

1 A bill to be entitled

2 An act relating to limited liability companies;
3 amending s. 605.0103, F.S.; specifying that persons
4 who are not members of a limited liability company are
5 not deemed to have notice of a provision of the
6 company's articles of organization which limits a
7 person's authority to transfer real property held in
8 the company's name unless such limitation appears in
9 an affidavit, certificate, or other instrument that is
10 recorded in a specified manner; amending s. 605.04073,
11 F.S.; requiring certain conditions for members of a
12 limited liability company, without a meeting, to take
13 certain actions requiring the vote or consent of the
14 members; amending s. 605.0410, F.S.; requiring a
15 limited liability company to provide a record of
16 certain information within a specified period to a
17 member who makes a demand; amending s. 605.1108, F.S.;
18 deleting a provision requiring that, for a limited
19 liability company formed before a specified date,
20 certain language in the company's articles of
21 organization operates as if it were in the operating
22 agreement; amending ss. 15.16, 213.758, 220.03,
23 220.13, 440.02, 605.0102, 605.0401, 605.04074,
24 605.0408, 605.04091, 605.1025, 606.06, 607.1108,
25 607.11101, 636.204, 655.0201, 658.2953, and 694.16,
26 F.S.; conforming cross-references to the repeal of the

27 Florida Limited Liability Company Act, revising
 28 definitions, and making editorial and conforming
 29 changes; providing an effective date.

30
 31 Be It Enacted by the Legislature of the State of Florida:

32
 33 Section 1. Paragraph (b) of subsection (4) of section
 34 605.0103, Florida Statutes, is amended to read:

35 605.0103 Knowledge; notice.—

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

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

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

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

42 3. Participation in a merger, interest exchange,
 43 conversion, or domestication, 90 days after the articles of
 44 merger, articles of interest exchange, articles of conversion,
 45 or articles of domestication under s. 605.1025, s. 605.1035, s.
 46 605.1045, or s. 605.1055, respectively, become effective;

47 4. Declaration in its articles of organization that it is
 48 manager-managed in accordance with s. 605.0201(3)(a); however,
 49 if such a declaration has been added or changed by an amendment
 50 or amendment and restatement of the articles of organization,
 51 notice of the addition or change may not become effective until
 52 90 days after the effective date of such amendment or amendment

53 and restatement; and

54 5. Grant of authority to or limitation imposed on the
 55 authority of a person holding a position or having a specified
 56 status in a company, or grant of authority to or limitation
 57 imposed on the authority of a specific person, if the grant of
 58 authority or limitation imposed on the authority is described in
 59 the articles of organization in accordance with s.

60 605.0201(3)(d); however, if that description has been added or
 61 changed by an amendment or an amendment and restatement of the
 62 articles of organization, notice of the addition or change may
 63 not become effective until 90 days after the effective date of
 64 such amendment or amendment and restatement. A provision of the
 65 articles of organization that limits the authority of a person
 66 to transfer real property held in the name of the limited
 67 liability company is not notice of such limitation to a person
 68 who is not a member or manager of the company, unless such
 69 limitation appears in an affidavit, certificate, or other
 70 instrument that bears the name of the limited liability company
 71 and is recorded in the office for recording transfers of such
 72 real property.

73 Section 2. Subsection (4) of section 605.04073, Florida
 74 Statutes, is amended to read:

75 605.04073 Voting rights of members and managers.—

76 (4) An action requiring the vote or consent of members
 77 under this chapter may be taken without a meeting if the action
 78 is approved in a record by members with at least the minimum

79 number of votes that would be necessary to authorize or take the
80 action at a meeting of the members.~~and~~ A member may appoint a
81 proxy or other agent to vote or consent for the member by
82 signing an appointing record, personally or by the member's
83 agent. On an action taken by fewer than all of the members
84 without a meeting, notice of the action must be given to those
85 members who did not consent in writing to the action or who were
86 not entitled to vote on the action within 10 days after the
87 action was taken.

88 Section 3. Subsection (2), paragraphs (a) and (c) of
89 subsection (3), and subsection (4) of section 605.0410, Florida
90 Statutes, are amended to read:

91 605.0410 Records to be kept; rights of member, manager,
92 and person dissociated to information.-

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

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

98 1. The records described in subsection (1); and

99 2. Each other record maintained by the company regarding
100 the company's activities, affairs, financial condition, and
101 other circumstances, to the extent the information is material
102 to the member's rights and duties under the operating agreement
103 or this chapter.

