Committee/Subcommittee hearing bill: Judiciary Committee

Representative Byrd offered the following:

Amendment (with title amendment)

Remove lines 11479-12701 and insert:

(f)(h) Any additional information that the department has identified as necessary or appropriate to enable the department of State to carry out the provisions of this chapter.

(2) If an annual report contains the name and address of a registered agent which differs from the information shown in the records of the department immediately before the annual report becomes effective, the differing information in the annual report is considered a statement of change under s. 607.0502.

Proof to the satisfaction of the Department of State that on or before May 1 such report was deposited in the United States mail.
in a sealed envelope, properly addressed with postage prepaid, shall be deemed compliance with this requirement.

(3) If an annual report does not contain the information required in subsection (1) by this section and delivered to the department of State within 30 days after the effective date of the notice, it will be considered timely delivered and deemed to be timely filed.

(4) Each report shall be executed by the corporation by an officer or director or, if the corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation by such receiver or trustee, and the signing thereof shall have the same legal effect as if made under oath, without the necessity of appending such oath thereto.

4 The first annual report must be delivered to the department of State between January 1 and May 1 of the year following the calendar year in which a domestic corporation's articles of incorporation became effective corporation was incorporated or a foreign corporation obtained its certificate of authority was authorized to transact business in this state. Subsequent annual reports must be delivered to the department of State between January 1 and May 1 of each calendar year.
thereafter. If one or more forms of annual report are submitted for a calendar year, the department shall file each of them and make the information contained in them part of the official record. The first form of annual report filed in a calendar year shall be considered the annual report for the calendar year, and each report filed after that one in the same calendar year shall be treated as an amended report for that calendar year the subsequent calendar years.

(5) Information in the annual report must be current as of the date the annual report is delivered to the department for filing executed on behalf of the corporation.

(7) If an additional updated report is received, the department shall file the document and make the information contained therein part of the official record.

(6) A domestic corporation or foreign corporation that fails any corporation failing to file an annual report that which complies with the requirements of this section may not prosecute or maintain shall not be permitted to maintain or defend any action in any court of this state until the such report is filed and all fees and penalties taxes due under this chapter act are paid, and shall be subject to dissolution or cancellation of its certificate of authority to transact do business as provided in this chapter act.

(7) The department shall prescribe the forms, which may be in an electronic format, on which to make the annual report.
called for in this section and may substitute the uniform
business report, pursuant to s. 606.06, as a means of satisfying
the requirement of this chapter part.

(8) As a condition of a merger under s. 607.1101, each
party to a merger which exists under the laws of this state, and
each party to the merger which exists under the laws of another
jurisdiction and has a certificate of authority to transact
business or conduct its affairs in this state, must be active
and current in filing its annual reports in the records of the
department through December 31 of the calendar year in which the
articles of merger are submitted to the department for filing.

(9) As a condition of a conversion of an entity to a
corporation under s. 607.11930, the entity, if it exists under
the laws of this state or if it exists under the laws of another
jurisdiction and has a certificate of authority to transact
business or conduct its affairs in this state, must be active
and current in filing its annual reports in the records of the
department through December 31 of the calendar year in which the
articles of conversion are submitted to the department for
filing.

(10) As a condition of a conversion of a domestic
corporation to another type of entity under s. 607.11930, the
domestic corporation converting to the other type of entity must
be active and current in filing its annual reports in the
records of the department through December 31 of the calendar
year in which the articles of conversion are submitted to the
department for filing.

(11) As a condition of a share exchange between a
corporation and another entity under s. 607.1102, the
corporation, and each other entity that is a party to the share
exchange which exists under the laws of this state, and each
party to the share exchange which exists under the laws of
another jurisdiction and has a certificate of authority to
transact business or conduct its affairs in this state, must be
active and current in filing its annual reports in the records
of the department through December 31 of the calendar year in
which the articles of share exchange are submitted to the
department for filing.

(12) As a condition of domestication of a domestic
corporation into a foreign jurisdiction under s. 607.11920, the
domestic corporation domesticating into a foreign jurisdiction
must be active and current in filing its annual reports in the
records of the department through December 31 of the calendar
year in which the articles of domestication are submitted to the
department for filing.

Section 225. Section 607.1701, Florida Statutes, is
amended to read:

607.1701 Application to existing domestic corporation.—
This chapter applies to all domestic corporations in
existence on January 1, 2020, that were
incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

Section 226. Section 607.1702, Florida Statutes, is amended to read:

607.1702 Application to qualified foreign corporations.—A foreign corporation authorized to transact business in this state on January 1, 2020, is subject to this chapter, is deemed to be authorized to transact business in this state, and is not required to obtain a new certificate of authority to transact business under this chapter.

Section 227. Section 607.1711, Florida Statutes, is amended to read:

607.1711 Application to foreign and interstate commerce.—The provisions of this chapter apply to commerce with foreign nations and among the several states only insofar as the same may be permitted under the Constitution and laws of the United States.

Section 228. Section 607.1801, Florida Statutes, is repealed.

