

By Senator Aronberg

27-00048-08

2008304__

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.;

27-00048-08

2008304__

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

27-00048-08

2008304__

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 lesser
68 | quorum or voting requirement to meet certain requirements;
69 | creating s. 617.07401, F.S.; prohibiting a person from
70 | commencing a proceeding in the right of a domestic or
71 | foreign corporation unless the person was a member of the
72 | corporation or became a member through transfer by
73 | operation of law; requiring that a complaint in a
74 | proceeding brought in the right of a domestic or foreign
75 | 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

27-00048-08

2008304__

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.

27-00048-08

2008304__

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

27-00048-08

2008304__

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

27-00048-08

2008304__

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

27-00048-08

2008304__

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 be
226 legible. If electronically transmitted, the document must be in a
227 format that can be retrieved or reproduced in typewritten or
228 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;

27-00048-08

2008304__

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 nonprofit
260 organization, and the Secretary of State may not assess any such
261 fees if the citizen support organization is certified by the

27-00048-08

2008304__

262 Department of Environmental Protection to the Secretary of State
263 as being under contract with the Department of Environmental
264 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; and

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

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

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

288 617.01401 Definitions.--As used in this act, unless the
289 context otherwise requires, the term:

290 (1) "Articles of incorporation" includes original, amended,

27-00048-08

2008304__

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

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

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

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

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

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

314 (7)~~(6)~~ "Electronic transmission" means any form of
315 communication, not directly involving the physical transmission
316 or transfer of paper, which creates a record that may be
317 retained, retrieved, and reviewed by a recipient thereof and
318 which may be directly reproduced in a comprehensible and legible
319 paper form by such recipient through an automated process.

27-00048-08

2008304__

320 Examples of electronic transmission include, but are not limited
321 to, telegrams, facsimile transmissions of images, and text that
322 is sent via electronic mail between computers.

323 (8)~~(7)~~ "Foreign corporation" means a corporation not for
324 profit organized under laws other than the laws of this state.

325 (9)~~(8)~~ "Insolvent" means the inability of a corporation to
326 pay its debts as they become due in the usual course of its
327 affairs.

328 (10)~~(9)~~ "Mail" means the United States mail, facsimile
329 transmissions, and private mail carriers handling nationwide mail
330 services.

331 (11)~~(10)~~ "Member" means one having membership rights in a
332 corporation in accordance with the provisions of its articles of
333 incorporation or bylaws or the provisions of this act.

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

346 (13)~~(11)~~ "Person" includes individual and entity.

347 (14) "Voting power" means the total number of votes
348 entitled to be cast for the election of directors at the time the

27-00048-08

2008304__

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

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

358 617.0205 Organizational meeting of directors.--

359 (1) After incorporation:

360 (a) If initial directors are named in the articles of
361 incorporation, the initial directors shall hold an organizational
362 meeting, at the call of a majority of the directors, to complete
363 the organization of the corporation by appointing officers,
364 adopting bylaws, and carrying on any other business brought
365 before the meeting;

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

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

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

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

375 617.0302 Corporate powers.--Every corporation not for
376 profit organized under this act, unless otherwise provided in its
377 articles of incorporation or bylaws, shall have power to:

27-00048-08

2008304__

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

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

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

392 617.0503 Registered agent; duties; confidentiality of
393 investigation records.--

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

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

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

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

405 617.0505 Distributions ~~Payment of dividends and~~
406 ~~distribution of income to members prohibited; issuance of~~

27-00048-08

2008304__

407 ~~certificates of membership; effect of stock issued under prior~~
408 ~~law.--~~

409 ~~(1) Except as authorized in s. 617.1302, A dividend may not~~
410 ~~be paid, and any part of the income or profit of a corporation~~
411 ~~may not make distributions be distributed, to its members,~~
412 ~~directors, or officers. A mutual benefit corporation, such as a~~
413 ~~private club that is established for social, pleasure, or~~
414 ~~recreational purposes and that is organized as a corporation of~~
415 ~~which the equity interests are held by the members, may, subject~~
416 ~~to s. 617.1302, purchase the equity membership interest of any~~
417 ~~member, and the payment for such interest is not a distribution~~
418 ~~for purposes of this section. A corporation may pay compensation~~
419 ~~in a reasonable amount to its members, directors, or officers for~~
420 ~~services rendered, may confer benefits upon its members in~~
421 ~~conformity with its purposes, and, upon dissolution or final~~
422 ~~liquidation, may make distributions to its members as permitted~~
423 ~~by this act. If expressly permitted by its articles of~~
424 ~~incorporation, a corporation may make distributions upon partial~~
425 ~~liquidation to its members, as permitted by this section. Any~~
426 ~~such payment, benefit, or distribution does not constitute a~~
427 ~~dividend or a distribution of income or profit for purposes of~~
428 ~~this section. Any corporation that ~~which~~ is a utility exempt from~~
429 ~~regulation under s. 367.022(7), whose articles of incorporation~~
430 ~~state that it is exempt from taxation under s. 501(c)(12) of the~~
431 ~~Internal Revenue Code or of the corresponding section of a~~
432 ~~subsequently enacted federal revenue act, may make such refunds~~
433 ~~to its members, prior to a dissolution or liquidation, as its~~
434 ~~managing board deems necessary to establish or preserve its tax-~~
435 ~~exempt status. Any such refund does not constitute a dividend or~~

27-00048-08

2008304__

436 a distribution of income or profit for purposes of this section.

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

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

443 Section 9. Subsections (1), (2), and (5) of section
444 617.0601, Florida Statutes, are amended to read:

445 617.0601 Members, generally.--

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

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

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

464 (2) A corporation may issue certificates of membership.

27-00048-08

2008304__

465 Stock certificates issued under former s. 617.011(2), Florida
466 Statutes (1989), constitute certificates of membership for
467 purposes of this act.

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

475 Section 10. Section 617.0605, Florida Statutes, is created
476 to read:

477 617.0605 Transfer of membership interests.--

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

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

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

491 Section 11. Section 617.0606, Florida Statutes, is created
492 to read:

493 617.0606 Resignation of members.--

27-00048-08

2008304__

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

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

502 Section 12. Section 617.0607, Florida Statutes, is created
503 to read:

504 617.0607 Termination, expulsion, and suspension.--

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

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

510 (a) The articles of incorporation or bylaws set forth a
511 procedure that provides:

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

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

520 (b) All of the relevant facts and circumstances are taken
521 into consideration.

522 (3) Any written notice given by mail must be delivered by

27-00048-08

2008304__

523 certified mail or first-class mail to the last address of the
524 member shown on the records of the corporation.

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

529 (5) A member who has been expelled or suspended may be
530 liable to the corporation for dues, assessments, or fees as a
531 result of obligations incurred or commitments made prior to
532 expulsion or suspension.

