CHAPTER 98-101

Senate Bill No. 704

An act relating to business entities; amending s. 607.0730, F.S.; removing 10-year limit on voting trusts; creating holding company formation by merger by certain corporations; amending s. 608.407, F.S.; reducing minimum number of members necessary to form a limited liability company; creating ss. 607.1108, 607.1109, 607.11101, F.S.; providing for mergers of domestic corporations and other business entities under certain circumstances; requiring a plan of merger; providing criteria; providing for articles of merger; providing for effect of merger; creating ss. 608.438, 608.4381, 608.4382, 608.4383, 608.4384, F.S.; providing for mergers of limited liability companies under certain circumstances; requiring a plan of merger; providing criteria; providing for action on a plan of merger; providing procedures; providing for articles of merger; providing for effect of merger; providing for rights of dissenting members; providing procedures; creating ss. 620.201, 620.202, 620.203, 620.204, 620.205, F.S.; providing for mergers of domestic limited partnerships under certain circumstances; requiring a plan of merger; providing criteria; providing for action on a plan of merger; providing procedures; providing for articles of merger; providing for effect of merger; providing for rights of dissenting partners; providing procedures; amending s. 220.02, F.S.; revising legislative intent; providing application; amending s. 220.02, F.S.; providing legislative intent regarding taxation of a "qualified subchapter S subsidiary"; amending s. 220.22, F.S.; requiring certain returns by such subsidiaries; providing retroactive application; amending s. 220.03, F.S.; revising a definition; amending s. 220.13, F.S.; redefining the term "taxable income" as applied to limited liability companies to exclude income of certain limited liability companies; amending s. 608.406, F.S.; revising criteria for limited liability company names; amending ss. 608.405 and 608.407, F.S.; reducing minimum number of members necessary to form a limited liability company; amending s. 608.471, F.S.; exempting certain limited liability companies from the corporate income tax; providing for classifying certain limited liability companies or members or assignees of a member of a limited liability company for certain taxation purposes; repealing ss. 607.0122(2) and (3), 607.0402, 607.1506(2)(b), 608.4061, 617.0122(2) and (3), 617.0402, 617.1506(2)(a), 620.104, 620.182(7), and 620.784(2), F.S., relating to corporation and partnership name reservation; conforming statutory provisions to the elimination of the name reservation program provided in the 1997-1998 General Appropriations Act; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 607.0730, Florida Statutes, are amended to read:

CODING: Words ~~striken~~ are deletions; words underlined are additions.

607.0730 Voting trusts.—

(2) A voting trust becomes effective on the date the first shares subject to the trust are registered in the trustee's name. ~~A voting trust is valid for not more than 10 years after its effective date unless extended under subsection (3). The validity of any voting trust otherwise lawful shall not be affected during a period of 10 years from the date when it was created or last extended by the fact that under its terms it will or may last beyond the 10-year period.~~

~~(3) All or some of the parties to a voting trust may extend it for additional terms of not more than 10 years each by signing an extension agreement and obtaining the voting trustee's written consent to the extension. An extension is valid for the period set forth therein, up to 10 years, from the date the first shareholder signs the extension agreement. The voting trustee must deliver copies of the extension agreement and list of beneficial owners to the corporation's principal office. An extension agreement binds only those parties signing it.~~

Section 2. Holding company formation by merger by certain corporations.—

(1) This section applies only to a corporation that has shares of any class or series which are either registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held of record by not fewer than 2,000 shareholders.

(2) As used in this section, the term:

(a) "Constituent corporation" means a corporation that is a party to a merger governed by this section.

(b) "Holding company" means a corporation that, from the date it first issued shares until consummation of a merger governed by this section, was at all times a wholly owned subsidiary of a constituent corporation, and whose shares are issued in such merger.

(c) "Wholly owned subsidiary" means, as to a corporation, any other corporation of which it owns, directly or indirectly through one or more subsidiaries, all of the issued and outstanding shares.

(3) Notwithstanding the requirements of section 607.1103, Florida Statutes, unless expressly required by its articles of incorporation, no vote of shareholders of a corporation is necessary to authorize a merger of the corporation with or into a wholly owned subsidiary of such corporation if:

(a) Such corporation and wholly owned subsidiary are the only constituent corporations to the merger;

(b) Each share or fraction of a share of the constituent corporation whose shares are being converted pursuant to the merger into a share or equal fraction of share of a holding company having the same designations, rights,

powers and preferences, and qualifications, limitations and restrictions thereof as the share of the constituent corporation being converted in the merger;

(c) The holding company and each of the constituent corporations to the merger are domestic corporations;

(d) The articles of incorporation and by–laws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and by–laws of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective time of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective;

(e) As a result of the merger, the constituent corporation whose shares are being converted pursuant to the merger or its successor corporation becomes or remains a direct or indirect wholly–owned subsidiary of the holding company;

(f) The directors of the constituent corporation become or remain the directors of the holding company upon the effective date of the merger;

(g) The articles of incorporation of the surviving corporation immediately following the effective time of the merger are identical to the articles of incorporation of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective time of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective. The articles of incorporation of the surviving corporation must be amended in the merger to contain a provision requiring, by specific reference to this section, that any act or transaction by or involving the surviving corporation which requires for its adoption under this act or its articles of incorporation the approval of the shareholders of the surviving corporation also be approved by the shareholders of the holding company, or any successor by merger, by the same vote as is required by this act or the articles of incorporation of the surviving corporation. The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares which the surviving corporation is authorized to issue;

(h) The board of directors of the constituent corporation determines that the shareholders of the constituent corporation will not recognize gain or loss for United States federal income tax purposes; and

(i) The board of directors of such corporation adopts a plan of merger that sets forth:

1. The names of the constituent corporations;

2. The manner and basis of converting the shares of the corporation into shares of the holding company and the manner and basis of converting rights to acquire shares of such corporation into rights to acquire shares of the holding company; and

3. A provision for the pro rata issuance of shares of the holding company to the holders of shares of the corporation upon surrender of any certificates therefor.

(4) From and after the effective time of a merger adopted by a constituent corporation by action of its board of directors and without any vote of shareholders pursuant to this section:

(a) To the extent the restrictions of sections 607.0901 and 607.0902, Florida Statutes, applied to the constituent corporation and its shareholders at the effective time of the merger, such restrictions also apply to the holding company and its shareholders immediately after the effective time of the merger as though it were the constituent corporation, and all shares of the holding company acquired in the merger shall, for purposes of sections 607.0901 and 607.0902, Florida Statutes, be deemed to have been acquired at the time that the shares of the constituent corporation converted in the merger were acquired, and provided further that any shareholder who immediately prior to the effective time of the merger was not an interested shareholder within the meaning of section 607.0901, Florida Statutes, shall not, solely by reason of the merger, become an interested shareholder of the holding company; and

(b) If the corporate name of the holding company immediately following the effective time of the merger is the same as the corporate name of the constituent corporation immediately prior to the effective time of the merger, the shares of the holding company into which the shares of the constituent corporation are converted in the merger shall be represented by the share certificates that previously represented shares of the constituent corporation.

(5) If a plan of merger is adopted by a constituent corporation by selection of its board of directors without any vote of shareholders pursuant to this section, the secretary or assistant secretary of the constituent corporation shall certify in the articles of merger that the plan of merger has been adopted pursuant to this section and that the conditions specified in the first sentence of this section have been satisfied. The articles of merger so certified shall then be filed and become effective in accordance with section 607.1106, Florida Statutes.

Section 3. Subsection (2) of section 608.407, Florida Statutes, is amended to read:

608.407 Articles of organization.—

(2) An affidavit declaring that the limited liability company has at least one member ~~two members~~ and setting forth the amount of the cash and a description and agreed value of property other than cash contributed by the members and the amount anticipated to be contributed by the members shall accompany the articles of organization of a limited liability company.

Section 4. Sections 607.1108, 607.1109, and 607.11101, Florida Statutes, are created to read:

607.1108 Merger of domestic corporation and other business entity.—

(1) As used in this section and ss. 607.1109 and 607.11101, the term "other business entity" means a limited liability company, a foreign corporation, a not-for-profit corporation, a business trust or association, a real estate investment trust, a common law trust, an unincorporated business, a general partnership, a limited partnership, or any other entity that is formed pursuant to the requirements of applicable law. Notwithstanding the provisions of chapter 617, a domestic not-for-profit corporation acting under a plan of merger approved pursuant to s. 617.1103 shall be governed by the provisions of ss. 607.1108, 607.1109, and 607.11101.

