

1                   A bill to be entitled  
2           An act relating to corporations not for profit; amending  
3           s. 617.01201, F.S.; requiring a document that is  
4           electronically transmitted to be in a format that can be  
5           retrieved in typewritten or printed form; requiring that a  
6           document be executed by a director of the domestic or  
7           foreign corporation; authorizing the delivery of a  
8           document by electronic transmission to the extent  
9           permitted by the Department of State; amending s.  
10          617.0122, F.S.; requiring the department to collect a fee  
11          for filing an agent's statement of resignation from an  
12          inactive corporation; amending s. 617.0124, F.S.;  
13          authorizing a domestic or foreign corporation to correct a  
14          document filed by the department within 30 days after  
15          filing under certain circumstances; amending s. 617.01401,  
16          F.S.; defining the terms "distribution," "mutual benefit  
17          corporation," and "voting power"; amending s. 617.0205,  
18          F.S.; requiring the incorporators to hold an  
19          organizational meeting after incorporation if the initial  
20          directors are not named in the articles of incorporation;  
21          amending s. 617.0302, F.S.; authorizing a corporation not  
22          for profit to make contracts and guaranties; amending s.  
23          617.0503, F.S.; providing that an alien business  
24          organization may withdraw its registered agent designation  
25          by delivering an application for certificate of withdrawal  
26          to the department; amending s. 617.0505, F.S.; prohibiting  
27          a corporation from making distributions to its members;  
28          providing an exception; deleting provisions related to the

29 issuance of certificates; amending s. 617.0601, F.S.;

30 correcting a reference to the Solicitation of

31 Contributions Act; providing that certain stock

32 certificates constitute certificates of membership;

33 requiring that a resignation, expulsion, or termination of

34 membership be recorded in the membership book; creating s.

35 617.0605, F.S.; prohibiting a member of a corporation from

36 transferring a membership under certain circumstances;

37 creating s. 617.0606, F.S.; providing that the resignation

38 of a member does not relieve the member from obligations

39 incurred and commitments made prior to resignation;

40 creating s. 617.0607, F.S.; requiring that a member of a

41 corporation be terminated or suspended pursuant to a

42 procedure that is fair and reasonable; providing criteria

43 that must be met for a procedure to satisfy the

44 requirements of fairness and reasonability; requiring that

45 written notice given by mail be delivered by certified

46 mail or first-class mail; requiring that a proceeding

47 challenging an expulsion, suspension, or termination be

48 commenced within 1 year after the effective date of such

49 expulsion, suspension, termination; providing that a

50 member who has been expelled or suspended may be liable to

51 the corporation for dues, assessments, or fees; creating

52 s. 617.0608, F.S.; prohibiting a corporation from

53 purchasing any of its memberships; authorizing a mutual

54 benefit corporation to purchase the membership of a member

55 who resigns or whose membership is terminated; amending s.

56 617.0701, F.S.; authorizing the holders of at least 5

57 | percent of the voting power of a corporation to call a  
58 | special meeting of the members under certain  
59 | circumstances; authorizing a person who signs a demand for  
60 | a special meeting to call a special meeting of the members  
61 | under certain circumstances; amending s. 617.0721, F.S.;  
62 | providing that members and proxy holders who are not  
63 | physically present at a meeting may participate by means  
64 | of remote communication and are deemed to be present at  
65 | the meeting under certain circumstances; amending s.  
66 | 617.0725, F.S.; requiring an amendment to the articles of  
67 | incorporation or the bylaws, which adds a greater or  
68 | lesser quorum or voting requirement to meet certain  
69 | requirements; creating s. 617.07401, F.S.; prohibiting a  
70 | person from commencing a proceeding in the right of a  
71 | domestic or foreign corporation unless the person was a  
72 | member of the corporation or became a member through  
73 | transfer by operation of law; requiring that a complaint  
74 | in a proceeding brought in the right of a domestic or  
75 | foreign corporation be verified and allege the demand with  
76 | particularity; authorizing the court to dismiss a  
77 | derivative proceeding if the court finds that a  
78 | determination was made in good faith after a reasonable  
79 | investigation; prohibiting certain proceedings from being  
80 | discontinued or settled without the approval of the court;  
81 | authorizing the court to require a plaintiff to pay a  
82 | defendant's reasonable expenses upon termination of a  
83 | proceeding, including attorney's fees; amending s.  
84 | 617.0801, F.S.; providing the duties of the board of

85 | directors; amending s. 617.0806, F.S.; providing that  
86 | directors may be divided into classes; amending s.  
87 | 617.0808, F.S.; providing that any member of the board of  
88 | directors may be removed from office with or without cause  
89 | by a certain vote; providing that a director who is  
90 | elected by a class, chapter, or other organizational unit  
91 | may be removed only by members of that class, chapter, or  
92 | organizational unit; providing that a director elected or  
93 | appointed by the board may be removed without cause by a  
94 | vote of two-thirds of the directors then in office;  
95 | providing that a director of a corporation described in s.  
96 | 501(c) of the Internal Revenue Code may be removed from  
97 | office pursuant to procedures provided in the articles of  
98 | incorporation or the bylaws; amending s. 617.0809, F.S.;  
99 | providing that a vacancy on the board of directors for a  
100 | director elected by a class, chapter, unit, or group may  
101 | be filled only by members of that class, chapter, unit, or  
102 | group; providing that the term of a director elected or  
103 | appointed to fill a vacancy expires at the next annual  
104 | meeting at which directors are elected; amending s.  
105 | 617.0830, F.S.; authorizing a director to consider such  
106 | factors as he or she deems relevant in discharging his or  
107 | her duties; amending s. 617.0832, F.S.; deleting a  
108 | provision that authorizes common or interested directors  
109 | to be counted in determining the presence of a quorum at a  
110 | meeting that ratifies a contract between a corporation and  
111 | one of its directors and any other corporation in which  
112 | one of its directors is financially interested; providing

113 | circumstances under which a conflict-of-interest  
114 | transaction is authorized; amending s. 617.0833, F.S.;  
115 | providing an exception to the requirement that a loan may  
116 | not be made by a corporation to its directors; amending s.  
117 | 617.0834, F.S.; providing that an officer or director of a  
118 | certain nonprofit organization or agricultural or  
119 | horticultural organization is immune from civil liability;  
120 | amending s. 617.1007, F.S.; providing that a restatement  
121 | of the articles of incorporation of a corporation may  
122 | include one or more amendments; amending s. 617.1101,  
123 | F.S.; providing requirements for a plan of merger;  
124 | creating s. 617.1102, F.S.; providing a limitation on the  
125 | merger of a corporation not for profit; creating s.  
126 | 617.1301, F.S.; prohibiting a corporation from making  
127 | distributions to its members under certain circumstances;  
128 | creating s. 617.1302, F.S.; providing that a mutual  
129 | benefit corporation may purchase its memberships only  
130 | under certain circumstances; authorizing a corporation to  
131 | make distributions upon dissolution; amending s. 617.1405,  
132 | F.S.; providing that the name of a dissolved corporation  
133 | may be available for immediate assumption by another  
134 | corporation if the dissolved corporation provides the  
135 | department with an affidavit permitting such use; creating  
136 | s. 617.1407, F.S.; authorizing a dissolved corporation or  
137 | successor entity to execute certain procedures to resolve  
138 | payment of unknown claims against it; providing that  
139 | certain claims against a dissolved corporation are barred;  
140 | providing that a claim may be entered against a dissolved

141 corporation under certain circumstances; creating s.  
142 617.1408, F.S.; authorizing a dissolved corporation or  
143 successor entity to execute certain procedures to dispose  
144 of known claims against it; requiring a dissolved  
145 corporation deliver written notice of the dissolution to  
146 each of its known claimants; providing a procedure under  
147 which a dissolved corporation may reject a claim made  
148 against it; requiring that a dissolved corporation give  
149 notice of the dissolution to persons having known claims  
150 that are contingent, conditional, or unmatured; requiring  
151 that a dissolved corporation follow certain procedures in  
152 offering compensation to a claimant if the claim matures;  
153 requiring that a dissolved corporation petition the  
154 circuit court to determine the amount and form of security  
155 that will be sufficient to provide compensation to certain  
156 claimants; providing that the giving of notice or making  
157 of an offer does not revive a claim that has been barred;  
158 providing that directors of a dissolved corporation or  
159 governing persons of a successor entity that has complied  
160 with certain procedures are not personally liable to the  
161 claimants of a dissolved corporation; providing that  
162 certain members of a dissolved corporation are not liable  
163 for any claim against the corporation; providing a limit  
164 on the aggregate liability of any member of a dissolved  
165 corporation; defining the term "successor entity";  
166 repealing s. 617.1421(6), F.S., relating to the assumption  
167 and use of the name of a dissolved corporation; amending  
168 s. 617.1422, F.S.; deleting certain requirements for an

169 application to reinstate a corporation that has been  
170 dissolved; requiring that a corporation submit a  
171 reinstatement form prescribed and furnished by the  
172 department; providing that the name of a dissolved  
173 corporation is not available for assumption or use by  
174 another corporation until 1 year after the effective date  
175 of dissolution; providing an exception; amending s.  
176 617.1430, F.S.; revising the requirements for members to  
177 dissolve a corporation in circuit court; amending s.  
178 617.1503, F.S.; requiring a foreign corporation to deliver  
179 a certificate of existence authenticated by the Secretary  
180 of State; amending s. 617.1504, F.S.; requiring that a  
181 foreign corporation make application to the department to  
182 obtain an amended certificate of authority within 90 days  
183 after the occurrence of a change; amending s. 617.1506,  
184 F.S.; requiring that an alternate corporate name adopted  
185 for use in this state be cross-referenced to the real  
186 corporate name in the records of the Division of  
187 Corporations; requiring that the corporate name of a  
188 foreign corporation be distinguishable from the corporate  
189 name of a corporation for profit incorporated or  
190 authorized to transact business in this state; amending s.  
191 617.1530, F.S.; requiring that the department receive an  
192 authenticated certificate from the Secretary of State  
193 before commencing a proceeding to revoke the certificate  
194 of authority of a foreign corporation; amending s.  
195 617.1601, F.S.; requiring that a corporation keep a copy  
196 of its articles of incorporation; amending s. 617.1602,

197 F.S.; providing that a member of a corporation is entitled  
198 to inspect and copy certain records of the corporation at  
199 a reasonable location specified by the corporation;  
200 requiring that a member give the corporation written  
201 notice 10 days before the date on which he or she wishes  
202 to inspect and copy records; amending s. 617.1605, F.S.;  
203 revising the circumstances under which a corporation is  
204 required to furnish a member with its latest annual  
205 financial statement; creating s. 617.1703, F.S.; providing  
206 for the applicability of certain provisions to  
207 corporations regulated under the act; amending s.  
208 617.1803, F.S.; providing for certain changes when a  
209 foreign not-for-profit corporation becomes domesticated;  
210 amending s. 617.1806, F.S.; revising the provisions for  
211 conversion to a corporation not for profit; amending s.  
212 617.1807, F.S.; correcting a reference to the articles of  
213 incorporation regarding the process of conversion to a  
214 corporation not for profit; amending s. 617.1907, F.S.;  
215 providing that the repeal or amendment of a statute does  
216 not affect certain operations and proceedings; repealing  
217 s. 617.2103, F.S., relating to exemptions for certain  
218 corporations; providing an effective date.