Section 229. Section 607.1907, Florida Statutes, is amended to read:

607.1907 Saving provision Effect of repeal of prior acts.—(1) Except as to procedural provisions, this act does not
affect a pending action or proceeding or a right accrued before January 1, 2020, and a pending civil action or proceeding may be completed, and a right accrued may be enforced, as if this act had not become effective provided in subsection (2), the repeal of a statute by this act 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 incorporation or bylaws of a corporation 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, consolidation, sale of assets, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, merger, consolidation, 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 or rule repealed by this act is reduced by this act, the penalty or punishment, if not already imposed, shall be imposed in accordance with this act.
Section 230. Section 607.1908, Florida Statutes, is created to read:

607.1908 Severability clause.—If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Section 231. Subsections (2) and (3) of section 607.504, Florida Statutes, are amended to read:

607.504 Election of social purpose corporation status.—
(2) A plan of merger, domestication, conversion, or share exchange must be adopted by the minimum status vote if an entity that is not a social purpose corporation is a party to the merger, domestication, or conversion or if the exchanging entity in a share exchange and the surviving, new, or resulting entity is, or will be, a social purpose corporation.

(3) If an entity elects to become a social purpose corporation by amendment of the articles of incorporation or by a merger, conversion, or share exchange, the shareholders of the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1340 ss. 607.1301-607.1333.

Section 232. Subsections (2) and (3) of section 607.604, Florida Statutes, are amended to read:

607.604 Election of benefit corporation status.—
(2) A plan of merger, domestication, conversion, or share exchange must be adopted by the minimum status vote if an entity that is not a benefit corporation is a party to a merger, domestication, or conversion or if the exchanging entity in a share exchange and the surviving, new, or resulting entity is, or will be, a benefit corporation.

(3) If an entity elects to become a benefit corporation by amendment of the articles of incorporation or by a merger, domestication, conversion, or share exchange, the shareholders of the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1340 ss. 607.1301-607.1333.

Section 233. Paragraph (b) of subsection (23) and subsections (55) and (58) of section 605.0102, Florida Statutes, are amended to read:

605.0102 Definitions.—As used in this chapter, the term:
(23)
(b) "Entity" does not include:
1. An individual;
2. A trust with a predominantly donative purpose or a charitable trust;
3. An association or relationship that is not a partnership solely by reason of s. 620.8202(2) s. 620.8202(3) or a similar provision of the law of another jurisdiction;
4. A decedent's estate; or
5. A government or a governmental subdivision, agency, or
instrumentality.

(55) "Private organic rules" means the rules, whether or not in a record, which govern the internal affairs of an entity, are binding on all its interest holders, and are not part of its public organic record, if any. Where private organic rules have been amended or restated, the term means the private organic rules as last amended or restated. The term includes:

(a) The bylaws of a business corporation.
(b) The bylaws of a nonprofit corporation.
(c) The partnership agreement of a general partnership.
(d) The partnership agreement of a limited partnership.
(e) The operating agreement, limited liability company agreement, or similar agreement of a limited liability company.
(f) The bylaws, trust instrument, or similar rules of a real estate investment trust.
(g) The trust instrument of a statutory trust or similar rules of a business trust or common law business trust.

(58) "Public organic record" means a record, the filing of which by a governmental body is required to form an entity, and an amendment to or restatement of that record. Where a public organic record has been amended or restated, the term means the public organic record as last amended or restated. The term includes the following:

(a) The articles of incorporation of a business corporation.
(b) The articles of incorporation of a nonprofit corporation.

(c) The certificate of limited partnership of a limited partnership.

(d) The articles of organization of a limited liability company.

(e) The articles of incorporation of a general cooperative association or a limited cooperative association.

(f) The certificate of trust of a statutory trust or similar record of a business trust.

(g) The articles of incorporation of a real estate investment trust.

Section 234. Paragraph (i) of subsection (3) of section 605.0105, Florida Statutes, is 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 grounds for dissolution specified in s. 605.0702. A deadlock resolution mechanism does not vary the grounds for dissolution for the purposes of this paragraph.

Section 235. Paragraphs (a) and (b) of subsection (1) of section 605.0112, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

605.0112 Name.—

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Published On: 4/15/2019 9:37:03 PM

Page 11 of 49
(1) The name of a limited liability company:

(a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or "LLC-" as will clearly indicate that it is a limited liability company instead of a natural person, partnership, corporation, or other business entity.

(b) Must be distinguishable in the records of the Division of Corporations of the department from the names of all other entities or filings that are on file with the department, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state; however, a limited liability company may register under a name that is not otherwise distinguishable on the records of the department with the written consent of the other owner entity if the consent is filed with the department at the time of registration of such name and if such name is not identical to the name of the other entity. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

1. A suffix.
2. A definite or indefinite article.
3. The word "and" and the symbol "."
4. The singular, plural, or possessive form of a word.
5. A recognized abbreviation of a root word.
6. A punctuation mark or a symbol.

(6) A limited liability company in existence before January 1, 2020, that has a name that does not clearly indicate that it is a limited liability company instead of a natural person, partnership, corporation, or other business entity may continue using such name until the limited liability company dissolves or amends its name in the records of the department.

Section 236. Section 605.01125, Florida Statutes, is created to read:

605.01125 Reserved name.—
(1) A person may reserve the exclusive use of the name of a limited liability company, including an alternate name for a foreign limited liability company whose name is not available, by delivering an application to the department for filing. The application must set forth the name and address of the applicant and the name proposed to be reserved. If the department finds that the name of the limited liability company applied for is available, it must reserve the name for the applicant's exclusive use for a nonrenewable 120-day period.

(2) The owner of a reserved name of a limited liability company may transfer the reservation to another person by delivering to the department a signed notice of the transfer that states the name and address of the transferee.

