

By the Committees on Judiciary; and Commerce; and Senators
Aronberg, Bennett, Fasano, and Detert

590-03446-09

20091288c2

1 A bill to be entitled
2 An act relating to corporations; amending s. 607.0501,
3 F.S.; deleting a provision providing that there shall
4 be no charge for telephone requests for certain
5 general corporate information; amending s. 607.1406,
6 F.S.; requiring notice to known claimants of a
7 dissolved corporation; amending s. 607.1620, F.S.;
8 requiring that certain corporations furnish annual
9 financial statements to shareholders within a
10 specified period after the close of a fiscal year;
11 providing an exception; providing a means by which
12 such requirement may be satisfied; amending s.
13 617.01201, F.S.; requiring a document that is
14 electronically transmitted to be in a format that may
15 be retrieved in typewritten or printed form; requiring
16 that a document be executed by a director of the
17 domestic or foreign corporation; authorizing the
18 delivery of a document by electronic transmission to
19 the extent allowed by the Department of State;
20 amending s. 617.0122, F.S.; requiring the department
21 to collect a fee for filing an agent's statement of
22 resignation from an inactive corporation; amending s.
23 617.0124, F.S.; authorizing a domestic or foreign
24 corporation to correct a document filed by the
25 department within 30 days under certain circumstances;
26 amending s. 617.01401, F.S.; defining the terms
27 "department," "distribution," "mutual benefit
28 corporation," "successor entity," and "voting power";
29 amending s. 617.0205, F.S.; requiring the

590-03446-09

20091288c2

30 incorporators to hold an organizational meeting after
31 incorporation if the initial directors are not named
32 in the articles of incorporation; amending s.
33 617.0302, F.S.; authorizing a corporation not for
34 profit to make guaranties; amending s. 617.0501, F.S.;
35 deleting a provision providing that there shall be no
36 charge for telephone requests for certain general
37 corporate information; amending s. 617.0503, F.S.;
38 providing that an alien business organization may
39 withdraw its registered agent designation by
40 delivering an application for certificate of
41 withdrawal to the department; amending s. 617.0505,
42 F.S.; prohibiting a corporation not for profit from
43 making distributions to its members; providing an
44 exception; deleting provisions related to the issuance
45 of certificates; amending s. 617.0601, F.S.;
46 correcting a reference to the Solicitation of
47 Contributions Act; providing that certain stock
48 certificates constitute certificates of membership;
49 requiring that a resignation, expulsion, or
50 termination of membership be recorded in the
51 membership book; creating s. 617.0605, F.S.;
52 prohibiting a member of a corporation from
53 transferring a membership under certain circumstances;
54 creating s. 617.0606, F.S.; providing that the
55 resignation of a member does not relieve the member
56 from obligations incurred and commitments made prior
57 to resignation; creating s. 617.0607, F.S.; requiring
58 that a member of a corporation be terminated or

590-03446-09

20091288c2

59 suspended pursuant to a procedure that is fair and
60 reasonable; requiring that written notice given and
61 delivered by certified mail or first-class mail;
62 requiring that a proceeding challenging an expulsion,
63 suspension, or termination be commenced within 1 year
64 after the effective date of such expulsion,
65 suspension, or termination; providing that a member
66 who has been expelled or suspended may be liable to
67 the corporation for dues, assessments, or fees;
68 creating s. 617.0608, F.S.; prohibiting a corporation
69 from purchasing any of its memberships; authorizing a
70 mutual benefit corporation to purchase the membership
71 of a member who resigns or whose membership is
72 terminated; amending s. 617.0701, F.S.; authorizing
73 the holders of at least 5 percent of the voting power
74 of a corporation to call a special meeting of the
75 members under certain circumstances; authorizing a
76 person who signs a demand for a special meeting to
77 call a special meeting of the members under certain
78 circumstances; revising the timeframes relating to
79 written member consent to actions; clarifying the
80 types of corporations that are not subject to certain
81 requirements; amending s. 617.0721, F.S.; authorizing
82 the corporation to reject a proxy action if it has
83 reasonable doubt as the validity of an appointment;
84 providing that members and proxy holders who are not
85 physically present at a meeting may participate by
86 means of remote communication and are deemed to be
87 present at the meeting under certain circumstances;

590-03446-09

20091288c2

88 amending s. 617.0725, F.S.; requiring an amendment to
89 the articles of incorporation or the bylaws which adds
90 a greater or lesser quorum or voting requirement to
91 meet certain requirements; creating s. 617.07401,
92 F.S.; prohibiting a person from commencing a
93 proceeding in the right of a domestic or foreign
94 corporation unless the person was a member of the
95 corporation or became a member through transfer by
96 operation of law; requiring that a complaint in a
97 proceeding brought in the right of a domestic or
98 foreign corporation be verified and allege the demand
99 with particularity; authorizing the court to dismiss a
100 derivative proceeding if the court finds that a
101 determination was made in good faith after a
102 reasonable investigation; prohibiting certain
103 proceedings from being discontinued or settled without
104 the approval of the court; authorizing the court to
105 require a plaintiff to pay a defendant's reasonable
106 expenses upon termination of a proceeding, including
107 attorney's fees; amending s. 617.0801, F.S.; providing
108 the duties of the board of directors; amending s.
109 617.0802, F.S.; providing an exception to the required
110 minimum age of a member of the board of directors for
111 certain corporations; excluding certain corporations
112 from eligibility for such exception; amending s.
113 617.0806, F.S.; providing that directors may be
114 divided into classes; amending s. 617.0808, F.S.;
115 providing that any member of the board of directors
116 may be removed from office with or without cause by a

590-03446-09

20091288c2

117 certain vote; providing that a director who is elected
118 by a class, chapter, or other organizational unit may
119 be removed only by members of that class, chapter, or
120 organizational unit; providing that a director elected
121 or appointed by the board may be removed without cause
122 by a vote of two-thirds of the directors then in
123 office; providing that a director of a corporation
124 described in s. 501(c) of the Internal Revenue Code
125 may be removed from office pursuant to procedures
126 provided in the articles of incorporation or the
127 bylaws; amending s. 617.0809, F.S.; providing that a
128 vacancy on the board of directors for a director
129 elected by a class, chapter, unit, or group may be
130 filled only by members of that class, chapter, unit,
131 or group; providing that the term of a director
132 elected or appointed to fill a vacancy expires at the
133 next annual meeting at which directors are elected;
134 amending s. 617.0824, F.S.; prohibiting certain
135 directors from being counted toward a quorum; amending
136 s. 617.0832, F.S.; deleting a provision that
137 authorizes common or interested directors to be
138 counted in determining the presence of a quorum at a
139 meeting that ratifies a contract between a corporation
140 and one of its directors and any other corporation in
141 which one of its directors is financially interested;
142 providing circumstances under which a conflict-of-
143 interest transaction is authorized; amending s.
144 617.0833, F.S.; providing an exception to the
145 requirement that a loan not be made by a corporation

590-03446-09

20091288c2

146 to its directors; amending s. 617.0834, F.S.;

147 providing that an officer or director of a certain

148 nonprofit organization or agricultural or

149 horticultural organization is immune from civil

150 liability; amending s. 617.1007, F.S.; providing that

151 a restatement of the articles of incorporation of a

152 corporation may include one or more amendments;

153 amending s. 617.1101, F.S.; providing requirements for

154 a plan of merger; creating s. 617.1102, F.S.;

155 providing a limitation on the merger of a corporation

156 not for profit; creating s. 617.1301, F.S.;

157 prohibiting a corporation from making distributions to

158 its members under certain circumstances; creating s.

159 617.1302, F.S.; providing that a mutual benefit

160 corporation may purchase its memberships only under

161 certain circumstances; authorizing a corporation to

162 make distributions upon dissolution; amending s.

163 617.1405, F.S.; providing that the name of a dissolved

164 corporation may be available for immediate assumption

165 by another corporation if the dissolved corporation

166 provides the department with an affidavit authorizing

167 such use; creating s. 617.1407, F.S.; authorizing a

168 dissolved corporation or successor entity to execute

169 certain procedures to resolve payment of unknown

170 claims against it; providing that certain claims

171 against a dissolved corporation are barred; providing

172 that a claim may be entered against a dissolved

173 corporation under certain circumstances; creating s.