(2) Pursuant to a plan of merger complying and approved in accordance with this section, one or more domestic corporations may merge with or into one or more other business entities formed, organized, or incorporated under the laws of this state or any other state, the United States, foreign country, or other foreign jurisdiction, if:

(a) Each domestic corporation which is a party to the merger complies with the applicable provisions of this chapter.

(b) Each domestic partnership that is a party to the merger complies with the applicable provisions of chapter 620.

(c) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of chapter 608.

(d) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated and each such other business entity complies with such laws in effecting the merger.

(3) The plan of merger shall set forth:

(a) The name of each domestic corporation and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic corporation or other business entity into which each other domestic corporation or other business entity plans to merge, which is hereinafter and in ss. 607.1109 and 607.11101 designated as the surviving entity.

(b) The terms and conditions of the merger.

(c) The manner and basis of converting the shares of each domestic corporation that is a party to the merger and the partnership interests, interests,

shares, obligations or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the shares of each domestic corporation that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations or other securities of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property.

(d) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(e) If a limited liability company is to be the surviving entity and management thereof is vested in one or more managers, the names and business addresses of such managers.

(f) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to the merger is formed, organized, or incorporated.

(4) The plan of merger may set forth:

(a) If a domestic corporation is to be the surviving entity, any amendments to, or a restatement of, the articles of incorporation of the surviving entity, and such amendments or restatement shall be effective at the effective date of the merger.

(b) The effective date of the merger, which may be on or after the date of filing the certificate of merger.

(c) Any other provisions relating to the merger.

(5) The plan of merger required by subsection (3) shall be adopted and approved by each domestic corporation that is a party to the merger in the same manner as is provided in s. 607.1103. Notwithstanding the foregoing, if the surviving entity is a partnership, no shareholder of a domestic corporation that is a party to the merger shall, as a result of the merger, become a general partner of the surviving entity, unless such shareholder specifically consents in writing to becoming a general partner of the surviving entity, and unless such written consent is obtained from each such shareholder who, as a result of the merger, would become a general partner of the surviving entity, such merger shall not become effective under s. 607.11101. Any shareholder providing such consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of s. 607.1103.

(6) Sections 607.1103 and 607.1301-607.1320 shall, insofar as they are applicable, apply to mergers of one or more domestic corporations with or into one or more other business entities.

(7) Notwithstanding any provision of this section or ss. 607.1109 and 607.11101, any merger consisting solely of the merger of one or more domes-

tic corporations with or into one or more foreign corporations shall be consummated solely in accordance with the requirements of s. 607.1107.

607.1109 Articles of merger.—

(1) After a plan of merger is approved by each domestic corporation and other business entity that is a party to the merger, the surviving entity shall deliver to the Department of State for filing articles of merger, which shall be executed by each domestic corporation as required by s. 607.0120 and by each other business entity as required by applicable law, and which shall set forth:

(a) The plan of merger.

(b) A statement that the plan of merger was approved by each domestic corporation that is a party to the merger in accordance with the applicable provisions of this chapter, and, if applicable, a statement that the written consent of each shareholder of such domestic corporation who, as a result of the merger, becomes a general partner of the surviving entity has been obtained pursuant to s. 607.1108(5).

(c) A statement that the plan of merger was approved by each domestic partnership that is a party to the merger in accordance with the applicable provisions of chapter 620.

(d) A statement that the plan of merger was approved by each domestic limited liability company that is a party to the merger in accordance with the applicable provisions of chapter 608.

(e) A statement that the plan of merger was approved by each other business entity that is a party to the merger, other than domestic corporations, limited liability companies, and partnerships formed, organized, or incorporated under the laws of this state, in accordance with the applicable laws of the state, country, or jurisdiction under which such other business entity is formed, organized, or incorporated.

(f) The effective date of the merger, which may be on or after the date of filing the articles of merger, provided, if the articles of merger do not provide for an effective date of the merger, the effective date shall be the date on which the articles of merger are filed.

(g) If the surviving entity is another business entity formed, organized, or incorporated under the laws of any state, country, or jurisdiction other than this state:

1. The address, including street and number, if any, of its principal office under the laws of the state, country, or jurisdiction in which it was formed, organized, or incorporated.

2. A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger.

3. A statement that the surviving entity has agreed to promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under s. 607.1302.

(2) A copy of the articles of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger other than the surviving entity is situated.

607.11101 Effect of merger of domestic corporation and other business entity.—When a merger becomes effective:

(1) Every domestic corporation and other business entity that is a party to the merger merges into the surviving entity and the separate existence of every domestic corporation and other business entity that is a party to the merger except the surviving entity ceases.

(2) The title to all property other than real property or any interest therein, owned by each domestic corporation and other business entity that is a party to the merger is vested in the surviving entity without reversion or impairment. Title to real property or any interest therein shall be conveyed by the recordation of a deed with payment of applicable taxes thereon.

(3) The surviving entity shall thereafter be responsible and liable for all the liabilities and obligations of each domestic corporation and other business entity that is a party to the merger, including liabilities arising out of the rights of dissenters with respect to such merger under applicable law.

(4) Any claim existing or action or proceeding pending by or against any domestic corporation or other business entity that is a party to the merger may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the domestic corporation or other business entity which ceased existence.

(5) Neither the rights of creditors nor any liens upon the property of any domestic corporation or other business entity shall be impaired by such merger.

(6) If a domestic corporation is the surviving entity, the articles of incorporation of such corporation in effect immediately prior to the time the merger becomes effective shall be the articles of incorporation of the surviving entity, except as amended or restated to the extent provided in the plan of merger.

(7) The shares, partnership interests, interests, obligations, or other securities, and the rights to acquire shares, partnership interests, interests, obligations, or other securities, of each domestic corporation and other business entity that is a party to the merger shall be converted into shares, partnership interests, interests, obligations, or other securities, or rights to such securities, of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property as provided in the plan of merger, and the former holders of shares, partnership interests, interests, obligations, or other securities, or rights to such

securities, shall be entitled only to the rights provided in the plan of merger and to their rights as dissenters, if any, under ss. 607.1301-607.1320, s. 608.4384, s. 620.205, or other applicable law.

Section 5. Sections 608.438, 608.4381, 608.4382, 608.4383, and 608.4384, Florida Statutes, are created to read:

608.438 Merger of limited liability company.—

(1) As used in this section and ss. 608.4381-608.4384, the term "other business entity" includes a corporation, a business trust or association, a real estate investment trust, a common law trust, an unincorporated business, a general partnership, a limited partnership, a limited liability company other than a limited liability company organized under the laws of this chapter, or any other entity that is formed pursuant to the requirements of applicable law.

(2) Unless otherwise provided in the articles of organization or the regulations of a limited liability company, pursuant to a plan of merger, a limited liability company may merge with or into one or more limited liability companies or other business entities formed, organized, or incorporated under the laws of this state or any other state, the United States, foreign country, or other foreign jurisdiction, if:

(a) Each limited liability company that is a party to the merger complies with the applicable provisions of this chapter and complies with the terms of its articles of organization and regulations.

(b) Each domestic partnership that is a party to the merger complies with the applicable provisions of chapter 620.

(c) Each domestic corporation that is a party to the merger complies with the applicable provisions of chapter 607.

(d) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each such other business entity complies with such laws in effecting the merger.

(3) The plan of merger shall set forth:

(a) The name of each limited liability company and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting limited liability company or other business entity into which each other limited liability company or other business entity plans to merge, which is, in this section and in ss. 608.4381-608.4384, designated as the surviving entity.

(b) The terms and conditions of the merger.

(c) The manner and basis of converting the interests of the members of each limited liability company that is a party to the merger and the interests, partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into interests, partnership

interests, shares, obligations, or other securities of the surviving entity or any other limited liability company or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire interests of each limited liability company that is a party to the merger and rights to acquire interests, partnership interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire interests, partnership interests, shares, obligations, or other securities of the surviving entity or any other limited liability company or other business entity or, in whole or in part, into cash or other property.

(d) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(e) If a limited liability company is to be the surviving entity, and management thereof is vested in one or more managers, the names and business addresses of such managers.

(f) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to merger is formed, organized, or incorporated.

(4) The plan of merger may set forth:

(a) If a limited liability company is to be the surviving entity, any amendments to, or a restatement of, the articles of organization or the regulations of the surviving entity, and such amendments or restatement shall be effective at the effective date of the merger.

(b) The effective date of the merger, which may be on or after the date of filing the certificate of merger.

