

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 creating s. 48.062, F.S.; providing for service of
 36 process on limited liability companies; providing for
 37 severability; providing for the future repeal of part
 38 I of chapter 608, F.S., relating to the Florida
 39 Limited Liability Company Act; providing effective
 40 dates.

41
 42 Be It Enacted by the Legislature of the State of Florida:

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

48 Section 2. Section 608.401, Florida Statutes, is amended
 49 to read:

50 608.401 Short title.—Sections 608.401-608.706 ~~608.401-~~
 51 ~~608.705~~ may be cited as the "Florida Limited Liability Company
 52 Act."

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

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

CS/HB 1079

2013

57 reference to this part only.

58 Section 4. (1) Except as otherwise provided in subsection
59 (2) or subsection (3), the Florida Limited Liability Company
60 Act, part I of chapter 608, Florida Statutes, shall govern all
61 limited liability companies in existence on the effective date
62 of this act.

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

66 (a) A limited liability company formed on or after January
67 1, 2014; or

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

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

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

80 PART II

81 FLORIDA REVISED LIMITED LIABILITY COMPANY ACT

82 608.7801 Short title.—Sections 608.7801-608.982 may be
83 cited as the "Florida Revised Limited Liability Company Act."

84 608.7802 Definitions.—As used in this chapter, the term:

85 (1) "Acquired entity" means the entity, all of one or more
86 classes or series of interests in which are acquired in an
87 interest exchange.

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

91 (3) "Articles of conversion" means the articles of
92 conversion required by s. 608.949. The term includes the
93 articles of conversion as amended or restated.

94 (4) "Articles of domestication" means the articles of
95 domestication required by s. 608.959. The term includes the
96 articles of domestication as amended or restated.

97 (5) "Articles of interest exchange" means the articles of
98 interest exchange required by s. 608.939. The term includes the
99 articles of interest exchange as amended or restated.

100 (6) "Articles of merger" means the articles of merger
101 required by under s. 608.929. The term includes the articles of
102 merger as amended or restated.

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

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

110 (a) In the case of an existing limited liability company,
111 the term "authorized representative" means, with respect to the
112 execution and filing of a record with the department or taking

113 any other action required or permitted by this chapter:

114 1. A manager of a manager-managed limited liability
115 company who is authorized to do so;

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

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

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

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

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

137 (11) "Conversion" means a transaction authorized by ss.
138 608.941-608.950.

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

141 (13) "Converting entity" means the domestic entity that
142 approves a plan of conversion pursuant to s. 608.947 or the
143 foreign entity that approves a conversion pursuant to the
144 organic law of its jurisdiction of formation.

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

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

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

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

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

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

157 (a) The term includes:

158 1. A redemption or other purchase by a limited liability
159 company of a transferable interest.

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

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

169 (18) "Distributional interest" means the rights under an
170 unincorporated entity's organic law and organic rules to receive
171 distributions from the entity.

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

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

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

180 (22) "Domestication" means a transaction authorized by ss.
181 608.955-608.960.

182 (23) "Entity" means:

183 (a) A business corporation;

184 (b) A nonprofit corporation;

185 (c) A general partnership, including a limited liability
186 partnership;

187 (d) A limited partnership, including a limited liability
188 limited partnership;

189 (e) A limited liability company;

190 (f) A real estate investment trust; or

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

193 1. An individual;

194 2. A trust with a predominantly donative purpose or a
195 charitable trust;

196 3. An association or relationship that is not a

197 partnership solely by reason of s. 620.8202(3) or a similar
 198 provision of the law of another jurisdiction;

199 4. A decedent's estate; or

200 5 A government or a governmental subdivision, agency, or
 201 instrumentality.

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

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

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

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

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

216 (b) Vote for or consent to the election of the governors
 217 of the entity; or

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

220 (28) "Governor" means:

221 (a) A director of a business corporation;

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

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

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

225 (e) A manager of a manager-managed limited liability
 226 company;

227 (f) A member of a member-managed limited liability
 228 company;

229 (g) A director or a trustee of a real estate investment
 230 trust; or

231 (h) Another person under whose authority the powers of an
 232 entity are exercised and under whose direction the activities
 233 and affairs of the entity are managed pursuant to the organic
 234 law and organic rules of the entity.

235 (29) "Interest" means:

236 (a) A share in a business corporation;

237 (b) A membership in a nonprofit corporation;

238 (c) A partnership interest in a general partnership;

239 (d) A partnership interest in a limited partnership;

240 (e) A membership interest in a limited liability company;

241 (f) A share or beneficial interest in a real estate
 242 investment trust;

243 (g) A member's interest in a limited cooperative
 244 association;

245 (h) A beneficial interest in a statutory trust, business
 246 trust, or common-law business trust; or

247 (i) A governance interest or distributional interest in
 248 another entity.

249 (30) "Interest exchange" means a transaction authorized by
 250 ss. 608.935-608.940.

251 (31) "Interestholder" means:

252 (a) A shareholder of a business corporation;

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

281 provided, however, for these purposes, if an entity exists under
 282 the law of a jurisdiction different from the jurisdiction under
 283 which the entity originally was formed, incorporated, created,
 284 or otherwise came into being, then the jurisdiction under which
 285 the entity then exists shall be treated as the jurisdiction of
 286 formation; or

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

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

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

302 (37) "Majority-in-interest" means those members holding
 303 more than 50 percent of the then current percentage or other
 304 interest in the profits or interests in the limited liability
 305 company who have the right to vote; however for purposes of ss.
 306 608.916-608.972, "majority-in-interest" means:

307 (a) In the case of a limited liability company with only
 308 one class or series of members, the holders of more than 50

309 percent of the then current percentage or other interest in the
310 profits or interests in the company who have the right to
311 approve a merger, interest exchange, or conversion, under the
312 organic law or the organic rules of the company; and

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

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

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

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

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

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

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

336 (42) "Merger" means a transaction authorized by ss.

337 608.925-608.930.

338 (43) "Merging entity" means an entity that is a party to a
 339 merger and exists immediately before the merger becomes
 340 effective.

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

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

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

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

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

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

365 (50) "Plan of conversion" means a plan developed under s.
366 608.946 and includes the plan of conversion as amended or
367 restated.

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

370 (52) "Plan of interest exchange" means a plan under s.
371 608.936 and includes the plan of interest exchange as amended or
372 restated.

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

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

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

383 (a) The bylaws of a business corporation.

384 (b) The bylaws of a nonprofit corporation.

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

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

387 (e) The operating agreement of a limited liability
388 company.

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

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

393 (56) "Property" means all property, whether real,
394 personal, mixed, tangible or intangible, or a right or interest
395 therein.

396 (57) "Protected agreement" means:

397 (a) A record evidencing indebtedness and any related
398 agreement in effect on January 1, 2014;

399 (b) An agreement that is binding on an entity on January
400 1, 2014;

401 (c) The organic rules of an entity in effect on January 1,
402 2014; or

403 (d) An agreement that is binding on any of the governors
404 or interestholders of an entity on January 1, 2014.

405 (58) "Public organic record" means a record, the filing of
406 which by a governmental body, is required to form an entity and
407 an amendment to or restatement of that record. The term
408 includes:

409 (a) The articles of incorporation of a business
410 corporation;

411 (b) The articles of incorporation of a nonprofit
412 corporation;

413 (c) The certificate of limited partnership of a limited
414 partnership;

415 (d) The articles of organization of a limited liability
416 company;

417 (e) The articles of incorporation of a general cooperative
418 association or a limited cooperative association;

419 (f) The certificate of trust of a statutory trust or
420 similar record of a business trust; or

421 (g) The articles of incorporation of a real estate
422 investment trust.

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

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

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

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

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

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

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

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

447 (65) "Transfer" includes:

448 (a) An assignment.

449 (b) A conveyance.

450 (c) A sale.

451 (d) A lease.

452 (e) An encumbrance, including a mortgage or security
453 interest.

454 (f) A gift.

455 (g) A transfer by operation of law.

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

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

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

467 (a) Recognized at common law; or

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

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

476 608.7803 Knowledge; notice.—

477 (1) A person knows a fact if the person:
 478 (a) Has actual knowledge of it; or
 479 (b) Is deemed to know it under paragraph (4) (a) or
 480 paragraph (4) (b), or a law other than this chapter.
 481 (2) A person has notice of a fact when the person:
 482 (a) Has reason to know the fact from all of the facts
 483 known to the person at the time in question; or
 484 (b) Is deemed to have notice of the fact under paragraph
 485 (4) (c).
 486 (3) Subject to s. 608.78291(8), a person notifies another
 487 person of a fact by taking steps reasonably required to inform
 488 the other person in the ordinary course of events, regardless of
 489 whether those steps cause the other person to know the fact.
 490 (4) A person who is not a member is deemed:
 491 (a) To know of a limitation on authority to transfer real
 492 property as provided in s. 608.7832(7).
 493 (b) To know of the authority or limitation on the
 494 authority of a person holding a position or having a specified
 495 status in a company, or to know of the authority or limitation
 496 on the authority of a specific person, if the authority or
 497 limitation on the authority is described in the articles of
 498 organization in accordance with s. 608.7821(3)(d). However, if
 499 that description is added or changed by an amendment or an
 500 amendment and restatement of the articles of organization, then
 501 notice of the addition or change does not become effective until
 502 90 days after the effective date of the amendment or amendment
 503 and restatement.
 504 (c) To have notice of a limited liability company's:

505 1. Declaration in its articles of organization that it is
506 manager-managed in accordance with s. 608.7821(3)(a); if such a
507 declaration is added or changed by an amendment or restatement
508 of the articles of organization, notice of the addition or
509 change does not become effective until 90 days after the
510 effective date of the amendment or restatement.

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

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

515 4. Participation in a merger, interest exchange,
516 conversion, or domestication within 90 days after the articles
517 of merger, articles of interest exchange, articles of
518 conversion, or articles of domestication under ss. 608.916-
519 608.972, as applicable, become effective.

520 608.7804 Governing law.—The law of this state governs:

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

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

525 608.7805 Operating agreement; scope, function, and
526 limitations.—

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

529 (a) Relations among the members as members and between the
530 members and the limited liability company.

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

533 (c) The activities and affairs of the company and the
534 conduct of those activities and affairs.

535 (d) The means and conditions for amending the operating
536 agreement.

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

540 (3) An operating agreement may not:

541 (a) Vary a limited liability company's capacity under s.
542 608.7809 to sue and be sued in its own name.

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

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

546 1. Registered agents; or

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

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

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

553 (4).

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

559 (g) Relieve or exonerate a person from liability for
560 conduct involving bad faith, willful or intentional misconduct,

561 or a knowing violation of law.

562 (h) Unreasonably restrict the duties and rights stated in
563 s. 608.7853, but the operating agreement may impose reasonable
564 restrictions on the availability and use of information obtained
565 under that section and may define appropriate remedies,
566 including liquidating damages, for a breach of a reasonable
567 restriction on use;

568 (i) Vary the power of a person to dissociate under s.
569 608.7861 except to require that the notice under s. 608.7862(1)
570 be in a record.

571 (j) Vary the grounds for dissolution specified in s.
572 608.7912(2).

573 (k) Vary the requirement to wind up the company's
574 business, activities, and affairs as specified in s.
575 608.7919(1), (2)(a), and (5).

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

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

582 (n) Vary the required contents of plan of merger under s.
583 608.926, a plan of interest exchange under s. 608.936, a plan of
584 conversion under s. 608.946, or a plan of domestication under s.
585 608.956.

586 (o) Except as otherwise provided in ss. 608.7806 and
587 608.7807(2), restrict the rights under this chapter of a person
588 other than a member or manager.

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

591 1. Conduct involving bad faith, willful or intentional
592 misconduct, or a knowing violation of law;

593 2. A transaction from which the member or manager derived
594 an improper personal benefit;

595 3. A circumstance under which the liability provisions of
596 s. 608.7845 are applicable; or

597 4. A breach of duties or obligations under s. 608.7851,
598 taking into account a variation of such duties and obligations
599 provided for in the operating agreement to the extent allowed by
600 subsection (4).

601 (4) Subject to subsection (3) (g), without limiting other
602 terms that may be included in an operating agreement, the
603 following rules apply:

604 (a) The operating agreement may:

605 1. Specify the method by which a specific act or
606 transaction that would otherwise violate the duty of loyalty may
607 be authorized or ratified by one or more disinterested and
608 independent persons after full disclosure of all material facts.

609 2. Alter the prohibition stated in s. 608.7844(1) (b) so
610 that the prohibition requires solely that the company's total
611 assets not be less than the sum of its total liabilities.

612 (b) To the extent the operating agreement of a member-
613 managed limited liability expressly relieves a member of
614 responsibility that the member would otherwise have under this
615 chapter and imposes the responsibility on one or more other
616 members, the operating agreement may, to the benefit of the

617 member that the operating agreement relieves of the
618 responsibility, also eliminate or limit a duty or obligation
619 that would have pertained to the responsibility.

620 (c) If not manifestly unreasonable, the operating
621 agreement may:

622 1. Alter or eliminate the aspects of the duty of loyalty
623 under s. 608.7851(2).

624 2. Identify specific types or categories of activities
625 that do not violate the duty of loyalty.

626 3. Alter the duty of care, but may not authorize willful
627 or intentional misconduct or a knowing violation of law.

628 (5) The court shall decide as a matter of law whether a
629 term of an operating agreement is manifestly unreasonable under
630 paragraph (3) (f) or paragraph(4) (c). The court:

631 (a) Shall make its determination as of the time the
632 challenged term became part of the operating agreement and shall
633 consider only circumstances existing at that time.

634 (b) May invalidate the term only if, in light of the
635 purposes, activities, and affairs of the limited liability
636 company, it is readily apparent that:

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

638 2. The term is an unreasonable means to achieve the
639 provision's objective.

640 (6) An operating agreement may provide for specific
641 penalties or specified consequences, including those described
642 in s. 608.7842(5), in the event a member or transferee fails to
643 comply with the terms and conditions of the operating agreement,
644 or when other events specified in the operating agreement occur.

645 608.7806 Operating agreement; effect on limited liability
646 company and person becoming member; preformation agreement;
647 other matters involving operating agreement.—

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

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

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

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

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

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

672 (7) An operating agreement may provide rights to a person,

673 including a person who is not a party to the operating
674 agreement, to the extent provided in the operating agreement.

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

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

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

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

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

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

698 (1) An operating agreement may specify that its amendment
699 requires the approval of a person who is not a party to the
700 agreement or upon the satisfaction of a condition. An amendment

701 is ineffective if its adoption does not include the required
702 approval or satisfy the specified condition.

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

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

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

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

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

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

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

728 608.7808 Nature, purpose, and duration of limited

729 liability company.-

730 (1) A limited liability company is an entity distinct from
 731 its members.

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

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

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

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

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

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

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

753 (5) Make contracts or guarantees, or incur liabilities;
 754 borrow money; issue notes, bonds, or other obligations, which
 755 may be convertible into or include the option to purchase other
 756 securities of the limited liability company; or make contracts

757 of guaranty and suretyship that are necessary or convenient to
758 the conduct, promotion, or attainment of the purposes activities
759 and affairs of the limited liability company.

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

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

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

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

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

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

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

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

784 (14) Grant, hold or exercise a power of attorney,

785 including an irrevocable power of attorney.
 786 608.7810 Limited liability company property.—
 787 (1) All property originally contributed to the limited
 788 liability company or subsequently acquired by a limited
 789 liability company by purchase or other method is limited
 790 liability company property.
 791 (2) Property acquired with limited liability company funds
 792 is limited liability company property.
 793 (3) Instruments and documents providing for the
 794 acquisition, mortgage, or disposition of property of the limited
 795 liability company are valid and binding upon the limited
 796 liability company if they are executed in accordance with this
 797 chapter.
 798 (4) A member of a limited liability company has no
 799 interest in a specific limited liability company property.
 800 608.7811 Rules of construction and supplemental principles
 801 of law.—
 802 (1) It is the intent of this chapter to give the maximum
 803 effect to the principle of freedom of contract and to the
 804 enforceability of operating agreements, including the purposes
 805 of ss. 608.7805-608.7807.
 806 (2) Unless displaced by particular provisions of this
 807 chapter, the principles of law and equity supplement this
 808 chapter.
 809 608.7812 Name.—
 810 (1) The name of a limited liability company:
 811 (a) Must contain the words "limited liability company" or
 812 the abbreviation "L.L.C." or "LLC".

813 (b) Must be distinguishable in the records of the
814 department from the names of all other entities or filings,
815 except fictitious name registrations pursuant to s. 865.09,
816 organized, registered, or reserved under the laws of this state,
817 which names are on file with the department.

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

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

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

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

838 (4) A limited liability company in existence before
839 January 1, 2014, which was registered with the department and is
840 using an abbreviation or designation in its name permitted under

841 previous law, is permitted to continue using the abbreviation or
842 designation in its name until it dissolves or amends its name in
843 the records of the department.

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

848 608.7813 Registered agent.-

849 (1) Each limited liability company and each foreign limited
850 liability company that has a certificate of authority under s.
851 608.902 shall designate and continuously maintain in this state:

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

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

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

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

861 (2) Each initial registered agent, and each successor
862 registered agent that is appointed, shall file a statement in
863 writing with the department, in the form and manner prescribed
864 by the department, accepting the appointment as registered agent
865 while simultaneously being designated as the registered agent.

866 The statement of acceptance shall provide that the registered
867 agent is familiar with, and accepts, the obligations of that
868 position.

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

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

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

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

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

890 608.7814 Change of registered agent or registered office.—

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

895 (a) The name of the limited liability company or foreign
 896 limited liability company.

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

898 (c) If the registered agent is to be changed, the name of
 899 the new registered agent.

900 (d) The street address of its current registered office
 901 for its registered agent.

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

905 (2) If the registered agent is changed, the written
 906 acceptance of the successor registered agent described in s.
 907 608.7813(2) must also be included in or attached to the
 908 statement of change.

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

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

917 608.7815 Resignation of registered agent.-

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

923 (2) After filing the statement with the department, the
 924 registered agent shall mail a copy to the limited liability

CS/HB 1079

2013

925 company's or foreign limited liability company's current mailing
926 address.

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

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

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

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

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

944 608.7816 Change of name or address by registered agent.—

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

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

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

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

954 (d) If the address of the agent has changed, the new
955 address.

956 (e) The registered agent has given the notice required by
957 subsection (2).

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

962 608.7817 Service of process, notice, or demand.-

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

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

972 (a) On a member of a member-managed limited liability
973 company; or

974 (b) On a manager of a manager-managed limited liability
975 company.

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

981 (4) Service of a process, notice, or demand on the
 982 department may be made by delivering to and leaving with the
 983 department duplicate copies of the process, notice, or demand.

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

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

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

991 608.7818 Delivery of record.—

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

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

998 608.7819 Waiver of notice.—When, pursuant to this chapter
 999 or the articles of organization or operating agreement of a
 1000 limited liability company, notice is required to be given to a
 1001 member of a limited liability company or to a manager of a
 1002 limited liability company having a manager or managers, a waiver
 1003 in writing signed by the person or persons entitled to the
 1004 notice, whether made before or after the time for notice to be
 1005 given, is equivalent to the giving of notice.

1006 608.7821 Formation of limited liability company; articles
 1007 of organization.—

1008 (1) One or more persons may act as authorized

1009 representatives to form a limited liability company by signing
 1010 and delivering to the department, for filing, articles of
 1011 organization.

1012 (2) The articles of organization must state:

1013 (a) The name of the limited liability company, which must
 1014 comply with s. 608.7812.

1015 (b) The street and mailing addresses of the company's
 1016 principal office.

1017 (c) The name, street address in this state, and written
 1018 acceptance of the company's initial registered agent.

1019 (3) The articles of organization may contain statements as
 1020 to matters other than those required by subsection (2), but may
 1021 not vary or otherwise affect the provisions specified in s.
 1022 608.7805(3) in a manner inconsistent with that section.

1023 Additional statements may include the following:

1024 (a) A declaration as to whether the limited liability
 1025 company is manager-managed for purposes of s. 608.7846 and other
 1026 relevant provisions of this chapter.

1027 (b) For a manager-managed limited liability company, the
 1028 names and addresses of one or more of the managers of the
 1029 company.

1030 (c) For a member-managed limited liability company, the
 1031 name and address of one or more of the members of the company.

1032 (d) A description of the authority or limitation on the
 1033 authority of a person holding a position or having a specified
 1034 status in a company, or a description of the authority or
 1035 limitation on the authority of a specific person.

1036 (e) Other relevant matters.

1037 (4) A limited liability company is formed when the
1038 company's articles of organization become effective under s.
1039 608.7827, and at least one person becomes a member at the time
1040 that the articles of organization become effective. The person
1041 who signs the articles of organization must affirm that the
1042 company has or will have at least one member as of the time the
1043 articles of organization become effective.

1044 608.7822 Amendment or restatement of articles of
1045 organization.—

1046 (1) The articles of organization may be amended or
1047 restated at any time.

1048 (2) To amend the articles of organization, a limited
1049 liability company must deliver to the department for filing an
1050 amendment, designated as such in its heading, which contains:

1051 (a) The present name of the company.

1052 (b) The date of filing of its articles of organization.

1053 (c) The amendment to the articles of organization.

1054 (d) The delayed effective date, pursuant to s. 608.7827,
1055 if the amendment is not effective on the date the department
1056 files the amendment.

1057 (3) To restate its articles of organization, a limited
1058 liability company must deliver to the department for filing an
1059 instrument, entitled "restatement of articles of organization,"
1060 which contains:

1061 (a) The present name of the company.

1062 (b) The date of the filing of its articles of
1063 organization.

1064 (c) All of the provisions of its articles of organization

1065 in effect, as restated.

1066 (d) The delayed effective date, pursuant to s. 608.7827,
 1067 if the restatement is not effective on the date the department
 1068 files the restatement.

1069 (4) A restatement of the articles of organization of a
 1070 limited liability company may also contain one or more
 1071 amendments of the present articles of organization, in which
 1072 case the instrument must be entitled "amended and restated
 1073 articles of organization."

1074 (5) If a member of a member-managed limited liability
 1075 company, or a manager of a manager-managed limited liability
 1076 company, knew that information contained in filed articles of
 1077 organization was inaccurate when the articles of organization
 1078 were filed or became inaccurate due to changed circumstances,
 1079 the member or manager shall promptly:

1080 (a) Cause the articles of organization to be amended; or

1081 (b) If appropriate, deliver to the department for filing a
 1082 statement of change under s. 608.7814 or a statement of
 1083 correction under s. 608.7829.

1084 608.7823 Signing of records to be delivered for filing to
 1085 department.-

1086 (1) A record delivered to the department for filing
 1087 pursuant to this chapter must be signed as follows:

1088 (a) Except as otherwise provided in paragraphs (b) and
 1089 (c), a record signed on behalf of a limited liability company
 1090 must be signed by a person authorized by the company.

1091 (b) A company's initial articles of organization must be
 1092 signed by at least one person acting as an authorized

1093 representative. The articles must also include or have attached
1094 a statement signed by the initial registered agent in the form
1095 described in s. 608.7813(2).

1096 (c) A record delivered on behalf of a dissolved company
1097 that has no member must be signed by the person winding up the
1098 company's activities and affairs under s. 608.7919(3) or a
1099 person appointed under s. 608.7919(4) to wind up the activities
1100 and affairs.

1101 (d) A statement of denial by a person under s. 608.7833
1102 must be signed by that person.

1103 (e) A record changing the registered agent must also
1104 include or be accompanied by a statement signed by the successor
1105 registered agent in the form described in s. 608.7813(2).

1106 (f) Another record delivered on behalf of a person to the
1107 department must be signed by that person.

1108 (2) A record may also be signed by an agent, legal
1109 representative, or attorney-in-fact, as applicable, if such
1110 person is duly appointed and authorized to sign the record and
1111 the record recites that such person possesses that authority.

1112 (3) A person who signs a record as an agent, legal
1113 representative, or attorney-in-fact affirms as a fact that the
1114 person is authorized to sign the record.

1115 608.7824 Signing and filing pursuant to judicial order.—

1116 (1) If a person who is required by this chapter to sign a
1117 record or deliver a record to the department for filing under
1118 this chapter does not do so, another person who is aggrieved may
1119 petition the circuit court to order:

1120 (a) The person to sign the record;

1121 (b) The person to deliver the record to the department for
 1122 filing; or

1123 (c) The department to file the record unsigned.

1124 (2) If a petitioner under subsection (1) is not the
 1125 limited liability company or foreign limited liability company
 1126 to which the record pertains, the petitioner shall make the
 1127 company a party to the action. The petitioner may seek the
 1128 remedies provided in subsection (1) in the same action in
 1129 combination or in the alternative.

1130 (3) A record filed under paragraph (1)(c) is effective
 1131 without being signed.

1132 608.7825 Liability for inaccurate information in filed
 1133 record.-

1134 (1) If a record delivered to the department for filing
 1135 under this chapter and filed by the department contains
 1136 inaccurate information, a person who suffers a loss by reliance
 1137 on the information may recover damages for the loss from:

1138 (a) A person who signed the record, or caused another to
 1139 sign it on the person's behalf, and knew the information was
 1140 inaccurate at the time the record was signed.

1141 (b) Subject to subsection (2), a member of a member-
 1142 managed limited liability company or the manager of a manager-
 1143 managed limited liability company, if:

1144 1. The record was delivered for filing on behalf of the
 1145 company.

1146 2. The member or manager had notice of the inaccuracy for
 1147 a reasonably sufficient time before the information was relied
 1148 upon so that, before the reliance, the member or manager

1149 reasonably could have:

1150 a. Effected an amendment under s. 608.7822;

1151 b. Filed a petition under s. 608.7824; or

1152 c. Delivered to the department for filing a statement of
1153 change under s. 608.7814 or a statement of correction under s.
1154 608.7829.

1155 (2) To the extent that the operating agreement of a
1156 member-managed limited liability company expressly relieves a
1157 member of responsibility for maintaining the accuracy of
1158 information contained in records delivered on behalf of the
1159 company to the department for filing and imposes that
1160 responsibility on one or more other members, the liability
1161 stated in paragraph (1)(b) applies to those other members and
1162 not to the member that the operating agreement relieves of the
1163 responsibility.

1164 (3) An individual who signs a record authorized or
1165 required to be filed under this chapter affirms under penalty of
1166 perjury that the information stated in the record is accurate.
1167 608.7826 Filing requirements.—

1168 (1) A record authorized or required to be delivered to the
1169 department for filing must be captioned to describe the record's
1170 purpose, be in a medium permitted by the department, and be
1171 delivered to the department. Unless the department determines
1172 that a record does not comply with the filing requirements, and
1173 if all filing fees are paid, the department shall file the
1174 record.

1175 (2) Upon request and payment of the applicable fee, the
1176 department shall send to the requester a certified copy of the

1177 | requested record.

1178 | (3) If the department has prescribed a mandatory medium or
 1179 | form for the record being filed, the record must be in the
 1180 | prescribed medium or on the prescribed form.

1181 | (4) Except as otherwise provided by the department, a
 1182 | document to be filed by the department must be typewritten or
 1183 | printed, legible, and written in the English language. A limited
 1184 | liability company name does not need to be in English if written
 1185 | in English letters or Arabic or Roman numerals, and the
 1186 | certificate of existence required of a foreign limited liability
 1187 | company, does not need to be in English if accompanied by a
 1188 | reasonably authenticated English translation. If the department
 1189 | has prescribed a mandatory form for the document to be filed,
 1190 | the document must be in or on the prescribed form. The
 1191 | department may prescribe forms in electronic format that comply
 1192 | with this chapter. The department may also use electronic
 1193 | transmissions for the purposes of notice and communication in
 1194 | the performance of its duties and may require filers and
 1195 | registrants to furnish email addresses when presenting a
 1196 | document for filing.

1197 | 608.7827 Effective date and time.—Except as otherwise
 1198 | provided in s. 608.7828, and subject to s. 608.7829(3), a
 1199 | document delivered to the department for filing may specify an
 1200 | effective time and a delayed effective date. In the case of
 1201 | initial articles of organization, a previous effective date may
 1202 | be specified in the articles of organization, provided such date
 1203 | is within 5 business days before the date of filing. Subject to
 1204 | ss. 608.7814, 608.7815, and 608.7829, a record filed by the

1205 department is effective:

1206 (1) If the record does not specify an effective time and
 1207 does not specify a previous or a delayed effective date, on the
 1208 date and when the record is filed as evidenced by the
 1209 department's endorsement of the date and time on the record.

1210 (2) If the record specifies an effective time but not a
 1211 previous or delayed effective date, on the date the record is
 1212 filed at the time specified in the record.

1213 (3) If the record specifies a delayed effective date but
 1214 not an effective time, at 12:01 a.m. on the earlier of:

1215 (a) The specified date; or
 1216 (b) The 90th day after the record is filed.

1217 (4) If the record specifies a date before the effective
 1218 date but no effective time, at 12:01 a.m. on the later of:

1219 (a) The specified date; or
 1220 (b) The 5th business day before the record is filed.

1221 (5) If the record specifies an effective time and a
 1222 delayed effective date, at the specified time on the earlier of:

1223 (a) The specified date; or
 1224 (b) The 90th day after the record is filed.

1225 (6) If the record specifies an effective time and a
 1226 previous effective date, at the specified time on the later of:

1227 (a) The specified date; or
 1228 (b) The 5th business day before the record is filed.

1229 608.7828 Withdrawal of filed record before effectiveness.—

1230 (1) Except as otherwise provided in ss. 608.916-608.972, a
 1231 record delivered to the department for filing may be withdrawn
 1232 before it takes effect by delivering to the department for

1233 | filing a withdrawal statement.

1234 | (2) A withdrawal statement must:

1235 | (a) Be signed by each person who signed the record being

1236 | withdrawn, except as otherwise agreed by those persons.

1237 | (b) Identify the record to be withdrawn.

1238 | (c) If not signed by all the persons who signed the record

1239 | being withdrawn, state that the record is withdrawn in

1240 | accordance with the agreement of all the persons who signed the

1241 | record.

1242 | (3) Upon the filing by the department of a withdrawal

1243 | statement, the action or transaction evidenced by the original

1244 | record does not take effect.

