

By the Committee on Commerce and Tourism; and Senator Burgess

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1                                   A bill to be entitled  
2       An act relating to business organizations; amending s.  
3       605.0410, F.S.; revising requirements relating to  
4       inspecting certain records of limited liability  
5       companies; amending s. 607.1301, F.S.; revising the  
6       definition of the term "accrued interest"; amending s.  
7       607.1302, F.S.; revising the circumstances under which  
8       shareholders are entitled to appraisal rights and  
9       certain payments; revising limitations relating to  
10      such rights and payments; revising applicability;  
11      amending s. 607.1303, F.S.; revising the circumstances  
12      in which certain shareholders may assert specified  
13      appraisal rights; amending s. 607.1321, F.S.; revising  
14      requirements for shareholders who wish to assert  
15      appraisal rights relating to specified corporate  
16      actions; amending s. 607.1322, F.S.; making a  
17      technical change; amending s. 607.1326, F.S.;  
18      entitling corporations to prepay a shareholder if the  
19      shareholder makes a demand for payment; specifying  
20      when interest is applicable to such prepayments;  
21      making technical changes; amending s. 607.1330, F.S.;  
22      revising requirements for proceedings relating to  
23      unsettled demands for payment; revising the  
24      eligibility requirements for shareholders entitled to  
25      the fair value of shares during court proceedings;  
26      making technical and conforming changes; amending s.  
27      607.1405, F.S.; revising the requirements for eligible  
28      entities to use the name of a dissolved corporation;  
29      amending s. 617.0725, F.S.; providing applicability;

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30 amending ss. 617.0825 and 617.1703, F.S.; revising  
31 applicability; providing an effective date.

32  
33 Be It Enacted by the Legislature of the State of Florida:

34  
35 Section 1. Paragraph (b) of subsection (3) of section  
36 605.0410, Florida Statutes, is amended to read:

37 605.0410 Records to be kept; rights of member, manager, and  
38 person dissociated to information.—

39 (3) In a manager-managed limited liability company, the  
40 following rules apply:

41 (b) During regular business hours and at a reasonable  
42 location specified by the company, a member may inspect and  
43 copy:

44 1. The records described in subsection (1); and

45 2. Full information regarding the activities, affairs,  
46 financial condition, and other circumstances of the company as  
47 is just and reasonable if:

48 a. The member seeks the information for a purpose  
49 reasonably related to the member's interest as a member; and ~~or~~

50 b. The member makes a demand in a record received by the  
51 company, describing with reasonable particularity the  
52 information sought and the purpose for seeking the information,  
53 and if the information sought is directly connected to the  
54 member's purpose.

55 Section 2. Subsection (1) of section 607.1301, Florida  
56 Statutes, is amended to read:

57 607.1301 Appraisal rights; definitions.—The following  
58 definitions apply to ss. 607.1301-607.1340:

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59 (1) "Accrued interest" means interest ~~from the date the~~  
60 ~~corporate action becomes effective until the date of payment,~~ at  
61 the rate agreed to by the corporation and the shareholder  
62 asserting appraisal rights, or at the rate determined by the  
63 court to be equitable, which rate may not be greater than the  
64 rate of interest ~~of interest~~ determined for judgments pursuant  
65 to s. 55.03; however, if the court finds that the shareholder  
66 asserting appraisal rights acted arbitrarily or otherwise not in  
67 good faith, no interest shall be allowed by the court,  
68 ~~determined as of the effective date of the corporate action.~~

69 Section 3. Subsections (1) and (2) of section 607.1302,  
70 Florida Statutes, are amended to read:

71 607.1302 Right of shareholders to appraisal.—

72 (1) A shareholder of a domestic corporation is entitled to  
73 appraisal rights, and to obtain payment of the fair value of  
74 that shareholder's shares, in the event of any of the following  
75 corporate actions:

76 (a) Consummation of a domestication or a conversion of such  
77 corporation pursuant to s. 607.11921 or s. 607.11932, as  
78 applicable, if shareholder approval is required for the  
79 domestication or the conversion;

80 (b) Consummation of a merger to which such corporation is a  
81 party:

82 1. If shareholder approval is required for the merger under  
83 s. 607.1103 or would be required but for s. 607.11035, except  
84 that appraisal rights shall not be available to any shareholder  
85 of the corporation with respect to shares of any class or series  
86 that remains outstanding after consummation of the merger where  
87 the terms of such class or series have not been materially

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88 altered; or

89 2. If such corporation is a subsidiary and the merger is  
90 governed by s. 607.1104;

91 (c) Consummation of a share exchange to which the  
92 corporation is a party as the corporation whose shares will be  
93 acquired, except that appraisal rights shall not be ~~are not~~  
94 available to any shareholder of the corporation with respect to  
95 any class or series of shares of the corporation that is not  
96 acquired in the share exchange;

97 (d) Consummation of a disposition of assets pursuant to s.  
98 607.1202 if the shareholder is entitled to vote on the  
99 disposition, ~~including a sale in dissolution~~, except that  
100 appraisal rights shall not be available to any shareholder of  
101 the corporation with respect to shares or any class or series  
102 if:

103 1. Under the terms of the corporate action approved by the  
104 shareholders there is to be distributed to shareholders in cash  
105 the corporation's net assets, in excess of a reasonable amount  
106 reserved to meet claims of the type described in ss. 607.1406  
107 and 607.1407, within 1 year after the shareholders' approval of  
108 the action and in accordance with their respective interests  
109 determined at the time of distribution; and

110 2. The disposition of assets is not an interested  
111 transaction;

112 (e) An amendment of the articles of incorporation with  
113 respect to a class or series of shares which reduces the number  
114 of shares of a class or series owned by the shareholder to a  
115 fraction of a share if the corporation has the obligation or the  
116 right to repurchase the fractional share so created;

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117 (f) Any other merger, share exchange, disposition of  
118 assets, or amendment to the articles of incorporation, in each  
119 case to the extent provided as of the record date by the  
120 articles of incorporation, bylaws, or a resolution of the board  
121 of directors providing for appraisal rights, except that no  
122 bylaw or board resolution providing for appraisal rights may be  
123 amended or otherwise altered except by shareholder approval;

124 ~~(g) An amendment to the articles of incorporation or bylaws~~  
125 ~~of the corporation, the effect of which is to alter or abolish~~  
126 ~~voting or other rights with respect to such interest in a manner~~  
127 ~~that is adverse to the interest of such shareholder, except as~~  
128 ~~the right may be affected by the voting or other rights of new~~  
129 ~~shares then being authorized of a new class or series of shares;~~

130 ~~(h)~~ An amendment to the articles of incorporation or bylaws  
131 of a corporation, the effect of which is to adversely affect the  
132 interest of the shareholder by altering or abolishing appraisal  
133 rights under this section;

134 (h)~~(i)~~ With regard to a class of shares prescribed in the  
135 articles of incorporation in any corporation as to which that  
136 particular class of shares was in existence prior to October 1,  
137 2003, including any shares within that class subsequently  
138 authorized by amendment, and for classes of shares authorized on  
139 or after October 1, 2003, in any corporation with 100 or fewer  
140 shareholders ~~prior to October 1, 2003, including any shares~~  
141 ~~within that class subsequently authorized by amendment, any~~  
142 amendment of the articles of incorporation if the shareholder is  
143 entitled to vote on the amendment and if such amendment would  
144 adversely affect such shareholder by:

145 1. Altering or abolishing any preemptive rights attached to

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146 any of his, her, or its shares;

147 2. Altering or abolishing the voting rights pertaining to  
148 any of his, her, or its shares, except as such rights may be  
149 affected by the voting rights of new shares then being  
150 authorized of any existing or new class or series of shares;

151 3. Effecting an exchange, cancellation, or reclassification  
152 of any of his, her, or its shares, when such exchange,  
153 cancellation, or reclassification would alter or abolish the  
154 shareholder's voting rights or alter his, her, or its percentage  
155 of equity in the corporation, or effecting a reduction or  
156 cancellation of accrued dividends or other arrearages in respect  
157 to such shares;

