

Senate Bill No. 2330

An act relating to corporations; amending s. 607.0728, F.S.; authorizing certain alternative procedures for the election of members of the board of directors; amending s. 607.0807, F.S.; revising resignation procedures for members of the board of directors; providing that a resignation may be irrevocable under certain conditions; amending s. 607.0809, F.S.; revising procedures for filling a vacancy on the board of directors; amending s. 607.0501, F.S.; deleting a provision providing that there shall be no charge for telephone requests for certain general corporate information; amending s. 607.1406, F.S.; requiring notice to known claimants of a dissolved corporation; amending s. 607.1620, F.S.; requiring that certain corporations furnish annual financial statements to shareholders within a specified period after the close of a fiscal year; providing an exception; providing a means by which such requirement may be satisfied; amending s. 617.01201, F.S.; requiring a document that is electronically transmitted to be in a format that may be retrieved in typewritten or printed form; requiring that a document be executed by a director of the domestic or foreign corporation; authorizing the delivery of a document by electronic transmission to the extent allowed by the Department of State; amending s. 617.0122, F.S.; requiring the department to collect a fee for filing an agent's statement of resignation from an inactive corporation; amending s. 617.0124, F.S.; authorizing a domestic or foreign corporation to correct a document filed by the department within 30 days under certain circumstances; amending s. 617.01401, F.S.; defining the terms "department," "distribution," "mutual benefit corporation," "successor entity," and "voting power"; amending s. 617.0205, F.S.; requiring the incorporators to hold an organizational meeting after incorporation if the initial directors are not named in the articles of incorporation; amending s. 617.0302, F.S.; authorizing a corporation not for profit to make guaranties; amending s. 617.0501, F.S.; deleting a provision providing that there shall be no charge for telephone requests for certain general corporate information; amending s. 617.0503, F.S.; providing that an alien business organization may withdraw its registered agent designation by delivering an application for certificate of withdrawal to the department; amending s. 617.0505, F.S.; prohibiting a corporation not for profit from making distributions to its members; providing an exception; deleting provisions related to the issuance of certificates; amending s. 617.0601, F.S.; correcting a reference to the Solicitation of Contributions Act; providing that certain stock certificates constitute certificates of membership; requiring that a resignation, expulsion, or termination of membership be recorded in the membership book; creating s. 617.0605, F.S.; prohibiting a member of a corporation from transferring a membership under certain circumstances; creating s. 617.0606, F.S.; providing that the resignation of a member does not relieve the member from obligations incurred and commitments made prior to resignation; creating s. 617.0607, F.S.; requiring that a member of a corporation

be terminated or suspended pursuant to a procedure that is fair and reasonable; requiring that written notice given and delivered by certified mail or first-class mail; requiring that a proceeding challenging an expulsion, suspension, or termination be commenced within 1 year after the effective date of such expulsion, suspension, or termination; providing that a member who has been expelled or suspended may be liable to the corporation for dues, assessments, or fees; creating s. 617.0608, F.S.; prohibiting a corporation from purchasing any of its memberships; authorizing a mutual benefit corporation to purchase the membership of a member who resigns or whose membership is terminated; amending s. 617.0701, F.S.; authorizing the holders of at least 5 percent of the voting power of a corporation to call a special meeting of the members under certain circumstances; authorizing a person who signs a demand for a special meeting to call a special meeting of the members under certain circumstances; revising the timeframes relating to written member consent to actions; clarifying the types of corporations that are not subject to certain requirements; amending s. 617.0721, F.S.; authorizing the corporation to reject a proxy action if it has reasonable doubt as the validity of an appointment; providing that members and proxy holders who are not physically present at a meeting may participate by means of remote communication and are deemed to be present at the meeting under certain circumstances; amending s. 617.0725, F.S.; requiring an amendment to the articles of incorporation or the bylaws which adds a greater or lesser quorum or voting requirement to meet certain requirements; creating s. 617.07401, F.S.; prohibiting a person from commencing a proceeding in the right of a domestic or foreign corporation unless the person was a member of the corporation or became a member through transfer by operation of law; requiring that a complaint in a proceeding brought in the right of a domestic or foreign corporation be verified and allege the demand with particularity; authorizing the court to dismiss a derivative proceeding if the court finds that a determination was made in good faith after a reasonable investigation; prohibiting certain proceedings from being discontinued or settled without the approval of the court; authorizing the court to require a plaintiff to pay a defendant's reasonable expenses upon termination of a proceeding, including attorney's fees; amending s. 617.0801, F.S.; providing the duties of the board of directors; amending s. 617.0802, F.S.; providing an exception to the required minimum age of a member of the board of directors for certain corporations; excluding certain corporations from eligibility for such exception; amending s. 617.0806, F.S.; providing that directors may be divided into classes; amending s. 617.0808, F.S.; providing that any member of the board of directors may be removed from office with or without cause by a certain vote; providing that a director who is elected by a class, chapter, or other organizational unit may be removed only by members of that class, chapter, or organizational unit; providing that a director elected or appointed by the board may be removed without cause by a vote of two-thirds of the directors then in office; providing that a director of a corporation described in s. 501(c) of the Internal Reve-

