

Council Substitute for House Bill No. 787

An act relating to limited liability companies; amending s. 608.401, F.S.; conforming a cross-reference to changes made by the act; amending s. 608.402, F.S.; revising definitions; amending s. 608.404, F.S.; authorizing a limited liability company to select managing members; amending s. 608.407, F.S.; revising requirements of the articles of organization for a company managed by one or more managers; amending s. 608.408, F.S.; providing requirements for executing articles of organization; amending s. 608.4081, F.S.; providing for filing a document with the Department of State; amending s. 608.409, F.S.; prohibiting the transaction of business or incurrance of debt until the effective date of the company's existence; amending s. 608.4101, F.S.; providing additional requirements with respect to recordkeeping; amending s. 608.411, F.S.; providing for amendments to or restatements of articles of organization; amending s. 608.422, F.S.; providing requirements for a member-managed company; providing for appointing a proxy; amending s. 608.4225, F.S.; providing standards for managers and managing members; amending s. 608.4226, F.S.; providing for validity of contracts and other transactions notwithstanding certain conflicts of interest; amending s. 608.4227, F.S.; providing for liability of managers and managing members; amending s. 608.4228, F.S.; limiting the liability of managers and managing members; amending s. 608.4229, F.S.; providing for indemnification of members of a limited liability company; amending s. 608.423, F.S.; providing requirements for operating agreements by members of a limited liability company; amending s. 608.4231, F.S.; providing for voting by managing members; authorizing a vote by proxy; amending s. 608.4235, F.S.; authorizing a managing member to act as an agent of the limited liability company; amending s. 608.4238, F.S.; providing liability for unauthorized actions; amending s. 608.425, F.S.; providing for validity of certain instruments and documents; amending s. 608.428, F.S.; prohibiting certain distributions from a limited liability company; amending s. 608.432, F.S.; providing for assignment of a member's interest in a limited liability company; amending s. 608.438, F.S.; requiring that a plan of merger specify the managing members; amending s. 608.441, F.S.; providing for dissolution of a limited liability company; amending s. 608.444, F.S.; providing for distribution of assets upon dissolution; amending ss. 608.445, 608.446, F.S.; providing requirements for articles of dissolution and for filing the articles; amending s. 608.449, F.S.; providing grounds for judicial dissolution; amending s. 608.463, F.S.; providing for service of process; amending s. 608.504, F.S.; providing for an amended certificate of authority; amending s. 608.507, F.S.; revising requirements for the registered office of a domestic company; creating s. 608.704, F.S.; specifying the Legislature's power to amend or repeal ch. 608, F.S.; creating s. 608.705, F.S.; providing for the effect of the repeal of a prior act; providing an effective date.

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

Section 1. Section 608.401, Florida Statutes, is amended to read:

608.401 Short title.—Sections ~~608.401-608.705~~ 608.401-608.703 may be cited as the “Florida Limited Liability Company Act.”

Section 2. Subsections (1), (2), (3), (14), (19), (21), and (24) of section 608.402, Florida Statutes, are amended to read:

608.402 Definitions.—As used in this chapter:

(1) “Articles of merger” means initial, amended, and restated articles of merger of a limited liability company delivered to the Department of State in accordance with s. 608.4382. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the Department of State or other official having custody of the company records of the foreign limited liability company in the state or country under whose law it is organized.

(2) “Articles of organization” means initial, amended, and restated articles of organization of a limited liability company, including initial, amended, or restated articles of merger, if any. In the case of a foreign limited liability company, the term includes all records serving a similar function required to be filed with the Department of State or other official having custody of the company records of the foreign limited liability company in the state or country under whose law it is organized.

(3) “Authorized representative” means one or more persons acting to form a limited liability company by executing and filing the articles of organization of such limited liability company in accordance with this chapter and authorized by a member ~~identified in the articles of organization or operating agreement~~ of such limited liability company, which authorized representative may, but need not be, a member of the limited liability company that the authorized representative forms.

(14) “Insolvent” means the inability of a limited liability company to pay the limited liability company’s debts as they become due in the ordinary course of business or that the fair value of the limited liability company’s total assets would be less than the sum of its total liabilities plus the amount that would be needed, if the limited liability company were to be dissolved and terminated at the time of the distribution, to satisfy the preferential distribution rights of the limited liability company’s members accrued through such dissolution and termination.

