

By Senator Deutch

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1 A bill to be entitled
2 An act relating to corporations; amending s. 607.1109,
3 F.S.; exempting a domestic corporation from the
4 requirement to file articles of merger under certain
5 circumstances; amending s. 607.1113, F.S.; exempting a
6 domestic corporation from the requirement to file a
7 certificate of conversion under certain circumstances;
8 amending s. 607.1115, F.S.; requiring that each converting
9 entity file a certificate of conversion with the
10 Department of State; amending s. 608.4382, F.S.; exempting
11 a domestic limited liability company from the requirement
12 to file a certificate of merger under certain
13 circumstances; amending s. 608.439, F.S.; including a
14 corporation within the definition of "other business
15 entity" or "another business entity"; requiring that each
16 converting entity file a certificate of conversion with
17 the department; amending s. 608.4403, F.S.; exempting a
18 limited liability company from the requirement to file a
19 certificate of conversion under certain circumstances;
20 amending s. 617.1108, F.S.; exempting a domestic
21 corporation not for profit from the requirement to file
22 articles of merger under certain circumstances; providing
23 for a copy of articles of merger or the certificate of
24 merger to be filed in each county in which real property
25 of a party to the merger is situated; amending s.
26 620.1406, F.S.; revising the requirements for general
27 partners with respect to exercising certain management
28 rights; providing that the expulsion of a limited partner
29 requires the consent of all of the other limited partners;

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30 | amending s. 620.2104, F.S.; requiring that a certificate
31 | of conversion be signed by each general partner and by the
32 | converting organization; exempting a limited partnership
33 | from the requirement to file a certificate of conversion
34 | if the partnership complies with certain other laws;
35 | amending s. 620.8918, F.S.; providing certain exceptions
36 | to the requirement that each constituent partnership file
37 | articles of merger or a certificate of merger with the
38 | Department of State; amending s. 620.2204, F.S.; changing
39 | the date of application of provisions authorizing a
40 | limited partner to dissociate from a limited partnership;
41 | amending s. 620.8101, F.S.; redefining the term
42 | "statement" to exclude a statement of merger; amending s.
43 | 620.8105, F.S.; requiring that a registration statement be
44 | filed with the department before filing a certificate of
45 | conversion or a certificate of merger; amending s.
46 | 620.81055, F.S.; providing that a filing fee applies to a
47 | certificate of merger; amending s. 620.8911, F.S.;
48 | clarifying that the term "organization" includes a
49 | converted or surviving organization under certain
50 | circumstances; amending s. 620.8914, F.S.; revising
51 | certain requirements for conversions; exempting a
52 | partnership from filing a certificate of conversion under
53 | certain circumstances; providing that the certificate of
54 | conversion acts as a cancellation of the registration
55 | statement for a converting partnership; amending s.
56 | 620.8918, F.S.; exempting a constituent partnership from
57 | filing a certificate of merger under certain
58 | circumstances; requiring that such partnership file a

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59 registration statement with the department if one is not
60 currently on file; providing an effective date.

61
62 Be It Enacted by the Legislature of the State of Florida:

63
64 Section 1. Subsection (3) is added to section 607.1109,
65 Florida Statutes, to read:

66 607.1109 Articles of merger.--

67 (3) A domestic corporation is not required to file articles
68 of merger pursuant to subsection (1) if the domestic corporation
69 is named as a party or constituent organization in articles of
70 merger or a certificate of merger filed for the same merger in
71 accordance with s. 608.4382(1), s. 617.1108, s. 620.2108(1) and
72 (2), or s. 620.8918(1) and (2), and if the articles of merger or
73 certificate of merger substantially complies with the
74 requirements of this section. In such a case, the other articles
75 of merger or certificate of merger may also be used for purposes
76 of subsection (2).

77 Section 2. Subsection (3) is added to section 607.1113,
78 Florida Statutes, to read:

79 607.1113 Certificate of conversion.--

80 (3) A converting domestic corporation is not required to
81 file a certificate of conversion pursuant to subsection (1) if
82 the converting domestic corporation files a certificate of
83 conversion that substantially complies with the requirements of
84 this section pursuant to s. 608.439, s. 620.2104(1)(b), or s.
85 620.8914(1)(b) and contains the signatures required by this
86 chapter. In such a case, the other certificate of conversion may
87 also be used for purposes of subsection (2).