nue Code may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws; amending s. 617.0809, F.S.; providing that a vacancy on the board of directors for a director elected by a class, chapter, unit, or group may be filled only by members of that class, chapter, unit, or group; providing that the term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected; amending s. 617.0824, F.S.; prohibiting certain directors from being counted toward a quorum; amending s. 617.0832, F.S.; deleting a provision that authorizes common or interested directors to be counted in determining the presence of a quorum at a meeting that ratifies a contract between a corporation and one of its directors and any other corporation in which one of its directors is financially interested; providing circumstances under which a conflict-of-interest transaction is authorized; amending s. 617.0833, F.S.; providing an exception to the requirement that a loan not be made by a corporation to its directors; amending s. 617.0834, F.S.; providing that an officer or director of a certain nonprofit organization or agricultural or horticultural organization is immune from civil liability; amending s. 617.1007, F.S.; providing that a restatement of the articles of incorporation of a corporation may include one or more amendments; amending s. 617.1101, F.S.; providing requirements for a plan of merger; creating s. 617.1102, F.S.; providing a limitation on the merger of a corporation not for profit; creating s. 617.1301, F.S.; prohibiting a corporation from making distributions to its members under certain circumstances; creating s. 617.1302, F.S.; providing that a mutual benefit corporation may purchase its memberships only under certain circumstances; authorizing a corporation to make distributions upon dissolution; amending s. 617.1405, F.S.; providing that the name of a dissolved corporation may be available for immediate assumption by another corporation if the dissolved corporation provides the department with an affidavit authorizing such use; creating s. 617.1407, F.S.; authorizing a dissolved corporation or successor entity to execute certain procedures to resolve payment of unknown claims against it; providing that certain claims against a dissolved corporation are barred; providing that a claim may be entered against a dissolved corporation under certain circumstances; creating s. 617.1408, F.S.; authorizing a dissolved corporation or successor entity to execute certain procedures to dispose of known claims against it; requiring that a dissolved corporation deliver written notice of the dissolution to each of its known claimants; providing a procedure under which a dissolved corporation may reject a claim made against it; requiring that a dissolved corporation give notice of the dissolution to persons having known claims that are contingent, conditional, or unmatured; requiring that a dissolved corporation follow certain procedures in offering compensation to a claimant if the claim matures; requiring that a dissolved corporation petition the circuit court to determine the amount and form of security that is sufficient to provide compensation to certain claimants; providing that the giving of notice or making of an offer does not revive a claim that has been barred; providing that directors of a dissolved corporation or governing persons of a successor

entity that has complied with certain procedures are not personally liable to the claimants of a dissolved corporation; providing that certain members of a dissolved corporation are not liable for any claim against the corporation; providing a limit on the aggregate liability of any member of a dissolved corporation; repealing s. 617.1421(6), F.S., relating to the assumption and use of the name of a dissolved corporation; amending s. 617.1422, F.S.; deleting certain requirements for an application to reinstate a corporation that has been dissolved; requiring that a corporation submit a reinstatement form prescribed and furnished by the department; providing that the name of a dissolved corporation is not available for assumption or use by another corporation until 1 year after the effective date of dissolution; providing an exception; amending s. 617.1430, F.S.; revising the requirements for members to dissolve a corporation in circuit court; amending s. 617.1503, F.S.; requiring a foreign corporation to deliver a certificate of existence authenticated by the Secretary of State; amending s. 617.1504, F.S.; requiring that a foreign corporation make application to the department to obtain an amended certificate of authority within 90 days after the occurrence of a change; amending s. 617.1506, F.S.; requiring that an alternate corporate name adopted for use in this state be cross-referenced to the real corporate name in the records of the Division of Corporations; requiring that the corporate name of a foreign corporation be distinguishable from the corporate name of a corporation for profit incorporated or authorized to transact business in this state; amending s. 617.1530, F.S.; requiring that the department receive an authenticated certificate from the Secretary of State before commencing a proceeding to revoke the certificate of authority of a foreign corporation; amending s. 617.1601, F.S.; requiring that a corporation keep a copy of its articles of incorporation; amending s. 617.1602, F.S.; providing that a member of a corporation is entitled to inspect and copy certain records of the corporation at a reasonable location specified by the corporation; requiring that a member give the corporation written notice 10 days before the date on which he or she wishes to inspect and copy records; amending s. 617.1605, F.S.; revising the circumstances under which a corporation is required to furnish a member with its latest annual financial statement; creating s. 617.1703, F.S.; providing for the applicability of certain provisions to corporations regulated under the act; amending s. 617.1803, F.S.; providing for certain changes when a foreign not-for-profit corporation becomes domesticated; amending s. 617.1806, F.S.; revising the provisions for conversion to a corporation not for profit; amending s. 617.1907, F.S.; providing that the repeal or amendment of a statute does not affect certain operations and proceedings; repealing s. 617.2103, F.S., relating to exemptions for certain corporations; providing effective dates.