(19) “Manager-managed company” means a limited liability company that which is designated to be managed by one or more managers ~~in its articles of organization or operating agreement.~~

(21) “Member” means any person who has been admitted to a limited liability company as a member in accordance with this chapter as provided ~~in s. 608.4232~~ and has an economic interest in a limited liability company which may, but need not, be represented by a capital account or, in the case

of a foreign limited liability company, has been admitted to a limited liability company as a member in accordance with the laws of the state or foreign country or other foreign jurisdiction under which the foreign limited liability company is organized.

(24) “Operating agreement” means, subject to s. 608.423, written or oral provisions ~~that which~~ are adopted for the management and regulation of the affairs of the limited liability company and that ~~which~~ set forth the relationships of the members, managers, or managing members and ~~the~~ limited liability company. The term includes amendments to the operating agreement, ~~subject to s. 608.423~~.

Section 3. Subsection (8) of section 608.404, Florida Statutes, is amended to read:

608.404 Powers.—Unless its articles of organization or operating agreement provide otherwise, each limited liability company organized and existing under this chapter shall have the same powers as an individual to do all things necessary to carry out its business and affairs, including, without limitation, the power to:

(8) Select managers or managing members and appoint officers, directors, employees, and agents of the limited liability company, define their duties, fix their compensation, and lend them money and credit.

Section 4. Section 608.407, Florida Statutes, is amended to read:

608.407 Articles of organization.—

(1) In order to form a limited liability company, articles of organization of a limited liability company shall be executed and filed with the Department of State by one or more members or authorized representatives of the limited liability company. The articles of organization shall set forth:

(a) The name of the limited liability company.

(b) The mailing address and the street address of the principal office of the limited liability company.

(c) The name and street address of its initial registered agent for service of process in the state. The articles of organization shall include or be accompanied by the written statement required by s. 608.415.

~~(d) If the limited liability company is to be managed by one or more managers, a statement that the company is to be a manager-managed company.~~

~~(d)~~(e) Any other matters that the members elect to include in the articles of organization.

(2) A limited liability company is formed at the time described in s. 608.409 if the person filing the articles of organization has substantially complied with the requirements of this section.

(3) The articles of organization shall be executed by at least one member or the authorized representative of a member.

(4) If the limited liability company is to be managed by one or more managers, the articles of organization may, but need not, include a statement that the limited liability company is to be a manager-managed company.

(5) The fact that articles of organization are on file with the Department of State is notice that the entity formed in connection with the filing of the articles of organization is a limited liability company formed under the laws of this state and is notice of all other facts set forth in the articles of organization.

Section 5. Section 608.408, Florida Statutes, is amended to read:

608.408 Execution of articles, certificate, or statement.—

(1) Any articles, ~~A~~ certificate, or statement required by this chapter to be filed with the Department of State must be executed in the following manner:

(a) If it is the articles of organization, a certificate of conversion, or a statement of change of registered agent or registered office, it must be signed by a member or by the authorized representative of a member, and by the new registered agent, if applicable; and

(b) If it is the articles ~~a certificate~~ of dissolution or revocation of dissolution, it must be signed by members having the same percentage of membership interests necessary to approve the dissolution or revocation of dissolution.

(2) Any person may sign a certificate through an attorney in fact, but a power of attorney to sign a certificate or statement authorizing the admission of a member must specifically describe the admission.

(3) The execution of a certificate constitutes an affirmation by the person executing the certificate, under the penalties of perjury, that the facts stated therein are true.

(4) If the articles of organization contain or any other document authorized or required to be filed under this chapter contains a false statement, one who suffers loss by reliance on the statement may recover damages for the loss from a person who signed the record or caused another to sign it on the person's behalf and knew the statement to be false at the time the record was signed.

Section 6. Paragraphs (b) and (c) of subsection (1) of section 608.4081, Florida Statutes, are amended to read:

608.4081 Filing requirements.—

(1) To be filed by the Department of State, a document must satisfy the following requirements, as supplemented or modified by any other section of this chapter:

(b) The document must be executed as required by ~~s. 608.408~~ s. 608.407.

(c) The document must contain any information required by this chapter and may contain other information the limited liability company elects to include.

