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LEGISLATIVE ACTION

Senate

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House

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Senator Simmons moved the following:

**Senate Amendment (with title amendment)**

Delete lines 145 - 375

and insert:

(2) To the extent that, at law or in equity, a member, manager, or other person has duties, including fiduciary duties, to a limited liability company or to another member or manager or to another person that is a party to or is otherwise bound by an operating agreement, the duties of the member, manager, or other person may be restricted, expanded, or eliminated, including in the determination of applicable duties and



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12 obligations under this chapter, by the operating agreement, to  
13 the extent allowed by s. 605.0105.

14 (3) Unless displaced by particular provisions of this  
15 chapter, the principles of law and equity, including the common  
16 law principles relating to the fiduciary duties of loyalty and  
17 care, supplement this chapter.

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

20 605.04073 Voting rights of members and managers.—

21 (4) An action requiring the vote or consent of members  
22 under this chapter may be taken without a meeting if the action  
23 is approved in a record by members with at least the minimum  
24 number of votes that would be necessary to authorize or take the  
25 action at a meeting of the members. ~~and~~ A member may appoint a  
26 proxy or other agent to vote or consent for the member by  
27 signing an appointing record, personally or by the member's  
28 agent. On an action taken by fewer than all of the members  
29 without a meeting, notice of the action must be given to those  
30 members who did not consent in writing to the action or who were  
31 not entitled to vote on the action within 10 days after the  
32 action was taken.

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

35 605.04091 Standards of conduct for members and managers.—

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

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

40 1. In the conduct or winding up of the company's activities



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41 and affairs;

42 2. From the use by the member or manager of the company's  
43 property; or

44 3. From the appropriation of a company opportunity;

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

50 (c) Refraining from competing with the company in the  
51 conduct of the company's activities and affairs before the  
52 dissolution of the company.

53 (3) The duty of care in the conduct or winding up of the  
54 company's activities and affairs is ~~limited~~ to refrain  
55 ~~refraining~~ from engaging in grossly negligent or reckless  
56 conduct, willful or intentional misconduct, or a knowing  
57 violation of law.

58 Section 6. Subsection (2), paragraph (a) of subsection (3),  
59 and subsection (4) of section 605.0410, Florida Statutes, are  
60 amended to read:

61 605.0410 Records to be kept; rights of member, manager, and  
62 person dissociated to information.—

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

65 (a) Upon reasonable notice, a member may inspect and copy  
66 during regular business hours, at a reasonable location  
67 specified by the company:

- 68 1. The records described in subsection (1); and  
69 2. Each other record maintained by the company regarding



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70 the company's activities, affairs, financial condition, and  
71 other circumstances, to the extent the information is material  
72 to the member's rights and duties under the operating agreement  
73 or this chapter.

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

75 1. Without demand, any information concerning the company's  
76 activities, affairs, financial condition, and other  
77 circumstances that the company knows and is material to the  
78 proper exercise of the member's rights and duties under the  
79 operating agreement or this chapter, except to the extent the  
80 company can establish that it reasonably believes the member  
81 already knows the information; and

82 2. On demand, other information concerning the company's  
83 activities, affairs, financial condition, and other  
84 circumstances, except to the extent the demand or information  
85 demanded is unreasonable or otherwise improper under the  
86 circumstances.

87 (c) Within 10 days after receiving a demand pursuant to  
88 subparagraph (b)2., the company shall provide to the member who  
89 made the demand a record of:

90 1. The information that the company will provide in  
91 response to the demand and when and where the company will  
92 provide such information.

93 2. For any demanded information that the company is not  
94 providing, the reasons that the company will not provide the  
95 information.

96 (d)~~(e)~~ The duty to furnish information under this  
97 subsection also applies to each member to the extent the member  
98 knows any of the information described in this subsection.



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

101 (a) The informational rights stated in subsection (2) and  
102 the duty stated in paragraph (2)(d) ~~(2)(e)~~ apply to the managers  
103 and not to the members.

