

<b>Tab 1 CS/CS/SB 76 by IT, IS, Simpson (CO-INTRODUCERS) Passidomo, Hooper, Mayfield, Book, Rouson, Berman, Perry, Taddeo, Cruz; (Compare to H 00045) Driving While Distracted</b>						
878202	D	S	RS	JU, Simmons	Delete everything after	03/26 11:38 AM
524280	SD	S	RCS	JU, Simmons	Delete everything after	03/26 11:38 AM

<b>Tab 2 CS/SB 892 by CM, Passidomo; (Similar to CS/H 01009) Business Organizations</b>						
632722	A	S	RCS	JU, Passidomo	Delete L.2108:	03/27 02:18 PM
855672	A	S	RCS	JU, Passidomo	btw L.5745 - 5746:	03/27 02:18 PM
855524	A	S	RCS	JU, Passidomo	Delete L.6544 - 6546:	03/27 02:18 PM
813292	A	S	RCS	JU, Passidomo	Delete L.12451 - 12461:	03/27 02:18 PM

<b>Tab 3 SB 1136 by Harrell (CO-INTRODUCERS) Perry; (Similar to H 01043) Cyberharassment</b>						
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<b>Tab 4 SB 762 by Gruters; (Similar to CS/H 00639) Trial Court Security</b>						
856104	D	S	RCS	JU, Gruters	Delete everything after	03/26 11:38 AM
918110	AA	S	RCS	JU, Rodriguez	In title, delete L.32:	03/26 11:38 AM
<del>906684</del>	T	S	WD	JU, Rodriguez	In title, delete L.2:	03/26 11:38 AM

<b>Tab 5 SB 1188 by Gruters; (Identical to H 01167) Courts</b>						
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<b>Tab 6 SB 1238 by Mayfield (CO-INTRODUCERS) Baxley, Hutson; (Compare to H 00403) Safety of Religious Institutions</b>						
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<b>Tab 7 SB 1656 by Lee; (Similar to H 07069) Amendment of Criminal Statutes</b>						
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<b>Tab 8 SB 1694 by Flores; (Identical to H 01019) Takings Claims Within Areas of Critical State Concern</b>						
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<b>Tab 9 SB 1742 by Gainer; (Identical to CS/H 00041) Correctional Facility Employees</b>						
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<b>Tab 10 SB 1200 by Stargel; (Similar to CS/H 01247) Construction Bonds</b>						
603720	D	S	RCS	JU, Stargel	Delete everything after	03/26 09:14 AM

<b>Tab 11 CS/SB 1134 by CJ, Simmons; (Similar to H 00569) Electronic Monitoring Devices</b>						
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<b>Tab 12 SB 1246 by Wright; (Similar to H 00911) Construction Defects</b>						
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**JUDICIARY**  
**Senator Simmons, Chair**  
**Senator Rodriguez, Vice Chair**

**MEETING DATE:** Monday, March 25, 2019

**TIME:** 4:00—6:00 p.m.

**PLACE:** Toni Jennings Committee Room, 110 Senate Building

**MEMBERS:** Senator Simmons, Chair; Senator Rodriguez, Vice Chair; Senators Baxley, Gibson, Hutson, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 76</b> Innovation, Industry, and Technology / Infrastructure and Security / Simpson (Compare H 45, H 107)	Driving While Distracted; Designating the "Florida Driving While Distracted Law"; defining the term "driving while distracted"; prohibiting a person from operating a motor vehicle when driving while distracted; revising crash results for which a user's billing records for a wireless communications device or the testimony of or written statements from certain authorities are admissible as evidence, etc.  IS      02/19/2019 Fav/CS IT      03/06/2019 Fav/CS JU      03/25/2019 Fav/CS RC	Fav/CS Yeas 5 Nays 1
2	<b>CS/SB 892</b> Commerce and Tourism / Passidomo (Similar H 1009, Compare H 615, S 272)	Business Organizations; Providing requirements, authorizations, and prohibitions relating to when the terms of a plan or a filed document may be dependent on facts objectively ascertainable outside of the plan or filed document; revising the process authorizing a domestic or foreign corporation to correct a document filed by the Department of State; requiring certain certificates to be taken by certain entities as prima facie evidence of the facts stated; revising requirements and authorizations for the contents of articles of incorporation, etc.  CM      03/11/2019 Fav/CS JU      03/25/2019 Fav/CS ATD AP	Fav/CS Yeas 6 Nays 0
3	<b>SB 1136</b> Harrell (Similar H 1043)	Cyberharassment; Redefining the terms "personal identifying information" and "sexually cyberharass"; providing criminal penalties, etc.  CJ      03/11/2019 Favorable JU      03/25/2019 Favorable RC	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Monday, March 25, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 762</b> Gruters (Similar CS/H 639, Compare CS/S 328)	Trial Court Security; Requiring sheriffs to provide security for trial court facilities; requiring sheriffs to coordinate with the chief judge on security matters for trial court facilities and to retain operational control over how they provide security for such facilities; specifying that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities, etc.  JU 03/25/2019 Fav/CS IS ACJ AP	Fav/CS Yeas 6 Nays 0
5	<b>SB 1188</b> Gruters (Identical H 1167)	Courts; Specifying that certain exemptions from court-related fees and charges apply to certain entities; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; providing that a certain examination report related to annual guardianship plans may be prepared by a physician assistant or an advanced practice registered nurse, etc.  JU 03/25/2019 Favorable CF RC	Favorable Yeas 6 Nays 0
6	<b>SB 1238</b> Mayfield (Compare H 403)	Safety of Religious Institutions; Authorizing a church, a synagogue, or other religious institution to allow a concealed weapons or concealed firearms licensee to carry a firearm on the property of that church, synagogue, or other religious institution for certain purposes; authorizing a private school or a religious school to designate a person to carry a firearm on that school's property, etc.  JU 03/25/2019 Favorable CJ RC	Favorable Yeas 4 Nays 2
7	<b>SB 1656</b> Lee (Similar H 7069)	Amendment of Criminal Statutes; Providing that an act of the Legislature which reenacts, revises, or amends a criminal statute may not be considered a repeal under a specified provision of the State Constitution; specifying that the reenactment, revision, or amendment of an existing criminal statute only operates prospectively unless expressly provided otherwise in such an act, etc.  JU 03/25/2019 Favorable CJ RC	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Monday, March 25, 2019, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1694</b> Flores (Identical H 1019)	Takings Claims Within Areas of Critical State Concern; Providing for the apportionment of awards of damages for takings claims within areas of critical state concern, etc.  JU 03/25/2019 Favorable CA AP	Favorable Yeas 6 Nays 0
9	<b>SB 1742</b> Gainer (Identical CS/H 41)	Correctional Facility Employees; Providing for forfeiture of retirement benefits of correctional facility employees who commit certain violations; providing enhanced penalties for offenses involving introduction of contraband in correctional facilities when committed by correctional facility employees, etc.  JU 03/25/2019 Temporarily Postponed ACJ AP	Temporarily Postponed
10	<b>SB 1200</b> Stargel (Similar CS/H 1247)	Construction Bonds; Requiring a notice of nonpayment to be verified; deeming contractors to be insureds or beneficiaries in relation to bonds for construction contracts; providing that a contractor may record a notice identifying a project bond as a conditional payment bond before project commencement to make the duty of a surety to pay lienors coextensive with the contractor's duty to pay, etc.  JU 03/25/2019 Fav/CS CA RC	Fav/CS Yeas 6 Nays 0
11	<b>CS/SB 1134</b> Criminal Justice / Simmons (Similar H 569)	Electronic Monitoring Devices; Specifying the jurisdictions under which certain prohibited acts relating to electronic monitoring devices may be prosecuted, etc.  CJ 03/11/2019 Fav/CS JU 03/25/2019 Favorable RC	Favorable Yeas 6 Nays 0
12	<b>SB 1246</b> Wright (Similar H 911)	Construction Defects; Requiring courts to require parties in actions involving construction defects to take part in nonbinding arbitration; authorizing parties to agree to be bound by the arbitration award; requiring a jury verdict and a final judgment to contain specified information in certain proceedings, etc.  JU 03/18/2019 Temporarily Postponed JU 03/25/2019 Temporarily Postponed IT RC	Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Judiciary

Monday, March 25, 2019, 4:00—6:00 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/CS/SB 76

INTRODUCER: Judiciary Committee; Innovation, Industry, Technology Committee; Infrastructure and Security Committee; and Senator Simpson and others

SUBJECT: Texting While Driving

DATE: March 26, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Proctor	Miller	IS	<b>Fav/CS</b>
2.	Wiehle	Imhof	IT	<b>Fav/CS</b>
3.	Stallard	Cibula	JU	<b>Fav/CS</b>
4.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/CS/SB 76 amends s. 316.305, F.S., the “Florida Ban on Texting While Driving Law,” to authorize enforcement of the ban as a primary offense punishable as a moving violation instead of the current nonmoving violation.

The bill allows for a statewide public education and awareness campaign, and provides for enforcement only by a warning from October 1, 2019, through December 31, 2019, after which a person may be issued a citation. A person who violates this law commits a noncriminal traffic infraction, punishable as a moving violation, and will have three points assessed against his or her license. However, a person cited for his or her first offense may avoid punishment and the assessment of points by completing a distracted driving safety program.

The bill requires that all penalties collected for a violation of the ban be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health (DOH), which will have an indeterminate fiscal impact on the General Revenue Fund, a number of state trust funds, the clerks of court, and municipalities. See Section V. Fiscal Impact Statement.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Florida Ban on Texting While Driving Law

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law.” It bans a person from operating a motor vehicle while using a wireless communications device<sup>1</sup> in specified ways. Enforcement is permitted only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of ch. 316, F.S., the “Florida Uniform Traffic Control Law,” ch. 320, F.S., relating to motor vehicle licenses, or ch. 322, F.S., relating to driver licenses.

More specifically, the statute bans operation of a moving motor vehicle either while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of non-voice interpersonal communication.<sup>2</sup> The ban does not apply to a motor vehicle operator who is:

- Performing official duties as an operator of an authorized emergency vehicle,<sup>3</sup> a law enforcement or fire service professional, or an emergency medical services professional.
- Reporting an emergency or criminal or suspicious activity to law enforcement authorities.
- Receiving messages that are: related to the operation or navigation of the motor vehicle; safety-related information, including emergency, traffic, or weather alerts; data used primarily by the motor vehicle; or radio broadcasts.
- Using a device or system for navigation purposes.
- Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.
- Conducting wireless interpersonal communication that does not require reading text messages, except to activate, deactivate, or initiate a feature or function.
- Operating an autonomous vehicle in autonomous mode.<sup>4</sup>

Any person who violates the ban commits a noncriminal traffic infraction.<sup>5</sup> A first violation is punishable as a nonmoving violation,<sup>6</sup> and a second or subsequent violation within five years after the date of a prior conviction is punishable as a moving violation.<sup>7</sup>

According to the Department of Highway Safety and Motor Vehicles (HSMV), there were a total of 1,671 citations from both state and local law enforcement agencies for violation of s. 316.305,

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<sup>1</sup> The statute defines the term “wireless communications device” to mean any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15, F.S., and that allows text communications.

<sup>2</sup> This includes but is not limited to texting, e-mailing, and instant messaging.

<sup>3</sup> The term “authorized emergency vehicle” is defined in s. 322.01(4), F.S., to mean a vehicle that is equipped with extraordinary audible and visual warning devices, that is authorized to display red or blue lights, and that is on call to respond to emergencies. The term includes, but is not limited to, ambulances, law enforcement vehicles, fire trucks, and other rescue vehicles; it does not include wreckers, utility trucks, or other vehicles that are used only incidentally for emergency purposes.

<sup>4</sup> Section 316.305(3)(b), F.S.

<sup>5</sup> Section 316.305(4)(a), F.S.

<sup>6</sup> *Id.*

<sup>7</sup> Section 316.305(4)(b), F.S.

F.S., in calendar year 2018.<sup>8</sup> Of those, 1,632 were for a first violation of the statute, and 39 were for a second or subsequent violation of the statute.<sup>9</sup>

Drivers convicted of unlawful use of a wireless communications device that results in a crash will have six points assessed against their driver license,<sup>10</sup> and drivers convicted of unlawful use of a wireless communications device within a school safety zone is assessed an additional two points.<sup>11</sup>

A user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages are admissible as evidence in any proceeding to determine whether a violation of the ban has been committed only in the event of a crash resulting in death or personal injury.

## **Distracted Driving Laws in Other States**

### ***Bans on Texting While Driving***

As of April 2018, 47 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands banned text messaging for all drivers.<sup>12</sup> In 43 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands texting laws are primary enforcement, and 4 states have secondary enforcement of texting for drivers.<sup>13</sup>

### ***Bans on the Use of Hand Held Devices While Driving***

As of April 2018, using a hand-held device while driving violations are enforced as primary offenses in 16 states, the District of Columbia, Puerto Rico, Guam, and the U.S. Virgin Islands.<sup>14</sup>

### ***Bans on Distracted Driving***

Both the District of Columbia<sup>15</sup> and Ohio<sup>16</sup> have distracted driver laws that encompass more than just the use of personal electronic devices.

## **Distracted Driving**

The National Highway Traffic Safety Administration defines distracted driving as any activity that diverts attention from the primary task of driving.<sup>17</sup> Besides using electronic devices,

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<sup>8</sup> Florida Department of Highway Safety and Motor Vehicles, *Annual Uniform Traffic Citation Report*, available at <https://services.flhsmv.gov/specialtyplates/uniformtrafficcitationreport>.

<sup>9</sup> *Id.*

<sup>10</sup> Section 322.27(3)(d)3., F.S.

<sup>11</sup> Section 322.27(3)(d)11., F.S.

<sup>12</sup> Governors Highway Safety Association, *Distracted Driving Laws by State* (April 2018), available at [https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart\\_Jun18.pdf](https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf).

<sup>13</sup> *Id.*

<sup>14</sup> Governors Highway Safety Association, *Distracted Driving Laws by State* (April 2018), available at [https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart\\_Jun18.pdf](https://www.ghsa.org/sites/default/files/2018-06/DistractedDrivingLawChart_Jun18.pdf).

<sup>15</sup> Sections 50-1731.02 and 50.1731.03, Code of the District of Columbia.

<sup>16</sup> Section 4511.051, Ohio Revised Code.

<sup>17</sup> U.S. Department of Transportation - National Highway Traffic Safety Administration, *Distracted Driving 2016* (April 2018), available at <https://www.nhtsa.gov/risky-driving/distracted-driving>.

distractions can also include adjusting a radio, eating and drinking, reading, grooming, and interacting with passengers.<sup>18</sup>

The Insurance Institute for Highway Safety asserts that cell phone use increases the risk of a crash, but that the crash risk associated with other distractions “isn’t well established.”<sup>19</sup>

### **Distraction-Affected Motor Vehicle Crashes**

In 2015, there were 885,000 distraction-affected motor vehicle crashes, of which 3,242 were fatal.<sup>20</sup> In the same year, 69,000 crashes were affected by cell phone use, and 453 of these crashes were fatal.<sup>21</sup>

However, the number of fatal distraction-affected crashes might be higher. If a driver fatality occurs in the crash, law enforcement agencies must rely on the crash investigation in order to report on whether driver distraction was involved, and they may not have information to indicate distraction.<sup>22</sup>

### **Traffic Infraction Civil Penalties**

Section 318.18, F.S., provides for penalties for traffic infractions and establishes a penalty of \$30 for a nonmoving traffic violation and \$60 for a moving violation.<sup>23</sup>

Section 318.21, F.S., requires that all civil penalties for traffic infractions that are received by a county court must be paid out as follows:

- One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Child Welfare Training Trust Fund for child welfare training purposes.
- One dollar from every civil penalty shall be remitted to the Department of Revenue for deposit into the Juvenile Justice Training Trust Fund for juvenile justice purposes.
- Of the remainder:
  - Fifty-six and four-tenths percent: shall be divided if the violation occurred within a municipality, with 50.8 percent paid to that municipality and 5.6 percent deposited into the Fine and Forfeiture Trust Fund for use by the Clerks of the Circuit Court in performing court-related functions; shall be deposited into the Fine and Forfeiture Trust Fund for use by the Clerks of the Circuit Court in performing court-related functions if

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<sup>18</sup> *Id.*

<sup>19</sup> Insurance Institute for Highway Safety, Highway Loss Data Institute, available at <https://www.iihs.org/iihs/topics/t/distracted-driving/topicoverview> (last visited February 26, 2019).

<sup>20</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *Traffic Safety Facts, Research Note, Distracted Driving 2016* (April 2018), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812517>.

<sup>21</sup> *Id.*

<sup>22</sup> U.S. Department of Transportation, National Highway Traffic Safety Administration, *An Examination of Driver Distraction as Recorded in NHTSA Databases* (September 2009), available at <https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/811216>.

<sup>23</sup> After the addition of court costs and service charges, the final amount paid could be up to \$108 for a nonmoving traffic violation and up to \$158 for a moving violation. See The Florida Court Clerks and Comptrollers, *Distribution Schedule* (July 2018), available at [https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public\\_documents/2018\\_distribution\\_schedule\\_1.pdf](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/2018_distribution_schedule_1.pdf) (last visited February 26, 2019).

the violation occurred within the unincorporated area of a county; or shall be paid to a special improvement district of the Seminole Indian Tribe or Miccosukee Indian Tribe if the violation occurred there.

- Twenty and six-tenths percent shall be remitted to the Department of Revenue for deposit into the General Revenue Fund of the state, except that the first \$300,000 shall be deposited into the Grants and Donations Trust Fund in the Justice Administrative Commission for administrative costs, training costs, and costs associated with the implementation and maintenance of Florida foster care citizen review panels in a constitutional charter county.
- Seven and two-tenths percent shall be remitted to the Department of Revenue for deposit in the Emergency Medical Services Trust Fund.
- Five and one-tenth percent shall be remitted to the Department of Revenue for deposit in the Additional Court Cost Clearing Trust Fund for criminal justice purposes.
- Eight and two-tenths percent shall be remitted to the Department of Revenue for deposit in the Brain and Spinal Cord Injury Program Trust Fund.
- Two percent shall be remitted to the Department of Revenue and transmitted monthly to the Florida Endowment Foundation for Vocational Rehabilitation.
- Five-tenths percent shall be paid to the Clerk of the Circuit Court for administrative costs.

### **Driver Improvement Schools**

The Florida Department of Highway Safety and Motor Vehicles (DHSMV) has the authority to approve and regulate courses for driver improvement schools, including courses that use technology as a delivery method.<sup>24</sup> In determining whether to approve a course, the DHSMV considers course content designed to promote safety, driver awareness, crash avoidance techniques, and other factors or criteria to improve driver performance from a safety viewpoint, including promoting motorcyclist, bicyclist, and pedestrian safety and risk factors resulting from driver attitude and irresponsible driver behaviors, such as speeding, running red lights and stop signs, and using electronic devices while driving.<sup>25</sup>

In addition to regular course costs, an assessment of \$2.50 is collected for the driver improvement course from each person who elects to attend a course. The course provider must remit the \$2.50 assessment to the DHSMV for deposit into the Highway Safety Operating Trust Fund in order to receive unique course completion certificate numbers for course participants.<sup>26</sup> The assessment fee is used to administer the program and to fund the general operations of the HSMV.

### **III. Effect of Proposed Changes:**

The bill amends the “Florida Ban on Texting While Driving Law” to authorize enforcement of the ban as a primary offense. The bill provides for phased-in enforcement. From October 1, 2019 to December 31, 2019, law enforcement officers are authorized to provide only a verbal or written warning to a person who is texting while driving. After December 31, 2019, an officer may issue a uniform traffic citation for an infraction. A person who violates this law commits a

<sup>24</sup> Section 318.1451(1), F.S.

<sup>25</sup> Section 318.1451(2)(a), F.S.

<sup>26</sup> Section 318.1451(4), F.S.

noncriminal traffic infraction, punishable as a moving violation, and will have three points assessed against his or her license.

The law currently provides that only in the event of a crash involving a death or personal injury may specified forms of evidence be used to establish whether a violation of the prohibition has occurred. The bill changes the term “personal injury” to “serious bodily injury.”

A person issued a citation for a first offense may elect to participate in a distracted driving safety program approved by the HSMV and have any penalties, associated costs, and points waived. All penalties collected for a violation of the ban on texting while driving must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health. Currently, only 7.2 percent of the penalties is deposited in this fund.

The bill authorizes the DHSMV, in consultation with the Department of Transportation, to implement a statewide safety and public awareness campaign to prevent drivers from driving while distracted. The DHSMV is authorized to contract with county, and local law enforcement agencies, safety councils, and public schools to assist with planning and conducting the statewide campaign.

The bill takes effect July 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Operators of motor vehicles who drive while distracted may be issued a citation and have resulting penalties. In addition, with the first violation being changed from a nonmoving to a moving traffic violation, the base fine amount doubles from \$30 to \$60, along with 3 points being assessed against their driver license.

**C. Government Sector Impact:**

The Emergency Medical Services Trust Fund of the DOH will receive 100 percent of the driving while distracted civil penalty amount instead of the current 7.2 percent associated with the texting while driving civil penalty, which will have an indeterminate positive fiscal impact. The other current recipients will no longer receive any of the texting while driving penalty revenues, resulting in an indeterminate negative fiscal impact to the following:

- Child Welfare Training Trust Fund;
- Juvenile Justice Training Trust Fund;
- Municipalities;
- Circuit Court Clerks/Fine and Forfeiture Trust Fund;
- General Revenue Fund;
- Additional Court Cost Clearing Trust Fund;
- Brain and Spinal Cord Injury Program Trust Fund;
- Florida Endowment Foundation for Vocational Rehabilitation; and
- Circuit Court Clerks for administrative costs.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 316.305 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS/CS/CS by Judiciary on March 25, 2019:**

The committee substitute limits the types of distracted driving regulated by the bill to texting while driving. The underlying bill would have regulated “reading, writing, performing personal grooming, applying a beauty aid or similar products, interacting with

pets or unsecured cargo, using a personal wireless communications device, or engaging in any other activity, conduct task or action that causes distraction.” The bill also eliminates the requirement that law enforcement officers record the race and ethnicity of each person cited for driving while distracted.

**CS/CS by Innovation, Industry, and Technology on March 6, 2019:**

The committee substitute for committee substitute:

- Revises a definition and a statement of intent to clarify that the driving while distracted provisions apply when the vehicle is in motion; and
- Requires that information on the race and ethnicity of persons violating the driving while distracted prohibition be recorded, maintained, and reported, as specified.

**CS by Infrastructure and Security on February 19, 2019:**

The CS changes the “relating to” clause of the bill to “an act relating to driving while distracted,” and adds numerous provisions to the bill. The CS:

- Expands the bill to include multiple forms of driving distracted;
- Renames a section of statute Driving while Distracted prohibition;
- Renames a statute section citation title to “Florida Driving While Distracted Law”;
- Defines the term “driving while distracted”;
- Defines the term “wireless communications device”;
- Allows law enforcement to issue citations to distracted drivers as a primary offense after December 1, 2019;
- Changes the first offense from a nonmoving violation, to a moving violation and provides an option to avoid points and penalties through participation in a distracted driving safety program;
- Allows that an operators first citation due to use of personal wireless communications device may be dismissed if they show proof of having purchased equipment that allows their personal wireless communications device to be used in a hands-free manner;
- Allows a user’s billing records for wireless communications device to be admissible as evidence in the event a crash results in “death or serious bodily injury”, current law allows admissibility when a crash results in “death or personal injury”;
- Allows for use of wireless communications device in hands-free or voice operated mode;
- Provides for a warning period from October 1, 2019 to December 31, 2019;
- Provides that the HSMV may implement a safety and public awareness campaign; and
- Directs all fines collected to be deposited in the Emergency Medical Services Trust Fund of the DOH.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/26/2019	.	
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The Committee on Judiciary (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 316.305, Florida Statutes, is amended to  
read:

316.305 Wireless communications devices; prohibition.—

(1) This section may be cited as the "Florida Ban on  
Texting While Driving Law."

(2) It is the intent of the Legislature to:

(a) Improve roadway safety for all vehicle operators,



878202

vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of driving while text messaging when operating ~~while driving~~ a motor vehicle while the vehicle is in motion.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

(d) Authorize law enforcement officers to stop motor vehicles and issue citations as a secondary offense to persons who are texting while driving as provided in subsection (3).

(3)(a)1. A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period of October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are texting



878202

41 while driving for the purposes of informing and educating such  
42 persons. This sub-subparagraph shall stand repealed on October  
43 1, 2020.

44 b. After December 31, 2019, a law enforcement officer may  
45 stop motor vehicles and issue citations to persons who are  
46 texting while driving.

47 (b) Paragraph (a) does not apply to a motor vehicle  
48 operator who is:

49 1. Performing official duties as an operator of an  
50 authorized emergency vehicle as defined in s. 322.01, a law  
51 enforcement or fire service professional, or an emergency  
52 medical services professional.

53 2. Reporting an emergency or criminal or suspicious  
54 activity to law enforcement authorities.

55 3. Receiving messages that are:

56 a. Related to the operation or navigation of the motor  
57 vehicle;

58 b. Safety-related information, including emergency,  
59 traffic, or weather alerts;

60 c. Data used primarily by the motor vehicle; or

61 d. Radio broadcasts.

62 4. Using a device or system for navigation purposes.

63 5. Conducting wireless interpersonal communication that  
64 does not require manual entry of multiple letters, numbers, or  
65 symbols, except to activate, deactivate, or initiate a feature  
66 or function.

67 6. Conducting wireless interpersonal communication that  
68 does not require reading text messages, except to activate,  
69 deactivate, or initiate a feature or function.



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70           7. Operating an autonomous vehicle, as defined in s.  
71 316.003, in autonomous mode.

72           (c) Only in the event of a crash resulting in death or  
73 serious bodily injury, as defined in s. 316.027 ~~personal injury,~~  
74 a user's billing records for a wireless communications device or  
75 the testimony of or written statements from appropriate  
76 authorities receiving such messages may be admissible as  
77 evidence in any proceeding to determine whether a violation of  
78 paragraph (a) has been committed.

79           (4)~~(a)~~ Any person who violates this section commits a  
80 noncriminal traffic infraction, punishable as a moving  
81 violation, as provided in chapter 318, and shall have 3 points  
82 assessed against his or her driver license as set forth in s.  
83 322.27. For a first offense under this section, in lieu of the  
84 penalty specified in s. 318.18 and the assessment of points, a  
85 person who violates this section may elect to participate in a  
86 distracted driving safety program approved by the Department of  
87 Highway Safety and Motor Vehicles. Upon completion of such  
88 program, the penalty specified in s. 318.18 and associated costs  
89 may be waived by the clerk of the court and the assessment of  
90 points must be waived ~~Any person who violates paragraph (3) (a)~~  
91 ~~commits a noncriminal traffic infraction, punishable as a~~  
92 ~~nonmoving violation as provided in chapter 318.~~

93           ~~(b) Any person who commits a second or subsequent violation~~  
94 ~~of paragraph (3) (a) within 5 years after the date of a prior~~  
95 ~~conviction for a violation of paragraph (3) (a) commits a~~  
96 ~~noncriminal traffic infraction, punishable as a moving violation~~  
97 ~~as provided in chapter 318.~~

98           (5) Notwithstanding s. 318.21, all proceeds collected



878202

pursuant to s. 318.18 for violations of this section must be  
remitted to the Department of Revenue for deposit into the  
Emergency Medical Services Trust Fund of the Department of  
Health ~~Enforcement of this section by state or local law~~  
~~enforcement agencies must be accomplished only as a secondary~~  
~~action when an operator of a motor vehicle has been detained for~~  
~~a suspected violation of another provision of this chapter,~~  
~~chapter 320, or chapter 322.~~

Section 2. (1) The Department of Highway Safety and Motor  
Vehicles, in consultation with the Department of Transportation,  
may implement a statewide campaign to raise awareness and  
prevent drivers from driving while distracted. The Department of  
Highway Safety and Motor Vehicles may use television messaging,  
radio broadcasts, print media, digital strategies, social media,  
and any other form of messaging deemed necessary and appropriate  
by the department to implement the campaign.

(2) The Department of Highway Safety and Motor Vehicles may  
contract with counties, local law enforcement agencies, safety  
councils, and public schools to assist with planning and  
conducting the statewide driving while distracted safety and  
public awareness campaign in a manner that encourages compliance  
with s. 316.305, Florida Statutes.

Section 3. Except as otherwise expressly provided in this  
act, this act shall take effect July 1, 2019.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:



878202

A bill to be entitled  
An act relating to texting while driving; amending s.  
316.305, F.S.; prohibiting a person from texting while  
driving; authorizing a law enforcement officer during  
a specified period to stop motor vehicles to issue  
warnings to persons who are driving while distracted;  
providing for repeal of a provision; authorizing a law  
enforcement officer, after a specified date, to stop  
motor vehicles and issue citations to persons who are  
driving while distracted; revising exceptions to such  
prohibition; revising crash results for which a user's  
billing records for a wireless communications device  
or the testimony of or written statements from certain  
authorities are admissible as evidence; providing  
penalties for driving while distracted; authorizing  
participation in a distracted driving safety program  
for a first offense, in lieu of specified penalties;  
requiring the deposit of fines into the Emergency  
Medical Services Trust Fund; deleting a provision  
requiring that enforcement of this section be  
accomplished only as a secondary action; authorizing  
the Department of Highway Safety and Motor Vehicles,  
in consultation with the Department of Transportation,  
to implement a statewide campaign to raise awareness  
and prevent drivers from driving while distracted;  
authorizing the department to use certain messaging to  
implement the campaign; authorizing the department to  
contract with certain entities for certain purposes;  
providing contract authority; providing an effective



878202

157

date.



524280

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2019	.	
	.	
	.	
	.	

---

The Committee on Judiciary (Simmons) recommended the following:

**Senate Substitute for Amendment (878202) (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Section 316.305, Florida Statutes, is amended to  
read:

316.305 Wireless communications devices; prohibition.—

(1) This section may be cited as the "Florida Ban on  
Texting While Driving Law."

(2) It is the intent of the Legislature to:



524280

(a) Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of driving while text messaging when operating ~~while driving~~ a motor vehicle while the vehicle is in motion.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

(d) Authorize law enforcement officers to stop motor vehicles and issue citations as a primary ~~secondary~~ offense to persons who are texting while driving as provided in subsection (3).

(3)(a)1. A person may not operate a motor vehicle while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period of October 1, 2019, through December



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31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are texting while driving for the purposes of informing and educating such persons. This sub-subparagraph shall stand repealed on October 1, 2020.

b. After December 31, 2019, a law enforcement officer may stop motor vehicles and issue citations to persons who are texting while driving.

(b) Paragraph (a) does not apply to a motor vehicle operator who is:

1. Performing official duties as an operator of an authorized emergency vehicle as defined in s. 322.01, a law enforcement or fire service professional, or an emergency medical services professional.

2. Reporting an emergency or criminal or suspicious activity to law enforcement authorities.

3. Receiving messages that are:

a. Related to the operation or navigation of the motor vehicle;

b. Safety-related information, including emergency, traffic, or weather alerts;

c. Data used primarily by the motor vehicle; or

d. Radio broadcasts.

4. Using a device or system for navigation purposes.

5. Conducting wireless interpersonal communication that does not require manual entry of multiple letters, numbers, or symbols, except to activate, deactivate, or initiate a feature or function.

6. Conducting wireless interpersonal communication that



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does not require reading text messages, except to activate, deactivate, or initiate a feature or function.

7. Operating an autonomous vehicle, as defined in s. 316.003, in autonomous mode.

(c) Only in the event of a crash resulting in death or serious bodily injury, as defined in s. 316.027 ~~personal injury~~, a user's billing records for a wireless communications device or the testimony of or written statements from appropriate authorities receiving such messages may be admissible as evidence in any proceeding to determine whether a violation of paragraph (a) has been committed.

~~(4)(a) Any person who violates this section commits a noncriminal traffic infraction, punishable as a moving violation, as provided in chapter 318, and shall have 3 points assessed against his or her driver license as set forth in s. 322.27. For a first offense under this section, in lieu of the penalty specified in s. 318.18 and the assessment of points, a person who violates this section may elect to participate in a distracted driving safety program approved by the Department of Highway Safety and Motor Vehicles. Upon completion of such program, the penalty specified in s. 318.18 and associated costs may be waived by the clerk of the court and the assessment of points must be waived~~ Any person who violates paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a nonmoving violation as provided in chapter 318.

~~(b) Any person who commits a second or subsequent violation of paragraph (3)(a) within 5 years after the date of a prior conviction for a violation of paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a moving violation~~



524280

~~as provided in chapter 318.~~

(5) Notwithstanding s. 318.21, all proceeds collected pursuant to s. 318.18 for violations of this section must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health  
~~Enforcement of this section by state or local law enforcement agencies must be accomplished only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of this chapter, chapter 320, or chapter 322.~~

Section 2. (1) The Department of Highway Safety and Motor Vehicles, in consultation with the Department of Transportation, may implement a statewide campaign to raise awareness and prevent drivers from driving while distracted. The Department of Highway Safety and Motor Vehicles may use television messaging, radio broadcasts, print media, digital strategies, social media, and any other form of messaging deemed necessary and appropriate by the department to implement the campaign.

(2) The Department of Highway Safety and Motor Vehicles may contract with counties, local law enforcement agencies, safety councils, and public schools to assist with planning and conducting the statewide driving while distracted safety and public awareness campaign in a manner that encourages compliance with s. 316.305, Florida Statutes.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2019.

=====  
T I T L E   A M E N D M E N T  
=====  
And the title is amended as follows:



524280

128 Delete everything before the enacting clause  
129 and insert:

130 A bill to be entitled  
131 An act relating to texting while driving; amending s.  
132 316.305, F.S.; prohibiting a person from texting while  
133 driving; authorizing a law enforcement officer during  
134 a specified period to stop motor vehicles to issue  
135 warnings to persons who are driving while distracted;  
136 providing for repeal of a provision; authorizing a law  
137 enforcement officer, after a specified date, to stop  
138 motor vehicles and issue citations to persons who are  
139 driving while distracted; revising exceptions to such  
140 prohibition; revising crash results for which a user's  
141 billing records for a wireless communications device  
142 or the testimony of or written statements from certain  
143 authorities are admissible as evidence; providing  
144 penalties for driving while distracted; authorizing  
145 participation in a distracted driving safety program  
146 for a first offense, in lieu of specified penalties;  
147 requiring the deposit of fines into the Emergency  
148 Medical Services Trust Fund; deleting a provision  
149 requiring that enforcement of this section be  
150 accomplished only as a secondary action; authorizing  
151 the Department of Highway Safety and Motor Vehicles,  
152 in consultation with the Department of Transportation,  
153 to implement a statewide campaign to raise awareness  
154 and prevent drivers from driving while distracted;  
155 authorizing the department to use certain messaging to  
156 implement the campaign; authorizing the department to



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157 contract with certain entities for certain purposes;  
158 providing contract authority; providing an effective  
159 date.

By the Committees on Innovation, Industry, and Technology; and Infrastructure and Security; and Senators Simpson, Passidomo, Hooper, Mayfield, Book, Rouson, Berman, Perry, Taddeo, and Cruz

580-02753-19

201976c2

1 A bill to be entitled  
 2 An act relating to driving while distracted; amending  
 3 s. 316.305, F.S.; revising the short title; defining  
 4 the term "driving while distracted"; redefining the  
 5 term "wireless communications device"; revising  
 6 legislative intent; prohibiting a person from  
 7 operating a motor vehicle when driving while  
 8 distracted; authorizing a law enforcement officer  
 9 during a specified period to stop motor vehicles to  
 10 issue warnings to persons who are driving while  
 11 distracted; providing for repeal of a provision;  
 12 authorizing a law enforcement officer, after a  
 13 specified date, to stop motor vehicles and issue  
 14 citations to persons who are driving while distracted;  
 15 revising exceptions to such prohibition; revising  
 16 crash results for which a user's billing records for a  
 17 wireless communications device or the testimony of or  
 18 written statements from certain authorities are  
 19 admissible as evidence; requiring that law enforcement  
 20 officers indicate specified information in the uniform  
 21 traffic citation; providing penalties for driving  
 22 while distracted; authorizing participation in a  
 23 distracted driving safety program for a first offense,  
 24 in lieu of specified penalties; authorizing a clerk of  
 25 the court to dismiss a case and assess court costs  
 26 under certain circumstances; requiring the deposit of  
 27 fines into the Emergency Medical Services Trust Fund;  
 28 deleting a provision requiring that enforcement of  
 29 this section be accomplished only as a secondary

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 action; requiring a law enforcement officer to record  
 31 the race and ethnicity of a violator when issuing a  
 32 citation for a violation of this section; requiring  
 33 all law enforcement agencies to maintain such  
 34 information and report the information to the  
 35 Department of Highway Safety and Motor Vehicles in a  
 36 form and manner determined by the department;  
 37 beginning on a specified date, requiring the  
 38 department to annually report the data to the Governor  
 39 and Legislature; providing requirements for the  
 40 report; authorizing the Department of Highway Safety  
 41 and Motor Vehicles, in consultation with the  
 42 Department of Transportation, to implement a statewide  
 43 campaign to raise awareness and prevent drivers from  
 44 driving while distracted; authorizing the department  
 45 to use certain messaging to implement the campaign;  
 46 authorizing the department to contract with certain  
 47 entities for certain purposes; providing contract  
 48 authority; providing effective dates.

49  
 50 Be It Enacted by the Legislature of the State of Florida:

51  
 52 Section 1. Effective October 1, 2019, section 316.305,  
 53 Florida Statutes, is amended to read:

54 316.305 Driving while distracted ~~Wireless communications~~  
 55 ~~devices~~; prohibition.-

56 (1) This section may be cited as the "Florida Driving Ban  
 57 ~~on Texting While Distracted Driving~~ Law."

58 (2) For purposes of this section, the term:

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(a) "Driving while distracted" means the inattentive operation of a motor vehicle while the vehicle is in motion. Inattentive or distracted driving conduct includes reading, writing, performing personal grooming, applying a beauty aid or similar products, interacting with pets or unsecured cargo, using a personal wireless communications device, or engaging in any other activity, conduct, task, or action that causes distraction.

(b) "Wireless communications device" means any handheld device that is designed or intended to receive or transmit text- or character-based messages, to record or view images, to access or store data, or to connect to the Internet or any communications service, as defined in s. 812.15, or which allows text communications. The term includes, but is not limited to, a cell phone, a tablet, a laptop, a two-way messaging device, or an electronic game that is used or capable of being used in a handheld manner. The term does not include a safety, security, or convenience feature built into a motor vehicle which does not require the use of a handheld device.

~~(3)(2)~~ It is the intent of the Legislature to:

(a) Improve roadway safety for all vehicle operators, vehicle passengers, bicyclists, pedestrians, and other road users.

(b) Prevent crashes related to the act of driving while distracted when operating ~~text messaging while driving~~ a motor vehicle while the vehicle is in motion.

(c) Reduce injuries, deaths, property damage, health care costs, health insurance rates, and automobile insurance rates related to motor vehicle crashes.

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(d) Authorize law enforcement officers to stop motor vehicles and issue citations ~~as a secondary offense~~ to persons who are ~~texting while driving~~ while distracted as provided in subsection (4).

~~(4)(3)~~ (a) 1. A person may not operate a motor vehicle when driving while distracted while manually typing or entering multiple letters, numbers, symbols, or other characters into a wireless communications device or while sending or reading data on such a device for the purpose of nonvoice interpersonal communication, including, but not limited to, communication methods known as texting, e-mailing, and instant messaging. As used in this section, the term "wireless communications device" means any handheld device used or capable of being used in a handheld manner, that is designed or intended to receive or transmit text or character-based messages, access or store data, or connect to the Internet or any communications service as defined in s. 812.15 and that allows text communications. For the purposes of this paragraph, a motor vehicle that is stationary is not being operated and is not subject to the prohibition in this paragraph.

2.a. During the period of October 1, 2019, through December 31, 2019, a law enforcement officer may stop motor vehicles to issue verbal or written warnings to persons who are driving while distracted for the purposes of informing and educating such persons. This sub-subparagraph shall stand repealed on October 1, 2020.

b. After December 31, 2019, a law enforcement officer may stop motor vehicles and issue citations to persons who are driving while distracted.

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- 117 (b) Paragraph (a) does not apply to a motor vehicle  
 118 operator who is:
- 119 1. Performing official duties as an operator of an  
 120 authorized emergency vehicle as defined in s. 322.01, a law  
 121 enforcement or fire service professional, or an emergency  
 122 medical services professional.
  - 123 2. Reporting an emergency or criminal or suspicious  
 124 activity to law enforcement authorities.
  - 125 3. Receiving messages that are:
  - 126 a. Related to the operation or navigation of the motor  
 127 vehicle;
  - 128 b. Safety-related information, including emergency,  
 129 traffic, or weather alerts;
  - 130 c. Data used primarily by the motor vehicle; or
  - 131 d. Radio broadcasts.
  - 132 4. Using a device or system in a hands-free manner for  
 133 navigation purposes.
  - 134 5. Using a wireless communications device hands-free or  
 135 hands-free in voice-operated mode, including, but not limited  
 136 to, a factory-installed or after-market Bluetooth device  
 137 ~~Conducting wireless interpersonal communication that does not~~  
 138 ~~require manual entry of multiple letters, numbers, or symbols,~~  
 139 ~~except to activate, deactivate, or initiate a feature or~~  
 140 ~~function.~~
  - 141 ~~6. Conducting wireless interpersonal communication that~~  
 142 ~~does not require reading text messages, except to activate,~~  
 143 ~~deactivate, or initiate a feature or function.~~
  - 144 ~~6.7-~~ Operating an autonomous vehicle, as defined in s.  
 145 316.003, in autonomous mode.