1245 | 608.7829 Correcting filed record.—

1246 | (1) A person on whose behalf a filed record was delivered

1247 | to the department for filing may correct the record if:

1248 | (a) The record at the time of filing was inaccurate;

1249 | (b) The record was defectively signed; or

1250 | (c) The electronic transmission of the record to the

1251 | department was defective.

1252 | (2) To correct a filed record, a person on whose behalf

1253 | the record was delivered to the department must deliver to the

1254 | department for filing a statement of correction.

1255 | (3) A statement of correction:

1256 | (a) May not state a delayed effective date.

1257 | (b) Must be signed by the person correcting the filed

1258 | record.

1259 | (c) Must identify the filed record to be corrected.

1260 | (d) Must specify the inaccuracy or defect to be corrected.

1261 (e) Must correct the inaccuracy or defect.

1262 (4) A statement of correction is effective as of the
 1263 effective date of the filed record that it corrects, except for
 1264 purposes of s. 608.7803(4) and as to persons relying on the
 1265 uncorrected filed record and adversely affected by the
 1266 correction. For those purposes and as to those persons, the
 1267 statement of correction is effective when filed.

1268 608.78291 Duty of department to file; review of refusal to
 1269 file; transmission of information by department.—

1270 (1) The department is considered to file a document by
 1271 stamping or otherwise endorsing the document as filed, together
 1272 with the department official title and the date and time of
 1273 receipt.

1274 (2) After filing a record, the department shall deliver an
 1275 acknowledgment of the filing or certified copy of the document
 1276 to the company or foreign limited liability company or its
 1277 authorized representative.

1278 (3) If the department refuses to file a record, the
 1279 department shall, within 15 days after the record is delivered:

1280 (a) Return the record or notify the person that submitted
 1281 the record of the refusal.

1282 (b) Provide a brief explanation in a record of the reason
 1283 for the refusal.

1284 (4) If the applicant returns the document with corrections
 1285 in accordance with the rules of the department within 60 days
 1286 after it was mailed to the applicant by the department and, if
 1287 at the time of return, the applicant so requests in writing, the
 1288 filing date of the document is the filing date that would have

1289 been applied had the original document not been deficient,
1290 except as to persons who relied on the record before correction
1291 and were adversely affected.

1292 (5) The department's duty to file documents under this
1293 section is ministerial. Filing or refusing to file a document
1294 does not:

1295 (a) Affect the validity or invalidity of the document in
1296 whole or part;

1297 (b) Relate to the correctness or incorrectness of
1298 information contained in the document; or

1299 (c) Create a presumption that the document is valid or
1300 invalid or that information contained in the document is correct
1301 or incorrect.

1302 (6) If not otherwise provided by law and this chapter, the
1303 department shall determine, by rule, the appropriate format for,
1304 number of copies of, manner of execution of, method of
1305 electronic transmission of, and amount of and method of payment
1306 of fees for a document placed under its jurisdiction.

1307 (7) If the department refuses to file a record, the person
1308 who submitted the record may petition the circuit court to
1309 compel filing of the record. The record and the explanation of
1310 the department of the refusal to file must be attached to the
1311 petition. The court may decide the matter in a summary
1312 proceeding.

1313 (8) Except as otherwise provided by s. 608.7817 or by any
1314 law other than this chapter, the department may deliver a record
1315 to a person by delivering it:

1316 (a) In person to the person that submitted it;

1317 (b) To the address of the person's registered agent;
 1318 (c) To the principal office of the person; or
 1319 (d) To another address the person provides to the
 1320 department for delivery.
 1321 608.78292 Certificate of status.—
 1322 (1) Upon request of a person, the department shall issue a
 1323 certificate of status for a limited liability company if the
 1324 records filed show that the department has accepted and filed
 1325 its articles of organization. A certificate of status must
 1326 state:
 1327 (a) The company's name.
 1328 (b) That the company was duly formed under the laws of
 1329 this state and the date of formation.
 1330 (c) Whether all fees and penalties due to the department
 1331 under this chapter have been paid.
 1332 (d) Whether the company's most recent annual report
 1333 required by s. 608.78293 has been filed by the department.
 1334 (e) Whether the department has administratively dissolved
 1335 the company or received a record notifying the department that
 1336 the company has been dissolved by judicial action pursuant to s.
 1337 608.7915.
 1338 (f) Whether the department has filed articles of
 1339 dissolution for the company.
 1340 (g) Whether the department has accepted and filed a
 1341 statement of termination.
 1342 (2) The department, upon request and payment of the
 1343 requisite fee, shall furnish a certificate of status for a
 1344 foreign limited liability company if the records filed show that

1345 the department has filed a certificate of authority. A
 1346 certificate of status for a foreign limited liability company
 1347 must state:

1348 (a) The company's name and a current alternate name
 1349 adopted under s. 608.905(1) for use in this state.

1350 (b) That the company is authorized to transact business in
 1351 this state.

1352 (c) Whether all fees and penalties due to the department
 1353 under this chapter or other law have been paid.

1354 (d) Whether the company's most recent annual report
 1355 required by s. 608.78293 has been filed by the department.

1356 (e) Whether the department has:

1357 1. Revoked the company's certificate of authority; or

1358 2. Filed a notice of withdrawal of certificate of
 1359 authority.

1360 (3) Subject to a qualification stated in the articles of
 1361 organization, a certificate of status issued by the department
 1362 is conclusive evidence that the limited liability company is in
 1363 existence or the foreign limited liability company is authorized
 1364 to transact business in this state.

1365 608.78293 Annual report for department.-

1366 (1) A limited liability company or a registered foreign
 1367 limited liability company shall deliver to the department for
 1368 filing an annual report that states:

1369 (a) The name of the limited liability company or, if a
 1370 foreign limited liability company, the name under which the
 1371 foreign limited liability company is registered to transact
 1372 business in this state.

1373 (b) The street address of its principal office and its
1374 mailing address.

1375 (c) The date of its organization, or if a foreign limited
1376 liability company, the jurisdiction of its formation, and the
1377 date on which it became qualified to transact business in this
1378 state.

1379 (d) The company's federal employer identification number
1380 or, if none, whether one was applied for.

1381 (e) The name, title or capacity, and address of at least
1382 one person who has the authority to manage the company.

1383 (f) Additional information that is necessary or
1384 appropriate to enable the department to carry out this chapter.

1385 (2) Information in the annual report must be current as of
1386 the date the report is delivered to the department for filing.

1387 (3) The first annual report must be delivered to the
1388 department between January 1 and May 1 of the year after the
1389 calendar year in which the limited liability company's articles
1390 of organization became effective or the foreign limited
1391 liability company registered to transact business in this state.
1392 Subsequent annual reports must be delivered to the department
1393 between January 1 and May 1 of each calendar year thereafter. If
1394 one or more forms of annual report are submitted for a calendar
1395 year, the department shall file each of them and make the
1396 information contained in them part of the official record. The
1397 first form of annual report filed in a calendar year will be
1398 considered the annual report for that calendar year, and each
1399 report filed after that one in the same calendar year will be
1400 treated as an amended report for that calendar year.

1401 (4) If an annual report does not contain the information
1402 required in this section, the department shall promptly notify
1403 the reporting limited liability company or registered foreign
1404 limited liability company. If the report is corrected to contain
1405 the information required in subsection (1) and delivered to the
1406 department within 30 days after the effective date of the
1407 notice, it is timely delivered.

1408 (5) If an annual report contains the name or address of a
1409 registered agent that differs from the information shown in the
1410 records of the department immediately before the annual report
1411 becomes effective, the differing information in the annual
1412 report is considered a statement of change under s. 608.7814.

1413 (6) A limited liability company or foreign limited
1414 liability company that fails to file an annual report that
1415 complies with the requirements of this section may not maintain
1416 or defend an action in a court of this state until the report is
1417 filed and all fees due under this chapter are paid. The company
1418 is subject to dissolution or cancellation of its certificate of
1419 authority to transact business as provided in this chapter.

1420 (7) The department shall prescribe the forms, which may be
1421 in an electronic format, on which to make the annual report
1422 called for in this section and may substitute the uniform
1423 business report, pursuant to s. 606.06, as a means of satisfying
1424 the requirement of this chapter.

1425 (8) As a condition of a merger under s. 608.925, each
1426 party to a merger that exists under the laws of this state, and
1427 each party to the merger that exists under the laws of another
1428 jurisdiction and is authorized to transact business or conduct

1429 its affairs in this state, must be active and current in filing
1430 its annual reports in the records of the department through
1431 December 31st of the calendar year in which the articles of
1432 merger are submitted to the department for filing.

1433 (9) As a condition of a conversion of an entity into a
1434 limited liability company under s. 608.941, the entity, if it
1435 exists under the laws of this state, or if it exists under the
1436 laws of another jurisdiction and is authorized to transact
1437 business or conduct its affairs in this state, must be active
1438 and current in filing its annual reports on the records of the
1439 department through December 31st of the calendar year in which
1440 the articles of conversion are submitted to the department for
1441 filing.

1442 (10) As a condition of a conversion of a limited liability
1443 company into another entity under s. 608.941, the limited
1444 liability company converting to the other type of entity must be
1445 active and current in filing its annual reports in the records
1446 of the department through December 31st of the calendar year in
1447 which the articles of conversion are submitted to the department
1448 for filing.

1449 608.78294 Fees of the department.—The fees of the
1450 department under this chapter are as follows:

1451 (1) Furnishing a certified copy, \$30.

1452 (2) Filing original articles of organization, \$100.

1453 (3) Filing articles of merger of limited liability
1454 companies or other business entities, \$25 per constituent party
1455 to the merger, unless a specific fee is required for a party
1456 under other applicable law.

1457 (4) Filing an annual report, \$50, plus the annual fee
1458 imposed pursuant to s. 607.193 in the amount of \$88.75.

1459 (5) Filing an application for reinstatement after an
1460 administrative or judicial dissolution or a revocation of
1461 authority to transact business, \$100.

1462 (6) Designating a registered agent or changing a
1463 registered agent or registered office address, \$25.

1464 (7) Filing a registered agent's statement of resignation
1465 from an active limited liability company, \$85.

1466 (8) Filing a registered agent's statement of resignation
1467 from a dissolved or revoked limited liability company, \$25.

1468 (9) Filing a statement of change of name of registered
1469 agent or change of registered office address, \$25.

1470 (10) Filing articles of conversion of a limited liability
1471 company, \$25.

1472 (11) Filing articles of domestication, \$25.

1473 (12) Furnishing a certificate of status, \$5.

1474 (13) Filing restated articles of organization, amended and
1475 restated articles of organization, an amendment to the articles
1476 of organization, or an amendment to a restated or an amended and
1477 restated articles of organization, \$25.

1478 (14) Filing an amendment to certificate of authority, \$25.

1479 (15) Filing a notice of withdrawal of certificate of
1480 authority, \$25.

1481 (16) Filing a statement of dissociation, \$25.

1482 (17) Filing a manager's statement of resignation, \$25.

1483 (18) Filing articles of dissolution, \$25.

1484 (19) Filing a certificate of revocation of dissolution,

1485 \$100.

1486 (20) Filing a statement of termination, \$25.

1487 (21) Filing a withdrawal statement, \$25.

1488 (22) Filing a statement of authority, \$25.

1489 (23) Filing an amendment to a statement of authority, \$25.

1490 (24) Filing a statement of denial, \$25.

1491 (25) Filing a cancellation of a statement of authority,

1492 \$25.

1493 (26) Filing a statement of correction, \$25.

1494 (27) Filing a foreign limited liability company's

1495 application for a certificate of authority to transact business,

1496 \$35.

1497 (28) Filing an amended annual report, \$50.

1498 (29) Filing a withdrawal statement of delivered

1499 record before effectiveness, \$25.

1500 (30) Filing a notice of withdrawal of certificate of

1501 authority, \$25.

1502 (31) Filing another limited liability company or foreign

1503 limited liability company document, \$25.

1504 608.78295 Powers of department.—The department has the

1505 power and authority reasonably necessary to administer this

1506 chapter efficiently, to perform the duties imposed upon it, and

1507 to adopt reasonable rules necessary to carry out its duties and

1508 functions under this chapter.

1509 608.78296 Certificates to be received in evidence and

1510 evidentiary effect of copy of filed document.—All certificates

1511 issued by the department in accordance with this chapter shall

1512 be taken and received in all courts, public offices, and

1513 official bodies as prima facie evidence of the facts stated. A
 1514 certificate from the department delivered with a copy of a
 1515 document filed by the department is conclusive evidence that the
 1516 original document is on file with the department.

1517 608.78297 Statement of dissociation or resignation.—

1518 (1) A member of a limited liability company may file a
 1519 statement of dissociation with the department containing:

1520 (a) The name of the limited liability company.

1521 (b) The name and signature of the dissociating member.

1522 (c) The date the member withdrew or will withdraw.

1523 (d) A statement that the company has been notified of the
 1524 dissociation in writing.

1525 (2) A manager in a manager-managed limited liability
 1526 company may file a statement of resignation with the department
 1527 containing:

1528 (a) The name of the limited liability company.

1529 (b) The name and signature of the resigning manager.

1530 (c) The date the resigning manager resigned or will
 1531 resign.

1532 (d) A statement that the limited liability company has
 1533 been notified of the resignation in writing.

1534 608.783 Power to bind limited liability company.—No person
 1535 shall have the power to bind a limited liability company, except
 1536 to the extent the person:

1537 (1) Is an agent of the company by virtue of s. 608.7849.

1538 (2) Has the authority to do so under the articles of
 1539 organization or operating agreement of the company;

1540 (3) Has the authority to do so by a statement of authority

1541 filed under s. 608.7832; or
 1542 (4) Has the status of an agent of the company, or the
 1543 authority or power to bind the company, under a law other than
 1544 this chapter.
 1545 608.7832 Statement of authority.-
 1546 (1) A limited liability company may file a statement of
 1547 authority. The statement:
 1548 (a) Must include the name of the company as it appears on
 1549 the records of the department, and the street and mailing
 1550 addresses of its principal office.
 1551 (b) With respect to a specified status or position in a
 1552 company, whether as a member, transferee, manager, officer, or
 1553 otherwise, may state the authority, or limitations on the
 1554 authority, of all persons having such status or holding such
 1555 position to:
 1556 1. Execute an instrument transferring real property held
 1557 in the name of the company; or
 1558 2. Enter into other transactions on behalf of, or
 1559 otherwise act for or bind, the company.
 1560 (c) May state the authority, or limitations on the
 1561 authority, of a specific person to:
 1562 1. Execute an instrument transferring real property held
 1563 in the name of the company; or
 1564 2. Enter into other transactions on behalf of, or
 1565 otherwise act for or bind, the company.
 1566 (2) To amend or cancel a statement of authority filed by
 1567 the department, a limited liability company must deliver to the
 1568 department for filing an amendment or cancellation stating:

1569 (a) The name of the company as it appears on the records
1570 of the department.

1571 (b) The street and mailing addresses of the limited
1572 liability company's principal office.

1573 (c) The effective date of the statement being affected
1574 became effective.

1575 (d) The contents of the amendment or a declaration that
1576 affected statement is canceled.

1577 (3) A statement of authority affects only the power of a
1578 person to bind a limited liability company to persons that are
1579 not members.

1580 (4) Subject to subsection (3) and s. 608.7803(4) and
1581 except as otherwise provided in subsections (6), (7), and (8), a
1582 limitation on the authority of a person or a position contained
1583 in an effective statement of authority is not by itself evidence
1584 of knowledge or notice of the limitation by a person.

1585 (5) Subject to subsection (3), a grant of authority not
1586 pertaining to transfers of real property and contained in an
1587 effective statement of authority is conclusive in favor of a
1588 person that gives value in reliance on the grant, except to the
1589 extent that when the person gives value:

1590 (a) The person has knowledge to the contrary;

1591 (b) The statement has been canceled or restrictively
1592 amended under subsection (2); or

1593 (c) A limitation on the grant is contained in another
1594 statement of authority that became effective after the statement
1595 containing the grant became effective.

1596 (6) Subject to subsection (3), an effective statement of

1597 authority that grants authority to transfer real property held
1598 in the name of the limited liability company, a certified copy
1599 of which statement is recorded in the office for recording
1600 transfers of the real property, is conclusive in favor of a
1601 person that gives value in reliance on the grant without
1602 knowledge to the contrary, except to the extent that when the
1603 person gives value:

1604 (a) The statement has been canceled or restrictively
1605 amended under subsection (2), and a certified copy of the
1606 cancellation or restrictive amendment has been recorded in the
1607 office for recording transfers of the real property; or

1608 (b) A limitation on the grant is contained in another
1609 statement of authority that became effective after the statement
1610 containing the grant became effective, and a certified copy of
1611 the later effective statement is recorded in the office for
1612 recording transfers of the real property.

1613 (7) Subject to subsection (3), if a certified copy of an
1614 effective statement containing a limitation on the authority to
1615 transfer real property held in the name of a limited liability
1616 company is recorded in the office for recording transfers of
1617 that real property, all persons are deemed to know of the
1618 limitation.

1619 (8) Subject to subsection (9), effective articles of
1620 dissolution or termination are a cancellation of a filed
1621 statement of authority for the purposes of subsection (6) and
1622 are a limitation on authority for the purposes of subsection
1623 (7).

1624 (9) After a company's articles of dissolution become

1625 effective, a limited liability company may deliver to the
1626 department for filing and, if appropriate, may record a
1627 statement of authority in accordance with subsection (1) that is
1628 designated as a post-dissolution statement of authority. The
1629 statement operates as provided in subsections (6) and (7).

1630 (10) Unless earlier canceled, an effective statement of
1631 authority is canceled by operation of law 5 years after the date
1632 on which the statement, or its most recent amendment, becomes
1633 effective. This cancellation operates without need for a
1634 recording under subsection (6) or (7). An effective statement of
1635 denial operates as a restrictive amendment under this section
1636 and may be recorded by certified copy for the purposes of
1637 paragraph (6) (a).

1638 (11) A statement of dissociation or a statement of
1639 resignation filed pursuant to s. 608.78297 terminates the
1640 authority of the person who filed the statement.

1641 608.7833 Statement of denial.—A person named in a filed
1642 statement of authority granting that person authority may
1643 deliver to the department for filing a statement of denial
1644 signed by that person that:

1645 (1) Provides the name of the limited liability company and
1646 the caption of the statement of authority to which the statement
1647 of denial pertains.

1648 (2) Denies the grant of authority.

1649 608.7834 Liability of members and managers.—

1650 (1) A debt, obligation, or other liability of a limited
1651 liability company is solely the debt, obligation, or other
1652 liability of the company. A member or manager is not personally

1653 liable, directly or indirectly, by way of contribution or
1654 otherwise, for a debt, obligation, or other liability of the
1655 company solely by reason of being or acting as a member or
1656 manager. This subsection applies regardless of the dissolution
1657 of the company.

1658 (2) The failure of a limited liability company to observe
1659 formalities relating to the exercise of its powers or management
1660 of its activities and affairs is not a ground for imposing
1661 liability on a member or manager of the company for a debt,
1662 obligation, or other liability of the company.

1663 608.784 Becoming a member.—

1664 (1) If a limited liability company is to have only one
1665 member upon formation, the person becomes a member as agreed by
1666 that person and the authorized representative of the company.
1667 That person and the authorized representative may be, but need
1668 not be, different persons. If different persons, the authorized
1669 representative acts on behalf of the initial member.

1670 (2) If a limited liability company is to have more than
1671 one member upon formation, those persons become members as
1672 agreed by the persons before the formation of the company. The
1673 authorized representative acts on behalf of the persons in
1674 forming the company and may be, but need not be, one of the
1675 persons.

1676 (3) After formation of a limited liability company, a
1677 person becomes a member:

1678 (a) As provided in the operating agreement;

1679 (b) As the result of a merger, interest exchange
1680 conversion, or domestication under ss. 608.916-608.972, as

1681 applicable;

1682 (c) With the consent of all the members; or

1683 (d) As provided in s. 608.7911(3).

1684 (4) A person may become a member without acquiring a
1685 transferable interest and without making or being obligated to
1686 make a contribution to the limited liability company.

1687 608.7841 Form of contribution.—A contribution may consist
1688 of tangible or intangible property or other benefit to a limited
1689 liability company, including money, services performed,
1690 promissory notes, other agreements to contribute money or
1691 property, and contracts for services to be performed.

1692 608.7842 Liability for contributions.—

1693 (1) A promise by a member to contribute to the limited
1694 liability company is not enforceable unless it is set out in a
1695 writing signed by the member.

1696 (2) A person's obligation to make a contribution to a
1697 limited liability company is not excused by the person's death,
1698 disability, or other inability to perform personally.

1699 (3) If a person does not fulfill an obligation to make a
1700 contribution other than money, the person is obligated at the
1701 option of the limited liability company to contribute money
1702 equal to the value of the part of the contribution that has not
1703 been made. The foregoing option is in addition to, and not in
1704 lieu of, other rights, including the right to specific
1705 performance, that the limited liability company may have against
1706 such member under the articles of organization or operating
1707 agreement, or applicable law.

1708 (4) The obligation of a person to make a contribution may

1709 be compromised only by consent of all members. A creditor of a
 1710 limited liability company which extends credit or otherwise acts
 1711 in reliance on an obligation enforceable under subsection (1)
 1712 without notice of a compromise may enforce the obligation.

1713 (5) An operating agreement may provide that the limited
 1714 liability company interest of a member who fails to make a
 1715 contribution that the member is obligated to make is subject to
 1716 specified penalties for, or specified consequences of, the
 1717 failure. The penalty or consequence may take the form of
 1718 reducing or eliminating the defaulting member's proportionate
 1719 interest in a limited liability company, subordinating the
 1720 member's limited liability company interest to that of
 1721 nondefaulting members, a forced sale of that limited liability
 1722 company interest, forfeiture of the defaulting member's limited
 1723 liability company interest, the lending by other members of the
 1724 amount necessary to meet the defaulting member's commitment, a
 1725 fixing of the value of the defaulting member's limited liability
 1726 company interest by appraisal or by formula and redemption or
 1727 sale of the limited liability company interest at such value, or
 1728 other penalty or consequence.

1729 608.7843 Sharing of distributions before dissolution and
 1730 profits and losses.—

1731 (1) Distributions made by a limited liability company
 1732 before its dissolution and winding up must be shared by the
 1733 members and persons dissociated as members on the basis of the
 1734 agreed value, as stated in the company's records, of the
 1735 contributions made by each of them to the extent they have been
 1736 received by the company, except to the extent necessary to

1737 comply with a transfer effective under s. 608.7856 or charging
1738 order in effect under s. 608.7857.

1739 (2) A person has a right to a distribution before the
1740 dissolution and winding up of a limited liability company only
1741 if the company decides to make an interim distribution. A
1742 person's dissociation does not entitle the person to a
1743 distribution.

1744 (3) A person does not have a right to demand or receive a
1745 distribution from a limited liability company in a form other
1746 than money. Except as otherwise provided in s. 608.7920(4), a
1747 limited liability company may distribute an asset in kind only
1748 if each part of the asset is fungible with each other part and
1749 each person receives a percentage of the asset equal in value to
1750 the person's share of distributions.

1751 (4) If a member or transferee becomes entitled to receive
1752 a distribution, the member or transferee has the status of, and
1753 is entitled to all remedies available to, a creditor of the
1754 limited liability company with respect to the distribution.

1755 (5) Profits and losses of a limited liability company must
1756 be allocated among the members and persons dissociated as
1757 members on the basis of the agreed value, as stated in the
1758 company's records, of the contributions made by each of them to
1759 the extent they have been received by the company.

1760 608.7844 Limitations on distributions.—

1761 (1) A limited liability company may not make a
1762 distribution, including a distribution under s. 608.7920, if
1763 after the distribution:

1764 (a) The company would not be able to pay its debts as they

1765 become due in the ordinary course of the company's activities
 1766 and affairs; or

1767 (b) The company's total assets would be less than the sum
 1768 of its total liabilities, plus the amount that would be needed
 1769 if the company were to be dissolved and wound up at the time of
 1770 the distribution, to satisfy the preferential rights upon
 1771 dissolution and winding up of members and transferees whose
 1772 preferential rights are superior to those of persons receiving
 1773 the distribution.

1774 (2) A limited liability company may base a determination
 1775 that a distribution is not prohibited under subsection (1) on:

1776 (a) Financial statements prepared on the basis of
 1777 accounting practices and principles that are reasonable under
 1778 the circumstances; or

1779 (b) A fair valuation or other method that is reasonable
 1780 under the circumstances.

1781 (3) Except as otherwise provided in subsection (5), the
 1782 effect of a distribution under subsection (1) is measured:

1783 (a) In the case of a distribution by purchase, redemption,
 1784 or other acquisition of a transferable interest in the company,
 1785 as of the earlier of:

1786 1. The date money or other property is transferred or the
 1787 debt is incurred by the company.

1788 2. The date the person entitled to distribution ceases to
 1789 own the interest or right being acquired by the company in
 1790 return for the distribution.

1791 (b) In the case of another distribution of indebtedness,
 1792 as of the date the indebtedness is distributed.

1793 (c) In all other cases, as of the date:
 1794 1. The distribution is authorized, if the payment occurs
 1795 within 120 days after that date; or
 1796 2. The payment is made, if the payment occurs more than
 1797 120 days after the distribution is authorized.
 1798 (4) A limited liability company's indebtedness to a member
 1799 or transferee incurred by reason of a distribution made in
 1800 accordance with this section is at parity with the company's
 1801 indebtedness to its general, unsecured creditors, except to the
 1802 extent subordinated by agreement.
 1803 (5) A limited liability company's indebtedness, including
 1804 indebtedness issued as a distribution, is not a liability for
 1805 purposes of subsection (1) if the terms of the indebtedness
 1806 provide that payment of principal and interest is made only if
 1807 and to the extent that a distribution could then be made under
 1808 this section. If the indebtedness is issued as a distribution,
 1809 and by its terms provides that the payments of principal and
 1810 interest are made only to the extent a distribution could be
 1811 made under this section, then each payment of principal or
 1812 interest of that indebtedness is treated as a distribution, the
 1813 effect of which is measured on the date the payment is actually
 1814 made.
 1815 (6) In measuring the effect of a distribution under s.
 1816 608.7920, the liabilities of a dissolved limited liability
 1817 company do not include a claim that is disposed of under ss.
 1818 608.7920-608.7923.
 1819 608.7845 Liability for improper distributions.-
 1820 (1) Except as otherwise provided in subsection (2), if a

1821 member of a member-managed limited liability company or manager
1822 of a manager-managed limited liability company consents to a
1823 distribution made in violation of s. 608.7844 and in consenting
1824 to the distribution fails to comply with s. 608.7851, the member
1825 or manager is personally liable to the company for the amount of
1826 the distribution which exceeds the amount that could have been
1827 distributed without the violation of s. 608.7844. A member of a
1828 member-managed limited liability company or manager of a
1829 manager-managed limited liability company may base a
1830 determination that a distribution is not prohibited under s.
1831 608.7844 on financial statements prepared on the basis of
1832 accounting practices and principles that are reasonable under
1833 the circumstances or on a fair valuation or other method that is
1834 reasonable under the circumstances.

1835 (2) To the extent the operating agreement of a member-
1836 managed limited liability company expressly relieves a member of
1837 the authority and responsibility to consent to distributions and
1838 imposes that authority and responsibility on one or more other
1839 members, the liability in subsection (1) applies to the other
1840 members and not the member that the operating agreement relieves
1841 of authority and responsibility.

1842 (3) A person who receives a distribution knowing that the
1843 distribution violated s. 608.7844 is personally liable to the
1844 limited liability company but only to the extent that the
1845 distribution received by the person exceeded the amount that
1846 could have been properly paid.

1847 (4) A person against which an action is commenced because
1848 that person is or may be liable under subsection (1) may:

1849 (a) Implead another person that is or may be liable under
1850 subsection (1) and seek to enforce a right of contribution from
1851 the person.

1852 (b) Implead a person that received a distribution in
1853 violation of subsection (3) and seek to enforce a right of
1854 contribution from an impleaded person in the amount the person
1855 received in violation of subsection (3).

1856 (5) An action under this section is barred unless
1857 commenced within 2 years after the distribution.

1858 608.7846 Management of limited liability company.—

1859 (1) A limited liability company is a member-managed
1860 limited liability company unless the operating agreement or
1861 articles of organization:

1862 (a) Expressly provide that:

1863 1. The company is or will be manager-managed;

1864 2. The company is or will be managed by managers; or

1865 3. Management of the company is or will be vested in
1866 managers; or

1867 (b) Includes words of similar import, except that, unless
1868 the context in which the expression is used otherwise requires,
1869 the terms "managing member" and "managing members" do not, in
1870 and of themselves, constitute words of similar import for this
1871 purpose.

1872 (2) In a member-managed limited liability company, the
1873 management and conduct of the company are vested in the members,
1874 except as expressly provided in this chapter.

1875 (3) In a manager-managed limited liability company, a
1876 matter relating to the activities and affairs of the company is

1877 decided exclusively by the manager, or if there is more than one
 1878 manager, by the managers, except as expressly provided in this
 1879 chapter.

1880 (4) A member is not entitled to remuneration for services
 1881 performed for a member-managed limited liability company, except
 1882 for reasonable compensation for services rendered in winding up
 1883 the activities and affairs of the company, in the absence of an
 1884 agreement to the contrary.

1885 (5) A limited liability company shall reimburse a member
 1886 for an advance to the company beyond the amount of capital the
 1887 member agreed to contribute.

1888 (6) The dissolution of a limited liability company does
 1889 not affect the applicability of ss. 608.7846-608.7849. However,
 1890 a person who wrongfully causes dissolution of the company loses
 1891 the right to participate in management as a member and a
 1892 manager.

1893 608.7847 Selection and terms of managers in a manager-
 1894 managed limited liability company.-In a manager-managed limited
 1895 liability company, the following rules apply:

1896 (1) A manager may be chosen at any time by the consent of
 1897 the member or members holding more than 50 percent of the then
 1898 current percentage or other interest in the profits of the
 1899 limited liability company owned by all of its members.

1900 (2) A person need not be a member to be a manager.