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

Section 1. Subsection (1) of section 607.0728, Florida Statutes, is amended to read:

607.0728 Voting for directors; cumulative voting.—

(1) Unless otherwise provided in the articles of incorporation, or in a bylaw that fixes a greater voting requirement for the election of directors and that is adopted by the board of directors or shareholders of a corporation having shares listed on a national securities exchange at the time of adoption, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. A bylaw provision or amendment adopted by shareholders which specifies the votes necessary for the election of directors may not be further amended or repealed by the board of directors.

Section 2. Subsection (2) of section 607.0807, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

607.0807 Resignation of directors.—

(2) A resignation is effective when the notice is delivered unless the notice specifies a later effective date or an effective date determined upon the subsequent happening of an event. If a resignation is made effective at a later date or upon the subsequent happening of an event, the board of directors may fill the pending vacancy before the effective date occurs if the board of directors provides that the successor does not take office until the effective date.

(3) A resignation that specifies a later effective date or that is conditioned upon the subsequent happening of an event may provide that the resignation is irrevocable.

Section 3. Subsection (3) of section 607.0809, Florida Statutes, is amended to read:

607.0809 Vacancy on board.—

(3) A vacancy that may will occur at a specific later date (under s. 607.0807(2) by reason of a resignation effective at a later date or upon the subsequent happening of an event ~~under s. 607.0807(2) or otherwise~~) may be filled before the vacancy occurs but the new director may not take office until the vacancy occurs.

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

607.0501 Registered office and registered agent.—

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

Section 5. Subsection (4) of section 607.1406, Florida Statutes, is amended to read:

607.1406 Known claims against dissolved corporation.—

(4) A dissolved corporation or successor entity electing to follow the procedures described in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons with known claims, that are contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such notice shall be in substantially the same form, and sent in the same manner, as described in subsection (2).

Section 6. Effective upon this act becoming a law and applicable to all fiscal years ending on or after December 31, 2008, subsection (3) of section 607.1620, Florida Statutes, is amended, and subsection (5) is added to that section, to read:

607.1620 Financial statements for shareholders.—

(3) Any A corporation required by subsection (1) to furnish annual financial statements to its shareholders shall furnish ~~mail~~ the annual financial statements to each shareholder within 120 days after the close of each fiscal year or within such additional time thereafter as is reasonably necessary to enable the corporation to prepare its financial statements if, for reasons beyond the corporation's control, it is unable to prepare its financial statements within the prescribed period. Thereafter, on written request from a shareholder who was not ~~furnished~~ ~~mailed~~ the statements, the corporation shall furnish ~~mail~~ him or her the latest annual financial statements.

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

Section 7. Subsections (4), (6), and (9) of section 617.01201, Florida Statutes, are amended to read:

617.01201 Filing requirements.—

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

(6) The document must be executed:

(a) ~~By a director the chair or any vice chair of the board of directors of a domestic or foreign corporation, or by its president or by another of its officers;~~

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

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

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

Section 8. Subsection (7) of section 617.0122, Florida Statutes, is amended to read:

617.0122 Fees for filing documents and issuing certificates.—The Department of State shall collect the following fees on documents delivered to the department for filing:

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

Any citizen support organization that is required by rule of the Department of Environmental Protection to be formed as a nonprofit organization and is under contract with the department is exempt from any fees required for incorporation as a nonprofit organization, and the Secretary of State may not assess any such fees if the citizen support organization is certified by the Department of Environmental Protection to the Secretary of State as being under contract with the Department of Environmental Protection.