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- 146 (c) Only in the event of a crash resulting in death or  
 147 serious bodily injury, as defined in s. 316.027 ~~personal injury,~~  
 148 a user's billing records for a wireless communications device or  
 149 the testimony of or written statements from appropriate  
 150 authorities receiving such messages may be admissible as  
 151 evidence in any proceeding to determine whether a violation of  
 152 paragraph (a) has been committed.
- 153 (d) Law enforcement officers must indicate the type of  
 154 distraction in the comment section of the uniform traffic  
 155 citation.
- 156 (5)(4)-(a) Any person who violates this section commits a  
 157 noncriminal traffic infraction, punishable as a moving  
 158 violation, as provided in chapter 318, and shall have 3 points  
 159 assessed against his or her driver license as set forth in s.  
 160 322.27. For a first offense under this section, in lieu of the  
 161 penalty specified in s. 318.18 and the assessment of points, a  
 162 person who violates this section may elect to participate in a  
 163 distracted driving safety program approved by the Department of  
 164 Highway Safety and Motor Vehicles. Upon completion of such  
 165 program, the penalty specified in s. 318.18 and associated costs  
 166 may be waived by the clerk of the court and the assessment of  
 167 points must be waived ~~Any person who violates paragraph (3)(a)~~  
 168 ~~commits a noncriminal traffic infraction, punishable as a~~  
 169 ~~nonmoving violation as provided in chapter 318.~~
- 170 (b) The clerk of the court may dismiss a case and assess  
 171 court costs in accordance with s. 318.18(11)(a) for a nonmoving  
 172 traffic infraction for a person who is cited for a first time  
 173 violation of this section if the inattentive or distracted  
 174 driving conduct resulting in the violation is for the use of a

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personal wireless communications device and the person shows the clerk proof of purchase of equipment that enables his or her personal wireless communications device to be used in a hands-free manner. ~~Any person who commits a second or subsequent violation of paragraph (3)(a) within 5 years after the date of a prior conviction for a violation of paragraph (3)(a) commits a noncriminal traffic infraction, punishable as a moving violation as provided in chapter 318.~~

~~(6)(5)~~ Notwithstanding s. 318.21, all proceeds collected pursuant to s. 318.18 for violations of this section must be remitted to the Department of Revenue for deposit into the Emergency Medical Services Trust Fund of the Department of Health. Enforcement of this section by state or local law enforcement agencies must be accomplished only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of this chapter, chapter 320, or chapter 322.

(7) When a law enforcement officer issues a citation for a violation of this section, the law enforcement officer must record the race and ethnicity of the violator. All law enforcement agencies must maintain such information and must report such information to the department in a form and manner determined by the department. Beginning February 1, 2020, the department shall annually report the data collected under this subsection to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The data collected must be reported at least by statewide totals for local law enforcement agencies, state law enforcement agencies, and state university law enforcement agencies. The statewide total for

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local law enforcement agencies must combine the data for the county sheriffs and the municipal law enforcement agencies.

Section 2. (1) The Department of Highway Safety and Motor Vehicles, in consultation with the Department of Transportation, may implement a statewide campaign to raise awareness and prevent drivers from driving while distracted. The Department of Highway Safety and Motor Vehicles may use television messaging, radio broadcasts, print media, digital strategies, social media, and any other form of messaging deemed necessary and appropriate by the department to implement the campaign.

(2) The Department of Highway Safety and Motor Vehicles may contract with counties, local law enforcement agencies, safety councils, and public schools to assist with planning and conducting the statewide driving while distracted safety and public awareness campaign in a manner that encourages compliance with s. 316.305, Florida Statutes.

Section 3. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 22, 2019

---

I respectfully request that **Senate Bill #76**, relating to Distracted Driving, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "W. Simpson", is written over a horizontal line.

Senator Wilton Simpson  
Florida Senate, District 10

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

March 25, 2019

*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

76

*Bill Number (if applicable)*

Topic Driving While Distracted

*Amendment Barcode (if applicable)*

Name Lisa Hurley

Job Title \_\_\_\_\_

Address 311 E. Park Ave.

Phone 850.224.5081

*Street*

Tallahassee

Florida

32301

Email lhurley@smithbryanandmyers.c

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03-25-2019

Meeting Date

0076

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Mark Merwitz

Job Title Student

Address 725 NW 13 St  
Street

Phone 786-505-7272

Gainesville FL 32601  
City State Zip

Email mbmerwitz@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Driving while Distracted

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews Ave

Street

Phone 954.789.9293

Ft. Lauderdale

FL

33301

City

State

Zip

Email dewest@broward.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Broward County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

*Meeting Date*

76

*Bill Number (if applicable)*

Topic Driving While Distracted

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic

Driving While Distracted

Amendment Barcode (if applicable)

Name

Dr. Danielle Thomas

Job Title

Legislation Chair

Address

17470 Orlando Central Pkwy

Phone

407 825 7604

Street

Orlando

FL

32828

City

State

Zip

Email

legislation@floridaptac.org

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Florida PTA

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

CS SB 76

Bill Number (if applicable)

Topic TEXTING WHILE DRIVING

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE

Phone 850 681 1065

Street

TAUAHASSEE

FL

32301

City

State

Zip

Email keynacory@pacconsultants.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing NATIONAL WASTE + RECYCLING ASSN + FL DFT TXT N DRV COALITION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

076

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Katie Petros

Job Title Councilwoman, Village of Key Biscayne

Address 375 Redwood Lane Phone 305.793.3979  
Street

Key Biscayne FL 33149  
City State Zip

Email kpetros@keybiscayne.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Village of Key Biscayne

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 76

Bill Number (if applicable)

Topic DRIVING WHILE DISTRACTED

Amendment Barcode (if applicable)

Name WILLIAM SMITH

Job Title PRESIDENT FIAT / PBA CHAPTER

Address 305 S BREVARD ST  
Street

Phone 802-733-7322

TALLAHASSEE FL 32301  
City State Zip

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

2/25/2019

Meeting Date

76

Bill Number (if applicable)

Topic Texting while driving

Amendment Barcode (if applicable)

Name Jim Cordero

Title Director of Governmental Affairs

Address 1007 E. DeSoto Park Drive, Suite 201

Phone 850-222-7300

Street

Tallahassee,

Florida

32301

City

State

Zip

Email jcordero@acaf.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/26/19  
Meeting Date

76  
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title \_\_\_\_\_

Address P.O. Box 12277  
Street

Phone 850-570-0033

Talla., FL 32317  
City State Zip

Email deborah.e.lawson@outlook.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing NACM Improved Construction Practices Committee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

## THE FLORIDA SENATE

**APPEARANCE RECORD**

3/25/2019

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

76

Meeting DateBill Number (if applicable)Topic Driving While DistractedAmendment Barcode (if applicable)Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165StreetTallahasseeFL32308CityStateZipEmail mdunagan@flsheriffs.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

SB# 76

Bill Number (if applicable)

Topic

Ban on Wireless Communication Devices

Amendment Barcode (if applicable)

Name

Debbie Wanninkhof

Job Title

Address

255 W Heather Dr.

Street

Phone

305-992-7470

City

Key Biscayne FL

State

Zip

33149

Email

debbie.wanninkhof@gmail.com

Speaking:

☒

For

☐

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

The Wanninkhof Family

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Texting Driver Distraction

Amendment Barcode (if applicable)

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy.

Street

Phone 941-928-0278

Sarasota

City

FL

State

34243

Zip

Email aichildren@aol.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Advocacy Institute For Children

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

3-25-19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

76

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name \_\_\_\_\_

Job Title \_\_\_\_\_

Address 815 Voncile Ave

Phone 850 339 8213

Street

Tallahassee FL 32303

City

State

Zip

Email demetriusbranca@gmail.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Anthony

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/28/19  
Meeting Date

76  
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 101 N. Monroe St Suite 1040  
Street

Phone 850 681-0411

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Email JAMES.MAGILL@BIPFL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FLA PUBLIC TRANSPORTATION ASSOC.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

76

Bill Number (if applicable)

Topic Driving while Distracted

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title \_\_\_\_\_

Address 204 S Monroe St  
Street

Phone 850 222 8900

Tallahassee FL 32303  
City State Zip

Email SSC@cardenasparsons.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Associated Industries of FL

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

CS/CS/SB 76  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable) \_\_\_\_\_

Name LEE MOFFITT

Job Title ATTORNEY

Address 33 PERIMETER RD  
Street

Phone 813 760-5712

PALM CITY  
City State Zip

Email MRSPEAKER@AOL.COM

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing AUTONATION

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

## THE FLORIDA SENATE

## APPEARANCE RECORD

3/25/19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

76

Meeting Date

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Chief Gary HesterJob Title Government AffairsAddress 2636 Mitcham DrivePhone 850-219-3631

Street

Tallahassee

FL

32308

City

State

Zip

Email ghester@fpca.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Police Chiefs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date \_\_\_\_\_

76  
 Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable) \_\_\_\_\_

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
 (The Chair will read this information into the record.)

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19  
Meeting Date

76  
Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Nancy Lawther

Job Title President

Address P.O. Box 10309

Phone 305 995-1102

Miami, FL 33101  
City State Zip

Email president@mdccpta  
not

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Miami Dade County Council PTA / PTSA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

## THE FLORIDA SENATE

**APPEARANCE RECORD**

03/25/2019

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

76

Meeting Date

Bill Number (if applicable)

Topic Use of Wireless Communications Devices While Driving

Amendment Barcode (if applicable)

Name Carl MikyskaJob Title Executive DirectorAddress 605 Suwannee Street - MS 28BPhone 850-414-4062

Street

Tallahassee

FL

32399

City

State

Zip

Email carl.mikyska@mpoac.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

## THE FLORIDA SENATE

**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/25/2019

Meeting Date

76

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Becky AfonsoJob Title Executive DirectorAddress 174B State St EPhone 813-748-1513

Street

OldsmarFL34677Email becky@floridabicycle.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Bicycle Association, Inc.Appearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.****This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Logan McFaddin

Job Title Regional Manager

Address 215 S. Monroe St. Suite 720

Phone 850 681 2615

Street

Tallahassee

City

FL 32301

State

Zip

Email logan.mcfaddin@apci.org

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing APCIA - American Property Casualty Insurance Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Ben Stearns

Job Title Attorney

Address 215 S. Monroe St., Suite 500

Phone (850) 425-3383

Street

Tallahassee

City

FL

State

32301

Zip

Email bstearns@carltonfields.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing NAMIC

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/CS/SB 892

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senator Passidomo

SUBJECT: Business Organizations

DATE: March 27, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2.	<u>Tulloch</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
3.	_____	_____	<u>ATD</u>	_____
4.	_____	_____	<u>AP</u>	_____

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 892 is a comprehensive amendment to the Florida Business Corporation Act (FBCA), ch. 607, F.S. Representatives of the Florida Bar's Business Law Section recommend these revisions to modernize the FBCA, incorporate updates from the Model Business Corporation Act (Model Act), and harmonize the FBCA with the recently updated Florida Revised Limited Liability Corporate Act (FRLICA), ch. 605, F.S.

The bill modifies and creates several provisions regarding corporate governance. Significantly, these provisions of the bill:

- Modify the process for the correction of documents filed by a corporation;
- Authorize articles of incorporation and bylaws to include exclusive forum provisions in limited circumstances;
- Permit proxy access provisions in a corporation's bylaws;
- Modernize service of process provisions for corporations;
- Allow remote participation at shareholder meetings;
- Modify how a vacancy on a corporation's board of directors is filled;
- Update provisions regarding shareholder agreements;
- Clarify the prescribed composition, operation, and authority of boards and committees;
- Reorganize sections regarding derivative action and indemnification;
- Amend burdens of proof in provisions regarding director conflict of interest;

- Modify the processes of judicial dissolution of a corporation and appointment of receivers and custodians made in the process thereof;
- Update and modernize laws regarding mergers, share exchanges, and conversions;
- Expand corporate domestication under additional circumstances;
- Clarify appraisal rights provisions; and
- Make conforming changes to mirror the FRLICA provisions regarding corporate names, registered agent appointments and successorships, and qualifications to transact business in Florida.

The bill takes effect on January 1, 2020.

## II. Present Situation:

Florida generally follows the revised Model Act as a basis for its laws that govern for-profit corporations.<sup>1</sup> The Corporate Laws Committee of the American Bar Association's Business Law Section (ABA) promulgates the Model Act, and most recently re-worked the Model Act in its entirety in 2016.<sup>2</sup> The Florida Business Corporation Act (FBCA)<sup>3</sup> was last updated as a whole in 1989, and therefore does not best reflect the modern state of corporate law.<sup>4</sup>

Further discussion of the present situation is discussed below in conjunction with the Effect of Proposed Changes.

## III. Effect of Proposed Changes:

The bill's proposed changes to the FBCA generally derive from or conform to three sources:

- (1) The ABA's Model Act.<sup>5</sup>
- (2) The Delaware General Corporation Law.<sup>6</sup>
- (3) Florida's Revised Limited Liability Company Act, ch. 605, F.S.<sup>7</sup>

### Filing of Records and General Provisions (Sections 1-15)

The FBCA requires domestic and foreign corporations that seek to transact business in Florida to register and file annual reports and other notices with the Department of State (Department). These documents must be executed by an officer, incorporator, or fiduciary and contain information as prescribed by law. The Department determines whether submitted filings and forms meet the pertinent statutory requirements and then records and indexes those filings in its

---

<sup>1</sup> 8A Fla. Jur 2d *Business Relationships* §4 (2018).

<sup>2</sup> American Bar Association, *Model Business Corporation Act* (2016), available at [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/corplaws/2016\\_mbca.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.pdf) (last visited Mar. 20, 2019).

<sup>3</sup> Section 607.0101, F.S. (providing for short title); ch. 607, F.S.

<sup>4</sup> Ch. 89-154, Laws of Fla.

<sup>5</sup> *See* n. 2, *supra*.

<sup>6</sup> Delaware's corporate law statutes are considered the "gold standard" for corporate law. *See generally* Michael B. Dorff, *Why Public Benefit Corporations?*, 42 DEL. J. CORP. L. 77, 80 (2017) ("Delaware has found a formula that has attracted a clear majority of the major corporations in the U.S. Delaware law is the gold standard.") (footnote omitted).

<sup>7</sup> The Florida Bar Business Law Section, *Proposed Modifications to Chapter 607 (Florida Business Corporation Act)*, Jan. 24, 2019 (on file with Senate Judiciary Committee).

database of records.<sup>8</sup> If the Department refuses to file a document, the filing corporation may seek to remedy the defect, or may appeal the matter to a court of competent jurisdiction.

**Section 1** amends s. 607.0101, F.S., to divide the FBCA into three parts and clarifies that the provisions of Part I, ch. 607, F.S., apply generally to all corporations, including social purpose and benefit corporations.<sup>9</sup>

**Section 3** amends s. 607.0120, F.S., to allow a corporation to make its articles of incorporation or amendments thereto, terms of shares, mergers, share exchanges, domestications, or conversion transactions dependent on extrinsic facts.<sup>10</sup> The corporation must state both the fact and the effect it will have on the document. This section prohibits specific terms from being made dependent on extrinsic facts, including the identity of a corporation's registered agent and the effective date of a document.

**Sections 6 and 7** amend ss. 607.0123 and 607.0124, F.S., respectively, to clarify the determination of the effective date and effective time a document is filed, as follows:

- A corporation may make the effective date of its article of incorporation retroactive up to 5 days before the date of filing;
- No document, subject to provisions otherwise in law, may include a delayed effective date of more than 90 days from the date of filing;
- The default effective time of a document is changed from the “start of business” to “12:01 am;” and
- The default time zone is that of the location where the document was filed.

**Sections 6 and 7** also create a process for the withdrawal of a filing delivered to the Department. This withdrawal statement must be signed by or, pursuant to an agreement, signed on behalf of each person who signed the underlying document, and must be filed with the Department prior to the effective date of the document to be withdrawn. A withdrawal statement may not be filed with a delayed effective date.

**Section 7** eliminates the 30-day statute of limitations to correct a document filed by a corporation. A corporation may now correct a document at any time.<sup>11</sup>

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<sup>8</sup> Florida Department of State, Division of Corporations, *About Us*, <https://dos.myflorida.com/sunbiz/about-us/> (last visited Mar. 11, 2019). *See also*, s. 607.0125(4), F.S.

<sup>9</sup> Parts II and III contain additional provisions that specifically apply to social purpose corporations, s. 607.504, F.S., and benefit corporations, s. 607.604, F.S., respectively. The changes to Parts II and III are technical, conforming changes. *See* discussion of bill sections 231-91, *infra*.

<sup>10</sup> Extrinsic facts refer to information available from credible public sources upon which terms in the filed document or plan may be dependent. *See* ABA, *Model Business Corporation Act* (2016), p. 5, available at [https://www.americanbar.org/content/dam/aba/administrative/business\\_law/corplaws/2016\\_mbca.pdf](https://www.americanbar.org/content/dam/aba/administrative/business_law/corplaws/2016_mbca.pdf) (last visited Mar. 20, 2019). “Common examples” of extrinsic facts “are references to an interest rate such as the federal funds rate or to securities market prices.” *Id.* The Commentary to the Model Act notes that the purpose for changes to the filing requirements “are intended to minimize both the number of documents to be processed by the secretary of state and the number of disputes between persons seeking to file documents and the secretary of state as to the legal efficacy of documents.” *Id.* However, the bill does not permit a foreign corporation to make its certificate of authority dependent on extrinsic facts.

<sup>11</sup> However, the bill retains the provision that filing fees may apply to articles of correction not filed within 15 days after the notice of filing is sent under s. 607.0125, F.S.

**Section 8** amends s. 607.0125, F.S., to clarify that the Department files a document by “stamping or otherwise endorsing” it. Prior law only required to the Department to “record” it. Additionally, the section permits the Department to send a notice of filing by electronic mail, but limits the Department to sending a copy of the actual filed document through the U.S. mail.

**Section 9** amends s. 607.0126, F.S., to limit a corporation’s venue for appeal of the Department’s refusal to file a document to the Leon County Circuit Court. Previously, a corporation could pursue an appeal in either Leon County or the county in which its principal office is located. Additionally, section 9 eliminates the 30-day statute of limitations for appealing the Department’s refusal to file a document.

**Section 10** amends s. 607.0127, F.S., to require that certified copies of documents bear the secretary of state’s signature in either original or facsimile form, and bear the state seal. Prior language did not require any specific mark. This section adds language that requires certificates issued by the Department to be received by all courts, public offices, and official bodies as prima facie evidence of the facts stated therein.

**Section 11** addresses a certificate of status which is a summary prepared by the Department of a corporation’s activity, especially related to timely reporting and payment of fees. Section 11 amends s. 607.0128, F.S., to clarify the information required on a certificate of status, and that the Department may require the requisite fee to be paid prior to its issuance.

**Section 12** amends s. 607.0130, F.S., to make a technical change that eliminates certain express powers of the Department. The trimmer version of s. 607.0130, F.S., does not, however, reduce the Department’s authority or power to administer the act.

**Sections 13-15** amend ss. 607.01401-.01402, F.S. and creates s. 607.01403, F.S., to add definitions for use in ch. 607, F.S., including the definition of “department,” which replaces the term “State” throughout the act when referring to the Florida Department of State.

**Section 14** updates forms of notice to permit electronic forms of notice, specifically requiring individual shareholder and director consent to send notice by e-mail. The section allows a corporation’s articles of incorporation or bylaws to override the consent requirement for electronic notice to directors only. Additionally, the bill incorporates terms from the federal “E-Sign Act”<sup>12</sup> and requires that the act will control to the extent permitted under federal law.<sup>13</sup>

**Section 15** defines “qualified director,” which is used in updated provisions relating to derivative actions, transactions that involve a director conflict of interest, and indemnification. A qualified director is one who has neither a material interest nor relationship with any of the interests at issue, and therefore is truly independent in his or her determinations.

**Sections 2, 4, and 5** make conforming changes to ss. 607.0102, 607.0121, and 607.0122, F.S., respectively.

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<sup>12</sup> See 15 U.S.C. s. 7001, et seq. (“Electronic Signatures in Global and National Commerce Act”).

<sup>13</sup> 15 U.S.C. s. 7002(a)(2) (exempting from federal preemption state laws that expressly adopt and modify, limit, or supersede the “E-sign Act.”).

**Incorporation (Sections 16-23)**

A corporation must file articles of incorporation with the Department before it may transact business in the state. Generally, s. 607.0202, F.S., requires articles of incorporation to include the corporation's name and address, the number of shares it is authorized to issue, and information about the registered agent.

**Section 19** amends s. 607.0204, F.S., to hold persons liable who act or transact business on behalf of a corporation "knowing" that the corporation has not yet been formed under the act. The term "knowing" replaces "having actual knowledge" and may be read by the courts more broadly to hold someone liable if he or she "knew or should have known" the corporation was not yet incorporated. Section 19 also removes the liability exemption for others having actual knowledge that the corporation had not yet been formed.

**Section 20** amends s. 607.0205, F.S., to reduce the amount of time (from 3 to 2 days before the meeting) that a director must receive notice of a corporation's organizational meeting.

**Sections 17 and 21** amend ss. 607.0202 and 607.0206, F.S., and **section 23** creates s. 607.0208, F.S., to allow articles of incorporation and bylaws to include exclusive forum<sup>14</sup> provisions relating to the resolution of internal corporate claims. However, **section 23** prohibits articles of incorporation or bylaws from including forced arbitration clauses relating to the resolution of an internal corporate claim.

**Sections 17 and 21** limit the adoption of articles of incorporation and bylaws provisions that make shareholders liable for fees related to internal corporate claims they institute or participate in. However, section 71, *infra*, amends s. 607.0732, F.S., to allow such provisions pursuant to a shareholder agreement.

**Section 21** continues to allow a corporation to include any provision in its bylaws that is consistent with law and its articles of incorporation, but now explicitly allows provisions that permit or limit proxy access provisions.

**Section 23** creates s. 607.0208, F.S., which defines an "internal corporate claim" as:

- Any claim based on a director's, officer's, or shareholder's violation of duty;
- Any derivative action or proceeding brought on the corporation's behalf;
- Any action that asserts a claim arising pursuant to the articles of incorporation, bylaws, or ch. 607, F.S.; or
- Any action asserting a claim governed by the internal affairs doctrine not otherwise included in the forgoing actions.

**Sections 16, 18, and 22** amend ss. 607.0201, 607.0203, and 607.0207, F.S., to make clarifying and conforming changes that do not substantively change existing law.

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<sup>14</sup> BLACK'S LAW DICTIONARY (10th ed. 2014) (defining "forum" in applicable part as "[a] court or other judicial body; a place of jurisdiction.").

### **Purposes and Powers (Sections 24-27)**

**Section 24** amends s. 607.0301, F.S., to set a default corporate purpose of “engaging in any lawful business” unless a more limited purpose is stated in a corporation’s articles of incorporation. It also limits corporations that engage in a regulated business under another Florida statute from incorporating under ch. 607, F.S., unless the underlying regulating chapter expressly permits.

**Section 27** amends s. 607.0304, F.S., to correct a term, replacing “Attorney General” with “Department of Legal Affairs.” The title has also been changed to mirror the ABA model act.

**Sections 25 and 26** amend ss. 607.0302 and 607.0303, F.S., to make clarifying and conforming changes that do not substantively change existing law.

### **Corporate Names (Sections 28-30)**

Section 607.0401, F.S., requires corporations to file a corporate name that is distinguishable and clearly indicates that the corporation is not a natural person.

**Section 28** amends s. 607.0401, F.S., to permit corporations to register under a name that is indistinguishable from another entity’s name if it files the written consent of the similarly named entity with its registration.

**Section 29** creates s. 607.04021, F.S., to restore a practice that allows a corporation to reserve its name for 120 days prior to its incorporation.<sup>15</sup> The owner of a reserved corporate name is also permitted to transfer the reservation to another person.

**Section 30** amends s. 607.0403, F.S., to make clarifying and conforming changes that do not substantively change existing law.

### **Office and Agent (Sections 31-37)**

A corporation transacting business in Florida must designate and maintain a registered agent and registered office that is located in Florida.<sup>16</sup> Currently, either a Florida resident or a corporation authorized to do business in Florida may serve as a corporation’s registered agent. **Section 31** updates these qualifications in s. 607.0501, F.S., to allow any business entity (e.g., LLCs, partnerships, etc.) authorized to do business in Florida to serve as a registered agent.

**Section 31** also explicitly provides a registered agent’s duties, including forwarding documents served to the corporation and providing proper notice of its resignation as the registered agent. This section also clarifies that a corporation that has failed to comply with this subsection may defend itself in Florida court actions, but may not prosecute or otherwise maintain such actions until it has appointed a registered agent.

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<sup>15</sup> Ch. 98-101, § 15, Laws of Fla.

<sup>16</sup> Section 607.0501, F.S.

**Sections 32** amends s. 607.0502, F.S., to require a corporation's designation of a successor registered agent to include a written statement of acceptance from the successor registered agent which operates to designate the new registered agent at the same moment of its acceptance of the position.

**Sections 33 and 34** creates ss. 607.0503 and 607.05031, F.S., to re-designate current law regarding a registered agent's resignation<sup>17</sup> or change of name or address,<sup>18</sup> respectively.

**Section 35** creates s. 607.05032, F.S., to subject delivery of notice to the Department to a different standard than the standard set forth in s. 607.0141, F.S. (providing that receipt of notice is when notice is actually received by the Department). Under s. 607.05032, F.S., a check sent to the Department for annual report or supplemental fees is deemed received as of the postmark on the transmitting envelope or package.

**Section 36** amends s. 607.0504, F.S., to update methods of service of process for corporations in the event the corporation ceases to have a registered agent or the registered agent cannot be served, requiring attempts to be made on certain parties before others may be served.

**Section 37** makes a clarifying change in s. 607.0505, F.S., that does not substantively affect existing law.

### **Shares and Distribution (Sections 38-51)**

A corporation's articles of incorporation must prescribe the classes of shares and the number of each class that the corporation is authorized to issue.<sup>19</sup> At least one class of shares must have unlimited voting rights, and one (which may be the same as the voting class) that is entitled to the corporation's net assets. The corporation may issue the number of shares as detailed in its articles of incorporation. Shareholder and corporate rights regarding the shares are laid out in statute, but may also be defined in the corporation's articles of incorporation, bylaws, or agreement.

**Section 38** amends s. 607.0601, F.S., to clarify that a corporation may define both series and classes of shares that the corporation will issue. This section also defines the preferences, limits, and rights assigned to classes or series of shares as "terms," and, as in section 1, *supra*, permits such terms to be based on extrinsic facts, such as interest rates.

**Sections 39** amends s. 607.0602, F.S., to grant boards authority to reclassify the class or series of any unissued shares, and to determine the shares' terms without shareholder approval. Likewise, **section 50** amends s. 607.0631, F.S., to allow a board, without shareholder approval, to re-acquire its issued shares in order to effectuate a reduction in its overall shares. However, any shares the corporation holds in a fiduciary capacity for the benefit of another may not be considered the corporation's property for the purpose of reducing its number of shares.

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<sup>17</sup> Section 607.0502(2), F.S.

<sup>18</sup> Section 607.0502(3), F.S.

<sup>19</sup> Section 607.0601, F.S.

**Section 40** removes requirements in s. 607.0604, F.S., that the board authorize the issuance of a scrip<sup>20</sup> only when considered desirable, and that the board's good faith judgment of the fair value of fractions of a share is conclusive.

**Section 41** amends the duration of time provided for in s. 607.0620, F.S., that a corporation must wait to sell shares to satisfy the debt incurred as the result of a subscription share from 20 days after demand is *sent* to 20 days after its *delivery*.

**Section 45** amends s. 607.0624, F.S., to authorize boards of directors to delegate to committees and officers the ability to issue equity compensation awards.

**Section 51** amends s. 607.06401, F.S., to clarify that a board may fix a record date to determine shareholders eligible for distributions made pursuant to the terms of their shares, but that date may not be retroactive. Additionally, this section excludes liquidations pursuant to ss. 607.1401-607.14401, F.S., from its application.

**Sections 42-44, and 46-49** make clarifying changes to ss. 607.0621-607.0623 and 607.0625-607.0630, F.S., respectively, that do not substantively affect existing law.

## **Shareholders (Sections 52-81)**

### ***Shareholder Meetings***

Corporations are required to hold an annual shareholders meeting to elect directors and transact business. A board of directors, persons authorized to call such a meeting, or a specified percentage of shareholders may call a special meetings for an express, limited purpose.

**Sections 52 and 53** amend ss. 607.0701 and 607.0702, F.S., respectively, to clarify that shareholders may participate in meetings by remote communication. Additionally, portions of existing ss. 607.0701 and 607.0702, F.S. were moved to **section 59**, which creates s. 607.0709, F.S., and outlines limits on participation in a meeting by remote communication. **Section 56** amends s. 607.0705, F.S., to require a corporation's board of directors to give notice of the types of remote communication that a shareholder can use to participate in a meeting.

If a corporation fails to hold an annual or special meeting in a timely manner, a court may order a meeting. **Section 54** amends s. 607.0703, F.S., to lengthen from 13 to 15 months the amount of time a corporation has to hold its annual meeting or undertake action by written consent before a court may order a meeting or other action. Section 54 also recognizes a court's ability to establish quorum requirements for separate voting groups at a meeting held upon its call.

**Sections 56 and 57** make clarifying changes to ss. 607.0705 and 607.0706, F.S., respectively, that do not substantively affect existing law.

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<sup>20</sup> BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014) (defining a "scrip issue" as synonymous with a "bonus issue"; defining a "bonus issue" as a corporation's "offer of free shares to existing shareholders, usually in proportion to their holdings and especially as an alternative to dividend payout.").

### ***Voting Rights***

Current law allows certain shareholders to instigate a vote by written consent. If the shareholders deliver a sufficient number of votes by written consent to the corporation within a 60-day timeframe, the matter is adopted and the corporation must give notice of the action to all shareholders who did not give written consent. **Section 55** updates s. 607.0704, F.S., to allow a corporation to delay the effectiveness of a written consent vote for a reasonable time to allow it to count the votes delivered by written consent, and also clarifies that a corporation's failure to give notice of the outcome of a written consent vote does not affect the vote's outcome.

A corporation must compile a list of shareholders eligible to participate in the corporation's meetings on the record date at a fixed period prior to the meeting. Any shareholder may inspect and copy this list.

**Section 58** amends s. 607.0707, F.S., to expressly allow a corporation's bylaws to establish more than one record date, or bifurcated record dates, to establish separate issues, e.g., which shareholders may vote at or are entitled notice to a meeting, who may demand a special meeting, or who may take other specified actions. This section also sets certain default record dates if the corporation does not establish them in their bylaws.

**Sections 59** creates s. 607.0709, F.S., and **Section 60** amends s. 607.0720, F.S., to adopt language to further implement bifurcated record dates, explicitly exclude shareholders' electronic mail addresses from the shareholder list, and remove a required \$5,000 civil penalty for the improper sale or distribution of a shareholder's list. The Florida Bar Business Law Section's commentary on the proposed bill states that the removal of the required penalty gives courts judicial discretion in determining a penalty for improper disclosure of the shareholder list.

A shareholder with voting shares is entitled to at least one vote per share on matters that are subject to a vote. However, if a corporation holds its own shares indirectly through a second corporation that it controls, those shares do not entitle their corporation owner to a vote. **Section 61** amends s. 607.0721, F.S., to further preclude a corporation from using shares it owns either directly or indirectly as a source of voting rights.

**Section 63** clarifies by amendment to s. 607.0723, F.S., the process required to create a beneficial ownership certificate, which is a designation of a third party who is treated as the record shareholder when the shares are actually held by an intermediate party. Specifically, the section requires a beneficial ownership certificate to be signed by or assented to by the record shareholder and the person on behalf of whom the shares are held.

**Section 68** creates the office of inspector of elections in s. 607.0729, F.S. A public corporation must, and any other corporation may, appoint one or more inspectors of elections to determine voting results at shareholder meetings. An inspector of elections generally determines the validity and number of votes cast and makes a written report. The inspector must be strictly impartial, and should the inspector's activities be challenged, determinations of law by inspectors are reviewed by the courts *de novo*. **Section 64** incorporates the role of an inspector of elections in s. 607.0724, F.S., and expands corporations' or inspector of elections' scope of scrutiny to

include ballots and shareholder demands in addition to votes, consents, waivers, or proxy appointments. Determinations by an inspector of elections is controlling under this section.

**Sections 70 and 71** amend ss. 607.0731 and 607.0732, F.S., to distinguish voting agreements from shareholder agreements. A voting agreement is one between shareholders that provides how they will vote on a particular subject. A shareholder agreement is a written agreement among shareholders regarding specific matters outlined in s. 607.0732(1), F.S. This bill expands matters that may be subject to a shareholder agreement to include the:

- Imposition of shareholder liability for participation in an internal corporate claim; and
- Establishment of a mechanism for breaking deadlock between the corporation's directors or shareholders or to address an oppressive action that a shareholder in a judicial dissolution proceeding asserts to exist.

**Section 67** amends the definition of a public company in s. 607.0728, F.S., to mean corporations with shares registered pursuant to section 12 of the Securities Exchange Act of 1934, rather than corporations with shares listed on the national securities exchange. **Section 71** amends s. 607.0732(4), F.S., to make a conforming reference, providing that shareholder agreements cease to be valid when shares of a corporation are registered pursuant to section 12 of the Securities Exchange Act of 1934, rather than listed on the national securities exchange or other national securities association.

**Sections 62, 65-66, and 69** make clarifying changes to ss. 607.0722, 607.0725-607.0727, and 607.0730, F.S., that do not substantively affect existing law.

### ***Derivative Actions***

A shareholder derivative action is a proceeding brought by a shareholder on behalf of a corporation to assert a claim that the corporation has not (or will not) itself raise and prosecute.<sup>21</sup> Under current Florida law, s. 607.07401(2), F.S., a shareholder may not pursue a derivative action in court before he or she demands that the corporation take specific action and permits the corporation 90 days to investigate and respond, *unless* irreparable injury to the corporation would result from waiting 90 days. If the corporation refuses to act, or ignores the shareholder's demand for at least 90 days, then the shareholder may file a complaint, initiating a lawsuit.

**Section 72** repeals s. 607.07401, F.S., which is currently the single statutory section governing shareholders' derivative actions. However, **sections 73-79** break out the substance of s. 607.07401, F.S., and divides its procedural aspects among seven newly created statutory provisions, conforming it to the ABA Model Act. These procedural aspects, respectively, are: (1) standing, s. 607.0741; (2) pleading requirements, s. 607.0742; (3) stay of proceedings, s. 607.0743; (4) dismissal of action, s. 607.0744; (5) discontinuance or settlement, s. 607.0745; (6) proceeds and expenses following termination of action, s. 607.0746; and (7) applicability to foreign corporations, s. 607.0747.

In **section 74** creating s. 607.0742, the pleading requirements for a shareholder's derivative action are expanded. First, the shareholder may initiate a derivative action without waiting 90

<sup>21</sup> Deborah DeMott, *Shareholder Derivative Actions: Law and Practice*, § 1:1 (Nov. 2018).

days for the corporation to respond to his or her demand if the shareholder alleges with particularity that irreparable injury to the corporation would result from waiting the 90 days, *or that the misapplication or waste of corporate assets causing material injury to the corporation* would result by waiting the 90 days. Further, the shareholder may initiate a derivative action without first making a demand when the shareholder alleges with particularity the reasons the demand was not made, i.e., a demand would have been futile.

Additionally, **sections 73-79**:

- Remove the requirement that a shareholder maintain his or her shares in the corporation during the entirety of the derivative action that the shareholder initiated;
- Replace the term “independent director” with “qualified director,” which is defined in s. 607.0143(a), F.S., of the bill, as a director who has neither a material interest in the outcome of the proceeding, nor a material relationship with a person who has a material interest in the proceeding;
- Permit a court to order the plaintiff in a derivative action to pay the defendant’s expenses and attorney fees if the court finds that the plaintiff began or maintained the action without reasonable cause or for an improper purpose; and
- In order not to implicate the internal affairs doctrine,<sup>22</sup> provide that a derivative proceeding may be filed on behalf of a foreign corporation but the procedural matters outlined in ss. 607.0743 (stays), 607.0745 (discontinuance or settlement), and 607.0746, F.S. (proceeds and expenses), are governed by the substantive laws of the jurisdiction where the foreign corporation is incorporated.

### ***Alternatives to Judicial Dissolution***

When harm is threatened to or incurred by a corporation as a result of either (1) a deadlock between its directors or (2) a director’s fraudulent activity, a shareholder may petition a court to appoint a receiver or custodian to manage the corporation’s business and affairs. However, a shareholder’s only procedural option under current law for the appointment of a receiver or custodian in these two situations, or to appoint a provisional director in the case of deadlock between the directors, is to seek judicial dissolution of the corporation under s. 607.1430, F.S. **Sections 80 and 81** create separate, alternative procedures to judicial dissolution proceeding for the appointment of a custodian, receiver, or provisional director.

Specifically, **section 80** creates s. 607.0748 establishing an alternative procedure to judicial dissolution when one of the two situations above arises (injury resulting from deadlock between directors or director fraud). Section 607.0748 authorizes a court to appoint a receiver or custodian to manage a corporation’s business and other affairs when a shareholder establishes one of these two situations during a full, properly noticed hearing. If the court appoints a custodian or receiver or both, it must specify the powers of each in its order. A custodian exercises all powers of the corporation in place of the board of directors; whereas a receiver may dispose of corporate assets and defend or bring suit on the corporation’s behalf.

Similarly, **section 81** creates s. 607.0749, F.S., establishing a separate, alternative procedure to judicial dissolution, allowing a shareholder to petition a court to appoint a provisional director to

<sup>22</sup> “The internal affairs doctrine is a conflict of laws principle which recognizes that only one State should have the authority to regulate a corporation’s internal affairs[.]” *Edgar v. Mite Corp*, 457 U.S. 624, 645 (1982).

break a deadlock between the directors that cannot be broken by shareholder action. The court has discretion to appoint an impartial provisional director who is neither a shareholder nor a creditor of the corporation to report back to the court on the status of the deadlock. The provisional director is vested with all the powers of an elected director, may be held liable as would any other director under s. 607.0831, and is subject to removal by a shareholder vote or court action.

### **Directors and Officers (Sections 82-114)**

A corporation is managed by and subject to the oversight of its board of directors. Florida law requires a director to be a natural person who is at least 18 years old, but other qualifications, if any, may be set by the corporation's articles of incorporation or bylaws.

**Section 83** clarifies s. 607.0802, F.S., to distinguish qualifications for nominees for directors from qualifications for current directors and when newly prescribed qualifications apply.

**Sections 86 and 87** amend ss. 607.0805 and 607.0806, F.S., respectively, to clarify the effect of staggering directors' terms of service and when a staggered term expires.

**Section 90** creates s. 607.08081, F.S., to allow a court to remove a director and order other relief, such as barring reelection of the director for a certain time, in a proceeding initiated by or on behalf of a corporation. This remedy is limited to cases in which the court finds:

- The director acted fraudulently with respect to the corporation or its shareholders, grossly abused his or her position, or intentionally inflicted harm on the corporation; and
- Removal of the director is in the best interests of the corporation and other remedies are inadequate or unavailable.

**Section 91** modifies s. 607.0809, F.S., governing how vacancies created by directors who were elected by a particular voting group will be filled. Section 607.0809(2) provides that when a particular director is to be elected by a particular voting group, any remaining directors elected by that particular voting group, or if there are no remaining directors, the shareholders in that particular voting group, will vote to fill the vacancy.

A board of directors or members of a committee may act without meeting, even if the action is otherwise required to be taken at a meeting, by way of a written consent signed by all members of the board or committee. **Section 93** amends s. 607.0821, F.S., to clarify that a written consent is only effective upon delivery to the corporation.

**Section 94** amends s. 607.0823, F.S., to require a director who objects to holding the meeting or to the business transacted at the meeting to both state an objection at the beginning of the meeting and to refuse to vote on any action taken at the meeting. If the director fails to do both, his or her presence constitutes a waiver of notice of the meeting and of all objections to the date, time, place, or purpose of the meeting. Previously, a director was required only to register his or her objection at the beginning of the meeting.

Section 607.0825, F.S., currently allows a board of directors to delegate many of its functions to a board committee. **Section 96** amends s. 607.0825 to permit a board committee to be comprised

of one person rather than two (unless otherwise required by law or the corporation's articles of incorporation or bylaws) and to allow the board to replace or fill any absent or disqualified committee members during his or her absence or disqualification. Additionally, the bill removes some of the restrictions on board committees and permits committees to issue or sell shares, or to designate a voting group's rights, preferences, and limitations.

**Section 97** creates s. 607.0826, F.S., to authorize a board of directors to enter into an agreement that contains a "force the vote" provision. Such provisions, often used in merger agreements, require the board to submit a matter to a shareholder vote even if the board no longer wants to pursue or enter into the agreement.

**Sections 98 and 99** concern Florida's business judgment rule.<sup>23</sup> **Section 98** amends s. 607.0830, F.S. to clarify a directors' fiduciary duties. Specifically, the prudent person standard of care is modified to require a director to act as an "ordinary prudent person in a like position would reasonably believe appropriate under similar circumstances." This section expands guidance of whom a board member may rely upon in discharging his or her duties. **Section 99** makes mostly technical and conforming amendments to s. 607.0831, the business judgment rule,<sup>24</sup> but removes the limitation that decisions made or not made by directors must relate to "corporate management or policy." This change potentially provides both a greater shield for the decisions of directors from liability, as well as a larger sword for holding them liable for self-interested decisions.

**Section 100** amends s. 607.0832, F.S., relating to a director's conflict of interest. The bill retains the requirement that any director's conflict of interest transaction must be fair to the corporation at the time authorized by the director to withstand challenge, but adds explicit definitions for "director's conflict of interest transaction,"<sup>25</sup> "fair to the corporation,"<sup>26</sup> and other related terms. Additionally, the bill creates a shifting burden of proof in challenges to the validity of a director's conflict of transaction: approval by a disinterested majority of directors or shareholders who received advanced notice of the conflict places the burden on the person challenging the transaction; however, the lack of any such approval places the burden on the person defending the transaction.

**Section 102** clarifies the statute of limitations for a director's liability for unlawful distributions in s. 607.0834, F.S.

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<sup>23</sup> The business judgment rule limits the liability of a corporate director by creating a limited presumption of correctness for their decisions. *Aerospace Accessory Serv., Inc. v. Abiseid*, 943 So. 2d 866, 867 (Fla. 3d DCA 2006) (noting that s. 607.0831, F.S. codifies the "business judgment rule").

<sup>24</sup> *Id.*

<sup>25</sup> The bill defines a "director's conflict of interest" in s. 607.0832(1)(a) as "a transaction between a corporation and one or more of its directors, or another entity in which one or more of the corporation's directors is directly or indirectly a party to the transaction, other than being an indirect party as a result of being a shareholder of the corporation, and has a direct or indirect material financial interest or other material interest."

<sup>26</sup> The bill defines the term "fair to the corporation" in s. 607.0832(1)(b) as a "transaction that, as a whole, is beneficial to the corporation and its shareholders, taking into appropriate account whether it is: (1) fair in terms of the director's dealing with the corporation in connection with that transaction and (2) comparable to what might have been obtainable in an arm's length transaction."

**Section 104** creates s. 607.08411, F.S., which provides standards of conduct for officers that parallel a director's fiduciary duties. Generally, the bill requires an officer to act in good faith and in a manner the officer reasonable believes to be in the best interests of the corporation. This section requires an officer to report or inform superior officers or other appropriate persons within the corporation of (1) material information about the corporation's affairs, (2) actual or probable material violations of law that involve the corporation or actual or probable breaches of duty to the corporation. Lastly, this section creates guidance regarding those persons an officer may on rely in reasonably discharging his or her duties.