174 617.1408, F.S.; authorizing a dissolved corporation or

590-03446-09

20091288c2

175 successor entity to execute certain procedures to
176 dispose of known claims against it; requiring that a
177 dissolved corporation deliver written notice of the
178 dissolution to each of its known claimants; providing
179 a procedure under which a dissolved corporation may
180 reject a claim made against it; requiring that a
181 dissolved corporation give notice of the dissolution
182 to persons having known claims that are contingent,
183 conditional, or unmatured; requiring that a dissolved
184 corporation follow certain procedures in offering
185 compensation to a claimant if the claim matures;
186 requiring that a dissolved corporation petition the
187 circuit court to determine the amount and form of
188 security that is sufficient to provide compensation to
189 certain claimants; providing that the giving of notice
190 or making of an offer does not revive a claim that has
191 been barred; providing that directors of a dissolved
192 corporation or governing persons of a successor entity
193 that has complied with certain procedures are not
194 personally liable to the claimants of a dissolved
195 corporation; providing that certain members of a
196 dissolved corporation are not liable for any claim
197 against the corporation; providing a limit on the
198 aggregate liability of any member of a dissolved
199 corporation; repealing s. 617.1421(6), F.S., relating
200 to the assumption and use of the name of a dissolved
201 corporation; amending s. 617.1422, F.S.; deleting
202 certain requirements for an application to reinstate a
203 corporation that has been dissolved; requiring that a

590-03446-09

20091288c2

204 corporation submit a reinstatement form prescribed and
205 furnished by the department; providing that the name
206 of a dissolved corporation is not available for
207 assumption or use by another corporation until 1 year
208 after the effective date of dissolution; providing an
209 exception; amending s. 617.1430, F.S.; revising the
210 requirements for members to dissolve a corporation in
211 circuit court; amending s. 617.1503, F.S.; requiring a
212 foreign corporation to deliver a certificate of
213 existence authenticated by the Secretary of State;
214 amending s. 617.1504, F.S.; requiring that a foreign
215 corporation make application to the department to
216 obtain an amended certificate of authority within 90
217 days after the occurrence of a change; amending s.
218 617.1506, F.S.; requiring that an alternate corporate
219 name adopted for use in this state be cross-referenced
220 to the real corporate name in the records of the
221 Division of Corporations; requiring that the corporate
222 name of a foreign corporation be distinguishable from
223 the corporate name of a corporation for profit
224 incorporated or authorized to transact business in
225 this state; amending s. 617.1530, F.S.; requiring that
226 the department receive an authenticated certificate
227 from the Secretary of State before commencing a
228 proceeding to revoke the certificate of authority of a
229 foreign corporation; amending s. 617.1601, F.S.;
230 requiring that a corporation keep a copy of its
231 articles of incorporation; amending s. 617.1602, F.S.;
232 providing that a member of a corporation is entitled

590-03446-09

20091288c2

233 to inspect and copy certain records of the corporation
234 at a reasonable location specified by the corporation;
235 requiring that a member give the corporation written
236 notice 10 days before the date on which he or she
237 wishes to inspect and copy records; amending s.
238 617.1605, F.S.; revising the circumstances under which
239 a corporation is required to furnish a member with its
240 latest annual financial statement; creating s.
241 617.1703, F.S.; providing for the applicability of
242 certain provisions to corporations regulated under the
243 act; amending s. 617.1803, F.S.; providing for certain
244 changes when a foreign not-for-profit corporation
245 becomes domesticated; amending s. 617.1806, F.S.;
246 revising the provisions for conversion to a
247 corporation not for profit; amending s. 617.1907,
248 F.S.; providing that the repeal or amendment of a
249 statute does not affect certain operations and
250 proceedings; repealing s. 617.2103, F.S., relating to
251 exemptions for certain corporations; providing
252 effective dates.

253
254 Be It Enacted by the Legislature of the State of Florida:

255
256 Section 1. Subsection (4) of section 607.0501, Florida
257 Statutes, is amended to read:

258 607.0501 Registered office and registered agent.—

259 (4) The Department of State shall maintain an accurate
260 record of the registered agents and registered offices for the
261 service of process and shall furnish any information disclosed

590-03446-09

20091288c2

262 thereby promptly upon request and payment of the required fee.

263 ~~There shall be no charge for telephone requests for general~~
264 ~~corporate information, including the corporation's status, names~~
265 ~~of officers and directors, address of principal place of~~
266 ~~business, and name and address of registered agent.~~

267 Section 2. Subsection (4) of section 607.1406, Florida
268 Statutes, is amended to read:

269 607.1406 Known claims against dissolved corporation.-

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

279 Section 3. Effective upon this act becoming a law and
280 applicable to all fiscal years ending on or after December 31,
281 2008, subsection (3) of section 607.1620, Florida Statutes, is
282 amended, and subsection (5) is added to that section, to read:

283 607.1620 Financial statements for shareholders.-

284 (3) Any A corporation required by subsection (1) to furnish
285 annual financial statements to its shareholders shall furnish
286 ~~mail~~ the annual financial statements to each shareholder within
287 120 days after the close of each fiscal year or within such
288 additional time thereafter as is reasonably necessary to enable
289 the corporation to prepare its financial statements if, for
290 reasons beyond the corporation's control, it is unable to

590-03446-09

20091288c2

291 prepare its financial statements within the prescribed period.
292 Thereafter, on written request from a shareholder who was not
293 furnished ~~mailed~~ the statements, the corporation shall furnish
294 ~~mail~~ him or her the latest annual financial statements.

295 (5) The requirement to furnish annual financial statements
296 as described in this section shall be satisfied by sending the
297 annual financial statements by mail or by electronic
298 transmission. If a corporation has an outstanding class of
299 securities registered under s. 12 of the Securities Exchange Act
300 of 1934, as amended, the requirement to furnish annual financial
301 statements may be satisfied by complying with 17 C.F.R. s.
302 240.14a-16, as amended, with respect to the obligation of a
303 corporation to furnish an annual report to shareholders pursuant
304 to 17 C.F.R. s. 240.14a-3(b), as amended.

305 Section 4. Subsections (4), (6), and (9) of section
306 617.01201, Florida Statutes, are amended to read:

307 617.01201 Filing requirements.—

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

312 (6) The document must be executed:

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

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

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

590-03446-09

20091288c2

320 fiduciary.

321 (9) The document must be delivered to the ~~office of the~~
322 ~~department of State~~ for filing. Delivery may be made by
323 electronic transmission if and to the extent allowed by the
324 department. If the document is filed in typewritten or printed
325 form and not transmitted electronically, the department may
326 require that and ~~may be accompanied by~~ one exact or conformed
327 copy be delivered with the document, ~~(except as provided in s.~~
328 ~~617.1508. The document),~~ and must be accompanied by the correct
329 filing fee and any other tax or penalty required by ~~this act or~~
330 ~~other~~ law.

331 Section 5. Subsection (7) of section 617.0122, Florida
332 Statutes, is amended to read:

333 617.0122 Fees for filing documents and issuing
334 certificates.—The Department of State shall collect the
335 following fees on documents delivered to the department for
336 filing:

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

339

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

590-03446-09

20091288c2

349 Section 6. Subsections (1) and (2) of section 617.0124,
350 Florida Statutes, are amended to read:

351 617.0124 Correcting filed document.—

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

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

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

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

360 (2) A document is corrected:

361 (a) By preparing articles of correction that:

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

364 2. Specify the incorrect statement and the reason it is
365 incorrect or the manner in which the execution was defective;
366 and

367 3. Correct the incorrect statement or defective execution;
368 and

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

371 Section 7. Section 617.01401, Florida Statutes, is amended
372 to read:

373 617.01401 Definitions.—As used in this chapter ~~act, unless~~
374 ~~the context otherwise requires~~, the term:

375 (1) "Articles of incorporation" includes original, amended,
376 and restated articles of incorporation, articles of
377 consolidation, and articles of merger, and all amendments

590-03446-09

20091288c2

378 thereto, including documents designated by the laws of this
379 state as charters, and, in the case of a foreign corporation,
380 documents equivalent to articles of incorporation in the
381 jurisdiction of incorporation.

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

386 (3) "Bylaws" means the code or codes of rules adopted for
387 the regulation or management of the affairs of the corporation
388 irrespective of the name or names by which such rules are
389 designated.

390 (4) "Corporation" or "domestic corporation" means a
391 corporation not for profit, subject to the provisions of this
392 chapter ~~act~~, except a foreign corporation.

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

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

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

590-03446-09

20091288c2

407 (8)~~(6)~~ "Electronic transmission" means any form of
408 communication, not directly involving the physical transmission
409 or transfer of paper, which creates a record that may be
410 retained, retrieved, and reviewed by a recipient ~~thereof~~ and
411 which may be directly reproduced in a comprehensible and legible
412 paper form by such recipient through an automated process.
413 Examples of electronic transmission include, but are not limited
414 to, telegrams, facsimile transmissions of images, and text that
415 is sent via electronic mail between computers.

416 (9)~~(7)~~ "Foreign corporation" means a corporation not for
417 profit organized under laws other than the laws of this state.

418 (10)~~(8)~~ "Insolvent" means the inability of a corporation to
419 pay its debts as they become due in the usual course of its
420 affairs.

421 (11)~~(9)~~ "Mail" means the United States mail, facsimile
422 transmissions, and private mail carriers handling nationwide
423 mail services.

424 (12)~~(10)~~ "Member" means one having membership rights in a
425 corporation in accordance with the provisions of its articles of
426 incorporation or bylaws or the provisions of this chapter ~~act~~.