Section 9. Subsections (1) and (2) of section 617.0124, Florida Statutes, are amended to read:

617.0124 Correcting filed document.—

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

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

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

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

(2) A document is corrected:

(a) By preparing articles of correction that:

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

2. Specify the incorrect statement and the reason it is incorrect or the manner in which the execution was defective; and
3. Correct the incorrect statement or defective execution; and
- (b) By delivering the executed articles of correction to the department of State for filing.

Section 10. Section 617.01401, Florida Statutes, is amended to read:

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

(1) “Articles of incorporation” includes original, amended, and restated articles of incorporation, articles of consolidation, and articles of merger, and all amendments thereto, including documents designated by the laws of this state as charters, and, in the case of a foreign corporation, documents equivalent to articles of incorporation in the jurisdiction of incorporation.

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

(3) “Bylaws” means the code or codes of rules adopted for the regulation or management of the affairs of the corporation irrespective of the name or names by which such rules are designated.

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

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

(6) “Department” means the Department of State.

(7) “Distribution” means the payment of a dividend or any part of the income or profit of a corporation to its members, directors, or officers. A donation or transfer of corporate assets or income to or from another not-for-profit corporation qualified as tax-exempt under s. 501(c) of the Internal Revenue Code or a governmental organization exempt from federal and state income taxes, if such corporation or governmental organization is a member of the corporation making such donation or transfer, is not a distribution for purposes of this chapter.

(8)(6) “Electronic transmission” means any form of communication, not directly involving the physical transmission or transfer of paper, which creates a record that may be retained, retrieved, and reviewed by a recipient thereof and which may be directly reproduced in a comprehensible and legible paper form by such recipient through an automated process. Examples of electronic transmission include, but are not limited to, telegrams,

facsimile transmissions of images, and text that is sent via electronic mail between computers.

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

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

~~(11)~~(9) “Mail” means the United States mail, facsimile transmissions, and private mail carriers handling nationwide mail services.

~~(12)~~(10) “Member” means one having membership rights in a corporation in accordance with the provisions of its articles of incorporation or bylaws or the provisions of this chapter ~~aet.~~

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

~~(14)~~(11) “Person” includes individual and entity.

(15) “Successor entity” means any trust, receivership, or other legal entity that is governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and that exists solely for the purposes of prosecuting and defending suits by or against the dissolved corporation and enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation’s members any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

(16) “Voting power” means the total number of votes entitled to be cast for the election of directors at the time the determination of voting power is made, excluding a vote that is contingent upon the happening of a condition or event that has not yet occurred. If the members of a class are entitled to vote as a class to elect directors, the determination of the voting power of the class is based on the percentage of the number of directors the class is entitled to elect relative to the total number of authorized directors. If the corporation’s directors are not elected by the members, voting power shall, unless otherwise provided in the articles of incorporation or bylaws, be on a one-member, one-vote basis.

Section 11. Subsection (1) of section 617.0205, Florida Statutes, is amended to read:

617.0205 Organizational meeting of directors.—

(1) After incorporation:

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

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

1. To elect directors and complete the organization of the corporation; or
2. To elect a board of directors who shall complete the organization of the corporation.

Section 12. Section 617.0302, Florida Statutes, is amended to read:

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

(1) Have succession by its corporate name for the period set forth in its articles of incorporation.

(2) Sue and be sued and appear and defend in all actions and proceedings in its corporate name to the same extent as a natural person.

(3) Adopt, use, and alter a common corporate seal. However, such seal must always contain the words “corporation not for profit.”

(4) Elect or appoint such officers and agents as its affairs shall require and allow them reasonable compensation.

(5) Adopt, change, amend, and repeal bylaws, not inconsistent with law or its articles of incorporation, for the administration of the affairs of the corporation and the exercise of its corporate powers.

(6) Increase, by a vote of its members cast as the bylaws may direct, the number of its directors so that the number shall not be less than three but may be any number in excess thereof.

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

(8) Conduct its affairs, carry on its operations, and have offices and exercise the powers granted by this act in any state, territory, district, or possession of the United States or any foreign country.

(9) Purchase, take, receive, lease, take by gift, devise, or bequest, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with real or personal property, or any interest therein, wherever situated.

(10) Acquire, enjoy, utilize, and dispose of patents, copyrights, and trademarks and any licenses and other rights or interests thereunder or therein.

(11) Sell, convey, mortgage, pledge, lease, exchange, transfer, or otherwise dispose of all or any part of its property and assets.