158 4. Reducing the stated redemption price of any of the  
159 shareholder's redeemable shares, altering or abolishing any  
160 provision relating to any sinking fund for the redemption or  
161 purchase of any of his, her, or its shares, or making any of  
162 his, her, or its shares subject to redemption when they are not  
163 otherwise redeemable;

164 5. Making noncumulative, in whole or in part, dividends of  
165 any of the shareholder's preferred shares which had theretofore  
166 been cumulative;

167 6. Reducing the stated dividend preference of any of the  
168 shareholder's preferred shares; or

169 7. Reducing any stated preferential amount payable on any  
170 of the shareholder's preferred shares upon voluntary or  
171 involuntary liquidation;

172 (i)~~(j)~~ An amendment of the articles of incorporation of a  
173 social purpose corporation to which s. 607.504 or s. 607.505  
174 applies;

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175        (j)~~(k)~~ An amendment of the articles of incorporation of a  
176 benefit corporation to which s. 607.604 or s. 607.605 applies;

177        (k)~~(l)~~ A merger, domestication, conversion, or share  
178 exchange of a social purpose corporation to which s. 607.504  
179 applies; or

180        (l)~~(m)~~ A merger, domestication, conversion, or share  
181 exchange of a benefit corporation to which s. 607.604 applies.

182        (2) Notwithstanding subsection (1), the availability of  
183 appraisal rights under paragraphs (1)(a), (b), (c), (d), ~~and~~  
184 (e), (f), and (h) shall be limited in accordance with the  
185 following provisions:

186        (a) Appraisal rights shall not be available for the holders  
187 of shares of any class or series of shares which is:

188            1. A covered security under s. 18(b)(1)(A) or (B) of the  
189 Securities Act of 1933;

190            2. Not a covered security, but traded in an organized  
191 market (or subject to a comparable trading process) and has at  
192 least 2,000 shareholders and the outstanding shares of such  
193 class or series have a market value of at least \$20 million,  
194 exclusive of the value of outstanding shares held by the  
195 corporation's subsidiaries, by the corporation's senior  
196 executives, by the corporation's directors, and by the  
197 corporation's beneficial shareholders and voting trust  
198 beneficial owners owning more than 10 percent of the outstanding  
199 shares; or

200            3. Issued by an open end management investment company  
201 registered with the Securities and Exchange Commission under the  
202 Investment Company Act of 1940 and which may be redeemed at the  
203 option of the holder at net asset value.

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204 (b) The applicability of paragraph (a) shall be determined  
205 as of:

206 1. The record date fixed to determine the shareholders  
207 entitled to receive notice of the meeting of shareholders to act  
208 upon the corporate action requiring appraisal rights, the record  
209 date fixed to determine the shareholders entitled to sign a  
210 written consent approving the corporate action requiring  
211 appraisal rights, or, in the case of an offer made pursuant to  
212 s. 607.11035, the date of such offer; or

213 2. If there will be no meeting of shareholders, no written  
214 consent approving the corporate action, and no offer ~~is~~ made  
215 pursuant to s. 607.11035, the close of business on the day  
216 before the consummation of the corporate action or the effective  
217 date of the amendment of the articles, as applicable.

218 (c) Paragraph (a) is not applicable and appraisal rights  
219 shall be available pursuant to subsection (1) for the holders of  
220 any class or series of shares where the corporate action is an  
221 interested transaction.

222 (d) For the purposes of subparagraph (a)2., a comparable  
223 trading process exists if:

224 1. The market price of the corporation's shares is  
225 determined at least quarterly based on an independent valuation  
226 and by following a formalized process that is designed to  
227 determine a value for the corporation's shares that is  
228 comparable to the value of comparable publicly traded companies;  
229 and

230 2. The corporation repurchases the shares at the price set  
231 by its board of directors based upon the independent valuation  
232 and subject to certain terms and conditions established by the



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233 corporation and provides the corporation's shareholders with a  
234 trading market comparable to that typically available had the  
235 corporation's shares been traded in an organized market.

