

Council Substitute for House Bill No. 419

An act relating to business entities; amending s. 607.1109, F.S.; exempting a domestic corporation from the requirement to file articles of merger under certain circumstances; amending s. 607.1113, F.S.; exempting a domestic corporation from the requirement to file a certificate of conversion under certain circumstances; amending s. 607.1115, F.S.; requiring that each converting entity file a certificate of conversion with the Department of State; amending s. 608.4382, F.S.; exempting a domestic limited liability company from the requirement to file a certificate of merger under certain circumstances; amending s. 608.439, F.S.; including a corporation within the definition of "other business entity" or "another business entity"; requiring that each converting entity file a certificate of conversion with the department; amending s. 608.4403, F.S.; exempting a limited liability company from the requirement to file a certificate of conversion under certain circumstances; amending s. 617.1108, F.S.; exempting a domestic corporation not for profit from the requirement to file articles of merger under certain circumstances; providing for a copy of articles of merger or the certificate of merger to be filed in each county in which real property of a party to the merger is situated; amending s. 620.1406, F.S.; revising the requirements for general partners with respect to exercising certain management rights; providing that the expulsion of a limited partner requires the consent of all of the other limited partners; amending s. 620.2104, F.S.; requiring that a certificate of conversion be signed by each general partner and by the converting organization; exempting a limited partnership from the requirement to file a certificate of conversion if the partnership complies with certain other laws; amending s. 620.2108, F.S.; providing exceptions to a requirement that constituent limited partnerships file articles of merger or a certificate of merger with the Department of State; amending s. 620.2204, F.S.; changing the date of application of provisions authorizing a limited partner to dissociate from a limited partnership; amending s. 620.8101, F.S.; redefining the term "statement" to exclude a statement of merger; amending s. 620.8105, F.S.; requiring that a registration statement be filed with the department before filing a certificate of conversion or a certificate of merger; amending s. 620.81055, F.S.; providing that a filing fee applies to a certificate of merger; amending s. 620.8911, F.S.; clarifying that the term "organization" includes a converted or surviving organization under certain circumstances; amending s. 620.8914, F.S.; revising requirements for conversions; exempting converting domestic partnerships from filing a certificate of conversion under certain circumstances; providing that the certificate of conversion acts as a cancellation of the registration statement for a converting partnership; amending s. 620.8918, F.S.; exempting domestic constituent partnerships from filing a certificate of merger under certain circumstances; requiring that such partnership file a registration statement with the department under certain circumstances; amending s. 621.06, F.S.; revising limitations

on qualifications to render professional services; amending s. 621.10, F.S.; revising limitations on disqualifications to render professional services; amending s. 621.13, F.S.; deleting limitations on mergers between domestic and foreign professional corporations and limited liability companies; amending s. 727.114, F.S.; providing for disposition of residue moneys after payment of certain creditors' claims; providing effective dates.

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

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

607.1109 Articles of merger.—

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

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

607.1113 Certificate of conversion.—

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

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

607.1115 Conversion of another business entity to a domestic corporation.—

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

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

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

608.4382 Certificate of merger.—

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

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

608.439 Conversion of certain entities to a limited liability company.—

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

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

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

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

608.4403 Certificate of conversion.—

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

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

617.1108 Merger of domestic corporation and other business entities.—

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

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

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

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

620.1406 Management rights of general partner; approval rights of other partners.—

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

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

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

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

620.2104 Filings required for conversion; effective date.—

(1) After a plan of conversion is approved:

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

1. A statement that the limited partnership has been converted into another organization.
2. The name and form of the organization and the jurisdiction of its governing law.
3. The date the conversion is effective under the governing law of the converted organization.
4. A statement that the conversion was approved as required by this act.
5. A statement that the conversion was approved as required by the governing law of the converted organization.
6. If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office which the Department of State may use for the purposes of s. 620.2105(3).

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

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

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

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

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

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

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

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

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

620.2108 Filings required for merger; effective date.—

(3) Each constituent limited partnership shall deliver the certificate of merger for filing in the Department of State unless the constituent limited partnership is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger in accordance with s. 607.1109(1), s. 608.4382(1), s. 617.1108, or s. 620.8918(1) and (2) and such articles of merger or certificate of merger substantially complies with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of s. 620.2109(3).

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

620.2204 Application to existing relationships.—

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

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

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

620.8101 Definitions.—As used in this act, the term:

(15) “Statement” means a statement of partnership authority under s. 620.8303, a statement of denial under s. 620.8304, a statement of dissociation under s. 620.8704, a statement of dissolution under s. 620.8805, ~~a statement of merger under s. 620.8918~~, a statement of qualification under s. 620.9001, a statement of foreign qualification under s. 620.9102, or an amendment or cancellation of any of the foregoing.