533 Section 13. Section 617.0608, Florida Statutes, is created
534 to read:

535 617.0608 Purchase of memberships.--

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

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

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

546 617.0701 Meetings of members, generally; failure to hold
547 annual meeting; special meeting; consent to corporate actions
548 without meetings; waiver of notice of meetings.--

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

550 (a) The president;;

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

27-00048-08

2008304__

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

553 (d) Other officers or persons as are provided for in the
554 articles of incorporation or the bylaws; ~~or~~

555 (e) The holders of at least 5 percent of the voting power
556 of a corporation when one or more written demands for the
557 meeting, which describe the purpose for which the meeting is to
558 be held, are signed, dated, and delivered to a corporate officer,
559 except as provided in the articles of incorporation or bylaws; or

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

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

27-00048-08

2008304__

581 Written consent shall not be effective to take the corporate
582 action referred to in the consent unless the consent is signed by
583 members having the requisite number of votes necessary to
584 authorize the action within 60 days of the date of the earliest
585 dated consent and is delivered in the manner required by this
586 section.

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

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

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

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

608 (f) Whenever action is taken pursuant to this section, the
609 written consent of the members consenting to such action or the

27-00048-08

2008304__

610 written reports of inspectors appointed to tabulate such consents
611 must be filed with the minutes of proceedings of members.

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

616 617.0721 Voting by members.--

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

621 (a) Participate in the meeting.

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

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

627 2. The corporation implements reasonable measures to
628 provide such members or proxy holders with a reasonable
629 opportunity to participate in the meeting and to vote on matters
630 submitted to the members including, without limitation, an
631 opportunity to communicate and to read or hear the proceedings of
632 the meeting substantially concurrent with such proceedings.

633

634 If any member or proxy holder votes or takes other action by
635 means of remote communication, a record of such vote or other
636 action shall be maintained by the corporation.

637 (4)(3) If any corporation, whether for profit or not for
638 profit, is a member of a corporation organized under this act,

27-00048-08

2008304__

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

661 (5)~~(4)~~ The articles of incorporation or the bylaws may
662 provide that, in all elections for directors, every member
663 entitled to vote has the right to cumulate his or her votes and
664 to give one candidate a number of votes equal to the number of
665 votes he or she could give if one director were being elected
666 multiplied by the number of directors to be elected or to
667 distribute such votes on the same principles among any number of

27-00048-08

2008304__

668 such candidates. A corporation may not have cumulative voting
669 unless such voting is expressly authorized in the articles of
670 incorporation.

671 (6)~~(5)~~ If a corporation has no members or its members do
672 not have the right to vote, the directors shall have the sole
673 voting power.

674 (7)~~(6)~~ Subsections (1), (2), (5) ~~(4)~~, and (6) ~~(5)~~ do not
675 apply to a corporation that is an association as defined in s.
676 720.301.

677 Section 16. Section 617.0725, Florida Statutes, is amended
678 to read:

679 617.0725 Quorum.--An amendment to the articles of
680 incorporation or the bylaws which adds, that changes, or deletes
681 a greater or lesser quorum or voting requirement must meet the
682 same quorum or voting requirement and be adopted by the same vote
683 and voting groups required to take action under the quorum and
684 voting requirements then in effect or proposed to be adopted,
685 whichever is greater ~~prescribed in the provision being amended.~~

686 Section 17. Section 617.07401, Florida Statutes, is created
687 to read:

688 617.07401 Members' derivative actions.--

689 (1) A person may not commence a proceeding in the right of
690 a domestic or foreign corporation unless the person was a member
691 of the corporation when the transaction complained of occurred or
692 unless the person became a member through transfer by operation
693 of law from one who was a member at that time.

694 (2) A complaint in a proceeding brought in the right of a
695 domestic or foreign corporation must be verified and allege with
696 particularity the demand made to obtain action by the board of

27-00048-08

2008304__

697 directors and that the demand was refused or ignored by the board
698 of directors for a period of at least 90 days following the date
699 of the first demand unless, prior to the expiration of the 90
700 days, the person was notified in writing that the corporation
701 rejected the demand, or unless irreparable injury to the
702 corporation would result by waiting for the expiration of the 90-
703 day period. If the corporation commences an investigation of the
704 charges made in the demand or complaint, the court may stay any
705 proceeding until the investigation is completed.

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

715 (a) A majority vote of independent directors present at a
716 meeting of the board of directors, if the independent directors
717 constitute a quorum;

718 (b) A majority vote of a committee consisting of two or
719 more independent directors appointed by a majority vote of
720 independent directors present at a meeting of the board of
721 directors, whether or not such independent directors constitute a
722 quorum; or

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

725 (4) A proceeding commenced under this section may not be

27-00048-08

2008304__

726 discontinued or settled without the approval of the court. If the
727 court determines that a proposed discontinuance or settlement
728 will substantially affect the interest of the members of the
729 corporation, or a class, series, or voting group of members, the
730 court shall direct that notice be given to the members affected.
731 The court may determine which party or parties to the proceeding
732 shall bear the expense of giving the notice.

733 (5) Upon termination of the proceeding, the court may
734 require the plaintiff to pay any defendant's reasonable expenses,
735 including reasonable attorney's fees, incurred in defending the
736 proceeding if it finds that the proceeding was commenced without
737 reasonable cause.

738 (6) The court may award reasonable expenses for maintaining
739 the proceeding, including reasonable attorney's fees, to a
740 successful plaintiff or to the person commencing the proceeding
741 who receives any relief, whether by judgment, compromise, or
742 settlement, and may require that the person account for the
743 remainder of any proceeds to the corporation; however, this
744 subsection does not apply to any relief rendered for the benefit
745 of injured members only and limited to a recovery of the loss or
746 damage of the injured members.

747 Section 18. Section 617.0801, Florida Statutes, is amended
748 to read:

749 617.0801 ~~Requirement for and~~ Duties of board of
750 directors.--All corporate powers must be exercised by or under
751 the authority of, and the affairs of the corporation managed
752 under the direction of, its board of directors, subject to any
753 limitation set forth in the articles of incorporation.

754 Section 19. Section 617.0806, Florida Statutes, is amended

27-00048-08

2008304__

755 to read:

756 617.0806 Staggered terms for directors.--The articles of
757 incorporation or bylaws may provide that directors may be divided
758 into classes and the terms of office of the several classes need
759 not be uniform. Each director shall hold office for the term to
760 which he or she is elected or appointed and until his or her
761 successor has been elected or appointed and qualified or until
762 his or her earlier resignation, removal from office, or death.

763 Section 20. Section 617.0808, Florida Statutes, is amended
764 to read:

765 617.0808 Removal of directors.--

766 (1) Subject to subsection (2), a director may be removed
767 from office pursuant to procedures provided in the articles of
768 incorporation or the bylaws, which shall provide the following,
769 and if they do not do so, shall be deemed to include the
770 following:

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

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

775 2. A majority of all votes of the members, if the director
776 was elected or appointed by the members.