104 (b) The company shall furnish to each member:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

151 Section 4. Subsection (3) of section 605.1108, Florida
 152 Statutes, is amended to read:

153 605.1108 Application to limited liability company formed
 154 under the Florida Limited Liability Company Act.—

155 (3) For the purpose of applying this chapter to a limited
 156 liability company formed before January 1, 2014, under the

157 Florida Limited Liability Company Act, ss. 608.401-608.705, ~~+~~
 158 ~~(a)~~ the company's articles of organization are deemed to
 159 be the company's articles of organization under this chapter,
 160 and

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

165 Section 5. Subsection (3) of section 15.16, Florida
 166 Statutes, is amended to read:

167 15.16 Reproduction of records; admissibility in evidence;
 168 electronic receipt and transmission of records; certification;
 169 acknowledgment.—

170 (3) The Department of State may cause to be received
 171 electronically any records that are required to be filed with it
 172 pursuant to chapter 55, chapter 117, chapter 118, chapter 495,
 173 chapter 605, chapter 606, chapter 607, ~~chapter 608~~, chapter 610,
 174 chapter 617, chapter 620, chapter 621, chapter 679, chapter 713,
 175 or chapter 865, through facsimile or other electronic transfers,
 176 for the purpose of filing such records. The originals of all
 177 such electronically transmitted records must be executed in the
 178 manner provided in paragraph (5) (b). The receipt of such
 179 electronic transfer constitutes delivery to the department as
 180 required by law. The department may use electronic transmissions
 181 for purposes of notice in the administration of chapters 55,
 182 117, 118, 495, 605, 606, 607, ~~608~~, 610, 617, 620, 621, 679, and

183 713 and s. 865.09. The Department of State may collect e-mail
 184 addresses for purposes of notice and communication in the
 185 performance of its duties and may require filers and registrants
 186 to furnish such e-mail addresses when presenting documents for
 187 filing.

188 Section 6. Paragraph (c) of subsection (1) of section
 189 213.758, Florida Statutes, is amended to read:

190 213.758 Transfer of tax liabilities.—

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

192 (c) "Insider" means:

193 1. Any person included within the meaning of insider as
 194 used in s. 726.102; or

195 2. A manager of, ~~a managing member of,~~ or a person who
 196 controls a transferor that is, a limited liability company~~,~~ or a
 197 relative as defined in s. 726.102 of any such persons.

198 Section 7. Paragraph (e) of subsection (1) of section
 199 220.03, Florida Statutes, is amended to read:

200 220.03 Definitions.—

201 (1) SPECIFIC TERMS.—When used in this code, and when not
 202 otherwise distinctly expressed or manifestly incompatible with
 203 the intent thereof, the following terms shall have the following
 204 meanings:

205 (e) "Corporation" includes all domestic corporations;
 206 foreign corporations qualified to do business in this state or
 207 actually doing business in this state; joint-stock companies;
 208 limited liability companies, under chapter 605 ~~608~~; common-law

209 | declarations of trust, under chapter 609; corporations not for
 210 | profit, under chapter 617; agricultural cooperative marketing
 211 | associations, under chapter 618; professional service
 212 | corporations, under chapter 621; foreign unincorporated
 213 | associations, under chapter 622; private school corporations,
 214 | under chapter 623; foreign corporations not for profit which are
 215 | carrying on their activities in this state; and all other
 216 | organizations, associations, legal entities, and artificial
 217 | persons which are created by or pursuant to the statutes of this
 218 | state, the United States, or any other state, territory,
 219 | possession, or jurisdiction. The term "corporation" does not
 220 | include proprietorships, even if using a fictitious name;
 221 | partnerships of any type, as such; limited liability companies
 222 | that are taxable as partnerships for federal income tax
 223 | purposes; state or public fairs or expositions, under chapter
 224 | 616; estates of decedents or incompetents; testamentary trusts;
 225 | or private trusts.