Section 7. Subsections (2) and (4) of section 608.409, Florida Statutes, are amended to read:

608.409 Effect of filing and issuance of time and date endorsement on the articles of organization.—

(2) The articles of organization may specify a delayed effective time and date of commencement of the limited liability company's existence, and if so specified, the articles of organization shall become effective, and the limited liability company's existence shall commence, at the time and date specified. If a delayed effective date, but no time, is specified, the articles of organization shall become effective, and the limited liability company's existence shall commence, at the close of business on the delayed effective date. Unless otherwise permitted by this chapter, a delayed effective date for a document may not be later than the 90th day after the date on which the document is filed.

(4) A limited liability company shall not transact business or incur indebtedness, except that which is incidental to its organization or to obtaining subscriptions for or payment of contributions, until the effective date and time of the commencement of the limited liability company's existence ~~articles of organization have been filed by the Department of State.~~

Section 8. Paragraphs (a) and (b) of subsection (1) and subsections (2) and (3) of section 608.4101, Florida Statutes, are amended to read:

608.4101 Records to be kept; right to information.—

(1) Each limited liability company shall keep at its principal office the following records:

(a) A current list of the full names and last known business, residence, or mailing addresses of all members, ~~and managers, and managing members.~~

(b) A copy of the articles of organization, ~~and all certificates of conversion, and any other documents filed with the Department of State concerning the limited liability company,~~ together with executed copies of any powers of attorney pursuant to which any articles of organization or certificates were executed.

(2) A limited liability company shall provide members and their agents and attorneys access to its records at the limited liability company's principal office or other reasonable locations specified in the operating agreement. The limited liability company shall provide former members and their agents and attorneys access for proper purposes to records pertaining to the period during which they were members. The right of access provides the

opportunity to inspect and copy records during ordinary business hours. The limited liability company may impose a reasonable charge, limited to the costs of labor and material, for copies of records furnished.

(3) A limited liability company shall furnish to a member, and to the legal representative of a deceased member or member under legal disability:

(a) Without demand, information concerning the limited liability company's business or affairs reasonably required for the proper exercise of the member's rights and performance of the member's duties under the operating agreement or this chapter; and

(b) On demand, other information concerning the limited liability company's business or affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

Section 9. Subsections (4) and (6) of section 608.411, Florida Statutes, are amended to read:

608.411 Amendments to or restatements of articles of organization.—

(4) If the restated articles of organization merely restate and integrate but do not further amend the then-effective articles of organization, the limited liability company shall title the filing "Restated Articles of Organization," together with such other words as the limited liability company deems appropriate. If the restated articles restate and integrate and also further amend in any respect the then-effective articles of organization, the limited liability company shall title the filing "Amended and Restated Articles of Organization," together with such other words as the limited liability company deems appropriate. In each case described in this subsection, the document shall be executed as provided in this chapter for articles of organization and filed as provided by this chapter with the Department of State.

(6) Upon the filing of the restated articles of organization with the Department of State, or upon any future effective date or time provided in restated articles of organization, the articles of organization existing prior to such filing shall be superseded and the restated articles of organization, including any further amendment or changes made thereby, shall become the limited liability company's articles of organization. The original effective date of the limited liability company's formation shall remain unchanged.

Section 10. Section 608.422, Florida Statutes, is amended to read:

608.422 Management of the limited liability company.—

(1) Unless otherwise provided in its articles of organization or the operating agreement, the limited liability company shall be a member-managed company.

(2) In a member-managed company, unless otherwise provided in its articles of organization or operating agreement:

(a) ~~Unless otherwise provided in the articles of organization or operating agreement~~, Management shall be vested in its members or elected managing

members in proportion to the then-current percentage or other interest of members in the profits of the limited liability company owned by all of the members or elected managing members.

(b) Except as otherwise provided in subsection (3) or in this chapter, the decision of a majority-in-interest of the members or elected managing members shall be controlling.

(3) If the articles of organization or the operating agreement provide for the management of the limited liability company by a manager or managers, the management of the limited liability company shall be vested in a manager or managers and the limited liability company shall be a manager-managed company.

(4) In a manager-managed company, unless otherwise provided in its articles of organization or operating agreement:

(a) Each manager has equal rights in the management and conduct of the limited liability company's business.

(b) Except as otherwise provided in subsection (3) or in this chapter, any matter relating to the business of the limited liability company may be exclusively decided by the manager or, if there is more than one manager, by a majority of the managers.

