

HB 1311

2009

1 A bill to be entitled
2 An act relating to corporations; amending s. 607.0501,
3 F.S.; deleting a provision providing that there shall be
4 no charge for telephone requests for certain general
5 corporate information; amending s. 607.1620, F.S.;
6 requiring that certain corporations furnish annual
7 financial statements to shareholders within a specified
8 period after the close of a fiscal year; providing an
9 exception; providing a means by which such requirement may
10 be satisfied; amending s. 617.01201, F.S.; requiring a
11 document that is electronically transmitted to be in a
12 format that may be retrieved in typewritten or printed
13 form; requiring that a document be executed by a director
14 of the domestic or foreign corporation; authorizing the
15 delivery of a document by electronic transmission to the
16 extent allowed by the Department of State; amending s.
17 617.0122, F.S.; requiring the department to collect a fee
18 for filing an agent's statement of resignation from an
19 inactive corporation; amending s. 617.0124, F.S.;
20 authorizing a domestic or foreign corporation to correct a
21 document filed by the department within 30 days under
22 certain circumstances; amending s. 617.01401, F.S.;
23 defining the terms "department," "distribution," "mutual
24 benefit corporation," "successor entity," and "voting
25 power"; amending s. 617.0205, F.S.; requiring the
26 incorporators to hold an organizational meeting after
27 incorporation if the initial directors are not named in
28 the articles of incorporation; amending s. 617.0302, F.S.;

Page 1 of 60

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1311-00

29 | authorizing a corporation not for profit to make
30 | guaranties; providing a cross-reference; amending s.
31 | 617.0501, F.S.; deleting a provision providing that there
32 | shall be no charge for telephone requests for certain
33 | general corporate information; amending s. 617.0503, F.S.;
34 | providing that an alien business organization may withdraw
35 | its registered agent designation by delivering an
36 | application for certificate of withdrawal to the
37 | department; amending s. 617.0505, F.S.; prohibiting a
38 | corporation not for profit from making distributions to
39 | its members; providing an exception; deleting provisions
40 | relating to the issuance of certificates; amending s.
41 | 617.0601, F.S.; correcting a reference to the Solicitation
42 | of Contributions Act; providing that certain stock
43 | certificates constitute certificates of membership;
44 | requiring that a resignation, expulsion, or termination of
45 | membership be recorded in the membership book; creating s.
46 | 617.0605, F.S.; prohibiting a member of a corporation from
47 | transferring a membership under certain circumstances;
48 | creating s. 617.0606, F.S.; providing that the resignation
49 | of a member does not relieve the member from obligations
50 | incurred and commitments made prior to resignation;
51 | creating s. 617.0607, F.S.; requiring that a member of a
52 | corporation be terminated or suspended pursuant to a fair
53 | and reasonable procedure; requiring that written notice
54 | given and delivered by certified mail or first-class mail;
55 | requiring that a proceeding challenging an expulsion,
56 | suspension, or termination be commenced within 1 year

57 | after the effective date of such expulsion, suspension, or
58 | termination; providing that a member who has been expelled
59 | or suspended may be liable to the corporation for dues,
60 | assessments, or fees; creating s. 617.0608, F.S.;
61 | prohibiting a corporation from purchasing any of its
62 | memberships; authorizing a mutual benefit corporation to
63 | purchase the membership of a member who resigns or whose
64 | membership is terminated; amending s. 617.0701, F.S.;
65 | authorizing the holders of at least 5 percent of the
66 | voting power of a corporation to call a special meeting of
67 | the members under certain circumstances; authorizing a
68 | person who signs a demand for a special meeting to call a
69 | special meeting of the members under certain
70 | circumstances; revising the timeframes relating to written
71 | member consent to actions; clarifying the types of
72 | corporations that are not subject to certain requirements;
73 | amending s. 617.0721, F.S.; authorizing the corporation to
74 | reject a proxy action if it has reasonable doubt as to the
75 | validity of an appointment; providing that members and
76 | proxy holders who are not physically present at a meeting
77 | may participate by means of remote communication and are
78 | deemed to be present at the meeting under certain
79 | circumstances; amending s. 617.0725, F.S.; requiring an
80 | amendment to the articles of incorporation or the bylaws
81 | which adds a greater or lesser quorum or voting
82 | requirement to meet certain requirements; creating s.
83 | 617.07401, F.S.; prohibiting a person from commencing a
84 | proceeding in the right of a domestic or foreign

85 | corporation unless the person was a member of the
86 | corporation or became a member through transfer by
87 | operation of law; requiring that a complaint in a
88 | proceeding brought in the right of a domestic or foreign
89 | corporation be verified and allege the demand with
90 | particularity; authorizing the court to dismiss a
91 | derivative proceeding if the court finds that a
92 | determination was made in good faith after a reasonable
93 | investigation; prohibiting certain proceedings from being
94 | discontinued or settled without the approval of the court;
95 | authorizing the court to require a plaintiff to pay a
96 | defendant's reasonable expenses upon termination of a
97 | proceeding, including attorney fees; amending s. 617.0801,
98 | F.S.; providing the duties of the board of directors;
99 | amending s. 617.0802, F.S.; providing an exception to the
100 | required minimum age of a member of the board of directors
101 | for certain corporations; amending s. 617.0806, F.S.;
102 | providing that directors may be divided into classes;
103 | amending s. 617.0808, F.S.; providing that any member of
104 | the board of directors may be removed from office with or
105 | without cause by a certain vote; providing that a director
106 | who is elected by a class, chapter, or other
107 | organizational unit may be removed only by members of that
108 | class, chapter, or organizational unit; providing that a
109 | director elected or appointed by the board may be removed
110 | without cause by a vote of two-thirds of the directors
111 | then in office; providing that a director of a corporation
112 | described in s. 501(c) of the Internal Revenue Code may be

113 removed from office pursuant to procedures provided in the
114 articles of incorporation or the bylaws; amending s.
115 617.0809, F.S.; providing that a vacancy on the board of
116 directors for a director elected by a class, chapter,
117 unit, or group may be filled only by members of that
118 class, chapter, unit, or group; providing that the term of
119 a director elected or appointed to fill a vacancy expires
120 at the next annual meeting at which directors are elected;
121 amending s. 617.0824, F.S.; prohibiting certain directors
122 from being counted toward a quorum; amending s. 617.0832,
123 F.S.; deleting a provision that authorizes common or
124 interested directors to be counted in determining the
125 presence of a quorum at a meeting that ratifies a contract
126 between a corporation and one of its directors and any
127 other corporation in which one of its directors is
128 financially interested; providing circumstances under
129 which a conflict of interest transaction is authorized;
130 amending s. 617.0833, F.S.; providing an exception to the
131 requirement that a loan not be made by a corporation to
132 its directors; amending s. 617.0834, F.S.; providing that
133 an officer or director of a certain nonprofit organization
134 or agricultural or horticultural organization is immune
135 from civil liability; amending s. 617.1007, F.S.;
136 providing that a restatement of the articles of
137 incorporation of a corporation may include one or more
138 amendments; amending s. 617.1101, F.S.; providing
139 requirements for a plan of merger; creating s. 617.1102,
140 F.S.; providing a limitation on the merger of a

141 corporation not for profit; creating s. 617.1301, F.S.;

142 prohibiting a corporation from making distributions to its

143 members under certain circumstances; creating s. 617.1302,

144 F.S.; providing that a mutual benefit corporation may

145 purchase its memberships only under certain circumstances;

146 authorizing a corporation to make distributions upon

147 dissolution; amending s. 617.1405, F.S.; providing that

148 the name of a dissolved corporation may be available for

149 immediate assumption by another corporation if the

150 dissolved corporation provides the department with an

151 affidavit authorizing such use; creating s. 617.1407,

152 F.S.; authorizing a dissolved corporation or successor

153 entity to execute certain procedures to resolve payment of

154 unknown claims against it; providing that certain claims

155 against a dissolved corporation are barred; providing that

156 a claim may be entered against a dissolved corporation

157 under certain circumstances; creating s. 617.1408, F.S.;

158 authorizing a dissolved corporation or successor entity to

159 execute certain procedures to dispose of known claims

160 against it; requiring that a dissolved corporation deliver

161 written notice of the dissolution to each of its known

162 claimants; providing a procedure under which a dissolved

163 corporation may reject a claim made against it; requiring

164 that a dissolved corporation give notice of the

165 dissolution to persons having known claims that are

166 contingent, conditional, or unmatured; requiring that a

167 dissolved corporation follow certain procedures in

168 offering compensation to a claimant if the claim matures;

169 requiring that a dissolved corporation petition the
170 circuit court to determine the amount and form of security
171 that is sufficient to provide compensation to certain
172 claimants; providing that the giving of notice or making
173 of an offer does not revive a claim that has been barred;
174 providing that directors of a dissolved corporation or
175 governing persons of a successor entity that has complied
176 with certain procedures are not personally liable to the
177 claimants of a dissolved corporation; providing that
178 certain members of a dissolved corporation are not liable
179 for any claim against the corporation; providing a limit
180 on the aggregate liability of any member of a dissolved
181 corporation; repealing s. 617.1421(6), F.S., relating to
182 the assumption and use of the name of a dissolved
183 corporation; amending s. 617.1422, F.S.; deleting certain
184 requirements for an application to reinstate a corporation
185 that has been dissolved; requiring that a corporation
186 submit a reinstatement form prescribed and furnished by
187 the department; providing that the name of a dissolved
188 corporation is not available for assumption or use by
189 another corporation until 1 year after the effective date
190 of dissolution; providing an exception; amending s.
191 617.1430, F.S.; revising the requirements for members to
192 dissolve a corporation in circuit court; amending s.
193 617.1503, F.S.; requiring a foreign corporation to deliver
194 a certificate of existence authenticated by the Secretary
195 of State; amending s. 617.1504, F.S.; requiring that a
196 foreign corporation make application to the department to

HB 1311

2009

197 obtain an amended certificate of authority within 90 days
198 after the occurrence of a change; amending s. 617.1506,
199 F.S.; requiring that an alternate corporate name adopted
200 for use in this state be cross-referenced to the real
201 corporate name in the records of the Division of
202 Corporations; requiring that the corporate name of a
203 foreign corporation be distinguishable from the corporate
204 name of a corporation for profit incorporated or
205 authorized to transact business in this state; amending s.
206 617.1530, F.S.; requiring that the department receive an
207 authenticated certificate from the Secretary of State
208 before commencing a proceeding to revoke the certificate
209 of authority of a foreign corporation; amending s.
210 617.1601, F.S.; requiring that a corporation keep a copy
211 of its articles of incorporation; amending s. 617.1602,
212 F.S.; providing that a member of a corporation is entitled
213 to inspect and copy certain records of the corporation at
214 a reasonable location specified by the corporation;
215 requiring that a member give the corporation written
216 notice 10 days before the date on which he or she wishes
217 to inspect and copy records; amending s. 617.1605, F.S.;
218 revising the circumstances under which a corporation is
219 required to furnish a member with its latest annual
220 financial statement; creating s. 617.1703, F.S.; providing
221 for the applicability of certain provisions to
222 corporations regulated under the act; amending s.
223 617.1803, F.S.; providing for certain changes when a
224 foreign not-for-profit corporation becomes domesticated;

225 | amending s. 617.1806, F.S.; revising the provisions for
 226 | conversion to a corporation not for profit; amending s.
 227 | 617.1907, F.S.; providing that the repeal or amendment of
 228 | a statute does not affect certain operations and
 229 | proceedings; repealing s. 617.2103, F.S., relating to
 230 | exemptions for certain corporations; providing an
 231 | effective date.