(3) The department may revoke any reservation if, after a
Section 237. Subsections (1) and (5) of section 605.0113, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

605.0113 Registered agent.—

(1) Each limited liability company and each foreign limited liability company that has a certificate of authority under s. 605.0902 shall designate and continuously maintain in this state:

(a) A registered office, which may be the same as its place of business in this state; and

(b) A registered agent, who must be:

1. An individual who resides in this state and whose business address is identical to the address of the registered office; or

2. Another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or

3. A foreign entity authorized to transact business in this state that is an authorized entity and whose business address is identical to the address of the registered office.

(5) A limited liability company and each foreign limited
liability company that has a certificate of authority under s. 605.0902 may not prosecute or maintain, maintain, or defend an action in a court in this state until the limited liability company complies with this section, pays to the department any amounts required under this chapter, and, to the extent ordered by a court of competent jurisdiction, and pays to the department a penalty of $5 for each day it has failed to comply or $500, whichever is less, and pays any other amounts required under this chapter.

(6) For the purposes of this section, "authorized entity" means:

(a) A corporation for profit.
(b) A limited liability company.
(c) A limited liability partnership.
(d) A limited partnership, including a limited liability limited partnership.

Section 238. Paragraphs (c), (d), and (e) of subsection (1) of section 605.0114, Florida Statutes, are amended to read:

605.0114 Change of registered agent or registered office.—
(1) In order to change its registered agent or registered office address, a limited liability company or a foreign limited liability company may deliver to the department for filing a statement of change containing the following:

(c) If the current registered agent is to be changed, the name of the new registered agent.
(d) The street address of its current registered office for its current registered agent.

(e) If the street address of the current registered office is to be changed, the new street address of the registered office in this state.

Section 239. Subsection (2) of section 605.0115, Florida Statutes, is amended to read:

605.0115  Resignation of registered agent—

(2) After delivering the statement of resignation to the department for filing, the registered agent shall mail a copy to the limited liability company's or foreign limited liability company's current mailing address.

Section 240. Paragraphs (b) through (e) of subsection (1) of section 605.0116, Florida Statutes, are amended to read:

605.0116  Change of name or address by registered agent—

(1) If a registered agent changes his or her name or address, the agent may deliver to the department for filing a statement of change that provides the following:

(b) The name of the registered agent as currently shown in the records of the department for the limited liability company or foreign limited liability company.

(c) If the name of the registered agent has changed, its new name.

(d) If the address of the registered agent has changed, the new address.
Section 241. Present subsection (7) of section 605.0117, Florida Statutes, is redesignated as subsection (8), subsections (1), (2), (3), (4), and (6) of that section are amended, and a new subsection (7) is added to that section, to read:

605.0117 Service of process, notice, or demand.—

(1) A limited liability company or registered foreign limited liability company may be served with process, notice, or a demand required or authorized by law by serving on its registered agent.

(2) If a limited liability company or registered foreign limited liability company ceases to have a registered agent or if its registered agent cannot with reasonable diligence be served, the process, notice, or demand required or permitted by law may instead be served:

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

(b) On a manager of a manager-managed limited liability company or registered foreign limited liability company.

(3) If the process, notice, or demand cannot be served on a limited liability company or registered foreign limited liability company pursuant to subsection (1) or subsection (2), the process, notice, or demand may be served on the secretary of state department as an agent of the company.
(4) Service of process on the secretary of state with process, notice, or a demand on the department may be made by delivering to and leaving with the department duplicate copies of the process, notice, or demand.

(6) The department shall keep a record of each process, notice, and demand served pursuant to this section and record the time of and the action taken regarding the service.

(7) Any notice or demand on a limited liability company or registered foreign limited liability company under this chapter may be given or made to any member of a member-managed limited liability company or registered foreign limited liability company or to any manager of a manager-managed limited liability company or registered foreign limited liability company; to the registered agent of the limited liability company or registered foreign limited liability company at the registered office of the limited liability company or registered foreign limited liability company in this state; or to any other address in this state that is in fact the principal office of the limited liability company or registered foreign limited liability company in this state.

Section 242. Subsection (3) of section 605.0118, Florida Statutes, is amended to read:

605.0118 Delivery of record.—

(3) If a check is mailed to the department for payment of an annual report fee or the annual supplemental fee required
under s. 607.193, the check shall be deemed to have been received by the department as of the postmark date appearing on the envelope or package transmitting the check if the envelope or package is received by the department.

Section 243. Section 605.0207, Florida Statutes, is amended to read:

605.0207 Effective date and time.—Except as otherwise provided in s. 605.0208, and subject to s. 605.0209(3), any document delivered to the department for filing under this chapter may specify an effective time and a delayed effective date. In the case of initial articles of organization, a prior effective date may be specified in the articles of organization if such date is within 5 business days before the date of filing. Subject to ss. 605.0114, 605.0115, 605.0208, and 605.0209, a record filed by the department is effective:

(1) If the record filed does not specify an effective time and does not specify a prior or a delayed effective date, on the date and at the time the record is accepted filed as evidenced by the department's endorsement of the date and time on the filing record.

(2) If the record filed specifies an effective time, but not a prior or delayed effective date, on the date the record is filed at the time specified in the filing record.