777 (b) If a director is elected by a class, chapter, or other
778 organizational unit, or by region or other geographic grouping,
779 the director may be removed only by the members of that class,
780 chapter, unit, or grouping. However:

781 1. A director may be removed only if the number of votes
782 cast to remove the director would be sufficient to elect the
783 director at a meeting to elect directors, except as provided in

27-00048-08

2008304__

784 subparagraphs 2. and 3.

785 2. If cumulative voting is authorized, a director may not
786 be removed if the number of votes sufficient to elect the
787 director under cumulative voting is voted against the removal of
788 the director.

789 3. If at the beginning of the term of a director the
790 articles of incorporation or bylaws provide that the director may
791 be removed for missing a specified number of board meetings, the
792 board may remove the director for failing to attend the specified
793 number of meetings. The director may be removed only if a
794 majority of the directors then in office vote for the removal ~~the~~
795 ~~vote or agreement in writing by a majority of all votes of the~~
796 ~~membership.~~

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

800 (d) ~~(3)~~ A proposed removal of a director at a meeting shall
801 require a separate vote for each director whose removal is ~~board~~
802 ~~member~~ sought to be removed. Where removal is sought by written
803 ~~consent agreement~~, a separate consent agreement is required for
804 each director ~~board member~~ to be removed.

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

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

811 (g) ~~(6)~~ Any director removed from office shall turn over to
812 the board of directors within 72 hours any and all records of the

27-00048-08

2008304__

813 corporation in his or her possession.

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

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

824 (2) A director of a corporation described in s. 501(c) of
825 the Internal Revenue Code of 1986, as amended, may be removed
826 from office pursuant to procedures provided in the articles of
827 incorporation or the bylaws, and the corporation may provide in
828 the articles of incorporation or the bylaws that it is subject to
829 the provisions of subsection (1).

830 Section 21. Section 617.0809, Florida Statutes, is amended
831 to read:

832 617.0809 Vacancy on board.--

833 (1) Except as provided in s. 617.0808(1)(f), any vacancy
834 occurring on the board of directors may be filled by the
835 affirmative vote of the majority of the remaining directors, even
836 though the remaining directors constitute less than a quorum, or
837 by the sole remaining director, as the case may be, or, if the
838 vacancy is not so filled or if no director remains, by the
839 members or, on the application of any person, by the circuit
840 court of the county where the registered office of the
841 corporation is located.

27-00048-08

2008304__

842 (2) Whenever a vacancy occurs with respect to a director
843 elected by a class, chapter, unit, or group, the vacancy may be
844 filled only by members of that class, chapter, unit, or group, or
845 by a majority of the directors then in office elected by such
846 class, chapter, unit, or group.

847 (3)~~(2)~~ The term of a director elected or appointed to fill
848 a vacancy expires at the next annual meeting at which directors
849 are elected shall be elected or appointed for the unexpired term
850 of his or her predecessor in office. Any directorship to be
851 filled by reason of an increase in the number of directors may be
852 filled by the board of directors, but only for a term of office
853 continuing until the next election of directors by the members
854 or, if the corporation has no members or no members having the
855 right to vote thereon, for such term of office as is provided in
856 the articles of incorporation or the bylaws.

857 (4)~~(3)~~ A vacancy that will occur at a specific later date,
858 by reason of a resignation effective at a later date under s.
859 617.0807 or otherwise, may be filled before the vacancy occurs.
860 However, the new director may not take office until the vacancy
861 occurs.

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

865 617.0830 General standards for directors.--

866 (4) In discharging his or her duties, a director may
867 consider such factors as the director deems relevant, including
868 the interests of the corporation and its members and such other
869 factors as may be necessary or relevant to exercise the
870 director's reasonable business judgment.

27-00048-08

2008304__

871 Section 23. Subsection (2) of section 617.0832, Florida
872 Statutes, is amended, and subsection (3) is added to that
873 section, to read:

874 617.0832 Director conflicts of interest.--

875 (2) For purposes of paragraph (1)(a) only, a conflict-of-
876 interest transaction is authorized, approved, or ratified if it
877 receives the affirmative vote of a majority of the directors on
878 the board of directors, or on the committee, who have no
879 relationship or interest in the transaction described in
880 subsection (1), but a transaction may not be authorized,
881 approved, or ratified under this section by a single director. If
882 a majority of the directors who have no such relationship or
883 interest in the transaction vote to authorize, approve, or ratify
884 the transaction, a quorum is present for the purpose of taking
885 action under this section. The presence of, or a vote cast by, a
886 director having such relationship or interest in the transaction
887 does not affect the validity of any action taken under paragraph
888 (1)(a) if the transaction is otherwise authorized, approved, or
889 ratified as provided in that subsection, but such presence or
890 vote of such a director may be counted for purposes of
891 determining whether the transaction is approved under other
892 sections of this act.

893 (3) For purposes of paragraph (1)(b), a conflict-of-
894 interest transaction is authorized, approved, or ratified if it
895 receives the vote of a majority in interest of the members
896 entitled to vote under this subsection. A director who has a
897 relationship or interest in the transaction described in
898 subsection (1) may not vote to determine whether to authorize,
899 approve, or ratify a conflict-of-interest transaction under

27-00048-08

2008304__

900 paragraph (1)(b). However, the vote of that director is counted
901 in determining whether the transaction is approved under other
902 sections of this act. A majority in interest of the members
903 entitled to vote on the transaction under this subsection
904 constitutes a quorum for the purpose of taking action under this
905 section. ~~Common or interested directors may be counted in~~
906 ~~determining the presence of a quorum at a meeting of the board of~~
907 ~~directors or a committee thereof which authorizes, approves, or~~
908 ~~ratifies such contract or transaction.~~

909 Section 24. Section 617.0833, Florida Statutes, is amended
910 to read:

911 617.0833 Loans to directors or officers.--Loans, other than
912 through the purchase of bonds, debentures, or similar obligations
913 of the type customarily sold in public offerings, or through
914 ordinary deposit of funds in a bank, may not be made by a
915 corporation to its directors or officers, or to any other
916 corporation, firm, association, or other entity in which one or
917 more of its directors or officers is a director or officer or
918 holds a substantial financial interest, except a loan by one
919 corporation which is exempt from federal income taxation under s.
920 501(c)(3) of the Internal Revenue Code of 1986, or of
921 the corresponding section of a subsequently enacted federal
922 revenue act, to another corporation which is exempt from federal
923 income taxation under s. 501(c)(3) of the Internal Revenue Code
924 of 1986, as amended, or of the corresponding section of a
925 subsequently enacted federal revenue act. A loan made in
926 violation of this section is a violation of the duty to the
927 corporation of the directors or officers authorizing it or
928 participating in it, but the obligation of the borrower with

27-00048-08

2008304__

929 | respect to the loan is ~~shall~~ not be affected thereby.