(c) A manager:

1. Must be designated, appointed, elected, removed, or replaced by a vote, approval, or consent of a majority-in-interest of the members; and

2. Holds office until a successor has been elected and qualified, unless the manager sooner resigns or is removed.

(5) Action requiring the consent of members or managers under this chapter may be taken without a meeting, subject to the limitations of s. 608.4231.

(6) Unless otherwise provided in the articles of organization or operating agreement, a member, managing member, or manager may appoint a proxy to vote or otherwise act for the member, managing member, or manager by signing an appointment instrument, either personally or by the member's, managing member's, or manager's attorney-in-fact.

(7) Unless otherwise provided in the articles of organization or operating agreement, a member, managing member, or ~~The manager or managers~~ may also hold the offices and have such other responsibilities accorded to them by the members and set out in the articles of organization or the operating agreement of the limited liability company.

Section 11. Subsection (1) of section 608.4225, Florida Statutes, is amended to read:

608.4225 General standards for managers and managing members.—

(1) Subject to ss. 608.4226 and 608.423, each manager and managing member shall owe a duty of loyalty and a duty of care to the limited liability company and all of the other members of the limited liability company.

(a) The duty of loyalty includes, without limitation:

1. Accounting to the limited liability company and holding as trustee for the limited liability company any property, profit, or benefit derived by such manager or managing member in the conduct or winding up of the limited liability company business or derived from a use by such manager or managing member of limited liability company property, including the appropriation of a limited liability company opportunity.

2. Refraining from dealing with the limited liability company in the conduct or winding up of the limited liability company business as or on behalf of a party having an interest adverse to the limited liability company.

3. Refraining from competing with the limited liability company in the conduct of the limited liability company business before the dissolution of the limited liability company.

(b) The duty of care is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(c) Each manager and managing member shall discharge the duties to the limited liability company and its other members under this chapter or under the articles of organization or operating agreement and exercise any rights consistent with the obligation of good faith and fair dealing.

(d) A manager or managing member does not violate a duty or obligation under this chapter or under the articles of organization or operating agreement merely because the manager's or managing member's conduct furthers such manager's or managing member's own interest.

(e) A manager or managing member may lend money to and transact other business with the limited liability company. As to each loan or transaction, the rights and obligations of the manager or managing member are the same as those of a person who is not a member, subject to other applicable law.

(f) This section applies to a person winding up the limited liability company business as the personal or other legal representative of the last surviving member as if such person were a manager or managing member.

Section 12. Subsections (1) and (3) of section 608.4226, Florida Statutes, are amended to read:

608.4226 Conflicts of interest.—

(1) No contract or other transaction between a limited liability company and one or more of its members, managers, or managing members or any other limited liability company, corporation, firm, association, or entity in which one or more of its members, managers, or managing members are

managers, managing members, directors, or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such members, managers, or managing members are present at the meeting of the members, managers, or managing members or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the managers or managing members or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting the votes or consents of such interested members, managers, or managing members;

(b) The fact of such relationship or interest is disclosed or known to the members entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or

(c) The contract or transaction is fair and reasonable as to the limited liability company at the time it is authorized by the managers, managing members, a committee, or the members.

(3) For purposes of paragraph (1)(b) only, a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority-in-interest of the members entitled to be counted under this subsection. Membership interests owned by or voted under the control of a manager or managing member who has a relationship or interest in the transaction described in subsection (1) may not be counted in a vote of members to determine whether to authorize, approve, or ratify a conflict of interest transaction under paragraph (1)(b). The vote of those membership interests, however, is counted in determining whether the transaction is approved under other sections of this act. A majority-in-interest of the members, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.

Section 13. Section 608.4227, Florida Statutes, is amended to read:

608.4227 Liability of members, managing members, and managers.—

(1) Except as provided in this chapter, ~~neither the members, managers, and managing members of a limited liability company nor the managers of a limited liability company managed by a manager or managing member~~ are not liable, solely by reason of being a member or serving as a manager or managing member, under a judgment, decree, or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company;

(2) Any such member, managing member, ~~or~~ manager, or other person acting under the articles of organization or operating agreement of a limited liability company ~~is~~ shall not be liable to the limited liability company or to any such other member, managing member, or manager for the member's, managing member's, ~~or~~ manager's, or other person's good faith reliance on

the provisions of the limited liability company's articles of organization or operating agreement; and

(3) The member's, managing member's, ~~or~~ manager's, or other person's duties and liabilities may be expanded or restricted by provisions in a limited liability company's articles of organization or operating agreement.

