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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2019	.	
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The Committee on Appropriations (Simmons) recommended the following:

Senate Amendment (with title amendment)

Delete lines 11796 - 12488
and insert:
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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- 11 (1) The name of a limited liability company:
- 12 (a) Must contain the words "limited liability company" or
- 13 the abbreviation "L.L.C." or "LLC-" as will clearly indicate
- 14 that it is a limited liability company instead of a natural
- 15 person, partnership, corporation, or other business entity.
- 16 (b) Must be distinguishable in the records of the ~~Division~~
- 17 ~~of Corporations of the~~ department from the names of all other
- 18 entities or filings that are on file with the department
- 19 ~~division~~, except fictitious name registrations pursuant to s.
- 20 865.09, general partnership registrations pursuant to s.
- 21 620.8105, and limited liability partnership statements pursuant
- 22 to s. 620.9001 which are organized, registered, or reserved
- 23 under the laws of this state; however, a limited liability
- 24 company may register under a name that is not otherwise
- 25 distinguishable on the records of the department ~~division~~ with
- 26 the written consent of the other ~~owner~~ entity if the consent is
- 27 filed with the department ~~division~~ at the time of registration
- 28 of such name and if such name is not identical to the name of
- 29 the other entity. A name that is different from the name of
- 30 another entity or filing due to any of the following is not
- 31 considered distinguishable:
- 32 1. A suffix.
- 33 2. A definite or indefinite article.
- 34 3. The word "and" and the symbol "&."
- 35 4. The singular, plural, or possessive form of a word.
- 36 5. ~~A recognized abbreviation of a root word.~~
- 37 ~~6.~~ A punctuation mark or a symbol.
- 38 (6) A limited liability company in existence before January
- 39 1, 2020, that has a name that does not clearly indicate that it



40 is a limited liability company instead of a natural person,
41 partnership, corporation, or other business entity may continue
42 using such name until the limited liability company dissolves or
43 amends its name in the records of the department.

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

46 605.01125 Reserved name.—

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

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

60 (3) The department may revoke any reservation if, after a
61 hearing, it finds that the application therefor or any transfer
62 thereof was not made in good faith.

63 Section 237. Subsections (1) and (5) of section 605.0113,
64 Florida Statutes, are amended, and subsection (6) is added to
65 that section, to read:

66 605.0113 Registered agent.—

67 (1) Each limited liability company and each foreign limited
68 liability company that has a certificate of authority under s.



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69 605.0902 shall designate and continuously maintain in this
70 state:

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

73 (b) A registered agent, who must be:

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

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

80 3. A foreign entity authorized to transact business in this
81 state that is an authorized entity and ~~A foreign or domestic~~
82 ~~entity authorized to transact business in this state~~ whose
83 business address is identical to the address of the registered
84 office.

85 (5) A limited liability company and each foreign limited
86 liability company that has a certificate of authority under s.
87 605.0902 may not prosecute or maintain, maintain, or defend an
88 action in a court in this state until the limited liability
89 company complies with this section, pays to the department any
90 amounts required under this chapter, and, to the extent ordered
91 by a court of competent jurisdiction, and pays to the department
92 a penalty of \$5 for each day it has failed to comply or \$500,
93 whichever is less, and pays any other amounts required under
94 this chapter.

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

97 (a) A corporation for profit.



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98 (b) A limited liability company.

99 (c) A limited liability partnership.

100 (d) A limited partnership, including a limited liability
101 limited partnership.

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

104 605.0114 Change of registered agent or registered office.—

105 (1) In order to change its registered agent or registered
106 office address, a limited liability company or a foreign limited
107 liability company may deliver to the department for filing a
108 statement of change containing the following:

109 (c) If the current registered agent is to be changed, the
110 name of the new registered agent.

111 (d) The street address of its current registered office for
112 its current registered agent.

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

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

118 605.0115 Resignation of registered agent.—

119 (2) After delivering the statement of resignation to ~~with~~
120 the department for filing, the registered agent must promptly
121 ~~shall~~ mail a copy to the limited liability company's or foreign
122 limited liability company's current mailing address.