232 |

233 | Be It Enacted by the Legislature of the State of Florida:

234 |

235 | Section 1. Subsection (4) of section 607.0501, Florida
 236 | Statutes, is amended to read:

237 | 607.0501 Registered office and registered agent.--

238 | (4) The Department of State shall maintain an accurate
 239 | record of the registered agents and registered offices for the
 240 | service of process and shall furnish any information disclosed
 241 | thereby promptly upon request and payment of the required fee.
 242 | ~~There shall be no charge for telephone requests for general~~
 243 | ~~corporate information, including the corporation's status, names~~
 244 | ~~of officers and directors, address of principal place of~~
 245 | ~~business, and name and address of registered agent.~~

246 | Section 2. Subsection (3) of section 607.1620, Florida
 247 | Statutes, is amended, and subsection (5) is added to that
 248 | section, to read:

249 | 607.1620 Financial statements for shareholders.--

250 | (3) Any A corporation required by subsection (1) to
 251 | furnish annual financial statements to its shareholders shall
 252 | furnish ~~mail~~ the annual financial statements to each shareholder

HB 1311

2009

253 within 120 days after the close of each fiscal year or within
 254 such additional time thereafter as is reasonably necessary to
 255 enable the corporation to prepare its financial statements if,
 256 for reasons beyond the corporation's control, it is unable to
 257 prepare its financial statements within the prescribed period.
 258 Thereafter, on written request from a shareholder who was not
 259 furnished ~~mailed~~ the statements, the corporation shall furnish
 260 ~~mail~~ him or her the latest annual financial statements.

261 (5) The requirement to furnish annual financial statements
 262 as described in this section may be satisfied by sending the
 263 annual financial statements by mail or by electronic
 264 transmission. If a corporation has an outstanding class of
 265 securities registered under s. 12 of the Securities Exchange Act
 266 of 1934, as amended, the requirement to furnish annual financial
 267 statements shall be satisfied by complying with 17 C.F.R. s.
 268 240.14a-16, as amended, with respect to the obligation of a
 269 corporation to furnish an annual report to shareholders pursuant
 270 to 17 C.F.R. s. 240.14a-3(b), as amended.

271 Section 3. Subsections (4), (6), and (9) of section
 272 617.01201, Florida Statutes, are amended to read:

273 617.01201 Filing requirements.--

274 (4) The document must be typewritten or printed and must
 275 be legible. If electronically transmitted, the document must be
 276 in a format that may be retrieved or reproduced in typewritten
 277 or printed form.

278 (6) The document must be executed:

279 (a) By a director ~~the chair or any vice chair of the board~~
 280 ~~of directors~~ of a domestic or foreign corporation, or by its

281 president or by another of its officers;

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

284 (c) If the corporation is in the hands of a receiver,
 285 trustee, or other court-appointed fiduciary, by the ~~that~~
 286 fiduciary.

287 (9) The document must be delivered to the ~~office of the~~
 288 department ~~of State~~ for filing. Delivery may be made by
 289 electronic transmission if and to the extent allowed by the
 290 department. If the document is filed in typewritten or printed
 291 form and not transmitted electronically, the department may
 292 require that ~~and may be accompanied by~~ one exact or conformed
 293 copy be delivered with the document, except as provided in s.
 294 617.1508. The document ~~(except as provided in s. 617.1508), and~~
 295 must be accompanied by the correct filing fee and any other tax
 296 or penalty required by ~~this act or other~~ law.

297 Section 4. Subsection (7) of section 617.0122, Florida
 298 Statutes, is amended to read:

299 617.0122 Fees for filing documents and issuing
 300 certificates.--The Department of State shall collect the
 301 following fees on documents delivered to the department for
 302 filing:

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

305
 306 Any citizen support organization that is required by rule of the
 307 Department of Environmental Protection to be formed as a
 308 nonprofit organization and is under contract with the department

309 is exempt from any fees required for incorporation as a
 310 nonprofit organization, and the Secretary of State may not
 311 assess any such fees if the citizen support organization is
 312 certified by the Department of Environmental Protection to the
 313 Secretary of State as being under contract with the Department
 314 of Environmental Protection.

315 Section 5. Subsections (1) and (2) of section 617.0124,
 316 Florida Statutes, are amended to read:

317 617.0124 Correcting filed document.--

318 (1) A domestic or foreign corporation may correct a
 319 document filed by the department ~~of State~~ within 30 ~~10 business~~
 320 days after filing if ~~the document~~:

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

322 (b) The document was defectively executed, attested,
 323 sealed, verified, or acknowledged; ~~or~~

324 (c) The electronic transmission of the document was
 325 defective.

326 (2) A document is corrected:

327 (a) By preparing articles of correction that:

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

330 2. Specify the incorrect statement and the reason it is
 331 incorrect or the manner in which the execution was defective;
 332 and

333 3. Correct the incorrect statement or defective execution;
 334 and

335 (b) By delivering the executed articles of correction to
 336 the department ~~of State~~ for filing.

337 Section 6. Section 617.01401, Florida Statutes, is amended
 338 to read:

339 617.01401 Definitions.--As used in this chapter act,
 340 ~~unless the context otherwise requires~~, the term:

341 (1) "Articles of incorporation" includes original,
 342 amended, and restated articles of incorporation, articles of
 343 consolidation, and articles of merger, and all amendments
 344 thereto, including documents designated by the laws of this
 345 state as charters, and, in the case of a foreign corporation,
 346 documents equivalent to articles of incorporation in the
 347 jurisdiction of incorporation.

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

352 (3) "Bylaws" means the code or codes of rules adopted for
 353 the regulation or management of the affairs of the corporation
 354 irrespective of the name or names by which such rules are
 355 designated.

356 (4) "Corporation" or "domestic corporation" means a
 357 corporation not for profit, subject to the provisions of this
 358 chapter act, except a foreign corporation.

359 (5) "Corporation not for profit" means a corporation no
 360 part of the income or profit of which is distributable to its
 361 members, directors, or officers, except as otherwise provided
 362 under this chapter.

363 (6) "Department" means the Department of State.

364 (7) "Distribution" means the payment of a dividend or any

365 part of the income or profit of a corporation to its members,
 366 directors, or officers. A donation or transfer of corporate
 367 assets or income to or from another not-for-profit corporation
 368 qualified as tax-exempt under s. 501(c) of the Internal Revenue
 369 Code or a governmental organization exempt from federal and
 370 state income taxes, if such corporation or governmental
 371 organization is a member of the corporation making such donation
 372 or transfer, is not a distribution for purposes of this chapter.

373 (8)~~(6)~~ "Electronic transmission" means any form of
 374 communication, not directly involving the physical transmission
 375 or transfer of paper, which creates a record that may be
 376 retained, retrieved, and reviewed by a recipient ~~thereof~~ and
 377 which may be directly reproduced in a comprehensible and legible
 378 paper form by such recipient through an automated process.
 379 Examples of electronic transmission include, but are not limited
 380 to, telegrams, facsimile transmissions of images, and text that
 381 is sent via electronic mail between computers.

382 (9)~~(7)~~ "Foreign corporation" means a corporation not for
 383 profit organized under laws other than the laws of this state.

384 (10)~~(8)~~ "Insolvent" means the inability of a corporation
 385 to pay its debts as they become due in the usual course of its
 386 affairs.

387 (11)~~(9)~~ "Mail" means the United States mail, facsimile
 388 transmissions, and private mail carriers handling nationwide
 389 mail services.

390 (12)~~(10)~~ "Member" means one having membership rights in a
 391 corporation in accordance with the provisions of its articles of
 392 incorporation or bylaws or the provisions of this chapter ~~act~~.

393 (13) "Mutual benefit corporation" means a domestic
 394 corporation that is not organized primarily or exclusively for
 395 religious purposes; is not recognized as exempt under s.
 396 501(c)(3) of the Internal Revenue Code; and is not organized for
 397 a public or charitable purpose that is required upon its
 398 dissolution to distribute its assets to the United States, a
 399 state, a local subdivision thereof, or a person that is
 400 recognized as exempt under s. 501(c)(3) of the Internal Revenue
 401 Code. The term does not include an association organized under
 402 chapter 718, chapter 719, chapter 720, or chapter 721, or any
 403 corporation when membership in the corporation is required
 404 pursuant to a document recorded in county property records.

405 ~~(14)(11)~~ "Person" includes individual and entity.

406 (15) "Successor entity" means any trust, receivership, or
 407 other legal entity that is governed by the laws of this state to
 408 which the remaining assets and liabilities of a dissolved
 409 corporation are transferred and that exists solely for the
 410 purposes of prosecuting and defending suits by or against the
 411 dissolved corporation and enabling the dissolved corporation to
 412 settle and close the business of the dissolved corporation, to
 413 dispose of and convey the property of the dissolved corporation,
 414 to discharge the liabilities of the dissolved corporation, and
 415 to distribute to the dissolved corporation's members any
 416 remaining assets, but not for the purpose of continuing the
 417 business for which the dissolved corporation was organized.

