

1 A bill to be entitled
2 An act relating to limited liability companies;
3 designating the Florida Limited Liability Company Act
4 as part I of chapter 608, F.S.; amending s. 608.401,
5 F.S.; conforming a cross-reference; creating s.
6 608.706, F.S.; providing for construction; providing
7 for applicability of and transition from the Florida
8 Limited Liability Company Act to the Florida Revised
9 Limited Liability Company Act, as created by this act;
10 creating part II of chapter 608, F.S.; creating the
11 "Florida Revised Limited Liability Company Act";
12 providing definitions and general provisions relating
13 to operating agreements, powers, property, rules of
14 construction, names, and registered agents of limited
15 liability companies; providing for the formation and
16 filing of documents of a limited liability company
17 with the Department of State; establishing the
18 authority and liability of members and managers;
19 providing for the relationship of members and
20 management, voting, standards of conduct, records, and
21 the right to obtain information; providing for
22 transferable interests and the rights of transferees
23 and creditors; providing for the dissociation of a
24 member and its effects; providing for the dissolution
25 and winding up of a limited liability company;
26 establishing provisions for merger, conversion,
27 domestication, interest exchange, and appraisal
28 rights; providing miscellaneous provisions for

29 application and construction, electronic signatures,
 30 tax exemption on income, interrogatories and other
 31 powers of the department, reservation of power to
 32 amend or appeal, and application to a limited
 33 liability company formed under the Florida Limited
 34 Liability Company Act before a specified date;
 35 providing for severability; providing for the future
 36 repeal of part I of chapter 608, F.S., relating to the
 37 Florida Limited Liability Company Act; providing
 38 effective dates.

40 Be It Enacted by the Legislature of the State of Florida:

42 Section 1. Sections 608.401 through 608.705, Florida
 43 Statutes, are designated as part I of chapter 608, Florida
 44 Statutes, to be entitled the "Florida Limited Liability Company
 45 Act."

46 Section 2. Section 608.401, Florida Statutes, is amended
 47 to read:

48 608.401 Short title.—Sections 608.401-608.706 ~~608.401-~~
 49 ~~608.705~~ may be cited as the "Florida Limited Liability Company
 50 Act."

51 Section 3. Section 608.706, Florida Statutes, is created
 52 in part I of chapter 608, Florida Statutes, to read:

53 608.706 References to chapter.—Any reference to "this
 54 chapter" contained within this part shall be construed as a
 55 reference to this part only.

56 Section 4. (1) Except as otherwise provided in subsection

57 | (2) or subsection (3), the Florida Limited Liability Company
 58 | Act, part I of chapter 608, Florida Statutes, shall govern all
 59 | limited liability companies in existence on the effective date
 60 | of this act.

61 | (2) Before January 1, 2015, the Florida Revised Limited
 62 | Liability Company Act, part II of chapter 608, Florida Statutes,
 63 | as created by this act, governs only:

64 | (a) A limited liability company formed on or after January
 65 | 1, 2014; or

66 | (b) A limited liability company formed before January 1,
 67 | 2014, that elects, in the manner provided in its operating
 68 | agreement or by law for amending the operating agreement, to be
 69 | subject to the Florida Revised Limited Liability Company Act,
 70 | part II of chapter 608, Florida Statutes.

71 | (3) Effective January 1, 2015, except as otherwise
 72 | provided in s. 608.981, Florida Statutes, the Florida Revised
 73 | Limited Liability Company Act, part II of chapter 608, Florida
 74 | Statutes, shall govern all limited liability companies.

75 | Section 5. Part II of chapter 608, Florida Statutes,
 76 | consisting of sections 608.7801 through 608.982, Florida
 77 | Statutes, is created to read:

78 | PART II

79 | FLORIDA REVISED LIMITED LIABILITY COMPANY ACT

80 | 608.7801 Short title.—Sections 608.7801-608.982 may be
 81 | cited as the "Florida Revised Limited Liability Company Act."

82 | 608.7802 Definitions.—As used in this chapter, the term:

83 | (1) "Acquired entity" means the entity, all of one or more
 84 | classes or series of interests in which are acquired in an

85 interest exchange.

86 (2) "Acquiring entity" means the entity that acquires all
 87 of one or more classes or series of interests of the acquired
 88 entity in an interest exchange.

89 (3) "Articles of conversion" means the articles of
 90 conversion required by s. 608.1045. The term includes the
 91 articles of conversion as amended or restated.

92 (4) "Articles of domestication" means the articles of
 93 domestication required by s. 608.1055. The term includes the
 94 articles of domestication as amended or restated.

95 (5) "Articles of interest exchange" means the articles of
 96 interest exchange required by s. 608.1035. The term includes the
 97 articles of interest exchange as amended or restated.

98 (6) "Articles of merger" means the articles of merger
 99 required by under s. 608.1025. The term includes the articles of
 100 merger as amended or restated.

101 (7) "Articles of organization" means the articles of
 102 organization required by s. 608.201. The term includes the
 103 articles of organization as amended or restated.

104 (8) "Authorized representative" means a person authorized
 105 by a prospective member of a limited liability company to form
 106 the company by executing and filing its articles of organization
 107 with the department:

108 (a) In the case of an existing limited liability company,
 109 the term "authorized representative" means, with respect to the
 110 execution and filing of a record with the department or taking
 111 any other action required or permitted by this chapter:

112 1. A manager of a manager-managed limited liability

HB 1079

2013

113 company who is authorized to do so;

114 2. A member of a member-managed limited liability company
115 who is authorized to do so; or

116 3. An agent or officer of the limited liability company
117 who is granted the authority to do so by such a manager or such
118 a member, or pursuant to the operating agreement of the limited
119 liability company.

120 (b) In the case of a foreign limited liability company or
121 another entity, the term "authorized representative" means, with
122 respect to the execution and filing of a record with the
123 department or taking another action required or permitted by
124 this chapter, a person who is authorized to file the record or
125 take another action on behalf of the foreign limited liability
126 company or other entity.

127 (9) "Business day" means Monday through Friday, excluding
128 a day a national banking association is not open for normal
129 business transactions.

130 (10) "Contribution," except in the phrase "right of
131 contribution," means property or a benefit described in s.
132 608.7841 which is provided by a person to a limited liability
133 company to become a member or is provided in the person's
134 capacity as a member.

135 (11) "Conversion" means a transaction authorized by ss.
136 608.941-608.950.

137 (12) "Converted entity" means the converting entity as it
138 continues in existence after a conversion.

139 (13) "Converting entity" means the domestic entity that
140 approves a plan of conversion pursuant to s. 608.947 or the

HB 1079

2013

141 foreign entity that approves a conversion pursuant to the
142 organic law of its jurisdiction of formation.

143 (14) "Day" means a calendar day.

144 (15) "Debtor in bankruptcy" means a person that is the
145 subject of:

146 (a) An order for relief under Title 11 of the United
147 States Code or a successor statute of general application; or

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

150 (16) "Department" means the Department of State.

151 (17) "Distribution" means a transfer of money or other
152 property from a limited liability company to a person on account
153 of a transferable interest or in the person's capacity as a
154 member.

155 (a) The term includes:

156 1. A redemption or other purchase by a limited liability
157 company of a transferable interest.

158 2. A transfer to a member in return for the member's
159 relinquishment of any right to participate as a member in the
160 management or conduct of the company's activities and affairs or
161 a relinquishment of a right to have access to records or other
162 information concerning the company's activities and affairs.

163 (b) The term does not include amounts constituting
164 reasonable compensation for present or past service or payments
165 made in the ordinary course of business under a bona fide
166 retirement plan or other bona fide benefits program.

167 (18) "Distributional interest" means the rights under an
168 unincorporated entity's organic law and organic rules to receive

169 | distributions from the entity.

170 | (19) "Domestic" with respect to an entity, means an entity
 171 | whose jurisdiction of formation is this state.

172 | (20) "Domesticated limited liability company" means the
 173 | domesticating entity as it continues in existence after a
 174 | domestication.

175 | (21) "Domesticating entity" means a non-United States
 176 | entity that approves a domestication pursuant to the law of its
 177 | jurisdiction of formation.

178 | (22) "Domestication" means a transaction authorized by ss.
 179 | 608.955-608.960.

180 | (23) "Entity" means:

181 | (a) A business corporation;

182 | (b) A nonprofit corporation;

183 | (c) A general partnership, including a limited liability
 184 | partnership;

185 | (d) A limited partnership, including a limited liability
 186 | limited partnership;

187 | (e) A limited liability company;

188 | (f) A real estate investment trust; or

189 | (g) Another domestic or foreign entity that is organized
 190 | under an organic law, but does not include:

191 | 1. An individual;

192 | 2. A trust with a predominantly donative purpose or a
 193 | charitable trust;

194 | 3. An association or relationship that is not a
 195 | partnership solely by reason of s. 620.8202(3) or a similar
 196 | provision of the law of another jurisdiction;

197 4. A decedent's estate; or
 198 5 A government or a governmental subdivision, agency, or
 199 instrumentality.

200 (24) "Filing entity" means an entity whose formation
 201 requires the filing of a public organic record.

202 (25) "Foreign," with respect to an entity, means an entity
 203 whose jurisdiction of formation is a jurisdiction other than
 204 this state.

205 (26) "Foreign limited liability company" means an
 206 unincorporated entity that was formed in a jurisdiction other
 207 than this state and is denominated by that law as a limited
 208 liability company.

209 (27) "Governance interest" means a right under the organic
 210 law or organic rules of an unincorporated entity, other than as
 211 a governor, agent, assignee, or proxy, to:

212 (a) Receive or demand access to information concerning an
 213 entity, or its books and records;

214 (b) Vote for or consent to the election of the governors
 215 of the entity; or

216 (c) Receive notice of, vote on, or consent to, an issue
 217 involving the internal affairs of the entity.

218 (28) "Governor" means:

219 (a) A director of a business corporation;

220 (b) A director or trustee of a nonprofit corporation;

221 (c) A general partner of a general partnership;

222 (d) A general partner of a limited partnership;

223 (e) A manager of a manager-managed limited liability
 224 company;

- 225 (f) A member of a member-managed limited liability
 226 company;
- 227 (g) A director or a trustee of a real estate investment
 228 trust; or
- 229 (h) Another person under whose authority the powers of an
 230 entity are exercised and under whose direction the activities
 231 and affairs of the entity are managed pursuant to the organic
 232 law and organic rules of the entity.
- 233 (29) "Interest" means:
- 234 (a) A share in a business corporation;
- 235 (b) A membership in a nonprofit corporation;
- 236 (c) A partnership interest in a general partnership;
- 237 (d) A partnership interest in a limited partnership;
- 238 (e) A membership interest in a limited liability company;
- 239 (f) A share or beneficial interest in a real estate
 240 investment trust;
- 241 (g) A member's interest in a limited cooperative
 242 association;
- 243 (h) A beneficial interest in a statutory trust, business
 244 trust, or common-law business trust; or
- 245 (i) A governance interest or distributional interest in
 246 another entity.
- 247 (30) "Interest exchange" means a transaction authorized by
 248 ss. 608.935-608.940.
- 249 (31) "Interestholder" means:
- 250 (a) A shareholder of a business corporation;
- 251 (b) A member of a nonprofit corporation;
- 252 (c) A general partner of a general partnership;

253 (d) A general partner of a limited partnership;
 254 (e) A limited partner of a limited partnership;
 255 (f) A member of a limited liability company;
 256 (g) A shareholder or beneficial owner of a real estate
 257 investment trust;
 258 (h) A beneficiary or beneficial owner of a statutory
 259 trust, business trust, or common-law business trust; or
 260 (i) Another direct holder of an interest.
 261 (32) "Interestholder liability" means:
 262 (a) Personal responsibility for a liability of an entity
 263 which is imposed on a person:
 264 1. Solely by reason of the status of the person as an
 265 interestholder; or
 266 2. By the organic rules of the entity which make one or
 267 more specified interestholders or categories of interestholders
 268 liable in their capacity as interestholders for all or specified
 269 liabilities of the entity.
 270 (b) An obligation of an interestholder under the organic
 271 rules of an entity to contribute to the entity.
 272 (33) "Jurisdiction," when used to refer to a political
 273 entity, means the United States, a state, a foreign country, or
 274 a political subdivision of a foreign country.
 275 (34) "Jurisdiction of formation" means, with respect to an
 276 entity:
 277 (a) The jurisdiction under whose organic law the entity is
 278 formed, incorporated, created or otherwise came into being;
 279 provided, however, for these purposes, if an entity exists under
 280 the law of a jurisdiction different from the jurisdiction under

HB 1079

2013

281 which the entity originally was formed, incorporated, created,
282 or otherwise came into being, then the jurisdiction under which
283 the entity then exists shall be treated as the jurisdiction of
284 formation; or

285 (b) In the case of a limited liability partnership or
286 foreign limited liability partnership, the jurisdiction in which
287 the partnership's statement of qualification or equivalent
288 document is filed.

289 (35) "Legal representative" means, with regard to a
290 natural person, the personal representative, executor, guardian,
291 conservator or other person who is empowered by applicable law
292 with the authority to act on behalf of the natural person, and,
293 with regard to a person other than a natural person, a person
294 who is empowered by applicable law with the authority to act on
295 behalf of the person.

296 (36) "Limited liability company" or "company," except in
297 the phrase "foreign limited liability company," means an entity
298 formed or existing under this chapter, or an entity that becomes
299 subject to this chapter pursuant to ss. 608.916-608.972.

300 (37) "Majority-in-interest" means those members holding
301 more than 50 percent of the then current percentage or other
302 interest in the profits or interests in the limited liability
303 company who have the right to vote; however for purposes of ss.
304 608.916-608.972, "majority-in-interest" means:

305 (a) In the case of a limited liability company with only
306 one class or series of members, the holders of more than 50
307 percent of the then current percentage or other interest in the
308 profits or interests in the company who have the right to

HB 1079

2013

309 approve a merger, interest exchange, or conversion, under the
310 organic law or the organic rules of the company; and

311 (b) In the case of a limited liability company having more
312 than one class or series of members, the holders in each class
313 or series of more than 50 percent of the then current percentage
314 or other interest in the profits or interests in that class or
315 series who have the right to approve a merger, interest
316 exchange, or conversion under the organic law or the organic
317 rules of the company, unless the company's organic rules provide
318 for the approval of the transaction in a different manner.

319 (38) "Manager" means a person who, under the operating
320 agreement of a manager-managed limited liability company, is
321 responsible, alone or in concert with others, for performing the
322 management functions stated in s. 608.7846(3).

323 (39) "Manager-managed limited liability company" means a
324 limited liability company that is manager-managed by virtue of
325 the operation of s. 608.7846(1).

326 (40) "Member" means a person who:

327 (a) Has become a member of a limited liability company
328 under s. 608.784 or was a member in a company when the company
329 become subject to this chapter; and

330 (b) Has not dissociated under s. 608.7862.

331 (41) "Member-managed limited liability company" means a
332 limited liability company that is not a manager-managed limited
333 liability company.

334 (42) "Merger" means a transaction authorized by ss.
335 608.925-608.930.

336 (43) "Merging entity" means an entity that is a party to a

337 merger and exists immediately before the merger becomes
338 effective.

339 (44) "Non United States entity" means a foreign entity
340 other than an entity with a jurisdiction of formation that is
341 not a state.

342 (45) "Operating agreement" means an agreement, whether
343 referred to as an operating agreement that may be oral, implied,
344 in a record, or in any combination thereof, of the members of a
345 limited liability company, including a sole member, concerning
346 the matters described in s. 608.105(a). The term includes the
347 agreement as amended or restated.

348 (46) "Organic law" means the law of the jurisdiction in
349 which an entity was formed.

350 (47) "Organic rules" means the public organic record and
351 private organic rules of an entity.

352 (48) "Person" means an individual, business corporation,
353 nonprofit corporation, partnership, limited partnership, limited
354 liability company, limited cooperative association,
355 unincorporated nonprofit association, statutory trust, business
356 trust, common-law business trust, estate, trust, association,
357 joint venture, public corporation, government or governmental
358 subdivision, agency, or instrumentality, or another legal or
359 commercial entity.

360 (49) "Plan" means a plan of merger, plan of interest
361 exchange, plan of conversion, or plan of domestication, as
362 appropriate in the particular context.

363 (50) "Plan of conversion" means a plan developed under s.
364 608.946 and includes the plan of conversion as amended or

HB 1079

2013

365 restated.

366 (51) "Plan of domestication" means a plan under s. 608.956
367 and includes the plan of domestication as amended or restated.

368 (52) "Plan of interest exchange" means a plan under s.
369 608.936 and includes the plan of interest exchange as amended or
370 restated.

371 (53) "Plan of merger" means a plan under s. 608.926 and
372 includes the plan of merger as amended or restated.

373 (54) "Principal office" means the principal executive
374 office of a limited liability company or foreign limited
375 liability company, regardless of whether the office is located
376 in this state.

377 (55) "Private organic rules" means the rules, whether or
378 not in a record, that govern the internal affairs of an entity,
379 are binding on all its interestholders, and are not part of its
380 public organic record, if a record exists. The term includes:

381 (a) The bylaws of a business corporation.

382 (b) The bylaws of a nonprofit corporation.

383 (c) The partnership agreement of a general partnership.

384 (d) The partnership agreement of a limited partnership.

385 (e) The operating agreement of a limited liability
386 company.

387 (f) The bylaws, trust instrument, or similar rules of a
388 real estate investment trust.

389 (g) The trust instrument of a statutory trust or similar
390 rules of a business trust or common-law business trust.

391 (56) "Property" means all property, whether real,
392 personal, mixed, tangible or intangible, or a right or interest

393 | therein.

394 | (57) "Protected agreement" means:

395 | (a) A record evidencing indebtedness and any related

396 | agreement in effect on January 1, 2014;

397 | (b) An agreement that is binding on an entity on January

398 | 1, 2014;

399 | (c) The organic rules of an entity in effect on January 1,

400 | 2014; or

401 | (d) An agreement that is binding on any of the governors

402 | or interestholders of an entity on January 1, 2014.

403 | (58) "Public organic record" means a record, the filing of

404 | which by a governmental body, is required to form an entity and

405 | an amendment to or restatement of that record. The term

406 | includes:

407 | (a) The articles of incorporation of a business

408 | corporation;

409 | (b) The articles of incorporation of a nonprofit

410 | corporation;

411 | (c) The certificate of limited partnership of a limited

412 | partnership;

413 | (d) The articles of organization of a limited liability

414 | company;

415 | (e) The articles of incorporation of a general cooperative

416 | association or a limited cooperative association;

417 | (f) The certificate of trust of a statutory trust or

418 | similar record of a business trust; or

419 | (g) The articles of incorporation of a real estate

420 | investment trust.

421 (59) "Record," when used as a noun, means information that
422 is inscribed on a tangible medium or that is stored in an
423 electronic or other medium and is retrievable in perceivable
424 form.

425 (60) "Registered foreign entity" means a foreign entity
426 that is authorized to transact business in this state pursuant
427 to a record filed with the department.

428 (61) "Registered foreign limited liability company" means
429 a foreign limited liability company that has a certificate of
430 authority to transact business in this state pursuant to a
431 record filed with the department.

432 (62) "Sign" means, with present intent to authenticate or
433 adopt a record:

434 (a) To execute or adopt a tangible symbol; or

435 (b) To attach to or logically associate with the record an
436 electronic symbol, sound, or process and includes a manual,
437 facsimile, conformed, or electronic signature. "Signed" and
438 "signature" have the corresponding meanings.

439 (63) "State" means a state of the United States, the
440 District of Columbia, Puerto Rico, the United States Virgin
441 Islands, or a territory or insular possession subject to the
442 jurisdiction of the United States.

443 (64) "Surviving entity" means the entity that continues in
444 existence after, or is created by, a merger.

445 (65) "Transfer" includes:

446 (a) An assignment.

447 (b) A conveyance.

448 (c) A sale.

449 (d) A lease.

450 (e) An encumbrance, including a mortgage or security
 451 interest.

452 (f) A gift.

453 (g) A transfer by operation of law.

454 (66) "Transferable interest" means the right, as initially
 455 owned by a person in the person's capacity as a member, to
 456 receive distributions from a limited liability company in
 457 accordance with the operating agreement, whether the person
 458 remains a member or continues to own a part of the right. The
 459 term applies to any fraction of the interest, by whomever owned.

460 (67) "Transferee" means a person to which all or part of a
 461 transferable interest is transferred, whether or not the
 462 transferor is a member. The term includes a person who owns a
 463 transferable interest under s. 608.7863(1)(c).

464 (68) "Type of entity" means a generic form of entity:

465 (a) Recognized at common law; or

466 (b) Formed under an organic law, whether or not some of
 467 the entities formed under that organic law are subject to
 468 provisions of that law that create different categories of the
 469 form of entity.

470 (69) "Writing" means printing, typewriting, electronic
 471 communication, or other intentional communication that is
 472 reducible to a tangible form. "Written" has the corresponding
 473 meaning.

474 608.7803 Knowledge; notice.—

475 (1) A person knows a fact if the person:

476 (a) Has actual knowledge of it; or

HB 1079

2013

477 (b) Is deemed to know it under paragraph (4) (a) or
478 paragraph (4) (b), or a law other than this chapter.

479 (2) A person has notice of a fact when the person:

480 (a) Has reason to know the fact from all of the facts
481 known to the person at the time in question; or

482 (b) Is deemed to have notice of the fact under paragraph
483 (4) (c).

484 (3) Subject to s. 608.78291(8), a person notifies another
485 person of a fact by taking steps reasonably required to inform
486 the other person in the ordinary course of events, regardless of
487 whether those steps cause the other person to know the fact.

488 (4) A person who is not a member is deemed:

489 (a) To know of a limitation on authority to transfer real
490 property as provided in s. 608.7832(7).

491 (b) To know of the authority or limitation on the
492 authority of a person holding a position or having a specified
493 status in a company, or to know of the authority or limitation
494 on the authority of a specific person, if the authority or
495 limitation on the authority is described in the articles of
496 organization in accordance with s. 608.7821(3) (d). However, if
497 that description is added or changed by an amendment or an
498 amendment and restatement of the articles of organization, then
499 notice of the addition or change does not become effective until
500 90 days after the effective date of the amendment or amendment
501 and restatement.

502 (c) To have notice of a limited liability company's:

503 1. Declaration in its articles of organization that it is
504 manager-managed in accordance with s. 608.7821(3) (a); if such a

505 declaration is added or changed by an amendment or restatement
506 of the articles of organization, notice of the addition or
507 change does not become effective until 90 days after the
508 effective date of the amendment or restatement.

509 2. Dissolution within 90 days after the articles of
510 dissolution filed under s. 608.7917 become effective.

511 3. Termination within 90 days after a statement of
512 termination filed under s. 608.7919(7) becomes effective.

513 4. Participation in a merger, interest exchange,
514 conversion, or domestication within 90 days after the articles
515 of merger, articles of interest exchange, articles of
516 conversion, or articles of domestication under ss. 608.916-
517 608.972, as applicable, become effective.

518 608.7804 Governing law.—The law of this state governs:

519 (1) The internal affairs of a limited liability company.

520 (2) The liability of a member as member, and a manager as
521 manager, for the debts, obligations, or other liabilities of a
522 limited liability company.

523 608.7805 Operating agreement; scope, function, and
524 limitations.—

525 (1) Except as otherwise provided in subsections (3) and
526 (4), the operating agreement governs:

527 (a) Relations among the members as members and between the
528 members and the limited liability company.

529 (b) The rights and duties under this chapter of a person
530 in the capacity of manager.

531 (c) The activities and affairs of the company and the
532 conduct of those activities and affairs.

533 (d) The means and conditions for amending the operating
534 agreement.

535 (2) To the extent the operating agreement does not
536 otherwise provide for a matter described in subsection (1), this
537 chapter governs the matter.

538 (3) An operating agreement may not:

539 (a) Vary a limited liability company's capacity under s.
540 608.7809 to sue and be sued in its own name.

541 (b) Vary the law applicable under s. 608.7804.

542 (c) Vary the requirement, procedure, or other provision of
543 this chapter pertaining to:

544 1. Registered agents; or

545 2. The department, including provisions pertaining to
546 records authorized or required to be delivered to the department
547 for filing under this chapter.

548 (d) Vary the provisions of s. 608.7804.

549 (e) Eliminate the duty of loyalty or the duty of care
550 under s. 608.7851, except as otherwise provided in subsection
551 (4).

552 (f) Eliminate the obligation of good faith and fair
553 dealing under s. 608.7851, but the operating agreement may
554 prescribe the standards by which the performance of the
555 obligation is to be measured, if the standards are not
556 manifestly unreasonable.

557 (g) Relieve or exonerate a person from liability for
558 conduct involving bad faith, willful or intentional misconduct,
559 or a knowing violation of law.

560 (h) Unreasonably restrict the duties and rights stated in

561 s. 608.7853, but the operating agreement may impose reasonable
562 restrictions on the availability and use of information obtained
563 under that section and may define appropriate remedies,
564 including liquidating damages, for a breach of a reasonable
565 restriction on use;

566 (i) Vary the power of a person to dissociate under s.
567 608.7861 except to require that the notice under s. 608.7862(1)
568 be in a record.

569 (j) Vary the grounds for dissolution specified in s.
570 608.7912(2).

571 (k) Vary the requirement to wind up the company's
572 business, activities, and affairs as specified in s.
573 608.7919(1), (2)(a), and (5).

574 (l) Unreasonably restrict the right of a member to
575 maintain an action under ss. 608.7931-608.7936.

576 (m) Vary the provisions of s. 608.7934, but the operating
577 agreement may provide that the company may not appoint a special
578 litigation committee. However, the operating agreement may not
579 prevent a court from appointing a special litigation committee.

580 (n) Vary the required contents of plan of merger under s.
581 608.926, a plan of interest exchange under s. 608.936, a plan of
582 conversion under s. 608.946, or a plan of domestication under s.
583 608.956.

584 (o) Except as otherwise provided in ss. 608.7806 and
585 608.7807(2), restrict the rights under this chapter of a person
586 other than a member or manager.

587 (p) Provide for indemnification for a member or manager
588 under s. 608.7850 for the following:

HB 1079

2013

- 589 1. Conduct involving bad faith, willful or intentional
590 misconduct, or a knowing violation of law;
- 591 2. A transaction from which the member or manager derived
592 an improper personal benefit;
- 593 3. A circumstance under which the liability provisions of
594 s. 608.7845 are applicable; or
- 595 4. A breach of duties or obligations under s. 608.7851,
596 taking into account a variation of such duties and obligations
597 provided for in the operating agreement to the extent allowed by
598 subsection (4).
- 599 (4) Subject to subsection (3) (g), without limiting other
600 terms that may be included in an operating agreement, the
601 following rules apply:
- 602 (a) The operating agreement may:
- 603 1. Specify the method by which a specific act or
604 transaction that would otherwise violate the duty of loyalty may
605 be authorized or ratified by one or more disinterested and
606 independent persons after full disclosure of all material facts.
- 607 2. Alter the prohibition stated in s. 608.7844(1) (b) so
608 that the prohibition requires solely that the company's total
609 assets not be less than the sum of its total liabilities.
- 610 (b) To the extent the operating agreement of a member-
611 managed limited liability expressly relieves a member of
612 responsibility that the member would otherwise have under this
613 chapter and imposes the responsibility on one or more other
614 members, the operating agreement may, to the benefit of the
615 member that the operating agreement relieves of the
616 responsibility, also eliminate or limit a duty or obligation

617 that would have pertained to the responsibility.

618 (c) If not manifestly unreasonable, the operating

619 agreement may:

620 1. Alter or eliminate the aspects of the duty of loyalty

621 under s. 608.7851(2).

622 2. Identify specific types or categories of activities

623 that do not violate the duty of loyalty.

624 3. Alter the duty of care, but may not authorize willful

625 or intentional misconduct or a knowing violation of law.

626 (5) The court shall decide as a matter of law whether a

627 term of an operating agreement is manifestly unreasonable under

628 paragraph (3) (f) or paragraph(4) (c). The court:

629 (a) Shall make its determination as of the time the

630 challenged term became part of the operating agreement and shall

631 consider only circumstances existing at that time.

632 (b) May invalidate the term only if, in light of the

633 purposes, activities, and affairs of the limited liability

634 company, it is readily apparent that:

635 1. The objective of the term is unreasonable; or

636 2. The term is an unreasonable means to achieve the

637 provision's objective.

638 (6) An operating agreement may provide for specific

639 penalties or specified consequences, including those described

640 in s. 608.7842(5), in the event a member or transferee fails to

641 comply with the terms and conditions of the operating agreement,

642 or when other events specified in the operating agreement occur.

643 608.7806 Operating agreement; effect on limited liability

644 company and person becoming member; preformation agreement;

HB 1079

2013

645 other matters involving operating agreement.—

646 (1) A limited liability company is bound by and may
647 enforce the operating agreement, regardless of whether the
648 company has itself agreed to the operating agreement.

649 (2) A person who becomes a member of a limited liability
650 company is deemed to assent to, is bound by, and may enforce the
651 operating agreement, regardless of whether the member executes
652 the operating agreement.

653 (3) Two or more persons intending to become the initial
654 members of a limited liability company may make an agreement
655 providing that, upon the formation of the company, the agreement
656 will become the operating agreement. One person intending to
657 become the initial member of a limited liability company may
658 agree to terms that will become the operating agreement upon
659 formation of the company.

660 (4) A manager of a limited liability company or a
661 transferee is bound by the operating agreement regardless of
662 whether the manager or transferee has agreed to the operating
663 agreement.

664 (5) An operating agreement of a limited liability company
665 that has only one member is not unenforceable simply because
666 there is only one person who is a party to the operating
667 agreement.

668 (6) Except as provided in s. 608.7805(1), an operating
669 agreement is not subject to a statute of frauds.

670 (7) An operating agreement may provide rights to a person,
671 including a person who is not a party to the operating
672 agreement, to the extent provided in the operating agreement.

673 (8) A written operating agreement or other record:

674 (a) May provide that a person be admitted as a member of a
675 limited liability company or become a transferee of a limited
676 liability company interest or other rights or powers of a member
677 to the extent assigned:

678 1. If the person or a representative authorized by that
679 person orally, in writing, or by other action such as payment
680 for a limited liability company interest, executes the operating
681 agreement or another record evidencing the intent of the person
682 to become a member or transferee; or

683 2. Without the execution of the operating agreement, if
684 the person or a representative authorized by the person orally,
685 in writing, or by other action such as payment for a limited
686 liability company interest complies with the conditions for
687 becoming a member or transferee as provided in the operating
688 agreement or another record.

689 (b) Shall not be unenforceable by reason of its not being
690 signed by a person being admitted as a member or becoming a
691 transferee as provided in subparagraph (a), or by reason of its
692 being signed by a representative as provided in this chapter.

693 608.7807 Operating agreement; effect on third parties and
694 relationship to records effective on behalf of limited liability
695 company.—

696 (1) An operating agreement may specify that its amendment
697 requires the approval of a person who is not a party to the
698 agreement or upon the satisfaction of a condition. An amendment
699 is ineffective if its adoption does not include the required
700 approval or satisfy the specified condition.

HB 1079

2013

701 (2) The obligations of a limited liability company and its
702 members to a person in the person's capacity as a transferee or
703 a person dissociated as a member are governed by the operating
704 agreement. An amendment to the operating agreement made after a
705 person becomes a transferee or is dissociated as a member:

706 (a) Is effective with regard to a debt, obligation, or
707 other liability of the limited liability company or its members
708 to the person in the person's capacity as a transferee or person
709 dissociated as a member.

710 (b) Is not effective to the extent the amendment imposes a
711 new debt, obligation, or other liability on the transferee or
712 person dissociated as a member.

713 (3) If a record delivered to the department for filing
714 becomes effective under this chapter and contains a provision
715 that would be ineffective under s. 608.7805(3) or (4)(c), if
716 contained in the operating agreement, the provision is
717 ineffective in the record.

718 (4) Subject to subsection (3), if a record delivered to
719 the department for filing that has become effective under this
720 chapter but conflicts with a provision of the operating
721 agreement:

722 (a) The operating agreement prevails as to members,
723 dissociated members, transferees, and managers.

724 (b) The record prevails as to other persons to the extent
725 they reasonably rely on the record.

726 608.7808 Nature, purpose, and duration of limited
727 liability company.-

728 (1) A limited liability company is an entity distinct from

729 its members.

730 (2) A limited liability company may have any lawful
731 purpose, regardless of whether the company is for profit.

732 (3) A limited liability company has indefinite duration.

733 608.7809 Powers.—A limited liability company has the
734 powers, rights, and privileges granted by this chapter, another
735 law, or by its operating agreement to do all things necessary or
736 convenient to carry out its activities and affairs, including
737 the power to:

738 (1) Sue and be sued, and defend, in its name.

739 (2) Purchase, receive, lease, or otherwise acquire, own,
740 hold, improve, use, and otherwise deal with real or personal
741 property, or any legal or equitable interest in property,
742 wherever located.

743 (3) Sell, convey, mortgage, grant a security interest in,
744 lease, exchange, and otherwise encumber or dispose of all or a
745 part of its property.

746 (4) Purchase, receive, subscribe for, or otherwise
747 acquire, own, hold, vote, use, sell, mortgage, lend, grant a
748 security interest in, or otherwise dispose of and deal in and
749 with, shares or other interests in or obligations of another
750 entity.

751 (5) Make contracts or guarantees, or incur liabilities;
752 borrow money; issue notes, bonds, or other obligations, which
753 may be convertible into or include the option to purchase other
754 securities of the limited liability company; or make contracts
755 of guaranty and suretyship that are necessary or convenient to
756 the conduct, promotion, or attainment of the purposes activities

HB 1079

2013

757 and affairs of the limited liability company.