(c) A provision authorizing one or more of the limited liability companies that are parties to the merger to abandon the proposed merger pursuant to s. 608.4381(7).

(d) A statement of, or a statement of the method of determining, the "fair value," as defined in s. 608.4384(1)(b), of an interest in any limited liability company that is a party to the merger.

(e) Other provisions relating to the merger.

608.4381 Action on plan of merger.—

(1) Unless the articles of organization or the regulations of a limited liability company require a greater-than-majority vote, the plan of merger shall be approved in writing by a majority of the managers of a limited liability company that is a party to the merger in which management is not reserved to its members. Unless the articles of organization or the regulations of a limited liability company require a greater-than-majority vote or provide for another method of determining the voting rights of each of its members, and whether or not management is reserved to its members, the plan of merger shall be approved in writing by a majority of the members

of a limited liability company that is a party to the merger, and, if applicable, the vote of each member shall be weighted in accordance with s. 608.4231(1)(b), provided, unless the articles of organization or the regulations of the limited liability company require a greater-than-majority vote or provide for another method of determining the voting rights of each of its members, if there is more than one class or group of members, the merger shall be approved by a majority of the members of each such class or group, and, if applicable, the vote of each member shall be weighted in accordance with s. 608.4231(1)(b).

(2) In addition to the approval required by subsection (1), if the surviving entity is a partnership, no member of a limited liability company that is a party to the merger shall, as a result of the merger, become a general partner of the surviving entity unless such member specifically consents in writing to becoming a general partner of the surviving entity and unless such written consent is obtained from each such member who, as a result of the merger, would become a general partner of the surviving entity, such merger shall not become effective under s. 608.4383. Any member providing such consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of s. 608.4384.

(3) All members of each limited liability company that is a party to the merger shall be given written notice of any meeting or other action with respect to the approval of a plan of merger as provided in subsection (4), not fewer than 30 or more than 60 days before the date of the meeting at which the plan of merger shall be submitted for approval by the members of such limited liability company, provided, if the plan of merger is submitted to the members of the limited liability company for their written approval or other action without a meeting, such notification shall be given to each member not fewer than 30 or more than 60 days before the effective date of the merger. Pursuant to s. 608.455, the notification required by this subsection may be waived in writing by the person or persons entitled to such notification.

(4) The notification required by subsection (3) shall be in writing and shall include:

(a) The date, time, and place of the meeting, if any, at which the plan of merger is to be submitted for approval by the members of the limited liability company, or, if the plan of merger is to be submitted for written approval or by other action without a meeting, a statement to that effect.

(b) A copy or summary of the plan of merger.

(c) A clear and concise statement that, if the plan of merger is effected, members dissenting therefrom may be entitled, if they comply with the provisions of s. 608.4384 regarding the rights of dissenting members, to be paid the fair value of their interests, which shall be accompanied by a copy of s. 608.4384.

(d) A statement of, or a statement of the method of determining, the "fair value," as defined in s. 608.4384(1)(b), of an interest in the limited liability company, in the case of a limited liability company in which management

is not reserved to its members, as determined by the managers of such limited liability company, which statement may consist of a reference to the applicable provisions of such limited liability company's articles of organization or regulations that determine the fair value of an interest in the limited liability company for such purposes, and which shall constitute an offer by the limited liability company to purchase at such fair value any interests of a "dissenter," as defined in s. 608.4384(1)(a), unless and until such dissenter's right to receive the fair value of his interests in the limited liability company is terminated pursuant to s. 608.4384(8).

(e) The date on which such notification was mailed or delivered to the members.

(f) Any other information concerning the plan of merger.

(5) The notification required by subsection (3) shall be deemed to be given at the earliest date of:

(a) The date such notification is received;

(b) Five days after the date such notification is deposited in the United States mail addressed to the member at his address as it appears in the books and records of the limited liability company, with postage thereon prepaid;

(c) The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such notification is given in accordance with the provisions of the articles of organization or the regulations of the limited liability company.

(6) A plan of merger may provide for the manner, if any, in which the plan of merger may be amended at any time before the effective date of the merger, except after the approval of the plan of merger by the members of a limited liability company that is a party to the merger, the plan of merger may not be amended to:

(a) Change the amount or kind of interests, partnership interests, shares, obligations, other securities, cash, rights, or any other property to be received by the members of such limited liability company in exchange for or on conversion of their interests;

(b) If the surviving entity is a limited liability company, change any term of the articles of organization or the regulations of the surviving entity, except for changes that otherwise could be adopted without the approval of the members of the surviving entity;

(c) If the surviving entity is not a limited liability company, change any term of the articles of incorporation or comparable governing document of the surviving entity, except for changes that otherwise could be adopted by the board of directors or comparable representatives of the surviving entity; or

(d) Change any of the terms and conditions of the plan of merger if any such change, alone or in the aggregate, would materially and adversely affect the members, or any class or group of members, of such limited liability company.

If an amendment to a plan of merger is made in accordance the plan and articles of merger have been filed with the Department of State, amended articles of merger executed by each limited liability company and other business entity that is a party to the merger shall be filed with the Department of State prior to the effective date of the merger.

(7) Unless the limited liability company's articles of organization or regulations or the plan of merger provide otherwise, notwithstanding the prior approval of the plan of merger by any limited liability company that is a party to the merger in which management is not reserved to its members, and at any time prior to the filing of articles of merger with the Department of State, the planned merger may be abandoned, subject to any contractual rights, by any such limited liability company by the affirmative vote of a majority of its managers without further action by its members, in accordance with the procedure set forth in the plan of merger or if none is set forth, in the manner determined by the managers of such limited liability company.

608.4382 Articles of merger.—

(1) After a plan of merger is approved by each limited liability company and other business entity that is a party to the merger, the surviving entity shall deliver to the Department of State for filing articles of merger, which shall be executed by each limited liability company and by each other business entity as required by applicable law, and which shall set forth:

(a) The plan of merger.

(b) A statement that the plan of merger was approved by each limited liability company that is a party to the merger in accordance with the applicable provisions of this chapter, and, if applicable, a statement that the written consent of each member of such limited liability company who, as a result of the merger, becomes a general partner of the surviving entity has been obtained pursuant to s. 608.4381(2).

(c) A statement that the plan of merger was approved by each domestic partnership that is a party to the merger in accordance with the applicable provisions of chapter 620.

(d) A statement that the plan of merger was approved by each domestic corporation that is a party to the merger in accordance with the applicable provisions of chapter 607.

(e) A statement that the plan of merger was approved by each other business entity that is a party to the merger, other than limited liability companies, partnerships, and corporations formed, organized, or incorporated under the laws of this state, in accordance with the applicable laws

of the state, country, or jurisdiction under which such other business entity is formed, organized, or incorporated.

(f) The effective date of the merger, which may be on or after the date of filing the articles of merger, provided, if the articles of merger do not provide for an effective date of the merger, the effective date shall be the date on which the articles of merger are filed.

(g) If the surviving entity is another business entity formed, organized, or incorporated under the laws of any state, country, or jurisdiction other than this state:

1. The address, including street and number, if any, of its principal office under the laws of the state, country, or jurisdiction in which it was formed, organized, or incorporated.

2. A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members of each limited liability company that is a party to the merger.

3. A statement that the surviving entity has agreed to promptly pay to the dissenting members of each limited liability company that is a party to the merger the amount, if any, to which such dissenting members are entitled under s. 608.4384.

(2) A copy of the articles of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger other than the surviving entity is situated.

608.4383 Effect of merger.—When a merger becomes effective:

(1) Every limited liability company and other business entity that is a party to the merger merges into the surviving entity and the separate existence of every limited liability company and other business entity that is a party to the merger, except the surviving entity, ceases.

(2) The title to all property other than real property or any interest therein, owned by each domestic corporation and other business entity that is a party to the merger is vested in the surviving entity without reversion or impairment. Title to real property or any interest therein shall be conveyed by the recordation of a deed with payment of applicable taxes thereon.

(3) The surviving entity shall thereafter be responsible and liable for all the liabilities and obligations of each limited liability company and other business entity that is a party to the merger, including liabilities arising out of the rights of dissenters with respect to such merger under applicable law.

(4) Any claim existing or action or proceeding pending by or against any limited liability company or other business entity that is a party to the merger may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the limited liability company or other business entity which ceased existence.

(5) Neither the rights of creditors nor any liens upon the property of any limited liability company or other business entity shall be impaired by such merger.

