

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 1346

INTRODUCER: Senator Berman

SUBJECT: Limited Liability Companies

DATE: January 29, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Favorable
2.			JU	
3.			FP	

I. Summary:

SB 1346 amends the Florida Revised Limited Liability Company Act in ch. 605, F.S., to provide for the formation of a protected series limited liability company (LLC) under Florida law. The bill specifies definitions, operations and governance, powers and duties, liability limitations, and requirements related to service and notice, reporting, management, merger, and dissolution.

The bill also changes an internal reference in s. 605.0103, F.S., related to knowledge and notice.

The bill takes effect January 1, 2025.

II. Present Situation:

Limited Liability Companies

A limited liability company (LLC) is a type of business entity recognized by and regulated under ch. 605, F.S., the Florida Revised Limited Liability Company Act (LLC Act). Benefits to forming a business as an LLC include a flexible tax structure¹ and a “vertical liability shield,”

¹ Depending on elections made by an LLC’s members, the IRS will treat an LLC as either a corporation, a partnership, or a disregarded entity. This last option allows for what is known as “pass-through taxation,” in which the LLC’s members claim the LLC’s profits or losses as part of their personal taxes, alleviating the LLC of needing to file its own tax return and preventing the profits and losses from being taxed twice. IRS, *Limited Liability Company (LLC)*, <https://www.irs.gov/businesses/small-businesses-self-employed/limited-liability-company-llc> (last visited Jan. 29, 2024).

which limits the personal liability of the LLC's members² and managers³ for company obligations.⁴

Forming a Florida LCC

To form an LLC in Florida, the authorized representatives⁵ must first choose a name, which name must be distinguishable from the names of all other business entity names in the records of the Department of State (DOS) and include the words "limited liability company" or the abbreviation "LLC" or "L.L.C."⁶ The authorized representatives must also designate a registered agent to accept legal notices and service of process on behalf of the LLC at a registered office located in Florida.⁷

Once these steps are completed, the authorized representatives must sign and deliver to the DOS for filing articles of organization stating the LLC's name; the street and mailing addresses of the LLC's principal office; and the name, street address in Florida, and written acceptance of the LLC's registered agent.⁸ An LLC is formed when the LLC's articles of organization become effective⁹ and when at least one person becomes a member at the time the articles of organization become effective.¹⁰

Once formed, the members of the LLC may establish an operating agreement to lay the groundwork for the company, which agreement governs the:

- Relations among the members as members and between the members and the LLC;
- Rights and duties of a person serving in the capacity of manager;
- LLC's activities and affairs; and
- Means and conditions for amending the operating agreement.¹¹

² "Member" means a person who: (a) is a member of an LLC under s. 605.0401, F.S., or was a member in a company when the company became subject to the Act; and (b) has not dissociated from the LLC under s. 605.0602, F.S. Section 605.0102(40), F.S.

³ "Manager" means a person who, under the operating agreement of a manager-managed LLC, is responsible, alone or in concert with others, for performing the management functions stated in ss. 605.0407(3) and 605.04073(2), F.S. Section 605.0102(38), F.S.

⁴ Exceptions to the liability shield include a member's or manager's written consent to be liable for an obligation; a statutory claw-back provision for improper distributions; provisions in agreements signed before the LLC's organization; a member's or manager's tortious conduct; a member's or manager's action or inaction that results in a violation of criminal law or improper personal gain; liability arising under federal tax laws of the Florida sales and use tax laws; and a violation of fiduciary duties to creditors. Section 605.0304, F.S. Daniel S. Kleinberger, *Limited Liability Limited* (Aug. 28, 2019), https://www.americanbar.org/groups/business_law/publications/blt/2019/09/limited-liability/ (last visited Jan. 29, 2024).

⁵ One or more persons may act as authorized representatives to form an LLC. Section 605.0201, F.S.

⁶ Section 605.0112, F.S.

⁷ The registered agent must be an individual who resides in Florida and whose business address is identical to the address of the registered office; another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or a foreign entity authorized to transact business in Florida that is an authorized entity and whose business address is identical to the address of the registered office. Section 605.0113, F.S.

⁸ The articles of organization may contain statements on additional matters as specified in statute. Section 605.0201, F.S.

⁹ Except as otherwise provided, any document delivered to the DOS for filing under the LLC Act 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 five business days before the date of filing. If the record does not specify an effective time or a prior or delayed effective date, the record is effective on the date and at the time the record is accepted, as evidenced by the DOS's endorsement of the date and time on the filing. Section 605.0207, F.S.

¹⁰ Section 605.0201, F.S.

¹¹ Section 605.0105, F.S.