758 (6) Lend money, invest or reinvest its funds, and receive
759 and hold real or personal property as security for repayment.

760 (7) Conduct its business, locate offices, and exercise the
761 powers granted by this chapter within or without this state.

762 (8) Select managers and appoint officers, directors,
763 employees, and agents of the limited liability company, define
764 their duties, fix their compensation, and lend them money and
765 credit.

766 (9) Make donations for the public welfare or for
767 charitable, scientific, or educational purposes.

768 (10) Pay pensions and establish pension plans, pension
769 trusts, profit-sharing plans, bonus plans, option plans, and
770 benefit or incentive plans for any or all of its current or
771 former managers, members, officers, agents, and employees.

772 (11) Be a promoter, incorporator, shareholder, partner,
773 member, associate, or manager of a corporation, partnership,
774 joint venture, trust, or other entity.

775 (12) Make payments or donations or do another act not
776 inconsistent with law that furthers the business of the limited
777 liability company.

778 (13) Enter into interest rate, basis, currency, hedge or
779 other swap agreements or cap, floor, put, call, option, exchange
780 or collar agreements, derivative agreements, or similar
781 agreement.

782 (14) Grant, hold or exercise a power of attorney,
783 including an irrevocable power of attorney.

784 608.7810 Limited liability company property.—

785 (1) All property originally contributed to the limited
786 liability company or subsequently acquired by a limited
787 liability company by purchase or other method is limited
788 liability company property.

789 (2) Property acquired with limited liability company funds
790 is limited liability company property.

791 (3) Instruments and documents providing for the
792 acquisition, mortgage, or disposition of property of the limited
793 liability company are valid and binding upon the limited
794 liability company if they are executed in accordance with this
795 chapter.

796 (4) A member of a limited liability company has no
797 interest in a specific limited liability company property.

798 608.7811 Rules of construction and supplemental principles
799 of law.—

800 (1) It is the intent of this chapter to give the maximum
801 effect to the principle of freedom of contract and to the
802 enforceability of operating agreements, including the purposes
803 of ss. 608.7805-608.7807.

804 (2) Unless displaced by particular provisions of this
805 chapter, the principles of law and equity supplement this
806 chapter.

807 608.7812 Name.—

808 (1) The name of a limited liability company:

809 (a) Must contain the words "limited liability company" or
810 the abbreviation "L.L.C." or "LLC".

811 (b) Must be distinguishable in the records of the
812 department from the names of all other entities or filings,

HB 1079

2013

813 except fictitious name registrations pursuant to s. 865.09,
814 organized, registered, or reserved under the laws of this state,
815 which names are on file with the department.

816 (c) May not contain language stating or implying that the
817 limited liability company is organized for a purpose other than
818 a purpose permitted in this chapter and its articles of
819 organization.

820 (d) May not contain language stating or implying that the
821 limited liability company is connected with a state or federal
822 government agency or a corporation or other entity chartered
823 under the laws of the United States.

824 (2) Subject to s. 608.905, this section applies to a
825 foreign limited liability company transacting business in this
826 state which has a certificate of authority to transact business
827 in this state or which has applied for a certificate of
828 authority.

829 (3) In the case of a limited liability company in
830 existence before July 1, 2007, and registered with the
831 department, the requirement in this section that the name of a
832 limited liability company be distinguishable from the names of
833 other entities and filings shall only apply when the limited
834 liability company files documents on or after July 1, 2007, that
835 would otherwise have affected its name.

836 (4) A limited liability company in existence before
837 January 1, 2014, which was registered with the department and is
838 using an abbreviation or designation in its name permitted under
839 previous law, is permitted to continue using the abbreviation or
840 designation in its name until it dissolves or amends its name in

841 the records of the department.

842 (5) The name of the limited liability company must be
843 filed with the department for public notice only and the act of
844 filing alone does not create any presumption of ownership beyond
845 that which is created under the common law.

846 608.7813 Registered agent.—

847 (1) Each limited liability company and each foreign limited
848 liability company that has a certificate of authority under s.
849 608.902 shall designate and continuously maintain in this state:

850 (a) A registered office, which may be the same as its
851 place of business in this state.

852 (b) A registered agent, who may be either:

853 1. An individual who resides in this state and whose
854 business address is identical to the address of the registered
855 office; or

856 2. A foreign or domestic entity authorized to transact
857 business in this state, which has a business office address that
858 is identical to the registered office.

859 (2) Each initial registered agent, and each successor
860 registered agent that is appointed, shall file a statement in
861 writing with the department, in the form and manner prescribed
862 by the department, accepting the appointment as registered agent
863 while simultaneously being designated as the registered agent.
864 The statement of acceptance shall provide that the registered
865 agent is familiar with, and accepts, the obligations of that
866 position.

867 (3) The only duties of a registered agent are:

868 (a) To forward to the limited liability company or

HB 1079

2013

869 registered foreign limited liability company, at the address
870 most recently supplied to the agent by the company, a process,
871 notice, or demand pertaining to the company or foreign limited
872 liability company that is served on or received by the agent.

873 (b) If the registered agent resigns, to provide the notice
874 required by s. 608.7815 to the company or foreign limited
875 liability company at the address most recently supplied to the
876 agent by the company or foreign limited liability company.

877 (4) The department shall maintain an accurate record of
878 the registered agents and registered office for the service of
879 process and shall promptly furnish information disclosed thereby
880 promptly upon request and payment of the required fee.

881 (5) A limited liability company and each foreign limited
882 liability company that has a certificate of authority under s.
883 608.902 may not prosecute, maintain, or defend an action in a
884 court until the limited liability company complies with this
885 section and pays to the department a penalty of \$5 for each day
886 it has failed to comply or \$500, whichever is less, and pays
887 another amount required under this chapter.

888 608.7814 Change of registered agent or registered office.-

889 (1) In order to change its registered agent or registered
890 office address, a limited liability company or a foreign limited
891 liability company may deliver to the department, for filing, a
892 statement of change containing:

893 (a) The name of the limited liability company or foreign
894 limited liability company.

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

896 (c) If the registered agent is to be changed, the name of

897 the new registered agent.

898 (d) The street address of its current registered office
899 for its registered agent.

900 (e) If the street address of the registered office is to
901 be changed, the new street address of the registered office in
902 this state.

903 (2) If the registered agent is changed, the written
904 acceptance of the successor registered agent described in s.
905 608.7813(2) must also be included in or attached to the
906 statement of change.

907 (3) A statement of change is effective when filed by the
908 department or when permitted by s. 608.7827.

909 (4) The changes described in this section may also be made
910 on the limited liability company's or foreign limited liability
911 company's annual report or on an application for reinstatement
912 filed with the department under s. 608.7925(1) or in an
913 amendment to a foreign limited liability company's certificate
914 of authority in accordance with s. 608.906.

915 608.7815 Resignation of registered agent.—

916 (1) A registered agent may resign as agent for a limited
917 liability company or foreign limited liability company by
918 delivering for filing to the department a signed statement of
919 resignation containing the name of the limited liability company
920 or foreign limited liability company.

921 (2) After filing the statement with the department, the
922 registered agent shall mail a copy to the limited liability
923 company's or foreign limited liability company's current mailing
924 address.

925 (3) A registered agent is terminated upon the earlier of:

926 (a) The 31st day after the department files the statement
 927 of resignation; or

928 (b) When a statement of change or other record for
 929 designating a new registered agent is filed by the department.

930 (4) When a statement of resignation takes effect, the
 931 registered agent ceases to have responsibility for a matter
 932 thereafter tendered to it as agent for the limited liability
 933 company or foreign limited liability company. The resignation
 934 does not affect contractual rights the company or foreign
 935 limited liability company has against the agent or that the
 936 agent has against the company or the foreign limited liability
 937 company.

938 (5) A registered agent may resign from a limited liability
 939 company or foreign limited liability company regardless of
 940 whether the company or foreign limited liability company has
 941 active status.

942 608.7816 Change of name or address by registered agent.—

943 (1) If a registered agent changes his or her name or
 944 address, the agent may deliver to the department for filing a
 945 statement of change that provides:

946 (a) The name of the limited liability company or foreign
 947 limited liability company represented by the registered agent.

948 (b) The name of the agent as currently shown in the
 949 records of the department for the company or foreign limited
 950 liability company.

951 (c) If the name of the agent has changed, its new name.

952 (d) If the address of the agent has changed, the new

HB 1079

2013

953 address.

954 (e) The registered agent has given the notice required by
955 subsection (2).

956 (2) A registered agent shall promptly furnish notice of
957 the statement of change and the changes made by the statement
958 filed with the department to the represented limited liability
959 company or foreign limited liability company.

960 608.7817 Service of process, notice, or demand.—

961 (1) A limited liability company or registered foreign
962 limited liability company may be served with a process, notice,
963 or demand required or permitted by law by serving its registered
964 agent.

965 (2) If a limited liability company or registered foreign
966 limited liability company ceases to have a registered agent, or
967 if its registered agent cannot with reasonable diligence be
968 served, the process, notice, or demand required or permitted by
969 law may instead be served:

970 (a) On a member of a member-managed limited liability
971 company; or

972 (b) On a manager of a manager-managed limited liability
973 company.

974 (3) If the process, notice, or demand cannot be served on
975 a limited liability company or registered foreign limited
976 liability company pursuant to subsection (1) or subsection (2),
977 the department shall also be an agent of the company upon whom
978 process, notice, or demand may be served.

979 (4) Service of a process, notice, or demand on the
980 department may be made by delivering to and leaving with the

981 department duplicate copies of the process, notice, or demand.

982 (5) Service is effected under subsection (3) on the date
 983 shown as received by the department.

984 (6) The department shall keep a record of each process,
 985 notice, and demand served pursuant to this section and record
 986 the time of, and the action taken regarding, the service.

987 (7) This section does not affect the right to serve
 988 process, notice, or demand in another manner provided by law.

989 608.7818 Delivery of record.—

990 (1) Except as otherwise provided in this chapter,
 991 permissible means of delivery of a record include delivery by
 992 hand, the United States Postal Service, a commercial delivery
 993 service, and electronic transmission.

994 (2) Delivery to the department is effective only when a
 995 record is received by the department.

996 608.7819 Waiver of notice.—When, pursuant to this chapter
 997 or the articles of organization or operating agreement of a
 998 limited liability company, notice is required to be given to a
 999 member of a limited liability company or to a manager of a
 1000 limited liability company having a manager or managers, a waiver
 1001 in writing signed by the person or persons entitled to the
 1002 notice, whether made before or after the time for notice to be
 1003 given, is equivalent to the giving of notice.

1004 608.7821 Formation of limited liability company; articles
 1005 of organization.—

1006 (1) One or more persons may act as authorized
 1007 representatives to form a limited liability company by signing
 1008 and delivering to the department, for filing, articles of

HB 1079

2013

1009 organization.

1010 (2) The articles of organization must state:

1011 (a) The name of the limited liability company, which must
1012 comply with s. 608.7812.

1013 (b) The street and mailing addresses of the company's
1014 principal office.

1015 (c) The name, street address in this state, and written
1016 acceptance of the company's initial registered agent.

1017 (3) The articles of organization may contain statements as
1018 to matters other than those required by subsection (2), but may
1019 not vary or otherwise affect the provisions specified in s.
1020 608.7805(3) in a manner inconsistent with that section.

1021 Additional statements may include the following:

1022 (a) A declaration as to whether the limited liability
1023 company is manager-managed for purposes of s. 608.7846 and other
1024 relevant provisions of this chapter.

1025 (b) For a manager-managed limited liability company, the
1026 names and addresses of one or more of the managers of the
1027 company.

1028 (c) For a member-managed limited liability company, the
1029 name and address of one or more of the members of the company.

1030 (d) A description of the authority or limitation on the
1031 authority of a person holding a position or having a specified
1032 status in a company, or a description of the authority or
1033 limitation on the authority of a specific person.

1034 (e) Other relevant matters.

1035 (4) A limited liability company is formed when the
1036 company's articles of organization become effective under s.

1037 608.7827, and at least one person becomes a member at the time
 1038 that the articles of organization become effective. The person
 1039 who signs the articles of organization must affirm that the
 1040 company has or will have at least one member as of the time the
 1041 articles of organization become effective.

1042 608.7822 Amendment or restatement of articles of
 1043 organization.—

1044 (1) The articles of organization may be amended or
 1045 restated at any time.

1046 (2) To amend the articles of organization, a limited
 1047 liability company must deliver to the department for filing an
 1048 amendment, designated as such in its heading, which contains:

1049 (a) The present name of the company.

1050 (b) The date of filing of its articles of organization.

1051 (c) The amendment to the articles of organization.

1052 (d) The delayed effective date, pursuant to s. 608.7827,
 1053 if the amendment is not effective on the date the department
 1054 files the amendment.

1055 (3) To restate its articles of organization, a limited
 1056 liability company must deliver to the department for filing an
 1057 instrument, entitled "restatement of articles of organization,"
 1058 which contains:

1059 (a) The present name of the company.

1060 (b) The date of the filing of its articles of
 1061 organization.

1062 (c) All of the provisions of its articles of organization
 1063 in effect, as restated.

1064 (d) The delayed effective date, pursuant to s. 608.7827,

HB 1079

2013

1065 if the restatement is not effective on the date the department
1066 files the restatement.

1067 (4) A restatement of the articles of organization of a
1068 limited liability company may also contain one or more
1069 amendments of the present articles of organization, in which
1070 case the instrument must be entitled "amended and restated
1071 articles of organization."

1072 (5) If a member of a member-managed limited liability
1073 company, or a manager of a manager-managed limited liability
1074 company, knew that information contained in filed articles of
1075 organization was inaccurate when the articles of organization
1076 were filed or became inaccurate due to changed circumstances,
1077 the member or manager shall promptly:

1078 (a) Cause the articles of organization to be amended; or

1079 (b) If appropriate, deliver to the department for filing a
1080 statement of change under s. 608.7814 or a statement of
1081 correction under s. 608.7829.

1082 608.7823 Signing of records to be delivered for filing to
1083 department.—

1084 (1) A record delivered to the department for filing
1085 pursuant to this chapter must be signed as follows:

1086 (a) Except as otherwise provided in paragraphs (b) and
1087 (c), a record signed on behalf of a limited liability company
1088 must be signed by a person authorized by the company.

1089 (b) A company's initial articles of organization must be
1090 signed by at least one person acting as an authorized
1091 representative. The articles must also include or have attached
1092 a statement signed by the initial registered agent in the form

1093 described in s. 608.7813(2).

1094 (c) A record delivered on behalf of a dissolved company
 1095 that has no member must be signed by the person winding up the
 1096 company's activities and affairs under s. 608.7919(3) or a
 1097 person appointed under s. 608.7919(4) to wind up the activities
 1098 and affairs.

1099 (d) A statement of denial by a person under s. 608.7833
 1100 must be signed by that person.

1101 (e) A record changing the registered agent must also
 1102 include or be accompanied by a statement signed by the successor
 1103 registered agent in the form described in s. 608.7813(2).

1104 (f) Another record delivered on behalf of a person to the
 1105 department must be signed by that person.

1106 (2) A record may also be signed by an agent, legal
 1107 representative, or attorney-in-fact, as applicable, if such
 1108 person is duly appointed and authorized to sign the record and
 1109 the record recites that such person possesses that authority.

1110 (3) A person who signs a record as an agent, legal
 1111 representative, or attorney-in-fact affirms as a fact that the
 1112 person is authorized to sign the record.

1113 608.7824 Signing and filing pursuant to judicial order.-

1114 (1) If a person who is required by this chapter to sign a
 1115 record or deliver a record to the department for filing under
 1116 this chapter does not do so, another person who is aggrieved may
 1117 petition the circuit court to order:

1118 (a) The person to sign the record;

1119 (b) The person to deliver the record to the department for
 1120 filing; or

1121 (c) The department to file the record unsigned.
 1122 (2) If a petitioner under subsection (1) is not the
 1123 limited liability company or foreign limited liability company
 1124 to which the record pertains, the petitioner shall make the
 1125 company a party to the action. The petitioner may seek the
 1126 remedies provided in subsection (1) in the same action in
 1127 combination or in the alternative.

1128 (3) A record filed under paragraph (1)(c) is effective
 1129 without being signed.

1130 608.7825 Liability for inaccurate information in filed
 1131 record.-

1132 (1) If a record delivered to the department for filing
 1133 under this chapter and filed by the department contains
 1134 inaccurate information, a person who suffers a loss by reliance
 1135 on the information may recover damages for the loss from:

1136 (a) A person who signed the record, or caused another to
 1137 sign it on the person's behalf, and knew the information was
 1138 inaccurate at the time the record was signed.

1139 (b) Subject to subsection (2), a member of a member-
 1140 managed limited liability company or the manager of a manager-
 1141 managed limited liability company, if:

1142 1. The record was delivered for filing on behalf of the
 1143 company.

1144 2. The member or manager had notice of the inaccuracy for
 1145 a reasonably sufficient time before the information was relied
 1146 upon so that, before the reliance, the member or manager
 1147 reasonably could have:

1148 a. Effected an amendment under s. 608.7822;

HB 1079

2013

1149 b. Filed a petition under s. 608.7824; or
1150 c. Delivered to the department for filing a statement of
1151 change under s. 608.7814 or a statement of correction under s.
1152 608.7829.

1153 (2) To the extent that the operating agreement of a
1154 member-managed limited liability company expressly relieves a
1155 member of responsibility for maintaining the accuracy of
1156 information contained in records delivered on behalf of the
1157 company to the department for filing and imposes that
1158 responsibility on one or more other members, the liability
1159 stated in paragraph (1)(b) applies to those other members and
1160 not to the member that the operating agreement relieves of the
1161 responsibility.

1162 (3) An individual who signs a record authorized or
1163 required to be filed under this chapter affirms under penalty of
1164 perjury that the information stated in the record is accurate.

1165 608.7826 Filing requirements.—

1166 (1) A record authorized or required to be delivered to the
1167 department for filing must be captioned to describe the record's
1168 purpose, be in a medium permitted by the department, and be
1169 delivered to the department. Unless the department determines
1170 that a record does not comply with the filing requirements, and
1171 if all filing fees are paid, the department shall file the
1172 record.

1173 (2) Upon request and payment of the applicable fee, the
1174 department shall send to the requester a certified copy of the
1175 requested record.

1176 (3) If the department has prescribed a mandatory medium or

HB 1079

2013

1177 form for the record being filed, the record must be in the
1178 prescribed medium or on the prescribed form.

1179 (4) Except as otherwise provided by the department, a
1180 document to be filed by the department must be typewritten or
1181 printed, legible, and written in the English language. A limited
1182 liability company name does not need to be in English if written
1183 in English letters or Arabic or Roman numerals, and the
1184 certificate of existence required of a foreign limited liability
1185 company, does not need to be in English if accompanied by a
1186 reasonably authenticated English translation. If the department
1187 has prescribed a mandatory form for the document to be filed,
1188 the document must be in or on the prescribed form. The
1189 department may prescribe forms in electronic format that comply
1190 with this chapter. The department may also use electronic
1191 transmissions for the purposes of notice and communication in
1192 the performance of its duties and may require filers and
1193 registrants to furnish email addresses when presenting a
1194 document for filing.

1195 608.7827 Effective date and time.—Except as otherwise
1196 provided in s. 608.7828, and subject to s. 608.7829(3), a
1197 document delivered to the department for filing may specify an
1198 effective time and a delayed effective date. In the case of
1199 initial articles of organization, a previous effective date may
1200 be specified in the articles of organization, provided such date
1201 is within 5 business days before the date of filing. Subject to
1202 ss. 608.7814, 608.7815, and 608.7829, a record filed by the
1203 department is effective:

1204 (1) If the record does not specify an effective time and

1205 does not specify a previous or a delayed effective date, on the
 1206 date and when the record is filed as evidenced by the
 1207 department's endorsement of the date and time on the record.

1208 (2) If the record specifies an effective time but not a
 1209 previous or delayed effective date, on the date the record is
 1210 filed at the time specified in the record.

1211 (3) If the record specifies a delayed effective date but
 1212 not an effective time, at 12:01 a.m. on the earlier of:

1213 (a) The specified date; or

1214 (b) The 90th day after the record is filed.

1215 (4) If the record specifies a date before the effective
 1216 date but no effective time, at 12:01 a.m. on the later of:

1217 (a) The specified date; or

1218 (b) The 5th business day before the record is filed.

1219 (5) If the record specifies an effective time and a
 1220 delayed effective date, at the specified time on the earlier of:

1221 (a) The specified date; or

1222 (b) The 90th day after the record is filed.

1223 (6) If the record specifies an effective time and a
 1224 previous effective date, at the specified time on the later of:

1225 (a) The specified date; or

1226 (b) The 5th business day before the record is filed.

1227 608.7828 Withdrawal of filed record before effectiveness.-

1228 (1) Except as otherwise provided in ss. 608.916-608.972, a
 1229 record delivered to the department for filing may be withdrawn
 1230 before it takes effect by delivering to the department for
 1231 filing a withdrawal statement.

1232 (2) A withdrawal statement must:

1233 (a) Be signed by each person who signed the record being
 1234 withdrawn, except as otherwise agreed by those persons.

1235 (b) Identify the record to be withdrawn.

1236 (c) If not signed by all the persons who signed the record
 1237 being withdrawn, state that the record is withdrawn in
 1238 accordance with the agreement of all the persons who signed the
 1239 record.

1240 (3) Upon the filing by the department of a withdrawal
 1241 statement, the action or transaction evidenced by the original
 1242 record does not take effect.

1243 608.7829 Correcting filed record.-

1244 (1) A person on whose behalf a filed record was delivered
 1245 to the department for filing may correct the record if:

1246 (a) The record at the time of filing was inaccurate;

1247 (b) The record was defectively signed; or

1248 (c) The electronic transmission of the record to the
 1249 department was defective.

1250 (2) To correct a filed record, a person on whose behalf
 1251 the record was delivered to the department must deliver to the
 1252 department for filing a statement of correction.

1253 (3) A statement of correction:

1254 (a) May not state a delayed effective date.

1255 (b) Must be signed by the person correcting the filed
 1256 record.

1257 (c) Must identify the filed record to be corrected.

1258 (d) Must specify the inaccuracy or defect to be corrected.

1259 (e) Must correct the inaccuracy or defect.

1260 (4) A statement of correction is effective as of the

1261 effective date of the filed record that it corrects, except for
 1262 purposes of s. 608.7803(4) and as to persons relying on the
 1263 uncorrected filed record and adversely affected by the
 1264 correction. For those purposes and as to those persons, the
 1265 statement of correction is effective when filed.

1266 608.78291 Duty of department to file; review of refusal to
 1267 file; transmission of information by department.-

1268 (1) The department is considered to file a document by
 1269 stamping or otherwise endorsing the document as filed, together
 1270 with the department official title and the date and time of
 1271 receipt.

1272 (2) After filing a record, the department shall deliver an
 1273 acknowledgment of the filing or certified copy of the document
 1274 to the company or foreign limited liability company or its
 1275 authorized representative.

1276 (3) If the department refuses to file a record, the
 1277 department shall, within 15 days after the record is delivered:

1278 (a) Return the record or notify the person that submitted
 1279 the record of the refusal.

1280 (b) Provide a brief explanation in a record of the reason
 1281 for the refusal.

1282 (4) If the applicant returns the document with corrections
 1283 in accordance with the rules of the department within 60 days
 1284 after it was mailed to the applicant by the department and, if
 1285 at the time of return, the applicant so requests in writing, the
 1286 filing date of the document is the filing date that would have
 1287 been applied had the original document not been deficient,
 1288 except as to persons who relied on the record before correction

1289 | and were adversely affected.

1290 | (5) The department's duty to file documents under this
 1291 | section is ministerial. Filing or refusing to file a document
 1292 | does not:

1293 | (a) Affect the validity or invalidity of the document in
 1294 | whole or part;

1295 | (b) Relate to the correctness or incorrectness of
 1296 | information contained in the document; or

1297 | (c) Create a presumption that the document is valid or
 1298 | invalid or that information contained in the document is correct
 1299 | or incorrect.

1300 | (6) If not otherwise provided by law and this chapter, the
 1301 | department shall determine, by rule, the appropriate format for,
 1302 | number of copies of, manner of execution of, method of
 1303 | electronic transmission of, and amount of and method of payment
 1304 | of fees for a document placed under its jurisdiction.

1305 | (7) If the department refuses to file a record, the person
 1306 | who submitted the record may petition the circuit court to
 1307 | compel filing of the record. The record and the explanation of
 1308 | the department of the refusal to file must be attached to the
 1309 | petition. The court may decide the matter in a summary
 1310 | proceeding.

1311 | (8) Except as otherwise provided by s. 608.7817 or by any
 1312 | law other than this chapter, the department may deliver a record
 1313 | to a person by delivering it:

1314 | (a) In person to the person that submitted it;

1315 | (b) To the address of the person's registered agent;

1316 | (c) To the principal office of the person; or

HB 1079

2013

1317 (d) To another address the person provides to the
1318 department for delivery.

1319 608.78293 Certificate of status.—

1320 (1) Upon request of a person, the department shall issue a
1321 certificate of status for a limited liability company if the
1322 records filed show that the department has accepted and filed
1323 its articles of organization. A certificate of status must
1324 state:

1325 (a) The company's name.

1326 (b) That the company was duly formed under the laws of
1327 this state and the date of formation.

1328 (c) Whether all fees and penalties due to the department
1329 under this chapter have been paid.

1330 (d) Whether the company's most recent annual report
1331 required by s. 608.78293 has been filed by the department.

1332 (e) Whether the department has administratively dissolved
1333 the company or received a record notifying the department that
1334 the company has been dissolved by judicial action pursuant to s.
1335 608.7915.

1336 (f) Whether the department has filed articles of
1337 dissolution for the company.

1338 (g) Whether the department has accepted and filed a
1339 statement of termination.

1340 (2) The department, upon request and payment of the
1341 requisite fee, shall furnish a certificate of status for a
1342 foreign limited liability company if the records filed show that
1343 the department has filed a certificate of authority. A
1344 certificate of status for a foreign limited liability company

1345 | must state:

1346 | (a) The company's name and a current alternate name

1347 | adopted under s. 608.905(1) for use in this state.

1348 | (b) That the company is authorized to transact business in

1349 | this state.

1350 | (c) Whether all fees and penalties due to the department

1351 | under this chapter or other law have been paid.

1352 | (d) Whether the company's most recent annual report

1353 | required by s. 608.78293 has been filed by the department.

1354 | (e) Whether the department has:

1355 | 1. Revoked the company's certificate of authority; or

1356 | 2. Filed a notice of withdrawal of certificate of

1357 | authority.

1358 | (3) Subject to a qualification stated in the articles of

1359 | organization, a certificate of status issued by the department

1360 | is conclusive evidence that the limited liability company is in

1361 | existence or the foreign limited liability company is authorized

1362 | to transact business in this state.

1363 | 608.78293 Annual report for department.-

1364 | (1) A limited liability company or a registered foreign

1365 | limited liability company shall deliver to the department for

1366 | filing an annual report that states:

1367 | (a) The name of the limited liability company or, if a

1368 | foreign limited liability company, the name under which the

1369 | foreign limited liability company is registered to transact

1370 | business in this state.

1371 | (b) The street address of its principal office and its

1372 | mailing address.

HB 1079

2013

1373 (c) The date of its organization, or if a foreign limited
1374 liability company, the jurisdiction of its formation, and the
1375 date on which it became qualified to transact business in this
1376 state.

1377 (d) The company's federal employer identification number
1378 or, if none, whether one was applied for.

1379 (e) The name, title or capacity, and address of at least
1380 one person who has the authority to manage the company.

1381 (f) Additional information that is necessary or
1382 appropriate to enable the department to carry out this chapter.

1383 (2) Information in the annual report must be current as of
1384 the date the report is delivered to the department for filing.

1385 (3) The first annual report must be delivered to the
1386 department between January 1 and May 1 of the year after the
1387 calendar year in which the limited liability company's articles
1388 of organization became effective or the foreign limited
1389 liability company registered to transact business in this state.
1390 Subsequent annual reports must be delivered to the department
1391 between January 1 and May 1 of each calendar year thereafter. If
1392 one or more forms of annual report are submitted for a calendar
1393 year, the department shall file each of them and make the
1394 information contained in them part of the official record. The
1395 first form of annual report filed in a calendar year will be
1396 considered the annual report for that calendar year, and each
1397 report filed after that one in the same calendar year will be
1398 treated as an amended report for that calendar year.

1399 (4) If an annual report does not contain the information
1400 required in this section, the department shall promptly notify

1401 the reporting limited liability company or registered foreign
 1402 limited liability company. If the report is corrected to contain
 1403 the information required in subsection (1) and delivered to the
 1404 department within 30 days after the effective date of the
 1405 notice, it is timely delivered.

1406 (5) If an annual report contains the name or address of a
 1407 registered agent that differs from the information shown in the
 1408 records of the department immediately before the annual report
 1409 becomes effective, the differing information in the annual
 1410 report is considered a statement of change under s. 608.7814.

1411 (6) A limited liability company or foreign limited
 1412 liability company that fails to file an annual report that
 1413 complies with the requirements of this section may not maintain
 1414 or defend an action in a court of this state until the report is
 1415 filed and all fees due under this chapter are paid. The company
 1416 is subject to dissolution or cancellation of its certificate of
 1417 authority to transact business as provided in this chapter.

1418 (7) The department shall prescribe the forms, which may be
 1419 in an electronic format, on which to make the annual report
 1420 called for in this section and may substitute the uniform
 1421 business report, pursuant to s. 606.06, as a means of satisfying
 1422 the requirement of this chapter.

1423 (8) As a condition of a merger under s. 608.925, each
 1424 party to a merger that exists under the laws of this state, and
 1425 each party to the merger that exists under the laws of another
 1426 jurisdiction and is authorized to transact business or conduct
 1427 its affairs in this state, must be active and current in filing
 1428 its annual reports in the records of the department through

HB 1079

2013

1429 December 31st of the calendar year in which the articles of
1430 merger are submitted to the department for filing.

1431 (9) As a condition of a conversion of an entity into a
1432 limited liability company under s. 608.941, the entity, if it
1433 exists under the laws of this state, or if it exists under the
1434 laws of another jurisdiction and is authorized to transact
1435 business or conduct its affairs in this state, must be active
1436 and current in filing its annual reports on the records of the
1437 department through December 31st of the calendar year in which
1438 the articles of conversion are submitted to the department for
1439 filing.

1440 (10) As a condition of a conversion of a limited liability
1441 company into another entity under s. 608.941, the limited
1442 liability company converting to the other type of entity must be
1443 active and current in filing its annual reports in the records
1444 of the department through December 31st of the calendar year in
1445 which the articles of conversion are submitted to the department
1446 for filing.

1447 608.78294 Fees of the department.—The fees of the
1448 department under this chapter are as follows:

1449 (1) Furnishing a certified copy, \$30.

1450 (2) Filing original articles of organization, \$100.

1451 (3) Filing articles of merger of limited liability
1452 companies or other business entities, \$25 per constituent party
1453 to the merger, unless a specific fee is required for a party
1454 under other applicable law.

1455 (4) Filing an annual report, \$50, plus the annual fee
1456 imposed pursuant to s. 607.193 in the amount of \$88.75.

- 1457 (5) Filing an application for reinstatement after an
1458 administrative or judicial dissolution or a revocation of
1459 authority to transact business, \$100.
- 1460 (6) Designating a registered agent or changing a
1461 registered agent or registered office address, \$25.
- 1462 (7) Filing a registered agent's statement of resignation
1463 from an active limited liability company, \$85.
- 1464 (8) Filing a registered agent's statement of resignation
1465 from a dissolved or revoked limited liability company, \$25.
- 1466 (9) Filing a statement of change of name of registered
1467 agent or change of registered office address, \$25.
- 1468 (10) Filing articles of conversion of a limited liability
1469 company, \$25.
- 1470 (11) Filing articles of domestication, \$25.
- 1471 (12) Furnishing a certificate of status, \$5.
- 1472 (13) Filing restated articles of organization, amended and
1473 restated articles of organization, an amendment to the articles
1474 of organization, or an amendment to a restated or an amended and
1475 restated articles of organization, \$25.
- 1476 (14) Filing an amendment to certificate of authority, \$25.
- 1477 (15) Filing a notice of withdrawal of certificate of
1478 authority, \$25.
- 1479 (16) Filing a statement of dissociation, \$25.
- 1480 (17) Filing a manager's statement of resignation, \$25.
- 1481 (18) Filing articles of dissolution, \$25.
- 1482 (19) Filing a certificate of revocation of dissolution,
1483 \$100.
- 1484 (20) Filing a statement of termination, \$25.

- 1485 (21) Filing a withdrawal statement, \$25.
- 1486 (22) Filing a statement of authority, \$25.
- 1487 (23) Filing an amendment to a statement of authority, \$25.
- 1488 (24) Filing a statement of denial, \$25.
- 1489 (25) Filing a cancellation of a statement of authority,
 1490 \$25.
- 1491 (26) Filing a statement of correction, \$25.
- 1492 (27) Filing a foreign limited liability company's
 1493 application for a certificate of authority to transact business,
 1494 \$35.
- 1495 (28) Filing an amended annual report, \$50.
- 1496 (29) Filing a withdrawal statement of delivered
 1497 record before effectiveness, \$25.
- 1498 (30) Filing a notice of withdrawal of certificate of
 1499 authority, \$25.
- 1500 (31) Filing another limited liability company or foreign
 1501 limited liability company document, \$25.
- 1502 608.78295 Powers of department.—The department has the
 1503 power and authority reasonably necessary to administer this
 1504 chapter efficiently, to perform the duties imposed upon it, and
 1505 to adopt reasonable rules necessary to carry out its duties and
 1506 functions under this chapter.
- 1507 608.78296 Certificates to be received in evidence and
 1508 evidentiary effect of copy of filed document.—All certificates
 1509 issued by the department in accordance with this chapter shall
 1510 be taken and received in all courts, public offices, and
 1511 official bodies as prima facie evidence of the facts stated. A
 1512 certificate from the department delivered with a copy of a

1513 document filed by the department is conclusive evidence that the
 1514 original document is on file with the department.