(6) If a limited liability company is the surviving entity, the articles of organization and the regulations of such limited liability company in effect immediately prior to the time the merger becomes effective shall be the articles of organization and the regulations of the surviving entity, except as amended or restated to the extent provided in the plan of merger.

(7) The interests, partnership interests, shares, obligations, or other securities, and the rights to acquire interests, partnership interests, shares, obligations, or other securities, of each limited liability company and other business entity that is a party to the merger shall be converted into interests, partnership interests, shares, obligations, or other securities, or rights to such securities, of the surviving entity or any other limited liability company or other business entity or, in whole or in part, into cash or other property as provided in the plan of merger, and the former holders of interests, partnership interests, shares, obligations, or other securities, or rights to such securities, shall be entitled only to the rights provided in the plan of merger and to their rights as dissenters, if any, under s. 608.4384, ss. 607.1301-607.1320, s. 620.205, or other applicable law.

608.4384 Rights of dissenting members.—

(1) For purposes of this section, the term:

(a) "Dissenter" means a member of a limited liability company who is a recordholder of the interests to which he seeks relief as of the date fixed for the determination of members entitled to notice of a plan of merger, who does not vote such interests in favor of the plan of merger, and who exercises the right to dissent from the plan of merger when and in the manner required by this section.

(b) "Fair value," with respect to a dissenter's interests, means the value of the interests in the limited liability company that is a party to a plan of merger as of the close of business of the day prior to the effective date of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger, unless such exclusion would be inequitable.

(2) Each member of a limited liability company that is a party to a merger shall have the right to be paid the fair value of his interests as a dissenter only as provided in this section.

(3) Not later than 20 days after the date on which the notification required by s. 608.4381(3) is given to the members, or if such notification is waived in writing by the dissenter, not later than 20 days after the date of such written waiver, the dissenter shall deliver to the limited liability company a written demand for payment to him of the fair value of the interests as to which he seeks relief that states his address, the number and class, if any, of those interests, and, at the election of the dissenter, the amount claimed by him as the fair value of the interests. The statement of fair

market value by the dissenter, if any, shall constitute an offer by the dissenter to sell the interests to the limited liability company at such amount. A dissenter may dissent as to less than all the interests registered in his name. In such event, the dissenter's rights shall be determined as if the interests as to which he has dissented and his remaining interests were registered in the names of different members. If the interests as to which a dissenter seeks relief are represented by certificates, the dissenter shall deposit such certificates with the limited liability company simultaneously with the delivery of the written demand for payment. Upon receiving a demand for payment from a dissenter who is a recordholder of uncertificated interests, the limited liability company shall make an appropriate notation of the demand for payment in its records. The limited liability company may restrict the transfer of uncertificated interests from the date the dissenter's written demand for payment is delivered. A written demand for payment served on the limited liability company in which the dissenter is a member shall constitute service on the surviving entity.

(4) The written demand for payment required by subsection (3) shall be deemed to be delivered to the limited liability company at the earliest of:

(a) The date such written demand is received;

(b) Five days after the date such written demand is deposited in the United States mail addressed to the principal business office of the limited liability company, with postage thereon prepaid;

(c) The date shown on the return receipt, if such written demand is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such written demand is given in accordance with the provisions of the limited liability company's articles of organization or regulations.

(5) Unless the articles of organization or regulations of the limited liability company in which the dissenter is a member provides a basis or method for determining and paying the fair value of the interests as to which the dissenter seeks relief, or unless the limited liability company or the surviving entity and the dissenter have agreed in writing as to the fair value of the interests as to which the dissenter seeks relief, the dissenter, the limited liability company, or the surviving entity, within 90 days after the dissenter delivers the written demand for payment to the limited liability company, may file an action in any court of competent jurisdiction in the county in this state where the registered office of the limited liability company is located or was located when the plan of merger was approved by its members, or in the county in this state in which the principal office of the limited liability company that issued the interests is located or was located when the plan of merger was approved by its partners, requesting that the fair value of the dissenter's interests be determined. The court shall also determine whether each dissenter that is a party to such proceeding, as to whom the limited liability company or the surviving entity requests the court to make such determination, is entitled to receive payment of the fair value for his interests. Other dissenters, within the 90-day period after a dissenter delivers a

written demand to the limited liability company, may join such proceeding as plaintiffs or may be joined in any such proceeding as defendants, and any two or more such proceedings may be consolidated. If the limited liability company or surviving entity commences such a proceeding, all dissenters, whether or not residents of this state, other than dissenters who have agreed in writing with the limited liability company or the surviving entity as to the fair value of the interests as to which such dissenters seek relief, shall be made parties to such action as an action against their interests. The limited liability company or the surviving entity shall serve a copy of the initial pleading in such proceeding upon each dissenter who is a party to such proceeding and who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each such dissenter who is not a resident of this state either by registered or certified mail and publication or in such matter as is permitted by law. The jurisdiction of the court in such a proceeding shall be plenary and exclusive. All dissenters who are proper parties to the proceeding are entitled to judgment against the limited liability company or the surviving entity for the amount of the fair value of their interests as to which payment is sought hereunder. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as is specified in the order of their appointment or an amendment thereof. The limited liability company shall pay each dissenter the amount found to be due him within 10 days after final determination of the proceedings. Upon payment of the judgment, the dissenter shall cease to have any interest in the interests as to which payment is sought hereunder.

(6) The judgment may, at the discretion of the court, include a fair rate of interest, to be determined by the court.

(7) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the limited liability company or the surviving entity, but all or any part of such costs and expenses may be apportioned and assessed as the court deems equitable against any or all of the dissenters who are parties to the proceeding, to whom the limited liability company or the surviving entity has made an offer to pay for the interests, if the court finds that the action of such dissenters in failing to accept such offer was arbitrary, vexatious or not in good faith. Such expenses shall include reasonable compensation for, and reasonable expenses of, the appraisers, but shall exclude the fees and expenses of counsel for, and experts employed by, any party. If the fair value of the interests, as determined, materially exceeds the amount which the limited liability company or the surviving entity offered to pay therefor, the court in its discretion may award to any dissenter who is a party to the proceeding such amount as the court determines to be reasonable compensation to any attorney or expert employed by the dissenter in the proceeding.

(8) The right of a dissenter to receive fair value for and the obligation to sell such interests as to which he seeks relief, and the right of the limited liability company or the surviving entity to purchase such interests and the obligation to pay the fair value of such interests, shall terminate if:

(a) The dissenter has not complied with this section, unless the limited liability company or the surviving entity waives, in writing, such noncompliance;

(b) The limited liability company abandons the merger or is finally enjoined or prevented from carrying it out, or the members rescind their adoption or approval of the merger;

(c) The dissenter withdraws his demand, with the consent of the limited liability company or the surviving entity; or

(d)1. The articles of organization or the regulations of the limited liability company in which the dissenter was a member does not provide a basis or method for determining and paying the dissenter the fair value of his interests.

2. The limited liability company or the surviving entity and the dissenter have not agreed upon the fair value of the dissenter's interests.

3. Neither the dissenter, the limited liability company, nor the surviving entity has filed or is joined in a complaint under subsection (5) within the 90-day period provided in subsection (5).

(9) Unless otherwise provided in the articles of organization or the regulations of the limited liability company in which the dissenter was a member, after the date the dissenter delivers the written demand for payment in accordance with subsection (3) until either the termination of the rights and obligations arising under subsection (3) or the purchase of the dissenter's interests by the limited liability company or the surviving entity, the dissenter shall be entitled only to payment as provided in this section and shall not be entitled to any other rights accruing from such interests, including voting or distribution rights. If the right to receive fair value is terminated other than by the purchase of the dissenter's interests by the limited liability company or the surviving entity, all rights of the dissenter as a member of the limited liability company shall be reinstated effective as of the date the dissenter delivered the written demand for payment, including the right to receive any intervening payment or other distribution with respect to the dissenter's interests in the limited liability company, or, if any such rights have expired or any such distribution other than a cash payment has been completed, in lieu thereof at the election of the surviving entity, the fair value thereof in cash as determined by the surviving entity as of the time of such expiration or completion, but without prejudice otherwise to any action or proceeding of the limited liability company that may have been taken by the limited liability company on or after the date the dissenter delivered the written demand for payment.

(10) A member who is entitled under this section to demand payment for his interests shall not have any right at law or in equity to challenge the validity of any merger that creates his entitlement to demand payment hereunder, or to have the merger set aside or rescinded, except with respect to compliance with the provisions of the limited liability company's articles of organization or regulations or if the merger is unlawful or fraudulent with respect to such member.