Section 14. Section 608.4228, Florida Statutes, is amended to read:

608.4228 Limitation of liability of managers and managing members.—

(1) A manager or a managing member shall not be personally liable for monetary damages to the limited liability company, its members, or any other person for any statement, vote, decision, or failure to act regarding management or policy decisions by a manager or a managing member, unless:

(a) The manager or managing member breached or failed to perform the duties as a manager or managing member; and

(b) The manager's or managing member's breach of, or failure to perform, those duties constitutes any of the following:

1. A violation of the criminal law, unless the manager or managing member had a reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe such conduct was unlawful. A judgment or other final adjudication against a manager or managing member in any criminal proceeding for a violation of the criminal law estops that manager or managing member from contesting the fact that such breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the manager or managing member from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that such conduct was unlawful.

2. A transaction from which the manager or managing member derived an improper personal benefit, either directly or indirectly.

3. A distribution in violation of s. 608.426.

4. In a proceeding by or in the right of the limited liability company to procure a judgment in its favor or by or in the right of a member, conscious disregard of the best interest of the limited liability company, or willful misconduct.

5. In a proceeding by or in the right of someone other than the limited liability company or a member, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(2) For the purposes of this section, the term "recklessness" means acting, or failing to act, in conscious disregard of a risk known, or so obvious that it should have been known, to the manager or managing member, and known to the manager or managing member, or so obvious that it should

have been known, to be so great as to make it highly probable that harm would follow from such action or failure to act.

(3) A manager or managing member is deemed not to have derived an improper personal benefit from any transaction if the transaction and the nature of any personal benefit derived by the manager or managing member are not prohibited by state or federal law or the articles of organization or operating agreement and, without further limitation, the transaction and the nature of any personal benefit derived by a manager or managing member are disclosed or known to the members, and the transaction was authorized, approved, or ratified by the vote of a majority-in-interest of the members other than the managing member, or the transaction was fair and reasonable to the limited liability company at the time it was authorized by the manager or managing member, notwithstanding that a manager or managing member received a personal benefit.

(4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the existence of other circumstances under which a manager will be deemed not to have derived an improper benefit.

Section 15. Section 608.4229, Florida Statutes, is amended to read:

608.4229 Indemnification of members, managers, managing members, officers, employees, and agents.—

(1) Subject to such standards and restrictions, if any, as are set forth in its articles of organization or operating agreement, a limited liability company may, and shall have the power to, but shall not be required to, indemnify and hold harmless any member or manager or other person from and against any and all claims and demands whatsoever.

(2) Notwithstanding subsection (1), indemnification or advancement of expenses shall not be made to or on behalf of any member, manager, managing member, officer, employee, or agent if a judgment or other final adjudication establishes that the actions, or omissions to act, of such member, manager, managing member, officer, employee, or agent were material to the cause of action so adjudicated and constitute any of the following:

(a) A violation of criminal law, unless the member, manager, managing member, officer, employee, or agent had no reasonable cause to believe such conduct was unlawful.

(b) A transaction from which the member, manager, managing member, officer, employee, or agent derived an improper personal benefit.

(c) In the case of a manager or managing member, a circumstance under which the liability provisions of s. 608.426 are applicable.

(d) Willful misconduct or a conscious disregard for the best interests of the limited liability company in a proceeding by or in the right of the limited liability company to procure a judgment in its favor or in a proceeding by or in the right of a member.

Section 16. Subsections (1), (2), (3), and (6) of section 608.423, Florida Statutes, are amended to read:

608.423 Limited liability company operating agreement; nonwaivable provisions.—

(1) Except as otherwise provided in subsection (2), all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the limited liability company and the conduct of its business, establish duties in addition to those set forth in this chapter, and to govern relations among the members, managers, and company. Any inconsistency between written and oral operating agreements shall be resolved in favor of the written agreement. The members of a limited liability company may enter into an operating agreement before, after, or at the time the articles of organization are filed, and the operating agreement takes effect on the date of the formation of the limited liability company or on any other date provided in the operating agreement. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and limited liability company.