219

220 Be It Enacted by the Legislature of the State of Florida:

221

222 Section 1. Subsections (4), (6), and (9) of section  
223 617.01201, Florida Statutes, are amended to read:

224 617.01201 Filing requirements.--



225 (4) The document must be typewritten or printed and must  
 226 be legible. If electronically transmitted, the document must be  
 227 in a format that can be retrieved or reproduced in typewritten  
 228 or printed form.

229 (6) The document must be executed:

230 (a) By a director ~~the chair or any vice chair of the board~~  
 231 ~~of directors~~ of a domestic or foreign corporation, or by its  
 232 president or by another of its officers;

233 (b) If directors or officers have not been selected or the  
 234 corporation has not been formed, by an incorporator; or

235 (c) If the corporation is in the hands of a receiver,  
 236 trustee, or other court-appointed fiduciary, by that fiduciary.

237 (9) The document must be delivered to the office of the  
 238 Department of State for filing. Delivery may be made by  
 239 electronic transmission if and to the extent permitted by the  
 240 Department of State. If the document is filed in typewritten or  
 241 printed form and not transmitted electronically, the Department  
 242 of State may require that ~~and may be accompanied by~~ one exact or  
 243 conformed copy be delivered with the document, ~~(except as~~  
 244 ~~provided in s. 617.1508. The document),~~ ~~and~~ must be accompanied  
 245 by the correct filing fee and any other tax or penalty required  
 246 by this act or other law.

247 Section 2. Subsection (7) of section 617.0122, Florida  
 248 Statutes, is amended to read:

249 617.0122 Fees for filing documents and issuing  
 250 certificates.--The Department of State shall collect the  
 251 following fees on documents delivered to the department for  
 252 filing:

253 (7) Agent's statement of resignation from inactive  
 254 ~~administratively dissolved~~ corporation: \$35.

255  
 256 Any citizen support organization that is required by rule of the  
 257 Department of Environmental Protection to be formed as a  
 258 nonprofit organization and is under contract with the department  
 259 is exempt from any fees required for incorporation as a  
 260 nonprofit organization, and the Secretary of State may not  
 261 assess any such fees if the citizen support organization is  
 262 certified by the Department of Environmental Protection to the  
 263 Secretary of State as being under contract with the Department  
 264 of Environmental Protection.

265 Section 3. Subsections (1) and (2) of section 617.0124,  
 266 Florida Statutes, are amended to read:

267 617.0124 Correcting filed document.--

268 (1) A domestic or foreign corporation may correct a  
 269 document filed by the Department of State within 30 ~~10 business~~  
 270 days after filing if ~~the document~~:

271 (a) The document contains an incorrect statement; ~~or~~

272 (b) The document was defectively executed, attested,  
 273 sealed, verified, or acknowledged; ~~or-~~

274 (c) The electronic transmission of the document was  
 275 defective.

276 (2) A document is corrected:

277 (a) By preparing articles of correction that:

278 1. Describe the document, (including its filing date) ~~or~~  
 279 ~~attach a copy of it to the articles;~~

280 2. Specify the incorrect statement and the reason it is

281 incorrect or the manner in which the execution was defective;  
 282 and

283 3. Correct the incorrect statement or defective execution;  
 284 and

285 (b) By delivering the executed articles of correction to  
 286 the Department of State for filing.

287 Section 4. Section 617.01401, Florida Statutes, is amended  
 288 to read:

289 617.01401 Definitions.--As used in this act, unless the  
 290 context otherwise requires, the term:

291 (1) "Articles of incorporation" includes original,  
 292 amended, and restated articles of incorporation, articles of  
 293 consolidation, and articles of merger, and all amendments  
 294 thereto, including documents designated by the laws of this  
 295 state as charters, and, in the case of a foreign corporation,  
 296 documents equivalent to articles of incorporation in the  
 297 jurisdiction of incorporation.

298 (2) "Board of directors" means the group of persons vested  
 299 with the management of the affairs of the corporation  
 300 irrespective of the name by which such group is designated,  
 301 including, but not limited to, managers or trustees.

302 (3) "Bylaws" means the code or codes of rules adopted for  
 303 the regulation or management of the affairs of the corporation  
 304 irrespective of the name or names by which such rules are  
 305 designated.

306 (4) "Corporation" or "domestic corporation" means a  
 307 corporation not for profit, subject to the provisions of this  
 308 act, except a foreign corporation.

309           (5) "Corporation not for profit" means a corporation no  
310 part of the income or profit of which is distributable to its  
311 members, directors, or officers, except as otherwise provided.

312           (6) "Distribution" means the payment of a dividend or any  
313 part of the income or profit of a corporation to its members,  
314 directors, or officers.

315           (7)~~(6)~~ "Electronic transmission" means any form of  
316 communication, not directly involving the physical transmission  
317 or transfer of paper, which creates a record that may be  
318 retained, retrieved, and reviewed by a recipient thereof and  
319 which may be directly reproduced in a comprehensible and legible  
320 paper form by such recipient through an automated process.  
321 Examples of electronic transmission include, but are not limited  
322 to, telegrams, facsimile transmissions of images, and text that  
323 is sent via electronic mail between computers.

324           (8)~~(7)~~ "Foreign corporation" means a corporation not for  
325 profit organized under laws other than the laws of this state.

326           (9)~~(8)~~ "Insolvent" means the inability of a corporation to  
327 pay its debts as they become due in the usual course of its  
328 affairs.

329           (10)~~(9)~~ "Mail" means the United States mail, facsimile  
330 transmissions, and private mail carriers handling nationwide  
331 mail services.

332           (11)~~(10)~~ "Member" means one having membership rights in a  
333 corporation in accordance with the provisions of its articles of  
334 incorporation or bylaws or the provisions of this act.

335           (12) "Mutual benefit corporation" means a domestic  
336 corporation that is not organized primarily or exclusively for

337 religious purposes; is not recognized as exempt under s.  
338 501(c)(3) of the Internal Revenue Code of 1986, as amended, or  
339 of the corresponding section of a subsequently enacted federal  
340 revenue act; and is not organized for a public or charitable  
341 purpose that is required upon its dissolution to distribute its  
342 assets to the United States, a state, a local subdivision  
343 thereof, or a person that is recognized as exempt under s.  
344 501(c)(3) of the Internal Revenue Code of 1986, as amended, or  
345 of the corresponding section of a subsequently enacted federal  
346 revenue act.

347 (13)~~(11)~~ "Person" includes individual and entity.

348 (14) "Voting power" means the total number of votes  
349 entitled to be cast for the election of directors at the time  
350 the determination of voting power is made, excluding a vote that  
351 is contingent upon the happening of a condition or event that  
352 has not occurred at the time. If the holders of the shares of a  
353 class are entitled to vote as a class to elect directors, the  
354 determination of voting power of the class shall be based on the  
355 percentage of the number of directors the class is entitled to  
356 elect out of the total number of authorized directors.

357 Section 5. Subsection (1) of section 617.0205, Florida  
358 Statutes, is amended to read:

359 617.0205 Organizational meeting of directors.--

360 (1) After incorporation:

361 (a) If initial directors are named in the articles of  
362 incorporation, the initial directors shall hold an  
363 organizational meeting, at the call of a majority of the  
364 directors, to complete the organization of the corporation by

365 appointing officers, adopting bylaws, and carrying on any other  
 366 business brought before the meeting;

367 (b) If initial directors are not named in the articles of  
 368 incorporation, the incorporators shall hold an organizational  
 369 meeting at the call of a majority of the incorporators:

370 1. To elect directors and complete the organization of the  
 371 corporation; or

372 2. To elect a board of directors who shall complete the  
 373 organization of the corporation.

374 Section 6. Subsections (7) and (16) of section 617.0302,  
 375 Florida Statutes, are amended to read:

376 617.0302 Corporate powers.--Every corporation not for  
 377 profit organized under this act, unless otherwise provided in  
 378 its articles of incorporation or bylaws, shall have power to:

379 (7) Make contracts and guaranties, incur liabilities,  
 380 borrow money at such rates of interest as the corporation may  
 381 determine, issue its notes, bonds, and other obligations, and  
 382 secure any of its obligations by mortgage and pledge of all or  
 383 any of its property, franchises, or income.

384 (16) Merge with other corporations or other business  
 385 entities as identified in s. 607.1108(1), both for profit and  
 386 not for profit, domestic and foreign, if the surviving  
 387 corporation or other surviving business entity is a corporation  
 388 not for profit or other business entity that has been organized  
 389 as a not-for-profit entity under a governing statute or other  
 390 applicable law that permits such a merger.

391 Section 7. Subsection (12) is added to section 617.0503,  
 392 Florida Statutes, to read:

393 617.0503 Registered agent; duties; confidentiality of  
 394 investigation records.--

395 (12) Any alien business organization may withdraw its  
 396 registered agent designation by delivering an application for  
 397 certificate of withdrawal to the Department of State for filing.  
 398 The application shall set forth:

399 (a) The name of the alien business organization and the  
 400 jurisdiction under the law of which it is incorporated or  
 401 organized; and

402 (b) That it is no longer required to maintain a registered  
 403 agent in this state.