An LLC must also deliver to the DOS for filing an annual report stating:

- The LLC's name;
- The LLC's principal office and mailing addresses;
- The date of the LLC's organization;
- The LLC's federal employer identification number¹² or, if none exists, whether one has been applied for;
- The name, title or capacity, and address of at least one person with the authority to manage the LLC; and
- Any additional information that is necessary or appropriate to enable the DOS to carry out the LCC Act.¹³

Foreign LLCs Doing Business in Florida

An entity organized as an LLC under the laws of another jurisdiction (a foreign LLC) that wishes to do business in Florida must, through an authorized representative, first apply for a certificate of authority to transact business in Florida by delivering an application for such a certificate to the DOS, which application must contain:

- The foreign LLC's name;
- The name of the foreign LLC's jurisdiction of formation;
- The foreign LLC's principal office and mailing addresses;
- The name and street address in Florida of, and the written acceptance by, the foreign LLC's initial registered agent in Florida;
- The name, title or capacity, and address of at least one person with the authority to manage the foreign LLC; and
- Additional information as may be necessary or appropriate in order to enable the DOS to determine whether the foreign LLC is entitled to file an application for a certificate of authority and to determine and assess applicable fees.¹⁴

Unless the DOS determines that such an application does not comply with the LLC Act's filing requirements, the DOS must, upon the payment of all filing fees, file the certificate of authority application.¹⁵ The filing of the application means the foreign LLC has obtained a certificate of authority and is authorized to do business in Florida.¹⁶ Such an LLC must file annual reports as required of a domestic LLC, which reports must include additional information pertinent to a foreign LLC as specified in the LLC Act.¹⁷

¹² The federal employer identification number, also known as a federal tax identification number, is issued by the IRS and used to identify a business for federal tax purposes. IRS, *Employer ID Numbers*, <https://www.irs.gov/businesses/small-businesses-self-employed/employer-id-numbers> (last visited Jan. 29, 2024)

¹³ Section 605.0212, F.S.

¹⁴ Section 605.0902, F.S.

¹⁵ Section 605.0903, F.S.

¹⁶ *Id.*

¹⁷ Section 605.0212, F.S.

Protected Series Limited Liability Companies

In 1996, Delaware enacted legislation providing for the formation of a “protected series limited liability company” (protected series LLC), which offers both the traditional, vertical liability shield of an LLC and a new, horizontal liability shield for any protected series of the LLC; in other words, the assets of any one protected series of an LLC are not available to satisfy the claims of creditors of the LLC or of any other protected series of the LLC.¹⁸ Since then, 20 other states and the District of Columbia have enacted legislation providing for the formation of some type of protected series LLC.¹⁹

In response to the growing popularity of this type of business entity, the Uniform Law Commission promulgated the Uniform Protected Series Act (UPSA) in 2017, intended as a model law that could be inserted into a state’s existing LLC statutes.²⁰ The UPSA contains definitions; a description of the nature and purpose of a protected series LLC, as well as its powers, purpose, and duration; a description of how a protected series is governed by the LLC’s operating agreement; and rules for applying certain provisions of a state’s existing LLC act to a protected series.²¹

Florida

A protected series LLC formed in another state (a foreign series LLC) is currently authorized to do business in Florida if it meets all applicable statutory requirements for a foreign LLC and registers with the DOS.²² However, Florida law does not currently recognize the protected series LLC model; thus, each series in a foreign series LLC must qualify to do business in Florida as if each series were a separate legal entity. Moreover, there is no guidance for lawyers and judges being asked to address a foreign series LLC with respect to contracts, claims, and disputes.²³

In 2020, the Business Law Section of the Florida Bar formed the Protected Series LLC Task Force (Task Force) to analyze the UPSA and consider its adoption in Florida.²⁴ The Task Force ultimately proposed that new sections be added to the LLC Act to authorize the formation of a protected series LLC under Florida law, using model language borrowed from the UPSA and language which deviates from the UPSA to address unique aspects of Florida law.²⁵

¹⁸ Protected Series LLC Task Force of the Florida Bar Business Law Section, *White Paper: Analysis of Proposed Additions to Chapter 605* (Jan. 14, 2024).

¹⁹ These states are: Wisconsin, Oklahoma, Illinois, Nevada, Tennessee, Iowa, Texas, Kansas, Missouri, Montana, Utah, Alabama, Indiana, Arkansas, Nebraska, North Dakota, South Dakota, Virginia, Wyoming, and Ohio. Puerto Rico also recognizes a protected series LLC. *Id.*

²⁰ Uniform Law Commission, *The Uniform Protected Series Act*, <https://www.uniformlaws.org/search?executeSearch=true&SearchTerm=uniform+protected+series+act&l=1> (last visited Jan. 29, 2024).

²¹ *Id.*

²² See Business Law Section, *supra* note 18.

²³ *Id.*; See s. 605.0902, F.S., authorizing the DOS to require each individual series of a foreign series LLC to make a separate application for a certificate of authority, and to make such other filings as may be required for purposes of complying with the requirements of the LLC Act as if such series was a separate foreign LLC.

²⁴ See Business Law Section, *supra* note 18.

²⁵ *Id.*

III. Effect of Proposed Changes:

The bill adopts the Business Law Section Task Force's recommendations, creating The Uniform Protected Series Provisions in ss. 605.2101-605.2802, F.S., within the LLC Act to allow for the formation of a protected series LLC under Florida law. The bill refers to a protected series LLC as a "series LLC" and defines the term to mean a domestic LLC with at least one protected series established under s. 605.2201, F.S.

Practically speaking, this may encourage a business wishing to organize as a protected series LLC to organize under Florida law. The bill also recognizes the structure of existing foreign series LLCs wishing to do business in Florida, and provides clarity for lawyers and judges engaging with a business organized as a series LLC.