418 (16) "Voting power" means the total number of votes
 419 entitled to be cast for the election of directors at the time
 420 the determination of voting power is made, excluding a vote that

421 is contingent upon the happening of a condition or event that
 422 has not yet occurred. If the members of a class are entitled to
 423 vote as a class to elect directors, the determination of the
 424 voting power of the class is based on the percentage of the
 425 number of directors the class is entitled to elect relative to
 426 the total number of authorized directors. If the corporation's
 427 directors are not elected by the members, voting power shall,
 428 unless otherwise provided in the articles of incorporation or
 429 bylaws, be on a one-member, one-vote basis.

430 Section 7. Subsection (1) of section 617.0205, Florida
 431 Statutes, is amended to read:

432 617.0205 Organizational meeting of directors.--

433 (1) After incorporation:

434 (a) If initial directors are named in the articles of
 435 incorporation, the initial directors shall hold an
 436 organizational meeting, at the call of a majority of the
 437 directors, to complete the organization of the corporation by
 438 appointing officers, adopting bylaws, and carrying on any other
 439 business brought before the meeting;

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

443 1. To elect directors and complete the organization of the
 444 corporation; or

445 2. To elect a board of directors who shall complete the
 446 organization of the corporation.

447 Section 8. Subsections (7) and (16) of section 617.0302,
 448 Florida Statutes, are amended to read:

HB 1311

2009

449 617.0302 Corporate powers.--Every corporation not for
450 profit organized under this act, unless otherwise provided in
451 its articles of incorporation or bylaws, shall have power to:

452 (7) Make contracts and guaranties, incur liabilities,
453 borrow money at such rates of interest as the corporation may
454 determine, issue its notes, bonds, and other obligations, and
455 secure ~~any~~ of its obligations by mortgage and pledge of all or
456 any of its property, franchises, or income.

457 (16) Merge with other corporations or other business
458 entities identified in s. 607.1108(1), both for profit and not
459 for profit, domestic and foreign, if the surviving corporation
460 or other surviving business entity is a corporation not for
461 profit or other business entity that has been organized as a
462 not-for-profit entity under a governing statute or other
463 applicable law that permits such a merger.

464 Section 9. Subsection (4) of section 617.0501, Florida
465 Statutes, is amended to read:

466 617.0501 Registered office and registered agent.--

467 (4) The Department of State shall maintain an accurate
468 record of the registered agents and registered offices for the
469 service of process and shall furnish any information disclosed
470 thereby promptly upon request and payment of the required fee.
471 ~~There shall be no charge for telephone requests for general~~
472 ~~corporate information, including the corporation's status, names~~
473 ~~of officers and directors, address of principal place of~~
474 ~~business, and name and address of resident agent.~~

475 Section 10. Subsection (12) is added to section 617.0503,
476 Florida Statutes, to read:

477 617.0503 Registered agent; duties; confidentiality of
478 investigation records.--

479 (12) Any alien business organization may withdraw its
480 registered agent designation by delivering an application for
481 certificate of withdrawal to the department for filing. The
482 application shall set forth:

483 (a) The name of the alien business organization and the
484 jurisdiction under the law of which it is incorporated or
485 organized.

486 (b) That the alien business organization is no longer
487 required to maintain a registered agent in this state.

488 Section 11. Section 617.0505, Florida Statutes, is amended
489 to read:

490 617.0505 Distributions; exceptions ~~Payment of dividends~~
491 ~~and distribution of income to members prohibited; issuance of~~
492 ~~certificates of membership; effect of stock issued under prior~~
493 ~~law.--~~

494 ~~(1) Except as authorized in s. 617.1302, A dividend may~~
495 ~~not be paid, and any part of the income or profit of a~~
496 ~~corporation may not make distributions be distributed, to its~~
497 ~~members, directors, or officers.~~

498 (1) A mutual benefit corporation, such as a private club
499 that is established for social, pleasure, or recreational
500 purposes and that is organized as a corporation of which the
501 equity interests are held by the members, may, subject to s.
502 617.1302, purchase the equity membership interest of any member,
503 and the payment for such interest is not a distribution for
504 purposes of this section.

HB 1311

2009

505 (2) A corporation may pay compensation in a reasonable
506 amount to its members, directors, or officers for services
507 rendered, may confer benefits upon its members in conformity
508 with its purposes, and, upon dissolution or final liquidation,
509 may make distributions to its members as permitted by this
510 chapter act.

511 (3) If expressly permitted by its articles of
512 incorporation, a corporation may make distributions upon partial
513 liquidation to its members, as permitted by this section. Any
514 such payment, benefit, or distribution does not constitute a
515 dividend or a distribution of income or profit for purposes of
516 this section.

517 (4) ~~A Any~~ corporation ~~that which~~ is a utility exempt from
518 regulation under s. 367.022(7), whose articles of incorporation
519 state that it is exempt from taxation under s. 501(c)(12) of the
520 Internal Revenue Code, may make ~~such~~ refunds to its members,
521 prior to a dissolution or liquidation, as its managing board
522 deems necessary to establish or preserve its tax-exempt status.
523 Any such refund does not constitute a dividend or a distribution
524 of income or profit for purposes of this section.

525 (5) A corporation that is regulated by chapter 718,
526 chapter 719, chapter 720, chapter 721, or chapter 723, or a
527 corporation where membership in such corporation is required
528 pursuant to a document recorded in the county property records,
529 may make refunds to its members, giving credits to its members,
530 disbursing insurance proceeds to its members, or disbursing or
531 paying settlements to its members without violating this
532 section.

533 ~~(2) Subject to subsection (1), a corporation may issue~~
 534 ~~certificates in any form evidencing membership in the~~
 535 ~~corporation.~~

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

539 Section 12. Subsections (1), (2), and (5) of section
 540 617.0601, Florida Statutes, are amended to read:

541 617.0601 Members, generally.--

542 (1) (a) A corporation may have one or more classes of
 543 members or may have no members. If the corporation has one or
 544 more classes of members, the designation of such class or
 545 classes, the qualifications and rights of the members of each
 546 class, any quorum and voting requirements for meetings and
 547 activities of the members, and notice requirements sufficient to
 548 provide notice of meetings and activities of the members must be
 549 set forth in the articles of incorporation or in the bylaws.

550 (b) The articles of incorporation or bylaws of any
 551 corporation not for profit that maintains chapters or affiliates
 552 may grant representatives of such chapters or affiliates the
 553 right to vote in conjunction with the board of directors of the
 554 corporation notwithstanding applicable quorum or voting
 555 requirements of this chapter act if the corporation is
 556 registered with the department ~~of State~~ pursuant to ss. 496.401-
 557 496.424 ~~ss. 496.001-496.011~~, the Solicitation of Contributions
 558 ~~Funds~~ Act.

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

HB 1311

2009

561 (2) A corporation may issue certificates of membership.
562 Stock certificates issued under former s. 617.011(2), Florida
563 Statutes (1989), constitute certificates of membership for
564 purposes of this section.

565 ~~(5) Membership in the corporation may be terminated in the~~
566 ~~manner provided by law, by the articles of incorporation, or by~~
567 ~~the bylaws, and~~ A resignation, expulsion, or termination of
568 membership pursuant to s. 617.0606 or s. 617.0607 shall be
569 recorded in the membership book. Unless otherwise provided in
570 the articles of incorporation or the bylaws, all the rights and
571 privileges of a member cease on termination of membership.

572 Section 13. Section 617.0605, Florida Statutes, is created
573 to read:

574 617.0605 Transfer of membership interests.--

575 (1) A member of a corporation may not transfer a
576 membership or any right arising from membership except as
577 otherwise allowed in this section.

578 (2) Except as set forth in the articles of incorporation
579 or bylaws of a mutual benefit corporation, a member of a mutual
580 benefit corporation may not transfer a membership or any right
581 arising from membership.

582 (3) If transfer rights have been provided for one or more
583 members of a mutual benefit corporation, a restriction on such
584 rights is not binding with respect to a member holding a
585 membership issued before the adoption of the restriction unless
586 the restriction is approved by the members and the affected
587 member.

588 Section 14. Section 617.0606, Florida Statutes, is created

HB 1311

2009

589 to read:

590 617.0606 Resignation of members.--

591 (1) Except as may be provided in the articles of
592 incorporation or bylaws of a corporation, a member of a mutual
593 benefit corporation may not transfer a membership or any right
594 arising from membership.

595 (2) The resignation of a member does not relieve the
596 member from any obligations that the member may have to the
597 corporation as a result of obligations incurred or commitments
598 made before resignation.

599 Section 15. Section 617.0607, Florida Statutes, is created
600 to read:

601 617.0607 Termination, expulsion, and suspension.--

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

606 (2) Any written notice given by mail must be delivered by
607 certified mail or first-class mail to the last address of the
608 member shown on the records of the corporation.

609 (3) Any proceeding challenging an expulsion, suspension,
610 or termination, including a proceeding in which the defective
611 notice is alleged, must be commenced within 1 year after the
612 effective date of the expulsion, suspension, or termination.

613 (4) A member who has been expelled or suspended may be
614 liable to the corporation for dues, assessments, or fees as a
615 result of obligations incurred or commitments made before
616 expulsion or suspension.

HB 1311

2009

617 Section 16. Section 617.0608, Florida Statutes, is created
 618 to read:

619 617.0608 Purchase of memberships.--

620 (1) A corporation may not purchase any of its memberships
 621 or any right arising from membership except as provided in s.
 622 617.0505 or subsection (2).

623 (2) Subject to s. 617.1302, a mutual benefit corporation
 624 may purchase the membership of a member who resigns, or whose
 625 membership is terminated, for the amount and pursuant to the
 626 conditions set forth in its articles of incorporation or bylaws.

627 Section 17. Subsections (3), (4), and (6) of section
 628 617.0701, Florida Statutes, are amended to read:

629 617.0701 Meetings of members, generally; failure to hold
 630 annual meeting; special meeting; consent to corporate actions
 631 without meetings; waiver of notice of meetings.--

632 (3) Except as provided in the articles of incorporation or
 633 bylaws, special meetings of the members may be called by:

634 (a) The president;~~;~~

635 (b) The chair of the board of directors;~~;~~

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

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

639 (e) The holders of at least 5 percent of the voting power
 640 of a corporation when one or more written demands for the
 641 meeting, which describe the purpose for which the meeting is to
 642 be held, are signed, dated, and delivered to a corporate
 643 officer; or

644 (f) A person who signs a demand for a special meeting

645 pursuant to paragraph (e) if notice for a special meeting is not
 646 given within 30 days after receipt of the demand. The person
 647 signing the demand may set the time and place of the meeting and
 648 give notice under this subsection.