930 | Section 25. Subsection (1) of section 617.0834, Florida
931 | Statutes, is amended to read:

932 | 617.0834 Officers and directors of certain corporations and
933 | associations not for profit; immunity from civil liability.--

934 | (1) An officer or director of a nonprofit organization
935 | recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of
936 | the Internal Revenue Code of 1986, as amended, or of the
937 | corresponding section of a subsequently enacted federal revenue
938 | act, or of an agricultural or a horticultural organization
939 | recognized under s. 501(c)(5), of the Internal Revenue Code of
940 | 1986, as amended, or of the corresponding section of a
941 | subsequently enacted federal revenue act, is not personally
942 | liable for monetary damages to any person for any statement,
943 | vote, decision, or failure to take an action, regarding
944 | organizational management or policy by an officer or director,
945 | unless:

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

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

950 | 1. A violation of the criminal law, unless the officer or
951 | director had reasonable cause to believe his or her conduct was
952 | lawful or had no reasonable cause to believe his or her conduct
953 | was unlawful. A judgment or other final adjudication against an
954 | officer or director in any criminal proceeding for violation of
955 | the criminal law estops that officer or director from contesting
956 | the fact that his or her breach, or failure to perform,
957 | constitutes a violation of the criminal law, but does not estop

27-00048-08

2008304__

958 the officer or director from establishing that he or she had
959 reasonable cause to believe that his or her conduct was lawful or
960 had no reasonable cause to believe that his or her conduct was
961 unlawful;

962 2. A transaction from which the officer or director derived
963 an improper personal benefit, either directly or indirectly; or

964 3. Recklessness or an act or omission which was committed
965 in bad faith or with malicious purpose or in a manner exhibiting
966 wanton and willful disregard of human rights, safety, or
967 property.

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

970 617.1007 Restated articles of incorporation.--

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

975 (3) A corporation restating its articles of incorporation
976 shall deliver to the Department of State for filing articles of
977 restatement, executed in accordance with the provisions of s.
978 617.01201, setting forth the name of the corporation and the text
979 of the restated articles of incorporation together with a
980 certificate setting forth:

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

984 (b) If the restatement contains an amendment to the
985 articles of incorporation requiring member approval, the
986 information required by s. 617.1006.

27-00048-08

2008304__

987 Section 27. Subsection (2) of section 617.1101, Florida
988 Statutes, is amended, and subsection (3) is added to that
989 section, to read:

990 617.1101 Plan of merger.--

991 (2) Each corporation must adopt a plan of merger setting
992 forth:

993 (a) The names of the corporations proposing to merge and
994 the name of the surviving corporation into which each other
995 corporation plans to merge, which is hereinafter designated as
996 the surviving corporation;

997 (b) The terms and conditions of the proposed merger;

998 (c) A statement of any changes in the articles of
999 incorporation of the surviving corporation to be effected by such
1000 merger; and

1001 (d) The manner and basis, if any, of converting the
1002 memberships of each merging corporation into memberships,
1003 obligations, or securities of the surviving corporation or any
1004 other corporation or, in whole or in part, into cash or other
1005 property. ~~Such other provisions with respect to the proposed~~
1006 ~~merger as are deemed necessary or desirable.~~

1007 (3) The plan of merger may set forth:

1008 (a) Amendments to, or a restatement of, the articles of
1009 incorporation of the surviving corporation;

1010 (b) The effective date of the merger, which may be on or
1011 after the date of filing the articles of incorporation or merger;
1012 or

1013 (c) Other provisions relating to the merger.

1014 Section 28. Section 617.1102, Florida Statutes, is created
1015 to read:

27-00048-08

2008304__

1016 617.1102 Limitation on merger.--A corporation not for
1017 profit organized under this act may merge only with one or more
1018 other business entities, as identified in s. 607.1108(1), if the
1019 surviving entity of such merger is a corporation not for profit
1020 or other business entity that has been organized as a not-for-
1021 profit entity under a governing statute or other applicable law
1022 that permits such a merger.

1023 Section 29. Section 617.1301, Florida Statutes, is created
1024 to read:

1025 617.1301 Prohibited distributions.--Except as authorized by
1026 ss. 617.0505 and 617.1302, a corporation may not make any
1027 distributions to its members.

1028 Section 30. Section 617.1302, Florida Statutes, is created
1029 to read:

1030 617.1302 Authorized distributions.--

1031 (1) A mutual benefit corporation may purchase its
1032 memberships pursuant to s. 617.0608 only if, after the purchase
1033 is completed:

1034 (a) The mutual benefit corporation would be able to pay its
1035 debts as they become due in the usual course of its activities;
1036 and

1037 (b) The total assets of the mutual benefit corporation
1038 would at least equal the sum of its total liabilities.

1039 (2) A corporation may make distributions upon dissolution
1040 in conformity with the dissolution provisions of this act.

1041 Section 31. Subsection (4) of section 617.1405, Florida
1042 Statutes, is amended to read:

1043 617.1405 Effect of dissolution.--

1044 (4) The name of a dissolved corporation is ~~shall~~ not ~~be~~

27-00048-08

2008304__

1045 available for assumption or use by another corporation until
1046 ~~after~~ 120 days after the effective date of dissolution unless the
1047 dissolved corporation provides the Department of State with an
1048 affidavit, executed pursuant to s. 617.01201, permitting the
1049 immediate assumption or use of the name by another corporation.

1050 Section 32. Section 617.1407, Florida Statutes, is created
1051 to read:

1052 617.1407 Unknown claims against dissolved corporation.--A
1053 dissolved corporation or successor entity, as defined in s.
1054 617.1408(15), may choose to execute one of the following
1055 procedures to resolve payment of unknown claims.

1056 (1) A dissolved corporation or successor entity may file
1057 notice of its dissolution with the department on the form
1058 prescribed by the department and request that persons having
1059 claims against the corporation which are not known to the
1060 corporation or successor entity present them in accordance with
1061 the notice. The notice must:

1062 (a) State the name of the corporation and the date of
1063 dissolution;

1064 (b) Describe the information that must be included in a
1065 claim and provide a mailing address to which the claim may be
1066 sent; and

1067 (c) State that a claim against the corporation under this
1068 subsection will be barred unless a proceeding to enforce the
1069 claim is commenced within 4 years after the filing of the notice.