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

620.8105 Execution, filing, and recording of partnership registration and other statements.—

(4) Except as provided in s. 620.8304 or s. 620.8704, a statement or a certificate of conversion or certificate of merger may be filed with the Department of State only if the partnership has filed a registration statement pursuant to subsection (1). If otherwise sufficient, a certified copy of a statement that is filed in a jurisdiction other than this state may be filed with the Department of State in lieu of an original statement. Any such filing has the effect provided in this act with respect to partnership property located in, or transactions that occur in, this state.

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

620.81055 Fees for filing documents and issuing certificates; powers of the Department of State.—

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

- (i) Certificate Statement of merger for each party thereto: \$25.

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

620.8911 Definitions.—As used in this section and ss. 620.8912-620.8923:

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

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

620.8914 Filings required for conversion; effective date.—

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

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

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

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

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

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

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

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

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

1. A ~~certificate of registration~~ statement in accordance with s. 620.8105.
2. A certificate of conversion, in accordance with s. 620.8105, signed by a general partner of the partnership in accordance with s. 620.8105(6) and by the converting organization as required by applicable law, which certificate of conversion must include:
 - a. A statement that the partnership was converted from another organization.
 - b. The name and form of the converting organization and the jurisdiction of its governing law.
 - c. A statement that the conversion was approved as required by this act.
 - d. A statement that the conversion was approved in a manner that complied with the converting organization's governing law.
 - e. The effective time of the conversion, if other than the time of the filing of the certificate statement of conversion.

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

(2) A conversion becomes effective:

(a) If the converted organization is a partnership, at the time specified ~~in the plan of conversion or~~ the certificate of conversion, which may be as of or after the time of the filing of the certificate of conversion, and, if the certificate of conversion does not contain such an effective time, the effective time shall be upon the filing of the certificate of conversion with the Department of State. ~~However, provided,~~ if the certificate has a delayed effective date, the certificate may not be effective any later than the 90th day after the date it was filed and ~~provided further,~~ the effective date ~~may shall~~ not be any earlier than the effective date of the ~~statement of registration~~ statement filed with the Department of State for the partnership in accordance with s. 620.8105.

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

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

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

620.8918 Filings required for merger; effective date.—

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

(4) A merger becomes effective under this act:

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

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

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

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

621.06 Rendition of professional services, limitations.—No corporation or limited liability company organized under this act may render professional services except through its members, officers, employees, and agents who are duly licensed or otherwise legally authorized to render such professional services ~~within this state~~; provided, however, this provision shall not be interpreted to include in the term “employee,” as used herein, clerks, secretaries, bookkeepers, technicians, and other assistants who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization

is required; and provided further, that nothing contained in this act shall be interpreted to require that the right of an individual to be a shareholder of a corporation or a member of a limited liability company organized under this act, or to organize such a corporation or limited liability company, is dependent upon the present or future existence of an employment relationship between him or her and such corporation or limited liability company, or his or her present or future active participation in any capacity in the production of the income of such corporation or limited liability company or in the performance of the services rendered by such corporation or limited liability company.

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

621.10 Disqualification of member, shareholder, officer, agent, or employee; administrative dissolution.—If any member, officer, shareholder, agent, or employee of a corporation or limited liability company organized under this chapter who has been rendering professional service to the public becomes legally disqualified to render such professional services within this state or accepts employment that, pursuant to existing law, places restrictions or limitations upon that person's continued rendering of such professional services, that person shall sever all employment with, and financial interests in, such corporation or limited liability company forthwith. A corporation's or limited liability company's failure to require compliance with this provision shall constitute a ground for the judicial dissolution of the corporation or limited liability company. When a corporation's or limited liability company's failure to comply with this provision is brought to the attention of the Department of State, the department forthwith shall certify that fact to the Department of Legal Affairs for appropriate action to dissolve the corporation or limited liability company.

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

621.13 Applicability of chapters 607 and 608.—

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

~~(3)~~(4) A professional corporation or limited liability company heretofore or hereafter organized under this act may change its business purpose from the rendering of professional service to provide for any other lawful purpose by amending its certificate of incorporation in the manner required for an original incorporation under chapter 607 or by amending its certificate of organization in the manner required for an original organization under chapter 608. However, such an amendment, when filed with and accepted by the Department of State, shall remove such corporation or limited liability company from the provisions of this chapter including, but not limited to, the right to practice a profession. A change of business purpose shall not

have any effect on the continued existence of the corporation or limited liability company.

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

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

(4) If all claims subject to distribution under this section have been paid in full, any residue shall be paid to the assignor.

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

Approved by the Governor June 17, 2008.

Filed in Office Secretary of State June 17, 2008.