427 (13) "Mutual benefit corporation" means a domestic
428 corporation that is not organized primarily or exclusively for
429 religious purposes; is not recognized as exempt under s.
430 501(c) (3) of the Internal Revenue Code; and is not organized for
431 a public or charitable purpose that is required upon its
432 dissolution to distribute its assets to the United States, a
433 state, a local subdivision thereof, or a person that is
434 recognized as exempt under s. 501(c) (3) of the Internal Revenue
435 Code. The term does not include an association organized under

590-03446-09

20091288c2

436 chapter 718, chapter 719, chapter 720, or chapter 721, or any
437 corporation where membership in the corporation is required
438 pursuant to a document recorded in county property records.

439 (14)~~(11)~~ "Person" includes individual and entity.

440 (15) "Successor entity" means any trust, receivership, or
441 other legal entity that is governed by the laws of this state to
442 which the remaining assets and liabilities of a dissolved
443 corporation are transferred and that exists solely for the
444 purposes of prosecuting and defending suits by or against the
445 dissolved corporation and enabling the dissolved corporation to
446 settle and close the business of the dissolved corporation, to
447 dispose of and convey the property of the dissolved corporation,
448 to discharge the liabilities of the dissolved corporation, and
449 to distribute to the dissolved corporation's members any
450 remaining assets, but not for the purpose of continuing the
451 business for which the dissolved corporation was organized.

452 (16) "Voting power" means the total number of votes
453 entitled to be cast for the election of directors at the time
454 the determination of voting power is made, excluding a vote that
455 is contingent upon the happening of a condition or event that
456 has not yet occurred. If the members of a class are entitled to
457 vote as a class to elect directors, the determination of the
458 voting power of the class is based on the percentage of the
459 number of directors the class is entitled to elect relative to
460 the total number of authorized directors. If the corporation's
461 directors are not elected by the members, voting power shall,
462 unless otherwise provided in the articles of incorporation or
463 bylaws, be on a one-member, one-vote basis.

464 Section 8. Subsection (1) of section 617.0205, Florida

590-03446-09

20091288c2

465 Statutes, is amended to read:

466 617.0205 Organizational meeting of directors.—

467 (1) After incorporation:

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

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

477 1. To elect directors and complete the organization of the
478 corporation; or

479 2. To elect a board of directors who shall complete the
480 organization of the corporation.

481 Section 9. Section 617.0302, Florida Statutes, is amended
482 to read:

483 617.0302 Corporate powers.—Every corporation not for profit
484 organized under this chapter ~~act~~, unless otherwise provided in
485 its articles of incorporation or bylaws, shall have power to:

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

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

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

590-03446-09

20091288c2

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

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

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

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

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

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

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

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

522 (12) Purchase, take, receive, subscribe for, or otherwise

590-03446-09

20091288c2

523 acquire, own, hold, vote, use, employ, sell, mortgage, lend,
524 pledge, or otherwise dispose of and otherwise use and deal in
525 and with, shares and other interests in, or obligations of,
526 other domestic or foreign corporations, whether for profit or
527 not for profit, associations, partnerships, or individuals, or
528 direct or indirect obligations of the United States, or of any
529 other government, state, territory, governmental district,
530 municipality, or of any instrumentality thereof.

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

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

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

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

548 Section 10. Subsection (4) of section 617.0501, Florida
549 Statutes, is amended to read:

550 617.0501 Registered office and registered agent.—

551 (4) The Department of State shall maintain an accurate

590-03446-09

20091288c2

552 record of the registered agents and registered offices for the
553 service of process and shall furnish any information disclosed
554 thereby promptly upon request and payment of the required fee.
555 ~~There shall be no charge for telephone requests for general~~
556 ~~corporate information, including the corporation's status, names~~
557 ~~of officers and directors, address of principal place of~~
558 ~~business, and name and address of resident agent.~~

559 Section 11. Subsection (12) is added to section 617.0503,
560 Florida Statutes, to read:

561 617.0503 Registered agent; duties; confidentiality of
562 investigation records.—

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

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

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

572 Section 12. Section 617.0505, Florida Statutes, is amended
573 to read:

574 617.0505 Distributions; exceptions ~~Payment of dividends and~~
575 ~~distribution of income to members prohibited; issuance of~~
576 ~~certificates of membership; effect of stock issued under prior~~
577 ~~law.—~~

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

590-03446-09

20091288c2

581 directors, or officers.

582 (1) A mutual benefit corporation, such as a private club
583 that is established for social, pleasure, or recreational
584 purposes and that is organized as a corporation of which the
585 equity interests are held by the members, may, subject to s.
586 617.1302, purchase the equity membership interest of any member,
587 and the payment for such interest is not a distribution for
588 purposes of this section.

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

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

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

609 (5) A corporation that is regulated by chapter 718, chapter

590-03446-09

20091288c2

610 719, chapter 720, chapter 721, or chapter 723, or a corporation
611 where membership in such corporation is required pursuant to a
612 document recorded in the county property records, may make
613 refunds to its members, giving credits to its members,
614 disbursing insurance proceeds to its members, or disbursing or
615 paying settlements to its members without violating this
616 section.

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

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

623 Section 13. Subsections (1), (2), and (5) of section
624 617.0601, Florida Statutes, are amended to read:

625 617.0601 Members, generally.—

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

634 (b) The articles of incorporation or bylaws of any
635 corporation not for profit that maintains chapters or affiliates
636 may grant representatives of such chapters or affiliates the
637 right to vote in conjunction with the board of directors of the
638 corporation notwithstanding applicable quorum or voting

590-03446-09

20091288c2

639 requirements of this chapter ~~act~~ if the corporation is
640 registered with the department ~~of State~~ pursuant to ss. 496.401-
641 496.424 ~~ss. 496.001-496.011~~, the Solicitation of Contributions
642 ~~Funds~~ Act.

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

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

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

657 Section 14. Section 617.0605, Florida Statutes, is created
658 to read:

659 617.0605 Transfer of membership interests.-

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

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

667 (3) If transfer rights have been provided for one or more

590-03446-09

20091288c2

668 members of a mutual benefit corporation, a restriction on such
669 rights is not binding with respect to a member holding a
670 membership issued before the adoption of the restriction unless
671 the restriction is approved by the members and the affected
672 member.

673 Section 15. Section 617.0606, Florida Statutes, is created
674 to read:

675 617.0606 Resignation of members.-

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

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

684 Section 16. Section 617.0607, Florida Statutes, is created
685 to read:

686 617.0607 Termination, expulsion, and suspension.-

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

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

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

590-03446-09

20091288c2

697 effective date of the expulsion, suspension, or termination.

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

702 Section 17. Section 617.0608, Florida Statutes, is created
703 to read:

704 617.0608 Purchase of memberships.-

705 (1) A corporation may not purchase any of its memberships
706 or any right arising from membership except as provided in s.
707 617.0505 or subsection (2).

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

712 Section 18. Subsections (3), (4), and (6) of section
713 617.0701, Florida Statutes, are amended to read:

714 617.0701 Meetings of members, generally; failure to hold
715 annual meeting; special meeting; consent to corporate actions
716 without meetings; waiver of notice of meetings.-

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

719 (a) The president;~~;~~

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

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

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

724 (e) The holders of at least 5 percent of the voting power
725 of a corporation when one or more written demands for the

590-03446-09

20091288c2

726 meeting, which describe the purpose for which the meeting is to
727 be held, are signed, dated, and delivered to a corporate
728 officer; or

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

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

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

590-03446-09

20091288c2

755 delivered in the manner required by this section.

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

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

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

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

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

783 (6) Subsections (1) and (3) do not apply to any corporation

590-03446-09

20091288c2

784 that is an association as defined in s. 720.301; a corporation
785 regulated by chapter 718, chapter 719, chapter 720, chapter 721,
786 or chapter 723; or a corporation where membership in such
787 corporation is required pursuant to a document recorded in the
788 county property records.

789 Section 19. Section 617.0721, Florida Statutes, is amended
790 to read:

791 617.0721 Voting by members.—

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

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

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

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

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

812 (a) Participate in the meeting.

590-03446-09

20091288c2

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

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

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

824
825 If any member or proxy holder votes or takes other action by
826 means of remote communication, a record of that member's
827 participation in the meeting must be maintained by the
828 corporation in accordance with s. 617.1601.

829 (4)~~(3)~~ If any corporation, whether for profit or not for
830 profit, is a member of a corporation organized under this
831 chapter ~~act~~, the chair of the board, president, any vice
832 president, the secretary, or the treasurer of the member
833 corporation, and any such officer or cashier or trust officer of
834 a banking or trust corporation holding such membership, and any
835 like officer of a foreign corporation whether for profit or not
836 for profit, holding membership in a domestic corporation, shall
837 be deemed by the corporation in which membership is held to have
838 the authority to vote on behalf of the member corporation and to
839 execute proxies and written waivers and consents in relation
840 thereto, unless, before a vote is taken or a waiver or consent
841 is acted upon, it appears pursuant to ~~is made to appear by a~~

590-03446-09

20091288c2

842 certified copy of the bylaws or resolution of the board of
843 directors or executive committee of the member corporation that
844 such authority does not exist or is vested in some other officer
845 or person. In the absence of such certification, a person
846 executing any such proxies, waivers, or consents or presenting
847 himself or herself at a meeting as one of such officers of a
848 corporate member shall be, for the purposes of this section,
849 conclusively deemed to be duly elected, qualified, and acting as
850 such officer and to be fully authorized. In the case of
851 conflicting representation, the corporate member shall be ~~deemed~~
852 ~~to be~~ represented by its senior officer, in the order ~~first~~
853 stated in this subsection.