404 Section 8. Section 617.0505, Florida Statutes, is amended  
 405 to read:

406 617.0505 Distributions ~~Payment of dividends and~~  
 407 ~~distribution of income to members prohibited; issuance of~~  
 408 ~~certificates of membership; effect of stock issued under prior~~  
 409 ~~law.--~~

410 ~~(1) Except as authorized in s. 617.1302, A dividend may~~  
 411 ~~not be paid, and any part of the income or profit of a~~  
 412 ~~corporation may not make distributions be distributed, to its~~  
 413 ~~members, directors, or officers. A mutual benefit corporation,~~  
 414 ~~such as a private club that is established for social, pleasure,~~  
 415 ~~or recreational purposes and that is organized as a corporation~~  
 416 ~~of which the equity interests are held by the members, may,~~  
 417 ~~subject to s. 617.1302, purchase the equity membership interest~~  
 418 ~~of any member, and the payment for such interest is not a~~  
 419 ~~distribution for purposes of this section. A corporation may pay~~  
 420 ~~compensation in a reasonable amount to its members, directors,~~

421 or officers for services rendered, may confer benefits upon its  
 422 members in conformity with its purposes, and, upon dissolution  
 423 or final liquidation, may make distributions to its members as  
 424 permitted by this act. If expressly permitted by its articles of  
 425 incorporation, a corporation may make distributions upon partial  
 426 liquidation to its members, as permitted by this section. Any  
 427 such payment, benefit, or distribution does not constitute a  
 428 dividend or a distribution of income or profit for purposes of  
 429 this section. Any corporation that ~~which~~ is a utility exempt  
 430 from regulation under s. 367.022(7), whose articles of  
 431 incorporation state that it is exempt from taxation under s.  
 432 501(c)(12) of the Internal Revenue Code or of the corresponding  
 433 section of a subsequently enacted federal revenue act, may make  
 434 such refunds to its members, prior to a dissolution or  
 435 liquidation, as its managing board deems necessary to establish  
 436 or preserve its tax-exempt status. Any such refund does not  
 437 constitute a dividend or a distribution of income or profit for  
 438 purposes of this section.

439 ~~(2) Subject to subsection (1), a corporation may issue~~  
 440 ~~certificates in any form evidencing membership in the~~  
 441 ~~corporation.~~

442 ~~(3) Stock certificates issued under former s. 617.011(2),~~  
 443 ~~Florida Statutes (1989), constitute membership certificates for~~  
 444 ~~purposes of this act.~~

445 Section 9. Subsections (1), (2), and (5) of section  
 446 617.0601, Florida Statutes, are amended to read:

447 617.0601 Members, generally.--

448 (1)(a) A corporation may have one or more classes of



449 members or may have no members. If the corporation has one or  
 450 more classes of members, the designation of such class or  
 451 classes, the qualifications and rights of the members of each  
 452 class, any quorum and voting requirements for meetings and  
 453 activities of the members, and notice requirements sufficient to  
 454 provide notice of meetings and activities of the members must be  
 455 set forth in the articles of incorporation or in the bylaws.

456 (b) The articles of incorporation or bylaws of any  
 457 corporation not for profit that maintains chapters or affiliates  
 458 may grant representatives of such chapters or affiliates the  
 459 right to vote in conjunction with the board of directors of the  
 460 corporation notwithstanding applicable quorum or voting  
 461 requirements of this act if the corporation is registered with  
 462 the Department of State pursuant to ss. 496.401-496.424 ~~ss.~~  
 463 ~~496.001-496.011~~, the Solicitation of Contributions Funds Act.

464 (c) This subsection does not apply to any condominium  
 465 association organized under chapter 718.

466 (2) A corporation may issue certificates of membership.  
 467 Stock certificates issued under former s. 617.011(2), Florida  
 468 Statutes (1989), constitute certificates of membership for  
 469 purposes of this act.

470 ~~(5) Membership in the corporation may be terminated in the~~  
 471 ~~manner provided by law, by the articles of incorporation, or by~~  
 472 ~~the bylaws, and A resignation, expulsion, or termination of~~  
 473 ~~membership pursuant to s. 617.0606 or s. 617.0607 shall be~~  
 474 ~~recorded in the membership book. Unless otherwise provided in~~  
 475 ~~the articles of incorporation or the bylaws, all the rights and~~  
 476 ~~privileges of a member cease on termination of membership.~~

HB 205

2008

477 Section 10. Section 617.0605, Florida Statutes, is created  
478 to read:

479 617.0605 Transfer of membership interests.--

480 (1) A member of a corporation may not transfer a  
481 membership or any right arising therefrom other than pursuant to  
482 subsection (2).

483 (2) Except as set forth in the articles of incorporation  
484 or bylaws of a mutual benefit corporation, a member of a mutual  
485 benefit corporation may not transfer a membership or any right  
486 arising therefrom.

487 (3) Where transfer rights have been provided for one or  
488 more members of a mutual benefit corporation, a restriction on  
489 such rights is not binding with respect to a member holding a  
490 membership issued prior to the adoption of the restriction  
491 unless the restriction is approved by the members and the  
492 affected member.

493 Section 11. Section 617.0606, Florida Statutes, is created  
494 to read:

495 617.0606 Resignation of members.--

496 (1) Except as may be provided in the articles of  
497 incorporation or bylaws of a corporation, a member of a mutual  
498 benefit corporation may not transfer a membership or any right  
499 arising therefrom.

500 (2) The resignation of a member does not relieve the  
501 member from any obligations that the member may have to the  
502 corporation as a result of obligations incurred or commitments  
503 made prior to resignation.

504 Section 12. Section 617.0607, Florida Statutes, is created

505 to read:

506 617.0607 Termination, expulsion, and suspension.--

507 (1) A member of a corporation may not be expelled or  
508 suspended, and a membership in the corporation may not be  
509 terminated or suspended, except pursuant to a procedure that is  
510 fair and reasonable and is carried out in good faith.

511 (2) A procedure is fair and reasonable if:

512 (a) The articles of incorporation or bylaws set forth a  
513 procedure that provides:

514 1. Written notice not less than 15 days before the  
515 expulsion, suspension, or termination and the reasons therefore;  
516 and

517 2. An opportunity for the member to be heard, orally or in  
518 writing, not less than 5 days before the effective date of the  
519 expulsion, suspension, or termination by a person or persons  
520 authorized to decide that the proposed expulsion, termination,  
521 or suspension should not take place; and

522 (b) All of the relevant facts and circumstances are taken  
523 into consideration.

524 (3) Any written notice given by mail must be delivered by  
525 certified mail or first-class mail to the last address of the  
526 member shown on the records of the corporation.

527 (4) Any proceeding challenging an expulsion, suspension,  
528 or termination, including a proceeding in which the defective  
529 notice is alleged, must be commenced within 1 year after the  
530 effective date of the expulsion, suspension, or termination.

531 (5) A member who has been expelled or suspended may be  
532 liable to the corporation for dues, assessments, or fees as a

533 result of obligations incurred or commitments made prior to  
534 expulsion or suspension.

535 Section 13. Section 617.0608, Florida Statutes, is created  
536 to read:

537 617.0608 Purchase of memberships.--

538 (1) A corporation may not purchase any of its memberships  
539 or any right arising therefrom except as provided in s. 617.0505  
540 or subsection (2).

541 (2) Subject to s. 617.1302, a mutual benefit corporation  
542 shall have the power to purchase the membership of a member who  
543 resigns or whose membership is terminated for the amount and  
544 pursuant to the conditions set forth in its articles of  
545 incorporation or bylaws.

546 Section 14. Subsections (3) and (4) of section 617.0701,  
547 Florida Statutes, are amended to read:

548 617.0701 Meetings of members, generally; failure to hold  
549 annual meeting; special meeting; consent to corporate actions  
550 without meetings; waiver of notice of meetings.--

551 (3) Special meetings of the members may be called by:

552 (a) The president;

553 (b) The chair of the board of directors;

554 (c) The board of directors; ~~or such~~

555 (d) Other officers or persons as are provided for in the  
556 articles of incorporation or the bylaws;

557 (e) The holders of at least 5 percent of the voting power  
558 of a corporation when one or more written demands for the  
559 meeting, which describe the purpose for which the meeting is to  
560 be held, are signed, dated, and delivered to a corporate

561 officer, except as provided in the articles of incorporation or  
562 bylaws; or

563 (f) A person who signs a demand for a special meeting  
564 pursuant to paragraph (e) if notice for a special meeting is not  
565 given within 30 days after receipt of the demand. The person  
566 signing the demand may set the time and place of the meeting and  
567 give notice under this subsection.

568 (4) (a) Unless otherwise provided in the articles of  
569 incorporation, action required or permitted by this act to be  
570 taken at an annual or special meeting of members may be taken  
571 without a meeting, without prior notice, and without a vote if  
572 the action is taken by the members entitled to vote on such  
573 action and having not less than the minimum number of votes  
574 necessary to authorize such action at a meeting at which all  
575 members entitled to vote on such action were present and voted.  
576 In order to be effective, the action must be evidenced by one or  
577 more written consents describing the action taken, dated and  
578 signed by approving members having the requisite number of votes  
579 and entitled to vote on such action, and delivered to the  
580 corporation by delivery to its principal office in this state,  
581 its principal place of business, the corporate secretary, or  
582 another officer or agent of the corporation having custody of  
583 the book in which proceedings of meetings of members are  
584 recorded. Written consent shall not be effective to take the  
585 corporate action referred to in the consent unless the consent  
586 is signed by members having the requisite number of votes  
587 necessary to authorize the action within 60 days of the date of  
588 the earliest dated consent and is delivered in the manner

589 required by this section.

590 (b) Any written consent may be revoked prior to the date  
591 that the corporation receives the required number of consents to  
592 authorize the proposed action. A revocation is not effective  
593 unless in writing and until received by the corporation at its  
594 principal office in this state or its principal place of  
595 business, or received by the corporate secretary or other  
596 officer or agent of the corporation having custody of the book  
597 in which proceedings of meetings of members are recorded.

598 (c) Within 10 days after obtaining such authorization by  
599 written consent, notice must be given to those members who are  
600 entitled to vote on the action but who have not consented in  
601 writing. The notice must fairly summarize the material features  
602 of the authorized action.

603 (d) A consent signed under this section has the effect of  
604 a meeting vote and may be described as such in any document.

605 (e) If the action to which the members consent is such as  
606 would have required the filing of articles or a certificate  
607 under any other section of this act if such action had been  
608 voted on by members at a meeting thereof, the articles or  
609 certificate filed under such other section must state that  
610 written consent has been given in accordance with the provisions  
611 of this section.

612 (f) Whenever action is taken pursuant to this section, the  
613 written consent of the members consenting to such action or the  
614 written reports of inspectors appointed to tabulate such  
615 consents must be filed with the minutes of proceedings of  
616 members.

