



## 1995 ASSEMBLY BILL 923

February 21, 1996 - Introduced by Representatives ALBERS, PORTER, BALDUS, GREEN, LA FAVE, VRAKAS, FOTI and GROTHMAN, cosponsored by Senators PETAK, HUELSMAN, FITZGERALD, RUDE, BUETTNER, COWLES, FARROW, BURKE, DARLING, GEORGE, PANZER and GROBSCHMIDT. Referred to Committee on Insurance, Securities and Corporate Policy.

1     **AN ACT to repeal** 183.0107 (1) (b), 183.0901 (3), 183.0908 (4), 183.1101 (1) (b),  
2     215.02 (15) (e), 215.26 (1), chapter 776, 813.02 (3) and 813.09; **to renumber**  
3     180.1602 (1); **to renumber and amend** 180.1915, 183.0403 (1) and 452.09 (1)  
4     (d); **to consolidate, renumber and amend** 183.0107 (1) (intro.) and (a) and  
5     183.1101 (1) (intro.) and (a); **to amend** 20.575 (1) (gb), 20.865 (1) (a), 20.865 (1)  
6     (g), 20.865 (1) (q), 71.07 (7) (b), 93.06 (4), 133.12, 180.0640 (6), 180.0706 (1),  
7     180.1604 (1), 183.0105 (3) (intro.), 183.0201, 183.0301 (1) (b), 183.0301 (2) (b),  
8     183.0304 (2), 183.0401 (2) (c), 183.0402 (3), 183.0403 (2), 183.0403 (3), 183.0403  
9     (4), 183.0403 (5) (b), 183.0405 (1) (b), 183.0405 (1) (e) (intro.), 183.0405 (1) (e)  
10    4., 183.0601, 183.0602, 183.0702 (2) (b), 183.0706 (2) (a), 183.0707, 183.0801 (1)  
11    (b), 183.0801 (2) (a), 183.0801 (2) (b), 183.0802 (1) (h), 183.0802 (3), 183.0901  
12    (4) (a), 183.0907 (2) (intro.), 183.0907 (2) (c), 183.0908 (1), 183.0908 (3) (intro.),  
13    183.1008 (1) (intro.), 183.1101 (2), 183.1101 (3), 183.1101 (4), 183.1102,  
14    183.1203 (2) (c), 185.95, 188.26, 452.09 (1) (b), 452.09 (1) (e), 452.10 (1), 452.12  
15    (2) (title), 452.12 (2) (c), 452.14 (4), 452.22 (2), 551.02 (13) (b), 551.02 (13) (c),  
16    628.04 (1) (b) 1., 891.20 and 972.085; and **to create** 77.25 (15w), 180.1602 (1),  
17    180.1915 (1) and (2), 183.0202 (6), 183.0403 (1) (b), 183.0802 (1) (k), 183.0909,

1           452.09 (1) (d) 1. to 5. and 452.12 (2) (bm) of the statutes; **relating to:** business  
2           corporation law and limited liability company law revisions, creating a real es-  
3           tate transfer fee exemption for certain business entity transfers, extending the  
4           other state tax credit to members of a limited liability company, permitting a  
5           limited liability company to obtain a real estate brokers license, repealing pro-  
6           visions for bringing legal actions and for filing injunctions against corporations  
7           or limited liability companies, the liability of service corporations and their  
8           shareholders, directors, officers and employes and making an appropriation.

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### *Analysis by the Legislative Reference Bureau*

This bill makes a number of changes relating to business corporations, service corporations (SCs) and limited liability companies (LLCs), including the following:

1. The bill limits the liability of SCs and their shareholders, directors, officers and employes. Under current law, organization as an SC does not alter any contract, tort or other legal relationship between a person receiving professional services and one or more persons rendering those professional services who are shareholders in an SC. Any legal liability that may arise out of the professional service is joint and several among those shareholders of the SC. A shareholder, director, officer or employe of an SC is not personally liable for the SC's debts or other contractual obligations. Under the bill, a shareholder, director, officer or employe of an SC is not liable for the omissions, negligence, wrongful acts, misconduct and malpractice of any person who is not under his or her actual supervision and control in the specific activity in which the omissions, negligence, wrongful acts, misconduct and malpractice occurred. The bill does not affect the liability of the SC for the acts of a shareholder, director, officer or employe while the person provides professional services on behalf of the SC or the liability of a person for his or her own acts or the acts of a person under his or her actual supervision and control.

2. The bill extends the income tax credit for income and franchise taxes paid in other states to members of an LLC. Under current law, income and franchise taxes paid to another state by a tax-option corporation may be claimed as a credit on Wisconsin income taxes by that corporation's shareholders. This bill provides the same treatment to members of LLCs.

3. The bill exempts from the real estate transfer fee transfers between a partnership and LLC if all of the members of the LLC are partners of the partnership, all of the partners of the partnership are members of the LLC and the transfer is for no consideration other than the assumption of debt or an interest in the LLC or the partnership.

4. The bill repeals a requirement in current law that corporations and LLCs show, in their annual reports filed with the secretary of state, whether the corporation or LLC has entered into any contract, combination or conspiracies in restraint of trade.

5. The bill includes references to LLCs in the secretary of state's appropriation for processing requests for expedited services and taking requests to reserving a name.

6. The bill clarifies the status of indebtedness to a shareholder incurred by a corporation because of a distribution to its shareholders. Under current law, this indebtedness is at parity with the corporation's indebtedness to its general, unsecured creditors, except to the extent subordinated by agreement. This bill provides that this provision does not affect the validity or priority of a security interest in corporation property created to secure indebtedness incurred because of a shareholder distribution.

7. The bill amends the provisions dealing with a waiver, by a shareholder of a corporation, of notice requirements under state law, the articles of incorporation or bylaws. Under current law, the shareholder may waive these requirements only before or after the date and time stated in the notice. This bill permits the waiver to occur at any time.

8. The bill defines shareholder, for purposes of shareholder inspection of corporate records, to include beneficial owners whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

9. The bill deletes the requirement that an LLC have 2 or more members.

10. The bill allows articles of organization of an LLC to include a delayed effective date and time.

11. The bill deletes a requirement that LLCs maintain, at their principal place of business, executed copies of any powers of attorney used for executing articles of organization and amendments to them.