649 (4)~~(a)~~ Unless otherwise provided in the articles of
 650 incorporation, action required or permitted by this chapter act
 651 to be taken at an annual or special meeting of members may be
 652 taken without a meeting, without prior notice, and without a
 653 vote if the action is taken by the members entitled to vote on
 654 such action and having not less than the minimum number of votes
 655 necessary to authorize such action at a meeting at which all
 656 members entitled to vote on such action were present and voted.

657 (a) ~~In order~~ To be effective, the action must be evidenced
 658 by one or more written consents describing the action taken,
 659 dated and signed by approving members having the requisite
 660 number of votes and entitled to vote on such action, and
 661 delivered to the corporation ~~by delivery~~ to its principal office
 662 in this state, its principal place of business, the corporate
 663 secretary, or another officer or agent of the corporation having
 664 custody of the book in which proceedings of meetings of members
 665 are recorded. Written consent ~~shall not be effective~~ to take the
 666 corporate action referred to in the consent is not effective
 667 unless the consent is signed by members having the requisite
 668 number of votes necessary to authorize the action within 90 ~~60~~
 669 days after ~~of~~ the date of the earliest dated consent and is
 670 delivered in the manner required by this section.

671 (b) Any written consent may be revoked prior to the date
 672 that the corporation receives the required number of consents to

HB 1311

2009

673 authorize the proposed action. A revocation is not effective
674 unless in writing and until received by the corporation at its
675 principal office in this state or its principal place of
676 business, or received by the corporate secretary or other
677 officer or agent of the corporation having custody of the book
678 in which proceedings of meetings of members are recorded.

679 (c) Within 30 ~~10~~ days after obtaining ~~such~~ authorization
680 by written consent, notice must be given to those members who
681 are entitled to vote on the action but who have not consented in
682 writing. The notice must fairly summarize the material features
683 of the authorized action.

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

686 (e) If the action to which the members consent is such as
687 would have required the filing of articles or a certificate
688 under any other section of this chapter ~~act~~ if such action had
689 been voted on by members at a meeting ~~thereof~~, the articles or
690 certificate filed under such other section must state that
691 written consent has been given in accordance with ~~the provisions~~
692 ~~of~~ this section.

693 (f) Whenever action is taken pursuant to this section, the
694 written consent of the members consenting to such action or the
695 written reports of inspectors appointed to tabulate such
696 consents must be filed with the minutes of member proceedings ~~of~~
697 ~~members~~.

698 (6) Subsections (1) and (3) do not apply to any
699 corporation that is an association as defined in s. 720.301; a
700 corporation regulated by chapter 718, chapter 719, chapter 720,

HB 1311

2009

701 chapter 721, or chapter 723; or a corporation where membership
 702 in such corporation is required pursuant to a document recorded
 703 in the county property records.

704 Section 18. Section 617.0721, Florida Statutes, is amended
 705 to read:

706 617.0721 Voting by members.--

707 (1) Members are not entitled to vote except as conferred
 708 by the articles of incorporation or the bylaws.

709 (2) A member who is entitled to vote may vote in person
 710 or, unless the articles of incorporation or the bylaws otherwise
 711 provide, may vote by proxy executed in writing by the member or
 712 by his or her duly authorized attorney in fact. An appointment
 713 of a proxy is not valid after 11 months following the date of
 714 its execution unless otherwise provided in the proxy.

715 (a) If directors or officers are to be elected by members,
 716 the bylaws may provide that such elections may be conducted by
 717 mail.

718 (b) A corporation may reject a vote, consent, waiver, or
 719 proxy appointment if the secretary or other officer or agent
 720 authorized to tabulate votes, acting in good faith, has a
 721 reasonable basis for doubting the validity of the signature on
 722 it or the signatory's authority to sign for the member.

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

727 (a) Participate in the meeting.

728 (b) Be deemed to be present in person and vote at the

HB 1311

2009

729 meeting if:

730 1. The corporation implements reasonable means to verify
731 that each person deemed present and authorized to vote by means
732 of remote communication is a member or proxy holder; and

733 2. The corporation implements reasonable measures to
734 provide such members or proxy holders with a reasonable
735 opportunity to participate in the meeting and to vote on matters
736 submitted to the members, including an opportunity to
737 communicate and to read or hear the proceedings of the meeting
738 substantially concurrent with the proceedings.

739
740 If any member or proxy holder votes or takes other action by
741 means of remote communication, a record of that member's
742 participation in the meeting must be maintained by the
743 corporation in accordance with s. 617.1601.

744 (4)~~(3)~~ If any corporation, whether for profit or not for
745 profit, is a member of a corporation organized under this
746 chapter act, the chair of the board, president, any vice
747 president, the secretary, or the treasurer of the member
748 corporation, and any such officer or cashier or trust officer of
749 a banking or trust corporation holding such membership, and any
750 like officer of a foreign corporation whether for profit or not
751 for profit, holding membership in a domestic corporation, shall
752 be deemed by the corporation in which membership is held to have
753 the authority to vote on behalf of the member corporation and to
754 execute proxies and written waivers and consents in relation
755 thereto, unless, before a vote is taken or a waiver or consent
756 is acted upon, it appears pursuant to ~~is made to appear by a~~

HB 1311

2009

757 certified copy of the bylaws or resolution of the board of
758 directors or executive committee of the member corporation that
759 such authority does not exist or is vested in some other officer
760 or person. In the absence of such certification, a person
761 executing any such proxies, waivers, or consents or presenting
762 himself or herself at a meeting as one of such officers of a
763 corporate member shall be, for the purposes of this section,
764 conclusively deemed to be duly elected, qualified, and acting as
765 such officer and to be fully authorized. In the case of
766 conflicting representation, the corporate member shall be ~~deemed~~
767 ~~to be~~ represented by its senior officer, in the order ~~first~~
768 stated in this subsection.

769 (5)~~(4)~~ The articles of incorporation or the bylaws may
770 provide that, in all elections for directors, every member
771 entitled to vote has the right to cumulate his or her votes and
772 to give one candidate a number of votes equal to the number of
773 votes he or she could give if one director were being elected
774 multiplied by the number of directors to be elected or to
775 distribute such votes on the same principles among any number of
776 such candidates. A corporation may not have cumulative voting
777 unless such voting is expressly authorized in the articles of
778 incorporation.

779 (6)~~(5)~~ If a corporation has no members or its members do
780 not have the right to vote, the directors shall have the sole
781 voting power.

782 (7)~~(6)~~ Subsections (1), (2), (5) ~~(4)~~, and (6) ~~(5)~~ do not
783 apply to a corporation that is an association as defined in s.
784 720.301.

HB 1311

2009

785 Section 19. Section 617.0725, Florida Statutes, is amended
 786 to read:

787 617.0725 Quorum.--An amendment to the articles of
 788 incorporation or the bylaws which adds, ~~that~~ changes, or deletes
 789 a greater or lesser quorum or voting requirement must meet the
 790 same quorum or voting requirement and be adopted by the same
 791 vote and voting groups required to take action under the quorum
 792 and voting requirements then in effect or proposed to be
 793 adopted, whichever is greater ~~prescribed in the provision being~~
 794 ~~amended.~~

795 Section 20. Section 617.07401, Florida Statutes, is
 796 created to read:

797 617.07401 Members' derivative actions.--

798 (1) A person may not commence a proceeding in the right of
 799 a domestic or foreign corporation unless the person was a member
 800 of the corporation when the transaction complained of occurred
 801 or unless the person became a member through transfer by
 802 operation of law from one who was a member at that time.

803 (2) A complaint in a proceeding brought in the right of a
 804 domestic or foreign corporation must be verified and allege with
 805 particularity the demand made to obtain action by the board of
 806 directors and that the demand was refused or ignored by the
 807 board of directors for at least 90 days after the date of the
 808 first demand unless, before the expiration of the 90 days, the
 809 person was notified in writing that the corporation rejected the
 810 demand, or unless irreparable injury to the corporation would
 811 result by waiting for the expiration of the 90-day period. If
 812 the corporation commences an investigation of the charges made

HB 1311

2009

813 in the demand or complaint, the court may stay any proceeding
814 until the investigation is completed.

815 (3) The court may dismiss a derivative proceeding if, on
816 motion by the corporation, the court finds that one of the
817 groups specified in paragraphs (a)-(c) has made a good faith
818 determination after conducting a reasonable investigation upon
819 which its conclusions are based that the maintenance of the
820 derivative suit is not in the best interests of the corporation.
821 The corporation has the burden of proving the independence and
822 good faith of the group making the determination and the
823 reasonableness of the investigation. The determination shall be
824 made by:

825 (a) A majority vote of independent directors present at a
826 meeting of the board of directors, if the independent directors
827 constitute a quorum;

828 (b) A majority vote of a committee consisting of two or
829 more independent directors appointed by a majority vote of
830 independent directors present at a meeting of the board of
831 directors, whether or not such independent directors constitute
832 a quorum; or

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

835 (4) A proceeding commenced under this section may not be
836 discontinued or settled without the approval of the court. If
837 the court determines that a proposed discontinuance or
838 settlement substantially affects the interest of the members of
839 the corporation, or a class, series, or voting group of members,
840 the court shall direct that notice be given to the members

HB 1311

2009

841 affected. The court may determine which party or parties to the
842 proceeding shall bear the expense of giving the notice.

843 (5) Upon termination of the proceeding, the court may
844 require the plaintiff to pay any defendant's reasonable
845 expenses, including reasonable attorney fees, incurred in
846 defending the proceeding if it finds that the proceeding was
847 commenced without reasonable cause.

848 (6) The court may award reasonable expenses for
849 maintaining the proceeding, including reasonable attorney fees,
850 to a successful plaintiff or to the person commencing the
851 proceeding who receives any relief, whether by judgment,
852 compromise, or settlement, and may require that the person
853 account for the remainder of any proceeds to the corporation;
854 however, this subsection does not apply to any relief rendered
855 for the benefit of injured members only and is limited to a
856 recovery of the loss or damage of the injured members.