**Sections 82, 84-85, 88-89, 92, 95, 101, and 103** make clarifying changes or add clarifying language to ss. 607.0801, 607.0803-607.0804, 607.0807-607.0808, 607.0820, 607.0824, 607.0833, and 607.08401, F.S., which do not substantively affect existing law.

### ***Indemnification and Advancement of Expenses***

Indemnification is the duty to make good any loss, damage, or liability incurred by another.<sup>27</sup> Florida law allows corporate directors, officers, employees, and agents who act in good faith and in a manner reasonably believed to be in the best interests of the corporation (and reasonably believed to be lawful) to be indemnified by the corporation.

**Sections 106-114** revises Florida's current indemnification law, s. 607.0850, F.S., by relocating provisions to newly created sections, ss. 607.0851, 607.0852, 607.0853, 607.0854, 607.0855, 607.0857, 607.0858, and 607.0859. These sections also include the following changes:

- Excludes employees and agents from the indemnification provisions but specifies that a corporation may indemnify its employees or agents under agency law or in its articles of incorporation, bylaws, or other agreement;
- Establishes a process for the board of directors to determine whether and to what extent an officer or director may be indemnified in connection with a proceeding by or in the right of the corporation;
- Sets a new, broader standard for mandatory indemnification, triggered when an officer or director involved in a proceeding in his or official capacity is "wholly successful"<sup>28</sup> in the action, whether based on a procedural defense or the merits, rather than just "successful on the merits;"
- Outlines how an advancement of expenses is authorized by either the board of directors or shareholders; and
- Clarifies a corporation's ability to obligate itself to indemnify officers and directors, as well as employees and agents, above and beyond that required by law.

**Section 105** makes clarifying changes to s. 607.0842, F.S., which do not substantively affect existing law.

<sup>27</sup> BLACK'S LAW DICTIONARY, 837 (9<sup>th</sup> Ed. 2009).

<sup>28</sup> Commentary to s. 8.52 of the Model Act provides that "A defendant is 'wholly successful' only if the entire proceeding is disposed of on a basis which does not involve a finding of liability."

### **Anti-Takeover Laws (Sections 115-116)**

Florida's affiliated transaction statute is intended to deter hostile takeovers. It protects minority shareholders in merger offers by ensuring that specific transactions are either approved by an appropriate number of disinterested directors or shareholders, or result in a fair price to all shareholders.<sup>29</sup>

**Section 115** amends s. 607.0901, F.S., to define an "interested shareholder" as a person who owns 15 percent or more of a public corporation's shares. This section requires that any affiliated transaction with an interested shareholder receive approval from either disinterested directors or a supermajority vote of disinterested shareholders. If neither of the first two are possible, this section requires a fair price to be paid to shareholders in the transaction.

Section 115 also amends the definition of an affiliated transaction to include those that constitute the sale of 10 percent or more of the corporation's assets, net income, or fair market value of the corporation's outstanding shares.

**Section 116** makes a conforming change in s. 607.0902, F.S., that does not substantively affect existing law.

### ***Amendment of Articles of Incorporation and Bylaws***

A board of directors may amend the corporation's articles of incorporation without shareholder approval in limited, usually ministerial, circumstances. **Section 118** amends s. 607.1002, F.S., to allow a board to make amendments that reflect a reduction in authorized shares and to delete an extinct class of shares when no shares of that class remain.

**Section 119** deletes language in s. 607.10025, F.S., that permitted board approval of share splits or combinations without shareholder approval only in corporations with more than 35 shareholders. The effect is to now permit all corporations to take such action without shareholder approval.

**Section 120** amends s. 607.1003, F.S., to require a full copy, as compared to the summary provided for in current law, of a proposed amendment to a corporation's articles of incorporation to be provided to shareholders prior to their meeting for approval of the amendment.

Additionally, **section 120** requires that a board must obtain written consent of all shareholders who will be subject to new interest holder liability as a result of the board's amendment to the articles of incorporation. **Section 126** amends s. 607.1009, F.S., which governs the effect of interest holder liability imposed as a result of amendment to articles of incorporation for both parties who incurred new interest holder liability and those whose interest holder liability is affected.

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<sup>29</sup> Daniel Nunn, Jr., *The Wolf at the Door: Florida's Takeover Laws Revisited*, Florida Bar Journal Vol. 83, No. 3, p. 10 (Mar. 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-wolf-at-the-door-floridas-takeover-laws-revisited/> (last visited Mar. 11, 2019).

**Section 130** creates s. 607.1023, F.S., to adopt language from the Model Act that provides a method of voting for directors, though a corporation must elect to be governed by this section in its bylaws for it to have effect.

**Sections 121-125 and 127-129** make clarifying or conforming changes to ss. 607.1004-1008 and 607.1020-607.1022, F.S., that do not substantively affect existing law.

### **Mergers and Share Exchanges (Sections 131-146)**

**Section 131** makes several changes to s. 607.1101, F.S., to accommodate mergers of a domestic corporation with one or more domestic or foreign entities, or mergers of other entities into a domestic corporation that ultimately create or merge into a corporation.

Similarly, **Section 132** expands language in s. 607.1102, F.S., regarding share exchanges to accommodate such transactions between a Florida corporation and a non-corporate domestic entity or a foreign entity. A share exchange is a method by which a corporation acquires the equity interests of an acquired entity in exchange for its own equity interest or other consideration. This results in the acquired entity being wholly owned by the acquiring entity, but continuing to exist as a distinct entity.<sup>30</sup>

**Section 133** provides a more clear process under s. 607.1103, F.S., for shareholder approval of a merger or share exchange where a domestic corporation either is a party to the merger, or is the acquired entity in the share exchange.

This section also allows the newly formed entity's articles of incorporation to eliminate or limit separate voting rights, except when:

- The merger or share exchange includes an amendment to the new corporation's articles of incorporation that requires voting by separate groups or classes, and
- The transaction will not affect a substantive business combination.

A domestic corporation that acquires another in a share exchange is not required to seek its shareholders' approval. Conversely, shareholders that do not have voting rights tied to their shares in a corporation that is acquired under a share exchange may not seek to vote on the plan.

**Section 134** creates provisions in s. 607.11035, F.S., that permit the merger of corporations without a shareholder vote if a tender offer is first made to shareholders, and ultimately results in the offeror's acquisition of a large enough interest in the corporation to satisfy the shareholder approval that would otherwise be required. This form of merger is often called a "two-step merger."<sup>31</sup> In order to prevent predatory share devaluation of the shares held by (now minority) shareholders who did not sell in response to the tender offer, this section implements a guarantee that the unsold shares retain their right to receive the same payment offered in the initial tender

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<sup>30</sup> Duane Morris, *Florida Legislature Unanimously Approves New Limited Liability Company Act* (Jan. 31, 2014), [https://www.duanemorris.com/alerts/florida\\_legislature\\_unanimously\\_approves\\_new\\_LLC\\_act\\_5106.html](https://www.duanemorris.com/alerts/florida_legislature_unanimously_approves_new_LLC_act_5106.html) (last visited Mar. 11, 2019).

<sup>31</sup> Daniel Nunn, *The Wolf at the Door: Florida's Takeover Laws Revisited*, 83 Fla. B.J. 10, (Mar. 2009), available at <https://www.floridabar.org/the-florida-bar-journal/the-wolf-at-the-door-floridas-takeover-laws-revisited/> (last visited Mar. 11, 2019).

offer after their shares have been converted to the stock of the new entity created as a result of the two-step merger.

**Section 135** amends s. 607.1104, F.S., to subject mergers between a parent corporation and its subsidiary, or between a parent corporation's two subsidiaries, to the general merger provisions in ss. 607.1101-607.1107, F.S. Additionally, a parent corporation must give notice of a successful merger to each of the subsidiary's shareholders within 10 days of the merger's effective date. This notice requirement replaces a provision that required the parent company to wait 30 days after it sent notice of the merger to shareholders to file its notice of merger with the Department.

**Section 137** provides for the formalization of articles of mergers and articles of share exchanges, the content required in the articles, the method of filing the articles with the Department, and the effective date of the articles by amendment to s. 607.1105, F.S.

**Section 138** amends s. 607.1106, F.S., to clarify the effect of mergers or share exchanges on domestic and foreign corporations, especially to accommodate the inclusion of non-corporate business entities and foreign corporations in these transactions. Section 138 addresses the merger's or share exchanges' effect on its parties':

- Corporate existence;
- Property ownership;
- Debt obligations, other liabilities, and creditor rights;
- Ongoing proceedings;
- Articles of incorporation, bylaws, or organic rules; and
- Shareholders' rights and interest holder liability.

**Section 139** conforms s. 607.1107, F.S., regarding the abandonment of a merger or share exchange, to the Model Act by allowing a statement of abandonment that is signed by all the parties to result in an abandonment after articles of merger have been filed with the Department, but before they have become effective. Section 607.1107, F.S., currently only permits abandonment before the articles have been filed with the Department.

**Sections 140-146** delete ss. 607.1108-607.1115, F.S., governing mergers and conversions. These subjects are re-organized and re-written by sections 131-139 (mergers, *supra*) and 152-157 (conversions, *infra*) of the bill.

### **Domestication (Sections 147-151)**

Current law allows a non-U.S. corporation to become a Florida domestic corporation by the process of domestication. **Section 147** creates s. 607.11920, F.S., to expand the types of domestications permitted in Florida to include in-bound domestications by foreign corporations and out-bound domestications by Florida corporations into foreign corporations. Specifically, this section allows Florida corporations to domesticate into foreign corporations organized in other U.S. states and foreign corporations organized in other U.S. states to become Florida domestic corporations, if the organic law of the foreign corporation allows it.

**Sections 148-150** create ss. 607.11921-607.11923, F.S., to establish the formalization of a plan of domestication of a domestic corporation into a foreign jurisdiction, govern the effectiveness and contents of articles of domestication, and permit the amendment or abandonment of the plan under certain circumstances.

**Section 151** creates s. 607.11924, F.S., to outline the effect of the domestication on the domesticating corporation, including the ultimate ownership of property, debt and other obligations, and shares as between the two corporations, ultimate locus of governance, and overall duties.

### **Conversions (152-157)**

**Section 152** creates s. 607.11930, F.S., to generally address all conversion actions (conversion of domestic corporations into domestic or foreign entities and domestic or foreign entities into domestic corporations), and require the adoption of a plan of conversion to effectuate such actions. **Sections 153 and 154** create ss. 607.11931-607.11932, F.S., to outline the information required in a plan of conversion and the method of adoption of the plan of conversion by the subsumed corporation's board of directors and shareholders. Additionally, Section 154 provides for notice requirements to shareholders of the subsumed corporation, shareholders affected by interest holder liability because of the conversion, and shareholders who may become a general partner of the converted partnership or limited partnerships.

**Sections 155** establishes in s. 607.11933, F.S., the method for filing the articles of conversion and their effective date, as well as the effect of such filing on the business governance structure of the subsumed corporation or entity in. **Section 157** more specifically addresses the transfer of property, debt, records and rules, and other specific rights or duties to the converted entity with the creation of s. 607.11935, F.S. **Section 156** creates s. 607.11934, F.S., to allow a converting entity to amend or abandon its plan of conversion.

### **Sale of Assets (Sections 158-159)**

A corporation may sell its assets in the regular course of business without approval by shareholders, unless otherwise required by its articles of incorporation. **Section 158** amends s. 607.1201, F.S., to permit a corporation to distribute its assets pro rata to shareholders, except for as part of a dissolution, without shareholder approval. **Section 159** amends s. 607.1202, F.S., to provide that if a board wishes to dispose of all, or substantially all, of its property not in the usual course of business, then it must submit such proposal to a shareholder vote with a resolution that recommends the sale, unless specific factors apply.

### **Appraisal Rights (Sections 160-173)**

Minority shareholders may choose to sell their shares in a corporation by asserting appraisal rights, which triggers a fair payout for their shares. This right is limited to situations where a material change in the relationship between the corporation and the shareholder is proposed, e.g., a merger or share exchange, and applies whether or not the shareholder has the right to vote on the proposed action.

**Section 160** defines “interested transaction” and related terms in s. 607.1301, F.S., for purposes of an appraisal of a corporation’s shares. This section also deletes language in s. 607.1301(5)(c), F.S., to clarify that an appraisal of fair value of a share should be determined without any discount for the share’s lack of marketability or minority status.

**Section 161** expands by amendment to s. 607.1302, F.S., the transactions pursuant to which a shareholder may exercise his or her appraisal rights to include conversion and domestication transactions. This section also updates definitions of public companies that are exempt from the exercise of shareholder appraisal rights.

**Section 163** amends the notice required under s. 607.1320, F.S., which requires corporations to notify shareholders of proposed actions that trigger appraisal rights under s. 607.1302, F.S. Specifically, this section requires a statement of possible appraisal rights and appropriate law to be sent with notice of the meeting at which shareholder consent is solicited for specific transactions. If approval of a corporate action that would trigger appraisal rights is sought by written consent, then notice of the appraisal rights must be sent to any nonconsenting or nonvoting shareholders at least 10 days before the corporate action becomes effective. Additionally, this section requires the corporation to send pertinent financial documents to its shareholders with the notice of appraisal rights.

**Section 164** amends s. 607.1321, F.S., regarding a shareholder’s assertion of his or her appraisal rights. If a shareholder ultimately decides to assert appraisal rights, he or she must deliver notice of intent before the proposed transaction is effectuated and abstain from voting on the matter, as described in Section 164 of the bill. Additionally, the bill dictates that a shareholder who wishes to assert appraisal rights pursuant to a proposed two-step merger in which there is no shareholder vote, can assert appraisal rights by delivery of his or her shares to the corporation with intent to demand payment if the transaction occurs and holding back any of his or her shares from the tender offer.

**Section 173** limits, via creation of s. 607.1340, F.S., a shareholder from challenging a corporate transaction under which he could have asserted appraisal rights, except on the basis of fraud, material misrepresentation, omission of fact, or illegal approval.

**Sections 162-172** make clarifying and conforming changes to s. 607.1303-607.1333, F.S., that do not substantively affect existing law.

#### **Dissolution (Sections 174-195)**

**Sections 174-177** update ss. 607.1401-607.1405, F.S., which allow a corporation to dissolve at the action of its board and, if applicable, shareholders. The bill makes several conforming changes relating to the articles of dissolution a corporation must file to formalize the dissolution, and adds a grace period that allows the corporation to revoke its dissolution within 120 days of the effective date of its articles of dissolution.

**Section 178** clarifies that a “dissolved corporation,” as defined in s. 1405, F.S., is one whose articles of dissolution are effective, and includes a “successor entity” that may exist solely for the purpose of prosecuting and defending suits on behalf of the dissolved corporation. This permits

the dissolved corporation to wind up and fully liquidate its assets in an appropriate manner. This section also adds language allowing a dissolved corporation to fix a new record date for purposes of liquidation of assets to its shareholders.

**Section 179** updates the process for disposition of known claims against a dissolved corporation in s. 607.1406, F.S., requiring the dissolved corporation to give written notice to such claimants no later than 270 days before the date that is 3 years after the effect of the articles of dissolution. This section also removes contingent claims and those claims that are effective upon an event that may occur after dissolution from the definition of known claims that must receive notice from the dissolved corporation.

**Sections 181-182** create new ss. 607.1408-607.1409, F.S., to provide for the enforcement of a claim against a dissolved corporation, and for a procedure for handling unknown and contingent claims against a dissolved corporation.

**Section 183** creates s. 607.1410, F.S., to add to a director's duties the payment of claims and distributions of assets during a corporation's dissolution or liquidation. This section also shields directors from liability against claims of breach of these duties if the corporation was properly dissolved.

**Section 180** makes clarifying and conforming changes to s. 607.1407, F.S., that do not substantively affect existing law.

### ***Administrative Dissolution***

**Sections 184-187** amend ss. 607.1420-607.1423, F.S., to add failure to pay a fee or penalty to the Department as bases for the administrative dissolution of a corporation by the Department. These sections also clarify that an administratively dissolved corporation may wind up its affairs and liquidate its assets. If a corporation wants to be reinstated pursuant to administrative dissolution, it may file the appropriate forms and fees with the Department. The Department may deny reinstatement, and the corporation may appeal its denial to Leon County Circuit Court. Current law allows the corporation to file such a petition where the involved state agency or corporation resides.

### ***Judicial Dissolution***

A shareholder may request that a court dissolve a corporation in which he or she owns shares for several reasons ranging from fraud to ineffectiveness. **Section 188** amends s. 607.1430, F.S., to add oppressive conduct by the corporation as grounds for dissolution, but limit it as a valid claim only for those who own at least 10 percent of the corporation's outstanding shares. This section clarifies how a shareholder agreement alternative to judicial dissolution takes effect.

**Section 189** amends s. 607.1431, F.S., to require a corporation defendant in a judicial dissolution proceeding to notify all shareholders, other than the petitioner of the proceeding, that they may avoid dissolution by electing to purchase the petitioner's shares. This remedy exists in current law, but the required notice is new. **Section 192** grants, by amendment to s. 607.1434, F.S., a court in a judicial dissolution proceeding broader discretion to order remedies other than those outlined in statute to avoid dissolution.

**Section 194** amends s. 607.1436, to require as a matter of public policy that a corporation that elects to purchase its shares instead of dissolving to follow through on that transaction, and prohibit the corporation from ultimately dissolving to avoid the purchase.

**Section 195** removes a requirement from s. 607.14401, F.S., that a dissolved corporation deposit funds owed to a missing or incompetent shareholder with the Department of Financial Services *within 6 months* of the final liquidating distribution.

**Sections 190, 191, and 193** make clarifying and conforming changes to ss. 607.1432-607.1433, and 607.1435, F.S., that do not substantively affect existing law.

### **Foreign Corporations (Sections 196-216)**

Foreign corporations operate under a certificate of authority issued by the Department and, like domestic corporations, must notify the Department of their registered agent, principal office, and other pertinent information. A foreign corporation must amend its certificate of authority to reflect any change in its operating document within 90 days of the occurrence. If a foreign corporation attempts to file for a certificate of authority under a name that is already in use by another business entity, it must find a distinguishable alternative or, pursuant to changes made to s. 607.1506, F.S., in **Section 202**, it may register under a name that is not distinguishable with the written consent of the other entity.

**Section 197** creates s. 607.15015, F.S., to clarify that a foreign corporation's organic law governs its organization, internal affairs, and shareholders' interest holder liability. **Section 198** further provides by amendment to s. 607.1502, F.S., that a foreign corporation's organic law applies when the corporation fails to have a certificate of authority to transact business in Florida, and the Florida Secretary of State is the designated agent for the corporation should any unauthorized transactions occur in Florida.

**Sections 203-206** amends or creates ss. 607.1507-607.15091, F.S., to parallel the requirements regarding a foreign corporation's registered agent to those of a domestic corporation's registered agent.

**Sections 207** creates a new notice delivery requirement in s. 607.15092, F.S., to reflect electronic communication. **Section 208** implements in s. 607.15101, F.S., a specific order for alternative service if a foreign corporation's registered agent is unavailable for service.

**Sections 210 and 211** create ss. 607.1521 and 607.1522, F.S., respectively, to specify that a converting, merging, or dissolving foreign corporation must give specific notice to the Department of the transaction and the effect thereof on its certificate of authority.

**Section 212** amends s. 607.1523, F.S., to grant the Florida Department of Legal Affairs authority to maintain an action to enjoin a foreign corporation from transacting business in violation of ch. 607, F.S.

**Section 213** makes clarifying and conforming changes to s. 607.1530, F.S., and adopts the substance of s. 607.1531, F.S., which is deleted by **Section 214**.

**Section 215** amends s. 607.15315, F.S., to permit the reinstatement of a foreign corporation's certificate of authority following its revocation, but removes as a basis for reinstatement that the grounds for revocation did not or no longer exist. **Section 216** amends s. 607.1532, F.S., to designate Leon County Circuit Court as proper venue for appeals of the Department's denial of a foreign corporation's petition for reinstatement.

#### **Records and Reports (Sections 217-224)**

**Section 217** replaces a corporation's duty to "keep as permanent records" with a duty to "maintain" certain documents in s. 607.1601, F.S. This section is also updated to explicitly include financial statements and notices required under s. 607.0120(11), F.S., within the record of documents that a corporation must maintain.

**Sections 218-221** amend ss. 607.1602-607.1605, F.S., to reduce the number of days a corporation has to produce *certain records* upon shareholder request from 15 to 5, and permit such production by electronic format. A new extension of a shareholder right to inspect corporate documents of a corporation's subsidiary has been added. The bill further entitles a shareholder who must resort to court action to enforce his or her right of inspection to reimbursement of attorney fees and reasonable expenses expended in the proceeding. Lastly, these sections clarify a court's right to impose reasonable confidentiality requirements on any court-ordered right to inspection and copy of a corporation's documents.

**Section 222** revises s. 607.1620, F.S., regarding the corporation's requirement to provide *financial statements* and any related public accountant report or audit to its shareholders. Currently, a corporation must furnish shareholders with its annual financial report within 120 days of the close of each fiscal year. This section now requires a corporation to furnish such financial information to a shareholder within 5 days of his or her request. If the shareholder's initial request so specifies, the corporation must also give notice to all other shareholders of the financial information's availability. The corporation may provide the requested documents by posting them on its website, place reasonable confidentiality restrictions on their distribution, and decline the request if the corporation determines that it was made in bad faith or for an improper purpose.

A shareholder may enforce his or her right to review the corporation's financial documents in a circuit court in the applicable county. The corporation has the burden of demonstrating that its refusal to furnish its financial documents to a shareholder and its restrictions placed on the distribution of its financial documents are reasonable or made in good faith. Reimbursement of attorney fees and costs is available to a prevailing shareholder in these proceedings.

**Section 223** deletes s. 607.1622, F.S., which requires a corporation to notify shareholders when it provides indemnification or an advance of funds to any director, officer, employee, or agent.

**Section 224** makes conforming changes to the corporate annual reporting requirements in s. 607.1622, F.S. This section also:

- Removes a requirement that the corporation include in its annual report language permitting a voluntary contribution to be transferred into the Election Campaign Financing Trust Fund;
- Deletes a provision requiring each report to be executed by a corporate officer or director;
- Clarifies the effect of multiple submissions of an annual report in one year—that any subsequent is treated as an amended report for that calendar year;
- Confirms the corporation’s right to defend itself in an action in this state, but re-asserts that it may not prosecute or maintain an action if it has failed to timely file an annual report and related fees; and
- Requires as a condition of merger, conversion, share exchange, or domestication of any corporation active under ch. 607, F.S., that the corporation is active and current in its filings with the Department.

**Sections 196, 199-201, and 209** make clarifying and conforming changes to ss. 607.1501, 607.1503-607.1505, and 607.1520, F.S., that do not substantively affect existing law.

### **Miscellaneous**

The bill makes several changes throughout, including:

- Updating the language used to identify public companies from those “listed on a national securities exchange” to those “registered pursuant to s. 12 of the Securities Act of 1934;”
- Replacing “act” with “chapter” to refer to the FBCA, ch. 607, F.S.;
- Replacing “executed” with “signed;”
- Ensuring the consistent use of “department” to refer to the Florida Department of State; and
- Including Limited Liability Companies as a type of eligible entity throughout the chapter.

**Sections 225 and 226** provide that ch. 607, F.S., applies to all corporations registered or authorized to do business in Florida on January 1, 2020. **Section 229** is a savings provision that permits any pending action, proceeding, or right accrued prior to January 1, 2020, to be completed as though the amendments pursuant to this act had not become effective. **Section 230** is a severability clause that ensures provisions in the bill remain valid if any other provision is held invalid.

**Sections 231-291** make non-substantive, conforming changes to parts II and III of ch. 607, F.S., as well as chs. 331, 339, 605, 617, 620, 621, 631, 658, 662, 663, and 694, F.S.

**Section 292** provides an effective date of January 1, 2020.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Corporations and those wishing to incorporate will need to familiarize themselves with the extensive updates to ch. 607, F.S.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

It is unclear what filing fee applies to an article of amendment filed pursuant to s. 607.0102, F.S.

Section 607.0742(2), F.S., regarding notice required to institute a shareholder derivative action, may be clearer if it included guidance for shareholders who make a demand of a corporation as required, but such demand is ignored for the entire duration of the required 90-day waiting period. Lines 4000-4001 require a shareholder to show that his or her demand was “refused, rejected, or ignored by the board of directors *prior* to the expiration of 90 days.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 607.0101, 607.0102, 607.0120, 607.0121, 607.0122, 607.0123, 607.0124, 607.0125, 607.0126, 607.0127, 607.0128, 607.0130, 607.01401, 607.0141, 607.0201, 607.0202, 607.0203, 607.0204, 607.0205, 607.0206, 607.0207, 607.0301, 607.0302, 607.0303, 607.0304, 607.0401, 607.0403, 607.0501, 607.0502, 607.0504, 607.0505, 607.0601, 607.0602, 607.0604, 607.0620, 607.0621, 607.0622, 607.0623, 607.0624, 607.0625, 607.0626, 607.0627, 607.0630, 607.0631, 607.06401, 607.0701,

607.0702, 607.0703, 607.0704, 607.0705, 607.0706, 607.0707, 607.0720, 607.0721, 607.0722, 607.0723, 607.0724, 607.0725, 607.0726, 607.0728, 607.0730, 607.0731, 607.0732, 607.0801, 607.0802, 607.0803, 607.0804, 607.0805, 607.0806, 607.0807, 607.0808, 607.0809, 607.0820, 607.0821, 607.0823, 607.0824, 607.0825, 607.0830, 607.0831, 607.0832, 607.0833, 607.0834, 607.08401, 607.0842, 607.0850, 607.0901, 607.0902, 607.1001, 607.1002, 607.10025, 607.1003, 607.1004, 607.1005, 607.1006, 607.1007, 607.1008, 607.1009, 607.1020, 607.1021, 607.1022, 607.1101, 607.1102, 607.1103, 607.1104, 607.11045, 607.1105, 607.1106, 607.1107, 607.1201, 607.1202, 607.1301, 607.1302, 607.1303, 607.1320, 607.1321, 607.1322, 607.1323, 607.1324, 607.1326, 607.1330, 607.1331, 607.1332, 607.1333, 607.1401, 607.1402, 607.1403, 607.1404, 607.1405, 607.1406, 607.1407, 607.1420, 607.1422, 607.1423, 607.1430, 607.1431, 607.1432, 607.1433, 607.1434, 607.1435, 607.1436, 607.14401, 607.1501, 607.1502, 607.1503, 607.1504, 607.1505, 607.1506, 607.1507, 607.1508, 607.1509, 607.15101, 607.1520, 607.1530, 607.15315, 607.1532, 607.1601, 607.1602, 607.1603, 607.1604, 607.1605, 607.1620, 607.1622, 607.1701, 607.1702, 607.1711, 607.1907, 607.504, 607.604, 605.0102, 605.0105, 605.0112, 605.0113, 605.0114, 605.0115, 605.0116, 605.0117, 605.0118, 605.0207, 605.0209, 605.0210, 605.0211, 605.0215, 605.04092, 605.0410, 605.0702, 605.0706, 605.0715, 605.0716, 605.0803, 605.0903, 605.0904, 605.0906, 605.0907, 605.0908, 605.0910, 605.0911, 605.0912, 605.1025, 605.1035, 605.1061, 605.1063, 605.1072, 617.0302, 617.0501, 617.0831, 617.1102, 617.1108, 617.1507, 620.1108, 620.2104, 620.2108, 620.8918, 621.12, 865.09, 662.150, 331.355, 339.12, 628.530, 631.0515, 658.44, 663.03, 663.403, and 694.16.

This bill creates the following sections of the Florida Statutes: 607.0143, 607.0208, 607.04021, 607.0503, 607.05031, 607.05032, 607.0709, 607.0729, 607.0741, 607.0742, 607.0742, 607.0744, 607.0745, 607.0746, 607.0747, 607.0748, 607.0749, 607.08081, 607.0826, 607.08411, 607.0851, 607.0852, 607.0853, 607.0854, 607.0855, 607.0857, 607.0858, 607.0859, 607.1023, 607.11035, 607.11920, 607.11921, 607.11922, 607.11923, 607.11924, 607.11930, 607.11931, 607.11932, 607.11933, 607.11934, 607.11935, 607.1340, 607.1408, 607.1409, 607.1410, 607.15015, 607.15091, 607.15092, 607.1521, 607.1522, 607.1523, 607.1908, 605.01125, 605.09091, 617.05015, and 620.11085.

This bill repeals the following sections of the Florida Statutes: 607.07401, 607.1108, 607.1109, 607.11101, 607.1112, 607.1113, 607.1114, 607.1115, 607.1421, 607.1531, 607.1621, and 607.1801.

## **IX. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS/CS by Judiciary on March 25, 2019:**

The committee substitute:

- Reinstates s. 605.0907(d)(1), F.S. concerning amendments to certificates of authority by deleting the amendment to s. 607.0907(d)(1), F.S. in section 258.
- Makes technical and conforming changes to sections 27, 115, and 132:
  - Section 27 – adding the term “director” to s. 607.0304(2)(b), F.S. conforming to changes elsewhere in the bill distinguishing between a “director” and an “officer.”

- Section 115 – amending s. 607.0901(4)(c), F.S., changing the period of 80% beneficial ownership from 5 years to 3 years, conforming this period of time with other changes to the affiliated transaction statute in the bill.
- Section 132 – adding the term “right to acquire shares” to new subsection (7) to conform with the rest of the changes to s. 607.1102, F.S. made by the bill.

**CS by Commerce and Tourism on March 11, 2019:**

The committee substitute reverts to current law to allow corporations to provide notice of dissolution to unknown claimants by either newspaper publication or filing with the Department of State.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment**

Delete line 2108  
and insert:  
suit, against an incumbent or former director, officer,  
employee, or agent



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment (with directory amendment)**

Between lines 5745 and 5746  
insert:

(4) The voting requirements set forth in subsection (2) do not apply to a particular affiliated transaction if all of the conditions specified in any one of the following paragraphs are met:

(a) The affiliated transaction has been approved by a majority of the disinterested directors;



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(b) The corporation has not had more than 300 shareholders of record at any time during the 3 years preceding the announcement date;

(c) The interested shareholder has been the beneficial owner of at least 80 percent of the corporation's outstanding voting shares for at least 3 ~~5~~ years preceding the announcement date;

(d) The interested shareholder is the beneficial owner of at least 90 percent of the outstanding voting shares of the corporation, exclusive of shares acquired directly from the corporation in a transaction not approved by a majority of the disinterested directors;

(e) The corporation is an investment company registered under the Investment Company Act of 1940; or

(f) In the affiliated transaction, consideration shall be paid to the holders of each class or series of voting shares and all of the following conditions shall be met:

1. The aggregate amount of the cash and the fair market value as of the valuation date of consideration other than cash to be received per share by holders of each class or series of voting shares in such affiliated transaction are at least equal to the highest of the following:

a. If applicable, the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of such class or series acquired by it within the 2-year period immediately preceding the announcement date or in the transaction in which it became an interested shareholder, whichever is higher;



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b. The fair market value per share of such class or series on the announcement date or on the determination date, whichever is higher;

c. If applicable, the price per share equal to the fair market value per share of such class or series determined pursuant to sub-subparagraph b., multiplied by the ratio of the highest per share price, including any brokerage commissions, transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for any shares of such class or series acquired by it within the 2-year period immediately preceding the announcement date, to the fair market value per share of such class or series on the first day in such 2-year period on which the interested shareholder acquired any shares of such class or series; and

d. If applicable, the highest preferential amount, if any, per share to which the holders of such class or series are entitled in the event of any voluntary or involuntary dissolution of the corporation;~~;~~

2. The consideration to be received by holders of outstanding shares shall be in cash or in the same form as the interested shareholder has previously paid for shares of the same class or series, and if the interested shareholder has paid for shares with varying forms of consideration, the form of the consideration shall be either cash or the form used to acquire the largest number of shares of such class or series previously acquired by the interested shareholder;~~;~~

3. During such portion of the 3-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the



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disinterested directors:

a. There shall have been no failure to declare and pay at the regular date therefor any full periodic dividends, whether or not cumulative, on any outstanding shares of the corporation;

b. There shall have been:

(I) No reduction in the annual rate of dividends paid on any class or series of voting shares, except as necessary to reflect any subdivision of the class or series; and

(II) An increase in such annual rate of dividends as necessary to reflect any reclassification, including any reverse stock split, recapitalization, reorganization, or similar transaction which has the effect of reducing the number of outstanding shares of the class or series; and

c. Such interested shareholder shall not have become the beneficial owner of any additional voting shares except as part of the transaction which results in such interested shareholder becoming an interested shareholder;~~;~~

4. During such portion of the 3-year period preceding the announcement date that such interested shareholder has been an interested shareholder, except as approved by a majority of the disinterested directors, such interested shareholder shall not have received the benefit, directly or indirectly (except proportionately as a shareholder), of any loans, advances, guaranties, pledges, or other financial assistance or any tax credits or other tax advantages provided by the corporation, whether in anticipation of or in connection with such affiliated transaction or otherwise; and~~;~~

5. Except as otherwise approved by a majority of the disinterested directors, a proxy or information statement



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describing the affiliated transaction and complying with the requirements of the Exchange Act and the rules and regulations thereunder has been mailed to holders of voting shares of the corporation at least 25 days before the consummation of such affiliated transaction, whether or not such proxy or information statement is required to be mailed pursuant to the Exchange Act or such rules or regulations.

===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

And the directory clause is amended as follows:

Delete line 5532

and insert:

subsection (1) and subsections (2), (4), (5), and (6) of section



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment**

Delete lines 6544 - 6546  
and insert:

(7)-(4) This section does not limit the power of a corporation to acquire all or part of the shares, or rights to acquire shares, of one or more classes or series of another corporation or eligible interests, or rights to acquire eligible interests,



813292

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
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The Committee on Judiciary (Passidomo) recommended the following:

**Senate Amendment**

Delete lines 12451 - 12461  
and insert:  
Section 258. Subsections (2) and (4) of section 605.0907,  
Florida Statutes, are amended to read:  
605.0907 Amendment to certificate of authority.-

By the Committee on Commerce and Tourism; and Senator Passidomo

577-02886-19

2019892c1

1 A bill to be entitled  
 2 An act relating to business organizations; amending s.  
 3 607.0101, F.S.; providing applicability; amending s.  
 4 607.0102, F.S.; making technical changes; amending s.  
 5 607.0120, F.S.; making technical changes; providing  
 6 requirements, authorizations, and prohibitions  
 7 relating to when the terms of a plan or a filed  
 8 document may be dependent on facts objectively  
 9 ascertainable outside of the plan or filed document;  
 10 defining the terms "filed document" and "plan";  
 11 amending s. 607.0121, F.S.; making technical changes;  
 12 conforming provisions to changes made by the act;  
 13 amending s. 607.0122, F.S.; conforming provisions to  
 14 changes made by the act; amending s. 607.0123, F.S.;  
 15 revising provisions, requirements, and authorizations  
 16 relating to the effective time and date of a document;  
 17 amending s. 607.0124, F.S.; revising the process  
 18 authorizing a domestic or foreign corporation to  
 19 correct a document filed by the Department of State;  
 20 authorizing a filing to be withdrawn before it takes  
 21 effect if certain requirements are met; amending s.  
 22 607.0125, F.S.; revising the filing duties of the  
 23 department; amending s. 607.0126, F.S.; revising the  
 24 appeals process relating to the department's refusal  
 25 to file a document; amending s. 607.0127, F.S.;  
 26 requiring certain certificates to be taken by certain  
 27 entities as prima facie evidence of the facts stated;  
 28 revising when a certificate and a copy of a document  
 29 are conclusive evidence that the original document is

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2019892c1

30 on file with the department; amending s. 607.0128,  
 31 F.S.; revising provisions relating to department-  
 32 issued certificates of status; amending s. 607.0130,  
 33 F.S.; deleting provisions relating to the powers of  
 34 the department; amending s. 607.01401, F.S.; defining  
 35 and redefining terms; amending s. 607.0141, F.S.;  
 36 revising provisions relating to written and oral  
 37 notice under ch. 607, F.S.; providing construction;  
 38 creating s. 607.0143, F.S.; defining the terms  
 39 "qualified director," "material relationship," and  
 40 "material interest"; providing for circumstances under  
 41 which a director is not automatically prevented from  
 42 being a qualified director; amending s. 607.0201,  
 43 F.S.; conforming provisions to changes made by the  
 44 act; amending s. 607.0202, F.S.; revising requirements  
 45 and authorizations for the contents of articles of  
 46 incorporation; authorizing provisions of the articles  
 47 of incorporation to be made dependent upon facts  
 48 objectively ascertainable outside of the articles of  
 49 incorporation; prohibiting the articles of  
 50 incorporation from containing certain provisions;  
 51 amending s. 607.0203, F.S.; conforming provisions to  
 52 changes made by the act; amending s. 607.0204, F.S.;  
 53 deleting an exemption from liability related to  
 54 persons who have actual knowledge that there is no  
 55 incorporation when purporting to act as or on behalf  
 56 of a corporation; making a technical change; amending  
 57 s. 607.0205, F.S.; making technical changes; requiring  
 58 directors or incorporators calling an organizational

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59 meeting to give at least 2, rather than 3, days'  
 60 notice; amending s. 607.0206, F.S.; revising  
 61 provisions relating to the contents of the bylaws of a  
 62 corporation; amending s. 607.0207, F.S.; making  
 63 technical changes; creating s. 607.0208, F.S.;  
 64 authorizing provisions of the articles of  
 65 incorporation or the bylaws to create exclusive  
 66 jurisdiction for certain claims; providing  
 67 applicability for such provisions; prohibiting the  
 68 articles or bylaws from prohibiting certain actions;  
 69 defining the term "internal corporate claim"; amending  
 70 s. 607.0301, F.S.; revising purposes and  
 71 applicability; amending s. 607.0302, F.S.; making  
 72 technical changes; amending s. 607.0303, F.S.;  
 73 revising the requirements relating to the liability of  
 74 certain persons acting in accordance with emergency  
 75 bylaws; making technical changes; amending s.  
 76 607.0304, F.S.; revising when a corporation's power to  
 77 act may be challenged; amending s. 607.0401, F.S.;  
 78 authorizing a corporation to register under a name  
 79 that is not otherwise distinguishable on the records  
 80 of the department under certain circumstances;  
 81 providing applicability; creating s. 607.04021, F.S.;  
 82 authorizing a person to reserve the exclusive use of a  
 83 corporate name and to transfer the reservation;  
 84 authorizing the department to revoke a reservation  
 85 under certain circumstances; amending s. 607.0403,  
 86 F.S.; making technical changes; conforming a cross-  
 87 reference; amending s. 607.0501, F.S.; revising

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88 requirements for registered offices and registered  
 89 agents; providing for the duties of a registered  
 90 agent; authorizing a court to stay a proceeding until  
 91 a corporation is compliant with requirements relating  
 92 to registered agents and registered offices; making  
 93 technical changes; amending s. 607.0502, F.S.;  
 94 revising the procedures relating to a corporation  
 95 changing its registered agent or its registered  
 96 office; creating s. 607.0503, F.S.; revising  
 97 procedures and requirements relating to the  
 98 resignation of a registered agent; creating s.  
 99 607.05031, F.S.; revising procedures and requirements  
 100 relating to the change of name or address by a  
 101 registered agent; creating s. 607.05032, F.S.;  
 102 providing for the delivery of notice or other  
 103 communication; amending s. 607.0504, F.S.; revising  
 104 the procedures for service of process, notice, or  
 105 demand on a corporation; amending s. 607.0505, F.S.;  
 106 conforming provisions to changes made by the act;  
 107 amending s. 607.0601, F.S.; revising provisions  
 108 relating to shares authorized by articles of  
 109 incorporation; amending s. 607.0602, F.S.; revising  
 110 provisions relating to the determination of the board  
 111 of directors to classify or reclassify certain shares;  
 112 amending s. 607.0604, F.S.; deleting a provision  
 113 relating to the good faith judgment of the board of  
 114 directors as to the fair value of fractions of a  
 115 share; making technical changes; amending s. 607.0620,  
 116 F.S.; revising provisions relating to subscriptions

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117 for shares; amending s. 607.0621, F.S.; expanding the  
 118 circumstances in which shares that are escrowed or  
 119 restricted and distributions that are credited may be  
 120 canceled; amending s. 607.0622, F.S.; making a  
 121 technical change; amending s. 607.0623, F.S.;  
 122 authorizing the board to fix a record date for  
 123 determining shareholders entitled to a share dividend;  
 124 amending s. 607.0624, F.S.; revising provisions  
 125 relating to rights, options, warrants, and awards for  
 126 the purchase of shares of the corporation; defining  
 127 the term "shares"; amending ss. 607.0625, 607.0626,  
 128 and 607.0627, F.S.; making technical changes; amending  
 129 s. 607.0630, F.S.; revising provisions relating to  
 130 shareholders' preemptive rights; amending s. 607.0631,  
 131 F.S.; revising provisions relating to a corporation's  
 132 acquisition of its own shares; amending s. 607.06401,  
 133 F.S.; revising provisions relating to distributions to  
 134 shareholders; providing applicability; making  
 135 technical changes; amending s. 607.0701, F.S.;  
 136 revising provisions relating to a corporation's annual  
 137 meeting; amending s. 607.0702, F.S.; revising  
 138 provisions relating to a corporation's special meeting  
 139 of the shareholders; amending s. 607.0703, F.S.;  
 140 revising provisions relating to court-ordered  
 141 meetings; amending s. 607.0704, F.S.; revising  
 142 provisions relating to actions by shareholders without  
 143 a meeting; making technical changes; amending s.  
 144 607.0705, F.S.; revising provisions relating to  
 145 notices of meetings; amending s. 607.0706, F.S.;