(12) Purchase, take, receive, subscribe for, or otherwise acquire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise dispose of and otherwise use and deal in and with, shares and other interests in, or obligations of, other domestic or foreign corporations, whether for profit or not for profit, associations, partnerships, or individuals, or direct or indirect obligations of the United States, or of any other government, state, territory, governmental district, municipality, or of any instrumentality thereof.

(13) Lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds loaned or invested except as prohibited by s. 617.0833.

(14) Make donations for the public welfare or for religious, charitable, scientific, educational, or other similar purposes.

(15) Have and exercise all powers necessary or convenient to effect any or all of the purposes for which the corporation is organized.

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

Section 13. Subsection (4) of section 617.0501, Florida Statutes, is amended to read:

617.0501 Registered office and registered agent.—

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

Section 14. Subsection (12) is added to section 617.0503, Florida Statutes, to read:

617.0503 Registered agent; duties; confidentiality of investigation records.—

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

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

(b) That it is no longer required to maintain a registered agent in this state.

Section 15. Section 617.0505, Florida Statutes, is amended to read:

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

~~(4) Except as authorized in s. 617.1302, A dividend may not be paid, and any part of the income or profit of a corporation may not make distributions be distributed, to its members, directors, or officers.~~

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

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

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

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

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

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

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

Section 16. Subsections (1), (2), and (5) of section 617.0601, Florida Statutes, are amended to read:

617.0601 Members, generally.—

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

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

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

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

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

Section 17. Section 617.0605, Florida Statutes, is created to read:

617.0605 Transfer of membership interests.—

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

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

(3) If transfer rights have been provided for one or more members of a mutual benefit corporation, a restriction on such rights is not binding with

respect to a member holding a membership issued before the adoption of the restriction unless the restriction is approved by the members and the affected member.

Section 18. Section 617.0606, Florida Statutes, is created to read:

617.0606 Resignation of members.—

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

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

Section 19. Section 617.0607, Florida Statutes, is created to read:

617.0607 Termination, expulsion, and suspension.—

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

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

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

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

Section 20. Section 617.0608, Florida Statutes, is created to read:

617.0608 Purchase of memberships.—

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

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

Section 21. Subsections (3), (4), and (6) of section 617.0701, Florida Statutes, are amended to read:

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

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

- (a) The president;
- (b) The chair of the board of directors;
- (c) The board of directors; ~~or such~~
- (d) Other officers or persons as are provided for in the articles of incorporation or the bylaws;
- (e) The holders of at least 5 percent of the voting power of a corporation when one or more written demands for the meeting, which describe the purpose for which the meeting is to be held, are signed, dated, and delivered to a corporate officer; or

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

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

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

(b) Any written consent may be revoked prior to the date that the corporation receives the required number of consents to authorize the proposed action. A revocation is not effective unless in writing and until received by the corporation at its principal office in this state or its principal place of business, or received by the corporate secretary or other officer or agent of the corporation having custody of the book in which proceedings of meetings of members are recorded.

(c) Within 30 ~~10~~ days after obtaining ~~such~~ authorization by written consent, notice must be given to those members who are entitled to vote on the

action but who have not consented in writing. The notice must fairly summarize the material features of the authorized action.

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

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

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

(6) Subsections (1) and (3) do not apply to any corporation that is an association as defined in s. 720.301; a corporation regulated by chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723; or a corporation where membership in such corporation is required pursuant to a document recorded in the county property records.

Section 22. Section 617.0721, Florida Statutes, is amended to read:

617.0721 Voting by members.—

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

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

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

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

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

(a) Participate in the meeting.

(b) Be deemed to be present in person and vote at the meeting if:

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

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

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

~~(4)~~(3) If any corporation, whether for profit or not for profit, is a member of a corporation organized under this chapter ~~aet~~, the chair of the board, president, any vice president, the secretary, or the treasurer of the member corporation, and any such officer or cashier or trust officer of a banking or trust corporation holding such membership, and any like officer of a foreign corporation whether for profit or not for profit, holding membership in a domestic corporation, shall be deemed by the corporation in which membership is held to have the authority to vote on behalf of the member corporation and to execute proxies and written waivers and consents in relation thereto, unless, before a vote is taken or a waiver or consent is acted upon, it appears pursuant to is made to appear ~~is made to appear~~ by a certified copy of the bylaws or resolution of the board of directors or executive committee of the member corporation that such authority does not exist or is vested in some other officer or person. In the absence of such certification, a person executing any such proxies, waivers, or consents or presenting himself or herself at a meeting as one of such officers of a corporate member shall be, for the purposes of this section, conclusively deemed to be duly elected, qualified, and acting as such officer and to be fully authorized. In the case of conflicting representation, the corporate member shall be ~~deemed to be~~ represented by its senior officer, in the order ~~first~~ stated in this subsection.

