

CHAPTER 2015-148

Committee Substitute for Committee Substitute for Committee Substitute for House Bill No. 531

An act relating to limited liability companies; amending s. 605.0103, F.S.; specifying that persons who are not members of a limited liability company are not deemed to have notice of a provision of the company's articles of organization which limits a person's authority to transfer real property held in the company's name unless such limitation appears in an affidavit, certificate, or other instrument that is recorded in a specified manner; amending s. 605.0105, F.S.; removing the prohibition that an operating agreement may not vary the power of a person to dissociate; clarifying that an operating agreement is prohibited from providing indemnification for a member or manager in certain circumstances; authorizing an operating agreement to alter or eliminate any other fiduciary duty; amending s. 605.0111, F.S.; providing that the duties of the member, manager, or other person may be restricted, expanded, or eliminated in certain circumstances; amending s. 605.04073, F.S.; requiring certain conditions for members of a limited liability company, without a meeting, to take certain actions requiring the vote or consent of the members; amending s. 605.04091, F.S.; providing that the duty of loyalty of members and managers includes, but is not limited to, specified actions; revising the duty of care in the conduct or winding up of the company's activities and affairs; amending s. 605.0410, F.S.; requiring a limited liability company to provide a record of certain information within a specified period to a member who makes a demand; amending s. 605.0602, F.S.; revising the conditions under which a member may be expelled for a material breach of the company's operating agreement or the standards of conduct for members; amending s. 605.0715, F.S.; revising which materials and information a specified limited liability company must submit to the Department of State as part of an application for reinstatement after administrative dissolution; amending s. 605.0909, F.S.; revising which materials and information a specified limited liability company must submit to the Department of State as part of an application for reinstatement after revocation of certificate of authority; amending s. 605.1072, F.S.; deleting a provision providing an exception to the limitation of remedies for appraisal events under specified circumstances; amending s. 605.1108, F.S.; deleting a provision requiring that, for a limited liability company formed before a specified date, certain language in the company's articles of organization operates as if it were in the operating agreement; repealing chapter 608, F.S., relating to the Florida Limited Liability Company Act; amending ss. 15.16, 48.062, 213.758, 220.02, 220.03, 220.13, 310.181, 440.02, 605.0401, 605.04074, 605.04091, 606.06, 607.1108, 607.1109, 607.11101, 621.12, 636.204, 655.0201, 658.2953, 694.16, and 1002.395, F.S.; conforming provisions to the repeal of the Florida Limited Liability Company Act; providing retroactive applicability; amending ss. 605.0102, 605.0712, 605.0717, and 605.0805,

F.S.; revising a definition; conforming cross-references; providing effective dates.

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

Section 1. Paragraph (b) of subsection (4) of section 605.0103, Florida Statutes, is amended to read:

605.0103 Knowledge; notice.—

(4) A person who is not a member is deemed to:

(b) Have notice of a limited liability company's:

1. Dissolution, 90 days after the articles of dissolution filed under s. 605.0707 become effective;

2. Termination, 90 days after a statement of termination filed under s. 605.0709(7) becomes effective;

3. Participation in a merger, interest exchange, conversion, or domestication, 90 days after the articles of merger, articles of interest exchange, articles of conversion, or articles of domestication under s. 605.1025, s. 605.1035, s. 605.1045, or s. 605.1055, respectively, become effective;

4. Declaration in its articles of organization that it is manager-managed in accordance with s. 605.0201(3)(a); however, if such a declaration has been added or changed by an amendment or amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement; and

5. Grant of authority to or limitation imposed on the authority of a person holding a position or having a specified status in a company, or grant of authority to or limitation imposed on the authority of a specific person, if the grant of authority or limitation imposed on the authority is described in the articles of organization in accordance with s. 605.0201(3)(d); however, if that description has been added or changed by an amendment or an amendment and restatement of the articles of organization, notice of the addition or change may not become effective until 90 days after the effective date of such amendment or amendment and restatement. A provision of the articles of organization that limits the authority of a person to transfer real property held in the name of the limited liability company is not notice of such limitation to a person who is not a member or manager of the company, unless such limitation appears in an affidavit, certificate, or other instrument that bears the name of the limited liability company and is recorded in the office for recording transfers of such real property.