(11) Unless otherwise provided in the articles of organization or the regulations of the limited liability company in which the dissenter was a member, this section does not apply with respect to a plan of merger if, as of the date fixed for the determination of members entitled to notice of a plan of merger:

(a) The interests of the limited liability company were held of record by not fewer than 500 members; or

(b) The interests were registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System.

Section 6. Sections 620.201, 620.202, 620.203, 620.204, and 620.205, Florida Statutes, are created to read:

620.201 Merger of domestic limited partnership.

(1) As used in this section and ss. 620.202-620.205, the term "other business entity" includes a corporation, a limited liability company, a business trust or association, a real estate investment trust, a common law trust, an unincorporated business, a general partnership or a limited partnership but excluding a domestic limited partnership, or any other entity that is formed pursuant to the requirements of applicable law.

(2) Unless otherwise provided in the partnership agreement of a domestic limited partnership, pursuant to a plan of merger, a domestic limited partnership may merge with or into one or more domestic limited partnerships or other business entities formed, organized, or incorporated under the laws of this state or any other state, the United States, foreign country, or other foreign jurisdiction, if:

(a) Each domestic partnership that is a party to the merger complies with the applicable provisions of this chapter and complies with the terms of its partnership agreement.

(b) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of chapter 608.

(c) Each domestic corporation that is a party to the merger complies with the applicable provisions of chapter 607.

(d) The merger is permitted by the laws of the state, country, or jurisdiction under which each other business entity that is a party to the merger is formed, organized, or incorporated, and each such other business entity complies with such laws in effecting the merger.

(3) The plan of merger shall set forth:

(a) The name of each domestic limited partnership and the name and jurisdiction of formation, organization, or incorporation of each other business entity planning to merge, and the name of the surviving or resulting domestic limited partnership or other business entity into which each other

domestic limited partnership or other business entity plans to merge, which is hereinafter and in ss. 620.202-620.205 designated as the surviving entity.

(b) The terms and conditions of the merger.

(c) The manner and basis of converting the partnership interests of each domestic limited partnership that is a party to the merger and the partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic limited partnership or other business entity or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire the partnership interests of each domestic limited partnership that is a party to the merger and rights to acquire partnership interests, interests, shares, obligations, or other securities of each other business entity that is a party to the merger into rights to acquire partnership interests, interests, shares, obligations, or other securities of the surviving entity or any other domestic limited partnership or other business entity or, in whole or in part, into cash or other property.

(d) If a partnership is to be the surviving entity, the names and business addresses of the general partners of the surviving entity.

(e) If a limited liability company is to be the surviving entity, and management thereof is vested in one or more managers, the names and business addresses of such managers.

(f) All statements required to be set forth in the plan of merger by the laws under which each other business entity that is a party to merger is formed, organized, or incorporated.

(4) The plan of merger may set forth:

(a) If a domestic limited partnership is to be the surviving entity, any amendments to, or a restatement of, the certificate of limited partnership or partnership agreement of the surviving entity, and such amendments or restatement shall be effective on the effective date of the merger.

(b) The effective date of the merger, which may be on or after the date of filing the certificate of merger.

(c) A provision authorizing one or more of the domestic limited partnerships that are parties to the merger to abandon the proposed merger pursuant to s. 620.202(7).

(d) A statement of, or a statement of the method of determining, the "fair value," as defined in s. 620.205(1)(b), of a partnership interest in any domestic limited partnership that is a party to the merger.

(e) Any other provisions relating to the merger.

620.202 Action on plan of merger.—

(1) Unless otherwise provided in the partnership agreement of a domestic limited partnership, the plan of merger shall be approved in writing by all of the general partners of a domestic limited partnership that is a party to the merger. Unless the partnership agreement of a domestic limited partnership requires a greater vote, the plan of merger shall also be approved in writing by those limited partners who own more than a majority of the then current percentage or other interests in the profits of the domestic limited partnership owned by all of the limited partners, provided, unless the partnership agreement of the domestic limited partnership requires a greater vote, if there is more than one class or group of limited partners, the plan of merger shall be approved by those limited partners who own more than a majority of the then current percentage or other interests in the profits of the domestic limited partnership owned by the limited partners in each class or group.

(2) In addition to the approval required by subsection (1):

(a) If a domestic limited partnership is to be the surviving entity, no person shall, as a result of the merger, continue to be or become a general partner of the surviving entity, unless such person specifically consents in writing to continuing to be or to becoming, as the case may be, a general partner of the surviving entity, and unless such written consent is obtained from each such person who, as a result of the merger, would become a general partner of the surviving entity, such merger shall not become effective under s. 620.204.

(b) If a partnership other than a domestic limited partnership is to be the surviving entity, no partner of a domestic limited partnership that is a party to the merger shall, as a result of the merger, become a general partner of the surviving entity unless such partner specifically consents in writing to becoming a general partner of the surviving entity, and unless such written consent is obtained from each person who, as a result of the merger, would become a general partner of the surviving entity, such merger shall not become effective under s. 620.204. Any person providing such consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of s. 620.205.

(3) All partners of each domestic limited partnership that is a party to the merger shall be given written notice of any meeting or other action with respect to the approval of a plan of merger as provided in subsection (4), not fewer than 30 or more than 60 days before the date of the meeting at which the plan of merger shall be submitted for approval by the partners of such limited partnership. However, if the plan of merger is submitted to the partners of the limited partnership for their written approval or other action without a meeting, such notification shall be given to each partner not fewer than 30 or more than 60 days before the effective date of the merger. Notwithstanding the foregoing, the notification required by this subsection may be waived in writing by the person or persons entitled to such notification.

(4) The notification required by subsection (3) shall be in writing and shall include:

(a) The date, time, and place of the meeting, if any, at which the plan of merger shall be submitted for approval by the partners of the domestic limited partnership, or, if the plan of merger will be submitted for written approval or by other action without a meeting, a statement to that effect.

(b) A copy or summary of the plan of merger.

(c) A clear and concise statement that, if the plan of merger is effected, partners dissenting therefrom may be entitled, if they comply with the provisions of s. 620.205 regarding the rights of dissenting partners, to be paid the fair value of their partnership interests, which shall be accompanied by a copy of s. 620.205.

(d) A statement of, or a statement of the method of determining, the "fair value," as defined in s. 620.205(1)(b), of an interest in the limited partnership as determined by the general partners of the limited partnership, which statement may consist of a reference to the applicable provisions of such limited partnership's partnership agreement that determine the fair value of an interest in the limited partnership for these purposes, and which shall constitute an offer by the limited partnership to purchase at such fair value any partnership interests of a "dissenter," as defined in s. 620.205(1)(a), unless and until such a dissenter's right to receive the fair value of his interests in the limited partnership are is terminated pursuant to s. 620.205(8).

(e) The date on which such notification was mailed or delivered to the partners.

(f) Any other information concerning the plan of merger.

(5) The notification required by subsection (3) shall be deemed to be given at the earliest of:

(a) The date such notification is received;

(b) Five days after the date such notification is deposited in the United States mail addressed to the partner at his address as it appears in the books and records of the limited partnership, with postage thereon prepaid;

(c) The date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such notification is given in accordance with the provisions of the limited partnership's partnership agreement.

(6) A plan of merger may provide for the manner, if any, in which the plan of merger may be amended at any time before the effective date of the merger, except, after the approval of the plan of merger by the limited partners of a domestic limited partnership that is a party to the merger, the general partners of such domestic limited partnership shall not be authorized to amend the plan of merger to:

(a) Change the amount or kind of partnership interests, interests, shares, obligations, other securities, cash, rights, or any other property to be received by the limited partners of such domestic limited partnership in exchange for or on conversion of their partnership interests;

(b) If the surviving entity is a partnership, change any term of the partnership agreement of the surviving entity, except for changes that otherwise could be adopted by the general partners of the surviving entity;

(c) If the surviving entity is not a partnership, change any term of the articles of incorporation or comparable governing document of the surviving entity, except for changes that otherwise could be adopted by the board of directors or comparable representatives of the surviving entity; or

(d) Change any of the terms and conditions of the plan of merger if any such change, alone or in the aggregate, would materially and adversely affect the limited partners, or any class or group of limited partners, of such domestic limited partnership.

If an amendment to a plan of merger is made in accordance with such plan and articles of merger have been filed with the Department of State, amended articles of merger executed by the general partners of each domestic limited partnership and other business entity that is a party to the merger shall be filed with the Department of State prior to the effective date of the merger.