854 (5)~~(4)~~ The articles of incorporation or the bylaws may
855 provide that, in all elections for directors, every member
856 entitled to vote has the right to cumulate his or her votes and
857 to give one candidate a number of votes equal to the number of
858 votes he or she could give if one director were being elected
859 multiplied by the number of directors to be elected or to
860 distribute such votes on the same principles among any number of
861 such candidates. A corporation may not have cumulative voting
862 unless such voting is expressly authorized in the articles of
863 incorporation.

864 (6)~~(5)~~ If a corporation has no members or its members do
865 not have the right to vote, the directors shall have the sole
866 voting power.

867 (7)~~(6)~~ Subsections (1), (2), (5) ~~(4)~~, and (6) ~~(5)~~ do not
868 apply to a corporation that is an association as defined in s.
869 720.301.

870 Section 20. Section 617.0725, Florida Statutes, is amended

590-03446-09

20091288c2

871 to read:

872 617.0725 Quorum.—An amendment to the articles of
873 incorporation or the bylaws which adds, ~~that~~ changes, or deletes
874 a greater or lesser quorum or voting requirement must meet the
875 same quorum or voting requirement and be adopted by the same
876 vote and voting groups required to take action under the quorum
877 and voting requirements then in effect or proposed to be
878 adopted, whichever is greater ~~prescribed in the provision being~~
879 amended.

880 Section 21. Section 617.07401, Florida Statutes, is created
881 to read:

882 617.07401 Members' derivative actions.—

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

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

590-03446-09

20091288c2

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

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

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

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

920 (4) A proceeding commenced under this section may not be
921 discontinued or settled without the approval of the court. If
922 the court determines that a proposed discontinuance or
923 settlement substantially affects the interest of the members of
924 the corporation, or a class, series, or voting group of members,
925 the court shall direct that notice be given to the members
926 affected. The court may determine which party or parties to the
927 proceeding shall bear the expense of giving the notice.

928 (5) Upon termination of the proceeding, the court may

590-03446-09

20091288c2

929 require the plaintiff to pay any defendant's reasonable
930 expenses, including reasonable attorney's fees, incurred in
931 defending the proceeding if it finds that the proceeding was
932 commenced without reasonable cause.

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

942 Section 22. Section 617.0801, Florida Statutes, is amended
943 to read:

944 617.0801 ~~Requirement for and~~ Duties of board of directors.—
945 All corporate powers must be exercised by or under the authority
946 of, and the affairs of the corporation managed under the
947 direction of, its board of directors, subject to any limitation
948 set forth in the articles of incorporation.

949 Section 23. Subsection (1) of section 617.0802, Florida
950 Statutes, is amended to read:

951 617.0802 Qualifications of directors.—

952 (1) Directors must be natural persons who are 18 years of
953 age or older but need not be residents of this state or members
954 of the corporation unless the articles of incorporation or
955 bylaws so require. For a corporation organized according to the
956 provisions of s. 501(c) (3) of the Internal Revenue Code of 1986,
957 as amended, but not for a corporation regulated by chapter 718,

590-03446-09

20091288c2

958 chapter 719, chapter 720, chapter 721, or chapter 723 or a
959 corporation for which membership in such corporation is required
960 pursuant to a document recorded in the county property records,
961 one director may be 15 years of age or older if so permitted in
962 the articles of incorporation or bylaws or by resolution of the
963 board of directors. The articles of incorporation or the bylaws
964 may prescribe additional qualifications for directors.

965 Section 24. Section 617.0806, Florida Statutes, is amended
966 to read:

967 617.0806 Staggered terms for directors.—The articles of
968 incorporation or bylaws may provide that directors may be
969 divided into classes and the terms of office of the several
970 classes need not be uniform. Each director shall hold office for
971 the term to which he or she is elected or appointed and until
972 his or her successor has been elected or appointed and qualified
973 or until his or her earlier resignation, removal from office, or
974 death.

975 Section 25. Section 617.0808, Florida Statutes, is amended
976 to read:

977 617.0808 Removal of directors.—

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

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

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

590-03446-09

20091288c2

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

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

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

997 2. If cumulative voting is authorized, a director may not
998 be removed if the number of votes sufficient to elect the
999 director under cumulative voting is voted against the removal of
1000 the director.

1001 3. If at the beginning of the term of a director the
1002 articles of incorporation or bylaws provide that the director
1003 may be removed for missing a specified number of board meetings,
1004 the board may remove the director for failing to attend the
1005 specified number of meetings. The director may be removed only
1006 if a majority of the directors then in office vote for the
1007 removal ~~the vote or agreement in writing by a majority of all~~
1008 ~~votes of the membership.~~

1009 ~~(c)(2)~~ The notice of a meeting ~~of the members~~ to recall a
1010 member or members of the board of directors shall state the
1011 specific directors sought to be removed.

1012 ~~(d)(3)~~ A proposed removal of a director at a meeting shall
1013 require a separate vote for each director whose removal is ~~board~~
1014 ~~member~~ sought ~~to be removed~~. Where removal is sought by written
1015 consent agreement, a separate consent agreement is required for

590-03446-09

20091288c2

1016 each director ~~board member~~ to be removed.

1017 (e)-(4) If removal is effected at a meeting, any vacancies
1018 created ~~thereby~~ shall be filled by the members or directors
1019 eligible to vote for the removal ~~at the same meeting~~.

1020 (f)-(5) Any director who is removed from the board is ~~shall~~
1021 not ~~be~~ eligible to stand for reelection until the next annual
1022 meeting at which directors are elected ~~of the members~~.

1023 (g)-(6) Any director removed from office shall turn over to
1024 the board of directors within 72 hours any and all records of
1025 the corporation in his or her possession.

1026 (h)-(7) If a director who is removed does ~~shall~~ not
1027 relinquish his or her office or turn over records as required
1028 under this section, the circuit court in the county where the
1029 corporation's principal office is located may summarily order
1030 the director to relinquish his or her office and turn over
1031 corporate records upon application of any member.

1032 (i) A director elected or appointed by the board may be
1033 removed without cause by a vote of two-thirds of the directors
1034 then in office or such greater number as is set forth in the
1035 articles of incorporation or bylaws.

1036 (2) A director of a corporation described in s. 501(c) of
1037 the Internal Revenue Code may be removed from office pursuant to
1038 procedures provided in the articles of incorporation or the
1039 bylaws, and the corporation may provide in the articles of
1040 incorporation or the bylaws that it is subject to the provisions
1041 of subsection (1).

1042 Section 26. Section 617.0809, Florida Statutes, is amended
1043 to read:

1044 617.0809 Board vacancy ~~on board~~.

590-03446-09

20091288c2

1045 (1) Except as provided in s. 617.0808(1)(f), any vacancy
1046 occurring on the board of directors may be filled by the
1047 affirmative vote of the majority of the remaining directors,
1048 even though the remaining directors constitute less than a
1049 quorum, or by the sole remaining director, ~~as the case may be,~~
1050 or, if the vacancy is not so filled or if no director remains,
1051 by the members or, on the application of any person, by the
1052 circuit court of the county where the registered office of the
1053 corporation is located.

1054 (2) Whenever a vacancy occurs with respect to a director
1055 elected by a class, chapter, unit, or group, the vacancy may be
1056 filled only by members of that class, chapter, unit, or group,
1057 or by a majority of the directors then in office elected by such
1058 class, chapter, unit, or group.

1059 (3)~~(2)~~ The term of a director elected or appointed to fill
1060 a vacancy expires at the next annual meeting at which directors
1061 are elected shall be elected or appointed for the unexpired term
1062 of his or her predecessor in office. Any directorship to be
1063 filled by reason of an increase in the number of directors may
1064 be filled by the board of directors, but only for a term of
1065 office continuing until the next election of directors by the
1066 members or, if the corporation has no members or no members
1067 having the right to vote thereon, for such term of office as is
1068 provided in the articles of incorporation or the bylaws.

1069 (4)~~(3)~~ A vacancy that will occur at a specific later date,
1070 by reason of a resignation effective at a later date under s.
1071 617.0807 or otherwise, may be filled before the vacancy occurs.
1072 However, the new director may not take office until the vacancy
1073 occurs.

590-03446-09

20091288c2

1074 Section 27. Subsection (1) of section 617.0824, Florida
1075 Statutes, is amended to read:

1076 617.0824 Quorum and voting.—

1077 (1) Unless the articles of incorporation or the bylaws
1078 require a different number, a quorum of a board of directors
1079 consists of a majority of the number of directors prescribed by
1080 the articles of incorporation or the bylaws. Directors younger
1081 than 18 years of age may not be counted toward a quorum.