(3) If the record filed specifies a delayed effective date, but not an effective time, at 12:01 a.m. on the earlier...
of:
(a) The specified date; or
(b) The 90th day after the record is filed.
(4) If the record filed specifies a delayed effective date and an effective time, at the specified time on or the earlier of:
(a) The specified date; or
(b) The 90th day after the record is filed.
(5)(4) If the record filed is the initial articles of organization and specifies an effective date before the effective date of the filing, but no effective time, at 12:01 a.m. on the later of:
(a) The specified date; or
(b) The 5th business day before the record is filed.
(6)(5) If the record filed is the initial articles of organization and specifies an effective time and a delayed effective date, at the specified time on the earlier of:
(a) The specified date; or
(b) The 90th day after the record is filed.
(6) If the record specifies an effective time and a prior effective date before the date of the filing, at the specified time on the later of:
(a) The specified date; or
(b) The 5th business day before the record is filed.
(7) If a filed document does not specify the time zone or
place at which the date or time, or both, is to be determined, the date or time, or both, at which it becomes effective shall be those prevailing at the place of filing in this state.

Section 244. Subsection (3) of section 605.0209, Florida Statutes, is amended to read:

605.0209 Correcting filed record.—
(3) A statement of correction:
(a) May not state a delayed effective date;
(b) Must be signed by the person correcting the filed record;
(c) Must identify the filed record to be corrected, including such record's filing date, or attach a copy of the record to the statement of correction;
(d) Must specify the inaccuracy or defect to be corrected; and
(e) Must correct the inaccuracy or defect.

Section 245. Subsection (7) of section 605.0210, Florida Statutes, is amended to read:

605.0210 Duty of department to file; review of refusal to file; transmission of information by department.—
(7) If the department refuses to file a record delivered to its office for filing, the person who submitted the record for filing may petition the Circuit Court of Leon County to compel filing of the record. The record and the explanation from of the department of the refusal to file must be attached to the
petition. The court may decide the matter in a summary proceeding and the court may summarily order the department to file the record or take other action the court considers appropriate. The court's final decision may be appealed as in other civil proceedings.

Section 246. Paragraph (a) of subsection (2) and subsection (3) of section 605.0211, Florida Statutes, are amended to read:

605.0211 Certificate of status.—

(2) The department, upon request and payment of the requisite fee, shall furnish a certificate of status for a foreign limited liability company if the records filed show that the department has filed a certificate of authority. A certificate of status for a foreign limited liability company must state the following:

(a) The foreign limited liability company's name and any current alternate name adopted under s. 605.0906(1) for use in this state.

(3) Subject to any qualification stated in the certificate of status, a certificate of status issued by the department is conclusive evidence that the domestic limited liability company is in existence and is of active status in this state or the foreign limited liability company is authorized to transact business in this state and is of active status in this state.

Section 247. Section 605.0215, Florida Statutes, is amended to read:
amended to read:

605.0215  Certificates to be received in evidence and evidentiary effect of copy of filed document.—All certificates issued by the department in accordance with this chapter shall be taken and received in all courts, public offices, and official bodies as prima facie evidence of the facts stated. A certificate from the department delivered with a copy of a document filed by the department bearing the signature of the secretary of state, which may be in facsimile, and the seal of this state is conclusive evidence that the original document is on file with the department.

Section 248. Subsections (1) through (4) of section 605.04092, Florida Statutes, are amended to read:

605.04092  Conflict of interest transactions.—

(1)  As used in this section, the following terms and definitions apply:

(a)  A member or manager is "indirectly" a party to a transaction if that member or manager has a material financial interest in or is a director, officer, member, manager, or partner of a person, other than the limited liability company, who is a party to the transaction.

(b)  A member or manager has an "indirect material financial interest" if a spouse or other family member has a material financial interest in the transaction, other than having an indirect interest as a member or manager of the
limited liability company, or if the transaction is with an 
entity, other than the limited liability company, which has a 
material financial interest in the transaction and controls, or 
is controlled by, the member or manager or another person 
specified in this subsection.

(c) "Fair to the limited liability company" means that the 
transaction, as a whole, is beneficial to the limited liability 
company and its members, taking into appropriate account whether 
it is:

1. Fair in terms of the member's or manager's dealings 
with the limited liability company in connection with that 
transaction; and

2. Comparable to what might have been obtainable in an 
arm's length transaction.

(d) "Family member" includes any of the following:

1. The member's or manager's spouse.

2. A child, stepchild, parent, stepparent, grandparent, 
sibling, step sibling, or half sibling of the member or manager 
or the member's or manager's spouse.

(e) "Manager's conflict of interest transaction" means a 
transaction between a limited liability company and one or more 
of its managers, or another entity in which one or more of the 
limited liability company's managers is directly or indirectly a 
party to the transaction, other than being an indirect party as 
a result of being a member of the limited liability company, and
has a direct or indirect material financial interest or other material interest.

(f) "Material financial interest" or "other material interest" means a financial or other interest in the transaction that would reasonably be expected to impair the objectivity of the judgment of the member or manager when participating in the action on the authorization of the transaction.

(g) "Member's conflict of interest transaction" means a transaction between a limited liability company and one or more of its members, or another entity in which one or more of the limited liability company's members is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member of the limited liability company, and has a direct or indirect material financial interest or other material interest.

(2) If the requirements of this section have been satisfied, a member's conflict of interest transaction or a manager's conflict of interest transaction between a limited liability company and one or more of its members or managers, or another entity in which one or more of the limited liability company's members or managers have a financial or other interest, is not void or voidable because of that relationship or interest; because the members or managers are present at the meeting of the members or managers at which the transaction was authorized, approved, effectuated, or ratified; or because the...
votes of the members or managers are counted for such purpose.

(3) If a member's conflict of interest transaction or a manager's conflict of interest transaction is fair to the limited liability company at the time it is authorized, approved, effectuated, or ratified, the fact that a member or manager of the limited liability company is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a member or manager of the limited liability company, or has a direct or indirect material financial interest or other interest in the transaction, other than having an indirect interest as a result of being a member or manager of the limited liability company, is not grounds for equitable relief and does not give rise to an award of damages or other sanctions.