(7) Unless the domestic limited partnership's partnership agreement or the plan of merger provides otherwise, notwithstanding the prior approval of the plan of merger by any domestic limited partnership that is a party to the merger and at any time prior to the filing of articles of merger with the Department of State, the planned merger may be abandoned, subject to any contractual rights, by any such domestic limited partnership by the affirmative vote of all of its general partners, without further action by its limited partners, in accordance with the procedure set forth in the plan of merger or if none is set forth, in the manner determined by the general partners of such domestic limited partnership.

620.203 Articles of merger.—

(1) After a plan of merger is approved by each domestic limited partnership and other business entity that is a party to the merger, the surviving entity shall deliver articles of merger to the Department of State for filing, which articles shall be executed by the general partners of each domestic limited partnership and by each other business entity as required by applicable law, and which shall set forth:

(a) The plan of merger.

(b) A statement that the plan of merger was approved by each domestic partnership that is a party to the merger in accordance with the applicable provisions of this chapter, and, if applicable, a statement that the written consent of each person who, as a result of the merger, becomes a general partner of the surviving entity has been obtained pursuant to s. 620.202(2).

(c) A statement that the plan of merger was approved by each domestic corporation that is a party to the merger in accordance with the applicable provisions of chapter 607.

(d) A statement that the plan of merger was approved by each domestic limited liability company that is a party to the merger in accordance with the applicable provisions of chapter 608.

(e) A statement that the plan of merger was approved by each other business entity that is a party to the merger, other than partnerships, limited liability companies, and corporations formed, organized, or incorporated under the laws of this state, in accordance with the applicable laws of the state, country, or jurisdiction under which such other business entity is formed, organized, or incorporated.

(f) The effective date of the merger, which may be on or after the date of filing the articles of merger, provided, if the articles of merger do not provide for an effective date of the merger, the effective date shall be the date on which the articles of merger are filed.

(g) If the surviving entity is another business entity formed, organized, or incorporated under the laws of any state, country, or jurisdiction other than this state:

1. The address, including street and number, if any, of its principal office under the laws of the state, country, or jurisdiction in which it was formed, organized or incorporated.

2. A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners of each domestic limited partnership that is a party to the merger.

3. A statement that the surviving entity has agreed to promptly pay to the dissenting partners of each domestic limited partnership that is a party to the merger the amount, if any, to which they are entitled under s. 620.205.

(2) A copy of the articles of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger other than the surviving entity is situated.

(3) Articles of merger shall act as a certificate of cancellation for purposes of s. 620.113 for a domestic limited partnership that is a party to the merger that is not the surviving entity and such partnership's certificate of limited partnership shall be canceled upon the effective date of the merger.

620.204 Effect of merger.—

(1) When a merger becomes effective:

(a) Every domestic limited partnership and other business entity that is a party to the merger merges into the surviving entity and the separate

existence of every domestic limited partnership and other business entity that is a party to the merger except the surviving entity ceases.

(b) The title to all property other than real property or any interest therein, owned by each domestic corporation and other business entity that is a party to the merger is vested in the surviving entity without reversion or impairment. Title to real property or any interest therein shall be conveyed by the recordation of a deed with payment of applicable taxes thereon.

(c) The surviving entity shall thereafter be responsible and liable for all the liabilities and obligations of each domestic limited partnership and other business entity that is a party to the merger, including liabilities arising out of the rights of dissenters with respect to such merger under applicable law.

(d) Any claim existing or action or proceeding pending by or against any domestic limited partnership or other business entity that is a party to the merger may be continued as if the merger did not occur or the surviving entity may be substituted in the proceeding for the domestic limited partnership or other business entity which ceased existence.

(e) Neither the rights of creditors nor any liens upon the property of any domestic limited partnership or other business entity shall be impaired by such merger.

(f) If a general partner of a partnership formed or organized under the laws of this state or any other state, country, or jurisdiction that is a party to the merger is not a general partner of the surviving entity, the former general partner shall have no liability for obligations arising out of the rights of dissenters with respect to such merger under applicable law or for any obligation incurred after the effective date of the merger, except to the extent that a former creditor of the partnership in which the former general partner was a general partner extends credit to the surviving entity reasonably believing that the former general partner continued as a general partner of the surviving entity.

(g) If a domestic limited partnership is the surviving entity, the certificate of limited partnership and partnership agreement of such partnership in effect immediately prior to the time the merger becomes effective shall be the certificate of limited partnership and partnership agreement of the surviving entity, except as amended or restated to the extent provided in the plan of merger.

(h) The partnership interests, interests, shares, obligations, or other securities, and the rights to acquire partnership interests, membership interests, shares, obligations, or other securities, of each domestic limited partnership and other business entity that is a party to the merger shall be converted into partnership interests, interests, shares, obligations, or other securities, or rights to such securities, of the surviving entity or any other domestic limited partnership or other business entity or, in whole or in part, into cash or other property as provided in the plan of merger, and the former holders of partnership interests, interests, shares, obligations, or other securities, or rights to such securities, shall be entitled only to the rights

provided in the plan of merger and to their rights as dissenters, if any, under s. 620.205, ss. 607.1301-607.1320, s. 608.4384, or other applicable law.

(2) Unless otherwise provided in the plan of merger, a merger of a domestic limited partnership, including a domestic limited partnership that is not the surviving entity, shall not require such domestic limited partnership to wind up its affairs under s. 620.159 or pay its liabilities and distribute its assets under s. 620.162.

620.205 Rights of dissenting partners.—

(1) For purposes of this section, the term:

(a) "Dissenter" means a partner of a domestic limited partnership who is a recordholder of the partnership interests to which he seeks relief as of the date fixed for the determination of partners entitled to notice of a plan of merger, who does not vote such interests in favor of the plan of merger, and who exercises the right to dissent from the plan of merger when and in the manner required by this section.

(b) "Fair value," with respect to a dissenter's partnership interests, means the value of the partnership interests in the domestic limited partnership that is a party to a plan of merger as of the close of business of the day prior to the effective date of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger, unless such exclusion would be inequitable.

(2) Each partner of a domestic limited partnership that is a party to a merger shall have the right to be paid the fair value of his partnership interests as a dissenter as provided in this section.

(3) Not later than 20 days after the date on which the notification required by s. 620.202(3) is given to the partners, or if such notification was waived in writing by the dissenter, not later than 20 days after the date of such written waiver, the dissenter shall deliver to the limited partnership a written demand for payment to him of the fair value of the interests as to which he seeks relief that states his address, the number and class, if any, of those interests, and, at the election of the dissenter, the amount claimed by him as the fair value of the interests. The statement of fair market value by the dissenter, if any, shall constitute an offer by the dissenter to sell the partnership interests to the limited partnership for such amount. A dissenter may dissent as to less than all the partnership interests registered in his name. In such event, the dissenter's rights shall be determined as if the partnership interests as to which he has dissented and his remaining partnership interests were registered in the names of different partners. If the interests as to which a dissenter seeks relief are represented by certificates, the dissenter shall deposit such certificates with the limited partnership simultaneously with the delivery of the written demand for payment. Upon receiving a demand for payment from a dissenter who is a record holder of uncertificated interests, the limited partnership shall make an appropriate notation of the demand for payment in its records. The limited partnership may restrict the transfer of uncertificated interests from the date the dissenter's written demand for payment is delivered. A written

demand for payment served on the domestic limited partnership in which the dissenter is a partner shall constitute service on the surviving entity.

(4) The written demand for payment required by subsection (3) shall be deemed to be delivered to the limited partnership at the earliest of:

(a) The date such written demand is received;

(b) Five days after the date such written demand is deposited in the United States mail addressed to the principal business office of the limited partnership, with postage thereon prepaid;

(c) The date shown on the return receipt, if such written demand is sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

(d) The date such written demand is given in accordance with the provisions of the limited partnership's partnership agreement.

