

By the Committee on Judiciary; and Senator Deutch

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1 A bill to be entitled

2 An act relating to business entities; amending s.
3 607.1109, 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. 620.2108, F.S.; providing certain exceptions
36 to the requirement that each constituent limited
37 partnership file articles of merger or a certificate of
38 merger with the Department of State; amending s. 620.2204,
39 F.S.; changing the date of application of provisions
40 authorizing a limited partner to dissociate from a limited
41 partnership; amending s. 620.8101, F.S.; redefining the
42 term "statement" to exclude a statement of merger;
43 amending s. 620.8105, F.S.; requiring that a registration
44 statement be filed with the department before filing a
45 certificate of conversion or a certificate of merger;
46 amending s. 620.81055, F.S.; providing that a filing fee
47 applies to a certificate of merger; amending s. 620.8911,
48 F.S.; 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; amending ss. 621.06 and 621.10, F.S.;
61 revising terms related to qualifications to render
62 professional services; amending s. 621.13, F.S.;
63 eliminating provisions prohibiting mergers between
64 domestic and foreign professional corporations and limited
65 liability companies; amending s. 727.114, F.S.; providing
66 that the assignor be paid any residue if all creditors
67 have been paid in full; providing effective dates.

68
69 Be It Enacted by the Legislature of the State of Florida:

70
71 Section 1. Subsection (3) is added to section 607.1109,
72 Florida Statutes, to read:

73 607.1109 Articles of merger.--

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

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

86 607.1113 Certificate of conversion.--

87 (3) A converting domestic corporation is not required to

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88 file a certificate of conversion pursuant to subsection (1) if
89 the converting domestic corporation files a certificate of
90 conversion that substantially complies with the requirements of
91 this section pursuant to s. 608.439, s. 620.2104(1)(b), or s.
92 620.8914(1)(b) and contains the signatures required by this
93 chapter. In such a case, the other certificate of conversion may
94 also be used for purposes of subsection (2).

95 Section 3. Paragraph (a) of subsection (2) of section
96 607.1115, Florida Statutes, is amended to read:

97 607.1115 Conversion of another business entity to a
98 domestic corporation.--

99 (2) Any other business entity may convert to a domestic
100 corporation if the conversion is permitted by the laws of the
101 jurisdiction that enacted the applicable laws governing the other
102 business entity and the other business entity complies with such
103 laws and the requirements of this section in effecting the
104 conversion. The other business entity shall file with the
105 Department of State in accordance with s. 607.0120:

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

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

111 608.4382 Certificate of merger.--

112 (3) A domestic limited liability company is not required to
113 file a certificate of merger pursuant to subsection (1) if the
114 domestic limited liability company is named as a party or
115 constituent organization in articles of merger or a certificate
116 of merger filed for the same merger in accordance with s.

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117 607.1109(1), s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and
118 (2), and if the articles of merger or certificate of merger
119 substantially complies with the requirements of this section. In
120 such a case, the other articles of merger or certificate of
121 merger may also be used for purposes of subsection (2).

122 Section 5. Subsection (1) and paragraph (a) of subsection
123 (2) of section 608.439, Florida Statutes, are amended to read:

124 608.439 Conversion of certain entities to a limited
125 liability company.--

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

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

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

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

148 608.4403 Certificate of conversion.--

149 (3) A converting limited liability company is not required
150 to file a certificate of conversion pursuant to subsection (1) if
151 the converting limited liability company files a certificate of
152 conversion that substantially complies with the requirements of
153 this section pursuant to s. 607.1115, s. 620.2104(1)(b), or s.
154 620.8914(1)(b) and contains the signatures required by this
155 chapter. In such a case, the other certificate of conversion may
156 also be used for purposes of subsection (2).

157 Section 7. Section 617.1108, Florida Statutes, is amended
158 to read:

159 617.1108 Merger of domestic corporation and other business
160 entities.--

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

166 (2) A domestic corporation not for profit organized under
167 this chapter is not required to file articles of merger pursuant
168 to this section if the corporation not for profit is named as a
169 party or constituent organization in articles of merger or a
170 certificate of merger filed for the same merger in accordance
171 with s. 607.1109, s. 608.4382(1), s. 620.2108(3), or s.
172 620.8918(1) and (2). In such a case, the other articles of merger
173 or certificate of merger may also be used for purposes of
174 subsection (3).