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146 relocating and revising requirements for a shareholder  
 147 to waive certain required notice; amending s.  
 148 607.0707, F.S.; revising provisions relating to record  
 149 dates; creating s. 607.0709, F.S.; relocating and  
 150 revising provisions relating to remote participation  
 151 in the annual and special meetings of shareholders;  
 152 amending s. 607.0720, F.S.; revising provisions  
 153 relating to shareholders' lists for meetings; amending  
 154 s. 607.0721, F.S.; revising provisions relating to  
 155 when certain shares are entitled to vote; defining the  
 156 term "voting power"; amending s. 607.0722, F.S.;  
 157 revising provisions relating to the appointment of a  
 158 proxy; amending s. 607.0723, F.S.; revising provisions  
 159 relating to shares held by intermediaries and nominees  
 160 being treated as the record shareholder; amending s.  
 161 607.0724, F.S.; revising provisions relating to the  
 162 acceptance of votes and other instruments; requiring  
 163 that ballots and shareholder demands be accepted under  
 164 certain circumstances; amending s. 607.0725, F.S.;  
 165 making technical changes; providing applicability for  
 166 provisions that provide for voting of classes or  
 167 series as separate voting groups; amending s.  
 168 607.0726, F.S.; making clarifying changes; amending s.  
 169 607.0728, F.S.; requiring that certain corporations  
 170 have shares registered pursuant to s. 12 of the  
 171 Securities Exchange Act of 1934 rather than pursuant  
 172 to a list on a national securities exchange, for the  
 173 purposes of certain voting requirements; creating s.  
 174 607.0729, F.S.; requiring certain corporations to

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175 appoint one or more inspectors to determine voting  
 176 results; authorizing the inspectors to appoint or  
 177 retain certain persons for specific reasons; providing  
 178 requirements for inspectors; authorizing the  
 179 inspectors to take certain actions; providing for  
 180 review of determinations of law by the inspectors;  
 181 providing for the closing of polls for elections;  
 182 amending s. 607.0730, F.S.; making technical changes;  
 183 amending s. 607.0731, F.S.; making clarifying changes;  
 184 expanding the circumstances under which a transferee  
 185 is deemed to have notice of a voting agreement;  
 186 amending s. 607.0732, F.S.; revising provisions  
 187 relating to shareholder agreements; providing  
 188 construction; repealing s. 607.07401, F.S., relating  
 189 to Shareholders' derivative actions; creating s.  
 190 607.0741, F.S.; providing standing requirements for a  
 191 shareholder commencing a derivative proceeding;  
 192 defining the term "shareholder"; creating s. 607.0742,  
 193 F.S.; relocating and revising provisions relating to a  
 194 complaint brought in a proceeding in the right of a  
 195 corporation; creating s. 607.0743, F.S.; authorizing a  
 196 court to stay a derivative proceeding under certain  
 197 circumstances; creating s. 607.0744, F.S.; relocating  
 198 and revising provisions relating to the dismissal of a  
 199 derivative proceeding; creating s. 607.0745, F.S.;  
 200 relocating a provision relating to the discontinuance  
 201 or settlement of a derivative action; creating s.  
 202 607.0746, F.S.; relocating and revising provisions  
 203 relating to proceeds and expenses after the

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204 termination of a derivative proceeding; creating s.  
 205 607.0747, F.S.; providing applicability relating to  
 206 foreign corporations; creating s. 607.0748, F.S.;  
 207 authorizing a circuit court to appoint one or more  
 208 persons to be custodians or receivers of and for a  
 209 corporation for certain proceedings; providing  
 210 guidance to the court for appointing such custodians  
 211 and receivers; creating s. 607.0749, F.S.; authorizing  
 212 a provisional director to be appointed at the  
 213 discretion of the court in a proceeding by a  
 214 shareholder and under certain circumstances; providing  
 215 requirements for the provisional director; requiring  
 216 the court to allow reasonable compensation paid by the  
 217 corporation to the provisional director for certain  
 218 services; amending s. 607.0801, F.S.; making technical  
 219 changes; amending s. 607.0802, F.S.; revising  
 220 provisions relating to the qualifications of  
 221 directors; amending s. 607.0803, F.S.; making  
 222 clarifying changes; amending s. 607.0804, F.S.;  
 223 providing applicability; amending s. 607.0805, F.S.;  
 224 revising provisions relating to terms of directors;  
 225 amending s. 607.0806, F.S.; revising provisions  
 226 relating to staggered terms for directors; amending s.  
 227 607.0807, F.S.; revising provisions relating to the  
 228 resignation of directors; amending s. 607.0808, F.S.;  
 229 revising provisions relating to the removal of  
 230 directors by shareholders; creating s. 607.08081,  
 231 F.S.; authorizing circuit courts to remove a director  
 232 from office and order certain relief under certain

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233 circumstances; amending s. 607.0809, F.S.; revising  
 234 provisions relating to vacancies on a board of  
 235 directors; amending s. 607.0820, F.S.; making  
 236 technical changes; amending s. 607.0821, F.S.;  
 237 revising provisions relating to action by directors  
 238 without a meeting; amending s. 607.0823, F.S.;  
 239 revising provisions relating to the waiver of notice  
 240 of a meeting of a board of directors; amending s.  
 241 607.0824, F.S.; revising provisions relating to what  
 242 constitutes a quorum of the board of directors;  
 243 amending s. 607.0825, F.S.; revising provisions  
 244 relating to the establishment and the powers of  
 245 executive and board committees; creating s. 607.0826,  
 246 F.S.; authorizing a corporation to agree to submit a  
 247 matter that the board of directors determines it no  
 248 longer recommends to a vote of the corporation's  
 249 shareholders; amending s. 607.0830, F.S.; revising the  
 250 general standards for directors; amending s. 607.0831,  
 251 F.S.; revising provisions relating to the liability of  
 252 directors; amending s. 607.0832, F.S.; defining terms;  
 253 revising provisions relating to directors' conflicts  
 254 of interest; amending s. 607.0833, F.S.; making a  
 255 technical change; amending s. 607.0834, F.S.; revising  
 256 provisions relating to liability for unlawful  
 257 distributions; amending s. 607.08401, F.S.;  
 258 authorizing the board of directors to appoint one or  
 259 more individuals to act as officers of the  
 260 corporation; specifying which records must be  
 261 authenticated by an officer; creating s. 607.08411,

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262 F.S.; providing general standards for officers of the  
 263 corporation; amending s. 607.0842, F.S.; revising  
 264 provisions relating to the resignation and removal of  
 265 officers; amending s. 607.0850, F.S.; defining terms;  
 266 deleting provisions relating to the indemnification of  
 267 officers, directors, employees, and agents; creating  
 268 s. 607.0851, F.S.; relocating and revising provisions  
 269 relating to the permissible indemnification of certain  
 270 persons by a corporation; creating s. 607.0852, F.S.;  
 271 relocating and revising provisions relating to the  
 272 mandatory indemnification of certain persons by a  
 273 corporation; creating s. 607.0853, F.S.; authorizing a  
 274 corporation to advance funds to pay for or reimburse  
 275 certain expenses; providing requirements for the  
 276 authorization of advanced funds; creating s. 607.0854,  
 277 F.S.; relocating and revising provisions related to  
 278 court-ordered indemnification and advance for  
 279 expenses; creating s. 607.0855, F.S.; relocating and  
 280 revising provisions relating to the determination and  
 281 authorization of indemnification; creating s.  
 282 607.0857, F.S.; relocating and revising provisions  
 283 relating to a corporation purchasing and maintaining  
 284 certain insurance; creating s. 607.0858, F.S.;  
 285 relocating and revising provisions relating to  
 286 indemnification by a corporation which is not  
 287 specifically provided for by law; providing  
 288 applicability; creating s. 607.0859, F.S.; relocating  
 289 and revising provisions relating to overriding  
 290 restrictions on indemnification; amending s. 607.0901,

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291 F.S.; revising defined terms; revising provisions  
 292 related to affiliated transactions; revising  
 293 applicability; amending s. 607.0902, F.S.; conforming  
 294 a cross-reference; amending s. 607.1001, F.S.; making  
 295 a technical change; amending s. 607.1002, F.S.;  
 296 expanding the list of types of amendments a  
 297 corporation's board of directors may adopt without  
 298 shareholder approval; making technical changes;  
 299 amending s. 607.10025, F.S.; making technical changes;  
 300 conforming a cross-reference; deleting a provision  
 301 exempting corporations with less than a specified  
 302 number of shareholders of record from applicability;  
 303 amending s. 607.1003, F.S.; revising provisions  
 304 relating to amendments to the articles of  
 305 incorporation; amending s. 607.1004, F.S.; revising  
 306 provisions relating to voting on amendments by voting  
 307 groups; amending s. 607.1005, F.S.; requiring that a  
 308 corporation have no board of directors for a majority  
 309 of its incorporators to be authorized to adopt  
 310 amendments to the corporation's articles of  
 311 incorporation; amending s. 607.1006, F.S.; revising  
 312 provisions relating to articles of amendment; amending  
 313 s. 607.1007, F.S.; revising provisions relating to  
 314 restated articles of incorporation; amending s.  
 315 607.1008, F.S.; revising provisions relating to an  
 316 amendment pursuant to reorganization; amending s.  
 317 607.1009, F.S.; specifying when new interest holder  
 318 liability as a result of an amendment takes effect;  
 319 amending s. 607.1020, F.S.; revising provisions

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320 relating to amendments of the bylaws by boards of  
 321 directors or shareholders; amending s. 607.1021, F.S.;  
 322 making a technical change; amending s. 607.1022, F.S.;  
 323 revising provisions relating to bylaws that increase a  
 324 quorum or voting requirement for directors; creating  
 325 s. 607.1023, F.S.; authorizing a corporation to elect  
 326 in its bylaws to be governed in the election of  
 327 directors under certain circumstances; providing  
 328 applicability; authorizing certain bylaws to be  
 329 repealed by the board of directors or shareholders  
 330 under certain circumstances; amending s. 607.1101,  
 331 F.S.; revising provisions relating to the merger of  
 332 certain corporations and eligible entities; amending  
 333 s. 607.1102, F.S.; revising provisions relating to  
 334 plans of share exchange; amending s. 607.1103, F.S.;  
 335 revising provisions relating to actions on a plan of  
 336 merger or a plan of share exchange; creating s.  
 337 607.11035, F.S.; specifying when shareholder approval  
 338 of a plan of merger or a plan of share exchange is not  
 339 required; defining terms; amending s. 607.1104, F.S.;  
 340 revising provisions relating to the mergers involving  
 341 subsidiary corporations; amending s. 607.11045, F.S.;  
 342 revising applicability; amending s. 607.1105, F.S.;  
 343 revising provisions relating to articles of merger or  
 344 share exchange; amending s. 607.1106, F.S.; revising  
 345 provisions relating to the effectiveness of a merger  
 346 or share exchange; amending s. 607.1107, F.S.;  
 347 revising provisions relating to the abandonment of a  
 348 merger or share exchange; deleting provisions relating

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349 to mergers or share exchanges with foreign  
 350 corporations; repealing s. 607.1108, F.S., relating to  
 351 merger of domestic corporation and other business  
 352 entity; repealing s. 607.1109, F.S., relating to  
 353 articles of merger; repealing s. 607.11101, F.S.,  
 354 relating to the effect of a merger of domestic  
 355 corporation and other business entity; repealing s.  
 356 607.1112, F.S., relating to the conversion of a  
 357 domestic corporation into another business entity;  
 358 repealing s. 607.1113, F.S., relating to certificates  
 359 of conversion; repealing s. 607.1114, F.S., relating  
 360 to the effect of the conversion of a domestic  
 361 corporation into another business entity; repealing s.  
 362 607.1115, F.S., relating to the conversion of another  
 363 business entity into a domestic corporation; creating  
 364 s. 607.11920, F.S.; authorizing a foreign corporation  
 365 to become a domestic corporation under certain  
 366 circumstances; authorizing a domestic corporation to  
 367 become a foreign corporation under certain  
 368 circumstances; requiring that a plan of domestication  
 369 include certain information; authorizing a  
 370 domestication to include certain provisions;  
 371 authorizing a plan of domestication to be made  
 372 dependent upon facts objectively ascertainable outside  
 373 of the plan; providing applicability; creating s.  
 374 607.11921, F.S.; requiring a plan of domestication to  
 375 be adopted in a certain manner; creating s. 607.11922,  
 376 F.S.; requiring a domesticating corporation to sign  
 377 articles of domestication under certain circumstances;

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378 requiring that the articles of domestication contain  
 379 certain information; providing procedures and  
 380 requirements relating to the filing of the articles of  
 381 domestication and the effectiveness of the  
 382 domestication; providing that certain domesticating  
 383 corporations' certificates of authority are  
 384 automatically canceled upon the domestication becoming  
 385 effective; providing that a copy of the articles of  
 386 domestication may be filed in certain official  
 387 records; creating s. 607.11923, F.S.; providing for  
 388 the amendment of a plan of domestication; providing  
 389 for the abandonment of a plan of domestication;  
 390 creating s. 607.11924, F.S.; specifying the effects of  
 391 a domestication; specifying that a domestication does  
 392 not constitute or cause the dissolution of the  
 393 domesticating corporation; prohibiting certain  
 394 property from being diverted as a result of a  
 395 domestication unless certain requirements are met;  
 396 providing applicability; creating ss. 607.11930 and  
 397 607.11931, F.S.; relocating and revising provisions  
 398 relating to the conversion of corporations; creating  
 399 s. 607.11932, F.S.; relocating and revising provisions  
 400 relating to actions on plans of conversion; providing  
 401 applicability; creating s. 607.11933, F.S.; relocating  
 402 and revising provisions relating to articles of  
 403 conversion and the effectiveness of such articles;  
 404 creating s. 607.11934, F.S.; relocating and revising  
 405 provisions relating to amendments to plans of  
 406 conversion; creating s. 607.11935, F.S.; relocating

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407 and revising provisions relating to the effectiveness  
 408 of a conversion; amending s. 607.1201, F.S.; revising  
 409 provisions relating to the disposition of assets not  
 410 requiring shareholder approval; amending s. 607.1202,  
 411 F.S.; revising provisions relating to shareholder  
 412 approval of certain dispositions; amending s.  
 413 607.1301, F.S.; defining, deleting, and revising  
 414 terms; amending s. 607.1302, F.S.; revising provisions  
 415 relating to appraisal rights of shareholders; amending  
 416 s. 607.1303, F.S.; making technical changes; amending  
 417 s. 607.1320, F.S.; revising provisions relating to  
 418 notice of appraisal rights; amending s. 607.1321,  
 419 F.S.; revising provisions relating to notice of intent  
 420 to demand payment; amending s. 607.1322, F.S.;  
 421 revising provisions relating to appraisal notice and  
 422 form; amending s. 607.1323, F.S.; making technical  
 423 changes; amending s. 607.1324, F.S.; specifying that a  
 424 shareholder ceases to have certain rights upon payment  
 425 of an agreed value; amending s. 607.1326, F.S.; making  
 426 technical changes; amending s. 607.1330, F.S.;  
 427 revising provisions relating to court action to  
 428 determine the fair value of shares and accrued  
 429 interest; amending ss. 607.1331, 607.1332, and  
 430 607.1333, F.S.; making technical changes; creating s.  
 431 607.1340, F.S.; relocating provisions relating to  
 432 certain shareholders challenging certain actions;  
 433 making technical changes; amending s. 607.1401, F.S.;  
 434 revising provisions relating to incorporators or  
 435 directors dissolving a corporation; amending s.

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436 607.1402, F.S.; revising provisions relating to the  
 437 dissolution of a corporation by the board of directors  
 438 and the shareholders; amending s. 607.1403, F.S.;  
 439 revising provisions relating to articles of  
 440 dissolution; defining the terms "dissolved  
 441 corporation" and "successor entity"; amending s.  
 442 607.1404, F.S.; revising provisions relating to  
 443 revocation of dissolution; amending s. 607.1405, F.S.;  
 444 revising provisions relating to the effect of  
 445 dissolution; amending s. 607.1406, F.S.; revising  
 446 provisions relating to known claims against a  
 447 dissolved corporation; defining the term "known  
 448 claims"; deleting the term "successor entity";  
 449 amending s. 607.1407, F.S.; revising provisions  
 450 relating to unknown claims against a dissolved  
 451 corporation; creating s. 607.1408, F.S.; relocating  
 452 provisions relating to claims against dissolved  
 453 corporations; creating s. 607.1409, F.S.; authorizing  
 454 certain dissolved corporations to file an application  
 455 with the circuit court for a certain determination;  
 456 providing guidelines for the proceedings; creating s.  
 457 607.1410, F.S.; providing duties for directors of  
 458 dissolved corporations; amending s. 607.1420, F.S.;  
 459 revising provisions relating to the administrative  
 460 dissolution of a corporation; repealing s. 607.1421,  
 461 F.S., relating to the procedure for and effect of  
 462 administrative dissolution; amending s. 607.1422,  
 463 F.S.; revising provisions relating to reinstatement  
 464 following administrative dissolution; amending s.

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465 607.1423, F.S.; revising provisions relating to  
 466 judicial review of denials of reinstatement; amending  
 467 s. 607.1430, F.S.; revising provisions relating to  
 468 grounds for judicial dissolution; defining the term  
 469 "shareholder"; amending s. 607.1431, F.S.; revising  
 470 provisions relating to procedures for judicial  
 471 dissolution; amending s. 607.1432, F.S.; revising  
 472 provisions relating to receivership and custodianship;  
 473 amending s. 607.1433, F.S.; revising provisions  
 474 relating to judgment of dissolution; amending s.  
 475 607.1434, F.S.; revising provisions relating to  
 476 alternative remedies to judicial dissolution; amending  
 477 s. 607.1435, F.S.; revising provisions relating to  
 478 court-appointed provisional directors; amending s.  
 479 607.1436, F.S.; revising provisions relating to  
 480 elections to purchase instead of dissolution; amending  
 481 s. 607.14401, F.S.; revising provisions relating to  
 482 deposits associated with a dissolved corporation;  
 483 amending s. 607.1501, F.S.; revising provisions  
 484 relating to the authority of a foreign corporation to  
 485 transact business in this state; creating s.  
 486 607.15015, F.S.; providing for applicability of  
 487 certain laws for a foreign corporation; providing that  
 488 a foreign corporation may not be denied a certificate  
 489 of authority for certain reasons; specifying that a  
 490 certificate of authority does not authorize a foreign  
 491 corporation to take certain actions; amending s.  
 492 607.1502, F.S.; revising provisions relating to  
 493 transacting business in this state without a

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494 certificate of authority; providing applicability;  
 495 amending s. 607.1503, F.S.; revising provisions  
 496 relating to applications for a certificate of  
 497 authority; amending s. 607.1504, F.S.; revising  
 498 provisions relating to amendments to certificates of  
 499 authority; amending s. 607.1505, F.S.; revising  
 500 provisions relating to the effect of a certificate of  
 501 authority; amending s. 607.1506, F.S.; revising  
 502 provisions relating to the corporate name of a foreign  
 503 corporation; amending s. 607.1507, F.S.; revising  
 504 provisions relating to the registered offices and  
 505 registered agents of foreign corporations; providing a  
 506 civil penalty; amending s. 607.1508, F.S.; revising  
 507 provisions relating to changing the names of  
 508 registered offices and registered agents of foreign  
 509 corporations; amending s. 607.1509, F.S.; revising  
 510 provisions relating to resignations of registered  
 511 agents of foreign corporations; creating s. 607.15091,  
 512 F.S.; revising provisions relating to name and address  
 513 changes for registered agents of foreign corporations;  
 514 creating s. 607.15092, F.S.; providing requirements  
 515 for delivery of notice or other communication;  
 516 amending s. 607.15101, F.S.; revising provisions  
 517 relating to service of process, notice, or demand on a  
 518 foreign corporation; amending s. 607.1520, F.S.;  
 519 revising provisions relating to the withdrawal of a  
 520 certificate of authority for a foreign corporation;  
 521 requiring a foreign corporation to take certain  
 522 actions to cancel its certificate of authority;

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523 creating s. 607.1521, F.S.; specifying that certain  
 524 foreign corporations are deemed to have withdrawn  
 525 their certificate of authority under certain  
 526 circumstances; creating s. 607.1522, F.S.; requiring a  
 527 foreign corporation to deliver a notice of withdrawal  
 528 of a certificate of authority under certain  
 529 circumstances; providing for effective service of  
 530 process on such foreign corporations; creating s.  
 531 607.1523, F.S.; authorizing the Department of Legal  
 532 Affairs to maintain certain actions and to enjoin a  
 533 foreign corporation under certain circumstances;  
 534 amending s. 607.1530, F.S.; revising provisions  
 535 relating to revocation of a foreign corporation's  
 536 certificate of authority; repealing s. 607.1531, F.S.,  
 537 relating to the procedure for and effect of  
 538 revocation; amending s. 607.15315, F.S.; revising  
 539 provisions relating to reinstatement of a foreign  
 540 corporation's certificate of authority; amending s.  
 541 607.1532, F.S.; revising provisions relating to  
 542 judicial review of a denial of reinstatement; amending  
 543 s. 607.1601, F.S.; revising provisions relating to the  
 544 maintenance of corporate records; amending s.  
 545 607.1602, F.S.; revising provisions relating to  
 546 inspection of records by shareholders; revising the  
 547 definition of the term "shareholder"; amending s.  
 548 607.1603, F.S.; revising provisions relating to the  
 549 scope of shareholders' inspection rights; amending s.  
 550 607.1604, F.S.; revising provisions relating to court-  
 551 ordered inspections; amending s. 607.1605, F.S.;

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552 revising provisions relating to directors' inspection  
 553 rights; amending s. 607.1620, F.S.; revising  
 554 provisions relating to financial statements for  
 555 shareholders; repealing s. 607.1621, F.S., relating to  
 556 other reports to shareholders; amending s. 607.1622,  
 557 F.S.; revising provisions relating to annual reports  
 558 that are required to be filed with the Department of  
 559 State; amending s. 607.1701, F.S.; making a technical  
 560 change; revising applicability; amending s. 607.1702,  
 561 F.S.; revising applicability; amending s. 607.1711,  
 562 F.S.; making a technical change; repealing s.  
 563 607.1801, F.S., relating to domestication of foreign  
 564 corporations; amending s. 607.1907, F.S.; revising  
 565 provisions relating to savings provisions; creating s.  
 566 607.1908, F.S.; providing for severability; amending  
 567 s. 607.504, F.S.; revising provisions relating to an  
 568 election of social purpose corporation status;  
 569 amending s. 607.604, F.S.; revising provisions  
 570 relating to an election of benefit corporation status;  
 571 conforming a cross-reference; amending s. 605.0102,  
 572 F.S.; conforming a cross-reference; revising the  
 573 definitions of the terms "private organic rules" and  
 574 "public organic record"; amending s. 605.0105, F.S.;  
 575 revising provisions relating to operating agreements;  
 576 amending s. 605.0112, F.S.; revising provisions  
 577 relating to names of limited liability companies;  
 578 creating s. 605.01125, F.S.; authorizing a person to  
 579 reserve the exclusive use of the name of a limited  
 580 liability company; providing requirements for

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581 reserving the name; authorizing the department to  
 582 revoke reservations under certain circumstances;  
 583 amending s. 605.0113, F.S.; revising provisions  
 584 relating to registered agents of limited liability  
 585 companies; defining the term "authorized entity";  
 586 amending s. 605.0114, F.S.; revising provisions  
 587 relating to changes of a registered agent or  
 588 registered office; amending s. 605.0115, F.S.;  
 589 requiring a registered agent to promptly mail a copy  
 590 of a statement of resignation to a limited liability  
 591 company's or foreign limited liability company's  
 592 current mailing address; amending s. 605.0116, F.S.;  
 593 making clarifying changes; amending s. 605.0117, F.S.;  
 594 revising provisions relating to service of process,  
 595 notice, and demand on limited liability companies and  
 596 registered foreign limited liability companies;  
 597 amending s. 605.0118, F.S.; conforming a provision to  
 598 changes made by the act; amending s. 605.0207, F.S.;  
 599 revising provisions relating to effective dates and  
 600 times for records filed with the Department of State;  
 601 amending s. 605.0209, F.S.; revising what a statement  
 602 of correction must contain; amending s. 605.0210,  
 603 F.S.; revising provisions relating to the department's  
 604 refusal to file a record; amending s. 605.0211, F.S.;  
 605 revising provisions relating to certificates of status  
 606 for foreign limited liability companies; amending s.  
 607 605.0215, F.S.; specifying that a copy of a document  
 608 filed by the department must bear the signature of the  
 609 Secretary of State and the seal of this state in order

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610 to be conclusive evidence that the original document  
 611 is on file with the department; amending s. 605.04092,  
 612 F.S.; defining terms; revising provisions relating to  
 613 conflict of interest transactions; amending s.  
 614 605.0410, F.S.; conforming a cross-reference; amending  
 615 s. 605.0702, F.S.; revising provisions relating to  
 616 grounds for judicial dissolution of a limited  
 617 liability company; amending s. 605.0706, F.S.;  
 618 revising provisions relating to an election to  
 619 purchase the entire interest of a petitioner instead  
 620 of dissolving the limited liability company; amending  
 621 s. 605.0715, F.S.; conforming a provision to changes  
 622 made by the act; requiring a dissolved limited  
 623 liability company to amend its articles of  
 624 incorporation to change its name under certain  
 625 circumstances; amending s. 605.0716, F.S.; revising  
 626 provisions relating to judicial review of denial of  
 627 reinstatement; amending ss. 605.0803 and 605.0903,  
 628 F.S.; making clarifying changes; amending s. 605.0904,  
 629 F.S.; revising provisions relating to a foreign  
 630 limited liability company's failure to have a  
 631 certificate of authority; amending s. 605.0906, F.S.;  
 632 requiring, rather than authorizing, certain foreign  
 633 limited liability companies to use an alternate name  
 634 to transact business in this state; amending s.  
 635 605.0907, F.S.; revising provisions relating to  
 636 foreign limited liability companies' amendments to  
 637 certificates of authority; amending s. 605.0908, F.S.;  
 638 making technical changes; creating s. 605.09091, F.S.;

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639 providing requirements relating to the judicial review  
 640 of denial of reinstatement for foreign limited  
 641 liability companies; amending ss. 605.0910 and  
 642 605.0911, F.S.; revising provisions relating to the  
 643 withdrawal or cancellation of a foreign limited  
 644 liability company's certificate of authority; amending  
 645 s. 605.0912, F.S.; revising provisions relating to a  
 646 foreign limited liability company's withdrawal on the  
 647 dissolution, merger, or conversion to a nonfiling  
 648 entity; amending ss. 605.1025 and 605.1035, F.S.;  
 649 conforming cross-references; amending s. 605.1061,  
 650 F.S.; making a technical change; amending s. 605.1063,  
 651 F.S.; providing requirements for when an appraisal  
 652 event is required to be approved by written consent of  
 653 members; amending s. 605.1072, F.S.; revising  
 654 provisions relating to other remedies for a member to  
 655 challenge certain completed appraisal events;  
 656 providing construction; amending s. 617.0302, F.S.;  
 657 conforming provisions to changes made by the act;  
 658 conforming a cross-reference; amending s. 617.0501,  
 659 F.S.; revising provisions relating to registered  
 660 offices and registered agents of corporations not for  
 661 profit; defining the term "authorized entity";  
 662 creating s. 617.05015, F.S.; authorizing a person to  
 663 reserve the exclusive use of the name of a corporation  
 664 not for profit; providing requirements for such  
 665 reservation; amending s. 617.0831, F.S.; conforming  
 666 cross-references; amending ss. 617.1102 and 617.1108,  
 667 F.S.; conforming provisions to changes made by the

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668 act; conforming cross-references; amending s.  
 669 617.1507, F.S.; revising provisions relating to  
 670 registered offices and registered agents of foreign  
 671 corporations not for profit; defining the term  
 672 "authorized entity"; amending s. 620.1108, F.S.;  
 673 revising provisions relating to the names of certain  
 674 limited partnerships; creating s. 620.11085, F.S.;  
 675 authorizing a person to reserve the exclusive use of  
 676 the name of a limited partnership; providing  
 677 requirements for such reservation; amending ss.  
 678 620.2104, 620.2108, and 620.8918, F.S.; conforming  
 679 cross-references; amending s. 621.12, F.S.; revising  
 680 provisions relating to the names of certain  
 681 corporations and limited liability companies; amending  
 682 s. 865.09, F.S.; prohibiting certain fictitious names  
 683 from containing "PA"; amending s. 662.150, F.S.;  
 684 conforming a provision to changes made by the act;  
 685 conforming cross-references; amending ss. 331.355,  
 686 339.12, 628.530, 631.0515, 658.44, 663.03, 663.403,  
 687 and 694.16, F.S.; conforming cross-references;  
 688 providing an effective date.

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

691  
 692 Section 1. Section 607.0101, Florida Statutes, is amended  
 693 to read:

694 607.0101 Short title; applicability.—  
 695 (1) This chapter may be cited as the "Florida Business  
 696 Corporation Act."

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697 (2) Part I of this chapter contains provisions of general  
 698 applicability to corporations.

699 (3) Part II of this chapter applies to social purpose  
 700 corporations.

701 (4) Part III of this chapter applies to benefit  
 702 corporations.

703 Section 2. Section 607.0102, Florida Statutes, is amended  
 704 to read:

705 607.0102 Reservation of power to amend or repeal.—The  
 706 Legislature has power to amend or repeal all or part of this  
 707 chapter ~~act~~ at any time, and all domestic and foreign  
 708 corporations subject to this chapter ~~act~~ shall be governed by  
 709 the amendment or repeal.

710 Section 3. Subsections (1), (2), (3), (6), (8), (9), and  
 711 (10) of section 607.0120, Florida Statutes, are amended, and  
 712 subsection (11) is added to that section, to read:

713 607.0120 Filing requirements.—

714 (1) A document must satisfy the requirements of this  
 715 section and of any other section that adds to or varies these  
 716 requirements to be entitled to filing by the department ~~of~~  
 717 State.

718 (2) This chapter ~~act~~ must require or permit filing the  
 719 document in the office of the department ~~of State~~.

720 (3) The document must contain the information required by  
 721 this chapter and act. ~~It~~ may contain other information as well.

722 (6) The document must be signed ~~executed~~:

723 (a) By a director of a domestic or foreign corporation, or  
 724 by its president or by another of its officers;

725 (b) If directors or officers have not been selected or the

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726 corporation has not been formed, by an incorporator; or

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

729 (8) If the department ~~of State~~ has prescribed a mandatory  
 730 form for the document under s. 607.0121, the document must be in  
 731 or on the prescribed form.

732 (9) The document must be delivered to the office of the  
 733 department ~~of State~~ for filing. Delivery may be made by  
 734 electronic transmission if and to the extent permitted by the  
 735 department ~~of State~~. If it is filed in typewritten or printed  
 736 form and not transmitted electronically, the department ~~of State~~  
 737 may require one exact or conformed copy, to be delivered with  
 738 the document, ~~except as provided in s. 607.1509~~.

739 (10) When the document is delivered to the department ~~of~~  
 740 State for filing, the correct filing fee, and any other tax,  
 741 license fee, or penalty required to be paid by this act or other  
 742 law shall be paid or provision for payment made in a manner  
 743 permitted by the department ~~of State~~.

744 (11) Whenever this chapter allows any of the terms of a  
 745 plan or a filed document to be dependent on facts objectively  
 746 ascertainable outside the plan or filed document, the following  
 747 provisions apply:

748 (a) The plan or filed document must set forth the manner in  
 749 which the facts will operate upon the terms of the plan or filed  
 750 document.

751 (b) The facts may include, but are not limited to:

752 1. Any of the following that are available in a nationally  
 753 recognized news or information medium either in print or  
 754 electronically:

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755 a. Statistical or market indices;  
 756 b. Market prices of any security or group of securities;  
 757 c. Interest rates;  
 758 d. Currency exchange rates; and  
 759 e. Similar economic or financial data;  
 760 2. A determination or action by any person or body,  
 761 including the corporation or any other party to a plan or filed  
 762 document; or  
 763 3. The terms of, or actions taken under, an agreement to  
 764 which the corporation is a party, or any other agreement or  
 765 document.  
 766 (c) The following provisions of a plan or filed document  
 767 may not be made dependent on facts outside the plan or filed  
 768 document:  
 769 1. The name and address of any person required in a filed  
 770 document;  
 771 2. The registered office of any entity required in a filed  
 772 document;  
 773 3. The registered agent of any entity required in a filed  
 774 document;  
 775 4. The number of authorized shares and designation of each  
 776 class or series of shares;  
 777 5. The effective date of a filed document; and  
 778 6. Any required statement in a filed document of the date  
 779 on which the underlying transaction was approved or the manner  
 780 in which that approval was given.  
 781 (d) If a provision of a filed document is made dependent on  
 782 a fact ascertainable outside of the filed document, and that  
 783 fact is not ascertainable by reference to a source described in

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784 subparagraph (b)1. or a document that is a matter of public  
 785 record, and the affected shareholders have not received notice  
 786 of the fact from the corporation, then the corporation must file  
 787 with the department articles of amendment to the filed document  
 788 setting forth the fact promptly after the time when the fact  
 789 referred to is first ascertainable or thereafter changes.  
 790 Articles of amendment under this paragraph are deemed to be  
 791 authorized by the authorization of the original filed document  
 792 to which they relate and may be filed by the corporation without  
 793 further action by the board of directors or the shareholders.  
 794 (e) As used in this subsection, the term "filed document"  
 795 means a document filed with the department pursuant to this  
 796 chapter, except for a document filed pursuant to ss. 607.1501-  
 797 607.1532; and the term "plan" means a plan of merger, a plan of  
 798 share exchange, a plan of conversion, or a plan of share  
 799 domestication.  
 800 Section 4. Section 607.0121, Florida Statutes, is amended  
 801 to read:  
 802 607.0121 Forms.—  
 803 (1) The department ~~of State~~ may prescribe and furnish on  
 804 request forms for:  
 805 (a) An application for certificate of status,  
 806 (b) A foreign corporation's application for certificate of  
 807 authority to transact business in the state,  
 808 (c) A foreign corporation's notice of withdrawal of  
 809 certificate of authority ~~application for certificate of~~  
 810 ~~withdrawal~~, and  
 811 (d) The annual report, for which the department may  
 812 prescribe the use of the uniform business report, pursuant to s.

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813 606.06.

814 (2) If the department ~~of State~~ so requires, the use of  
 815 these forms shall be mandatory.

816 (3)(2) The department ~~of State~~ may prescribe and furnish on  
 817 request forms for other documents required or permitted to be  
 818 filed by this chapter act, but their use is not ~~shall not be~~  
 819 mandatory.

820 Section 5. Section 607.0122, Florida Statutes, is amended  
 821 to read:

822 607.0122 Fees for filing documents and issuing  
 823 certificates.—The department ~~of State~~ shall collect the  
 824 following fees when the documents described in this section are  
 825 delivered to the department for filing:

826 (1) Articles of incorporation: \$35.

827 (2) Application for registered name: \$87.50.

828 (3) Application for renewal of registered name: \$87.50.

829 (4) Corporation's statement of change of registered agent  
 830 or registered office or both if not included on the annual  
 831 report: \$35.

832 (5) Designation of and acceptance by registered agent: \$35.

833 (6) Agent's statement of resignation from active  
 834 corporation: \$87.50.

835 (7) Agent's statement of resignation from an inactive  
 836 corporation: \$35.

837 (8) Amendment of articles of incorporation: \$35.

838 (9) Restatement of articles of incorporation with amendment  
 839 of articles: \$35.

840 (10) Articles of merger or share exchange for each party  
 841 thereto: \$35.

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842 (11) Articles of dissolution: \$35.

843 (12) Articles of revocation of dissolution: \$35.

844 (13) Application for reinstatement following administrative  
 845 dissolution: \$600.

846 (14) Application for certificate of authority to transact  
 847 business in this state by a foreign corporation: \$35.

848 (15) Application for amended certificate of authority: \$35.

849 (16) Application for certificate of withdrawal by a foreign  
 850 corporation: \$35.

851 (17) Annual report: \$61.25.

852 (18) Articles of correction: \$35.

853 (19) Application for certificate of status: \$8.75.

854 (20) Certificate of domestication of a foreign corporation:  
 855 \$50.

856 (21) Certified copy of document: \$52.50.

857 (22) Serving as agent for substitute service of process:  
 858 \$87.50.

859 (23) Supplemental corporate fee: \$88.75.

860 (24) Any other document required or permitted to be filed  
 861 by this chapter act: \$35.

862 Section 6. Section 607.0123, Florida Statutes, is amended  
 863 to read:

864 607.0123 Effective time and date of document.—Except as  
 865 otherwise provided in s. 607.0124(5), and subject to s.  
 866 607.0124(4), any document delivered to the department for filing  
 867 under this chapter may specify an effective time and a delayed  
 868 effective date. In the case of initial articles of  
 869 incorporation, a prior effective date may be specified in the  
 870 articles of incorporation if such date is within 5 business days

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871 before the date of filing.

872 (1) Subject to s. 607.0124, a document accepted for filing

873 is effective:

874 (a) If the filing does not specify an effective time and

875 does not specify a prior or a delayed effective date, on the

876 date and at the time the filing is accepted, as evidenced by the

877 department's endorsement of the date and time on the filing;

878 (b) If the filing specifies an effective time, but not a

879 prior or delayed effective date, on the date the filing is filed

880 at the time specified in the filing;

881 (c) If the filing specifies a delayed effective date, but

882 not an effective time, at 12:01 a.m. on the earlier of:

883 1. The specified date; or

884 2. The 90th day after the date of the filing.

885 (d) If the filing specifies a delayed effective date and an

886 effective time, at the specified time on the earlier of:

887 1. The specified date; or

888 2. The 90th day after the date of the filing.

889 (e) If the filing is of initial articles of incorporation

890 and specifies an effective date before the date of the filing,

891 but no effective time, at 12:01 a.m. on the later of:

892 1. The specified date; or

893 2. The 5th business day before the date of the filing.

894 (f) If the filing is of initial articles of incorporation

895 and specifies an effective time and an effective date before the

896 date of the filing, at the specified time on the later of:

897 1. The specified date; or

898 2. The 5th business day before the date of the filing.

899 (2) If a filed document does not specify the time zone or

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900 place at which the date or time, or both, is to be determined,

901 the date or time, or both, at which it becomes effective shall

902 be those prevailing at the place of filing in this state.

903 ~~(1) Except as provided in subsections (2) and (4) and in s.~~

904 ~~607.0124(3), a document accepted for filing is effective on the~~

905 ~~date and at the time of filing, as evidenced by such means as~~

906 ~~the Department of State may use for the purpose of recording the~~

907 ~~date and time of filing.~~

908 ~~(2) A document may specify a delayed effective date and, if~~

909 ~~desired, a time on that date, and if it does the document shall~~

910 ~~become effective on the date and at the time, if any, specified.~~

911 ~~If a delayed effective date is specified without specifying a~~

912 ~~time on that date, the document shall become effective at the~~

913 ~~start of business on that date. Unless otherwise permitted by~~

914 ~~this act, a delayed effective date for a document may not be~~

915 ~~later than the 90th day after the date on which it is filed.~~

916 ~~(3) If a document is determined by the department of State~~

917 ~~to be incomplete and inappropriate for filing, the department of~~

918 ~~State may return the document to the person or corporation~~

919 ~~filing it, together with a brief written explanation of the~~

920 ~~reason for the refusal to file, in accordance with s.~~

921 ~~607.0125(3). If the applicant returns the document with~~

922 ~~corrections in accordance with the rules of the department~~

923 ~~within 60 days after it was mailed to the applicant by the~~

924 ~~department and if at the time of return the applicant so~~

925 ~~requests in writing, the filing date of the document will be the~~

926 ~~filing date that would have been applied had the original~~

927 ~~document not been deficient, except as to persons who relied on~~

928 ~~the record before correction and were adversely affected~~

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thereby.

~~(4) Corporate existence may predate the filing date, pursuant to s. 607.0203(1).~~

Section 7. Section 607.0124, Florida Statutes, is amended to read:

607.0124 Correcting filed document; withdrawal of filed record before effectiveness.—

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

(a) The document contains an inaccuracy;

(b) The document contains false, misleading, or fraudulent information;

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

(d) The electronic transmission of the document to the department was defective.

(2) A document is corrected:

(a) By preparing articles of correction that:

1. Describe the document (including its filing date) or attach a copy of the document to the articles of correction;
2. Specify the inaccuracy or defect to be corrected; and
3. Correct the inaccuracy or defect; and

(b) By delivering the articles of correction to the department ~~of State~~ for filing, signed ~~executed~~ in accordance with s. 607.0120.

(3) Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the

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correction. As to those persons, articles of correction are effective when filed.

(4) Articles of correction may not contain a delayed effective date for the correction.

(5) Unless otherwise provided for in s. 607.1107(2), s. 607.11923(3), or s. 607.11934(3), a filing delivered to the department may be withdrawn before it takes effect by delivering a withdrawal statement to the department for filing.

(a) A withdrawal statement must:

1. Be signed by each person who signed the filing being withdrawn, except as otherwise agreed to by such persons;
2. Identify the filing to be withdrawn; and
3. If not signed by all persons who signed the filing being withdrawn, state that the filing is withdrawn in accordance with the agreement of all persons who signed the filing.

(b) On the filing by the department of a withdrawal statement, the action or transaction evidenced by the original filing does not take effect.

(6)~~(4)~~ Articles of correction that are filed to correct false, misleading, or fraudulent information are not subject to a fee of the department ~~of State~~ if the articles of correction are delivered to the department ~~of State~~ within 15 days after the notification of filing sent pursuant to s. 607.0125(2).

Section 8. Section 607.0125, Florida Statutes, is amended to read:

607.0125 Filing duties of the department ~~of State~~.—

(1) If a document delivered to the department ~~of State~~ for filing satisfies the requirements of s. 607.0120, the department ~~of State~~ shall file it.

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(2) The department ~~of State~~ files a document by stamping or otherwise endorsing the document as filed, together with the department's official title and recording it as filed on the date and time of receipt. After filing a document, the department ~~of State~~ shall send a notice of the filing or a copy of the filing to the electronic mail address on file for the domestic or foreign corporation or its authorized representative or a copy of the filed document to the mailing address of such corporation or its authorized representative. If the record changes the electronic mail address of the corporation, the department ~~of State~~ must send such notice to the new electronic mail address and to the most recent prior electronic mail address. If the record changes the mailing address of the corporation, the department ~~of State~~ must send such notice to the new mailing address and to the most recent prior mailing address.

(3) If the department ~~of State~~ refuses to file a document, the department ~~it~~ shall return the document ~~it~~ to the domestic or foreign corporation or its representative within 15 days after the document was received for filing, together with a brief, written explanation of the reason for refusal.

(4) The department's ~~Department of State's~~ duty to file documents under this section is ministerial. The filing or refusing to file a document does not:

(a) Affect the validity or invalidity of the document in whole or part;

(b) Relate to the correctness or incorrectness of information contained in the document;

(c) Create a presumption that the document does or does not

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conform to the requirements of this chapter or that the ~~is valid or invalid or that~~ information contained in the document is correct or incorrect.

(5) If not otherwise provided by law and the provisions of this chapter act, the department ~~of State~~ shall determine, by rule, the appropriate format for, number of copies of, manner of execution of, method of electronic transmission of, and amount of and method of payment of fees for, any document placed under its jurisdiction.