(5) Unless the partnership agreement of the limited partnership in which the dissenter is a partner provides a basis or method for determining and paying the fair value of the interests as to which the dissenter seeks relief, or unless the limited partnership or the surviving entity and the dissenter have agreed in writing as to the fair value of the interests as to which the dissenter seeks relief, the dissenter, the limited partnership, or the surviving entity, within 90 days after the dissenter delivers the written demand for payment to the limited partnership, may file an action in any court of competent jurisdiction in the county in this state where the registered office of the limited partnership is located or was located when the plan of merger was approved by its partners, or in the county in this state in which the principal office of the limited partnership that issued the partnership interests is located or was located when the plan of merger was approved by its partners, requesting a determination of the fair value of the dissenter's partnership interests. The court shall also determine whether each dissenter that is a party to such proceeding, as to whom the limited partnership or the surviving entity requests the court to make such determination, is entitled to receive payment of the fair value for his partnership interests. Other dissenters, within the 90-day period after a dissenter delivers a written demand to the partnership, may join such proceeding as plaintiffs or may be joined in any such proceeding as defendants, and any two or more such proceedings may be consolidated. If the limited partnership or surviving entity commences such a proceeding, all dissenters, whether or not residents of this state, other than dissenters who have agreed in writing with the limited partnership or the surviving entity as to the fair value of the partnership interests as to which such dissenters seek relief, shall be made parties to such action as an action against their partnership interests. The limited partnership or the surviving entity shall serve a copy of the initial pleading in such proceeding upon each dissenter who is a party to such proceeding and who is a resident of this state in the manner provided by law for the service of a summons and complaint and upon each such dissenter who is not a resident of this state either by registered or certified mail and publication or in such manner as is permitted by law. The jurisdiction of the court in such a proceeding shall be plenary and exclusive. All

dissenters who are proper parties to the proceeding are entitled to judgment against the limited partnership or the surviving entity for the amount of the fair value of their partnership interests as to which payment is sought hereunder. The court may, if it so elects, appoint one or more persons as appraisers to receive evidence and recommend a decision on the question of fair value. The appraisers shall have such power and authority as is specified in the order of their appointment or an amendment thereof. The limited partnership shall pay each dissenter the amount found to be due him within 10 days after final determination of the proceedings. Upon payment of the judgment, the dissenter shall cease to have any interest in the partnership interests as to which payment is sought hereunder.

(6) The judgment may, at the discretion of the court, include a fair rate of interest, to be determined by the court.

(7) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the limited partnership or the surviving entity. However, all or any part of such costs and expenses may be apportioned and assessed as the court deems equitable against any or all of the dissenters who are parties to the proceeding, to whom the limited partnership or the surviving entity has made an offer to pay for the partnership interests, if the court finds that the action of such dissenters in failing to accept such offer was arbitrary, vexatious, or not in good faith. Such expenses shall include reasonable compensation for, and reasonable expenses of, the appraisers, but shall exclude the fees and expenses of counsel for, and experts employed by, any party. If the fair value of the partnership interests, as determined, materially exceeds the amount which the limited partnership or the surviving entity offered to pay therefor, the court in its discretion may award to any dissenter who is a party to the proceeding such amount as the court determines to be reasonable compensation to any attorney or expert employed by the dissenter in the proceeding.

(8) The right of a dissenter to receive fair value for and the obligation to sell such partnership interests as to which he seeks relief and the right of the domestic limited partnership or the surviving entity to purchase such interests and the obligation to pay the fair value of such interests shall terminate if:

(a) The dissenter has not complied with this section, unless the limited partnership or the surviving entity waives in writing such noncompliance;

(b) The limited partnership abandons the merger or is finally enjoined or prevented from carrying out the merger, or the partners rescind their adoption or approval of the merger;

(c) The dissenter withdraws his demand, with the consent of the limited partnership or the surviving entity; or

(d)1. The partnership agreement of the domestic limited partnership in which the dissenter was a partner does not provide a basis or method for determining and paying the dissenter the fair value of his partnership interests.

2. The limited partnership or the surviving entity and the dissenter have not agreed upon the fair value of the dissenter's partnership interests.

3. Neither the dissenter, the limited partnership nor the surviving entity has filed or is joined in a complaint under subsection (5) within the 90-day period provided in that subsection.

(9) Unless otherwise provided in the partnership agreement of the domestic limited partnership in which the dissenter was a partner, after the date the dissenter delivers the written demand for payment in accordance with subsection (3) until either the termination of the rights and obligations arising from it or the purchase of the dissenter's partnership interests by the limited partnership or the surviving entity, the dissenter shall be entitled only to payment as provided in this section and shall not be entitled to any other rights accruing from such interests, including voting or distribution rights. If the right to receive fair value is terminated other than by the purchase of the dissenter's partnership interests by the limited partnership or the surviving entity, all rights of the dissenter as a partner of the limited partnership shall be reinstated effective as of the date the dissenter delivered the written demand for payment, including the right to receive any intervening payment or other distribution with respect to the dissenter's interests in the limited partnership, or, if any such rights have expired or any such distribution other than a cash payment has been completed, in lieu thereof at the election of the surviving entity, the fair value thereof in cash as determined by the surviving entity as of the time of such expiration or completion, but without prejudice otherwise to any action or proceeding of the limited partnership that may have been taken by the limited partnership on or after the date the dissenter delivered the written demand for payment.

(10) A partner who is entitled under this section to demand payment for his partnership interests shall not have any right at law or in equity to challenge the validity of any merger that creates his entitlement to demand payment hereunder, or to have the merger set aside or rescinded, except with respect to compliance with the provisions of the limited partnership's partnership agreement or if the merger is unlawful or fraudulent with respect to such partner.

(11) Unless otherwise provided in the partnership agreement of the domestic limited partnership in which the dissenter was a partner, this section does not apply with respect to a plan of merger if, as of the date fixed for the determination of partners entitled to notice of a plan of merger:

(a) The partnership interests of the limited partnership were held of record by not fewer than 500 partners; or

(b) The partnership interests were registered on a national securities exchange or quoted on the National Association of Securities Dealers Automated Quotation System.

Section 7. Subsection (1) of section 220.02, Florida Statutes, is amended and subsection (11) is added to that section to read:

220.02 Legislative intent.—

(1) It is the intent of the Legislature in enacting this code to impose a tax upon all corporations, organizations, associations, and other artificial entities which derive from this state or from any other jurisdiction permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. It is intended that any limited liability company that is classified as a partnership for federal income tax purposes and formed under chapter 608 or qualified to do business in this state as a foreign limited liability company not ~~companies~~ be subject to the tax imposed by this code. It is the intent of the Legislature to subject such corporations and other entities to taxation hereunder for the privilege of conducting business, deriving income, or existing within this state. This code is not intended to tax, and shall not be construed so as to tax, any natural person who engages in a trade, business, or profession in this state under his or her own or any fictitious name, whether individually as a proprietorship or in partnership with others, or as a member or a manager of a limited liability company classified as a partnership for federal income tax purposes; any estate of a decedent or incompetent; or any testamentary trust. However, a corporation or other taxable entity which is or which becomes partners with one or more natural persons shall not, merely by reason of being a partner, exclude from its net income subject to tax its respective share of partnership net income. This statement of intent shall be given preeminent consideration in any construction or interpretation of this code in order to avoid any conflict between this code and the mandate in s. 5, Art. VII of the State Constitution that no income tax be levied upon natural persons who are residents and citizens of this state.

(11) Notwithstanding any other provision in this chapter, it is the intent of the Legislature that, except as otherwise provided under the Internal Revenue Code, for purposes of this chapter a "qualified subchapter S subsidiary," as that term is defined in s. 1361(b)(3) of the Internal Revenue Code, shall not be treated as a separate corporation or entity from the S corporation parent to which the subsidiary's assets, liabilities, income, deductions, and credits are attributed under s. 1361(b)(3) thereof.

(2) This section shall take effect upon this act becoming a law. The provisions of this section are intended to clarify the intent of the Legislature under existing law and are effective with respect to tax years beginning on or after January 1, 1997.

Section 8. (1) Subsection (4) is added to section 220.22, Florida Statutes, to read:

220.22 Returns; filing requirement.—

(4) For the year in which an election is made pursuant to s. 1361(b)(3) of the Internal Revenue Code, the qualified subchapter S subsidiary shall file an informational return with the department, which return shall be restricted to information identifying the subsidiary, the electing S corporation parent, and the effective date of the election.

(2) This section shall take effect upon this act becoming a law. The provisions of this section are intended to clarify the intent of the Legislature under existing law and are effective with respect to tax years beginning on or after January 1, 1997; however, no penalty shall be assessed for failure to file the information return required by this section if the return would have been due on or before the date this act becomes a law.