Series LLC Formation

The bill specifies that the provisions of the LLC Act applicable to the formation of an LLC generally also apply to the formation of a series LLC or protected series, except as otherwise provided. The bill also establishes provisions specific to the formation of a series LLC or protected series.

Section 5 specifies a short title for sections 605.2101 through 605.2802 – the "Uniform Protected Series Provisions."

Section 6 specifies definitions for use in the provisions.

Designation of Protected Series

Section 13 creates s. 605.2201, F.S., to provide that, with the affirmative vote or consent of all members of an LLC, the LLC may establish a protected series. To establish a protected series after such a vote, the bill requires an LLC to deliver to the DOS for filing a protected series designation, signed by the LLC, stating the names of the LLC and of the protected series to be established, and any other information the DOS requires for filing.

Under the bill, a protected series is established when the protected series designation takes effect. To amend such a designation, a series LLC must deliver to the DOS for filing a statement of designation change, signed by the company, that sets forth:

- The names of the series LLC and of the protected series to which the designation applies;
- Each change to the protected series designation; and
- A statement that the change was approved by the affirmative vote or consent of the members of the series LLC required to make the designated change.

The amendment takes effect when the statement of designation change takes effect.

Protected Series Name

Section 14 creates s. 605.2202, F.S., to specify that a protected series' name generally must meet the statutory requirements for LLC names. However, under the bill, a protected series' name must also:

- Begin with the series LLC’s name, including any word or abbreviation required by the LLC Act; and
- Contain the phrase “protected series” or the abbreviation “P.S.” or “PS.”

If a series LLC changes its name, the LLC must deliver to the DOS for filing a statement of designation change for each of the LLC’s protected series, changing the name of each such series to comply with this section.

Nature of a Protected Series

Section 7 creates s. 605.2103, F.S. to provide that a protected series is a person²⁶ distinct from all of the following:

- The series LLC, generally.
- Another protected series of the series LLC.
- A member of the series LLC, regardless of whether the member is an associated member²⁷ of the protected series.
- A protected-series transferee²⁸ of a protected series of the series LLC.
- A transferee of a transferrable interest²⁹ of the series LLC.

Powers and Duties of a Protected Series

Section 8 creates s. 605.2104, F.S., to provide that a protected series:

- Can sue and be sued in its own name.
- Generally has the same powers and purposes as the series LLC.
- Ceases to exist not later than when the series LLC completes its winding up.
- May not:
 - Be a member of the series LLC;
 - Establish a protected series; or
 - Except as otherwise authorized by Florida law, have a purpose or power, or take an action, that Florida law prohibits an LLC from having or taking.

Liability Limitations

The bill recognizes both the traditional, vertical liability shield of an LLC and the new, horizontal liability shield of a series LLC, and establishes the limitations of such shields as applied to a series LLC.

²⁶ “Person” means an individual, business corporation, nonprofit corporation, partnership, limited partnership, LLC, limited cooperative association, unincorporated nonprofit association, statutory trust, business trust, common law business trust, estate, trust, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or another legal or commercial entity. *See* s. 605.0102, F.S.

²⁷ An “associated member” is a member of a series LLC that meets statutory requirements and is associated with a protected series. *See* s. 605.2302, F.S.

²⁸ “Protected-series transferee” means a person to which all or part of a protected-series transferable interest of a protected series has been transferred, other than the series LLC company, and includes a person that owns a protected-series transferable interest as a result of ceasing to be an associated member of a protected series.

²⁹ “Protected series transferrable interest” means a right to receive a distribution from a protected series.

Liability Shield

Section 24 creates s. 605.2401, F.S., to provide that the following concepts generally apply:

- A series LLC's debt, obligation, or other liability is solely the debt, obligation, or liability of the series LLC.
- A protected series' debt, obligation, or other liability is solely the debt, obligation, or liability of the protected series.
- A series LLC is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of its protected series solely by reason of the protected series being a protected series of the series LLC, or the series LLC:
 - Being or acting as a protected-series manager of the protected series;
 - Having the protected series manage the series LLC; or
 - Owning a protected-series transferrable interest of the protected series.
- A protected series is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of the series LLC or another protected series of the series LLC, solely by reason of:
 - Being a protected series of the series LLC;
 - Being or acting as a manager of the series LLC or a protected-series manager of another protected series of the company; or
 - Having the series LLC or another protected series of the company be or act as a protected-series manager of the protected series.

Further, the bill specifies that a person is not liable, directly or indirectly, by way of contribution or otherwise, for a debt, obligation, or other liability of:

- A protected series of a series LLC solely by reason of being or acting as:
 - An associated member, protected-series manager, or protected-series transferee of the protected series; or
 - A member, manager, or a transferee of the series LLC.
- A series LLC solely by reason of being or acting as an associated member, protected-series manager, or protected-series transferee of a protected series of the LLC.