(4)(a) In a proceeding challenging the validity of a member's conflict of interest transaction or a manager's conflict of interest transaction or in a proceeding seeking equitable relief, award of damages, or other sanctions with respect to a member's conflict of interest transaction or a manager's conflict of interest transaction, described in subsection (3), the person challenging the validity or seeking equitable relief, award of damages, or other sanctions has the burden of proving the lack of fairness of the transaction if:

1. In a manager-managed limited liability company, the material facts of the transaction and the member's or manager's
interest in the transaction were disclosed or known to the
managers or a committee of managers who voted upon the
transaction and the transaction was authorized, approved, or
ratified by a majority of the disinterested managers even if the
disinterested managers constitute less than a quorum; however,
the transaction cannot be authorized, approved, or ratified
under this subsection solely by a single manager; and

2. In a member-managed limited liability company, or a
manager-managed limited liability company in which the managers
have failed to or cannot act under subparagraph 1., the material
facts of the transaction and the member's or manager's interest
in the transaction were disclosed or known to the members who
voted upon such transaction and the transaction was authorized,
approved, or ratified by a majority-in-interest of the
disinterested members even if the disinterested members
constitute less than a quorum; however, the transaction cannot
be authorized, approved, or ratified under this subsection
solely by a single member; or

(b) If neither of the conditions provided in paragraph (a)
has been satisfied, the person defending or asserting the
validity of a member's conflict of interest transaction or a
manager's conflict of interest transaction described in
subsection (3) has the burden of proving its fairness in a
proceeding challenging the validity of the transaction.

Section 249. Paragraph (c) of subsection (3) of section
605.0410, Florida Statutes, is amended to read:

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

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

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

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

2. The company's reasons for declining, if the company declines to provide any demanded information.

Section 250. Paragraph (b) of subsection (1) and subsection (2) of section 605.0702, Florida Statutes, are amended, and subsections (3), (4), and (5) are added to that section, to read:

605.0702  Grounds for judicial dissolution.—

(1) A circuit court may dissolve a limited liability company:

(b) In a proceeding by a manager or member to dissolve the limited liability company if it is established that:

1. The conduct of all or substantially all of the company's activities and affairs is unlawful;

2. It is not reasonably practicable to carry on the
company's activities and affairs in conformity with the articles
of organization and the operating agreement;

3. The managers or members in control of the company have
acted, are acting, or \textbf{will} are reasonably expected to
act in a
manner that is illegal or fraudulent;

4. The limited liability company's assets are being
misappropriated or wasted, causing injury to the limited
liability company, or in a proceeding by a member, causing
injury to one or more of its members; or

5. The managers or the members of the limited liability
company are deadlocked in the management of the limited
liability company's activities and affairs, the members are
unable to break the deadlock, and irreparable injury to the
limited liability company is threatened or being suffered.

(2)(a) If the managers or the members of the limited
liability company are deadlocked in the management of the
limited liability company's activities and affairs, the members
are unable to break the deadlock, and irreparable injury to the
limited liability company is threatened or being suffered, if
the operating agreement contains a deadlock sale provision that
has been initiated before the time that the court determines
that the grounds for judicial dissolution exist under
subparagraph (1)(b)5., then such deadlock sale provision applies
to the resolution of such deadlock instead of the court entering
an order of judicial dissolution or an order directing the
purchase of petitioner's interest under s. 605.0706, so long as the provisions of such deadlock sale provision are thereafter initiated and effectuated in accordance with the terms of such deadlock sale provision or otherwise pursuant to an agreement of the members of the company.

(b) As used in this section, the term "deadlock sale provision" means a provision in an operating agreement which is or may be applicable in the event of a deadlock among the managers or the members of the limited liability company which the members of the company are unable to break and which provides for a deadlock breaking mechanism, including, but not limited to:

1. A redemption or a purchase and sale of interests; or
2. A governance change, among or between members;
3. The sale of the company or all or substantially all of the assets of the company; or
4. A similar provision that, if initiated and effectuated, breaks the deadlock by causing the transfer of interests, a governance change, or the sale of all or substantially all of the company's assets. A deadlock sale provision in an operating agreement which is not initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s. 605.0706 does not adversely affect the rights of members and managers to seek judicial dissolution under
subparagraph (1)(b)5. or the rights of the company or one or more members to purchase the petitioner's interest under s. 605.0706. The filing of an action for judicial dissolution on the grounds described in subparagraph (1)(b)5. or an election to purchase the petitioner's interest under s. 605.0706 does not adversely affect the right of a member to initiate an available deadlock sale provision under the operating agreement or to enforce a member-initiated or an automatically-initiated deadlock sale provision if the deadlock sale provision is initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s. 605.0706.

(3) A deadlock sale provision in an operating agreement which is not initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s. 605.0706, does not adversely affect the rights of members and managers to seek judicial dissolution under subparagraph (1)(b)5. or the rights of the company or one or more members to purchase the petitioner's interest under s. 605.0706. The filing of an action for judicial dissolution on the grounds described in subparagraph (1)(b)5. or an election to purchase the petitioner's interest under s. 605.0706, does not adversely affect the right of a member to initiate an available deadlock sale provision.
sale provision under the operating agreement or to enforce a member-initiated or an automatically-initiated deadlock sale provision if the deadlock sale provision is initiated and effectuated before the court enters an order of judicial dissolution under subparagraph (1)(b) or an order directing the purchase of petitioner's interest under s. 605.0706.