(2) The operating agreement may not:

(a) Unreasonably restrict a right to information or access to records under s. 608.4101;

(b) Eliminate the duty of loyalty under s. 608.4225, but the agreement may:

1. Identify specific types or categories of activities that do not violate the duty of loyalty, if not manifestly unreasonable; and

2. Specify the number or percentage of members or disinterested managers that may authorize or ratify, after full disclosure of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(c) Unreasonably reduce the duty of care under s. 608.4225;

(d) Eliminate the obligation of good faith and fair dealing under s. 608.4225, but the operating agreement may determine the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

~~(e) Vary the right to expel a member in an event specified in this chapter;~~

~~(e)(f)~~ Vary the requirement to wind up the limited liability company's business in a case specified in this chapter; or

~~(f)(g)~~ Restrict rights of a person, other than a manager, member, or transferee of a member's distributional interest, under this chapter.

(3) The power to adopt, alter, amend, or repeal the operating agreement of a limited liability company shall be vested in the members of the limited liability company unless vested in the manager or managers of the limited

liability company by the articles of organization or operating agreement, provided that any amendment to a written operating agreement shall be in writing. The operating agreement adopted by the members or by the manager or managers may be repealed or altered; a new operating agreement may be adopted by the members; and the members may prescribe in any operating agreement made by them that such operating agreement may not be altered, amended, or repealed by the manager or managers.

(6) Actions taken by the limited liability company in good faith in accordance with the emergency operating agreement have the effect of binding the limited liability company and may not be used to impose liability on a manager, employee, or agent of the limited liability company.

Section 17. Subsections (3), (6), and (8) of section 608.4231, Florida Statutes, are amended to read:

608.4231 Voting by members and managers.—

(3) If no conflicting voting provision is contained in the articles of organization or operating agreement:

(a) The members of a limited liability company shall vote in proportion to their then-current percentage or other allocable interest in the profits of the limited liability company or, in the case of a member who has assigned the member's entire economic interest in the limited liability company to a person who has not been admitted as a member, in proportion to the then-current percentage or other allocable interest in the profits of the limited liability company that the assigning member would have, had the assignment not been made.

(b) In all matters in which a vote is required, a vote of a majority-in-interest of the members shall be sufficient unless provided otherwise in the limited liability company's articles of organization or operating agreement or this chapter.

(6) Except as otherwise provided in the articles of organization or the operating agreement, if the members have appointed more than one manager or managing member to manage the business of the limited liability company, decisions of the managers or managing members shall be made by majority vote of the managers or managing members if at a meeting, or by unanimous written consent. Unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by one or more managers or managing members, the managers or managing members may vote in person or by proxy. Within 10 days after obtaining such authorization by written consent, notice must be given to those managers or managing members who have not consented in writing or who are not entitled to vote on the action.

(8) Unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by members, the members may take such action without a meeting, without prior notice, and without a vote if a consent or consents in writing, setting forth the action so taken, are signed by the members having not less than the minimum number of

votes that would be necessary to authorize or take such action at a meeting, but in no event by a vote of less than a majority-in-interest of the members that would be necessary to authorize or take such action at a meeting. Unless otherwise provided in the articles of organization or operating agreement, on any matter that is to be voted on by members ~~or managers~~, the members ~~or managers~~ may vote in person or by proxy. Within 10 days after obtaining such authorization by written consent, notice must be given to those members who have not consented in writing or who are not entitled to vote on the action.

Section 18. Section 608.4235, Florida Statutes, is amended to read:

608.4235 Agency of members and managers or managing members.—

(1) Subject to subsections (2) and (3):

(a) In a member-managed company, each member is an agent of the limited liability company for the purpose of its business, and an act of a member, including the signing of an instrument in the limited liability company's name, for apparently carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the company binds the limited liability company, unless the member had no authority to act for the limited liability company in the particular matter and the person with whom the member was dealing knew or had notice that the member lacked authority.

(b) An act of a member which is not apparently for carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized by appropriate vote of the other members.

(2) Subject to subsection (3), in a manager-managed company:

(a) A member is not an agent of the limited liability company for the purpose of its business solely by reason of being a member. Each manager is an agent of the limited liability company for the purpose of its business, and an act of a manager, including the signing of an instrument in the limited liability company's name, for apparently carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the company binds the limited liability company, unless the manager had no authority to act for the limited liability company in the particular matter and the person with whom the manager was dealing knew or had notice that the manager lacked authority.