1082 Section 28. Present subsection (2) of section 617.0832,
1083 Florida Statutes, is renumbered as subsection (3) and amended,
1084 and a new subsection (2) is added to that section, to read:

1085 617.0832 Director conflicts of interest.—

1086 (2) For purposes of paragraph (1) (a) only, a conflict-of-
1087 interest transaction is authorized, approved, or ratified if it
1088 receives the affirmative vote of a majority of the directors on
1089 the board of directors, or on the committee, who have no
1090 relationship or interest in the transaction described in
1091 subsection (1), but a transaction may not be authorized,
1092 approved, or ratified under this section by a single director.
1093 If a majority of the directors who have no relationship or
1094 interest in the transaction vote to authorize, approve, or
1095 ratify the transaction, a quorum is present for the purpose of
1096 taking action under this section. The presence of, or a vote
1097 cast by, a director having a relationship or interest in the
1098 transaction does not affect the validity of any action taken
1099 under paragraph (1) (a) if the transaction is otherwise
1100 authorized, approved, or ratified as provided in subsection (1),
1101 but such presence or vote of such a director may be counted for
1102 purposes of determining whether the transaction is approved

590-03446-09

20091288c2

1103 under other sections of this chapter.

1104 (3)-(2) For purposes of paragraph (1)(b), a conflict-of-
1105 interest transaction is authorized, approved, or ratified if it
1106 receives the vote of a majority in interest of the members
1107 entitled to vote under this subsection. A director who has a
1108 relationship or interest in the transaction described in
1109 subsection (1) may not vote to determine whether to authorize,
1110 approve, or ratify a conflict-of-interest transaction under
1111 paragraph (1)(b). However, the vote of that director is counted
1112 in determining whether the transaction is approved under other
1113 sections of this chapter. A majority in interest of the members
1114 entitled to vote on the transaction under this subsection
1115 constitutes a quorum for the purpose of taking action under this
1116 section. As used in this subsection, the term "majority in
1117 interest" refers to a majority of the voting shares or other
1118 voting units allotted to the members. ~~Common or interested~~
1119 directors may be counted in determining the presence of a quorum
1120 at a meeting of the board of directors or a committee thereof
1121 which authorizes, approves, or ratifies such contract or
1122 transaction.

1123 Section 29. Section 617.0833, Florida Statutes, is amended
1124 to read:

1125 617.0833 Loans to directors or officers.—Loans, other than
1126 through the purchase of bonds, debentures, or similar
1127 obligations of the type customarily sold in public offerings, or
1128 through ordinary deposit of funds in a bank, may not be made by
1129 a corporation to its directors or officers, or to any other
1130 corporation, firm, association, or other entity in which one or
1131 more of its directors or officers is a director or officer or

590-03446-09

20091288c2

1132 holds a substantial financial interest, except a loan by one
1133 corporation which is exempt from federal income taxation under
1134 s. 501(c)(3) of the Internal Revenue Code of 1986, as amended,
1135 to another corporation which is exempt from federal income
1136 taxation under s. 501(c)(3) of the Internal Revenue Code of
1137 1986, as amended. A loan made in violation of this section is a
1138 violation of the duty to the corporation of the directors or
1139 officers authorizing it or participating in it, but the
1140 obligation of the borrower with respect to the loan is ~~shall~~ not
1141 ~~be~~ affected ~~thereby~~.

1142 Section 30. Subsection (1) of section 617.0834, Florida
1143 Statutes, is amended to read:

1144 617.0834 Officers and directors of certain corporations and
1145 associations not for profit; immunity from civil liability.—

1146 (1) An officer or director of a nonprofit organization
1147 recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of
1148 the Internal Revenue Code of 1986, as amended, or of an
1149 agricultural or a horticultural organization recognized under s.
1150 501(c)(5), of the Internal Revenue Code of 1986, as amended, is
1151 not personally liable for monetary damages to any person for any
1152 statement, vote, decision, or failure to take an action,
1153 regarding organizational management or policy by an officer or
1154 director, unless:

1155 (a) The officer or director breached or failed to perform
1156 his or her duties as an officer or director; and

1157 (b) The officer's or director's breach of, or failure to
1158 perform, his or her duties constitutes:

1159 1. A violation of the criminal law, unless the officer or
1160 director had reasonable cause to believe his or her conduct was

590-03446-09

20091288c2

1161 lawful or had no reasonable cause to believe his or her conduct
1162 was unlawful. A judgment or other final adjudication against an
1163 officer or director in any criminal proceeding for violation of
1164 the criminal law estops that officer or director from contesting
1165 the fact that his or her breach, or failure to perform,
1166 constitutes a violation of the criminal law, but does not estop
1167 the officer or director from establishing that he or she had
1168 reasonable cause to believe that his or her conduct was lawful
1169 or had no reasonable cause to believe that his or her conduct
1170 was unlawful;

1171 2. A transaction from which the officer or director derived
1172 an improper personal benefit, ~~either~~ directly or indirectly; or

1173 3. Recklessness or an act or omission that ~~which~~ was
1174 committed in bad faith or with malicious purpose or in a manner
1175 exhibiting wanton and willful disregard of human rights, safety,
1176 or property.

1177 Section 31. Subsections (2) and (3) of section 617.1007,
1178 Florida Statutes, are amended to read:

1179 617.1007 Restated articles of incorporation.—

1180 (2) The restatement may include one or more amendments to
1181 the articles of incorporation. If the restatement includes an
1182 amendment requiring member approval, it must be adopted as
1183 provided in s. 617.1002.

1184 (3) A corporation restating its articles of incorporation
1185 shall deliver to the department ~~of State~~ for filing articles of
1186 restatement, executed in accordance with ~~the provisions of~~ s.
1187 617.01201, setting forth the name of the corporation and the
1188 text of the restated articles of incorporation together with a
1189 certificate setting forth:

590-03446-09

20091288c2

1190 (a) Whether the restatement contains an amendment to the
1191 articles of incorporation requiring member approval and, if it
1192 does not, that the board of directors adopted the restatement;
1193 or

1194 (b) If the restatement contains an amendment to the
1195 articles of incorporation requiring member approval, the
1196 information required by s. 617.1006.

1197 Section 32. Subsection (2) of section 617.1101, Florida
1198 Statutes, is amended, and subsection (3) is added to that
1199 section, to read:

1200 617.1101 Plan of merger.—

1201 (2) Each corporation must adopt a plan of merger setting
1202 forth:

1203 (a) The names of the corporations proposing to merge and
1204 the name of the surviving corporation into which each other
1205 corporation plans to merge, which is ~~hereinafter~~ designated as
1206 the surviving corporation;

1207 (b) The terms and conditions of the proposed merger;

1208 (c) A statement of any changes in the articles of
1209 incorporation of the surviving corporation to be effected by
1210 such merger; and

1211 (d) The manner and basis, if any, of converting the
1212 memberships of each merging corporation into memberships,
1213 obligations, or securities of the surviving corporation or any
1214 other corporation or, in whole or in part, into cash or other
1215 property. ~~Such other provisions with respect to the proposed~~
1216 ~~merger as are deemed necessary or desirable.~~

1217 (3) The plan of merger may set forth:

1218 (a) Amendments to, or a restatement of, the articles of

590-03446-09

20091288c2

1219 incorporation of the surviving corporation;

1220 (b) The effective date of the merger, which may be on or
1221 after the date of filing the articles of incorporation or
1222 merger; or

1223 (c) Other provisions relating to the merger.

1224 Section 33. Section 617.1102, Florida Statutes, is created
1225 to read:

1226 617.1102 Limitation on merger.—A corporation not for profit
1227 organized under this chapter may merge with one or more other
1228 business entities, as identified in s. 607.1108(1), only if the
1229 surviving entity of such merger is a corporation not for profit
1230 or other business entity that has been organized as a not-for-
1231 profit entity under a governing statute or other applicable law
1232 that allows such a merger.

1233 Section 34. Section 617.1301, Florida Statutes, is created
1234 to read:

1235 617.1301 Prohibited distributions.—Except as authorized in
1236 ss. 617.0505 and 617.1302, a corporation may not make any
1237 distributions to its members.

1238 Section 35. Section 617.1302, Florida Statutes, is created
1239 to read:

1240 617.1302 Authorized distributions.—

1241 (1) A mutual benefit corporation may purchase its
1242 memberships pursuant to s. 617.0608 only if, after the purchase
1243 is completed:

1244 (a) The mutual benefit corporation is able to pay its debts
1245 as they become due in the usual course of its activities; and

1246 (b) The total assets of the mutual benefit corporation at
1247 least equal the sum of its total liabilities.

590-03446-09

20091288c2

1248 (2) A corporation may make distributions upon dissolution
1249 in conformity with the dissolution provisions of this chapter.