236 Section 4. Subsection (1) of section 607.1303, Florida  
237 Statutes, is amended, and paragraph (c) is added to subsection  
238 (2) of that section, to read:

239 607.1303 Assertion of rights by nominees and beneficial  
240 owners.—

241 (1) A record shareholder may assert appraisal rights as to  
242 fewer than all the shares registered in the record shareholder's  
243 name but owned by a beneficial shareholder or a voting trust  
244 beneficial owner only if:

245 (a) The record shareholder objects with respect to all  
246 shares of the class or series owned by the beneficial  
247 shareholder or the voting trust beneficial owner;

248 (b) The particular beneficial shareholder or voting trust  
249 beneficial owner acquired all such shares before the record date  
250 established under s. 607.1321 in connection with the applicable  
251 corporate action; and

252 (c) The record shareholder ~~and~~ notifies the corporation in  
253 writing of its ~~the~~ name and address (if the record shareholder  
254 beneficially owns the shares as to which appraisal rights are  
255 being asserted) or notifies the corporation in writing of the  
256 name and address of the particular ~~of each~~ beneficial  
257 shareholder or voting trust beneficial owner on whose behalf  
258 appraisal rights are being asserted.

259

260 The rights of a record shareholder who asserts appraisal rights  
261 for only part of the shares held of record in the record

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262 shareholder's name under this subsection shall be determined as  
263 if the shares as to which the record shareholder objects and the  
264 record shareholder's other shares were registered in the names  
265 of different record shareholders.

266 (2) A beneficial shareholder and a voting trust beneficial  
267 owner may assert appraisal rights as to shares of any class or  
268 series held on behalf of the shareholder only if such  
269 shareholder:

270 (c) Acquired all shares of the class or series before the  
271 record date established under s. 607.1321 in connection with the  
272 applicable corporate action.

273 Section 5. Subsections (1), (2), and (3) of section  
274 607.1321, Florida Statutes, are amended to read:

275 607.1321 Notice of intent to demand payment.—

276 (1) If a proposed corporate action requiring appraisal  
277 rights under s. 607.1302 is submitted to a vote at a  
278 shareholders' meeting, a shareholder who wishes to assert  
279 appraisal rights with respect to any class or series of shares:

280 (a) Must have beneficially owned the shares of such class  
281 or series as of the record date for the shareholders' meeting at  
282 which the proposed corporate action is to be submitted to a  
283 vote;

284 (b) Must deliver to the corporation before the vote is  
285 taken written notice of the shareholder's intent, if the  
286 proposed corporate action is effectuated, to demand payment for  
287 all shares of such class or series beneficially owned by the  
288 shareholder as of the record date for the shareholders' meeting  
289 at which the proposed corporate action is to be submitted to a  
290 vote ~~if the proposed corporate action is effectuated;~~ and

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291 (c) ~~(b)~~ Must not vote, or cause or permit to be voted, any  
292 shares of such class or series in favor of the proposed  
293 corporate action.

294 (2) If a proposed corporate action requiring appraisal  
295 rights under s. 607.1302 is to be approved by written consent, a  
296 shareholder who wishes to assert appraisal rights with respect  
297 to any class or series of shares:

298 (a) Must have beneficially owned the shares of such class  
299 or series as of the record date established for determining who  
300 is entitled to sign a written consent;

301 (b) Must assert such appraisal rights for all shares of  
302 such class or series beneficially owned by the shareholder as of  
303 the record date for determining who is entitled to sign the  
304 written consent; and

305 (c) Must not sign a consent in favor of the proposed  
306 corporate action with respect to that class or series of shares.

307 (3) If a proposed corporate action specified in s.  
308 607.1302(1) does not require shareholder approval pursuant to s.  
309 607.11035, a shareholder who wishes to assert appraisal rights  
310 with respect to any class or series of shares:

311 (a) Must have beneficially owned the shares of such class  
312 or series as of the date the offer to purchase is made pursuant  
313 to s. 607.11035;

314 (b) Must deliver to the corporation before the shares are  
315 purchased pursuant to the offer a written notice of the  
316 shareholder's intent to demand payment if the proposed corporate  
317 action is effected for all shares of such class or series  
318 beneficially owned by the shareholder as of the date the offer  
319 to purchase is made pursuant to s. 607.11035; and

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320        (c) ~~(b)~~ Must not tender, or cause or permit to be tendered,  
321 any shares of such class or series in response to such offer.

