A bill to be entitled

An act relating to direct actions by partners of a limited partnership, members of a limited liability company, and shareholders of a corporation; amending ss. 620.2001, 620.2002, 605.0801, 605.0802, 607.01401(17), 607.0750, and 607.0742, F.S.; clarifying the standard for maintaining a direct action; permitting direct and derivative actions to be brought in the same proceeding; providing construction.

Be It Enacted by the Legislature of the State of Florda:

Section 1. Section 605.0801, Florida Statutes, is amended to read:

605.0801 Direct action by member.—

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

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

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

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

(3) A member maintaining a direct action under subsection (2) is not required to plead or prove there is or was any actual or threatened special injury to the member.

(4) A member may maintain a direct action under this section and a derivative action under s. 605.0802 in the same proceeding where the actions involve a common question of law or fact.

Section 2: Section 605.0802, Florida Statutes, is amended to read:

605.0802 Derivative action.–

(1) A member may maintain a derivative action to enforce a right of a limited liability company if:

(a) The member first makes a demand on the other members in a member-manager limited liability company or the managers of a manager-managed limited liability company requesting that the managers or other members cause the company to take suitable action to enforce the right, and the managers or other members do not take action within a reasonable time, not to exceed 90 days; or

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(b) A demand under paragraph (a) of subsection (1) would be futile, or irreparable injury would result to the limited liability company by waiting for the other members or the managers to take action to enforce the right in accordance with paragraph (a) of subsection (1).

(2) A member may maintain a derivative action under this section and a direct action under s. 605.0801 in the same proceeding where the actions involve a common question of law or fact.

Section 3: Subsection (17) of section 607.01401, Florida Statutes, is amended to read:

607.01401 Definitions.—As used in this chapter, unless the context otherwise requires, the term:

(17) "Derivative proceeding," "derivative action," or derivative suit" means a civil suit in the right of a domestic corporation or, to the extent provided in s. 607.0747, in the right of a foreign corporation.

Section 4: Section 607.0750, Florida Statutes, is amended to read:

607.0750 Direct action by shareholder.—

(1) Subject to subsection (2), a shareholder may maintain a direct action against another shareholder, an officer, a director, or the ~~company~~ corporation, to enforce the shareholder's rights and otherwise protect the shareholder's interests, including rights and interests

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under the articles of incorporation, the bylaws, agreements between or among some or all of the shareholders or agreements between or among the corporation and one or more shareholders, or this chapter or arising independently of the shareholder relationship.

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

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

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

(3) A shareholder maintaining a direct action under subsection (2) is not required to plead or prove there is or was any actual or threatened special injury to the shareholder.

(4) A shareholder may maintain a direct action under this section and a derivative action under s. 607.0742 in the same proceeding where the actions involve a common question of law or fact.

Section 5: Section 607.0742, Florida Statutes, is amended to read:

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607.0742 Complaint; demand and excuse.–

(1) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity:

(a) The demand, if any, made to obtain the action desired by the shareholder from the board of directors; and

(b) Either:

1. If such demand was made, that the demand was refused, rejected, or ignored by the board of directors prior to the expiration of 90 days from the date the demand was made;

2. If such demand was made, why irreparable injury to the corporation or misapplication or waste of corporate assets causing material injury to the corporation would result by waiting for the expiration of 90 days ~~a 90-day period~~ from the date the demand was made; or

3. The reason or reasons the shareholder did not make the effort to obtain the desired action from the board of directors or comparable authority.

(2) A shareholder may maintain a derivative action under this section and a direct action under s. 607.0750 in the same proceeding where the actions involve a common question of law or fact.

Section 6: Section 620.2001, Florida Statutes, is amended to read:

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620.2001 Direct action by partner.–

(1) Subject to subsection (2), a partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this act or arising independently of the partnership relationship.

(2) A partner ~~commencing~~ maintaining a direct action under this section ~~is required to~~ must plead and prove either:

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

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

(3) Any partner maintaining a direct action under subsection (2) is not required to plead or prove there is or was any actual or threatened special injury to the partner.

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(4) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

(5) A partner may maintain a direct action under this section and a derivative action under s. 620.2002 in the same proceeding where the actions involve a common question of law or fact.

Section 7: Section 620.2002, Florida Statutes, is amended to read:

620.2002 Derivative action.–

(1) A partner may maintain a derivative action to enforce a right of a limited partnership if:

(a) The partner first makes a demand on the general partners requesting that ~~they~~ the general partners cause the limited partnership to ~~bring an~~ take suitable action to enforce the right and the general partners do not ~~bring~~ take the action within a reasonable time, not to exceed 90 days; or

(b) A demand under paragraph (a) of subsection (1) would be futile, or irreparable injury would result to the limited partnership by waiting for the general partners to take action to enforce the right in accordance with paragraph (a) of subsection (1).

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(2) A partner may maintain a derivative action under this section and a direct action under s. 620.2001 in the same proceeding where the actions involve a common question of law or fact.

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