Section 9. Section 607.0126, Florida Statutes, is amended to read:

607.0126 Appeal from department's ~~Department of State's~~ refusal to file document.—If the department ~~of State~~ refuses to file a document delivered to its office for filing, the person who submitted the document for filing may petition the Circuit Court of Leon County to compel filing of the document. The document and the explanation from the department of the refusal to file must be attached to the petition. The court may decide the matter in a summary proceeding and within 30 days after return of the document by the department by mail, as evidenced by the postmark, the domestic or foreign corporation may:

~~(1) Appeal the refusal pursuant to s. 120.68; or~~

~~(2) Appeal the refusal to the circuit court of the county where the corporation's principal office (or, if none in this state, its registered office) is or will be located. The appeal is commenced by petitioning the court to compel filing the document and by attaching to the petition the document and the Department of State's explanation of its refusal to file. The matter shall promptly be tried de novo by the court without a~~

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1045 ~~jury~~ the court may summarily order the department ~~of State~~ to  
 1046 file the document or take other action the court considers  
 1047 appropriate. The court's final decision may be appealed as in  
 1048 other civil proceedings.

1049 Section 10. Section 607.0127, Florida Statutes, is amended  
 1050 to read:

1051 607.0127 Certificates to be received in evidence;  
 1052 evidentiary effect of certified copy of filed document.~~All~~  
 1053 certificates issued by the department pursuant to this chapter  
 1054 must be taken and received in all courts, public offices, and  
 1055 official bodies as prima facie evidence of the facts stated. A  
 1056 certificate the department from the Department of State  
 1057 delivered with a copy of a document filed by the department,  
 1058 bearing the signature of the secretary of state, which may be in  
 1059 facsimile, and the seal of the state, Department of State is  
 1060 conclusive evidence that the original document is on file with  
 1061 the department.

1062 Section 11. Section 607.0128, Florida Statutes, is amended  
 1063 to read:

1064 607.0128 Certificate of status.—

1065 (1) The department, upon request and payment of the  
 1066 requisite fee, shall issue a certificate of status for a  
 1067 corporation if the records filed in the department show that the  
 1068 department has accepted and filed the corporation's articles of  
 1069 incorporation. A certificate of status must state the following:

1070 (a) The corporation's name.

1071 (b) That the corporation was organized under the laws of  
 1072 this state and the date of organization.

1073 (c) Whether all fees due to the department under this

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1074 chapter have been paid.

1075 (d) Whether the corporation's most recent annual report  
 1076 required under s. 607.1622 has been filed by the department.

1077 (e) Whether the department has administratively dissolved  
 1078 the corporation or received a record notifying the department  
 1079 that the corporation has been dissolved by judicial action  
 1080 pursuant to s. 607.1433.

1081 (f) Whether the department has filed articles of  
 1082 dissolution for the corporation.

1083 (2) The department, upon request and payment of the  
 1084 requisite fee, shall furnish a certificate of status for a  
 1085 foreign corporation if the records filed show that the  
 1086 department has filed a certificate of authority. A certificate  
 1087 of status for a foreign corporation must state the following:

1088 (a) The foreign corporation's name and any current  
 1089 alternate name adopted pursuant to s. 607.1506 for use in this  
 1090 state.

1091 (b) That the foreign corporation is authorized to transact  
 1092 business in this state.

1093 (c) Whether all fees and penalties due to the department  
 1094 under this chapter or other law have been paid.

1095 (d) Whether the foreign corporation's most recent annual  
 1096 report required under s. 607.1622 has been filed by the  
 1097 department.

1098 (e) Whether the department has:

1099 1. Revoked the foreign corporation's certificate of  
 1100 authority; or

1101 2. Filed a notice of withdrawal of certificate of authority

1102 ~~(1) Anyone may apply to the Department of State to furnish~~

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1103 ~~a certificate of status for a domestic corporation or a~~  
 1104 ~~certificate of authorization for a foreign corporation.~~  
 1105 ~~(2) A certificate of status or authorization sets forth:~~  
 1106 ~~(a) The domestic corporation's corporate name or the~~  
 1107 ~~foreign corporation's corporate name used in this state;~~  
 1108 ~~(b) 1. That the domestic corporation is duly incorporated~~  
 1109 ~~under the law of this state and the date of its incorporation,~~  
 1110 ~~or~~  
 1111 ~~2. That the foreign corporation is authorized to transact~~  
 1112 ~~business in this state;~~  
 1113 ~~(c) That all fees and penalties owed to the department have~~  
 1114 ~~been paid, if:~~  
 1115 ~~1. Payment is reflected in the records of the department,~~  
 1116 ~~and~~  
 1117 ~~2. Nonpayment affects the existence or authorization of the~~  
 1118 ~~domestic or foreign corporation;~~  
 1119 ~~(d) That its most recent annual report required by s.~~  
 1120 ~~607.1622 has been delivered to the department; and~~  
 1121 ~~(e) That articles of dissolution have not been filed.~~  
 1122 (3) Subject to any qualification stated in the certificate,  
 1123 a certificate of status ~~or authorization~~ issued by the  
 1124 department ~~is~~ may be relied upon as conclusive evidence that the  
 1125 domestic ~~or foreign~~ corporation is in existence and is of active  
 1126 status in this state or that the foreign corporation is  
 1127 authorized to transact business in this state and is of active  
 1128 status in this state.  
 1129 Section 12. Section 607.0130, Florida Statutes, is amended  
 1130 to read:  
 1131 607.0130 Powers of department ~~of State.~~

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1132 ~~(1) The Department of State may propound to any corporation~~  
 1133 ~~subject to the provisions of this act, and to any officer or~~  
 1134 ~~director thereof, such interrogatories as may be reasonably~~  
 1135 ~~necessary and proper to enable it to ascertain whether the~~  
 1136 ~~corporation has complied with all applicable provisions of this~~  
 1137 ~~act. Such interrogatories must be answered within 30 days after~~  
 1138 ~~mailing or within such additional time as fixed by the~~  
 1139 ~~department. Answers to interrogatories must be full and~~  
 1140 ~~complete, in writing, and under oath. Interrogatories directed~~  
 1141 ~~to an individual must be answered by the individual, and~~  
 1142 ~~interrogatories directed to a corporation must be answered by~~  
 1143 ~~the president, vice president, secretary, or assistant~~  
 1144 ~~secretary.~~  
 1145 ~~(2) The Department of State is not required to file any~~  
 1146 ~~document.~~  
 1147 ~~(a) To which interrogatories, as propounded pursuant to~~  
 1148 ~~subsection (1), relate, until the interrogatories are answered~~  
 1149 ~~in full;~~  
 1150 ~~(b) When interrogatories or other relevant evidence~~  
 1151 ~~discloses that such document is not in conformity with the~~  
 1152 ~~provisions of this act; or~~  
 1153 ~~(c) When the department has determined that the parties to~~  
 1154 ~~such document have not paid all fees, taxes, and penalties due~~  
 1155 ~~and owing this state.~~  
 1156 ~~(3) The Department of State may, based upon its findings~~  
 1157 ~~hereunder or as provided in s. 213.053(15), bring an action in~~  
 1158 ~~circuit court to collect any penalties, fees, or taxes~~  
 1159 ~~determined to be due and owing the state and to compel any~~  
 1160 ~~filing, qualification, or registration required by law. In~~

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connection with such proceeding the department may, without prior approval by the court, file a lis pendens against any property owned by the corporation and may further certify any findings to the Department of Legal Affairs for the initiation of any action permitted pursuant to s. 607.0505 which the Department of Legal Affairs may deem appropriate.

~~(4)~~ The department of State shall have the power and authority reasonably necessary to enable it to administer this act efficiently, to perform the duties herein imposed upon it, and to promulgate reasonable rules necessary to carry out its duties and functions under this chapter ~~act~~.

Section 13. Section 607.01401, Florida Statutes, is amended to read:

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

(1) "Acquired eligible entity" means a domestic or foreign eligible entity that will have all of one or more classes or series of its shares or eligible interests acquired in a share exchange.

(2) "Acquiring eligible entity" means a domestic or foreign eligible entity that will acquire all of one or more classes or series of shares or eligible interests of the acquired eligible entity in a share exchange.

(3) "Applicable county" means: the county in this state in which a corporation's principal office is located or was located when an action is or was commenced; if the corporation has, and at the time of such action had, no principal office in this state, then in the county in which the corporation has, or at the time of such action had, an office in this state; or if the

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corporation does not have an office in this state, then in the county in which the corporation's registered office is or was last located.

(4) "Articles of incorporation" includes original, amended, and restated articles of incorporation, articles of share exchange, and articles of merger, and all amendments thereto. When used with respect to a foreign corporation, the term means the document of the foreign corporation that is equivalent to the articles of incorporation of a domestic corporation.

(5) "Authorized entity" means:

(a) A corporation for profit;

(b) A limited liability company;

(c) A limited liability partnership; or

(d) A limited partnership, including a limited liability limited partnership.

(6) ~~(2)~~ "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(7) "Beneficial shareholder" means a person who owns the beneficial interest in shares. Such person may be a record shareholder or a person on whose behalf shares are registered in the name of an intermediary or nominee.

(8) ~~(3)~~ "Business day" means Monday through Friday, excluding any day a national banking association is not open for normal business transactions.

(9) ~~(4)~~ "Conspicuous" means so written, displayed, or presented that a reasonable person against whom the writing is to operate should have noticed it. For example, text printing in italics, boldface, or a contrasting color, or typing in capitals, or underlined text, is conspicuous.

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1219 (10) "Conversion" means a transaction pursuant to ss.  
 1220 607.11930-607.11935.  
 1221 (11) "Converted eligible entity" means the converting  
 1222 eligible entity as it continues in existence after a conversion.  
 1223 (12) "Converting eligible entity" means the domestic  
 1224 corporation that approves a plan of conversion pursuant to s.  
 1225 607.11932, or a foreign eligible entity that approves a  
 1226 conversion pursuant to the organic law of the foreign eligible  
 1227 entity.  
 1228 (13)(5) "Corporation" or "domestic corporation" means a  
 1229 corporation for profit, which is not a foreign corporation,  
 1230 incorporated under this chapter or subject to the provisions of  
 1231 this act.  
 1232 (14)(6) "Day" means a calendar day.  
 1233 (15)(7) "Deliver" or "delivery" means any method of  
 1234 delivery used in conventional commercial practice, including  
 1235 delivery by hand, mail, commercial delivery, and, if authorized  
 1236 under s. 607.0141, electronic transmission.  
 1237 (16) "Department" means the Florida Department of State.  
 1238 (17) "Derivative proceeding" means a civil suit in the  
 1239 right of a domestic corporation or, to the extent provided in s.  
 1240 607.0747, in the right of a foreign corporation.  
 1241 (18)(8) "Distribution" means a direct or indirect transfer  
 1242 of money or other property (except its own shares) or incurrence  
 1243 of indebtedness by a corporation to or for the benefit of its  
 1244 shareholders in respect of any of its shares. A distribution may  
 1245 be in the form of: a declaration or payment of a dividend; a  
 1246 purchase, redemption, or other acquisition of shares; a  
 1247 distribution of indebtedness; a distribution in liquidation; or

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1248 otherwise.  
 1249 (19) "Document" means:  
 1250 (a) Any tangible medium on which information is inscribed,  
 1251 and includes any writing or written instrument; or  
 1252 (b) An electronic record.  
 1253 (20) "Domestic" means, with respect to an entity, an entity  
 1254 governed as to its internal affairs by the laws of this state.  
 1255 (21) "Domesticated corporation" means the domesticating  
 1256 corporation as it continues in existence after a domestication.  
 1257 (22) "Domesticating corporation" means a domestic  
 1258 corporation that approves a plan of domestication pursuant to s.  
 1259 607.11921, or a foreign corporation that approves a  
 1260 domestication pursuant to the organic law of the foreign  
 1261 corporation.  
 1262 (23) "Domestication" means a transaction pursuant to ss.  
 1263 607.11920-607.11924.  
 1264 (24) "Effective date" means, when referring to a document  
 1265 accepted for filing by the department, the date and time  
 1266 determined in accordance with s. 607.0123.  
 1267 (25) "Electronic" means relating to technology having  
 1268 electrical, digital, magnetic, wireless, optical,  
 1269 electromagnetic, or similar capabilities.  
 1270 (26) "Electronic record" means information that is stored  
 1271 in an electronic or other medium and is retrievable in paper  
 1272 form through an automated process used in conventional  
 1273 commercial practice, unless otherwise authorized under s.  
 1274 607.0141.  
 1275 (27)(9) "Electronic transmission" or "electronically  
 1276 transmitted" means any form or process of communication not

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directly involving the physical transfer of paper or another tangible medium, which:

(a) ~~that~~ Is suitable for the retention, retrieval, and reproduction of information by the recipient; and

(b) Is retrievable in paper form by the recipient through an automated process used in conventional commercial practice, unless otherwise authorized under s. 607.0141.

For purposes of proxy voting in accordance with ss. 607.0721, 607.0722, and 607.0724, the term includes, but is not limited to, telegrams, cablegrams, telephone transmissions, and transmissions through the Internet.

(28) (a) "Eligible entity" means:

1. A domestic corporation;

2. A foreign corporation;

3. A non-profit corporation;

4. A general partnership, including a limited liability partnership;

5. A limited partnership, including a limited liability limited partnership;

6. A limited liability company;

7. A real estate investment trust; or

8. Any other foreign or domestic entity that is organized under an organic law.

(b) The term does not include:

1. An individual;

2. A trust with a predominantly donative purpose or a charitable trust;

3. An association or relationship that is not a partnership

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solely by reason of s. 620.8202(2) or a similar provision of the law of another jurisdiction;

4. A decedent's estate; or

5. A government or a governmental subdivision, agency or instrumentality.

(29) "Eligible interests" means interests or memberships.

(30)-(40) "Employee" includes an officer but not a director. A director may accept duties that make him or her also an employee.

(31)-(41) "Entity" includes corporation and foreign corporation; unincorporated association; business trust, estate, limited liability company, partnership, trust, and two or more persons having a joint or common economic interest; and state, United States, and foreign governments.

(32) "Expenses" means reasonable expenses of any kind that are incurred in connection with a matter.

(33) The phrase "facts objectively ascertainable outside the plan or filed document" shall be interpreted as set forth in s. 607.0120(11).

(34) "Filing entity" means an entity, other than a limited liability partnership, that is of a type that is created by filing a public organic record or is required to file a public organic record that evidences its creation.

(35) "Foreign" means, with respect to an entity, an entity governed as to its internal affairs by the organic law of a jurisdiction other than this state.

(36)-(42) "Foreign corporation" means an entity incorporated or organized under laws other than the laws of this state which would be a corporation for profit if incorporated under laws

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1335 ~~other than~~ the laws of this state.

1336 (37) "Foreign nonprofit corporation" means an entity  
 1337 incorporated or organized under laws other than the laws of this  
 1338 state which would be a nonprofit corporation if incorporated  
 1339 under the laws of this state.

1340 (38)-(13) "Governmental subdivision" includes authority,  
 1341 county, district, and municipality.

1342 (39) "Governor" means:

1343 (a) A director of a corporation for profit;

1344 (b) A director or trustee of a nonprofit corporation;

1345 (c) A general partner of a general partnership;

1346 (d) A general partner of a limited partnership;

1347 (e) A manager of a manager-managed limited liability  
 1348 company;

1349 (f) A member of a member-managed limited liability company;

1350 (g) A director or a trustee of a real estate investment  
 1351 trust; or

1352 (h) Any other person under whose authority the powers of an  
 1353 entity are exercised and under whose direction the activities  
 1354 and affairs of the entity are managed pursuant to the organic  
 1355 law and organic rules of the entity.

1356 (40)-(14) "Includes" "or including" denotes a partial  
 1357 definition or a non-exclusive list.

1358 (41)-(15) "Individual" includes the estate of an incompetent  
 1359 or deceased individual.

1360 (42)-(16) "Insolvent" means either:

1361 (a) The inability of a corporation to pay its debts as they  
 1362 become due in the usual course of its business; or

1363 (b) The value of the corporation's total assets are less

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1364 than the sum of its total liabilities, at fair valuation.

1365 (43) "Interest" means:

1366 (a) A share in a corporation for profit;

1367 (b) A membership in a nonprofit corporation;

1368 (c) A partnership interest in a general partnership,  
 1369 including a limited liability partnership;

1370 (d) A partnership interest in a limited partnership,  
 1371 including a limited liability limited partnership;

1372 (e) A membership interest in a limited liability company;

1373 (f) A share or beneficial interest in a real estate  
 1374 investment trust;

1375 (g) A member's interest in a limited cooperative  
 1376 association;

1377 (h) A beneficial interest in a statutory trust, business  
 1378 trust, or common law business trust; or

1379 (i) A governance interest or distributional interest in  
 1380 another entity.

1381 (44) "Interest holder" means:

1382 (a) A shareholder of a corporation for profit;

1383 (b) A member of a nonprofit corporation;

1384 (c) A general partner of a general partnership;

1385 (d) A general partner of a limited partnership;

1386 (e) A limited partner of a limited partnership;

1387 (f) A member of a limited liability company;

1388 (g) A shareholder or beneficial owner of a real estate  
 1389 investment trust;

1390 (h) A beneficiary or beneficial owner of a statutory trust,  
 1391 business trust, or common law business trust; or

1392 (i) Another direct holder of an interest.

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1393 (45) "Interest holder liability" means:  
 1394 (a) Personal liability for a liability of an entity which  
 1395 is imposed on a person:  
 1396 1. Solely by reason of the status of the person as an  
 1397 interest holder; or  
 1398 2. By the organic rules of the entity which make one or  
 1399 more specified interest holders or categories of interest  
 1400 holders liable in their capacity as interest holders for all or  
 1401 specified liabilities of the entity.  
 1402 (b) An obligation of an interest holder under the organic  
 1403 rules of an entity to contribute to the entity.  
 1404  
 1405 For purposes of this subsection, except as otherwise provided in  
 1406 the articles of incorporation of a domestic corporation or the  
 1407 organic law or organic rules of an entity, interest holder  
 1408 liability arises under paragraph (a) when the corporation or  
 1409 entity, as applicable, incurs the liability.  
 1410 (46) "Jurisdiction of formation" means, with respect to an  
 1411 entity:  
 1412 (a) The jurisdiction under whose organic law the entity is  
 1413 formed, incorporated, or created or otherwise comes into being;  
 1414 however, for these purposes, if an entity exists under the law  
 1415 of a jurisdiction different from the jurisdiction under which  
 1416 the entity originally was formed, incorporated, or created or  
 1417 otherwise came into being, then the jurisdiction under which the  
 1418 entity then exists is treated as the jurisdiction of formation;  
 1419 or  
 1420 (b) In the case of a limited liability partnership or  
 1421 foreign limited liability partnership, the jurisdiction in which

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1422 the partnership's statement of qualification or equivalent  
 1423 document is filed.  
 1424 (47)-(47) "Mail" means the United States mail, facsimile  
 1425 transmissions, and private mail carriers handling nationwide  
 1426 mail services.  
 1427 (48)-(48) "Means" denotes an exhaustive definition.  
 1428 (49) "Membership" means the rights of a member in a  
 1429 domestic or foreign nonprofit corporation.  
 1430 (50) "Merger" means a transaction pursuant to s. 607.1101.  
 1431 (51) "New interest holder liability," in the context of a  
 1432 merger or share exchange, means interest holder liability of a  
 1433 person resulting from a merger or share exchange that is:  
 1434 (a) In respect of an eligible entity which is different  
 1435 from the eligible entity and not the same eligible entity in  
 1436 which the person held shares or eligible interests, immediately  
 1437 before the merger or share exchange became effective; or  
 1438 (b) In respect of the same eligible entity as the one in  
 1439 which the person held shares or eligible interests, immediately  
 1440 before the merger or share exchange became effective if:  
 1441 1. The person did not have interest holder liability  
 1442 immediately before the merger or share exchange became  
 1443 effective; or  
 1444 2. The person had interest holder liability immediately  
 1445 before the merger or share exchange became effective, the terms  
 1446 and conditions of which were changed when the merger or share  
 1447 exchange became effective.  
 1448 (52) "Nonprofit corporation" or "domestic nonprofit  
 1449 corporation" means a corporation incorporated under the laws of  
 1450 this state and subject to the provisions of chapter 617.

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1451 (53) "Organic law" means the laws of the jurisdiction in  
 1452 which the entity was formed.

1453 (54) "Organic rules" means the public organic record and  
 1454 private organic rules of an entity.

1455 (55) "Party to a merger" means any domestic or foreign  
 1456 entity that will merge under a plan of merger. The term does not  
 1457 include a survivor created by the merger.

1458 (56)-(19) "Person" includes an individual and an entity.

1459 (57)-(20) "Principal office" means the office (in or out of  
 1460 this state) where the principal executive offices of a domestic  
 1461 or foreign corporation are located as designated in the articles  
 1462 of incorporation or other initial filing until an annual report  
 1463 has been filed, and thereafter as designated in the annual  
 1464 report.

1465 (58) "Private organic rules" means the rules, whether or  
 1466 not in a record, which govern the internal affairs of an entity,  
 1467 are binding on all its interest holders, and are not part of its  
 1468 public organic record, if any. If the private organic rules are  
 1469 amended or restated, the term means the private organic rules as  
 1470 last amended or restated. The term includes:

1471 (a) The bylaws of a corporation for profit;

1472 (b) The bylaws of a nonprofit corporation;

1473 (c) The partnership agreement of a general partnership;

1474 (d) The partnership agreement of a limited partnership;

1475 (e) The operating agreement, limited liability company  
 1476 agreement, or similar agreement of a limited liability company;

1477 (f) The bylaws, trust instrument, or similar rules of a  
 1478 real estate investment trust; and

1479 (g) The trust instrument of a statutory trust or similar

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1480 rules of a business trust or common law business trust.

1481 (59)-(21) "Proceeding" includes a civil suit, a criminal  
 1482 action, an administrative action, and an and criminal,  
 1483 administrative, and investigatory action.

1484 (60) "Protected agreement" means:

1485 (a) A record evidencing indebtedness and any related  
 1486 agreement in effect on January 1, 2020;

1487 (b) An agreement that is binding on an entity on January 1,  
 1488 2020;

1489 (c) The organic rules of an entity in effect on January 1,  
 1490 2020; or

1491 (d) An agreement that is binding on any of the governors or  
 1492 interest holders of an entity on January 1, 2020.

1493 (61) "Public organic record" means a record, the filing of  
 1494 which by a governmental body is required to form an entity, or  
 1495 an amendment to or restatement of such record. Where a public  
 1496 organic record has been amended or restated, the term means the  
 1497 public organic record as last amended or restated. The term  
 1498 includes the following:

1499 (a) The articles of incorporation of a corporation for  
 1500 profit;

1501 (b) The articles of incorporation of a nonprofit  
 1502 corporation;

1503 (c) The certificate of limited partnership of a limited  
 1504 partnership;

1505 (d) The articles of organization, certificate of  
 1506 organization, or certificate of formation of a limited liability  
 1507 company;

1508 (e) The articles of incorporation of a general cooperative

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association or a limited cooperative association;

(f) The certificate of trust of a statutory trust or similar record of a business trust; or

(g) The articles of incorporation of a real estate investment trust.

(62) "Record," if used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(63)(22) "Record date" means the date fixed for determining on which a corporation determines the identity of the corporation's its shareholders and their share holdings for purposes of this chapter. Unless another time is specified when the record date is fixed, ~~act.~~ the determination shall be made as of the close of the business at the principal office of the corporation on the date so on the record date unless another time is fixed.

(64) "Record shareholder" means:

(a) The person in whose name shares are registered in the records of the corporation; or

(b) The person identified as a beneficial owner of shares in the beneficial ownership certificate under s. 607.0723 on file with the corporation to the extent of the rights granted by such certificate.

(65)(23) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under s. 607.08401 to maintain ~~for custody of~~ the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

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(66) "Secretary of state" means the Secretary of State of the State of Florida.

(67)(24) "Shareholder" ~~or "stockholder"~~ means a record shareholder ~~one who is a holder of record of shares in a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.~~

(68)(25) "Shares" means the units into which the proprietary interests in a corporation are divided.

(69) "Share exchange" means a transaction pursuant to s. 607.1102.

(70)(26) "Sign" or "signature" means, with present intent to authenticate or adopt a document:

(a) To execute or adopt a tangible symbol on a document, which includes any manual facsimile or conformed signature; or

(b) To attach or to logically associate with an electronic transmission an electronic sound, symbol, or process, which includes an electronic signature in an electronic transmission ~~any symbol, manual, facsimile, conformed, or electronic signature adopted by a person with the intent to authenticate a document.~~

(71)(27) "State," when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.

(72)(28) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(73) "Survivor," in a merger, means the domestic or foreign

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1567 eligible entity into which one or more other eligible entities  
 1568 are merged.

1569 ~~(74)-(29)~~ "Treasury shares" means shares of a corporation  
 1570 that belong to the issuing corporation, which shares are  
 1571 authorized and issued shares that are not outstanding, are not  
 1572 canceled, and have not been restored to the status of authorized  
 1573 but unissued shares.

1574 (75) "Type of entity" means a generic form of entity  
 1575 either:

1576 (a) Recognized at common law; or

1577 (b) Formed under an organic law, regardless of whether some  
 1578 entities formed under that organic law are subject to provisions  
 1579 of that law that create different categories of the form of  
 1580 entity.

1581 ~~(76)-(30)~~ "United States" includes district, authority,  
 1582 bureau, commission, department, and any other agency of the  
 1583 United States.

1584 (77) "Unrestricted voting trust beneficial owner" means,  
 1585 with respect to any shareholder rights, a voting trust  
 1586 beneficial owner whose entitlement to exercise the shareholder  
 1587 right in question is not inconsistent with the voting trust  
 1588 agreement.

1589 ~~(78)-(31)~~ "Voting group" means all shares of one or more  
 1590 classes or series that under the articles of incorporation or  
 1591 this chapter ~~act~~ are entitled to vote and be counted together  
 1592 collectively on a matter at a ~~the~~ meeting of shareholders. All  
 1593 shares entitled by the articles of incorporation or this chapter  
 1594 ~~act~~ to vote generally on the matter are for that purpose a  
 1595 single voting group.

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1596 (79) "Voting trust beneficial owner" means an owner of a  
 1597 beneficial interest in shares of the corporation held in a  
 1598 voting trust established pursuant to s. 607.0730(1).

1599 (80) "Writing" means printing, typewriting, electronic  
 1600 communication, or other communication that is reducible to a  
 1601 tangible form. The term "written" has the corresponding meaning.

1602 Section 14. Section 607.0141, Florida Statutes, is amended  
 1603 to read:

1604 607.0141 Notice.—

1605 (1) ~~(a)~~ Notice under this chapter ~~act~~ must be in writing,  
 1606 unless oral notice is:

1607 1. ~~(a)~~ Expressly authorized by the articles of incorporation  
 1608 or the bylaws; ~~7~~ and

1609 2. ~~(b)~~ Reasonable under the circumstances.

1610 (b) Unless otherwise agreed upon between the sender and the  
 1611 recipient, words in a notice or other communication under this  
 1612 chapter must be in English.

1613 (c) Notice by electronic transmission is written notice.

1614 (2) A notice or other communication may be given by any  
 1615 method of delivery, including voice mail where oral notice is  
 1616 allowed, except that electronic transmissions must be in  
 1617 accordance with this section ~~Notice may be communicated in~~  
 1618 ~~person, by telephone, voice mail (where oral notice is~~  
 1619 ~~permitted), or other electronic means; or by mail or other~~  
 1620 ~~method of delivery.~~

1621 (3) (a) Written notice by a domestic or foreign corporation  
 1622 authorized to transact business in this state to its  
 1623 shareholder, if in a comprehensible form, is effective:

1624 1. Upon deposit into the United States mail, if mailed

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postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

2. When electronically transmitted to the shareholder in a manner authorized by the shareholder.

(b) Unless otherwise provided in the articles of incorporation or bylaws, and without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any provision of this chapter, the articles of incorporation, or the bylaws shall be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Any such consent shall be revocable by a shareholder by written notice to the corporation, and if a written notice of revocation is delivered to the corporation, the corporation must begin providing individual notices, reports, and other statements to the revoking shareholder no later than 30 days after delivery of the written notice of revocation.

(c) Any shareholder who fails to object in writing to the corporation, within 60 days after having been given written notice by the corporation of its intention to send the single notice permitted under paragraph (b), shall be deemed to have consented to receiving such single written notice.

~~(d) This subsection shall not apply to s. 607.0620, s. 607.1402, or s. 607.1404.~~

(4) Written notice to a domestic corporation or to a foreign corporation authorized to transact business in this state may be addressed:

(a) To its registered agent at the corporation's ~~its~~

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registered office; or

(b) To the corporation or the corporation's ~~its~~ secretary at the corporation's ~~its~~ principal office or electronic mail address as authorized and shown in its most recent annual report or, in the case of a corporation that has not yet delivered an annual report, in a domestic corporation's articles of incorporation or in a foreign corporation's application for certificate of authority.

(5) (a) Except as provided in subsection (3) or elsewhere in this chapter ~~act~~, written notice, if in a comprehensible form, is effective at the earliest date of the following:

1. ~~(a)~~ When received;

2. ~~(b)~~ Five days after its deposit in the United States mail, if mailed postpaid and correctly addressed; ~~or~~

3. ~~(c)~~ On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or

4. When it enters an information processing system that the recipient has designated or uses for the purposes of receiving electronic transmissions or information of the type sent, and from which the recipient is able to retrieve the electronic transmission, and it is in a form capable of being processed by that system.

(b) Except as provided elsewhere in this chapter, oral notice is effective when communicated directly to the person to be notified in a comprehensible manner.

(6) Except with respect to notice to directors by the corporation, notice or other communications may be delivered by electronic transmission if consented to by the recipient or if

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1683 authorized by subsection (7). Notice or other communication to  
 1684 directors by the corporation may be delivered by electronic  
 1685 transmission if consented to by the recipient director; however,  
 1686 if the articles or bylaws require or authorize electronic  
 1687 transmission of notice or other communication to a director by  
 1688 the corporation, then no consent by the director recipient is  
 1689 required for the corporation to deliver notice or other  
 1690 communications to the director by electronic transmission.

1691 (7) A notice or other communication may be in the form of  
 1692 an electronic transmission that cannot be directly reproduced in  
 1693 paper form by the recipient through an automated process used in  
 1694 conventional commercial practice only if:

1695 (a) The electronic transmission is otherwise retrievable in  
 1696 perceivable form; and

1697 (b) The sender and the recipient have consented in writing  
 1698 to the use of such form of electronic transmission.

1699 (8) Any consent under subsection (7) may be revoked by the  
 1700 person who consented by written or electronic notice to the  
 1701 person to whom the consent was delivered. Any such consent shall  
 1702 be deemed revoked if:

1703 (a) The corporation is unable to deliver two consecutive  
 1704 electronic transmissions given by the corporation in accordance  
 1705 with such consent; and

1706 (b) Such inability becomes known to the secretary or  
 1707 assistant secretary of the corporation or to the transfer agent,  
 1708 or other person responsible for the giving of notice or other  
 1709 communications; provided, however, that the inadvertent failure  
 1710 to treat such inability as a revocation does not invalidate any  
 1711 meeting or other action.

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1712 (9) Receipt of an electronic acknowledgment from an  
 1713 information processing system described in paragraph (5)(d)  
 1714 establishes that an electronic transmission was received, but,  
 1715 by itself, does not establish that the content sent corresponds  
 1716 to the content received.

1717 (10) An electronic transmission is received under this  
 1718 section even if no person is aware of its receipt ~~Oral notice is~~  
 1719 effective when communicated if communicated directly to the  
 1720 person to be notified in a comprehensible manner.

1721 (11)(7) If this act prescribes ~~notice~~ requirements for  
 1722 notices or other communications in particular circumstances,  
 1723 those requirements govern. If articles of incorporation or  
 1724 bylaws prescribe ~~notice~~ requirements for notices or other  
 1725 communications not less stringent than the requirements of this  
 1726 section or other provisions of this act, those requirements  
 1727 govern. The articles of incorporation or bylaws may authorize or  
 1728 require delivery of notices of meetings of directors by  
 1729 electronic transmission.

1730 (12) In the event that any provisions of this chapter are  
 1731 deemed to modify, limit, or supersede the federal Electronic  
 1732 Signatures in Global and National Commerce Act, 15 U.S.C. s.  
 1733 7001 et seq., the provisions of this chapter shall control to  
 1734 the maximum extent permitted by section 102(a)(2) of that  
 1735 federal act.

1736 Section 15. Section 607.0143, Florida Statutes, is created  
 1737 to read:

1738 607.0143 Qualified director.—

1739 (1) A "qualified director" is a director who, at the time  
 1740 action is to be taken under:

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- 1741 (a) Section 607.0744, does not have a material interest in  
 1742 the outcome of the proceeding or a material relationship with a  
 1743 person who has such an interest;
- 1744 (b) Section 607.0832, is not a director as to whom the  
 1745 transaction is a director's conflict of interest transaction, or  
 1746 who has a material relationship with another director as to whom  
 1747 the transaction is a director's conflict of interest  
 1748 transaction; or
- 1749 (c) Section 607.0853 or s. 607.0855:
- 1750 1. Is not a party to the proceeding;
- 1751 2. Is not a director as to whom a transaction is a  
 1752 director's conflict of interest transaction, which transaction  
 1753 is challenged in the proceeding; and
- 1754 3. Does not have a material relationship with a director  
 1755 who is disqualified by virtue of not meeting the requirements of  
 1756 subparagraph 1. or subparagraph 2.
- 1757 (2) For purposes of this section:
- 1758 (a) "Material relationship" means a familial, financial,  
 1759 professional, employment, or other relationship that would  
 1760 reasonably be expected to impair the objectivity of the  
 1761 director's judgment when participating in the action to be  
 1762 taken.
- 1763 (b) "Material interest" means an actual or potential  
 1764 benefit or detriment, other than one which would devolve on the  
 1765 corporation or the shareholders generally, that would reasonably  
 1766 be expected to impair the objectivity of the director's judgment  
 1767 when participating in the action to be taken.
- 1768 (3) The presence of one or more of the following  
 1769 circumstances does not automatically prevent a director from

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- 1770 being a qualified director:
- 1771 (a) Nomination or election of the director to the current  
 1772 board by any director who is not a qualified director with  
 1773 respect to the matter, or by any person that has a material  
 1774 relationship with that director, acting alone or participating  
 1775 with others;
- 1776 (b) Service as a director of another corporation of which a  
 1777 director who is not a qualified director with respect to the  
 1778 matter, or any individual who has a material relationship with  
 1779 that director, is or was also a director; or
- 1780 (c) With respect to action pursuant to s. 607.0744, status  
 1781 as a named defendant, as a director against whom action is  
 1782 demand, or as a director who approved the conduct being  
 1783 challenged.
- 1784 Section 16. Section 607.0201, Florida Statutes, is amended  
 1785 to read:
- 1786 607.0201 Incorporators.—One or more persons may act as the  
 1787 incorporator or incorporators of a corporation by delivering  
 1788 articles of incorporation to the department ~~of State~~ for filing.
- 1789 Section 17. Section 607.0202, Florida Statutes, is amended  
 1790 to read:
- 1791 607.0202 Articles of incorporation; content.—
- 1792 (1) The articles of incorporation must set forth:
- 1793 (a) A corporate name for the corporation that satisfies the  
 1794 requirements of s. 607.0401;
- 1795 (b) The street address of the initial principal office and,  
 1796 if different, the mailing address of the corporation;
- 1797 (c) The number of shares the corporation is authorized to  
 1798 issue;

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1799 ~~(d) If any preemptive rights are to be granted to~~  
 1800 ~~shareholders, the provision therefor;~~  
 1801 ~~(d)(e)~~ The street address of the corporation's initial  
 1802 registered office and the name of its initial registered agent  
 1803 at that office together with a written acceptance as required in  
 1804 s. 607.0501(3); and  
 1805 ~~(e)(f)~~ The name and address of each incorporator.  
 1806 (2) The articles of incorporation may set forth:  
 1807 (a) The names and addresses of the individuals who are to  
 1808 serve as the initial directors;  
 1809 (b) Provisions not inconsistent with law regarding:  
 1810 1. The purpose or purposes for which the corporation is  
 1811 organized;  
 1812 2. Managing the business and regulating the affairs of the  
 1813 corporation;  
 1814 3. Defining, limiting, and regulating the powers of the  
 1815 corporation and its board of directors and shareholders;  
 1816 4. A par value for authorized shares or classes of shares;  
 1817 5. The imposition of personal liability on shareholders for  
 1818 the debts of the corporation to a specified extent and upon  
 1819 specified conditions; and  
 1820 6. Exclusive forum provisions to the extent allowed by s.  
 1821 607.0208;  
 1822 (c) Provisions for granting any preemptive rights to  
 1823 shareholders; and  
 1824 (d) Any provision that under this chapter act is required  
 1825 or permitted to be set forth in the bylaws.  
 1826 (3) The articles of incorporation need not set forth any of  
 1827 the corporate powers enumerated in this chapter act.

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1828 (4) Provisions of the articles of incorporation may be made  
 1829 dependent upon facts objectively ascertainable outside the  
 1830 articles of incorporation in accordance with s. 607.0120(11).  
 1831 (5) The articles of incorporation may not contain any  
 1832 provision that would impose liability on a shareholder for the  
 1833 attorney fees or expenses of the corporation or any other party  
 1834 in connection with an internal corporate claim, as defined in s.  
 1835 607.0208.  
 1836 Section 18. Subsection (2) of section 607.0203, Florida  
 1837 Statutes, is amended to read:  
 1838 607.0203 Incorporation.—  
 1839 (2) The ~~department's~~ Department of State's filing of the  
 1840 articles of incorporation is conclusive proof that the  
 1841 incorporators satisfied all conditions precedent to  
 1842 incorporation except in a proceeding by the state to cancel or  
 1843 revoke the incorporation or administratively involuntarily  
 1844 dissolve the corporation.  
 1845 Section 19. Section 607.0204, Florida Statutes, is amended  
 1846 to read:  
 1847 607.0204 Liability for preincorporation transactions.—All  
 1848 persons purporting to act as or on behalf of a corporation,  
 1849 ~~knowing having actual knowledge~~ that there was no incorporation  
 1850 under this chapter, are jointly and severally liable for all  
 1851 liabilities created while so acting ~~except for any liability to~~  
 1852 ~~any person who also had actual knowledge that there was no~~  
 1853 ~~incorporation.~~  
 1854 Section 20. Subsections (1), (2), and (3) of section  
 1855 607.0205, Florida Statutes, are amended to read:  
 1856 607.0205 Organizational meeting of directors.—

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1857 (1) After incorporation:

1858 (a) If initial directors are named in the articles of  
1859 incorporation, the initial directors shall hold an  
1860 organizational meeting, at the call of a majority of the  
1861 directors, to complete the organization of the corporation by  
1862 appointing officers, adopting bylaws, and carrying on any other  
1863 business brought before the meeting;

1864 (b) If initial directors are not named in the articles of of  
1865 incorporation, the incorporators shall hold an organizational  
1866 meeting at the call of a majority of the incorporators:

1867 1. To elect directors and complete the organization of the  
1868 corporation; or

1869 2. To elect a board of directors who shall complete the  
1870 organization of the corporation.

1871 (2) Action required or permitted by this chapter act to be  
1872 taken by incorporators or directors at an organizational meeting  
1873 may be taken without a meeting if the action taken is evidenced  
1874 by one or more written consents describing the action taken and  
1875 signed by each incorporator or director.

1876 (3) The directors or incorporators calling the  
1877 organizational meeting shall give at least 2 3 days' notice  
1878 thereof to each director or incorporator so named, stating the  
1879 time and place of the meeting.

1880 Section 21. Subsection (2) of section 607.0206, Florida  
1881 Statutes, is amended, and subsections (3) through (6) are added  
1882 to that section, to read:

1883 607.0206 Bylaws.—

1884 (2) The bylaws of a corporation may contain any provision  
1885 that is not inconsistent with law or the articles of

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1886 incorporation, including the provisions described in subsections  
1887 (3) and (4) for managing the business and regulating the affairs  
1888 of the corporation that is not inconsistent with law or the  
1889 articles of incorporation.

1890 (3) The bylaws of a corporation may contain one or both of  
1891 the following provisions:

1892 (a) A requirement that if the corporation solicits proxies  
1893 or consents with respect to an election of directors, the  
1894 corporation include in its proxy statement and any form of its  
1895 proxy or consent, to the extent and subject to such procedures  
1896 or conditions as are provided in the bylaws, one or more  
1897 individuals nominated by a shareholder in addition to  
1898 individuals nominated by the board of directors.

1899 (b) A requirement that the corporation reimburse the  
1900 expenses incurred by a shareholder in soliciting proxies or  
1901 consents in connection with an election of directors, to the  
1902 extent and subject to such procedures and conditions as are  
1903 provided in the bylaws, provided that no bylaw so adopted shall  
1904 apply to elections for which any record date precedes its  
1905 adoption.

1906 (4) The bylaws of a corporation may contain exclusive forum  
1907 provisions to the extent allowed by s. 607.0208.

1908 (5) Notwithstanding s. 607.1020(1)(b), the shareholders in  
1909 amending, repealing, or adopting a bylaw described in subsection  
1910 (3) may not limit the authority of the board of directors to  
1911 amend or repeal any condition or procedure set forth in, or to  
1912 add any procedure or condition to, such a bylaw to provide for a  
1913 reasonable, practical, and orderly process.

1914 (6) The bylaws may not contain any provision that would

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impose liability on a shareholder for the attorney fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in s. 607.0208.

Section 22. Subsections (1), (3), (4), and (5) of section 607.0207, Florida Statutes, are amended to read:

607.0207 Emergency bylaws.—

(1) Unless the articles of incorporation provide otherwise, the board of directors ~~of a corporation~~ may adopt bylaws to be effective only in an emergency defined in subsection (5). The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during an emergency, including:

(a) Procedures for calling a meeting of the board of directors;

(b) Quorum requirements for the meeting; and

(c) Designation of additional or substitute directors.

(3) All provisions of the regular bylaws not inconsistent ~~consistent~~ with the emergency bylaws remain effective during the emergency. The emergency bylaws are not effective after the emergency ends.

(4) Corporate action taken in good faith in accordance with the emergency bylaws:

(a) Binds the corporation; and

(b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or agent of the corporation.

(5) An emergency exists for purposes of this section if a quorum of the board of corporation's ~~corporation's~~ directors cannot readily be assembled because of some catastrophic event.