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

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

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

~~(i) Vary the power of a person to dissociate under s. 605.0601, except to require that the notice under s. 605.0602(1) be in a record.~~

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

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

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

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

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

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

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

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

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

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

4. Alter or eliminate any other fiduciary duty.

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

605.0111 Rules of construction and supplemental principles of law.—

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

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

manager, or other person may be restricted, expanded, or eliminated, including in the determination of applicable duties and obligations under this chapter, by the operating agreement, to the extent allowed by s. 605.0105.

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

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

605.04073 Voting rights of members and managers.—

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

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

605.04091 Standards of conduct for members and managers.—

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

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

1. In the conduct or winding up of the company's activities and affairs;
2. From the use by the member or manager of the company's property; or
3. From the appropriation of a company opportunity;

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

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

(3) The duty of care in the conduct or winding up of the company's activities and affairs is ~~limited to~~ refrain ~~refraining~~ from engaging in grossly

negligent or reckless conduct, willful or intentional misconduct, or a knowing violation of law.

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

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

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

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

- 1. The records described in subsection (1); and
- 2. Each other record maintained by the company regarding the company's activities, affairs, financial condition, and other circumstances, to the extent the information is material to the member's rights and duties under the operating agreement or this chapter.

(b) The company shall furnish to each member:

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

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

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

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

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

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

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

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

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

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

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

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

Section 7. Section 605.0715, Florida Statutes, is amended to read:

605.0715 Reinstatement.—

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

(a) The name of the limited liability company.

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

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

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

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

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

(2) In lieu of the requirement to file an application for reinstatement as described in subsection (1), an administratively dissolved limited liability company may submit all fees and penalties owed by the company at the rates provided by law at the time the company applies for reinstatement, together with a current annual report, signed by both the registered agent and an

authorized representative of the company, which contains the information described in subsection (1).

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

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

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

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

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

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

Section 8. Section 605.0909, Florida Statutes, is amended to read:

605.0909 Reinstatement following revocation of certificate of authority.

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

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

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

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

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

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

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

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

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

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

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

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

Section 9. Subsection (2) of section 605.1072, Florida Statutes, is amended to read:

605.1072 Other remedies limited.—

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

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

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

~~(c) Is an interested transaction, unless it has been approved in the same manner as is provided in s. 605.04092 or is fair to the limited liability company as defined in s. 605.04092(1)(e).~~

Section 10. Subsection (3) of section 605.1108, Florida Statutes, is amended to read:

605.1108 Application to limited liability company formed under the Florida Limited Liability Company Act.—

(3) For the purpose of applying this chapter to a limited liability company formed before January 1, 2014, under the Florida Limited Liability Company Act, former ss. 608.401-608.705,:

(a) the company’s articles of organization are deemed to be the company’s articles of organization under this chapter; ~~and~~

~~(b) For the purpose of applying s. 605.0102(39), the language in the company’s articles of organization designating the company’s management structure operates as if that language were in the operating agreement.~~

Section 11. Effective upon this act becoming a law, chapter 608, Florida Statutes, consisting of sections 608.401, 608.402, 608.403, 608.404, 608.405, 608.406, 608.407, 608.408, 608.4081, 608.4082, 608.409, 608.4101, 608.411, 608.4115, 608.415, 608.416, 608.4211, 608.422, 608.4225, 608.4226, 608.4227, 608.4228, 608.4229, 608.423, 608.4231, 608.4232, 608.4235, 608.4236, 608.4237, 608.4238, 608.425, 608.426, 608.4261, 608.427, 608.428, 608.431, 608.432, 608.433, 608.434, 608.4351, 608.4352, 608.4353, 608.4354, 608.4355, 608.4356, 608.4357, 608.43575, 608.4358, 608.43585, 608.4359, 608.43595, 608.438, 608.4381, 608.4382, 608.4383, 608.439, 608.4401, 608.4402, 608.4403, 608.4404, 608.441, 608.4411, 608.4421, 608.4431, 608.444, 608.445, 608.446, 608.447, 608.448, 608.4481, 608.4482, 608.4483, 608.449, 608.4491, 608.4492, 608.4493, 608.4511, 608.452, 608.455, 608.461, 608.462, 608.463, 608.471, 608.501, 608.502, 608.503, 608.504, 608.505, 608.506, 608.507, 608.508, 608.509, 608.5101, 608.511, 608.512, 608.513, 608.5135, 608.514, 608.601, 608.701, 608.702, 608.703, 608.704, and 608.705, is repealed.