1901 (3) A person chosen as a manager continues as a manager
 1902 until a successor is chosen, unless the manager at an earlier
 1903 time resigns, is removed, or dies or, in the case of a manager
 1904 that is not an individual, terminates.

1905 (4) A manager may be removed at any time without notice or
 1906 cause by the consent of the member or members holding more than
 1907 50 percent of the then current percentage or other interest in
 1908 the profits of the limited liability company owned by all of its
 1909 members.

1910 (5) The dissociation of a member that is also a manager
 1911 removes the person as a manager.

1912 (6) If a person who is both a manager and a member ceases
 1913 to be a manager, that cessation does not, by itself, dissociate
 1914 the person as a member.

1915 (7) A person's ceasing to be a manager does not discharge
 1916 a debt, obligation, or other liability to the limited liability
 1917 company or members which the person incurred while a manager.

1918 608.7848 Voting rights of members and managers.—

1919 (1) In a member-managed limited liability company, the
 1920 following rules apply:

1921 (a) Each member has the right to vote with respect to the
 1922 management and conduct of the company's activities and affairs.

1923 (b) Each member's vote is proportionate to that member's
 1924 then current percentage or other interest in the profits of the
 1925 limited liability company owned by all members.

1926 (c) Except as otherwise provided in this chapter, the
 1927 affirmative vote or consent of a majority-in-interest of the
 1928 members is required to undertake an act, whether within or
 1929 outside the ordinary course of the company's activities and
 1930 affairs, including a transaction under ss. 608.916-608.972.

1931 (d) The operating agreement and articles of organization
 1932 may be amended only with the affirmative vote or consent of all

1933 | members.

1934 | (2) In a manager-managed limited liability company, the

1935 | following rules apply:

1936 | (a) Each manager has equal rights in the management and

1937 | conduct of the company's activities and affairs.

1938 | (b) Except as expressly provided in this chapter, a matter

1939 | relating to the activities and affairs of the company shall be

1940 | decided by the manager; if there is more than one manager, by

1941 | the affirmative vote or consent of a majority of the managers;

1942 | or if the action is taken without a meeting, then by their

1943 | unanimous consent in a record.

1944 | (c) Each member's vote is proportionate to that member's

1945 | then current percentage or other interest in the profits of the

1946 | limited liability company owned by all members.

1947 | (d) Except as otherwise provided in this chapter, the

1948 | affirmative vote or consent of a majority-in-interest of the

1949 | members is required to undertake an act outside the ordinary

1950 | course of the company's activities and affairs, including a

1951 | transaction under ss. 608.916-608.972.

1952 | (e) The operating agreement and articles of organization

1953 | may be amended only with the affirmative vote or consent of all

1954 | members.

1955 | (3) If a member has transferred all or a portion of the

1956 | member's transferable interest in the limited liability company

1957 | to a person who is not admitted as a member and the transferring

1958 | member has not been dissociated in accordance with s.

1959 | 608.7862(4), the transferring member continues to be entitled to

1960 | vote on an action reserved to the members, with the vote of the

1961 transferring member being proportionate to the current
 1962 percentage or other interest in the profits of the limited
 1963 liability company owned by all members that the transferring
 1964 member would have if the transfer not occurred.

1965 (4) An action requiring the vote or consent of members
 1966 under this chapter may be taken without a meeting, and a member
 1967 may appoint a proxy or other agent to vote or consent for the
 1968 member by signing an appointing record, personally or by the
 1969 member's agent. On an action taken by less than all of the
 1970 members without a meeting, notice of the action must be given to
 1971 those members who did not consent in writing to the action or
 1972 who were not entitled to vote on the action within 10 days after
 1973 the action was taken.

1974 (5) An action requiring the vote or consent of managers
 1975 under this chapter may be taken without a meeting, if the action
 1976 is unanimously approved by the managers in a record, and a
 1977 manager may appoint a proxy or other agent to vote or consent
 1978 for the manager by signing an appointing record, personally or
 1979 by the manager's agent.

1980 (6) Meetings of members and meetings of managers may be
 1981 held by a conference telephone call or other communications
 1982 equipment if all persons participating in the meeting can hear
 1983 each other. Participation in a meeting pursuant to this section
 1984 constitutes presence in person at the meeting.

1985 608.7849 Agency rights of members and managers.-

1986 (1) In a member-managed limited liability company, the
 1987 following rules apply:

1988 (a) Except as provided in subsection (3), each member is

1989 an agent of the limited liability company for the purpose of its
 1990 activities and affairs. An act of a member, including signing an
 1991 agreement or instrument of transfer in the name of the company
 1992 for apparently carrying on in the ordinary course the company's
 1993 activities and affairs, or activities and affairs of the kind
 1994 carried on by the company, binds the company unless the member
 1995 had no authority to act for the company in the particular matter
 1996 and the person with whom the member was dealing knew or had
 1997 notice that the member lacked authority.

1998 (b) An act of a member which is not done for apparently
 1999 carrying on in the ordinary course the limited liability
 2000 company's activities and affairs, or activities and affairs of
 2001 the kind carried on by the company, binds the company only if
 2002 the act was authorized by appropriate vote of the members.

2003 (2) In a manager-managed limited liability company, the
 2004 following rules apply:

2005 (a) A member is not an agent of the limited liability
 2006 company for the purpose of its business solely by reason of
 2007 being a member.

2008 (b) Except as provided in subsection (3), each manager is
 2009 an agent of the limited liability company for the purpose of its
 2010 business, and an act of a manager, including signing an
 2011 agreement or instrument of transfer in the name of the company,
 2012 for apparently carrying on in the ordinary course the company's
 2013 business or business of the kind carried on by the company binds
 2014 the company, unless the manager had no authority to act for the
 2015 company in the particular matter and the person with whom the
 2016 manager was dealing knew or had notice that the manager lacked

2017 | authority.

2018 | (c) An act of a manager which is not apparently for
 2019 | carrying on in the ordinary course the limited liability
 2020 | company's business or business of the kind carried on by the
 2021 | company, binds the company only if the act was authorized by
 2022 | appropriate vote of the members.

2023 | (3) Unless a certified statement of authority recorded in
 2024 | the applicable real estate records limits the authority of a
 2025 | member, a member of a member-managed company or manager of a
 2026 | manager-managed company may sign and deliver an instrument
 2027 | transferring or affecting the limited liability company's
 2028 | interest in real property. The instrument is conclusive in favor
 2029 | of a person who gives value without knowledge of the lack of the
 2030 | authority of the person signing and delivering the instrument.

2031 | 608.7850 Reimbursement, indemnification, advancement, and
 2032 | insurance.—

2033 | (1) A limited liability company may reimburse a member of
 2034 | a member-managed company or the manager of a manager-managed
 2035 | company for a payment made by the member or manager in the
 2036 | course of the member's or manager's activities on behalf of the
 2037 | company, if the member or manager complied with ss. 608.7846-
 2038 | 608.7850 and 608.7851 in making the payment.

2039 | (2) A limited liability company may indemnify and hold
 2040 | harmless a person with respect to any claim or demand against
 2041 | the person and a debt, obligation, or other liability incurred
 2042 | by the person by reason of the person's former or present
 2043 | capacity as a member or manager, if the claim, demand, debt,
 2044 | obligation, or other liability does not arise from the person's

2045 breach of ss. 608.405 or 608.7846-608.7851.

2046 (3) In the ordinary course of its activities and affairs,
 2047 a limited liability company may advance reasonable expenses,
 2048 including attorney fees and costs, incurred by a person in
 2049 connection with a claim or demand against the person by reason
 2050 of the person's former or present capacity as a member or
 2051 manager, if the person promises to repay the company if the
 2052 person ultimately is determined not to be entitled to be
 2053 indemnified under subsection (2).

2054 (4) A limited liability company may purchase and maintain
 2055 insurance on behalf of a member or manager of the company
 2056 against liability asserted against or incurred by the member or
 2057 manager in that capacity or arising from that status even if:

2058 (a) Under s. 608.7805(3) (g) the operating agreement could
 2059 not eliminate or limit the person's liability to the company for
 2060 the conduct giving rise to the liability.

2061 (b) Under s. 608.7805(3) (n) the operating agreement could
 2062 not provide for indemnification for the conduct giving rise to
 2063 the liability.

2064 608.7851 Standards of conduct for members and managers.-

2065 (1) Each manager of a manager-managed limited liability
 2066 company and member of a member-managed limited liability company
 2067 owes fiduciary duties of loyalty and care to the limited
 2068 liability company and members of the limited liability company.

2069 (2) The duty of loyalty is limited to:

2070 (a) Accounting to the limited liability company and
 2071 holding as trustee for it any property, profit, or benefit
 2072 derived by the manager or member, as applicable:

2073 1. In the conduct or winding up of the company's
 2074 activities and affairs;

2075 2. From the use by the member or manager of the company's
 2076 property; or

2077 3. From the appropriation of a company opportunity.

2078 (b) Refraining from dealing with the company in the
 2079 conduct or winding up of the company's activities and affairs as
 2080 or on behalf of a person having an interest adverse to the
 2081 company, except to the extent that a transaction satisfies the
 2082 requirements of this section.

2083 (c) Refraining from competing with the company in the
 2084 conduct of the company's activities and affairs before the
 2085 dissolution of the company.

2086 (3) The duty of care in the conduct or winding up of the
 2087 company's activities and affairs is limited to refraining from
 2088 engaging in grossly negligent or reckless conduct, willful or
 2089 intentional misconduct, or a knowing violation of law.

2090 (4) A manager of a manager-managed limited liability
 2091 company and member of a member-managed limited liability company
 2092 shall discharge their duties and obligations under this chapter
 2093 or under the operating agreement and exercise any rights
 2094 consistently with the obligation of good faith and fair dealing.

2095 (5) A manager of a manager-managed limited liability
 2096 company or a member of a member-managed limited liability
 2097 company does not violate a duty or obligation under this chapter
 2098 or under the operating agreement solely because the manager's or
 2099 member's conduct furthers such manager's or member's own
 2100 interest.

2101 (6) In discharging his, her, or its duties, a manager of a
 2102 manager-managed limited liability company or a member of a
 2103 member-managed limited liability company is entitled to rely on
 2104 information, opinions, reports, or statements, including
 2105 financial statements and other financial data, if prepared or
 2106 presented by:

2107 (a) One or more members or employees of the limited
 2108 liability company whom the manager or member reasonably believes
 2109 to be reliable and competent in the matters presented;

2110 (b) Legal counsel, public accountants, or other persons as
 2111 to matters the manager or member reasonably believes are within
 2112 the persons' professional or expert competence; or

2113 (c) A committee of managers or members of which the
 2114 affected manager or member is not a participant if the manager
 2115 or member reasonably believes the committee merits confidence.

2116 (7) A manager or member, as applicable, is not acting in
 2117 good faith if the manager or member has knowledge concerning the
 2118 matter in question that makes reliance otherwise permitted by
 2119 subsection (6) unwarranted.

2120 (8) In discharging his, her, or its duties, a manager of a
 2121 manager-managed limited liability company or member of a member-
 2122 managed limited liability company may consider factors the
 2123 manager or member deems relevant, including the long-term
 2124 prospects and interests of the limited liability company and its
 2125 members, and the social, economic, legal, or other effects of an
 2126 action on the employees, suppliers, customers of the limited
 2127 liability company, the communities and society in which the
 2128 limited liability company operates, and the economy of the state

2129 | and the nation.

2130 | (9) This section applies to a person winding up the
 2131 | limited liability company business as the legal representative
 2132 | of the last surviving member as if such person were subject to
 2133 | this section.

2134 | 608.7852 Conflict of interest transactions.—

2135 | (1) As used in this section, the following terms and
 2136 | definitions apply:

2137 | (a) A member or manager is "indirectly" a party to a
 2138 | transaction if that member or manager has a material financial
 2139 | interest in or is a director, officer, manager or partner of a
 2140 | person, other than the limited liability company, who is a party
 2141 | to the transaction.

2142 | (b) A member or manager has an "indirect material
 2143 | financial interest" if a spouse or other family member has a
 2144 | material financial interest in the transaction, other than
 2145 | having an indirect interest as a member or manager of the
 2146 | limited liability company, or if the transaction is with an
 2147 | entity, other than the limited liability company, that has a
 2148 | material financial interest in the transaction and controls, or
 2149 | is controlled by, the member or manager or another person
 2150 | specified in this subsection.

2151 | (c) "Fair to the limited liability company" means that the
 2152 | transaction, as a whole, is beneficial to the limited liability
 2153 | company and its members, taking into appropriate account whether
 2154 | it is:

2155 | 1. Fair in terms of the member's or manager's dealings
 2156 | with the limited liability in connection with that transaction.

2157 2. Comparable to what might have been obtainable in an
2158 arm's length transaction.

2159 (2) If the requirements of this section have been
2160 satisfied, no transaction between a limited liability company
2161 and one or more of its members or managers, or another entity in
2162 which one or more of the limited liability company's members or
2163 managers has a financial or other interest, is either void or
2164 voidable because of that relationship or interest, because the
2165 members or managers are present at the meeting of the members or
2166 managers at which the transaction was authorized, approved,
2167 effectuated, or ratified, or because their votes are counted for
2168 such purpose.

2169 (3) If a transaction is fair to the limited liability
2170 company at the time it is authorized, approved, effectuated, or
2171 ratified, the fact that a member or manager of the limited
2172 liability company is directly or indirectly a party to the
2173 transaction, other than being an indirect party as a result of
2174 being a member or manager of the limited liability company, or
2175 has a direct or indirect material financial interest or other
2176 interest in the transaction, other than having an indirect
2177 interest as a result of being a member or manager of the limited
2178 liability company, is not grounds for equitable relief or give
2179 rise to an award of damages or other sanctions.

2180 (4) (a) In a proceeding challenging the validity of a
2181 transaction described in s. 608.7851(1) or (3), the person
2182 challenging the validity has the burden of proving the lack of
2183 fairness of the transaction if:

2184 1. In a manager-managed limited liability company, the

2185 material facts of the transaction and the member's or manager's
2186 interest in the transaction were disclosed or known to the
2187 managers or a committee of managers who voted upon the
2188 transaction and the transaction was authorized, approved, or
2189 ratified by a majority of the disinterested managers even if the
2190 disinterested managers constitute less than a quorum, if the
2191 transaction cannot be authorized, approved, or ratified under
2192 this subsection solely by a single manager.

2193 2. In a member-managed limited liability company, or a
2194 manager-managed limited liability company in which the managers
2195 have failed to or cannot act under s. 608.7851, the material
2196 facts of the transaction and the member's or manager's interest
2197 in the transaction were disclosed or known to the members who
2198 voted upon such transaction and the transaction was authorized,
2199 approved or ratified by a majority-in-interest of the
2200 disinterested members even if the disinterested members
2201 constitute less than a quorum.

2202 (b) If neither of the conditions provided in paragraph (a)
2203 have been satisfied, the person defending or asserting the
2204 validity of a transaction described in subsection (3) has the
2205 burden of proving its fairness in a proceeding challenging the
2206 validity of the transaction.

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

2213 whether the transaction is approved under other sections of this
 2214 chapter.

2215 (6) In addition to other grounds for challenge, a party
 2216 challenging the validity of the transaction is not precluded
 2217 from asserting and proving that a particular member or manager
 2218 was not disinterested on grounds of financial or other interest
 2219 for purposes of the vote on, consent to, or approval of the
 2220 transaction.

2221 608.7853 Records to be kept; rights of member, manager,
 2222 and person dissociated to information.-

2223 (1) A limited liability company shall keep at its
 2224 principal office or another location the following records:

2225 (a) A current list of the full names and last known
 2226 business, residence, or mailing addresses of each member and
 2227 manager.

2228 (b) A copy of a then-effective operating agreement and all
 2229 amendments thereto, if made in a record.

2230 (c) A copy of the articles of organization, articles of
 2231 merger, articles of interest exchange, articles of conversion,
 2232 or articles of domestication, and other documents and all
 2233 amendments thereto, concerning the limited liability company
 2234 that were filed with the department, together with executed
 2235 copies of any powers of attorney pursuant to which any articles
 2236 of organization or such other documents were executed.

2237 (d) Copies of the limited liability company's federal,
 2238 state, and local income tax returns and reports, if any, for the
 2239 3 most recent years.

2240 (e) Copies of the financial statements of the limited

2241 liability company for the 3 most recent years.

2242 (f) Unless contained in an operating agreement made in a
2243 record, a record stating the amount of cash and a description
2244 and statement of the agreed value of the property or other
2245 benefits contributed and agreed to be contributed by each
2246 member, and the times at which, or occurrence of events upon
2247 which, additional contributions agreed to be made by each member
2248 are to be made.

2249 (2) In a member-managed limited liability company, the
2250 following rules apply:

2251 (a) Upon reasonable notice, a member may inspect and copy
2252 during regular business hours, at a reasonable location
2253 specified by the company:

2254 1. The records described in subsection (1).

2255 2. Another record maintained by the company regarding the
2256 company's activities, affairs, financial condition, and other
2257 circumstances, to the extent the information is material to the
2258 member's rights and duties under the operating agreement or this
2259 chapter.

2260 (b) The company shall furnish to each member:

2261 1. Without demand, any information concerning the
2262 company's activities, affairs, financial condition, and other
2263 circumstances that the company knows and is material to the
2264 proper exercise of the member's rights and duties under the
2265 operating agreement or this chapter, except to the extent the
2266 company can establish that it reasonably believes the member
2267 already knows the information.

2268 2. On demand, other information concerning the company's

2269 activities, affairs, financial condition, and other
 2270 circumstances, except to the extent the demand or information
 2271 demanded is unreasonable or otherwise improper under the
 2272 circumstances.

2273 (c) The duty to furnish information under this subsection
 2274 also applies to each member to the extent the member knows any
 2275 of the information described in this subsection.

2276 (3) In a manager-managed limited liability company, the
 2277 following rules apply:

2278 (a) The informational rights stated in subsection (2) and
 2279 the duty stated in paragraph (2) (c) apply to the managers and
 2280 not to the members.

2281 (b) During regular business hours and at a reasonable
 2282 location specified by the company, a member may inspect and
 2283 copy:

2284 1. The records described in subsection (1).

2285 2. Full information regarding the activities, affairs,
 2286 financial condition, and other circumstances of the company as
 2287 is just and reasonable if:

2288 a. The member seeks the information for a purpose
 2289 reasonably related to the member's interest as a member.

2290 b. The member makes a demand in a record received by the
 2291 company, describing with reasonable particularity the
 2292 information sought and the purpose for seeking the information.

2293 c. The information sought is directly connected to the
 2294 member's purpose.

2295 (c) Within 10 days after receiving a demand pursuant to
 2296 paragraph (2) (b), the company shall, in a record, inform the

2297 member who made the demand of:

2298 1. The information that the company will provide in
2299 response to the demand and when and where the company will
2300 provide the information.

2301 2. The company's reasons for declining, if the company
2302 declines to provide any demanded information.

2303 (d) Whenever this chapter or an operating agreement
2304 provides for a member to give or withhold consent to a matter,
2305 before the consent is given or withheld, the company shall,
2306 without demand, provide the member with all information that is
2307 known to the company and is material to the member's decision.

2308 (4) Subject to subsection (9), on 10 days' demand made in
2309 a record received by a limited liability company, a person
2310 dissociated as a member may have access to information to which
2311 the person was entitled while a member if:

2312 (a) The information pertains to the period during which
2313 the person was a member.

2314 (b) The person seeks the information in good faith.

2315 (c) The person satisfies the requirements imposed on a
2316 member by paragraph (3) (b).

2317 (5) A limited liability company shall respond to a demand
2318 made pursuant to subsection (4) in the manner provided in
2319 paragraph (3) (c).

2320 (6) A limited liability company may charge a person who
2321 makes a demand under this section the reasonable costs of
2322 copying, which shall be limited to the costs of labor and
2323 materials.

2324 (7) A member or person dissociated as a member may

2325 exercise rights under this section through an agent or, in the
2326 case of an individual under legal disability, a legal
2327 representative. A restriction or condition imposed by the
2328 operating agreement or under subsection (9) applies both to the
2329 agent or legal representative and the member or person
2330 dissociated as a member.

2331 (8) Subject to subsection (10), the rights under this
2332 section do not extend to a person as transferee.

2333 (9) If a member dies, s. 608.7858 applies.

2334 (10) In addition to a restriction or condition stated in
2335 the operating agreement, a limited liability company, as a
2336 matter within the ordinary course of its activities and affairs,
2337 may impose reasonable restrictions and conditions on access to
2338 and use of information to be furnished under this section,
2339 including designating information confidential and imposing
2340 nondisclosure and safeguarding obligations on the recipient. In
2341 a dispute concerning the reasonableness of a restriction under
2342 this subsection, the company has the burden of proving
2343 reasonableness. This subsection does not apply to the request
2344 by a member for the records described in subsection (1).

2345 608.7854 Court-ordered inspection.-

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

2353 located, may summarily order inspection and copying of the
 2354 records demanded at the limited liability company's expense upon
 2355 application of the member, manager, or other person.

2356 (2) If the court orders inspection or copying of the
 2357 records demanded, it shall also order the limited liability
 2358 company to pay the costs, including reasonable attorney fees,
 2359 reasonably incurred by the member, manager, or other person
 2360 seeking the records to obtain the order and enforce its rights
 2361 under this section unless the limited liability company proves
 2362 that it refused inspection in good faith because it had a
 2363 reasonable basis for doubt about the right of the member,
 2364 manager, or such other person, to inspect or copy the records
 2365 demanded.

2366 (3) If the court orders inspection or copying of the
 2367 records demanded, it may impose reasonable restrictions on the
 2368 use or distribution of the records by the member, manager, or
 2369 other person demanding them.

2370 608.7855 Nature of transferable interest.—A transferable
 2371 interest is personal property.

2372 608.7856 Transfer of transferable interest.—

2373 (1) Subject to s. 608.7857(5), a transfer, in whole or in
 2374 part, of a transferable interest:

2375 (a) Is permissible.

2376 (b) Does not by itself cause a member's dissociation or a
 2377 dissolution and winding up of the limited liability company's
 2378 activities and affairs.

2379 (c) Does not entitle the transferee to:

2380 1. Participate in the management or conduct of the

2381 company's activities and affairs; or

2382 2. Except as otherwise provided in subsection (3), have
2383 access to records or other information concerning the company's
2384 activities and affairs.

2385 (2) A transferee has the right to receive, in accordance
2386 with the transfer, distributions to which the transferor would
2387 otherwise be entitled.

2388 (3) In a dissolution and winding up of a limited liability
2389 company, a transferee is entitled to an account of the company's
2390 transactions only from the date of dissolution.

2391 (4) A transferable interest may be evidenced by a
2392 certificate of the interest issued by the limited liability
2393 company in a record, and, subject to this section, the interest
2394 represented by the certificate may be transferred by a transfer
2395 of the certificate.

2396 (5) A limited liability company need not give effect to a
2397 transferee's rights under this section until the company knows
2398 or has notice of the transfer.

2399 (6) A transfer of a transferable interest in violation of
2400 a restriction on transfer contained in the operating agreement
2401 is ineffective as to a person having knowledge or notice of the
2402 restriction at the time of transfer.

2403 (7) Except as otherwise provided in s. 608.7862(5)(b), if
2404 a member transfers a transferable interest, the transferor
2405 retains the rights of a member other than the transferable
2406 interest transferred and retains all the duties and obligations
2407 of a member.

2408 (8) If a member transfers a transferable interest to a

2409 person who becomes a member with respect to the transferred
2410 interest, the transferee is liable for the member's obligations
2411 under ss.. 608.7842 and 608.7845(3) known to the transferee when
2412 the transferee becomes a member.

2413 608.7857 Charging order.—

2414 (1) On application to a court of competent jurisdiction by
2415 a judgment creditor of a member or a transferee, the court may
2416 enter a charging order against the transferable interest of the
2417 member or transferee for payment of the unsatisfied amount of
2418 the judgment with interest. Except as provided in subsection
2419 (5), a charging order constitutes a lien upon a judgment
2420 debtor's transferable interest and requires the limited
2421 liability company to pay over to the judgment creditor a
2422 distribution that would otherwise be paid to the judgment
2423 debtor.

2424 (2) This chapter does not deprive a member or transferee
2425 of the benefit of an exemption law applicable to the
2426 transferable interest of the member or transferee.

2427 (3) Except as provided in subsections (4) and (5), a
2428 charging order is the sole and exclusive remedy by which a
2429 judgment creditor of a member or member's transferee may satisfy
2430 a judgment from the judgment debtor's interest in a limited
2431 liability company or rights to distributions from the limited
2432 liability company.

2433 (4) In the case of a limited liability company having only
2434 one member, if a judgment creditor of a member or member's
2435 transferee establishes to the satisfaction of a court of
2436 competent jurisdiction that distributions under a charging order

CS/HB 1079

2013

2437 will not satisfy the judgment within a reasonable time, a
2438 charging order is not the sole and exclusive remedy by which the
2439 judgment creditor may satisfy the judgment against a judgment
2440 debtor who is the sole member of a limited liability company or
2441 the transferee of the sole member, and upon such showing, the
2442 court may order the sale of that interest in the limited
2443 liability company pursuant to a foreclosure sale. A judgment
2444 creditor may make a showing to the court that distributions
2445 under a charging order will not satisfy the judgment within a
2446 reasonable time at any time after the entry of the judgment and
2447 may do so at the same time that the judgment creditor applies
2448 for the entry of a charging order.

2449 (5) When a limited liability company has only one member,
2450 if the court orders a foreclosure sale of a judgment debtor's
2451 interest in the limited liability company or of a charging order
2452 lien against the sole member of the limited liability company
2453 pursuant to subsection (4):

2454 (a) The purchaser at the court-ordered foreclosure sale
2455 obtains the member's entire limited liability company interest,
2456 not merely the rights of a transferee.

2457 (b) The purchaser at the sale becomes the member of the
2458 limited liability company.

2459 (c) The person whose limited liability company interest is
2460 sold pursuant to the foreclosure sale or is the subject of the
2461 foreclosed charging order ceases to be a member of the limited
2462 liability company.

2463 (6) In the case of a limited liability company having more
2464 than one member, the remedy of foreclosure on a judgment

2465 debtor's interest in the limited liability company or against
2466 rights to distribution from the limited liability company is not
2467 available to a judgment creditor attempting to satisfy the
2468 judgment and may not be ordered by a court.

2469 (7) This section does not limit:

2470 (a) The rights of a creditor who has been granted a
2471 consensual security interest in a limited liability company
2472 interest to pursue the remedies available to the secured
2473 creditor under other law applicable to secured creditors.

2474 (b) The principles of law and equity which affect
2475 fraudulent transfers.

2476 (c) The availability of the equitable principles of alter
2477 ego, equitable lien, or constructive trust, or other equitable
2478 principles not inconsistent with this section.

2479 (d) The continuing jurisdiction of the court to enforce
2480 its charging order in a manner consistent with this section.

2481 608.7858 Power of legal representative.— If a member who
2482 is an individual dies or a court of competent jurisdiction
2483 adjudges the member to be incompetent to manage the member's
2484 person or property, the member's legal representative may
2485 exercise all of the member's rights for the purpose of settling
2486 the member's estate or administering the member's property,
2487 including any power under an operating agreement of a transferee
2488 to become a member. If a member is a corporation, trust, or
2489 other entity and is dissolved or terminated, the powers of that
2490 member may be exercised by its legal representative.

2491 608.7861 Power to dissociate as member; wrongful
2492 dissociation.—

2493 (1) A person has the power to dissociate as a member at
 2494 any time, rightfully or wrongfully, by withdrawing as a member
 2495 by express will under s. 608.7862(1).

2496 (2) A person's dissociation as a member is wrongful only
 2497 if the dissociation:

2498 (a) Is in breach of an express provision of the operating
 2499 agreement; or

2500 (b) Occurs before completion of the winding up of the
 2501 company and:

2502 1. The person withdraws as a member by express will;

2503 2. The person is expelled as a member by judicial order
 2504 under s. 608.7862(6);

2505 3. The person is dissociated under s. 608.7862(8); or

2506 4. In the case of a person that is not a trust other than
 2507 a business trust, an estate, or an individual, the person is
 2508 expelled or otherwise dissociated as a member because it
 2509 willfully dissolved or terminated.

2510 (3) A person who wrongfully dissociates as a member is
 2511 liable to the limited liability company and, subject to s.
 2512 608.7931, to the other members for damages caused by the
 2513 dissociation. The liability is in addition to a debt,
 2514 obligation, or other liability of the member to the company or
 2515 the other members.

2516 608.7862 Events causing dissociation.—A person is
 2517 dissociated as a member when:

2518 (1) The company has notice of the person's express will to
 2519 withdraw as a member, but, if the person specified a withdrawal
 2520 date later than the date the company had notice, on that later

2521 date.

2522 (2) An event stated in the operating agreement as causing

2523 the person's dissociation occurs.

2524 (3) The person's entire interest is transferred in a

2525 foreclosure sale under s. 608.7857(5).

2526 (4) The person is expelled as a member pursuant to the

2527 operating agreement.

2528 (5) The person is expelled as a member by the unanimous

2529 consent of the other members if:

2530 (a) It is unlawful to carry on the company's activities

2531 and affairs with the person as a member.

2532 (b) There has been a transfer of all the person's

2533 transferable interest in the company, other than:

2534 1. A transfer for security purposes; or

2535 2. A charging order in effect under s. 608.7857 which has

2536 not been foreclosed.

2537 (c) The person is a corporation.

2538 1. The company notifies the person that it will be

2539 expelled as a member because the person has filed articles or a

2540 certificate of dissolution or the equivalent, its charter has

2541 been revoked, or its right to conduct business has been

2542 suspended by the jurisdiction of its formation.

2543 2. Within 90 days after the notification, the articles or

2544 certificate of dissolution or the equivalent has not been

2545 revoked or its charter or right to conduct business has not been

2546 reinstated.

2547 (d) The person is an unincorporated entity that has been

2548 dissolved and whose business is being wound up.

