

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative McGhee offered the following:

2
3 **Amendment (with directory and title amendments)**

4 Between lines 100 and 101, insert:

5 (p)~~(q)~~ Provide for indemnification for a member or manager
6 under s. 605.0408 for any of the following:

7 1. Conduct involving bad faith, willful or intentional
8 misconduct, or a knowing violation of law.

9 2. A transaction from which the member or manager derived
10 an improper personal benefit.

11 3. A circumstance under which the liability provisions of
12 s. 605.0406 are applicable.

13 4. A breach of duties or obligations under s. 605.04091,
14 taking into account a restriction, an expansion, or an

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15 elimination ~~variation~~ of such duties and obligations provided
16 for in the operating agreement to the extent allowed by
17 subsection (4).

18 (4) Subject to paragraph (3)(g), without limiting other
19 terms that may be included in an operating agreement, the
20 following rules apply:

21 (c) If not manifestly unreasonable, the operating
22 agreement may:

23 1. Alter or eliminate the aspects of the duty of loyalty
24 under s. 605.04091(2);

25 2. Identify specific types or categories of activities
26 that do not violate the duty of loyalty; ~~and~~

27 3. Alter the duty of care, but may not authorize willful
28 or intentional misconduct or a knowing violation of law; and

29 4. Alter or eliminate any other fiduciary duty.

30 Section 3. Section 605.0111, Florida Statutes, is amended
31 to read:

32 605.0111 Rules of construction and supplemental principles
33 of law.—

34 (1) It is the intent of this chapter to give the maximum
35 effect to the principle of freedom of contract and to the
36 enforceability of operating agreements, including the purposes
37 of ss. 605.0105-605.0107.

38 (2) To the extent that, at law or in equity, a member,
39 manager, or other person has duties, including fiduciary duties,
40 to a limited liability company or to another member or manager

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41 or to another person that is a party to or is otherwise bound by
42 an operating agreement, the duties of the member, manager, or
43 other person may be restricted, expanded, or eliminated,
44 including in the determination of applicable duties and
45 obligations under this chapter, by the operating agreement, to
46 the extent allowed by s. 605.0105.

47 (3) Unless displaced by particular provisions of this
48 chapter, the principles of law and equity, including the common
49 law principles relating to the fiduciary duties of loyalty and
50 care, supplement this chapter.

51 -----
52 **D I R E C T O R Y A M E N D M E N T**

53 Remove lines 92-93 and insert:

54 Section 2. Paragraphs (i) and (q) of subsection (3) and
55 paragraph (c) of subsection (4) of section 605.0105, Florida
56 Statutes, are amended to read:
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59 **T I T L E A M E N D M E N T**

60 Remove lines 11-13 and insert:

61 F.S.; removing the prohibition that an operating
62 agreement may not vary the power of a person to
63 dissociate; clarifying that an operating agreement is
64 prohibited from providing indemnification for a member
65 or manager in certain circumstances; authorizing an
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67 | operating agreement to alter or eliminate any other
68 | fiduciary duty; amending s. 605.0111, F.S.; providing
69 | that the duties of the member, manager, or other
70 | person may be restricted, expanded, or eliminated in
71 | certain circumstances; amending s. 605.04073, F.S.;
72 | requiring

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