Claim Seeking to Disregard Liability Limitation

Section 25 creates s. 605.2402, F.S., to provide that a claim seeking to disregard a liability limitation pertaining to a series LLC, a protected series, or persons connected thereto, including a principal providing a right to a creditor or holding a person liable for a debt, obligation, or other liability of another person, is governed by the principles of law and equity which would apply if each protected series were an LLC formed separately from the series LLC and distinct from the series LLC and any other protected series of such LLC. The bill also specifies that:

- Failure of an LLC or a protected series to observe the formalities of its activities and affairs is not grounds to disregard a limitation in s. 605.2401(1), F.S., relating to the liability of persons acting in specified roles, but may be grounds to disregard a limitation in s. 605.2401(2), F.S., relating to the liability of a protected series or series LLC.

- This section applies to a claim seeking to disregard a liability limitation applicable to a foreign series LLC³⁰ or a foreign protected series³¹ and comparable to a limitation stated in s. 605.2401, F.S., if:
 - The claimant is a Florida resident, transacting business in Florida, or authorized to transact business in Florida; or
 - The claim is to establish or enforce a liability arising under Florida law other than the LLC Act or from an act or omission in Florida.

Remedies of Certain Judgment Creditors

Section 26 creates s. 605.2403, F.S., to specify that the provisions of s. 605.0503, F.S., which provide or restrict remedies available to a judgment creditor³² of a member or transferee of an LLC, apply to a judgment creditor of:

- An associated member or protected-series transferee of a protected series; and
- A series LLC, to the extent the LLC owns a protected-series transferable interest of a protected series.

Enforcement of Claim Against Non-Associated Assets

Section 27 creates s. 605.2404, F.S., to specify that, if a claim against a series LLC or a protected series of the LLC has been reduced to judgment, in addition to any other remedy provided by law or equity, the judgment may be enforced in accordance with the following:

- A judgment against a series LLC may be enforced against an asset³³ of a protected series of the LLC if the asset:
 - Was a non-associated asset³⁴ of the protected series on the incurrence date;³⁵ or
 - Is a non-associated asset of the protected series on the enforcement date.³⁶
- A judgment against a protected series may be enforced against the series LLC if the asset:
 - Was a non-associated asset of the series LLC on the incurrence date; or
 - Is a non-associated asset of the series LLC on the enforcement date.
- A judgment against a protected series may be enforced against an asset of another protected series of the series LLC if the asset:

³⁰ A “foreign series LLC” is a foreign LLC that has at least one foreign series or protected series.

³¹ A “foreign protected series” means an arrangement, configuration, or other structure established by a foreign LLC which has attributes comparable to a protected series established under ch. 605, F.S., regardless of whether the law under which such company is organized refers to “series” or “protected series.”

³² A “judgment creditor” is a person with the right to demand the payment of monetary damages awarded as part of a judgment rendered in a civil action. Legal Information Institute, *Judgment Creditor*, https://www.law.cornell.edu/wex/judgment_creditor (last visited Jan. 29, 2024).

³³ “Asset” means property: (a) in which a series LLC or a protected series has rights; or (b) as to which the series LLC or protected series has the power to transfer rights.

³⁴ A “non-associated asset” means: (a) an asset of a series LLC which is not an associated asset of such LLC; or (b) an asset of a protected series which is not an associated asset of the protected series. “Associated asset,” meanwhile, means an asset that meets the requirements of s. 605.2301, F.S. In other words, associated assets have only one owner (that is, either the series LLC or the protected series), while non-associated assets are available to the creditors of both the series LLC and the protected series.

³⁵ “Incurrence date” means the date on which a series LLC or protected series incurred the liability giving rise to a claim that a claimant seeks to enforce under s. 605.2404, F.S.

³⁶ “Enforcement date” means 12:01 a.m. on the date on which a claimant first serves process on a series LLC or protected series in an action seeking to enforce a claim against an asset of the LLC or protected series by attachment, levy, or the like under s. 605.2404, F.S.

- Was a non-associated asset of the other protected series on the incurrence date; or
- Is a non-associated asset of the other protected series on the enforcement date.

Further, under the bill:

- If a claim against a series LLC or a protected series has not been reduced to a judgment, and a law other than the LLC Act authorizes a prejudgment remedy by attachment,³⁷ levy,³⁸ or the like, the court may apply the foregoing as a prejudgment remedy.
- The party asserting that an asset is or was an associated asset of a series LLC or a protected series has the burden of proof on the issue.
- Newly-created s. 605.2404, F.S., applies to an asset of a foreign series LLC or foreign protected series under specified circumstances, including that the asset is real or tangible property located in Florida.

Protected Series LLC Operations and Governance

The bill specifies that the provisions of the LLC Act applicable to LLCs in general, and their members and managers, including, but not limited to, provisions relating to LLC operation, existence, and management; court proceedings; and filings with the DOS and other state or local government agencies, generally apply to each series LLC and to each protected series established under s. 605.2201, F.S. The bill also creates provisions of the LLC Act applicable only to the operation and governance of a series LLC and a protected series.

Protected Series Governing Law

Sections 9 and 39 create ss. 605.2105 and 605.2701, F.S., respectively, to provide that Florida law governs:

- The internal affairs of a protected series or foreign protected series.
- The relations between a protected series or foreign protected series and specified parties, including the series LLC or foreign series LLC and another protected series of such LLC.
- The liability of a person for a debt, obligation, or other liability of a protected series or foreign protected series arising under specified circumstances.
- The liability of a series LLC or foreign series LLC for a debt, obligation, or other liability of its protected series arising under specified circumstances.
- The liability of a protected series or foreign protected series for a debt, obligation, or other liability of the series LLC or foreign series LLC arising under specified circumstances.