1515 608.78297 Statement of dissociation or resignation.—

1516 (1) A member of a limited liability company may file a
 1517 statement of dissociation with the department containing:

1518 (a) The name of the limited liability company.

1519 (b) The name and signature of the dissociating member.

1520 (c) The date the member withdrew or will withdraw.

1521 (d) A statement that the company has been notified of the
 1522 dissociation in writing.

1523 (2) A manager in a manager-managed limited liability
 1524 company may file a statement of resignation with the department
 1525 containing:

1526 (a) The name of the limited liability company.

1527 (b) The name and signature of the resigning manager.

1528 (c) The date the resigning manager resigned or will
 1529 resign.

1530 (d) A statement that the limited liability company has
 1531 been notified of the resignation in writing.

1532 608.783 Power to bind limited liability company.—No person
 1533 shall have the power to bind a limited liability company, except
 1534 to the extent the person:

1535 (1) Is an agent of the company by virtue of s. 608.7849.

1536 (2) Has the authority to do so under the articles of
 1537 organization or operating agreement of the company;

1538 (3) Has the authority to do so by a statement of authority
 1539 filed under s. 608.7832; or

1540 (4) Has the status of an agent of the company, or the

1541 authority or power to bind the company, under a law other than
 1542 this chapter.

1543 608.7832 Statement of authority.—

1544 (1) A limited liability company may file a statement of
 1545 authority. The statement:

1546 (a) Must include the name of the company as it appears on
 1547 the records of the department, and the street and mailing
 1548 addresses of its principal office.

1549 (b) With respect to a specified status or position in a
 1550 company, whether as a member, transferee, manager, officer, or
 1551 otherwise, may state the authority, or limitations on the
 1552 authority, of all persons having such status or holding such
 1553 position to:

1554 1. Execute an instrument transferring real property held
 1555 in the name of the company; or

1556 2. Enter into other transactions on behalf of, or
 1557 otherwise act for or bind, the company.

1558 (c) May state the authority, or limitations on the
 1559 authority, of a specific person to:

1560 1. Execute an instrument transferring real property held
 1561 in the name of the company; or

1562 2. Enter into other transactions on behalf of, or
 1563 otherwise act for or bind, the company.

1564 (2) To amend or cancel a statement of authority filed by
 1565 the department, a limited liability company must deliver to the
 1566 department for filing an amendment or cancellation stating:

1567 (a) The name of the company as it appears on the records
 1568 of the department.

HB 1079

2013

1569 (b) The street and mailing addresses of the limited
1570 liability company's principal office.

1571 (c) The effective date of the statement being affected
1572 became effective.

1573 (d) The contents of the amendment or a declaration that
1574 affected statement is canceled.

1575 (3) A statement of authority affects only the power of a
1576 person to bind a limited liability company to persons that are
1577 not members.

1578 (4) Subject to subsection (3) and s. 608.7803(4) and
1579 except as otherwise provided in subsections (6), (7), and (8), a
1580 limitation on the authority of a person or a position contained
1581 in an effective statement of authority is not by itself evidence
1582 of knowledge or notice of the limitation by a person.

1583 (5) Subject to subsection (3), a grant of authority not
1584 pertaining to transfers of real property and contained in an
1585 effective statement of authority is conclusive in favor of a
1586 person that gives value in reliance on the grant, except to the
1587 extent that when the person gives value:

1588 (a) The person has knowledge to the contrary;

1589 (b) The statement has been canceled or restrictively
1590 amended under subsection (2); or

1591 (c) A limitation on the grant is contained in another
1592 statement of authority that became effective after the statement
1593 containing the grant became effective.

1594 (6) Subject to subsection (3), an effective statement of
1595 authority that grants authority to transfer real property held
1596 in the name of the limited liability company, a certified copy

HB 1079

2013

1597 of which statement is recorded in the office for recording
1598 transfers of the real property, is conclusive in favor of a
1599 person that gives value in reliance on the grant without
1600 knowledge to the contrary, except to the extent that when the
1601 person gives value:

1602 (a) The statement has been canceled or restrictively
1603 amended under subsection (2), and a certified copy of the
1604 cancellation or restrictive amendment has been recorded in the
1605 office for recording transfers of the real property; or

1606 (b) A limitation on the grant is contained in another
1607 statement of authority that became effective after the statement
1608 containing the grant became effective, and a certified copy of
1609 the later effective statement is recorded in the office for
1610 recording transfers of the real property.

1611 (7) Subject to subsection (3), if a certified copy of an
1612 effective statement containing a limitation on the authority to
1613 transfer real property held in the name of a limited liability
1614 company is recorded in the office for recording transfers of
1615 that real property, all persons are deemed to know of the
1616 limitation.

1617 (8) Subject to subsection (9), effective articles of
1618 dissolution or termination are a cancellation of a filed
1619 statement of authority for the purposes of subsection (6) and
1620 are a limitation on authority for the purposes of subsection
1621 (7).

1622 (9) After a company's articles of dissolution become
1623 effective, a limited liability company may deliver to the
1624 department for filing and, if appropriate, may record a

HB 1079

2013

1625 statement of authority in accordance with subsection (1) that is
1626 designated as a post-dissolution statement of authority. The
1627 statement operates as provided in subsections (6) and (7).

1628 (10) Unless earlier canceled, an effective statement of
1629 authority is canceled by operation of law 5 years after the date
1630 on which the statement, or its most recent amendment, becomes
1631 effective. This cancellation operates without need for a
1632 recording under subsection (6) or (7). An effective statement of
1633 denial operates as a restrictive amendment under this section
1634 and may be recorded by certified copy for the purposes of
1635 paragraph (6) (a).

1636 (11) A statement of dissociation or a statement of
1637 resignation filed pursuant to s. 608.78297 terminates the
1638 authority of the person who filed the statement.

1639 608.7833 Statement of denial.—A person named in a filed
1640 statement of authority granting that person authority may
1641 deliver to the department for filing a statement of denial
1642 signed by that person that:

1643 (1) Provides the name of the limited liability company and
1644 the caption of the statement of authority to which the statement
1645 of denial pertains.

1646 (2) Denies the grant of authority.

1647 608.7834 Liability of members and managers.—

1648 (1) A debt, obligation, or other liability of a limited
1649 liability company is solely the debt, obligation, or other
1650 liability of the company. A member or manager is not personally
1651 liable, directly or indirectly, by way of contribution or
1652 otherwise, for a debt, obligation, or other liability of the

HB 1079

2013

1653 company solely by reason of being or acting as a member or
1654 manager. This subsection applies regardless of the dissolution
1655 of the company.

1656 (2) The failure of a limited liability company to observe
1657 formalities relating to the exercise of its powers or management
1658 of its activities and affairs is not a ground for imposing
1659 liability on a member or manager of the company for a debt,
1660 obligation, or other liability of the company.

1661 608.784 Becoming a member.—

1662 (1) If a limited liability company is to have only one
1663 member upon formation, the person becomes a member as agreed by
1664 that person and the authorized representative of the company.
1665 That person and the authorized representative may be, but need
1666 not be, different persons. If different persons, the authorized
1667 representative acts on behalf of the initial member.

1668 (2) If a limited liability company is to have more than
1669 one member upon formation, those persons become members as
1670 agreed by the persons before the formation of the company. The
1671 authorized representative acts on behalf of the persons in
1672 forming the company and may be, but need not be, one of the
1673 persons.

1674 (3) After formation of a limited liability company, a
1675 person becomes a member:

1676 (a) As provided in the operating agreement;

1677 (b) As the result of a merger, interest exchange
1678 conversion, or domestication under ss. 608.916-608.972, as
1679 applicable;

1680 (c) With the consent of all the members; or

HB 1079

2013

1681 (d) As provided in s. 608.7911(3).

1682 (4) A person may become a member without acquiring a
1683 transferable interest and without making or being obligated to
1684 make a contribution to the limited liability company.

1685 608.7841 Form of contribution.—A contribution may consist
1686 of tangible or intangible property or other benefit to a limited
1687 liability company, including money, services performed,
1688 promissory notes, other agreements to contribute money or
1689 property, and contracts for services to be performed.

1690 608.7842 Liability for contributions.—

1691 (1) A promise by a member to contribute to the limited
1692 liability company is not enforceable unless it is set out in a
1693 writing signed by the member.

1694 (2) A person's obligation to make a contribution to a
1695 limited liability company is not excused by the person's death,
1696 disability, or other inability to perform personally.

1697 (3) If a person does not fulfill an obligation to make a
1698 contribution other than money, the person is obligated at the
1699 option of the limited liability company to contribute money
1700 equal to the value of the part of the contribution that has not
1701 been made. The foregoing option is in addition to, and not in
1702 lieu of, other rights, including the right to specific
1703 performance, that the limited liability company may have against
1704 such member under the articles of organization or operating
1705 agreement, or applicable law.

1706 (4) The obligation of a person to make a contribution may
1707 be compromised only by consent of all members. A creditor of a
1708 limited liability company which extends credit or otherwise acts

HB 1079

2013

1709 in reliance on an obligation enforceable under subsection (1)
1710 without notice of a compromise may enforce the obligation.

1711 (5) An operating agreement may provide that the limited
1712 liability company interest of a member who fails to make a
1713 contribution that the member is obligated to make is subject to
1714 specified penalties for, or specified consequences of, the
1715 failure. The penalty or consequence may take the form of
1716 reducing or eliminating the defaulting member's proportionate
1717 interest in a limited liability company, subordinating the
1718 member's limited liability company interest to that of
1719 nondefaulting members, a forced sale of that limited liability
1720 company interest, forfeiture of the defaulting member's limited
1721 liability company interest, the lending by other members of the
1722 amount necessary to meet the defaulting member's commitment, a
1723 fixing of the value of the defaulting member's limited liability
1724 company interest by appraisal or by formula and redemption or
1725 sale of the limited liability company interest at such value, or
1726 other penalty or consequence.

1727 608.7843 Sharing of distributions before dissolution and
1728 profits and losses.—

1729 (1) Distributions made by a limited liability company
1730 before its dissolution and winding up must be shared by the
1731 members and persons dissociated as members on the basis of the
1732 agreed value, as stated in the company's records, of the
1733 contributions made by each of them to the extent they have been
1734 received by the company, except to the extent necessary to
1735 comply with a transfer effective under s. 608.7856 or charging
1736 order in effect under s. 608.7857.

HB 1079

2013

1737 (2) A person has a right to a distribution before the
1738 dissolution and winding up of a limited liability company only
1739 if the company decides to make an interim distribution. A
1740 person's dissociation does not entitle the person to a
1741 distribution.

1742 (3) A person does not have a right to demand or receive a
1743 distribution from a limited liability company in a form other
1744 than money. Except as otherwise provided in s. 608.7920(4), a
1745 limited liability company may distribute an asset in kind only
1746 if each part of the asset is fungible with each other part and
1747 each person receives a percentage of the asset equal in value to
1748 the person's share of distributions.

1749 (4) If a member or transferee becomes entitled to receive
1750 a distribution, the member or transferee has the status of, and
1751 is entitled to all remedies available to, a creditor of the
1752 limited liability company with respect to the distribution.

1753 (5) Profits and losses of a limited liability company must
1754 be allocated among the members and persons dissociated as
1755 members on the basis of the agreed value, as stated in the
1756 company's records, of the contributions made by each of them to
1757 the extent they have been received by the company.

1758 608.7844 Limitations on distributions.—

1759 (1) A limited liability company may not make a
1760 distribution, including a distribution under s. 608.7920, if
1761 after the distribution:

1762 (a) The company would not be able to pay its debts as they
1763 become due in the ordinary course of the company's activities
1764 and affairs; or

1765 (b) The company's total assets would be less than the sum
1766 of its total liabilities, plus the amount that would be needed
1767 if the company were to be dissolved and wound up at the time of
1768 the distribution, to satisfy the preferential rights upon
1769 dissolution and winding up of members and transferees whose
1770 preferential rights are superior to those of persons receiving
1771 the distribution.

1772 (2) A limited liability company may base a determination
1773 that a distribution is not prohibited under subsection (1) on:

1774 (a) Financial statements prepared on the basis of
1775 accounting practices and principles that are reasonable under
1776 the circumstances; or

1777 (b) A fair valuation or other method that is reasonable
1778 under the circumstances.

1779 (3) Except as otherwise provided in subsection (5), the
1780 effect of a distribution under subsection (1) is measured:

1781 (a) In the case of a distribution by purchase, redemption,
1782 or other acquisition of a transferable interest in the company,
1783 as of the earlier of:

1784 1. The date money or other property is transferred or the
1785 debt is incurred by the company.

1786 2. The date the person entitled to distribution ceases to
1787 own the interest or right being acquired by the company in
1788 return for the distribution.

1789 (b) In the case of another distribution of indebtedness,
1790 as of the date the indebtedness is distributed.

1791 (c) In all other cases, as of the date:

1792 1. The distribution is authorized, if the payment occurs

1793 | within 120 days after that date; or

1794 | 2. The payment is made, if the payment occurs more than
 1795 | 120 days after the distribution is authorized.

1796 | (4) A limited liability company's indebtedness to a member
 1797 | or transferee incurred by reason of a distribution made in
 1798 | accordance with this section is at parity with the company's
 1799 | indebtedness to its general, unsecured creditors, except to the
 1800 | extent subordinated by agreement.

1801 | (5) A limited liability company's indebtedness, including
 1802 | indebtedness issued as a distribution, is not a liability for
 1803 | purposes of subsection (1) if the terms of the indebtedness
 1804 | provide that payment of principal and interest is made only if
 1805 | and to the extent that a distribution could then be made under
 1806 | this section. If the indebtedness is issued as a distribution,
 1807 | and by its terms provides that the payments of principal and
 1808 | interest are made only to the extent a distribution could be
 1809 | made under this section, then each payment of principal or
 1810 | interest of that indebtedness is treated as a distribution, the
 1811 | effect of which is measured on the date the payment is actually
 1812 | made.

1813 | (6) In measuring the effect of a distribution under s.
 1814 | 608.7920, the liabilities of a dissolved limited liability
 1815 | company do not include a claim that is disposed of under ss.
 1816 | 608.7920-608.7923.

1817 | 608.7845 Liability for improper distributions.-

1818 | (1) Except as otherwise provided in subsection (2), if a
 1819 | member of a member-managed limited liability company or manager
 1820 | of a manager-managed limited liability company consents to a

HB 1079

2013

1821 distribution made in violation of s. 608.7844 and in consenting
1822 to the distribution fails to comply with s. 608.7851, the member
1823 or manager is personally liable to the company for the amount of
1824 the distribution which exceeds the amount that could have been
1825 distributed without the violation of s. 608.7844. A member of a
1826 member-managed limited liability company or manager of a
1827 manager-managed limited liability company may base a
1828 determination that a distribution is not prohibited under s.
1829 608.7844 on financial statements prepared on the basis of
1830 accounting practices and principles that are reasonable under
1831 the circumstances or on a fair valuation or other method that is
1832 reasonable under the circumstances.

1833 (2) To the extent the operating agreement of a member-
1834 managed limited liability company expressly relieves a member of
1835 the authority and responsibility to consent to distributions and
1836 imposes that authority and responsibility on one or more other
1837 members, the liability in subsection (1) applies to the other
1838 members and not the member that the operating agreement relieves
1839 of authority and responsibility.

1840 (3) A person who receives a distribution knowing that the
1841 distribution violated s. 608.7844 is personally liable to the
1842 limited liability company but only to the extent that the
1843 distribution received by the person exceeded the amount that
1844 could have been properly paid.

1845 (4) A person against which an action is commenced because
1846 that person is or may be liable under subsection (1) may:

1847 (a) Implead another person that is or may be liable under
1848 subsection (1) and seek to enforce a right of contribution from

1849 the person.

1850 (b) Implead a person that received a distribution in
 1851 violation of subsection (3) and seek to enforce a right of
 1852 contribution from an impleaded person in the amount the person
 1853 received in violation of subsection (3).

1854 (5) An action under this section is barred unless
 1855 commenced within 2 years after the distribution.

1856 608.7846 Management of limited liability company.—

1857 (1) A limited liability company is a member-managed
 1858 limited liability company unless the operating agreement or
 1859 articles of organization:

1860 (a) Expressly provide that:

- 1861 1. The company is or will be manager-managed;
- 1862 2. The company is or will be managed by managers; or
- 1863 3. Management of the company is or will be vested in
 1864 managers; or

1865 (b) Includes words of similar import, except that, unless
 1866 the context in which the expression is used otherwise requires,
 1867 the terms "managing member" and "managing members" do not, in
 1868 and of themselves, constitute words of similar import for this
 1869 purpose.

1870 (2) In a member-managed limited liability company, the
 1871 management and conduct of the company are vested in the members,
 1872 except as expressly provided in this chapter.

1873 (3) In a manager-managed limited liability company, a
 1874 matter relating to the activities and affairs of the company is
 1875 decided exclusively by the manager, or if there is more than one
 1876 manager, by the managers, except as expressly provided in this

HB 1079

2013

1877 | chapter.

1878 | (4) A member is not entitled to remuneration for services
1879 | performed for a member-managed limited liability company, except
1880 | for reasonable compensation for services rendered in winding up
1881 | the activities and affairs of the company, in the absence of an
1882 | agreement to the contrary.

1883 | (5) A limited liability company shall reimburse a member
1884 | for an advance to the company beyond the amount of capital the
1885 | member agreed to contribute.

1886 | (6) The dissolution of a limited liability company does
1887 | not affect the applicability of ss. 608.7846-608.7849. However,
1888 | a person who wrongfully causes dissolution of the company loses
1889 | the right to participate in management as a member and a
1890 | manager.

1891 | 608.7847 Selection and terms of managers in a manager-
1892 | managed limited liability company.-In a manager-managed limited
1893 | liability company, the following rules apply:

1894 | (1) A manager may be chosen at any time by the consent of
1895 | the member or members holding more than 50 percent of the then
1896 | current percentage or other interest in the profits of the
1897 | limited liability company owned by all of its members.

1898 | (2) A person need not be a member to be a manager.

1899 | (3) A person chosen as a manager continues as a manager
1900 | until a successor is chosen, unless the manager at an earlier
1901 | time resigns, is removed, or dies or, in the case of a manager
1902 | that is not an individual, terminates.

1903 | (4) A manager may be removed at any time without notice or
1904 | cause by the consent of the member or members holding more than

1905 | 50 percent of the then current percentage or other interest in
 1906 | the profits of the limited liability company owned by all of its
 1907 | members.

1908 | (5) The dissociation of a member that is also a manager
 1909 | removes the person as a manager.

1910 | (6) If a person who is both a manager and a member ceases
 1911 | to be a manager, that cessation does not, by itself, dissociate
 1912 | the person as a member.

1913 | (7) A person's ceasing to be a manager does not discharge
 1914 | a debt, obligation, or other liability to the limited liability
 1915 | company or members which the person incurred while a manager.

1916 | 608.7848 Voting rights of members and managers.—

1917 | (1) In a member-managed limited liability company, the
 1918 | following rules apply:

1919 | (a) Each member has the right to vote with respect to the
 1920 | management and conduct of the company's activities and affairs.

1921 | (b) Each member's vote is proportionate to that member's
 1922 | then current percentage or other interest in the profits of the
 1923 | limited liability company owned by all members.

1924 | (c) Except as otherwise provided in this chapter, the
 1925 | affirmative vote or consent of a majority-in-interest of the
 1926 | members is required to undertake an act, whether within or
 1927 | outside the ordinary course of the company's activities and
 1928 | affairs, including a transaction under ss. 608.916-608.972.

1929 | (d) The operating agreement and articles of organization
 1930 | may be amended only with the affirmative vote or consent of all
 1931 | members.

1932 | (2) In a manager-managed limited liability company, the

1933 | following rules apply:

1934 | (a) Each manager has equal rights in the management and
 1935 | conduct of the company's activities and affairs.

1936 | (b) Except as expressly provided in this chapter, a matter
 1937 | relating to the activities and affairs of the company shall be
 1938 | decided by the manager; if there is more than one manager, by
 1939 | the affirmative vote or consent of a majority of the managers;
 1940 | or if the action is taken without a meeting, then by their
 1941 | unanimous consent in a record.

1942 | (c) Each member's vote is proportionate to that member's
 1943 | then current percentage or other interest in the profits of the
 1944 | limited liability company owned by all members.

1945 | (d) Except as otherwise provided in this chapter, the
 1946 | affirmative vote or consent of a majority-in-interest of the
 1947 | members is required to undertake an act outside the ordinary
 1948 | course of the company's activities and affairs, including a
 1949 | transaction under ss. 608.916-608.972.

1950 | (e) The operating agreement and articles of organization
 1951 | may be amended only with the affirmative vote or consent of all
 1952 | members.

1953 | (3) If a member has transferred all or a portion of the
 1954 | member's transferable interest in the limited liability company
 1955 | to a person who is not admitted as a member and the transferring
 1956 | member has not been dissociated in accordance with s.
 1957 | 608.7862(4), the transferring member continues to be entitled to
 1958 | vote on an action reserved to the members, with the vote of the
 1959 | transferring member being proportionate to the current
 1960 | percentage or other interest in the profits of the limited

1961 liability company owned by all members that the transferring
 1962 member would have if the transfer not occurred.

1963 (4) An action requiring the vote or consent of members
 1964 under this chapter may be taken without a meeting, and a member
 1965 may appoint a proxy or other agent to vote or consent for the
 1966 member by signing an appointing record, personally or by the
 1967 member's agent. On an action taken by less than all of the
 1968 members without a meeting, notice of the action must be given to
 1969 those members who did not consent in writing to the action or
 1970 who were not entitled to vote on the action within 10 days after
 1971 the action was taken.

1972 (5) An action requiring the vote or consent of managers
 1973 under this chapter may be taken without a meeting, if the action
 1974 is unanimously approved by the managers in a record, and a
 1975 manager may appoint a proxy or other agent to vote or consent
 1976 for the manager by signing an appointing record, personally or
 1977 by the manager's agent.

1978 (6) Meetings of members and meetings of managers may be
 1979 held by a conference telephone call or other communications
 1980 equipment if all persons participating in the meeting can hear
 1981 each other. Participation in a meeting pursuant to this section
 1982 constitutes presence in person at the meeting.

1983 608.7849 Agency rights of members and managers.—

1984 (1) In a member-managed limited liability company, the
 1985 following rules apply:

1986 (a) Except as provided in subsection (3), each member is
 1987 an agent of the limited liability company for the purpose of its
 1988 activities and affairs. An act of a member, including signing an

1989 agreement or instrument of transfer in the name of the company
 1990 for apparently carrying on in the ordinary course the company's
 1991 activities and affairs, or activities and affairs of the kind
 1992 carried on by the company, binds the company unless the member
 1993 had no authority to act for the company in the particular matter
 1994 and the person with whom the member was dealing knew or had
 1995 notice that the member lacked authority.

1996 (b) An act of a member which is not done for apparently
 1997 carrying on in the ordinary course the limited liability
 1998 company's activities and affairs, or activities and affairs of
 1999 the kind carried on by the company, binds the company only if
 2000 the act was authorized by appropriate vote of the members.

2001 (2) In a manager-managed limited liability company, the
 2002 following rules apply:

2003 (a) A member is not an agent of the limited liability
 2004 company for the purpose of its business solely by reason of
 2005 being a member.

2006 (b) Except as provided in subsection (3), each manager is
 2007 an agent of the limited liability company for the purpose of its
 2008 business, and an act of a manager, including signing an
 2009 agreement or instrument of transfer in the name of the company,
 2010 for apparently carrying on in the ordinary course the company's
 2011 business or business of the kind carried on by the company binds
 2012 the company, unless the manager had no authority to act for the
 2013 company in the particular matter and the person with whom the
 2014 manager was dealing knew or had notice that the manager lacked
 2015 authority.

2016 (c) An act of a manager which is not apparently for

2017 carrying on in the ordinary course the limited liability
 2018 company's business or business of the kind carried on by the
 2019 company, binds the company only if the act was authorized by
 2020 appropriate vote of the members.

2021 (3) Unless a certified statement of authority recorded in
 2022 the applicable real estate records limits the authority of a
 2023 member, a member of a member-managed company or manager of a
 2024 manager-managed company may sign and deliver an instrument
 2025 transferring or affecting the limited liability company's
 2026 interest in real property. The instrument is conclusive in favor
 2027 of a person who gives value without knowledge of the lack of the
 2028 authority of the person signing and delivering the instrument.

2029 608.7850 Reimbursement, indemnification, advancement, and
 2030 insurance.-

2031 (1) A limited liability company may reimburse a member of
 2032 a member-managed company or the manager of a manager-managed
 2033 company for a payment made by the member or manager in the
 2034 course of the member's or manager's activities on behalf of the
 2035 company, if the member or manager complied with ss. 608.7846-
 2036 608.7850 and 608.7851 in making the payment.

2037 (2) A limited liability company may indemnify and hold
 2038 harmless a person with respect to any claim or demand against
 2039 the person and a debt, obligation, or other liability incurred
 2040 by the person by reason of the person's former or present
 2041 capacity as a member or manager, if the claim, demand, debt,
 2042 obligation, or other liability does not arise from the person's
 2043 breach of ss. 608.405 or 608.7846-608.7851.

2044 (3) In the ordinary course of its activities and affairs,

2045 a limited liability company may advance reasonable expenses,
 2046 including attorney fees and costs, incurred by a person in
 2047 connection with a claim or demand against the person by reason
 2048 of the person's former or present capacity as a member or
 2049 manager, if the person promises to repay the company if the
 2050 person ultimately is determined not to be entitled to be
 2051 indemnified under subsection (2).

2052 (4) A limited liability company may purchase and maintain
 2053 insurance on behalf of a member or manager of the company
 2054 against liability asserted against or incurred by the member or
 2055 manager in that capacity or arising from that status even if:

2056 (a) Under s. 608.7805(3)(g) the operating agreement could
 2057 not eliminate or limit the person's liability to the company for
 2058 the conduct giving rise to the liability.

2059 (b) Under s. 608.7805(3)(n) the operating agreement could
 2060 not provide for indemnification for the conduct giving rise to
 2061 the liability.

2062 608.7851 Standards of conduct for members and managers.—

2063 (1) Each manager of a manager-managed limited liability
 2064 company and member of a member-managed limited liability company
 2065 owes fiduciary duties of loyalty and care to the limited
 2066 liability company and members of the limited liability company.

2067 (2) The duty of loyalty is limited to:

2068 (a) Accounting to the limited liability company and
 2069 holding as trustee for it any property, profit, or benefit
 2070 derived by the manager or member, as applicable:

2071 1. In the conduct or winding up of the company's
 2072 activities and affairs;

HB 1079

2013

2073 2. From the use by the member or manager of the company's
2074 property; or

2075 3. From the appropriation of a company opportunity.

2076 (b) Refraining from dealing with the company in the
2077 conduct or winding up of the company's activities and affairs as
2078 or on behalf of a person having an interest adverse to the
2079 company, except to the extent that a transaction satisfies the
2080 requirements of this section.

2081 (c) Refraining from competing with the company in the
2082 conduct of the company's activities and affairs before the
2083 dissolution of the company.

2084 (3) The duty of care in the conduct or winding up of the
2085 company's activities and affairs is limited to refraining from
2086 engaging in grossly negligent or reckless conduct, willful or
2087 intentional misconduct, or a knowing violation of law.

2088 (4) A manager of a manager-managed limited liability
2089 company and member of a member-managed limited liability company
2090 shall discharge their duties and obligations under this chapter
2091 or under the operating agreement and exercise any rights
2092 consistently with the obligation of good faith and fair dealing.

2093 (5) A manager of a manager-managed limited liability
2094 company or a member of a member-managed limited liability
2095 company does not violate a duty or obligation under this chapter
2096 or under the operating agreement solely because the manager's or
2097 member's conduct furthers such manager's or member's own
2098 interest.

2099 (6) In discharging his, her, or its duties, a manager of a
2100 manager-managed limited liability company or a member of a

HB 1079

2013

2101 member-managed limited liability company is entitled to rely on
2102 information, opinions, reports, or statements, including
2103 financial statements and other financial data, if prepared or
2104 presented by:

2105 (a) One or more members or employees of the limited
2106 liability company whom the manager or member reasonably believes
2107 to be reliable and competent in the matters presented;

2108 (b) Legal counsel, public accountants, or other persons as
2109 to matters the manager or member reasonably believes are within
2110 the persons' professional or expert competence; or

2111 (c) A committee of managers or members of which the
2112 affected manager or member is not a participant if the manager
2113 or member reasonably believes the committee merits confidence.

2114 (7) A manager or member, as applicable, is not acting in
2115 good faith if the manager or member has knowledge concerning the
2116 matter in question that makes reliance otherwise permitted by
2117 subsection (6) unwarranted.

2118 (8) In discharging his, her, or its duties, a manager of a
2119 manager-managed limited liability company or member of a member-
2120 managed limited liability company may consider factors the
2121 manager or member deems relevant, including the long-term
2122 prospects and interests of the limited liability company and its
2123 members, and the social, economic, legal, or other effects of an
2124 action on the employees, suppliers, customers of the limited
2125 liability company, the communities and society in which the
2126 limited liability company operates, and the economy of the state
2127 and the nation.

2128 (9) This section applies to a person winding up the

2129 limited liability company business as the legal representative
 2130 of the last surviving member as if such person were subject to
 2131 this section.

2132 608.7852 Conflict of interest transactions.-

2133 (1) As used in this section, the following terms and
 2134 definitions apply:

2135 (a) A member or manager is "indirectly" a party to a
 2136 transaction if that member or manager has a material financial
 2137 interest in or is a director, officer, manager or partner of a
 2138 person, other than the limited liability company, who is a party
 2139 to the transaction.

2140 (b) A member or manager has an "indirect material
 2141 financial interest" if a spouse or other family member has a
 2142 material financial interest in the transaction, other than
 2143 having an indirect interest as a member or manager of the
 2144 limited liability company, or if the transaction is with an
 2145 entity, other than the limited liability company, that has a
 2146 material financial interest in the transaction and controls, or
 2147 is controlled by, the member or manager or another person
 2148 specified in this subsection.

2149 (c) "Fair to the limited liability company" means that the
 2150 transaction, as a whole, is beneficial to the limited liability
 2151 company and its members, taking into appropriate account whether
 2152 it is:

2153 1. Fair in terms of the member's or manager's dealings
 2154 with the limited liability in connection with that transaction.

2155 2. Comparable to what might have been obtainable in an
 2156 arm's length transaction.

HB 1079

2013

2157 (2) If the requirements of this section have been
2158 satisfied, no transaction between a limited liability company
2159 and one or more of its members or managers, or another entity in
2160 which one or more of the limited liability company's members or
2161 managers has a financial or other interest, is either void or
2162 voidable because of that relationship or interest, because the
2163 members or managers are present at the meeting of the members or
2164 managers at which the transaction was authorized, approved,
2165 effectuated, or ratified, or because their votes are counted for
2166 such purpose.

2167 (3) If a transaction is fair to the limited liability
2168 company at the time it is authorized, approved, effectuated, or
2169 ratified, the fact that a member or manager of the limited
2170 liability company is directly or indirectly a party to the
2171 transaction, other than being an indirect party as a result of
2172 being a member or manager of the limited liability company, or
2173 has a direct or indirect material financial interest or other
2174 interest in the transaction, other than having an indirect
2175 interest as a result of being a member or manager of the limited
2176 liability company, is not grounds for equitable relief or give
2177 rise to an award of damages or other sanctions.

2178 (4) (a) In a proceeding challenging the validity of a
2179 transaction described in s. 608.7851(1) or (3), the person
2180 challenging the validity has the burden of proving the lack of
2181 fairness of the transaction if:

2182 1. In a manager-managed limited liability company, the
2183 material facts of the transaction and the member's or manager's
2184 interest in the transaction were disclosed or known to the

2185 managers or a committee of managers who voted upon the
 2186 transaction and the transaction was authorized, approved, or
 2187 ratified by a majority of the disinterested managers even if the
 2188 disinterested managers constitute less than a quorum, if the
 2189 transaction cannot be authorized, approved, or ratified under
 2190 this subsection solely by a single manager.

2191 2. In a member-managed limited liability company, or a
 2192 manager-managed limited liability company in which the managers
 2193 have failed to or cannot act under s. 608.7851, the material
 2194 facts of the transaction and the member's or manager's interest
 2195 in the transaction were disclosed or known to the members who
 2196 voted upon such transaction and the transaction was authorized,
 2197 approved or ratified by a majority-in-interest of the
 2198 disinterested members even if the disinterested members
 2199 constitute less than a quorum.

2200 (b) If neither of the conditions provided in paragraph (a)
 2201 have been satisfied, the person defending or asserting the
 2202 validity of a transaction described in subsection (3) has the
 2203 burden of proving its fairness in a proceeding challenging the
 2204 validity of the transaction.

2205 (5) The presence of, or a vote cast by, a manager or
 2206 member with an interest in the transaction does not affect the
 2207 validity of an action taken under paragraph (4) (a) if the
 2208 transaction is otherwise authorized, approved, or ratified as
 2209 provided in that subsection, but the presence or vote of the
 2210 manager or member may be counted for purposes of determining
 2211 whether the transaction is approved under other sections of this
 2212 chapter.