Section 251. Subsections (1), (2), (4), (5), (6), (7), and (8) of section 605.0706, Florida Statutes, are amended to read:

605.0706 Election to purchase instead of dissolution.—

(1) In a proceeding initiated by a member of a limited liability company under s. 605.0702(1)(b) to dissolve the company, the company may elect, or, if it fails to elect, one or more other members may elect, to purchase the entire interest of the petitioner in the company at the fair value of the interest. An election pursuant to this section is irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court within 90 days after the filing of the petition by the petitioning member under s. 605.0702(1)(b) or at such later time as the court may allow. If the election to purchase is filed, the company shall within 10 days thereafter give written notice to all members, other than the petitioning member. The notice must describe the interest in the company owned by each petitioning member and must advise the
recipients of their right to join in the election to purchase the petitioning member's interest in accordance with this section. Members who wish to participate must file notice of their intention to join in the purchase within 30 days after the effective date of the notice. A member who has filed an election or notice of the intent to participate in the election to purchase thereby becomes a party to the proceeding and shall participate in the purchase in proportion to the ownership interest as of the date the first election was filed unless the members otherwise agree or the court otherwise directs. After an election to purchase has been filed by the limited liability company or one or more members, the proceeding under s. 605.0702(1)(b) or (2) may not be discontinued or settled, and the petitioning member may not sell or otherwise dispose of the interest of the petitioner in the company unless the court determines that it would be equitable to the company and the members, other than the petitioner, to authorize such discontinuance, settlement, sale, or other disposition or the sale is pursuant to a deadlock sale provision described in s. 605.0702(1)(b).

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of a party, may shall stay the proceedings to dissolve under s. 605.0702(1)(b) and shall, whether or not the proceeding is stayed, determine the fair value of the petitioner's interest as
of the day before the date on which the petition was filed or as of such other date as the court deems appropriate under the circumstances.

(5) Upon determining the fair value of the petitioner's interest in the company, unless the petitioner's interest has been acquired pursuant to a deadlock sale provision before the order, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include: payment of the purchase price in installments, when necessary in the interests of equity; a provision for security to ensure payment of the purchase price and additional costs, fees, and expenses as may have been awarded; and, if the interest is to be purchased by members, the allocation of the interest among those members. In allocating the petitioner's interest among holders of different classes or series of interests in the company, the court shall attempt to preserve any the existing distribution of voting rights among holders of different classes or series insofar as practicable and may direct that holders of any a specific class or classes or series may not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good faith, payment of interest is not allowed. If the court finds that the petitioning member had
probable grounds for relief under s. 605.0702(1)(b) or 605.0702(1)(b)3. or 4., it may award expenses to the petitioning member, including reasonable fees and expenses of counsel and of experts employed by petitioner.

(6) The **upon** entry of an order under subsection (3) or subsection (5) shall be subject to subsection (8), and the order may not be entered unless the award is determined by the court to be allowed under subsection (8). In determining compliance with s. 605.0405, the court may rely on an affidavit from the limited liability company as to compliance with that section as of the measurement date. Upon entry of an order under subsection (3) or subsection (5), the court shall dismiss the petition to dissolve the limited liability company under s. 605.0702(1)(b), and the petitioning member shall no longer have rights or status as a member of the limited liability company except the right to receive the amounts awarded by the order of the court, which shall be enforceable in the same manner as any other judgment.

(7) The purchase ordered pursuant to subsection (5) shall must be made within 10 days after the date the order becomes final unless, before that time, the limited liability company files with the court a notice of its intention to dissolve pursuant to s. 605.0701(2), in which case articles of dissolution for the company must be filed within 50 days thereafter. Upon filing of such articles of dissolution, the limited liability company shall be wound up in accordance with
ss. 605.0709–605.0713, and the order entered pursuant to subsection (5) shall no longer be of force or effect except that the court may award the petitioning member reasonable fees and expenses of counsel and experts in accordance with subsection (5), and the petitioner may continue to pursue any claims previously asserted on behalf of the limited liability company.

(8) Any award by the limited liability company pursuant to an order under subsection (3) or subsection (5), other than an award of fees and expenses pursuant to subsection (5), is subject to s. 605.0405. Unless otherwise provided in the court's order, the effect of a distribution under s. 605.0405 shall be measured as of the date of the court's order under subsection (3) or subsection (5).

Section 252. Subsection (5) of section 605.0715, Florida Statutes, is amended, and subsection (6) is added to that section, to read:

605.0715 Reinstatement.—

(5) 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 business entity limited liability company.

(6) If the name of the dissolved limited liability company
has been lawfully assumed in this state by another business entity, the department shall require the dissolved limited liability company to amend its articles of organization to change its name before accepting the application for reinstatement.

Section 253. Subsections (2) and (3) of section 605.0716, Florida Statutes, are amended, and subsection (4) is added to that section, to read:

605.0716 Judicial review of denial of reinstatement.—
(2) Within 30 days after service of a notice of denial of reinstatement, a limited liability company may appeal the denial by petitioning the Circuit Court of Leon County in the applicable county, as defined in s. 605.0711(15), to set aside the dissolution. The petition must be served on the department and contain a copy of the department's notice of administrative dissolution, the company's application for reinstatement, and the department's notice of denial.

(3) The circuit court may order the department to reinstate a dissolved limited liability company or take other action the court considers appropriate.