Section 23. Section 607.0208, Florida Statutes, is created

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to read:

607.0208 Forum selection.—

(1) The articles of incorporation or the bylaws may require that any or all internal corporate claims be brought exclusively in any specified court or courts of this state and, if so specified, in any additional courts in this state or in any other jurisdictions with which the corporation has a reasonable relationship.

(2) A provision of the articles of incorporation or bylaws adopted under subsection (1) does not have the effect of conferring jurisdiction on any court or over any person or claim, and does not apply if none of the courts specified by such provision has the requisite personal and subject matter jurisdiction. If the court or courts in this state specified in a provision adopted under subsection (1) do not have the requisite personal and subject matter jurisdiction and another court in this state does have such jurisdiction, then the internal corporate claim may be brought in such other court, notwithstanding that such other court is not specified in such provision, or in any other court outside the state specified in such provision that has the requisite jurisdiction.

(3) No provision of the articles of incorporation or the bylaws may prohibit bringing an internal corporate claim in all courts in this state or require such claims to be determined by arbitration.

(4) For the purposes of this section, "Internal corporate claim" means:

(a) Any claim that is based upon a violation of a duty under the laws of this state by a current or former director,

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1973 officer, or shareholder in such capacity;

1974 (b) Any derivative action or proceeding brought on behalf  
1975 of the corporation;

1976 (c) Any action asserting a claim arising pursuant to this  
1977 chapter or the articles of incorporation or bylaws; or

1978 (d) Any action asserting a claim governed by the internal  
1979 affairs doctrine that is not included in paragraphs (a), (b), or  
1980 (c).

1981 Section 24. Section 607.0301, Florida Statutes, is amended  
1982 to read:

1983 607.0301 Purposes and application.—

1984 (1) Every corporation incorporated under this chapter has  
1985 the purpose of engaging in any lawful business unless a more  
1986 limited purpose is set forth in the articles of incorporation.

1987 (2) A corporation engaging in a business that is subject to  
1988 regulation under another statute of this state may incorporate  
1989 under this chapter only if permitted by, and subject to all  
1990 limitations of, the other statute.

1991 (3) Corporations may be organized under this act for any  
1992 lawful purpose or purposes, and The provisions of this chapter  
1993 act extend to all corporations, whether chartered by special  
1994 acts or general laws, except that special statutes for the  
1995 regulation and control of types of business and corporations  
1996 shall control when in conflict herewith.

1997 Section 25. Section 607.0302, Florida Statutes, is amended  
1998 to read:

1999 607.0302 General powers.—Unless its articles of  
2000 incorporation provide otherwise, every corporation has perpetual  
2001 duration and succession in its corporate name and has the same

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2002 powers as an individual to do all things necessary or convenient  
2003 to carry out its business and affairs, including ~~without~~  
2004 ~~limitation~~ power:

2005 (1) To sue and be sued, complain, and defend in its  
2006 corporate name;

2007 (2) To have a corporate seal, which may be altered at will  
2008 and to use it or a facsimile of it, by impressing or affixing it  
2009 or in any other manner reproducing it;

2010 (3) To purchase, receive, lease, or otherwise acquire, and  
2011 own, hold, improve, use, and otherwise deal with real or  
2012 personal property or any legal or equitable interest in property  
2013 wherever located;

2014 (4) To sell, convey, mortgage, pledge, create a security  
2015 interest in, lease, exchange, and otherwise dispose of all or  
2016 any part of its property;

2017 (5) To lend money to, and use its credit to assist, its  
2018 officers and employees in accordance with s. 607.0833;

2019 (6) To purchase, receive, subscribe for, or otherwise  
2020 acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or  
2021 otherwise dispose of; and deal in and with shares or other  
2022 interests in, or obligations of, any other entity;

2023 (7) To make contracts and guarantees, incur liabilities,  
2024 borrow money, issue its notes, bonds, and other securities and  
2025 obligations (which may be convertible into or include the option  
2026 to purchase other securities of the corporation), and secure any  
2027 of its obligations by mortgage or pledge of any of its property,  
2028 franchises, or ~~and~~ income and make contracts of guaranty and  
2029 suretyship which are necessary or convenient to the conduct,  
2030 promotion, or attainment of the business of a corporation the

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majority of the outstanding shares ~~steek~~ of which is owned, directly or indirectly, by the contracting corporation; a corporation which owns, directly or indirectly, a majority of the outstanding shares ~~steek~~ of the contracting corporation; or a corporation the majority of the outstanding shares ~~steek~~ of which is owned, directly or indirectly, by a corporation which owns, directly or indirectly, the majority of the outstanding shares ~~steek~~ of the contracting corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or convenient to the conduct, promotion, or attainment of the business of the contracting corporation, and make other contracts of guaranty and suretyship which are necessary or convenient to the conduct, promotion, or attainment of the business of the contracting corporation;

(8) To lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;

(9) To conduct its business, locate offices, and exercise the powers granted by this chapter ~~act~~ within or without this state;

(10) To elect directors and appoint officers, employees, and agents of the corporation and define their duties, fix their compensation, and lend them money and credit;

(11) To make and amend bylaws, not inconsistent with its articles of incorporation or with the laws of this state, for managing the business and regulating the affairs of the corporation;

(12) To make donations for the public welfare or for charitable, scientific, or educational purposes;

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(13) To transact any lawful business that will aid governmental policy;

(14) To make payments or donations or do any other act not inconsistent with law that furthers the business and affairs of the corporation;

(15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former directors, officers, employees, and agents and for any or all of the current or former directors, officers, employees, and agents of its subsidiaries;

(16) To provide insurance for its benefit on the life of any of its directors, officers, or employees, or on the life of any shareholder for the purpose of acquiring at his or her death shares of its stock owned by the shareholder or by the spouse or children of the shareholder; and

(17) To be a promoter, incorporator, partner, member, associate, or manager of any corporation, partnership, joint venture, trust, or other entity.

Section 26. Subsections (3), (4), and (5) of section 607.0303, Florida Statutes, are amended to read:

607.0303 Emergency powers.—

(3) Corporate action taken in good faith during an emergency under this section to further the ordinary business affairs of the corporation:

(a) Binds the corporation; and

(b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or agent of the corporation.

(4) No officer, director, or employee acting in accordance

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with any emergency bylaws shall be liable except for willful or intentional misconduct.

(5) An emergency exists for purposes of this section if a quorum of the board of corporation's directors cannot readily be assembled because of some catastrophic event.

Section 27. Section 607.0304, Florida Statutes, is amended to read:

607.0304 Lack of power to act Ultra vires.—

(1) Except as provided in subsection (2), the validity of corporate action, including, but not limited to, any conveyance, transfer, or encumbrance of real or personal property to or by a corporation, may not be challenged on the ground that the corporation lacks or lacked power to act.

(2) A corporation's power to act may be challenged:

(a) In a proceeding by a shareholder against the corporation to enjoin the act;

(b) In a proceeding by the corporation, directly, derivatively, or through a receiver, trustee, or other legal representative, or through shareholders in a representative suit, against an incumbent or former officer, employee, or agent of the corporation; or

(c) In a proceeding by the Department of Legal Affairs pursuant to s. 607.1403 or Attorney General, ~~as provided in this act, to dissolve the corporation or in a proceeding by the Attorney General~~ to enjoin the corporation from the transaction of unauthorized business.

(3) In a shareholder's proceeding under paragraph (2)(a) to enjoin an unauthorized corporate act, the court may enjoin or set aside the act, if equitable and if all affected persons are

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parties to the proceeding, and may award damages for loss (other than anticipated profits) suffered by the corporation or another party because of enjoining the unauthorized act.

Section 28. Section 607.0401, Florida Statutes, is amended to read:

607.0401 Corporate name.—

(1) A corporate name:

~~(a)(1)~~ Must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," or "Inc.," or "Co.," or the designation "Corp.," or "Inc.," or "Co.," as will clearly indicate that it is a corporation instead of a natural person, partnership, or other eligible business entity.

~~(b)(2)~~ May not contain language stating or implying that the corporation is organized for a purpose other than that permitted in this chapter act and its articles of incorporation.

~~(c)(3)~~ May not contain language stating or implying that the corporation is connected with a state or federal government agency or a corporation or other entity chartered under the laws of the United States.

~~(d)(4)~~ Must be distinguishable from the names of all other entities or filings that are on file with the department ~~Division of Corporations~~, except fictitious name registrations pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state. A name that is different from the name of another entity or filing due to any of the following is not considered distinguishable:

1. ~~(a)~~ A suffix.

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2147 2.(b) A definite or indefinite article.

2148 3.(e) The word "and" and the symbol "&."

2149 4.(d) The singular, plural, or possessive form of a word.

2150 (e) A recognized abbreviation of a root word.

2151 5.(f) A punctuation mark or a symbol.

2152 (e) Notwithstanding the foregoing, a corporation may

2153 register under a name that is not otherwise distinguishable on

2154 the records of the department with the written consent of the

2155 other entity if the consent is filed with the department at the

2156 time of registration of such name and if such name is not

2157 identical to the name of the other entity.

2158 (2)(5) As filed with the department ~~of State~~, is for public

2159 notice only and does not alone create any presumption of

2160 ownership beyond that which is created under the common law.

2161 (3) This chapter does not control the use of fictitious

2162 names.

2163 Section 29. Section 607.04021, Florida Statutes, is created

2164 to read:

2165 607.04021 Reserved name.—

2166 (1) A person may reserve the exclusive use of a corporate

2167 name, including an alternate name for a foreign corporation

2168 whose corporate name is not available, by delivering an

2169 application to the department for filing. The application must

2170 set forth the name and address of the applicant and the name

2171 proposed to be reserved. If the department finds that the

2172 corporate name applied for is available, it shall reserve the

2173 name for the exclusive use of the applicant for a nonrenewable

2174 120-day period.

2175 (2) The owner of a reserved corporate name may transfer the

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2176 reservation to another person by delivering to the department a

2177 signed notice of the transfer that states the name and address

2178 of the transferee.

2179 (3) The department may revoke any reservation if, after a

2180 hearing, it finds that the application therefor or any transfer

2181 thereof was not made in good faith.

2182 Section 30. Subsections (1), (2), (5), and (6) of section

2183 607.0403, Florida Statutes, are amended to read:

2184 607.0403 Registered name; application; renewal;

2185 revocation.—

2186 (1) A foreign corporation may register its corporate name,

2187 or its corporate name with the any addition of any word or

2188 abbreviation required by s. 607.1506, if the name is

2189 distinguishable upon the records of the department ~~of State~~ from

2190 the corporate names that are not available under s.

2191 607.0401(1)(d) s. 607.0401(4).

2192 (2) A foreign corporation registers its corporate name, or

2193 its corporate name with any addition allowed ~~required~~ by s.

2194 607.1506, by delivering to the department ~~of State~~ for filing an

2195 application:

2196 (a) Setting forth such name ~~its corporate name, or its~~

2197 ~~corporate name with any addition required by s. 607.1506~~, the

2198 state or country and date of its incorporation, and a brief

2199 description of the nature of the business that is to be

2200 conducted in this state in which it is engaged; and

2201 (b) Accompanied by a certificate of existence, or a

2202 certificate setting forth that such corporation is in good

2203 standing under the laws of the state or country wherein it is

2204 organized (or a document of similar import), from the state or

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country of incorporation.

(5) A foreign corporation the registration of which is effective may thereafter qualify as a foreign corporation under the registered name or consent in writing to the use of that name by a corporation thereafter incorporated under this chapter ~~act~~ or by another foreign corporation thereafter authorized to transact business in this state. The registration terminates when the domestic corporation is incorporated or the foreign corporation qualifies or consents to the qualification of another foreign corporation under the registered name.

(6) The department ~~of State~~ may revoke any registration if, after a hearing, it finds that the application therefor or any renewal thereof was not made in good faith.

Section 31. Subsections (1), (3), (4), and (5) of section 607.0501, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

607.0501 Registered office and registered agent.—

(1) Each corporation shall designate ~~have~~ and continuously maintain in this state:

(a) A registered office which may be the same as its place of business in this state; and

(b) A registered agent, which must be who may be either:

1. An individual who resides in this state whose business address office is identical to the address of the ~~with such~~ registered office;

2. Another domestic entity that is an authorized entity and whose business address is identical to the address of the registered office; or

3. A foreign entity authorized to transact business in this

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state which is an authorized entity and whose business address is identical to the address of the registered office ~~Another corporation or not-for-profit corporation as defined in chapter 617, authorized to transact business or conduct its affairs in this state, having a business office identical with the registered office; or~~

~~3. A foreign corporation or not-for-profit foreign corporation authorized pursuant to this chapter or chapter 617 to transact business or conduct its affairs in this state, having a business office identical with the registered office.~~

(3) Each initial A registered agent, and each appointed ~~pursuant to this section or a successor registered agent that is appointed, shall pursuant to s. 607.0502 on whom process may be served shall each file a statement in writing with the department, in the form and manner of State, in such form and manner as shall be~~ prescribed by the department, accepting the appointment as a registered agent while simultaneously with his ~~or her~~ being designated as the registered agent. ~~The. Such~~ statement of acceptance must provide ~~shall state~~ that the registered agent is familiar with, and accepts, the obligations of that position.

(4) The duties of a registered agent are:

(a) To forward to the corporation at the address most recently supplied to the registered agent by the corporation, a process, notice, or demand pertaining to the corporation which is served on or received by the registered agent; and

(b) If the registered agent resigns, to provide the notice required under s. 607.0503 to the corporation at the address most recently supplied to the registered agent by the

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corporation.

(5) The department of State shall maintain an accurate record of the registered agents and registered office for offices for the service of process and shall promptly furnish any information disclosed thereby promptly upon request and payment of the required fee.

(6)(5) A corporation may not prosecute or maintain an any action in a court in this state until the corporation complies with this section, pays to the department any amounts required under this chapter, and, to the extent ordered by a court of competent jurisdiction, with the provisions of this section or s. 607.1507, as applicable, and pays to the department of State a penalty of \$5 for each day it has failed to so comply or \$500, whichever is less.

(7) A court may stay a proceeding commenced by a corporation until the corporation complies with this section.

Section 32. Section 607.0502, Florida Statutes, is amended to read:

607.0502 Change of registered office or registered agent; resignation of registered agent.—

(1) In order to change its registered agent or registered office address, a corporation may deliver to the department for filing change its registered office or its registered agent upon filing with the Department of State a statement of change containing the following setting forth:

(a) The name of the corporation;†

(b) The name of its current registered agent. The street address of its current registered office;

(c) If the current registered agent is to be changed, the

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name of the new registered agent. If the current registered office is to be changed, the street address of the new registered office;

(d) The street address of its current registered office for its current registered agent. The name of its current registered agent;

(e) If the street address of the current registered office is to be changed, the new street address of the registered office in this state If its current registered agent is to be changed, the name of the new registered agent and the new agent's written consent (either on the statement or attached to it) to the appointment;

(f) That the street address of its registered office and the street address of the business office of its registered agent, as changed, will be identical;

(g) That such change was authorized by resolution duly adopted by its board of directors or by an officer of the corporation so authorized by the board of directors.

(2) If the registered agent is changed, the written acceptance of the successor registered agent described in s. 607.0501(3) must also be included in or attached to the statement of change.

(3) A statement of change is effective when filed by the department.

(4) The changes described in this section may also be made on the corporation's annual report, in an application for reinstatement filed with the department under s. 607.1622, or in an amendment to or restatement of a company's articles of incorporation in accordance with s. 607.1006 or s. 607.1007. Any

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2321 ~~registered agent may resign his or her agency appointment by~~  
 2322 ~~signing and delivering for filing with the Department of State a~~  
 2323 ~~statement of resignation and mailing a copy of such statement to~~  
 2324 ~~the corporation at its principal office address shown in its~~  
 2325 ~~most recent annual report or, if none, filed in the articles of~~  
 2326 ~~incorporation or other most recently filed document. The~~  
 2327 ~~statement of resignation shall state that a copy of such~~  
 2328 ~~statement has been mailed to the corporation at the address so~~  
 2329 ~~stated. The agency is terminated as of the 31st day after the~~  
 2330 ~~date on which the statement was filed and unless otherwise~~  
 2331 ~~provided in the statement, termination of the agency acts as a~~  
 2332 ~~termination of the registered office.~~

2333 ~~(3) If a registered agent changes his or her business name~~  
 2334 ~~or business address, he or she may change such name or address~~  
 2335 ~~and the address of the registered office of any corporation for~~  
 2336 ~~which he or she is the registered agent by:~~

2337 ~~(a) Notifying all such corporations in writing of the~~  
 2338 ~~change,~~

2339 ~~(b) Signing (either manually or in facsimile) and~~  
 2340 ~~delivering to the Department of State for filing a statement~~  
 2341 ~~that substantially complies with the requirements of paragraphs~~  
 2342 ~~(1) (a) - (f), setting forth the names of all such corporations~~  
 2343 ~~represented by the registered agent, and~~

2344 ~~(c) Reciting that each corporation has been notified of the~~  
 2345 ~~change.~~

2346 ~~(4) Changes of the registered office or registered agent~~  
 2347 ~~may be made by a change on the corporation's annual report form~~  
 2348 ~~filed with the Department of State.~~

2349 ~~(5) The Department of State shall collect a fee pursuant to~~

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2350 ~~s. 15.09(2) for the filings authorized under this section.~~

2351 Section 33. Section 607.0503, Florida Statutes, is created  
 2352 to read:

2353 607.0503 Resignation of registered agent.—

2354 (1) A registered agent may resign as agent for a  
 2355 corporation by delivering to the department for filing a signed  
 2356 statement of resignation containing the name of the corporation.

2357 (2) After delivering the statement of resignation to the  
 2358 department for filing, the registered agent must promptly mail a  
 2359 copy to the corporation at its current mailing address.

2360 (3) A registered agent is terminated upon the earlier of:

2361 (a) The 31st day after the department files the statement  
 2362 of resignation; or

2363 (b) When a statement of change or other record designating  
 2364 a new registered agent is filed by the department.

2365 (4) When a statement of resignation takes effect, the  
 2366 registered agent ceases to have responsibility for a matter  
 2367 thereafter tendered to it as agent for the corporation. The  
 2368 resignation does not affect contractual rights that the  
 2369 corporation has against the agent or that the agent has against  
 2370 the corporation.

2371 (5) A registered agent may resign from a corporation  
 2372 regardless of whether the corporation has active status.

2373 Section 34. Section 607.05031, Florida Statutes, is created  
 2374 to read:

2375 607.05031 Change of name or address by registered agent.—

2376 (1) If a registered agent changes its name or address, the  
 2377 agent may deliver to the department for filing a statement of  
 2378 change that provides the following:

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2379 (a) The name of the corporation represented by the  
 2380 registered agent.  
 2381 (b) The name of the registered agent as currently shown in  
 2382 the records of the department for the corporation.  
 2383 (c) If the name of the registered agent has changed, its  
 2384 new name.  
 2385 (d) If the address of the registered agent has changed, the  
 2386 new address.  
 2387 (e) A statement that the registered agent has given the  
 2388 notice required under subsection (2).  
 2389 (2) A registered agent shall promptly furnish notice of the  
 2390 statement of change and the changes made by the statement filed  
 2391 with the department to the represented corporation.  
 2392 Section 35. Section 607.05032, Florida Statutes, is created  
 2393 to read:  
 2394 607.05032 Delivery of notice or other communication.—  
 2395 (1) Except as otherwise provided in this chapter,  
 2396 permissible means of delivery of a notice or other communication  
 2397 includes delivery by hand, the United States Postal Service, a  
 2398 commercial delivery service, and electronic transmission, all as  
 2399 more particularly described in s. 607.0141.  
 2400 (2) Except as provided in subsection (3), delivery to the  
 2401 department is effective only when a notice or other  
 2402 communication is received by the department.  
 2403 (3) If a check is mailed to the department for payment of  
 2404 an annual report fee or the annual supplemental fee required  
 2405 under s. 607.193 and the check is received by the department,  
 2406 the check shall be deemed to have been received by the  
 2407 department as of the postmark date appearing on the envelope or

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2408 package transmitting the check.  
 2409 Section 36. Section 607.0504, Florida Statutes, is amended  
 2410 to read:  
 2411 607.0504 Service of process, notice, or demand on a  
 2412 corporation.—  
 2413 (1) A corporation may be served with process required or  
 2414 authorized by law by serving on its registered agent.  
 2415 (2) If a corporation ceases to have a registered agent or  
 2416 if its registered agent cannot with reasonable diligence be  
 2417 served, the process required or permitted by law may instead be  
 2418 served on the chair of the board, the president, any vice  
 2419 president, the secretary, or the treasurer of the corporation at  
 2420 the principal office of the corporation in this state.  
 2421 (3) If the process cannot be served on a corporation  
 2422 pursuant to subsection (1) or subsection (2), the process may be  
 2423 served on the secretary of state as an agent of the corporation.  
 2424 (4) Service of process on the secretary of state shall be  
 2425 made by delivering to and leaving with the department duplicate  
 2426 copies of the process.  
 2427 (5) Service is effectuated under subsection (3) on the date  
 2428 shown as received by the department.  
 2429 (6) The department shall keep a record of each process  
 2430 served on the secretary of state pursuant to this subsection and  
 2431 record the time of and the action taken regarding the service.  
 2432 (7) Any notice or demand on a corporation under this  
 2433 chapter may be given or made to the chair of the board, the  
 2434 president, any vice president, the secretary, or the treasurer  
 2435 of the corporation; to the registered agent of the corporation  
 2436 at the registered office of the corporation in this state; or to

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any other address in this state that is in fact the principal office of the corporation in this state.

(8) This section does not affect the right to serve process, give notice, or make a demand in any other manner provided by law. ~~Process against any corporation may be served in accordance with chapter 48 or chapter 49.~~

~~(2) Any notice to or demand on a corporation under this act may be made to the chair of the board, the president, any vice president, the secretary, or the treasurer; to the registered agent of the corporation at the registered office of the corporation in this state; or to any other address in this state that is in fact the principal office of the corporation in this state.~~

~~(3) This section does not prescribe the only means, or necessarily the required means, of serving notice or demand on a corporation.~~

Section 37. Paragraph (a) of subsection (1) and subsections (5), (6), (10), and (12) of section 607.0505, Florida Statutes, are amended to read:

607.0505 Registered agent; duties.—

(1)(a) Each corporation, foreign corporation, or alien business organization that owns real property located in this state, that owns a mortgage on real property located in this state, or that transacts business in this state shall have and continuously maintain in this state a registered office and a registered agent and shall file with the department ~~of State~~ notice of the registered office and registered agent as provided in ss. 607.0501 and 607.0502. The appointment of a registered agent in compliance with s. 607.0501 or s. 607.1507 is

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sufficient for purposes of this section provided the registered agent so appointed files, in such form and manner as prescribed by the department ~~of State~~, an acceptance of the obligations provided for in this section.

(5) If a corporation, foreign corporation, or alien business organization fails without lawful excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the Department of Legal Affairs may file an action in the circuit court for the judicial circuit in which the corporation, foreign corporation, or alien business organization is found or transacts business or in which real property belonging to the corporation, foreign corporation, or alien business organization is located, for an order compelling compliance with the subpoena. The failure without a lawful excuse to comply timely or fully with an order compelling compliance with the subpoena will result in a civil penalty of not more than \$1,000 for each day of noncompliance with the order. In connection with such proceeding, the Department of Legal Affairs may, without prior approval by the court, file a lis pendens against real property owned by the corporation, foreign corporation, or alien business organization, which lis pendens shall set forth the legal description of the real property and shall be filed in the public records of the county where the real property is located. If the lis pendens is filed in any county other than the county in which the action is pending, the lis pendens which is filed must be a certified copy of the original lis pendens. A judgment or an order of payment entered pursuant to this subsection will become a judgment lien against any real property owned by the corporation, foreign corporation, or alien business organization

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when a certified copy of the judgment or order is recorded as required by s. 55.10. The Department of Legal Affairs will be able to avail itself of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining of payment pursuant to a judgment or order of payment. The state, through the Attorney General, may bid, at any judicial sale to enforce its judgment lien, an amount up to the amount of the judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with the procedure set forth in s. 895.09.

(6) Information provided to, and records and transcriptions of testimony obtained by, the Department of Legal Affairs pursuant to this section are confidential and exempt from the provisions of s. 119.07(1) while the investigation is active. For purposes of this section, an investigation shall be considered "active" while such investigation is being conducted with a reasonable, good faith belief that it may lead to the filing of an administrative, civil, or criminal proceeding. An investigation does not cease to be active so long as the Department of Legal Affairs is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the Department of Legal Affairs or other administrative or law enforcement agency. Except for active criminal intelligence or criminal investigative information, as defined in s. 119.011, and information which, if disclosed, would reveal a trade secret, as defined in s. 688.002, or would jeopardize the safety of an individual, all information,

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records, and transcriptions become public record when the investigation is completed or ceases to be active. The Department of Legal Affairs shall not disclose confidential information, records, or transcriptions of testimony except pursuant to the authorization by the Attorney General in any of the following circumstances:

(a) To a law enforcement agency participating in or conducting a civil investigation under chapter 895, or participating in or conducting a criminal investigation.

(b) In the course of filing, participating in, or conducting a judicial proceeding instituted pursuant to this section or chapter 895.

(c) In the course of filing, participating in, or conducting a judicial proceeding to enforce an order or judgment entered pursuant to this section or chapter 895.

(d) In the course of a criminal or civil proceeding.

A person or law enforcement agency which receives any information, record, or transcription of testimony that has been made confidential by this subsection shall maintain the confidentiality of such material and shall not disclose such information, record, or transcription of testimony except as provided for herein. Any person who willfully discloses any information, record, or transcription of testimony that has been made confidential by this subsection, except as provided for herein, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If any information, record, or testimony obtained pursuant to subsection (2) is offered in evidence in any judicial

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proceeding, the court may, in its discretion, seal that portion of the record to further the policies of confidentiality set forth herein.

(10) The designation of a registered agent and a registered office as required by subsection (1) for a corporation, foreign corporation, or alien business organization which owns real property in this state or a mortgage on real property in this state is solely for the purposes of this chapter act; and, notwithstanding s. 48.181, s. 607.1502, s. 607.1503, or any other relevant section of the Florida Statutes, such designation shall not be used in determining whether the corporation, foreign corporation, or alien business organization is actually doing business in this state.

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

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

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

Section 38. Section 607.0601, Florida Statutes, is amended to read:

607.0601 Authorized shares.—

(1) The articles of incorporation must set forth any ~~prescribe the~~ classes of shares and series of shares within a class, and the number of shares of each class and series, that the corporation is authorized to issue. If more than one class

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or series of shares is authorized, the articles of incorporation must prescribe a distinguishing designation for each class or series, and ~~before~~ prior to the issuance of shares of a class or series, describe the terms, including the preferences, limitations, and relative rights of that class or series ~~must be described in the articles of incorporation~~. All shares of a class or series must have terms, including preferences, limitations, and relative rights, identical with those of other shares of the same class or series, except to the extent otherwise permitted by this section, s. 607.0602, or s. 607.0624.

(2) The articles of incorporation must authorize:

(a) One or more classes or series of shares that together have unlimited voting rights, and

(b) One or more classes or series of shares (which may be the same class or classes or series as those with voting rights) that together are entitled to receive the net assets of the corporation upon dissolution.

(3) The articles of incorporation may authorize one or more classes or series of shares that:

(a) Have special, conditional, or limited voting rights, or no right to vote, except to the extent otherwise provided ~~prohibited~~ by this chapter act;

(b) Are redeemable or convertible as specified in the articles of incorporation:

1. At the option of the corporation, the shareholder, or another person or upon the occurrence of a specified ~~designated~~ event;

2. For cash, indebtedness, securities, or other property;

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or

3. At prices and in an amount specified, or determined, in accordance with a formula in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events;

(c) Entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;

(d) Have preference over any other class or series of shares with respect to distributions, including ~~dividends and~~ distributions upon the dissolution of the corporation.

(4) The description of the designations, preferences, limitations, and relative rights of share classes or series in subsection (3) is not exhaustive.

(5) The terms of shares may be made dependent on facts ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

(6)~~(5)~~ Shares which are entitled to preference in the distribution of dividends or assets shall not be designated as common shares. Shares which are not entitled to preference in the distribution of dividends or assets shall be common shares and shall not be designated as preferred shares.

Section 39. Section 607.0602, Florida Statutes, is amended to read:

607.0602 Terms of class or series determined by board of directors.—

(1) If the articles of incorporation so provide, the board of directors is authorized, without shareholder approval, to may ~~determine, in whole or part, the preferences, limitations, and~~

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~~relative rights (within the limits set forth in s. 607.0601) of:~~

(a) Classify any unissued class of shares into one or more classes or into one or more series within a class; before the issuance of any shares of that class, or

(b) Reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or

(c) Reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class before the issuance of any shares of that series.

(2) If the board of directors acts pursuant to subsection (1), it shall determine the terms, including the preferences, limitations, and relative rights, to the extent allowed under s. 607.0601, of:

(a) Any class of shares before the issuance of any shares of that class; or

(b) Any series within a class before the issuance of any shares of that series.

(3) Each class and each series of a class must be given a distinguishing designation.

(4)~~(3)~~ All shares of a series must have preferences, limitations, and relative rights identical with those of other shares of the same series and, except to the extent otherwise provided in the description of the series, of those of other series of the same class.

(5)~~(4)~~ Before issuing any shares of a class or series created under this section, the corporation shall must ~~must~~ deliver to the department ~~of State~~ for filing articles of amendment, which are effective without shareholder action, that set forth:

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- 2669 (a) The name of the corporation;
- 2670 (b) The text of the amendment determining the terms of the
- 2671 class or series of shares;
- 2672 (c) The date the amendment was adopted; and
- 2673 (d) A statement that the amendment was duly adopted by the
- 2674 board of directors.
- 2675 Section 40. Subsections (1), (2), (4), and (5) of section
- 2676 607.0604, Florida Statutes, are amended to read:
- 2677 607.0604 Fractional shares.—
- 2678 (1) A corporation may:
- 2679 (a) Issue fractions of a share or, in lieu of doing so, pay
- 2680 in money the fair value of fractions of a share;
- 2681 (b) Make arrangements, or provide reasonable opportunity,
- 2682 for any person entitled to or holding a fractional interest in a
- 2683 share to sell such fractional interest or to purchase such
- 2684 additional fractional interests as may be necessary to acquire a
- 2685 full share;
- 2686 (c) Issue scrip in registered or bearer form, over the
- 2687 manual or facsimile signature of an officer of the corporation
- 2688 or its agent, entitling the holder to receive a full share upon
- 2689 surrendering enough scrip to equal a full share.
- 2690 (2) The board of directors may authorize the issuance of
- 2691 scrip subject to any condition ~~considered desirable~~, including
- 2692 that:
- 2693 (a) ~~That~~ The scrip will become void if not exchanged for
- 2694 full shares before a specified date; and
- 2695 (b) ~~That~~ The shares for which the scrip is exchangeable may
- 2696 be sold and the proceeds paid to the scripholders.
- 2697 (4) The holder of a fractional share is entitled to

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- 2698 exercise the rights of a shareholder, including the rights ~~right~~
- 2699 to vote, to receive dividends, and to receive distributions upon
- 2700 ~~dissolution participate in the assets of the corporation upon~~
- 2701 ~~liquidation~~. The holder of scrip is not entitled to any of these
- 2702 rights unless the scrip provides for them.
- 2703 ~~(5) When a corporation is to pay in money the value of~~
- 2704 ~~fractions of a share, the good faith judgment of the board of~~
- 2705 ~~directors as to the fair value shall be conclusive.~~
- 2706 Section 41. Subsections (2) and (5) of section 607.0620,
- 2707 Florida Statutes, are amended, and subsection (6) is added to
- 2708 that section, to read:
- 2709 607.0620 Subscriptions for shares.—
- 2710 (2) A subscription for shares, whether made before or after
- 2711 incorporation, is not enforceable against the subscriber unless
- 2712 in writing and signed by the subscriber.
- 2713 (5) If a subscriber defaults in payment of money or
- 2714 property under a subscription agreement entered into before
- 2715 incorporation, the corporation may collect the amount owed as
- 2716 any other debt. Alternatively, unless the subscription agreement
- 2717 provides otherwise, the corporation may rescind the agreement
- 2718 and may sell the shares if the debt remains unpaid more than 20
- 2719 days after the corporation delivers ~~sends~~ written demand for
- 2720 payment to the subscriber. If the subscription agreement is
- 2721 rescinded and the shares sold, then, notwithstanding the
- 2722 rescission, if mailed, such written demand shall be deemed to be
- 2723 made when deposited in the United States mail in a sealed
- 2724 envelope addressed to the subscriber at his or her last post
- 2725 office address known to the corporation, with first class
- 2726 postage thereon prepaid, the defaulting subscriber or his or her

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legal representative shall be entitled to be paid the excess of the sale proceeds over the sum of the amount due and unpaid on the subscription and the reasonable expenses incurred in selling the shares, but in no event shall the defaulting subscriber or his or her legal representative be entitled to be paid an amount greater than the amount paid by the subscriber on the subscription.

(6) A subscription agreement entered into after incorporation is also subject to s. 607.0621.

Section 42. Subsection (5) of section 607.0621, Florida Statutes, is amended to read:

607.0621 Issuance of shares.—

(5) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect of the shares against their purchase price, until the services are performed, the note is paid, or the benefits received. If the services are not performed, the note is not paid, or the benefits are not received, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

Section 43. Subsection (5) of section 607.0622, Florida Statutes, is amended to read:

607.0622 Liability for shares issued before payment.—

(5) No liability under this section may be asserted more than 5 years after the earlier of:

(a) The issuance of the shares ~~stock~~, or

(b) The date of the subscription upon which the assessment is sought.

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Section 44. Subsections (1) and (3) of section 607.0623, Florida Statutes, are amended to read:

607.0623 Share dividends.—

(1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and without consideration to the corporation's shareholders or to the shareholders of one or more classes or series or shares. An issuance of shares under this subsection is a share dividend.

(3) The board of directors may fix the record date for determining shareholders entitled to a share dividend, but the date may not be retroactive. If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, the record date ~~is~~ is the date the board of directors authorizes the share dividend.

Section 45. Section 607.0624, Florida Statutes, is amended to read:

607.0624 Share rights, options, warrants, and awards.—

(1) Unless the articles of incorporation provide otherwise, a corporation may issue rights, options, or warrants for the purchase of shares of the corporation of any class or series, whether authorized but unissued shares of the corporation, treasury shares, or shares of the corporation to be purchased or acquired by the corporation. The board of directors shall determine the terms and conditions upon which the rights, options, or warrants are issued, including the consideration for which the shares are to be issued. The authorization by the board of directors for the corporation to issue such rights, options, or warrants constitutes authorization for the issuance of the shares for which the rights, options, or warrants are

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exercisable ~~their form and content, and the consideration for which the shares are to be issued.~~

(2) The terms and conditions of such ~~stock~~ rights, and options, or warrants, including those outstanding on January 1, 2020, may include restrictions or conditions that:

(a) Preclude or limit the exercise, transfer, or receipt of such rights, options, or warrants by any person or persons owning or offering to acquire a specified number or percentage of the outstanding shares of the corporation or by any transferee or transferees of any such person or persons; or

(b) which are created and issued by a corporation formed under this chapter, or its successor, and which entitle the holders thereof to purchase from the corporation shares of any class or classes, whether authorized but unissued shares, treasury shares, or shares to be purchased or acquired by the corporation, may include, without limitation, restrictions, or conditions that preclude or limit the exercise, transfer, receipt, or holding of such rights or options by any person or persons, including any person or persons owning or offering to acquire a specified number or percentage of the outstanding common shares or other securities of the corporation, or any transferee or transferees of any such person or persons, or that Invalidate or void such rights, ~~or~~ options, or warrants held by any such person or persons or any such transferee or transferees.

(3) The board of directors may authorize a board committee or the board of directors may authorize one or more officers, or a board committee so authorized by the board of directors may authorize one or more officers, to:

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(a) Designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares; and

(b) Determine, within an amount and subject to any other limitations established by the board of directors, a board committee, and, if applicable, the shareholders, the number of such rights, options, warrants, or other equity compensation awards and the terms and conditions of such rights, options, warrants, or awards to be received by the recipients, provided that an officer may not use such authority to designate himself or herself or any other persons as the board of directors or a committee of the board may specify as a recipient of such rights, options, warrants, or other equity compensation awards.

(4) For purposes of this section, the term "shares" includes a security convertible into or carrying a right to subscribe for or acquire shares.

Section 46. Subsections (1), (2), and (3) of section 607.0625, Florida Statutes, are amended to read:

607.0625 Form and content of certificates.—

(1) Shares may but need not be represented by certificates. Unless this ~~chapter~~ act or another statute expressly provides otherwise, the rights and obligations of shareholders are identical, regardless of whether ~~or not~~ their shares are represented by certificates.

(2) At a minimum, each share certificate must state on its face:

(a) The name of the ~~issuing~~ corporation and that the corporation is organized under the laws of this state;

(b) The name of the person to whom issued; and

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2843 (c) The number and class of shares and the designation of  
 2844 the series, if any, the certificate represents.

2845 (3) If the ~~issuing~~ corporation is authorized to issue  
 2846 different classes of shares or different series of shares within  
 2847 a class, the designations, relative rights, preferences, and  
 2848 limitations applicable to each class and the variations in  
 2849 rights, preferences, and limitations determined for each series  
 2850 (and the authority of the board of directors to determine  
 2851 variations for future series) must be summarized on the front or  
 2852 back of each certificate. Alternatively, each certificate may  
 2853 state conspicuously on its front or back that the corporation  
 2854 will furnish the shareholder a full statement of this  
 2855 information on request and without charge.

2856 Section 47. Section 607.0626, Florida Statutes, is amended  
 2857 to read:

2858 607.0626 Shares without certificates.—

2859 (1) Unless the articles of incorporation or bylaws provide  
 2860 otherwise, the board of directors of a corporation may authorize  
 2861 the issuance ~~issue~~ of some or all of the shares of any or all of  
 2862 its classes or series without certificates. The authorization  
 2863 does not affect shares already represented by certificates until  
 2864 they are surrendered to the corporation.

2865 (2) Within a reasonable time after the issuance ~~issue~~ or  
 2866 transfer of shares without certificates, the corporation shall  
 2867 deliver to ~~send~~ the shareholder a written statement of the  
 2868 information required on certificates by s. 607.0625(2) and (3),  
 2869 and, if applicable, s. 607.0627.

2870 Section 48. Subsection (4) of section 607.0627, Florida  
 2871 Statutes, is amended to read:

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2872 607.0627 Restriction on transfer of shares and other  
 2873 securities.—

2874 (4) A restriction on the transfer or registration of  
 2875 transfer of shares may:

2876 (a) Obligate the shareholder first to offer the corporation  
 2877 or other persons (separately, consecutively, or simultaneously)  
 2878 an opportunity to acquire the restricted shares;

2879 (b) Obligate the corporation or other persons (separately,  
 2880 consecutively, or simultaneously) to acquire the restricted  
 2881 shares;

2882 (c) Require the corporation, the holders of any class or  
 2883 series of its shares, or other persons ~~another person~~ to approve  
 2884 the transfer of the restricted shares, if the requirement is not  
 2885 manifestly unreasonable; or

2886 (d) Prohibit the transfer of the restricted shares to  
 2887 designated persons or classes of persons, if the prohibition is  
 2888 not manifestly unreasonable.

2889 Section 49. Paragraphs (c), (d), and (e) of subsection (2)  
 2890 of section 607.0630, Florida Statutes, are amended to read:

2891 607.0630 Shareholders' preemptive rights.—

2892 (2) A statement included in the articles of incorporation  
 2893 that "the corporation elects to have preemptive rights" (or  
 2894 words of similar import) means that the following principles  
 2895 apply except to the extent the articles of incorporation  
 2896 expressly provide otherwise:

2897 (c) There is no preemptive right with respect to:

2898 1. Shares issued as compensation to directors, officers,  
 2899 agents, or employees of the corporation, ~~or~~ its subsidiaries, or  
 2900 affiliates;

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2. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation, ~~or~~ its subsidiaries, or affiliates;

3. Shares authorized in the articles of incorporation that are issued within 6 months from the effective date of incorporation;

4. Shares issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this state or of the United States; or

5. Shares issued for consideration other than money.

(d) Holders of shares of any class or series without general voting rights but with preferential rights to distributions to receive the ~~or~~ net assets upon dissolution ~~and liquidation~~ have no preemptive rights with respect to shares of any class or series.

(e) Holders of shares of any class or series with general voting rights but without preferential rights to distributions ~~or net assets~~ upon dissolution ~~or liquidation~~ have no preemptive rights with respect to shares of any class or series with preferential rights to receive the net assets of the corporation upon dissolution ~~distributions or assets~~ unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire the shares without preferential rights.

Section 50. Subsections (3) and (5) of section 607.0631, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

607.0631 Corporation's acquisition of its own shares.—

(3) Articles of amendment to effectuate a reduction in the

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authorized shares by the number of shares acquired by the corporation may be adopted by the board of directors without shareholder action, shall be delivered to the department ~~of~~ ~~State~~ for filing, and shall set forth:

(a) The name of the corporation;

(b) The reduction in the number of authorized shares, itemized by class and series; and

(c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares.

(5) A corporation that has shares of any class or series which are ~~either~~ registered on a national securities exchange ~~or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc.,~~ may acquire such shares and designate, either in the bylaws or in the resolutions of its board, that shares so acquired by the corporation shall constitute treasury shares.

(6) Shares that a corporation acquires in a fiduciary capacity for the benefit of any person other than the corporation directly or indirectly through an entity controlled by the corporation may not be deemed to have been acquired by the corporation for purposes of this section.

Section 51. Subsections (2), (3), (4), (6), (7), and (8) of section 607.06401, Florida Statutes, are amended, and subsection (9) is added to that section, to read:

607.06401 Distributions to shareholders.—

(2) The board of directors may fix the record date for determining shareholders entitled to a distribution, but the date may not be retroactive. If the board of directors does not

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fix the record date for determining shareholders entitled to a distribution (other than one involving a purchase, redemption, or other acquisition of the corporation's shares), the record date ~~it~~ is the date the board of directors authorizes the distribution.

(3) No distribution may be made if, after giving it effect:

(a) The corporation would not be able to pay its debts as they become due in the usual course of the corporation's activities and affairs ~~business~~; or

(b) The corporation's total assets would be less than the sum of its total liabilities plus (unless the articles of incorporation permit otherwise) the amount that would be needed, if the corporation were to be dissolved and wound up at the time of the distribution, to satisfy the preferential rights upon dissolution and winding up of shareholders whose preferential rights are superior to those receiving the distribution.