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

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

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

Section 23. Section 617.0725, Florida Statutes, is amended to read:

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

Section 24. Section 617.07401, Florida Statutes, is created to read:

617.07401 Members' derivative actions.—

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

(2) A complaint in a proceeding brought in the right of a domestic or foreign corporation must be verified and allege with particularity the demand made to obtain action by the board of directors and that the demand was refused or ignored by the board of directors for at least 90 days after the date of the first demand unless, before the expiration of the 90 days, the person was notified in writing that the corporation rejected the demand, or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period. If the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

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

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

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

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

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

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

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

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

Section 25. Section 617.0801, Florida Statutes, is amended to read:

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

Section 26. Subsection (1) of section 617.0802, Florida Statutes, is amended to read:

617.0802 Qualifications of directors.—

(1) Directors must be natural persons who are 18 years of age or older but need not be residents of this state or members of the corporation unless the articles of incorporation or bylaws so require. For a corporation organized according to the provisions of s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, but not for a corporation regulated by chapter 718, chapter 719, chapter 720, chapter 721, or chapter 723 or a corporation for which membership in such corporation is required pursuant to a document recorded in the county property records, one director may be 15 years of age or older if so permitted in the articles of incorporation or bylaws or by resolution of the board of directors. The articles of incorporation or the bylaws may prescribe additional qualifications for directors.

Section 27. Section 617.0806, Florida Statutes, is amended to read:

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

Section 28. Section 617.0808, Florida Statutes, is amended to read:

617.0808 Removal of directors.—

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

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

1. Except as provided in paragraph (i), a majority of all votes of the directors, if the director was elected or appointed by the directors; or

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

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

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

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

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

~~(c)(2)~~ 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.

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

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

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

~~(g)(6)~~ 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 or her possession.

(h)(7) If a director who is removed ~~does~~ shall not relinquish his or her 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 or her office and turn over corporate records upon application of any member.

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

(2) A director of a corporation described in s. 501(c) of the Internal Revenue Code may be removed from office pursuant to procedures provided in the articles of incorporation or the bylaws, and the corporation may provide in the articles of incorporation or the bylaws that it is subject to the provisions of subsection (1).

Section 29. Section 617.0809, Florida Statutes, is amended to read:

617.0809 Board ~~vacancy on board.~~—

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

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

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

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

Section 30. Subsection (1) of section 617.0824, Florida Statutes, is amended to read:

617.0824 Quorum and voting.—

(1) Unless the articles of incorporation or the bylaws require a different number, a quorum of a board of directors consists of a majority of the number

of directors prescribed by the articles of incorporation or the bylaws. Directors younger than 18 years of age may not be counted toward a quorum.

Section 31. Present subsection (2) of section 617.0832, Florida Statutes, is renumbered as subsection (3) and amended, and a new subsection (2) is added to that section, to read:

617.0832 Director conflicts of interest.—

(2) For purposes of paragraph (1)(a) only, a conflict-of-interest transaction is authorized, approved, or ratified if it receives the affirmative vote of a majority of the directors on the board of directors, or on the committee, who have no relationship or interest in the transaction described in subsection (1), but a transaction may not be authorized, approved, or ratified under this section by a single director. If a majority of the directors who have no relationship or interest in the transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose of taking action under this section. The presence of, or a vote cast by, a director having a relationship or interest in the transaction does not affect the validity of any action taken under paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (1), but such presence or vote of such a director may be counted for purposes of determining whether the transaction is approved under other sections of this chapter.

(3)(2) For purposes of paragraph (1)(b), a conflict-of-interest transaction is authorized, approved, or ratified if it receives the vote of a majority in interest of the members entitled to vote under this subsection. A director who has a relationship or interest in the transaction described in subsection (1) may not vote to determine whether to authorize, approve, or ratify a conflict-of-interest transaction under paragraph (1)(b). However, the vote of that director is counted in determining whether the transaction is approved under other sections of this chapter. A majority in interest of the members entitled to vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section. As used in this subsection, the term “majority in interest” refers to a majority of the voting shares or other voting units allotted to the members. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction.