1070 (2) A dissolved corporation or successor entity may, within
1071 10 days after filing articles of dissolution with the department,
1072 publish a "Notice of Corporate Dissolution." The notice must
1073 appear once a week for 2 consecutive weeks in a newspaper of

27-00048-08

2008304__

1074 general circulation in a county in the state in which the
1075 corporation has its principal office, if any, or, if none, in a
1076 county in the state in which the corporation owns real or
1077 personal property. Such newspaper shall meet the requirements as
1078 are prescribed by law for such purposes. The notice must:

1079 (a) State the name of the corporation and the date of
1080 dissolution;

1081 (b) Describe the information that must be included in a
1082 claim and provide a mailing address to which the claim may be
1083 sent; and

1084 (c) State that a claim against the corporation under this
1085 subsection will be barred unless a proceeding to enforce the
1086 claim is commenced within 4 years after the date of the second
1087 consecutive weekly publication of the notice authorized by this
1088 section.

1089 (3) If the dissolved corporation or successor entity
1090 complies with subsection (1) or subsection (2), the claim of each
1091 of the following claimants is barred unless the claimant
1092 commences a proceeding to enforce the claim against the dissolved
1093 corporation within 4 years after the date of filing the notice
1094 with the department or the date of the second consecutive weekly
1095 publication, as applicable:

1096 (a) A claimant who did not receive written notice under s.
1097 617.1408(9), or whose claim is not provided for under s.
1098 617.1408(10), whether such claim is based on an event occurring
1099 before or after the effective date of dissolution.

1100 (b) A claimant whose claim was timely sent to the dissolved
1101 corporation but on which no action was taken.

1102 (4) A claim may be entered under this section:

27-00048-08

2008304__

1103 (a) Against the dissolved corporation, to the extent of its
1104 undistributed assets; or

1105 (b) If the assets have been distributed in liquidation,
1106 against a member of the dissolved corporation to the extent of
1107 such member's pro rata share of the claim or the corporate assets
1108 distributed to such member in liquidation, whichever is less;
1109 however, the aggregate liability of any member of a dissolved
1110 corporation arising under this section, or otherwise, may not
1111 exceed the amount distributed to the member in dissolution.

1112 Section 33. Section 617.1408, Florida Statutes, is created
1113 to read:

1114 617.1408 Known claims against dissolved corporation.--

1115 (1) A dissolved corporation or successor entity, as defined
1116 in subsection (15), may dispose of the known claims against it by
1117 following the procedures described in subsections (2), (3), and
1118 (4).

1119 (2) The dissolved corporation or successor entity shall
1120 deliver to each of its known claimants written notice of the
1121 dissolution at any time after its effective date. The written
1122 notice must:

1123 (a) Provide a reasonable description of the claim that the
1124 claimant may be entitled to assert;

1125 (b) State whether the claim is admitted or not admitted, in
1126 whole or in part, and, if admitted:

1127 1. The amount that is admitted, which may be as of a given
1128 date; and

1129 2. Any interest obligation if fixed by an instrument of
1130 indebtedness;

1131 (c) Provide a mailing address where a claim may be sent;

27-00048-08

2008304__

1132 (d) State the deadline, which may not be less than 120 days
1133 after the effective date of the written notice, by which
1134 confirmation of the claim must be delivered to the dissolved
1135 corporation or successor entity; and

1136 (e) State that the corporation or successor entity may make
1137 distributions thereafter to other claimants and the members of
1138 the corporation or persons interested as having been such without
1139 further notice.

1140 (3) A dissolved corporation or successor entity may reject,
1141 in whole or in part, any claim made by a claimant pursuant to
1142 this subsection by mailing notice of such rejection to the
1143 claimant within 90 days after receipt of such claim and, in all
1144 events, at least 150 days before expiration of 3 years following
1145 the effective date of dissolution. A notice sent by the dissolved
1146 corporation or successor entity pursuant to this subsection must
1147 be accompanied by a copy of this section.

1148 (4) A dissolved corporation or successor entity electing to
1149 follow the procedures described in subsections (2) and (3) must
1150 also give notice of the dissolution of the corporation to persons
1151 having known claims that are contingent upon the occurrence or
1152 nonoccurrence of future events, or are otherwise conditional or
1153 unmatured, and request that such persons present such claims in
1154 accordance with the terms of such notice. Such notice must be in
1155 substantially the form, and sent in the same manner, as described
1156 in subsection (2).

1157 (5) A dissolved corporation or successor entity shall offer
1158 any claimant whose known claim is contingent, conditional, or
1159 unmatured such security as the corporation or such entity
1160 determines is sufficient to provide compensation to the claimant

27-00048-08

2008304__

1161 if the claim matures. The dissolved corporation or successor
1162 entity shall deliver such offer to the claimant within 90 days
1163 after receipt of such claim and, in all events, at least 150 days
1164 before expiration of 3 years following the effective date of
1165 dissolution. If the claimant offered such security does not
1166 deliver in writing to the dissolved corporation or successor
1167 entity a notice rejecting the offer within 120 days after receipt
1168 of such offer for security, the claimant is deemed to have
1169 accepted such security as the sole source from which to satisfy
1170 his or her claim against the corporation.

1171 (6) A dissolved corporation or successor entity that has
1172 given notice in accordance with subsections (2) and (4) shall
1173 petition the circuit court in the county where the corporation's
1174 principal office is located or was located at the effective date
1175 of dissolution to determine the amount and form of security which
1176 will be sufficient to provide compensation to any claimant who
1177 has rejected the offer for security made pursuant to subsection
1178 (5).

1179 (7) A dissolved corporation or successor entity that has
1180 given notice in accordance with subsection (2) shall petition the
1181 circuit court in the county where the corporation's principal
1182 office is located or was located at the effective date of
1183 dissolution to determine the amount and form of security which
1184 will be sufficient to provide compensation to claimants whose
1185 claims are known to the corporation or successor entity but whose
1186 identities are unknown. The court shall appoint a guardian ad
1187 litem to represent all claimants whose identities are unknown in
1188 any proceeding brought under this subsection. The reasonable fees
1189 and expenses of such guardian, including all reasonable expert

27-00048-08

2008304__

1190 witness fees, shall be paid by the petitioner in such proceeding.

1191 (8) The giving of any notice or making of any offer
1192 pursuant to the provisions of this section does not revive any
1193 claim then barred, does not constitute acknowledgment by the
1194 dissolved corporation or successor entity that any person to whom
1195 such notice is sent is a proper claimant, and does not operate as
1196 a waiver of any defense or counterclaim in respect of any claim
1197 asserted by any person to whom such notice is sent.

1198 (9) A dissolved corporation or successor entity that has
1199 followed the procedures described in subsections (2)-(7) shall:

1200 (a) Pay the claims admitted or made and not rejected in
1201 accordance with subsection (3);

1202 (b) Post the security offered and not rejected pursuant to
1203 subsection (5);

1204 (c) Post any security ordered by the circuit court in any
1205 proceeding under subsections (6) and (7); and

1206 (d) Pay or make provision for all other known obligations
1207 of the corporation or the successor entity. Such claims or
1208 obligations shall be paid in full, and any such provision for
1209 payments shall be made in full if there are sufficient funds. If
1210 there are insufficient funds, such claims and obligations shall
1211 be paid or provided for according to their priority and, among
1212 claims of equal priority, ratably to the extent of funds legally
1213 available for payment thereof. Any remaining funds shall be
1214 distributed to the members of the dissolved corporation; however,
1215 such distribution may not be made before the expiration of 150
1216 days following the date of the last notice of rejections given
1217 pursuant to subsection (3). In the absence of actual fraud, the
1218 judgment of the directors of the dissolved corporation or the

27-00048-08

2008304__

1219 governing persons of the successor entity as to the provisions
1220 made for the payment of all obligations under this paragraph is
1221 conclusive.