Operating Agreements

Section 10 creates s. 605.2106, F.S., to provide that a series LLC's operating agreement generally governs the internal affairs of a protected series and relations between a protected series and specified parties. The bill also specifies:

³⁷ An "attachment" is a court order directing the freezing or seizure of specific assets belonging to a debtor, pending the outcome of a civil matter involving a creditor who may obtain a judgment in his or her favor that could be satisfied by the sale or application of the assets. Legal Information Institute, *Attachment*, <https://www.law.cornell.edu/wex/attachment> (last visited Jan. 29, 2024).

³⁸ A "levy" is the court-ordered seizure and sale of property to satisfy a delinquent debt or judgment. Legal Information Institute, *Levy*, <https://www.law.cornell.edu/wex/levy> (last visited Jan. 29, 2024).

- How such matters are determined if the operating agreement of a series LLC does not provide for such matters in an authorized manner.
- How certain restrictions on operating agreements imposed by the LLC Act or other laws apply.

Section 11 creates s. 605.2107, F.S., to provide that an operating agreement for a series LLC may not vary the effect of specified provisions of law created by the bill, except to the extent otherwise specified therein. Under the bill, an operating agreement may not unreasonably restrict the duties and rights of a person who is not an associated member of a protected series to information concerning the protected series, but may impose reasonable restrictions on the availability and use of such information, and may provide appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on such use.

Application

Section 12 creates s. 605.2108, F.S., which specifies application of ch. 605, F.S., to specified provisions of protected series, and exemptions.

Registered Agent

Section 15 creates s. 605.2203, F.S., to provide that the registered agent in Florida for a series LLC is the registered agent in Florida for each protected series of that LLC, but a series LLC must agree with a registered agent that the agent will serve as the registered agent in Florida for the LLC and for each protected series of the LLC before delivering a protected series designation to the DOS for filing. Further, under the bill, a person that ceases to be the registered agent for a:

- Series LLC ceases to be the registered agent for each protected series of such LLC.
- Protected series, other than as a result of the termination of the protected series, ceases to be the registered agent of the series LLC and any other protected series of such LLC.

The bill also provides that, except as otherwise agreed upon by a series LLC and its registered agent, the registered agent is not obligated to distinguish between a process, notice, demand, or other record concerning the series LLC and a process, notice, demand, or other record concerning a protected series of the series LLC.

Service of Process, Notice, Demand, or Other Record

Section 16 creates s. 605.2204, F.S., to provide that process against a series LLC, a protected series, a registered foreign series LLC, or a registered foreign protected series may be serviced in the same manner as service is made on such entity under s. 48.062 and chapters 48 or 49, F.S. Under the bill, any notice or demand on a series LLC or protected series may be given or made to any member of a member-managed series LLC or to any manager of a manager-managed LLC; to the registered agent of a series LLC at the registered office of the series LLC in Florida; or to any other address in Florida which is the principal Florida office of the series LLC. Similarly, any notice or demand on a registered foreign series LLC or a registered foreign protected series may be given or made to any member of a member-managed foreign series LLC or to any manager of a manager-managed foreign series LLC; the registered agent of the registered foreign series LLC at the registered office of the foreign series LLC; or to the principal office address, or any other Florida address, which is the principal Florida office of the registered

foreign series LLC. However, the bill does not affect the right to serve process on, give notice to, or make a demand on a series LLC or a protected series thereof, or on a foreign series LLC or a protected series thereof, in any other manner provided by law.

Section 3 amends s. 605.0117, F.S., to delete a provision that a registered series of a foreign series limited liability company may be served in the same manner as a registered limited liability company.

Section 1 amends s. 48.062, F.S., to define “registered foreign protected series of a foreign series LLC” and “registered foreign series LLC” and to provide that:

- Service on a series LLC is notice to each protected series thereof.
- Service on a protected series is notice to the series LLC thereof.
- Service on a registered foreign series LLC is notice to each protected series thereof.
- Service on a registered foreign protected series is notice to each registered foreign series LLC thereof.

Foreign Series LLCs and Foreign Protected Series

Section 40 creates s. 605.2702, F.S., to provide that, in determining whether a foreign series LLC or foreign protected series is transacting business in Florida or is subject to the personal jurisdiction of Florida courts, the activities and affairs of the:

- Foreign series LLC are not attributable to a foreign protected series of such LLC solely by reason of the foreign protected series being a foreign protected series of the LLC.
- Foreign protected series are not attributable to a foreign series LLC or another foreign protected series of the LLC solely by reason of the foreign protected series being a foreign protected series of the foreign series LLC.

Section 41 creates s. 605.2703, F.S., to require that an application by a foreign protected series for a certificate of authority to do business in Florida must include specified information, including the name and jurisdiction of formation of the foreign series LLC and the foreign protected series seeking the certificate and, if the foreign series LLC has other foreign protected series, the name, title, capacity, and street and mailing address of at least one person who has the authority to manage the foreign series LLC and who knows specified information about the protected series. The bill also specifies which provisions of the LLC Act apply to the application for a certificate of authority by a foreign series LLC, which provisions include the naming requirements and provisions relating to required information.