12. The bill allows an LLC to be licensed as a real estate broker or salesperson and specifies how the license application requirements are to be applied to LLCs.

13. The bill changes the situations in which a member's interest in an LLC is either not a "security" or is presumed to be a "security".

14. The bill eliminates the ability of managers of an LLC to bring a derivative suit.

15. The bill adds a definition of liabilities to the indemnification provisions and allows indemnification of the LLC of liabilities of members in certain circumstances.

This bill repeals a number of provisions that relate to actions and proceedings by and against corporations. These provisions are located outside of the general business corporations chapter of the statutes and, in certain cases, they conflict with the provisions contained in that chapter. The provisions that are repealed by this bill include the following:

1. Certain provisions relating to injunctions against corporations. These provisions allow a court to restrain a corporation from assuming or exercising a corporate right or from transacting business not authorized by its charter. The provisions also impose certain requirements on a court in granting an injunction to suspend the gen-

eral and ordinary business of a corporation. The bill does not repeal the provisions in the business corporations chapter of the statutes that permit a court to enjoin unlawful corporate acts in certain cases and to order the dissolution of a corporation.

2. Certain provisions regarding injunctions and suits against corporations with banking powers. These provisions permit an injunction to be issued by the Wisconsin supreme court whenever a banking corporation becomes insolvent, neglects or refuses to pay its debts or violates any law. These provisions do not specifically address the powers of the banking commissioner or the role of federal bank regulators. Provisions in the banking chapter of the statutes, not repealed by the bill, permit the commissioner of banking to bring an action in circuit court to enjoin banks to enforce compliance with the law and with rules and orders of the commissioner.

3. Certain procedural provisions relating to actions by creditors against corporations and their officers, directors and stockholders. Separate provisions in the business corporations chapter of the statutes, not repealed by the bill, specifically address the substantive liability of these parties and special procedures for derivative actions by shareholders.

4. A general provision providing that, after final judgement against a corporation or against a corporation's directors, trustees, officers or stockholders, the court must cause the just and fair distribution of the corporation's property. The bill does not repeal any of the specific provisions in the business corporations chapter of the statutes that govern the process of winding up and liquidating a domestic corporation's business and affairs.

5. General provisions granting courts "jurisdiction" over certain causes of action against directors, managers, trustees and other officers of corporations. The causes of action covered by these provisions include actions to suspend or remove any director, trustee or other officer from exercising their office; and to direct new elections of a corporate board. The provisions also authorize the governor to fill vacancies on corporate boards if all members of the board are removed by a court. The provisions appear to conflict in certain ways with specific provisions contained in the business corporations chapter of the statutes, not repealed by the bill.

6. Certain procedural and substantive provisions dealing with the dissolution of a corporation and with vacating or annulling an act of incorporation or a corporation's charter. Under these provisions, a judgment that a corporation has forfeited its corporate rights, privileges and franchises results in the dissolution of the corporation. These provide for a specific order of priority in distributing the assets of the corporations, the payment of the attorney general's costs in bringing dissolution actions, and the filing of judgements dissolving a corporation. The business corporation chapter contains specific provisions that govern the judicial dissolution of corporations, although these provisions do not provide for a specific order of priority in distributing the assets of the dissolved corporation.

7. A specific provision allowing courts to compel discovery with respect to a corporation and its officers, agents and stockholders.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.575 (1) (gb) of the statutes is amended to read:

2           20.575 (1) (gb) *Expedited service and telephone application for reservation of*  
3 *name.* The amounts in the schedule for processing of a document, request for in-  
4 formation or certification in an expeditious manner under s. 14.38 (9), 179.16 (5),  
5 180.0122 (4), 181.68 (1) (k), 183.0114 (1) (u) or 185.83 (1) (h) and for taking telephone  
6 applications to reserve a name under s. 179.03 (2), 180.0402, 181.07 (2), 183.0104 or  
7 185.045. All expedited service fees collected under ss. 14.38 (9), 179.16 (5), 180.0122  
8 (4), 181.68 (1) (k), 183.0114 (1) (u) and 185.83 (1) (h) and all fees for telephone applica-  
9 tion to reserve a name collected under s. 179.03 (2), 180.0122 (1) (e) or (f), 181.68 (1)  
10 (g), 183.0114 (1) (e) or (f) or 185.045 shall be credited to this appropriation. Notwith-  
11 standing s. 20.001 (3) (a), any unencumbered balance at the close of a fiscal year ex-  
12 ceeding 10% of the previous fiscal year's expenditures under this appropriation shall  
13 lapse to the general fund.

14           **SECTION 2.** 20.865 (1) (a) of the statutes is amended to read:

15           20.865 (1) (a) *Judgments and legal expenses.* A sum sufficient to pay for legal  
16 expenses under ss. s. 59.31 and 776.43, for costs under ss. 227.485 and 814.245 and  
17 for the costs of judgments, orders and settlements of actions, appeals and complaints  
18 under subch. II of ch. 111 or subch. II or III of ch. 230, and those judgments, awards,  
19 orders and settlements under ss. 21.13, 165.25 (6), 775.04 and 895.46 that are not  
20 otherwise reimbursable as liability costs under par. (fm). Release of moneys under

1 this paragraph pursuant to any settlement agreement, whether or not incorporated  
2 into an order, is subject to approval of the attorney general.

3 **SECTION 3.** 20.865 (1) (g) of the statutes is amended to read:

4 20.865 (1) (g) *Judgments and legal expenses; program revenues.* From the ap-  
5 propriate program revenue and program revenue-service accounts, a sum sufficient  
6 to pay for legal expenses under ss. s. 59.31 and ~~776.43~~, for costs under ss. 227.485  
7 and 814.245 and for the cost of judgments, orders and settlements of actions, appeals  
8 and complaints under subch. II of ch. 111 or subch. II or III of ch. 230, and those judg-  
9 ments, awards, orders and settlements under ss. 21.13, 165.25 (6), 775.04 and 895.46  
10 that are not otherwise reimbursable as liability costs under par. (fm). Release of mo-  
11 neys under this paragraph pursuant to any settlement agreement, whether or not  
12 incorporated into an order, is subject to approval of the attorney general.