617 Section 15. Present subsections (3), (4), (5), and (6) of  
618 section 617.0721, Florida Statutes, are redesignated as  
619 subsections (4), (5), (6), and (7), respectively, and amended,  
620 and a new subsection (3) is added to that section, to read:

621 617.0721 Voting by members.--

622 (3) If authorized by the board of directors, and subject  
623 to such guidelines and procedures as the board of directors may  
624 adopt, members and proxy holders who are not physically present  
625 at a meeting may, by means of remote communication:

626 (a) Participate in the meeting.

627 (b) Be deemed to be present in person and vote at the  
628 meeting if:

629 1. The corporation implements reasonable means to verify  
630 that each person deemed present and permitted to vote by means  
631 of remote communication is a member or proxy holder; and

632 2. The corporation implements reasonable measures to  
633 provide such members or proxy holders with a reasonable  
634 opportunity to participate in the meeting and to vote on matters  
635 submitted to the members including, without limitation, an  
636 opportunity to communicate and to read or hear the proceedings  
637 of the meeting substantially concurrent with such proceedings.

638  
639 If any member or proxy holder votes or takes other action by  
640 means of remote communication, a record of such vote or other  
641 action shall be maintained by the corporation.

642 ~~(4)-(3)~~ If any corporation, whether for profit or not for  
643 profit, is a member of a corporation organized under this act,  
644 the chair of the board, president, any vice president, the

645 secretary, or the treasurer of the member corporation, and any  
646 such officer or cashier or trust officer of a banking or trust  
647 corporation holding such membership, and any like officer of a  
648 foreign corporation whether for profit or not for profit,  
649 holding membership in a domestic corporation, shall be deemed by  
650 the corporation in which membership is held to have the  
651 authority to vote on behalf of the member corporation and to  
652 execute proxies and written waivers and consents in relation  
653 thereto, unless, before a vote is taken or a waiver or consent  
654 is acted upon, it is made to appear by a certified copy of the  
655 bylaws or resolution of the board of directors or executive  
656 committee of the member corporation that such authority does not  
657 exist or is vested in some other officer or person. In the  
658 absence of such certification, a person executing any such  
659 proxies, waivers, or consents or presenting himself or herself  
660 at a meeting as one of such officers of a corporate member shall  
661 be, for the purposes of this section, conclusively deemed to be  
662 duly elected, qualified, and acting as such officer and to be  
663 fully authorized. In the case of conflicting representation, the  
664 corporate member shall be deemed to be represented by its senior  
665 officer, in the order ~~first~~ stated in this subsection.

666 (5)~~(4)~~ The articles of incorporation or the bylaws may  
667 provide that, in all elections for directors, every member  
668 entitled to vote has the right to cumulate his or her votes and  
669 to give one candidate a number of votes equal to the number of  
670 votes he or she could give if one director were being elected  
671 multiplied by the number of directors to be elected or to  
672 distribute such votes on the same principles among any number of



673 such candidates. A corporation may not have cumulative voting  
 674 unless such voting is expressly authorized in the articles of  
 675 incorporation.

676 (6)~~(5)~~ If a corporation has no members or its members do  
 677 not have the right to vote, the directors shall have the sole  
 678 voting power.

679 (7)~~(6)~~ Subsections (1), (2), (5) ~~(4)~~, and (6) ~~(5)~~ do not  
 680 apply to a corporation that is an association as defined in s.  
 681 720.301.

682 Section 16. Section 617.0725, Florida Statutes, is amended  
 683 to read:

684 617.0725 Quorum.--An amendment to the articles of  
 685 incorporation or the bylaws which adds, that changes, or deletes  
 686 a greater or lesser quorum or voting requirement must meet the  
 687 same quorum or voting requirement and be adopted by the same  
 688 vote and voting groups required to take action under the quorum  
 689 and voting requirements then in effect or proposed to be  
 690 adopted, whichever is greater ~~prescribed in the provision being~~  
 691 ~~amended.~~

692 Section 17. Section 617.07401, Florida Statutes, is  
 693 created to read:

694 617.07401 Members' derivative actions.--

695 (1) A person may not commence a proceeding in the right of  
 696 a domestic or foreign corporation unless the person was a member  
 697 of the corporation when the transaction complained of occurred  
 698 or unless the person became a member through transfer by  
 699 operation of law from one who was a member at that time.

700 (2) A complaint in a proceeding brought in the right of a

701 domestic or foreign corporation must be verified and allege,  
702 with particularity, the demand made to obtain action by the  
703 board of directors and that the demand was refused or ignored by  
704 the board of directors for a period of at least 90 days  
705 following the date of the first demand unless, prior to the  
706 expiration of the 90 days, the person was notified in writing  
707 that the corporation rejected the demand, or unless irreparable  
708 injury to the corporation would result by waiting for the  
709 expiration of the 90-day period. If the corporation commences an  
710 investigation of the charges made in the demand or complaint,  
711 the court may stay any proceeding until the investigation is  
712 completed.

713 (3) The court may dismiss a derivative proceeding if, on  
714 motion by the corporation, the court finds that one of the  
715 groups specified in paragraphs (a)-(c) has made a determination  
716 in good faith after conducting a reasonable investigation upon  
717 which its conclusions are based that the maintenance of the  
718 derivative suit is not in the best interests of the corporation.  
719 The corporation has the burden of proving the independence and  
720 good faith of the group making the determination and the  
721 reasonableness of the investigation. The determination shall be  
722 made by:

723 (a) A majority vote of independent directors present at a  
724 meeting of the board of directors, if the independent directors  
725 constitute a quorum;

726 (b) A majority vote of a committee consisting of two or  
727 more independent directors appointed by a majority vote of  
728 independent directors present at a meeting of the board of

729 directors, whether or not such independent directors constitute  
730 a quorum; or

731 (c) A panel of one or more independent persons appointed  
732 by the court upon motion by the corporation.

733 (4) A proceeding commenced under this section may not be  
734 discontinued or settled without the approval of the court. If  
735 the court determines that a proposed discontinuance or  
736 settlement will substantially affect the interest of the members  
737 of the corporation, or a class, series, or voting group of  
738 members, the court shall direct that notice be given to the  
739 members affected. The court may determine which party or parties  
740 to the proceeding shall bear the expense of giving the notice.

741 (5) Upon termination of the proceeding, the court may  
742 require the plaintiff to pay any defendant's reasonable  
743 expenses, including reasonable attorney's fees, incurred in  
744 defending the proceeding if it finds that the proceeding was  
745 commenced without reasonable cause.

746 (6) The court may award reasonable expenses for  
747 maintaining the proceeding, including reasonable attorney's  
748 fees, to a successful plaintiff or to the person commencing the  
749 proceeding who receives any relief, whether by judgment,  
750 compromise, or settlement, and may require that the person  
751 account for the remainder of any proceeds to the corporation;  
752 however, this subsection does not apply to any relief rendered  
753 for the benefit of injured members only and limited to a  
754 recovery of the loss or damage of the injured members.

755 Section 18. Section 617.0801, Florida Statutes, is amended  
756 to read:

HB 205

2008

757           617.0801 ~~Requirement for and~~ Duties of board of  
758 directors.--All corporate powers must be exercised by or under  
759 the authority of, and the affairs of the corporation managed  
760 under the direction of, its board of directors, subject to any  
761 limitation set forth in the articles of incorporation.

762           Section 19. Section 617.0806, Florida Statutes, is amended  
763 to read:

764           617.0806 Staggered terms for directors.--The articles of  
765 incorporation or bylaws may provide that directors may be  
766 divided into classes ~~and the terms of office of the several~~  
767 ~~classes need not be uniform~~. Each director shall hold office for  
768 the term to which he or she is elected or appointed and until  
769 his or her successor has been elected or appointed and qualified  
770 or until his or her earlier resignation, removal from office, or  
771 death.

772           Section 20. Section 617.0808, Florida Statutes, is amended  
773 to read:

774           617.0808 Removal of directors.--

775           (1) Subject to subsection (2), a director may be removed  
776 from office pursuant to procedures provided in the articles of  
777 incorporation or the bylaws, which shall provide the following,  
778 and if they do not do so, shall be deemed to include the  
779 following:

780           (a)~~(1)~~ Any member of the board of directors may be removed  
781 from office with or without cause by:

782           1. A majority of all votes of the directors, if the  
783 director was elected or appointed by the directors; or

784           2. A majority of all votes of the members, if the director

785 was elected or appointed by the members.

786 (b) If a director is elected by a class, chapter, or other  
 787 organizational unit, or by region or other geographic grouping,  
 788 the director may be removed only by the members of that class,  
 789 chapter, unit, or grouping. However:

790 1. A director may be removed only if the number of votes  
 791 cast to remove the director would be sufficient to elect the  
 792 director at a meeting to elect directors, except as provided in  
 793 subparagraphs 2. and 3.

794 2. If cumulative voting is authorized, a director may not  
 795 be removed if the number of votes sufficient to elect the  
 796 director under cumulative voting is voted against the removal of  
 797 the director.

798 3. If at the beginning of the term of a director the  
 799 articles of incorporation or bylaws provide that the director  
 800 may be removed for missing a specified number of board meetings,  
 801 the board may remove the director for failing to attend the  
 802 specified number of meetings. The director may be removed only  
 803 if a majority of the directors then in office vote for the  
 804 removal ~~the vote or agreement in writing by a majority of all~~  
 805 ~~votes of the membership.~~

806 ~~(c)(2)~~ (c) The notice of a meeting of the members to recall a  
 807 member or members of the board of directors shall state the  
 808 specific directors sought to be removed.

809 ~~(d)(3)~~ (d) A proposed removal of a director at a meeting shall  
 810 require a separate vote for each director whose removal is board  
 811 ~~member sought to be removed.~~ Where removal is sought by written  
 812 consent agreement, a separate consent agreement is required for

813 each director ~~board member~~ to be removed.

814 (e)(4) If removal is effected at a meeting, any vacancies  
 815 created thereby shall be filled by the members or directors  
 816 eligible to vote for the removal ~~at the same meeting~~.

817 (f)(5) Any director who is removed from the board is ~~shall~~  
 818 not ~~be~~ eligible to stand for reelection until the next annual  
 819 meeting of the members.

820 (g)(6) Any director removed from office shall turn over to  
 821 the board of directors within 72 hours any and all records of  
 822 the corporation in his or her possession.

823 (h)(7) If a director who is removed does ~~shall~~ not  
 824 relinquish his or her office or turn over records as required  
 825 under this section, the circuit court in the county where the  
 826 corporation's principal office is located may summarily order  
 827 the director to relinquish his or her office and turn over  
 828 corporate records upon application of any member.