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

125 605.0116 Change of name or address by registered agent.—

126 (1) If a registered agent changes his or her name or



127 address, the agent may deliver to the department for filing a
128 statement of change that provides the following:

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

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

134 (d) If the address of the registered agent has changed, the
135 new address.

136 (e) A statement that the registered agent has given the
137 notice required under subsection (2).

138 Section 241. Present subsection (7) of section 605.0117,
139 Florida Statutes, is redesignated as subsection (8), subsections
140 (1), (2), (3), (4), and (6) of that section are amended, and a
141 new subsection (7) is added to that section, to read:

142 605.0117 Service of process, notice, or demand.—

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

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

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

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



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156 (3) If the process, ~~notice, or demand~~ cannot be served on a
157 limited liability company or registered foreign limited
158 liability company pursuant to subsection (1) or subsection (2),
159 the process, ~~notice, or demand~~ may be served on the secretary of
160 state department as an agent of the company.

161 (4) Service of process on the secretary of state ~~with~~
162 ~~process, notice, or a demand on the department~~ may be made by
163 delivering to and leaving with the department duplicate copies
164 of the process, ~~notice, or demand~~.

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

168 (7) Any notice or demand on a limited liability company or
169 registered foreign limited liability company under this chapter
170 may be given or made to any member of a member-managed limited
171 liability company or registered foreign limited liability
172 company or to any manager of a manager-managed limited liability
173 company or registered foreign limited liability company; to the
174 registered agent of the limited liability company or registered
175 foreign limited liability company at the registered office of
176 the limited liability company or registered foreign limited
177 liability company in this state; or to any other address in this
178 state that is in fact the principal office of the limited
179 liability company or registered foreign limited liability
180 company in this state.

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

183 605.0118 Delivery of record.—

184 (3) If a check is mailed to the department for payment of



185 an annual report fee or the annual supplemental fee required
186 under s. 607.193, the check shall be deemed to have been
187 received by the department as of the postmark date appearing on
188 the envelope or package transmitting the check if the envelope
189 or package is received by the department.

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

192 605.0207 Effective date and time.—Except as otherwise
193 provided in s. 605.0208, and subject to s. 605.0209(3), any
194 document delivered to the department for filing under this
195 chapter may specify an effective time and a delayed effective
196 date. In the case of initial articles of organization, a prior
197 effective date may be specified in the articles of organization
198 if such date is within 5 business days before the date of
199 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
200 605.0209, a record filed by the department is effective:

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

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

209 (3) If the record filed specifies a delayed effective date,
210 but not an effective time, at 12:01 a.m. on the earlier of:

211 (a) The specified date; or

212 (b) The 90th day after the record is filed.

213 (4) If the record filed specifies a delayed effective date



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214 and an effective time, at the specified time on or the earlier
215 of:

216 (a) The specified date; or

217 (b) The 90th day after the record is filed.

218 (5)-(4) If the record filed is the initial articles of
219 organization and specifies an effective a date before the
220 effective date of the filing, but no effective time, at 12:01
221 a.m. on the later of:

222 (a) The specified date; or

223 (b) The 5th business day before the record is filed.

224 (6)-(5) If the record filed is the initial articles of
225 organization and specifies an effective time and an effective a
226 delayed effective date, at the specified time on the earlier of:

227 (a) The specified date; or

228 (b) The 90th day after the record is filed.

229 (6) If the record specifies an effective time and a prior
230 effective date before the date of the filing, at the specified
231 time on the later of:

232 (a) The specified date; or

233 (b) The 5th business day before the record is filed.

234 (7) If a filed document does not specify the time zone or
235 place at which the date or time, or both, is to be determined,
236 the date or time, or both, at which it becomes effective shall
237 be those prevailing at the place of filing in this state.