(b) An act of a manager which is not apparently for carrying on in the ordinary course the limited liability company's business or business of the kind carried on by the limited liability company binds the limited liability company only if the act was authorized under s. 608.422.

(3) Unless the articles of organization or operating agreement limit the authority of a member, any member of a member-managed company or manager of a manager-managed company may sign and deliver any instrument transferring or affecting the limited liability company's interest in real

property. The instrument is conclusive in favor of a person who gives value without knowledge of the lack of the authority of the person signing and delivering the instrument.

Section 19. Section 608.4238, Florida Statutes, is amended to read:

608.4238 Unauthorized assumption of powers.—All persons purporting to act as or on behalf of a limited liability company, having actual knowledge that there was no organization of a limited liability company under this chapter, are jointly and severally liable for all liabilities created while so acting except for any liability to any person who also had actual knowledge that there was no organization of a limited liability company.

Section 20. Subsection (3) of section 608.425, Florida Statutes, is amended to read:

608.425 Limited liability company property.—

(3) Instruments and documents providing for the acquisition, mortgage, or disposition of property of the limited liability company shall be valid and binding upon the limited liability company, if they are executed in accordance with this chapter.

Section 21. Subsection (2) of section 608.428, Florida Statutes, is amended to read:

608.428 Liability upon wrongful distribution.—

(2) A member may not receive a distribution from a limited liability company to the extent that, after giving effect to the distribution, ~~all liabilities of the limited liability company would be insolvent, other than liabilities to members on account of their membership interests in the limited liability company, exceed the value of the limited liability company's assets.~~

Section 22. Subsection (1) of section 608.432, Florida Statutes, is amended to read:

608.432 Assignment of member's interest.—

(1) A limited liability company interest is assignable in whole or in part except as provided in the articles of organization or operating agreement. The assignee of a member's interest shall have no right to participate in the management of the business and affairs of a limited liability company except as provided in the articles of organization or operating agreement and upon:

(a) The approval of all of the members of the limited liability company other than the member assigning the limited liability company interest; or

(b) Compliance with any procedure provided for in the articles of organization or operating limited liability company agreement.

Section 23. Paragraph (e) of subsection (3) of section 608.438, Florida Statutes, is amended to read:

608.438 Merger of limited liability company.—

(3) The plan of merger shall set forth:

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

Section 24. Subsections (1) and (2) of section 608.441, Florida Statutes, are amended to read:

608.441 Dissolution.—

(1) A limited liability company organized under this chapter shall be dissolved, and the limited liability company's affairs shall be concluded, upon the first to occur of any of the following events:

(a) At the time specified in the articles of organization or operating agreement, but if no such time is set forth in the articles of organization or operating agreement, then the limited liability company shall have a perpetual existence;

(b) Upon the occurrence of events specified in the articles of organization or operating agreement;

(c) Unless otherwise provided in the articles of organization or operating agreement, upon the written consent of all of the members of the limited liability company;

(d) At any time there are no members; however, unless otherwise provided in the articles of organization or operating agreement, the limited liability company is not dissolved and is not required to be wound up if, within 90 days, or such other period as provided in the articles of organization or operating agreement, after the occurrence of the event that terminated the continued membership of the last remaining member, the personal or other legal representative of the last remaining member agrees in writing to continue the limited liability company and agrees to the admission of the personal representative of such member or its nominee or designee to the limited liability company as a member, effective as of the occurrence of the event that terminated the continued membership of the last remaining member; or

(e) The entry of an order of dissolution by a circuit court pursuant to subsection (3).

(2) So long as the limited liability company continues to have at least one remaining member, and except as provided in paragraph (1)(d) or as otherwise provided in the articles of organization or operating agreement, the death, retirement, resignation, expulsion, bankruptcy, or dissolution of any member or the occurrence of any other event that terminates the continued membership of any member shall not cause the limited liability company to be dissolved, and upon the occurrence of any such event, the limited liability company shall be continued without dissolution.

Section 25. Subsection (3) of section 608.444, Florida Statutes, is amended to read:

608.444 Distribution of assets upon dissolution.—In settling accounts after dissolution of a limited liability company, the assets of the limited liability company must be distributed in the following order:

(3) Except as provided in the articles of organization or the operating agreement, to members pro rata in proportion to their then-current percentage, or other interests in the profits, of the limited liability company.