1222 (10) A dissolved corporation or successor entity that has
1223 not followed the procedures described in subsections (2) and (3)
1224 shall pay or make reasonable provision to pay all known claims
1225 and obligations, including all contingent, conditional, or
1226 unmatured claims known to the corporation or the successor entity
1227 and all claims that are known to the dissolved corporation or the
1228 successor entity but for which the identity of the claimant is
1229 unknown. Such claims shall be paid in full, and any such
1230 provision for payment made shall be made in full if there are
1231 sufficient funds. If there are insufficient funds, such claims
1232 and obligations shall be paid or provided for according to their
1233 priority and, among claims of equal priority, ratably to the
1234 extent of funds legally available for payment thereof. Any
1235 remaining funds shall be distributed to the members of the
1236 dissolved corporation.

1237 (11) Directors of a dissolved corporation or governing
1238 persons of a successor entity that has complied with subsection
1239 (9) or subsection (10) are not personally liable to the claimants
1240 of the dissolved corporation.

1241 (12) A member of a dissolved corporation the assets of
1242 which were distributed pursuant to subsection (9) or subsection
1243 (10) is not liable for any claim against the corporation in an
1244 amount in excess of such member's pro rata share of the claim or
1245 the amount distributed to the member, whichever is less.

1246 (13) A member of a dissolved corporation, the assets of
1247 which were distributed pursuant to subsection (9), is not liable

27-00048-08

2008304__

1248 for any claim against the corporation which claim is known to the
1249 corporation or successor entity and on which a proceeding is not
1250 begun prior to the expiration of 3 years following the effective
1251 date of dissolution.

1252 (14) The aggregate liability of any member of a dissolved
1253 corporation for claims against the dissolved corporation arising
1254 under this section, or otherwise, may not exceed the amount
1255 distributed to the member in dissolution.

1256 (15) As used in this section and s. 617.1407, the term
1257 "successor entity" includes any trust, receivership, or other
1258 legal entity that is governed by the laws of this state to which
1259 the remaining assets and liabilities of a dissolved corporation
1260 are transferred and that exists solely for the purposes of
1261 prosecuting and defending suits by or against the dissolved
1262 corporation and enabling the dissolved corporation to settle and
1263 close the business of the dissolved corporation, to dispose of
1264 and convey the property of the dissolved corporation, to
1265 discharge the liabilities of the dissolved corporation, and to
1266 distribute to the dissolved corporation's members any remaining
1267 assets, but not for the purpose of continuing the business for
1268 which the dissolved corporation was organized.

1269 Section 34. Subsection (6) of section 617.1421, Florida
1270 Statutes, is repealed.

1271 Section 35. Section 617.1422, Florida Statutes, is amended
1272 to read:

1273 617.1422 Reinstatement following administrative
1274 dissolution.--

1275 (1)~~(a)~~ A corporation administratively dissolved under s.
1276 617.1421 may apply to the Department of State for reinstatement

27-00048-08

2008304__

1277 at any time after the effective date of dissolution. The
1278 corporation must submit a reinstatement form prescribed and
1279 furnished by the Department of State or a current uniform
1280 business report signed by a registered agent and an officer or
1281 director and submit application must:

1282 1. ~~Recite the name of the corporation and the effective~~
1283 ~~date of its administrative dissolution;~~

1284 2. ~~State that the ground or grounds for dissolution either~~
1285 ~~did not exist or have been eliminated and that no further grounds~~
1286 ~~currently exist for dissolution;~~

1287 3. ~~State that the corporation's name satisfies the~~
1288 ~~requirements of s. 617.0401; and~~

1289 4. ~~State that all fees owed by the corporation and computed~~
1290 ~~at the rate provided by law at the time the corporation applies~~
1291 ~~for reinstatement, have been paid; or~~

1292 ~~(b) Submit a current annual report, signed by the~~
1293 ~~registered agent and an officer or director, which substantially~~
1294 ~~complies with the requirements of paragraph (a).~~

1295 (2) If the department of State determines that the
1296 application contains the information required by subsection (1)
1297 and that the information is correct, it shall ~~file the document,~~
1298 ~~cancel the certificate of dissolution, and~~ reinstate the
1299 corporation effective on the date which the reinstatement
1300 document is filed.

1301 (3) When the reinstatement is effective, it relates back to
1302 and takes effect as of the effective date of the administrative
1303 dissolution and the corporation resumes carrying on its business
1304 ~~affairs~~ as if the administrative dissolution had never occurred.

1305 (4) The name of the dissolved corporation is not available

27-00048-08

2008304__

1306 for assumption or use by another corporation until 1 year after
1307 the effective date of dissolution unless the dissolved
1308 corporation provides the department with an affidavit executed as
1309 required by s. 617.01201 permitting the immediate assumption or
1310 use of the name by another corporation.

1311 (5)~~(4)~~ If the name of the dissolved corporation has been
1312 lawfully assumed in this state by another corporation, the
1313 department ~~of State~~ shall require the dissolved corporation to
1314 amend its articles of incorporation to change its name before
1315 accepting its application for reinstatement.

1316 Section 36. Subsection (2) of section 617.1430, Florida
1317 Statutes, is amended to read:

1318 617.1430 Grounds for judicial dissolution.--A circuit court
1319 may dissolve a corporation:

1320 (2) Except as provided in the articles of incorporation or
1321 bylaws of a corporation, in a proceeding by at least 50 members
1322 or members holding at least 10 percent of the voting power of any
1323 corporation, whichever is less, or by a director or any person
1324 authorized in the articles of incorporation, ~~In a proceeding by a~~
1325 ~~member~~ if it is established that:

1326 (a) The directors are deadlocked in the management of the
1327 corporate affairs, the members are unable to break the deadlock,
1328 and irreparable injury to the corporation is threatened or being
1329 suffered;

1330 (b) The members are deadlocked in voting power and have
1331 failed to elect successors to directors whose terms have expired
1332 or would have expired upon qualification of their successors; or

1333 (c) The corporate assets are being misapplied or wasted.