13 **SECTION 4.** 20.865 (1) (q) of the statutes is amended to read:

14 20.865 (1) (q) *Judgments and legal expenses; segregated revenues.* From the  
15 appropriate segregated funds, a sum sufficient to pay for legal expenses under ss. s.  
16 59.31 and ~~776.43~~, for costs under ss. 227.485 and 814.245 and for the cost of judg-  
17 ments, orders and settlements of actions, appeals and complaints under subch. II of  
18 ch. 111 or subch. II or III of ch. 230, and those judgments, awards, orders and settle-  
19 ments under ss. 21.13, 165.25 (6), 775.04 and 895.46 that are not otherwise reim-  
20 bursable as liability costs under par. (fm). Release of moneys under this paragraph  
21 pursuant to any settlement agreement, whether or not incorporated into an order,  
22 is subject to approval of the attorney general.

23 **SECTION 5.** 71.07 (7) (b) of the statutes is amended to read:

24 71.07 (7) (b) If a resident individual, estate or trust pays a net income tax to  
25 another state, that resident individual, estate or trust may credit the net tax paid to

1 that other state on that income against the net income tax otherwise payable to the  
2 state on income of the same year. The credit may not be allowed unless the income  
3 taxed by the other state is also considered income for Wisconsin tax purposes. The  
4 credit may not be allowed unless claimed within the time provided in s. 71.75 (2), but  
5 s. 71.75 (4) does not apply to those credits. For purposes of this paragraph, amounts  
6 declared and paid pursuant to the income tax law of another state shall be deemed  
7 a net income tax paid to that other state only in the year in which the income tax re-  
8 turn for that state was required to be filed. Income and franchise taxes paid to another  
9 state by a tax-option corporation or limited liability company may be claimed as  
10 a credit under this paragraph by that corporation's shareholders or that limited li-  
11 ability company's members who are residents of this state and who otherwise qualify  
12 under this paragraph.

13 **SECTION 6.** 77.25 (15w) of the statutes is created to read:

14 77.25 (15w) Between a partnership and a limited liability company if all of the  
15 members of the limited liability company are partners of the partnership and all of  
16 the partners of the partnership are members of the limited liability company and if  
17 the transfer is for no consideration other than the assumption of debt or an interest  
18 in the limited liability company or the partnership.

19 **SECTION 7.** 93.06 (4) of the statutes is amended to read:

20 93.06 (4) LAW ENFORCEMENT. At the request of the attorney general or of any  
21 district attorney, assist in the enforcement of any of the following statutes relating  
22 to trade: ss. 133.03 to 133.07, 133.10, 133.12 to 133.15, 133.17, 134.01, 185.94,  
23 ~~776.32, 776.36~~, 784.04 and 939.31.

24 **SECTION 8.** 133.12 of the statutes is amended to read:

1           **133.12 Domestic and foreign corporations and limited liability compa-**  
2 **nies; cancellation of charters or certificates of authority for restraining**  
3 **trade; affidavit.** Any corporation or limited liability company organized under the  
4 laws of this state or foreign corporation or foreign limited liability company autho-  
5 rized to transact business in this state pursuant to a certificate of authority from the  
6 secretary of state which violates any provision of this chapter, may, upon proof there-  
7 of, in any circuit court have its charter or authority to transact business in this state  
8 suspended, canceled or annulled. ~~Every corporation or limited liability company~~  
9 ~~shall, in its annual report filed with the secretary of state, show whether it has en-~~  
10 ~~tered into any contract, combination in the form of trust or otherwise, or conspiracy~~  
11 ~~in restraint of trade or commerce.~~ The department of justice shall enforce this sec-  
12 tion.

13           **SECTION 9.** 180.0640 (6) of the statutes is amended to read:

14           180.0640 (6) A corporation's indebtedness to a shareholder incurred because  
15 of a distribution made in accordance with this section is at parity with the corpora-  
16 tion's indebtedness to its general, unsecured creditors except to the extent subordi-  
17 nated by agreement. This subsection does not affect the validity or priority of a secu-  
18 urity interest in corporation property created to secure indebtedness incurred because  
19 of a distribution.

20           **SECTION 10.** 180.0706 (1) of the statutes is amended to read:

21           180.0706 (1) A shareholder may waive any notice required by this chapter, the  
22 articles of incorporation or the bylaws ~~before or after the date and time stated in the~~  
23 ~~notice at any time.~~ The waiver shall be in writing and signed by the shareholder en-  
24 titled to the notice, contain the same information that would have been required in  
25 the notice under any applicable provisions of this chapter, except that the time and



1 place of meeting need not be stated, and be delivered to the corporation for inclusion  
2 in the corporate records.

3 **SECTION 11.** 180.1602 (1) of the statutes is renumbered 180.1602 (1m).

4 **SECTION 12.** 180.1602 (1) of the statutes is created to read:

5 180.1602 (1) In this section, “shareholder” includes a beneficial owner whose  
6 shares are held in a voting trust or by a nominee on the beneficial owner’s behalf.

7 **SECTION 13.** 180.1604 (1) of the statutes is amended to read:

8 180.1604 (1) If a corporation does not within a reasonable time allow a share-  
9 holder to inspect and copy any record described in s. 180.1602 (1) or (2), the share-  
10 holder who complies with s. 180.1602 (1) (1m) or (2), as applicable, may apply to the  
11 circuit court for the county where the corporation’s principal office or, if none in this  
12 state, its registered office is located for an order to permit inspection and copying of  
13 the records demanded.