2549 (6) On application by the company or a member in a direct
2550 action under s. 608.7931, the person is expelled as a member by
2551 judicial order because the person:

2552 (a) Has engaged or is engaging in wrongful conduct that
2553 has affected adversely and materially, or will affect adversely
2554 and materially, the company's activities and affairs;

2555 (b) Has committed willfully or persistently, or is
2556 committing willfully and persistently, a material breach of the
2557 operating agreement or a duty or obligation under s. 608.7851;
2558 or

2559 (c) Has engaged, or is engaging, in conduct relating to
2560 the company's activities and affairs which makes it not
2561 reasonably practicable to carry on the activities and affairs
2562 with the person as a member.

2563 (7) In the case of an individual:

2564 (a) The individual dies; or

2565 (b) In a member-managed limited liability company:

2566 1. A guardian or general conservator for the individual is
2567 appointed; or

2568 2. There is a judicial order that the individual has
2569 otherwise become incapable of performing the individual's duties
2570 as a member under this chapter or the operating agreement.

2571 (8) In a member-managed limited liability company, the
2572 person:

2573 (a) Becomes a debtor in bankruptcy;

2574 (b) Executes an assignment for the benefit of creditors;

2575 or

2576 (c) Seeks, consents to, or acquiesces in the appointment

2577 | of a trustee, receiver, or liquidator of the person or of all or
 2578 | substantially all the person's property.

2579 | (9) In the case of a person who is a testamentary or inter
 2580 | vivos trust or is acting as a member by virtue of being a
 2581 | trustee of such a trust, the trust's entire transferable
 2582 | interest in the company is distributed.

2583 | (10) In the case of a person who is an estate or is acting
 2584 | as a member by virtue of being a legal representative of an
 2585 | estate, the estate's entire transferable interest in the company
 2586 | is distributed.

2587 | (11) In the case of a person that is not an individual,
 2588 | corporation, unincorporated entity, trust, or estate, the
 2589 | existence of the person terminates.

2590 | (12) The company participates in a merger under ss.
 2591 | 608.925-608.930; and

2592 | (a) The company is not the surviving entity; or,

2593 | (b) Otherwise as a result of the merger, the person ceases
 2594 | to be a member.

2595 | (13) The company participates in a conversion under ss.
 2596 | 608.941-608.950 and the person ceases to be member.

2597 | (14) The company participates in an interest exchange
 2598 | under ss. 608.935-608.940 and the person ceases to be a member.

2599 | (15) The company dissolves and completes winding up.
 2600 | 608.7863 Effect of dissociation.—

2601 | (1) If a person is dissociated as a member:

2602 | (a) The person's right to participate as a member in the
 2603 | management and conduct of the company's activities and affairs
 2604 | terminates.

2605 (b) If the company is member-managed, the person's duties
2606 and obligations under s. 608.7851 as a member end with regard to
2607 matters arising and events occurring after the person's
2608 dissociation.

2609 (c) Subject to ss. 608.7858 and 608.916-608.972, a
2610 transferable interest owned by the person in the person's
2611 capacity immediately before dissociation as a member is owned by
2612 the person solely as a transferee.

2613 (2) A person's dissociation as a member does not, of
2614 itself, discharge the person from a debt, obligation, or other
2615 liability to the company or the other members which the person
2616 incurred while a member.

2617 608.7911 Events causing dissolution.—A limited liability
2618 company is dissolved and its activities and affairs must be
2619 wound up upon the occurrence of:

2620 (1) An event or circumstance that the operating agreement
2621 states causes dissolution.

2622 (2) The consent of all the members.

2623 (3) The passage of 90 consecutive days during which the
2624 company has no members, unless:

2625 (a) Consent to admit at least one specified person as a
2626 member is given by transferees owning the rights to receive a
2627 majority of distributions as transferees at the time the consent
2628 is to be effective.

2629 (b) At least one person becomes a member in accordance
2630 with the consent.

2631 (4) The entry of a decree of judicial dissolution in
2632 accordance with s. 608.7915.

- 2633 (5) The filing of a statement of administrative
2634 dissolution by the department under s. 608.7924.
2635 608.7912 Grounds for judicial dissolution.—A circuit court
2636 may dissolve a limited liability company:
- 2637 (1) In a proceeding by the Department of Legal Affairs if
2638 it is established that:
- 2639 (a) The limited liability company obtained its articles of
2640 organization through fraud; or
- 2641 (b) The limited liability company has continued to exceed
2642 or abuse the authority conferred upon it by law.
- 2643
- 2644 The enumeration in paragraphs (a) and (b) of grounds for
2645 involuntary dissolution does not exclude actions or special
2646 proceedings by the Department of Legal Affairs or a state
2647 official for the annulment or dissolution of a limited liability
2648 company for other causes as provided in another law of this
2649 state.
- 2650 (2) In a proceeding by a manager or member if it is
2651 established that:
- 2652 (a) The conduct of all or substantially all of the
2653 company's activities and affairs is unlawful;
- 2654 (b) It is not reasonably practicable to carry on the
2655 company's activities and affairs in conformity with the articles
2656 of organization and the operating agreement;
- 2657 (c) The managers or members in control of the company have
2658 acted, are acting, or are reasonably expected to act in a manner
2659 that is illegal or fraudulent;
- 2660 (d) The limited liability company's assets are being

2661 misappropriated or wasted, causing material injury to the
2662 limited liability company, or in a proceeding by a member,
2663 causing material injury to one or more of its members; or

2664 (e) Subject to subsection (4), the managers or those
2665 members in control of the limited liability company are
2666 deadlocked in the management of the limited liability company
2667 affairs, the members are unable to break the deadlock, and
2668 irreparable injury to the limited liability company is
2669 threatened or being suffered.

2670 (3) In a proceeding by the limited liability company to
2671 have its voluntary dissolution continued under court
2672 supervision.

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

CS/HB 1079

2013

2689 automatically triggered or a member-triggered sale of all or
2690 substantially all of the assets of the company or a subsidiary
2691 of the company, or a similar provision that, if triggered,
2692 breaks the deadlock by causing the transfer of the interests or
2693 governance interests of one or more members or the sale of all
2694 or substantially all of the company's or a subsidiary's assets.
2695 A deadlock provision in an operating agreement that is not
2696 triggered before the establishment of the grounds for judicial
2697 dissolution under paragraph (2)(e) does not adversely affect the
2698 rights of members and managers to seek judicial dissolution
2699 under paragraph (2)(e).

2700 608.7913 Procedure for judicial dissolution; alternative
2701 remedies.—

2702 (1) Venue for a proceeding brought under s. 608.7912 lies
2703 in the circuit court of the county where the limited liability
2704 company's principal office is or was last located, as shown by
2705 the records of the department or, if none in this state, where
2706 its registered office is or was last located.

2707 (2) It is not necessary to make members parties to a
2708 proceeding to dissolve a limited liability company unless relief
2709 is sought against them individually.

2710 (3) A court in a proceeding brought to dissolve a limited
2711 liability company may issue injunctions, appoint a receiver or
2712 custodian pendente lite with all powers and duties the court
2713 directs, take other action required to preserve the limited
2714 liability company's assets wherever located, and carry on the
2715 business of the limited liability company until a full hearing
2716 can be held.

CS/HB 1079

2013

2717 (4) In a proceeding brought under s. 608.7912, the court
2718 may, upon a showing of sufficient merit to warrant such a
2719 remedy:

2720 (a) Appoint a receiver or custodian under s. 608.7914;

2721 (b) Order a purchase of a petitioning member's interest
2722 pursuant to s. 608.7916; or

2723 (c) Upon a showing of good cause, order another remedy the
2724 court deems appropriate in its discretion, including an
2725 equitable remedy.

2726 (5) Section 57.105 applies to a proceeding brought under
2727 s. 608.7912.

2728 608.7914 Receivership or custodianship.—

2729 (1) A court in a judicial proceeding brought to dissolve a
2730 limited liability company may appoint one or more receivers to
2731 wind up and liquidate, or one or more custodians to manage the
2732 business and affairs of the limited liability company. The court
2733 shall hold a hearing, after notifying all parties to the
2734 proceeding and an interested person designated by the court,
2735 before appointing a receiver or custodian. The court appointing
2736 a receiver or custodian has exclusive jurisdiction over the
2737 limited liability company and all of its property, wherever
2738 located.

2739 (2) The court may appoint a person authorized to act as a
2740 receiver or custodian. The court may require the receiver or
2741 custodian to post bond, with or without sureties, in an amount
2742 the court directs.

2743 (3) The court shall describe the powers and duties of the
2744 receiver or custodian in its appointing order, which may be

2745 amended. Among other powers:

2746 (a) The receiver:

2747 1. May dispose of all or a part of the assets of the
2748 limited liability company wherever located, at a public or
2749 private sale, if authorized by the court.

2750 2. May sue and defend in the receiver's own name, as
2751 receiver of the limited liability company, in all courts of this
2752 state.

2753 (b) The custodian may exercise all of the powers of the
2754 limited liability company, through or in place of its managers
2755 or members, to the extent necessary to manage the activities and
2756 affairs of the limited liability company in the best interests
2757 of its members and creditors.

2758 (4) The court, during a receivership, may redesignate the
2759 receiver as a custodian, and during a custodianship may
2760 redesignate the custodian as a receiver, if doing so is in the
2761 best interests of the limited liability company and its members
2762 and creditors.

2763 (5) During the receivership or custodianship the court may
2764 order compensation paid and expense disbursements or
2765 reimbursements made to the receiver or custodian and the
2766 receiver's or custodian's counsel from the assets of the limited
2767 liability company or proceeds from the sale of part or all of
2768 those assets.

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

CS/HB 1079

2013

2773 circumstances exist requiring the appointment of such a
2774 receiver. The court may appoint such an ancillary receiver for a
2775 foreign limited liability company even though no receiver has
2776 been appointed elsewhere. The receivership shall be converted
2777 into an ancillary receivership when an order entered by a court
2778 of competent jurisdiction in the other state provides for a
2779 receivership of the foreign limited liability company.

2780 608.7915 Decree of dissolution.-

2781 (1) If, after a hearing, the court determines that one or
2782 more grounds for judicial dissolution described in s. 608.7912
2783 exist, the court may enter a decree dissolving the limited
2784 liability company and specifying the effective date of the
2785 dissolution, and the clerk of the court shall deliver a
2786 certified copy of the decree to the department, which shall file
2787 the decree.

2788 (2) After entering the decree of dissolution, the court
2789 shall direct the winding up and liquidation of the limited
2790 liability company's activities and affairs in accordance with
2791 ss. 608.7919-608.7923, subject to subsection (3).

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

2801 fixed, the court may extend the time for the filing of claims by
 2802 court order. Creditors and claimants failing to file proofs of
 2803 claim on or before the date so fixed may be barred, by order of
 2804 court, from participating in the distribution of the assets of
 2805 the limited liability company. Nothing in this section affects
 2806 the enforceability of a recorded mortgage or lien or the
 2807 perfected security interest or rights of a person in possession
 2808 of real or personal property.

2809 608.7916 Election to purchase instead of dissolution.—

2810 (1) In a proceeding initiated by a member of a limited
 2811 liability company under s. 608.7912(2) to dissolve the company,
 2812 the company may elect, or, if it fails to elect, one or more
 2813 other members may elect to purchase the entire interest of the
 2814 petitioner in the company at the fair value of the interest. An
 2815 election pursuant to this section is irrevocable unless the
 2816 court determines that it is equitable to set aside or modify the
 2817 election.

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

2829 their intention to join in the purchase within 30 days after the
2830 effective date of the notice. A member who has filed an election
2831 or notice of the intent to participate in the election to
2832 purchase thereby become parties to the proceeding and shall
2833 participate in the purchase in proportion to the ownership
2834 interest as of the date the first election was filed, unless
2835 they otherwise agree or the court otherwise directs. After an
2836 election to purchase has been filed by the limited liability
2837 company or one or more members, the proceeding under s.
2838 608.7912(2) may not be discontinued or settled, nor may the
2839 petitioning member sell or otherwise dispose of interest of the
2840 petitioner in the company, unless the court determines that it
2841 would be equitable to the company and the members, other than
2842 the petitioner, to permit such discontinuance, settlement, sale,
2843 or other disposition.

2844 (3) If, within 60 days after the filing of the first
2845 election, the parties reach agreement as to the fair value and
2846 terms of the purchase of the petitioner's interest, the court
2847 shall enter an order directing the purchase of petitioner's
2848 interest upon the terms and conditions agreed to by the parties.

2849 (4) If the parties are unable to reach an agreement as
2850 provided for in subsection (3), the court, upon application of a
2851 party, shall stay the proceedings and determine the fair value
2852 of the petitioner's interest as of the day before the date on
2853 which the petition was filed or as of such other date as the
2854 court deems appropriate under the circumstances.

2855 (5) Upon determining the fair value of the petitioner's
2856 interest in the company, the court shall enter an order

CS/HB 1079

2013

2857 directing the purchase upon such terms and conditions as the
2858 court deems appropriate, which may include payment of the
2859 purchase price in installments, when necessary in the interests
2860 of equity; provision for security to ensure payment of the
2861 purchase price and additional costs, fees, and expenses as may
2862 have been awarded; and, if the interest is to be purchased by
2863 members, the allocation of the interest among those members. In
2864 allocating petitioner's interest among holders of different
2865 classes or series of interests in the company, the court shall
2866 attempt to preserve the existing distribution of voting rights
2867 among holders of different classes insofar as practicable and
2868 may direct that holders of a specific class or classes or series
2869 not participate in the purchase. Interest may be allowed at the
2870 rate and from the date determined by the court to be equitable;
2871 however, if the court finds that the refusal of the petitioning
2872 member to accept an offer of payment was arbitrary or otherwise
2873 not in good faith, no payment of interest is allowed. If the
2874 court finds that the petitioning member had probable grounds for
2875 relief under s. 608.7912(2) (d) or (e), it may award to the
2876 petitioning member reasonable fees and expenses of counsel and
2877 of experts employed by petitioner.

2878 (6) Upon entry of an order under subsection (3) or
2879 subsection (5), the court shall dismiss the petition to dissolve
2880 the limited liability company and the petitioning member shall
2881 no longer have rights or status as a member of the limited
2882 liability company, except the right to receive the amounts
2883 awarded by the order of the court, which shall be enforceable in
2884 the same manner as another judgment.

2885 (7) The purchase ordered pursuant to subsection (5) must
 2886 be made within 10 days after the date the order becomes final
 2887 unless, before that time, the limited liability company files
 2888 with the court a notice of its intention to dissolve pursuant to
 2889 s. 608.7911(2), in which case articles of dissolution for the
 2890 company must be filed within 50 days thereafter. Upon filing of
 2891 such articles of dissolution, the limited liability company
 2892 shall be dissolved in accordance with ss. 608.7919-608.7923, and
 2893 the order entered pursuant to subsection (5) shall no longer be
 2894 of force or effect, except that the court may award the
 2895 petitioning member reasonable fees and expenses of counsel and
 2896 experts in accordance with subsection (5) and the petitioner may
 2897 continue to pursue any claims previously asserted on behalf of
 2898 the limited liability company.

2899 (8) A payment by the limited liability company pursuant to
 2900 an order under subsection (3) or (5), other than an award of
 2901 fees and expenses pursuant to subsection (5), is subject to s.
 2902 608.7844.

2903 608.7917 Articles of dissolution; filing of articles of
 2904 dissolution.-

2905 (1) Upon the occurrence of an event described in s.
 2906 608.7911(1)-(3), the limited liability company shall deliver for
 2907 filing articles of dissolution as provided in this section.

2908 (2) The articles of dissolution must set forth:

2909 (a) The name of the limited liability company.

2910 (b) The effective date of the limited liability company's
 2911 dissolution.

2912 (c) The occurrence that resulted in the limited liability

2913 | company's dissolution.

2914 | (d) If there are no members, the name, address, and
 2915 | signature of the person appointed in accordance with this
 2916 | subsection to wind up the company.

2917 | (3) The articles of dissolution of the limited liability
 2918 | company shall be delivered to the department. If the department
 2919 | finds that the articles of dissolution conform to law, it shall,
 2920 | when all fees have been paid as prescribed in this chapter, file
 2921 | the articles of dissolution and issue a certificate of
 2922 | dissolution.

2923 | (4) Upon the filing of the articles of dissolution, the
 2924 | limited liability company shall cease conducting its business
 2925 | and shall continue solely for the purpose of winding up its
 2926 | affairs in accordance with s. 608.7919, except for the purpose
 2927 | of lawsuits, other proceedings, and appropriate action as
 2928 | provided in this chapter.

2929 | 608.7918 Revocation of articles of dissolution.-

2930 | (1) A limited liability company that has dissolved as the
 2931 | result of an event described in s. 608.7911(1)-(3) and filed
 2932 | articles of dissolution with the department, but has not filed a
 2933 | statement of termination that has become effective, may revoke
 2934 | its dissolution at any time before 120 days after the effective
 2935 | date of its articles of dissolution.

2936 | (2) The revocation of the dissolution shall be authorized
 2937 | in the same manner as the dissolution was authorized.

2938 | (3) After the revocation of dissolution is authorized, the
 2939 | limited liability company shall deliver a statement of
 2940 | revocation of dissolution to the department for filing, together

2941 with a copy of its articles of dissolution, that sets forth:
 2942 (a) The name of the limited liability company.
 2943 (b) The effective date of the dissolution that was
 2944 revoked.
 2945 (c) The date that the statement of revocation of
 2946 dissolution was authorized.
 2947 (4) If there has been substantial compliance with
 2948 subsection (3), the revocation of dissolution is effective when
 2949 the department files the statement of revocation of dissolution.
 2950 (5) When the revocation of dissolution becomes effective:
 2951 (a) The company resumes carrying on its activities and
 2952 affairs as if dissolution had never occurred.
 2953 (b) Subject to paragraph (c), a liability incurred by the
 2954 company after the dissolution and before the revocation is
 2955 effective is determined as if dissolution had never occurred;.
 2956 (c) The rights of a third party arising out of conduct in
 2957 reliance on the dissolution before the third party knew or had
 2958 notice of the revocation may not be adversely affected.
 2959 608.7919 Winding up.—
 2960 (1) A dissolved limited liability company shall wind up
 2961 its activities and affairs and, except as otherwise provided in
 2962 ss. 608.7918 and 608.7925, the company continues after
 2963 dissolution only for the purpose of winding up.
 2964 (2) In winding up its activities and affairs, a limited
 2965 liability company:
 2966 (a) Shall discharge or make provision for the company's
 2967 debts, obligations and other liabilities as provided in ss.
 2968 608.7920-608.7923, settle and close the company's activities and

2969 affairs, and marshal and distribute the assets of the company.
 2970 (b) May:
 2971 1. Preserve the company's activities, affairs, and
 2972 property as a going concern for a reasonable time.
 2973 2. Prosecute and defend actions and proceedings, whether
 2974 civil, criminal, or administrative.
 2975 3. Transfer title to the company's real estate and other
 2976 property.
 2977 4. Settle disputes by mediation or arbitration.
 2978 5. Dispose of its properties that will not be distributed
 2979 in kind to its members.
 2980 6. Perform other acts necessary or appropriate to the
 2981 winding up.
 2982 (3) If a dissolved limited liability company has no
 2983 members, the legal representative of the last person to have
 2984 been a member may wind up the activities and affairs of the
 2985 company. If the legal representative does so, the person has the
 2986 powers of a sole manager under s. 608.7846(3) and is deemed to
 2987 be a manager for the purposes of s. 608.7834(1).
 2988 (4) If the legal representative under subsection (3)
 2989 declines or fails to wind up the company's activities and
 2990 affairs, a person may be appointed to do so by the consent of
 2991 transferees owning a majority of the rights to receive
 2992 distributions as transferees at the time the consent is to be
 2993 effective. A person appointed under this subsection has the
 2994 powers of a sole manager under s. 608.7846(3) and is deemed to
 2995 be a manager for the purposes of s. 608.7834(1).
 2996 (5) A circuit court may order judicial supervision of the

CS/HB 1079

2013

2997 winding up of a dissolved limited liability company, including
2998 the appointment of one or more persons to wind up the company's
2999 activities and affairs:

3000 (a) On application of a member or manager, if the
3001 applicant establishes good cause;

3002 (b) On the application of a transferee, if:

3003 1. The company does not have any members.

3004 2. The legal representative of the last person to have
3005 been a member declines or fails to wind up the company's
3006 activities and affairs.

3007 3. Within a reasonable time following the dissolution a
3008 person has not been appointed pursuant to subsection (3);

3009 (c) On application of a creditor of the company if the
3010 applicant establishes good cause, but only if a receiver,
3011 custodian, or another person has not already been appointed for
3012 that purpose under this chapter; or

3013 (d) In connection with a proceeding under s. 608.7912, if
3014 a receiver, custodian or another person has not already been
3015 appointed for that purpose under s. 608.7914.

3016 (6) The person or persons appointed by a court under
3017 subsection (5) may also be designated trustees or receivers of
3018 and for the company with the authority and power to take charge
3019 of the limited liability company's property; to collect the
3020 debts and property due and belonging to the limited liability
3021 company, to prosecute and defend, in the name of the limited
3022 liability company, or otherwise, all such suits as may be
3023 necessary or proper for the purposes described above, and to
3024 appoint an agent or agents under them; and to do all other acts

3025 which might be done by the limited liability company, if in
 3026 being, that may be necessary for the final settlement of the
 3027 unfinished activities and affairs of the limited liability
 3028 company. The powers of the trustees or receivers may be
 3029 continued as long as the court determines necessary for the
 3030 above purposes.

3031 (7) A dissolved limited liability company that has
 3032 completed winding up may deliver to the department for filing a
 3033 statement of termination that provides:

3034 (a) The name of the limited liability company.

3035 (b) The date of filing of its initial articles of
 3036 organization.

3037 (c) The date of the filing of its articles of dissolution.

3038 (d) The limited liability company has completed winding up
 3039 its affairs and has determined that it will file a statement of
 3040 termination.

3041 (e) Other information as determined by the authorized
 3042 representative.

3043 (8) The manager or managers in office at the time of
 3044 dissolution or the survivors of them, or, if none, the members,
 3045 shall thereafter be trustees for the members and creditors of
 3046 the dissolved limited liability company. The trustees may
 3047 distribute property of the limited liability company discovered
 3048 after dissolution, convey real estate and other property, and
 3049 take such other action as may be necessary on behalf of and in
 3050 the name of the dissolved limited liability company.

3051 608.7920 Disposition of assets in winding up.-

3052 (1) In winding up its activities and affairs, a limited

3053 liability company must apply its assets to discharge its
3054 obligations to creditors, including members who are creditors.

3055 (2) After a limited liability company complies with
3056 subsection (1), the surplus must be distributed in the following
3057 order, subject to a charging order in effect under s. 608.7857:

3058 (a) To each person owning a transferable interest that
3059 reflects contributions made and not previously returned, an
3060 amount equal to the value of the unreturned contributions.

3061 (b) To members and dissociated members, in the proportions
3062 in which they shared in distributions before dissolution, except
3063 to the extent necessary to comply with a transfer effective
3064 under s. 608.7856.

3065 (3) If the limited liability company does not have
3066 sufficient surplus to comply with paragraph (2) (a), any surplus
3067 must be distributed among the owners of transferable interests
3068 in proportion to the value of their respective unreturned
3069 contributions.

3070 (4) All distributions made under subsections (2) and (3)
3071 must be paid in money.

3072 608.7921 Known claims against dissolved limited liability
3073 company.—

3074 (1) A dissolved limited liability company or successor
3075 entity, as defined in subsection (14), may dispose of the known
3076 claims against it by following the procedure described in
3077 subsections (2)-(7).

3078 (2) A dissolved limited liability company or successor
3079 entity shall deliver to each of its known claimants written
3080 notice of the dissolution after its effective date. The written

3081 notice must:

3082 (a) Provide a reasonable description of the claim that the
3083 claimant may be entitled to assert.

3084 (b) State whether the claim is admitted or not admitted,
3085 in whole or in part, and, if admitted:

3086 1. The amount that is admitted, which may be as of a given
3087 date.

3088 2. An interest obligation if fixed by an instrument of
3089 indebtedness.

3090 (c) Provide a mailing address to which a claim may be
3091 sent.

3092 (d) State the deadline, which may not be less than 120
3093 days after the effective date of the written notice, by which
3094 confirmation of the claim must be delivered to the dissolved
3095 limited liability company or successor entity.

3096 (e) State that the dissolved limited liability company or
3097 successor entity may make distributions to other claimants and
3098 to the members or transferees of the limited liability company
3099 or persons interested without further notice.

3100 (3) A dissolved limited liability company or successor
3101 entity may reject, in whole or in part, a claim made by a
3102 claimant pursuant to this subsection by mailing notice of the
3103 rejection to the claimant within 90 days after receipt of the
3104 claim and, in all events, at least 150 days before expiration of
3105 3 years after the effective date of dissolution. A notice sent
3106 by the dissolved limited liability company or successor entity
3107 pursuant to this subsection must be accompanied by a copy of
3108 this section.

3109 (4) A dissolved limited liability company or successor
3110 entity electing to follow the procedures described in
3111 subsections (2) and (3) shall also give notice of the
3112 dissolution of the limited liability company to persons with
3113 known claims that are contingent upon the occurrence or
3114 nonoccurrence of future events or otherwise conditional or
3115 unmatured, and request that the persons present the claims in
3116 accordance with the terms of the notice. The notice must be in
3117 substantially the form and sent in the same manner as described
3118 in subsection (2).

3119 (5) A dissolved limited liability company or successor
3120 entity shall offer a claimant whose known claim is contingent,
3121 conditional, or unmatured such security as the limited liability
3122 company or entity determines is sufficient to provide
3123 compensation to the claimant if the claim matures. The dissolved
3124 limited liability company or successor entity shall deliver such
3125 offer to the claimant within 90 days after receipt of the claim
3126 and, in all events, at least 150 days before expiration of 3
3127 years after the effective date of dissolution. If the claimant
3128 who is offered the security does not deliver in writing to the
3129 dissolved limited liability company or successor entity a notice
3130 rejecting the offer within 120 days after receipt of the offer
3131 for security, the claimant is deemed to have accepted such
3132 security as the sole source from which to satisfy his or her
3133 claim against the limited liability company.

3134 (6) A dissolved limited liability company or successor
3135 entity that gives notice in accordance with subsections (2) and
3136 (4) shall petition the circuit court in the applicable county to

CS/HB 1079

2013

3137 determine the amount and form of security that is sufficient to
3138 provide compensation to a claimant who has rejected the offer
3139 for security made pursuant to subsection (5).

3140 (7) A dissolved limited liability company or successor
3141 entity that has given notice in accordance with subsection (2)
3142 shall petition the circuit court in the applicable county to
3143 determine the amount and form of security that will be
3144 sufficient to provide compensation to claimants whose claims are
3145 known to the limited liability company or successor entity but
3146 whose identities are unknown. The court shall appoint a guardian
3147 ad litem to represent all claimants whose identities are unknown
3148 in a proceeding brought under this subsection. The reasonable
3149 fees and expenses of the guardian, including all reasonable
3150 expert witness fees, shall be paid by the petitioner in the
3151 proceeding.

3152 (8) The giving of notice or making of an offer pursuant to
3153 this section does not revive a claim then barred, extend an
3154 otherwise applicable statute of limitations, or constitute
3155 acknowledgment by the dissolved limited liability company or
3156 successor entity that a person to whom such notice is sent is a
3157 proper claimant, and does not operate as a waiver of a defense
3158 or counterclaim in respect of a claim asserted by a person to
3159 whom such notice is sent.

3160 (9) A dissolved limited liability company or successor
3161 entity that followed the procedures described in subsections
3162 (2)-(7) must:

3163 (a) Pay the claims admitted or made and not rejected in
3164 accordance with subsection (3).

CS/HB 1079

2013

3165 (b) Post the security offered and not rejected pursuant to
3166 subsection (5).

3167 (c) Post a security ordered by the circuit court in a
3168 proceeding under subsections (6) and (7).

3169 (d) Pay or make provision for all other known obligations
3170 of the limited liability company or the successor entity.

3171
3172 If there are sufficient funds, such claims or obligations must
3173 be paid in full, and a provision for payments must be made in
3174 full. If there are insufficient funds, the claims and
3175 obligations shall be paid or provided for according to their
3176 priority and, among claims of equal priority, ratably to the
3177 extent of funds that are legally available therefor. Remaining
3178 funds shall be distributed to the members and transferees of the
3179 dissolved limited liability company. However, the distribution
3180 may not be made before the expiration of 150 days after the date
3181 of the last notice of a rejection given pursuant to subsection
3182 (3). In the absence of actual fraud, the judgment of the
3183 managers of a dissolved manager-managed limited liability
3184 company, or the members of a dissolved member-managed limited
3185 liability company, or other person or persons winding up the
3186 limited liability company or the governing persons of the
3187 successor entity, as to the provisions made for the payment of
3188 all obligations under paragraph (d), is conclusive.

3189 (10) A dissolved limited liability company or successor
3190 entity which has not followed the procedures described in
3191 subsections (2) and (3) shall pay or make reasonable provision
3192 to pay all known claims and obligations, including all

3193 contingent, conditional, or unmatured claims known to the
 3194 dissolved limited liability company or the successor entity and
 3195 all claims that are known to the dissolved limited liability
 3196 company or the successor entity but for which the identity of
 3197 the claimant is unknown. If there are sufficient funds, the
 3198 claims must be paid in full, and a provision made for payment
 3199 must be made in full. If there are insufficient funds, the
 3200 claims and obligations shall be paid or provided for according
 3201 to their priority and, among claims of equal priority, ratably
 3202 to the extent of funds that are legally available. Remaining
 3203 funds shall be distributed to the members and transferees of the
 3204 dissolved limited liability company.

3205 (11) A member or transferee of a dissolved limited
 3206 liability company to which the assets were distributed pursuant
 3207 to subsection (9) or subsection (10) is not liable for a claim
 3208 against the limited liability company in an amount in excess of
 3209 the member's or transferee's pro rata share of the claim or the
 3210 amount distributed to the member or transferee, whichever is
 3211 less.

3212 (12) A member or transferee of a dissolved limited
 3213 liability company to which the assets were distributed pursuant
 3214 to subsection (9) is not liable for a claim against the limited
 3215 liability company, which claim is known to the limited liability
 3216 company or successor entity and on which a proceeding is not
 3217 begun before the expiration of 3 years after the effective date
 3218 of dissolution.