829 (i) A director elected or appointed by the board may be  
 830 removed without cause by a vote of two-thirds of the directors  
 831 then in office or such greater number as is set forth in the  
 832 articles of incorporation or bylaws.

833 (2) A director of a corporation described in s. 501(c) of  
 834 the Internal Revenue Code of 1986, as amended, may be removed  
 835 from office pursuant to procedures provided in the articles of  
 836 incorporation or the bylaws, and the corporation may provide in  
 837 the articles of incorporation or the bylaws that it is subject  
 838 to the provisions of subsection (1).

839 Section 21. Section 617.0809, Florida Statutes, is amended  
 840 to read:

841 617.0809 Vacancy on board.--

842 (1) Except as provided in s. 617.0808(1)(f), any vacancy  
843 occurring on the board of directors may be filled by the  
844 affirmative vote of the majority of the remaining directors,  
845 even though the remaining directors constitute less than a  
846 quorum, or by the sole remaining director, as the case may be,  
847 or, if the vacancy is not so filled or if no director remains,  
848 by the members or, on the application of any person, by the  
849 circuit court of the county where the registered office of the  
850 corporation is located.

851 (2) Whenever a vacancy occurs with respect to a director  
852 elected by a class, chapter, unit, or group, the vacancy may be  
853 filled only by members of that class, chapter, unit, or group,  
854 or by a majority of the directors then in office elected by such  
855 class, chapter, unit, or group.

856 (3)~~(2)~~ The term of a director elected or appointed to fill  
857 a vacancy expires at the next annual meeting at which directors  
858 are elected shall be elected or appointed for the unexpired term  
859 of his or her predecessor in office. Any directorship to be  
860 filled by reason of an increase in the number of directors may  
861 be filled by the board of directors, but only for a term of  
862 office continuing until the next election of directors by the  
863 members or, if the corporation has no members or no members  
864 having the right to vote thereon, for such term of office as is  
865 provided in the articles of incorporation or the bylaws.

866 (4)~~(3)~~ A vacancy that will occur at a specific later date,  
867 by reason of a resignation effective at a later date under s.  
868 617.0807 or otherwise, may be filled before the vacancy occurs.

869 However, the new director may not take office until the vacancy  
870 occurs.

871 Section 22. Present subsection (4) of section 617.0830,  
872 Florida Statutes, is redesignated as subsection (5), and a new  
873 subsection (4) is added to that section, to read:

874 617.0830 General standards for directors.--

875 (4) In discharging his or her duties, a director may  
876 consider such factors as the director deems relevant, including  
877 the interests of the corporation and its members and such other  
878 factors as may be necessary or relevant to exercise the  
879 director's reasonable business judgment.

880 Section 23. Subsection (2) of section 617.0832, Florida  
881 Statutes, is amended, and subsection (3) is added to that  
882 section, to read:

883 617.0832 Director conflicts of interest.--

884 (2) For purposes of paragraph (1)(a) only, a conflict-of-  
885 interest transaction is authorized, approved, or ratified if it  
886 receives the affirmative vote of a majority of the directors on  
887 the board of directors, or on the committee, who have no  
888 relationship or interest in the transaction described in  
889 subsection (1), but a transaction may not be authorized,  
890 approved, or ratified under this section by a single director.  
891 If a majority of the directors who have no such relationship or  
892 interest in the transaction vote to authorize, approve, or  
893 ratify the transaction, a quorum is present for the purpose of  
894 taking action under this section. The presence of, or a vote  
895 cast by, a director having such relationship or interest in the  
896 transaction does not affect the validity of any action taken



897 under paragraph (1)(a) if the transaction is otherwise  
 898 authorized, approved, or ratified as provided in that  
 899 subsection, but such presence or vote of such a director may be  
 900 counted for purposes of determining whether the transaction is  
 901 approved under other sections of this act.

902 (3) For purposes of paragraph (1)(b), a conflict-of-  
 903 interest transaction is authorized, approved, or ratified if it  
 904 receives the vote of a majority in interest of the members  
 905 entitled to vote under this subsection. A director who has a  
 906 relationship or interest in the transaction described in  
 907 subsection (1) may not vote to determine whether to authorize,  
 908 approve, or ratify a conflict-of-interest transaction under  
 909 paragraph (1)(b). However, the vote of that director is counted  
 910 in determining whether the transaction is approved under other  
 911 sections of this act. A majority in interest of the members  
 912 entitled to vote on the transaction under this subsection  
 913 constitutes a quorum for the purpose of taking action under this  
 914 section. ~~Common or interested directors may be counted in~~  
 915 ~~determining the presence of a quorum at a meeting of the board~~  
 916 ~~of directors or a committee thereof which authorizes, approves,~~  
 917 ~~or ratifies such contract or transaction.~~

918 Section 24. Section 617.0833, Florida Statutes, is amended  
 919 to read:

920 617.0833 Loans to directors or officers.--Loans, other  
 921 than through the purchase of bonds, debentures, or similar  
 922 obligations of the type customarily sold in public offerings, or  
 923 through ordinary deposit of funds in a bank, may not be made by  
 924 a corporation to its directors or officers, or to any other

925 corporation, firm, association, or other entity in which one or  
 926 more of its directors or officers is a director or officer or  
 927 holds a substantial financial interest, except a loan by one  
 928 corporation which is exempt from federal income taxation under  
 929 s. 501(c)(3) of the Internal Revenue Code of 1986, as amended,  
 930 or of the corresponding section of a subsequently enacted  
 931 federal revenue act, to another corporation which is exempt from  
 932 federal income taxation under s. 501(c)(3) of the Internal  
 933 Revenue Code of 1986, as amended, or of the corresponding  
 934 section of a subsequently enacted federal revenue act. A loan  
 935 made in violation of this section is a violation of the duty to  
 936 the corporation of the directors or officers authorizing it or  
 937 participating in it, but the obligation of the borrower with  
 938 respect to the loan is ~~shall~~ not be affected thereby.

939 Section 25. Subsection (1) of section 617.0834, Florida  
 940 Statutes, is amended to read:

941 617.0834 Officers and directors of certain corporations  
 942 and associations not for profit; immunity from civil  
 943 liability.--

944 (1) An officer or director of a nonprofit organization  
 945 recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of  
 946 the Internal Revenue Code of 1986, as amended, or of the  
 947 corresponding section of a subsequently enacted federal revenue  
 948 act, or of an agricultural or a horticultural organization  
 949 recognized under s. 501(c)(5), of the Internal Revenue Code of  
 950 1986, as amended, or of the corresponding section of a  
 951 subsequently enacted federal revenue act, is not personally  
 952 liable for monetary damages to any person for any statement,

953 | vote, decision, or failure to take an action, regarding  
954 | organizational management or policy by an officer or director,  
955 | unless:

956 |       (a) The officer or director breached or failed to perform  
957 | his or her duties as an officer or director; and

958 |       (b) The officer's or director's breach of, or failure to  
959 | perform, his or her duties constitutes:

960 |           1. A violation of the criminal law, unless the officer or  
961 | director had reasonable cause to believe his or her conduct was  
962 | lawful or had no reasonable cause to believe his or her conduct  
963 | was unlawful. A judgment or other final adjudication against an  
964 | officer or director in any criminal proceeding for violation of  
965 | the criminal law estops that officer or director from contesting  
966 | the fact that his or her breach, or failure to perform,  
967 | constitutes a violation of the criminal law, but does not estop  
968 | the officer or director from establishing that he or she had  
969 | reasonable cause to believe that his or her conduct was lawful  
970 | or had no reasonable cause to believe that his or her conduct  
971 | was unlawful;

972 |           2. A transaction from which the officer or director  
973 | derived an improper personal benefit, either directly or  
974 | indirectly; or

975 |           3. Recklessness or an act or omission which was committed  
976 | in bad faith or with malicious purpose or in a manner exhibiting  
977 | wanton and willful disregard of human rights, safety, or  
978 | property.

979 |       Section 26. Subsections (2) and (3) of section 617.1007,  
980 | Florida Statutes, are amended to read:

981           617.1007 Restated articles of incorporation.--

982           (2) The restatement may include one or more amendments to  
983 the articles of incorporation. If the restatement includes an  
984 amendment requiring member approval, it must be adopted as  
985 provided in s. 617.1002.

986           (3) A corporation restating its articles of incorporation  
987 shall deliver to the Department of State for filing articles of  
988 restatement, executed in accordance with the provisions of s.  
989 617.01201, setting forth the name of the corporation and the  
990 text of the restated articles of incorporation together with a  
991 certificate setting forth:

992           (a) Whether the restatement contains an amendment to the  
993 articles of incorporation requiring member approval and, if it  
994 does not, that the board of directors adopted the restatement;  
995 or

996           (b) If the restatement contains an amendment to the  
997 articles of incorporation requiring member approval, the  
998 information required by s. 617.1006.

999           Section 27. Subsection (2) of section 617.1101, Florida  
1000 Statutes, is amended, and subsection (3) is added to that  
1001 section, to read:

1002           617.1101 Plan of merger.--

1003           (2) Each corporation must adopt a plan of merger setting  
1004 forth:

1005           (a) The names of the corporations proposing to merge and  
1006 the name of the surviving corporation into which each other  
1007 corporation plans to merge, which is hereinafter designated as  
1008 the surviving corporation;

1009 (b) The terms and conditions of the proposed merger;  
 1010 (c) A statement of any changes in the articles of  
 1011 incorporation of the surviving corporation to be effected by  
 1012 such merger; and

1013 (d) The manner and basis, if any, of converting the  
 1014 memberships of each merging corporation into memberships,  
 1015 obligations, or securities of the surviving corporation or any  
 1016 other corporation or, in whole or in part, into cash or other  
 1017 property. ~~Such other provisions with respect to the proposed~~  
 1018 merger as are deemed necessary or desirable.

1019 (3) The plan of merger may set forth:

1020 (a) Amendments to, or a restatement of, the articles of  
 1021 incorporation of the surviving corporation;

1022 (b) The effective date of the merger, which may be on or  
 1023 after the date of filing the articles of incorporation or  
 1024 merger; or

1025 (c) Other provisions relating to the merger.

1026 Section 28. Section 617.1102, Florida Statutes, is created  
 1027 to read:

1028 617.1102 Limitation on merger.--A corporation not for  
 1029 profit organized under this act may merge only with one or more  
 1030 other business entities, as identified in s. 607.1108(1), if the  
 1031 surviving entity of such merger is a corporation not for profit  
 1032 or other business entity that has been organized as a not-for-  
 1033 profit entity under a governing statute or other applicable law  
 1034 that permits such a merger.