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88 Section 3. Paragraph (a) of subsection (2) of section
89 607.1115, Florida Statutes, is amended to read:

90 607.1115 Conversion of another business entity to a
91 domestic corporation.--

92 (2) Any other business entity may convert to a domestic
93 corporation if the conversion is permitted by the laws of the
94 jurisdiction that enacted the applicable laws governing the other
95 business entity and the other business entity complies with such
96 laws and the requirements of this section in effecting the
97 conversion. The other business entity shall file with the
98 Department of State in accordance with s. 607.0120:

99 (a) A certificate of conversion that has been executed in
100 accordance with s. 607.0120 and by the other business entity as
101 required by applicable law.

102 Section 4. Subsection (3) is added to section 608.4382,
103 Florida Statutes, to read:

104 608.4382 Certificate of merger.--

105 (3) A domestic limited liability company is not required to
106 file a certificate of merger pursuant to subsection (1) if the
107 domestic limited liability company is named as a party or
108 constituent organization in articles of merger or a certificate
109 of merger filed for the same merger in accordance with s.
110 607.1109(1), s. 617.1108, s. 620.2108(1) and (2), or s.
111 620.8918(1) and (2), and if the articles of merger or certificate
112 of merger substantially complies with the requirements of this
113 section. In such a case, the other articles of merger or
114 certificate of merger may also be used for purposes of subsection
115 (2).

116 Section 5. Subsection (1) and paragraph (a) of subsection

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117 (2) of section 608.439, Florida Statutes, are amended to read:

118 608.439 Conversion of certain entities to a limited
119 liability company.--

120 (1) As used in this section, the term "other business
121 entity" or "another business entity" means a corporation; a
122 common law or business trust or association; a real estate
123 investment trust; a general partnership, including a limited
124 liability partnership; a limited partnership, including a limited
125 liability limited partnership; or any other domestic or foreign
126 entity that is organized under a governing law or other
127 applicable law, provided such term shall not include a domestic
128 limited liability company.

129 (2) Any other business entity may convert to a domestic
130 limited liability company if the conversion is permitted by the
131 laws of the jurisdiction that enacted the statute or other
132 applicable law governing the other business entity and the other
133 business entity complies with such laws and the requirements of
134 this section in effecting the conversion. The other business
135 entity shall file with the Department of State in accordance with
136 s. 608.4081:

137 (a) A certificate of conversion that has been executed by
138 one or more authorized persons in accordance with s. 608.408, and
139 by the other business entity as required by applicable law.

140 Section 6. Subsection (3) is added to section 608.4403,
141 Florida Statutes, to read:

142 608.4403 Certificate of conversion.--

143 (3) A converting limited liability company is not required
144 to file a certificate of conversion pursuant to subsection (1) if
145 the converting limited liability company files a certificate of

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146 conversion that substantially complies with the requirements of
147 this section pursuant to s. 607.1115, s. 620.2104(1)(b), or s.
148 620.8914(1)(b) and contains the signatures required by this
149 chapter. In such a case, the other certificate of conversion may
150 also be used for purposes of subsection (2).

151 Section 7. Section 617.1108, Florida Statutes, is amended
152 to read:

153 617.1108 Merger of domestic corporation and other business
154 entities.--

155 (1) Subject to s. 617.0302(16) and other applicable
156 provisions of this chapter, ss. 607.1108, 607.1109, and 607.11101
157 shall apply to a merger involving a corporation not for profit
158 organized under this act and one or more other business entities
159 identified in s. 607.1108(1).

160 (2) A domestic corporation not for profit organized under
161 this chapter is not required to file articles of merger pursuant
162 to this section if the corporation not for profit is named as a
163 party or constituent organization in articles of merger or a
164 certificate of merger filed for the same merger in accordance
165 with s. 607.1109, s. 608.4382(1), s. 620.2108(1) and (2), or s.
166 620.8918(1) and (2). In such a case, the other articles of merger
167 or certificate of merger may also be used for purposes of
168 subsection (3).

169 (3) A copy of the articles of merger or certificate of
170 merger, certified by the Department of State, may be filed in the
171 office of the official who is the recording officer of each
172 county in this state in which real property of a party to the
173 merger, other than the surviving entity, is situated.