3219 (13) The aggregate liability of a person for claims
 3220 against the dissolved limited liability company arising under

3221 this section or s. 608.7920 may not exceed the amount
3222 distributed to the person in dissolution.

3223 (14) As used in this section and s. 608.7920, the term
3224 "successor entity" includes a trust, receivership, or other
3225 legal entity governed by the laws of this state to which the
3226 remaining assets and liabilities of a dissolved limited
3227 liability company are transferred and which exists solely for
3228 the purposes of prosecuting and defending suits by or against
3229 the dissolved limited liability company, thereby enabling the
3230 dissolved limited liability company to settle and close the
3231 activities and affairs of the dissolved limited liability
3232 company, to dispose of and convey the property of the dissolved
3233 limited liability company, to discharge the liabilities of the
3234 dissolved limited liability company, and to distribute to the
3235 dissolved limited liability company's members or transferees any
3236 remaining assets, but not for the purpose of continuing the
3237 activities and affairs for which the dissolved limited liability
3238 company was organized.

3239 (15) As used in this section and s. 608.7923, the term
3240 "circuit court in the applicable county" means the county in
3241 this state in which the limited liability company's principal
3242 office is located or was located at the effective date of
3243 dissolution; if it has, and at the effective date of dissolution
3244 had, no principal office in this state, then in the county in
3245 which the limited liability company has, or at the effective
3246 date of dissolution had, an office in this state; or if none in
3247 this state, then in the county in which the limited liability
3248 company's registered office is or was last located.

3249 (16) As used in this section, the term "known claim" or
3250 "claim" includes unliquidated claims, but does not include a
3251 contingent liability that has not matured so that there is no
3252 immediate right to bring suit or a claim based on an event
3253 occurring after the effective date of dissolution.

3254 608.7922 Other claims against a dissolved limited
3255 liability company.-

3256 (1) A dissolved limited liability company or successor
3257 entity, as defined in s. 608.7921(14), may choose to execute one
3258 of the following procedures to resolve payment of unknown
3259 claims:

3260 (a) The company or successor entity may file notice of its
3261 dissolution with the department on the form prescribed by the
3262 department and request that persons with claims against the
3263 company which are not known to the company or successor entity
3264 present them in accordance with the notice. The notice must:

3265 1. State the name of the company and the date of
3266 dissolution.

3267 2. Describe the information that must be included in a
3268 claim, state that the claim must be in writing, and provide a
3269 mailing address to which the claim may be sent.

3270 3. State that a claim against the company is barred unless
3271 a proceeding to enforce the claim is commenced within 4 years
3272 after the filing of the notice.

3273 (b) The company or successor entity may publish notice of
3274 its dissolution and request persons having claims against the
3275 company to present them in accordance with the notice. The
3276 notice must:

3277 1. Be published in a newspaper of general circulation in
3278 the county in which the dissolved limited liability company's
3279 principal office is located or, if the principal office is not
3280 located in this state, in the county in which the office of the
3281 company's registered agent is or was last located.

3282 2. Describe the information required to be contained in a
3283 claim, state that the claim must be in writing, and provide a
3284 mailing address to which the claim is to be sent.

3285 3. State that a claim against the company is barred unless
3286 an action to enforce the claim is commenced within 4 years after
3287 publication of the notice.

3288 (2) If a dissolved limited liability company complies with
3289 either paragraph (1) (a) or paragraph (1) (b), unless sooner
3290 barred by another statute limiting actions, the claim of each of
3291 the following claimants is barred unless the claimant commences
3292 an action to enforce the claim against the dissolved limited
3293 liability company within 4 years after the publication date of
3294 the notice:

3295 (a) A claimant that did not receive notice in a record
3296 under s. 608.7921.

3297 (b) A claimant whose claim was timely sent to the
3298 dissolved limited liability company but not acted on.

3299 (c) A claimant whose claim is contingent at, or based on
3300 an event occurring after, the effective date of dissolution.

3301 (3) A claim that is not barred by this section, s.
3302 608.7921, or another statute limiting actions, may be enforced:

3303 (a) Against a dissolved limited liability company, to the
3304 extent of its undistributed assets.

3305 (b) Except as otherwise provided in s. 608.7923, if assets
3306 of the limited liability company have been distributed after
3307 dissolution, against a member or transferee to the extent of
3308 that person's proportionate share of the claim or of the
3309 company's assets distributed to the member or transferee after
3310 dissolution, whichever is less, but a person's total liability
3311 for all claims under this subsection may not exceed the total
3312 amount of assets distributed to the person after dissolution.

3313 (4) This section does not extend an otherwise applicable
3314 statute of limitations.

3315 608.7923 Court proceedings.—

3316 (1) A dissolved limited liability company that has filed
3317 or published a notice under s. 608.7922(1)(a) or (1)(b) may file
3318 an application with the circuit court in the applicable county,
3319 for a determination of the amount and form of security to be
3320 provided for payment of claims that are contingent, have not
3321 been made known to the company, or are based on an event
3322 occurring after the effective date of dissolution but which,
3323 based on the facts known to the dissolved company, are
3324 reasonably expected to arise after the effective date of
3325 dissolution. Security is not required for a claim that is or is
3326 reasonably anticipated to be barred under s. 608.7922.

3327 (2) Within 10 days after filing an application under
3328 subsection (1), the dissolved limited liability company must
3329 give notice of the proceeding to each claimant holding a
3330 contingent claim known to the company.

3331 (3) In a proceeding under this section, the court may
3332 appoint a guardian ad litem to represent all claimants whose

3333 identities are unknown. The reasonable fees and expenses of the
3334 guardian, including all reasonable expert witness fees, must be
3335 paid by the dissolved limited liability company.

3336 (4) A dissolved limited liability company that provides
3337 security in the amount and form ordered by the court under
3338 subsection (1) satisfies the company's obligations with respect
3339 to claims that are contingent, have not been made known to the
3340 company, or are based on an event occurring after the effective
3341 date of dissolution, and such claims may not be enforced against
3342 a member or transferee that received assets in liquidation.

3343 608.7924 Administrative dissolution.-

3344 (1) The department may dissolve a limited liability
3345 company administratively if the company does not:

3346 (a) Deliver its annual report to the department by 5:00
3347 p.m. Eastern Time on the third Friday in September;

3348 (b) Pay a fee or penalty due to the department under this
3349 chapter;

3350 (c) Appoint and maintain a registered agent as required by
3351 s. 608.7813; or

3352 (d) Deliver for filing a statement of a change under s.
3353 608.7814 within 30 days after a change has occurred in the name
3354 or address of the agent, unless, within 30 days after the change
3355 occurred, either:

3356 1. The agent filed a statement of change under s.
3357 608.7816; or

3358 2. The change was made accordance with s. 608.7814(4).

3359 (2) Administrative dissolution of a limited liability
3360 company for failure to file an annual report shall occur on the

3361 fourth Friday in September of each year. The department shall
3362 issue a notice in a record of administrative dissolution to the
3363 limited liability company dissolved for failure to final an
3364 annual report. Issuance of the notice may be by electronic
3365 transmission to a limited liability company that has provided
3366 the department with an electronic mail address.

3367 (3) If the department determines that one or more grounds
3368 exist for administratively dissolving a limited liability
3369 company under paragraphs (1)(b)-(d), the department shall serve
3370 notice in a record to the limited liability company of its
3371 intent to administratively dissolve the limited liability
3372 company. Issuance of the notice may be by electronic
3373 transmission to a limited liability company that has provided
3374 the department with an electronic mail address.

3375 (4) If within 60 days after sending the notice of intent
3376 to administratively dissolve pursuant to subsection (3), a
3377 limited liability company does not correct each ground for
3378 dissolution under paragraphs (1)(b)-(d), or demonstrate to the
3379 reasonable satisfaction of the department that each ground
3380 determined by the department does not exist, the department
3381 shall dissolve the limited liability company administratively
3382 and issue to the company a notice in a record of administrative
3383 dissolution that states the grounds for dissolution. Issuance of
3384 the notice of administrative dissolution may be by electronic
3385 transmission to a limited liability company that has provided
3386 the department with an email address.

3387 (5) A limited liability company that has been
3388 administratively dissolved continues in existence but, subject

CS/HB 1079

2013

3389 to s. 608.7925, may only carry on activities necessary to wind
3390 up its activities and affairs, liquidate and distribute its
3391 assets, and notify claimants under ss. 608.7921 and 608.7922.

3392 (6) The administrative dissolution of a limited liability
3393 company does not terminate the authority of its agent for
3394 service of process.

3395 608.7925 Reinstatement.—

3396 (1) A limited liability company that is administratively
3397 dissolved under s. 608.7924 may apply to the department for
3398 reinstatement at any time after the effective date of
3399 dissolution. The company must submit a form of application for
3400 reinstatement prescribed and furnished by the department and
3401 provide all of the information required by the department,
3402 together with all fees then owed by the company at the rates
3403 provided by law at the time the company applies for
3404 reinstatement.

3405 (2) If the department determines that an application for
3406 reinstatement contains the information required by subsection
3407 (1) and that the information is correct, and upon payment of all
3408 required fees, the department shall reinstate the limited
3409 liability company.

3410 (3) When reinstatement under this section becomes
3411 effective:

3412 (a) The reinstatement relates back to and takes effect as
3413 of the effective date of the administrative dissolution.

3414 (b) The limited liability company may resume its
3415 activities and affairs as if the administrative dissolution had
3416 not occurred.

CS/HB 1079

2013

3417 (c) The rights of a person arising out of an act or
3418 omission in reliance on the dissolution before the person knew
3419 or had notice of the reinstatement are not affected.

3420 (4) The name of the dissolved limited liability company is
3421 not available for assumption or use by another limited liability
3422 company until 1 year after the effective date of dissolution
3423 unless the dissolved limited liability company provides the
3424 department with a record executed as required by s. 608.7823
3425 permitting the immediate assumption or use of the name by
3426 another limited liability company.

3427 608.7926 Judicial review of denial of reinstatement.-

3428 (1)(a) If the department denies a limited liability
3429 company's application for reinstatement after administrative
3430 dissolution, the department shall serve the company with a
3431 notice in a record that explains the reason or reasons for the
3432 denial.

3433 (b) Within 30 days after service of a notice of denial of
3434 reinstatement, a limited liability company may appeal from the
3435 denial by petitioning the circuit court to set aside the
3436 dissolution. The petition must be served on the department and
3437 contain a copy of the department's notice of administrative
3438 dissolution, the company's application for reinstatement, and
3439 the department's notice of denial.

3440 (c) The court may order the department to reinstate a
3441 dissolved limited liability company or take other action the
3442 court considers appropriate.

3443 608.7927 Effect of dissolution.-

3444 (1) Dissolution of a limited liability company does not:

CS/HB 1079

2013

3445 (a) Transfer title to the limited liability company's
3446 assets.

3447 (b) Prevent commencement of a proceeding by or against the
3448 limited liability company in its name.

3449 (c) Abate or suspend a proceeding pending by or against
3450 the limited liability company on the effective date of
3451 dissolution.

3452 (d) Terminate the authority of the registered agent of the
3453 limited liability company.

3454 (2) Except as provided in s. 608.7925(4), the name of the
3455 dissolved limited liability company is not available for
3456 assumption or use by another limited liability company until 120
3457 days after the effective date of dissolution, or filing of a
3458 statement of termination, if earlier.

3459 608.7931 Direct action by member.—

3460 (1) Subject to subsection (2), a member may maintain a
3461 direct action against another member, a manager, or the limited
3462 liability company to enforce the member's rights and otherwise
3463 protect the member's interests, including rights and interests
3464 under the operating agreement or this chapter or arising
3465 independently of the membership relationship.

3466 (2) A member maintaining a direct action under this
3467 section must plead and prove an actual or threatened injury that
3468 is not solely the result of an injury suffered or threatened to
3469 be suffered by the limited liability company.

3470 608.7932 Derivative action.—A member may maintain a
3471 derivative action to enforce a right of a limited liability
3472 company if:

CS/HB 1079

2013

3473 (1) The member first makes a demand on the other members
3474 in a member-managed limited liability company, or the managers
3475 of a manager-managed limited liability company, requesting that
3476 they cause the company to take suitable action to enforce the
3477 right, and the managers or other members do not take the action
3478 within a reasonable time, not to exceed 90 days; or

3479 (2) A demand under subsection (1) would be futile, or
3480 irreparable injury would result to the company by waiting for
3481 the other members or the managers to take action to enforce the
3482 right in accordance with subsection (1).

3483 608.7933 Proper plaintiff.—A derivative action to enforce
3484 a right of a limited liability company may be maintained only by
3485 a person that is a member at the time the action is commenced
3486 and:

3487 (1) Was a member when the conduct giving rise to the
3488 action occurred; or

3489 (2) Whose status as a member devolved on the person by
3490 operation of law or pursuant to the terms of the operating
3491 agreement from a person that was a member at the time of the
3492 conduct.

3493 608.7934 Special litigation committee.—

3494 (1) If a limited liability company is named as or made a
3495 party in a derivative action, the company may appoint a special
3496 litigation committee to investigate the claims asserted in the
3497 derivative action and determine whether pursuing the action is
3498 in the best interests of the company. If the company appoints a
3499 special litigation committee, on motion, except for good cause
3500 shown, the court may stay any derivative action for the time

3501 reasonably necessary to permit the committee to make its
3502 investigation. This subsection does not prevent the court from:
3503 (a) Enforcing a person's rights under the company's
3504 operating agreement or this chapter, including the person's
3505 rights to information under s. 608.7853; or,
3506 (b) Exercising its equitable or other powers, including
3507 granting extraordinary relief in the form of a temporary
3508 restraining order or preliminary injunction.
3509 (2) A special litigation committee must be composed of one
3510 or more disinterested and independent individuals, who may be
3511 members.
3512 (3) A special litigation committee may be appointed:
3513 (a) In a member-managed limited liability company, by the
3514 consent of the members who are not named as parties in the
3515 derivative action, who are otherwise disinterested and
3516 independent, and who hold a majority of the current percentage
3517 or other interest in the profits of the company owned by all of
3518 all members of the company who are not named as parties in the
3519 derivative action and who are otherwise disinterested and
3520 independent;
3521 (b) In a manager-managed limited liability company, by a
3522 majority of the managers not named as parties in the derivative
3523 action and who are otherwise disinterested and independent; or
3524 (c) Upon motion by the limited liability company,
3525 consisting of a panel of one or more disinterested and
3526 independent persons.
3527 (4) After appropriate investigation, a special litigation
3528 committee shall determine what action is in the best interest of

3529 the limited liability company, including continuing, dismissing,
3530 or settling the derivative action, or taking another action that
3531 the special litigation committee deems appropriate.

3532 (5) After making a determination under subsection (4), a
3533 special litigation committee shall file or cause to be filed
3534 with the court a statement of its determination and its report
3535 supporting its determination, and shall serve each party to the
3536 derivative action with a copy of the determination and report.
3537 Upon motion to enforce the determination of the special
3538 litigation committee, the court shall determine whether the
3539 members of the committee were disinterested and independent and
3540 whether the committee conducted its investigation and made its
3541 recommendation in good faith, independently, and with reasonable
3542 care, with the committee having the burden of proof. If the
3543 court finds that the members of the committee were disinterested
3544 and independent and that the committee acted in good faith,
3545 independently, and with reasonable care, the court may enforce
3546 the determination of the committee. Otherwise, the court shall
3547 dissolve any stay of derivative action entered under subsection
3548 (1) and allow the derivative action to continue under the
3549 control of the plaintiff.

3550 608.7935 Proceeds and expenses.—

3551 (1) Except as otherwise provided in subsection (2):

3552 (a) Proceeds or other benefits of a derivative action
3553 under s. 608.7932, whether by judgment, compromise, or
3554 settlement, belong to the limited liability company and not to
3555 the plaintiff.

3556 (b) If the plaintiff receives any proceeds, the plaintiff

3557 shall remit them immediately to the company.

3558 (2) If a derivative action under s. 608.7932 is successful
3559 in whole or in part, the court may award the plaintiff
3560 reasonable expenses, including reasonable attorney fees and
3561 costs, from the recovery of the limited liability company.

3562 608.7936 Voluntary dismissal or settlement; notice.—

3563 (1) A derivative action on behalf of a limited liability
3564 company may not be voluntarily dismissed or settled without the
3565 court's approval.

3566 (2) If the court determines that a proposed voluntary
3567 dismissal or settlement will substantially affect the interest
3568 of the limited liability company's members or a class, series,
3569 or voting group of members, the court shall direct that notice
3570 be given to the members affected. The court may determine which
3571 party or parties to the derivative action shall bear the expense
3572 of giving the notice.

3573 608.901 Governing law.—

3574 (1) The law of the state or other jurisdiction under which
3575 a foreign limited liability company exists governs:

3576 (a) The organization and internal affairs of the company.

3577 (b) The liability of a member as member and a manager as
3578 manager for the debts, obligations, or other liabilities of the
3579 company.

3580 (2) A foreign limited liability company may not be denied
3581 a certificate of authority by reason of a difference between its
3582 jurisdiction of formation and the laws of this state.

3583 (3) A certificate of authority does not authorize a
3584 foreign limited liability company to engage in any business or

3585 exercise any power that a limited liability company may not
 3586 engage in or exercise in this state.

3587 608.902 Application for certificate of authority.—

3588 (1) A foreign limited liability company may not transact
 3589 business in this state until it obtains a certificate of
 3590 authority from the department. A foreign limited liability
 3591 company may apply for a certificate of authority to transact
 3592 business in this state by delivering an application to the
 3593 department for filing. Such application must be made on forms
 3594 prescribed by the department. The application must contain:

3595 (a) The name of the company and, if the name does not
 3596 comply with s. 608.7812, an alternate name adopted pursuant to
 3597 s. 608.905(1).

3598 (b) The name of the company's jurisdiction of formation.

3599 (c) The principal office and mailing addresses of the
 3600 company.

3601 (d) The name and street address in this state of, and
 3602 written acceptance by, the company's initial registered agent in
 3603 this state.

3604 (e) The name, title or capacity, and address of at least
 3605 one person who has the authority to manage the company.

3606 (f) Additional information as may be necessary or
 3607 appropriate in order to enable the department to determine
 3608 whether the company is entitled to file an application for a
 3609 certificate of authority to transact business in this state and
 3610 to determine and assess the fees as prescribed in this chapter.

3611 (2) A foreign limited liability company shall deliver with
 3612 a completed application under subsection (1) a certificate of

3613 existence or a record of similar import signed by the Secretary
3614 of State or other official having custody of the foreign limited
3615 liability company's publicly filed records in its jurisdiction
3616 of formation, dated not more than 90 days before the delivery of
3617 the application to the department.

3618 (3) For purposes of complying with the requirements of
3619 this chapter, the department may require each individual series
3620 or cell of a foreign series limited liability company that
3621 transacts business in this state to make a separate application
3622 for certificate of authority, and to make such other filings as
3623 may be required for purposes of complying with the requirements
3624 of this chapter as if each such series or cell were a separate
3625 foreign limited liability company.

3626 608.903 Activities that do not constitute transacting
3627 business.—

3628 (1) The following activities, among others, do not
3629 constitute transacting business within the meaning of s.
3630 608.902(1):

3631 (a) Maintaining, defending, or settling any proceeding.

3632 (b) Holding meetings of the managers or members or
3633 carrying on other activities concerning internal company
3634 affairs.

3635 (c) Maintaining bank accounts.

3636 (d) Maintaining managers or agencies for the transfer,
3637 exchange, and registration of the foreign limited liability
3638 company's own securities or maintaining trustees or depositaries
3639 with respect to those securities.

3640 (e) Selling through independent contractors.

3641 (f) Soliciting or obtaining orders, whether by mail or
 3642 through employees, agents, or otherwise, if the orders require
 3643 acceptance outside this state before they become contracts.

3644 (g) Creating or acquiring indebtedness, mortgages, and
 3645 security interests in real or personal property.

3646 (h) Securing or collecting debts or enforcing mortgages
 3647 and security interests in property securing the debts.

3648 (i) Transacting business in interstate commerce.

3649 (j) Conducting an isolated transaction that is completed
 3650 within 30 days and that is not one in the course of repeated
 3651 transactions of a like nature.

3652 (k) Owning and controlling a subsidiary corporation
 3653 incorporated, or limited liability company formed, in or
 3654 transacting business within this state or voting the stock of a
 3655 corporation which it has lawfully acquired.

3656 (l) Owning a limited partner interest in a limited
 3657 partnership that is transacting business within this state,
 3658 unless the limited partner manages or controls the partnership
 3659 or exercises the powers and duties of a general partner.

3660 (m) Owning, without more, real or personal property.

3661 (2) The list of activities in subsection (1) is an not
 3662 exhaustive list of activities that constitute transacting
 3663 business within the meaning of s. 608.903(1).

3664 (3) The ownership in this state of income-producing real
 3665 property or tangible personal property, other than property
 3666 excluded under subsection (1), constitutes transacting business
 3667 in this state for purposes of s. 608.902(1).

3668 (4) This section does not apply when determining the

3669 contacts or activities that may subject a foreign limited
 3670 liability company to service of process, taxation, or regulation
 3671 under the law of this state other than this chapter.

3672 608.904 Application for certificate of authority.—

3673 (1) Unless the department determines that an application
 3674 for a certificate of authority of a foreign limited liability
 3675 company to transact business in this state does not comply with
 3676 the filing requirements of this chapter, the department shall,
 3677 upon payment of all filing fees, authorize the foreign limited
 3678 liability company to transact business in this state and file
 3679 the application for a certificate of authority.

3680 (2) The filing by the department of an application for a
 3681 certificate of authority authorizes the foreign limited
 3682 liability company to which it is issued to transact business in
 3683 this state subject, however, to the right of the department to
 3684 suspend or revoke the certificate of authority as provided in
 3685 this chapter.

3686 608.905 Noncomplying name of foreign limited liability
 3687 company.—

3688 (1) A foreign limited liability company whose name is
 3689 unavailable under or does not otherwise comply with s. 608.7812
 3690 may use an alternate name that complies with s. 608.7812 to
 3691 transact business in this state. An alternate name adopted for
 3692 use in this state shall be cross-referenced to the actual name
 3693 of the foreign limited liability company in the records of the
 3694 department. If the actual name of the foreign limited liability
 3695 company subsequently becomes available in this state or the
 3696 company chooses to change its alternate name, a copy of the

CS/HB 1079

2013

3697 record approving the change by its members, managers, or other
3698 persons having the authority to do so, and executed as required
3699 by s. 608.7823, shall be delivered to the department for filing.

3700 (2) A foreign limited liability company that adopts an
3701 alternate name under subsection (1) and obtains a certificate of
3702 authority with the alternate name need not comply with s.
3703 865.09.

3704 (3) After obtaining a certificate of authority with an
3705 alternate name, a foreign limited liability company shall
3706 transact business in this state under the alternate name unless
3707 the company is authorized under s. 865.09 to transact business
3708 in this state under another name.

3709 (4) If a foreign limited liability company authorized to
3710 transact business in this state changes its name to one that
3711 does not comply with s. 608.7812, it may not thereafter transact
3712 business in this state until it complies with subsection (1) and
3713 obtains an amended certificate of authority.

3714 608.906 Amendment to certificate of authority.-

3715 (1) A foreign limited liability company authorized to
3716 transact business in this state shall deliver for filing an
3717 amendment to its certificate of authority to reflect the change
3718 of:

3719 (a) Its name on the records of the department;

3720 (b) Its jurisdiction of formation;

3721 (c) The principal office and mailing addresses of the
3722 company unless the change was made in a timely filed annual
3723 report;

3724 (d) The name and street address in this state of the

3725 company's registered agent in this state, unless the change was
3726 timely made in accordance with s. 608.7814 or s. 608.7816; or

3727 (e) A person identified in accordance with s.
3728 608.902(1)(e), or a change in the title or capacity or address
3729 of that person.

3730 (2) The application must be made within 30 days after the
3731 occurrence of a change mentioned in subsection (1), must be
3732 signed by an authorized representative of the foreign limited
3733 liability company, and must include:

3734 (a) The name of the foreign limited liability company as
3735 it appears on the records of the department.

3736 (b) Its jurisdiction of formation.

3737 (c) The date the foreign limited liability company was
3738 authorized to transact business this state.

3739 (d) If the name of the foreign limited liability company
3740 has been changed, the name relinquished and its new name.

3741 (e) If the amendment changes the jurisdiction of formation
3742 of the foreign limited liability company, a statement of that
3743 change.

3744 (3) Subject to subsection (4), a foreign limited liability
3745 company authorized to do business in this state may make
3746 application to the department to obtain an amended certificate
3747 of authority to add, remove, or change the name, title,
3748 capacity, or address of a person who has the authority to manage
3749 the foreign limited liability company.

3750 (4) The requirements of s. 608.902(2) for obtaining an
3751 original certificate of authority apply to obtaining an amended
3752 certificate under this section, unless the secretary of state or

3753 other official having custody of the foreign limited liability
3754 company's publicly filed records in its jurisdiction of
3755 formation did not require an amendment to effectuate the change
3756 on its records.

3757 608.907 Revocation of certificate of authority.—

3758 (1) A certificate of authority of a foreign limited
3759 liability company to transact business in this state may be
3760 revoked by the department if:

3761 (a) The company did not deliver its annual report to the
3762 department by 5 p.m. Eastern Time on the third Friday in
3763 September;

3764 (b) The company did not pay a fee or penalty due to the
3765 department under this chapter;

3766 (c) The company did not appoint and maintain an agent for
3767 service of process as required by s. 608.7813;

3768 (d) The company did not deliver for filing a statement of
3769 a change under s. 608.7814 within 30 days after a change has
3770 occurred in the name or address of the agent, unless, within 30
3771 days after the change occurred, either:

3772 1. The agent filed a statement of change under s.
3773 608.7816, or

3774 2. The change was made in accordance with s. 608.7814(4)
3775 or s. 608.906(1)(d);

3776 (e) The company failed to amend its certificate of
3777 authority to reflect a change in its name on the records of the
3778 department or its jurisdiction of formation;

3779 (f) The department receives a duly authenticated
3780 certificate from the official having custody of records in the

3781 company's jurisdiction of formation stating that it has been
3782 dissolved or is no longer active on its records;

3783 (g) The company's period of duration has expired;

3784 (h) A member, manager, or agent of the company signed a
3785 document that the member, manager, or agent knew was false in a
3786 material respect with the intent that the document be delivered
3787 to the department for filing; or

3788 (i) The company has failed to answer truthfully and fully,
3789 within the time prescribed in s. 608.978, interrogatories
3790 propounded by the department.

3791 (2) Revocation of a foreign limited liability company's
3792 certificate of authority for failure to file an annual report
3793 shall occur on the 4th Friday in September of each year. The
3794 department shall issue a notice in a record of the revocation to
3795 the revoked foreign limited liability company. Issuance of the
3796 notice may be by electronic transmission to a foreign limited
3797 liability company that has provided the department with an email
3798 address.

3799 (3) If the department determines that one or more grounds
3800 exist under paragraphs (1)(b)-(i) for revoking a foreign limited
3801 liability company's certificate of authority, the department
3802 shall issue a notice in a record to the foreign limited
3803 liability company of the department's intent to revoke the
3804 certificate of authority. Issuance of the notice may be by
3805 electronic transmission to a foreign limited liability company
3806 that has provided the department with an email address.

3807 (4) If within 60 days after the department sent the notice
3808 of intent to revoke in accordance with subsection (3), the

CS/HB 1079

2013

3809 foreign limited liability company does not correct each ground
3810 for revocation or demonstrate to the reasonable satisfaction of
3811 the department that each ground determined by the department
3812 does not exist, the department shall revoke the foreign limited
3813 liability company's authority to transact business in this state
3814 and issue a notice in a record of revocation that states the
3815 grounds for revocation. Issuance of the notice may be by
3816 electronic transmission to a foreign limited liability company
3817 that has provided the department with an email address.

3818 608.908 Cancellation of certificate of authority.—To
3819 cancel its certificate of authority to transact business in this
3820 state, a foreign limited liability company must deliver to the
3821 department for filing a notice of withdrawal of certificate of
3822 authority. The certificate is canceled when the notice becomes
3823 effective under s. 608.7827. The notice of withdrawal of
3824 certificate of authority must be signed by an authorized
3825 representative and state the following:

3826 (1) The name of the company as it appears on the records
3827 of the department.

3828 (2) The name of the company's jurisdiction of formation.

3829 (3) The date the company was authorized to transact
3830 business in this state.

3831 (4) The company is withdrawing its certificate of
3832 authority in this state.

3833 608.909 Effect of failure to have certificate of
3834 authority.—

3835 (1) A foreign limited liability company transacting
3836 business in this state or its successors may not maintain an

3837 action or proceeding in this state unless it has a certificate
3838 of authority to transact business in this state.

3839 (2) The successor to a foreign limited liability company
3840 that transacted business in this state without a certificate of
3841 authority and the assignee of a cause of action arising out of
3842 that business may not maintain a proceeding based on that cause
3843 of action in a court in this state until the foreign limited
3844 liability company or its successor obtains a certificate of
3845 authority.

3846 (3) A court may stay a proceeding commenced by a foreign
3847 limited liability company or its successor or assignee until it
3848 determines whether the foreign limited liability company or its
3849 successor requires a certificate of authority. If it so
3850 determines, the court may further stay the proceeding until the
3851 foreign limited liability company or its successor obtains the
3852 certificate.

3853 (4) The failure of a foreign limited liability company to
3854 have a certificate of authority to transact business in this
3855 state does not impair the validity of a contract or act of the
3856 company or prevent the foreign limited liability company from
3857 defending an action or proceeding in this state.

3858 (5) A member or manager of a foreign limited liability
3859 company is not liable for the debts, obligations, or other
3860 liabilities of the foreign limited liability company solely
3861 because the foreign limited liability company transacted
3862 business in this state without a certificate of authority.

3863 (6) If a foreign limited liability company transacts
3864 business in this state without a certificate of authority or

3865 cancels its certificate of authority, it appoints the department
 3866 as its agent for service of process for rights of action arising
 3867 out of the transaction of business in this state.

