

CHAPTER 97-230

House Bill No. 1245

An act relating to corporations; amending ss. 617.0808 and 617.2103, F.S.; excluding charitable corporations from certain provisions relating to removal of a director from a board of directors; amending s. 48.101, F.S.; clarifying service of process on certain corporations; amending s. 607.01401, F.S.; providing a definition; amending s. 607.0732, F.S.; specifying an additional criterion for certain shareholder agreements; amending s. 607.0902, F.S.; clarifying a circumstance under which acquisition of certain shares does not constitute a control-share acquisition; amending s. 607.1002, F.S.; authorizing a corporation's board of directors to amend the corporation's articles of incorporation for an additional purpose; providing an effective date.

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

Section 1. Section 617.0808, Florida Statutes, is amended to read:

617.0808 Removal of directors.—A director may be removed from office pursuant to procedures provided in the articles of incorporation or the by-laws, which shall provide the following, and if they do not do so, shall be deemed to include the following:

(1) ~~Except as provided in subsection (2),~~ Any member of the board of directors may be removed from office with or without cause by the vote or agreement in writing by a majority of all votes of the membership.

~~(2) Any member of the board of directors of a charitable organization as defined in s. 496.404, may be removed from office without cause only following the recommendation of a majority of the board of directors followed by the vote or agreement in writing by a majority of all votes of the membership.~~

~~(2)~~(3) The notice of a meeting of the members to recall a member or members of the board of directors shall state the specific directors sought to be removed.

~~(3)~~(4) A proposed removal of a director at a meeting shall require a separate vote for each board member sought to be removed. Where removal is sought by written agreement, a separate agreement is required for each board member to be removed.

~~(4)~~(5) If removal is effected at a meeting, any vacancies created thereby shall be filled by the members at the same meeting.

~~(5)~~(6) Any director who is removed from the board shall not be eligible to stand for reelection until the next annual meeting of the members.

~~(6)~~(7) Any director removed from office shall turn over to the board of directors within 72 hours any and all records of the corporation in his possession.

~~(7)~~(8) If a director who is removed shall not relinquish his office or turn over records as required under this section, the circuit court in the county where the corporation's principal office is located may summarily order the director to relinquish his office and turn over corporate records upon application of any member.

Section 2. Subsection (1) of section 617.2103, Florida Statutes, 1996 Supplement, is amended to read:

617.2103 Exemptions for certain corporations.—

(1) No corporation described in s. 501(c) of the Internal Revenue Code of 1986, as amended, shall be subject to the provisions of s. 617.0808, s. 617.1601, s. 617.1602, s. 617.1603, s. 617.1604, s. 617.1605, or s. 617.2102, unless the articles of incorporation or bylaws provide otherwise. ~~No corporation described in s. 501(c) of the Internal Revenue Code of 1986, as amended, except a charitable organization as defined in s. 496.404, is subject to the provisions of s. 617.0808.~~ For purposes of this subsection, if a current determination letter issued under the authority of the internal revenue laws of the United States of America determines that a particular corporation is or is not exempt from federal income taxation under s. 501(c) of the Internal Revenue Code of 1986, as amended, that shall be conclusive on the question whether the corporation is or is not described in s. 501(c) of the Internal Revenue Code of 1986, as amended.

Section 3. Section 48.101, Florida Statutes, is amended to read:

48.101 Service on dissolved corporations.—Process against the directors of any corporation which ~~was~~ is dissolved ~~before July 1, 1990~~, as trustees of the dissolved corporation shall be served on one or more of the directors of the dissolved corporation as trustees thereof and binds all of the directors of the dissolved corporation as trustees thereof. ~~Process against any other dissolved corporation shall be served in accordance with s. 48.081.~~

Section 4. Subsections (27) and (28) of section 607.01401, Florida Statutes, are renumbered as subsections (28) and (29), respectively, and a new subsection (27) is added to said section, to read:

607.01401 Definitions.—As used in this act, unless the context otherwise requires, the term:

(27) “Treasury shares” means shares of a corporation that belong to the issuing corporation, which shares are authorized and issued shares that are not outstanding, are not canceled, and have not been restored to the status of authorized but unissued shares.

Section 5. Paragraph (h) is added to subsection (1) of section 607.0732, Florida Statutes, to read:

607.0732 Shareholder agreements.—

(1) An agreement among the shareholders of a corporation with 100 or fewer shareholders at the time of the agreement, that complies with this section, is effective among the shareholders and the corporation, even though it is inconsistent with one or more other provisions of this chapter, if it:

(h) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship between the shareholders, the directors, or the corporation, and is not contrary to public policy. For purposes of this paragraph, agreements contrary to public policy include, but are not limited to, agreements that reduce the duties of care and loyalty to the corporation as required by ss. 607.0830 and 607.0832, exculpate directors from liability that may be imposed under s. 607.0831, adversely affect shareholders' rights to bring derivative actions under s. 607.07401, or abrogate dissenters' rights under ss. 607.1301-607.1320.

Section 6. Paragraph (d) of subsection (2) of section 607.0902, Florida Statutes, is amended to read:

607.0902 Control-share acquisitions.—

(2) "CONTROL-SHARE ACQUISITION."—

(d) The acquisition of any shares of an issuing public corporation does not constitute a control-share acquisition if the acquisition is consummated in any of the following circumstances:

1. Before July 2, 1987.
2. Pursuant to a contract existing before July 2, 1987.
3. Pursuant to the laws of intestate succession or pursuant to a gift or testamentary transfer.
4. Pursuant to the satisfaction of a pledge or other security interest created in good faith and not for the purpose of circumventing this section.
5. Pursuant to a merger or share exchange effected in compliance with s. 607.1101, s. 607.1102, s. 607.1103, s. 607.1104, or s. 607.1107, if the issuing public corporation is a party to the agreement of merger or plan of share exchange.
6. Pursuant to any savings, employee stock ownership, or other employee benefit plan of the issuing public corporation or any of its subsidiaries or any fiduciary with respect to any such plan when acting in such fiduciary capacity.
7. Pursuant to an acquisition of shares of an issuing public corporation if the ~~which~~ acquisition has been approved by the board of directors of such issuing public corporation before acquisition.

Section 7. Section 607.1002, Florida Statutes, is amended to read:

607.1002 Amendment by board of directors.—Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder action:

(1) To extend the duration of the corporation if it was incorporated at a time when limited duration was required by law;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the Department of State;

(4) To delete any other information contained in the articles of incorporation that is solely of historical interest;

(5) To delete the authorization for a class or series of shares authorized pursuant to s. 607.0602, if no shares of such class or series are issued;

(6) To change the corporate name by substituting the word "corporation," "incorporated," or "company," or the abbreviation "corp.," "Inc.," or "Co.," for a similar word or abbreviation in the name, or by adding, deleting, or changing a geographical attribution for the name;

(7) To change the par value for a class or series of shares; or

(8) To provide that if the corporation acquires its own shares, such shares belong to the corporation and constitute treasury shares until disposed of or canceled by the corporation; or

~~(9)~~(8) To make any other change expressly permitted by this act to be made without shareholder action.

Section 8. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.