1250 Section 36. Subsection (4) of section 617.1405, Florida
1251 Statutes, is amended to read:

1252 617.1405 Effect of dissolution.—

1253 (4) The name of a dissolved corporation is ~~shall~~ not ~~be~~
1254 available for assumption or use by another corporation until
1255 ~~after~~ 120 days after the effective date of dissolution unless
1256 the dissolved corporation provides the department with an
1257 affidavit, executed pursuant to s. 617.01201, authorizing the
1258 immediate assumption or use of the name by another corporation.

1259 Section 37. Section 617.1407, Florida Statutes, is created
1260 to read:

1261 617.1407 Unknown claims against dissolved corporation.—

1262 (1) A dissolved corporation or successor entity may execute
1263 one of the following procedures to resolve payment of unknown
1264 claims:

1265 (a) A dissolved corporation or successor entity may file
1266 notice of its dissolution with the department on the form
1267 prescribed by the department and request that persons having
1268 claims against the corporation which are not known to the
1269 corporation or successor entity present them in accordance with
1270 the notice. The notice must:

1271 1. State the name of the corporation and the date of
1272 dissolution;

1273 2. Describe the information that must be included in a
1274 claim and provide a mailing address to which the claim may be
1275 sent; and

1276 3. State that a claim against the corporation under this

590-03446-09

20091288c2

1277 subsection is barred unless a proceeding to enforce the claim is
1278 commenced within 4 years after the filing of the notice.

1279 (b) A dissolved corporation or successor entity may, within
1280 10 days after filing articles of dissolution with the
1281 department, publish a "Notice of Corporate Dissolution." The
1282 notice must appear once a week for 2 consecutive weeks in a
1283 newspaper of general circulation in the county in the state in
1284 which the corporation has its principal office, if any, or, if
1285 none, in a county in the state in which the corporation owns
1286 real or personal property. Such newspaper shall meet the
1287 requirements as are prescribed by law for such purposes. The
1288 notice must:

1289 1. State the name of the corporation and the date of
1290 dissolution;

1291 2. Describe the information that must be included in a
1292 claim and provide a mailing address to which the claim may be
1293 sent; and

1294 3. State that a claim against the corporation under this
1295 subsection is barred unless a proceeding to enforce the claim is
1296 commenced within 4 years after the date of the second
1297 consecutive weekly publication of the notice.

1298 (2) If the dissolved corporation or successor entity
1299 complies with paragraph (1) (a) or paragraph (1) (b), the claim of
1300 each of the following claimants is barred unless the claimant
1301 commences a proceeding to enforce the claim against the
1302 dissolved corporation within 4 years after the date of filing
1303 the notice with the department or the date of the second
1304 consecutive weekly publication, as applicable:

1305 (a) A claimant who did not receive written notice under s.

590-03446-09

20091288c2

1306 617.1408(9), or whose claim is not provided for under s.
1307 617.1408(10), regardless of whether such claim is based on an
1308 event occurring before or after the effective date of
1309 dissolution.

1310 (b) A claimant whose claim was timely sent to the dissolved
1311 corporation but on which no action was taken.

1312 (3) A claim may be entered under this section:

1313 (a) Against the dissolved corporation, to the extent of its
1314 undistributed assets; or

1315 (b) If the assets have been distributed in liquidation,
1316 against a member of the dissolved corporation to the extent of
1317 such member's pro rata share of the claim or the corporate
1318 assets distributed to such member in liquidation, whichever is
1319 less; however, the aggregate liability of any member of a
1320 dissolved corporation may not exceed the amount distributed to
1321 the member in dissolution.

1322 Section 38. Section 617.1408, Florida Statutes, is created
1323 to read:

1324 617.1408 Known claims against dissolved corporation.-

1325 (1) A dissolved corporation or successor entity may dispose
1326 of the known claims against it by following the procedures
1327 described in subsections (2), (3), and (4).

1328 (2) The dissolved corporation or successor entity shall
1329 deliver to each of its known claimants written notice of the
1330 dissolution at any time after its effective date. The written
1331 notice must:

1332 (a) Provide a reasonable description of the claim that the
1333 claimant may be entitled to assert;

1334 (b) State whether the claim is admitted or not admitted, in

590-03446-09

20091288c2

1335 whole or in part, and, if admitted:

1336 1. The amount that is admitted, which may be as of a given
1337 date; and

1338 2. Any interest obligation if fixed by an instrument of
1339 indebtedness;

1340 (c) Provide a mailing address where a claim may be sent;

1341 (d) State the deadline, which must be at least 120 days
1342 after the effective date of the written notice, by which
1343 confirmation of the claim must be delivered to the dissolved
1344 corporation or successor entity; and

1345 (e) State that the corporation or successor entity may make
1346 distributions thereafter to other claimants and the members of
1347 the corporation or persons interested as having been such
1348 without further notice.

1349 (3) A dissolved corporation or successor entity may reject,
1350 in whole or in part, any claim made by a claimant pursuant to
1351 this section by mailing notice of such rejection to the claimant
1352 within 90 days after receipt of such claim and, in all events,
1353 at least 150 days before expiration of 3 years following the
1354 effective date of dissolution. The notice must be accompanied by
1355 a copy of this section.

1356 (4) A dissolved corporation or successor entity electing to
1357 follow the procedures described in subsections (2) and (3) must
1358 also give notice of dissolution to persons having known claims
1359 that are contingent upon the occurrence or nonoccurrence of
1360 future events, or are otherwise conditional or unmatured, and
1361 request that such persons present such claims in accordance with
1362 the terms of the notice. The notice must be in substantially the
1363 same form, and sent in the same manner, as described in

590-03446-09

20091288c2

1364 subsection (2).

1365 (5) A dissolved corporation or successor entity shall offer
1366 any claimant whose known claim is contingent, conditional, or
1367 unmatured such security as the corporation or entity determines
1368 is sufficient to provide compensation to the claimant if the
1369 claim matures. The dissolved corporation or successor entity
1370 shall deliver such offer to the claimant within 90 days after
1371 receipt of such claim and, in all events, at least 150 days
1372 before expiration of 3 years following the effective date of
1373 dissolution. If the claimant offered such security does not
1374 deliver in writing to the dissolved corporation or successor
1375 entity a notice rejecting the offer within 120 days after
1376 receipt of such offer, the claimant is deemed to have accepted
1377 such security as the sole source from which to satisfy his or
1378 her claim against the corporation.

1379 (6) A dissolved corporation or successor entity that has
1380 given notice in accordance with subsections (2) and (4) shall
1381 petition the circuit court in the county where the corporation's
1382 principal office is located or was located on the effective date
1383 of dissolution to determine the amount and form of security
1384 which is sufficient to provide compensation to a claimant who
1385 has rejected the offer for security made pursuant to subsection
1386 (5).

1387 (7) A dissolved corporation or successor entity that has
1388 given notice in accordance with subsection (2) shall petition
1389 the circuit court in the county where the corporation's
1390 principal office is located or was located on the effective date
1391 of dissolution to determine the amount and form of security
1392 which is sufficient to provide compensation to claimants whose

590-03446-09

20091288c2

1393 claims are known to the corporation or successor entity but
1394 whose identities are unknown. The court shall appoint a guardian
1395 ad litem to represent all claimants whose identities are unknown
1396 in any proceeding brought under this subsection. The reasonable
1397 fees and expenses of such guardian, including all reasonable
1398 expert witness fees, shall be paid by the petitioner in such
1399 proceeding.

1400 (8) The giving of any notice or making of any offer
1401 pursuant to this section does not revive any claim then barred,
1402 does not constitute acknowledgment by the dissolved corporation
1403 or successor entity that any person to whom such notice is sent
1404 is a proper claimant, and does not operate as a waiver of any
1405 defense or counterclaim in respect of any claim asserted by any
1406 person to whom such notice is sent.

1407 (9) A dissolved corporation or successor entity that has
1408 followed the procedures described in subsections (2)-(7) shall:

1409 (a) Pay the claims admitted or made and not rejected in
1410 accordance with subsection (3);

1411 (b) Post the security offered and not rejected pursuant to
1412 subsection (5);

1413 (c) Post any security ordered by the circuit court in any
1414 proceeding under subsections (6) and (7); and

1415 (d) Pay or make provision for all other known obligations
1416 of the corporation or the successor entity. Such claims or
1417 obligations shall be paid in full, and any provision for
1418 payments shall be made in full if there are sufficient funds. If
1419 there are insufficient funds, the claims and obligations shall
1420 be paid or provided for according to their priority and, among
1421 claims of equal priority, ratably to the extent of funds legally

590-03446-09

20091288c2

1422 available for payment. Any remaining funds shall be distributed
1423 in accordance with s. 617.1406; however, such distribution may
1424 not be made until 150 days after the date of the last notice of
1425 rejections given pursuant to subsection (3). In the absence of
1426 actual fraud, the judgment of the directors of the dissolved
1427 corporation or the governing persons of the successor entity as
1428 to the provisions made for the payment of all obligations under
1429 this paragraph is conclusive.