1035 Section 29. Section 617.1301, Florida Statutes, is created  
 1036 to read:

1037 617.1301 Prohibited distributions.--Except as authorized  
 1038 by ss. 617.0505 and 617.1302, a corporation may not make any  
 1039 distributions to its members.

1040 Section 30. Section 617.1302, Florida Statutes, is created  
 1041 to read:

1042 617.1302 Authorized distributions.--

1043 (1) A mutual benefit corporation may purchase its  
 1044 memberships pursuant to s. 617.0608 only if, after the purchase  
 1045 is completed:

1046 (a) The mutual benefit corporation would be able to pay  
 1047 its debts as they become due in the usual course of its  
 1048 activities; and

1049 (b) The total assets of the mutual benefit corporation  
 1050 would at least equal the sum of its total liabilities.

1051 (2) A corporation may make distributions upon dissolution  
 1052 in conformity with the dissolution provisions of this act.

1053 Section 31. Subsection (4) of section 617.1405, Florida  
 1054 Statutes, is amended to read:

1055 617.1405 Effect of dissolution.--

1056 (4) The name of a dissolved corporation ~~is shall~~ not ~~be~~  
 1057 available for assumption or use by another corporation until  
 1058 ~~after~~ 120 days after the effective date of dissolution unless  
 1059 the dissolved corporation provides the Department of State with  
 1060 an affidavit, executed pursuant to s. 617.01201, permitting the  
 1061 immediate assumption or use of the name by another corporation.

1062 Section 32. Section 617.1407, Florida Statutes, is created  
 1063 to read:

1064 617.1407 Unknown claims against dissolved corporation.--A

1065 dissolved corporation or successor entity, as defined in s.  
 1066 617.1408(15), may choose to execute one of the following  
 1067 procedures to resolve payment of unknown claims.

1068 (1) A dissolved corporation or successor entity may file  
 1069 notice of its dissolution with the department on the form  
 1070 prescribed by the department and request that persons having  
 1071 claims against the corporation which are not known to the  
 1072 corporation or successor entity present them in accordance with  
 1073 the notice. The notice must:

1074 (a) State the name of the corporation and the date of  
 1075 dissolution;

1076 (b) Describe the information that must be included in a  
 1077 claim and provide a mailing address to which the claim may be  
 1078 sent; and

1079 (c) State that a claim against the corporation under this  
 1080 subsection will be barred unless a proceeding to enforce the  
 1081 claim is commenced within 4 years after the filing of the  
 1082 notice.

1083 (2) A dissolved corporation or successor entity may,  
 1084 within 10 days after filing articles of dissolution with the  
 1085 department, publish a "Notice of Corporate Dissolution." The  
 1086 notice must appear once a week for 2 consecutive weeks in a  
 1087 newspaper of general circulation in a county in the state in  
 1088 which the corporation has its principal office, if any, or, if  
 1089 none, in a county in the state in which the corporation owns  
 1090 real or personal property. Such newspaper shall meet the  
 1091 requirements as are prescribed by law for such purposes. The  
 1092 notice must:

1093        (a) State the name of the corporation and the date of  
 1094 dissolution;

1095        (b) Describe the information that must be included in a  
 1096 claim and provide a mailing address to which the claim may be  
 1097 sent; and

1098        (c) State that a claim against the corporation under this  
 1099 subsection will be barred unless a proceeding to enforce the  
 1100 claim is commenced within 4 years after the date of the second  
 1101 consecutive weekly publication of the notice authorized by this  
 1102 section.

1103        (3) If the dissolved corporation or successor entity  
 1104 complies with subsection (1) or subsection (2), the claim of  
 1105 each of the following claimants is barred unless the claimant  
 1106 commences a proceeding to enforce the claim against the  
 1107 dissolved corporation within 4 years after the date of filing  
 1108 the notice with the department or the date of the second  
 1109 consecutive weekly publication, as applicable:

1110        (a) A claimant who did not receive written notice under s.  
 1111 617.1408(9), or whose claim is not provided for under s.  
 1112 617.1408(10), whether such claim is based on an event occurring  
 1113 before or after the effective date of dissolution.

1114        (b) A claimant whose claim was timely sent to the  
 1115 dissolved corporation but on which no action was taken.

1116        (4) A claim may be entered under this section:

1117        (a) Against the dissolved corporation, to the extent of  
 1118 its undistributed assets; or

1119        (b) If the assets have been distributed in liquidation,  
 1120 against a member of the dissolved corporation to the extent of



1121 such member's pro rata share of the claim or the corporate  
 1122 assets distributed to such member in liquidation, whichever is  
 1123 less; however, the aggregate liability of any member of a  
 1124 dissolved corporation arising under this section, or otherwise,  
 1125 may not exceed the amount distributed to the member in  
 1126 dissolution.

1127 Section 33. Section 617.1408, Florida Statutes, is created  
 1128 to read:

1129 617.1408 Known claims against dissolved corporation.--

1130 (1) A dissolved corporation or successor entity, as  
 1131 defined in subsection (15), may dispose of the known claims  
 1132 against it by following the procedures described in subsections  
 1133 (2), (3), and (4).

1134 (2) The dissolved corporation or successor entity shall  
 1135 deliver to each of its known claimants written notice of the  
 1136 dissolution at any time after its effective date. The written  
 1137 notice must:

1138 (a) Provide a reasonable description of the claim that the  
 1139 claimant may be entitled to assert;

1140 (b) State whether the claim is admitted or not admitted,  
 1141 in whole or in part, and, if admitted:

1142 1. The amount that is admitted, which may be as of a given  
 1143 date; and

1144 2. Any interest obligation if fixed by an instrument of  
 1145 indebtedness;

1146 (c) Provide a mailing address where a claim may be sent;

1147 (d) State the deadline, which may not be less than 120  
 1148 days after the effective date of the written notice, by which

1149 confirmation of the claim must be delivered to the dissolved  
 1150 corporation or successor entity; and

1151 (e) State that the corporation or successor entity may  
 1152 make distributions thereafter to other claimants and the members  
 1153 of the corporation or persons interested as having been such  
 1154 without further notice.

1155 (3) A dissolved corporation or successor entity may  
 1156 reject, in whole or in part, any claim made by a claimant  
 1157 pursuant to this subsection by mailing notice of such rejection  
 1158 to the claimant within 90 days after receipt of such claim and,  
 1159 in all events, at least 150 days before expiration of 3 years  
 1160 following the effective date of dissolution. A notice sent by  
 1161 the dissolved corporation or successor entity pursuant to this  
 1162 subsection must be accompanied by a copy of this section.

1163 (4) A dissolved corporation or successor entity electing  
 1164 to follow the procedures described in subsections (2) and (3)  
 1165 must also give notice of the dissolution of the corporation to  
 1166 persons having known claims that are contingent upon the  
 1167 occurrence or nonoccurrence of future events, or are otherwise  
 1168 conditional or unmatured, and request that such persons present  
 1169 such claims in accordance with the terms of such notice. Such  
 1170 notice must be in substantially the form, and sent in the same  
 1171 manner, as described in subsection (2).

1172 (5) A dissolved corporation or successor entity shall  
 1173 offer any claimant whose known claim is contingent, conditional,  
 1174 or unmatured such security as the corporation or such entity  
 1175 determines is sufficient to provide compensation to the claimant  
 1176 if the claim matures. The dissolved corporation or successor

1177 entity shall deliver such offer to the claimant within 90 days  
1178 after receipt of such claim and, in all events, at least 150  
1179 days before expiration of 3 years following the effective date  
1180 of dissolution. If the claimant offered such security does not  
1181 deliver in writing to the dissolved corporation or successor  
1182 entity a notice rejecting the offer within 120 days after  
1183 receipt of such offer for security, the claimant is deemed to  
1184 have accepted such security as the sole source from which to  
1185 satisfy his or her claim against the corporation.

1186 (6) A dissolved corporation or successor entity that has  
1187 given notice in accordance with subsections (2) and (4) shall  
1188 petition the circuit court in the county where the corporation's  
1189 principal office is located or was located at the effective date  
1190 of dissolution to determine the amount and form of security  
1191 which will be sufficient to provide compensation to any claimant  
1192 who has rejected the offer for security made pursuant to  
1193 subsection (5).

1194 (7) A dissolved corporation or successor entity that has  
1195 given notice in accordance with subsection (2) shall petition  
1196 the circuit court in the county where the corporation's  
1197 principal office is located or was located at the effective date  
1198 of dissolution to determine the amount and form of security  
1199 which will be sufficient to provide compensation to claimants  
1200 whose claims are known to the corporation or successor entity  
1201 but whose identities are unknown. The court shall appoint a  
1202 guardian ad litem to represent all claimants whose identities  
1203 are unknown in any proceeding brought under this subsection. The  
1204 reasonable fees and expenses of such guardian, including all

1205 reasonable expert witness fees, shall be paid by the petitioner  
 1206 in such proceeding.

1207 (8) The giving of any notice or making of any offer  
 1208 pursuant to the provisions of this section does not revive any  
 1209 claim then barred, does not constitute acknowledgment by the  
 1210 dissolved corporation or successor entity that any person to  
 1211 whom such notice is sent is a proper claimant, and does not  
 1212 operate as a waiver of any defense or counterclaim in respect of  
 1213 any claim asserted by any person to whom such notice is sent.

1214 (9) A dissolved corporation or successor entity that has  
 1215 followed the procedures described in subsections (2)-(7) shall:

1216 (a) Pay the claims admitted or made and not rejected in  
 1217 accordance with subsection (3);

1218 (b) Post the security offered and not rejected pursuant to  
 1219 subsection (5);

1220 (c) Post any security ordered by the circuit court in any  
 1221 proceeding under subsections (6) and (7); and

1222 (d) Pay or make provision for all other known obligations  
 1223 of the corporation or the successor entity. Such claims or  
 1224 obligations shall be paid in full, and any such provision for  
 1225 payments shall be made in full if there are sufficient funds. If  
 1226 there are insufficient funds, such claims and obligations shall  
 1227 be paid or provided for according to their priority and, among  
 1228 claims of equal priority, ratably to the extent of funds legally  
 1229 available for payment thereof. Any remaining funds shall be  
 1230 distributed to the members of the dissolved corporation;  
 1231 however, such distribution may not be made before the expiration  
 1232 of 150 days following the date of the last notice of rejections

1233 given pursuant to subsection (3). In the absence of actual  
1234 fraud, the judgment of the directors of the dissolved  
1235 corporation or the governing persons of the successor entity as  
1236 to the provisions made for the payment of all obligations under  
1237 this paragraph is conclusive.