Section 26. Subsection (6) of section 608.445, Florida Statutes, is amended to read:

608.445 Articles of dissolution.—The articles of dissolution shall set forth:

(6) The fact that there are no suits pending against the limited liability company in any court or that adequate provision has been made for the satisfaction of any judgment, order, or decree which may be entered against it in any pending suit.

Section 27. Subsection (2) of section 608.446, Florida Statutes, is amended to read:

608.446 Filing of articles of dissolution.—

(2) The certificate of dissolution shall be returned to the representative of the dissolved limited liability company. Upon the issuance of such certificate of dissolution, the existence of the limited liability company shall cease, except for the purpose of suits, other proceedings, and appropriate action as provided in this chapter. The manager or managers in office at the time of dissolution, or the survivors of them, or, if none, the members, shall thereafter be trustees for the members and creditors of the dissolved limited liability company; and as such the trustees shall have authority to distribute any ~~company~~ company property of the limited liability company discovered after dissolution, to convey real estate, and to take such other action as may be necessary on behalf of and in the name of such dissolved limited liability company.

Section 28. Subsection (2) of section 608.449, Florida Statutes, is amended to read:

608.449 Grounds for judicial dissolution.—A circuit court may dissolve a limited liability company:

(2) In a proceeding by a manager or member if it is established that:

(a) The managers, managing members, or members are deadlocked in the management of the limited liability company affairs, the members are unable to break the deadlock, and irreparable injury to the limited liability company is threatened or being suffered; or

(b) The limited liability company's assets are being misappropriated or wasted.

Section 29. Subsections (1) and (2) of section 608.463, Florida Statutes, are amended to read:

608.463 Service of process.—

(1) Process against a limited liability company may be served:

(a) In accordance with chapter 48 or chapter 49, as if the limited liability company were a partnership.

(b) Upon the registered agent at the agent's street address.

(2) Any notice to or demand on a limited liability company organized pursuant to this chapter may be made:

(a) By delivery to a manager of the limited liability company, if the management of the limited liability company is vested in one or more managers ~~a manager~~, or by delivery to a member, if the management of the limited liability company is vested in the members.

(b) By mailing a writing, which notice or demand in writing is mailed to the registered office of the limited liability company in this state or to another address in this state which is the principal office of the limited liability company.

Section 30. Subsection (1) of section 608.504, Florida Statutes, is amended to read:

608.504 Amended certificate of authority.—

(1) A foreign limited liability company authorized to transact business in this state shall make application to the Department of State to obtain an amended certificate of authority if any statement in the limited liability company's application was false or becomes false due to change in circumstances or if the foreign limited liability company changes:

(a) Its limited liability company name.

(b) The period of its duration.

(c) The jurisdiction of its organization.

Section 31. Subsection (2) of section 608.507, Florida Statutes, is amended to read:

608.507 Registered office and registered agent of foreign limited liability company.—Each foreign limited liability company in this state must continuously maintain in this state:

(2) A registered agent, which ~~who~~ may be either:

(a) An individual who resides in this state and whose business office is identical with the registered office; or

~~(b) A domestic corporation or domestic limited liability company the business office of which is identical with the registered office; or~~

~~(b)(c) A foreign or domestic entity corporation or foreign limited liability company authorized to transact business in this state which has a the business office of which is identical with the registered office.~~

Section 32. Section 608.704, Florida Statutes, is created to read:

608.704 Reservation of power to amend or repeal.—The Legislature has the power to amend or repeal all or part of this chapter at any time, and all domestic and foreign limited liability companies subject to this chapter shall be governed by the amendment or repeal.

Section 33. Section 608.705, Florida Statutes, is created to read:

608.705 Effect of repeal of prior acts.—

(1) Except as provided in subsection (2), the repeal of a statute by this chapter does not affect:

(a) The operation of the statute or any action taken under it before its repeal, including, without limiting the generality of the foregoing, the continuing validity of any provision of the articles of organization, regulations, or operating agreements of a limited liability company authorized by the statute at the time of its adoption;

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

(c) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(d) Any proceeding, merger, sale of assets, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, merger, sale of assets, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

(2) If a penalty or punishment imposed for violation of a statute is reduced by this chapter, the penalty or punishment if not already imposed shall be imposed in accordance with this chapter.

Section 34. This act shall take effect October 1, 2002.

Approved by the Governor May 23, 2002.

Filed in Office Secretary of State May 23, 2002.