Section 32. Section 617.0833, Florida Statutes, is amended to read:

617.0833 Loans to directors or officers.—Loans, other than through the purchase of bonds, debentures, or similar obligations of the type customarily sold in public offerings, or through ordinary deposit of funds in a bank, may not be made by a corporation to its directors or officers, or to any other corporation, firm, association, or other entity in which one or more of its directors or officers is a director or officer or holds a substantial financial interest, except a loan by one corporation which is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, to another corporation which is exempt from federal income taxation under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended. A loan made in violation of this section is a violation of the duty to the

corporation of the directors or officers authorizing it or participating in it, but the obligation of the borrower with respect to the loan is shall not be affected ~~thereby~~.

Section 33. Subsection (1) of section 617.0834, Florida Statutes, is amended to read:

617.0834 Officers and directors of certain corporations and associations not for profit; immunity from civil liability.—

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

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

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

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

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

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

Section 34. Subsections (2) and (3) of section 617.1007, Florida Statutes, are amended to read:

617.1007 Restated articles of incorporation.—

(2) The restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment requiring member approval, it must be adopted as provided in s. 617.1002.

(3) A corporation restating its articles of incorporation shall deliver to the department of State for filing articles of restatement, executed in accordance with ~~the provisions~~ of s. 617.01201, setting forth the name of the corporation

and the text of the restated articles of incorporation together with a certificate setting forth:

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

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

Section 35. Subsection (2) of section 617.1101, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

617.1101 Plan of merger.—

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

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

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

(c) A statement of any changes in the articles of incorporation of the surviving corporation to be effected by such merger; and

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

(3) The plan of merger may set forth:

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

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

(c) Other provisions relating to the merger.

Section 36. Section 617.1102, Florida Statutes, is created to read:

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

Section 37. Section 617.1301, Florida Statutes, is created to read:

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

Section 38. Section 617.1302, Florida Statutes, is created to read:

617.1302 Authorized distributions.—

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

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

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

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

Section 39. Subsection (4) of section 617.1405, Florida Statutes, is amended to read:

617.1405 Effect of dissolution.—

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

Section 40. Section 617.1407, Florida Statutes, is created to read:

617.1407 Unknown claims against dissolved corporation.—

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

(a) A dissolved corporation or successor entity may file notice of its dissolution with the department on the form prescribed by the department and request that persons having claims against the corporation which are not known to the corporation or successor entity present them in accordance with the notice. The notice must:

1. State the name of the corporation and the date of dissolution;
2. Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and
3. State that a claim against the corporation under this subsection is barred unless a proceeding to enforce the claim is commenced within 4 years after the filing of the notice.

(b) A dissolved corporation or successor entity may, within 10 days after filing articles of dissolution with the department, publish a "Notice of Corporate Dissolution." The notice must appear once a week for 2 consecutive weeks in a newspaper of general circulation in the county in the state in which the corporation has its principal office, if any, or, if none, in a county

in the state in which the corporation owns real or personal property. Such newspaper shall meet the requirements as are prescribed by law for such purposes. The notice must:

1. State the name of the corporation and the date of dissolution;
2. Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and
3. State that a claim against the corporation under this subsection is barred unless a proceeding to enforce the claim is commenced within 4 years after the date of the second consecutive weekly publication of the notice.

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

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

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

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

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

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

Section 41. Section 617.1408, Florida Statutes, is created to read:

617.1408 Known claims against dissolved corporation.—

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

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

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

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

1. The amount that is admitted, which may be as of a given date; and
2. Any interest obligation if fixed by an instrument of indebtedness;

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

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

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

(3) A dissolved corporation or successor entity may reject, in whole or in part, any claim made by a claimant pursuant to this section by mailing notice of such rejection to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. The notice must be accompanied by a copy of this section.

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

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

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

(7) A dissolved corporation or successor entity that has given notice in accordance with subsection (2) shall petition the circuit court in the county

where the corporation's principal office is located or was located on the effective date of dissolution to determine the amount and form of security which is sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

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

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

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

(b) Post the security offered and not rejected pursuant to subsection (5);

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

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

(10) A dissolved corporation or successor entity that has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims and obligations, including all contingent, conditional, or unmatured claims known to the corporation or the successor entity and all claims that are known to the dissolved corporation or the successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full, and any provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available for payment thereof. Any remaining funds shall be distributed in accordance with s. 617.1406.

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

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

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

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

Section 42. Subsection (6) of section 617.1421, Florida Statutes, is repealed.