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

240 605.0209 Correcting filed record.—

241 (3) A statement of correction:

242 (a) May not state a delayed effective date;



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243 (b) Must be signed by the person correcting the filed
244 record;

245 (c) Must identify the filed record to be corrected,
246 including such record's filing date, or attach a copy of the
247 record to the statement of correction;

248 (d) Must specify the inaccuracy or defect to be corrected;
249 and

250 (e) Must correct the inaccuracy or defect.

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

253 605.0210 Duty of department to file; review of refusal to
254 file; transmission of information by department.—

255 (7) If the department refuses to file a record delivered to
256 its office for filing, the person who submitted the record for
257 filing may petition the Circuit Court of Leon County to compel
258 filing of the record. The record and the explanation ~~from~~ of the
259 department of the refusal to file must be attached to the
260 petition. The court may decide the matter in a summary
261 proceeding and the court may summarily order the department to
262 file the record or take other action the court considers
263 appropriate. The court's final decision may be appealed as in
264 other civil proceedings.

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

267 605.0211 Certificate of status.—

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



272 certificate of status for a foreign limited liability company
273 must state the following:

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

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

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

285 605.0215 Certificates to be received in evidence and
286 evidentiary effect of copy of filed document.—All certificates
287 issued by the department in accordance with this chapter shall
288 be taken and received in all courts, public offices, and
289 official bodies as prima facie evidence of the facts stated. A
290 certificate from the department delivered with a copy of a
291 document filed by the department bearing the signature of the
292 secretary of state, which may be in facsimile, and the seal of
293 this state is conclusive evidence that the original document is
294 on file with the department.

295 Section 248. Subsections (1) through (4) of section
296 605.04092, Florida Statutes, are amended to read:

297 605.04092 Conflict of interest transactions.—

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

300 (a) A member or manager is "indirectly" a party to a



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301 transaction if that member or manager has a material financial
302 interest in or is a director, officer, member, manager, or
303 partner of a person, other than the limited liability company,
304 who is a party to the transaction.

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

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

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

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

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

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

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

328 (e) "Manager's conflict of interest transaction" means a
329 transaction between a limited liability company and one or more



330 of its managers, or another entity in which one or more of the
331 limited liability company's managers is directly or indirectly a
332 party to the transaction, other than being an indirect party as
333 a result of being a member of the limited liability company, and
334 has a direct or indirect material financial interest or other
335 material interest.

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

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

349 (2) If the requirements of this section have been
350 satisfied, a member's conflict of interest transaction or a
351 manager's conflict of interest transaction between a limited
352 liability company and one or more of its members or managers, or
353 another entity in which one or more of the limited liability
354 company's members or managers have a financial or other
355 interest, is not void or voidable because of that relationship
356 or interest; because the members or managers are present at the
357 meeting of the members or managers at which the transaction was
358 authorized, approved, effectuated, or ratified; or because the



359 votes of the members or managers are counted for such purpose.

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

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

382 1. In a manager-managed limited liability company, the
383 material facts of the transaction and the member's or manager's
384 interest in the transaction were disclosed or known to the
385 managers or a committee of managers who voted upon the
386 transaction and the transaction was authorized, approved, or
387 ratified by a majority of the disinterested managers even if the



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388 disinterested managers constitute less than a quorum; however,
389 the transaction cannot be authorized, approved, or ratified
390 under this subsection solely by a single manager; and

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

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

408 Section 249. Paragraph (c) of subsection (3) of section
409 605.0410, Florida Statutes, is amended to read:

410 605.0410 Records to be kept; rights of member, manager, and
411 person dissociated to information.—

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

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



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

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

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

426 605.0702 Grounds for judicial dissolution.—

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

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

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

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

436 3. The managers or members in control of the company have
437 acted, are acting, or are reasonably expected to act in a manner
438 that is illegal or fraudulent;

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

443 5. The managers or the members of the limited liability
444 company are deadlocked in the management of the limited
445 liability company's activities and affairs, the members are



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446 unable to break the deadlock, and irreparable injury to the
447 limited liability company is threatened or being suffered.