2213 (6) In addition to other grounds for challenge, a party
 2214 challenging the validity of the transaction is not precluded
 2215 from asserting and proving that a particular member or manager
 2216 was not disinterested on grounds of financial or other interest
 2217 for purposes of the vote on, consent to, or approval of the
 2218 transaction.

2219 608.7853 Records to be kept; rights of member, manager,
 2220 and person dissociated to information.-

2221 (1) A limited liability company shall keep at its
 2222 principal office or another location the following records:

2223 (a) A current list of the full names and last known
 2224 business, residence, or mailing addresses of each member and
 2225 manager.

2226 (b) A copy of a then-effective operating agreement and all
 2227 amendments thereto, if made in a record.

2228 (c) A copy of the articles of organization, articles of
 2229 merger, articles of interest exchange, articles of conversion,
 2230 or articles of domestication, and other documents and all
 2231 amendments thereto, concerning the limited liability company
 2232 that were filed with the department, together with executed
 2233 copies of any powers of attorney pursuant to which any articles
 2234 of organization or such other documents were executed.

2235 (d) Copies of the limited liability company's federal,
 2236 state, and local income tax returns and reports, if any, for the
 2237 3 most recent years.

2238 (e) Copies of the financial statements of the limited
 2239 liability company for the 3 most recent years.

2240 (f) Unless contained in an operating agreement made in a

2241 record, a record stating the amount of cash and a description
 2242 and statement of the agreed value of the property or other
 2243 benefits contributed and agreed to be contributed by each
 2244 member, and the times at which, or occurrence of events upon
 2245 which, additional contributions agreed to be made by each member
 2246 are to be made.

2247 (2) In a member-managed limited liability company, the
 2248 following rules apply:

2249 (a) Upon reasonable notice, a member may inspect and copy
 2250 during regular business hours, at a reasonable location
 2251 specified by the company:

2252 1. The records described in subsection (1).

2253 2. Another record maintained by the company regarding the
 2254 company's activities, affairs, financial condition, and other
 2255 circumstances, to the extent the information is material to the
 2256 member's rights and duties under the operating agreement or this
 2257 chapter.

2258 (b) The company shall furnish to each member:

2259 1. Without demand, any information concerning the
 2260 company's activities, affairs, financial condition, and other
 2261 circumstances that the company knows and is material to the
 2262 proper exercise of the member's rights and duties under the
 2263 operating agreement or this chapter, except to the extent the
 2264 company can establish that it reasonably believes the member
 2265 already knows the information.

2266 2. On demand, other information concerning the company's
 2267 activities, affairs, financial condition, and other
 2268 circumstances, except to the extent the demand or information

HB 1079

2013

2269 demanded is unreasonable or otherwise improper under the
2270 circumstances.

2271 (c) The duty to furnish information under this subsection
2272 also applies to each member to the extent the member knows any
2273 of the information described in this subsection.

2274 (3) In a manager-managed limited liability company, the
2275 following rules apply:

2276 (a) The informational rights stated in subsection (2) and
2277 the duty stated in paragraph (2)(c) apply to the managers and
2278 not to the members.

2279 (b) During regular business hours and at a reasonable
2280 location specified by the company, a member may inspect and
2281 copy:

2282 1. The records described in subsection (1).

2283 2. Full information regarding the activities, affairs,
2284 financial condition, and other circumstances of the company as
2285 is just and reasonable if:

2286 a. The member seeks the information for a purpose
2287 reasonably related to the member's interest as a member.

2288 b. The member makes a demand in a record received by the
2289 company, describing with reasonable particularity the
2290 information sought and the purpose for seeking the information.

2291 c. The information sought is directly connected to the
2292 member's purpose.

2293 (c) Within 10 days after receiving a demand pursuant to
2294 paragraph (2)(b), the company shall, in a record, inform the
2295 member who made the demand of:

2296 1. The information that the company will provide in

HB 1079

2013

2297 response to the demand and when and where the company will
2298 provide the information.

2299 2. The company's reasons for declining, if the company
2300 declines to provide any demanded information.

2301 (d) Whenever this chapter or an operating agreement
2302 provides for a member to give or withhold consent to a matter,
2303 before the consent is given or withheld, the company shall,
2304 without demand, provide the member with all information that is
2305 known to the company and is material to the member's decision.

2306 (4) Subject to subsection (9), on 10 days' demand made in
2307 a record received by a limited liability company, a person
2308 dissociated as a member may have access to information to which
2309 the person was entitled while a member if:

2310 (a) The information pertains to the period during which
2311 the person was a member.

2312 (b) The person seeks the information in good faith.

2313 (c) The person satisfies the requirements imposed on a
2314 member by paragraph (3) (b).

2315 (5) A limited liability company shall respond to a demand
2316 made pursuant to subsection (4) in the manner provided in
2317 paragraph (3) (c).

2318 (6) A limited liability company may charge a person who
2319 makes a demand under this section the reasonable costs of
2320 copying, which shall be limited to the costs of labor and
2321 materials.

2322 (7) A member or person dissociated as a member may
2323 exercise rights under this section through an agent or, in the
2324 case of an individual under legal disability, a legal

HB 1079

2013

2325 representative. A restriction or condition imposed by the
2326 operating agreement or under subsection (9) applies both to the
2327 agent or legal representative and the member or person
2328 dissociated as a member.

2329 (8) Subject to subsection (10), the rights under this
2330 section do not extend to a person as transferee.

2331 (9) If a member dies, s. 608.7858 applies.

2332 (10) In addition to a restriction or condition stated in
2333 the operating agreement, a limited liability company, as a
2334 matter within the ordinary course of its activities and affairs,
2335 may impose reasonable restrictions and conditions on access to
2336 and use of information to be furnished under this section,
2337 including designating information confidential and imposing
2338 nondisclosure and safeguarding obligations on the recipient. In
2339 a dispute concerning the reasonableness of a restriction under
2340 this subsection, the company has the burden of proving
2341 reasonableness. This subsection does not apply to the request
2342 by a member for the records described in subsection (1).

2343 608.7854 Court-ordered inspection.—

2344 (1) If a limited liability company does not allow a
2345 member, manager, or other person who complies with s.
2346 608.7853(2)(a), (3)(a), (3)(b), or (4), as applicable, to inspect
2347 and copy any records required by that section to be available
2348 for inspection, the circuit court in the county where the
2349 limited liability company's principal office is located or, if
2350 there is none in this state, where its registered office is
2351 located, may summarily order inspection and copying of the
2352 records demanded at the limited liability company's expense upon

HB 1079

2013

2353 application of the member, manager, or other person.

2354 (2) If the court orders inspection or copying of the
2355 records demanded, it shall also order the limited liability
2356 company to pay the costs, including reasonable attorney fees,
2357 reasonably incurred by the member, manager, or other person
2358 seeking the records to obtain the order and enforce its rights
2359 under this section unless the limited liability company proves
2360 that it refused inspection in good faith because it had a
2361 reasonable basis for doubt about the right of the member,
2362 manager, or such other person, to inspect or copy the records
2363 demanded.

2364 (3) If the court orders inspection or copying of the
2365 records demanded, it may impose reasonable restrictions on the
2366 use or distribution of the records by the member, manager, or
2367 other person demanding them.

2368 608.7855 Nature of transferable interest.—A transferable
2369 interest is personal property.

2370 608.7856 Transfer of transferable interest.—

2371 (1) Subject to s. 608.7857(5), a transfer, in whole or in
2372 part, of a transferable interest:

2373 (a) Is permissible.

2374 (b) Does not by itself cause a member's dissociation or a
2375 dissolution and winding up of the limited liability company's
2376 activities and affairs.

2377 (c) Does not entitle the transferee to:

2378 1. Participate in the management or conduct of the
2379 company's activities and affairs; or

2380 2. Except as otherwise provided in subsection (3), have

HB 1079

2013

2381 access to records or other information concerning the company's
2382 activities and affairs.

2383 (2) A transferee has the right to receive, in accordance
2384 with the transfer, distributions to which the transferor would
2385 otherwise be entitled.

2386 (3) In a dissolution and winding up of a limited liability
2387 company, a transferee is entitled to an account of the company's
2388 transactions only from the date of dissolution.

2389 (4) A transferable interest may be evidenced by a
2390 certificate of the interest issued by the limited liability
2391 company in a record, and, subject to this section, the interest
2392 represented by the certificate may be transferred by a transfer
2393 of the certificate.

2394 (5) A limited liability company need not give effect to a
2395 transferee's rights under this section until the company knows
2396 or has notice of the transfer.

2397 (6) A transfer of a transferable interest in violation of
2398 a restriction on transfer contained in the operating agreement
2399 is ineffective as to a person having knowledge or notice of the
2400 restriction at the time of transfer.

2401 (7) Except as otherwise provided in s. 608.7862(5)(b), if
2402 a member transfers a transferable interest, the transferor
2403 retains the rights of a member other than the transferable
2404 interest transferred and retains all the duties and obligations
2405 of a member.

2406 (8) If a member transfers a transferable interest to a
2407 person who becomes a member with respect to the transferred
2408 interest, the transferee is liable for the member's obligations

HB 1079

2013

2409 under ss.. 608.7842 and 608.7845(3) known to the transferee when
2410 the transferee becomes a member.

2411 608.7857 Charging order.—

2412 (1) On application to a court of competent jurisdiction by
2413 a judgment creditor of a member or a transferee, the court may
2414 enter a charging order against the transferable interest of the
2415 member or transferee for payment of the unsatisfied amount of
2416 the judgment with interest. Except as provided in subsection
2417 (5), a charging order constitutes a lien upon a judgment
2418 debtor's transferable interest and requires the limited
2419 liability company to pay over to the judgment creditor a
2420 distribution that would otherwise be paid to the judgment
2421 debtor.

2422 (2) This chapter does not deprive a member or transferee
2423 of the benefit of an exemption law applicable to the
2424 transferable interest of the member or transferee.

2425 (3) Except as provided in subsections (4) and (5), a
2426 charging order is the sole and exclusive remedy by which a
2427 judgment creditor of a member or member's transferee may satisfy
2428 a judgment from the judgment debtor's interest in a limited
2429 liability company or rights to distributions from the limited
2430 liability company.

2431 (4) In the case of a limited liability company having only
2432 one member, if a judgment creditor of a member or member's
2433 transferee establishes to the satisfaction of a court of
2434 competent jurisdiction that distributions under a charging order
2435 will not satisfy the judgment within a reasonable time, a
2436 charging order is not the sole and exclusive remedy by which the

HB 1079

2013

2437 judgment creditor may satisfy the judgment against a judgment
2438 debtor who is the sole member of a limited liability company or
2439 the transferee of the sole member, and upon such showing, the
2440 court may order the sale of that interest in the limited
2441 liability company pursuant to a foreclosure sale. A judgment
2442 creditor may make a showing to the court that distributions
2443 under a charging order will not satisfy the judgment within a
2444 reasonable time at any time after the entry of the judgment and
2445 may do so at the same time that the judgment creditor applies
2446 for the entry of a charging order.

2447 (5) When a limited liability company has only one member,
2448 if the court orders a foreclosure sale of a judgment debtor's
2449 interest in the limited liability company or of a charging order
2450 lien against the sole member of the limited liability company
2451 pursuant to subsection (4):

2452 (a) The purchaser at the court-ordered foreclosure sale
2453 obtains the member's entire limited liability company interest,
2454 not merely the rights of a transferee.

2455 (b) The purchaser at the sale becomes the member of the
2456 limited liability company.

2457 (c) The person whose limited liability company interest is
2458 sold pursuant to the foreclosure sale or is the subject of the
2459 foreclosed charging order ceases to be a member of the limited
2460 liability company.

2461 (6) In the case of a limited liability company having more
2462 than one member, the remedy of foreclosure on a judgment
2463 debtor's interest in the limited liability company or against
2464 rights to distribution from the limited liability company is not

HB 1079

2013

2465 available to a judgment creditor attempting to satisfy the
2466 judgment and may not be ordered by a court.

2467 (7) This section does not limit:

2468 (a) The rights of a creditor who has been granted a
2469 consensual security interest in a limited liability company
2470 interest to pursue the remedies available to the secured
2471 creditor under other law applicable to secured creditors.

2472 (b) The principles of law and equity which affect
2473 fraudulent transfers.

2474 (c) The availability of the equitable principles of alter
2475 ego, equitable lien, or constructive trust, or other equitable
2476 principles not inconsistent with this section.

2477 (d) The continuing jurisdiction of the court to enforce
2478 its charging order in a manner consistent with this section.

2479 608.7858 Power of legal representative.— If a member who
2480 is an individual dies or a court of competent jurisdiction
2481 adjudges the member to be incompetent to manage the member's
2482 person or property, the member's legal representative may
2483 exercise all of the member's rights for the purpose of settling
2484 the member's estate or administering the member's property,
2485 including any power under an operating agreement of a transferee
2486 to become a member. If a member is a corporation, trust, or
2487 other entity and is dissolved or terminated, the powers of that
2488 member may be exercised by its legal representative.

2489 608.7861 Power to dissociate as member; wrongful
2490 dissociation.—

2491 (1) A person has the power to dissociate as a member at
2492 any time, rightfully or wrongfully, by withdrawing as a member

2493 by express will under s. 608.7862(1).

2494 (2) A person's dissociation as a member is wrongful only
 2495 if the dissociation:

2496 (a) Is in breach of an express provision of the operating
 2497 agreement; or

2498 (b) Occurs before completion of the winding up of the
 2499 company and:

2500 1. The person withdraws as a member by express will;

2501 2. The person is expelled as a member by judicial order
 2502 under s. 608.7862(6);

2503 3. The person is dissociated under s. 608.7862(8); or

2504 4. In the case of a person that is not a trust other than
 2505 a business trust, an estate, or an individual, the person is
 2506 expelled or otherwise dissociated as a member because it
 2507 willfully dissolved or terminated.

2508 (3) A person who wrongfully dissociates as a member is

2509 liable to the limited liability company and, subject to s.

2510 608.7931, to the other members for damages caused by the

2511 dissociation. The liability is in addition to a debt,

2512 obligation, or other liability of the member to the company or

2513 the other members.

2514 608.7862 Events causing dissociation.—A person is

2515 dissociated as a member when:

2516 (1) The company has notice of the person's express will to

2517 withdraw as a member, but, if the person specified a withdrawal

2518 date later than the date the company had notice, on that later

2519 date.

2520 (2) An event stated in the operating agreement as causing

HB 1079

2013

2521 | the person's dissociation occurs.

2522 | (3) The person's entire interest is transferred in a
2523 | foreclosure sale under s. 608.7857(5).

2524 | (4) The person is expelled as a member pursuant to the
2525 | operating agreement.

2526 | (5) The person is expelled as a member by the unanimous
2527 | consent of the other members if:

2528 | (a) It is unlawful to carry on the company's activities
2529 | and affairs with the person as a member.

2530 | (b) There has been a transfer of all the person's
2531 | transferable interest in the company, other than:

2532 | 1. A transfer for security purposes; or

2533 | 2. A charging order in effect under s. 608.7857 which has
2534 | not been foreclosed.

2535 | (c) The person is a corporation.

2536 | 1. The company notifies the person that it will be
2537 | expelled as a member because the person has filed articles or a
2538 | certificate of dissolution or the equivalent, its charter has
2539 | been revoked, or its right to conduct business has been
2540 | suspended by the jurisdiction of its formation.

2541 | 2. Within 90 days after the notification, the articles or
2542 | certificate of dissolution or the equivalent has not been
2543 | revoked or its charter or right to conduct business has not been
2544 | reinstated.

2545 | (d) The person is an unincorporated entity that has been
2546 | dissolved and whose business is being wound up.

2547 | (6) On application by the company or a member in a direct
2548 | action under s. 608.7931, the person is expelled as a member by

HB 1079

2013

2549 judicial order because the person:

2550 (a) Has engaged or is engaging in wrongful conduct that
2551 has affected adversely and materially, or will affect adversely
2552 and materially, the company's activities and affairs;

2553 (b) Has committed willfully or persistently, or is
2554 committing willfully and persistently, a material breach of the
2555 operating agreement or a duty or obligation under s. 608.7851;
2556 or

2557 (c) Has engaged, or is engaging, in conduct relating to
2558 the company's activities and affairs which makes it not
2559 reasonably practicable to carry on the activities and affairs
2560 with the person as a member.

2561 (7) In the case of an individual:

2562 (a) The individual dies; or

2563 (b) In a member-managed limited liability company:

2564 1. A guardian or general conservator for the individual is
2565 appointed; or

2566 2. There is a judicial order that the individual has
2567 otherwise become incapable of performing the individual's duties
2568 as a member under this chapter or the operating agreement.

2569 (8) In a member-managed limited liability company, the
2570 person:

2571 (a) Becomes a debtor in bankruptcy;

2572 (b) Executes an assignment for the benefit of creditors;

2573 or

2574 (c) Seeks, consents to, or acquiesces in the appointment
2575 of a trustee, receiver, or liquidator of the person or of all or
2576 substantially all the person's property.

HB 1079

2013

2577 (9) In the case of a person who is a testamentary or inter
2578 vivos trust or is acting as a member by virtue of being a
2579 trustee of such a trust, the trust's entire transferable
2580 interest in the company is distributed.

2581 (10) In the case of a person who is an estate or is acting
2582 as a member by virtue of being a legal representative of an
2583 estate, the estate's entire transferable interest in the company
2584 is distributed.

2585 (11) In the case of a person that is not an individual,
2586 corporation, unincorporated entity, trust, or estate, the
2587 existence of the person terminates.

2588 (12) The company participates in a merger under ss.
2589 608.925-608.930; and

2590 (a) The company is not the surviving entity; or,

2591 (b) Otherwise as a result of the merger, the person ceases
2592 to be a member.

2593 (13) The company participates in a conversion under ss.
2594 608.941-608.950 and the person ceases to be member.

2595 (14) The company participates in an interest exchange
2596 under ss. 608.935-608.940 and the person ceases to be a member.

2597 (15) The company dissolves and completes winding up.
2598 608.7863 Effect of dissociation.—

2599 (1) If a person is dissociated as a member:

2600 (a) The person's right to participate as a member in the
2601 management and conduct of the company's activities and affairs
2602 terminates.

2603 (b) If the company is member-managed, the person's duties
2604 and obligations under s. 608.7851 as a member end with regard to

HB 1079

2013

2605 matters arising and events occurring after the person's
2606 dissociation.

2607 (c) Subject to ss. 608.7858 and 608.916-608.972, a
2608 transferable interest owned by the person in the person's
2609 capacity immediately before dissociation as a member is owned by
2610 the person solely as a transferee.

2611 (2) A person's dissociation as a member does not, of
2612 itself, discharge the person from a debt, obligation, or other
2613 liability to the company or the other members which the person
2614 incurred while a member.

2615 608.7911 Events causing dissolution.-A limited liability
2616 company is dissolved and its activities and affairs must be
2617 wound up upon the occurrence of:

2618 (1) An event or circumstance that the operating agreement
2619 states causes dissolution.

2620 (2) The consent of all the members.

2621 (3) The passage of 90 consecutive days during which the
2622 company has no members, unless:

2623 (a) Consent to admit at least one specified person as a
2624 member is given by transferees owning the rights to receive a
2625 majority of distributions as transferees at the time the consent
2626 is to be effective.

2627 (b) At least one person becomes a member in accordance
2628 with the consent.

2629 (4) The entry of a decree of judicial dissolution in
2630 accordance with s. 608.7915.

2631 (5) The filing of a statement of administrative
2632 dissolution by the department under s. 608.7924.

2633 608.7912 Grounds for judicial dissolution.—A circuit court
 2634 may dissolve a limited liability company:

2635 (1) In a proceeding by the Department of Legal Affairs if
 2636 it is established that:

2637 (a) The limited liability company obtained its articles of
 2638 organization through fraud; or

2639 (b) The limited liability company has continued to exceed
 2640 or abuse the authority conferred upon it by law.

2641
 2642 The enumeration in paragraphs (a) and (b) of grounds for
 2643 involuntary dissolution does not exclude actions or special
 2644 proceedings by the Department of Legal Affairs or a state
 2645 official for the annulment or dissolution of a limited liability
 2646 company for other causes as provided in another law of this
 2647 state.

2648 (2) In a proceeding by a manager or member if it is
 2649 established that:

2650 (a) The conduct of all or substantially all of the
 2651 company's activities and affairs is unlawful;

2652 (b) It is not reasonably practicable to carry on the
 2653 company's activities and affairs in conformity with the articles
 2654 of organization and the operating agreement;

2655 (c) The managers or members in control of the company have
 2656 acted, are acting, or are reasonably expected to act in a manner
 2657 that is illegal or fraudulent;

2658 (d) The limited liability company's assets are being
 2659 misappropriated or wasted, causing material injury to the
 2660 limited liability company, or in a proceeding by a member,

HB 1079

2013

2661 causing material injury to one or more of its members; or
2662 (e) Subject to subsection (4), the managers or those
2663 members in control of the limited liability company are
2664 deadlocked in the management of the limited liability company
2665 affairs, the members are unable to break the deadlock, and
2666 irreparable injury to the limited liability company is
2667 threatened or being suffered.

2668 (3) In a proceeding by the limited liability company to
2669 have its voluntary dissolution continued under court
2670 supervision.

2671 (4) If a deadlock exists among the managers or members in
2672 control of a limited liability company and the managers or
2673 members are unable to break the deadlock, irreparable injury to
2674 the company is threatened or being suffered, and the operating
2675 agreement contains a deadlock sale provision that has been
2676 automatically triggered or has been triggered by a member before
2677 the establishment of the grounds for judicial dissolution under
2678 paragraph (2) (e), then the grounds for judicial dissolution
2679 under paragraph (2) (e) are no longer applicable to that
2680 deadlock. For purposes of this section, a deadlock sale
2681 provision means a provision in an operating agreement that is or
2682 may be applicable in the event of a deadlock among the managers
2683 or members in control of the limited liability company that the
2684 members are unable to break, which provides for an automatically
2685 triggered or a member-triggered purchase and sale of interests
2686 or governance interests among or between members or an
2687 automatically triggered or a member-triggered sale of all or
2688 substantially all of the assets of the company or a subsidiary

HB 1079

2013

2689 of the company, or a similar provision that, if triggered,
2690 breaks the deadlock by causing the transfer of the interests or
2691 governance interests of one or more members or the sale of all
2692 or substantially all of the company's or a subsidiary's assets.
2693 A deadlock provision in an operating agreement that is not
2694 triggered before the establishment of the grounds for judicial
2695 dissolution under paragraph (2) (e) does not adversely affect the
2696 rights of members and managers to seek judicial dissolution
2697 under paragraph (2) (e).

2698 608.7913 Procedure for judicial dissolution; alternative
2699 remedies.—

2700 (1) Venue for a proceeding brought under s. 608.7912 lies
2701 in the circuit court of the county where the limited liability
2702 company's principal office is or was last located, as shown by
2703 the records of the department or, if none in this state, where
2704 its registered office is or was last located.

2705 (2) It is not necessary to make members parties to a
2706 proceeding to dissolve a limited liability company unless relief
2707 is sought against them individually.

2708 (3) A court in a proceeding brought to dissolve a limited
2709 liability company may issue injunctions, appoint a receiver or
2710 custodian pendente lite with all powers and duties the court
2711 directs, take other action required to preserve the limited
2712 liability company's assets wherever located, and carry on the
2713 business of the limited liability company until a full hearing
2714 can be held.

2715 (4) In a proceeding brought under s. 608.7912, the court
2716 may, upon a showing of sufficient merit to warrant such a

2717 remedy:
 2718 (a) Appoint a receiver or custodian under s. 608.7914;
 2719 (b) Order a purchase of a petitioning member's interest
 2720 pursuant to s. 608.7916; or
 2721 (c) Upon a showing of good cause, order another remedy the
 2722 court deems appropriate in its discretion, including an
 2723 equitable remedy.
 2724 (5) Section 57.105 applies to a proceeding brought under
 2725 s. 608.7912.
 2726 608.7914 Receivership or custodianship.-
 2727 (1) A court in a judicial proceeding brought to dissolve a
 2728 limited liability company may appoint one or more receivers to
 2729 wind up and liquidate, or one or more custodians to manage the
 2730 business and affairs of the limited liability company. The court
 2731 shall hold a hearing, after notifying all parties to the
 2732 proceeding and an interested person designated by the court,
 2733 before appointing a receiver or custodian. The court appointing
 2734 a receiver or custodian has exclusive jurisdiction over the
 2735 limited liability company and all of its property, wherever
 2736 located.
 2737 (2) The court may appoint a person authorized to act as a
 2738 receiver or custodian. The court may require the receiver or
 2739 custodian to post bond, with or without sureties, in an amount
 2740 the court directs.
 2741 (3) The court shall describe the powers and duties of the
 2742 receiver or custodian in its appointing order, which may be
 2743 amended. Among other powers:
 2744 (a) The receiver:

HB 1079

2013

2745 1. May dispose of all or a part of the assets of the
2746 limited liability company wherever located, at a public or
2747 private sale, if authorized by the court.

2748 2. May sue and defend in the receiver's own name, as
2749 receiver of the limited liability company, in all courts of this
2750 state.

2751 (b) The custodian may exercise all of the powers of the
2752 limited liability company, through or in place of its managers
2753 or members, to the extent necessary to manage the activities and
2754 affairs of the limited liability company in the best interests
2755 of its members and creditors.

2756 (4) The court, during a receivership, may redesignate the
2757 receiver as a custodian, and during a custodianship may
2758 redesignate the custodian as a receiver, if doing so is in the
2759 best interests of the limited liability company and its members
2760 and creditors.

2761 (5) During the receivership or custodianship the court may
2762 order compensation paid and expense disbursements or
2763 reimbursements made to the receiver or custodian and the
2764 receiver's or custodian's counsel from the assets of the limited
2765 liability company or proceeds from the sale of part or all of
2766 those assets.

2767 (6) The court has jurisdiction to appoint an ancillary
2768 receiver for the assets and business of a limited liability
2769 company. The ancillary receiver shall serve ancillary to a
2770 receiver located in another state, whenever the court deems that
2771 circumstances exist requiring the appointment of such a
2772 receiver. The court may appoint such an ancillary receiver for a

HB 1079

2013

2773 foreign limited liability company even though no receiver has
2774 been appointed elsewhere. The receivership shall be converted
2775 into an ancillary receivership when an order entered by a court
2776 of competent jurisdiction in the other state provides for a
2777 receivership of the foreign limited liability company.

2778 608.7915 Decree of dissolution.-

2779 (1) If, after a hearing, the court determines that one or
2780 more grounds for judicial dissolution described in s. 608.7912
2781 exist, the court may enter a decree dissolving the limited
2782 liability company and specifying the effective date of the
2783 dissolution, and the clerk of the court shall deliver a
2784 certified copy of the decree to the department, which shall file
2785 the decree.

2786 (2) After entering the decree of dissolution, the court
2787 shall direct the winding up and liquidation of the limited
2788 liability company's activities and affairs in accordance with
2789 ss. 608.7919-608.7923, subject to subsection (3).

2790 (3) In a proceeding for judicial dissolution, the court
2791 may require all creditors of the limited liability company to
2792 file with the clerk of the court or with the receiver, in a form
2793 as the court may prescribe, proofs under oath of their
2794 respective claims. If the court requires the filing of claims,
2795 the court shall fix a date, which may not be less than 4 months
2796 after the date of the order, as the last day for filing claims.
2797 The court shall prescribe the deadline for filing claims that
2798 shall be given to creditors and claimants. Before the date so
2799 fixed, the court may extend the time for the filing of claims by
2800 court order. Creditors and claimants failing to file proofs of

HB 1079

2013

2801 claim on or before the date so fixed may be barred, by order of
2802 court, from participating in the distribution of the assets of
2803 the limited liability company. Nothing in this section affects
2804 the enforceability of a recorded mortgage or lien or the
2805 perfected security interest or rights of a person in possession
2806 of real or personal property.

2807 608.7916 Election to purchase instead of dissolution.—

2808 (1) In a proceeding initiated by a member of a limited
2809 liability company under s. 608.7912(2) to dissolve the company,
2810 the company may elect, or, if it fails to elect, one or more
2811 other members may elect to purchase the entire interest of the
2812 petitioner in the company at the fair value of the interest. An
2813 election pursuant to this section is irrevocable unless the
2814 court determines that it is equitable to set aside or modify the
2815 election.

2816 (2) An election to purchase pursuant to this section may
2817 be filed with the court within 90 days after the filing of the
2818 petition by the petitioning member under s. 608.7912(2) or at
2819 such later time as the court in its discretion may allow. If the
2820 election to purchase is filed, the company shall, within 10 days
2821 thereafter, give written notice to all members, other than the
2822 petitioning member. The notice must describe the interest in the
2823 company owned by each petitioning member and must advise the
2824 recipients of their right to join in the election to purchase
2825 the petitioning member's interest in accordance with this
2826 section. Members who wish to participate must file notice of
2827 their intention to join in the purchase within 30 days after the
2828 effective date of the notice. A member who has filed an election

HB 1079

2013

2829 or notice of the intent to participate in the election to
2830 purchase thereby become parties to the proceeding and shall
2831 participate in the purchase in proportion to the ownership
2832 interest as of the date the first election was filed, unless
2833 they otherwise agree or the court otherwise directs. After an
2834 election to purchase has been filed by the limited liability
2835 company or one or more members, the proceeding under s.
2836 608.7912(2) may not be discontinued or settled, nor may the
2837 petitioning member sell or otherwise dispose of interest of the
2838 petitioner in the company, unless the court determines that it
2839 would be equitable to the company and the members, other than
2840 the petitioner, to permit such discontinuance, settlement, sale,
2841 or other disposition.

2842 (3) If, within 60 days after the filing of the first
2843 election, the parties reach agreement as to the fair value and
2844 terms of the purchase of the petitioner's interest, the court
2845 shall enter an order directing the purchase of petitioner's
2846 interest upon the terms and conditions agreed to by the parties.

2847 (4) If the parties are unable to reach an agreement as
2848 provided for in subsection (3), the court, upon application of a
2849 party, shall stay the proceedings and determine the fair value
2850 of the petitioner's interest as of the day before the date on
2851 which the petition was filed or as of such other date as the
2852 court deems appropriate under the circumstances.

2853 (5) Upon determining the fair value of the petitioner's
2854 interest in the company, the court shall enter an order
2855 directing the purchase upon such terms and conditions as the
2856 court deems appropriate, which may include payment of the

HB 1079

2013

2857 purchase price in installments, when necessary in the interests
2858 of equity; provision for security to ensure payment of the
2859 purchase price and additional costs, fees, and expenses as may
2860 have been awarded; and, if the interest is to be purchased by
2861 members, the allocation of the interest among those members. In
2862 allocating petitioner's interest among holders of different
2863 classes or series of interests in the company, the court shall
2864 attempt to preserve the existing distribution of voting rights
2865 among holders of different classes insofar as practicable and
2866 may direct that holders of a specific class or classes or series
2867 not participate in the purchase. Interest may be allowed at the
2868 rate and from the date determined by the court to be equitable;
2869 however, if the court finds that the refusal of the petitioning
2870 member to accept an offer of payment was arbitrary or otherwise
2871 not in good faith, no payment of interest is allowed. If the
2872 court finds that the petitioning member had probable grounds for
2873 relief under s. 608.7912(2)(d) or (e), it may award to the
2874 petitioning member reasonable fees and expenses of counsel and
2875 of experts employed by petitioner.

2876 (6) Upon entry of an order under subsection (3) or
2877 subsection (5), the court shall dismiss the petition to dissolve
2878 the limited liability company and the petitioning member shall
2879 no longer have rights or status as a member of the limited
2880 liability company, except the right to receive the amounts
2881 awarded by the order of the court, which shall be enforceable in
2882 the same manner as another judgment.

2883 (7) The purchase ordered pursuant to subsection (5) must
2884 be made within 10 days after the date the order becomes final

HB 1079

2013

2885 unless, before that time, the limited liability company files
2886 with the court a notice of its intention to dissolve pursuant to
2887 s. 608.7911(2), in which case articles of dissolution for the
2888 company must be filed within 50 days thereafter. Upon filing of
2889 such articles of dissolution, the limited liability company
2890 shall be dissolved in accordance with ss. 608.7919-608.7923, and
2891 the order entered pursuant to subsection (5) shall no longer be
2892 of force or effect, except that the court may award the
2893 petitioning member reasonable fees and expenses of counsel and
2894 experts in accordance with subsection (5) and the petitioner may
2895 continue to pursue any claims previously asserted on behalf of
2896 the limited liability company.

2897 (8) A payment by the limited liability company pursuant to
2898 an order under subsection (3) or (5), other than an award of
2899 fees and expenses pursuant to subsection (5), is subject to s.
2900 608.7844.

2901 608.7917 Articles of dissolution; filing of articles of
2902 dissolution.-

2903 (1) Upon the occurrence of an event described in s.
2904 608.7911(1)-(3), the limited liability company shall deliver for
2905 filing articles of dissolution as provided in this section.

2906 (2) The articles of dissolution must set forth:

2907 (a) The name of the limited liability company.

2908 (b) The effective date of the limited liability company's
2909 dissolution.

2910 (c) The occurrence that resulted in the limited liability
2911 company's dissolution.

2912 (d) If there are no members, the name, address, and

2913 signature of the person appointed in accordance with this
 2914 subsection to wind up the company.

2915 (3) The articles of dissolution of the limited liability
 2916 company shall be delivered to the department. If the department
 2917 finds that the articles of dissolution conform to law, it shall,
 2918 when all fees have been paid as prescribed in this chapter, file
 2919 the articles of dissolution and issue a certificate of
 2920 dissolution.

