

# Publications

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## Florida Passes Sweeping Modernization of State Nonprofit Law, Effective July 1

### Key Takeaways:

- HB 797 will comprehensively modernize the Florida Nonprofit Corporation Act, with changes taking effect July 1, 2026.
- The legislation reshapes nonprofit governance, member rights and restructuring mechanics to align with the ABA's Model Nonprofit Corporation Act.
- Florida nonprofits should begin a focused governance review now to align with new statutory defaults and identify amendments needed before the effective date.

CS/CS/HB 797 (HB 797) has unanimously passed both the Florida House and Senate and now awaits Governor Ron DeSantis's signature. Once signed, it will significantly rewrite and modernize the Florida Nonprofit Act (Chapter 617, Florida Statutes), aligning Florida law with the American Bar Association's Model Nonprofit Corporation Act that has been adopted in 37 states.

The new law will take effect July 1, 2026, giving Florida nonprofit organizations a limited window of time to review and update governance documents, policies and operational practices to account for the changes in the law.

### What Changed and Why It Matters

Upon signature, HB 797 will constitute a comprehensive revision of Chapter 617. The legislation materially affects nonprofit governance, member rights and procedures, officer standards of conduct, and the statutory framework governing mergers, restructurings and other fundamental transactions.

Although many organizations may not require immediate structural changes, most Florida nonprofit corporations should anticipate the need to review and potentially revise their articles of incorporation, bylaws, governance policies, member procedures and transaction documentation to ensure alignment with revised statutory defaults and newly available statutory mechanisms.

Importantly, these updates apply not only to charitable nonprofits, but also to member-

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### Related Capabilities

- Nonprofit Organizations

driven organizations, including trade associations, professional organizations and community associations organized under Chapter 617.

## Key Changes at a Glance

### 1) New statutory framework for derivative proceedings

HB 797 creates Sections 617.0741 through 617.0747, establishing a detailed statutory structure for derivative actions. These provisions address standing requirements, demand and demand-excuse pleading standards, potential stays while the corporation investigates, and dismissal mechanisms where qualified decisionmakers determine that continuation of the action is not in the corporation's best interests.

Settlements and discontinuances generally require court approval, and courts may direct notice to members in appropriate cases. These provisions intersect with the statute's newly defined "qualified director" concept.

**Practical Impact:** Organizations should evaluate current and anticipated litigation matters considering these procedural requirements.

### 2) Conflict-of-interest and "qualified director" concepts

Section 617.0832 has been substantially revised to clarify what constitutes a director conflict-of-interest transaction and to define the standards by which fairness to the corporation is assessed.

New Section 617.0143 introduces the concept of a "qualified director," which applies in multiple statutory contexts, including approval of conflict-of-interest transactions, determinations regarding derivative proceedings and certain indemnification decisions. A qualified director must not have a material interest or relationship in the relevant transaction or proceeding.

These provisions establish clearer statutory guardrails governing interested-director transactions and are intended to mitigate risks associated with private benefit or excess benefit transactions.

**Practical Impact:** Organizations should review and update conflict-of-interest policies, board approval procedures and bylaws to incorporate the qualified director framework and ensure compliance with statutory safeguards.

### 3) Board and member governance mechanics updated

HB 797 updates default rules concerning board and member governance, including director participation via communications technology, waivers of notice, action by unanimous written consent, remote member participation and recordkeeping requirements for remote votes. The legislation also revises provisions governing director elections, terms, removal and vacancies.

**Practical Impact:** Nonprofits should review bylaws, meeting procedures and electronic communications practices to ensure consistency with the revised statute. Particular attention should be given to notice requirements for annual and special meetings and to procedures governing remote participation and electronic voting.

### 4) Transactions and restructuring: transfer or purchase of membership

Historically, Florida nonprofit corporations were generally prohibited from transferring or

selling membership interests, which often complicated acquisition structures and required relying on asset transactions. This caused additional steps to affect the acquisition or reliance on an asset sale.

HB 797 aligns Florida law with the Model Act approach by permitting the transfer or sale of membership interests, provided that the corporation's governing documents authorize such transfers.

**Practical Impact:** HB 797 will clarify and simplify the process for nonprofit organizations looking to sell or acquire their membership interests. Organizations that wish to permit transferability should consider amending their organizing documents accordingly, which may simplify future merger and acquisition transactions.

#### 5) Transactions and restructuring: mergers

The legislation revises and expands statutory provisions governing mergers and similar transactions. Among other changes, HB 797 introduces a short-form parent-sub subsidiary merger provision, adds conversion and domestication mechanisms and substantially updates the required contents of articles of merger.

The statute addresses property held for charitable purposes, limiting certain mergers involving such property to other nonprofit entities. It also includes provisions concerning "protected agreements," which may treat certain conversions or domestications as mergers unless relevant contractual language is amended after July 1, 2026. If an organization holds property for charitable purposes, it may only merge with another nonprofit entity. Additional procedural requirements govern approval of a plan of merger, including circumstances in which directors must provide notice rather than a recommendation due to conflicts.