14 **SECTION 14.** 180.1915 of the statutes is renumbered 180.1915 (intro.) and  
15 amended to read:

16 **180.1915** (title) ~~Contract and tort~~ **Professional relationships preserved**  
17 **and liability.** (intro.) ~~Sections~~ Except as provided in this section, ss. 180.1901 to  
18 180.1921 do not alter any contract, tort or other legal relationship between a person  
19 receiving professional services and one or more persons who are licensed, certified  
20 or registered to render those professional services and who are shareholders, direc-  
21 tors, officers or employes in the same service corporation. Any legal liability which  
22 may arise out of the professional service shall be joint and several among those share-  
23 holders of the same service corporation. A shareholder, director, officer or employe  
24 of a service corporation is not personally liable for the debts or other contractual ob-  
25 ligations of the service corporation nor for the omissions, negligence, wrongful acts,

1 misconduct and malpractice of any person who is not under his or her actual supervi-  
2 sion and control in the specific activity in which the omissions, negligence, wrongful  
3 acts, misconduct and malpractice occurred. A service corporation may charge for the  
4 services of its shareholders, directors, officers, employes or agents, may collect such  
5 charges and may compensate those who render such personal services. Nothing in  
6 this section shall affect any of the following:

7 **SECTION 15.** 180.1915 (1) and (2) of the statutes are created to read:

8 180.1915 (1) The liability of a service corporation for the omissions, negligence,  
9 wrongful acts, misconduct and malpractice of a shareholder, director, officer or em-  
10 ploye while the person, on behalf of the service corporation, provides professional ser-  
11 vices.

12 (2) The personal liability of a shareholder, director, officer or employe of a ser-  
13 vice corporation for his or her own omissions, negligence, wrongful acts, misconduct  
14 and malpractice and for the omissions, negligence, wrongful acts, misconduct and  
15 malpractice of any person acting under his or her actual supervision and control in  
16 the specific activity in which the omissions, negligence, wrongful acts, misconduct  
17 and malpractice occurred.

18 **SECTION 16.** 183.0105 (3) (intro.) of the statutes is amended to read:

19 183.0105 (3) (intro.) ~~Except as provided in sub. (4), a~~ A statement of change de-  
20 livered under sub. (2) (a) shall include all of the following information:

21 **SECTION 17.** 183.0107 (1) (intro.) and (a) of the statutes are consolidated, re-  
22 numbered 183.0107 (1) and amended to read:

23 183.0107 (1) Except as provided in this chapter, any document required or per-  
24 mitted by this chapter to be delivered for filing to the secretary of state shall be exe-  
25 cuted by ~~any of the following: (a) Any~~ a manager, if management of the limited liabil-

1 ity company is vested in a manager or managers, or by a any member, if management  
2 of the limited liability company is reserved to the members.

3 **SECTION 18.** 183.0107 (1) (b) of the statutes is repealed.

4 **SECTION 19.** 183.0201 of the statutes is amended to read:

5 **183.0201 Organization.** One or more persons may organize a limited liability  
6 company by signing and delivering articles of organization to the secretary of state  
7 for filing. The organizer or organizers need not be members of the limited liability  
8 company at the time of organization or thereafter. ~~A limited liability company shall~~  
9 ~~have 2 or more members.~~

10 **SECTION 20.** 183.0202 (6) of the statutes is created to read:

11 183.0202 (6) If applicable, the delayed effective date and time of the articles  
12 of organization permitted under s. 183.0111 (2).

13 **SECTION 21.** 183.0301 (1) (b) of the statutes is amended to read:

14 183.0301 (1) (b) The act of any member, including the execution in the name  
15 of the limited liability company of any instrument, for apparently carrying on in the  
16 ordinary course of business the business of the limited liability company, binds the  
17 limited liability company unless the member has, in fact, no authority to act for the  
18 limited liability company in the particular matter, and the person with whom the  
19 member is dealing has knowledge that the member has no authority to act in the  
20 matter.

21 **SECTION 22.** 183.0301 (2) (b) of the statutes is amended to read:

22 183.0301 (2) (b) Each manager is an agent of the limited liability company, but  
23 not of the members or any of them, for the purpose of its business. The act of any  
24 manager, including the execution in the name of the limited liability company of any  
25 instrument, for apparently carrying on in the ordinary course of business the busi-

1       ness of the limited liability company, binds the limited liability company unless the  
2       manager has, in fact, no authority to act for the limited liability company in the par-  
3       ticular matter, and the person with whom the manager is dealing has knowledge that  
4       the manager has no authority to act in the matter.

5           **SECTION 23.** 183.0304 (2) of the statutes is amended to read:

6           183.0304 (2) Notwithstanding sub. (1), nothing in this chapter shall preclude  
7       a court from ignoring the limited liability company entity under principles of com-  
8       mon law of this state that are similar to those applicable to business corporations and  
9       shareholders in this state and under circumstances that are not inconsistent with  
10      the purposes of this chapter.

11          **SECTION 24.** 183.0401 (2) (c) of the statutes is amended to read:

12          183.0401 (2) (c) ~~Unless earlier removed or earlier resigned, shall~~ Shall hold of-  
13      fice until a successor is elected and qualified, or until prior death, resignation or re-  
14      moval.

15          **SECTION 25.** 183.0402 (3) of the statutes is amended to read:

16          183.0402 (3) An operating agreement may impose duties on its members and  
17      managers that are in addition to, ~~but not in abrogation of,~~ those provided under sub.  
18      (1).

19          **SECTION 26.** 183.0403 (1) of the statutes is renumbered 183.0403 (1) (intro.) and  
20      amended to read:

21          183.0403 (1) (intro.) In this section, ~~“expenses”~~:

22          (a) “Expenses” has the meaning given in s. 180.0850 (3).

23          **SECTION 27.** 183.0403 (1) (b) of the statutes is created to read:

1           183.0403 (1) (b) “Liabilities” include the obligation to pay a judgment, settle-  
2           ment, penalty, assessment, forfeiture or fine, including an excise tax assessed with  
3           respect to an employe benefit plan.

4           **SECTION 28.** 183.0403 (2) of the statutes is amended to read:

5           183.0403 (2) A limited liability company shall indemnify or allow reasonable  
6           expenses to and pay liabilities of each member and, if management of the limited li-  
7           ability company is vested in one or more managers, of each manager ~~for all reason-~~  
8           ~~able expenses~~, incurred with respect to a proceeding if that member or manager was  
9           a party to the proceeding in the capacity of a member or manager.

10          **SECTION 29.** 183.0403 (3) of the statutes is amended to read:

11          183.0403 (3) An operating agreement may alter or provide additional rights to  
12          indemnification of liabilities or allowance of expenses to members and managers.