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

108 (a) The information pertains to the period during which the  
109 person was a member;

110 (b) The person seeks the information in good faith; and

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

113 Section 7. Subsection (6) of section 605.0602, Florida  
114 Statutes, is amended to read:

115 605.0602 Events causing dissociation.—A person is  
116 dissociated as a member if any of the following occur:

117 (6) On application by the company or a member in a direct  
118 action under s. 605.0801, the person is expelled as a member by  
119 judicial order because the person:

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

123 (b) Has committed willfully or persistently, or is  
124 committing willfully or ~~and~~ persistently, a material breach of  
125 the operating agreement or a duty or obligation under s.  
126 605.04091; or

127 (c) Has engaged or is engaging in conduct relating to the



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128 company's activities and affairs which makes it not reasonably  
129 practicable to carry on the activities and affairs with the  
130 person as a member.

131 Section 8. Section 605.0715, Florida Statutes, is amended  
132 to read:

133 605.0715 Reinstatement.—

134 (1) A limited liability company that is administratively  
135 dissolved under s. 605.0714 or former s. 608.4481 may apply to  
136 the department for reinstatement at any time after the effective  
137 date of dissolution. The company must submit ~~a form of~~  
138 ~~application for reinstatement prescribed and furnished by the~~  
139 ~~department and provide all of the information required by the~~  
140 ~~department, together with~~ all fees and penalties then owed by  
141 the company at the rates provided by law at the time the company  
142 applies for reinstatement together with an application for  
143 reinstatement prescribed and furnished by the department, which  
144 is signed by both the registered agent and an authorized  
145 representative of the company and states:

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

147 (b) The street address of the company's principal office  
148 and mailing address.

149 (c) The date of the company's organization.

150 (d) The company's federal employer identification number  
151 or, if none, whether one has been applied for.

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

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

156 (2) In lieu of the requirement to file an application for



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157 reinstatement as described in subsection (1), an  
158 administratively dissolved limited liability company may submit  
159 all fees and penalties owed by the company at the rates provided  
160 by law at the time the company applies for reinstatement,  
161 together with a current annual report, signed by both the  
162 registered agent and an authorized representative of the  
163 company, which contains the information described in subsection  
164 (1).

165 (3)~~(2)~~ If the department determines that an application for  
166 reinstatement contains the information required under subsection  
167 (1) or subsection (2) and that the information is correct, upon  
168 payment of all required fees and penalties, the department shall  
169 reinstate the limited liability company.

170 (4)~~(3)~~ When reinstatement under this section becomes  
171 effective:

172 (a) The reinstatement relates back to and takes effect as  
173 of the effective date of the administrative dissolution.

174 (b) The limited liability company may resume its activities  
175 and affairs as if the administrative dissolution had not  
176 occurred.

177 (c) The rights of a person arising out of an act or  
178 omission in reliance on the dissolution before the person knew  
179 or had notice of the reinstatement are not affected.

180 (5)~~(4)~~ The name of the dissolved limited liability company  
181 is not available for assumption or use by another business  
182 entity until 1 year after the effective date of dissolution  
183 unless the dissolved limited liability company provides the  
184 department with a record executed as required pursuant to s.  
185 605.0203 permitting the immediate assumption or use of the name



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186 by another limited liability company.

187 Section 9. Section 605.0909, Florida Statutes, is amended  
188 to read:

189 605.0909 Reinstatement following revocation of certificate  
190 of authority.-

191 (1) A foreign limited liability company whose certificate  
192 of authority has been revoked may apply to the department for  
193 reinstatement at any time after the effective date of the  
194 revocation. The foreign limited liability company applying for  
195 reinstatement must submit ~~provide information in a form~~  
196 ~~prescribed and furnished by the department and pay~~ all fees and  
197 penalties then owed by the foreign limited liability company at  
198 rates provided by law at the time the foreign limited liability  
199 company applies for reinstatement together with an application  
200 for reinstatement prescribed and furnished by the department,  
201 which is signed by both the registered agent and an authorized  
202 representative of the company and states:

203 (a) The name under which the foreign limited liability  
204 company is registered to transact business in this state.