Section 12. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (3) of section 15.16, Florida Statutes, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) The Department of State may cause to be received electronically any records that are required to be filed with it pursuant to chapter 55, chapter

117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, ~~chapter 608~~, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5)(b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 55, 117, 118, 495, 605, 606, 607, ~~608~~, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

Section 13. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsections (1) and (2) of section 48.062, Florida Statutes, are amended to read:

48.062 Service on a limited liability company.—

(1) Process against a limited liability company, domestic or foreign, may be served on the registered agent designated by the limited liability company under chapter 605 ~~or chapter 608~~. A person attempting to serve process pursuant to this subsection may serve the process on any employee of the registered agent during the first attempt at service even if the registered agent is a natural person and is temporarily absent from his or her office.

(2) If service cannot be made on a registered agent of the limited liability company because of failure to comply with chapter 605 ~~or chapter 608~~ or because the limited liability company does not have a registered agent, or if its registered agent cannot with reasonable diligence be served, process against the limited liability company, domestic or foreign, may be served:

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

(b) On a manager of a manager-managed limited liability company; or

(c) If a member or manager is not available during regular business hours to accept service on behalf of the limited liability company, he, she, or it may designate an employee of the limited liability company to accept such service. After one attempt to serve a member, manager, or designated employee has been made, process may be served on the person in charge of the limited liability company during regular business hours.

Section 14. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (1) of section 213.758, Florida Statutes, is amended to read:

213.758 Transfer of tax liabilities.—

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

(c) "Insider" means:

- 1. Any person included within the meaning of insider as used in s. 726.102; or
- 2. A manager of, ~~a managing member of,~~ or a person who controls a transferor that is, a limited liability company, or a relative as defined in s. 726.102 of any such persons.

Section 15. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 220.02, Florida Statutes, is amended 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 is defined in and organized pursuant to ~~formed under~~ chapter ~~605~~ 608 or qualified to do business in this state as a foreign limited liability company not 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.

Section 16. Effective upon this act becoming a law and operating retroactively to January 1, 2015, 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 ~~605~~ 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 17. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (j) of 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:

(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 ~~605~~ 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, 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;

Section 18. Effective upon this act becoming a law and operating retroactively to January 1, 2015, section 310.181, Florida Statutes, is amended to read:

310.181 Corporate powers.—All the rights, powers, and liabilities conferred or imposed by the laws of Florida relating to corporations for profit organized under part I of chapter 607 or under former chapter 608 before January 1, 1976, or to corporations organized under chapter 621 apply to corporations organized pursuant to s. 310.171.

Section 19. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (9) of section 440.02, Florida Statutes, is amended to read:

440.02 Definitions.—When used in this chapter, unless the context clearly requires otherwise, the following terms shall have the following meanings:

(9) “Corporate officer” or “officer of a corporation” means any person who fills an office provided for in the corporate charter or articles of incorporation filed with the Division of Corporations of the Department of State or as authorized or required under part I of chapter 607. The term “officer of a corporation” includes a member owning at least 10 percent of a limited liability company as defined in and organized pursuant to created and approved under chapter 605 608.