857 Section 21. Section 617.0801, Florida Statutes, is amended
858 to read:

859 617.0801 ~~Requirement for and~~ Duties of board of
860 directors.--All corporate powers must be exercised by or under
861 the authority of, and the affairs of the corporation managed
862 under the direction of, its board of directors, subject to any
863 limitation set forth in the articles of incorporation.

864 Section 22. Subsection (1) of section 617.0802, Florida
865 Statutes, is amended to read:

866 617.0802 Qualifications of directors.--

867 (1) Directors must be natural persons who are 18 years of
868 age or older but need not be residents of this state or members

HB 1311

2009

869 of the corporation unless the articles of incorporation or
 870 bylaws so require. For corporations organized according to the
 871 provisions of s. 501(c)(3) of the Internal Revenue Code of 1986,
 872 as amended, one director may be 15 years of age or older if so
 873 permitted in the articles of incorporation or bylaws or by
 874 resolution of the board of directors. The articles of
 875 incorporation or the bylaws may prescribe additional
 876 qualifications for directors.

877 Section 23. Section 617.0806, Florida Statutes, is amended
 878 to read:

879 617.0806 Staggered terms for directors.--The articles of
 880 incorporation or bylaws may provide that directors ~~may~~ be
 881 divided into classes ~~and the terms of office of the several~~
 882 ~~classes need not be uniform.~~ Each director shall hold office for
 883 the term to which he or she is elected or appointed and until
 884 his or her successor has been elected or appointed and qualified
 885 or until his or her earlier resignation, removal from office, or
 886 death.

887 Section 24. Section 617.0808, Florida Statutes, is amended
 888 to read:

889 617.0808 Removal of directors.--

890 (1) Subject to subsection (2), a director may be removed
 891 from office pursuant to procedures provided in the articles of
 892 incorporation or the bylaws, which shall provide the following,
 893 and if they do not do so, shall be deemed to include the
 894 following:

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

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

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

901 (b) If a director is elected by a class, chapter, or other
 902 organizational unit, or by region or other geographic grouping,
 903 the director may be removed only by the members of that class,
 904 chapter, unit, or grouping. However:

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

909 2. If cumulative voting is authorized, a director may not
 910 be removed if the number of votes sufficient to elect the
 911 director under cumulative voting is voted against the removal of
 912 the director.

913 3. If at the beginning of the term of a director the
 914 articles of incorporation or bylaws provide that the director
 915 may be removed for missing a specified number of board meetings,
 916 the board may remove the director for failing to attend the
 917 specified number of meetings. The director may be removed only
 918 if a majority of the directors then in office vote for the
 919 removal ~~the vote or agreement in writing by a majority of all~~
 920 ~~votes of the membership.~~

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

924 (d) ~~(3)~~ A proposed removal of a director at a meeting shall

925 require a separate vote for each director whose removal is ~~board~~
 926 ~~member sought to be removed~~. Where removal is sought by written
 927 consent agreement, a separate consent agreement is required for
 928 each director ~~board member~~ to be removed.

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

932 (f)(5) Any director who is removed from the board is ~~shall~~
 933 not ~~be~~ eligible to stand for reelection until the next annual
 934 meeting at which directors are elected ~~of the members~~.

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

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

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

948 (2) A director of a corporation described in s. 501(c) of
 949 the Internal Revenue Code may be removed from office pursuant to
 950 procedures provided in the articles of incorporation or the
 951 bylaws, and the corporation may provide in the articles of
 952 incorporation or the bylaws that it is subject to the provisions

HB 1311

2009

953 of subsection (1).

954 Section 25. Section 617.0809, Florida Statutes, is amended
955 to read:

956 617.0809 Board vacancy ~~on board~~.--

957 (1) Except as provided in s. 617.0808(1)(f), any vacancy
958 occurring on the board of directors may be filled by the
959 affirmative vote of the majority of the remaining directors,
960 even though the remaining directors constitute less than a
961 quorum, or by the sole remaining director, ~~as the case may be,~~
962 or, if the vacancy is not so filled or if no director remains,
963 by the members or, on the application of any person, by the
964 circuit court of the county where the registered office of the
965 corporation is located.

966 (2) Whenever a vacancy occurs with respect to a director
967 elected by a class, chapter, unit, or group, the vacancy may be
968 filled only by members of that class, chapter, unit, or group,
969 or by a majority of the directors then in office elected by such
970 class, chapter, unit, or group.

971 (3)-(2) The term of a director elected or appointed to fill
972 a vacancy expires at the next annual meeting at which directors
973 are elected ~~shall be elected or appointed for the unexpired term~~
974 ~~of his or her predecessor in office.~~ Any directorship to be
975 filled by reason of an increase in the number of directors may
976 be filled by the board of directors, but only for a term of
977 office continuing until the next election of directors by the
978 members or, if the corporation has no members or no members
979 having the right to vote thereon, for such term of office as is
980 provided in the articles of incorporation or the bylaws.

981 (4)~~(3)~~ A vacancy that will occur at a specific later date,
 982 by reason of a resignation effective at a later date under s.
 983 617.0807 or otherwise, may be filled before the vacancy occurs.
 984 However, the new director may not take office until the vacancy
 985 occurs.

986 Section 26. Subsection (1) of section 617.0824, Florida
 987 Statutes, is amended to read:

988 617.0824 Quorum and voting.--

989 (1) Unless the articles of incorporation or the bylaws
 990 require a different number, a quorum of a board of directors
 991 consists of a majority of the number of directors prescribed by
 992 the articles of incorporation or the bylaws. Directors younger
 993 than 18 years of age may not be counted toward a quorum.

994 Section 27. Present subsection (2) of section 617.0832,
 995 Florida Statutes, is renumbered as subsection (3) and amended,
 996 and a new subsection (2) is added to that section, to read:

997 617.0832 Director conflicts of interest.--

998 (2) For purposes of paragraph (1)(a) only, a conflict of
 999 interest transaction is authorized, approved, or ratified if it
 1000 receives the affirmative vote of a majority of the directors on
 1001 the board of directors, or on the committee, who have no
 1002 relationship or interest in the transaction described in
 1003 subsection (1), but a transaction may not be authorized,
 1004 approved, or ratified under this section by a single director.
 1005 If a majority of the directors who have no relationship or
 1006 interest in the transaction vote to authorize, approve, or
 1007 ratify the transaction, a quorum is present for the purpose of
 1008 taking action under this section. The presence of, or a vote

1009 cast by, a director having a relationship or interest in the
 1010 transaction does not affect the validity of any action taken
 1011 under paragraph (1) (a) if the transaction is otherwise
 1012 authorized, approved, or ratified as provided in subsection (1),
 1013 but such presence or vote of such a director may be counted for
 1014 purposes of determining whether the transaction is approved
 1015 under other sections of this chapter.

1016 (3)~~(2)~~ For purposes of paragraph (1) (b), a conflict of
 1017 interest transaction is authorized, approved, or ratified if it
 1018 receives the vote of a majority in interest of the members
 1019 entitled to vote under this subsection. A director who has a
 1020 relationship or interest in the transaction described in
 1021 subsection (1) may not vote to determine whether to authorize,
 1022 approve, or ratify a conflict of interest transaction under
 1023 paragraph (1) (b). However, the vote of that director is counted
 1024 in determining whether the transaction is approved under other
 1025 sections of this chapter. A majority in interest of the members
 1026 entitled to vote on the transaction under this subsection
 1027 constitutes a quorum for the purpose of taking action under this
 1028 section. Common or interested directors may be counted in
 1029 ~~determining the presence of a quorum at a meeting of the board~~
 1030 ~~of directors or a committee thereof which authorizes, approves,~~
 1031 ~~or ratifies such contract or transaction.~~

1032 Section 28. Section 617.0833, Florida Statutes, is amended
 1033 to read:

1034 617.0833 Loans to directors or officers.--Loans, other
 1035 than through the purchase of bonds, debentures, or similar
 1036 obligations of the type customarily sold in public offerings, or

HB 1311

2009

1037 through ordinary deposit of funds in a bank, may not be made by
 1038 a corporation to its directors or officers, or to any other
 1039 corporation, firm, association, or other entity in which one or
 1040 more of its directors or officers is a director or officer or
 1041 holds a substantial financial interest, except a loan by one
 1042 corporation which is exempt from federal income taxation under
 1043 s. 501(c)(3) of the Internal Revenue Code of 1986, as amended,
 1044 to another corporation which is exempt from federal income
 1045 taxation under s. 501(c)(3) of the Internal Revenue Code of
 1046 1986, as amended. A loan made in violation of this section is a
 1047 violation of the duty to the corporation of the directors or
 1048 officers authorizing it or participating in it, but the
 1049 obligation of the borrower with respect to the loan is ~~shall~~ not
 1050 ~~be~~ affected ~~thereby~~.

1051 Section 29. Subsection (1) of section 617.0834, Florida
 1052 Statutes, is amended to read:

1053 617.0834 Officers and directors of certain corporations
 1054 and associations not for profit; immunity from civil
 1055 liability.--

1056 (1) An officer or director of a nonprofit organization
 1057 recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of
 1058 the Internal Revenue Code of 1986, as amended, or of an
 1059 agricultural or a horticultural organization recognized under s.
 1060 501(c)(5), of the Internal Revenue Code of 1986, as amended, is
 1061 not personally liable for monetary damages to any person for any
 1062 statement, vote, decision, or failure to take an action,
 1063 regarding organizational management or policy by an officer or
 1064 director, unless:

HB 1311

2009

1065 (a) The officer or director breached or failed to perform
 1066 his or her duties as an officer or director; and

1067 (b) The officer's or director's breach of, or failure to
 1068 perform, his or her duties constitutes:

1069 1. A violation of the criminal law, unless the officer or
 1070 director had reasonable cause to believe his or her conduct was
 1071 lawful or had no reasonable cause to believe his or her conduct
 1072 was unlawful. A judgment or other final adjudication against an
 1073 officer or director in any criminal proceeding for violation of
 1074 the criminal law estops that officer or director from contesting
 1075 the fact that his or her breach, or failure to perform,
 1076 constitutes a violation of the criminal law, but does not estop
 1077 the officer or director from establishing that he or she had
 1078 reasonable cause to believe that his or her conduct was lawful
 1079 or had no reasonable cause to believe that his or her conduct
 1080 was unlawful;

1081 2. A transaction from which the officer or director
 1082 derived an improper personal benefit, ~~either~~ directly or
 1083 indirectly; or

1084 3. Recklessness or an act or omission that ~~which~~ was
 1085 committed in bad faith or with malicious purpose or in a manner
 1086 exhibiting wanton and willful disregard of human rights, safety,
 1087 or property.