3868 (7) A foreign limited liability company that transacts
 3869 business in this state without authority to do so is liable to
 3870 this state for the years or parts thereof during which it
 3871 transacted business in this state without authority in an amount
 3872 equal to all fees or penalties which would have been imposed by
 3873 this chapter upon the foreign limited liability company had it
 3874 duly applied for and received authority to transact business in
 3875 this state as required by this chapter. In addition to the
 3876 payments thus prescribed, the foreign limited liability company
 3877 is liable for a civil penalty of at least \$500 but not more than
 3878 \$1,000 for each year or part thereof during which it transacts
 3879 business in this state without a certificate of authority. The
 3880 department may collect all penalties due under this subsection.

3881 608.910 Reinstatement after revocation of certificate of
 3882 authority.—

3883 (1) A foreign limited liability company whose certificate
 3884 of authority has been revoked may apply to the department for
 3885 reinstatement at any time after the effective date of the
 3886 revocation. The foreign limited liability company applying for
 3887 reinstatement must provide information in a form prescribed and
 3888 furnished by the department, and pay all fees then owed by the
 3889 foreign limited liability company at a rate provided by law at
 3890 the time the company applies for reinstatement.

3891 (2) If the department determines that an application for
 3892 reinstatement contains the information required by subsection

3893 | (1) and that the information is correct, and upon payment of all
 3894 | required fees, the department shall reinstate the foreign
 3895 | limited liability company's certificate of authority.

3896 | (3) When a reinstatement becomes effective, it relates
 3897 | back to and takes effect as of the effective date of the
 3898 | revocation of authority and the foreign limited liability
 3899 | company may resume its activities in this state as if the
 3900 | revocation of authority had not occurred.

3901 | (4) The name of the foreign limited liability company
 3902 | whose certificate of authority has been revoked is not available
 3903 | for assumption or use by another business entity until 1 year
 3904 | after the effective date of revocation of authority unless the
 3905 | limited liability company provides the department with a record
 3906 | executed as required by s. 608.7823 permitting the immediate
 3907 | assumption or use of its name by another limited liability
 3908 | company.

3909 | (5) If the name of the foreign limited liability company
 3910 | applying for reinstatement has been lawfully assumed in this
 3911 | state by another business entity, the department shall require
 3912 | the foreign limited liability company to comply with s. 608.7812
 3913 | before accepting its application for reinstatement.

3914 | 608.911 Action by Department of Legal Affairs.—The
 3915 | Department of Legal Affairs may maintain an action to enjoin a
 3916 | foreign limited liability company from transacting business in
 3917 | this state in violation of this chapter.

3918 | 608.916 Relationship of ss. 608.916-608.972 to other
 3919 | laws.—

3920 | (1) Sections 608.916-608.972 do not authorize an act

3921 prohibited by, and do not affect the application or requirements
 3922 of, law other than ss. 608.916-608.972.

3923 (2) A transaction effected under ss. 608.916-608.972 may
 3924 not create or impair a right or obligation on the part of a
 3925 person under a provision of the law of this state, other than
 3926 ss. 608.1001-608.1072, relating to a change in control,
 3927 takeover, business combination, control-share acquisition, or
 3928 similar transaction involving a merging, acquiring, or
 3929 converting, a domestic business corporation unless:

3930 (a) If the corporation does not survive the transaction,
 3931 the transaction satisfies the requirements of the provision; or

3932 (b) If the corporation survives the transaction, the
 3933 approval of the plan is by a vote of the shareholders or
 3934 directors which would be sufficient to create or impair the
 3935 right or obligation directly under the provision.

3936 608.917 Charitable and donative provisions.—

3937 (1) Property held for a charitable purpose under the law
 3938 of this state by a domestic or foreign entity immediately before
 3939 a transaction under this chapter becomes effective may not, as a
 3940 result of the transaction, be diverted from the objects for
 3941 which it was donated, granted, devised, or otherwise transferred
 3942 unless, to the extent required by or pursuant to the law of this
 3943 state concerning cy pres or other law dealing with nondiversion
 3944 of charitable assets, the entity obtains an appropriate order of
 3945 the appropriate court specifying the disposition of the
 3946 property.

3947 (2) A bequest, devise, gift, grant, or promise contained
 3948 in a will or other instrument of donation, subscription, or

3949 conveyance that is made to a merging entity that is not the
3950 surviving entity and that takes effect or remains payable after
3951 the merger inures to the surviving entity. A trust obligation
3952 that would govern property if transferred to the nonsurviving
3953 entity applies to property that is transferred to the surviving
3954 entity under this section.

3955 608.918 Status of filings.—A filing under ss. 608.916-
3956 608.972 signed by a domestic entity becomes part of the public
3957 organic record of the entity if the entity's organic law
3958 provides that similar filings under that law become part of the
3959 public organic record of the entity.

3960 608.919 Nonexclusivity.—The fact that a transaction under
3961 ss. 608.916-608.972 produces a certain result does not preclude
3962 the same result from being accomplished in another manner
3963 permitted by a law other than ss. 608.916-608.972.

3964 608.92 Reference to external facts.—A plan may refer to
3965 facts ascertainable outside the plan if the manner in which the
3966 facts will operate upon the plan is specified in the plan. The
3967 facts may include the occurrence of an event or a determination
3968 or action by a person, whether or not the event, determination,
3969 or action is within the control of a party to the transaction.

3970 608.922 Appraisal rights.—

3971 (1) A member of a limited liability company is entitled to
3972 appraisal rights and to obtain payment of the fair value of that
3973 member's membership interest in the following events:

3974 (a) Consummation of a merger of a limited liability
3975 company pursuant to this chapter where the member possessed the
3976 right to vote upon the merger.

3977 (b) Consummation of a conversion of such limited liability
 3978 company pursuant to this chapter where the member possessed the
 3979 right to vote upon the conversion.

3980 (c) Consummation of an interest exchange pursuant to this
 3981 chapter where the member possessed the right to vote upon the
 3982 interest exchange, except that appraisal rights are not
 3983 available to an interestholder of the limited liability company
 3984 whose interest in the limited liability company is not subject
 3985 to exchange in the interest exchange.

3986 (d) Consummation of a sale of substantially all of the
 3987 assets of a limited liability company where the member possessed
 3988 the right to vote upon the sale, unless the sale is pursuant to
 3989 court order or the sale is for cash pursuant to a plan under
 3990 which all or substantially all of the net proceeds of the sale
 3991 will be distributed to the interestholders within 1 year after
 3992 the date of sale.

3993 (e) An amendment to the organic rules of the entity that
 3994 reduces the interest of the holder to a fraction of an interest
 3995 if the limited liability company will be obligated to or will
 3996 have the right to repurchase the fractional interest so created.

3997 (f) An amendment to the organic rules of an entity, the
 3998 effect of which is to alter or abolish voting or other rights
 3999 with respect to the interest in a manner that is adverse to the
 4000 interest of the member, except as the right may be affected by
 4001 the voting or other rights of new interests then being
 4002 authorized of a new class or series of interests.

4003 (g) An amendment to the organic rules of an entity the
 4004 effect of which is to adversely affect the interest of the

4005 member by altering or abolishing appraisal rights under this
 4006 section.

4007 (h) To the extent otherwise expressly authorized by the
 4008 organic rules of the limited liability company.

4009 (2) A limited liability company may modify, restrict, or
 4010 eliminate the appraisal rights provided in this section in its
 4011 organic rules so long as the provision modifying, restricting,
 4012 or eliminating the appraisal rights is authorized by each member
 4013 whose appraisal rights are being modified, restricted, or
 4014 eliminated. Organic rules containing an express waiver of
 4015 appraisal rights that are approved by a member constitute a
 4016 waiver of appraisal rights with respect to the member to the
 4017 extent provided in the organic rules.

4018 (3) To the extent that appraisal rights are available, ss.
 4019 608.961-608.972 govern the procedures with respect to such
 4020 appraisal rights as between the limited liability company and
 4021 its members.

4022 (4) Notwithstanding subsection (1), the availability of
 4023 appraisal rights is limited in accordance with the following
 4024 provisions:

4025 (a) Appraisal rights are not available for holders of a
 4026 membership interests that are:

4027 1. A covered security under section 18(b)(1)(A) or (B) of
 4028 the Securities Act of 1933, as amended;

4029 2. Traded in an organized market and part of a class or
 4030 series that has at least 2,000 members or other holders and a
 4031 market value of at least \$20 million, exclusive of the value of
 4032 the class or series of membership interests held by the limited

4033 liability company's subsidiaries, senior executives, managers,
 4034 and beneficial members owning more than 10 percent of the class
 4035 or series of membership interests; or

4036 3. Issued by an open end management investment company
 4037 registered with the Securities and Exchange Commission under the
 4038 Investment Company Act of 1940 and subject to being redeemed at
 4039 the option of the holder at net asset value.

4040 (b) The applicability of paragraph (a) shall be determined
 4041 as of the date fixed to determine the members entitled to
 4042 receive notice of, and to vote upon, the appraisal event, or the
 4043 day before the effective date of the appraisal event if there is
 4044 no meeting of the members to vote upon the appraisal event.

4045 (c) Subsection (4) does not apply to, and appraisal rights
 4046 shall be available pursuant to subsection (1) for, members who
 4047 are required by the appraisal event to accept for their
 4048 membership interests anything other than cash or a proprietary
 4049 interest in an entity that satisfies the standards provided in
 4050 paragraph (a) at the time the appraisal event becomes effective.

4051 (d) This subsection does not apply to, and appraisal
 4052 rights shall be available pursuant to subsection (1) for, the
 4053 holder of a membership interest if:

4054 1. The member or members' interests in the limited
 4055 liability company or the limited liability company's assets are
 4056 being acquired or converted, whether by merger, conversion, or
 4057 otherwise, pursuant to the appraisal event by a person, or by an
 4058 affiliate of a person, who:

4059 a. Is, or at any time in the 1-year period immediately
 4060 before approval of the appraisal event was, the beneficial owner

4061 of 20 percent or more of those interests in the limited
4062 liability company entitled to vote on the appraisal event,
4063 excluding interests acquired pursuant to an offer for all
4064 interests having voting rights if the offer was made within 1
4065 year before the appraisal event for consideration of the same
4066 kind and of a value equal to or less than that paid in
4067 connection with the appraisal event; or
4068 b. Directly or indirectly has, or at any time in the 1-
4069 year period immediately before approval of the appraisal event
4070 had, the power, contractually or otherwise, to cause the
4071 appointment or election of any senior executives, or managers of
4072 the limited liability company.
4073 2. Any of the members' interests in the limited liability
4074 company or the limited liability company's assets are being
4075 acquired or converted, whether by merger, conversion, or
4076 otherwise, pursuant to the appraisal event by a person, or by an
4077 affiliate of a person, who is, or at any time in the 1-year
4078 period immediately before approval of the appraisal event was, a
4079 senior executive of the limited liability company or a senior
4080 executive of an affiliate of the limited liability company, and
4081 that senior executive will receive, as a result of the limited
4082 liability company action, a financial benefit not generally
4083 available to members, other than:
4084 a. Employment, consulting, retirement, or similar benefits
4085 established separately and not as part of or in contemplation of
4086 the appraisal event;
4087 b. Employment, consulting, retirement, or similar benefits
4088 established in contemplation of, or as part of, the appraisal

4089 event that are not more favorable than those existing before the
4090 appraisal event or, if more favorable, that have been approved
4091 by the limited liability company; or

4092 c. In the case of a manager of the limited liability
4093 company who will, during or as the result of the appraisal
4094 event, become a manager, general partner, or director of the
4095 surviving or converted entity or one of its affiliates, those
4096 rights and benefits as a manager, general partner, or director
4097 that are provided on the same basis as those afforded by the
4098 surviving or converted entity generally to other managers,
4099 general partners, or directors of the surviving or converted
4100 entity or its affiliate.

4101 (e) For the purposes of sub-subparagraph (d)1.a. of this
4102 subsection only, the term "beneficial owner" means a person who,
4103 directly or indirectly, through a contract, arrangement, or
4104 understanding, other than a revocable proxy, has or shares the
4105 right to vote, or to direct the voting of, an interest in a
4106 limited liability company with respect to approval of the
4107 appraisal event, if a member of a national securities exchange
4108 is not deemed to be a beneficial owner of an interest in a
4109 limited liability company held directly or indirectly by it on
4110 behalf of another person solely because the member is the
4111 recordholder of interests in the limited liability company if
4112 the member is precluded by the rules of the exchange from voting
4113 without instruction on contested matters or matters that may
4114 affect substantially the rights or privileges of the holders of
4115 the interests in the limited liability company to be voted. When
4116 two or more persons agree to act together for the purpose of

4117 voting such interests, each member of the group formed thereby
4118 is deemed to have acquired beneficial ownership, as of the date
4119 of the agreement, of all voting interests in the limited
4120 liability company beneficially owned by member of the group.

4121 608.925 Merger authorized.—

4122 (1) By complying with ss. 608.925-608.930:

4123 (a) One or more domestic limited liability companies may
4124 merge with one or more domestic or foreign entities into a
4125 domestic or foreign surviving entity.

4126 (b) Two or more foreign entities may merge into a domestic
4127 limited liability company.

4128 (2) By complying with ss. 608.925-608.930 that are
4129 applicable to foreign entities, a foreign entity may be a party
4130 to a merger under those provisions or may be the surviving
4131 entity in the merger if the merger is authorized by the law of
4132 the foreign entity's jurisdiction of formation.

4133 (3) In the case of a merger involving a limited liability
4134 company that is a not-for-profit company, the surviving limited
4135 liability company or other business entity must also be a not-
4136 for-profit entity.

4137 608.926 Plan of merger.—

4138 (1) A domestic limited liability company may become a
4139 party to a merger under ss. 608.926-608.930 by approving a plan
4140 of merger. The plan must be in a record and contain:

4141 (a) As to each merging entity, its name, jurisdiction of
4142 formation, and type of entity.

4143 (b) The surviving entity in the merger.

4144 (c) The manner and basis of converting the interests and

4145 the rights to acquire interests in each party to the merger into
4146 interests, securities, obligations, money, other property,
4147 rights to acquire interests or securities, or any combination
4148 thereof.

4149 (d) If the surviving entity exists before the merger, any
4150 proposed amendments to or restatements of its public organic
4151 record, or any proposed amendments to or restatements of its
4152 private organic rules, that are, or are proposed to be, in a
4153 record, and all such amendments or restatements are effective
4154 upon the effective date of the merger.

4155 (e) If the surviving entity is to be created in the
4156 merger, its proposed public organic record, and the full text of
4157 its private organic rules that are proposed to be in a record,
4158 if any.

4159 (f) The other terms and conditions of the merger.

4160 (g) Another provision required by the law of a merging
4161 entity's jurisdiction of formation or the organic rules of a
4162 merging entity.

4163 (2) In addition to the requirements of subsection (1), a
4164 plan of merger may contain another provision not prohibited by
4165 law.

4166 608.927 Approval of merger.—

4167 (1) A plan of merger is not effective unless it has been
4168 approved:

4169 (a) With respect to a domestic merging limited liability
4170 company, by a majority-in-interest of the members.

4171 (b) In a record, by each member of a merging limited
4172 liability company that will have interestholder liability for

4173 debts, obligations, and other liabilities that arise after the
4174 merger becomes effective, unless:

4175 1. The organic rules of the company in a record provide
4176 for the approval of a merger in which some or all of its members
4177 become subject to interestholder liability by the vote or
4178 consent of fewer than all of the members.

4179 2. The member consented in a record to or voted for that
4180 provision of the organic rules or became a member after the
4181 adoption of that provision.

4182 (2) A merger involving a domestic merging entity that is
4183 not a limited liability company is not effective unless the
4184 merger is approved by that entity in accordance with its organic
4185 law.

4186 (3) A merger involving a foreign merging entity is not
4187 effective unless the merger is approved by the foreign entity in
4188 accordance with the law of the foreign entity's jurisdiction of
4189 formation.

4190 (4) All members of each domestic limited liability company
4191 that is a party to the merger who have a right to vote upon the
4192 merger must be given written notice of a meeting regarding the
4193 approval of a plan of merger as provided in subsection (1), at
4194 least 10 days but not more than 60 days before the date of the
4195 meeting at which the plan of merger is submitted for approval by
4196 the members of the limited liability company. The notification
4197 required by this subsection may be waived in writing by the
4198 person or persons entitled to the notification.

4199 (5) The notification required by subsection (4) must be in
4200 writing and include:

4201 (a) The date, time, and place of the meeting where the
 4202 plan of merger is to be submitted for approval by the members of
 4203 the limited liability company.

4204 (b) A copy of the plan of merger.

4205 (c) The statement or statements required by ss. 608.926,
 4206 608.961, and 608.962 regarding the availability of appraisal
 4207 rights, if any, to members of the limited liability company.

4208 (d) The date on which the notification was mailed or
 4209 delivered to the members.

4210 (e) Other information concerning the plan of merger.

4211 (6) The notification required by subsection (4) is deemed
 4212 to be given at the earliest date of:

4213 (a) The date the notification is received;

4214 (b) Five days after the date the notification is deposited
 4215 in the United States mail addressed to the member at the
 4216 member's address as it appears in the books and records of the
 4217 limited liability company, with prepaid postage affixed;

4218 (c) The date shown on the return receipt, if sent by
 4219 registered or certified mail, return receipt requested, and the
 4220 receipt is signed by or on behalf of the addressee; or

4221 (d) The date the notification is given in accordance with
 4222 the organic rules of the limited liability company.

4223 608.928 Amendment or abandonment of plan of merger.-

4224 (1) A plan of merger may be amended only with the consent
 4225 of each party to the plan, except as otherwise provided in the
 4226 plan or in the organic rules of the entity.

4227 (2) A merging limited liability company may approve an
 4228 amendment of a plan of merger:

4229 (a) In the same manner that the plan was approved, if the
4230 plan does not provide for the manner in which it may be amended;

4231 or

4232 (b) By the managers or members in the manner provided in
4233 the plan, but a member who was entitled to vote on or consent to
4234 approval of the merger is entitled to vote on or consent to an
4235 amendment of the plan that will change:

4236 1. The amount or kind of interests, securities,
4237 obligations, money, other property, rights to acquire interests
4238 or securities, or any combination of the foregoing, to be
4239 received by the interestholders of a party to the plan;

4240 2. The public organic record, if any, or private organic
4241 rules of the surviving entity that will be in effect immediately
4242 after the merger becomes effective, except for changes that do
4243 not require approval of the interestholders of the surviving
4244 entity under its organic law or organic rules; or

4245 3. Other terms or conditions of the plan, if the change
4246 would adversely affect the member in a material respect.

4247 (3) After a plan of merger has been approved and before
4248 the articles of merger become effective, the plan may be
4249 abandoned as provided in the plan. Unless prohibited by the
4250 plan, a domestic merging limited liability company may abandon
4251 the plan in the same manner that the plan was approved.

4252 (4) If a plan of merger is abandoned after articles of
4253 merger have been delivered to the department for filing and
4254 before the articles of merger have become effective, a statement
4255 of abandonment, signed by a party to the plan, must be delivered
4256 to the department for filing before the articles of merger

4257 become effective. The statement of abandonment takes effect on
 4258 filing and the merger is abandoned and does not become
 4259 effective. The statement of abandonment must contain:

4260 (a) The name of each party to the plan of merger;

4261 (b) The date on which the articles of merger were
 4262 delivered to the department for filing; and

4263 (c) A statement that the merger has been abandoned in
 4264 accordance with this section.

4265 608.929 Articles of merger.—

4266 (1) After a plan of merger is approved, articles of merger
 4267 must be signed by each merging entity and delivered to the
 4268 department for filing.

4269 (2) The articles of merger must contain:

4270 (a) The name, jurisdiction of formation, and type of
 4271 entity of each merging entity that is not the surviving entity.

4272 (b) The name, jurisdiction of formation, and type of
 4273 entity of the surviving entity.

4274 (c) A statement that the merger was approved by each
 4275 domestic merging entity that is a limited liability company, if
 4276 any, in accordance with ss. 608.925-608.930, by each other
 4277 merging entity, if any, in accordance with the law of its
 4278 jurisdiction of formation, and by each member of such limited
 4279 liability company who, as a result of the merger, will have
 4280 interestholder liability under s. 608.927(1)(b) and whose
 4281 approval is required.

4282 (d) If the surviving entity exists before the merger and
 4283 is a domestic filing entity, an amendment to its public organic
 4284 record approved as part of the plan of merger.

4285 (e) If the surviving entity is created by the merger and
4286 is a domestic filing entity, its public organic record, as an
4287 attachment.

4288 (f) If the surviving entity is created by the merger and
4289 is a domestic limited liability partnership, its statement of
4290 qualification, as an attachment.

4291 (g) If the surviving entity is a foreign entity that does
4292 not have a certificate of authority to transact business in this
4293 state, a mailing address to which the department may send any
4294 process served on the department pursuant to s. 608.117 and
4295 chapter 48.

4296 (h) A statement that the surviving entity has agreed to
4297 pay to members of a limited liability company with appraisal
4298 rights the amount to which such members are entitled under s.
4299 608.922 and ss. 608.961-608.972.

4300 (i) The effective date of the merger, if the effective
4301 date of the merger is not the same as the date of filing of the
4302 articles of merger, subject to the limitations contained in s.
4303 608.7827.

4304 (3) In addition to the requirements of subsection (2),
4305 articles of merger may contain another provision not prohibited
4306 by law.

4307 (4) A merger becomes effective when the articles of merger
4308 become effective, unless the articles of merger specify an
4309 effective time or a delayed effective date that complies with s.
4310 608.7827.

4311 (5) A copy of the articles of merger, certified by the
4312 department, may be filed in the official records of a county in

4313 this state in which a party to the merger holds an interest in
4314 real property.

4315 (6) A limited liability company is not required to deliver
4316 articles of merger for filing pursuant to subsection (1) if the
4317 limited liability company is named as a merging entity or
4318 surviving entity in articles of merger or a certificate of
4319 merger filed for the same merger in accordance with s.
4320 607.1109(1), s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and
4321 (2), and if the articles of merger substantially comply with the
4322 requirements of this section. In that case, the other articles
4323 of merger or certificate of merger may also be used for purposes
4324 of subsection (2).

4325 608.930 Effect of merger.

4326 (1) When a merger becomes effective:

4327 (a) The surviving entity continues in existence.

4328 (b) Each merging entity that is not the surviving entity
4329 ceases to exist.

4330 (c) All property of each merging entity vests in the
4331 surviving entity without transfer, reversion or impairment.

4332 (d) All debts, obligations, and other liabilities of each
4333 merging entity are debts, obligations, and other liabilities of
4334 the surviving entity.

4335 (e) Except as otherwise provided by law or the plan of
4336 merger, all the rights, privileges, immunities, powers, and
4337 purposes of each merging entity vest in the surviving entity.

4338 (f) If the surviving entity exists before the merger:

4339 1. All its property continues to be vested in it without
4340 transfer, reversion, or impairment.

4341 2. It remains subject to all of its debts, obligations,
4342 and other liabilities.

4343 3. All of its rights, privileges, immunities, powers, and
4344 purposes continue to be vested in it.

4345 (g) The name of the surviving entity may be substituted
4346 for the name of a merging entity that is a party to a pending
4347 action or proceeding;

4348 (h) If the surviving entity exists before the merger:

4349 1. Its public organic record, if any, is amended as
4350 provided in the articles of merger.

4351 2. Its private organic rules that are to be in a record,
4352 if any, are amended to the extent provided in the plan of
4353 merger.

4354 (i) If the surviving entity is created by the merger:

4355 1. Its public organic record, if any, is effective.

4356 2. Its private organic rules are effective.

4357 (j) The interests or rights to acquire interests in each
4358 merging entity which are to be converted in the merger are
4359 converted, and the interestholders of those interests are
4360 entitled only to the rights provided to them under the plan of
4361 merger and to appraisal rights they have under s. 608.922 and
4362 ss. 608.961-608.972 and the merging entity's organic law.

4363 (2) Except as otherwise provided in the organic law or
4364 organic rules of a merging entity:

4365 (a) The merger does not give rise to any rights that an
4366 interestholder, governor, or third party would have upon a
4367 dissolution, liquidation, or winding up of the merging entity.

4368 (b) The merging entity is not required to wind up its

4369 affairs, pay its liabilities, and distribute its assets under
 4370 ss. 608.7911-608.7927, and the merger does not constitute a
 4371 dissolution of the merging entity.

4372 (3) When a merger becomes effective, a person who did not
 4373 have interestholder liability with respect to any of the merging
 4374 entities and who becomes subject to interestholder liability
 4375 with respect to a domestic entity as a result of the merger will
 4376 have interestholder liability only to the extent provided by the
 4377 organic law of that entity and only for those debts,
 4378 obligations, and other liabilities that arise after the merger
 4379 becomes effective.

4380 (4) When a merger becomes effective, the interestholder
 4381 liability of a person who ceases to hold an interest in a
 4382 domestic merging entity with respect to which the person had
 4383 interestholder liability is as follows:

4384 (a) The merger does not discharge an interestholder
 4385 liability under the organic law of the domestic merging entity
 4386 to the extent the interestholder liability arose before the
 4387 merger became effective.

4388 (b) The person does not have interestholder liability
 4389 under the organic law of the domestic merging entity for a debt,
 4390 obligation, or other liability that arises after the merger
 4391 becomes effective.

4392 (c) The organic law of the domestic merging entity and
 4393 rights of contribution provided under that law, or the organic
 4394 rules of the domestic merging entity, continue to apply to the
 4395 release, collection, or discharge of an interestholder liability
 4396 preserved under paragraph (a) as if the merger had not occurred

4397 and the surviving entity were the domestic merging entity.

4398 (5) When a merger becomes effective, a foreign entity that
 4399 is the surviving entity may be served with process in this state
 4400 for the collection and enforcement of any debts, obligations, or
 4401 other liabilities of a domestic merging entity as provided in s.
 4402 608.7817 and chapter 48.

4403 (6) When a merger becomes effective, the certificate of
 4404 authority to transact business in this state of a foreign
 4405 merging entity that is not the surviving entity is canceled.

4406 608.935 Interest exchange authorized.-

4407 (1) By complying with ss. 608.935-608.940:

4408 (a) A domestic limited liability company may acquire all
 4409 of one or more classes or series of interests of another
 4410 domestic or foreign entity, or the rights to acquire one or more
 4411 classes or series of those interests, in exchange for interests,
 4412 securities, obligations, money, other property, rights to
 4413 acquire interests or securities, or a combination of the
 4414 foregoing.

4415 (b) All of one or more classes or series of interests of a
 4416 domestic limited liability company or rights to acquire one or
 4417 more classes or series of such interests may be acquired by
 4418 another domestic or foreign entity in exchange for interests,
 4419 securities, obligations, money, other property, rights to
 4420 acquire interests or securities, or any combination of the
 4421 foregoing.

4422 (2) By complying with ss. 608.935-608.940 that are
 4423 applicable to foreign entities, a foreign entity may be the
 4424 acquiring or acquired entity in an interest exchange completed

CS/HB 1079

2013

4425 under ss. 608.935-608.940 if the interest exchange is authorized
4426 by the organic law in the foreign entity's jurisdiction of
4427 formation.

4428 (3) If a protected agreement contains a provision that
4429 applies to a merger of a domestic limited liability company but
4430 does not refer to an interest exchange, the provision applies to
4431 an interest exchange in which the domestic limited liability
4432 company is the acquired entity as if the interest exchange were
4433 a merger until the provision is amended after January 1, 2014.

4434 608.936 Plan of interest exchange.—

4435 (1) A domestic limited liability company may be the
4436 acquired entity in an interest exchange under ss. 608.935-
4437 608.940 by approving a plan of interest exchange. The plan must
4438 be in a record and contain:

4439 (a) The name of the acquired entity.

4440 (b) The name, jurisdiction of formation, and type of
4441 entity of the acquiring entity.

4442 (c) The manner and basis of converting the interests and
4443 the rights to acquire interests of the members of each limited
4444 liability company that is to be an acquired entity into
4445 interests, securities, obligations, money, other property,
4446 rights to acquire interests or securities, or any combination of
4447 the foregoing.

4448 (d) If the acquired entity is a domestic limited liability
4449 company, any proposed amendments to or restatements of its
4450 public organic record, or any amendments to or restatements of
4451 its private organic rules that are, or are proposed to be, in a
4452 record, and all such amendments or restatements are effective

4453 upon the effective date of the interest exchange.

4454 (e) The other terms and conditions of the interest
4455 exchange.

4456 (f) Another provision required by the law of an acquired
4457 entity's jurisdiction of formation, the organic rules of the
4458 acquired entity, the organic rules of an acquiring entity or the
4459 law of the jurisdiction of formation of the acquiring entity.

4460 (2) In addition to the requirements of subsection (1), a
4461 plan of interest exchange may contain any other provision not
4462 prohibited by law.

4463 608.937 Approval of interest exchange.—

4464 (1) A plan of interest exchange is not effective unless it
4465 has been approved:

4466 (a) With respect to a domestic limited liability company
4467 that is the acquired entity in the interest exchange, by a
4468 majority-in-interest of the members of the company.

4469 (b) In a record, by each member of the domestic acquired
4470 limited liability company that will have interestholder
4471 liability for debts, obligations, and other liabilities that
4472 arise after the interest exchange becomes effective, unless:

4473 1. The organic rules of the company in a record provide
4474 for the approval of an interest exchange or a merger in which
4475 some or all of its members become subject to interestholder
4476 liability by the vote or consent of fewer than all the members.

4477 2. The member consented in a record to, or voted for, that
4478 provision of the organic rules or became a member after the
4479 adoption of that provision.

4480 (2) An interest exchange involving a domestic acquired

4481 entity that is not a limited liability company is not effective
4482 unless it is approved by the domestic entity in accordance with
4483 its organic law.

4484 (3) An interest exchange involving a foreign acquired
4485 entity is not effective unless it is approved by the foreign
4486 entity in accordance with the law of the foreign entity's
4487 jurisdiction of formation.

4488 (4) Except as otherwise provided in its organic law or
4489 organic rules, the interestholders of the acquiring entity are
4490 not required to approve the interest exchange.