Section 20. Subsection (37) of section 605.0102, Florida Statutes, is amended to read:

605.0102 Definitions.—As used in this chapter, the term:

(37) “Majority-in-interest” means those members who hold more than 50 percent of the then-current percentage or other interest in the profits of the limited liability company owned by all of its members and who have the right to vote; however, as used in ss. 605.1001-605.1072, the term means:

(a) In the case of a limited liability company with only one class or series of members, the holders of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of its members who have the right to approve the a merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company; and

(b) In the case of a limited liability company having more than one class or series of members, the holders in each class or series of more than 50 percent of the then-current percentage or other interest in the profits of the company owned by all of the members of that class or series who have the right to approve the a merger, interest exchange, or conversion, as applicable, under the organic law or the organic rules of the company, unless the company’s organic rules provide for the approval of the transaction in a different manner.

Section 21. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (3) of section 605.0401, Florida Statutes, is amended to read:

605.0401 Becoming a member.—

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

- (a) As provided in the operating agreement;
- (b) As the result of a merger, interest exchange, conversion, or domestication under ss. 605.1001-605.1072, as applicable;
- (c) With the consent of all the members; or
- (d) As provided in s. 605.0701(3).

Section 22. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (a) of subsection (1) of section 605.04074, Florida Statutes, is amended to read:

605.04074 Agency rights of members and managers.—

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

(a) Except as provided in subsection (3), each member is an agent of the limited liability company for the purpose of its activities and affairs, ~~and~~ an act of a member, including signing an agreement or instrument of transfer in the name of the company for apparently carrying on in the ordinary course of the company's activities and affairs or activities and affairs of the kind carried on by the company, binds the company unless the member had no authority to act for the company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

Section 23. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (b) of subsection (2) of section 605.04091, Florida Statutes, is amended to read:

605.04091 Standards of conduct for members and managers.—

(2) The duty of loyalty is limited to:

(b) Refraining from dealing with the company in the conduct or winding up of the company's activities and affairs as, or on behalf of, a person having an interest adverse to the company, except to the extent that a transaction satisfies the requirements of s. 605.04092 ~~this section~~; and

Section 24. Subsection (6) of section 605.0602, Florida Statutes, is amended to read:

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

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

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

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

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

Section 25. Subsection (3) of section 605.0712, Florida Statutes, is amended to read:

605.0712 Other claims against a dissolved limited liability company.—

(3) A claim that is not barred by this section, ~~s. 608.0711~~, or another statute limiting actions, may be enforced:

(a) Against a dissolved limited liability company, to the extent of its undistributed assets; and

(b) Except as otherwise provided in s. 605.0713, if assets of the limited liability company have been distributed after dissolution, against a member or transferee to the extent of that person’s proportionate share of the claim or of the company’s assets distributed to the member or transferee after dissolution, whichever is less, but a person’s total liability for all claims under this subsection may not exceed the total amount of assets distributed to the person after dissolution.

Section 26. Subsection (2) of section 605.0717, Florida Statutes, is amended to read:

605.0717 Effect of dissolution.—

(2) Except as provided in s. ~~605.0715(5)~~ 605.0715(4), the name of the dissolved limited liability company is not available for assumption or use by another business entity until 120 days after the effective date of dissolution or filing of a statement of termination, if earlier.

Section 27. Subsection (2) of section 605.0805, Florida Statutes, is amended to read:

605.0805 Proceeds and expenses.—

(2) If a derivative action under ~~s. 608.0802~~ is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorney fees and costs, from the recovery of the limited liability company.

Section 28. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (2) of section 606.06, Florida Statutes, is amended to read:

606.06 Uniform business report.—The department may use the uniform business report:

(2) As a substitute for any annual report or renewal filing required by chapters 495, 605, 607, ~~608~~, 609, 617, 620, 621, and 865.

Section 29. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (2) of section 607.1108, Florida Statutes, is amended to read:

607.1108 Merger of domestic corporation and other business entity.—

(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:

(c) Each domestic limited liability company that is a party to the merger complies with the applicable provisions of chapter 605 ~~608~~.

Section 30. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (d) of subsection (1) of section 607.1109, Florida Statutes, is amended to read:

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:

(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 605 ~~608~~.