1334 Section 37. Subsection (2) of section 617.1503, Florida

27-00048-08

2008304__

1335 Statutes, is amended to read:

1336 617.1503 Application for certificate of authority.--

1337 (2) The foreign corporation shall deliver with the
1338 completed application a certificate of existence, for a document
1339 of similar import, ~~+~~ duly authenticated, not more than 90 days
1340 prior to delivery of the application to the Department of State,
1341 by the Secretary of State or other official having custody of
1342 corporate records in the jurisdiction under the law of which it
1343 is incorporated. A translation of the certificate, under oath of
1344 the translator, must be attached to a certificate that ~~which~~ is
1345 in a language other than the English language.

1346 Section 38. Subsection (2) of section 617.1504, Florida
1347 Statutes, is amended to read:

1348 617.1504 Amended certificate of authority.--

1349 (2) Such application shall be made within 90 ~~30~~ days after
1350 the occurrence of any change mentioned in subsection (1), shall
1351 be made on forms prescribed by the Department of State, shall be
1352 executed and filed in the same manner as an original application
1353 for authority, and shall set forth:

1354 (a) The name of the foreign corporation as it appears on
1355 the records of the Department of State;

1356 (b) The jurisdiction of its incorporation;

1357 (c) The date it was authorized to conduct its affairs in
1358 this state;

1359 (d) If the name of the foreign corporation has been
1360 changed, the name relinquished, the new name, a statement that
1361 the change of name has been effected under the laws of the
1362 jurisdiction of its incorporation, and the date the change was
1363 effected;

27-00048-08

2008304__

1364 (e) If the period of duration has been changed, a statement
1365 of such change and the date the change was effected;

1366 (f) If the jurisdiction of incorporation has been changed,
1367 a statement of such change and the date the change was effected;
1368 and

1369 (g) If the purpose or purposes that ~~which~~ the corporation
1370 intends to pursue in this state have been changed, a statement of
1371 such new purpose or purposes, and a further statement that the
1372 corporation is authorized to pursue such purpose or purposes in
1373 the jurisdiction of its incorporation.

1374 Section 39. Section 617.1506, Florida Statutes, is amended
1375 to read:

1376 617.1506 Corporate name of foreign corporation.--

1377 (1) A foreign corporation is not entitled to file an
1378 application for a certificate of authority unless the corporate
1379 name of such corporation satisfies the requirements of s.
1380 617.0401. To obtain or maintain a certificate of authority to
1381 transact business in this state, the foreign corporation:

1382 (a) May add the word "corporation" or "incorporated" or the
1383 abbreviation "corp." or "inc." or words of like import, as will
1384 clearly indicate that it is a corporation instead of a natural
1385 person or partnership or other business entity; ~~however, to its~~
1386 ~~corporate name for use in this state, provided,~~ the name of a
1387 foreign corporation may not contain the word "company" or the
1388 abbreviation "co."; or

1389 (b) May use an alternate name to transact business in this
1390 state if its real name is unavailable. Any such alternate
1391 corporate name adopted for use in this state shall be cross-
1392 referenced to the real corporate name in the records of the

27-00048-08

2008304__

1393 Division of Corporations. If the real corporate name of the
1394 corporation becomes available in this state or if the corporation
1395 chooses to change its alternate name, and it delivers to the
1396 Department of State, for filing, a copy of the resolution of its
1397 board of directors, changing or withdrawing the alternate name,
1398 executed as required by s. 617.01201, must be delivered for
1399 filing adopting an alternate name.

1400 (2) The corporate name, including the alternate name, of a
1401 foreign corporation must be distinguishable, within the records
1402 of the Division of Corporations, from:

1403 (a) Any corporate name of a corporation for profit
1404 incorporated or authorized to transact business in this state.

1405 (b) (a) The alternate name of another foreign corporation
1406 authorized to transact business in this state.

1407 (c) (b) The corporate name of a not-for-profit corporation
1408 incorporated or authorized to transact business in this state.

1409 (d) (e) The names of all other entities or filings, except
1410 fictitious name registrations pursuant to s. 865.09, organized,
1411 or registered under the laws of this state, that are on file with
1412 the Division of Corporations.

1413 (3) If a foreign corporation authorized to transact
1414 business in this state changes its corporate name to one that
1415 does not satisfy the requirements of s. 607.0401, such
1416 corporation may not transact business in this state under the
1417 changed name until the corporation adopts a name satisfying the
1418 requirements of s. 607.0401.

1419 ~~(4) The corporate name must be distinguishable from the~~
1420 ~~names of all other entities or filings, organized, registered, or~~
1421 ~~reserved under the laws of the state that are on file with the~~

27-00048-08

2008304__

1422 ~~Division of Corporations, except fictitious name registrations~~
1423 ~~pursuant to s. 865.09.~~

1424 Section 40. Subsection (6) of section 617.1530, Florida
1425 Statutes, is amended to read:

1426 617.1530 Grounds for revocation of authority to conduct
1427 affairs.--The Department of State may commence a proceeding under
1428 s. 617.1531 to revoke the certificate of authority of a foreign
1429 corporation authorized to conduct its affairs in this state if:

1430 (6) The Department of State receives a duly authenticated
1431 certificate from the Secretary ~~secretary~~ of State ~~state~~ or other
1432 official having custody of corporate records in the jurisdiction
1433 under the law of which the foreign corporation is incorporated
1434 stating that it has been dissolved or disappeared as the result
1435 of a merger.

1436 Section 41. Paragraph (a) of subsection (5) of section
1437 617.1601, Florida Statutes, is amended to read:

1438 617.1601 Corporate records.--

1439 (5) A corporation shall keep a copy of the following
1440 records:

1441 (a) Its articles of incorporation or restated articles of
1442 incorporation and all amendments to them currently in effect.

1443 Section 42. Subsections (1), (2), and (4) of section
1444 617.1602, Florida Statutes, are amended to read:

1445 617.1602 Inspection of records by members.--

1446 (1) A member of a corporation is entitled to inspect and
1447 copy, during regular business hours at the corporation's
1448 principal office or at a reasonable location specified by the
1449 corporation, any of the records of the corporation described in
1450 s. 617.1601(5), if the member gives the corporation written

27-00048-08

2008304__

1451 notice of his or her demand at least 10 ~~5~~ business days before
1452 the date on which he or she wishes to inspect and copy.

1453 (2) A member of a corporation is entitled to inspect and
1454 copy, during regular business hours at a reasonable location
1455 specified by the corporation, any of the following records of the
1456 corporation if the member meets the requirements of subsection
1457 (3) and gives the corporation written notice of his or her demand
1458 at least 10 ~~5~~ business days before the date on which he or she
1459 wishes to inspect and copy:

1460 (a) Excerpts from minutes of any meeting of the board of
1461 directors, records of any action of a committee of the board of
1462 directors while acting in place of the board of directors on
1463 behalf of the corporation, minutes of any meeting of the members,
1464 and records of action taken by the members or board of directors
1465 without a meeting, to the extent not subject to inspection under
1466 subsection (1).