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

180 Section 8. Subsections (3), (4), and (5) of section
181 620.1406, Florida Statutes, are amended to read:

182 620.1406 Management rights of general partner; approval
183 rights of other partners.--

184 (3) In addition to the approval of the general partners
185 required by subsections (1) and (2), the approval of all limited
186 partners shall also be required in order to take any of the
187 actions under subsection (1) or subsection (2) with the exception
188 of a transaction described in paragraph (1)(e), a transaction
189 described in paragraph (1)(h), or a transaction described in
190 paragraph (1)(i).

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

194 (5) The expulsion of a limited partner described in
195 paragraph (1)(e) shall also require the consent of all of the
196 other limited partners. A transaction described in paragraph
197 (1)(i) shall also require approval of limited partners owning a
198 majority of the rights to receive distributions as limited
199 partners at the time the consent is to be effective.

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

202 620.2104 Filings required for conversion; effective date.--

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

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204 (a) A converting limited partnership shall deliver to the
205 Department of State for filing a certificate of conversion,
206 signed by each general partner listed in the certificate of
207 limited partnership, and must include:

208 1. A statement that the limited partnership has been
209 converted into another organization.

210 2. The name and form of the organization and the
211 jurisdiction of its governing law.

212 3. The date the conversion is effective under the governing
213 law of the converted organization.

214 4. A statement that the conversion was approved as required
215 by this act.

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

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

222 (b) If the converting organization is not a converting
223 limited partnership, the converting organization shall deliver to
224 the Department of State for filing:

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

228 2. A certificate of conversion, signed by each general
229 partner listed in the certificate of limited partnership
230 submitted in accordance with subparagraph 1. and by the
231 converting organization as required by applicable law, which
232 certificate of conversion must include:

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233 a. A statement that the limited partnership was converted
234 from another organization.

235 b. The name and form of the converting organization and the
236 jurisdiction of its governing law.

237 c. A statement that the conversion was approved as required
238 by this act.

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

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

249 Section 10. Subsection (3) of section 620.2108,
250 Florida Statutes, is amended to read:

251 620.2108 Filings required for merger; effective date.--

252 (3) Each constituent limited partnership shall deliver the
253 certificate of merger for filing in the Department of State,
254 unless the constituent limited partnership is named as a party or
255 constituent organization in articles of merger or a certificate
256 of merger filed for the same merger in accordance with s.
257 607.1109(1), s. 608.4382(1), s. 617.1108, or s. 620.8918(1) and
258 (2), and such articles of merger or certificate of merger
259 substantially complies with the requirements of this section. If
260 such circumstances exist, the other articles of merger or
261 certificate of merger may also be used for purposes of s.

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262 | 620.2109(3).

263 | Section 11. Paragraph (c) of subsection (3) of section
264 | 620.2204, Florida Statutes, is amended to read:

265 | 620.2204 Application to existing relationships.--

266 | (3) With respect to a limited partnership formed before
267 | January 1, 2006, the following rules apply except as the partners
268 | otherwise elect in the manner provided in the partnership
269 | agreement or by law for amending the partnership agreement:

270 | (c) The provisions of ss. 620.1601 and 620.1602 do not
271 | apply and a limited partner has the same right and power to
272 | dissociate from the limited partnership, with the same
273 | consequences, as existed immediately before January 1, 2006 ~~July~~
274 | ~~1, 2005~~.

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

277 | 620.8101 Definitions.--As used in this act, the term:

278 | (15) "Statement" means a statement of partnership authority
279 | under s. 620.8303, a statement of denial under s. 620.8304, a
280 | statement of dissociation under s. 620.8704, a statement of
281 | dissolution under s. 620.8805, ~~a statement of merger under s.~~
282 | ~~620.8918,~~ a statement of qualification under s. 620.9001, a
283 | statement of foreign qualification under s. 620.9102, or an
284 | amendment or cancellation of any of the foregoing.

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

287 | 620.8105 Execution, filing, and recording of partnership
288 | registration and other statements.--

289 | (4) Except as provided in s. 620.8304 or s. 620.8704, a
290 | statement or a certificate of conversion or certificate of merger

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291 | may be filed with the Department of State only if the partnership
292 | has filed a registration statement pursuant to subsection (1).
293 | If otherwise sufficient, a certified copy of a statement that is
294 | filed in a jurisdiction other than this state may be filed with
295 | the Department of State in lieu of an original statement. Any
296 | such filing has the effect provided in this act with respect to
297 | partnership property located in, or transactions that occur in,
298 | this state.