1238 (10) A dissolved corporation or successor entity that has  
1239 not followed the procedures described in subsections (2) and (3)  
1240 shall pay or make reasonable provision to pay all known claims  
1241 and obligations, including all contingent, conditional, or  
1242 unmatured claims known to the corporation or the successor  
1243 entity and all claims that are known to the dissolved  
1244 corporation or the successor entity but for which the identity  
1245 of the claimant is unknown. Such claims shall be paid in full,  
1246 and any such provision for payment made shall be made in full if  
1247 there are sufficient funds. If there are insufficient funds,  
1248 such claims and obligations shall be paid or provided for  
1249 according to their priority and, among claims of equal priority,  
1250 ratably to the extent of funds legally available for payment  
1251 thereof. Any remaining funds shall be distributed to the members  
1252 of the dissolved corporation.

1253 (11) Directors of a dissolved corporation or governing  
1254 persons of a successor entity that has complied with subsection  
1255 (9) or subsection (10) are not personally liable to the  
1256 claimants of the dissolved corporation.

1257 (12) A member of a dissolved corporation the assets of  
1258 which were distributed pursuant to subsection (9) or subsection  
1259 (10) is not liable for any claim against the corporation in an  
1260 amount in excess of such member's pro rata share of the claim or

1261 the amount distributed to the member, whichever is less.

1262 (13) A member of a dissolved corporation, the assets of  
 1263 which were distributed pursuant to subsection (9), is not liable  
 1264 for any claim against the corporation which claim is known to  
 1265 the corporation or successor entity and on which a proceeding is  
 1266 not begun prior to the expiration of 3 years following the  
 1267 effective date of dissolution.

1268 (14) The aggregate liability of any member of a dissolved  
 1269 corporation for claims against the dissolved corporation arising  
 1270 under this section, or otherwise, may not exceed the amount  
 1271 distributed to the member in dissolution.

1272 (15) As used in this section and s. 617.1407, the term  
 1273 "successor entity" includes any trust, receivership, or other  
 1274 legal entity that is governed by the laws of this state to which  
 1275 the remaining assets and liabilities of a dissolved corporation  
 1276 are transferred and that exists solely for the purposes of  
 1277 prosecuting and defending suits by or against the dissolved  
 1278 corporation and enabling the dissolved corporation to settle and  
 1279 close the business of the dissolved corporation, to dispose of  
 1280 and convey the property of the dissolved corporation, to  
 1281 discharge the liabilities of the dissolved corporation, and to  
 1282 distribute to the dissolved corporation's members any remaining  
 1283 assets, but not for the purpose of continuing the business for  
 1284 which the dissolved corporation was organized.

1285 Section 34. Subsection (6) of section 617.1421, Florida  
 1286 Statutes, is repealed.

1287 Section 35. Section 617.1422, Florida Statutes, is amended  
 1288 to read:

1289           617.1422 Reinstatement following administrative  
 1290 dissolution.--

1291           (1)~~(a)~~ A corporation administratively dissolved under s.  
 1292 617.1421 may apply to the Department of State for reinstatement  
 1293 at any time after the effective date of dissolution. The  
 1294 corporation must submit a reinstatement form prescribed and  
 1295 furnished by the Department of State or a current uniform  
 1296 business report signed by a registered agent and an officer or  
 1297 director and submit application must:

1298           1. ~~Recite the name of the corporation and the effective~~  
 1299 ~~date of its administrative dissolution;~~

1300           2. ~~State that the ground or grounds for dissolution either~~  
 1301 ~~did not exist or have been eliminated and that no further~~  
 1302 ~~grounds currently exist for dissolution;~~

1303           3. ~~State that the corporation's name satisfies the~~  
 1304 ~~requirements of s. 617.0401; and~~

1305           4. ~~State that all fees owed by the corporation and~~  
 1306 ~~computed at the rate provided by law at the time the corporation~~  
 1307 ~~applies for reinstatement, have been paid; or~~

1308           ~~(b) Submit a current annual report, signed by the~~  
 1309 ~~registered agent and an officer or director, which substantially~~  
 1310 ~~complies with the requirements of paragraph (a).~~

1311           (2) If the department ~~of State~~ determines that the  
 1312 application contains the information required by subsection (1)  
 1313 and that the information is correct, it shall ~~file the document,~~  
 1314 ~~cancel the certificate of dissolution, and~~ reinstate the  
 1315 corporation effective ~~on the date which the reinstatement~~  
 1316 ~~document is filed.~~

1317 (3) When the reinstatement is effective, it relates back  
 1318 to and takes effect as of the effective date of the  
 1319 administrative dissolution and the corporation resumes carrying  
 1320 on its business ~~affairs~~ as if the administrative dissolution had  
 1321 never occurred.

1322 (4) The name of the dissolved corporation is not available  
 1323 for assumption or use by another corporation until 1 year after  
 1324 the effective date of dissolution unless the dissolved  
 1325 corporation provides the department with an affidavit executed  
 1326 as required by s. 617.01201 permitting the immediate assumption  
 1327 or use of the name by another corporation.

1328 ~~(5)~~ (4) If the name of the dissolved corporation has been  
 1329 lawfully assumed in this state by another corporation, the  
 1330 department ~~of State~~ shall require the dissolved corporation to  
 1331 amend its articles of incorporation to change its name before  
 1332 accepting its application for reinstatement.

1333 Section 36. Subsection (2) of section 617.1430, Florida  
 1334 Statutes, is amended to read:

1335 617.1430 Grounds for judicial dissolution.--A circuit  
 1336 court may dissolve a corporation:

1337 (2) Except as provided in the articles of incorporation or  
 1338 bylaws of a corporation, in a proceeding by at least 50 members  
 1339 or members holding at least 10 percent of the voting power of  
 1340 any corporation, whichever is less, or by a director or any  
 1341 person authorized in the articles of incorporation, ~~in a~~  
 1342 proceeding by a member if it is established that:

1343 (a) The directors are deadlocked in the management of the  
 1344 corporate affairs, the members are unable to break the deadlock,



1345 and irreparable injury to the corporation is threatened or being  
 1346 suffered;

1347 (b) The members are deadlocked in voting power and have  
 1348 failed to elect successors to directors whose terms have expired  
 1349 or would have expired upon qualification of their successors; or

1350 (c) The corporate assets are being misapplied or wasted.

1351 Section 37. Subsection (2) of section 617.1503, Florida  
 1352 Statutes, is amended to read:

1353 617.1503 Application for certificate of authority.--

1354 (2) The foreign corporation shall deliver with the  
 1355 completed application a certificate of existence, for a document  
 1356 of similar import, ~~or~~ duly authenticated, not more than 90 days  
 1357 prior to delivery of the application to the Department of State,  
 1358 by the Secretary of State or other official having custody of  
 1359 corporate records in the jurisdiction under the law of which it  
 1360 is incorporated. A translation of the certificate, under oath of  
 1361 the translator, must be attached to a certificate that ~~which~~ is  
 1362 in a language other than the English language.

1363 Section 38. Subsection (2) of section 617.1504, Florida  
 1364 Statutes, is amended to read:

1365 617.1504 Amended certificate of authority.--

1366 (2) Such application shall be made within 90 ~~30~~ days after  
 1367 the occurrence of any change mentioned in subsection (1), shall  
 1368 be made on forms prescribed by the Department of State, shall be  
 1369 executed and filed in the same manner as an original application  
 1370 for authority, and shall set forth:

1371 (a) The name of the foreign corporation as it appears on  
 1372 the records of the Department of State;

- 1373 (b) The jurisdiction of its incorporation;
- 1374 (c) The date it was authorized to conduct its affairs in
- 1375 this state;
- 1376 (d) If the name of the foreign corporation has been
- 1377 changed, the name relinquished, the new name, a statement that
- 1378 the change of name has been effected under the laws of the
- 1379 jurisdiction of its incorporation, and the date the change was
- 1380 effected;
- 1381 (e) If the period of duration has been changed, a
- 1382 statement of such change and the date the change was effected;
- 1383 (f) If the jurisdiction of incorporation has been changed,
- 1384 a statement of such change and the date the change was effected;
- 1385 and
- 1386 (g) If the purpose or purposes that ~~which~~ the corporation
- 1387 intends to pursue in this state have been changed, a statement
- 1388 of such new purpose or purposes, and a further statement that
- 1389 the corporation is authorized to pursue such purpose or purposes
- 1390 in the jurisdiction of its incorporation.

1391 Section 39. Section 617.1506, Florida Statutes, is amended  
 1392 to read:

1393 617.1506 Corporate name of foreign corporation.--

1394 (1) A foreign corporation is not entitled to file an  
 1395 application for a certificate of authority unless the corporate  
 1396 name of such corporation satisfies the requirements of s.  
 1397 617.0401. To obtain or maintain a certificate of authority to  
 1398 transact business in this state, the foreign corporation:

- 1399 (a) May add the word "corporation" or "incorporated" or
- 1400 the abbreviation "corp." or "inc." or words of like import, as

1401 will clearly indicate that it is a corporation instead of a  
 1402 natural person or partnership or other business entity; however,  
 1403 ~~to its corporate name for use in this state, provided,~~ the name  
 1404 of a foreign corporation may not contain the word "company" or  
 1405 the abbreviation "co."; or

1406 (b) May use an alternate name to transact business in this  
 1407 state if its real name is unavailable. Any such alternate  
 1408 corporate name adopted for use in this state shall be cross-  
 1409 referenced to the real corporate name in the records of the  
 1410 Division of Corporations. If the real corporate name of the  
 1411 corporation becomes available in this state or if the  
 1412 corporation chooses to change its alternate name, and it  
 1413 ~~delivers to the Department of State, for filing,~~ a copy of the  
 1414 resolution of its board of directors, changing or withdrawing  
 1415 the alternate name, executed as required by s. 617.01201, must  
 1416 be delivered for filing adopting an alternate name.

1417 (2) The corporate name, including the alternate name, of a  
 1418 foreign corporation must be distinguishable, within the records  
 1419 of the Division of Corporations, from:

1420 (a) Any corporate name of a corporation for profit  
 1421 incorporated or authorized to transact business in this state.