174 Section 8. Subsections (3), (4), and (5) of section

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175 620.1406, Florida Statutes, are amended to read:

176 620.1406 Management rights of general partner; approval
177 rights of other partners.--

178 (3) In addition to the approval of the general partners
179 required by subsections (1) and (2), the approval of all limited
180 partners shall also be required in order to take any of the
181 actions under subsection (1) or subsection (2) with the exception
182 of a transaction described in paragraph (1) (e), a transaction
183 described in paragraph (1) (h), or a transaction described in
184 paragraph (1) (i).

185 (4) The approval of a plan of conversion under s. 620.2103
186 or a plan of merger under s. 620.2107 shall also require the
187 consent of the limited partners in the manner described therein.

188 (5) The expulsion of a limited partner described in
189 paragraph (1) (e) shall also require the consent of all of the
190 other limited partners. A transaction described in paragraph
191 (1) (i) shall also require approval of limited partners owning a
192 majority of the rights to receive distributions as limited
193 partners at the time the consent is to be effective.

194 Section 9. Subsection (1) of section 620.2104, Florida
195 Statutes, is amended to read:

196 620.2104 Filings required for conversion; effective date.--

197 (1) After a plan of conversion is approved:

198 (a) A converting limited partnership shall deliver to the
199 Department of State for filing a certificate of conversion,
200 signed by each general partner listed in the certificate of
201 limited partnership, and must include:

202 1. A statement that the limited partnership has been
203 converted into another organization.

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204 2. The name and form of the organization and the
205 jurisdiction of its governing law.

206 3. The date the conversion is effective under the governing
207 law of the converted organization.

208 4. A statement that the conversion was approved as required
209 by this act.

210 5. A statement that the conversion was approved as required
211 by the governing law of the converted organization.

212 6. If the converted organization is a foreign organization
213 not authorized to transact business in this state, the street and
214 mailing address of an office which the Department of State may
215 use for the purposes of s. 620.2105(3).

216 (b) If the converting organization is not a converting
217 limited partnership, the converting organization shall deliver to
218 the Department of State for filing:

219 1. A certificate of limited partnership containing the
220 information required by s. 620.1201, signed by each general
221 partner as required by s. 620.1204(1)(a).

222 2. A certificate of conversion, signed by each general
223 partner listed in the certificate of limited partnership
224 submitted in accordance with subparagraph 1. and by the
225 converting organization as required by applicable law, which
226 certificate of conversion must include:

227 a. A statement that the limited partnership was converted
228 from another organization.

229 b. The name and form of the converting organization and the
230 jurisdiction of its governing law.

231 c. A statement that the conversion was approved as required
232 by this act.

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233 d. A statement that the conversion was approved in a manner
234 that complied with the converting organization's governing law.

235 (c) A converting limited partnership is not required to
236 file a certificate of conversion pursuant to paragraph (a) if the
237 converting limited partnership files a certificate of conversion
238 that substantially complies with the requirements of this section
239 pursuant to s. 607.1115, s. 608.439, or s. 620.8914(1)(b) and
240 contains the signatures required by this chapter. In such a case,
241 the other certificate of conversion may also be used for purposes
242 of s. 620.2105(4).

243 Section 10. Subsection (3) of section 620.8918, Florida
244 Statutes, is amended to read:

245 620.8918 Filings required for merger; effective date.--

246 (3) Each constituent partnership shall deliver to the
247 Department of State for filing a statement of registration in
248 accordance with s. 620.8105, if such statement was not previously
249 filed, and a certificate of merger in accordance with s.
250 620.8105, unless the constituent limited partnership is named as
251 a party or constituent organization in articles of merger or a
252 certificate of merger filed for the same merger in accordance
253 with s. 607.1109(1), s. 608.4382(1), s. 617.1108, or subsections
254 (1) and (2), and such articles of merger or certificate of merger
255 substantially complies with the requirements of this section. In
256 such a case, the other articles of merger or certificate of
257 merger may also be used for purposes of s. 620.2109(3).