322        Section 6. Paragraph (a) of subsection (2) of section  
323 607.1322, Florida Statutes, is amended to read:

324        607.1322 Appraisal notice and form.—

325        (2) The appraisal notice must be delivered no earlier than  
326 the date the corporate action became effective, and no later  
327 than 10 days after such date, and must:

328        (a) Supply a form that specifies the date that the  
329 corporate action became effective and that provides for the  
330 shareholder to state:

331            1. The shareholder's name and address.

332            2. The number, classes, and series of shares as to which  
333 the shareholder asserts appraisal rights.

334            3. That the shareholder did not vote for or consent to the  
335 transaction.

336            4. Whether the shareholder accepts the corporation's offer  
337 as stated in subparagraph (b)4.

338            5. If the offer is not accepted, the shareholder's  
339 estimated fair value of the shares and a demand for payment of  
340 the shareholder's estimated value plus accrued interest, if and  
341 to the extent applicable.

342        Section 7. Section 607.1326, Florida Statutes, is amended  
343 to read:

344        607.1326 Procedure if shareholder is dissatisfied with  
345 offer.—

346        (1) A shareholder who is dissatisfied with the  
347 corporation's offer as set forth pursuant to s. 607.1322(2)(b)4.  
348 must notify the corporation on the form provided pursuant to s.

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349 607.1322(1) of that shareholder's estimate of the fair value of  
350 the shares and demand payment of that estimate plus accrued  
351 interest, if and to the extent applicable.

352 (2) A shareholder who fails to notify the corporation in  
353 writing of that shareholder's demand to be paid the  
354 shareholder's stated estimate of the fair value plus accrued  
355 interest, if and to the extent applicable, under subsection (1)  
356 within the timeframe set forth in s. 607.1322(2)(b)2. waives the  
357 right to demand payment under this section and shall be entitled  
358 only to the payment offered by the corporation pursuant to s.  
359 607.1322(2)(b)4.

360 (3) With respect to a shareholder who properly makes demand  
361 for payment pursuant to subsection (1), at any time after the  
362 shareholder makes such demand, including during a court  
363 proceeding under s. 607.1330, the corporation shall have the  
364 right to prepay to the shareholder all or any portion of the  
365 amount that the corporation determines to be due under s.  
366 607.1322(2)(b)3. and the shareholder shall be obligated to  
367 accept such prepayment.

368 (a) If such prepayment is made within 90 days after the  
369 earlier of the date on which the appraisal notice is provided by  
370 the corporation under s. 607.1322(1) or the deadline date by  
371 which the appraisal notice is required to be provided by the  
372 corporation under s. 607.1322(2), accrued interest will be  
373 payable, if at all, to the shareholder entitled to appraisal  
374 rights, calculated and accrued from the date on which the  
375 corporate action became effective and only on amounts that are  
376 determined to be due to the shareholder and are above the amount  
377 so prepaid. Accrued interest will not be payable to the

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378 shareholder entitled to appraisal rights on the prepayment  
379 previously made to the shareholder by the corporation pursuant  
380 to this paragraph.

381 (b) If such prepayment is made more than 90 days after the  
382 earlier of the date on which the appraisal notice is provided by  
383 the corporation under s. 607.1322(1) or the deadline date by  
384 which the appraisal notice is required to be provided by the  
385 corporation under s. 607.1322(2), the prepayment must include  
386 accrued interest on the amount of the prepayment, calculated at  
387 the rate of interest determined for judgments pursuant to s.  
388 55.03 and calculated and accrued from the date that the  
389 corporate action became effective through the date of the  
390 prepayment previously made to the shareholder by the corporation  
391 pursuant to this paragraph. In addition, accrued interest will  
392 be payable to the shareholder entitled to appraisal rights on  
393 such amounts, if any, determined to be due to the shareholder in  
394 excess of the prepaid amount, calculated and accrued from the  
395 date on which the corporate action became effective.