1422 (b) ~~(a)~~ The alternate name of another foreign corporation  
 1423 authorized to transact business in this state.

1424 (c) ~~(b)~~ The corporate name of a not-for-profit corporation  
 1425 incorporated or authorized to transact business in this state.

1426 (d) ~~(e)~~ The names of all other entities or filings, except  
 1427 fictitious name registrations pursuant to s. 865.09, organized,  
 1428 or registered under the laws of this state, that are on file

1429 with the Division of Corporations.

1430 (3) If a foreign corporation authorized to transact  
 1431 business in this state changes its corporate name to one that  
 1432 does not satisfy the requirements of s. 607.0401, such  
 1433 corporation may not transact business in this state under the  
 1434 changed name until the corporation adopts a name satisfying the  
 1435 requirements of s. 607.0401.

1436 ~~(4) The corporate name must be distinguishable from the~~  
 1437 ~~names of all other entities or filings, organized, registered,~~  
 1438 ~~or reserved under the laws of the state that are on file with~~  
 1439 ~~the Division of Corporations, except fictitious name~~  
 1440 ~~registrations pursuant to s. 865.09.~~

1441 Section 40. Subsection (6) of section 617.1530, Florida  
 1442 Statutes, is amended to read:

1443 617.1530 Grounds for revocation of authority to conduct  
 1444 affairs.--The Department of State may commence a proceeding  
 1445 under s. 617.1531 to revoke the certificate of authority of a  
 1446 foreign corporation authorized to conduct its affairs in this  
 1447 state if:

1448 (6) The Department of State receives a duly authenticated  
 1449 certificate from the Secretary ~~secretary~~ of State ~~state~~ or other  
 1450 official having custody of corporate records in the jurisdiction  
 1451 under the law of which the foreign corporation is incorporated  
 1452 stating that it has been dissolved or disappeared as the result  
 1453 of a merger.

1454 Section 41. Paragraph (a) of subsection (5) of section  
 1455 617.1601, Florida Statutes, is amended to read:

1456 617.1601 Corporate records.--

1457 (5) A corporation shall keep a copy of the following  
 1458 records:

1459 (a) Its articles of incorporation or restated articles of  
 1460 incorporation and all amendments to them currently in effect.

1461 Section 42. Subsections (1), (2), and (4) of section  
 1462 617.1602, Florida Statutes, are amended to read:

1463 617.1602 Inspection of records by members.--

1464 (1) A member of a corporation is entitled to inspect and  
 1465 copy, during regular business hours at the corporation's  
 1466 principal office or at a reasonable location specified by the  
 1467 corporation, any of the records of the corporation described in  
 1468 s. 617.1601(5), if the member gives the corporation written  
 1469 notice of his or her demand at least 10 ~~5~~ business days before  
 1470 the date on which he or she wishes to inspect and copy.

1471 (2) A member of a corporation is entitled to inspect and  
 1472 copy, during regular business hours at a reasonable location  
 1473 specified by the corporation, any of the following records of  
 1474 the corporation if the member meets the requirements of  
 1475 subsection (3) and gives the corporation written notice of his  
 1476 or her demand at least 10 ~~5~~ business days before the date on  
 1477 which he or she wishes to inspect and copy:

1478 (a) Excerpts from minutes of any meeting of the board of  
 1479 directors, records of any action of a committee of the board of  
 1480 directors while acting in place of the board of directors on  
 1481 behalf of the corporation, minutes of any meeting of the  
 1482 members, and records of action taken by the members or board of  
 1483 directors without a meeting, to the extent not subject to  
 1484 inspection under subsection (1).

1485 (b) Accounting records of the corporation.

1486 (c) The record of members.

1487 (d) Any other books and records.

1488 (4) This section does not affect:

1489 (a) The right of a member ~~to inspect and copy records~~  
 1490 ~~under s. 617.0730(6), or, if the member is~~ in litigation with  
 1491 the corporation to inspect and copy records, to the same extent  
 1492 as any other litigant.

1493 (b) The power of a court, independently of this act, to  
 1494 compel the production of corporate records for examination.

1495 Section 43. Section 617.1605, Florida Statutes, is amended  
 1496 to read:

1497 617.1605 Financial reports for members.--A corporation,  
 1498 upon written demand from a member, shall furnish that member its  
 1499 latest annual financial statements, which may be consolidated or  
 1500 combined statements of the corporation and one or more of its  
 1501 subsidiaries or affiliates, as appropriate, and which include a  
 1502 balance sheet as of the end of the fiscal year and a statement  
 1503 of operations for that year. If financial statements are  
 1504 prepared for the corporation on the basis of generally accepted  
 1505 accounting principles, the annual financial statements must also  
 1506 be prepared on such basis. Within 60 days following the end of  
 1507 ~~the fiscal or calendar year or annually on such date as is~~  
 1508 ~~otherwise provided in the bylaws of the corporation, the board~~  
 1509 ~~of directors of the corporation shall mail or furnish by~~  
 1510 ~~personal delivery to each member a complete financial report of~~  
 1511 ~~actual receipts and expenditures for the previous 12 months. The~~  
 1512 ~~report shall show the amounts of receipts by accounts and~~

1513 ~~receipt classifications and shall show the amounts of expenses~~  
 1514 ~~by accounts and expense classifications.~~

1515 Section 44. Section 617.1703, Florida Statutes, is created  
 1516 to read:

1517 617.1703 Application to condominiums, homeowners'  
 1518 associations, cooperatives, and mobile home park lot  
 1519 tenancies.--In the event of any conflict between the provisions  
 1520 of this act and the provisions of chapter 718 regarding  
 1521 condominiums, chapter 719 regarding cooperatives, chapter 720  
 1522 regarding homeowners' associations, or chapter 723 regarding  
 1523 mobile home park lot tenancies, the provisions of such other  
 1524 chapters shall apply. The provisions of ss. 617.0605-617.0608 do  
 1525 not apply to corporations regulated by any of the foregoing  
 1526 chapters or to any other corporation in which membership in the  
 1527 corporation is required pursuant to a document recorded in the  
 1528 county property records.

1529 Section 45. Subsection (8) is added to section 617.1803,  
 1530 Florida Statutes, to read:

1531 617.1803 Domestication of foreign not-for-profit  
 1532 corporations.--

1533 (8) When a domestication becomes effective:

1534 (a) The title to all real and personal property, both  
 1535 tangible and intangible, of the foreign corporation remains in  
 1536 the domesticated corporation without reversion or impairment;

1537 (b) The liabilities of the foreign corporation remain the  
 1538 liabilities of the domesticated corporation;

1539 (c) An action or proceeding against the foreign  
 1540 corporation continues against the domesticated corporation as if

1541 the domestication had not occurred;

1542 (d) The articles of incorporation attached to the  
 1543 certificate of domestication constitute the articles of  
 1544 incorporation of the domesticated corporation; and

1545 (e) Membership interests in the foreign corporation remain  
 1546 identical in the domesticated corporation.

1547 Section 46. Section 617.1806, Florida Statutes, is amended  
 1548 to read:

1549 617.1806 Conversion to corporation not for profit;  
 1550 petition and contents.--A petition for conversion to a  
 1551 corporation not for profit pursuant to s. 617.1805 shall be  
 1552 accompanied by the written consent of all the shareholders  
 1553 authorizing the change in the corporate nature and directing an  
 1554 authorized officer to file such petition before the court,  
 1555 together with a statement agreeing to accept all the property of  
 1556 the petitioning corporation and agreeing to assume and pay all  
 1557 its indebtedness and liabilities and the proposed articles of  
 1558 incorporation signed by the president and secretary of the  
 1559 petitioning corporation which shall set forth the provisions  
 1560 required in original articles of incorporation by s. 617.0202.

1561 Section 47. Section 617.1807, Florida Statutes, is amended  
 1562 to read:

1563 617.1807 Conversion to corporation not for profit;  
 1564 authority of circuit judge.--If the circuit judge to whom the  
 1565 petition and proposed articles of incorporation are presented  
 1566 finds that the petition and proposed articles of incorporation  
 1567 are in proper form, he or she shall approve the articles of  
 1568 incorporation and endorse his or her approval thereon; such



1569 approval shall provide that all of the property of the  
 1570 petitioning corporation shall become the property of the  
 1571 successor corporation not for profit, subject to all  
 1572 indebtedness and liabilities of the petitioning corporation.  
 1573 The articles of incorporation with such endorsements thereupon  
 1574 shall be sent to the Department of State, which shall, upon  
 1575 receipt thereof and upon payment of all taxes due the state by  
 1576 the petitioning corporation, if any, issue a certificate showing  
 1577 the receipt of the articles of incorporation with the  
 1578 endorsement of approval thereon and of the payment of all taxes  
 1579 to the state. Upon payment of the filing fees specified in s.  
 1580 617.0122, the Department of State shall file the articles of  
 1581 incorporation, and from thenceforth the petitioning corporation  
 1582 shall become a corporation not for profit under the name adopted  
 1583 in the articles of incorporation and subject to all the rights,  
 1584 powers, immunities, duties, and liabilities of corporations not  
 1585 for profit under state law, and its rights, powers, immunities,  
 1586 duties, and liabilities as a corporation for profit shall cease  
 1587 and determine.

1588 Section 48. Section 617.1907, Florida Statutes, is amended  
 1589 to read:

1590 617.1907 Effect of repeal or amendment of prior acts.--

1591 (1) Except as provided in subsection (2), the repeal or  
 1592 amendment of a statute by this act does not affect:

1593 (a) The operation of the statute or any action taken under  
 1594 it before its repeal or amendment;

1595 (b) Any ratification, right, remedy, privilege,  
 1596 obligation, or liability acquired, accrued, or incurred under

HB 205

2008

1597 the statute before its repeal or amendment;

1598 (c) Any violation of the statute, or any penalty,  
1599 forfeiture, or punishment incurred because of the violation,  
1600 before its repeal or amendment; or

1601 (d) Any proceeding, reorganization, or dissolution  
1602 commenced under the statute before its repeal or amendment, and  
1603 the proceeding, reorganization, or dissolution may be completed  
1604 in accordance with the statute as if it had not been repealed or  
1605 amended.

1606 (2) If a penalty or punishment imposed for violation of a  
1607 statute repealed or amended by this act is reduced by this act,  
1608 the penalty or punishment if not already imposed shall be  
1609 imposed in accordance with this act.

1610 Section 49. Section 617.2103, Florida Statutes, is  
1611 repealed.

1612 Section 50. This act shall take effect October 1, 2008.