Section 42 creates s. 605.2704, F.S., to provide that, not later than 30 days after becoming a party to a proceeding before a civil, administrative, or other adjudicative tribunal of or located in Florida, or a tribunal of the United States located in Florida:³⁹

- A foreign series LLC must disclose to each other party the name and street and mailing address of:
 - Each of its foreign protected series; and

³⁹ The disclosure requirements are tolled under the bill if a foreign series LLC or foreign protected series challenges the personal jurisdiction of the tribunal, until the tribunal determines whether it has personal jurisdiction.

- Each foreign protected series manager of and a registered agent for service of process for each foreign protected series.
- A foreign protected series must disclose to each other party the name and street and mailing address of:
 - The foreign series LLC;
 - An agent for service of process for the foreign series LLC;
 - Any other foreign protected series of the foreign series LLC; and
 - Each foreign protected-series manager of and an agent for service of process for the other foreign protected series.

Under the bill, where a foreign series LLC or foreign protected series does not comply with the disclosure requirements under s. 605.2704, F.S., a party to the proceeding may ask the tribunal to treat the noncompliance as a failure to comply with the tribunal's discovery rules or bring a separate proceeding to the court to enforce compliance.

Issuance of Certificate of Status or Authority

Section 17 creates s. 605.2205, F.S., to provide that, upon the satisfaction of specified requirements, the DOS must issue a certificate of status for a protected series, or a certificate of authority for a foreign protected series, if:

- In the case of a protected series, the records show that the DOS has accepted and filed articles of organization for the series LLC and a protected series designation for the protected series.
- In the case of a foreign protected series, the records show that the DOS has filed a certificate of authority for the foreign series LLC and a certificate of authority for the foreign protected series.

A certificate issued under this section must contain specified information, including:

- In the case of a protected series, the name of the protected series, the series LLC's name, the date the protected series designation took effect, and other information.
- In the case of a foreign protected series, the foreign protected series' name, the foreign series LLC's name, the fact that the foreign series LLC is authorized to do business in Florida, and other information.

Under the bill, the certificate may be relied on as conclusive evidence of the facts stated therein, subject to any qualifications stated by the DOS in the certificate.

Annual Report Information

Section 18 creates s. 605.2206, F.S., to require that, in its annual report, a series LLC must include the name of each its protected series:

- For which the series LLC has previously delivered to the DOS for filing a protected series designation; and
- Which has not dissolved and completed winding up.

Under the bill, a series LLC's failure to comply with this requirement with regard to a protected series prevents issuance of a certificate of status pertaining to the protected series, but does not otherwise affect the protected series.

Similarly, the bill requires that, in its annual report, a registered foreign series LLC include the name of each registered foreign protected series of the registered foreign series LLC:

- For which the registered foreign series LLC has previously delivered to the DOS for filing an application for a certificate of authority to do business in Florida, which the DOS has accepted; and
- Which has not withdrawn its certificate of authority.

Under the bill, the failure of a registered foreign series LLC to comply with this requirement with regard to a registered foreign protected series prevents issuance of a certificate of status pertaining to the foreign protected series.

Associated Assets

Section 19 creates s. 605.2301, F.S., to provide that only an asset of a protected series may be an associated asset of the protected series, while only an asset of a series LLC may be an associated asset of the series LLC. Further, the bill specifies that an asset of a protected series is an associated asset of the protected series, and an asset of a series LLC is an associated asset of the series LLC, only if the protected series or series LLC creates and maintains specified records that state the name of the protected series or series LLC and describe the asset with sufficient specificity to permit a disinterested, reasonable individual to make specified determinations about the asset. Such records may be organized by specific listing, category, type, quantity, or computational or allocational formula or procedure, including a percentage or share of any asset, or in any other reasonable manner.

Further, under the bill, a series LLC or protected series may, to the extent authorized by law, hold an associated asset directly or indirectly, except that:

- A protected series may not hold an associated asset in the name of the series LLC or another protected series of such LLC; and
- The series LLC may not hold an associated asset in the name of its protected series.

The bill also provides for the effect of a deed or other instrument granting an interest in real property to or from a series LLC or one or more protected series of a series LLC, or any other instrument otherwise affecting an interest in real property held by such entity, in each case to the extent such deed or other instrument is recorded in the office for recording transfers or other matters affecting real property and specified records are maintained.

Associated Member

Section 20 creates s. 605.2302, F.S., to specify that only a member of a series LLC may be an associated member of a protected series of such LLC. Under the bill, a member of a series LLC becomes an associated member of a protected series of such LLC if the operating agreement or a procedure established therein states:

- That the member is an associated member of the protected series;
- The date on which the member became an associated member of the protected series; and
- Any protected-series transferable interest the associated member has in connection with becoming or being an associated member of the protected series.

Further, the bill specifies:

- That if a person that is an associated member of a protected series is dissociated from the series LLC, the person ceases to be an associated member of the protected series.
- The rights of an associated member of a protected series to vote on or consent to an amendment to the series LLC's operating agreement or any other matter being decided by the members or to maintain a derivative action to enforce a right of the LLC.
- That an associated member of a protected series is an agent of the protected series with certain powers to bind the protected series.