2921 (4) Upon the filing of the articles of dissolution, the
 2922 limited liability company shall cease conducting its business
 2923 and shall continue solely for the purpose of winding up its
 2924 affairs in accordance with s. 608.7919, except for the purpose
 2925 of lawsuits, other proceedings, and appropriate action as
 2926 provided in this chapter.

2927 608.7918 Revocation of articles of dissolution.-

2928 (1) A limited liability company that has dissolved as the
 2929 result of an event described in s. 608.7911(1)-(3) and filed
 2930 articles of dissolution with the department, but has not filed a
 2931 statement of termination that has become effective, may revoke
 2932 its dissolution at any time before 120 days after the effective
 2933 date of its articles of dissolution.

2934 (2) The revocation of the dissolution shall be authorized
 2935 in the same manner as the dissolution was authorized.

2936 (3) After the revocation of dissolution is authorized, the
 2937 limited liability company shall deliver a statement of
 2938 revocation of dissolution to the department for filing, together
 2939 with a copy of its articles of dissolution, that sets forth:

2940 (a) The name of the limited liability company.

2941 (b) The effective date of the dissolution that was
 2942 revoked.

2943 (c) The date that the statement of revocation of
 2944 dissolution was authorized.

2945 (4) If there has been substantial compliance with
 2946 subsection (3), the revocation of dissolution is effective when
 2947 the department files the statement of revocation of dissolution.

2948 (5) When the revocation of dissolution becomes effective:

2949 (a) The company resumes carrying on its activities and
 2950 affairs as if dissolution had never occurred.

2951 (b) Subject to paragraph (c), a liability incurred by the
 2952 company after the dissolution and before the revocation is
 2953 effective is determined as if dissolution had never occurred;.

2954 (c) The rights of a third party arising out of conduct in
 2955 reliance on the dissolution before the third party knew or had
 2956 notice of the revocation may not be adversely affected.

2957 608.7919 Winding up.-

2958 (1) A dissolved limited liability company shall wind up
 2959 its activities and affairs and, except as otherwise provided in
 2960 ss. 608.7918 and 608.7925, the company continues after
 2961 dissolution only for the purpose of winding up.

2962 (2) In winding up its activities and affairs, a limited
 2963 liability company:

2964 (a) Shall discharge or make provision for the company's
 2965 debts, obligations and other liabilities as provided in ss.
 2966 608.7920-608.7923, settle and close the company's activities and
 2967 affairs, and marshal and distribute the assets of the company.

2968 (b) May:

- 2969 | 1. Preserve the company's activities, affairs, and
 2970 | property as a going concern for a reasonable time.
- 2971 | 2. Prosecute and defend actions and proceedings, whether
 2972 | civil, criminal, or administrative.
- 2973 | 3. Transfer title to the company's real estate and other
 2974 | property.
- 2975 | 4. Settle disputes by mediation or arbitration.
- 2976 | 5. Dispose of its properties that will not be distributed
 2977 | in kind to its members.
- 2978 | 6. Perform other acts necessary or appropriate to the
 2979 | winding up.
- 2980 | (3) If a dissolved limited liability company has no
 2981 | members, the legal representative of the last person to have
 2982 | been a member may wind up the activities and affairs of the
 2983 | company. If the legal representative does so, the person has the
 2984 | powers of a sole manager under s. 608.7846(3) and is deemed to
 2985 | be a manager for the purposes of s. 608.7834(1).
- 2986 | (4) If the legal representative under subsection (3)
 2987 | declines or fails to wind up the company's activities and
 2988 | affairs, a person may be appointed to do so by the consent of
 2989 | transferees owning a majority of the rights to receive
 2990 | distributions as transferees at the time the consent is to be
 2991 | effective. A person appointed under this subsection has the
 2992 | powers of a sole manager under s. 608.7846(3) and is deemed to
 2993 | be a manager for the purposes of s. 608.7834(1).
- 2994 | (5) A circuit court may order judicial supervision of the
 2995 | winding up of a dissolved limited liability company, including
 2996 | the appointment of one or more persons to wind up the company's

2997 | activities and affairs:

2998 | (a) On application of a member or manager, if the

2999 | applicant establishes good cause;

3000 | (b) On the application of a transferee, if:

3001 | 1. The company does not have any members.

3002 | 2. The legal representative of the last person to have

3003 | been a member declines or fails to wind up the company's

3004 | activities and affairs.

3005 | 3. Within a reasonable time following the dissolution a

3006 | person has not been appointed pursuant to subsection (3);

3007 | (c) On application of a creditor of the company if the

3008 | applicant establishes good cause, but only if a receiver,

3009 | custodian, or another person has not already been appointed for

3010 | that purpose under this chapter; or

3011 | (d) In connection with a proceeding under s. 608.7912, if

3012 | a receiver, custodian or another person has not already been

3013 | appointed for that purpose under s. 608.7914.

3014 | (6) The person or persons appointed by a court under

3015 | subsection (5) may also be designated trustees or receivers of

3016 | and for the company with the authority and power to take charge

3017 | of the limited liability company's property; to collect the

3018 | debts and property due and belonging to the limited liability

3019 | company, to prosecute and defend, in the name of the limited

3020 | liability company, or otherwise, all such suits as may be

3021 | necessary or proper for the purposes described above, and to

3022 | appoint an agent or agents under them; and to do all other acts

3023 | which might be done by the limited liability company, if in

3024 | being, that may be necessary for the final settlement of the

HB 1079

2013

3025 unfinished activities and affairs of the limited liability
3026 company. The powers of the trustees or receivers may be
3027 continued as long as the court determines necessary for the
3028 above purposes.

3029 (7) A dissolved limited liability company that has
3030 completed winding up may deliver to the department for filing a
3031 statement of termination that provides:

3032 (a) The name of the limited liability company.

3033 (b) The date of filing of its initial articles of
3034 organization.

3035 (c) The date of the filing of its articles of dissolution.

3036 (d) The limited liability company has completed winding up
3037 its affairs and has determined that it will file a statement of
3038 termination.

3039 (e) Other information as determined by the authorized
3040 representative.

3041 (8) The manager or managers in office at the time of
3042 dissolution or the survivors of them, or, if none, the members,
3043 shall thereafter be trustees for the members and creditors of
3044 the dissolved limited liability company. The trustees may
3045 distribute property of the limited liability company discovered
3046 after dissolution, convey real estate and other property, and
3047 take such other action as may be necessary on behalf of and in
3048 the name of the dissolved limited liability company.

3049 608.7920 Disposition of assets in winding up.-

3050 (1) In winding up its activities and affairs, a limited
3051 liability company must apply its assets to discharge its
3052 obligations to creditors, including members who are creditors.

HB 1079

2013

3053 (2) After a limited liability company complies with
3054 subsection (1), the surplus must be distributed in the following
3055 order, subject to a charging order in effect under s. 608.7857:

3056 (a) To each person owning a transferable interest that
3057 reflects contributions made and not previously returned, an
3058 amount equal to the value of the unreturned contributions.

3059 (b) To members and dissociated members, in the proportions
3060 in which they shared in distributions before dissolution, except
3061 to the extent necessary to comply with a transfer effective
3062 under s. 608.7856.

3063 (3) If the limited liability company does not have
3064 sufficient surplus to comply with paragraph (2) (a), any surplus
3065 must be distributed among the owners of transferable interests
3066 in proportion to the value of their respective unreturned
3067 contributions.

3068 (4) All distributions made under subsections (2) and (3)
3069 must be paid in money.

3070 608.7921 Known claims against dissolved limited liability
3071 company.—

3072 (1) A dissolved limited liability company or successor
3073 entity, as defined in subsection (14), may dispose of the known
3074 claims against it by following the procedure described in
3075 subsections (2)-(7).

3076 (2) A dissolved limited liability company or successor
3077 entity shall deliver to each of its known claimants written
3078 notice of the dissolution after its effective date. The written
3079 notice must:

3080 (a) Provide a reasonable description of the claim that the

HB 1079

2013

3081 claimant may be entitled to assert.

3082 (b) State whether the claim is admitted or not admitted,
3083 in whole or in part, and, if admitted:

3084 1. The amount that is admitted, which may be as of a given
3085 date.

3086 2. An interest obligation if fixed by an instrument of
3087 indebtedness.

3088 (c) Provide a mailing address to which a claim may be
3089 sent.

3090 (d) State the deadline, which may not be less than 120
3091 days after the effective date of the written notice, by which
3092 confirmation of the claim must be delivered to the dissolved
3093 limited liability company or successor entity.

3094 (e) State that the dissolved limited liability company or
3095 successor entity may make distributions to other claimants and
3096 to the members or transferees of the limited liability company
3097 or persons interested without further notice.

3098 (3) A dissolved limited liability company or successor
3099 entity may reject, in whole or in part, a claim made by a
3100 claimant pursuant to this subsection by mailing notice of the
3101 rejection to the claimant within 90 days after receipt of the
3102 claim and, in all events, at least 150 days before expiration of
3103 3 years after the effective date of dissolution. A notice sent
3104 by the dissolved limited liability company or successor entity
3105 pursuant to this subsection must be accompanied by a copy of
3106 this section.

3107 (4) A dissolved limited liability company or successor
3108 entity electing to follow the procedures described in

HB 1079

2013

3109 subsections (2) and (3) shall also give notice of the
3110 dissolution of the limited liability company to persons with
3111 known claims that are contingent upon the occurrence or
3112 nonoccurrence of future events or otherwise conditional or
3113 unmatured, and request that the persons present the claims in
3114 accordance with the terms of the notice. The notice must be in
3115 substantially the form and sent in the same manner as described
3116 in subsection (2).

3117 (5) A dissolved limited liability company or successor
3118 entity shall offer a claimant whose known claim is contingent,
3119 conditional, or unmatured such security as the limited liability
3120 company or entity determines is sufficient to provide
3121 compensation to the claimant if the claim matures. The dissolved
3122 limited liability company or successor entity shall deliver such
3123 offer to the claimant within 90 days after receipt of the claim
3124 and, in all events, at least 150 days before expiration of 3
3125 years after the effective date of dissolution. If the claimant
3126 who is offered the security does not deliver in writing to the
3127 dissolved limited liability company or successor entity a notice
3128 rejecting the offer within 120 days after receipt of the offer
3129 for security, the claimant is deemed to have accepted such
3130 security as the sole source from which to satisfy his or her
3131 claim against the limited liability company.

3132 (6) A dissolved limited liability company or successor
3133 entity that gives notice in accordance with subsections (2) and
3134 (4) shall petition the circuit court in the applicable county to
3135 determine the amount and form of security that is sufficient to
3136 provide compensation to a claimant who has rejected the offer

HB 1079

2013

3137 for security made pursuant to subsection (5).

3138 (7) A dissolved limited liability company or successor
3139 entity that has given notice in accordance with subsection (2)
3140 shall petition the circuit court in the applicable county to
3141 determine the amount and form of security that will be
3142 sufficient to provide compensation to claimants whose claims are
3143 known to the limited liability company or successor entity but
3144 whose identities are unknown. The court shall appoint a guardian
3145 ad litem to represent all claimants whose identities are unknown
3146 in a proceeding brought under this subsection. The reasonable
3147 fees and expenses of the guardian, including all reasonable
3148 expert witness fees, shall be paid by the petitioner in the
3149 proceeding.

3150 (8) The giving of notice or making of an offer pursuant to
3151 this section does not revive a claim then barred, extend an
3152 otherwise applicable statute of limitations, or constitute
3153 acknowledgment by the dissolved limited liability company or
3154 successor entity that a person to whom such notice is sent is a
3155 proper claimant, and does not operate as a waiver of a defense
3156 or counterclaim in respect of a claim asserted by a person to
3157 whom such notice is sent.

3158 (9) A dissolved limited liability company or successor
3159 entity that followed the procedures described in subsections
3160 (2)-(7) must:

3161 (a) Pay the claims admitted or made and not rejected in
3162 accordance with subsection (3).

3163 (b) Post the security offered and not rejected pursuant to
3164 subsection (5).

HB 1079

2013

3165 (c) Post a security ordered by the circuit court in a
3166 proceeding under subsections (6) and (7).

3167 (d) Pay or make provision for all other known obligations
3168 of the limited liability company or the successor entity.

3169

3170 If there are sufficient funds, such claims or obligations must
3171 be paid in full, and a provision for payments must be made in
3172 full. If there are insufficient funds, the claims and
3173 obligations shall be paid or provided for according to their
3174 priority and, among claims of equal priority, ratably to the
3175 extent of funds that are legally available therefor. Remaining
3176 funds shall be distributed to the members and transferees of the
3177 dissolved limited liability company. However, the distribution
3178 may not be made before the expiration of 150 days after the date
3179 of the last notice of a rejection given pursuant to subsection
3180 (3). In the absence of actual fraud, the judgment of the
3181 managers of a dissolved manager-managed limited liability
3182 company, or the members of a dissolved member-managed limited
3183 liability company, or other person or persons winding up the
3184 limited liability company or the governing persons of the
3185 successor entity, as to the provisions made for the payment of
3186 all obligations under paragraph (d), is conclusive.

3187 (10) A dissolved limited liability company or successor
3188 entity which has not followed the procedures described in
3189 subsections (2) and (3) shall pay or make reasonable provision
3190 to pay all known claims and obligations, including all
3191 contingent, conditional, or unmatured claims known to the
3192 dissolved limited liability company or the successor entity and

HB 1079

2013

3193 all claims that are known to the dissolved limited liability
3194 company or the successor entity but for which the identity of
3195 the claimant is unknown. If there are sufficient funds, the
3196 claims must be paid in full, and a provision made for payment
3197 must be made in full. If there are insufficient funds, the
3198 claims and obligations shall be paid or provided for according
3199 to their priority and, among claims of equal priority, ratably
3200 to the extent of funds that are legally available. Remaining
3201 funds shall be distributed to the members and transferees of the
3202 dissolved limited liability company.

3203 (11) A member or transferee of a dissolved limited
3204 liability company to which the assets were distributed pursuant
3205 to subsection (9) or subsection (10) is not liable for a claim
3206 against the limited liability company in an amount in excess of
3207 the member's or transferee's pro rata share of the claim or the
3208 amount distributed to the member or transferee, whichever is
3209 less.

3210 (12) A member or transferee of a dissolved limited
3211 liability company to which the assets were distributed pursuant
3212 to subsection (9) is not liable for a claim against the limited
3213 liability company, which claim is known to the limited liability
3214 company or successor entity and on which a proceeding is not
3215 begun before the expiration of 3 years after the effective date
3216 of dissolution.

3217 (13) The aggregate liability of a person for claims
3218 against the dissolved limited liability company arising under
3219 this section or s. 608.7920 may not exceed the amount
3220 distributed to the person in dissolution.

3221 (14) As used in this section and s. 608.7920, the term
 3222 "successor entity" includes a trust, receivership, or other
 3223 legal entity governed by the laws of this state to which the
 3224 remaining assets and liabilities of a dissolved limited
 3225 liability company are transferred and which exists solely for
 3226 the purposes of prosecuting and defending suits by or against
 3227 the dissolved limited liability company, thereby enabling the
 3228 dissolved limited liability company to settle and close the
 3229 activities and affairs of the dissolved limited liability
 3230 company, to dispose of and convey the property of the dissolved
 3231 limited liability company, to discharge the liabilities of the
 3232 dissolved limited liability company, and to distribute to the
 3233 dissolved limited liability company's members or transferees any
 3234 remaining assets, but not for the purpose of continuing the
 3235 activities and affairs for which the dissolved limited liability
 3236 company was organized.

3237 (15) As used in this section and s. 608.7923, the term
 3238 "circuit court in the applicable county" means the county in
 3239 this state in which the limited liability company's principal
 3240 office is located or was located at the effective date of
 3241 dissolution; if it has, and at the effective date of dissolution
 3242 had, no principal office in this state, then in the county in
 3243 which the limited liability company has, or at the effective
 3244 date of dissolution had, an office in this state; or if none in
 3245 this state, then in the county in which the limited liability
 3246 company's registered office is or was last located.

3247 (16) As used in this section, the term "known claim" or
 3248 "claim" includes unliquidated claims, but does not include a

HB 1079

2013

3249 contingent liability that has not matured so that there is no
3250 immediate right to bring suit or a claim based on an event
3251 occurring after the effective date of dissolution.

3252 608.7922 Other claims against a dissolved limited
3253 liability company.-

3254 (1) A dissolved limited liability company or successor
3255 entity, as defined in s. 608.7921(14), may choose to execute one
3256 of the following procedures to resolve payment of unknown
3257 claims:

3258 (a) The company or successor entity may file notice of its
3259 dissolution with the department on the form prescribed by the
3260 department and request that persons with claims against the
3261 company which are not known to the company or successor entity
3262 present them in accordance with the notice. The notice must:

3263 1. State the name of the company and the date of
3264 dissolution.

3265 2. Describe the information that must be included in a
3266 claim, state that the claim must be in writing, and provide a
3267 mailing address to which the claim may be sent.

3268 3. State that a claim against the company is barred unless
3269 a proceeding to enforce the claim is commenced within 4 years
3270 after the filing of the notice.

3271 (b) The company or successor entity may publish notice of
3272 its dissolution and request persons having claims against the
3273 company to present them in accordance with the notice. The
3274 notice must:

3275 1. Be published in a newspaper of general circulation in
3276 the county in which the dissolved limited liability company's

HB 1079

2013

3277 principal office is located or, if the principal office is not
3278 located in this state, in the county in which the office of the
3279 company's registered agent is or was last located.

3280 2. Describe the information required to be contained in a
3281 claim, state that the claim must be in writing, and provide a
3282 mailing address to which the claim is to be sent.

3283 3. State that a claim against the company is barred unless
3284 an action to enforce the claim is commenced within 4 years after
3285 publication of the notice.

3286 (2) If a dissolved limited liability company complies with
3287 either paragraph (1) (a) or paragraph (1) (b), unless sooner
3288 barred by another statute limiting actions, the claim of each of
3289 the following claimants is barred unless the claimant commences
3290 an action to enforce the claim against the dissolved limited
3291 liability company within 4 years after the publication date of
3292 the notice:

3293 (a) A claimant that did not receive notice in a record
3294 under s. 608.7921.

3295 (b) A claimant whose claim was timely sent to the
3296 dissolved limited liability company but not acted on.

3297 (c) A claimant whose claim is contingent at, or based on
3298 an event occurring after, the effective date of dissolution.

3299 (3) A claim that is not barred by this section, s.
3300 608.7921, or another statute limiting actions, may be enforced:

3301 (a) Against a dissolved limited liability company, to the
3302 extent of its undistributed assets.

3303 (b) Except as otherwise provided in s. 608.7923, if assets
3304 of the limited liability company have been distributed after

HB 1079

2013

3305 dissolution, against a member or transferee to the extent of
3306 that person's proportionate share of the claim or of the
3307 company's assets distributed to the member or transferee after
3308 dissolution, whichever is less, but a person's total liability
3309 for all claims under this subsection may not exceed the total
3310 amount of assets distributed to the person after dissolution.

3311 (4) This section does not extend an otherwise applicable
3312 statute of limitations.

3313 608.7923 Court proceedings.—

3314 (1) A dissolved limited liability company that has filed
3315 or published a notice under s. 608.7922(1)(a) or (1)(b) may file
3316 an application with the circuit court in the applicable county,
3317 for a determination of the amount and form of security to be
3318 provided for payment of claims that are contingent, have not
3319 been made known to the company, or are based on an event
3320 occurring after the effective date of dissolution but which,
3321 based on the facts known to the dissolved company, are
3322 reasonably expected to arise after the effective date of
3323 dissolution. Security is not required for a claim that is or is
3324 reasonably anticipated to be barred under s. 608.7922.

3325 (2) Within 10 days after filing an application under
3326 subsection (1), the dissolved limited liability company must
3327 give notice of the proceeding to each claimant holding a
3328 contingent claim known to the company.

3329 (3) In a proceeding under this section, the court may
3330 appoint a guardian ad litem to represent all claimants whose
3331 identities are unknown. The reasonable fees and expenses of the
3332 guardian, including all reasonable expert witness fees, must be

HB 1079

2013

3333 paid by the dissolved limited liability company.

3334 (4) A dissolved limited liability company that provides
3335 security in the amount and form ordered by the court under
3336 subsection (1) satisfies the company's obligations with respect
3337 to claims that are contingent, have not been made known to the
3338 company, or are based on an event occurring after the effective
3339 date of dissolution, and such claims may not be enforced against
3340 a member or transferee that received assets in liquidation.

3341 608.7924 Administrative dissolution.—

3342 (1) The department may dissolve a limited liability
3343 company administratively if the company does not:

3344 (a) Deliver its annual report to the department by 5:00
3345 p.m. Eastern Time on the third Friday in September;

3346 (b) Pay a fee or penalty due to the department under this
3347 chapter;

3348 (c) Appoint and maintain a registered agent as required by
3349 s. 608.7813; or

3350 (d) Deliver for filing a statement of a change under s.
3351 608.7814 within 30 days after a change has occurred in the name
3352 or address of the agent, unless, within 30 days after the change
3353 occurred, either:

3354 1. The agent filed a statement of change under s.
3355 608.7816; or

3356 2. The change was made accordance with s. 608.7814(4).

3357 (2) Administrative dissolution of a limited liability
3358 company for failure to file an annual report shall occur on the
3359 fourth Friday in September of each year. The department shall
3360 issue a notice in a record of administrative dissolution to the

HB 1079

2013

3361 limited liability company dissolved for failure to final an
3362 annual report. Issuance of the notice may be by electronic
3363 transmission to a limited liability company that has provided
3364 the department with an electronic mail address.

3365 (3) If the department determines that one or more grounds
3366 exist for administratively dissolving a limited liability
3367 company under paragraphs (1)(b)-(d), the department shall serve
3368 notice in a record to the limited liability company of its
3369 intent to administratively dissolve the limited liability
3370 company. Issuance of the notice may be by electronic
3371 transmission to a limited liability company that has provided
3372 the department with an electronic mail address.

3373 (4) If within 60 days after sending the notice of intent
3374 to administratively dissolve pursuant to subsection (3), a
3375 limited liability company does not correct each ground for
3376 dissolution under paragraphs (1)(b)-(d), or demonstrate to the
3377 reasonable satisfaction of the department that each ground
3378 determined by the department does not exist, the department
3379 shall dissolve the limited liability company administratively
3380 and issue to the company a notice in a record of administrative
3381 dissolution that states the grounds for dissolution. Issuance of
3382 the notice of administrative dissolution may be by electronic
3383 transmission to a limited liability company that has provided
3384 the department with an email address.

3385 (5) A limited liability company that has been
3386 administratively dissolved continues in existence but, subject
3387 to s. 608.7925, may only carry on activities necessary to wind
3388 up its activities and affairs, liquidate and distribute its

HB 1079

2013

3389 assets, and notify claimants under ss. 608.7921 and 608.7922.

3390 (6) The administrative dissolution of a limited liability
3391 company does not terminate the authority of its agent for
3392 service of process.

3393 608.7925 Reinstatement.—

3394 (1) A limited liability company that is administratively
3395 dissolved under s. 608.7924 may apply to the department for
3396 reinstatement at any time after the effective date of
3397 dissolution. The company must submit a form of application for
3398 reinstatement prescribed and furnished by the department and
3399 provide all of the information required by the department,
3400 together with all fees then owed by the company at the rates
3401 provided by law at the time the company applies for
3402 reinstatement.

3403 (2) If the department determines that an application for
3404 reinstatement contains the information required by subsection
3405 (1) and that the information is correct, and upon payment of all
3406 required fees, the department shall reinstate the limited
3407 liability company.

3408 (3) When reinstatement under this section becomes
3409 effective:

3410 (a) The reinstatement relates back to and takes effect as
3411 of the effective date of the administrative dissolution.

3412 (b) The limited liability company may resume its
3413 activities and affairs as if the administrative dissolution had
3414 not occurred.

3415 (c) The rights of a person arising out of an act or
3416 omission in reliance on the dissolution before the person knew

HB 1079

2013

3417 or had notice of the reinstatement are not affected.

3418 (4) The name of the dissolved limited liability company is
3419 not available for assumption or use by another limited liability
3420 company until 1 year after the effective date of dissolution
3421 unless the dissolved limited liability company provides the
3422 department with a record executed as required by s. 608.7823
3423 permitting the immediate assumption or use of the name by
3424 another limited liability company.

3425 608.7926 Judicial review of denial of reinstatement.—

3426 (1) (a) If the department denies a limited liability
3427 company's application for reinstatement after administrative
3428 dissolution, the department shall serve the company with a
3429 notice in a record that explains the reason or reasons for the
3430 denial.

3431 (b) Within 30 days after service of a notice of denial of
3432 reinstatement, a limited liability company may appeal from the
3433 denial by petitioning the circuit court to set aside the
3434 dissolution. The petition must be served on the department and
3435 contain a copy of the department's notice of administrative
3436 dissolution, the company's application for reinstatement, and
3437 the department's notice of denial.

3438 (c) The court may order the department to reinstate a
3439 dissolved limited liability company or take other action the
3440 court considers appropriate.

3441 608.7927 Effect of dissolution.—

3442 (1) Dissolution of a limited liability company does not:

3443 (a) Transfer title to the limited liability company's
3444 assets.

HB 1079

2013

3445 (b) Prevent commencement of a proceeding by or against the
3446 limited liability company in its name.

3447 (c) Abate or suspend a proceeding pending by or against
3448 the limited liability company on the effective date of
3449 dissolution.

3450 (d) Terminate the authority of the registered agent of the
3451 limited liability company.

3452 (2) Except as provided in s. 608.7925(4), the name of the
3453 dissolved limited liability company is not available for
3454 assumption or use by another limited liability company until 120
3455 days after the effective date of dissolution, or filing of a
3456 statement of termination, if earlier.

3457 608.7931 Direct action by member.—

3458 (1) Subject to subsection (2), a member may maintain a
3459 direct action against another member, a manager, or the limited
3460 liability company to enforce the member's rights and otherwise
3461 protect the member's interests, including rights and interests
3462 under the operating agreement or this chapter or arising
3463 independently of the membership relationship.

3464 (2) A member maintaining a direct action under this
3465 section must plead and prove an actual or threatened injury that
3466 is not solely the result of an injury suffered or threatened to
3467 be suffered by the limited liability company.

3468 608.7932 Derivative action.—A member may maintain a
3469 derivative action to enforce a right of a limited liability
3470 company if:

3471 (1) The member first makes a demand on the other members
3472 in a member-managed limited liability company, or the managers

HB 1079

2013

3473 of a manager-managed limited liability company, requesting that
3474 they cause the company to take suitable action to enforce the
3475 right, and the managers or other members do not take the action
3476 within a reasonable time, not to exceed 90 days; or

3477 (2) A demand under subsection (1) would be futile, or
3478 irreparable injury would result to the company by waiting for
3479 the other members or the managers to take action to enforce the
3480 right in accordance with subsection (1).

3481 608.7933 Proper plaintiff.—A derivative action to enforce
3482 a right of a limited liability company may be maintained only by
3483 a person that is a member at the time the action is commenced
3484 and:

3485 (1) Was a member when the conduct giving rise to the
3486 action occurred; or

3487 (2) Whose status as a member devolved on the person by
3488 operation of law or pursuant to the terms of the operating
3489 agreement from a person that was a member at the time of the
3490 conduct.

3491 608.7934 Special litigation committee.—

3492 (1) If a limited liability company is named as or made a
3493 party in a derivative action, the company may appoint a special
3494 litigation committee to investigate the claims asserted in the
3495 derivative action and determine whether pursuing the action is
3496 in the best interests of the company. If the company appoints a
3497 special litigation committee, on motion, except for good cause
3498 shown, the court may stay any derivative action for the time
3499 reasonably necessary to permit the committee to make its
3500 investigation. This subsection does not prevent the court from:

3501 (a) Enforcing a person's rights under the company's
 3502 operating agreement or this chapter, including the person's
 3503 rights to information under s. 608.7853; or,

3504 (b) Exercising its equitable or other powers, including
 3505 granting extraordinary relief in the form of a temporary
 3506 restraining order or preliminary injunction.

3507 (2) A special litigation committee must be composed of one
 3508 or more disinterested and independent individuals, who may be
 3509 members.

3510 (3) A special litigation committee may be appointed:

3511 (a) In a member-managed limited liability company, by the
 3512 consent of the members who are not named as parties in the
 3513 derivative action, who are otherwise disinterested and
 3514 independent, and who hold a majority of the current percentage
 3515 or other interest in the profits of the company owned by all of
 3516 all members of the company who are not named as parties in the
 3517 derivative action and who are otherwise disinterested and
 3518 independent;

3519 (b) In a manager-managed limited liability company, by a
 3520 majority of the managers not named as parties in the derivative
 3521 action and who are otherwise disinterested and independent; or

3522 (c) Upon motion by the limited liability company,
 3523 consisting of a panel of one or more disinterested and
 3524 independent persons.

3525 (4) After appropriate investigation, a special litigation
 3526 committee shall determine what action is in the best interest of
 3527 the limited liability company, including continuing, dismissing,
 3528 or settling the derivative action, or taking another action that

HB 1079

2013

3529 | the special litigation committee deems appropriate.

3530 | (5) After making a determination under subsection (4), a
3531 | special litigation committee shall file or cause to be filed
3532 | with the court a statement of its determination and its report
3533 | supporting its determination, and shall serve each party to the
3534 | derivative action with a copy of the determination and report.
3535 | Upon motion to enforce the determination of the special
3536 | litigation committee, the court shall determine whether the
3537 | members of the committee were disinterested and independent and
3538 | whether the committee conducted its investigation and made its
3539 | recommendation in good faith, independently, and with reasonable
3540 | care, with the committee having the burden of proof. If the
3541 | court finds that the members of the committee were disinterested
3542 | and independent and that the committee acted in good faith,
3543 | independently, and with reasonable care, the court may enforce
3544 | the determination of the committee. Otherwise, the court shall
3545 | dissolve any stay of derivative action entered under subsection
3546 | (1) and allow the derivative action to continue under the
3547 | control of the plaintiff.

3548 | 608.7935 Proceeds and expenses.—

3549 | (1) Except as otherwise provided in subsection (2):

3550 | (a) Proceeds or other benefits of a derivative action
3551 | under s. 608.7932, whether by judgment, compromise, or
3552 | settlement, belong to the limited liability company and not to
3553 | the plaintiff.

3554 | (b) If the plaintiff receives any proceeds, the plaintiff
3555 | shall remit them immediately to the company.

3556 | (2) If a derivative action under s. 608.7932 is successful

HB 1079

2013

3557 in whole or in part, the court may award the plaintiff
3558 reasonable expenses, including reasonable attorney fees and
3559 costs, from the recovery of the limited liability company.

3560 608.7936 Voluntary dismissal or settlement; notice.—

3561 (1) A derivative action on behalf of a limited liability
3562 company may not be voluntarily dismissed or settled without the
3563 court's approval.

3564 (2) If the court determines that a proposed voluntary
3565 dismissal or settlement will substantially affect the interest
3566 of the limited liability company's members or a class, series,
3567 or voting group of members, the court shall direct that notice
3568 be given to the members affected. The court may determine which
3569 party or parties to the derivative action shall bear the expense
3570 of giving the notice.

3571 608.901 Governing law.—

3572 (1) The law of the state or other jurisdiction under which
3573 a foreign limited liability company exists governs:

3574 (a) The organization and internal affairs of the company.

3575 (b) The liability of a member as member and a manager as
3576 manager for the debts, obligations, or other liabilities of the
3577 company.

3578 (2) A foreign limited liability company may not be denied
3579 a certificate of authority by reason of a difference between its
3580 jurisdiction of formation and the laws of this state.

3581 (3) A certificate of authority does not authorize a
3582 foreign limited liability company to engage in any business or
3583 exercise any power that a limited liability company may not
3584 engage in or exercise in this state.

3585 608.902 Application for certificate of authority.-
 3586 (1) A foreign limited liability company may not transact
 3587 business in this state until it obtains a certificate of
 3588 authority from the department. A foreign limited liability
 3589 company may apply for a certificate of authority to transact
 3590 business in this state by delivering an application to the
 3591 department for filing. Such application must be made on forms
 3592 prescribed by the department. The application must contain:
 3593 (a) The name of the company and, if the name does not
 3594 comply with s. 608.7812, an alternate name adopted pursuant to
 3595 s. 608.905(1).
 3596 (b) The name of the company's jurisdiction of formation.
 3597 (c) The principal office and mailing addresses of the
 3598 company.
 3599 (d) The name and street address in this state of, and
 3600 written acceptance by, the company's initial registered agent in
 3601 this state.
 3602 (e) The name, title or capacity, and address of at least
 3603 one person who has the authority to manage the company.
 3604 (f) Additional information as may be necessary or
 3605 appropriate in order to enable the department to determine
 3606 whether the company is entitled to file an application for a
 3607 certificate of authority to transact business in this state and
 3608 to determine and assess the fees as prescribed in this chapter.
 3609 (2) A foreign limited liability company shall deliver with
 3610 a completed application under subsection (1) a certificate of
 3611 existence or a record of similar import signed by the Secretary
 3612 of State or other official having custody of the foreign limited

HB 1079

2013

3613 liability company's publicly filed records in its jurisdiction
3614 of formation, dated not more than 90 days before the delivery of
3615 the application to the department.

3616 (3) For purposes of complying with the requirements of
3617 this chapter, the department may require each individual series
3618 or cell of a foreign series limited liability company that
3619 transacts business in this state to make a separate application
3620 for certificate of authority, and to make such other filings as
3621 may be required for purposes of complying with the requirements
3622 of this chapter as if each such series or cell were a separate
3623 foreign limited liability company.