**Practical Impact:** Organizations contemplating mergers or reorganizations should carefully evaluate these revised requirements to ensure compliance and mitigate liability exposure.

#### 6) Transactions and restructuring: conversions and domestications

HB 797 creates new statutory provisions governing domestication into Florida as a nonprofit corporation and conversion from a for-profit entity to a nonprofit corporation. The statute specifies the required contents of a plan of domestication and related approval procedures.

**Practical Impact:** For many of the businesses and individuals moving to Florida, redomiciling their affiliated charitable organizations may be appealing. HB 797 provides a clearer path for how to achieve that result. Additionally, HB 797 provides clarity for entities that may want to convert to a nonprofit corporation.

#### 7) Distributions and dividends

Under the previous language of Section 617.0505, distributions, which included dividends, were generally restricted unless specific exceptions were met, including mutual benefits, the payment of reasonable compensation, transfers upon dissolution or upon partial liquidation. Although distributions remain generally restricted under Chapter 617, HB 797 introduces a new exception permitting distributions to another nonprofit entity or governmental unit that is a member of the distributing corporation or that has authority to appoint one or more directors.

**Practical Impact:** This change simplifies planning within complex structures or joint ventures where that entity is organized as a nonprofit corporation. Previously, members would have to rely upon management service agreements or other similar arrangements to receive money from a nonprofit corporation of which it was a member. HB 797 simplifies that process and streamlines investment by a nonprofit organization into other nonprofit organizations.

#### 8) Dissolution and judicial remedies clarified

The bill revises statutory provisions relating to dissolution and judicial proceedings. Courts are granted additional equitable remedies short of dissolution. Examples of these alternatives include the appointment of a receiver or custodian, appointment of a provisional director or grant other equitable relief other than dissolution. A provision director steps in to remedy issues raised by members or directors.

**Practical Impact:** These expanded remedies provide members and directors with additional mechanisms to address governance disputes or alleged misconduct without necessarily dissolving the corporation.

#### 9) Standard of conduct for officers

HB 797 codifies a standard of conduct for officers, requiring them to act in good faith, in a manner they reasonably believe to be in the best interests of the corporation and with the care an ordinarily prudent person in a like position would exercise under similar circumstances. The bill also identifies categories of persons upon whom an officer may reasonably rely, including informed employees, legal counsel, accountants and other professionals.

**Practical Impact:** Organizations should incorporate this statutory standard into their bylaws and governance policies and ensure that officer roles and responsibilities are clearly documented.

#### 10) Amending the Articles of Incorporation

The statutory process for amending articles of incorporation has been comprehensively revised. Directors must first adopt a proposed amendment and, unless otherwise authorized by statute, submit it to the organization's members for approval, along with a recommendation to approve the articles of amendment, unless a conflict of interest or other special circumstance prevents such recommendation. The statute also identifies certain amendments that may be approved by the board without member approval.

**Practical Impact:** This section provides a default for the amendment process if one is not provided in the organizing documents. Organizations should review their organizing documents to confirm that amendment procedures remain consistent with governance objectives and statutory requirements.

### Who Should Pay Attention

These changes may impact any organization incorporated under the Florida Nonprofit Act, including:

- Charitable nonprofits and grantmaking entities organized as Florida nonprofits
- Trade and professional associations
- Member-driven nonprofits, including many community association structures that use the Florida Nonprofit Act for governance defaults

## Recommended Next Steps Before July 1

If your organization is governed by the Florida Nonprofit Act, consider a focused governance review in advance of the effective date:

1. **Governing documents checkup:** Identify where articles and bylaws rely on statutory defaults that have changed, especially concerning member governance, meeting mechanics and officer provisions.
2. **Board and officer practice review:** Confirm the delegations, committee authority and officer responsibilities reflect current practice and are properly documented.
3. **Policy review:** Review your corporate policies and procedures to ensure they are compliant with the new law and your organization's current realities.
4. **Membership governance review (if applicable):** Validate quorum, voting standards, proxy and remote voting rules (if used), member notices and discipline or termination provisions.
5. **Transaction planning (if applicable):** For mergers and restructurings, conduct an inventory of the assets potentially held for charitable purposes and evaluate structural constraints early.
6. **Implementation plan:** Decide what must be amended before the effective date versus what can be addressed through policy and process updates.

## How We Can Help

Polsinelli's nonprofit and governance team can assist with:

- Florida Nonprofit Act gap assessments for bylaws and governance policies
- Member governance updates and modernization
- Officer and board role clarification and training
- Transaction structuring where charitable-purpose property restrictions may apply

If you have questions about Florida HB 797 or would like assistance updating governing documents, member procedures, policies or transaction documentation in light of the changes to the Florida Nonprofit Act (Chapter 617, Florida Statutes), please contact Michael Kuczynski, Jonathan Grissom or Maverick Flowers, or any member of Polsinelli's Nonprofit and Tax-Exempt Organizations Group.

Polsinelli's Nonprofit and Tax-Exempt Organizations Group advises nonprofits, foundations and membership organizations on governance, tax exemption, board and fiduciary issues, restructurings and regulatory compliance, including entity formation, bylaw modernization and transactional support under the Florida Nonprofit Act.