Protected-Series Transferrable Interest

Section 21 creates s. 605.2303, F.S., to provide that a protected-series transferrable interest of a protected series must be owned initially by an associated member of the protected series or the series LLC. Under the bill, if a protected series has no associated members when established, the series LLC owns the protected-series transferable interests in the protected series. A series LLC may also acquire a protected-series transferable interest through a transfer from another person or as provided in the operating agreement.

Further, except as otherwise specified, a provision of the:

- LLC Act which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferable interest of the protected series.
- Operating agreement of a series LLC which applies to a protected-series transferee of a protected series applies to the series LLC in its capacity as an owner of a protected-series transferrable interest of the protected series.

Management

Section 22 creates s. 605.2304, F.S., to specify that a protected series may have more than one protected-series manager and, if a protected series has no associated members, the series LLC is the protected-series manager. The bill also provides for the determination of any duties of a protected-series manager to:

- The protected series;
- Any associated member of the protected series; and
- Any protected-series transferee of the protected series.

However, the bill provides that, solely by reason of being or acting as a protected-series manager, a person owes no duty to:

- The series LLC;
- Another protected series of the series LLC; or
- Another person in that person's capacity as:
 - A member of the series LLC which is not an associated member of the protected series;
 - A protected-series transferee or protected-series manager of another protected series; or
 - A transferee of the series LLC.

Right of Non-Associated Members to Specified Information

Section 23 creates s. 605.2305, F.S., to specify the rights to information concerning the protected series of a member of a series LLC which is not an associated member of a protected series of such LLC; a person who was formerly an associated member of a protected series; the legal representative of a deceased associated member of a protected series; and a protected-series manager of a protected series. Such rights generally correspond to the current rights of the counterparts of such persons under the LLC Act. The bill also provides that the court-ordered inspection provisions of s. 605.0411, F.S.,⁴⁰ apply to such information rights.

Entity Transactions

Section 31 specifies definitions for use in provisions relating to entity transactions and mergers.

The bill provides for the role of, and in some instance prohibits the participation of, a series LLC or a protected series in certain entity transactions, including conversions,⁴¹ domestications,⁴² interest exchanges,⁴³ and mergers.⁴⁴

Sections 32 and 33 create ss. 605.2602 and 605.2603, F.S., respectively, to provide that a protected series and a series LLC, respectively, may not be a party to, be formed, organized, established, or created in, or result from:

- A conversion, domestication, or an interest exchange under the LLC Act or the law of a foreign jurisdiction; or
- A transaction with the same substantive effect as a conversion, domestication, or interest exchange.

The bill also specifies that a:

- Protected series may not be a party to, be formed, organized, established, or created in, or result from a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.
- Series LLC may not, except as otherwise provided by law, be a party to or the surviving company⁴⁵ of a merger under the LLC Act or the law of a foreign jurisdiction or a transaction with the same substantive effect as a merger.

Mergers Authorized

Section 34 creates s. 605.2604, F.S., to authorize a series LLC to be party to a merger only if:

- Each other party to the merger is an LLC; and
- The surviving company is not created in the merger.

⁴⁰ S. 605.0411, F.S., applies if an LLC does not allow a member, manager, or other person who complies with applicable law to inspect and copy any records required to be available for inspection. Under this section, the circuit court may summarily order inspection and copying of the records demanded under specified circumstances, and may order the LLC to pay the costs, including reasonable attorney fees, incurred by the member, manager, or other person seeking the records to obtain the order and enforce its rights.

⁴¹ A “conversion” is a transaction authorized under ss. 605.1041-605.1046, F.S.

⁴² A “domestication” is a transaction authorized under ss. 605.1051-605.1056, F.S.

⁴³ An “interest exchange” is a transaction authorized under ss. 605.1031-605.1036, F.S.

⁴⁴ A “merger” is a transaction authorized under ss. 605.1021-605.1026, F.S.

⁴⁵ “Surviving company” means a merging company that continues in existence after a merger.

Section 35 creates s. 605.2605, F.S., to require that the plan of merger:

- Comply with the requirements for the contents of a plan of merger for an LLC; and
- State specified information in a record, which information depends on whether the protected series is a protected series of a non-surviving company,⁴⁶ a protected series of a surviving company, a relocated protected series,⁴⁷ a continuing protected series,⁴⁸ or a protected series to be established by the surviving company.

Section 36 creates s. 605.2606, F.S., to require that the articles of merger:

- Comply with the requirements for the articles of merger for an LLC;⁴⁹ and
- Include specified attachments, including, as appropriate, a signed statement of designation cancellation and termination; a signed statement of relocation and a statement of protected series designation; or a signed protected series designation.