4491 (5) All members of each domestic limited liability company
4492 that is a party to the interest exchange and have a right to
4493 vote upon the interest exchange must be given written notice of
4494 a meeting with respect to the approval of a plan of interest
4495 exchange as provided in subsection (1), at least 10 days but not
4496 more than 60 days before the date of the meeting at which the
4497 plan of interest exchange is submitted for approval by the
4498 members of such limited liability company. The notification
4499 required by this subsection may be waived in writing by the
4500 person or persons entitled to such notification.

4501 (6) The notification required by subsection (5) must be in
4502 writing and include:

4503 (a) The date, time, and place of the meeting at which the
4504 plan of interest exchange is to be submitted for approval by the
4505 members of the limited liability company.

4506 (b) A copy of the plan of interest exchange.

4507 (c) The statement or statements required by this chapter
4508 regarding the availability of appraisal rights, if any, to

4509 members of the limited liability company.

4510 (d) The date on which such notification was mailed or
4511 delivered to the members.

4512 (e) Other information concerning the plan of interest
4513 exchange.

4514 (7) The notification required by subsection (5) is deemed
4515 to be given at the earliest date of:

4516 (a) The date the notification is received.

4517 (b) Five days after the date the notification is deposited
4518 in the United States mail addressed to the member at the
4519 member's address as it appears in the books and records of the
4520 limited liability company, with prepaid postage affixed.

4521 (c) The date shown on the return receipt, if sent by
4522 registered or certified mail, return receipt requested, and the
4523 receipt is signed by or on behalf of the addressee.

4524 (d) The date the notification is given in accordance with
4525 the organic rules of the limited liability company.

4526 608.938 Amendment or abandonment of plan of interest
4527 exchange.—

4528 (1) A plan of interest exchange may be amended only with
4529 the consent of each party to the plan, except as otherwise
4530 provided in the plan or in the organic rules of each entity.

4531 (2) A domestic acquired limited liability company may
4532 approve an amendment of a plan of interest exchange:

4533 (a) In the same manner as the plan was approved, if the
4534 plan does not provide for the manner in which it may be amended;
4535 or

4536 (b) By the managers or members in the manner provided in

4537 the plan, but a member that was entitled to vote on or consent
4538 to approval of the interest exchange is entitled to vote on or
4539 consent to an amendment of the plan that will change:

4540 1. The amount or kind of interests, securities,
4541 obligations, money, other property, rights to acquire interests
4542 or securities, or any combination of the foregoing, to be
4543 received by the interestholders of a party to the plan;

4544 2. The public organic record, if any, or private organic
4545 rules of the acquired entity that will be in effect immediately
4546 after the interest exchange becomes effective, except for
4547 changes that do not require approval of the interestholders of
4548 the acquired entity under its organic law or organic rules; or

4549 3. Other terms or conditions of the plan, if the change
4550 would adversely affect the member in a material respect.

4551 (3) After a plan of interest exchange has been approved
4552 and before the articles of interest exchange become effective,
4553 the plan may be abandoned as provided in the plan. Unless
4554 prohibited by the plan, a domestic limited liability company may
4555 abandon the plan in the same manner that the plan was approved.

4556 (4) If a plan of interest exchange is abandoned after
4557 articles of interest exchange have been delivered to the
4558 department for filing and before the articles of interest
4559 exchange have become effective, a statement of abandonment,
4560 signed by a party to the plan, must be delivered to the
4561 department for filing before the articles of interest exchange
4562 become effective. The statement of abandonment takes effect on
4563 filing, and the interest exchange is abandoned and does not
4564 become effective. The statement of abandonment must contain:

4565 (a) The name of each party to the plan of interest
 4566 exchange.

4567 (b) The date on which the articles of interest exchange
 4568 were delivered to the department for filing.

4569 (c) A statement that the interest exchange has been
 4570 abandoned in accordance with this section.

4571 608.939 Articles of interest exchange.—

4572 (1) After a plan of interest exchange has been approved,
 4573 articles of interest exchange must be signed by each party to
 4574 the interest exchange and delivered to the department for
 4575 filing.

4576 (2) The articles of interest exchange must contain:

4577 (a) The name of the acquired limited liability company.

4578 (b) The name, jurisdiction of formation, and type of
 4579 entity of the acquiring entity.

4580 (c) A statement that the plan of interest exchange was
 4581 approved by the acquired limited liability entity in accordance
 4582 with ss. 608.935-608.940 and by each member of such limited
 4583 liability company who, as a result of the interest exchange,
 4584 will have interestholder liability under s. 608.937(1)(b) and
 4585 whose approval is required.

4586 (d) Any amendments to the acquired limited liability
 4587 company's public organic record approved as part of the plan of
 4588 interest exchange.

4589 (e) A statement that the plan of interest exchange was
 4590 approved by each acquiring entity that is a party to the
 4591 interest exchange in accordance with the organic laws in its
 4592 jurisdiction of formation, or if such approval was not required,

4593 | a statement to that effect.

4594 | (f) A statement that the acquiring entity has agreed to
 4595 | pay to any members of the acquired entity with appraisal rights
 4596 | the amount to which such members are entitled under s. 608.922
 4597 | and ss. 608.961-608.972.

4598 | (g) The effective date of the interest exchange, if the
 4599 | effective date of the interest exchange is not the same as the
 4600 | date of filing of the articles of interest exchange, subject to
 4601 | the limitations contained in s. 608.7827.

4602 | (3) In addition to the requirements of subsection (2),
 4603 | articles of interest exchange may contain any other provision
 4604 | not prohibited by law.

4605 | (4) An interest exchange becomes effective when the
 4606 | articles of interest exchange become effective, unless the
 4607 | articles of interest exchange specify an effective time or a
 4608 | delayed effective date that complies with s. 608.7827.

4609 | (5) A limited liability company is not required to deliver
 4610 | articles of interest exchange for filing pursuant to subsection
 4611 | (1) if the domestic limited liability company is named as an
 4612 | acquired entity or as an acquiring entity in the articles of
 4613 | interest exchange filed for the same interest exchange in
 4614 | accordance with s. 607.979(1), and if such articles of interest
 4615 | exchange substantially comply with the requirements of this
 4616 | section. In such a case, the other articles of interest exchange
 4617 | may also be used for purposes of subsection (2).

4618 | 608.940 Effect of interest exchange.-

4619 | (1) When an interest exchange in which the acquired entity
 4620 | is a domestic limited liability company becomes effective:

4621 (a) The interests in a domestic company that are the
4622 subject of the interest exchange cease to exist or are converted
4623 or exchanged, and the members holding those interests are
4624 entitled only to the rights provided to them under the plan of
4625 interest exchange and to any appraisal rights they have under s.
4626 608.922 and ss. 608.961-608.972.

4627 (b) The acquiring entity becomes the interestholder of the
4628 interests in the acquired entity stated in the plan of interest
4629 exchange to be acquired by the acquiring entity.

4630 (c) The public organic record of the acquired entity is
4631 amended as provided in the articles of interest exchange.

4632 (d) The private organic rules of the acquired entity that
4633 are to be in a record, if any, are amended to the extent
4634 provided in the plan of interest exchange.

4635 (2) Except as otherwise provided in the organic rules of
4636 the acquired limited liability company, the interest exchange
4637 does not give rise to any rights that a member, manager, or
4638 third party would have upon a dissolution, liquidation, or
4639 winding up of the acquired entity.

4640 (3) When an interest exchange becomes effective, a person
4641 who did not have interestholder liability with respect to a
4642 domestic acquired limited liability company and who becomes
4643 subject to interestholder liability with respect to a domestic
4644 entity as a result of the interest exchange will have
4645 interestholder liability only to the extent provided by the
4646 organic law of the entity and only for those debts, obligations,
4647 and other liabilities that arise after the interest exchange
4648 becomes effective.

4649 (4) When an interest exchange becomes effective, the
4650 interestholder liability of a person who ceases to hold an
4651 interest in a domestic acquired limited liability company with
4652 respect to which the person had interestholder liability is as
4653 follows:

4654 (a) The interest exchange does not discharge an
4655 interestholder liability to the extent the interestholder
4656 liability arose before the interest exchange became effective.

4657 (b) The person does not have interestholder liability for
4658 any debt, obligation, or other liability that arises after the
4659 interest exchange becomes effective.

4660 (c) The organic law of the acquired entity's jurisdiction
4661 of formation and any rights of contribution provided by that
4662 law, or under the organic rules of the acquired entity,
4663 continues to apply to the release, collection, or discharge of
4664 any interestholder liability preserved under paragraph (a) as if
4665 the interest exchange had not occurred.

4666 608.941 Conversion authorized.—

4667 (1) By complying with s. 608.941-608.950 a domestic
4668 limited liability company may become:

4669 (a) A domestic entity that is a different type of entity;
4670 or

4671 (b) A foreign entity that is a limited liability company
4672 or a different type of entity, if the conversion is authorized
4673 by the law of the foreign entity's jurisdiction of formation.

4674 (2) By complying with ss. 608.941-608.950 that are
4675 applicable to domestic entities that are not a domestic limited
4676 liability company, a domestic entity that is not a domestic

CS/HB 1079

2013

4677 limited liability company may become a domestic limited
4678 liability company if the conversion is authorized by the law
4679 governing the domestic entity that is not a domestic limited
4680 liability company.

4681 (3) By complying with s. 608.1041-608.1046 that are
4682 applicable to a foreign entity, a foreign entity may become a
4683 domestic limited liability company if the conversion is
4684 authorized by the law of the foreign entity's jurisdiction of
4685 formation.

4686 (4) If a protected agreement contains a provision that
4687 applies to a merger of a domestic limited liability company but
4688 does not refer to a conversion, the provision applies to a
4689 conversion of the entity as if the conversion were a merger
4690 until the provision is amended after January 1, 2014.

4691 608.946 Plan of conversion.—

4692 (1) A domestic limited liability company may convert into
4693 a different type of domestic entity or into a foreign entity
4694 that is a foreign limited liability company or a different type
4695 of foreign entity by approving a plan of conversion. The plan
4696 must be in a record and contain:

4697 (a) The name of the converting limited liability company.

4698 (b) The name, jurisdiction of formation, and type of
4699 entity of the converted entity.

4700 (c) The manner and basis of converting the interests and
4701 rights to acquire interests in the converting limited liability
4702 company into interests, securities, obligations, money, other
4703 property, rights to acquire interests or securities, or any
4704 combination of the foregoing.

4705 (d) The proposed public organic record of the converted
4706 entity if it will be a filing entity.

4707 (e) The full text of the private organic rules of the
4708 converted entity that are proposed to be in a record, if any.

4709 (f) Another provision required by the law of this state or
4710 the organic rules of the converted limited liability company, if
4711 the entity is to be other than a domestic limited liability
4712 company.

4713 (g) All other statements required to be set forth in a
4714 plan of conversion by the law of the jurisdiction of formation
4715 of the converted entity following the conversion.

4716 (2) In addition to the requirements of subsection (1), a
4717 plan of conversion may contain any other provision not
4718 prohibited by law.

4719 608.947 Approval of conversion.-

4720 (1) A plan of conversion is not effective unless it has
4721 been approved:

4722 (a) If the converting entity is a domestic limited
4723 liability company, by a majority-in-interest of the members of
4724 the company who have a right to vote upon the conversion.

4725 (b) In a record, by each member of a converting limited
4726 liability company that will have interestholder liability for
4727 debts, obligations, and other liabilities that arise after the
4728 conversion becomes effective, unless:

4729 1. The organic rules of the company in a record provide
4730 for the approval of a conversion in which some or all of its
4731 members become subject to interestholder liability by the vote
4732 or consent of less than all of the members.

4733 2. The member consented in a record to or voted for that
4734 provision of the organic rules or became a member after the
4735 adoption of that provision.

4736 (2) A conversion involving a domestic converting entity
4737 that is not a limited liability company is not effective unless
4738 it is approved by the domestic converting entity in accordance
4739 with its organic law.

4740 (3) A conversion of a foreign converting entity is not
4741 effective unless it is approved by the foreign entity in
4742 accordance with the law of the foreign entity's jurisdiction of
4743 formation.

4744 (4) If the converting entity is a domestic limited
4745 liability company, all members of the company who have the right
4746 to vote upon the conversion must be given written notice of a
4747 meeting with respect to the approval of a plan of conversion as
4748 provided in subsection (1), at least 10 days but not more than
4749 60 days before the date of the meeting at which the plan of
4750 conversion is submitted for approval by the members of the
4751 limited liability company. The notification required by
4752 subsection (5) may be waived in writing by the person or persons
4753 entitled to such notification.

4754 (5) The notification required by subsection (4) must be in
4755 writing and include:

4756 (a) The date, time, and place of the meeting at which the
4757 plan of conversion is to be submitted for approval by the
4758 members of the limited liability company.

4759 (b) A copy of the plan of conversion.

4760 (c) The statement or statements required by s. 608.922 and

4761 ss. 608.961-608.972 regarding the availability of appraisal
 4762 rights, if any, to members of the limited liability company.

4763 (d) The date on which such notification was mailed or
 4764 delivered to the members.

4765 (e) Any other information concerning the plan of
 4766 conversion.

4767 (6) The notification required by subsection (4) is deemed
 4768 to be given at the earliest date of:

4769 (a) The date the notification is received;

4770 (b) Five days after the date the notification is deposited
 4771 in the United States mail addressed to the member at the
 4772 member's address as it appears in the books and records of the
 4773 limited liability company, with prepaid postage affixed;

4774 (c) The date shown on the return receipt, if sent by
 4775 registered or certified mail, return receipt requested, and the
 4776 receipt is signed by or on behalf of the addressee; or

4777 (d) The date the notification is given in accordance with
 4778 the organic rules of the limited liability company.

4779 608.948 Amendment or abandonment of plan of conversion.-

4780 (1) A plan of conversion of a domestic converting limited
 4781 liability company may be amended:

4782 (a) In the same manner as the plan was approved, if the
 4783 plan does not provide for the manner in which it may be amended;
 4784 or

4785 (b) By the managers or members of the entity in the manner
 4786 provided in the plan, but a member who was entitled to vote on
 4787 or consent to approval of the conversion is entitled to vote on
 4788 or consent to an amendment of the plan that will change:

4789 1. The amount or kind of interests, securities,
4790 obligations, money, other property, rights to acquire interests
4791 or securities, or any combination of the foregoing, to be
4792 received by the interestholders of the converting entity under
4793 the plan;

4794 2. The public organic record, if any, or private organic
4795 rules of the converted entity that will be in effect immediately
4796 after the conversion becomes effective, except for changes that
4797 do not require approval of the interestholders of the converting
4798 entity under its organic law or organic rules; or

4799 3. Other terms or conditions of the plan, if the change
4800 would adversely affect the member in a material respect.

4801 (2) After a plan of conversion has been approved and
4802 before the articles of conversion become effective, the plan may
4803 be abandoned as provided in the plan. Unless prohibited by the
4804 plan, a domestic converting limited liability company may
4805 abandon the plan in the same manner that the plan was approved.

4806 (3) If a plan of conversion is abandoned after articles of
4807 conversion have been delivered to the department for filing and
4808 before the articles of conversion have become effective, a
4809 statement of abandonment, signed by the converting entity, must
4810 be delivered to the department for filing before the articles of
4811 conversion become effective. The statement of abandonment takes
4812 effect on filing, and the conversion is abandoned and does not
4813 become effective. The statement of abandonment must contain:

4814 (a) The name of the converting limited liability company.

4815 (b) The date on which the articles of conversion were
4816 delivered to the department for filing.

4817 (c) A statement that the conversion has been abandoned in
4818 accordance with this section.

4819 608.949 Articles of conversion.—

4820 (1) After a plan of conversion is approved, articles of
4821 conversion signed by the converting entity must be delivered to
4822 the department for filing.

4823 (2) The articles of conversion must contain:

4824 (a) The name, jurisdiction of formation, and type of
4825 entity of the converting entity.

4826 (b) The name, jurisdiction of formation and type of entity
4827 of the converted entity.

4828 (c) If the converting entity is a domestic limited
4829 liability company, a statement that the plan of conversion has
4830 been approved in accordance with ss. 608.941-608.950, or if the
4831 converted entity is a foreign entity, a statement that the
4832 conversion was approved by the foreign converting entity in
4833 accordance with the law of its jurisdiction of formation and by
4834 each member of the converting entity, who, as a result of the
4835 conversion, will have interestholder liability under s.
4836 608.947(1)(b), and whose approval is required.

4837 (d) If the converted entity is a domestic filing entity,
4838 the text of its public organic record, as an attachment.

4839 (e) If the converted entity is a domestic limited
4840 liability partnership, the text of its statement of
4841 qualification, as an attachment.

4842 (f) If the converted entity is a foreign entity that does
4843 not have a certificate of authority to transact business in this
4844 state, a mailing address to which the department may send any

4845 process served on the department pursuant to s. 608.7817 and
 4846 chapter 48.

4847 (g) A statement that the converted entity has agreed to
 4848 pay to the members of a limited liability company with appraisal
 4849 rights the amount to which such members are entitled under s.
 4850 608.922 and ss. 608.961-608.972.

4851 (h) The effective date of the conversion, if the effective
 4852 date of the conversion is not the same as the date of filing of
 4853 the articles of conversion, subject to the limitations contained
 4854 in s. 608.7827.

4855 (2) In addition to the requirements of subsection (1),
 4856 articles of conversion may contain another provision not
 4857 prohibited by law.

4858 (3) A conversion becomes effective when the articles of
 4859 conversion become effective, unless the articles of conversion
 4860 specify an effective time or a delayed effective date that
 4861 complies with s. 608.7827.

4862 (5) A copy of the articles of conversion, certified by the
 4863 department, may be filed in the official records of any county
 4864 in this state in which the converted entity holds an interest in
 4865 real property.

4866 608.950 Effect of conversion.—

4867 (1) When a conversion in which the converted entity is a
 4868 domestic limited liability company becomes effective:

4869 (a) The converted entity is:

4870 1. Organized under and subject to this chapter.

4871 2. The same entity without interruption as the converting
 4872 entity.

4873 (b) All property of the converting entity continues to be
4874 vested in the converted entity without transfer, reversion, or
4875 impairment.

4876 (c) All debts, obligations, and other liabilities of the
4877 converting entity continue as debts, obligations, and other
4878 liabilities of the converted entity.

4879 (d) Except as otherwise provided by law or the plan of
4880 conversion, all the rights, privileges, immunities, powers, and
4881 purposes of the converting entity remain in the converted
4882 entity.

4883 (e) The name of the converted entity may be substituted
4884 for the name of the converting entity in a pending action or
4885 proceeding.

4886 (f) The organic rules of the converted entity that are to
4887 be in a record, if any, approved as part of the plan of
4888 conversion are effective.

4889 (g) The interests or rights to acquire interests in the
4890 converting entity are converted, and the interestholders of the
4891 converting entity are entitled only to the rights provided to
4892 them under the plan of conversion and to any appraisal rights
4893 they have under s. 608.922 and ss. 608.961-972 and the
4894 converting entity's organic law.

4895 (2) Except as otherwise provided in the private organic
4896 rules of a domestic converting limited liability company, the
4897 conversion does not give rise to any rights that a member,
4898 manager, or third party would otherwise have upon a dissolution,
4899 liquidation, or winding up of the converting entity.

4900 (3) When a conversion becomes effective, a person who did

4901 not have interestholder liability with respect to the converting
4902 entity and becomes subject to interestholder liability with
4903 respect to a domestic entity as a result of the conversion has
4904 interestholder liability only to the extent provided by the
4905 organic law of the entity and only for those debts, obligations,
4906 and other liabilities that arise after the conversion becomes
4907 effective.

4908 (4) When a conversion becomes effective, the
4909 interestholder liability of a person who ceases to hold an
4910 interest in a domestic limited liability company with respect to
4911 which the person had interestholder liability is as follows:

4912 (a) The conversion does not discharge any interestholder
4913 liability to the extent the interestholder liability arose
4914 before the conversion became effective.

4915 (b) The person does not have interestholder liability for
4916 any debt, obligation, or other liability that arises after the
4917 conversion becomes effective.

4918 (c) The organic law of the jurisdiction of formation of
4919 the converting limited liability company and the rights of
4920 contribution provided under that law, or the organic rules of
4921 the converting limited liability company, continue to apply to
4922 the release, collection or discharge of an interestholder
4923 liability preserved under paragraph (a) as if the conversion had
4924 not occurred.

4925 (5) When a conversion becomes effective, a foreign entity
4926 that is the converted entity may be served with process in this
4927 state for the collection and enforcement of its debts,
4928 obligations, and liabilities as provided in s. 608.7817 and part

4929 48.

4930 (6) If the converting entity is a registered foreign
 4931 entity, the certificate of authority to conduct business in this
 4932 state of the converting entity is canceled when the conversion
 4933 becomes effective.

4934 (7) A conversion does not require the entity to wind up its
 4935 affairs and does not constitute or cause the dissolution of the
 4936 entity.

4937 608.955 Domestication authorized.— By complying with ss.
 4938 608.955-608.960, a non-United States entity may become a
 4939 domestic limited liability company if the domestication is
 4940 authorized by the organic law of the non-United States entity's
 4941 jurisdiction of formation.

4942 608.956 Plan of domestication.—

4943 (1) A non-United States entity may become a domestic
 4944 limited liability company by approving a plan of domestication.
 4945 The plan of domestication must be in a record and contain:

4946 (a) The name and jurisdiction of formation of the
 4947 domesticating entity.

4948 (b) If applicable, the manner and basis of converting the
 4949 interests and rights to acquire interests in the domesticating
 4950 entity into interests, securities, obligations, money, other
 4951 property, rights to acquire interests or securities, or any
 4952 combination thereof.

4953 (c) The proposed public organic record of the
 4954 domesticating entity in this state.

4955 (d) The full text of the proposed private organic rules of
 4956 the domesticated entity that are to be in a record, if any.

CS/HB 1079

2013

4957 (e) Any other provision required by the law of the
4958 jurisdiction of formation of the domesticating entity or the
4959 organic rules of the domesticating entity.

4960 (2) In addition to the requirements of subsection (1), a
4961 plan of domestication may contain any other provision not
4962 prohibited by law.

4963 608.957 Approval of domestication.—

4964 (1) A plan of domestication of a domesticating entity
4965 shall be approved:

4966 (a) In accordance with the organic law of the
4967 domesticating entity's jurisdiction of formation.

4968 (b) In a record, by each of the domesticating entity's
4969 owners who will have interestholder liability for debts,
4970 obligations, and other liabilities that arise after the
4971 domestication becomes effective, unless:

4972 1. The organic rules of the domesticating entity in a
4973 record provide for the approval of a domestication in which some
4974 or all of the persons who are its owners become subject to
4975 interestholder liability by the vote or consent of fewer than
4976 all of the persons that are its owners.

4977 2. The person who will be a member of the domesticated
4978 limited liability company consented in a record to or voted for
4979 that provision of the organic rules of the domesticating entity
4980 or became an owner of the domesticating entity after the
4981 adoption of that provision.

4982 608.958 Amendment or abandonment of plan of
4983 domestication.—

4984 (1) A plan of domestication of a domesticating entity may

4985 be amended:

4986 (a) In the same manner that the plan was approved if the
 4987 plan does not provide for the manner in which it may be amended;

4988 or

4989 (b) By the interestholders of the domesticating entity in
 4990 the manner provided in the plan, but an owner who was entitled
 4991 to vote on or consent to approval of the domestication is
 4992 entitled to vote on or consent to an amendment of the plan that
 4993 will change:

4994 1. If applicable, the amount or kind of interests,
 4995 securities, obligations, money, other property, rights to
 4996 acquire interests or securities, or any combination of the
 4997 foregoing, to be received by the interestholders of the
 4998 domesticating entity under the plan;

4999 2. The public organic record, if any, or private organic
 5000 rules of the domesticated limited liability company that will be
 5001 in effect immediately after the domestication becomes effective,
 5002 except for changes that do not require approval of the
 5003 interestholders of the domesticating entity under its organic
 5004 law or organic rules; or

5005 3. Any other terms or conditions of the plan, if the
 5006 change would adversely affect the member in a material respect.

5007 (2) After a plan of domestication has been approved and
 5008 before the articles of domestication become effective, the plan
 5009 may be abandoned as provided in the plan. Unless prohibited by
 5010 the plan, the domesticating entity may abandon the plan in the
 5011 same manner that the plan was approved.

5012 (3) If a plan of domestication is abandoned after articles

5013 of domestication have been delivered to the department for
 5014 filing and before the articles of domestication have become
 5015 effective, a statement of abandonment, signed by the
 5016 domesticating entity, must be delivered to the department for
 5017 filing before the articles of domestication become effective.
 5018 The statement of abandonment takes effect on filing, and the
 5019 domestication is abandoned and does not become effective. The
 5020 statement of abandonment must contain:

- 5021 (a) The name of the domesticating entity.
- 5022 (b) The date on which the articles of domestication were
 5023 delivered to the department for filing.
- 5024 (c) A statement that the domestication has been abandoned
 5025 in accordance with this section.

5026 608.959 Articles of domestication.—

5027 (1) The articles of domestication must be filed with the
 5028 department. The articles of domestication shall state:

5029 (a) The date on which the domesticating entity was first
 5030 formed, incorporated, created, or otherwise came into being.

5031 (b) The name of the domesticating entity immediately
 5032 before the filing of the articles of domestication.

5033 (c) The name of the domesticated limited liability company
 5034 as set forth in the articles of organization filed in accordance
 5035 with this subsection.

5036 (d) The future effective date of the domestication as a
 5037 limited liability company if it is not to be effective upon the
 5038 filing of the articles of domestication subject to the
 5039 limitations contained in s. 608.7827.

5040 (e) The jurisdiction that constituted the seat, siege

5041 social, or principal place of business or central administration
5042 of the domesticating entity, or any other equivalent under
5043 applicable law, immediately before the filing of the articles of
5044 domestication.

5045 (f) That the domestication has been approved in accordance
5046 with the laws of the jurisdiction of formation of the
5047 domesticating entity.

5048 (2) In addition to the requirements of subsection (1),
5049 articles of domestication may contain any other provision not
5050 prohibited by law.

5051 (3) The articles of domestication that are filed with the
5052 department must be accompanied by a certificate of status or
5053 equivalent document, if any, from the domesticating entity's
5054 jurisdiction of formation.

5055 (4) The articles of domestication and the public organic
5056 record of a domesticated limited liability company must satisfy
5057 the requirements of the law of this state, but be executed by an
5058 authorized representative and registered agent in accordance
5059 with this chapter.

5060 608.960 Effect of domestication.—

5061 (1) When a domestication becomes effective:

5062 (a) The domesticated limited liability company is:

5063 1. Organized under and subject to the organic law of this
5064 state.

5065 2. The same entity, without interruption, as the
5066 domesticating entity.

5067 (b) All property of the domesticating entity continues to
5068 be vested in the domesticated limited liability company without

5069 transfer, reversion, or impairment.

5070 (c) All debts, obligations, and other liabilities of the
5071 domesticating entity continue as debts, obligations, and other
5072 liabilities of the domesticated limited liability company.

5073 (d) Except as otherwise provided by law or the plan of
5074 domestication, all the rights, privileges, immunities, powers,
5075 and purposes of the domesticating entity remain in the
5076 domesticated limited liability company.

5077 (e) The name of the domesticated limited liability company
5078 may be substituted for the name of the domesticating entity in a
5079 pending action or proceeding.

5080 (f) The public organic rules of the domesticated limited
5081 liability company are effective.

5082 (g) The private organic rules of the domesticated limited
5083 liability company that are to be in a record, if any, approved
5084 as part of the plan of domestication are effective.

5085 (h) The interests in the domesticating entity are
5086 converted to the extent and as approved in connection with the
5087 domestication, and the interestholders of the domesticating
5088 entity are entitled only to the rights provided to them under
5089 the plan of domestication.

5090 (2) Except as otherwise provided in the organic law or
5091 organic rules of the domesticating entity, the domestication
5092 does not give rise to any rights that an interestholder or third
5093 party would otherwise have upon a dissolution, liquidation, or
5094 winding up of the domesticating entity.

5095 (3) When a domestication becomes effective, a person who
5096 did not have interestholder liability with respect to the

5097 domesticating entity and becomes subject to interestholder
5098 liability with respect to the domesticated limited liability
5099 company as a result of the domestication has interestholder
5100 liability only to the extent provided by the organic law of the
5101 domesticating entity and only for those debts, obligations, and
5102 other liabilities that arise after the domestication becomes
5103 effective.

5104 (4) When a domestication becomes effective:

5105 (a) The domestication does not discharge any
5106 interestholder liability under this chapter to the extent the
5107 interestholder liability arose before the domestication became
5108 effective.

5109 (b) A person does not have interestholder liability under
5110 this chapter for any debt, obligation, or other liability that
5111 arises after the domestication becomes effective.

5112 (c) The organic law of the jurisdiction of formation of
5113 the domesticating entity and any rights of contribution provided
5114 under that law, or the organic rules of the domesticating
5115 entity, continue to apply to the release, collection, or
5116 discharge of any interestholder liability preserved under
5117 subparagraph (a) as if the domestication had not occurred.

5118 (5) When a domestication becomes effective, a
5119 domesticating entity that has become the domesticated limited
5120 liability company may be served with process in this state for
5121 the collection and enforcement of its debts, obligations, and
5122 liabilities as provided in s. 608.7817 and chapter 48.

5123 (6) If the domesticating entity is qualified to transact
5124 business in this state, the certificate of authority of the

5125 domesticating entity is canceled when the domestication becomes
5126 effective.

5127 (7) A domestication does not require the domesticating
5128 entity to wind up its affairs and does not constitute or cause
5129 the dissolution of the domesticating entity.

5130 608.961 Appraisal rights; definitions.— The following
5131 definitions apply to s. 608.922 and to ss. 608.961-608.972:

5132 (1) "Accrued interest" means interest from the effective
5133 date of the appraisal event to which the member objects until
5134 the date of payment, at the rate of interest determined for
5135 judgments in accordance with s. 55.03, determined as of the
5136 effective date of the appraisal event.