258 Section 11. Paragraph (c) of subsection (3) of section
259 620.2204, Florida Statutes, is amended to read:

260 620.2204 Application to existing relationships.--

261 (3) With respect to a limited partnership formed before

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262 | January 1, 2006, the following rules apply except as the partners
263 | otherwise elect in the manner provided in the partnership
264 | agreement or by law for amending the partnership agreement:

265 | (c) The provisions of ss. 620.1601 and 620.1602 do not
266 | apply and a limited partner has the same right and power to
267 | dissociate from the limited partnership, with the same
268 | consequences, as existed immediately before January 1, 2006 ~~July~~
269 | ~~1, 2005~~.

270 | Section 12. Subsection (15) of section 620.8101, Florida
271 | Statutes, is amended to read:

272 | 620.8101 Definitions.--As used in this act, the term:

273 | (15) "Statement" means a statement of partnership authority
274 | under s. 620.8303, a statement of denial under s. 620.8304, a
275 | statement of dissociation under s. 620.8704, a statement of
276 | dissolution under s. 620.8805, ~~a statement of merger under s.~~
277 | ~~620.8918,~~ a statement of qualification under s. 620.9001, a
278 | statement of foreign qualification under s. 620.9102, or an
279 | amendment or cancellation of any of the foregoing.

280 | Section 13. Subsection (4) of section 620.8105, Florida
281 | Statutes, is amended to read:

282 | 620.8105 Execution, filing, and recording of partnership
283 | registration and other statements.--

284 | (4) Except as provided in s. 620.8304 or s. 620.8704, a
285 | statement or a certificate of conversion or certificate of merger
286 | may be filed with the Department of State only if the partnership
287 | has filed a registration statement pursuant to subsection (1).
288 | If otherwise sufficient, a certified copy of a statement that is
289 | filed in a jurisdiction other than this state may be filed with
290 | the Department of State in lieu of an original statement. Any

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291 | such filing has the effect provided in this act with respect to
292 | partnership property located in, or transactions that occur in,
293 | this state.

294 | Section 14. Paragraph (i) of subsection (1) of section
295 | 620.81055, Florida Statutes, is amended to read:

296 | 620.81055 Fees for filing documents and issuing
297 | certificates; powers of the Department of State.--

298 | (1) The Department of State shall collect the following
299 | fees when documents authorized by this act are delivered to the
300 | Department of State for filing:

301 | (i) Certificate ~~Statement~~ of merger for each party thereto:
302 | \$25.

303 | Section 15. Subsection (7) of section 620.8911, Florida
304 | Statutes, is amended to read:

305 | 620.8911 Definitions.--As used in this section and ss.
306 | 620.8912-620.8923:

307 | (7) "Organization" means a corporation; general
308 | partnership, including a limited liability partnership; limited
309 | partnership, including a limited liability limited partnership;
310 | limited liability company; common law or business trust or
311 | association; real estate investment trust; or any other person
312 | organized under a governing law or other applicable law, provided
313 | such term shall not include an organization that is not organized
314 | for profit, unless the not-for-profit organization is the
315 | converted organization in a conversion or the surviving
316 | organization in ~~a conversion or~~ a merger governed by this act.
317 | The term includes both domestic and foreign organizations.

318 | Section 16. Section 620.8914, Florida Statutes, is amended
319 | to read:

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320 620.8914 Filings required for conversion; effective date.--

321 (1) After a plan of conversion is approved:

322 (a) A converting partnership shall deliver to the
323 Department of State for filing a ~~statement of~~ registration
324 statement in accordance with s. 620.8105, if such statement was
325 not previously filed, and a certificate of conversion, in
326 accordance with s. 620.8105, which must include:

327 1. A statement that the partnership has been converted into
328 another organization.

329 2. The name and form of the organization and the
330 jurisdiction of its governing law.

331 3. The date the conversion is effective under the governing
332 law of the converted organization.

333 4. A statement that the conversion was approved as required
334 by this act.

335 5. A statement that the conversion was approved as required
336 by the governing law of the converted organization.

337 6. If the converted organization is a foreign organization
338 not authorized to transact business in this state, the street and
339 mailing address of an office which the Department of State may
340 use for the purposes of s. 620.8915(3).

341 (b) In the case of a converting organization converting
342 into a partnership to be governed by this act, the converting
343 organization shall deliver to the Department of State for filing:

344 1. A ~~certificate of~~ registration statement in accordance
345 with s. 620.8105.

346 2. A certificate of conversion, in accordance with s.
347 620.8105, signed by a general partner of the partnership in
348 accordance with s. 620.8105(6) and by the converting organization

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349 as required by applicable law, which certificate of conversion
350 must include:

351 a. A statement that the partnership was converted from
352 another organization.