396 Section 8. Subsections (1) and (5) of section 607.1330,  
397 Florida Statutes, are amended to read:

398 607.1330 Court action.—

399 (1) If a shareholder makes demand for payment under s.  
400 607.1326 which remains unsettled, the corporation shall commence  
401 a proceeding within 60 days after receiving the payment demand  
402 and petition the court to determine the fair value of the shares  
403 and accrued interest, if and to the extent applicable,  
404 calculated and accrued from the date the corporate action became  
405 effective and taking into account the amount of any prepayment  
406 previously made to the shareholder by the corporation pursuant

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407 ~~to s. 607.1326(3) from the date of the corporate action.~~ If the  
408 corporation does not commence the proceeding within the 60-day  
409 period, any shareholder who has made a demand pursuant to s.  
410 607.1326 may commence the proceeding in the name of the  
411 corporation.

412 (5) Each shareholder entitled to appraisal rights who is  
413 made a party to the proceeding is entitled to judgment for the  
414 amount of the fair value of such shareholder's shares as found  
415 by the court, plus accrued interest, if and to the extent  
416 applicable and as found by the court, taking into account the  
417 amount of any prepayment previously made to the shareholder by  
418 the corporation pursuant to s. 607.1326(3).

419 Section 9. Subsection (5) of section 607.1405, Florida  
420 Statutes, is amended to read:

421 607.1405 Effect of dissolution.—

422 (5) Except as provided in s. 607.1422(4), the name of a  
423 dissolved corporation is not available for assumption or use by  
424 another eligible entity until 120 days ~~1 year~~ after the  
425 effective date of dissolution unless the dissolved corporation  
426 provides the department with a record, signed as required by s.  
427 607.0120, permitting the immediate assumption or use of the name  
428 by another eligible entity.

429 Section 10. Section 617.0725, Florida Statutes, is amended  
430 to read:

431 617.0725 Quorum.—An amendment to the articles of  
432 incorporation or the bylaws which adds, changes, or deletes a  
433 greater or lesser quorum or voting requirement must meet the  
434 same quorum or voting requirement and be adopted by the same  
435 vote and voting groups required to take action under the quorum

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436 and voting requirements then in effect or proposed to be  
437 adopted, whichever is greater. This section does not apply to  
438 any corporation that is an association, as defined in s.  
439 720.301(9), or any corporation regulated under chapter 718 or  
440 chapter 719.

441 Section 11. Subsection (9) of section 617.0825, Florida  
442 Statutes, is amended to read:

443 617.0825 Board committees and advisory committees.—

444 (9) This section does not apply to a committee established  
445 under chapter 718, chapter 719, or chapter 720 to perform the  
446 functions set forth in s. 718.303(3), s. 719.303(3), s.  
447 720.305(2), s. 720.303(2), or s. 720.3035(1), or s. 720.405,  
448 respectively.

449 Section 12. Section 617.1703, Florida Statutes, is amended  
450 to read:

451 617.1703 Application of chapter.—

452 (1) (a) This chapter is applicable to a corporation that is  
453 an association as defined in and regulated by any of chapter 718  
454 regarding condominiums, chapter 719 regarding cooperatives,  
455 chapter 720 regarding homeowners' associations, chapter 721  
456 regarding timeshares, or chapter 723 regarding mobile  
457 homeowners' associations, except:

458 1. For ~~In the event of~~ any conflict between the provisions  
459 of this chapter and chapter 718 ~~regarding condominiums,~~ chapter  
460 719 ~~regarding cooperatives,~~ chapter 720 ~~regarding homeowners'~~  
461 associations, chapter 721 ~~regarding timeshares,~~ or chapter 723;  
462 or

463 2. As otherwise provided for in chapter 718, chapter 719,  
464 chapter 720, chapter 721, or chapter 723.



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465 (b) If subparagraph (a)1. or subparagraph (a)2. applies  
466 ~~regarding mobile home owners' associations,~~ the applicable  
467 provisions of such other respective chapters shall apply.

468 (2) The provisions of ss. 617.0605-617.0608 do not apply to  
469 corporations regulated by any of the foregoing chapters or to  
470 any other corporation where membership in the corporation is  
471 required pursuant to a document recorded in the county property  
472 records.

473 Section 13. This act shall take effect upon becoming a law.