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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2015	.	
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The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 92 - 114

and insert:

Section 2. Paragraphs (i) and (q) of subsection (3) and paragraph (c) of subsection (4) of section 605.0105, Florida Statutes, are amended to read:

605.0105 Operating agreement; scope, function, and limitations.—

(3) An operating agreement may not do any of the following:

~~(i) Vary the power of a person to dissociate under s.~~



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12 ~~605.0601, except to require that the notice under s. 605.0602(1)~~  
13 ~~be in a record.~~

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

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

18 2. A transaction from which the member or manager derived  
19 an improper personal benefit.

20 3. A circumstance under which the liability provisions of  
21 s. 605.0406 are applicable.

22 4. A breach of duties or obligations under s. 605.04091,  
23 taking into account a restriction, an expansion, or an  
24 elimination ~~variation~~ of such duties and obligations provided  
25 for in the operating agreement to the extent allowed by  
26 subsection (4).

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

30 (c) If not manifestly unreasonable, the operating agreement  
31 may:

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

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

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

38 4. Alter or eliminate any other fiduciary duty.

39 Section 3. Section 605.0111, Florida Statutes, is amended  
40 to read:



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41           605.0111 Rules of construction and supplemental principles  
42 of law.—

43           (1) It is the intent of this chapter to give the maximum  
44 effect to the principle of freedom of contract and to the  
45 enforceability of operating agreements, including the purposes  
46 of ss. 605.0105-605.0107.

47           (2) To the extent that, at law or in equity, a member, a  
48 manager, or another person has duties, including fiduciary  
49 duties, to a limited liability company or to another member or  
50 manager or to another person that is a party to or is otherwise  
51 bound by an operating agreement, the duties of the member,  
52 manager, or other person may be restricted, expanded, or  
53 eliminated, including in the determination of applicable duties  
54 and obligations under this chapter, by the operating agreement,  
55 and to the extent allowed by s. 605.0105.

56           (3) Unless displaced by particular provisions of this  
57 chapter, the principles of law and equity, including the common  
58 law principles relating to the fiduciary duties of loyalty and  
59 care, supplement this chapter.

60           Section 4. Subsection (4) of section 605.04073, Florida  
61 Statutes, is amended to read:

62           605.04073 Voting rights of members and managers.—

63           (4) An action requiring the vote or consent of members  
64 under this chapter may be taken without a meeting if the action  
65 is approved in a record by members with at least the minimum  
66 number of votes that would be necessary to authorize or take the  
67 action at a meeting of the members.,~~and~~ A member may appoint a  
68 proxy or other agent to vote or consent for the member by  
69 signing an appointing record, personally or by the member's



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70 agent. On an action taken by fewer than all of the members  
71 without a meeting, notice of the action must be given to those  
72 members who did not consent in writing to the action or who were  
73 not entitled to vote on the action within 10 days after the  
74 action was taken.

75 Section 5. Subsections (2) and (3) of section 605.04091,  
76 Florida Statutes, are amended to read:

77 605.04091 Standards of conduct for members and managers.—

78 (2) The duty of loyalty includes ~~is limited to~~:

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

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

84 2. From the use by the member or manager of the company's  
85 property; or

86 3. From the appropriation of a company opportunity;

87 (b) Refraining from dealing with the company in the conduct  
88 or winding up of the company's activities and affairs as, or on  
89 behalf of, a person having an interest adverse to the company,  
90 except to the extent that a transaction satisfies the  
91 requirements of this section; and

92 (c) Refraining from competing with the company in the  
93 conduct of the company's activities and affairs before the  
94 dissolution of the company.

95 (3) The duty of care in the conduct or winding up of the  
96 company's activities and affairs is ~~limited~~ to refrain  
97 ~~refraining~~ from engaging in grossly negligent or reckless  
98 conduct, willful or intentional misconduct, or a knowing



99 violation of law.

100

101 ===== T I T L E A M E N D M E N T =====

102 And the title is amended as follows:

103 Delete lines 13 - 16

104 and insert:

105 dissociate; clarifying that an operating agreement is  
106 prohibited from providing indemnification for a member  
107 or manager in certain circumstances; authorizing an  
108 operating agreement to alter or eliminate any other  
109 fiduciary duty; amending s. 605.0111, F.S.; providing  
110 that the duties of the member, manager, or another  
111 person may be restricted, expanded, or eliminated in  
112 certain circumstances; amending s. 605.04073, F.S.;  
113 requiring certain conditions for members of a limited  
114 liability company, without a meeting, to take certain  
115 actions requiring the vote or consent of the members;  
116 amending s. 605.04091, F.S.; providing that the duty  
117 of loyalty includes, but is not limited to, specified  
118 actions; revising the duty of care in the conduct or  
119 winding up of the company's activities and affairs;  
120 amending