1088 Section 30. Subsections (2) and (3) of section 617.1007,
 1089 Florida Statutes, are amended to read:

1090 617.1007 Restated articles of incorporation.--

1091 (2) The restatement may include one or more amendments to
 1092 the articles of incorporation. If the restatement includes an

HB 1311

2009

1093 amendment requiring member approval, it must be adopted as
 1094 provided in s. 617.1002.

1095 (3) A corporation restating its articles of incorporation
 1096 shall deliver to the department ~~of State~~ for filing articles of
 1097 restatement, executed in accordance with ~~the provisions of~~ s.
 1098 617.01201, setting forth the name of the corporation and the
 1099 text of the restated articles of incorporation together with a
 1100 certificate setting forth:

1101 (a) Whether the restatement contains an amendment to the
 1102 articles of incorporation requiring member approval and, if it
 1103 does not, that the board of directors adopted the restatement;
 1104 or

1105 (b) If the restatement contains an amendment to the
 1106 articles of incorporation requiring member approval, the
 1107 information required by s. 617.1006.

1108 Section 31. Subsection (2) of section 617.1101, Florida
 1109 Statutes, is amended, and subsection (3) is added to that
 1110 section, to read:

1111 617.1101 Plan of merger.--

1112 (2) Each corporation must adopt a plan of merger setting
 1113 forth:

1114 (a) The names of the corporations proposing to merge and
 1115 the name of the surviving corporation into which each other
 1116 corporation plans to merge, which is ~~hereinafter~~ designated as
 1117 the surviving corporation;

1118 (b) The terms and conditions of the proposed merger;

1119 (c) A statement of any changes in the articles of
 1120 incorporation of the surviving corporation to be effected by

1121 such merger; and

1122 (d) The manner and basis, if any, of converting the
 1123 memberships of each merging corporation into memberships,
 1124 obligations, or securities of the surviving corporation or any
 1125 other corporation or, in whole or in part, into cash or other
 1126 property. ~~Such other provisions with respect to the proposed~~
 1127 merger as are deemed necessary or desirable.

1128 (3) The plan of merger may set forth:

1129 (a) Amendments to, or a restatement of, the articles of
 1130 incorporation of the surviving corporation;

1131 (b) The effective date of the merger, which may be on or
 1132 after the date of filing the articles of incorporation or
 1133 merger; or

1134 (c) Other provisions relating to the merger.

1135 Section 32. Section 617.1102, Florida Statutes, is created
 1136 to read:

1137 617.1102 Limitation on merger.--A corporation not for
 1138 profit organized under this chapter may merge with one or more
 1139 other business entities, as identified in s. 607.1108(1), only
 1140 if the surviving entity of such merger is a corporation not for
 1141 profit or other business entity that has been organized as a
 1142 not-for-profit entity under a governing statute or other
 1143 applicable law that allows such a merger.

1144 Section 33. Section 617.1301, Florida Statutes, is created
 1145 to read:

1146 617.1301 Prohibited distributions.--Except as authorized
 1147 in ss. 617.0505 and 617.1302, a corporation may not make any
 1148 distributions to its members.

HB 1311

2009

1149 Section 34. Section 617.1302, Florida Statutes, is created
 1150 to read:

1151 617.1302 Authorized distributions.--

1152 (1) A mutual benefit corporation may purchase its
 1153 memberships pursuant to s. 617.0608 only if, after the purchase
 1154 is completed:

1155 (a) The mutual benefit corporation is able to pay its
 1156 debts as they become due in the usual course of its activities.

1157 (b) The total assets of the mutual benefit corporation at
 1158 least equal the sum of its total liabilities.

1159 (2) A corporation may make distributions upon dissolution
 1160 in conformity with the dissolution provisions of this chapter.

1161 Section 35. Subsection (4) of section 617.1405, Florida
 1162 Statutes, is amended to read:

1163 617.1405 Effect of dissolution.--

1164 (4) The name of a dissolved corporation ~~is shall~~ not ~~be~~
 1165 available for assumption or use by another corporation until
 1166 ~~after~~ 120 days after the effective date of dissolution unless
 1167 the dissolved corporation provides the department with an
 1168 affidavit, executed pursuant to s. 617.01201, authorizing the
 1169 immediate assumption or use of the name by another corporation.

1170 Section 36. Section 617.1407, Florida Statutes, is created
 1171 to read:

1172 617.1407 Unknown claims against dissolved corporation.--

1173 (1) A dissolved corporation or successor entity may
 1174 execute one of the following procedures to resolve payment of
 1175 unknown claims:

1176 (a) A dissolved corporation or successor entity may file

1177 notice of its dissolution with the department on the form
 1178 prescribed by the department and request that persons having
 1179 claims against the corporation which are not known to the
 1180 corporation or successor entity present them in accordance with
 1181 the notice. The notice must:

1182 1. State the name of the corporation and the date of
 1183 dissolution.

1184 2. Describe the information that must be included in a
 1185 claim and provide a mailing address to which the claim may be
 1186 sent.

1187 3. State that a claim against the corporation under this
 1188 subsection is barred unless a proceeding to enforce the claim is
 1189 commenced within 4 years after the filing of the notice.

1190 (b) A dissolved corporation or successor entity may,
 1191 within 10 days after filing articles of dissolution with the
 1192 department, publish a notice of corporate dissolution. The
 1193 notice must appear once a week for 2 consecutive weeks in a
 1194 newspaper of general circulation in the county in the state in
 1195 which the corporation has its principal office, if any, or, if
 1196 none, in a county in the state in which the corporation owns
 1197 real or personal property. Such newspaper shall meet the
 1198 requirements as are prescribed by law for such purposes. The
 1199 notice must:

1200 1. State the name of the corporation and the date of
 1201 dissolution.

1202 2. Describe the information that must be included in a
 1203 claim and provide a mailing address to which the claim may be
 1204 sent.

1205 3. State that a claim against the corporation under this
 1206 subsection is barred unless a proceeding to enforce the claim is
 1207 commenced within 4 years after the date of the second
 1208 consecutive weekly publication of the notice.

1209 (2) If the dissolved corporation or successor entity
 1210 complies with paragraph (1) (a) or paragraph (1) (b), the claim of
 1211 each of the following claimants is barred unless the claimant
 1212 commences a proceeding to enforce the claim against the
 1213 dissolved corporation within 4 years after the date of filing
 1214 the notice with the department or the date of the second
 1215 consecutive weekly publication, as applicable:

1216 (a) A claimant who did not receive written notice under s.
 1217 617.1408(9), or whose claim is not provided for under s.
 1218 617.1408(10), regardless of whether such claim is based on an
 1219 event occurring before or after the effective date of
 1220 dissolution.

1221 (b) A claimant whose claim was timely sent to the
 1222 dissolved corporation but on which no action was taken.

1223 (3) A claim may be entered under this section:

1224 (a) Against the dissolved corporation, to the extent of
 1225 its undistributed assets; or

1226 (b) If the assets have been distributed in liquidation,
 1227 against a member of the dissolved corporation to the extent of
 1228 such member's pro rata share of the claim or the corporate
 1229 assets distributed to such member in liquidation, whichever is
 1230 less; however, the aggregate liability of any member of a
 1231 dissolved corporation may not exceed the amount distributed to
 1232 the member in dissolution.

HB 1311

2009

1233 Section 37. Section 617.1408, Florida Statutes, is created
 1234 to read:

1235 617.1408 Known claims against dissolved corporation.--

1236 (1) A dissolved corporation or successor entity may
 1237 dispose of the known claims against it by following the
 1238 procedures described in subsections (2), (3), and (4).

1239 (2) The dissolved corporation or successor entity shall
 1240 deliver to each of its known claimants written notice of the
 1241 dissolution at any time after its effective date. The written
 1242 notice must:

1243 (a) Provide a reasonable description of the claim that the
 1244 claimant may be entitled to assert;

1245 (b) State whether the claim is admitted or not admitted,
 1246 in whole or in part, and, if admitted:

1247 1. The amount that is admitted, which may be as of a given
 1248 date; and

1249 2. Any interest obligation if fixed by an instrument of
 1250 indebtedness;

1251 (c) Provide a mailing address where a claim may be sent;

1252 (d) State the deadline, which must be at least 120 days
 1253 after the effective date of the written notice, by which
 1254 confirmation of the claim must be delivered to the dissolved
 1255 corporation or successor entity; and

1256 (e) State that the corporation or successor entity may
 1257 make distributions thereafter to other claimants and the members
 1258 of the corporation or persons interested as having been such
 1259 without further notice.

1260 (3) A dissolved corporation or successor entity may

1261 reject, in whole or in part, any claim made by a claimant
 1262 pursuant to this section by mailing notice of such rejection to
 1263 the claimant within 90 days after receipt of such claim and, in
 1264 all events, at least 150 days before expiration of 3 years
 1265 following the effective date of dissolution. The notice must be
 1266 accompanied by a copy of this section.

1267 (4) A dissolved corporation or successor entity electing
 1268 to follow the procedures described in subsections (2) and (3)
 1269 must also give notice of dissolution to persons having known
 1270 claims that are contingent upon the occurrence or nonoccurrence
 1271 of future events, or are otherwise conditional or unmatured, and
 1272 request that such persons present such claims in accordance with
 1273 the terms of the notice. The notice must be in substantially the
 1274 form, and sent in the same manner, as described in subsection
 1275 (2).

1276 (5) A dissolved corporation or successor entity shall
 1277 offer any claimant whose known claim is contingent, conditional,
 1278 or unmatured such security as the corporation or entity
 1279 determines is sufficient to provide compensation to the claimant
 1280 if the claim matures. The dissolved corporation or successor
 1281 entity shall deliver such offer to the claimant within 90 days
 1282 after receipt of such claim and, in all events, at least 150
 1283 days before expiration of 3 years after the effective date of
 1284 dissolution. If the claimant offered such security does not
 1285 deliver in writing to the dissolved corporation or successor
 1286 entity a notice rejecting the offer within 120 days after
 1287 receipt of such offer, the claimant is deemed to have accepted
 1288 such security as the sole source from which to satisfy his or

1289 her claim against the corporation.