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

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

- 471 1. A redemption or a purchase and sale of interests; ~~or~~
472 2. A governance change, among or between members;
473 3. The sale of the company or all or substantially all of
474 the assets of the company; or



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475 4. A similar provision that, if initiated and effectuated,
476 breaks the deadlock by causing the transfer of interests, a
477 governance change, or the sale of all or substantially all of
478 the company's assets. ~~A deadlock sale provision in an operating~~
479 ~~agreement which is not initiated and effectuated before the~~
480 ~~court enters an order of judicial dissolution under subparagraph~~
481 ~~(1) (b)5. or an order directing the purchase of petitioner's~~
482 ~~interest under s. 605.0706 does not adversely affect the rights~~
483 ~~of members and managers to seek judicial dissolution under~~
484 ~~subparagraph (1) (b)5. or the rights of the company or one or~~
485 ~~more members to purchase the petitioner's interest under s.~~
486 ~~605.0706. The filing of an action for judicial dissolution on~~
487 ~~the grounds described in subparagraph (1) (b)5. or an election to~~
488 ~~purchase the petitioner's interest under s. 605.0706 does not~~
489 ~~adversely affect the right of a member to initiate an available~~
490 ~~deadlock sale provision under the operating agreement or to~~
491 ~~enforce a member-initiated or an automatically-initiated~~
492 ~~deadlock sale provision if the deadlock sale provision is~~
493 ~~initiated and effectuated before the court enters an order of~~
494 ~~judicial dissolution under subparagraph (1) (b)5. or an order~~
495 ~~directing the purchase of petitioner's interest under s.~~
496 ~~605.0706.~~

497 (3) A deadlock sale provision in an operating agreement
498 which is not initiated and effectuated before the court enters
499 an order of judicial dissolution under subparagraph (1) (b)5. or
500 an order directing the purchase of petitioner's interest under
501 s. 605.0706, does not adversely affect the rights of members and
502 managers to seek judicial dissolution under subparagraph
503 (1) (b)5. or the rights of the company or one or more members to



504 purchase the petitioner's interest under s. 605.0706. The filing
505 of an action for judicial dissolution on the grounds described
506 in subparagraph (1)(b)5. or an election to purchase the
507 petitioner's interest under s. 605.0706, does not adversely
508 affect the right of a member to initiate an available deadlock
509 sale provision under the operating agreement or to enforce a
510 member-initiated or an automatically-initiated deadlock sale
511 provision if the deadlock sale provision is initiated and
512 effectuated before the court enters an order of judicial
513 dissolution under subparagraph (1)(b)5. or an order directing
514 the purchase of petitioner's interest under s. 605.0706.

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

517 605.0706 Election to purchase instead of dissolution.—

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

526 (2) An election to purchase pursuant to this section may be
527 filed with the court within 90 days after the filing of the
528 petition by the petitioning member under s. 605.0702(1)(b) ~~or~~
529 ~~(2)~~ or at such later time as the court may allow. If the
530 election to purchase is filed, the company shall within 10 days
531 thereafter give written notice to all members, other than the
532 petitioning member. The notice must describe the interest in the



533 company owned by each petitioning member and must advise the
534 recipients of their right to join in the election to purchase
535 the petitioning member's interest in accordance with this
536 section. Members who wish to participate must file notice of
537 their intention to join in the purchase within 30 days after the
538 effective date of the notice. A member who has filed an election
539 or notice of the intent to participate in the election to
540 purchase thereby becomes a party to the proceeding and shall
541 participate in the purchase in proportion to the ownership
542 interest as of the date the first election was filed unless the
543 members otherwise agree or the court otherwise directs. After an
544 election to purchase has been filed by the limited liability
545 company or one or more members, the proceeding under s.
546 605.0702(1)(b) ~~or (2)~~ may not be discontinued or settled, and
547 the petitioning member may not sell or otherwise dispose of the
548 interest of the petitioner in the company unless the court
549 determines that it would be equitable to the company and the
550 members, other than the petitioner, to authorize such
551 discontinuance, settlement, sale, or other disposition or the
552 sale is pursuant to a deadlock sale provision described in s.
553 605.0702(1)(b).