Section 9. Paragraph (e) of subsection (1) of section 220.03, Florida Statutes, is amended to read:

220.03 Definitions.—

(1) SPECIFIC TERMS.—When used in this code, and when not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the following terms shall have the following meanings:

(e) "Corporation" includes all domestic corporations; foreign corporations qualified to do business in this state or actually doing business in this state; joint-stock companies; limited liability companies, under chapter 608; common-law declarations of trust, under chapter 609; corporations not for profit, under chapter 617; agricultural cooperative marketing associations, under chapter 618; professional service corporations, under chapter 621; foreign unincorporated associations, under chapter 622; private school corporations, under chapter 623; foreign corporations not for profit which are carrying on their activities in this state; and all other organizations, associations, legal entities, and artificial persons which are created by or pursuant to the statutes of this state, the United States, or any other state, territory, possession, or jurisdiction. The term "corporation" does not include proprietorships, even if using a fictitious name; partnerships of any type, as such; limited liability companies that are taxable as partnerships for federal income tax purposes; state or public fairs or expositions, under chapter 616; estates of decedents or incompetents; testamentary trusts; or private trusts.

Section 10. Subsection (2) of section 220.13, Florida Statutes, is amended to read:

220.13 "Adjusted federal income" defined.—

(2) For purposes of this section, a taxpayer's taxable income for the taxable year means taxable income as defined in s. 63 of the Internal Revenue Code and properly reportable for federal income tax purposes for the taxable year, but subject to the limitations set forth in paragraph (1)(b) with respect to the deductions provided by ss. 172 (relating to net operating losses), 170(d)(2) (relating to excess charitable contributions), 404(a)(1)(D) (relating to excess pension trust contributions), 404(a)(3)(A) and (B) (to the extent relating to excess stock bonus and profit-sharing trust contributions), and 1212 (relating to capital losses) of the Internal Revenue Code, except that, subject to the same limitations, the term:

(a) "Taxable income," in the case of a life insurance company subject to the tax imposed by s. 801 of the Internal Revenue Code, means life insurance company taxable income; however, for purposes of this code, the total of any amounts subject to tax under s. 815(a)(2) of the Internal Revenue Code

pursuant to s. 801(c) of the Internal Revenue Code shall not exceed, cumulatively, the total of any amounts determined under s. 815(c)(2) of the Internal Revenue Code of 1954, as amended, from January 1, 1972, to December 31, 1983;

(b) "Taxable income," in the case of an insurance company subject to the tax imposed by s. 831(b) of the Internal Revenue Code, means taxable investment income;

(c) "Taxable income," in the case of an insurance company subject to the tax imposed by s. 831(a) of the Internal Revenue Code, means insurance company taxable income;

(d) "Taxable income," in the case of a regulated investment company subject to the tax imposed by s. 852 of the Internal Revenue Code, means investment company taxable income;

(e) "Taxable income," in the case of a real estate investment trust subject to the tax imposed by s. 857 of the Internal Revenue Code, means the income subject to tax, computed as provided in s. 857 of the Internal Revenue Code;

(f) "Taxable income," in the case of a corporation which is a member of an affiliated group of corporations filing a consolidated income tax return for the taxable year for federal income tax purposes, means taxable income of such corporation for federal income tax purposes as if such corporation had filed a separate federal income tax return for the taxable year and each preceding taxable year for which it was a member of an affiliated group, unless a consolidated return for the taxpayer and others is required or elected under s. 220.131;

(g) "Taxable income," in the case of a cooperative corporation or association, means the taxable income of such organization determined in accordance with the provisions of ss. 1381 through 1388 of the Internal Revenue Code;

(h) "Taxable income," in the case of an organization which is exempt from the federal income tax by reason of s. 501(a) of the Internal Revenue Code, means its unrelated business taxable income as determined under s. 512 of the Internal Revenue Code;

(i) "Taxable income," in the case of a corporation for which there is in effect for the taxable year an election under s. 1362(a) of the Internal Revenue Code, means the amounts subject to tax under s. 1374 or s. 1375 of the Internal Revenue Code for each taxable year;

(j) "Taxable income," in the case of a limited liability company, other than a limited liability company classified as a partnership for federal income tax purposes, as defined in and organized pursuant to chapter 608 or qualified to do business in this state as a foreign limited liability company or other than a similar limited liability company classified as a partnership for federal income tax purposes and created as an artificial entity pursuant to the statutes of the United States or any other state, territory, possession, or jurisdiction, if such limited liability company or similar entity is taxable as

a corporation for federal income tax purposes ~~absent a federal report and determination of taxable income as a corporation under the Internal Revenue Code~~, means taxable income determined as if such limited liability company were required to file or had filed a federal corporate income tax return under the Internal Revenue Code;

(k) "Taxable income," in the case of a taxpayer liable for the alternative minimum tax as defined in s. 55 of the Internal Revenue Code, means the alternative minimum taxable income as defined in s. 55(b)(2) of the Internal Revenue Code, less the exemption amount computed under s. 55(d) of the Internal Revenue Code. A taxpayer is not liable for the alternative minimum tax unless the taxpayer's federal tax return, or related federal consolidated tax return, if included in a consolidated return for federal tax purposes, reflect a liability on the return filed for the alternative minimum tax as defined in s. 55(b)(2) of the Internal Revenue Code;

(l) "Taxable income," in the case of a taxpayer whose taxable income is not otherwise defined in this subsection, means the sum of amounts to which a tax rate specified in s. 11 of the Internal Revenue Code plus the amount to which a tax rate specified in s. 1201(a)(2) of the Internal Revenue Code are applied for federal income tax purposes.

Section 11. Section 608.406, Florida Statutes, is amended to read:

608.406 Limited liability company name.—

(1) The words "limited liability company" or "limited company," or their abbreviation "L.L.C." or "L.C.," shall be the last words of the name of every limited liability company formed under the provisions of this chapter.

(2) The limited liability name may not contain language stating or implying that the limited liability company is organized for a purpose other than that permitted in this act and its articles of organization.

(3) The limited liability name may not contain language stating or implying that the limited liability company is connected with a state or federal government agency or a corporation chartered under the laws of the United States.

(4) The limited liability name must be distinguishable upon the records of the Division of Corporations of the Department of State from all other entities or filings, except fictitious name registrations pursuant to s. 865.09, organized or registered under the laws of this state that are on file with the division.

(5) Omission of the words "limited liability company" or "limited company," or their abbreviation "L.L.C. or "L.C.," in the use of the name of the limited liability company shall render any person who participates in the omission, or knowingly acquiesces in it, liable for any indebtedness, damage, or liability occasioned by the omission.

Section 12. Section 608.405, Florida Statutes, is amended to read:

608.405 Formation.—One ~~Two~~ or more persons may form a limited liability company.

Section 13. Section (2) of section 608.407, Florida Statutes, is amended to read:

608.407 Articles of organization.—

(2) An affidavit declaring that the limited liability company has at least one member ~~two members~~ and setting forth the amount of the cash and a description and agreed value of property other than cash contributed by the members and the amount anticipated to be contributed by the members shall accompany the articles of organization of a limited liability company.

Section 14. Section 608.471, Florida Statutes, is amended to read:

608.471 Tax exemption on income of certain limited liability companies ~~company~~.—

(1) A limited liability company classified as a partnership for federal income tax purposes and organized pursuant to this chapter or qualified to do business in this state as a foreign limited liability company is not an "artificial entity" within the purview of s. 220.02 and is not subject to the tax imposed under chapter 220.

(2) The income of a limited liability company that is classified as a partnership for federal income tax purposes and that is organized pursuant to this chapter or is qualified to do business in this state as a foreign limited liability company shall not be subject to the Florida Income Tax Code and the tax levied pursuant to chapter 220.

(3) For purposes of taxation under chapter 220, a limited liability company formed in this state or authorized to transact business in this state as a foreign limited liability company shall be classified as a partnership unless classified otherwise for federal income tax purposes, in which case the limited liability company shall be classified identically to its classification for federal income tax purposes. For purposes of taxation under chapter 220, a member or an assignee of a member of a limited liability company formed in this state or qualified to do business in this state as a foreign limited liability company shall be treated as a resident or nonresident partner unless classified otherwise for federal income tax purposes, in which case the member or assignee of a member shall have the same status as such member or assignee of a member has for federal income tax purposes. ~~A distribution shall be deemed a "dividend" under s. 316 of the Internal Revenue Code as such code is defined in s. 220.03.~~

Section 15. Subsections (2) and (3) of section 607.0122, section 607.0402, paragraph (b) of subsection (2) of section 607.1506, section 608.4061, subsections (2) and (3) of section 617.0122, section 617.0402, paragraph (a) of subsection (2) of section 617.1506, section 620.104, subsection (7) of section 620.182, and subsection (2) of section 620.784, Florida Statutes, are repealed.

Section 16. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.