(4) The board of directors may base a determination that a distribution is not prohibited under subsection (3) on:

(a) ~~either on~~ Financial statements prepared on the basis of accounting practices and principles that are reasonable under ~~in~~ the circumstances; or

(b) ~~on~~ A fair valuation or other method that is reasonable under ~~in~~ the circumstances. In the case of any distribution based upon such a valuation, each such distribution shall be identified as a distribution based upon a current valuation of assets, and the amount per share paid on the basis of such valuation shall be disclosed to the shareholders concurrent with their receipt of the distribution.

(6) Except as provided in subsection (8), the effect of a

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distribution under subsection (3) is measured:

(a) In the case of a distribution by purchase, redemption, or other acquisition of the corporation's shares, as of the earlier of the date on which:

1. ~~The date~~ Money or other property is transferred or the debt to a shareholder is incurred by the corporation, or  
2. ~~The date the~~ shareholder ceases to be a shareholder with respect to the acquired shares;

(b) In the case of a ~~any other~~ distribution of indebtedness, as of the date on which the indebtedness is distributed;

(c) In all other cases, as of the date on which:

1. ~~The date the~~ distribution is authorized if the payment occurs within 120 days after that date; ~~the date of authorization~~, or

2. ~~The date the~~ payment is made if the payment ~~it~~ occurs more than 120 days after the date the distribution is authorized of authorization.

(7) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise ~~subordinated~~ by agreement. The obligation to pay such indebtedness may be secured by a lien on assets of the corporation if not prohibited by a law other than this chapter.

(8) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability for purposes of determinations under subsection (3) if the terms of the indebtedness ~~its terms~~ provide that payment of principal and

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interest ~~is are~~ made only if and to the extent that ~~payment of a~~  
distribution to shareholders could then be made under this  
section. If ~~such the~~ indebtedness is issued as a distribution,  
~~and by its terms provides that the payments each payment of~~  
principal or interest ~~are made only to the extent is treated as~~  
~~a distribution could be made under this section, then each~~  
~~payment of principal and interest of that indebtedness is~~  
~~treated as a distribution~~, the effect of which is measured on  
the date the payment is actually made.

(9) This section does not apply to distributions in  
liquidation under ss. 607.1401-607.14401.

Section 52. Section 607.0701, Florida Statutes, is amended  
to read:

607.0701 Annual meeting.—

(1) Unless directors are elected by written consent in lieu  
of an annual meeting pursuant to s. 607.0704, a corporation  
shall hold a meeting of shareholders annually, for the election  
of directors and for the transaction of any proper business, at  
a time stated in or fixed in accordance with the bylaws.

(2) Annual ~~shareholders'~~ meetings of shareholders may be  
held in or out of this state at a place stated in or fixed in  
accordance with the bylaws or, when not inconsistent with the  
bylaws, stated in the notice of the annual meeting. If no place  
is stated in or fixed in accordance with the bylaws, or stated  
in the notice of the annual meeting, annual meetings shall be  
held at the corporation's principal office.

(3) The failure to hold the annual meeting at the time  
stated in or fixed in accordance with a corporation's bylaws or  
pursuant to this ~~chapter~~ ~~act~~ does not affect the validity of any

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corporate action and shall not work a forfeiture of or  
dissolution of the corporation.

(4) Participation of shareholders and proxy holders at an  
annual meeting of shareholders by remote communication shall be  
governed by and subject to the provisions of s. 607.0709 ~~if~~  
~~authorized by the board of directors, and subject to such~~  
~~guidelines and procedures as the board of directors may adopt,~~  
~~shareholders and proxy holders not physically present at an~~  
~~annual meeting of shareholders may, by means of remote~~  
~~communication:~~

~~(a) Participate in an annual meeting of shareholders.~~

~~(b) Be deemed present in person and vote at an annual~~  
~~meeting of shareholders, whether such meeting is to be held at a~~  
~~designated place or solely by means of remote communication,~~  
~~provided that:~~

~~1. The corporation shall implement reasonable measures to~~  
~~verify that each person deemed present and permitted to vote at~~  
~~the annual meeting by means of remote communication is a~~  
~~shareholder or proxy holder;~~

~~2. The corporation shall implement reasonable measures to~~  
~~provide such shareholders or proxy holders a reasonable~~  
~~opportunity to participate in the annual meeting and to vote on~~  
~~matters submitted to the shareholders, including, without~~  
~~limitation, an opportunity to communicate and to read or hear~~  
~~the proceedings of the annual meeting substantially concurrently~~  
~~with such proceedings; and~~

~~3. If any shareholder or proxy holder votes or takes other~~  
~~action at the annual meeting by means of remote communication, a~~  
~~record of such vote or other action shall be maintained by the~~

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corporation.

Section 53. Section 607.0702, Florida Statutes, is amended to read:

607.0702 Special meeting.—

(1) A corporation shall hold a special meeting of shareholders:

(a) On call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(b) If shareholders holding the holders of not less than 10 percent, unless a greater percentage not to exceed 50 percent is required by the articles of incorporation, of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

(2) Special meetings of shareholders ~~shareholders' meetings~~ may be held in or out of the state at a place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws, in the notice of the special meeting. If no place is stated in or fixed in accordance with the bylaws or in the notice of the special meeting, special meetings shall be held at the corporation's principal office.

(3) Only business within the purpose or purposes described

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in the special meeting notice required by s. 607.0705 may be conducted at a special meeting of shareholders ~~shareholders' meeting.~~

(4) Participation of shareholders and proxy holders at a special meeting of shareholders by remote communication shall be governed by and subject to the provisions of s. 607.0709 ~~If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxy holders not physically present at a special meeting of shareholders may, by means of remote communication:~~

~~(a) Participate in a special meeting of shareholders.~~

~~(b) Be deemed present in person and vote at a special meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:~~

~~1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the special meeting by means of remote communication is a shareholder or proxy holder;~~

~~2. The corporation shall implement reasonable measures to provide such shareholders or proxy holders a reasonable opportunity to participate in the special meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the special meeting substantially concurrently with such proceedings; and~~

~~3. If any shareholder or proxy holder votes or takes other action at the special meeting by means of remote communication,~~

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3133 a record of such vote or other action shall be maintained by the  
3134 corporation.

3135 Section 54. Section 607.0703, Florida Statutes, is amended  
3136 to read:

3137 607.0703 Court-ordered meeting.—

3138 (1) The circuit court in the applicable county may  
3139 summarily of the county where a corporation's principal office  
3140 is located, if located in this state, or where a corporation's  
3141 registered office is located if its principal office is not  
3142 located in this state, may, after notice to the corporation,  
3143 order a meeting to be held:

3144 (a) On application of any shareholder ~~of the corporation~~  
3145 entitled to vote at ~~an~~ an annual meeting if neither an annual  
3146 meeting has ~~not~~ been held nor an action by written consent in  
3147 lieu thereof has become effective within any 15-month ~~13-month~~  
3148 period; or

3149 (b) On application of one or more shareholders a  
3150 ~~shareholder~~ who signed a demand for a special meeting valid  
3151 under s. 607.0702, if:

3152 1. Notice of the special meeting was not given within 60  
3153 days after the first day on which the requisite number of  
3154 demands have been ~~date the demand was~~ delivered to the  
3155 corporation's secretary; or

3156 2. The special meeting was not held in accordance with the  
3157 notice.

3158 (2) The court may fix the time and place of the meeting,  
3159 determine the shares entitled to participate in the meeting,  
3160 specify a record date or dates for determining shareholders  
3161 entitled to notice of and to vote at the meeting, prescribe the

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3162 form and content of the meeting notice, fix the quorum by voting  
3163 group required for matters to be considered at the meeting (or  
3164 direct that the votes of a voting group represented at the  
3165 meeting constitute a quorum of such voting group for action on  
3166 those matters), and enter other orders necessary to accomplish  
3167 the purpose or purposes of the meeting as may be appropriate.

3168 Section 55. Subsections (1), (3), (4), and (5) of section  
3169 607.0704, Florida Statutes, are amended, and subsections (7) and  
3170 (8) are added to that section, to read:

3171 607.0704 Action by shareholders without a meeting.—

3172 (1) Unless otherwise provided in the articles of  
3173 incorporation or in subsection (8), action required or permitted  
3174 by this chapter act to be taken at an annual or special meeting  
3175 of shareholders may be taken without a meeting, without prior  
3176 notice, and without a vote if the action is taken by the holders  
3177 of outstanding shares ~~stock~~ of each voting group entitled to  
3178 vote thereon having not less than the minimum number of votes  
3179 with respect to each voting group that would be necessary to  
3180 authorize or take such action at a meeting at which all voting  
3181 groups and shares entitled to vote thereon were present and  
3182 voted. In order to be effective the action must be evidenced by  
3183 one or more written consents describing the action taken, dated  
3184 and signed by approving shareholders having the requisite number  
3185 of votes of each voting group entitled to vote thereon, and  
3186 delivered to the corporation by delivery to its principal office  
3187 in this state, its principal place of business, the corporate  
3188 secretary, or another officer or agent of the corporation having  
3189 custody of the book in which proceedings of meetings of  
3190 shareholders are recorded. No written consent shall be effective

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to take the corporate action referred to therein unless, within 60 days of the date of the earliest dated consent delivered in the manner required by this section, written consents signed by shareholders owning a sufficient number of shares ~~the number of holders~~ required to authorize or take the action have been ~~are~~ delivered to the corporation by delivery as set forth in this section.

(3) Within 10 days after either written consents sufficient to authorize or take the action have been delivered to the corporation or such later date that tabulation of consents is completed pursuant to an authorization under subsection (4) ~~obtaining such authorization by written consent~~, notice must be given to those shareholders who have not consented in writing or who are not entitled to vote on the action. The notice shall fairly summarize the material features of the authorized action and, if the action be such for which appraisal dissenters' rights are provided under this chapter act, the notice shall contain a clear statement of the right of shareholders entitled to assert appraisal rights under this chapter with respect to the action ~~dissenting therefrom~~ to be paid the fair value of their shares upon compliance with further provisions of this chapter act regarding the rights of dissenting shareholders entitled to assert appraisal rights under this chapter with respect to the action.

(4) A consent signed under this section has the effect of a meeting vote and may be described as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written

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consent shall be effective when written consents signed by shareholders owning a sufficient number of shares required to authorize or take the action have been delivered to the corporation.

(5) In the event that the action to which the shareholders consent is such as would have required the filing of a certificate under any other section of this chapter act if such action had been voted on by shareholders at a meeting thereof, the certificate filed under such other section shall state that written consent has been given in accordance with the provisions of this section.

(7) The notice requirements in subsection (3) do not delay the effectiveness of actions taken by written consent, and a failure to comply with such notice requirement does not invalidate actions taken by written consent. This subsection may not be deemed to limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice within the required time period.

(8) If a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to s. 607.0728, directors may not be elected by written consent of the shareholders unless the consent is unanimous.

Section 56. Section 607.0705, Florida Statutes, is amended to read:

607.0705 Notice of meeting.—

(1) A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. The notice must include the record date for determining the

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3249 shareholders entitled to vote at the meeting if the record date  
 3250 for determining the shareholders entitled to vote at the meeting  
 3251 is different than the record date for determining shareholders  
 3252 entitled to notice of the meeting. If the board of directors has  
 3253 authorized participation by means of remote communication  
 3254 pursuant to s. 607.0709 for any class or series of shares, the  
 3255 notice to the holders of such class or series must describe the  
 3256 means of remote communication to be used. Unless this chapter  
 3257 ~~act~~ or the articles of incorporation require otherwise, the  
 3258 corporation is required to give notice only to shareholders  
 3259 entitled to vote at the meeting as of the record date for  
 3260 determining the shareholders entitled to notice of the meeting.  
 3261 Notice shall be given in the manner provided in s. 607.0141, by  
 3262 or at the direction of the president, the secretary, or the  
 3263 officer or persons calling the meeting. If the notice is mailed  
 3264 at least 30 days before the date of the meeting, it may be done  
 3265 by a class of United States mail other than first class.  
 3266 Notwithstanding s. 607.0141, if mailed, such notice shall be  
 3267 deemed to be delivered when deposited in the United States mail  
 3268 addressed to the shareholder at her or his address as it appears  
 3269 in the record of shareholders of the corporation, maintained in  
 3270 accordance with s. 607.1601(4) on the stock transfer books of  
 3271 ~~the corporation,~~ with postage thereon prepaid.

3272 (2) Unless this chapter ~~act~~ or the articles of  
 3273 incorporation require otherwise, notice of an annual meeting of  
 3274 shareholders need not include a description of the purpose or  
 3275 purposes for which the meeting is called.

3276 (3) Notice of a special meeting of shareholders must  
 3277 include a description of the purpose or purposes for which the

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3278 meeting is called.

3279 (4) Unless the bylaws require otherwise, if an annual or  
 3280 special ~~shareholders'~~ meeting of shareholders is adjourned to a  
 3281 different date, time, or place, or to add or modify the terms of  
 3282 participation by remote communication, notice need not be given  
 3283 of the new date, time, ~~or~~ place, or terms of participation by  
 3284 remote communication if the new date, time, ~~or~~ place, or terms  
 3285 of participation by remote communication is announced at the  
 3286 meeting before an adjournment is taken, and any business may be  
 3287 transacted at the adjourned meeting that might have been  
 3288 transacted on the original date of the meeting. If a new record  
 3289 date for the adjourned meeting is or must be fixed under s.  
 3290 607.0707, however, notice of the adjourned meeting must be given  
 3291 under this section to persons who are shareholders as of the new  
 3292 record date who are entitled to notice of the meeting.

3293 (5) Notwithstanding the foregoing, whenever notice is  
 3294 required to be given to any shareholder under this chapter or  
 3295 the articles of incorporation or bylaws of any corporation to  
 3296 whom no notice of a shareholders' meeting need be given to a  
 3297 shareholder if:

3298 (a) Notice of two consecutive annual meetings, and all  
 3299 notices of meetings or the taking of action by written consent  
 3300 without a meeting to such person during the period between such  
 3301 two consecutive annual meetings; An annual report and proxy  
 3302 statements for two consecutive annual meetings of shareholders  
 3303 or

3304 (b) All, and at least two checks in payment of dividends or  
 3305 interest on securities during a 12-month period,  
 3306

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have been sent by first-class United States mail, addressed to the shareholder at ~~such person's her or his~~ address as it appears ~~in the record of shareholders on the share transfer books~~ of the corporation, maintained in accordance with s. 607.1601(4), and returned undeliverable, ~~then the giving of such notice to such person shall not be required. Any action or meeting which is taken or held without notice to such person has the same force and effect as if such notice has been duly given. If any such person delivers to the corporation a written notice setting forth such person's then current address, the requirement that a notice be given to such person with respect to future notices shall be reinstated. The obligation of the corporation to give notice of a shareholders' meeting to any such shareholder shall be reinstated once the corporation has received a new address for such shareholder for entry on its share transfer books.~~

Section 57. Subsection (1) of section 607.0706, Florida Statutes, is amended to read:

607.0706 Waiver of notice.—

(1) A shareholder may waive any notice required by this ~~chapter act~~, the articles of incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation for filing by the corporation with inclusion in the minutes or filing with the corporate records. Neither the business to be transacted at nor the purpose of any regular or special meeting of the shareholders need be specified in any written waiver of notice unless so required by the articles of incorporation or the

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bylaws.

Section 58. Subsections (1), (3), (4), (6), and (7) of section 607.0707, Florida Statutes, are amended, and subsections (8), (9), and (10) are added to that section, to read:

607.0707 Record date.—

(1) The bylaws may fix or provide the manner of fixing the record date or dates for one or more voting groups ~~in order~~ to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix or provide for fixing such a record date, the board of directors ~~of the corporation~~ may fix the record date. In no event may a record date fixed by the board of directors be a date preceding the date upon which the resolution fixing the record date is adopted.

(3) The bylaws may fix or provide the manner of fixing the record date for determining shareholders entitled to take action by the written consent of shareholders. If not otherwise provided by or pursuant to the bylaws, the board of directors of the corporation may set a record date for determining shareholders entitled to take action by the written consent of shareholders. In no event may a record date fixed by the board of directors be a date preceding the date upon which the resolution fixing the record date is adopted. If the bylaws do not fix or provide for the manner of fixing such a record date and if no such record date is fixed by the board of directors, the record date for determining shareholders entitled to take such action shall be the date that the first signed written consent is delivered to the corporation pursuant to s. 607.0704 ~~If not otherwise provided by or pursuant to the bylaws and no~~

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3365 ~~prior action is required by the board of directors pursuant to~~  
 3366 ~~this act, the record date for determining shareholders entitled~~  
 3367 ~~to take action without a meeting is the date the first signed~~  
 3368 ~~written consent is delivered to the corporation under s.~~  
 3369 ~~607.0704. If not otherwise fixed, and prior action is required~~  
 3370 ~~by the board of directors pursuant to this chapter, the record~~  
 3371 ~~date for determining shareholders entitled to take action~~  
 3372 ~~without a meeting is at the close of business on the day on~~  
 3373 ~~which the board of directors adopts the resolution taking such~~  
 3374 ~~prior action.~~

3375 (4) If not otherwise provided by or pursuant to the bylaws,  
 3376 or by a court order pursuant to s. 607.0703, the record date for  
 3377 determining shareholders entitled to notice of and to vote at an  
 3378 annual or special shareholders' meeting is the close of business  
 3379 on the day before the first notice is delivered to shareholders.

3380 (6) A determination of shareholders entitled to notice of  
 3381 or to vote at a shareholders' meeting is effective for any  
 3382 adjournment of the meeting unless the board of directors fixes a  
 3383 new record date or dates, which it must do if the meeting is  
 3384 adjourned to a date more than 120 days after the date fixed for  
 3385 the original meeting.

3386 (7) If a court orders a meeting adjourned to a date more  
 3387 than 120 days after the date fixed for the original meeting, it  
 3388 may provide that the original record date or dates continues in  
 3389 effect or it may fix a new record date or dates.

3390 (8) The record date for a shareholders' meeting fixed by or  
 3391 in the manner provided in the bylaws or by the board of  
 3392 directors shall be the record date for determining shareholders  
 3393 entitled both to notice of and to vote at the shareholders'

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3394 meeting, unless in the case of a record date fixed by the board  
 3395 of directors and to the extent not prohibited by the bylaws, the  
 3396 board of directors, at the time it fixes the record date for  
 3397 shareholders entitled to notice of the meeting, fixes a later  
 3398 record date on or before the date of the meeting to determine  
 3399 the shareholders entitled to vote at the meeting.

3400 (9) Shares of a corporation's own stock acquired by the  
 3401 corporation between the record date for determining shareholders  
 3402 entitled to notice of or to vote at a meeting of shareholders  
 3403 and the time of the meeting may be voted on at the meeting by  
 3404 the holder of record as of the record date and shall be counted  
 3405 in determining the total number of outstanding shares entitled  
 3406 to be voted at the meeting.

3407 (10) If not otherwise fixed under s. 607.0703, the record  
 3408 date for determining shareholders entitled to demand a special  
 3409 meeting is the earliest date on which a signed shareholder  
 3410 demand is delivered to the corporation. A written demand for a  
 3411 special meeting is not effective unless, within 60 days of the  
 3412 earliest date on which such a demand delivered to the  
 3413 corporation as required by s. 607.0702 was signed, written  
 3414 demands signed by shareholders holding at least the percentage  
 3415 of votes specified in or fixed in accordance with s.  
 3416 607.0702(1)(b) have been delivered to the corporation.

3417 Section 59. Section 607.0709, Florida Statutes, is created  
 3418 to read:

3419 607.0709 Remote participation in annual and special  
 3420 meetings of shareholders.-

3421 (1) Shareholders of any voting group, other persons  
 3422 entitled to vote on behalf of shareholders pursuant to s.

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3423 607.0721, attorneys in fact for shareholders, and holders of  
 3424 proxies appointed pursuant to s. 607.0722 may participate in any  
 3425 annual or special meeting of shareholders by means of remote  
 3426 communication to the extent the board of directors authorizes  
 3427 such participation for such voting group. Participation by means  
 3428 of remote communication is subject to such guidelines and  
 3429 procedures as the board of directors adopts, and must be in  
 3430 conformity with subsection (2).

3431 (2) Shareholders, other persons entitled to vote on behalf  
 3432 of shareholders pursuant to s. 607.0721, attorneys in fact for  
 3433 shareholders, and holders of proxies appointed pursuant to s.  
 3434 607.0722 participating in a shareholders' meeting by means of  
 3435 remote communication authorized under subsection (1) shall be  
 3436 deemed present in person and may vote at such a meeting, whether  
 3437 such meeting is to be held at a designated place or solely by  
 3438 means of remote communication, if the corporation has  
 3439 implemented reasonable measures:

3440 (a) To verify that each person participating remotely as a  
 3441 shareholder is a shareholder, is another person entitled to vote  
 3442 on behalf of a shareholder pursuant to s. 607.0721, is an  
 3443 attorney in fact for a shareholder, or is a holder of a proxy  
 3444 appointed pursuant to s. 607.0722; and

3445 (b) To provide such shareholders, such other persons  
 3446 entitled to vote on behalf of shareholders pursuant to s.  
 3447 607.0721, such attorneys in fact for shareholders, and such  
 3448 holders of proxies appointed pursuant to s. 607.0722, a  
 3449 reasonable opportunity to participate in the meeting and to vote  
 3450 on matters submitted to the shareholders, including an  
 3451 opportunity to communicate, and to read or hear the proceedings

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3452 of the meeting, substantially concurrently with such  
 3453 proceedings.

3454 (3) If any shareholder, any other person entitled to vote  
 3455 on behalf of a shareholder pursuant to s. 607.0721, any attorney  
 3456 in fact for a shareholder, or any holder of a proxy appointed  
 3457 pursuant to s. 607.0722, votes or takes action at a  
 3458 shareholder's meeting by means of remote communication  
 3459 authorized under this section, a record of such vote or other  
 3460 action shall be maintained by the corporation.

3461 (4) If the board of directors is authorized to determine  
 3462 the place of a shareholders' meeting, the board of directors  
 3463 may, in its sole discretion, determine that the meeting shall be  
 3464 held solely by means of remote communication.

3465 Section 60. Subsections (1), (2), (3), (5), and (7) of  
 3466 section 607.0720, Florida Statutes, are amended to read:

3467 607.0720 Shareholders' list for meeting.—

3468 (1) After fixing a record date for a meeting, a corporation  
 3469 shall prepare an alphabetical list of the names of all its  
 3470 shareholders who are entitled to notice of a shareholders'  
 3471 meeting. If the board of directors fixes a different record date  
 3472 under s. 607.0707(8) to determine the shareholders entitled to  
 3473 vote at the meeting, the corporation must also prepare an  
 3474 alphabetical list of the names of all its shareholders who are  
 3475 entitled to vote at the meeting. Each list must be arranged by  
 3476 voting group, and within each voting group by class or series of  
 3477 shares, and show the address of and number of shares held by  
 3478 each shareholder. This subsection does not require the  
 3479 corporation to include on such list the electronic mail address  
 3480 or other electronic contact information of a shareholder,

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arranged by voting group with the address of, and the number and class and series, if any, of shares held by, each.

(2) The shareholders' list for notice must be available for inspection by any shareholder for a period of 10 days prior to the meeting or such shorter time as exists between the record date and the meeting and continuing through the meeting at the corporation's principal office, at a place identified in the meeting notice in the city where the meeting will be held, or at the office of the corporation's transfer agent or registrar. Any separate shareholders' list for voting, if different, must be similarly available for inspection promptly after the record date for voting. A shareholder or the shareholder's agent or attorney is entitled on written demand to inspect and, the list (subject to the requirements of s. 607.1602(3)), copy a list during regular business hours and at his or her expense, during the period it is available for inspection.

(3) The corporation shall make the ~~shareholders'~~ list of shareholders entitled to vote available at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(5) If the requirements of this section have not been substantially complied with or if the corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect a the shareholders' list, or copy a list pursuant to subsection (2), before or at the meeting, the meeting shall be adjourned until such requirements are complied with on the demand of any shareholder in person or by proxy who failed to get such access, or, if not adjourned upon such demand and such

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requirements are not complied with, the circuit court in the applicable county of the county where a corporation's principal office (or, if none in this state, its registered office) is located, on application of the shareholder, may summarily order the inspection or copying at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection or copying is complete.

(7) A shareholder may not sell or otherwise distribute any information or records inspected under this section, except to the extent that such use is for a proper purpose as defined in s. 607.1602(3). ~~Any person who violates this provision shall be subject to a civil penalty of \$5,000.~~

Section 61. Subsections (1), (2), (3), and (4) of section 607.0721, Florida Statutes, are amended to read:

607.0721 Voting entitlement of shares.—

(1) Except as provided in subsections (2), (3), and (4) or unless the articles of incorporation or this chapter act provides otherwise, each outstanding share, regardless of class or series, is entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Only shares are entitled to vote. If the articles of incorporation provide for more or less than one vote for any share on any matter, every reference in this chapter act to a majority or other proportion of shares shall refer to such a majority or other proportion of votes entitled to be cast.

(2) ~~The~~ Shares of a corporation are not entitled to vote if they are owned by or otherwise belong to the corporation directly, or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the

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corporation or which is otherwise controlled by the, ~~directly or indirectly, by a second corporation, domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for directors of the second corporation.~~

(3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation directly, or indirectly through an entity of which a majority of the voting power is held directly or indirectly by the corporation or which is otherwise controlled by the corporation. For the purposes of this subsection, "voting power" means the current power to vote in the election of directors of a corporation or to elect, select, or appoint those persons who will govern another entity Subsection (2) does not limit the power of a corporation to vote any shares, including its own shares, held by it in a fiduciary capacity.

(4) Redeemable shares are not entitled to vote on any matter, and shall not be deemed to be outstanding, after delivery of a written notice of redemption is effective mailed to the holders thereof and a sum sufficient to redeem such shares has been deposited with a bank, trust company, or other financial institution upon an irrevocable obligation to pay the holders the redemption price upon surrender of the shares.

Section 62. Subsections (3) and (7) of section 607.0722, Florida Statutes, are amended, and subsection (5) of that section is republished, to read:

607.0722 Proxies.—

(3) An appointment of a proxy is effective when a signed

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appointment form or an electronic transmission of the appointment is received by the inspector of election or by the secretary or other officer or agent authorized to count tabulate votes. An appointment is valid for the term up to 11 months unless a longer period is expressly provided in the appointment form and, if no term is provided, is valid for 11 months unless the appointment is irrevocable under subsection (5).

(5) An appointment of a proxy is revocable by the shareholder unless the appointment form or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of:

(a) A pledgee;

(b) A person who purchased or agreed to purchase the shares;

(c) A creditor of the corporation who extended credit to the corporation under terms requiring the appointment;

(d) An employee of the corporation whose employment contract requires the appointment; or

(e) A party to a voting agreement created under s. 607.0731.

(7) Unless the appointment otherwise provides, an appointment made irrevocable under subsection (5) continues in effect after a transfer of the shares and a transferee takes subject to the appointment, except that a transferee for value of shares subject to an irrevocable appointment may revoke the appointment if the transferee did not know of its existence when the transferee he or she acquired the shares and the existence of the irrevocable appointment was not noted conspicuously on

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the certificate representing the shares or on the information statement for shares without certificates.

Section 63. Section 607.0723, Florida Statutes, is amended to read:

607.0723 Shares held by intermediaries and nominees.—

(1) A corporation's board of directors ~~corporation~~ may establish a procedure under ~~by~~ which a person on whose behalf the beneficial owner of shares that are registered in the name of an intermediary or a nominee may elect to be treated as ~~recognized~~ by the corporation as the record shareholder by filing with the corporation a beneficial ownership certificate. The terms, conditions, and limitations of such treatment shall be specified in the procedure. To the extent such person is treated under such procedure as having rights or privileges that the record shareholder otherwise would have, the record shareholder may not have those rights or privileges. The extent of this recognition may be determined in the procedure.

(2) The procedure must specify ~~may set forth~~:

(a) The types of intermediaries or nominees to which it applies;

(b) The rights or privileges that the corporation recognizes in a person with respect to whom a beneficial ownership certificate is filed ~~beneficial owner~~;

(c) The manner in which the procedure is selected, which shall include that the beneficial ownership certificate be signed or assented to by or on behalf of the record shareholder and the person or persons on whose behalf the shares are held by ~~the nominee~~;

(d) The information that must be provided when the

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procedure is selected;

(e) The period for which selection of the procedure is effective; ~~and~~

(f) Requirements for notice to the corporation with respect to the arrangement; and

(g) The form and contents of the beneficial ownership certificate.

(3) The procedure may specify any other aspects of the rights and duties created by the filing of a beneficial ownership certificate.

Section 64. Section 607.0724, Florida Statutes, is amended to read:

607.0724 ~~Corporation's~~ Acceptance of votes and other instruments.—

(1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment corresponds to the name of a shareholder, the corporation if acting in good faith is entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder.

(2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy appointment does not correspond to the name of its shareholder, the corporation if acting in good faith is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and give it effect as the act of the shareholder if:

(a) The shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(b) The name signed purports to be that of an

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administrator, executor, guardian, personal representative, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(c) The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee for the benefit of creditors of the shareholder and, if the corporation requests, evidence of this status acceptable to the corporation has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

(d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation of the signatory's authority to sign for the shareholder has been presented with respect to the vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

(e) Two or more persons are the shareholder as cotenants or fiduciaries and the name signed purports to be the name of at least one of the co-owners and the person signing appears to be acting on behalf of all the co-owners.

(3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand, or proxy appointment if the person authorized to accept or reject such instrument ~~secretary or other officer or agent authorized to tabulate votes~~, acting in good faith, has reasonable basis for doubt about the validity of the signature on it or about the signatory's authority to sign for the shareholder.

(4) Neither the corporation or any person authorized by it,

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nor any inspector of election under s. 607.0729, that ~~The corporation and its officer or agent who~~ accepts or rejects a vote, ballot, consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with the standards of this section ~~is~~ ~~are not~~ liable in damages to the shareholder for the consequences of the acceptance or rejection.

(5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver, shareholder demand, or proxy appointment under this section is valid unless a court of competent jurisdiction determines otherwise.

(6) If an inspector of election has been appointed under s. 607.0729, the inspector of election may request information and make determinations under subsections (1), (2), and (3). Any determination made by the inspector of election under those subsections is controlling.

Section 65. Subsections (1), (2), (3), and (5) of section 607.0725, Florida Statutes, are amended, and subsection (8) is added to that section, to read:

607.0725 Quorum and voting requirements for voting groups.-

(1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting only if a quorum of those shares exists with respect to that matter. Unless the articles of incorporation or this chapter ~~act~~ provides otherwise, a majority of the votes entitled to be cast on the matter by the voting group constitutes a quorum of that voting group for action on that matter.

(2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting

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unless a new record date is or must be fixed ~~set~~ for that adjourned meeting.

(3) If a quorum exists, action on a matter (other than the election of directors) by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the articles of incorporation or this chapter ~~act~~ requires a greater number of affirmative votes.

(5) The articles of incorporation may provide for a greater voting requirement or a greater or lesser quorum requirement for shareholders, or voting groups of shareholders, than is provided by this chapter ~~act~~, but in no event shall a quorum consist of less than one-third of the shares entitled to vote.

(8) Whenever a provision of this chapter provides for voting of classes or series as separate voting groups, the rules provided in s. 607.1004 for amendments of articles of incorporation apply to that provision.

Section 66. Section 607.0726, Florida Statutes, is amended to read:

607.0726 Action by single and multiple voting groups.—

(1) If the articles of incorporation or this chapter ~~act~~ provides for voting by a single voting group on a matter, action on that matter is taken when voted upon by that voting group as provided in s. 607.0725.

(2) If the articles of incorporation or this chapter ~~act~~ provides for voting by two or more voting groups on a matter, action on that matter is taken only when voted upon by each of those voting groups counted separately as provided in s.

607.0725. Action may be taken by different voting groups ~~one~~

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~~voting group~~ on a matter at different times ~~even though no action is taken by another voting group entitled to vote on the matter.~~

Section 67. Subsection (1) of section 607.0728, Florida Statutes, is amended to read:

607.0728 Voting for directors; cumulative voting.—

(1) Unless otherwise provided in the articles of incorporation, or in a bylaw that fixes a greater voting requirement for the election of directors and that is adopted by the board of directors or shareholders of a corporation having shares registered pursuant to s. 12 of the Securities Exchange Act of 1934 ~~listed on a national securities exchange~~ at the time of adoption, directors are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting at which a quorum is present. A bylaw provision or amendment adopted by shareholders which specifies the votes necessary for the election of directors may not be further amended or repealed by the board of directors.

Section 68. Section 607.0729, Florida Statutes, is created to read:

607.0729 Voting procedures; inspectors of election.—

(1) A corporation that has a class of shares registered pursuant to s. 12 of the Securities Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders in connection with determining voting results. Each inspector will faithfully execute the duties of inspector with strict impartiality and according to the best of the inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors may

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3771 appoint or retain other persons to assist the inspectors in the  
 3772 performance of the duties of inspector under subsection (2) and  
 3773 may rely on information provided by such persons and other  
 3774 persons, including those appointed to count votes, unless the  
 3775 inspectors believe reliance is unwarranted.  
 3776 (2) The inspectors shall:  
 3777 (a) Ascertain the number of shares outstanding and the  
 3778 voting power of each;  
 3779 (b) Determine the shares represented at a meeting;  
 3780 (c) Determine the validity of proxy appointments and  
 3781 ballots;  
 3782 (d) Count the votes; and  
 3783 (e) Make a written report of the results.  
 3784 (3) In performing their duties, the inspectors may examine:  
 3785 (a) The proxy appointment forms and any other information  
 3786 provided in accordance with s. 607.0722(2);  
 3787 (b) Any envelope or related writing submitted with those  
 3788 appointment forms;  
 3789 (c) Any ballots;  
 3790 (d) Any evidence or other information specified in s.  
 3791 607.0724; and  
 3792 (e) The relevant books and records of the corporation  
 3793 relating to its shareholders and their entitlement to vote,  
 3794 including any securities position list provided by a depository  
 3795 clearing agency.  
 3796 (4) The inspectors also may consider other information that  
 3797 they believe is relevant and reliable for the purpose of  
 3798 performing any of the duties assigned to them pursuant to  
 3799 subsection (2), including, for the purpose of evaluating

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3800 inconsistent, incomplete, or erroneous information and  
 3801 reconciling information submitted on behalf of banks, brokers,  
 3802 their nominees, or similar persons that indicates more votes  
 3803 being cast than a proxy is authorized by the record shareholder  
 3804 to cast or more votes being cast than the record shareholder is  
 3805 entitled to cast. If the inspectors consider other information  
 3806 allowed by this subsection, they must, in their report under  
 3807 subsection (2), specify the information considered by them,  
 3808 including the purpose or purposes for which the information was  
 3809 considered, the person or persons from whom they obtained the  
 3810 information, when the information was obtained, the means by  
 3811 which the information was obtained, and the basis for the  
 3812 inspectors' belief that such information is relevant and  
 3813 reliable.  
 3814 (5) Determinations of law by the inspectors of election are  
 3815 subject to de novo review by a court in a judicial proceeding  
 3816 challenging the inspector's activities under this section.  
 3817 (6) The chair of the meeting shall announce at the meeting  
 3818 when the polls close for each matter voted upon. If no  
 3819 announcement is made, the polls shall be deemed to have closed  
 3820 upon the final adjournment of the meeting. After the polls  
 3821 close, no ballots, proxies, or votes, or any revocations or  
 3822 changes thereto, may be accepted.  
 3823 Section 69. Subsection (1) of section 607.0730, Florida  
 3824 Statutes, is amended to read:  
 3825 607.0730 Voting trusts.—  
 3826 (1) One or more shareholders may create a voting trust,  
 3827 conferring on a trustee the right to vote or otherwise act for  
 3828 him or her or for them, by signing an agreement setting out the

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3829 provisions of the trust (which may include anything consistent  
 3830 with its purpose) and transferring their shares to the trustee.  
 3831 When a voting trust agreement is signed, the trustee shall  
 3832 prepare a list of the names and addresses of all voting trust  
 3833 beneficial owners ~~of beneficial interests in the trust~~, together  
 3834 with the number and class of shares each transferred to the  
 3835 trust, and deliver copies of the list and agreement to the  
 3836 corporation at its ~~corporation's~~ principal office. After filing  
 3837 a copy of the list and agreement in the corporation's principal  
 3838 office, such copy shall be open to inspection by any shareholder  
 3839 of the corporation (subject to the requirements of s.  
 3840 607.1602(3)) or by any beneficiary of the trust under the  
 3841 agreement during business hours.

3842 Section 70. Section 607.0731, Florida Statutes, is amended  
 3843 to read:

3844 607.0731 Voting Shareholders' agreements.—

3845 (1) Two or more shareholders may provide for the manner in  
 3846 which they will vote their shares by signing an agreement for  
 3847 that purpose. A voting shareholders' agreement created under  
 3848 this section is not subject to the provisions of s. 607.0730.

3849 (2) A voting shareholders' agreement created under this  
 3850 section is specifically enforceable.

3851 (3) A transferee of shares in a corporation the  
 3852 shareholders of which have entered into an agreement authorized  
 3853 by subsection (1) shall be bound by such agreement if the  
 3854 transferee takes shares subject to such agreement with notice  
 3855 thereof. A transferee shall be deemed to have notice of any such  
 3856 agreement or any ~~such~~ renewal thereof if the existence of such  
 3857 agreement ~~thereof~~ is noted on the face or back of the

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3858 certificate or certificates representing such shares or on the  
 3859 information statement for uncertified shares required by s.  
 3860 607.0626(2).

3861 Section 71. Subsections (1) through (5) of section  
 3862 607.0732, Florida Statutes, are amended, and subsection (8) is  
 3863 added to that section, to read:

3864 607.0732 Shareholder agreements.—

3865 (1) An agreement among the shareholders of a corporation  
 3866 ~~with 100 or fewer shareholders at the time of the agreement,~~  
 3867 that complies with this section, is effective among the  
 3868 shareholders and the corporation, even though it is inconsistent  
 3869 with one or more other provisions of this chapter, if it:

3870 (a) Eliminates the board of directors or limits or  
 3871 restricts the discretion or powers of the board of directors;

3872 (b) Governs the authorization or making of distributions  
 3873 regardless of whether they are or not in proportion to ownership  
 3874 of shares, subject to the limitations in s. 607.06401;

3875 (c) Establishes who shall be directors or officers of the  
 3876 corporation, or their terms of office or manner of selection or  
 3877 removal;

3878 (d) Governs, in general or in regard to specific matters,  
 3879 the exercise or division of voting power by the shareholders and  
 3880 directors or among any of them, including use of weighted voting  
 3881 rights or director proxies;

3882 (e) Establishes the terms and conditions of any agreement  
 3883 for the transfer or use of property or the provision of services  
 3884 between the corporation and any shareholder, director, officer,  
 3885 or employee of the corporation or among any of them;

3886 (f) Transfers to any shareholder or other person any

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authority to exercise the corporate powers or to manage the business and affairs of the corporation, including the resolution of any issue about which there exists a deadlock among directors or shareholders; ~~or~~

(g) Requires dissolution of the corporation at the request of one or more of the shareholders or upon the occurrence of a specified event or contingency;

(h) Imposes a liability on a shareholder for the attorney fees or expenses of the corporation or any other party in connection with an internal corporate claim, as defined in s. 607.0208;

(i) Establishes, including in lieu of a judicial dissolution, a mechanism for breaking a deadlock among the directors or shareholders of the corporation or for addressing the occurrence or existence of a shareholder asserted oppressive action; or

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

(2) An agreement authorized by this section shall be:

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(a)1. Set forth or referenced in the articles of incorporation or bylaws and approved by all persons who are shareholders at the time the agreement; or

2. Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and such written agreement is made known to the corporation; and-

(b) Subject to termination or amendment only by all persons who are shareholders at the time of the termination or amendment, unless the agreement provides otherwise ~~with respect to termination and with respect to amendments that do not change the designation, rights, preferences, or limitations of any of the shares of a class or series.~~

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required with respect to uncertified shares by s. 607.0626(2). If at the time of the agreement the corporation has shares outstanding which are represented by certificates, the corporation shall recall such certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not

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represented by a certificate, the information statement is delivered to the purchaser at or ~~before~~ ~~prior to~~ the time of the purchase of the shares. An action to enforce the right of rescission authorized by this subsection must be commenced within the earlier of 90 days after discovery of the existence of the agreement or 2 years after the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are registered pursuant to s. 12 of the Securities Exchange Act of 1934 listed on a national securities exchange or regularly quoted in a market maintained by one or more members of a national or affiliated securities association. If the agreement ceases to be effective for any reason, the board of directors may, if the agreement is contained or referred to in the corporation's articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws, without shareholder action, to delete the agreement and any references to it.

(5) An agreement authorized by this section that limits or restricts the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(8) This section does not limit or invalidate agreements that are otherwise valid or authorized without regard to this section, including shareholder agreements between or among some or all of the shareholders or agreements between or among the

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corporation and one or more shareholders.

Section 72. Section 607.07401, Florida Statutes, is repealed.

Section 73. Section 607.0741, Florida Statutes, is created to read:

607.0741 Standing.—

(1) A shareholder may not commence a derivative proceeding unless the shareholder is a shareholder at the time the action is commenced and:

(a) Was a shareholder when the conduct giving rise to the action occurred; or

(b) Whose status as a shareholder devolved on the person through transfer or by operation of law from one who was a shareholder when the conduct giving rise to the action occurred.

(2) In ss. 607.0741-607.0747, the term "shareholder" means a record shareholder, a beneficial shareholder, or an unrestricted voting trust beneficial owner.

Section 74. Section 607.0742, Florida Statutes, is created to read:

607.0742 Complaint; demand and excuse.—A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity:

(1) The demand, if any, made to obtain the action desired by the shareholder from the board of directors; and

(2) Either:

(a) If such a demand was made, that the demand was refused, rejected, or ignored by the board of directors prior to the expiration of 90 days from the date the demand was made;

(b) If such a demand was made, why irreparable injury to

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the corporation or misapplication or waste of corporate assets causing material injury to the corporation would result by waiting for the expiration of a 90-day period from the date the demand was made; or

(c) The reason or reasons the shareholder did not make the effort to obtain the desired action from the board of directors or comparable authority.

Section 75. Section 607.0743, Florida Statutes, is created to read:

607.0743 Stay of proceedings.—If the corporation commences an inquiry into the allegations made in the demand or complaint, the court may stay any derivative proceeding for such period as the court deems appropriate.