554 (4) If the parties are unable to reach an agreement as
555 provided for in subsection (3), the court, upon application of a
556 party, may shall stay the proceedings to dissolve under s.
557 605.0702(1)(b) and shall, whether or not the proceeding is
558 stayed, determine the fair value of the petitioner's interest as
559 of the day before the date on which the petition was filed or as
560 of such other date as the court deems appropriate under the
561 circumstances.



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562 (5) Upon determining the fair value of the petitioner's
563 interest in the company, unless the petitioner's interest has
564 been acquired pursuant to a deadlock sale provision before the
565 order, the court shall enter an order directing the purchase
566 upon such terms and conditions as the court deems appropriate,
567 which may include: payment of the purchase price in
568 installments, when necessary in the interests of equity; a
569 provision for security to ensure payment of the purchase price
570 and additional costs, fees, and expenses as may have been
571 awarded; and, if the interest is to be purchased by members, the
572 allocation of the interest among those members. In allocating
573 the petitioner's interest among holders of different classes or
574 series of interests in the company, the court shall attempt to
575 preserve any ~~the~~ existing distribution of voting rights among
576 holders of different classes or series insofar as practicable
577 and may direct that holders of any ~~a~~ specific class or classes
578 or series may not participate in the purchase. Interest may be
579 allowed at the rate and from the date determined by the court to
580 be equitable; however, if the court finds that the refusal of
581 the petitioning member to accept an offer of payment was
582 arbitrary or otherwise not in good faith, payment of interest is
583 not allowed. If the court finds that the petitioning member had
584 probable grounds for relief under s. 605.0702(1)(b) ~~s.~~
585 ~~605.0702(1)(b)3. or 4.~~, it may award expenses to the petitioning
586 member, including reasonable fees and expenses of counsel and of
587 experts employed by petitioner.

588 (6) The ~~Upon~~ entry of an order under subsection (3) or
589 subsection (5) shall be subject to subsection (8), and the order
590 may not be entered unless the award is determined by the court



591 to be allowed under subsection (8). In determining compliance
592 with s. 605.0405, the court may rely on an affidavit from the
593 limited liability company as to compliance with that section as
594 of the measurement date. Upon entry of an order under subsection
595 (3) or subsection (5), the court shall dismiss the petition to
596 dissolve the limited liability company under s. 605.0702(1)(b),
597 and the petitioning member shall no longer have rights or status
598 as a member of the limited liability company except the right to
599 receive the amounts awarded by the order of the court, which
600 shall be enforceable in the same manner as any other judgment.

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

615 (8) Any award ~~A payment by the limited liability company~~
616 ~~pursuant to an order under subsection (3) or subsection (5),~~
617 ~~other than an award of fees and expenses pursuant to subsection~~
618 ~~(5), is subject to s. 605.0405. Unless otherwise provided in the~~
619 ~~court's order, the effect of a distribution under s. 605.0405~~



620 shall be measured as of the date of the court's order under
621 subsection (3) or subsection (5).

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

625 605.0715 Reinstatement.—

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

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

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

642 605.0716 Judicial review of denial of reinstatement.—

643 (2) Within 30 days after service of a notice of denial of
644 reinstatement, a limited liability company may appeal the denial
645 by petitioning the Circuit Court of Leon County ~~in the~~
646 ~~applicable county, as defined in s. 605.0711(15),~~ to set aside
647 the dissolution. The petition must be served on the department
648 and contain a copy of the department's notice of administrative



649 dissolution, the company's application for reinstatement, and
650 the department's notice of denial.

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

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

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

658 605.0801 Direct action by member.—

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

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

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

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

675
676 ===== T I T L E A M E N D M E N T =====

677 And the title is amended as follows:



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678 Delete line 627
679 and insert:
680 reinstatement; amending s. 605.0801, F.S.; revising
681 provisions relating to direct actions by members;
682 amending ss. 605.0803 and 605.0903,