1290 (6) A dissolved corporation or successor entity that has
 1291 given notice in accordance with subsections (2) and (4) shall
 1292 petition the circuit court in the county where the corporation's
 1293 principal office is located or was located on the effective date
 1294 of dissolution to determine the amount and form of security that
 1295 is sufficient to provide compensation to a claimant who has
 1296 rejected the offer for security made pursuant to subsection (5).

1297 (7) A dissolved corporation or successor entity that has
 1298 given notice in accordance with subsection (2) shall petition
 1299 the circuit court in the county where the corporation's
 1300 principal office is located or was located on the effective date
 1301 of dissolution to determine the amount and form of security
 1302 which is sufficient to provide compensation to claimants whose
 1303 claims are known to the corporation or successor entity but
 1304 whose identities are unknown. The court shall appoint a guardian
 1305 ad litem to represent all claimants whose identities are unknown
 1306 in any proceeding brought under this subsection. The reasonable
 1307 fees and expenses of such guardian, including all reasonable
 1308 expert witness fees, shall be paid by the petitioner in such
 1309 proceeding.

1310 (8) The giving of any notice or making of any offer
 1311 pursuant to this section does not revive any claim then barred,
 1312 does not constitute acknowledgment by the dissolved corporation
 1313 or successor entity that any person to whom such notice is sent
 1314 is a proper claimant, and does not operate as a waiver of any
 1315 defense or counterclaim in respect of any claim asserted by any
 1316 person to whom such notice is sent.

HB 1311

2009

1317 (9) A dissolved corporation or successor entity that has
1318 followed the procedures described in subsections (2)-(7) shall:

1319 (a) Pay the claims admitted or made and not rejected in
1320 accordance with subsection (3).

1321 (b) Post the security offered and not rejected pursuant to
1322 subsection (5).

1323 (c) Post any security ordered by the circuit court in any
1324 proceeding under subsections (6) and (7).

1325 (d) Pay or make provision for all other known obligations
1326 of the corporation or the successor entity. Such claims or
1327 obligations shall be paid in full, and any provision for
1328 payments shall be made in full if there are sufficient funds. If
1329 there are insufficient funds, the claims and obligations shall
1330 be paid or provided for according to their priority and, among
1331 claims of equal priority, ratably to the extent of funds legally
1332 available for payment. Any remaining funds shall be distributed
1333 in accordance with s. 617.1406; however, such distribution may
1334 not be made until 150 days after the date of the last notice of
1335 rejections given pursuant to subsection (3). In the absence of
1336 actual fraud, the judgment of the directors of the dissolved
1337 corporation or the governing persons of the successor entity as
1338 to the provisions made for the payment of all obligations under
1339 this paragraph is conclusive.

1340 (10) A dissolved corporation or successor entity that has
1341 not followed the procedures described in subsections (2) and (3)
1342 shall pay or make reasonable provision to pay all known claims
1343 and obligations, including all contingent, conditional, or
1344 unmatured claims known to the corporation or the successor

HB 1311

2009

1345 entity and all claims that are known to the dissolved
1346 corporation or the successor entity but for which the identity
1347 of the claimant is unknown. Such claims shall be paid in full,
1348 and any provision for payment made shall be made in full if
1349 there are sufficient funds. If there are insufficient funds,
1350 such claims and obligations shall be paid or provided for
1351 according to their priority and, among claims of equal priority,
1352 ratably to the extent of funds legally available for payment
1353 thereof. Any remaining funds shall be distributed in accordance
1354 with s. 617.1406.

1355 (11) Directors of a dissolved corporation or governing
1356 persons of a successor entity that has complied with subsection
1357 (9) or subsection (10) are not personally liable to the
1358 claimants of the dissolved corporation.

1359 (12) A member of a dissolved corporation the assets of
1360 which were distributed pursuant to subsection (9) or subsection
1361 (10) is not liable for any claim against the corporation greater
1362 than the member's pro rata share of the claim or the amount
1363 distributed to the member, whichever is less.

1364 (13) A member of a dissolved corporation, the assets of
1365 which were distributed pursuant to subsection (9), is not liable
1366 for any claim against the corporation which is known to the
1367 corporation or successor entity and on which a proceeding is
1368 begun after the expiration of 3 years after the effective date
1369 of dissolution.

1370 (14) The aggregate liability of any member of a dissolved
1371 corporation for claims against the dissolved corporation may not
1372 be greater than the amount distributed to the member in

HB 1311

2009

1373 dissolution.

1374 Section 38. Subsection (6) of section 617.1421, Florida
 1375 Statutes, is repealed.

1376 Section 39. Section 617.1422, Florida Statutes, is amended
 1377 to read:

1378 617.1422 Reinstatement following administrative
 1379 dissolution.--

1380 (1) ~~(a)~~ A corporation administratively dissolved under s.
 1381 617.1421 may apply to the department ~~of State~~ for reinstatement
 1382 at any time after the effective date of dissolution. The
 1383 corporation must submit a reinstatement form prescribed and
 1384 furnished by the department or a current uniform business report
 1385 signed by a registered agent and an officer or director and
 1386 submit application must:

1387 1. ~~Recite the name of the corporation and the effective~~
 1388 ~~date of its administrative dissolution;~~

1389 2. ~~State that the ground or grounds for dissolution either~~
 1390 ~~did not exist or have been eliminated and that no further~~
 1391 ~~grounds currently exist for dissolution;~~

1392 3. ~~State that the corporation's name satisfies the~~
 1393 ~~requirements of s. 617.0401; and~~

1394 4. ~~State that all fees owed by the corporation and~~
 1395 ~~computed at the rate provided by law at the time the corporation~~
 1396 ~~applies for reinstatement, have been paid; or~~

1397 ~~(b) Submit a current annual report, signed by the~~
 1398 ~~registered agent and an officer or director, which substantially~~
 1399 ~~complies with the requirements of paragraph (a).~~

1400 (2) If the department ~~of State~~ determines that the

HB 1311

2009

1401 application contains the information required by subsection (1)
 1402 and that the information is correct, it shall ~~file the document,~~
 1403 ~~cancel the certificate of dissolution,~~ and reinstate the
 1404 corporation ~~effective on the date which the reinstatement~~
 1405 ~~document is filed.~~

1406 (3) When the reinstatement is effective, it relates back
 1407 to and takes effect as of the effective date of the
 1408 administrative dissolution and the corporation resumes carrying
 1409 on its business ~~affairs~~ as if the administrative dissolution had
 1410 never occurred.

1411 (4) The name of the dissolved corporation is not available
 1412 for assumption or use by another corporation until 1 year after
 1413 the effective date of dissolution unless the dissolved
 1414 corporation provides the department with an affidavit executed
 1415 pursuant to s. 617.01201 authorizing the immediate assumption or
 1416 use of the name by another corporation.

1417 (5) ~~(4)~~ If the name of the dissolved corporation has been
 1418 lawfully assumed in this state by another corporation, the
 1419 department ~~of State~~ shall require the dissolved corporation to
 1420 amend its articles of incorporation to change its name before
 1421 accepting its application for reinstatement.

1422 Section 40. Subsection (2) of section 617.1430, Florida
 1423 Statutes, is amended to read:

1424 617.1430 Grounds for judicial dissolution.--A circuit
 1425 court may dissolve a corporation:

1426 (2) In a proceeding brought by at least 50 members or
 1427 members holding at least 10 percent of the voting power,
 1428 whichever is less, or by a member or group or percentage of

HB 1311

2009

1429 members as otherwise provided in the articles of incorporation
 1430 or bylaws, or by a director or any person authorized in the
 1431 articles of incorporation, ~~by a member~~ if it is established
 1432 that:

1433 (a) The directors are deadlocked in the management of the
 1434 corporate affairs, the members are unable to break the deadlock,
 1435 and irreparable injury to the corporation is threatened or being
 1436 suffered;

1437 (b) The members are deadlocked in voting power and have
 1438 failed to elect successors to directors whose terms have expired
 1439 or would have expired upon qualification of their successors; or

1440 (c) The corporate assets are being misapplied or wasted.

1441 Section 41. Subsection (2) of section 617.1503, Florida
 1442 Statutes, is amended to read:

1443 617.1503 Application for certificate of authority.--

1444 (2) The foreign corporation shall deliver with the
 1445 completed application a certificate of existence, for a document
 1446 of similar import, ~~duly authenticated,~~ within ~~not more than~~ 90
 1447 days prior to delivery of the application to the department ~~of~~
 1448 ~~State,~~ by the Secretary of State or other official having
 1449 custody of corporate records in the jurisdiction under the law
 1450 of which it is incorporated. A translation of the certificate,
 1451 under oath of the translator, must be attached to a certificate
 1452 that ~~which~~ is in a language other than the English language.

1453 Section 42. Subsection (2) of section 617.1504, Florida
 1454 Statutes, is amended to read:

1455 617.1504 Amended certificate of authority.--

1456 (2) Such application shall be made within 90 ~~30~~ days after

HB 1311

2009

1457 the occurrence of any change mentioned in subsection (1), shall
 1458 be made on forms prescribed by the department ~~of State~~, shall be
 1459 executed and filed in the same manner as an original application
 1460 for authority, and shall set forth:

1461 (a) The name of the foreign corporation as it appears on
 1462 the department's records of the ~~Department of State~~;

1463 (b) The jurisdiction of its incorporation;

1464 (c) The date it was authorized to conduct its affairs in
 1465 this state;

1466 (d) If the name of the foreign corporation has ~~been~~
 1467 changed, the name relinquished, the new name, a statement that
 1468 the change of name has been effected under the laws of the
 1469 jurisdiction of its incorporation, and the date the change was
 1470 effected;

1471 (e) If the period of duration has ~~been~~ changed, a
 1472 statement of such change and the date the change was effected;

1473 (f) If the jurisdiction of incorporation has ~~been~~ changed,
 1474 a statement of such change and the date the change was effected;
 1475 and

1476 (g) If the ~~purpose or purposes~~ that ~~which~~ the corporation
 1477 intends to pursue in this state have ~~been~~ changed, a statement
 1478 of such new ~~purpose or purposes~~, and a further statement that
 1479 the corporation is authorized to pursue such ~~purpose or purposes~~
 1480 in the jurisdiction of its incorporation.