3624 608.903 Activities that do not constitute transacting
3625 business.—

3626 (1) The following activities, among others, do not
3627 constitute transacting business within the meaning of s.
3628 608.902(1):

3629 (a) Maintaining, defending, or settling any proceeding.

3630 (b) Holding meetings of the managers or members or
3631 carrying on other activities concerning internal company
3632 affairs.

3633 (c) Maintaining bank accounts.

3634 (d) Maintaining managers or agencies for the transfer,
3635 exchange, and registration of the foreign limited liability
3636 company's own securities or maintaining trustees or depositaries
3637 with respect to those securities.

3638 (e) Selling through independent contractors.

3639 (f) Soliciting or obtaining orders, whether by mail or
3640 through employees, agents, or otherwise, if the orders require

3641 acceptance outside this state before they become contracts.

3642 (g) Creating or acquiring indebtedness, mortgages, and
3643 security interests in real or personal property.

3644 (h) Securing or collecting debts or enforcing mortgages
3645 and security interests in property securing the debts.

3646 (i) Transacting business in interstate commerce.

3647 (j) Conducting an isolated transaction that is completed
3648 within 30 days and that is not one in the course of repeated
3649 transactions of a like nature.

3650 (k) Owning and controlling a subsidiary corporation
3651 incorporated, or limited liability company formed, in or
3652 transacting business within this state or voting the stock of a
3653 corporation which it has lawfully acquired.

3654 (l) Owning a limited partner interest in a limited
3655 partnership that is transacting business within this state,
3656 unless the limited partner manages or controls the partnership
3657 or exercises the powers and duties of a general partner.

3658 (m) Owning, without more, real or personal property.

3659 (2) The list of activities in subsection (1) is an not
3660 exhaustive list of activities that constitute transacting
3661 business within the meaning of s. 608.903(1).

3662 (3) The ownership in this state of income-producing real
3663 property or tangible personal property, other than property
3664 excluded under subsection (1), constitutes transacting business
3665 in this state for purposes of s. 608.902(1).

3666 (4) This section does not apply when determining the
3667 contacts or activities that may subject a foreign limited
3668 liability company to service of process, taxation, or regulation

HB 1079

2013

3669 | under the law of this state other than this chapter.

3670 | 608.904 Application for certificate of authority.—

3671 | (1) Unless the department determines that an application
3672 | for a certificate of authority of a foreign limited liability
3673 | company to transact business in this state does not comply with
3674 | the filing requirements of this chapter, the department shall,
3675 | upon payment of all filing fees, authorize the foreign limited
3676 | liability company to transact business in this state and file
3677 | the application for a certificate of authority.

3678 | (2) The filing by the department of an application for a
3679 | certificate of authority authorizes the foreign limited
3680 | liability company to which it is issued to transact business in
3681 | this state subject, however, to the right of the department to
3682 | suspend or revoke the certificate of authority as provided in
3683 | this chapter.

3684 | 608.905 Noncomplying name of foreign limited liability
3685 | company.—

3686 | (1) A foreign limited liability company whose name is
3687 | unavailable under or does not otherwise comply with s. 608.7812
3688 | may use an alternate name that complies with s. 608.7812 to
3689 | transact business in this state. An alternate name adopted for
3690 | use in this state shall be cross-referenced to the actual name
3691 | of the foreign limited liability company in the records of the
3692 | department. If the actual name of the foreign limited liability
3693 | company subsequently becomes available in this state or the
3694 | company chooses to change its alternate name, a copy of the
3695 | record approving the change by its members, managers, or other
3696 | persons having the authority to do so, and executed as required

3697 | by s. 608.7823, shall be delivered to the department for filing.

3698 | (2) A foreign limited liability company that adopts an
 3699 | alternate name under subsection (1) and obtains a certificate of
 3700 | authority with the alternate name need not comply with s.
 3701 | 865.09.

3702 | (3) After obtaining a certificate of authority with an
 3703 | alternate name, a foreign limited liability company shall
 3704 | transact business in this state under the alternate name unless
 3705 | the company is authorized under s. 865.09 to transact business
 3706 | in this state under another name.

3707 | (4) If a foreign limited liability company authorized to
 3708 | transact business in this state changes its name to one that
 3709 | does not comply with s. 608.7812, it may not thereafter transact
 3710 | business in this state until it complies with subsection (1) and
 3711 | obtains an amended certificate of authority.

3712 | 608.906 Amendment to certificate of authority.-

3713 | (1) A foreign limited liability company authorized to
 3714 | transact business in this state shall deliver for filing an
 3715 | amendment to its certificate of authority to reflect the change
 3716 | of:

3717 | (a) Its name on the records of the department;

3718 | (b) Its jurisdiction of formation;

3719 | (c) The principal office and mailing addresses of the
 3720 | company unless the change was made in a timely filed annual
 3721 | report;

3722 | (d) The name and street address in this state of the
 3723 | company's registered agent in this state, unless the change was
 3724 | timely made in accordance with s. 608.7814 or s. 608.7816; or

3725 (e) A person identified in accordance with s.
 3726 608.902(1)(e), or a change in the title or capacity or address
 3727 of that person.

3728 (2) The application must be made within 30 days after the
 3729 occurrence of a change mentioned in subsection (1), must be
 3730 signed by an authorized representative of the foreign limited
 3731 liability company, and must include:

3732 (a) The name of the foreign limited liability company as
 3733 it appears on the records of the department.

3734 (b) Its jurisdiction of formation.

3735 (c) The date the foreign limited liability company was
 3736 authorized to transact business this state.

3737 (d) If the name of the foreign limited liability company
 3738 has been changed, the name relinquished and its new name.

3739 (e) If the amendment changes the jurisdiction of formation
 3740 of the foreign limited liability company, a statement of that
 3741 change.

3742 (3) Subject to subsection (4), a foreign limited liability
 3743 company authorized to do business in this state may make
 3744 application to the department to obtain an amended certificate
 3745 of authority to add, remove, or change the name, title,
 3746 capacity, or address of a person who has the authority to manage
 3747 the foreign limited liability company.

3748 (4) The requirements of s. 608.902(2) for obtaining an
 3749 original certificate of authority apply to obtaining an amended
 3750 certificate under this section, unless the secretary of state or
 3751 other official having custody of the foreign limited liability
 3752 company's publicly filed records in its jurisdiction of

3753 | formation did not require an amendment to effectuate the change
 3754 | on its records.

3755 | 608.907 Revocation of certificate of authority.—

3756 | (1) A certificate of authority of a foreign limited
 3757 | liability company to transact business in this state may be
 3758 | revoked by the department if:

3759 | (a) The company did not deliver its annual report to the
 3760 | department by 5 p.m. Eastern Time on the third Friday in
 3761 | September;

3762 | (b) The company did not pay a fee or penalty due to the
 3763 | department under this chapter;

3764 | (c) The company did not appoint and maintain an agent for
 3765 | service of process as required by s. 608.7813;

3766 | (d) The company did not deliver for filing a statement of
 3767 | a change under s. 608.7814 within 30 days after a change has
 3768 | occurred in the name or address of the agent, unless, within 30
 3769 | days after the change occurred, either:

3770 | 1. The agent filed a statement of change under s.
 3771 | 608.7816, or

3772 | 2. The change was made in accordance with s. 608.7814(4)
 3773 | or s. 608.906(1)(d);

3774 | (e) The company failed to amend its certificate of
 3775 | authority to reflect a change in its name on the records of the
 3776 | department or its jurisdiction of formation;

3777 | (f) The department receives a duly authenticated
 3778 | certificate from the official having custody of records in the
 3779 | company's jurisdiction of formation stating that it has been
 3780 | dissolved or is no longer active on its records;

HB 1079

2013

- 3781 (g) The company's period of duration has expired;
- 3782 (h) A member, manager, or agent of the company signed a
3783 document that the member, manager, or agent knew was false in a
3784 material respect with the intent that the document be delivered
3785 to the department for filing; or
- 3786 (i) The company has failed to answer truthfully and fully,
3787 within the time prescribed in s. 608.978, interrogatories
3788 propounded by the department.
- 3789 (2) Revocation of a foreign limited liability company's
3790 certificate of authority for failure to file an annual report
3791 shall occur on the 4th Friday in September of each year. The
3792 department shall issue a notice in a record of the revocation to
3793 the revoked foreign limited liability company. Issuance of the
3794 notice may be by electronic transmission to a foreign limited
3795 liability company that has provided the department with an email
3796 address.
- 3797 (3) If the department determines that one or more grounds
3798 exist under paragraphs (1)(b)-(i) for revoking a foreign limited
3799 liability company's certificate of authority, the department
3800 shall issue a notice in a record to the foreign limited
3801 liability company of the department's intent to revoke the
3802 certificate of authority. Issuance of the notice may be by
3803 electronic transmission to a foreign limited liability company
3804 that has provided the department with an email address.
- 3805 (4) If within 60 days after the department sent the notice
3806 of intent to revoke in accordance with subsection (3), the
3807 foreign limited liability company does not correct each ground
3808 for revocation or demonstrate to the reasonable satisfaction of

HB 1079

2013

3809 the department that each ground determined by the department
3810 does not exist, the department shall revoke the foreign limited
3811 liability company's authority to transact business in this state
3812 and issue a notice in a record of revocation that states the
3813 grounds for revocation. Issuance of the notice may be by
3814 electronic transmission to a foreign limited liability company
3815 that has provided the department with an email address.

3816 608.908 Cancellation of certificate of authority.—To
3817 cancel its certificate of authority to transact business in this
3818 state, a foreign limited liability company must deliver to the
3819 department for filing a notice of withdrawal of certificate of
3820 authority. The certificate is canceled when the notice becomes
3821 effective under s. 608.7827. The notice of withdrawal of
3822 certificate of authority must be signed by an authorized
3823 representative and state the following:

3824 (1) The name of the company as it appears on the records
3825 of the department.

3826 (2) The name of the company's jurisdiction of formation.

3827 (3) The date the company was authorized to transact
3828 business in this state.

3829 (4) The company is withdrawing its certificate of
3830 authority in this state.

3831 608.909 Effect of failure to have certificate of
3832 authority.—

3833 (1) A foreign limited liability company transacting
3834 business in this state or its successors may not maintain an
3835 action or proceeding in this state unless it has a certificate
3836 of authority to transact business in this state.

HB 1079

2013

3837 (2) The successor to a foreign limited liability company
3838 that transacted business in this state without a certificate of
3839 authority and the assignee of a cause of action arising out of
3840 that business may not maintain a proceeding based on that cause
3841 of action in a court in this state until the foreign limited
3842 liability company or its successor obtains a certificate of
3843 authority.

3844 (3) A court may stay a proceeding commenced by a foreign
3845 limited liability company or its successor or assignee until it
3846 determines whether the foreign limited liability company or its
3847 successor requires a certificate of authority. If it so
3848 determines, the court may further stay the proceeding until the
3849 foreign limited liability company or its successor obtains the
3850 certificate.

3851 (4) The failure of a foreign limited liability company to
3852 have a certificate of authority to transact business in this
3853 state does not impair the validity of a contract or act of the
3854 company or prevent the foreign limited liability company from
3855 defending an action or proceeding in this state.

3856 (5) A member or manager of a foreign limited liability
3857 company is not liable for the debts, obligations, or other
3858 liabilities of the foreign limited liability company solely
3859 because the foreign limited liability company transacted
3860 business in this state without a certificate of authority.

3861 (6) If a foreign limited liability company transacts
3862 business in this state without a certificate of authority or
3863 cancels its certificate of authority, it appoints the department
3864 as its agent for service of process for rights of action arising

HB 1079

2013

3865 | out of the transaction of business in this state.

3866 | (7) A foreign limited liability company that transacts
3867 | business in this state without authority to do so is liable to
3868 | this state for the years or parts thereof during which it
3869 | transacted business in this state without authority in an amount
3870 | equal to all fees or penalties which would have been imposed by
3871 | this chapter upon the foreign limited liability company had it
3872 | duly applied for and received authority to transact business in
3873 | this state as required by this chapter. In addition to the
3874 | payments thus prescribed, the foreign limited liability company
3875 | is liable for a civil penalty of at least \$500 but not more than
3876 | \$1,000 for each year or part thereof during which it transacts
3877 | business in this state without a certificate of authority. The
3878 | department may collect all penalties due under this subsection.

3879 | 608.910 Reinstatement after revocation of certificate of
3880 | authority.—

3881 | (1) A foreign limited liability company whose certificate
3882 | of authority has been revoked may apply to the department for
3883 | reinstatement at any time after the effective date of the
3884 | revocation. The foreign limited liability company applying for
3885 | reinstatement must provide information in a form prescribed and
3886 | furnished by the department, and pay all fees then owed by the
3887 | foreign limited liability company at a rate provided by law at
3888 | the time the company applies for reinstatement.

3889 | (2) If the department determines that an application for
3890 | reinstatement contains the information required by subsection
3891 | (1) and that the information is correct, and upon payment of all
3892 | required fees, the department shall reinstate the foreign

3893 | limited liability company's certificate of authority.

3894 | (3) When a reinstatement becomes effective, it relates
 3895 | back to and takes effect as of the effective date of the
 3896 | revocation of authority and the foreign limited liability
 3897 | company may resume its activities in this state as if the
 3898 | revocation of authority had not occurred.

3899 | (4) The name of the foreign limited liability company
 3900 | whose certificate of authority has been revoked is not available
 3901 | for assumption or use by another business entity until 1 year
 3902 | after the effective date of revocation of authority unless the
 3903 | limited liability company provides the department with a record
 3904 | executed as required by s. 608.7823 permitting the immediate
 3905 | assumption or use of its name by another limited liability
 3906 | company.

3907 | (5) If the name of the foreign limited liability company
 3908 | applying for reinstatement has been lawfully assumed in this
 3909 | state by another business entity, the department shall require
 3910 | the foreign limited liability company to comply with s. 608.7812
 3911 | before accepting its application for reinstatement.

3912 | 608.911 Action by Department of Legal Affairs.—The
 3913 | Department of Legal Affairs may maintain an action to enjoin a
 3914 | foreign limited liability company from transacting business in
 3915 | this state in violation of this chapter.

3916 | 608.916 Relationship of ss. 608.916-608.972 to other
 3917 | laws.—

3918 | (1) Sections 608.916-608.972 do not authorize an act
 3919 | prohibited by, and do not affect the application or requirements
 3920 | of, law other than ss. 608.916-608.972.

3921 (2) A transaction effected under ss. 608.916-608.972 may
 3922 not create or impair a right or obligation on the part of a
 3923 person under a provision of the law of this state, other than
 3924 ss. 608.1001-608.1072, relating to a change in control,
 3925 takeover, business combination, control-share acquisition, or
 3926 similar transaction involving a merging, acquiring, or
 3927 converting, a domestic business corporation unless:

3928 (a) If the corporation does not survive the transaction,
 3929 the transaction satisfies the requirements of the provision; or

3930 (b) If the corporation survives the transaction, the
 3931 approval of the plan is by a vote of the shareholders or
 3932 directors which would be sufficient to create or impair the
 3933 right or obligation directly under the provision.

3934 608.917 Charitable and donative provisions.-

3935 (1) Property held for a charitable purpose under the law
 3936 of this state by a domestic or foreign entity immediately before
 3937 a transaction under this chapter becomes effective may not, as a
 3938 result of the transaction, be diverted from the objects for
 3939 which it was donated, granted, devised, or otherwise transferred
 3940 unless, to the extent required by or pursuant to the law of this
 3941 state concerning cy pres or other law dealing with nondiversion
 3942 of charitable assets, the entity obtains an appropriate order of
 3943 the appropriate court specifying the disposition of the
 3944 property.

3945 (2) A bequest, devise, gift, grant, or promise contained
 3946 in a will or other instrument of donation, subscription, or
 3947 conveyance that is made to a merging entity that is not the
 3948 surviving entity and that takes effect or remains payable after

HB 1079

2013

3949 the merger inures to the surviving entity. A trust obligation
3950 that would govern property if transferred to the nonsurviving
3951 entity applies to property that is transferred to the surviving
3952 entity under this section.

3953 608.918 Status of filings.—A filing under ss. 608.916-
3954 608.972 signed by a domestic entity becomes part of the public
3955 organic record of the entity if the entity's organic law
3956 provides that similar filings under that law become part of the
3957 public organic record of the entity.

3958 608.919 Nonexclusivity.—The fact that a transaction under
3959 ss. 608.916-608.972 produces a certain result does not preclude
3960 the same result from being accomplished in another manner
3961 permitted by a law other than ss. 608.916-608.972.

3962 608.92 Reference to external facts.—A plan may refer to
3963 facts ascertainable outside the plan if the manner in which the
3964 facts will operate upon the plan is specified in the plan. The
3965 facts may include the occurrence of an event or a determination
3966 or action by a person, whether or not the event, determination,
3967 or action is within the control of a party to the transaction.

3968 608.922 Appraisal rights.—

3969 (1) A member of a limited liability company is entitled to
3970 appraisal rights and to obtain payment of the fair value of that
3971 member's membership interest in the following events:

3972 (a) Consummation of a merger of a limited liability
3973 company pursuant to this chapter where the member possessed the
3974 right to vote upon the merger.

3975 (b) Consummation of a conversion of such limited liability
3976 company pursuant to this chapter where the member possessed the

HB 1079

2013

3977 | right to vote upon the conversion.

3978 | (c) Consummation of an interest exchange pursuant to this
3979 | chapter where the member possessed the right to vote upon the
3980 | interest exchange, except that appraisal rights are not
3981 | available to an interestholder of the limited liability company
3982 | whose interest in the limited liability company is not subject
3983 | to exchange in the interest exchange.

3984 | (d) Consummation of a sale of substantially all of the
3985 | assets of a limited liability company where the member possessed
3986 | the right to vote upon the sale, unless the sale is pursuant to
3987 | court order or the sale is for cash pursuant to a plan under
3988 | which all or substantially all of the net proceeds of the sale
3989 | will be distributed to the interestholders within 1 year after
3990 | the date of sale.

3991 | (e) An amendment to the organic rules of the entity that
3992 | reduces the interest of the holder to a fraction of an interest
3993 | if the limited liability company will be obligated to or will
3994 | have the right to repurchase the fractional interest so created.

3995 | (f) An amendment to the organic rules of an entity, the
3996 | effect of which is to alter or abolish voting or other rights
3997 | with respect to the interest in a manner that is adverse to the
3998 | interest of the member, except as the right may be affected by
3999 | the voting or other rights of new interests then being
4000 | authorized of a new class or series of interests.

4001 | (g) An amendment to the organic rules of an entity the
4002 | effect of which is to adversely affect the interest of the
4003 | member by altering or abolishing appraisal rights under this
4004 | section.

HB 1079

2013

4005 (h) To the extent otherwise expressly authorized by the
4006 organic rules of the limited liability company.

4007 (2) A limited liability company may modify, restrict, or
4008 eliminate the appraisal rights provided in this section in its
4009 organic rules so long as the provision modifying, restricting,
4010 or eliminating the appraisal rights is authorized by each member
4011 whose appraisal rights are being modified, restricted, or
4012 eliminated. Organic rules containing an express waiver of
4013 appraisal rights that are approved by a member constitute a
4014 waiver of appraisal rights with respect to the member to the
4015 extent provided in the organic rules.

4016 (3) To the extent that appraisal rights are available, ss.
4017 608.961-608.972 govern the procedures with respect to such
4018 appraisal rights as between the limited liability company and
4019 its members.

4020 (4) Notwithstanding subsection (1), the availability of
4021 appraisal rights is limited in accordance with the following
4022 provisions:

4023 (a) Appraisal rights are not available for holders of a
4024 membership interests that are:

4025 1. A covered security under section 18(b)(1)(A) or (B) of
4026 the Securities Act of 1933, as amended;

4027 2. Traded in an organized market and part of a class or
4028 series that has at least 2,000 members or other holders and a
4029 market value of at least \$20 million, exclusive of the value of
4030 the class or series of membership interests held by the limited
4031 liability company's subsidiaries, senior executives, managers,
4032 and beneficial members owning more than 10 percent of the class

HB 1079

2013

4033 or series of membership interests; or

4034 3. Issued by an open end management investment company
4035 registered with the Securities and Exchange Commission under the
4036 Investment Company Act of 1940 and subject to being redeemed at
4037 the option of the holder at net asset value.

4038 (b) The applicability of paragraph (a) shall be determined
4039 as of the date fixed to determine the members entitled to
4040 receive notice of, and to vote upon, the appraisal event, or the
4041 day before the effective date of the appraisal event if there is
4042 no meeting of the members to vote upon the appraisal event.

4043 (c) Subsection (4) does not apply to, and appraisal rights
4044 shall be available pursuant to subsection (1) for, members who
4045 are required by the appraisal event to accept for their
4046 membership interests anything other than cash or a proprietary
4047 interest in an entity that satisfies the standards provided in
4048 paragraph (a) at the time the appraisal event becomes effective.

4049 (d) This subsection does not apply to, and appraisal
4050 rights shall be available pursuant to subsection (1) for, the
4051 holder of a membership interest if:

4052 1. The member or members' interests in the limited
4053 liability company or the limited liability company's assets are
4054 being acquired or converted, whether by merger, conversion, or
4055 otherwise, pursuant to the appraisal event by a person, or by an
4056 affiliate of a person, who:

4057 a. Is, or at any time in the 1-year period immediately
4058 before approval of the appraisal event was, the beneficial owner
4059 of 20 percent or more of those interests in the limited
4060 liability company entitled to vote on the appraisal event,

HB 1079

2013

4061 excluding interests acquired pursuant to an offer for all
4062 interests having voting rights if the offer was made within 1
4063 year before the appraisal event for consideration of the same
4064 kind and of a value equal to or less than that paid in
4065 connection with the appraisal event; or
4066 b. Directly or indirectly has, or at any time in the 1-
4067 year period immediately before approval of the appraisal event
4068 had, the power, contractually or otherwise, to cause the
4069 appointment or election of any senior executives, or managers of
4070 the limited liability company.

4071 2. Any of the members' interests in the limited liability
4072 company or the limited liability company's assets are being
4073 acquired or converted, whether by merger, conversion, or
4074 otherwise, pursuant to the appraisal event by a person, or by an
4075 affiliate of a person, who is, or at any time in the 1-year
4076 period immediately before approval of the appraisal event was, a
4077 senior executive of the limited liability company or a senior
4078 executive of an affiliate of the limited liability company, and
4079 that senior executive will receive, as a result of the limited
4080 liability company action, a financial benefit not generally
4081 available to members, other than:

4082 a. Employment, consulting, retirement, or similar benefits
4083 established separately and not as part of or in contemplation of
4084 the appraisal event;

4085 b. Employment, consulting, retirement, or similar benefits
4086 established in contemplation of, or as part of, the appraisal
4087 event that are not more favorable than those existing before the
4088 appraisal event or, if more favorable, that have been approved

HB 1079

2013

4089 by the limited liability company; or

4090 c. In the case of a manager of the limited liability
4091 company who will, during or as the result of the appraisal
4092 event, become a manager, general partner, or director of the
4093 surviving or converted entity or one of its affiliates, those
4094 rights and benefits as a manager, general partner, or director
4095 that are provided on the same basis as those afforded by the
4096 surviving or converted entity generally to other managers,
4097 general partners, or directors of the surviving or converted
4098 entity or its affiliate.

4099 (e) For the purposes of sub-subparagraph(d)1.a. of this
4100 subsection only, the term "beneficial owner" means a person who,
4101 directly or indirectly, through a contract, arrangement, or
4102 understanding, other than a revocable proxy, has or shares the
4103 right to vote, or to direct the voting of, an interest in a
4104 limited liability company with respect to approval of the
4105 appraisal event, if a member of a national securities exchange
4106 is not deemed to be a beneficial owner of an interest in a
4107 limited liability company held directly or indirectly by it on
4108 behalf of another person solely because the member is the
4109 recordholder of interests in the limited liability company if
4110 the member is precluded by the rules of the exchange from voting
4111 without instruction on contested matters or matters that may
4112 affect substantially the rights or privileges of the holders of
4113 the interests in the limited liability company to be voted. When
4114 two or more persons agree to act together for the purpose of
4115 voting such interests, each member of the group formed thereby
4116 is deemed to have acquired beneficial ownership, as of the date

HB 1079

2013

4117 of the agreement, of all voting interests in the limited
4118 liability company beneficially owned by member of the group.

4119 608.925 Merger authorized.—

4120 (1) By complying with ss. 608.925-608.930:

4121 (a) One or more domestic limited liability companies may
4122 merge with one or more domestic or foreign entities into a
4123 domestic or foreign surviving entity.

4124 (b) Two or more foreign entities may merge into a domestic
4125 limited liability company.

4126 (2) By complying with ss. 608.925-608.930 that are
4127 applicable to foreign entities, a foreign entity may be a party
4128 to a merger under those provisions or may be the surviving
4129 entity in the merger if the merger is authorized by the law of
4130 the foreign entity's jurisdiction of formation.

4131 (3) In the case of a merger involving a limited liability
4132 company that is a not-for-profit company, the surviving limited
4133 liability company or other business entity must also be a not-
4134 for-profit entity.

4135 608.926 Plan of merger.—

4136 (1) A domestic limited liability company may become a
4137 party to a merger under ss. 608.926-608.930 by approving a plan
4138 of merger. The plan must be in a record and contain:

4139 (a) As to each merging entity, its name, jurisdiction of
4140 formation, and type of entity.

4141 (b) The surviving entity in the merger.

4142 (c) The manner and basis of converting the interests and
4143 the rights to acquire interests in each party to the merger into
4144 interests, securities, obligations, money, other property,

HB 1079

2013

4145 rights to acquire interests or securities, or any combination
4146 thereof.

4147 (d) If the surviving entity exists before the merger, any
4148 proposed amendments to or restatements of its public organic
4149 record, or any proposed amendments to or restatements of its
4150 private organic rules, that are, or are proposed to be, in a
4151 record, and all such amendments or restatements are effective
4152 upon the effective date of the merger.

4153 (e) If the surviving entity is to be created in the
4154 merger, its proposed public organic record, and the full text of
4155 its private organic rules that are proposed to be in a record,
4156 if any.

4157 (f) The other terms and conditions of the merger.

4158 (g) Another provision required by the law of a merging
4159 entity's jurisdiction of formation or the organic rules of a
4160 merging entity.

4161 (2) In addition to the requirements of subsection (1), a
4162 plan of merger may contain another provision not prohibited by
4163 law.

4164 608.927 Approval of merger.—

4165 (1) A plan of merger is not effective unless it has been
4166 approved:

4167 (a) With respect to a domestic merging limited liability
4168 company, by a majority-in-interest of the members.

4169 (b) In a record, by each member of a merging limited
4170 liability company that will have interestholder liability for
4171 debts, obligations, and other liabilities that arise after the
4172 merger becomes effective, unless:

HB 1079

2013

4173 1. The organic rules of the company in a record provide
4174 for the approval of a merger in which some or all of its members
4175 become subject to interestholder liability by the vote or
4176 consent of fewer than all of the members.

4177 2. The member consented in a record to or voted for that
4178 provision of the organic rules or became a member after the
4179 adoption of that provision.

4180 (2) A merger involving a domestic merging entity that is
4181 not a limited liability company is not effective unless the
4182 merger is approved by that entity in accordance with its organic
4183 law.

4184 (3) A merger involving a foreign merging entity is not
4185 effective unless the merger is approved by the foreign entity in
4186 accordance with the law of the foreign entity's jurisdiction of
4187 formation.

4188 (4) All members of each domestic limited liability company
4189 that is a party to the merger who have a right to vote upon the
4190 merger must be given written notice of a meeting regarding the
4191 approval of a plan of merger as provided in subsection (1), at
4192 least 10 days but not more than 60 days before the date of the
4193 meeting at which the plan of merger is submitted for approval by
4194 the members of the limited liability company. The notification
4195 required by this subsection may be waived in writing by the
4196 person or persons entitled to the notification.

4197 (5) The notification required by subsection (4) must be in
4198 writing and include:

4199 (a) The date, time, and place of the meeting where the
4200 plan of merger is to be submitted for approval by the members of

4201 the limited liability company.

4202 (b) A copy of the plan of merger.

4203 (c) The statement or statements required by ss. 608.926,
 4204 608.961, and 608.962 regarding the availability of appraisal
 4205 rights, if any, to members of the limited liability company.

4206 (d) The date on which the notification was mailed or
 4207 delivered to the members.

4208 (e) Other information concerning the plan of merger.

4209 (6) The notification required by subsection (4) is deemed
 4210 to be given at the earliest date of:

4211 (a) The date the notification is received;

4212 (b) Five days after the date the notification is deposited
 4213 in the United States mail addressed to the member at the
 4214 member's address as it appears in the books and records of the
 4215 limited liability company, with prepaid postage affixed;

4216 (c) The date shown on the return receipt, if sent by
 4217 registered or certified mail, return receipt requested, and the
 4218 receipt is signed by or on behalf of the addressee; or

4219 (d) The date the notification is given in accordance with
 4220 the organic rules of the limited liability company.

4221 608.928 Amendment or abandonment of plan of merger.-

4222 (1) A plan of merger may be amended only with the consent
 4223 of each party to the plan, except as otherwise provided in the
 4224 plan or in the organic rules of the entity.

4225 (2) A merging limited liability company may approve an
 4226 amendment of a plan of merger:

4227 (a) In the same manner that the plan was approved, if the
 4228 plan does not provide for the manner in which it may be amended;

HB 1079

2013

4229 or

4230 (b) By the managers or members in the manner provided in
4231 the plan, but a member who was entitled to vote on or consent to
4232 approval of the merger is entitled to vote on or consent to an
4233 amendment of the plan that will change:

4234 1. The amount or kind of interests, securities,
4235 obligations, money, other property, rights to acquire interests
4236 or securities, or any combination of the foregoing, to be
4237 received by the interestholders of a party to the plan;

4238 2. The public organic record, if any, or private organic
4239 rules of the surviving entity that will be in effect immediately
4240 after the merger becomes effective, except for changes that do
4241 not require approval of the interestholders of the surviving
4242 entity under its organic law or organic rules; or

4243 3. Other terms or conditions of the plan, if the change
4244 would adversely affect the member in a material respect.

4245 (3) After a plan of merger has been approved and before
4246 the articles of merger become effective, the plan may be
4247 abandoned as provided in the plan. Unless prohibited by the
4248 plan, a domestic merging limited liability company may abandon
4249 the plan in the same manner that the plan was approved.

4250 (4) If a plan of merger is abandoned after articles of
4251 merger have been delivered to the department for filing and
4252 before the articles of merger have become effective, a statement
4253 of abandonment, signed by a party to the plan, must be delivered
4254 to the department for filing before the articles of merger
4255 become effective. The statement of abandonment takes effect on
4256 filing and the merger is abandoned and does not become

4257 effective. The statement of abandonment must contain:
 4258 (a) The name of each party to the plan of merger;
 4259 (b) The date on which the articles of merger were
 4260 delivered to the department for filing; and
 4261 (c) A statement that the merger has been abandoned in
 4262 accordance with this section.
 4263 608.929 Articles of merger.-
 4264 (1) After a plan of merger is approved, articles of merger
 4265 must be signed by each merging entity and delivered to the
 4266 department for filing.
 4267 (2) The articles of merger must contain:
 4268 (a) The name, jurisdiction of formation, and type of
 4269 entity of each merging entity that is not the surviving entity.
 4270 (b) The name, jurisdiction of formation, and type of
 4271 entity of the surviving entity.
 4272 (c) A statement that the merger was approved by each
 4273 domestic merging entity that is a limited liability company, if
 4274 any, in accordance with ss. 608.925-608.930, by each other
 4275 merging entity, if any, in accordance with the law of its
 4276 jurisdiction of formation, and by each member of such limited
 4277 liability company who, as a result of the merger, will have
 4278 interestholder liability under s. 608.927(1)(b) and whose
 4279 approval is required.
 4280 (d) If the surviving entity exists before the merger and
 4281 is a domestic filing entity, an amendment to its public organic
 4282 record approved as part of the plan of merger.
 4283 (e) If the surviving entity is created by the merger and
 4284 is a domestic filing entity, its public organic record, as an

4285 attachment.

4286 (f) If the surviving entity is created by the merger and
 4287 is a domestic limited liability partnership, its statement of
 4288 qualification, as an attachment.

4289 (g) If the surviving entity is a foreign entity that does
 4290 not have a certificate of authority to transact business in this
 4291 state, a mailing address to which the department may send any
 4292 process served on the department pursuant to s. 608.117 and
 4293 chapter 48.

4294 (h) A statement that the surviving entity has agreed to
 4295 pay to members of a limited liability company with appraisal
 4296 rights the amount to which such members are entitled under s.
 4297 608.922 and ss. 608.961-608.972.

4298 (i) The effective date of the merger, if the effective
 4299 date of the merger is not the same as the date of filing of the
 4300 articles of merger, subject to the limitations contained in s.
 4301 608.7827.

4302 (3) In addition to the requirements of subsection (2),
 4303 articles of merger may contain another provision not prohibited
 4304 by law.

4305 (4) A merger becomes effective when the articles of merger
 4306 become effective, unless the articles of merger specify an
 4307 effective time or a delayed effective date that complies with s.
 4308 608.7827.

4309 (5) A copy of the articles of merger, certified by the
 4310 department, may be filed in the official records of a county in
 4311 this state in which a party to the merger holds an interest in
 4312 real property.