13          **SECTION 30.** 183.0403 (4) of the statutes is amended to read:

14          183.0403 (4) Notwithstanding subs. (2) and (3), a limited liability company  
15          may not indemnify a member or manager for liabilities or permit a member or man-  
16          ager to retain any allowance for expenses provided under those subsections unless  
17          it is determined by or on behalf of the limited liability company that ~~the member or~~  
18          ~~manager did not~~ the liabilities or expenses did not result from the member’s or man-  
19          ~~ager’s~~ breach or fail failure to perform a duty to the limited liability company as pro-  
20          vided in s. 183.0402.

21          **SECTION 31.** 183.0403 (5) (b) of the statutes is amended to read:

22          183.0403 (5) (b) In situations not described in par. (a), the determination of  
23          whether a member or manager, who is a party to a proceeding because the person is  
24          a member or manager, has breached or failed to perform a duty to the limited liability  
25          company, or whether the liability or expenses resulted from the breach or failure,

1 shall be made by the vote of the members that meets the requirements under s.  
2 183.0404 (1) (a), except that the vote of any member who is a party to the same or a  
3 related proceeding shall be excluded unless all members are parties.

4 **SECTION 32.** 183.0405 (1) (b) of the statutes is amended to read:

5 183.0405 (1) (b) A copy of the articles of organization and all amendments to  
6 the articles, ~~together with executed copies of any powers of attorney under which any~~  
7 ~~articles have been executed.~~

8 **SECTION 33.** 183.0405 (1) (e) (intro.) of the statutes is amended to read:

9 183.0405 (1) (e) (intro.) Unless already set forth in an operating agreement, a  
10 ~~writing~~ written records containing all of the following information:

11 **SECTION 34.** 183.0405 (1) (e) 4. of the statutes is amended to read:

12 183.0405 (1) (e) 4. Other writings ~~prepared under a requirement, if any, in~~ as  
13 required by an operating agreement.

14 **SECTION 35.** 183.0601 of the statutes is amended to read:

15 **183.0601 Interim distributions.** Except as provided in this subchapter, a  
16 member is entitled to receive distributions from a limited liability company, before  
17 the member's dissociation from the limited liability company and before its dissolu-  
18 tion and winding up, to the extent and at the times or upon the events specified in  
19 an operating agreement, or, if not otherwise provided in an operating agreement, to  
20 the extent and at the times determined by the members or managers under s.  
21 183.0404 (1).

22 **SECTION 36.** 183.0602 of the statutes is amended to read:

23 **183.0602 Allocation of distributions.** Distributions of cash or other assets  
24 of a limited liability company shall be allocated among the members as provided in  
25 an operating agreement. If the members do not enter into an operating agreement

1 or the operating agreement does not so provide, distributions shall be allocated on  
2 the basis of the value, as stated in the records required to be kept under s. 183.0405  
3 (1), of the contributions made by each member in the same manner that profits are  
4 allocated under s. 183.0503.

5 **SECTION 37.** 183.0702 (2) (b) of the statutes is amended to read:

6 183.0702 (2) (b) A member who is not a manager does not have authority, in  
7 the member's capacity as a member, to transfer title to property of the limited liabil-  
8 ity company.

9 **SECTION 38.** 183.0706 (2) (a) of the statutes is amended to read:

10 183.0706 (2) (a) An assignee of a limited liability company interest who be-  
11 comes a member has, to the extent assigned, the rights and powers, and is subject  
12 to the restrictions and liabilities, of the assignor under an operating agreement and  
13 this chapter. An assignee who becomes a member is liable for any of the assignor's  
14 obligations under an operating agreement and this chapter to the limited liability  
15 company.

16 **SECTION 39.** 183.0707 of the statutes is amended to read:

17 **183.0707 Powers of legal representative.** If a member who is an individual  
18 dies or is adjudged to be incompetent to manage his or her person or estate by a court  
19 of competent jurisdiction ~~adjudges the member to be incompetent to manage his or~~  
20 ~~her person or property,~~ the member's personal representative, administrator, guard-  
21 ian, conservator, trustee or other legal representative shall have all of the rights of  
22 an assignee of the member's interest. If a member is a corporation, trust, partner-  
23 ship, limited liability company or other entity and is dissolved or terminated, ~~the~~  
24 ~~powers of that member may be exercised by its legal representative or successor~~ shall  
25 have all of the rights of an assignee of the member's interest.

1           **SECTION 40.** 183.0801 (1) (b) of the statutes is amended to read:

2           183.0801 (1) (b) The time provided in and upon compliance with an operating  
3 agreement or, if the limited liability company does not have an operating agreement  
4 or an operating agreement does not so provide, ~~when~~ on the effective date of the per-  
5 son's admission is as reflected in the records of the limited liability company main-  
6 tained under s. 183.0405 (1).

7           **SECTION 41.** 183.0801 (2) (a) of the statutes is amended to read:

8           183.0801 (2) (a) In the case of a person acquiring a limited liability company  
9 interest directly from the limited liability company, at the time provided in and upon  
10 compliance with an operating agreement or, if the limited liability company does not  
11 have an operating agreement or an operating agreement does not so provide, upon  
12 the consent of all members and ~~when~~ on the effective date of the person's admission  
13 is as reflected in the records of the limited liability company maintained under s.  
14 183.0405 (1).

15           **SECTION 42.** 183.0801 (2) (b) of the statutes is amended to read:

16           183.0801 (2) (b) In the case of an assignee of a limited liability company inter-  
17 est, as provided in s. 183.0706 (1) and at the time provided in and upon compliance  
18 with an operating agreement or, if the limited liability company does not have an op-  
19 erating agreement or an operating agreement does not so provide, ~~when~~ on the effec-  
20 tive date of the person's admission is as reflected in the records of the limited liability  
21 company maintained under s. 183.0405 (1).

22           **SECTION 43.** 183.0802 (1) (h) of the statutes is amended to read:

23           183.0802 (1) (h) Unless otherwise provided in an operating agreement or by the  
24 written consent of all members at the time, if the member is a separate domestic or



1 foreign limited liability company, the dissolution and commencement of winding up  
2 of the separate domestic or foreign limited liability company.

3 **SECTION 44.** 183.0802 (1) (k) of the statutes is created to read:

4 183.0802 (1) (k) Unless otherwise provided in an operating agreement or by the  
5 written consent of all members at the time, if the member is a partnership or other  
6 entity not described under pars. (g) to (j), the dissolution of the partnership or entity.