Effect of Merger

Section 37 creates s. 605.2607, F.S., to establish the effects of a merger which occur in addition to the effects stated in s. 605.1026, F.S., relating to the merger of an LLC. Under this section:

- As provided in the plan of merger, each protected series of each merging series LLC which was established before the merger is a relocated or continuing protected series or is dissolved, wound up, and terminated.
- Any protected series to be established due to the merger is established.
- Any relocated or continuing protected series is the same person it was before the merger.
- All property of a relocated or continuing protected series continues to be vested in such protected series.
- All debts, obligations, and other liabilities of a relocated or continuing protected series continue as debts, obligations, and other liabilities of such protected series.
- Except as otherwise provided by law or the plan of merger, all rights, privileges, immunities, powers, and purposes of a relocated or continuing protected series remain in such protected series.
- The new name of a relocated protected series may be substituted for its former name in any pending action or proceeding.
- To the extent provided in the plan of merger:
 - A person becomes an associated member or a protected-series transferee or a relocated protected series or continuing protected series.
 - A person becomes an associated member of a protected series established by the surviving company due to the merger.

⁴⁶ “Non-surviving company” means a merging company that does not continue in existence after a merger.

⁴⁷ “Relocated protected series” means a protected series of a non-surviving company which, after a merger, continues in uninterrupted existence as a protected series of the surviving company.

⁴⁸ “Continuing protected series” means a protected series of a surviving series LLC which continues in uninterrupted existence after a merger.

⁴⁹ Under s. 605.1025, F.S., after a plan of merger is approved, articles of merger must be signed by each merging entity and delivered to the DOS for filing. The articles must also contain specified information, including the merger’s effective date and the name, jurisdiction of formation, and type of entity of each merging entity that is not the surviving entity and of each entity that is the surviving entity.

- Any change in a person's rights or obligations in the person's capacity as an associated member or a protected series or continuing protected series takes effect.
- Any consideration to be paid to a person that before the merger was an associated member or a protected-series transferee of a relocated protected series or continuing protected series is due.
- Any person that is an associated member of a relocated protected series becomes a member of the surviving company, if not already a member.

Section 38 creates s. 605.2608, F.S., to specify how creditors' rights existing under s. 605.2404, F.S., immediately before a merger may be enforced.

Protected Series Dissolution and Reinstatement

The bill establishes the methods by which a protected series may be voluntarily or is automatically dissolved under the LLC Act.

Events Causing Protected Series Dissolution

Section 28 creates s. 605.2501, F.S., to provide that a protected series is dissolved, and its activities and affairs must be wound up, upon the occurrence of specified events, including:

- Dissolution of the series LLC;
- Occurrence of an event which the operating agreement states causes dissolution;
- Affirmative vote or consent of all members of the protected series;
- Entry of a court order dissolving the protected series under specified circumstances;
- Automatic or involuntary dissolution of the series LLC that established the protected series; and
- The filing of a statement of administrative dissolution⁵⁰ by the DOS.

Winding Up Dissolved Protected Series

Section 29 creates s. 605.2502, F.S., to provide the manner in which a dissolved protected series must wind up its activities and affairs, including by filing with the DOS articles of protected series dissolution and a statement of designation cancellation, and the extent to which judicial supervision or another judicial remedy is available in such a winding up. Further, the bill specifies that a series LLC does not complete its winding up until each of its protected series has completed its winding up.

Effect of Reinstatement or Voluntary Dismissal Revocation

Section 30 creates s. 605.2503, F.S., to provide that, if a series LLC that has been administratively dissolved is reinstated, or a series LLC that voluntarily dissolved revokes its articles of dissolution, before filing a statement of termination:

- Each protected series of the series LLC ceases winding up; and
- The provisions of s. 605.0708, F.S., relating to revocation of articles of dissolution, apply to the series LLC and to each protected series as specified in law.

⁵⁰ Administrative dissolution is governed by s. 605.0714, F.S.

Electronic Signatures

Section 43 creates s. 605.2801, F.S., to provide that s. 605.1102, F.S., relating to the applicability of the Electronic Signatures in Global and National Commerce Act, applies to the Uniform Protected Series Provisions.

Other Provisions

Section 2 amends s. 605.0103, F.S., to specify that a person knows a fact if they are deemed to know the fact under paragraph (4)(a), changing the reference from the current (4)(b).

Section 4 amends s. 605.0211, F.S., to make clarifying changes to provisions related to certificates of status.

Effective Date

Section 44 creates s. 605.2802, F.S., to provide that:

- Beginning July 1, 2025, Chapter 605, F.S., governs all domestic and foreign series LLCs, all domestic protected series, and all foreign series that do business in Florida.
- A domestic LLC formed before January 1, 2025, may not create or designate any protected series before the bill's effective date.

Section 45 provides an effective date of January 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Indeterminate. New or additional business entities may organize and do business in the state.

C. Government Sector Impact:

Indeterminate. New or additional entities registering with the Department of State may marginally increase their workload.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 48.062, 605.0103, 605.0117, and 605.0211.

This bill creates the following sections of the Florida Statutes: 605.2101, 605.2102, 605.2103, 605.2104, 605.2105, 605.2106, 605.2107, 605.2108, 605.2201, 605.2202, 605.2203, 605.2204, 605.2205, 605.2206, 605.2301, 605.2302, 605.2303, 605.2304, 605.2305, 605.2401, 605.2402, 605.2403, 605.2404, 605.2501, 605.2502, 605.2503, 605.2601, 605.2602, 605.2603, 605.2604, 605.2605, 605.2606, 605.2607, 605.2608, 605.2701, 605.2702, 605.2703, 605.2704, 605.2801, and 605.2802

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.