5137 (2) "Affiliate" means a person who directly or indirectly,
5138 through one or more intermediaries, controls, is controlled by,
5139 or is under common control with another person or is a senior
5140 executive thereof. For purposes of s. 608.922(2), a person is
5141 deemed to be an affiliate of its senior executives.

5142 (3) "Appraisal event" means an event described in s.
5143 608.922(1).

5144 (4) "Beneficial member" means a person who is the
5145 beneficial owner of a membership interest held in a voting trust
5146 or by a nominee on the beneficial owner's behalf.

5147 (5) "Fair value" means the value of the member's
5148 membership interests determined:

5149 (a) Immediately before the effectuation of the appraisal
5150 event to which the member objects.

5151 (b) Using customary and current valuation concepts and
5152 techniques generally employed for similar businesses in the

5153 context of the transaction requiring appraisal, excluding any
5154 appreciation or depreciation in anticipation of the transaction
5155 to which the member objects unless exclusion would be
5156 inequitable to the limited liability company and its remaining
5157 members.

5158 (c) Without discounting for lack of marketability or
5159 minority status.

5160 (6) "Limited liability company" means the limited
5161 liability company that issued the membership interest held by a
5162 member demanding appraisal and, for matters covered in ss.
5163 608.961-608.972, including the converted entity in a conversion
5164 or the surviving entity in a merger.

5165 (7) "Member" means a record member or a beneficial member.

5166 (8) "Membership interest" means a member's transferable
5167 interest and all other rights as a member of the limited
5168 liability company that issued the membership interest, including
5169 voting rights, management rights, or other rights under this
5170 chapter or the organic rules of the limited liability company
5171 except, if the appraisal rights of a member under s. 608.922
5172 pertain to only a certain class or series of a membership
5173 interest, the term "membership interest" means only the
5174 membership interest pertaining to such class or series.

5175 (9) "Record member" means each person who is identified as
5176 a member in the current list of members maintained for purposes
5177 of s. 608.922 by the limited liability company, or to the extent
5178 the limited liability company has failed to maintain a current
5179 list, each person that is the rightful owner of a membership
5180 interest in the limited liability company. A transferee of a

5181 membership interest who has not been admitted as member is not a
5182 record member.

5183 (10) "Senior executive" means a manager in a manager-
5184 managed limited liability company, a member in a member-managed
5185 limited liability company, or the chief executive officer, chief
5186 operating officer, chief financial officer, or anyone in charge
5187 of a principal business unit or function of a limited liability
5188 company, or of a manager in a manager-managed limited liability
5189 company, or a member in a member-managed limited liability
5190 company.

5191 608.962 Assertion of rights by nominees and beneficial
5192 owners.-

5193 (1) A record member may assert appraisal rights as to
5194 fewer than all the membership interests registered in the record
5195 member's name which are owned by a beneficial member only if the
5196 record member objects with respect to all membership interests
5197 of the class or series owned by that beneficial member and
5198 notifies the limited liability company in writing of the name
5199 and address of each beneficial member on whose behalf appraisal
5200 rights are being asserted. The rights of a record member who
5201 asserts appraisal rights for only part of the membership
5202 interests of the class or series held of record in the record
5203 member's name under this subsection shall be determined as if
5204 the membership interests to which the record member objects and
5205 the record member's other membership interests were registered
5206 in the names of different record members.

5207 (2) A beneficial member may assert appraisal rights as to
5208 a membership interest held on behalf of the member only if the

5209 beneficial member:

5210 (a) Submits to the limited liability company the record
 5211 member's written consent to the assertion of such rights by the
 5212 date provided in s. 608.963(3)(b).

5213 (b) Does so with respect to all membership interests of
 5214 the class or series that are beneficially owned by the
 5215 beneficial member.

5216 608.963 Notice of appraisal rights.-

5217 (1) If a proposed appraisal event is to be submitted to a
 5218 vote at a members' meeting, the meeting notice must state that
 5219 the limited liability company has concluded that the members
 5220 are, are not, or may be entitled to assert appraisal rights
 5221 under this chapter.

5222 (2) If the limited liability company concludes that
 5223 appraisal rights are or may be available, a copy of s. 608.922
 5224 and ss. 608.961-608.972 must accompany the meeting notice sent
 5225 to those record members who are or may be entitled to exercise
 5226 appraisal rights.

5227 (3) If the appraisal event is to be approved other than by
 5228 a members' meeting:

5229 (a) Written notice that appraisal rights are, are not, or
 5230 may be available must be sent to each member from whom a consent
 5231 is solicited at the time consent of the member is first
 5232 solicited, and if the limited liability company has concluded
 5233 that appraisal rights are or may be available, a copy of s.
 5234 608.922 and ss. 608.961-608.972 must accompany such written
 5235 notice.

5236 (b) Written notice that appraisal rights are, are not, or

5237 may be available must be delivered, at least 10 days before the
 5238 appraisal event becomes effective, to all nonconsenting and
 5239 nonvoting members, and, if the limited liability company has
 5240 concluded that appraisal rights are or may be available, a copy
 5241 of s. 608.922 and ss. 608.961-608.972 must accompany such
 5242 written notice.

5243 (4) If a particular appraisal event is proposed and the
 5244 limited liability company concludes that appraisal rights are or
 5245 may be available, the notice referred to in subsection (1) or
 5246 paragraph (3) (a) or paragraph (3) (b) must be accompanied by:

5247 (a) Financial statements of the limited liability company
 5248 that issued the membership interests that may or are subject to
 5249 appraisal rights, consisting of a balance sheet as of the end of
 5250 the fiscal year ending not more than 16 months before the date
 5251 of the notice, an income statement for that fiscal year and a
 5252 cash flow statement for that fiscal year; if the financial
 5253 statements are not reasonably available, the limited liability
 5254 company must provide reasonably equivalent financial
 5255 information.

5256 (b) The latest available interim financial statements,
 5257 including year to date through the end of the interim period, of
 5258 the limited liability company, if any.

5259 (5) The right to receive the information described in
 5260 subsection (4) may be waived in writing by a member before or
 5261 after the appraisal event.

5262 608.964 Notice of intent to demand payment.—

5263 (1) If a proposed appraisal event is submitted to a vote
 5264 at a members' meeting, a member who is entitled to, and who

5265 wishes, to assert appraisal rights with respect to a class or
5266 series of membership interests:

5267 (a) Must deliver to any other member of a member managed
5268 limited liability company, to a manager of a manager-managed
5269 limited liability company, or, if the limited liability company
5270 has appointed officers, to an officer, before the vote is taken,
5271 written notice of the person's intent to demand payment if the
5272 proposed appraisal event is effectuated.

5273 (b) Must not vote, or cause or permit to be voted, any
5274 membership interests of the class or series in favor of the
5275 appraisal event.

5276 (2) If a proposed appraisal event is to be approved by
5277 less than unanimous written consent of the members, a member who
5278 is entitled to and who wishes to assert appraisal rights with
5279 respect to a class or series of membership interests must not
5280 sign a consent in favor of the proposed appraisal event with
5281 respect to that class or series of membership interests.

5282 (3) A person who may otherwise be entitled to appraisal
5283 rights, but who does not satisfy the requirements of subsection
5284 (1) or subsection (2), is not entitled to payment under s.
5285 608.922 and ss. 608.961-608.972.

5286 608.965 Appraisal notice and form.—

5287 (1) If the proposed appraisal event becomes effective, the
5288 limited liability company must send a written appraisal notice
5289 and form required by subparagraph (2) (a) to all members who
5290 satisfy the requirements of s. 608.964(1) or (2).

5291 (2) The appraisal notice must be sent no earlier than the
5292 date the appraisal event became effective and within 10 days

5293 | after the date and must:

5294 | (a) Supply a form that specifies the date that the

5295 | appraisal event became effective and that provides for the

5296 | member to state:

5297 | 1. The member's name and address.

5298 | 2. The number, classes, and series of membership interests

5299 | as to which the member asserts appraisal rights.

5300 | 3. That the member did not vote for or execute a written

5301 | consent with respect to the transaction.

5302 | 4. Whether the member accepts the limited liability

5303 | company's offer as stated in subparagraph (b)4.

5304 | 5. If the offer is not accepted, the member's estimated

5305 | fair value of the membership interests and a demand for payment

5306 | of the member's estimated value plus accrued interest.

5307 | (b) State:

5308 | 1. Where the form described in paragraph (a) must be sent.

5309 | 2. A date by which the limited liability company must

5310 | receive the form, which is at least 40 days but not more than 60

5311 | days after the date the appraisal notice and form described in

5312 | this section are sent, and that the member is considered to have

5313 | waived the right to demand appraisal with respect to the

5314 | membership interests unless the form is received by the limited

5315 | liability company by the specified date.

5316 | 3. In the case of membership interests represented by a

5317 | certificate, the location at which certificates for the

5318 | certificated membership interests must be deposited, if that

5319 | action is required by the limited liability company, and the

5320 | date by which those certificates must be deposited, which may

5321 not be earlier than the date for receiving the required form
5322 under subparagraph 2.

5323 4. The limited liability company's estimate of the fair
5324 value of the membership interests.

5325 5. An offer to each member who is entitled to appraisal
5326 rights to pay the limited liability company's estimate of fair
5327 value provided in subparagraph 4.

5328 6. That, if requested in writing, the limited liability
5329 company will provide to the member so requesting, within 10 days
5330 after the date specified in subparagraph 2. the number of
5331 members who return the forms by the specified date and the total
5332 number of membership interests owned by them.

5333 7. The date by which the notice to withdraw under s.
5334 608.966 must be received, which must be within 20 days after the
5335 date specified in subsection (2)(b)2.

5336 8. If not previously provided, accompanied by a copy of
5337 ss. 608.922 and ss. 608.961-608.972.

5338 608.966 Perfection of rights; right to withdraw.—

5339 (1) A member who receives notice pursuant to s. 608.965
5340 and wishes to exercise appraisal rights must sign and return the
5341 form received pursuant to s. 608.965(1) and, in the case of
5342 certificated membership interests and if the limited liability
5343 company so requires, deposit the member's certificates in
5344 accordance with the terms of the notice by the date referred to
5345 in the notice pursuant to s. 608.965(2)(b)2. Once a member
5346 deposits that member's certificates or, in the case of
5347 uncertificated membership interests, returns the signed form
5348 described in s. 608.965(2), the member loses all rights as a

5349 member, unless the member withdraws pursuant to subsection (2).
5350 Upon receiving a demand for payment from a member who holds an
5351 uncertificated membership interest, the limited liability
5352 company shall make an appropriate notation of the demand for
5353 payment in its records and shall restrict the transfer of the
5354 membership interest, or the applicable class or series, from the
5355 date the member delivers the items required by this section.

5356 (2) A member who has complied with subsection (1) may
5357 nevertheless decline to exercise appraisal rights and withdraw
5358 from the appraisal process by so notifying the limited liability
5359 company in writing by the date provided in the appraisal notice
5360 pursuant to s. 608.965(2)(b)7. A member who fails to so withdraw
5361 from the appraisal process may not later withdraw without the
5362 limited liability company's written consent.

5363 (3) A member who does not sign and return the form and, in
5364 the case of certificated membership interests, deposit that
5365 member's certificates, if so required by the limited liability
5366 company, each by the date provided in the notice, is not
5367 entitled to payment under s. 608.922 and ss. 608.961-608.972.

5368 (4) If the member's right to receive fair value is
5369 terminated other than by the purchase of the membership interest
5370 by the limited liability company, all rights of the member, with
5371 respect to the membership interest, shall be reinstated
5372 effective as of the date the member delivered the items required
5373 in subsection (1), including the right to receive an intervening
5374 payment or other distribution with respect to such membership
5375 interest, or, if any rights have expired or a distribution other
5376 than a cash payment has been completed, in lieu thereof at the

5377 election of the limited liability company, the fair value in
5378 cash as determined by the limited liability company as of the
5379 time of such expiration or completion, but without prejudice
5380 otherwise to any action or proceeding of the limited liability
5381 company that may have been taken by the limited liability
5382 company on or after the date the member delivered the items
5383 required by subsection (1).

5384 608.967 Member's acceptance of limited liability company's
5385 offer.

5386 (1) If the member states on the form provided in s.
5387 608.965(1) that the member accepts the offer of the limited
5388 liability company to pay the limited liability company's
5389 estimated fair value for the membership interest, the limited
5390 liability company shall make the payment to the member within 90
5391 days after the limited liability company's receipt of the items
5392 required by s. 608.966(1).

5393 (2) Upon payment of the agreed value, the member ceases to
5394 have an interest in the membership interest.

5395 608.968 Procedure if member is dissatisfied with offer.—

5396 (1) A member who is dissatisfied with the limited
5397 liability company's offer as provided pursuant to s.
5398 608.965(2)(b)4. must notify the limited liability company on the
5399 form provided pursuant to s. 608.965(1) of the member's estimate
5400 of the fair value of the membership interest and demand payment
5401 of that estimate plus accrued interest.

5402 (2) A member who fails to notify the limited liability
5403 company in writing of the member's demand to be paid the
5404 member's estimate of the fair value plus interest under

5405 subsection (1) within the timeframe provided in s.
5406 608.965(2)(b)2. waives the right to demand payment under this
5407 section and is entitled only to the payment offered by the
5408 limited liability company pursuant to s. 608.965(2)(b)4.

5409 608.969 Court action.-

5410 (1) If a member makes demand for payment under s. 608.968,
5411 which remains unsettled, the limited liability company shall
5412 commence a proceeding within 60 days after receiving the payment
5413 demand and petition the court to determine the fair value of the
5414 membership interest plus accrued interest from the date of the
5415 appraisal event. If the limited liability company does not
5416 commence the proceeding within the 60-day period, a member who
5417 has made a demand pursuant to s. 608.968 may commence the
5418 proceeding in the name of the limited liability company.

5419 (2) The proceeding shall be commenced in the appropriate
5420 court of the county in which the limited liability company's
5421 principal office in this state is located or, if none, the
5422 county in which its registered agent is located. If by virtue of
5423 the appraisal event becoming effective the limited liability
5424 company has become a foreign limited liability company without a
5425 registered agent in this state, the proceeding shall be
5426 commenced in the county in this state in which the principal
5427 office or registered agent of the limited liability company was
5428 located immediately before the time the appraisal event became
5429 effective.

5430 (3) All members, whether residents of this state, whose
5431 demands remain unsettled shall be made parties to the proceeding
5432 as in an action against their membership interests. The limited

5433 liability company shall serve a copy of the initial pleading in
5434 the proceeding upon each member party who is a resident of this
5435 state in the manner provided by law for the service of a summons
5436 and complaint and upon each nonresident member party by
5437 registered or certified mail or by publication as provided by
5438 law.

5439 (4) The jurisdiction of the court in which the proceeding
5440 is commenced is plenary and exclusive. If it so elects, the
5441 court may appoint one or more persons as appraisers to receive
5442 evidence and recommend a decision on the question of fair value.
5443 The appraisers shall have the powers described in the order
5444 appointing them or in an amendment to the order. The members
5445 demanding appraisal rights are entitled to the same discovery
5446 rights as parties in other civil proceedings. There is no right
5447 to a jury trial.

5448 (5) Each member who is made a party to the proceeding is
5449 entitled to judgment for the amount of the fair value of the
5450 member's membership interests, plus interest, as found by the
5451 court.

5452 (6) The limited liability company shall pay each member
5453 the amount found to be due within 10 days after final
5454 determination of the proceedings. Upon payment of the judgment,
5455 the member ceases to have any interest in the membership
5456 interests.

5457 608.97 Court costs and counsel fees.-

5458 (1) The court in an appraisal proceeding shall determine
5459 all costs of the proceeding, including the reasonable
5460 compensation and expenses of appraisers appointed by the court.

5461 The court shall assess the costs against the limited liability
5462 company, except that the court may assess costs against all or
5463 some of the members demanding appraisal, in amounts the court
5464 finds equitable, to the extent the court finds the members acted
5465 arbitrarily, vexatiously, or not in good faith with respect to
5466 the rights provided by this chapter.

5467 (2) The court in an appraisal proceeding may also assess
5468 the expenses incurred by the respective parties, in amounts the
5469 court finds equitable:

5470 (a) Against the limited liability company and in favor of
5471 any or all members demanding appraisal if the court finds the
5472 limited liability company did not substantially comply with the
5473 requirements of ss. 608.961-608.972; or

5474 (b) Against either the limited liability company or a
5475 member demanding appraisal, in favor of another party, if the
5476 court finds that the party against whom the expenses are
5477 assessed acted arbitrarily, vexatiously, or not in good faith
5478 with respect to the rights provided by this chapter.

5479 (3) If the court, in an appraisal proceeding, finds that
5480 the expenses incurred by any member were of substantial benefit
5481 to other members similarly situated, and that the expenses
5482 should not be assessed against the limited liability company,
5483 the court may direct that the expenses be paid out of the
5484 amounts awarded the members who were benefited.

5485 (4) To the extent the limited liability company fails to
5486 make a required payment pursuant to s. 608.967 or s. 608.969,
5487 the member may sue directly for the amount owed and, to the
5488 extent successful, is entitled to recover from the limited

5489 liability company all costs and expenses of the suit, including
 5490 attorney fees.

5491 608.971 Limitation on limited liability company payment.-

5492 (1) No payment may be made to a member seeking appraisal
 5493 rights if, at the time of payment, the limited liability company
 5494 is unable to meet the distribution standards of s. 608.7844. In
 5495 such event, the member shall, at the member's option:

5496 (a) Withdraw the notice of intent to assert appraisal
 5497 rights, which is deemed withdrawn with the consent of the
 5498 limited liability company; or

5499 (b) Retain the status as a claimant against the limited
 5500 liability company and, if the limited liability company is
 5501 liquidated, be subordinated to the rights of creditors of the
 5502 limited liability company but have rights superior to the
 5503 members not asserting appraisal rights and, if it is not
 5504 liquidated, retain the right to be paid for the membership
 5505 interest, which right the limited liability company is obliged
 5506 to satisfy when the restrictions of this section do not apply.

5507 (2) The member shall exercise the option under paragraph
 5508 (1) (a) or paragraph (1) (b) by written notice filed with the
 5509 limited liability company within 30 days after the limited
 5510 liability company has given written notice that the payment for
 5511 the membership interests cannot be made because of the
 5512 restrictions of this section. If the member fails to exercise
 5513 the option, the member is deemed to have withdrawn the notice of
 5514 intent to assert appraisal rights.

5515 608.972 Other remedies limited.-

5516 (1) The legality of a proposed or completed appraisal

5517 event may not be contested, and the appraisal event may not be
5518 enjoined, set aside, or rescinded, in a legal or equitable
5519 proceeding by a member after the members have approved the
5520 appraisal event.

5521 (2) Subsection (1) does not apply to an appraisal event
5522 that:

5523 (a) Was not authorized and approved in accordance with the
5524 applicable provisions of this chapter, the organic rules of the
5525 limited liability company, or the resolutions of the members
5526 authorizing the appraisal event; or

5527 (b) Was procured as a result of fraud, a material
5528 misrepresentation, or an omission of a material fact necessary
5529 to make statements made, in light of the circumstances in which
5530 they were made, not misleading.

5531 (3) Is an interested transaction, unless it has been
5532 approved in the same manner as is provided in s. 608.7852.

5533 608.975 Uniformity of application and construction.—In
5534 applying and construing this chapter, consideration must be
5535 given to the need to promote uniformity of the law with respect
5536 to the uniform act upon which it is based.

5537 608.976 Relation to electronic signatures in global and
5538 national commerce act.—This chapter modifies, limits, and
5539 supersedes the Electronic Signatures in Global and National
5540 Commerce Act, 15 U.S.C. s. 7001 et seq., but does not modify,
5541 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),
5542 or authorize electronic delivery of the notices described in s.
5543 103(b) of that act, 15 U.S.C. s. 7003(b). Notwithstanding the
5544 foregoing, this section and this chapter do not modify, limit,

5545 | or supersede ss. 15.16, 116.34, or 668.50.

5546 | 608.977 Tax exemption on income of certain limited
 5547 | liability companies.—

5548 | (1) A limited liability company classified as a
 5549 | partnership for federal income tax purposes, or a single-member
 5550 | limited liability that is disregarded as an entity separate from
 5551 | its owner for federal income tax purposes, and organized
 5552 | pursuant to this chapter or qualified to do business in this
 5553 | state as a foreign limited liability company is not an
 5554 | artificial entity within the purview of s. 220.02 and is not
 5555 | subject to the tax imposed under chapter 220. If a single-member
 5556 | limited liability company is disregarded as an entity separate
 5557 | from its owner for federal income tax purposes, its activities
 5558 | are, for purposes of taxation under chapter 220, treated in the
 5559 | same manner as a sole proprietorship, branch, or division of the
 5560 | owner.

5561 | (2) For purposes of taxation under chapter 220, a limited
 5562 | liability company formed in this state or a foreign limited
 5563 | liability company authorized to transact business in this state
 5564 | shall be classified as a partnership, or a limited liability
 5565 | company that has only one member shall be disregarded as an
 5566 | entity separate from its owner for federal income tax purposes,
 5567 | unless classified otherwise for federal income tax purposes, in
 5568 | which case the limited liability company shall be classified
 5569 | identically to its classification for federal income tax
 5570 | purposes. For purposes of taxation under chapter 220, a member
 5571 | or an transferee of a member of a limited liability company
 5572 | formed in this state or a foreign limited liability company

5573 qualified to do business in this state shall be treated as a
 5574 resident or nonresident partner unless classified otherwise for
 5575 federal income tax purposes, in which case the member or
 5576 transferee of a member has the same status as the member or
 5577 transferee of a member has for federal income tax purposes.

5578 (3) Single-member limited liability companies and other
 5579 entities that are disregarded for federal income tax purposes
 5580 must be treated as separate legal entities for all non-income
 5581 tax purposes. The Department of Revenue shall adopt rules to
 5582 take into account that single-member disregarded entities such
 5583 as limited liability companies and qualified subchapter S
 5584 corporations may be disregarded as separate entities for federal
 5585 tax purposes and therefore may report and account for income,
 5586 employment, and other taxes under the taxpayer identification
 5587 number of the owner of the single-member entity.

5588 608.978 Interrogatories by department; other powers of
 5589 department.-

5590 (1) The department may direct to a limited liability
 5591 company or foreign limited liability company subject to this
 5592 chapter, and to a member or manager of a limited liability
 5593 company or foreign limited liability company subject to this
 5594 chapter, any interrogatories reasonably necessary and proper to
 5595 enable the department to ascertain whether the limited liability
 5596 company or foreign limited liability company has complied with
 5597 all of the provisions of this chapter applicable to the limited
 5598 liability company or foreign limited liability company. The
 5599 interrogatories must be answered within 30 days after the date
 5600 of mailing, or within such additional time as fixed by the

5601 department. The answers to the interrogatories must be full and
5602 complete and must be made in writing and under oath. If the
5603 interrogatories are directed to an individual, they must be
5604 answered by the individual, and if directed to a limited
5605 liability company or foreign limited liability company, they
5606 must be answered by a manager of a manager-managed company, a
5607 member of a member-managed company, or a fiduciary if the
5608 company is in the hands of a receiver, trustee, or other court-
5609 appointed fiduciary.

5610 (2) The department need not file a record in a court of
5611 competent jurisdiction to which the interrogatories relate until
5612 the interrogatories are answered as provided in this chapter,
5613 and not then if the answers thereto disclose that the record is
5614 not in conformity with the requirements of this chapter or if
5615 the department has determined that the parties to such document
5616 have not paid all fees, taxes, and penalties due and owing this
5617 state. The department shall certify to the Department of Legal
5618 Affairs, for such action as the Department of Legal Affairs may
5619 deem appropriate, all interrogatories and answers that disclose
5620 a violation of this chapter.

5621 (3) The department may, based upon its findings hereunder
5622 or as provided in s. 213.053(15), bring an action in circuit
5623 court to collect any penalties, fees, or taxes determined to be
5624 due and owing the state and to compel any filing, qualification,
5625 or registration required by law. In connection with such
5626 proceeding, the department may, without previous approval by the
5627 court, file a lis pendens against any property owned by the
5628 limited liability company and may further certify any findings

5629 to the Department of Legal Affairs for the initiation of an
5630 action permitted pursuant to this chapter which the Department
5631 of Legal Affairs may deem appropriate.

5632 (4) The department has the power and authority reasonably
5633 necessary to administer this chapter efficiently, to perform the
5634 duties herein imposed upon it, and to adopt reasonable rules
5635 necessary to carry out its duties and functions under this
5636 chapter.

5637 608.979 Reservation of power to amend or repeal.—The
5638 Legislature has the power to amend or repeal all or part of this
5639 chapter at any time, and all domestic and foreign limited
5640 liability companies subject to this chapter shall be governed by
5641 the amendment or repeal.

5642 608.980 Savings clause.—

5643 (1) Except as provided in subsection (2), the repeal of a
5644 statute by this chapter does not affect:

5645 (a) The operation of the statute or an action taken under
5646 it before its repeal, including, without limiting the generality
5647 of the foregoing, the continuing validity of any provision of
5648 the articles of organization, regulations, or operating
5649 agreements of a limited liability company authorized by the
5650 statute at the time of its adoption.

5651 (b) A ratification, right, remedy, privilege, obligation,
5652 or liability acquired, accrued, or incurred under the statute
5653 before its repeal.

5654 (c) A violation of the statute or a penalty, forfeiture,
5655 or punishment incurred because of the violation, before its
5656 repeal.

5657 (d) A proceeding, merger, sale of assets, reorganization,
5658 or dissolution commenced under the statute before its repeal,
5659 and the proceeding, merger, sale of assets, reorganization, or
5660 dissolution may be completed in accordance with the statute as
5661 if it had not been repealed.

5662 (2) If a penalty or punishment imposed for violation of a
5663 statute is reduced by this chapter, the penalty or punishment if
5664 not already imposed shall be imposed in accordance with this
5665 chapter.

5666 (3) This chapter does not affect an action commenced,
5667 proceeding brought, or right accrued before this chapter takes
5668 effect.

5669 608.981 Application to limited liability company formed
5670 under the Florida Limited Liability Company Act.—For purposes of
5671 applying this chapter to a limited liability company formed
5672 before January 1, 2014, under the Florida Limited Liability
5673 Company Act, ss. 608.401-608.706:

5674 (1) The company's articles of organization are deemed to
5675 be the company's articles of organization under this chapter.

5676 (2) For the purposes of applying s. 608.7802(12) and
5677 subject to s. 608.7812(4), language in the company's articles of
5678 organization designating the company's management structure
5679 operates as if that language were in the operating agreement.

5680 (3) Effective January 1, 2014, all documents, instruments,
5681 and other records submitted to the department must comply with
5682 the filing requirements stipulated by this chapter.

5683 608.982 References to chapter.—Any reference to "this
5684 chapter" contained within this part shall be construed as a

5685 reference to this part only. This section is repealed January 1,
 5686 2015.

5687 Section 6. Section 48.062, Florida Statutes, is created to
 5688 read:

5689 48.062 Service on limited liability companies.-

5690 (1) Process against any limited liability company,
 5691 domestic or foreign, may be served on the registered agent
 5692 designated by the limited liability company under chapter 608. A
 5693 person attempting to serve process pursuant to this paragraph
 5694 may serve the process on any employee of the registered agent
 5695 during the first attempt at service even if the registered agent
 5696 is a natural person and is temporarily absent from his or her
 5697 office.

5698 (2) If service cannot be made on a registered agent of the
 5699 limited liability company because of failure to comply with
 5700 chapter 608 or because the limited liability company does not
 5701 have a registered agent, or if its registered agent cannot with
 5702 reasonable diligence be served, process against the limited
 5703 liability company, domestic or foreign, may be served:

5704 (a) On any member of a member-managed limited liability
 5705 company;

5706 (b) On any manager of a manager-managed limited liability
 5707 company; or

5708 (c) If a member or manager is not available during regular
 5709 business hours to accept service on behalf of the limited
 5710 liability company, the member or manager may designate an
 5711 employee of the limited liability company to accept such
 5712 service. After one attempt to serve a member, manager, or

5713 designated employee has been made, process may be served on the
 5714 person in charge of the limited liability company during regular
 5715 business hours.

5716 (3) If, after reasonable diligence, service of process
 5717 cannot be completed under subsection (1) or subsection (2),
 5718 service of process may be effected by service upon the Secretary
 5719 of State as agent of the limited liability company as provided
 5720 for in s. 48.181.

5721 (4) If the address provided for the registered agent,
 5722 member, or manager is a residence or private mailbox, service on
 5723 the limited liability company, domestic or foreign, may be made
 5724 by serving the registered agent, member, or manager in
 5725 accordance with s. 48.031.

5726 (5) This section does not apply to service of process on
 5727 an insurance company regulated under chapter 624.

5728 Section 7. Effective January 1, 2015, section 608.981,
 5729 Florida Statutes, as created by this act, is amended to read:

5730 608.981 Application to limited liability company formed
 5731 under former ~~the~~ Florida Limited Liability Company Act.—For
 5732 purposes of applying this chapter to a limited liability company
 5733 formed before January 1, 2014, under the Florida Limited
 5734 Liability Company Act, former ss. 608.401-608.706, Florida
 5735 Statutes 2014:

5736 (1) The company's articles of organization are deemed to
 5737 be the company's articles of organization under this chapter.

5738 (2) For the purposes of applying s. 608.7802(12) and
 5739 subject to s. 608.7812(4), language in the company's articles of
 5740 organization designating the company's management structure

CS/HB 1079

2013

5741 | operates as if that language were in the operating agreement.

5742 | (3) ~~Effective January 1, 2014,~~ All documents, instruments,
5743 | and other records submitted to the department must comply with
5744 | the filing requirements stipulated by this chapter.

5745 | Section 8. Effective January 1, 2015, the Florida Limited
5746 | Liability Company Act, part I of chapter 608, Florida Statutes,
5747 | consisting of ss. 608.401-608.706, is repealed.

5748 | Section 9. If a provision of this chapter or its
5749 | application to any person or circumstance is held invalid, the
5750 | invalidity does not affect other provisions or applications of
5751 | this chapter which can be given effect without the invalid
5752 | provision or application, and to this end the provisions of this
5753 | chapter are severable.

5754 | Section 10. This act shall take effect January 1, 2014.