Section 43. Section 617.1422, Florida Statutes, is amended to read:

617.1422 Reinstatement following administrative dissolution.—

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

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

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

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

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

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

(2) If the department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall file the document, cancel the certificate of dissolution, and

reinstate the corporation effective ~~on the date which the reinstatement document is filed.~~

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

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

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

Section 44. Subsection (2) of section 617.1430, Florida Statutes, is amended to read:

617.1430 Grounds for judicial dissolution.—A circuit court may dissolve a corporation:

(2) In a proceeding brought by at least 50 members or members holding at least 10 percent of the voting power, whichever is less, or by a member or group or percentage of members as otherwise provided in the articles of incorporation or bylaws, or by a director or any person authorized in the articles of incorporation, by a member if it is established that:

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

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

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

Section 45. Subsection (2) of section 617.1503, Florida Statutes, is amended to read:

617.1503 Application for certificate of authority.—

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

Section 46. Subsection (2) of section 617.1504, Florida Statutes, is amended to read:

617.1504 Amended certificate of authority.—

(2) Such application shall be made within 90 ~~30~~ days after the occurrence of any change mentioned in subsection (1), shall be made on forms prescribed by the department of State, shall be executed and filed in the same manner as an original application for authority, and shall set forth:

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

(b) The jurisdiction of its incorporation;

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

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

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

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

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

Section 47. Section 617.1506, Florida Statutes, is amended to read:

617.1506 Corporate name of foreign corporation.—

(1) A foreign corporation may ~~is not entitled to~~ file an application for a certificate of authority unless the corporate name of such corporation satisfies the requirements of s. 617.0401. To obtain or maintain a certificate of authority to transact business in this state, the foreign corporation:

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

(b) May use an alternate name to transact business in this state if its real name is unavailable. Any alternate corporate name adopted for use in this state must be cross-referenced to the real corporate name in the records of the Division of Corporations. If the real corporate name of the corporation becomes available in this state or if the corporation chooses to change its

alternate name and it delivers to the Department of State, for filing, a copy of the resolution of its board of directors, changing or withdrawing the alternate name and executed as required by s. 617.01201, must be delivered for filing adopting an alternate name.

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

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

(b)(a) The alternate name of another foreign corporation authorized to transact business in this state.

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

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

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

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

Section 48. Subsection (6) of section 617.1530, Florida Statutes, is amended to read:

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

(6) The department of State receives a duly authenticated certificate from the secretary of state or other official having custody of corporate records in the jurisdiction under the law of which the foreign corporation is incorporated stating that it has been dissolved or disappeared as the result of a merger.

Section 49. Paragraph (a) of subsection (5) of section 617.1601, Florida Statutes, is amended to read:

617.1601 Corporate records.—

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

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

Section 50. Subsections (1), (2), and (4) of section 617.1602, Florida Statutes, are amended to read:

617.1602 Inspection of records by members.—

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

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

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

(b) Accounting records of the corporation.

(c) The record of members.

(d) Any other books and records.

(4) This section does not affect:

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

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

Section 51. Section 617.1605, Florida Statutes, is amended to read:

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

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

Section 52. Section 617.1703, Florida Statutes, is created to read:

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

Section 53. Subsection (8) is added to section 617.1803, Florida Statutes, to read:

617.1803 Domestication of foreign not-for-profit corporations.—

(8) When a domestication becomes effective:

(a) The title to all real and personal property, both tangible and intangible, of the foreign corporation remains in the domesticated corporation without reversion or impairment;

(b) The liabilities of the foreign corporation remain the liabilities of the domesticated corporation;

(c) An action or proceeding against the foreign corporation continues against the domesticated corporation as if the domestication had not occurred;

(d) The articles of incorporation attached to the certificate of domestication constitute the articles of incorporation of the domesticated corporation; and

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

Section 54. Section 617.1806, Florida Statutes, is amended to read:

617.1806 Conversion to corporation not for profit; petition and contents.—A petition for conversion to a corporation not for profit pursuant to s. 617.1805 shall be accompanied by the written consent of all the shareholders authorizing the change in the corporate nature and directing an authorized officer to file such petition before the court, together with a statement agreeing to accept all the property of the petitioning corporation and agreeing to assume and pay all its indebtedness and liabilities, and the proposed

articles of incorporation signed by the president and secretary of the petitioning corporation which shall set forth the provisions required in original articles of incorporation by s. 617.0202.

Section 55. Section 617.1907, Florida Statutes, is amended to read:

617.1907 Effect of repeal or amendment of prior acts.—

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

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

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

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

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

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

Section 56. Section 617.2103, Florida Statutes, is repealed.

Section 57. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect October 1, 2009.

Approved by the Governor June 18, 2009.

Filed in Office Secretary of State June 18, 2009.