226 | Section 8. Paragraph (j) of subsection (2) of section
 227 | 220.13, Florida Statutes, is amended to read:

228 | 220.13 "Adjusted federal income" defined.—

229 | (2) For purposes of this section, a taxpayer's taxable
 230 | income for the taxable year means taxable income as defined in
 231 | s. 63 of the Internal Revenue Code and properly reportable for
 232 | federal income tax purposes for the taxable year, but subject to
 233 | the limitations set forth in paragraph (1)(b) with respect to
 234 | the deductions provided by ss. 172 (relating to net operating

235 losses), 170(d)(2) (relating to excess charitable
236 contributions), 404(a)(1)(D) (relating to excess pension trust
237 contributions), 404(a)(3)(A) and (B) (to the extent relating to
238 excess stock bonus and profit-sharing trust contributions), and
239 1212 (relating to capital losses) of the Internal Revenue Code,
240 except that, subject to the same limitations, the term:

241 (j) "Taxable income," in the case of a limited liability
242 company, other than a limited liability company classified as a
243 partnership for federal income tax purposes, as defined in and
244 organized pursuant to chapter 605 or chapter 608 or qualified to
245 do business in this state as a foreign limited liability company
246 or other than a similar limited liability company classified as
247 a partnership for federal income tax purposes and created as an
248 artificial entity pursuant to the statutes of the United States
249 or any other state, territory, possession, or jurisdiction, if
250 such limited liability company or similar entity is taxable as a
251 corporation for federal income tax purposes, means taxable
252 income determined as if such limited liability company were
253 required to file or had filed a federal corporate income tax
254 return under the Internal Revenue Code;

255 Section 9. Subsection (9) of section 440.02, Florida
256 Statutes, is amended to read:

257 440.02 Definitions.—When used in this chapter, unless the
258 context clearly requires otherwise, the following terms shall
259 have the following meanings:

260 (9) "Corporate officer" or "officer of a corporation"

261 means any person who fills an office provided for in the
 262 corporate charter or articles of incorporation filed with the
 263 Division of Corporations of the Department of State or as
 264 authorized or required under part I of chapter 607. The term
 265 "officer of a corporation" includes a member owning at least 10
 266 percent of a limited liability company created and approved
 267 under chapter 605 or chapter 608.

268 Section 10. Subsection (37) of section 605.0102, Florida
 269 Statutes, is amended to read:

270 605.0102 Definitions.—As used in this chapter, the term:

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

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

283 (b) In the case of a limited liability company having more
 284 than one class or series of members, the holders in each class
 285 or series of more than 50 percent of the then-current percentage
 286 or other interest in the profits of the company owned by all of

287 the members of that class or series who have the right to
 288 approve the a merger, interest exchange, or conversion, as
 289 applicable, under the organic law or the organic rules of the
 290 company, unless the company's organic rules provide for the
 291 approval of the transaction in a different manner.

292 Section 11. Subsection (3) of section 605.0401, Florida
 293 Statutes, is amended to read:

294 605.0401 Becoming a member.—

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

297 (a) As provided in the operating agreement;

298 (b) As the result of a merger, interest exchange,
 299 conversion, or domestication under ss. 605.1001-605.1072, as
 300 applicable;

301 (c) With the consent of all the members; or

302 (d) As provided in s. 605.0701(3).

303 Section 12. Paragraph (a) of subsection (1) of section
 304 605.04074, Florida Statutes, is amended to read:

305 605.04074 Agency rights of members and managers.—

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

308 (a) Except as provided in subsection (3), each member is
 309 an agent of the limited liability company for the purpose of its
 310 activities and affairs, and— an act of a member, including
 311 signing an agreement or instrument of transfer in the name of
 312 the company for apparently carrying on in the ordinary course of

313 the company's activities and affairs or activities and affairs
 314 of the kind carried on by the company, binds the company unless
 315 the member had no authority to act for the company in the
 316 particular matter and the person with whom the member was
 317 dealing knew or had notice that the member lacked authority.

318 Section 13. Paragraph (b) of subsection (4) of section
 319 605.0408, Florida Statutes, is amended to read:

320 605.0408 Reimbursement, indemnification, advancement, and
 321 insurance.—

322 (4) A limited liability company may purchase and maintain
 323 insurance on behalf of a member or manager of the company
 324 against liability asserted against or incurred by the member or
 325 manager in that capacity or arising from that status even if:

326 (b) Under s. 605.0105(3)(q) ~~605.0105(3)(p)~~, the operating
 327 agreement could not provide for indemnification for the conduct
 328 giving rise to the liability.