299 | Section 14. Paragraph (i) of subsection (1) of section
300 | 620.81055, Florida Statutes, is amended to read:

301 | 620.81055 Fees for filing documents and issuing
302 | certificates; powers of the Department of State.--

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

306 | (i) Certificate ~~Statement~~ of merger for each party thereto:
307 | \$25.

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

310 | 620.8911 Definitions.--As used in this section and ss.
311 | 620.8912-620.8923:

312 | (7) "Organization" means a corporation; general
313 | partnership, including a limited liability partnership; limited
314 | partnership, including a limited liability limited partnership;
315 | limited liability company; common law or business trust or
316 | association; real estate investment trust; or any other person
317 | organized under a governing law or other applicable law, provided
318 | such term shall not include an organization that is not organized
319 | for profit, unless the not-for-profit organization is the

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320 converted organization in a conversion or the surviving
321 organization in ~~a conversion or~~ a merger governed by this act.
322 The term includes both domestic and foreign organizations.

323 Section 16. Section 620.8914, Florida Statutes, is amended
324 to read:

325 620.8914 Filings required for conversion; effective date.--

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

327 (a) A converting partnership shall deliver to the
328 Department of State for filing a ~~statement of~~ registration
329 statement in accordance with s. 620.8105, if such statement was
330 not previously filed, and a certificate of conversion, in
331 accordance with s. 620.8105, which must include:

332 1. A statement that the partnership has been converted into
333 another organization.

334 2. The name and form of the organization and the
335 jurisdiction of its governing law.

336 3. The date the conversion is effective under the governing
337 law of the converted organization.

338 4. A statement that the conversion was approved as required
339 by this act.

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

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

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

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349 1. A ~~certificate of registration statement~~ in accordance
350 with s. 620.8105.

351 2. A certificate of conversion, in accordance with s.
352 620.8105, signed by a general partner of the partnership in
353 accordance with s. 620.8105(6) and by the converting organization
354 as required by applicable law, which certificate of conversion
355 must include:

356 a. A statement that the partnership was converted from
357 another organization.

358 b. The name and form of the converting organization and the
359 jurisdiction of its governing law.

360 c. A statement that the conversion was approved as required
361 by this act.

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

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

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

375 (2) A conversion becomes effective:

376 (a) If the converted organization is a partnership, at the
377 time specified in ~~the plan of conversion or~~ the certificate of

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378 conversion, which may be as of or after the time of the filing of
379 the certificate of conversion, and, if the certificate of
380 conversion does not contain such an effective time, the effective
381 time shall be upon the filing of the certificate of conversion
382 with the Department of State. However, ~~provided~~, if the
383 certificate has a delayed effective date, the certificate may not
384 be effective any later than the 90th day after the date it was
385 filed and ~~provided further~~, the effective date may ~~shall~~ not be
386 any earlier than the effective date of the ~~statement of~~
387 registration statement filed with the Department of State for the
388 partnership in accordance with s. 620.8105.

389 (b) If the converted organization is not a partnership, as
390 provided by the governing law of the converted organization.
391

392 A certificate of conversion acts as a cancellation of any
393 registration statement for a converting partnership for purposes
394 of s. 620.8105, and the cancellation shall be deemed filed upon
395 the effective date of the conversion.

396 Section 17. Subsections (3), (4), and (5) of section
397 620.8918, Florida Statutes, are amended to read:

398 620.8918 Filings required for merger; effective date.--

399 (3) Each domestic constituent partnership shall deliver the
400 certificate of merger for filing with ~~to~~ the Department of State,
401 unless the domestic constituent partnership is named as a party
402 or constituent organization in articles of merger or a
403 certificate of merger filed for the same merger in accordance
404 with s. 607.1109(1), s. 608.4382(1), s. 617.1108, or s.
405 620.2108(3). The articles of merger or certificate of merger must
406 substantially comply with the requirements of this section. In

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407 such a case, the other articles of merger or certificate of
408 merger may also be used for purposes of s. 620.8919(3). Each
409 domestic constituent partnership in the merger shall also file a
410 registration statement in accordance with s. 620.8105(1) if it
411 does not have a currently effective registration statement filed
412 with the Department of State. ~~for filing a statement of~~
413 ~~registration in accordance with s. 620.8105, if such statement~~
414 ~~was not previously filed, and a certificate of merger in~~
415 ~~accordance with s. 620.8105.~~

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

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

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

432 (5) A certificate of merger acts ~~shall act~~ as a
433 cancellation of any ~~statement of~~ registration statement for
434 purposes of s. 620.8105 for a partnership that is a party to the
435 merger ~~that~~ is not the surviving organization, which cancellation

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436 shall be deemed filed upon the effective date of the merger.