7 **SECTION 45.** 183.0802 (3) of the statutes is amended to read:

8 183.0802 (3) Unless an operating agreement provides that a member does not  
9 have the power to withdraw by voluntary act from a limited liability company, the  
10 member may do so at any time by giving written notice to the other members, or on  
11 any other terms as are provided in an operating agreement. If the member has the  
12 power to withdraw but the withdrawal is a breach of an operating agreement or the  
13 withdrawal occurs as a result of otherwise wrongful conduct of the member, the lim-  
14 ited liability company may recover from the withdrawing member damages for  
15 breach of the operating agreement or as a result of the wrongful conduct and may  
16 offset the damages against the amount otherwise distributable to the member, in  
17 addition to pursuing any remedies provided for in an operating agreement or other-  
18 wise available under applicable law. Unless otherwise provided in an operating  
19 agreement, in the case of a limited liability company for a definite term or particular  
20 undertaking, a withdrawal by a member before the expiration of that term or comple-  
21 tion of that undertaking is a breach of the operating agreement.

22 **SECTION 46.** 183.0901 (3) of the statutes is repealed.

23 **SECTION 47.** 183.0901 (4) (a) of the statutes is amended to read:

24 183.0901 (4) (a) The business of the limited liability company is continued by  
25 the consent of all of the remaining members within 90 days after the date on which

1 the event occurs at which time the remaining members may agree to the admission  
2 of one or more additional members or to the appointment of one or more additional  
3 managers, or both.

4 **SECTION 48.** 183.0907 (2) (intro.) of the statutes is amended to read:

5 183.0907 (2) (intro.) A dissolved limited liability company may notify its known  
6 claimants in writing of the dissolution at any time after the effective date of its ar-  
7 ticles of dissolution. The written notice shall include all of the following:

8 **SECTION 49.** 183.0907 (2) (c) of the statutes is amended to read:

9 183.0907 (2) (c) The deadline, which may not be fewer than 120 days after the  
10 ~~later of the date of the written notice or the filing of articles of dissolution under s.~~  
11 ~~183.0906,~~ by which the limited liability company must receive the claim.

12 **SECTION 50.** 183.0908 (1) of the statutes is amended to read:

13 183.0908 (1) ~~A~~ At any time after the effective date of its articles of dissolution,  
14 a dissolved limited liability company may publish a notice of its dissolution under  
15 this section that requests that persons with claims, whether known or unknown,  
16 against the limited liability company or its members or managers, in their capacities  
17 as such, present the claims in accordance with the notice.

18 **SECTION 51.** 183.0908 (3) (intro.) of the statutes is amended to read:

19 183.0908 (3) (intro.) If a dissolved limited liability company publishes a notice  
20 under sub. (2) and ~~files articles of dissolution under s. 183.0906,~~ the claim of any of  
21 the following claimants against the limited liability company or its members or man-  
22 agers is barred unless the claimant commences a proceeding to enforce the claim  
23 within 2 years after the ~~later of the date of the publication of the notice or the filing~~  
24 ~~of the articles of dissolution:~~

25 **SECTION 52.** 183.0908 (4) of the statutes is repealed.

1           **SECTION 53.** 183.0909 of the statutes is created to read:

2           **183.0909 Enforcing claims.** A claim not barred under s. 183.0907 or  
3 183.0908 may be enforced under this section against any of the following:

4           **(1)** The dissolved limited liability company, to the extent of its undistributed  
5 assets.

6           **(2)** If the dissolved limited liability company's assets have been distributed in  
7 liquidation, a member of the limited liability company to the extent of the member's  
8 proportionate share of the claim or to the extent of the assets of the limited liability  
9 company distributed to the member in liquidation, whichever is less, but a member's  
10 total liability for all claims under this section may not exceed the total value of assets  
11 distributed to the member in liquidation.

12           **SECTION 54.** 183.1008 (1) (intro.) of the statutes is amended to read:

13           183.1008 **(1)** (intro.) A foreign limited liability company authorized to transact  
14 business in this state may change its registered office or registered agent, or both,  
15 by delivering to the secretary of state for filing a statement of change that, ~~except as~~  
16 ~~provided in sub. (2),~~ includes all of the following:

17           **SECTION 55.** 183.1101 (1) (intro.) and (a) of the statutes are consolidated, re-  
18 numbered 183.1101 (1) and amended to read:

19           183.1101 **(1)** Unless otherwise provided in an operating agreement, an action  
20 on behalf of a limited liability company may be brought in the name of the limited  
21 liability company by ~~any of the following:~~ ~~(a)~~ One one or more members of the lim-  
22 ited liability company, whether or not the management of the limited liability compa-  
23 ny is vested in one or more managers, if the members are authorized to sue by the  
24 affirmative vote as described in s. 183.0404 (1) (a), except that the vote of any member

1 who has an interest in the outcome of the action that is adverse to the interest of the  
2 limited liability company shall be excluded.

3 **SECTION 56.** 183.1101 (1) (b) of the statutes is repealed.

4 **SECTION 57.** 183.1101 (2) of the statutes is amended to read:

5 183.1101 (2) In an action brought on behalf of a limited liability company, the  
6 member ~~or manager~~ bringing the action shall be a member ~~or manager~~ at the time  
7 of bringing the action and at the time of the transaction which is the subject of the  
8 action or, ~~in the case of a member~~, the person's status as a member devolved upon that  
9 person by operation of law or under the terms of an operating agreement from a per-  
10 son who was a member at the time of the transaction.

11 **SECTION 58.** 183.1101 (3) of the statutes is amended to read:

12 183.1101 (3) In an action brought on behalf of a limited liability company, the  
13 complaint shall describe with particularity the authorization of the member ~~or man-~~  
14 ~~ager~~ to bring the action and the determination of the authorization.

15 **SECTION 59.** 183.1101 (4) of the statutes is amended to read:

16 183.1101 (4) If an action brought on behalf of a limited liability company is suc-  
17 cessful, in whole or in part, as a result of a judgment, compromise or settlement of  
18 the action, the court may award the member ~~or manager~~ bringing the action reason-  
19 able expenses, including reasonable attorney fees, from any recovery in the action  
20 or from the limited liability company.