Section 31. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (7) of section 607.11101, Florida Statutes, is amended to read:

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

(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 appraisal rights, if any, under s. 605.1006, ss. 605.1061-605.1072, ss. ~~607.1301-607.1333, ss. 608.4351-608.43595~~, ss. ~~620.2114-620.2124~~, or other applicable law.

Section 32. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (b) of subsection (2) of section 621.12, Florida Statutes, is amended to read:

621.12 Identification with individual shareholders or individual members.—

(2) The name shall also contain:

(b)1. In the case of a professional corporation, the words “professional association” or the abbreviation “P.A.”; or

2. In the case of a professional limited liability company formed before January 1, 2014, the words “professional limited company” or “professional limited liability company,” the abbreviation “P.L.” or “P.L.L.C.” or the designation “PL” or “PLLC,” in lieu of the words “limited company” or “limited liability company,” or the abbreviation “L.C.” or “L.L.C.” or the designation “LC” or “LLC” as otherwise required under s. ~~605.0112~~ or former s. 608.406.

3. In the case of a professional limited liability company formed on or after January 1, 2014, the words “professional limited liability company,” the abbreviation “P.L.L.C.” or the designation “PLLC,” in lieu of the words “limited liability company,” or the abbreviation “L.L.C.” or the designation “LLC” as otherwise required under s. 605.0112.

Section 33. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 636.204, Florida Statutes, is amended to read:

636.204 License required.—

(1) Before doing business in this state as a discount medical plan organization, an entity must be a corporation, a limited liability company,

or a limited partnership, incorporated, organized, formed, or registered under the laws of this state or authorized to transact business in this state in accordance with chapter 605, part I of chapter 607, ~~chapter 608~~, chapter 617, chapter 620, or chapter 865, and must be licensed by the office as a discount medical plan organization or be licensed by the office pursuant to chapter 624, part I of this chapter, or chapter 641.

Section 34. Effective upon this act becoming a law and operating retroactively to January 1, 2015, subsection (1) of section 655.0201, Florida Statutes, is amended to read:

655.0201 Service of process, notice, or demand on financial institutions.

(1) Process against any financial institution authorized by federal or state law to transact business in this state may be served in accordance with chapter 48, chapter 49, chapter 605, or part I of chapter 607, ~~or chapter 608~~, as appropriate.

Section 35. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (c) of subsection (11) of section 658.2953, Florida Statutes, is amended to read:

658.2953 Interstate branching.—

(11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.—

(c) An out-of-state bank may establish and maintain a de novo branch or acquire a branch in this state upon compliance with chapter 605 or part I of chapter 607 ~~or chapter 608~~ relating to doing business in this state as a foreign business entity, including maintaining a registered agent for service of process and other legal notice pursuant to s. 655.0201.

Section 36. Effective upon this act becoming a law and operating retroactively to January 1, 2015, section 694.16, Florida Statutes, is amended to read:

694.16 Conveyances by merger or conversion of business entities.—As to any merger or conversion of business entities prior to June 15, 2000, the title to all real estate, or any interest therein, owned by a business entity that was a party to a merger or a conversion is vested in the surviving entity without reversion or impairment, notwithstanding the requirement of a deed which was previously required by s. 607.11101, former s. 608.4383, former s. 620.204, former s. 620.8904, or former s. 620.8906.

Section 37. Effective upon this act becoming a law and operating retroactively to January 1, 2015, paragraph (f) of subsection (2) of section 1002.395, Florida Statutes, is amended to read:

1002.395 Florida Tax Credit Scholarship Program.—

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

(f) “Eligible nonprofit scholarship-funding organization” means a state university; or an independent college or university that is eligible to participate in the William L. Boyd, IV, Florida Resident Access Grant Program, located and chartered in this state, is not for profit, and is accredited by the Commission on Colleges of the Southern Association of Colleges and Schools; or is a charitable organization that:

1. Is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code;
2. Is a Florida entity formed under chapter 605, chapter 607, ~~chapter 608~~, or chapter 617 and whose principal office is located in the state; and
3. Complies with subsections (6) and (16).

Section 38. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2015.

Approved by the Governor June 11, 2015.

Filed in Office Secretary of State June 11, 2015.