437 Section 18. Section 621.06, Florida Statutes, is amended to
438 read:

439 621.06 Rendition of professional services, limitations.--No
440 corporation or limited liability company organized under this act
441 may render professional services except through its members,
442 officers, employees, and agents who are duly licensed or
443 otherwise legally authorized to render such professional services
444 ~~within this state~~; provided, however, this provision shall not be
445 interpreted to include in the term "employee," as used herein,
446 clerks, secretaries, bookkeepers, technicians, and other
447 assistants who are not usually and ordinarily considered by
448 custom and practice to be rendering professional services to the
449 public for which a license or other legal authorization is
450 required; and provided further, that nothing contained in this
451 act shall be interpreted to require that the right of an
452 individual to be a shareholder of a corporation or a member of a
453 limited liability company organized under this act, or to
454 organize such a corporation or limited liability company, is
455 dependent upon the present or future existence of an employment
456 relationship between him or her and such corporation or limited
457 liability company, or his or her present or future active
458 participation in any capacity in the production of the income of
459 such corporation or limited liability company or in the
460 performance of the services rendered by such corporation or
461 limited liability company.

462 Section 19. Section 621.10, Florida Statutes, is amended to
463 read:

464 621.10 Disqualification of member, shareholder, officer,

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465 agent, or employee; administrative dissolution.--If any member,
466 officer, shareholder, agent, or employee of a corporation or
467 limited liability company organized under this chapter who has
468 been rendering professional service to the public becomes legally
469 disqualified to render such professional services ~~within this~~
470 ~~state~~ or accepts employment that, pursuant to existing law,
471 places restrictions or limitations upon that person's continued
472 rendering of such professional services, that person shall sever
473 all employment with, and financial interests in, such corporation
474 or limited liability company forthwith. A corporation's or
475 limited liability company's failure to require compliance with
476 this provision shall constitute a ground for the judicial
477 dissolution of the corporation or limited liability company. When
478 a corporation's or limited liability company's failure to comply
479 with this provision is brought to the attention of the Department
480 of State, the department forthwith shall certify that fact to the
481 Department of Legal Affairs for appropriate action to dissolve
482 the corporation or limited liability company.

483 Section 20. Subsections (3) and (4) of section 621.13,
484 Florida Statutes, are amended to read:

485 621.13 Applicability of chapters 607 and 608.--

486 ~~(3) A professional corporation or limited liability company~~
487 ~~organized under this act shall exchange shares or merge only with~~
488 ~~other domestic professional corporations or limited liability~~
489 ~~companies organized under this act to render the same specific~~
490 ~~professional service, and a merger or consolidation with any~~
491 ~~foreign corporation or limited liability company is prohibited.~~

492 (3)(4) A professional corporation or limited liability
493 company heretofore or hereafter organized under this act may

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494 change its business purpose from the rendering of professional
495 service to provide for any other lawful purpose by amending its
496 certificate of incorporation in the manner required for an
497 original incorporation under chapter 607 or by amending its
498 certificate of organization in the manner required for an
499 original organization under chapter 608. However, such an
500 amendment, when filed with and accepted by the Department of
501 State, shall remove such corporation or limited liability company
502 from the provisions of this chapter including, but not limited
503 to, the right to practice a profession. A change of business
504 purpose shall not have any effect on the continued existence of
505 the corporation or limited liability company.

506 Section 21. Effective upon this act becoming a law,
507 subsection (4) is added to section 727.114, Florida Statutes, to
508 read:

509 727.114 Priority of claims.--Allowed claims shall receive
510 distribution under this chapter in the following order of
511 priority and, with the exception of paragraph (1)(a), on a pro
512 rata basis:

513 (4) If all of the creditors listed in subsections (1)-(3)
514 have been paid in full, any residue shall be paid to the
515 assignor.

516 Section 22. Except as otherwise expressly provided in this
517 act and except for this section, which shall take effect upon
518 becoming a law, this act shall take effect July 1, 2008.