HB 1079

2013

4313 (6) A limited liability company is not required to deliver
4314 articles of merger for filing pursuant to subsection (1) if the
4315 limited liability company is named as a merging entity or
4316 surviving entity in articles of merger or a certificate of
4317 merger filed for the same merger in accordance with s.
4318 607.1109(1), s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and
4319 (2), and if the articles of merger substantially comply with the
4320 requirements of this section. In that case, the other articles
4321 of merger or certificate of merger may also be used for purposes
4322 of subsection (2).

4323 608.930 Effect of merger.

4324 (1) When a merger becomes effective:

4325 (a) The surviving entity continues in existence.

4326 (b) Each merging entity that is not the surviving entity
4327 ceases to exist.

4328 (c) All property of each merging entity vests in the
4329 surviving entity without transfer, reversion or impairment.

4330 (d) All debts, obligations, and other liabilities of each
4331 merging entity are debts, obligations, and other liabilities of
4332 the surviving entity.

4333 (e) Except as otherwise provided by law or the plan of
4334 merger, all the rights, privileges, immunities, powers, and
4335 purposes of each merging entity vest in the surviving entity.

4336 (f) If the surviving entity exists before the merger:

4337 1. All its property continues to be vested in it without
4338 transfer, reversion, or impairment.

4339 2. It remains subject to all of its debts, obligations,
4340 and other liabilities.

HB 1079

2013

4341 3. All of its rights, privileges, immunities, powers, and
4342 purposes continue to be vested in it.

4343 (g) The name of the surviving entity may be substituted
4344 for the name of a merging entity that is a party to a pending
4345 action or proceeding;

4346 (h) If the surviving entity exists before the merger:

4347 1. Its public organic record, if any, is amended as
4348 provided in the articles of merger.

4349 2. Its private organic rules that are to be in a record,
4350 if any, are amended to the extent provided in the plan of
4351 merger.

4352 (i) If the surviving entity is created by the merger:

4353 1. Its public organic record, if any, is effective.

4354 2. Its private organic rules are effective.

4355 (j) The interests or rights to acquire interests in each
4356 merging entity which are to be converted in the merger are
4357 converted, and the interestholders of those interests are
4358 entitled only to the rights provided to them under the plan of
4359 merger and to appraisal rights they have under s. 608.922 and
4360 ss. 608.961-608.972 and the merging entity's organic law.

4361 (2) Except as otherwise provided in the organic law or
4362 organic rules of a merging entity:

4363 (a) The merger does not give rise to any rights that an
4364 interestholder, governor, or third party would have upon a
4365 dissolution, liquidation, or winding up of the merging entity.

4366 (b) The merging entity is not required to wind up its
4367 affairs, pay its liabilities, and distribute its assets under
4368 ss. 608.7911-608.7927, and the merger does not constitute a

HB 1079

2013

4369 dissolution of the merging entity.

4370 (3) When a merger becomes effective, a person who did not
4371 have interestholder liability with respect to any of the merging
4372 entities and who becomes subject to interestholder liability
4373 with respect to a domestic entity as a result of the merger will
4374 have interestholder liability only to the extent provided by the
4375 organic law of that entity and only for those debts,
4376 obligations, and other liabilities that arise after the merger
4377 becomes effective.

4378 (4) When a merger becomes effective, the interestholder
4379 liability of a person who ceases to hold an interest in a
4380 domestic merging entity with respect to which the person had
4381 interestholder liability is as follows:

4382 (a) The merger does not discharge an interestholder
4383 liability under the organic law of the domestic merging entity
4384 to the extent the interestholder liability arose before the
4385 merger became effective.

4386 (b) The person does not have interestholder liability
4387 under the organic law of the domestic merging entity for a debt,
4388 obligation, or other liability that arises after the merger
4389 becomes effective.

4390 (c) The organic law of the domestic merging entity and
4391 rights of contribution provided under that law, or the organic
4392 rules of the domestic merging entity, continue to apply to the
4393 release, collection, or discharge of an interestholder liability
4394 preserved under paragraph (a) as if the merger had not occurred
4395 and the surviving entity were the domestic merging entity.

4396 (5) When a merger becomes effective, a foreign entity that

HB 1079

2013

4397 is the surviving entity may be served with process in this state
4398 for the collection and enforcement of any debts, obligations, or
4399 other liabilities of a domestic merging entity as provided in s.
4400 608.7817 and chapter 48.

4401 (6) When a merger becomes effective, the certificate of
4402 authority to transact business in this state of a foreign
4403 merging entity that is not the surviving entity is canceled.

4404 608.935 Interest exchange authorized.—

4405 (1) By complying with ss. 608.935-608.940:

4406 (a) A domestic limited liability company may acquire all
4407 of one or more classes or series of interests of another
4408 domestic or foreign entity, or the rights to acquire one or more
4409 classes or series of those interests, in exchange for interests,
4410 securities, obligations, money, other property, rights to
4411 acquire interests or securities, or a combination of the
4412 foregoing.

4413 (b) All of one or more classes or series of interests of a
4414 domestic limited liability company or rights to acquire one or
4415 more classes or series of such interests may be acquired by
4416 another domestic or foreign entity in exchange for interests,
4417 securities, obligations, money, other property, rights to
4418 acquire interests or securities, or any combination of the
4419 foregoing.

4420 (2) By complying with ss. 608.935-608.940 that are
4421 applicable to foreign entities, a foreign entity may be the
4422 acquiring or acquired entity in an interest exchange completed
4423 under ss. 608.935-608.940 if the interest exchange is authorized
4424 by the organic law in the foreign entity's jurisdiction of

HB 1079

2013

4425 formation.

4426 (3) If a protected agreement contains a provision that
4427 applies to a merger of a domestic limited liability company but
4428 does not refer to an interest exchange, the provision applies to
4429 an interest exchange in which the domestic limited liability
4430 company is the acquired entity as if the interest exchange were
4431 a merger until the provision is amended after January 1, 2014.

4432 608.936 Plan of interest exchange.—

4433 (1) A domestic limited liability company may be the
4434 acquired entity in an interest exchange under ss. 608.935-
4435 608.940 by approving a plan of interest exchange. The plan must
4436 be in a record and contain:

4437 (a) The name of the acquired entity.

4438 (b) The name, jurisdiction of formation, and type of
4439 entity of the acquiring entity.

4440 (c) The manner and basis of converting the interests and
4441 the rights to acquire interests of the members of each limited
4442 liability company that is to be an acquired entity into
4443 interests, securities, obligations, money, other property,
4444 rights to acquire interests or securities, or any combination of
4445 the foregoing.

4446 (d) If the acquired entity is a domestic limited liability
4447 company, any proposed amendments to or restatements of its
4448 public organic record, or any amendments to or restatements of
4449 its private organic rules that are, or are proposed to be, in a
4450 record, and all such amendments or restatements are effective
4451 upon the effective date of the interest exchange.

4452 (e) The other terms and conditions of the interest

HB 1079

2013

4453 exchange.

4454 (f) Another provision required by the law of an acquired
4455 entity's jurisdiction of formation, the organic rules of the
4456 acquired entity, the organic rules of an acquiring entity or the
4457 law of the jurisdiction of formation of the acquiring entity.

4458 (2) In addition to the requirements of subsection (1), a
4459 plan of interest exchange may contain any other provision not
4460 prohibited by law.

4461 608.937 Approval of interest exchange.—

4462 (1) A plan of interest exchange is not effective unless it
4463 has been approved:

4464 (a) With respect to a domestic limited liability company
4465 that is the acquired entity in the interest exchange, by a
4466 majority-in-interest of the members of the company.

4467 (b) In a record, by each member of the domestic acquired
4468 limited liability company that will have interestholder
4469 liability for debts, obligations, and other liabilities that
4470 arise after the interest exchange becomes effective, unless:

4471 1. The organic rules of the company in a record provide
4472 for the approval of an interest exchange or a merger in which
4473 some or all of its members become subject to interestholder
4474 liability by the vote or consent of fewer than all the members.

4475 2. The member consented in a record to, or voted for, that
4476 provision of the organic rules or became a member after the
4477 adoption of that provision.

4478 (2) An interest exchange involving a domestic acquired
4479 entity that is not a limited liability company is not effective
4480 unless it is approved by the domestic entity in accordance with

HB 1079

2013

4481 its organic law.

4482 (3) An interest exchange involving a foreign acquired
4483 entity is not effective unless it is approved by the foreign
4484 entity in accordance with the law of the foreign entity's
4485 jurisdiction of formation.

4486 (4) Except as otherwise provided in its organic law or
4487 organic rules, the interestholders of the acquiring entity are
4488 not required to approve the interest exchange.

4489 (5) All members of each domestic limited liability company
4490 that is a party to the interest exchange and have a right to
4491 vote upon the interest exchange must be given written notice of
4492 a meeting with respect to the approval of a plan of interest
4493 exchange as provided in subsection (1), at least 10 days but not
4494 more than 60 days before the date of the meeting at which the
4495 plan of interest exchange is submitted for approval by the
4496 members of such limited liability company. The notification
4497 required by this subsection may be waived in writing by the
4498 person or persons entitled to such notification.

4499 (6) The notification required by subsection (5) must be in
4500 writing and include:

4501 (a) The date, time, and place of the meeting at which the
4502 plan of interest exchange is to be submitted for approval by the
4503 members of the limited liability company.

4504 (b) A copy of the plan of interest exchange.

4505 (c) The statement or statements required by this chapter
4506 regarding the availability of appraisal rights, if any, to
4507 members of the limited liability company.

4508 (d) The date on which such notification was mailed or

4509 | delivered to the members.

4510 | (e) Other information concerning the plan of interest
 4511 | exchange.

4512 | (7) The notification required by subsection (5) is deemed
 4513 | to be given at the earliest date of:

4514 | (a) The date the notification is received.

4515 | (b) Five days after the date the notification is deposited
 4516 | in the United States mail addressed to the member at the
 4517 | member's address as it appears in the books and records of the
 4518 | limited liability company, with prepaid postage affixed.

4519 | (c) The date shown on the return receipt, if sent by
 4520 | registered or certified mail, return receipt requested, and the
 4521 | receipt is signed by or on behalf of the addressee.

4522 | (d) The date the notification is given in accordance with
 4523 | the organic rules of the limited liability company.

4524 | 608.938 Amendment or abandonment of plan of interest
 4525 | exchange.—

4526 | (1) A plan of interest exchange may be amended only with
 4527 | the consent of each party to the plan, except as otherwise
 4528 | provided in the plan or in the organic rules of each entity.

4529 | (2) A domestic acquired limited liability company may
 4530 | approve an amendment of a plan of interest exchange:

4531 | (a) In the same manner as the plan was approved, if the
 4532 | plan does not provide for the manner in which it may be amended;
 4533 | or

4534 | (b) By the managers or members in the manner provided in
 4535 | the plan, but a member that was entitled to vote on or consent
 4536 | to approval of the interest exchange is entitled to vote on or

HB 1079

2013

4537 consent to an amendment of the plan that will change:

4538 1. The amount or kind of interests, securities,
4539 obligations, money, other property, rights to acquire interests
4540 or securities, or any combination of the foregoing, to be
4541 received by the interestholders of a party to the plan;

4542 2. The public organic record, if any, or private organic
4543 rules of the acquired entity that will be in effect immediately
4544 after the interest exchange becomes effective, except for
4545 changes that do not require approval of the interestholders of
4546 the acquired entity under its organic law or organic rules; or

4547 3. Other terms or conditions of the plan, if the change
4548 would adversely affect the member in a material respect.

4549 (3) After a plan of interest exchange has been approved
4550 and before the articles of interest exchange become effective,
4551 the plan may be abandoned as provided in the plan. Unless
4552 prohibited by the plan, a domestic limited liability company may
4553 abandon the plan in the same manner that the plan was approved.

4554 (4) If a plan of interest exchange is abandoned after
4555 articles of interest exchange have been delivered to the
4556 department for filing and before the articles of interest
4557 exchange have become effective, a statement of abandonment,
4558 signed by a party to the plan, must be delivered to the
4559 department for filing before the articles of interest exchange
4560 become effective. The statement of abandonment takes effect on
4561 filing, and the interest exchange is abandoned and does not
4562 become effective. The statement of abandonment must contain:

4563 (a) The name of each party to the plan of interest
4564 exchange.

4565 (b) The date on which the articles of interest exchange
 4566 were delivered to the department for filing.

4567 (c) A statement that the interest exchange has been
 4568 abandoned in accordance with this section.

4569 608.939 Articles of interest exchange.—

4570 (1) After a plan of interest exchange has been approved,
 4571 articles of interest exchange must be signed by each party to
 4572 the interest exchange and delivered to the department for
 4573 filing.

4574 (2) The articles of interest exchange must contain:

4575 (a) The name of the acquired limited liability company.

4576 (b) The name, jurisdiction of formation, and type of
 4577 entity of the acquiring entity.

4578 (c) A statement that the plan of interest exchange was
 4579 approved by the acquired limited liability entity in accordance
 4580 with ss. 608.935-608.940 and by each member of such limited
 4581 liability company who, as a result of the interest exchange,
 4582 will have interestholder liability under s. 608.937(1)(b) and
 4583 whose approval is required.

4584 (d) Any amendments to the acquired limited liability
 4585 company's public organic record approved as part of the plan of
 4586 interest exchange.

4587 (e) A statement that the plan of interest exchange was
 4588 approved by each acquiring entity that is a party to the
 4589 interest exchange in accordance with the organic laws in its
 4590 jurisdiction of formation, or if such approval was not required,
 4591 a statement to that effect.

4592 (f) A statement that the acquiring entity has agreed to

4593 pay to any members of the acquired entity with appraisal rights
 4594 the amount to which such members are entitled under s. 608.922
 4595 and ss. 608.961-608.972.

4596 (g) The effective date of the interest exchange, if the
 4597 effective date of the interest exchange is not the same as the
 4598 date of filing of the articles of interest exchange, subject to
 4599 the limitations contained in s. 608.7827.

4600 (3) In addition to the requirements of subsection (2),
 4601 articles of interest exchange may contain any other provision
 4602 not prohibited by law.

4603 (4) An interest exchange becomes effective when the
 4604 articles of interest exchange become effective, unless the
 4605 articles of interest exchange specify an effective time or a
 4606 delayed effective date that complies with s. 608.7827.

4607 (5) A limited liability company is not required to deliver
 4608 articles of interest exchange for filing pursuant to subsection
 4609 (1) if the domestic limited liability company is named as an
 4610 acquired entity or as an acquiring entity in the articles of
 4611 interest exchange filed for the same interest exchange in
 4612 accordance with s. 607.979(1), and if such articles of interest
 4613 exchange substantially comply with the requirements of this
 4614 section. In such a case, the other articles of interest exchange
 4615 may also be used for purposes of subsection (2).

4616 608.940 Effect of interest exchange.-

4617 (1) When an interest exchange in which the acquired entity
 4618 is a domestic limited liability company becomes effective:

4619 (a) The interests in a domestic company that are the
 4620 subject of the interest exchange cease to exist or are converted

4621 or exchanged, and the members holding those interests are
4622 entitled only to the rights provided to them under the plan of
4623 interest exchange and to any appraisal rights they have under s.
4624 608.922 and ss. 608.961-608.972.

4625 (b) The acquiring entity becomes the interestholder of the
4626 interests in the acquired entity stated in the plan of interest
4627 exchange to be acquired by the acquiring entity.

4628 (c) The public organic record of the acquired entity is
4629 amended as provided in the articles of interest exchange.

4630 (d) The private organic rules of the acquired entity that
4631 are to be in a record, if any, are amended to the extent
4632 provided in the plan of interest exchange.

4633 (2) Except as otherwise provided in the organic rules of
4634 the acquired limited liability company, the interest exchange
4635 does not give rise to any rights that a member, manager, or
4636 third party would have upon a dissolution, liquidation, or
4637 winding up of the acquired entity.

4638 (3) When an interest exchange becomes effective, a person
4639 who did not have interestholder liability with respect to a
4640 domestic acquired limited liability company and who becomes
4641 subject to interestholder liability with respect to a domestic
4642 entity as a result of the interest exchange will have
4643 interestholder liability only to the extent provided by the
4644 organic law of the entity and only for those debts, obligations,
4645 and other liabilities that arise after the interest exchange
4646 becomes effective.

4647 (4) When an interest exchange becomes effective, the
4648 interestholder liability of a person who ceases to hold an

4649 interest in a domestic acquired limited liability company with
 4650 respect to which the person had interestholder liability is as
 4651 follows:

4652 (a) The interest exchange does not discharge an
 4653 interestholder liability to the extent the interestholder
 4654 liability arose before the interest exchange became effective.

4655 (b) The person does not have interestholder liability for
 4656 any debt, obligation, or other liability that arises after the
 4657 interest exchange becomes effective.

4658 (c) The organic law of the acquired entity's jurisdiction
 4659 of formation and any rights of contribution provided by that
 4660 law, or under the organic rules of the acquired entity,
 4661 continues to apply to the release, collection, or discharge of
 4662 any interestholder liability preserved under paragraph (a) as if
 4663 the interest exchange had not occurred.

4664 608.941 Conversion authorized.—

4665 (1) By complying with s. 608.941-608.950.a domestic
 4666 limited liability company may become:

4667 (a) A domestic entity that is a different type of entity;
 4668 or

4669 (b) A foreign entity that is a limited liability company
 4670 or a different type of entity, if the conversion is authorized
 4671 by the law of the foreign entity's jurisdiction of formation.

4672 (2) By complying with ss. 608.941-608.950 that are
 4673 applicable to domestic entities that are not a domestic limited
 4674 liability company, a domestic entity that is not a domestic
 4675 limited liability company may become a domestic limited
 4676 liability company if the conversion is authorized by the law

HB 1079

2013

4677 governing the domestic entity that is not a domestic limited
4678 liability company.

4679 (3) By complying with s. 608.1041-608.1046 that are
4680 applicable to a foreign entity, a foreign entity may become a
4681 domestic limited liability company if the conversion is
4682 authorized by the law of the foreign entity's jurisdiction of
4683 formation.

4684 (4) If a protected agreement contains a provision that
4685 applies to a merger of a domestic limited liability company but
4686 does not refer to a conversion, the provision applies to a
4687 conversion of the entity as if the conversion were a merger
4688 until the provision is amended after January 1, 2014.

4689 608.946 Plan of conversion.—

4690 (1) A domestic limited liability company may convert into
4691 a different type of domestic entity or into a foreign entity
4692 that is a foreign limited liability company or a different type
4693 of foreign entity by approving a plan of conversion. The plan
4694 must be in a record and contain:

4695 (a) The name of the converting limited liability company.

4696 (b) The name, jurisdiction of formation, and type of
4697 entity of the converted entity.

4698 (c) The manner and basis of converting the interests and
4699 rights to acquire interests in the converting limited liability
4700 company into interests, securities, obligations, money, other
4701 property, rights to acquire interests or securities, or any
4702 combination of the foregoing.

4703 (d) The proposed public organic record of the converted
4704 entity if it will be a filing entity.

HB 1079

2013

4705 (e) The full text of the private organic rules of the
4706 converted entity that are proposed to be in a record, if any.

4707 (f) Another provision required by the law of this state or
4708 the organic rules of the converted limited liability company, if
4709 the entity is to be other than a domestic limited liability
4710 company.

4711 (g) All other statements required to be set forth in a
4712 plan of conversion by the law of the jurisdiction of formation
4713 of the converted entity following the conversion.

4714 (2) In addition to the requirements of subsection (1), a
4715 plan of conversion may contain any other provision not
4716 prohibited by law.

4717 608.947 Approval of conversion.-

4718 (1) A plan of conversion is not effective unless it has
4719 been approved:

4720 (a) If the converting entity is a domestic limited
4721 liability company, by a majority-in-interest of the members of
4722 the company who have a right to vote upon the conversion.

4723 (b) In a record, by each member of a converting limited
4724 liability company that will have interestholder liability for
4725 debts, obligations, and other liabilities that arise after the
4726 conversion becomes effective, unless:

4727 1. The organic rules of the company in a record provide
4728 for the approval of a conversion in which some or all of its
4729 members become subject to interestholder liability by the vote
4730 or consent of less than all of the members.

4731 2. The member consented in a record to or voted for that
4732 provision of the organic rules or became a member after the

HB 1079

2013

4733 | adoption of that provision.

4734 | (2) A conversion involving a domestic converting entity
4735 | that is not a limited liability company is not effective unless
4736 | it is approved by the domestic converting entity in accordance
4737 | with its organic law.

4738 | (3) A conversion of a foreign converting entity is not
4739 | effective unless it is approved by the foreign entity in
4740 | accordance with the law of the foreign entity's jurisdiction of
4741 | formation.

4742 | (4) If the converting entity is a domestic limited
4743 | liability company, all members of the company who have the right
4744 | to vote upon the conversion must be given written notice of a
4745 | meeting with respect to the approval of a plan of conversion as
4746 | provided in subsection (1), at least 10 days but not more than
4747 | 60 days before the date of the meeting at which the plan of
4748 | conversion is submitted for approval by the members of the
4749 | limited liability company. The notification required by
4750 | subsection (5) may be waived in writing by the person or persons
4751 | entitled to such notification.

4752 | (5) The notification required by subsection (4) must be in
4753 | writing and include:

4754 | (a) The date, time, and place of the meeting at which the
4755 | plan of conversion is to be submitted for approval by the
4756 | members of the limited liability company.

4757 | (b) A copy of the plan of conversion.

4758 | (c) The statement or statements required by s. 608.922 and
4759 | ss. 608.961-608.972 regarding the availability of appraisal
4760 | rights, if any, to members of the limited liability company.

4761 (d) The date on which such notification was mailed or
 4762 delivered to the members.

4763 (e) Any other information concerning the plan of
 4764 conversion.

4765 (6) The notification required by subsection (4) is deemed
 4766 to be given at the earliest date of:

4767 (a) The date the notification is received;

4768 (b) Five days after the date the notification is deposited
 4769 in the United States mail addressed to the member at the
 4770 member's address as it appears in the books and records of the
 4771 limited liability company, with prepaid postage affixed;

4772 (c) The date shown on the return receipt, if sent by
 4773 registered or certified mail, return receipt requested, and the
 4774 receipt is signed by or on behalf of the addressee; or

4775 (d) The date the notification is given in accordance with
 4776 the organic rules of the limited liability company.

4777 608.948 Amendment or abandonment of plan of conversion.-

4778 (1) A plan of conversion of a domestic converting limited
 4779 liability company may be amended:

4780 (a) In the same manner as the plan was approved, if the
 4781 plan does not provide for the manner in which it may be amended;
 4782 or

4783 (b) By the managers or members of the entity in the manner
 4784 provided in the plan, but a member who was entitled to vote on
 4785 or consent to approval of the conversion is entitled to vote on
 4786 or consent to an amendment of the plan that will change:

4787 1. The amount or kind of interests, securities,
 4788 obligations, money, other property, rights to acquire interests

4789 or securities, or any combination of the foregoing, to be
4790 received by the interestholders of the converting entity under
4791 the plan;

4792 2. The public organic record, if any, or private organic
4793 rules of the converted entity that will be in effect immediately
4794 after the conversion becomes effective, except for changes that
4795 do not require approval of the interestholders of the converting
4796 entity under its organic law or organic rules; or

4797 3. Other terms or conditions of the plan, if the change
4798 would adversely affect the member in a material respect.

4799 (2) After a plan of conversion has been approved and
4800 before the articles of conversion become effective, the plan may
4801 be abandoned as provided in the plan. Unless prohibited by the
4802 plan, a domestic converting limited liability company may
4803 abandon the plan in the same manner that the plan was approved.

4804 (3) If a plan of conversion is abandoned after articles of
4805 conversion have been delivered to the department for filing and
4806 before the articles of conversion have become effective, a
4807 statement of abandonment, signed by the converting entity, must
4808 be delivered to the department for filing before the articles of
4809 conversion become effective. The statement of abandonment takes
4810 effect on filing, and the conversion is abandoned and does not
4811 become effective. The statement of abandonment must contain:

4812 (a) The name of the converting limited liability company.

4813 (b) The date on which the articles of conversion were
4814 delivered to the department for filing.

4815 (c) A statement that the conversion has been abandoned in
4816 accordance with this section.

HB 1079

2013

4817 608.949 Articles of conversion.-

4818 (1) After a plan of conversion is approved, articles of
4819 conversion signed by the converting entity must be delivered to
4820 the department for filing.

4821 (2) The articles of conversion must contain:

4822 (a) The name, jurisdiction of formation, and type of
4823 entity of the converting entity.

4824 (b) The name, jurisdiction of formation and type of entity
4825 of the converted entity.

4826 (c) If the converting entity is a domestic limited
4827 liability company, a statement that the plan of conversion has
4828 been approved in accordance with ss. 608.941-608.950, or if the
4829 converted entity is a foreign entity, a statement that the
4830 conversion was approved by the foreign converting entity in
4831 accordance with the law of its jurisdiction of formation and by
4832 each member of the converting entity, who, as a result of the
4833 conversion, will have interestholder liability under s.
4834 608.947(1)(b), and whose approval is required.

4835 (d) If the converted entity is a domestic filing entity,
4836 the text of its public organic record, as an attachment.

4837 (e) If the converted entity is a domestic limited
4838 liability partnership, the text of its statement of
4839 qualification, as an attachment.

4840 (f) If the converted entity is a foreign entity that does
4841 not have a certificate of authority to transact business in this
4842 state, a mailing address to which the department may send any
4843 process served on the department pursuant to s. 608.7817 and
4844 chapter 48.

4845 (g) A statement that the converted entity has agreed to
 4846 pay to the members of a limited liability company with appraisal
 4847 rights the amount to which such members are entitled under s.
 4848 608.922 and ss. 608.961-608.972.

4849 (h) The effective date of the conversion, if the effective
 4850 date of the conversion is not the same as the date of filing of
 4851 the articles of conversion, subject to the limitations contained
 4852 in s. 608.7827.

4853 (2) In addition to the requirements of subsection (1),
 4854 articles of conversion may contain another provision not
 4855 prohibited by law.

4856 (3) A conversion becomes effective when the articles of
 4857 conversion become effective, unless the articles of conversion
 4858 specify an effective time or a delayed effective date that
 4859 complies with s. 608.7827.

4860 (5) A copy of the articles of conversion, certified by the
 4861 department, may be filed in the official records of any county
 4862 in this state in which the converted entity holds an interest in
 4863 real property.

4864 608.950 Effect of conversion.—

4865 (1) When a conversion in which the converted entity is a
 4866 domestic limited liability company becomes effective:

4867 (a) The converted entity is:

- 4868 1. Organized under and subject to this chapter.
- 4869 2. The same entity without interruption as the converting
 4870 entity.

4871 (b) All property of the converting entity continues to be
 4872 vested in the converted entity without transfer, reversion, or

4873 | impairment.

4874 | (c) All debts, obligations, and other liabilities of the
 4875 | converting entity continue as debts, obligations, and other
 4876 | liabilities of the converted entity.

4877 | (d) Except as otherwise provided by law or the plan of
 4878 | conversion, all the rights, privileges, immunities, powers, and
 4879 | purposes of the converting entity remain in the converted
 4880 | entity.

4881 | (e) The name of the converted entity may be substituted
 4882 | for the name of the converting entity in a pending action or
 4883 | proceeding.

4884 | (f) The organic rules of the converted entity that are to
 4885 | be in a record, if any, approved as part of the plan of
 4886 | conversion are effective.

4887 | (g) The interests or rights to acquire interests in the
 4888 | converting entity are converted, and the interestholders of the
 4889 | converting entity are entitled only to the rights provided to
 4890 | them under the plan of conversion and to any appraisal rights
 4891 | they have under s. 608.922 and ss. 608.961-972 and the
 4892 | converting entity's organic law.

4893 | (2) Except as otherwise provided in the private organic
 4894 | rules of a domestic converting limited liability company, the
 4895 | conversion does not give rise to any rights that a member,
 4896 | manager, or third party would otherwise have upon a dissolution,
 4897 | liquidation, or winding up of the converting entity.

4898 | (3) When a conversion becomes effective, a person who did
 4899 | not have interestholder liability with respect to the converting
 4900 | entity and becomes subject to interestholder liability with

HB 1079

2013

4901 respect to a domestic entity as a result of the conversion has
4902 interestholder liability only to the extent provided by the
4903 organic law of the entity and only for those debts, obligations,
4904 and other liabilities that arise after the conversion becomes
4905 effective.

4906 (4) When a conversion becomes effective, the
4907 interestholder liability of a person who ceases to hold an
4908 interest in a domestic limited liability company with respect to
4909 which the person had interestholder liability is as follows:

4910 (a) The conversion does not discharge any interestholder
4911 liability to the extent the interestholder liability arose
4912 before the conversion became effective.

4913 (b) The person does not have interestholder liability for
4914 any debt, obligation, or other liability that arises after the
4915 conversion becomes effective.

4916 (c) The organic law of the jurisdiction of formation of
4917 the converting limited liability company and the rights of
4918 contribution provided under that law, or the organic rules of
4919 the converting limited liability company, continue to apply to
4920 the release, collection or discharge of an interestholder
4921 liability preserved under paragraph (a) as if the conversion had
4922 not occurred.

4923 (5) When a conversion becomes effective, a foreign entity
4924 that is the converted entity may be served with process in this
4925 state for the collection and enforcement of its debts,
4926 obligations, and liabilities as provided in s. 608.7817 and part
4927 48.

4928 (6) If the converting entity is a registered foreign

HB 1079

2013

4929 entity, the certificate of authority to conduct business in this
4930 state of the converting entity is canceled when the conversion
4931 becomes effective.

4932 (7) A conversion does not require the entity to wind up its
4933 affairs and does not constitute or cause the dissolution of the
4934 entity.

4935 608.955 Domestication authorized.— By complying with ss.
4936 608.955-608.960, a non-United States entity may become a
4937 domestic limited liability company if the domestication is
4938 authorized by the organic law of the non-United States entity's
4939 jurisdiction of formation.

4940 608.956 Plan of domestication.—

4941 (1) A non-United States entity may become a domestic
4942 limited liability company by approving a plan of domestication.
4943 The plan of domestication must be in a record and contain:

4944 (a) The name and jurisdiction of formation of the
4945 domesticating entity.

4946 (b) If applicable, the manner and basis of converting the
4947 interests and rights to acquire interests in the domesticating
4948 entity into interests, securities, obligations, money, other
4949 property, rights to acquire interests or securities, or any
4950 combination thereof.

4951 (c) The proposed public organic record of the
4952 domesticating entity in this state.

4953 (d) The full text of the proposed private organic rules of
4954 the domesticated entity that are to be in a record, if any.

4955 (e) Any other provision required by the law of the
4956 jurisdiction of formation of the domesticating entity or the

HB 1079

2013

4957 | organic rules of the domesticating entity.
 4958 | (2) In addition to the requirements of subsection (1), a
 4959 | plan of domestication may contain any other provision not
 4960 | prohibited by law.
 4961 | 608.957 Approval of domestication.—
 4962 | (1) A plan of domestication of a domesticating entity
 4963 | shall be approved:
 4964 | (a) In accordance with the organic law of the
 4965 | domesticating entity's jurisdiction of formation.
 4966 | (b) In a record, by each of the domesticating entity's
 4967 | owners who will have interestholder liability for debts,
 4968 | obligations, and other liabilities that arise after the
 4969 | domestication becomes effective, unless:
 4970 | 1. The organic rules of the domesticating entity in a
 4971 | record provide for the approval of a domestication in which some
 4972 | or all of the persons who are its owners become subject to
 4973 | interestholder liability by the vote or consent of fewer than
 4974 | all of the persons that are its owners.
 4975 | 2. The person who will be a member of the domesticated
 4976 | limited liability company consented in a record to or voted for
 4977 | that provision of the organic rules of the domesticating entity
 4978 | or became an owner of the domesticating entity after the
 4979 | adoption of that provision.
 4980 | 608.958 Amendment or abandonment of plan of
 4981 | domestication.—
 4982 | (1) A plan of domestication of a domesticating entity may
 4983 | be amended:
 4984 | (a) In the same manner that the plan was approved if the

HB 1079

2013

4985 plan does not provide for the manner in which it may be amended;

4986 or

4987 (b) By the interestholders of the domesticating entity in
4988 the manner provided in the plan, but an owner who was entitled
4989 to vote on or consent to approval of the domestication is
4990 entitled to vote on or consent to an amendment of the plan that
4991 will change:

4992 1. If applicable, the amount or kind of interests,
4993 securities, obligations, money, other property, rights to
4994 acquire interests or securities, or any combination of the
4995 foregoing, to be received by the interestholders of the
4996 domesticating entity under the plan;

4997 2. The public organic record, if any, or private organic
4998 rules of the domesticated limited liability company that will be
4999 in effect immediately after the domestication becomes effective,
5000 except for changes that do not require approval of the
5001 interestholders of the domesticating entity under its organic
5002 law or organic rules; or

5003 3. Any other terms or conditions of the plan, if the
5004 change would adversely affect the member in a material respect.

5005 (2) After a plan of domestication has been approved and
5006 before the articles of domestication become effective, the plan
5007 may be abandoned as provided in the plan. Unless prohibited by
5008 the plan, the domesticating entity may abandon the plan in the
5009 same manner that the plan was approved.