1467 (b) Accounting records of the corporation.

1468 (c) The record of members.

1469 (d) Any other books and records.

1470 (4) This section does not affect:

1471 (a) The right of a member ~~to inspect and copy records under~~
1472 ~~s. 617.0730(6), or, if the member is in litigation with the~~
1473 ~~corporation to inspect and copy records,~~ to the same extent as
1474 any other litigant.

1475 (b) The power of a court, independently of this act, to
1476 compel the production of corporate records for examination.

1477 Section 43. Section 617.1605, Florida Statutes, is amended
1478 to read:

1479 617.1605 Financial reports for members.--A corporation,

27-00048-08

2008304__

1480 upon written demand from a member, shall furnish that member its
1481 latest annual financial statements, which may be consolidated or
1482 combined statements of the corporation and one or more of its
1483 subsidiaries or affiliates, as appropriate, and which include a
1484 balance sheet as of the end of the fiscal year and a statement of
1485 operations for that year. If financial statements are prepared
1486 for the corporation on the basis of generally accepted accounting
1487 principles, the annual financial statements must also be prepared
1488 on such basis. ~~Within 60 days following the end of the fiscal or~~
1489 ~~calendar year or annually on such date as is otherwise provided~~
1490 ~~in the bylaws of the corporation, the board of directors of the~~
1491 ~~corporation shall mail or furnish by personal delivery to each~~
1492 ~~member a complete financial report of actual receipts and~~
1493 ~~expenditures for the previous 12 months. The report shall show~~
1494 ~~the amounts of receipts by accounts and receipt classifications~~
1495 ~~and shall show the amounts of expenses by accounts and expense~~
1496 ~~classifications.~~

1497 Section 44. Section 617.1703, Florida Statutes, is created
1498 to read:

1499 617.1703 Application to condominiums, homeowners'
1500 associations, cooperatives, and mobile home park lot
1501 tenancies.--In the event of any conflict between the provisions
1502 of this act and the provisions of chapter 718 regarding
1503 condominiums, chapter 719 regarding cooperatives, chapter 720
1504 regarding homeowners' associations, or chapter 723 regarding
1505 mobile home park lot tenancies, the provisions of such other
1506 chapters shall apply. The provisions of ss. 617.0605-617.0608 do
1507 not apply to corporations regulated by any of the foregoing
1508 chapters or to any other corporation in which membership in the

27-00048-08

2008304__

1509 corporation is required pursuant to a document recorded in the
1510 county property records.

1511 Section 45. Subsection (8) is added to section 617.1803,
1512 Florida Statutes, to read:

1513 617.1803 Domestication of foreign not-for-profit
1514 corporations.--

1515 (8) When a domestication becomes effective:

1516 (a) The title to all real and personal property, both
1517 tangible and intangible, of the foreign corporation remains in
1518 the domesticated corporation without reversion or impairment;

1519 (b) The liabilities of the foreign corporation remain the
1520 liabilities of the domesticated corporation;

1521 (c) An action or proceeding against the foreign corporation
1522 continues against the domesticated corporation as if the
1523 domestication had not occurred;

1524 (d) The articles of incorporation attached to the
1525 certificate of domestication constitute the articles of
1526 incorporation of the domesticated corporation; and

1527 (e) Membership interests in the foreign corporation remain
1528 identical in the domesticated corporation.

1529 Section 46. Section 617.1806, Florida Statutes, is amended
1530 to read:

1531 617.1806 Conversion to corporation not for profit; petition
1532 and contents.--A petition for conversion to a corporation not for
1533 profit pursuant to s. 617.1805 shall be accompanied by the
1534 written consent of all the shareholders authorizing the change in
1535 the corporate nature and directing an authorized officer to file
1536 such petition before the court, together with a statement
1537 agreeing to accept all the property of the petitioning

27-00048-08

2008304__

1538 corporation and agreeing to assume and pay all its indebtedness
1539 and liabilities and the proposed articles of incorporation signed
1540 by the president and secretary of the petitioning corporation
1541 which shall set forth the provisions required in original
1542 articles of incorporation by s. 617.0202.

1543 Section 47. Section 617.1807, Florida Statutes, is amended
1544 to read:

1545 617.1807 Conversion to corporation not for profit;
1546 authority of circuit judge.--If the circuit judge to whom the
1547 petition and proposed articles of incorporation are presented
1548 finds that the petition and proposed articles of incorporation
1549 are in proper form, he or she shall approve the articles of
1550 incorporation and endorse his or her approval thereon; such
1551 approval shall provide that all of the property of the
1552 petitioning corporation shall become the property of the
1553 successor corporation not for profit, subject to all indebtedness
1554 and liabilities of the petitioning corporation. The articles of
1555 incorporation with such endorsements thereupon shall be sent to
1556 the Department of State, which shall, upon receipt thereof and
1557 upon payment of all taxes due the state by the petitioning
1558 corporation, if any, issue a certificate showing the receipt of
1559 the articles of incorporation with the endorsement of approval
1560 thereon and of the payment of all taxes to the state. Upon
1561 payment of the filing fees specified in s. 617.0122, the
1562 Department of State shall file the articles of incorporation, and
1563 from thenceforth the petitioning corporation shall become a
1564 corporation not for profit under the name adopted in the articles
1565 of incorporation and subject to all the rights, powers,
1566 immunities, duties, and liabilities of corporations not for

27-00048-08

2008304__

1567 | profit under state law, and its rights, powers, immunities,
1568 | duties, and liabilities as a corporation for profit shall cease
1569 | and determine.

1570 | Section 48. Section 617.1907, Florida Statutes, is amended
1571 | to read:

1572 | 617.1907 Effect of repeal or amendment of prior acts.--

1573 | (1) Except as provided in subsection (2), the repeal or
1574 | amendment of a statute by this act does not affect:

1575 | (a) The operation of the statute or any action taken under
1576 | it before its repeal or amendment;

1577 | (b) Any ratification, right, remedy, privilege, obligation,
1578 | or liability acquired, accrued, or incurred under the statute
1579 | before its repeal or amendment;

1580 | (c) Any violation of the statute, or any penalty,
1581 | forfeiture, or punishment incurred because of the violation,
1582 | before its repeal or amendment; or

1583 | (d) Any proceeding, reorganization, or dissolution
1584 | commenced under the statute before its repeal or amendment, and
1585 | the proceeding, reorganization, or dissolution may be completed
1586 | in accordance with the statute as if it had not been repealed or
1587 | amended.

1588 | (2) If a penalty or punishment imposed for violation of a
1589 | statute repealed or amended by this act is reduced by this act,
1590 | the penalty or punishment if not already imposed shall be imposed
1591 | in accordance with this act.

1592 | Section 49. Section 617.2103, Florida Statutes, is
1593 | repealed.

1594 | Section 50. This act shall take effect October 1, 2008.