1481 Section 43. Section 617.1506, Florida Statutes, is amended
 1482 to read:

1483 617.1506 Corporate name of foreign corporation.--

1484 (1) A foreign corporation may ~~is not entitled to~~ file an

1485 application for a certificate of authority unless the corporate
 1486 name of such corporation satisfies the requirements of s.
 1487 617.0401. To obtain or maintain a certificate of authority to
 1488 transact business in this state, the foreign corporation:

1489 (a) May add the word "corporation" or "incorporated" or
 1490 the abbreviation "corp." or "inc." or words of like import,
 1491 which ~~as will~~ clearly indicate that it is a corporation instead
 1492 of a natural person or partnership or other business entity;
 1493 ~~however, to its corporate name for use in this state, provided,~~
 1494 the name of a foreign corporation may not contain the word
 1495 "company" or the abbreviation "co."; or

1496 (b) May use an alternate name to transact business in this
 1497 state if its real name is unavailable. Any alternate corporate
 1498 name adopted for use in this state must be cross-referenced to
 1499 the real corporate name in the records of the Division of
 1500 Corporations. If the real corporate name of the corporation
 1501 becomes available in this state or if the corporation chooses to
 1502 change its alternate name and it delivers to the Department of
 1503 State, for filing, a copy of the resolution of its board of
 1504 directors, changing or withdrawing the alternate name and
 1505 executed as required by s. 617.01201, must be delivered for
 1506 filing adopting an alternate name.

1507 (2) The corporate name, including the alternate name, of a
 1508 foreign corporation must be distinguishable, within the records
 1509 of the Division of Corporations, from:

1510 (a) Any corporate name of a corporation for profit
 1511 incorporated or authorized to transact business in this state.

1512 (b) ~~(a)~~ The alternate name of another foreign corporation

HB 1311

2009

1513 authorized to transact business in this state.

1514 (c) ~~(b)~~ The corporate name of a not-for-profit corporation
 1515 incorporated or authorized to transact business in this state.

1516 (d) ~~(e)~~ The names of all other entities or filings, except
 1517 fictitious name registrations pursuant to s. 865.09, organized,
 1518 or registered under the laws of this state, that are on file
 1519 with the Division of Corporations.

1520 (3) If a foreign corporation authorized to transact
 1521 business in this state changes its corporate name to one that
 1522 does not satisfy the requirements of s. 617.0401 ~~s. 607.0401~~,
 1523 such corporation may not transact business in this state under
 1524 the changed name until the corporation adopts a name satisfying
 1525 the requirements of s. 617.0401 ~~s. 607.0401~~.

1526 ~~(4) The corporate name must be distinguishable from the~~
 1527 ~~names of all other entities or filings, organized, registered,~~
 1528 ~~or reserved under the laws of the state that are on file with~~
 1529 ~~the Division of Corporations, except fictitious name~~
 1530 ~~registrations pursuant to s. 865.09.~~

1531 Section 44. Subsection (6) of section 617.1530, Florida
 1532 Statutes, is amended to read:

1533 617.1530 Grounds for revocation of authority to conduct
 1534 affairs.--The department of State may commence a proceeding
 1535 under s. 617.1531 to revoke the certificate of authority of a
 1536 foreign corporation authorized to conduct its affairs in this
 1537 state if:

1538 (6) The department ~~of State~~ receives a duly authenticated
 1539 certificate from the secretary of state or other official having
 1540 custody of corporate records in the jurisdiction under the law

1541 of which the foreign corporation is incorporated stating that it
 1542 has been dissolved or disappeared as the result of a merger.

1543 Section 45. Paragraph (a) of subsection (5) of section
 1544 617.1601, Florida Statutes, is amended to read:

1545 617.1601 Corporate records.--

1546 (5) A corporation shall keep a copy of the following
 1547 records:

1548 (a) Its articles of incorporation or restated articles of
 1549 incorporation and all amendments to them currently in effect.

1550 Section 46. Subsections (1), (2), and (4) of section
 1551 617.1602, Florida Statutes, are amended to read:

1552 617.1602 Inspection of records by members.--

1553 (1) A member of a corporation is entitled to inspect and
 1554 copy, during regular business hours at the corporation's
 1555 principal office or at a reasonable location specified by the
 1556 corporation, any of the records of the corporation described in
 1557 s. 617.1601(5), if the member gives the corporation written
 1558 notice of his or her demand at least 10 ~~5~~ business days before
 1559 the date on which he or she wishes to inspect and copy.

1560 (2) A member of a corporation is entitled to inspect and
 1561 copy, during regular business hours at a reasonable location
 1562 specified by the corporation, any of the following records of
 1563 the corporation if the member meets the requirements of
 1564 subsection (3) and gives the corporation written notice of his
 1565 or her demand at least 10 ~~5~~ business days before the date on
 1566 which he or she wishes to inspect and copy:

1567 (a) Excerpts from minutes of any meeting of the board of
 1568 directors, records of any action of a committee of the board of

1569 directors while acting in place of the board of directors on
 1570 behalf of the corporation, minutes of any meeting of the
 1571 members, and records of action taken by the members or board of
 1572 directors without a meeting, to the extent not subject to
 1573 inspection under subsection (1).

1574 (b) Accounting records of the corporation.

1575 (c) The record of members.

1576 (d) Any other books and records.

1577 (4) This section does not affect:

1578 (a) The right of a member ~~to inspect and copy records~~
 1579 ~~under s. 617.0730(6), or, if the member is~~ in litigation with
 1580 the corporation to inspect and copy records, to the same extent
 1581 as any other litigant.

1582 (b) The power of a court, independently of this chapter
 1583 ~~act~~, to compel the production of corporate records for
 1584 examination.

1585 Section 47. Section 617.1605, Florida Statutes, is amended
 1586 to read:

1587 617.1605 Financial reports for members.--A corporation,
 1588 upon a member's written demand, shall furnish that member its
 1589 latest annual financial statements, which may be consolidated or
 1590 combined statements of the corporation and one or more of its
 1591 subsidiaries or affiliates, as appropriate, and which include a
 1592 balance sheet as of the end of the fiscal year and a statement
 1593 of operations for that year. If financial statements are
 1594 prepared for the corporation on the basis of generally accepted
 1595 accounting principles, the annual financial statements must also
 1596 be prepared on such basis. ~~Within 60 days following the end of~~

HB 1311

2009

1597 ~~the fiscal or calendar year or annually on such date as is~~
 1598 ~~otherwise provided in the bylaws of the corporation, the board~~
 1599 ~~of directors of the corporation shall mail or furnish by~~
 1600 ~~personal delivery to each member a complete financial report of~~
 1601 ~~actual receipts and expenditures for the previous 12 months. The~~
 1602 ~~report shall show the amounts of receipts by accounts and~~
 1603 ~~receipt classifications and shall show the amounts of expenses~~
 1604 ~~by accounts and expense classifications.~~

1605 Section 48. Section 617.1703, Florida Statutes, is created
 1606 to read:

1607 617.1703 Application of chapter.--In the event of any
 1608 conflict between the provisions of this chapter and chapter 718
 1609 regarding condominiums, chapter 719 regarding cooperatives,
 1610 chapter 720 regarding homeowners' associations, chapter 721
 1611 regarding timeshares, or chapter 723 regarding mobile home
 1612 owners' associations, the provisions of such other chapters
 1613 shall apply. The provisions of ss. 617.0605-617.0608 do not
 1614 apply to corporations regulated by any of the foregoing chapters
 1615 or to any other corporation where membership in the corporation
 1616 is required pursuant to a document recorded in the county
 1617 property records.

1618 Section 49. Subsection (8) is added to section 617.1803,
 1619 Florida Statutes, to read:

1620 617.1803 Domestication of foreign not-for-profit
 1621 corporations.--

1622 (8) When a domestication becomes effective:

1623 (a) The title to all real and personal property, both
 1624 tangible and intangible, of the foreign corporation remains in

HB 1311

2009

1625 the domesticated corporation without reversion or impairment.

1626 (b) The liabilities of the foreign corporation remain the
 1627 liabilities of the domesticated corporation.

1628 (c) An action or proceeding against the foreign
 1629 corporation continues against the domesticated corporation as if
 1630 the domestication had not occurred.

1631 (d) The articles of incorporation attached to the
 1632 certificate of domestication constitute the articles of
 1633 incorporation of the domesticated corporation.

1634 (e) Membership interests in the foreign corporation remain
 1635 identical in the domesticated corporation.

1636 Section 50. Section 617.1806, Florida Statutes, is amended
 1637 to read:

1638 617.1806 Conversion to corporation not for profit;
 1639 petition and contents.--A petition for conversion to a
 1640 corporation not for profit pursuant to s. 617.1805 shall be
 1641 accompanied by the written consent of all the shareholders
 1642 authorizing the change in the corporate nature and directing an
 1643 authorized officer to file such petition before the court,
 1644 together with a statement agreeing to accept all the property of
 1645 the petitioning corporation and agreeing to assume and pay all
 1646 its indebtedness and liabilities, and the proposed articles of
 1647 incorporation signed by the president and secretary of the
 1648 petitioning corporation which shall set forth the provisions
 1649 required in original articles of incorporation by s. 617.0202.

1650 Section 51. Section 617.1907, Florida Statutes, is amended
 1651 to read:

1652 617.1907 Effect of repeal or amendment of prior acts.--

HB 1311

2009

1653 (1) Except as provided in subsection (2), the repeal or
 1654 amendment of a statute by this act does not affect:

1655 (a) The operation of the statute or any action taken under
 1656 it before its repeal or amendment;

1657 (b) Any ratification, right, remedy, privilege,
 1658 obligation, or liability acquired, accrued, or incurred under
 1659 the statute before its repeal or amendment;

1660 (c) Any violation of the statute, or any penalty,
 1661 forfeiture, or punishment incurred because of the violation,
 1662 before its repeal or amendment; or

1663 (d) Any proceeding, reorganization, or dissolution
 1664 commenced ~~under the statute~~ before its repeal or amendment, and
 1665 the proceeding, reorganization, or dissolution may be completed
 1666 ~~in accordance with the statute~~ as if it had not been repealed or
 1667 amended.

1668 (2) If a penalty or punishment imposed for violation of a
 1669 statute repealed or amended by this act is reduced by this act,
 1670 the penalty or punishment if not already imposed shall be
 1671 imposed in accordance with this act.

1672 Section 52. Section 617.2103, Florida Statutes, is
 1673 repealed.

1674 Section 53. This act shall take effect October 1, 2009.