(4) The circuit court's final decision may be appealed as in other civil proceedings.

Section 254. Section 605.0801, Florida Statutes, is amended to read:

605.0801 Direct action by member.—
(1) Subject to subsection (2), a member may maintain a direct action against another member, a manager, or the limited liability company to enforce the member's rights and otherwise protect the member's interests, including rights and interests under the operating agreement or this chapter or arising independently of the membership relationship.

(2) A member maintaining a direct action under this section must plead and prove either:

(a) An actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited liability company; or

(b) An actual or threatened injury resulting from a violation of a separate statutory or contractual duty owed by the alleged wrongdoer to the member or manager, even if the injury is in whole or in part the same as the injury suffered or threatened to be suffered by the limited liability company.

Section 255. Section 605.0803, Florida Statutes, is amended to read:

605.0803  Proper plaintiff.—A derivative action to enforce a right of a limited liability company may be commenced maintained only by a person who is a member at the time the action is commenced and:

(1) Was a member when the conduct giving rise to the action occurred; or

(2) Whose status as a member devolved on the person by
operation of law or pursuant to the terms of the operating agreement from a person who was a member when at the time of the conduct giving rise to the action occurred.

Section 256. Subsection (2) of section 605.0903, Florida Statutes, is amended to read:

605.0903 Effect of a certificate of authority.—

(2) The filing by the department of an application for a certificate of authority means authorizes the foreign limited liability company that filed the application to transact business in this state has obtained a certificate of authority to transact business in this state and is authorized to transact business in this state, subject, however, to the right of the department to suspend or revoke the certificate of authority as provided in this chapter.

Section 257. Subsections (3) and (4) of section 605.0904, Florida Statutes, are amended to read:

605.0904 Effect of failure to have certificate of authority.—

(3) A court may stay a proceeding commenced by a foreign limited liability company or its successor or assignee until it determines whether the foreign limited liability company or its successor requires a certificate of authority. If it so determines, the court may further stay the proceeding until the foreign limited liability company or its successor has obtained a certificate of authority to transact business in...
this state.

(4) The failure of a foreign limited liability company to have a certificate of authority to transact business in this state does not impair the validity of any contract, deed, mortgage, security interest, a contract or act of the foreign limited liability company or prevent the foreign limited liability company from defending an action or proceeding in this state.

Section 258. Subsections (1) and (4) of section 605.0906, Florida Statutes, are amended to read:

605.0906 Noncomplying name of foreign limited liability company.—

(1) A foreign limited liability company whose name is unavailable under or whose name does not otherwise comply with s. 605.0112 shall may use an alternate name that complies with s. 605.0112 to transact business in this state. An alternate name adopted for use in this state shall be cross-referenced to the actual name of the foreign limited liability company in the records of the department. If the actual name of the foreign limited liability company subsequently becomes available in this state or the foreign limited liability company chooses to change its alternate name, a copy of the record approving the change by its members, managers, or other persons having the authority to do so, and executed as required pursuant to s. 605.0203, shall be delivered to the department for filing.
If a foreign limited liability company authorized to transact business in this state changes its name to one that does not comply with s. 605.0112, it may not thereafter transact business in this state until it complies with subsection (1) and obtains an amended certificate of authority pursuant to s. 605.0907.

Section 259. Subsections (2) and (4) of section 605.0907, Florida Statutes, are amended to read:

605.0907 Amendment to certificate of authority.—

(2) The amendment must be filed within 90 days after the occurrence of a change described in subsection (1), must be signed by an authorized representative of the foreign limited liability company, and must state the following:

(a) The name of the foreign limited liability company as it appears on the records of the department.

(b) Its jurisdiction of formation.

(c) The date the foreign limited liability company was authorized to transact business in this state.

(d) If the name of the foreign limited liability company has been changed, the name relinquished and its new name.

(e) If the amendment changes the jurisdiction of formation of the foreign limited liability company, a statement of that change.

(4) The requirements of s. 605.0902 for obtaining an original certificate of authority apply to...
obtaining an amended certificate under this section unless the Secretary of State or other official having custody of the foreign limited liability company's publicly filed records in its jurisdiction of formation did not require an amendment to effectuate the change on its records.

Section 260. Subsection (1) of section 605.0908, Florida Statutes, is amended to read:

605.0908 Revocation of certificate of authority.—

(1) A certificate of authority of a foreign limited liability company to transact business in this state may be revoked by the department if:

(a) The foreign limited liability company does not deliver its annual report to the department by 5 p.m. Eastern Time on the third Friday in September of each year.

(b) The foreign limited liability company does not pay a fee or penalty due to the department under this chapter.

(c) The foreign limited liability company does not appoint and maintain a registered agent as required under s. 605.0113.

(d) The foreign limited liability company does not deliver for filing a statement of a change under s. 605.0114 within 30 days after a change in the name or address of the agent has occurred in the name or address of the agent, unless, within 30 days after the change occurred, either:

1. The registered agent files a statement of change under s. 605.0116; or
2. The change was made in accordance with s. 605.0114(4),
or s. 605.0907(1)(d).†

(e) The foreign limited liability company has failed to amend its certificate of authority to reflect a change in its name on the records of the department or its jurisdiction of formation.†

(f) The department receives a duly authenticated certificate from the official having custody of records in the company's jurisdiction of formation stating that it has been dissolved or is no longer active on the official's records.†

(g) The foreign limited liability company's period of duration has expired.†

(h) A member, manager, or agent of the foreign limited liability company signs a document that the member, manager, or agent knew was false in a material respect with the intent that the document be delivered to the department for filing.‡

(i) The foreign limited liability company has failed to answer truthfully and fully, within the time prescribed in s. 605.1104, interrogatories propounded by the department.