21 **SECTION 60.** 183.1102 of the statutes is amended to read:

22 **183.1102 Effect of lack of authority to sue.** The lack of authority of a mem-  
23 ber ~~or manager~~ to sue on behalf of a limited liability company may not be asserted  
24 by the limited liability company as a basis for bringing a subsequent suit on the same  
25 cause of action.

1           **SECTION 61.** 183.1203 (2) (c) of the statutes is amended to read:

2           183.1203 **(2)** (c) The manner and basis of converting the interests in each lim-  
3           ited liability company that is a party to the merger into limited liability company in-  
4           terests, cash or obligations of the surviving limited liability company or into cash or  
5           other property.

6           **SECTION 62.** 185.95 of the statutes is amended to read:

7           **185.95 Discrimination against association.** Whenever any corporation  
8           has discriminated against any association transacting business in this state, its  
9           charter may be vacated or its existence annulled, or its license to do business in this  
10          state may be revoked ~~in the manner provided in s. 776.36.~~

11          **SECTION 63.** 188.26 of the statutes is amended to read:

12          **188.26 Veterans; corporations.** Whenever any corporation is formed under  
13          ch. 180 or 181 or this chapter for the purpose of assisting any veteran, as defined in  
14          s. 45.37 (1a), or operating social clubs in which the name “veteran” appears, the sec-  
15          retary of state shall investigate the same to ascertain the character thereof, and  
16          whether or not the same has been procured by fraudulent representation or conceal-  
17          ment of any material fact relating to such veteran’s name, purpose, membership, or-  
18          ganization, management or control or other material fact. If the secretary of state  
19          so finds, such findings, misrepresentation or concealment shall be reported to the at-  
20          torney general, and the attorney general ~~thereupon shall as provided in s. 776.35~~  
21          bring an action to vacate or annul the corporate charter.

22          **SECTION 64.** 215.02 (15) (e) of the statutes is repealed.

23          **SECTION 65.** 215.26 (1) of the statutes is repealed.

24          **SECTION 66.** 452.09 (1) (b) of the statutes is amended to read:

1           452.09 (1) (b) The name and address of the applicant; if the applicant is a part-  
2           nership, the name and address of each member; and if the applicant is a corporation,  
3           the name and address of each of its officers; if the applicant is a limited liability com-  
4           pany whose articles of organization vest management in one or more managers, the  
5           name and address of each manager; and if the applicant is a limited liability company  
6           whose articles of organization do not vest management in one or more managers, the  
7           name and address of each member of the limited liability company.

8           **SECTION 67.** 452.09 (1) (d) of the statutes is renumbered 452.09 (1) (d) (intro.)  
9           and amended to read:

10           452.09 (1) (d) (intro.) The business or occupation engaged in by the applicant,  
11           ~~or if a partnership, by each member, or if a corporation, by each officer,~~ for a period  
12           of at least 2 years immediately preceding the date of the application, by the follow-  
13           ing:

14           **SECTION 68.** 452.09 (1) (d) 1. to 5. of the statutes are created to read:

15           452.09 (1) (d) 1. If an individual, the applicant.

16           2. If a corporation, the officers.

17           3. If a partnership, the members.

18           4. If a limited liability company whose articles of organization vest manage-  
19           ment in one or more managers, the managers.

20           5. If a limited liability company whose articles of organization do not vest man-  
21           agement in one or more managers, the members.

22           **SECTION 69.** 452.09 (1) (e) of the statutes is amended to read:

23           452.09 (1) (e) Any other information which the department may reasonably re-  
24           quire to enable it to determine the competency of each applicant, ~~including each~~  
25           ~~member of the partnership, or each officer of the corporation,~~ to transact the business

1 of a broker or salesperson in a manner which safeguards the interests of the public.  
2 In this paragraph, "applicant" includes each member of a partnership, each officer  
3 of a corporation, each manager of a limited liability company whose articles of orga-  
4 nization vest management in one or more managers and each member of a limited  
5 liability company whose articles of organization do not vest management in one or  
6 more managers.

7 **SECTION 70.** 452.10 (1) of the statutes is amended to read:

8 452.10 (1) An application shall be verified by the applicant. If made by a part-  
9 nership it shall be verified by ~~at least 2 members~~ a member. If made by a corporation  
10 it shall be verified by ~~the president and secretary~~ an officer of the corporation. If  
11 made by a limited liability company whose articles of organization vest management  
12 in one or more managers, it shall be verified by a manager. If made by a limited liabil-  
13 ity company whose articles of organization do not vest management in one or more  
14 managers, it shall be verified by a member.

15 **SECTION 71.** 452.12 (2) (title) of the statutes is amended to read:

16 452.12 (2) (title) CORPORATIONS; PARTNERSHIPS; LIMITED LIABILITY COMPANIES.

17 **SECTION 72.** 452.12 (2) (bm) of the statutes is created to read:

18 452.12 (2) (bm) A license may be issued to a limited liability company if the lim-  
19 ited liability company has reserved management to its members and has at least one  
20 member who is a licensed broker or if the limited liability company has vested man-  
21 agement in one or more managers and has at least one manager who is a licensed  
22 broker. The license issued to the limited liability company entitles each member or  
23 manager, respectively, of the limited liability company who is a licensed broker to act  
24 as a broker on behalf of the limited liability company.

25 **SECTION 73.** 452.12 (2) (c) of the statutes is amended to read:

1           452.12 (2) (c) Application for a corporate ~~or~~, partnership or limited liability  
2 company license shall be made on forms prescribed by the department, listing the  
3 names and addresses of all officers ~~and of the corporation~~, partners of the partner-  
4 ship and members if management is reserved to members or managers if manage-  
5 ment is vested in one or more managers of the limited liability company, and shall  
6 be accompanied by the fee specified in s. 440.05 (1). If there is a change in any of the  
7 officers ~~or~~, partners, members or managers, the change shall be reported to the de-  
8 partment, on the same form, within 30 days after the effective date of the change.