329 Section 14. Paragraph (b) of subsection (2) of section
 330 605.04091, Florida Statutes, is amended to read:

331 605.04091 Standards of conduct for members and managers.—

332 (2) The duty of loyalty is limited to:

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

338 Section 15. Paragraph (f) of subsection (2) of section

339 605.1025, Florida Statutes, is amended to read:

340 605.1025 Articles of merger.—

341 (2) The articles of merger must contain the following:

342 (f) If the surviving entity is created by the merger and
 343 is a domestic limited liability partnership ~~or domestic limited~~
 344 ~~liability limited partnership~~, its statement of qualification,
 345 as an attachment.

346 Section 16. Subsection (2) of section 606.06, Florida
 347 Statutes, is amended to read:

348 606.06 Uniform business report.—The department may use the
 349 uniform business report:

350 (2) As a substitute for any annual report or renewal
 351 filing required by chapters 495, 605, 607, ~~608~~, 609, 617, 620,
 352 621, and 865.

353 Section 17. Paragraph (b) of subsection (2) of section
 354 607.1108, Florida Statutes, is amended to read:

355 607.1108 Merger of domestic corporation and other business
 356 entity.—

357 (2) Pursuant to a plan of merger complying and approved in
 358 accordance with this section, one or more domestic corporations
 359 may merge with or into one or more other business entities
 360 formed, organized, or incorporated under the laws of this state
 361 or any other state, the United States, foreign country, or other
 362 foreign jurisdiction, if:

363 (b) Each domestic partnership that is a party to the
 364 merger complies with the applicable provisions of chapter 605

365 ~~620.~~

366 Section 18. Subsection (7) of section 607.11101, Florida
 367 Statutes, is amended to read:

368 607.11101 Effect of merger of domestic corporation and
 369 other business entity.—When a merger becomes effective:

370 (7) The shares, partnership interests, interests,
 371 obligations, or other securities, and the rights to acquire
 372 shares, partnership interests, interests, obligations, or other
 373 securities, of each domestic corporation and other business
 374 entity that is a party to the merger shall be converted into
 375 shares, partnership interests, interests, obligations, or other
 376 securities, or rights to such securities, of the surviving
 377 entity or any other domestic corporation or other business
 378 entity or, in whole or in part, into cash or other property as
 379 provided in the plan of merger, and the former holders of
 380 shares, partnership interests, interests, obligations, or other
 381 securities, or rights to such securities, shall be entitled only
 382 to the rights provided in the plan of merger and to their
 383 appraisal rights, if any, under s. 605.1006, ss. 605.1061-
 384 605.1072, ss. 607.1301-607.1333, ~~ss. 608.4351-608.43595,~~ ss.
 385 620.2114-620.2124, or other applicable law.

386 Section 19. Subsection (1) of section 636.204, Florida
 387 Statutes, is amended to read:

388 636.204 License required.—

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

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

399 Section 20. Subsection (1) of section 655.0201, Florida
 400 Statutes, is amended to read:

401 655.0201 Service of process, notice, or demand on
 402 financial institutions.—

403 (1) Process against any financial institution authorized
 404 by federal or state law to transact business in this state may
 405 be served in accordance with chapter 48, chapter 49, chapter
 406 605, or part I of chapter 607, ~~or chapter 608~~, as appropriate.

407 Section 21. Paragraph (c) of subsection (11) of section
 408 658.2953, Florida Statutes, is amended to read:

409 658.2953 Interstate branching.—

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

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

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417 Section 22. Section 694.16, Florida Statutes, is amended
418 to read:

419 694.16 Conveyances by merger or conversion of business
420 entities.—As to any merger or conversion of business entities
421 prior to June 15, 2000, the title to all real estate, or any
422 interest therein, owned by a business entity that was a party to
423 a merger or a conversion is vested in the surviving entity
424 without reversion or impairment, notwithstanding the requirement
425 of a deed which was previously required by s. 607.11101, former
426 s. 608.4383, former s. 620.204, former s. 620.8904, or former s.
427 620.8906.

428 Section 23. This act shall take effect July 1, 2015.