1430 (10) A dissolved corporation or successor entity that has
1431 not followed the procedures described in subsections (2) and (3)
1432 shall pay or make reasonable provision to pay all known claims
1433 and obligations, including all contingent, conditional, or
1434 unmatured claims known to the corporation or the successor
1435 entity and all claims that are known to the dissolved
1436 corporation or the successor entity but for which the identity
1437 of the claimant is unknown. Such claims shall be paid in full,
1438 and any provision for payment made shall be made in full if
1439 there are sufficient funds. If there are insufficient funds,
1440 such claims and obligations shall be paid or provided for
1441 according to their priority and, among claims of equal priority,
1442 ratably to the extent of funds legally available for payment
1443 thereof. Any remaining funds shall be distributed in accordance
1444 with s. 617.1406.

1445 (11) Directors of a dissolved corporation or governing
1446 persons of a successor entity that has complied with subsection
1447 (9) or subsection (10) are not personally liable to the
1448 claimants of the dissolved corporation.

1449 (12) A member of a dissolved corporation the assets of
1450 which were distributed pursuant to subsection (9) or subsection

590-03446-09

20091288c2

1451 (10) is not liable for any claim against the corporation greater
1452 than the member's pro rata share of the claim or the amount
1453 distributed to the member, whichever is less.

1454 (13) A member of a dissolved corporation, the assets of
1455 which were distributed pursuant to subsection (9), is not liable
1456 for any claim against the corporation which is known to the
1457 corporation or successor entity and on which a proceeding is
1458 begun after the expiration of 3 years following the effective
1459 date of dissolution.

1460 (14) The aggregate liability of any member of a dissolved
1461 corporation for claims against the dissolved corporation may not
1462 be greater than the amount distributed to the member in
1463 dissolution.

1464 Section 39. Subsection (6) of section 617.1421, Florida
1465 Statutes, is repealed.

1466 Section 40. Section 617.1422, Florida Statutes, is amended
1467 to read:

1468 617.1422 Reinstatement following administrative
1469 dissolution.-

1470 (1)(a) A corporation administratively dissolved under s.
1471 617.1421 may apply to the department of State for reinstatement
1472 at any time after the effective date of dissolution. The
1473 corporation must submit a reinstatement form prescribed and
1474 furnished by the department or a current uniform business report
1475 signed by a registered agent and an officer or director and
1476 submit application must:

1477 1. Recite the name of the corporation and the effective
1478 date of its administrative dissolution;

1479 2. State that the ground or grounds for dissolution either

590-03446-09

20091288c2

1480 ~~did not exist or have been eliminated and that no further~~
1481 ~~grounds currently exist for dissolution;~~

1482 ~~3. State that the corporation's name satisfies the~~
1483 ~~requirements of s. 617.0401; and~~

1484 ~~4. State that all fees owed by the corporation and computed~~
1485 ~~at the rate provided by law at the time the corporation applies~~
1486 ~~for reinstatement, have been paid; or~~

1487 ~~(b) Submit a current annual report, signed by the~~
1488 ~~registered agent and an officer or director, which substantially~~
1489 ~~complies with the requirements of paragraph (a).~~

1490 (2) If the department ~~of State~~ determines that the
1491 application contains the information required by subsection (1)
1492 and that the information is correct, it shall ~~file the document,~~
1493 ~~cancel the certificate of dissolution, and~~ reinstate the
1494 corporation effective ~~on the date which the reinstatement~~
1495 ~~document is filed.~~

1496 (3) When the reinstatement is effective, it relates back to
1497 and takes effect as of the effective date of the administrative
1498 dissolution and the corporation resumes carrying on its business
1499 ~~affairs~~ as if the administrative dissolution had never occurred.

1500 (4) The name of the dissolved corporation is not available
1501 for assumption or use by another corporation until 1 year after
1502 the effective date of dissolution unless the dissolved
1503 corporation provides the department with an affidavit executed
1504 pursuant to s. 617.01201 authorizing the immediate assumption or
1505 use of the name by another corporation.

1506 (5) ~~(4)~~ If the name of the dissolved corporation has been
1507 lawfully assumed in this state by another corporation, the
1508 department ~~of State~~ shall require the dissolved corporation to

590-03446-09

20091288c2

1509 amend its articles of incorporation to change its name before
1510 accepting its application for reinstatement.

1511 Section 41. Subsection (2) of section 617.1430, Florida
1512 Statutes, is amended to read:

1513 617.1430 Grounds for judicial dissolution.—A circuit court
1514 may dissolve a corporation:

1515 (2) In a proceeding brought by at least 50 members or
1516 members holding at least 10 percent of the voting power,
1517 whichever is less, or by a member or group or percentage of
1518 members as otherwise provided in the articles of incorporation
1519 or bylaws, or by a director or any person authorized in the
1520 articles of incorporation, ~~by a member~~ if it is established
1521 that:

1522 (a) The directors are deadlocked in the management of the
1523 corporate affairs, the members are unable to break the deadlock,
1524 and irreparable injury to the corporation is threatened or being
1525 suffered;

1526 (b) The members are deadlocked in voting power and have
1527 failed to elect successors to directors whose terms have expired
1528 or would have expired upon qualification of their successors; or

1529 (c) The corporate assets are being misapplied or wasted.

1530 Section 42. Subsection (2) of section 617.1503, Florida
1531 Statutes, is amended to read:

1532 617.1503 Application for certificate of authority.—

1533 (2) The foreign corporation shall deliver with the
1534 completed application a certificate of existence, ~~for a document~~
1535 ~~of similar import,~~ duly authenticated, within ~~not more than~~ 90
1536 ~~days~~ prior to delivery of the application to the department ~~of~~
1537 ~~State~~, by the Secretary of State or other official having

590-03446-09

20091288c2

1538 custody of corporate records in the jurisdiction under the law
1539 of which it is incorporated. A translation of the certificate,
1540 under oath of the translator, must be attached to a certificate
1541 that ~~which~~ is in a language other than the English language.

1542 Section 43. Subsection (2) of section 617.1504, Florida
1543 Statutes, is amended to read:

1544 617.1504 Amended certificate of authority.—

1545 (2) Such application shall be made within 90 ~~30~~ days after
1546 the occurrence of any change mentioned in subsection (1), shall
1547 be made on forms prescribed by the department ~~of State~~, shall be
1548 executed and filed in the same manner as an original application
1549 for authority, and shall set forth:

1550 (a) The name of the foreign corporation as it appears on
1551 the department's records ~~of the Department of State~~;

1552 (b) The jurisdiction of its incorporation;

1553 (c) The date it was authorized to conduct its affairs in
1554 this state;

1555 (d) If the name of the foreign corporation has ~~been~~
1556 changed, the name relinquished, the new name, a statement that
1557 the change of name has been effected under the laws of the
1558 jurisdiction of its incorporation, and the date the change was
1559 effected;

1560 (e) If the period of duration has ~~been~~ changed, a statement
1561 of such change and the date the change was effected;

1562 (f) If the jurisdiction of incorporation has ~~been~~ changed,
1563 a statement of such change and the date the change was effected;
1564 and

1565 (g) If the ~~purpose or purposes~~ that ~~which~~ the corporation
1566 intends to pursue in this state have ~~been~~ changed, a statement

590-03446-09

20091288c2

1567 of such new ~~purpose or~~ purposes, and a further statement that
1568 the corporation is authorized to pursue such ~~purpose or~~ purposes
1569 in the jurisdiction of its incorporation.

1570 Section 44. Section 617.1506, Florida Statutes, is amended
1571 to read:

1572 617.1506 Corporate name of foreign corporation.—

1573 (1) A foreign corporation may ~~is not entitled to~~ file an
1574 application for a certificate of authority unless the corporate
1575 name of such corporation satisfies the requirements of s.
1576 617.0401. To obtain or maintain a certificate of authority to
1577 transact business in this state, the foreign corporation:

1578 (a) May add the word "corporation" or "incorporated" or the
1579 abbreviation "corp." or "inc." or words of like import, which ~~as~~
1580 ~~will~~ clearly indicate that it is a corporation instead of a
1581 natural person or partnership or other business entity; however,
1582 ~~to its corporate name for use in this state, provided,~~ the name
1583 of a foreign corporation may not contain the word "company" or
1584 the abbreviation "co."; or

1585 (b) May use an alternate name to transact business in this
1586 state if its real name is unavailable. Any alternate corporate
1587 name adopted for use in this state must be cross-referenced to
1588 the real corporate name in the records of the Division of
1589 Corporations. If the real corporate name of the corporation
1590 becomes available in this state or if the corporation chooses to
1591 change its alternate name and it delivers to the Department of
1592 State, for filing, a copy of the resolution of its board of
1593 directors, changing or withdrawing the alternate name and
1594 executed as required by s. 617.01201, must be delivered for
1595 filing ~~adopting an alternate name.~~

590-03446-09

20091288c2

1596 (2) The corporate name, including the alternate name, of a
1597 foreign corporation must be distinguishable, within the records
1598 of the Division of Corporations, from:

1599 (a) Any corporate name of a corporation for profit
1600 incorporated or authorized to transact business in this state.