353 b. The name and form of the converting organization and the
354 jurisdiction of its governing law.

355 c. A statement that the conversion was approved as required
356 by this act.

357 d. A statement that the conversion was approved in a manner
358 that complied with the converting organization's governing law.

359 e. The effective time of the conversion, if other than the
360 time of the filing of the certificate ~~statement~~ of conversion.

361
362 A converting partnership is not required to file a certificate of
363 conversion pursuant to paragraph (a) if the converting
364 partnership files a certificate of conversion that substantially
365 complies with the requirements of this section pursuant to s.
366 607.1115, s. 608.439, or s. 620.2104(1)(b) and contains the
367 signatures required by this chapter. In such a case, the other
368 certificate of conversion may also be used for purposes of s.
369 620.8915(4).

370 (2) A conversion becomes effective:

371 (a) If the converted organization is a partnership, at the
372 time specified in ~~the plan of conversion or~~ the certificate of
373 conversion, which may be as of or after the time of the filing of
374 the certificate of conversion, and, if the certificate of
375 conversion does not contain such an effective time, the effective
376 time shall be upon the filing of the certificate of conversion
377 with the Department of State. However, ~~provided,~~ if the

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378 certificate has a delayed effective date, the certificate may not
379 be effective any later than the 90th day after the date it was
380 filed and ~~provided further~~, the effective date may ~~shall~~ not be
381 any earlier than the effective date of the ~~statement of~~
382 registration statement filed with the Department of State for the
383 partnership in accordance with s. 620.8105.

384 (b) If the converted organization is not a partnership, as
385 provided by the governing law of the converted organization.
386

387 A certificate of conversion acts as a cancellation of any
388 registration statement for a converting partnership for purposes
389 of s. 620.8105, and the cancellation shall be deemed filed upon
390 the effective date of the conversion.

391 Section 17. Subsections (3), (4), and (5) of section
392 620.8918, Florida Statutes, are amended to read:

393 620.8918 Filings required for merger; effective date.--

394 (3) Each constituent partnership shall deliver the
395 certificate of merger for filing with ~~to~~ the Department of State,
396 unless the constituent partnership is named as a party or
397 constituent organization in articles of merger or a certificate
398 of merger filed for the same merger in accordance with s.
399 607.1109(1), s. 608.4382(1), s. 617.1108, or s. 620.2108(1) and
400 (2). The articles of merger or certificate of merger must
401 substantially comply with the requirements of this section. In
402 such a case, the other articles of merger or certificate of
403 merger may also be used for purposes of s. 620.8919(3). Each
404 constituent partnership in the merger shall also file a
405 registration statement in accordance with s. 620.8105(1) if it
406 does not have a currently effective registration statement filed

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407 ~~with the Department of State. for filing a statement of~~
408 ~~registration in accordance with s. 620.8105, if such statement~~
409 ~~was not previously filed, and a certificate of merger in~~
410 ~~accordance with s. 620.8105.~~

411 (4) A merger becomes effective under this act:

412 (a) If the surviving organization is a partnership, at the
413 time specified in ~~the plan of merger or~~ the certificate of
414 merger, which may be as of or after the time of the filing of the
415 certificate of merger, and, if the certificate of merger does not
416 contain such an effective time, the effective time shall be upon
417 the filing of the certificate ~~statement~~ of merger with the
418 Department of State. However, ~~provided,~~ if the certificate has a
419 delayed effective date, the certificate may not be effective any
420 later than the 90th day after the date it was filed, and ~~provided~~
421 ~~further,~~ the effective date may ~~shall~~ not be any earlier than the
422 effective date of the ~~statement of~~ registration statement filed
423 with the Department of State for the partnership in accordance
424 with s. 620.8105.

425 (b) If the surviving organization is not a partnership, as
426 provided by the governing law of the surviving organization.

427 (5) A certificate of merger acts ~~shall act~~ as a
428 cancellation of any ~~statement of~~ registration statement for
429 purposes of s. 620.8105 for a partnership that is a party to the
430 merger ~~that~~ is not the surviving organization, which cancellation
431 shall be deemed filed upon the effective date of the merger.

432 Section 18. This act shall take effect July 1, 2008.