Section 261. Section 605.09091, Florida Statutes, is created to read:

605.09091 Judicial review of denial of reinstatement.—

(1) If the department denies a foreign limited liability company's application for reinstatement after revocation of its certificate of authority, the department shall serve the foreign
limited liability company, pursuant to s. 605.0117(7), with a
written notice that explains the reason or reasons for the
denial.

(2) Within 30 days after service of a notice of denial of
reinstatement, a foreign limited liability company may appeal
the denial by petitioning the Circuit Court of Leon County to
set aside the revocation. The petition must be served on the
department and must contain a copy of the department's notice of
revocation, the foreign limited liability company's application
for reinstatement, and the department's notice of denial.

(3) The circuit court may order the department to
reinstate the certificate of authority of the foreign limited
liability company or take other action the court considers
appropriate.

(4) The circuit court's final decision may be appealed as
in other civil proceedings.

Section 262. Section 605.0910, Florida Statutes, is
amended to read:

605.0910  Withdrawal and cancellation of certificate of
authority.—

(1) To cancel its certificate of authority to transact
business in this state, a foreign limited liability company must
deliver to the department for filing a notice of withdrawal of
certificate of authority. The certificate of authority is
canceled when the notice becomes effective pursuant to s.
605.0207. The notice of withdrawal of certificate of authority must be signed by an authorized representative and state the following:

(a) The name of the foreign limited liability company as it appears on the records of the department.

(b) The name of the foreign limited liability company's jurisdiction of formation.

(c) The date the foreign limited liability company was authorized to transact business in this state.

(d) That the foreign limited liability company is withdrawing its certificate of authority in this state.

(e) That the foreign limited liability company revokes the authority of its registered agent to accept service on its behalf and appoints the secretary of state as its agent for service of process based on a cause of action arising during the time the foreign limited liability company was authorized to transact business in this state.

(f) A mailing address to which the department may mail a copy of any process served on the secretary of state under paragraph (e).

(g) A commitment to notify the department in the future of any change in its mailing address.

(2) After the withdrawal of the foreign limited liability company is effective, service of process on the secretary of state under this section is service on the foreign limited
liability company. Upon receipt of the process, the department shall mail a copy of the process to the foreign limited liability company at the mailing address set forth under paragraph (1)(f).

Section 263. Section 605.0911, Florida Statutes, is amended to read:

605.0911 Withdrawal deemed on conversion to domestic filing entity.—A registered foreign limited liability company authorized to transact business in this state that converts to a domestic limited liability company or to another domestic entity that is organized, incorporated, registered or otherwise formed through the delivery of a record to the department for filing is deemed to have withdrawn its certificate of authority on the effective date of the conversion.

Section 264. Section 605.0912, Florida Statutes, is amended to read:

605.0912 Withdrawal on dissolution, merger, or conversion to nonfiling entity.—

(1) A registered foreign limited liability company that has dissolved and completed winding up, has merged into a foreign entity that is not authorized to transact business registered in this state, or has converted to a domestic or foreign entity that is not organized, incorporated, registered or otherwise formed through the public filing of a record, shall deliver a notice of withdrawal of certificate of authority to
(2) After a withdrawal under this section of a foreign limited liability company entity that has converted to another type of entity is effective, service of process in any action or proceeding based on a cause of action arising during the time the foreign limited liability company was authorized to transact business in this state may be made pursuant to s. 605.0117.

Section 265. Subsection (6) of section 605.1025, Florida Statutes, is amended to read:

605.1025 Articles of merger.—

(6) A limited liability company is not required to deliver articles of merger for filing pursuant to subsection (1) if the limited liability company is named as a merging entity or surviving entity in articles of merger or a certificate of merger filed for the same merger in accordance with s. 607.1105, s. 607.1109, s. 617.1108, s. 620.2108(3), or s. 620.8918(3), and if such articles of merger or certificate of merger substantially comply with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (5).

Section 266. Subsection (5) of section 605.1035, Florida Statutes, is amended to read:

605.1035 Articles of interest exchange.—

(5) A limited liability company is not required to deliver
articles of interest exchange for filing pursuant to subsection (1) if the domestic limited liability company is named as an acquired entity or as an acquiring entity in the articles of share exchange filed for the same interest exchange in accordance with s. 607.1105 and if such articles of share exchange substantially comply with the requirements of this section.

Section 267. Subsection (5) of section 605.1061, Florida Statutes, is amended to read:

605.1061 Appraisal rights; definitions.—The following definitions apply to this section and to ss. 605.1006 and 605.1062-605.1072:

(5) "Fair value" means the value of the member's membership interest determined:

(a) Immediately before the effectiveness of the appraisal event to which the member objects;

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the transaction to which the member objects, unless exclusion would be inequitable to the limited liability company and its remaining members; and

(c) Without discounting for lack of marketability or minority status.

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Published On: 4/15/2019 9:37:03 PM

Page 48 of 49
Section 268. Subsection (3) of section 605.1063, Florida Statutes, is amended to read:

605.1063 Notice of appraisal rights.—

(3) If the appraisal event is to be approved by written consent of the members pursuant to s. 605.04073 other than by a members' meeting:

Title Amendment

Remove line 627 and insert:

reinstatement; amending s. 605.0801, F.S.; providing for direct action by member; amending ss. 605.0803 and 605.0903,