9           **SECTION 74.** 452.14 (4) of the statutes is amended to read:

10           452.14 (4) If a broker is a company it shall be sufficient cause for reprimand  
11 or for the limitation, suspension or revocation of a broker's license that any officer,  
12 director or trustee of the company, ~~or~~ any member of a partnership, any member of  
13 a limited liability company if management is reserved to members or any manager  
14 if management is vested in one or more managers, or anyone who has a financial in-  
15 terest in or is in any way connected with the operation of a brokerage business, has  
16 been guilty of any act or omission which would be cause for refusing a broker's license  
17 to such person as an individual.

18           **SECTION 75.** 452.22 (2) of the statutes is amended to read:

19           452.22 (2) The certificate of the secretary or his or her designee to the effect that  
20 a specified individual, partnership ~~or~~, corporation or limited liability company is not  
21 or was not on a specified date the holder of a broker's, salesperson's or time-share  
22 salesperson's license or registration, or that a specified license or registration was  
23 not in effect on a date specified, or as to the issuance, limitation, suspension or re-  
24 vocation of any license or registration or the reprimand of any holder thereof, the fil-



1 ing or withdrawal of any application or its existence or nonexistence, is prima facie  
2 evidence of the facts therein stated for all purposes in any action or proceedings.

3 **SECTION 76.** 551.02 (13) (b) of the statutes is amended to read:

4 551.02 (13) (b) "Security" does not include any fixed or variable insurance or  
5 endowment policy or annuity contract under which an insurer promises to pay  
6 money either in a lump sum or periodically for life or some other specified period; any  
7 beneficial interest in any voluntary inter vivos trust not created for the purpose of  
8 carrying on any business or solely for the purpose of voting; or any beneficial interest  
9 in any testamentary trust; or any member's interest that includes all of the rights  
10 set forth in s. 183.0102 (11) in a limited liability company organized under ch. 183  
11 if the aggregate number of members of the limited liability company, after the inter-  
12 est is transferred sold, does not exceed 15 and the right to manage, and the articles  
13 of organization do not vest management of the limited liability company is vested in  
14 its members in one or more managers.

15 **SECTION 77.** 551.02 (13) (c) of the statutes is amended to read:

16 551.02 (13) (c) "Security" Except as provided in par. (b), "security" is presumed  
17 to include an a member's interest in a limited liability company organized under ch.  
18 183 if the right to manage articles of organization vest management of the limited  
19 liability company is vested in, or if the operating agreement delegates the essential  
20 managerial responsibility of the limited liability company to, one or more managers  
21 who are not members, or if the aggregate number of members of the limited liability  
22 company, after the interest is sold, exceeds 35. "Security" is not presumed not to in-  
23 clude an a member's interest in a limited liability company organized under ch. 183  
24 if the aggregate number of members of the limited liability company, after the inter-  
25 est is sold, does not exceed 35 and the right to manage articles of organization do not

1 vest management of the limited liability company is vested in, nor does the operating  
2 agreement delegate the essential managerial responsibilities of the limited liability  
3 company to its members one or more managers who are not members.

4 **SECTION 78.** 628.04 (1) (b) 1. of the statutes is amended to read:

5 628.04 (1) (b) 1. That if a natural person, the applicant has the intent in good  
6 faith to do business as an intermediary or, if a corporation, partnership or limited  
7 liability company, has that intent and has included that purpose in the articles of in-  
8 corporation, ~~association or organization~~ certificate of limited partnership or general  
9 partnership agreement or limited liability company operating agreement;

10 **SECTION 79.** Chapter 776 of the statutes is repealed.

11 **SECTION 80.** 813.02 (3) of the statutes is repealed.

12 **SECTION 81.** 813.09 of the statutes is repealed.

13 **SECTION 82.** 891.20 of the statutes is amended to read:

14 **891.20 Articles of incorporation, presumptions.** Any Except as provided  
15 in s. 180.0203 (2), any charter or patent of incorporation which shall have been issued  
16 by the governor or secretary of state, or both, to any corporation under any law of the  
17 state; any certificate of organization or association of any corporation or joint stock  
18 company; the articles of organization of a limited liability company; the articles of  
19 association or organization of any corporation, or a certified copy thereof, which shall  
20 have been filed or recorded in the office of the secretary of state, or recorded in the  
21 office of any register of deeds or filed or recorded in the office of any clerk of the circuit  
22 court under any law of the state; any certificate or resolution for the purpose of  
23 amendment, and every amendment in any form, of the charter, patent, certificate or  
24 articles of association or organization or of the name, corporate powers or purposes  
25 of any corporation or limited liability company, filed or recorded in either of said

1 offices and a certified copy of any such document so filed or recorded shall be received  
2 as conclusive evidence of the existence of the corporation, limited liability company  
3 or joint stock company mentioned therein, or of the due amendment of the charter,  
4 patent, certificate or articles of association or organization thereof in all cases where  
5 such facts are only collaterally involved; and as presumptive evidence thereof and  
6 of the facts therein stated in all other cases.

7 **SECTION 83.** 972.085 of the statutes is amended to read:

8 **972.085 Immunity; use standard.** Immunity from criminal or forfeiture pro-  
9 secution under ss. 13.35, 17.16 (7), 77.61 (12), 93.17, 111.07 (2) (b), 128.16, 133.15,  
10 139.20, 139.39 (5), 195.048, 196.48, 551.56 (3), 553.55 (3), 601.62 (5), 767.47 (4),  
11 767.65 (21), ~~776.23~~, 885.15, 885.24, 885.25 (2), 891.39 (2), 968.26, 972.08 (1) and  
12 979.07 (1), provides immunity only from the use of the compelled testimony or evi-  
13 dence in subsequent criminal or forfeiture proceedings, as well as immunity from the  
14 use of evidence derived from that compelled testimony or evidence.

15 **SECTION 84. Initial applicability.**

16 (1) The treatment of section 71.07 (7) (b) of the statutes first applies to a tax-  
17 able year of a limited liability company that begins on January 1, 1995, and first ap-  
18 plies to the appropriate taxable year of a member of a limited liability company to  
19 conform the member's treatment of the credit to the limited liability company's treat-  
20 ment.

21 (2) The renumbering and amendment of section 180.1915 of the statutes and  
22 the creation of section 180.1915 (1) and (2) of the statutes first apply to civil actions  
23 commenced on the effective date of this subsection.

24 **(END)**