1601 (b) ~~(a)~~ The alternate name of another foreign corporation
1602 authorized to transact business in this state.

1603 (c) ~~(b)~~ The corporate name of a not-for-profit corporation
1604 incorporated or authorized to transact business in this state.

1605 (d) ~~(e)~~ The names of all other entities or filings, except
1606 fictitious name registrations pursuant to s. 865.09, organized,
1607 or registered under the laws of this state, that are on file
1608 with the Division of Corporations.

1609 (3) If a foreign corporation authorized to transact
1610 business in this state changes its corporate name to one that
1611 does not satisfy the requirements of s. 617.0401 ~~s. 607.0401~~,
1612 such corporation may not transact business in this state under
1613 the changed name until the corporation adopts a name satisfying
1614 the requirements of s. 617.0401 ~~s. 607.0401~~.

1615 ~~(4) The corporate name must be distinguishable from the~~
1616 ~~names of all other entities or filings, organized, registered,~~
1617 ~~or reserved under the laws of the state that are on file with~~
1618 ~~the Division of Corporations, except fictitious name~~
1619 ~~registrations pursuant to s. 865.09.~~

1620 Section 45. Subsection (6) of section 617.1530, Florida
1621 Statutes, is amended to read:

1622 617.1530 Grounds for revocation of authority to conduct
1623 affairs.—The department of State may commence a proceeding under
1624 s. 617.1531 to revoke the certificate of authority of a foreign

590-03446-09

20091288c2

1625 corporation authorized to conduct its affairs in this state if:

1626 (6) The department ~~of State~~ receives a duly authenticated
1627 certificate from the secretary of state or other official having
1628 custody of corporate records in the jurisdiction under the law
1629 of which the foreign corporation is incorporated stating that it
1630 has been dissolved or disappeared as the result of a merger.

1631 Section 46. Paragraph (a) of subsection (5) of section
1632 617.1601, Florida Statutes, is amended to read:

1633 617.1601 Corporate records.—

1634 (5) A corporation shall keep a copy of the following
1635 records:

1636 (a) Its articles of incorporation or restated articles of
1637 incorporation and all amendments to them currently in effect.

1638 Section 47. Subsections (1), (2), and (4) of section
1639 617.1602, Florida Statutes, are amended to read:

1640 617.1602 Inspection of records by members.—

1641 (1) A member of a corporation is entitled to inspect and
1642 copy, during regular business hours at the corporation's
1643 principal office or at a reasonable location specified by the
1644 corporation, any of the records of the corporation described in
1645 s. 617.1601(5), if the member gives the corporation written
1646 notice of his or her demand at least 10 ~~5~~ business days before
1647 the date on which he or she wishes to inspect and copy.

1648 (2) A member of a corporation is entitled to inspect and
1649 copy, during regular business hours at a reasonable location
1650 specified by the corporation, any of the following records of
1651 the corporation if the member meets the requirements of
1652 subsection (3) and gives the corporation written notice of his
1653 or her demand at least 10 ~~5~~ business days before the date on

590-03446-09

20091288c2

1654 which he or she wishes to inspect and copy:

1655 (a) Excerpts from minutes of any meeting of the board of
1656 directors, records of any action of a committee of the board of
1657 directors while acting in place of the board of directors on
1658 behalf of the corporation, minutes of any meeting of the
1659 members, and records of action taken by the members or board of
1660 directors without a meeting, to the extent not subject to
1661 inspection under subsection (1).

1662 (b) Accounting records of the corporation.

1663 (c) The record of members.

1664 (d) Any other books and records.

1665 (4) This section does not affect:

1666 (a) The right of a member ~~to inspect and copy records under~~
1667 ~~s. 617.0730(6), or, if the member is~~ in litigation with the
1668 corporation to inspect and copy records, to the same extent as
1669 any other litigant.

1670 (b) The power of a court, independently of this chapter
1671 ~~act~~, to compel the production of corporate records for
1672 examination.

1673 Section 48. Section 617.1605, Florida Statutes, is amended
1674 to read:

1675 617.1605 Financial reports for members.—A corporation, upon
1676 a member's written demand, shall furnish that member its latest
1677 annual financial statements, which may be consolidated or
1678 combined statements of the corporation and one or more of its
1679 subsidiaries or affiliates, as appropriate, and which include a
1680 balance sheet as of the end of the fiscal year and a statement
1681 of operations for that year. If financial statements are
1682 prepared for the corporation on the basis of generally accepted

590-03446-09

20091288c2

1683 accounting principles, the annual financial statements must also
1684 be prepared on such basis. ~~Within 60 days following the end of~~
1685 ~~the fiscal or calendar year or annually on such date as is~~
1686 ~~otherwise provided in the bylaws of the corporation, the board~~
1687 ~~of directors of the corporation shall mail or furnish by~~
1688 ~~personal delivery to each member a complete financial report of~~
1689 ~~actual receipts and expenditures for the previous 12 months. The~~
1690 ~~report shall show the amounts of receipts by accounts and~~
1691 ~~receipt classifications and shall show the amounts of expenses~~
1692 ~~by accounts and expense classifications.~~

1693 Section 49. Section 617.1703, Florida Statutes, is created
1694 to read:

1695 617.1703 Application of chapter.—In the event of any
1696 conflict between the provisions of this chapter and chapter 718
1697 regarding condominiums, chapter 719 regarding cooperatives,
1698 chapter 720 regarding homeowners' associations, chapter 721
1699 regarding timeshares, or chapter 723 regarding mobile home
1700 owners' associations, the provisions of such other chapters
1701 shall apply. The provisions of ss. 617.0605-617.0608 do not
1702 apply to corporations regulated by any of the foregoing chapters
1703 or to any other corporation where membership in the corporation
1704 is required pursuant to a document recorded in the county
1705 property records.

1706 Section 50. Subsection (8) is added to section 617.1803,
1707 Florida Statutes, to read:

1708 617.1803 Domestication of foreign not-for-profit
1709 corporations.—

1710 (8) When a domestication becomes effective:

1711 (a) The title to all real and personal property, both

590-03446-09

20091288c2

1712 tangible and intangible, of the foreign corporation remains in
1713 the domesticated corporation without reversion or impairment;

1714 (b) The liabilities of the foreign corporation remain the
1715 liabilities of the domesticated corporation;

1716 (c) An action or proceeding against the foreign corporation
1717 continues against the domesticated corporation as if the
1718 domestication had not occurred;

1719 (d) The articles of incorporation attached to the
1720 certificate of domestication constitute the articles of
1721 incorporation of the domesticated corporation; and

1722 (e) Membership interests in the foreign corporation remain
1723 identical in the domesticated corporation.

1724 Section 51. Section 617.1806, Florida Statutes, is amended
1725 to read:

1726 617.1806 Conversion to corporation not for profit; petition
1727 and contents.—A petition for conversion to a corporation not for
1728 profit pursuant to s. 617.1805 shall be accompanied by the
1729 written consent of all the shareholders authorizing the change
1730 in the corporate nature and directing an authorized officer to
1731 file such petition before the court, together with a statement
1732 agreeing to accept all the property of the petitioning
1733 corporation and agreeing to assume and pay all its indebtedness
1734 and liabilities, and the proposed articles of incorporation
1735 signed by the president and secretary of the petitioning
1736 corporation which shall set forth the provisions required in
1737 original articles of incorporation by s. 617.0202.

1738 Section 52. Section 617.1907, Florida Statutes, is amended
1739 to read:

1740 617.1907 Effect of repeal or amendment of prior acts.—

590-03446-09

20091288c2

1741 (1) Except as provided in subsection (2), the repeal or
1742 amendment of a statute by this chapter act does not affect:

1743 (a) The operation of the statute or any action taken under
1744 it before its repeal or amendment;

1745 (b) Any ratification, right, remedy, privilege, obligation,
1746 or liability acquired, accrued, or incurred under the statute
1747 before its repeal or amendment;

1748 (c) Any violation of the statute, or any penalty,
1749 forfeiture, or punishment incurred because of the violation,
1750 before its repeal or amendment; or

1751 (d) Any proceeding, reorganization, or dissolution
1752 commenced ~~under the statute~~ before its repeal or amendment, and
1753 the proceeding, reorganization, or dissolution may be completed
1754 ~~in accordance with the statute~~ as if it had not been repealed or
1755 amended.

1756 (2) If a penalty or punishment imposed for violation of a
1757 statute repealed or amended by this chapter act is reduced by
1758 this act, the penalty or punishment if not already imposed shall
1759 be imposed in accordance with this chapter act.

1760 Section 53. Section 617.2103, Florida Statutes, is
1761 repealed.

1762 Section 54. Except as otherwise expressly provided in this
1763 act and except for this section, which shall take effect upon
1764 becoming a law, this act shall take effect October 1, 2009.