205 (b) The street address of the company's principal office  
206 and its mailing address.

207 (c) The jurisdiction of the company's formation and the  
208 date on which it became qualified to transact business in this  
209 state.

210 (d) The company's federal employer identification number  
211 or, if none, whether one has been applied for.

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

214 (f) Additional information that is necessary or appropriate





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215 to enable the department to carry out this chapter.

216 (2) In lieu of the requirement to file an application for  
217 reinstatement as described in subsection (1), a foreign limited  
218 liability company whose certificate of authority has been  
219 revoked may submit all fees and penalties owed by the company at  
220 the rates provided by law at the time the company applies for  
221 reinstatement, together with a current annual report, signed by  
222 both the registered agent and an authorized representative of  
223 the company, which contains the information described in  
224 subsection (1).

225 (3)~~(2)~~ If the department determines that an application for  
226 reinstatement contains the information required under subsection  
227 (1) or subsection (2) and that the information is correct, upon  
228 payment of all required fees and penalties, the department shall  
229 reinstate the foreign limited liability company's certificate of  
230 authority.

231 (4)~~(3)~~ When a reinstatement becomes effective, it relates  
232 back to and takes effect as of the effective date of the  
233 revocation of authority and the foreign limited liability  
234 company may resume its activities in this state as if the  
235 revocation of authority had not occurred.

236 (5)~~(4)~~ The name of the foreign limited liability company  
237 whose certificate of authority has been revoked is not available  
238 for assumption or use by another business entity until 1 year  
239 after the effective date of revocation of authority unless the  
240 limited liability company provides the department with a record  
241 executed pursuant to s. 605.0203 which authorizes the immediate  
242 assumption or use of its name by another limited liability  
243 company.



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244        (6)~~(5)~~ If the name of the foreign limited liability company  
245 applying for reinstatement has been lawfully assumed in this  
246 state by another business entity, the department shall require  
247 the foreign limited liability company to comply with s. 605.0906  
248 before accepting its application for reinstatement.

249        Section 10. Subsection (2) of section 605.1072, Florida  
250 Statutes, is amended to read:

251        605.1072 Other remedies limited.—

252        (2) Subsection (1) does not apply to an appraisal event  
253 that:

254        (a) Was not authorized and approved in accordance with the  
255 applicable provisions of this chapter, the organic rules of the  
256 limited liability company, or the resolutions of the members  
257 authorizing the appraisal event; or

258        (b) Was procured as a result of fraud, a material  
259 misrepresentation, or an omission of a material fact that is  
260 necessary to make statements made, in light of the circumstances  
261 in which they were made, not misleading. ~~;~~ ~~or~~

262  
263 ===== T I T L E   A M E N D M E N T =====

264 And the title is amended as follows:

265        Delete lines 18 - 31

266 and insert:

267        that the duties of the member, manager, or other  
268 person may be restricted, expanded, or eliminated in  
269 certain circumstances; amending s. 605.04073, F.S.;

270        requiring certain conditions for members of a limited  
271 liability company, without a meeting, to take certain  
272 actions requiring the vote or consent of the members;



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273 amending s. 605.04091, F.S.; providing that the duty  
274 of loyalty includes, but is not limited to, specified  
275 actions; revising the duty of care in the conduct or  
276 winding up of the company's activities and affairs;  
277 amending s. 605.0410, F.S.; requiring a limited  
278 liability company to provide a record of certain  
279 information within a specified period to a member who  
280 makes a demand; amending s. 605.0602, F.S.; revising  
281 the events that cause a person to be dissociated as a  
282 member; amending s. 605.0715, F.S.; revising