5010 (3) If a plan of domestication is abandoned after articles
5011 of domestication have been delivered to the department for
5012 filing and before the articles of domestication have become

5013 effective, a statement of abandonment, signed by the
 5014 domesticating entity, must be delivered to the department for
 5015 filing before the articles of domestication become effective.
 5016 The statement of abandonment takes effect on filing, and the
 5017 domestication is abandoned and does not become effective. The
 5018 statement of abandonment must contain:
 5019 (a) The name of the domesticating entity.
 5020 (b) The date on which the articles of domestication were
 5021 delivered to the department for filing.
 5022 (c) A statement that the domestication has been abandoned
 5023 in accordance with this section.
 5024 608.959 Articles of domestication.—
 5025 (1) The articles of domestication must be filed with the
 5026 department. The articles of domestication shall state:
 5027 (a) The date on which the domesticating entity was first
 5028 formed, incorporated, created, or otherwise came into being.
 5029 (b) The name of the domesticating entity immediately
 5030 before the filing of the articles of domestication.
 5031 (c) The name of the domesticated limited liability company
 5032 as set forth in the articles of organization filed in accordance
 5033 with this subsection.
 5034 (d) The future effective date of the domestication as a
 5035 limited liability company if it is not to be effective upon the
 5036 filing of the articles of domestication subject to the
 5037 limitations contained in s. 608.7827.
 5038 (e) The jurisdiction that constituted the seat, siege
 5039 social, or principal place of business or central administration
 5040 of the domesticating entity, or any other equivalent under

HB 1079

2013

5041 applicable law, immediately before the filing of the articles of
5042 domestication.

5043 (f) That the domestication has been approved in accordance
5044 with the laws of the jurisdiction of formation of the
5045 domesticating entity.

5046 (2) In addition to the requirements of subsection (1),
5047 articles of domestication may contain any other provision not
5048 prohibited by law.

5049 (3) The articles of domestication that are filed with the
5050 department must be accompanied by a certificate of status or
5051 equivalent document, if any, from the domesticating entity's
5052 jurisdiction of formation.

5053 (4) The articles of domestication and the public organic
5054 record of a domesticated limited liability company must satisfy
5055 the requirements of the law of this state, but be executed by an
5056 authorized representative and registered agent in accordance
5057 with this chapter.

5058 608.960 Effect of domestication.—

5059 (1) When a domestication becomes effective:

5060 (a) The domesticated limited liability company is:

5061 1. Organized under and subject to the organic law of this
5062 state.

5063 2. The same entity, without interruption, as the
5064 domesticating entity.

5065 (b) All property of the domesticating entity continues to
5066 be vested in the domesticated limited liability company without
5067 transfer, reversion, or impairment.

5068 (c) All debts, obligations, and other liabilities of the

5069 domesticating entity continue as debts, obligations, and other
 5070 liabilities of the domesticated limited liability company.

5071 (d) Except as otherwise provided by law or the plan of
 5072 domestication, all the rights, privileges, immunities, powers,
 5073 and purposes of the domesticating entity remain in the
 5074 domesticated limited liability company.

5075 (e) The name of the domesticated limited liability company
 5076 may be substituted for the name of the domesticating entity in a
 5077 pending action or proceeding.

5078 (f) The public organic rules of the domesticated limited
 5079 liability company are effective.

5080 (g) The private organic rules of the domesticated limited
 5081 liability company that are to be in a record, if any, approved
 5082 as part of the plan of domestication are effective.

5083 (h) The interests in the domesticating entity are
 5084 converted to the extent and as approved in connection with the
 5085 domestication, and the interestholders of the domesticating
 5086 entity are entitled only to the rights provided to them under
 5087 the plan of domestication.

5088 (2) Except as otherwise provided in the organic law or
 5089 organic rules of the domesticating entity, the domestication
 5090 does not give rise to any rights that an interestholder or third
 5091 party would otherwise have upon a dissolution, liquidation, or
 5092 winding up of the domesticating entity.

5093 (3) When a domestication becomes effective, a person who
 5094 did not have interestholder liability with respect to the
 5095 domesticating entity and becomes subject to interestholder
 5096 liability with respect to the domesticated limited liability

HB 1079

2013

5097 company as a result of the domestication has interestholder
5098 liability only to the extent provided by the organic law of the
5099 domesticating entity and only for those debts, obligations, and
5100 other liabilities that arise after the domestication becomes
5101 effective.

5102 (4) When a domestication becomes effective:

5103 (a) The domestication does not discharge any
5104 interestholder liability under this chapter to the extent the
5105 interestholder liability arose before the domestication became
5106 effective.

5107 (b) A person does not have interestholder liability under
5108 this chapter for any debt, obligation, or other liability that
5109 arises after the domestication becomes effective.

5110 (c) The organic law of the jurisdiction of formation of
5111 the domesticating entity and any rights of contribution provided
5112 under that law, or the organic rules of the domesticating
5113 entity, continue to apply to the release, collection, or
5114 discharge of any interestholder liability preserved under
5115 subparagraph (a) as if the domestication had not occurred.

5116 (5) When a domestication becomes effective, a
5117 domesticating entity that has become the domesticated limited
5118 liability company may be served with process in this state for
5119 the collection and enforcement of its debts, obligations, and
5120 liabilities as provided in s. 608.7817 and chapter 48.

5121 (6) If the domesticating entity is qualified to transact
5122 business in this state, the certificate of authority of the
5123 domesticating entity is canceled when the domestication becomes
5124 effective.

5125 (7) A domestication does not require the domesticating
5126 entity to wind up its affairs and does not constitute or cause
5127 the dissolution of the domesticating entity.

5128 608.961 Appraisal rights; definitions.— The following
5129 definitions apply to s. 608.922 and to ss. 608.961-608.972:

5130 (1) "Accrued interest" means interest from the effective
5131 date of the appraisal event to which the member objects until
5132 the date of payment, at the rate of interest determined for
5133 judgments in accordance with s. 55.03, determined as of the
5134 effective date of the appraisal event.

5135 (2) "Affiliate" means a person who directly or indirectly,
5136 through one or more intermediaries, controls, is controlled by,
5137 or is under common control with another person or is a senior
5138 executive thereof. For purposes of s. 608.922(2), a person is
5139 deemed to be an affiliate of its senior executives.

5140 (3) "Appraisal event" means an event described in s.
5141 608.922(1).

5142 (4) "Beneficial member" means a person who is the
5143 beneficial owner of a membership interest held in a voting trust
5144 or by a nominee on the beneficial owner's behalf.

5145 (5) "Fair value" means the value of the member's
5146 membership interests determined:

5147 (a) Immediately before the effectuation of the appraisal
5148 event to which the member objects.

5149 (b) Using customary and current valuation concepts and
5150 techniques generally employed for similar businesses in the
5151 context of the transaction requiring appraisal, excluding any
5152 appreciation or depreciation in anticipation of the transaction

HB 1079

2013

5153 to which the member objects unless exclusion would be
5154 inequitable to the limited liability company and its remaining
5155 members.

5156 (c) Without discounting for lack of marketability or
5157 minority status.

5158 (6) "Limited liability company" means the limited
5159 liability company that issued the membership interest held by a
5160 member demanding appraisal and, for matters covered in ss.
5161 608.961-608.972, including the converted entity in a conversion
5162 or the surviving entity in a merger.

5163 (7) "Member" means a record member or a beneficial member.

5164 (8) "Membership interest" means a member's transferable
5165 interest and all other rights as a member of the limited
5166 liability company that issued the membership interest, including
5167 voting rights, management rights, or other rights under this
5168 chapter or the organic rules of the limited liability company
5169 except, if the appraisal rights of a member under s. 608.922
5170 pertain to only a certain class or series of a membership
5171 interest, the term "membership interest" means only the
5172 membership interest pertaining to such class or series.

5173 (9) "Record member" means each person who is identified as
5174 a member in the current list of members maintained for purposes
5175 of s. 608.922 by the limited liability company, or to the extent
5176 the limited liability company has failed to maintain a current
5177 list, each person that is the rightful owner of a membership
5178 interest in the limited liability company. A transferee of a
5179 membership interest who has not been admitted as member is not a
5180 record member.

HB 1079

2013

5181 (10) "Senior executive" means a manager in a manager-
5182 managed limited liability company, a member in a member-managed
5183 limited liability company, or the chief executive officer, chief
5184 operating officer, chief financial officer, or anyone in charge
5185 of a principal business unit or function of a limited liability
5186 company, or of a manager in a manager-managed limited liability
5187 company, or a member in a member-managed limited liability
5188 company.

5189 608.962 Assertion of rights by nominees and beneficial
5190 owners.-

5191 (1) A record member may assert appraisal rights as to
5192 fewer than all the membership interests registered in the record
5193 member's name which are owned by a beneficial member only if the
5194 record member objects with respect to all membership interests
5195 of the class or series owned by that beneficial member and
5196 notifies the limited liability company in writing of the name
5197 and address of each beneficial member on whose behalf appraisal
5198 rights are being asserted. The rights of a record member who
5199 asserts appraisal rights for only part of the membership
5200 interests of the class or series held of record in the record
5201 member's name under this subsection shall be determined as if
5202 the membership interests to which the record member objects and
5203 the record member's other membership interests were registered
5204 in the names of different record members.

5205 (2) A beneficial member may assert appraisal rights as to
5206 a membership interest held on behalf of the member only if the
5207 beneficial member:

5208 (a) Submits to the limited liability company the record

HB 1079

2013

5209 member's written consent to the assertion of such rights by the
5210 date provided in s. 608.963(3)(b).

5211 (b) Does so with respect to all membership interests of
5212 the class or series that are beneficially owned by the
5213 beneficial member.

5214 608.963 Notice of appraisal rights.-

5215 (1) If a proposed appraisal event is to be submitted to a
5216 vote at a members' meeting, the meeting notice must state that
5217 the limited liability company has concluded that the members
5218 are, are not, or may be entitled to assert appraisal rights
5219 under this chapter.

5220 (2) If the limited liability company concludes that
5221 appraisal rights are or may be available, a copy of s. 608.922
5222 and ss. 608.961-608.972 must accompany the meeting notice sent
5223 to those record members who are or may be entitled to exercise
5224 appraisal rights.

5225 (3) If the appraisal event is to be approved other than by
5226 a members' meeting:

5227 (a) Written notice that appraisal rights are, are not, or
5228 may be available must be sent to each member from whom a consent
5229 is solicited at the time consent of the member is first
5230 solicited, and if the limited liability company has concluded
5231 that appraisal rights are or may be available, a copy of s.
5232 608.922 and ss. 608.961-608.972 must accompany such written
5233 notice.

5234 (b) Written notice that appraisal rights are, are not, or
5235 may be available must be delivered, at least 10 days before the
5236 appraisal event becomes effective, to all nonconsenting and

HB 1079

2013

5237 nonvoting members, and, if the limited liability company has
5238 concluded that appraisal rights are or may be available, a copy
5239 of s. 608.922 and ss. 608.961-608.972 must accompany such
5240 written notice.

5241 (4) If a particular appraisal event is proposed and the
5242 limited liability company concludes that appraisal rights are or
5243 may be available, the notice referred to in subsection (1) or
5244 paragraph (3) (a) or paragraph (3) (b) must be accompanied by:

5245 (a) Financial statements of the limited liability company
5246 that issued the membership interests that may or are subject to
5247 appraisal rights, consisting of a balance sheet as of the end of
5248 the fiscal year ending not more than 16 months before the date
5249 of the notice, an income statement for that fiscal year and a
5250 cash flow statement for that fiscal year; if the financial
5251 statements are not reasonably available, the limited liability
5252 company must provide reasonably equivalent financial
5253 information.

5254 (b) The latest available interim financial statements,
5255 including year to date through the end of the interim period, of
5256 the limited liability company, if any.

5257 (5) The right to receive the information described in
5258 subsection (4) may be waived in writing by a member before or
5259 after the appraisal event.

5260 608.964 Notice of intent to demand payment.—

5261 (1) If a proposed appraisal event is submitted to a vote
5262 at a members' meeting, a member who is entitled to, and who
5263 wishes, to assert appraisal rights with respect to a class or
5264 series of membership interests:

HB 1079

2013

5265 (a) Must deliver to any other member of a member managed
5266 limited liability company, to a manager of a manager-managed
5267 limited liability company, or, if the limited liability company
5268 has appointed officers, to an officer, before the vote is taken,
5269 written notice of the person's intent to demand payment if the
5270 proposed appraisal event is effectuated.

5271 (b) Must not vote, or cause or permit to be voted, any
5272 membership interests of the class or series in favor of the
5273 appraisal event.

5274 (2) If a proposed appraisal event is to be approved by
5275 less than unanimous written consent of the members, a member who
5276 is entitled to and who wishes to assert appraisal rights with
5277 respect to a class or series of membership interests must not
5278 sign a consent in favor of the proposed appraisal event with
5279 respect to that class or series of membership interests.

5280 (3) A person who may otherwise be entitled to appraisal
5281 rights, but who does not satisfy the requirements of subsection
5282 (1) or subsection (2), is not entitled to payment under s.
5283 608.922 and ss. 608.961-608.972.

5284 608.965 Appraisal notice and form.—

5285 (1) If the proposed appraisal event becomes effective, the
5286 limited liability company must send a written appraisal notice
5287 and form required by subparagraph (2) (a) to all members who
5288 satisfy the requirements of s. 608.964(1) or (2).

5289 (2) The appraisal notice must be sent no earlier than the
5290 date the appraisal event became effective and within 10 days
5291 after the date and must:

5292 (a) Supply a form that specifies the date that the

5293 appraisal event became effective and that provides for the
 5294 member to state:

- 5295 1. The member's name and address.
- 5296 2. The number, classes, and series of membership interests
 5297 as to which the member asserts appraisal rights.
- 5298 3. That the member did not vote for or execute a written
 5299 consent with respect to the transaction.
- 5300 4. Whether the member accepts the limited liability
 5301 company's offer as stated in subparagraph (b)4.
- 5302 5. If the offer is not accepted, the member's estimated
 5303 fair value of the membership interests and a demand for payment
 5304 of the member's estimated value plus accrued interest.

5305 (b) State:

- 5306 1. Where the form described in paragraph (a) must be sent.
- 5307 2. A date by which the limited liability company must
 5308 receive the form, which is at least 40 days but not more than 60
 5309 days after the date the appraisal notice and form described in
 5310 this section are sent, and that the member is considered to have
 5311 waived the right to demand appraisal with respect to the
 5312 membership interests unless the form is received by the limited
 5313 liability company by the specified date.
- 5314 3. In the case of membership interests represented by a
 5315 certificate, the location at which certificates for the
 5316 certificated membership interests must be deposited, if that
 5317 action is required by the limited liability company, and the
 5318 date by which those certificates must be deposited, which may
 5319 not be earlier than the date for receiving the required form
 5320 under subparagraph 2.

5321 4. The limited liability company's estimate of the fair
5322 value of the membership interests.

5323 5. An offer to each member who is entitled to appraisal
5324 rights to pay the limited liability company's estimate of fair
5325 value provided in subparagraph 4.

5326 6. That, if requested in writing, the limited liability
5327 company will provide to the member so requesting, within 10 days
5328 after the date specified in subparagraph 2. the number of
5329 members who return the forms by the specified date and the total
5330 number of membership interests owned by them.

5331 7. The date by which the notice to withdraw under s.
5332 608.966 must be received, which must be within 20 days after the
5333 date specified in subsection (2) (b)2.

5334 8. If not previously provided, accompanied by a copy of
5335 ss. 608.922 and ss. 608.961-608.972.

5336 608.966 Perfection of rights; right to withdraw.-

5337 (1) A member who receives notice pursuant to s. 608.965
5338 and wishes to exercise appraisal rights must sign and return the
5339 form received pursuant to s. 608.965(1) and, in the case of
5340 certificated membership interests and if the limited liability
5341 company so requires, deposit the member's certificates in
5342 accordance with the terms of the notice by the date referred to
5343 in the notice pursuant to s. 608.965(2) (b)2. Once a member
5344 deposits that member's certificates or, in the case of
5345 uncertificated membership interests, returns the signed form
5346 described in s. 608.965(2), the member loses all rights as a
5347 member, unless the member withdraws pursuant to subsection (2).
5348 Upon receiving a demand for payment from a member who holds an

HB 1079

2013

5349 uncertificated membership interest, the limited liability
5350 company shall make an appropriate notation of the demand for
5351 payment in its records and shall restrict the transfer of the
5352 membership interest, or the applicable class or series, from the
5353 date the member delivers the items required by this section.

5354 (2) A member who has complied with subsection (1) may
5355 nevertheless decline to exercise appraisal rights and withdraw
5356 from the appraisal process by so notifying the limited liability
5357 company in writing by the date provided in the appraisal notice
5358 pursuant to s. 608.965(2)(b)7. A member who fails to so withdraw
5359 from the appraisal process may not later withdraw without the
5360 limited liability company's written consent.

5361 (3) A member who does not sign and return the form and, in
5362 the case of certificated membership interests, deposit that
5363 member's certificates, if so required by the limited liability
5364 company, each by the date provided in the notice, is not
5365 entitled to payment under s. 608.922 and ss. 608.961-608.972.

5366 (4) If the member's right to receive fair value is
5367 terminated other than by the purchase of the membership interest
5368 by the limited liability company, all rights of the member, with
5369 respect to the membership interest, shall be reinstated
5370 effective as of the date the member delivered the items required
5371 in subsection (1), including the right to receive an intervening
5372 payment or other distribution with respect to such membership
5373 interest, or, if any rights have expired or a distribution other
5374 than a cash payment has been completed, in lieu thereof at the
5375 election of the limited liability company, the fair value in
5376 cash as determined by the limited liability company as of the

HB 1079

2013

5377 time of such expiration or completion, but without prejudice
5378 otherwise to any action or proceeding of the limited liability
5379 company that may have been taken by the limited liability
5380 company on or after the date the member delivered the items
5381 required by subsection (1).

5382 608.967 Member's acceptance of limited liability company's
5383 offer.

5384 (1) If the member states on the form provided in s.
5385 608.965(1) that the member accepts the offer of the limited
5386 liability company to pay the limited liability company's
5387 estimated fair value for the membership interest, the limited
5388 liability company shall make the payment to the member within 90
5389 days after the limited liability company's receipt of the items
5390 required by s. 608.966(1).

5391 (2) Upon payment of the agreed value, the member ceases to
5392 have an interest in the membership interest.

5393 608.968 Procedure if member is dissatisfied with offer.-

5394 (1) A member who is dissatisfied with the limited
5395 liability company's offer as provided pursuant to s.
5396 608.965(2) (b) 4. must notify the limited liability company on the
5397 form provided pursuant to s. 608.965(1) of the member's estimate
5398 of the fair value of the membership interest and demand payment
5399 of that estimate plus accrued interest.

5400 (2) A member who fails to notify the limited liability
5401 company in writing of the member's demand to be paid the
5402 member's estimate of the fair value plus interest under
5403 subsection (1) within the timeframe provided in s.
5404 608.965(2) (b) 2. waives the right to demand payment under this

HB 1079

2013

5405 section and is entitled only to the payment offered by the
5406 limited liability company pursuant to s. 608.965(2)(b)4.

5407 608.969 Court action.—

5408 (1) If a member makes demand for payment under s. 608.968,
5409 which remains unsettled, the limited liability company shall
5410 commence a proceeding within 60 days after receiving the payment
5411 demand and petition the court to determine the fair value of the
5412 membership interest plus accrued interest from the date of the
5413 appraisal event. If the limited liability company does not
5414 commence the proceeding within the 60-day period, a member who
5415 has made a demand pursuant to s. 608.968 may commence the
5416 proceeding in the name of the limited liability company.

5417 (2) The proceeding shall be commenced in the appropriate
5418 court of the county in which the limited liability company's
5419 principal office in this state is located or, if none, the
5420 county in which its registered agent is located. If by virtue of
5421 the appraisal event becoming effective the limited liability
5422 company has become a foreign limited liability company without a
5423 registered agent in this state, the proceeding shall be
5424 commenced in the county in this state in which the principal
5425 office or registered agent of the limited liability company was
5426 located immediately before the time the appraisal event became
5427 effective.

5428 (3) All members, whether residents of this state, whose
5429 demands remain unsettled shall be made parties to the proceeding
5430 as in an action against their membership interests. The limited
5431 liability company shall serve a copy of the initial pleading in
5432 the proceeding upon each member party who is a resident of this

HB 1079

2013

5433 state in the manner provided by law for the service of a summons
5434 and complaint and upon each nonresident member party by
5435 registered or certified mail or by publication as provided by
5436 law.

5437 (4) The jurisdiction of the court in which the proceeding
5438 is commenced is plenary and exclusive. If it so elects, the
5439 court may appoint one or more persons as appraisers to receive
5440 evidence and recommend a decision on the question of fair value.
5441 The appraisers shall have the powers described in the order
5442 appointing them or in an amendment to the order. The members
5443 demanding appraisal rights are entitled to the same discovery
5444 rights as parties in other civil proceedings. There is no right
5445 to a jury trial.

5446 (5) Each member who is made a party to the proceeding is
5447 entitled to judgment for the amount of the fair value of the
5448 member's membership interests, plus interest, as found by the
5449 court.

5450 (6) The limited liability company shall pay each member
5451 the amount found to be due within 10 days after final
5452 determination of the proceedings. Upon payment of the judgment,
5453 the member ceases to have any interest in the membership
5454 interests.

5455 608.97 Court costs and counsel fees.-

5456 (1) The court in an appraisal proceeding shall determine
5457 all costs of the proceeding, including the reasonable
5458 compensation and expenses of appraisers appointed by the court.
5459 The court shall assess the costs against the limited liability
5460 company, except that the court may assess costs against all or

HB 1079

2013

5461 some of the members demanding appraisal, in amounts the court
5462 finds equitable, to the extent the court finds the members acted
5463 arbitrarily, vexatiously, or not in good faith with respect to
5464 the rights provided by this chapter.

5465 (2) The court in an appraisal proceeding may also assess
5466 the expenses incurred by the respective parties, in amounts the
5467 court finds equitable:

5468 (a) Against the limited liability company and in favor of
5469 any or all members demanding appraisal if the court finds the
5470 limited liability company did not substantially comply with the
5471 requirements of ss. 608.961-608.972; or

5472 (b) Against either the limited liability company or a
5473 member demanding appraisal, in favor of another party, if the
5474 court finds that the party against whom the expenses are
5475 assessed acted arbitrarily, vexatiously, or not in good faith
5476 with respect to the rights provided by this chapter.

5477 (3) If the court, in an appraisal proceeding, finds that
5478 the expenses incurred by any member were of substantial benefit
5479 to other members similarly situated, and that the expenses
5480 should not be assessed against the limited liability company,
5481 the court may direct that the expenses be paid out of the
5482 amounts awarded the members who were benefited.

5483 (4) To the extent the limited liability company fails to
5484 make a required payment pursuant to s. 608.967 or s. 608.969,
5485 the member may sue directly for the amount owed and, to the
5486 extent successful, is entitled to recover from the limited
5487 liability company all costs and expenses of the suit, including
5488 attorney fees.

5489 608.971 Limitation on limited liability company payment.-
 5490 (1) No payment may be made to a member seeking appraisal
 5491 rights if, at the time of payment, the limited liability company
 5492 is unable to meet the distribution standards of s. 608.7844. In
 5493 such event, the member shall, at the member's option:
 5494 (a) Withdraw the notice of intent to assert appraisal
 5495 rights, which is deemed withdrawn with the consent of the
 5496 limited liability company; or
 5497 (b) Retain the status as a claimant against the limited
 5498 liability company and, if the limited liability company is
 5499 liquidated, be subordinated to the rights of creditors of the
 5500 limited liability company but have rights superior to the
 5501 members not asserting appraisal rights and, if it is not
 5502 liquidated, retain the right to be paid for the membership
 5503 interest, which right the limited liability company is obliged
 5504 to satisfy when the restrictions of this section do not apply.
 5505 (2) The member shall exercise the option under paragraph
 5506 (1) (a) or paragraph (1) (b) by written notice filed with the
 5507 limited liability company within 30 days after the limited
 5508 liability company has given written notice that the payment for
 5509 the membership interests cannot be made because of the
 5510 restrictions of this section. If the member fails to exercise
 5511 the option, the member is deemed to have withdrawn the notice of
 5512 intent to assert appraisal rights.
 5513 608.972 Other remedies limited.-
 5514 (1) The legality of a proposed or completed appraisal
 5515 event may not be contested, and the appraisal event may not be
 5516 enjoined, set aside, or rescinded, in a legal or equitable

5517 proceeding by a member after the members have approved the
 5518 appraisal event.

5519 (2) Subsection (1) does not apply to an appraisal event
 5520 that:

5521 (a) Was not authorized and approved in accordance with the
 5522 applicable provisions of this chapter, the organic rules of the
 5523 limited liability company, or the resolutions of the members
 5524 authorizing the appraisal event; or

5525 (b) Was procured as a result of fraud, a material
 5526 misrepresentation, or an omission of a material fact necessary
 5527 to make statements made, in light of the circumstances in which
 5528 they were made, not misleading.

5529 (3) Is an interested transaction, unless it has been
 5530 approved in the same manner as is provided in s. 608.7852.

5531 608.975 Uniformity of application and construction.—In
 5532 applying and construing this chapter, consideration must be
 5533 given to the need to promote uniformity of the law with respect
 5534 to the uniform act upon which it is based.

5535 608.976 Relation to electronic signatures in global and
 5536 national commerce act.—This chapter modifies, limits, and
 5537 supersedes the Electronic Signatures in Global and National
 5538 Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify,
 5539 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
 5540 or authorize electronic delivery of the notices described in s.
 5541 103(b) of that act, 15 U.S.C. s. 7003(b). Notwithstanding the
 5542 foregoing, this section and this chapter do not modify, limit,
 5543 or supersede ss. 15.16, 116.34, or 668.50.

5544 608.977 Tax exemption on income of certain limited

HB 1079

2013

5545 liability companies.-

5546 (1) A limited liability company classified as a
5547 partnership for federal income tax purposes, or a single-member
5548 limited liability that is disregarded as an entity separate from
5549 its owner for federal income tax purposes, and organized
5550 pursuant to this chapter or qualified to do business in this
5551 state as a foreign limited liability company is not an
5552 artificial entity within the purview of s. 220.02 and is not
5553 subject to the tax imposed under chapter 220. If a single-member
5554 limited liability company is disregarded as an entity separate
5555 from its owner for federal income tax purposes, its activities
5556 are, for purposes of taxation under chapter 220, treated in the
5557 same manner as a sole proprietorship, branch, or division of the
5558 owner.

5559 (2) For purposes of taxation under chapter 220, a limited
5560 liability company formed in this state or a foreign limited
5561 liability company authorized to transact business in this state
5562 shall be classified as a partnership, or a limited liability
5563 company that has only one member shall be disregarded as an
5564 entity separate from its owner for federal income tax purposes,
5565 unless classified otherwise for federal income tax purposes, in
5566 which case the limited liability company shall be classified
5567 identically to its classification for federal income tax
5568 purposes. For purposes of taxation under chapter 220, a member
5569 or an transferee of a member of a limited liability company
5570 formed in this state or a foreign limited liability company
5571 qualified to do business in this state shall be treated as a
5572 resident or nonresident partner unless classified otherwise for

HB 1079

2013

5573 federal income tax purposes, in which case the member or
5574 transferee of a member has the same status as the member or
5575 transferee of a member has for federal income tax purposes.

5576 (3) Single-member limited liability companies and other
5577 entities that are disregarded for federal income tax purposes
5578 must be treated as separate legal entities for all non-income
5579 tax purposes. The Department of Revenue shall adopt rules to
5580 take into account that single-member disregarded entities such
5581 as limited liability companies and qualified subchapter S
5582 corporations may be disregarded as separate entities for federal
5583 tax purposes and therefore may report and account for income,
5584 employment, and other taxes under the taxpayer identification
5585 number of the owner of the single-member entity.

5586 608.978 Interrogatories by department; other powers of
5587 department.-

5588 (1) The department may direct to a limited liability
5589 company or foreign limited liability company subject to this
5590 chapter, and to a member or manager of a limited liability
5591 company or foreign limited liability company subject to this
5592 chapter, any interrogatories reasonably necessary and proper to
5593 enable the department to ascertain whether the limited liability
5594 company or foreign limited liability company has complied with
5595 all of the provisions of this chapter applicable to the limited
5596 liability company or foreign limited liability company. The
5597 interrogatories must be answered within 30 days after the date
5598 of mailing, or within such additional time as fixed by the
5599 department. The answers to the interrogatories must be full and
5600 complete and must be made in writing and under oath. If the

HB 1079

2013

5601 interrogatories are directed to an individual, they must be
5602 answered by the individual, and if directed to a limited
5603 liability company or foreign limited liability company, they
5604 must be answered by a manager of a manager-managed company, a
5605 member of a member-managed company, or a fiduciary if the
5606 company is in the hands of a receiver, trustee, or other court-
5607 appointed fiduciary.

5608 (2) The department need not file a record in a court of
5609 competent jurisdiction to which the interrogatories relate until
5610 the interrogatories are answered as provided in this chapter,
5611 and not then if the answers thereto disclose that the record is
5612 not in conformity with the requirements of this chapter or if
5613 the department has determined that the parties to such document
5614 have not paid all fees, taxes, and penalties due and owing this
5615 state. The department shall certify to the Department of Legal
5616 Affairs, for such action as the Department of Legal Affairs may
5617 deem appropriate, all interrogatories and answers that disclose
5618 a violation of this chapter.

5619 (3) The department may, based upon its findings hereunder
5620 or as provided in s. 213.053(15), bring an action in circuit
5621 court to collect any penalties, fees, or taxes determined to be
5622 due and owing the state and to compel any filing, qualification,
5623 or registration required by law. In connection with such
5624 proceeding, the department may, without previous approval by the
5625 court, file a lis pendens against any property owned by the
5626 limited liability company and may further certify any findings
5627 to the Department of Legal Affairs for the initiation of an
5628 action permitted pursuant to this chapter which the Department

5629 | of Legal Affairs may deem appropriate.

5630 | (4) The department has the power and authority reasonably
 5631 | necessary to administer this chapter efficiently, to perform the
 5632 | duties herein imposed upon it, and to adopt reasonable rules
 5633 | necessary to carry out its duties and functions under this
 5634 | chapter.

5635 | 608.979 Reservation of power to amend or repeal.—The
 5636 | Legislature has the power to amend or repeal all or part of this
 5637 | chapter at any time, and all domestic and foreign limited
 5638 | liability companies subject to this chapter shall be governed by
 5639 | the amendment or repeal.

5640 | 608.980 Savings clause.—

5641 | (1) Except as provided in subsection (2), the repeal of a
 5642 | statute by this chapter does not affect:

5643 | (a) The operation of the statute or an action taken under
 5644 | it before its repeal, including, without limiting the generality
 5645 | of the foregoing, the continuing validity of any provision of
 5646 | the articles of organization, regulations, or operating
 5647 | agreements of a limited liability company authorized by the
 5648 | statute at the time of its adoption.

5649 | (b) A ratification, right, remedy, privilege, obligation,
 5650 | or liability acquired, accrued, or incurred under the statute
 5651 | before its repeal.

5652 | (c) A violation of the statute or a penalty, forfeiture,
 5653 | or punishment incurred because of the violation, before its
 5654 | repeal.

5655 | (d) A proceeding, merger, sale of assets, reorganization,
 5656 | or dissolution commenced under the statute before its repeal,

HB 1079

2013

5657 and the proceeding, merger, sale of assets, reorganization, or
5658 dissolution may be completed in accordance with the statute as
5659 if it had not been repealed.

5660 (2) If a penalty or punishment imposed for violation of a
5661 statute is reduced by this chapter, the penalty or punishment if
5662 not already imposed shall be imposed in accordance with this
5663 chapter.

5664 (3) This chapter does not affect an action commenced,
5665 proceeding brought, or right accrued before this chapter takes
5666 effect.

5667 608.981 Application to limited liability company formed
5668 under the Florida Limited Liability Company Act.—For purposes of
5669 applying this chapter to a limited liability company formed
5670 before January 1, 2014, under the Florida Limited Liability
5671 Company Act, ss. 608.401-608.706:

5672 (1) The company's articles of organization are deemed to
5673 be the company's articles of organization under this chapter.

5674 (2) For the purposes of applying s. 608.7802(12) and
5675 subject to s. 608.7812(4), language in the company's articles of
5676 organization designating the company's management structure
5677 operates as if that language were in the operating agreement.

5678 (3) Effective January 1, 2014, all documents, instruments,
5679 and other records submitted to the department must comply with
5680 the filing requirements stipulated by this chapter.

5681 608.982 References to chapter.—Any reference to "this
5682 chapter" contained within this part shall be construed as a
5683 reference to this part only. This section is repealed January 1,
5684 2015.

5685 Section 6. Effective January 1, 2015, section 608.981,
 5686 Florida Statutes, as created by this act, is amended to read:

5687 608.981 Application to limited liability company formed
 5688 under former ~~the~~ Florida Limited Liability Company Act.—For
 5689 purposes of applying this chapter to a limited liability company
 5690 formed before January 1, 2014, under the Florida Limited
 5691 Liability Company Act, former ss. 608.401-608.706, Florida
 5692 Statutes 2014:

5693 (1) The company's articles of organization are deemed to
 5694 be the company's articles of organization under this chapter.

5695 (2) For the purposes of applying s. 608.7802(12) and
 5696 subject to s. 608.7812(4), language in the company's articles of
 5697 organization designating the company's management structure
 5698 operates as if that language were in the operating agreement.

5699 (3) ~~Effective January 1, 2014,~~ All documents, instruments,
 5700 and other records submitted to the department must comply with
 5701 the filing requirements stipulated by this chapter.

5702 Section 7. Effective January 1, 2015, the Florida Limited
 5703 Liability Company Act, part I of chapter 608, Florida Statutes,
 5704 consisting of ss. 608.401-608.706, is repealed.

5705 Section 8. If a provision of this chapter or its
 5706 application to any person or circumstance is held invalid, the
 5707 invalidity does not affect other provisions or applications of
 5708 this chapter which can be given effect without the invalid
 5709 provision or application, and to this end the provisions of this
 5710 chapter are severable.

5711 Section 9. This act shall take effect January 1, 2014.