Section 76. Section 607.0744, Florida Statutes, is created to read:

607.0744 Dismissal.—

(1) A derivative proceeding may be dismissed, in whole or in part, by the court on motion by the corporation if a group specified in subsection (2) or subsection (3) has determined in good faith, after conducting a reasonable inquiry upon which its conclusions are based, that the maintenance of the derivative proceeding is not in the best interests of the corporation. In all such cases, the corporation has the burden of proof regarding the qualifications, good faith, and reasonable inquiry of the group making the determination.

(2) Unless a panel is appointed pursuant to subsection (3), the determination required in subsection (1) shall be made by:

(a) A majority of qualified directors present at a meeting of the board of directors if the qualified directors constitute

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a quorum; or

(b) A majority vote of a committee consisting of two or more qualified directors appointed by majority vote of qualified directors present at a meeting of the board of directors, regardless of whether such qualified directors constitute a quorum.

(3) Upon motion by the corporation, the court may appoint a panel consisting of one or more disinterested and independent individuals to make a determination required in subsection (1).

(4) This section does not prevent the court from:

(a) Enforcing a person's rights under the corporation's articles of incorporation, bylaws or this chapter, including the person's rights to information under s. 607.1602; or

(b) Exercising its equitable or other powers, including granting extraordinary relief in the form of a temporary restraining order or preliminary injunction.

Section 77. Section 607.0745, Florida Statutes, is created to read:

607.0745 Discontinuance or settlement; notice.—

(1) A derivative action on behalf of a corporation may not be discontinued or settled without the court's approval.

(2) If the court determines that a proposed discontinuance or settlement will substantially affect the interest of the corporation's shareholders or a class, series, or voting group of shareholders, the court shall direct that notice be given to the shareholders affected. The court may determine which party or parties to the derivative action shall bear the expense of giving the notice.

Section 78. Section 607.0746, Florida Statutes, is created

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4061 to read:

4062 607.0746 Proceeds and expenses.—On termination of the  
 4063 derivative proceeding the court may:

4064 (1) Order the corporation to pay from the amount recovered  
 4065 in the derivative proceeding by the corporation the plaintiff's  
 4066 reasonable expenses, including reasonable attorney fees and  
 4067 costs, incurred in the derivative proceeding if it finds that,  
 4068 in the derivative proceeding, the plaintiff was successful in  
 4069 whole or in part; or

4070 (2) Order the plaintiff to pay any of the defendant's  
 4071 reasonable expenses, including reasonable attorney fees and  
 4072 costs, incurred in defending the proceeding if it finds that the  
 4073 proceeding was commenced or maintained without reasonable cause  
 4074 or for an improper purpose.

4075 Section 79. Section 607.0747, Florida Statutes, is created  
 4076 to read:

4077 607.0747 Applicability to foreign corporations.—In any  
 4078 derivative proceeding in the right of a foreign corporation  
 4079 brought in the courts of this state, the matters covered by ss.  
 4080 607.0741-607.0747 shall be governed by the laws of the  
 4081 jurisdiction of incorporation of the foreign corporation except  
 4082 for ss. 607.0743, 607.0745, and 607.0746.

4083 Section 80. Section 607.0748, Florida Statutes, is created  
 4084 to read:

4085 607.0748 Shareholder action to appoint custodians or  
 4086 receivers.—

4087 (1) A circuit court may appoint one or more persons to be  
 4088 custodians or receivers of and for a corporation in a proceeding  
 4089 by a shareholder where it is established that:

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4090 (a) The directors are deadlocked in the management of the  
 4091 corporate affairs, the shareholders are unable to break the  
 4092 deadlock, and irreparable injury to the corporation is  
 4093 threatened or being suffered; or

4094 (b) The directors or those in control of the corporation  
 4095 are acting fraudulently and irreparable injury to the  
 4096 corporation is threatened or being suffered.

4097 (2) The court:

4098 (a) May issue injunctions, appoint one or more temporary  
 4099 custodians or temporary receivers with all the powers and duties  
 4100 the court directs, to take other action to preserve the  
 4101 corporate assets wherever located, and to carry on the business  
 4102 of the corporation until a full hearing is held;

4103 (b) Shall hold a full hearing, after notifying all parties  
 4104 to the proceeding and any interested persons designated by the  
 4105 court, before appointing a custodian or receiver; and

4106 (c) Has jurisdiction over the corporation and all of its  
 4107 property, wherever located.

4108 (3) The court may appoint a natural person, a domestic  
 4109 eligible entity, or a foreign eligible entity authorized to  
 4110 transact business in this state as a custodian or receiver and  
 4111 may require the custodian or receiver to post bond, with or  
 4112 without sureties, in an amount the court directs.

4113 (4) The court shall describe the powers and duties of the  
 4114 custodian or receiver in its appointing order, which may be  
 4115 amended. Among other powers:

4116 (a) A custodian may exercise all of the powers of the  
 4117 corporation, through or in place of its board of directors, to  
 4118 the extent necessary to manage the business and affairs of the

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corporation; and

(b) A receiver may dispose of all or any part of the assets of the corporation, wherever located, at a public or private sale, if authorized by the court, and may sue and defend in the receiver's own name as receiver in all courts of this state.

(5) During a custodianship, the court may redesignate the custodian a receiver and, during a receivership, the court may redesignate the receiver a custodian, in each case if doing so is in the best interests of the corporation.

(6) The court from time to time during the custodianship or receivership may order compensation paid and expense disbursements or reimbursements made to any custodian or receiver from the assets of the corporation or proceeds from the sale of its assets.

Section 81. Section 607.0749, Florida Statutes, is created to read:

607.0749 Provisional director.—

(1) In a proceeding by a shareholder, a provisional director may be appointed in the discretion of the court if it appears that such action by the court will remedy a situation in which the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock. A provisional director may be appointed notwithstanding the absence of a vacancy on the board of directors, and such director shall have all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors, until such time as the provisional director is removed by order of the court or, unless otherwise ordered by a court, removed by a vote of the

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shareholders sufficient either to elect a majority of the board of directors or, if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action. A provisional director shall be an impartial person who is neither a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the court.

(2) A provisional director shall report from time to time to the court concerning the matter complained of, or the status of the deadlock, if any, and of the status of the corporation's business, as the court shall direct. No provisional director shall be liable for any action taken or decision made, except as directors may be liable under s. 607.0831. In addition, the provisional director shall submit to the court, if so directed, recommendations as to the appropriate disposition of the action. Whenever a provisional director is appointed, any officer or director of the corporation may, from time to time, petition the court for instructions clarifying the duties and responsibilities of such officer or director.

(3) In any proceeding under this section, the court shall allow reasonable compensation to the provisional director for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation.

Section 82. Section 607.0801, Florida Statutes, is amended to read:

607.0801 Requirement for and duties of board of directors.—

(1) Except as may be provided in an agreement authorized

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4177 pursuant to s. 607.0732(1), each corporation must have a board  
4178 of directors.

4179 (2) All corporate powers shall be exercised by or under the  
4180 authority of the board of directors of the corporation, and the  
4181 business and affairs of the corporation shall be managed by or  
4182 under the direction of, and subject to the oversight of, its  
4183 board of directors, subject to any limitation set forth in the  
4184 articles of incorporation or in an agreement authorized under s.  
4185 607.0732.

4186 Section 83. Section 607.0802, Florida Statutes, is amended  
4187 to read:

4188 607.0802 Qualifications of directors.—

4189 (1) Directors must be natural persons who are 18 years of  
4190 age or older but need not be residents of this state or  
4191 shareholders of the corporation unless the articles of  
4192 incorporation or bylaws so require. The articles of  
4193 incorporation or bylaws may prescribe additional qualifications  
4194 for directors or nominees for directors.

4195 (2) A qualification for nomination for director prescribed  
4196 before a person's nomination shall apply to such person at the  
4197 time of nomination. A qualification for nomination for director  
4198 prescribed after a person's nomination does not apply to such  
4199 person with respect to such nomination.

4200 (3) A qualification for director prescribed before a  
4201 director has been elected or appointed may apply only at the  
4202 time an individual becomes a director or may apply during a  
4203 director's term. A qualification prescribed after a director has  
4204 been elected or appointed does not apply to that director before  
4205 the end of that director's term.

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4206 ~~(4)(2)~~ In the event that the eligibility to serve as a  
4207 member of the board of directors of a condominium association,  
4208 cooperative association, homeowners' association, or mobile home  
4209 owners' association is restricted to membership in such  
4210 association and membership is appurtenant to ownership of a  
4211 unit, parcel, or mobile home, a grantor of a trust described in  
4212 s. 733.707(3), or a qualified beneficiary as defined in s.  
4213 736.0103 of a trust which owns a unit, parcel, or mobile home  
4214 shall be deemed a member of the association and eligible to  
4215 serve as a director of the condominium association, cooperative  
4216 association, homeowners' association, or mobile home owners'  
4217 association, provided that said beneficiary occupies the unit,  
4218 parcel, or mobile home.

4219 Section 84. Subsection (3) of section 607.0803, Florida  
4220 Statutes, is amended to read:

4221 607.0803 Number of directors.—

4222 (3) Directors are elected at the first annual shareholders'  
4223 meeting and at each annual shareholders' meeting thereafter,  
4224 unless elected by written consent in lieu of an annual  
4225 shareholders' meeting pursuant to s. 607.0704 or unless their  
4226 terms are staggered under s. 607.0806.

4227 Section 85. Section 607.0804, Florida Statutes, is amended  
4228 to read:

4229 607.0804 Election of directors by certain voting groups;  
4230 special voting rights of certain directors.—The articles of  
4231 incorporation may confer upon holders of any voting group the  
4232 right to elect one or more directors who shall serve for such  
4233 term and have such voting powers as are stated in the articles  
4234 of incorporation. The terms of office and voting powers of the

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directors elected in the manner provided in the articles of incorporation may be greater than or less than those of any other director or class of directors. If the articles of incorporation provide that directors elected by the holders of a voting group shall have more or less than one vote per director on any matter, every reference in this ~~chapter~~ act to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors. If a shareholders' agreement meeting the requirements of s. 607.0732, or articles of incorporation or bylaws meeting the requirements of s. 607.0732, provide that directors shall have more or less than one vote per director on any matter, every reference in this chapter to a majority or other proportion of directors shall refer to a majority or other proportion of the votes of such directors.

Section 86. Subsections (2) and (5) of section 607.0805, Florida Statutes, are amended to read:

607.0805 Terms of directors generally.—

(2) The terms of all other directors expire at the next annual shareholders' meeting following their election, except to the extent:

(a) Provided in s. 607.0806;

(b) Provided in s. 607.1023 if a bylaw electing to be governed by that section is in effect; or

(c) That a shorter term is specified in the articles of incorporation in the event of a director nominee failing to receive a specified vote for election unless their terms are staggered under s. 607.0806.

(5) Except to the extent otherwise provided in the articles

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of incorporation or under s. 607.1023, if a bylaw electing to be governed by that section is in effect, despite the expiration of a director's term, the director continues to serve until his or her successor is elected and qualifies or until there is a decrease in the number of directors.

Section 87. Section 607.0806, Florida Statutes, is amended to read:

607.0806 Staggered terms for directors.—

(1) The directors of any corporation organized under this act may, by the articles of incorporation, the initial bylaws or by an initial bylaw, or by a bylaw adopted by a vote of the shareholders, may provide for staggering the terms of directors by dividing the total number of directors into two or three groups, with each group containing half or one-third of the total, as near as may be practicable. In that event, the terms of the first group expire at the first annual shareholders' meeting after their election, the terms of the second group expire at the second annual shareholders' meeting after their election, and the terms of the third group, if any, expire at the third annual shareholders' meeting after their election. At each annual shareholders' meeting held thereafter, directors shall be elected for a term of two years or three years be divided into one, two, or three classes with the number of directors in each class being as nearly equal as possible; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be,

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to succeed those whose terms expire. If the directors have staggered terms, then any increase or decrease in the number of directors shall be so apportioned among the classes as to make all classes as nearly equal in number as possible.

(2) In the case of any Florida corporation in existence prior to July 1, 1990, directors of such corporation divided into four classes may continue to serve staggered terms as the articles of incorporation or bylaws of such corporation provided immediately prior to the effective date of this chapter act, unless and until the articles of incorporation or bylaws are amended to alter or terminate such classes.

Section 88. Section 607.0807, Florida Statutes, is amended to read:

607.0807 Resignation of directors.—

(1) A director may resign at any time by delivering written notice of resignation to the board of directors or its chair or to the secretary of the corporation.

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

(3) A resignation that specifies a later effective date or that is conditioned upon the subsequent happening of an event or events or upon failing to receive a specified vote for election

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as a director may provide that the resignation is irrevocable.

Section 89. Subsections (3) and (4) of section 607.0808, Florida Statutes, are amended to read:

607.0808 Removal of directors by shareholders.—

(3) A director may be removed if the number of votes cast to remove the director exceeds the number of votes cast not to remove the director, except to the extent the articles of incorporation or bylaws require a greater number; provided that if cumulative voting is authorized, a director may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director under cumulative voting is voted against his or her removal and, if action is taken by less than unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect the director under cumulative voting do not consent to the removal. If cumulative voting is not authorized, a director may be removed only if the number of votes cast to remove the director exceeds the number of votes cast not to remove him or her.

(4) A director may be removed by the shareholders only at a meeting of shareholders called for the purpose of removing the director and the meeting notice must state that the, provided the notice of the meeting states that the purpose, or one of the purposes, of the meeting is removal of the director is the purpose of the meeting.

Section 90. Section 607.08081, Florida Statutes, is created to read:

607.08081 Removal of directors by judicial proceedings.—

(1) The circuit court in the applicable county may remove a director from office, and may order other relief, including

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barring the director from reelection for a period prescribed by the court, in a proceeding commenced by or in the right of the corporation if the court finds that:

(a) The director engaged in fraudulent conduct with respect to the corporation or its shareholders, grossly abused the position of director, or intentionally inflicted harm on the corporation; and

(b) Considering the director's course of conduct and the inadequacy of other available remedies, removal or such other relief would be in the best interest of the corporation.

(2) A shareholder proceeding on behalf of the corporation under paragraph (1)(a) shall comply with all of the requirements of ss. 607.0741-607.0747, except s. 607.0741(1).

Section 91. Section 607.0809, Florida Statutes, is amended to read:

607.0809 Vacancy on board.—

(1) Unless the articles of incorporation provide otherwise, if ~~Whenever~~ a vacancy occurs on a board of directors, including a vacancy resulting from an increase in the number of directors, ~~it may be filled by the affirmative vote of a majority of the remaining directors, though less than a quorum of the board of directors, or by the shareholders, unless the articles of incorporation provide otherwise~~

(a) The shareholders may fill the vacancy;

(b) The board of directors may fill the vacancy; or

(c) If the directors remaining in office are less than a quorum, the vacancy may be filled by the affirmative vote of a majority of all the directors then remaining in office.

(2) If the vacant office was held by a director elected by

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a voting group of shareholders, only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled by the shareholders, and only the remaining directors elected by that voting group, even if less than a quorum, are entitled to fill the vacancy if it is filled by the directors ~~Whenever the holders of shares of any voting group are entitled to elect a class of one or more directors by the provisions of the articles of incorporation, vacancies in such class may be filled by holders of shares of that voting group or by a majority of the directors then in office elected by such voting group or by a sole remaining director so elected. If no director elected by such voting group remains in office, unless the articles of incorporation provide otherwise, directors not elected by such voting group may fill vacancies as provided in subsection (1).~~

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

Section 92. Subsection (4) of section 607.0820, Florida Statutes, is amended to read:

607.0820 Meetings.—

(4) Unless the articles of incorporation or bylaws provide otherwise, the board of directors may permit any or all directors to participate in any meeting of the board of directors ~~a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which~~

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all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

Section 93. Subsections (1) and (2) of section 607.0821, Florida Statutes, are amended to read:

607.0821 Action by directors without a meeting.—

(1) Unless the articles of incorporation or bylaws provide otherwise, action required or permitted by this chapter ~~act~~ to be taken at a board of directors' meeting or committee meeting may be taken without a meeting if the action is taken by all members of the board or of the committee. The action must be evidenced by one or more written consents describing the action taken and signed by each director or committee member and delivered to the corporation.

(2) Action taken under this section is effective when the last director signs the consent and delivers the consent to the corporation, unless the consent specifies a different effective date. A director's consent may be withdrawn by a revocation signed by the director and delivered to the corporation prior to delivery to the corporation of unrevoked written consents signed by all the directors.

Section 94. Section 607.0823, Florida Statutes, is amended to read:

607.0823 Waiver of notice.—Notice of a meeting of the board of directors need not be given to any director who signs a waiver of notice either before or after the meeting. Attendance of a director at a meeting shall constitute a waiver of notice of such meeting and a waiver of any and all objections to the date, time, place, or purpose of the meeting, ~~the time of the~~

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~~meeting,~~ or the manner in which it has been called or convened, except when a director states, at the beginning of the meeting or promptly upon arrival at the meeting, any objection to holding the meeting or to the transaction of business because the meeting is not lawfully called or convened and if the director, after objection, does not vote for or consent to action taken at the meeting.

Section 95. Subsections (1), (2), and (3) of section 607.0824, Florida Statutes, are amended, present subsection (4) of that section is redesignated as subsection (5), and a new subsection (4) is added to that section, to read:

607.0824 Quorum and voting.—

(1) Unless the articles of incorporation or bylaws provide for a greater or lesser number, or unless otherwise expressly provided in this chapter ~~require a different number~~, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with ~~prescribed by~~ the articles of incorporation or the bylaws.

(2) The quorum of the board of directors specified in or fixed in accordance with the articles of incorporation or bylaws ~~may not consist of less than may authorize a quorum of a board of directors to consist of less than a majority but no fewer than one-third of the specified or fixed prescribed number of directors determined under the articles of incorporation or the bylaws.~~

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors or

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unless otherwise expressly provided for in this chapter.

(4) If any directors have special voting rights in compliance with the provisions of s. 607.0804, the quorum and voting requirements of this section shall be determined consistent with the provisions of s. 607.0804.

Section 96. Section 607.0825, Florida Statutes, is amended to read:

607.0825 Committees.—

(1) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, the board of directors may establish ~~provide~~, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other board committees to perform functions of the board of directors. Such committees shall be composed exclusively of one or more directors ~~committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:~~

~~(a) Approve or recommend to shareholders actions or proposals required by this act to be approved by shareholders.~~

~~(b) Fill vacancies on the board of directors or any committee thereof.~~

~~(c) Adopt, amend, or repeal the bylaws.~~

~~(d) Authorize or approve the reacquisition of shares unless pursuant to a general formula or method specified by the board of directors.~~

~~(e) Authorize or approve the issuance or sale or contract~~

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~~for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.~~

(2) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, the establishment of a board committee, the appointment of members to such committee, the dissolution of a previously created board committee, and the removal of members from a previously created board committee must be approved by a majority of all the directors in office when the action is taken ~~Unless the articles of incorporation or bylaws provide otherwise, ss. 607.0820, 607.0822, 607.0823, and 607.0824 which govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors apply to committees and their members as well.~~

(3) Sections 607.0820-607.0824, which govern meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to board committees and their members as well.

(4) A board committee may exercise the powers of the board of directors under s. 607.0801, except that a board committee may not:

(a) Authorize or approve the reacquisition of shares unless pursuant to a formula or method, or within limits, prescribed by the board of directors.

(b) Approve, recommend to shareholders, or propose to shareholders action that this chapter requires be approved by shareholders.

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4525 (c) Fill vacancies on the board of directors or on any  
 4526 board committee.  
 4527 (d) Adopt, amend, or repeal bylaws.  
 4528 (5) The establishment of, delegation of authority to, or  
 4529 action by a committee does not alone constitute compliance by a  
 4530 director with the standards of conduct described in s. 607.0830.  
 4531 (6) The board of directors may appoint ~~Each committee must~~  
 4532 ~~have two or more members who serve at the pleasure of the board~~  
 4533 ~~of directors. The board, by resolution adopted in accordance~~  
 4534 ~~with subsection (1), may designate one or more directors as~~  
 4535 ~~alternate members of any board~~ such committee to fill a vacancy  
 4536 on the committee or to replace who may act in the place and  
 4537 stead of any absent or disqualified member of such committee  
 4538 during the member's absence or disqualification. If the articles  
 4539 of incorporation, the bylaws, or the resolution creating the  
 4540 board committee so provide, the member or members present at any  
 4541 board committee meeting and not disqualified from voting, by  
 4542 unanimous action, may appoint another director to act in place  
 4543 of an absent or disqualified member during that member's absence  
 4544 or disqualification or members at any meeting of such committee.  
 4545 ~~(4) Neither the designation of any such committee, the~~  
 4546 ~~delegation thereto of authority, nor action by such committee~~  
 4547 ~~pursuant to such authority shall alone constitute compliance by~~  
 4548 ~~any member of the board of directors not a member of the~~  
 4549 ~~committee in question with his or her responsibility to act in~~  
 4550 ~~good faith, in a manner he or she reasonably believes to be in~~  
 4551 ~~the best interests of the corporation, and with such care as an~~  
 4552 ~~ordinarily prudent person in a like position would use under~~  
 4553 ~~similar circumstances.~~

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4554 Section 97. Section 607.0826, Florida Statutes, is created  
 4555 to read:  
 4556 607.0826 Submission of matters for a shareholder vote.—A  
 4557 corporation may agree to submit a matter to a vote of its  
 4558 shareholders even if, after approving the matter, the board of  
 4559 directors determines it no longer recommends the matter.  
 4560 Section 98. Section 607.0830, Florida Statutes, is amended  
 4561 to read:  
 4562 607.0830 General standards for directors.—  
 4563 (1) Each member of the board of directors, when discharging  
 4564 the duties of a director, including in discharging his or her  
 4565 duties as a member of a board committee, must act ~~A director~~  
 4566 ~~shall discharge his or her duties as a director, including his~~  
 4567 ~~or her duties as a member of a committee:~~  
 4568 (a) In good faith; and  
 4569 (b) With the care an ordinarily prudent person in a like  
 4570 ~~position would exercise under similar circumstances; and~~  
 4571 ~~(c) In a manner he or she reasonably believes to be in the~~  
 4572 ~~best interests of the corporation.~~  
 4573 (2) The members of the board of directors or a board  
 4574 committee, when becoming informed in connection with a  
 4575 decisionmaking function or devoting attention to an oversight  
 4576 function, shall discharge their duties with the care that an  
 4577 ordinary prudent person in a like position would reasonably  
 4578 believe appropriate under similar circumstances ~~In discharging~~  
 4579 ~~his or her duties, a director is entitled to rely on~~  
 4580 ~~information, opinions, reports, or statements, including~~  
 4581 ~~financial statements and other financial data, if prepared or~~  
 4582 ~~presented by:~~

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4583 ~~(a) One or more officers or employees of the corporation~~  
 4584 ~~whom the director reasonably believes to be reliable and~~  
 4585 ~~competent in the matters presented;~~  
 4586 ~~(b) Legal counsel, public accountants, or other persons as~~  
 4587 ~~to matters the director reasonably believes are within the~~  
 4588 ~~persons' professional or expert competence; or~~  
 4589 ~~(c) A committee of the board of directors of which he or~~  
 4590 ~~she is not a member if the director reasonably believes the~~  
 4591 ~~committee merits confidence.~~  
 4592 (3) In discharging board or board committee duties, a  
 4593 director who does not have knowledge that makes reliance  
 4594 unwarranted is entitled to rely on the performance by any of the  
 4595 persons specified in paragraph (5) (a) or paragraph (5) (b) to  
 4596 whom the board may have delegated, formally or informally by  
 4597 course of conduct, the authority or duty to perform one or more  
 4598 of the board's functions that are delegable under applicable  
 4599 law.  
 4600 (4) In discharging board or board committee duties, a  
 4601 director who does not have knowledge that makes reliance  
 4602 unwarranted is entitled to rely on information, opinions,  
 4603 reports, or statements, including financial statements and other  
 4604 financial data, prepared or presented by any of the persons  
 4605 specified in subsection (5).  
 4606 (5) A director is entitled to rely, in accordance with  
 4607 subsection (3) or subsection (4), on:  
 4608 (a) One or more officers or employees of the corporation  
 4609 whom the director reasonably believes to be reliable and  
 4610 competent in the functions performed or the information,  
 4611 opinions, reports, or statements provided;

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4612 (b) Legal counsel, public accountants, or other persons  
 4613 retained by the corporation or by a committee of the board of  
 4614 the corporation as to matters involving skills or expertise the  
 4615 director reasonably believes are matters:  
 4616 1. Within the particular person's professional or expert  
 4617 competence; or  
 4618 2. As to which the particular person merits confidence; or  
 4619 (c) A committee of the board of directors of which the  
 4620 director is not a member if the director reasonably believes the  
 4621 committee merits confidence.  
 4622 (6)(3) In discharging board or board committee his or her  
 4623 duties, a director may consider such factors as the director  
 4624 deems relevant, including the long-term prospects and interests  
 4625 of the corporation and its shareholders, and the social,  
 4626 economic, legal, or other effects of any action on the  
 4627 employees, suppliers, customers of the corporation or its  
 4628 subsidiaries, the communities and society in which the  
 4629 corporation or its subsidiaries operate, and the economy of the  
 4630 state and the nation.  
 4631 ~~(4) A director is not acting in good faith if he or she has~~  
 4632 ~~knowledge concerning the matter in question that makes reliance~~  
 4633 ~~otherwise permitted by subsection (2) unwarranted.~~  
 4634 ~~(5) A director is not liable for any action taken as a~~  
 4635 ~~director, or any failure to take any action, if he or she~~  
 4636 ~~performed the duties of his or her office in compliance with~~  
 4637 ~~this section.~~  
 4638 Section 99. Subsections (1) and (3) of section 607.0831,  
 4639 Florida Statutes, are amended to read:  
 4640 607.0831 Liability of directors.-

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(1) A director is not personally liable for monetary damages to the corporation or any other person for any statement, vote, decision to take or not to take action, or any failure to take any action, as or failure to act, regarding ~~corporate management or policy, by~~ a director, unless:

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

(b) The director's breach of, or failure to perform, those duties constitutes any of the following:

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

2. A circumstance under which the A transaction at issue is one from which the director derived an improper personal benefit, either directly or indirectly;

3. A circumstance under which the liability provisions of s. 607.0834 are applicable;

4. In a proceeding by or in the right of the corporation to procure a judgment in its favor or by or in the right of a shareholder, conscious disregard for the best interest of the corporation, or willful or intentional misconduct; or

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5. In a proceeding by or in the right of someone other than the corporation or a shareholder, recklessness or an act or omission which was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

(3) A director is deemed not to have derived an improper personal benefit from any transaction if the transaction and the nature of any personal benefit derived by the director are not prohibited by state or federal law or regulation and, without further limitation:

(a) In an action other than a derivative suit regarding a decision by the director to approve, reject, or otherwise affect the outcome of an offer to purchase the shares ~~stock~~ of, or to effect a merger of, the corporation, the transaction and the nature of any personal benefits derived by a director are disclosed or known to all directors voting on the matter, and the transaction was authorized, approved, or ratified by at least two directors who comprise a majority of the disinterested directors (whether or not such disinterested directors constitute a quorum); or

(b) The transaction is fair to the corporation at the time it is authorized, approved, or ratified as determined in accordance with s. 607.0832 and the nature of any personal ~~benefits derived by a director are disclosed or known to the shareholders entitled to vote, and the transaction was authorized, approved, or ratified by the affirmative vote or written consent of such shareholders who hold a majority of the shares, the voting of which is not controlled by directors who derived a personal benefit from or otherwise had a personal~~

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4699 ~~interest in the transaction; or~~

4700 ~~(e) The transaction was fair and reasonable to the~~  
 4701 ~~corporation at the time it was authorized by the board, a~~  
 4702 ~~committee, or the shareholders, notwithstanding that a director~~  
 4703 ~~received a personal benefit.~~

4704 Section 100. Section 607.0832, Florida Statutes, is amended  
 4705 to read:

4706 607.0832 Director conflicts of interest.—

4707 (1) As used in this section, the following terms and  
 4708 definitions apply:

4709 (a) "Director's conflict of interest transaction" means a  
 4710 transaction between a corporation and one or more of its  
 4711 directors, or another entity in which one or more of the  
 4712 corporation's directors is directly or indirectly a party to the  
 4713 transaction, other than being an indirect party as a result of  
 4714 being a shareholder of the corporation, and has a direct or  
 4715 indirect material financial interest or other material interest.

4716 (b) "Fair to the corporation" means that the transaction,  
 4717 as a whole, is beneficial to the corporation and its  
 4718 shareholders, taking into appropriate account whether it is:

4719 1. Fair in terms of the director's dealings with the  
 4720 corporation in connection with that transaction; and

4721 2. Comparable to what might have been obtainable in an  
 4722 arm's length transaction.

4723 (c) "Family member" includes any of the following:

4724 1. The director's spouse.

4725 2. A child, stepchild, parent, stepparent, grandparent,  
 4726 sibling, step sibling, or half sibling of the director or the  
 4727 director's spouse.

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4728 (d) A director is "indirectly" a party to a transaction if  
 4729 that director has a material financial interest in or is a  
 4730 director, officer, member, manager, or partner of a person,  
 4731 other than the corporation, who is a party to the transaction.

4732 (e) A director has an "indirect material financial  
 4733 interest" if a family member has a material financial interest  
 4734 in the transaction, other than having an indirect interest as a  
 4735 shareholder of the corporation, or if the transaction is with an  
 4736 entity, other than the corporation, which has a material  
 4737 financial interest in the transaction and controls, or is  
 4738 controlled by, the director or another person specified in this  
 4739 subsection.

4740 (f) "Material financial interest" or "other material  
 4741 interest" means a financial or other interest in the transaction  
 4742 that would reasonably be expected to impair the objectivity of  
 4743 the director's judgment when participating in the action on the  
 4744 authorization of the transaction.

4745 (2) If a director's conflict of interest transaction is  
 4746 fair to the corporation at the time it is authorized, approved,  
 4747 effectuated, or ratified:

4748 (a) Such transaction is not void or voidable; and

4749 (b) The fact that the transaction is a director's conflict  
 4750 of interest transaction is not grounds for any equitable relief,  
 4751 an award of damages, or other sanctions,

4752 because of that relationship or interest, because such director  
 4753 or directors are present at the meeting of the board of  
 4754 directors or a committee thereof which authorizes, approves, or  
 4755 ratifies such transaction, or because his or her or their votes  
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are counted for such purpose.

(3) (a) In a proceeding challenging the validity of a director's conflict of interest transaction or in a proceeding seeking equitable relief, award of damages, or other sanctions with respect to a director's conflict of interest transaction, the person challenging the validity or seeking equitable relief, award of damages, or other sanctions has the burden of proving the lack of fairness of the transaction if:

1. The material facts of the transaction and the director's interest in the transaction were disclosed or known to the board of directors or committee that authorizes, approves, or ratifies the transaction and the transaction was authorized, approved, or ratified by a vote of a majority of the qualified directors even if the qualified directors constitute less than a quorum of the board or the committee; however, the transaction cannot be authorized, approved, or ratified under this subsection solely by a single director; or

2. The material facts of the transaction and the director's interest in the transaction were disclosed or known to the shareholders who voted upon such transaction and the transaction was authorized, approved, or ratified by a majority of the votes cast by disinterested shareholders or by the written consent of disinterested shareholders representing a majority of the votes that could be cast by all disinterested shareholders. Shares owned by or voted under the control of a director who has a relationship or interest in the director's conflict of interest transaction may not be considered shares owned by a disinterested shareholder and may not be counted in a vote of shareholders to determine whether to authorize, approve, or

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ratify a director's conflict of interest transaction under this subparagraph. The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this chapter. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subparagraph constitutes a quorum for the purpose of taking action under this section.

(b) If neither of the conditions provided in paragraph (a) has been satisfied, the person defending or asserting the validity of a director's conflict of interest transaction has the burden of proving its fairness in a proceeding challenging the validity of the transaction.

(4) The presence of or a vote cast by a director with an interest in the transaction does not affect the validity of an action taken under paragraph (3) (a) if the transaction is otherwise authorized, approved, or ratified as provided in subsection (3), but the presence or vote of the director may be counted for purposes of determining whether the transaction is approved under other sections of this chapter.

(5) In addition to other grounds for challenge, a party challenging the validity of the transaction is not precluded from asserting and proving that a particular director or shareholder was not disinterested on grounds of financial or other interest for purposes of the vote on, consent to, or approval of the transaction.

(6) If directors' action under this section does not otherwise satisfy a quorum or voting requirement applicable to the authorization of the transaction by directors as required by the articles of incorporation, the bylaws, this chapter, or any

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other law, an action to satisfy those authorization requirements, whether as part of the same action or by way of another action, must be taken by the board of directors or a committee in order to authorize the transaction. In such action, the vote or consent of directors who are not disinterested may be counted.

(7) Where shareholders' action under this section does not satisfy a quorum or voting requirement applicable to the authorization of the transaction by shareholders as required by the articles of incorporation, the bylaws, this chapter, or any other law, an action to satisfy those authorization requirements, whether as part of the same action or by way of another action, must be taken by the shareholders in order to authorize the transaction. In such action, the vote or consent of shareholders who are not disinterested shareholders may be counted. No contract or other transaction between a corporation and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested shall be either void or voidable because of such relationship or interest, because such director or directors are present at the meeting of the board of directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction, or because his or her or their votes are counted for such purpose, if:

(a) The fact of such relationship or interest is disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction by a vote or consent sufficient for the purpose without counting

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~~the votes or consents of such interested directors;~~

~~(b) The fact of such relationship or interest is disclosed or known to the shareholders entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or written consent; or~~

~~(c) The contract or transaction is fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the shareholders.~~

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

~~(3) For purposes of paragraph (1)(b), a conflict of interest transaction is authorized, approved, or ratified if it receives the vote of a majority of the shares entitled to be~~

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~~counted under this subsection. Shares owned by or voted under the control of a director who has a relationship or interest in the transaction described in subsection (1) may not be counted in a vote of shareholders to determine whether to authorize, approve, or ratify a conflict of interest transaction under paragraph (1)(b). The vote of those shares, however, is counted in determining whether the transaction is approved under other sections of this act. A majority of the shares, whether or not present, that are entitled to be counted in a vote on the transaction under this subsection constitutes a quorum for the purpose of taking action under this section.~~

Section 101. Section 607.0833, Florida Statutes, is amended to read:

607.0833 Loans to officers, directors, and employees; guaranty of obligations.—Any corporation may lend money to, guarantee any obligation of, or otherwise assist any officer, director, or employee of the corporation or of a subsidiary, whenever, in the judgment of the board of directors, such loan, guaranty, or assistance may reasonably be expected to benefit the corporation. The loan, guaranty, or other assistance may be with or without interest and may be unsecured or secured in such manner as the board of directors shall approve, including, ~~without limitation,~~ a pledge of shares of stock of the corporation. Nothing in this section shall be deemed to deny, limit, or restrict the powers of guaranty or warranty of any corporation at common law or under any statute. Loans, guarantees, or other types of assistance are subject to s. 607.0832.

Section 102. Subsections (1) and (3) of section 607.0834,

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Florida Statutes, are amended to read:

607.0834 Liability for unlawful distributions.—

(1) A director who votes for or assents to a distribution made in violation of s. 607.06401, s. 607.1410(1), or the articles of incorporation is personally liable to the corporation for the amount of the distribution that exceeds what could have been distributed without violating s. 607.06401, s. 607.1410(1), or the articles of incorporation if it is established that the director did not perform his or her duties in compliance with s. 607.0830. In any proceeding commenced under this section, a director has all of the defenses ordinarily available to a director.

(3) A proceeding under this section is barred unless it is commenced:

(a) Within 2 years after the date on which the effect of the distribution was measured under s. 607.06401(6) or (8);—

(b) Within 2 years after the date as of which the violation of s. 607.06401 occurred as the consequence of disregard of a restriction in the articles of incorporation;

(c) Within 2 years after the date on which the distribution of assets to shareholders under s. 607.1410(1) was made; or

(d) With regard to contribution or recoupment under subsection (2), within 1 year after the liability of the claimant has been finally adjudicated under subsection (1).

Section 103. Subsections (2) and (3) of section 607.08401, Florida Statutes, are amended to read:

607.08401 Required officers.—

(2) The board of directors may appoint one or more individuals to act as the officers of the corporation. A duly

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appointed officer may appoint one or more officers or assistant officers if authorized by the bylaws or the board of directors.

(3) The bylaws or the board of directors shall assign ~~delegate~~ to one of the officers responsibility for preparing minutes of the directors' and shareholders' meetings and for authenticating records of the corporation required to be kept pursuant to s. 607.1601(1) and (5).

Section 104. Section 607.08411, Florida Statutes, is created to read:

607.08411 General standards for officers.-

(1) An officer, when performing in such capacity, shall act:

(a) In good faith; and

(b) In a manner the officer reasonably believes to be in the best interests of the corporation.

(2) An officer, when becoming informed in connection with a decisionmaking function, shall discharge his or her duties with the care that an ordinary prudent person in a like position would reasonably believe appropriate under similar circumstances.

(3) The duty of an officer includes the obligation to:

(a) Inform the superior officer to whom, or the board of directors or the committee to which, the officer reports of information about the affairs of the corporation known to the officer, within the scope of the officer's functions, and known or as should be known to the officer to be material to such superior officer, board, or committee; and

(b) Inform his or her superior officer, or another appropriate person within the corporation, or the board of

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directors, or a committee thereof, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by an officer, employee, or agent of the corporation the officer believes has occurred or is likely to occur.

(4) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the persons specified in subsection (6) to whom the responsibilities were properly delegated, formally or informally, by course of conduct.

(5) In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in subsection (6).

(6) An officer is entitled to rely, in accordance with subsection (4) or subsection (5), on:

(a) One or more other officers of the corporation or one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;

(b) Legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters within the particular person's professional or expert competence or as to which the particular person merits confidence.

Section 105. Section 607.0842, Florida Statutes, is amended to read:

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4989 607.0842 Resignation and removal of officers.—  
 4990 (1) An officer may resign at any time by delivering a  
 4991 written notice to the corporation. A resignation is effective as  
 4992 provided in s. 607.0141(5) when the notice is delivered unless  
 4993 the notice provides for a delayed effectiveness, including  
 4994 effectiveness determined upon a future event or events specifies  
 4995 a later effective date. If effectiveness of a resignation is  
 4996 stated to be delayed and the board of directors or appointing  
 4997 officer accepts the delay, the made effective at a later date  
 4998 and the corporation accepts the future effective date, its board  
 4999 of directors or the appointing officer may fill the pending  
 5000 vacancy before the delayed effectiveness effective date if the  
 5001 board of directors or appointing officer provides that the  
 5002 successor does not take office until the vacancy occurs  
 5003 effective date.  
 5004 (2) An officer may be removed at any time with or without  
 5005 cause by:  
 5006 (a) The board of directors;  
 5007 (b) The appointing officer, unless the bylaws or the board  
 5008 of directors provide otherwise; or  
 5009 (c) Any other officer, if authorized by the bylaws or the  
 5010 board of directors.  
 5011 (3) For the purposes of this section, the term "appointing  
 5012 officer" means the officer, including any successor to that  
 5013 officer, who appointed the officer resigning or being removed A  
 5014 board of directors may remove any officer at any time with or  
 5015 without cause. Any officer or assistant officer, if appointed by  
 5016 another officer, may likewise be removed by such officer.  
 5017 Section 106. Section 607.0850, Florida Statutes, is amended

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5018 to read:  
 5019 607.0850 ~~Definitions Indemnification of officers,~~  
 5020 ~~directors, employees, and agents.—In ss. 607.0850-607.0859, the~~  
 5021 ~~term:~~  
 5022 (1) "Agent" includes a volunteer.  
 5023 (2) "Corporation" includes, in addition to the resulting  
 5024 corporation, any constituent corporation (including any  
 5025 constituent of a constituent) absorbed in a merger, so that any  
 5026 person who is or was a director or officer of a constituent  
 5027 corporation, or is or was serving at the request of a  
 5028 constituent corporation as a director or officer, member,  
 5029 manager, partner, trustee, employee, or agent of another  
 5030 domestic or foreign corporation, limited liability company,  
 5031 partnership, joint venture, trust, employee benefit plan, or  
 5032 other enterprise or entity, is in the same position under this  
 5033 section with respect to the resulting or surviving corporation  
 5034 as he or she would have been with respect to such constituent  
 5035 corporation if its separate existence had continued.  
 5036 (3) "Director" or "officer" means an individual who is or  
 5037 was a director or officer, respectively, of a corporation or  
 5038 who, while a director or officer of the corporation, is or was  
 5039 serving at the corporation's request as a director or officer,  
 5040 manager, partner, trustee, employee, or agent of another  
 5041 domestic or foreign corporation, limited liability company,  
 5042 partnership, joint venture, trust, employee benefit plan, or  
 5043 another enterprise or entity. A director or officer is  
 5044 considered to be serving an employee benefit plan at the  
 5045 corporation's request if the individual's duties to the  
 5046 corporation or such plan also impose duties on, or otherwise

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involve services by, the individual to the plan or to participants in or beneficiaries of the plan. The term includes, unless the context otherwise requires, the estate, heirs, executors, administrators, and personal representatives of a director or officer.

(4) "Expenses" includes reasonable attorney fees, including those incurred in connection with any appeal.

(5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred with respect to a proceeding.

(6) "Party" means an individual who was, is, or is threatened to be made, a defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, arbitrative, or investigative and whether formal or informal.

(8) "Serving at the corporation's request" includes any service as a director, officer, employee, or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries.

~~(1) A corporation shall have power to indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that he or she is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of~~

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~~another corporation, partnership, joint venture, trust, or other enterprise against liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in, or not opposed to, the best interests of the corporation or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.~~

~~(2) A corporation shall have power to indemnify any person, who was or is a party to any proceeding by or in the right of the corporation to procure a judgment in its favor by reason of the fact that the person is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he or she reasonably~~

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believed to be in, or not opposed to, the best interests of the corporation, except that no indemnification shall be made under this subsection in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the court in which such proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper.

(3) To the extent that a director, officer, employee, or agent of a corporation has been successful on the merits or otherwise in defense of any proceeding referred to in subsection (1) or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be indemnified against expenses actually and reasonably incurred by him or her in connection therewith.

(4) Any indemnification under subsection (1) or subsection (2), unless pursuant to a determination by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in subsection (1) or subsection (2). Such determination shall be made:

(a) By the board of directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such a quorum is not obtainable or, even if

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obtainable, by majority vote of a committee duly designated by the board of directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

~~(c) By independent legal counsel:~~

1. Selected by the board of directors prescribed in paragraph (a) or the committee prescribed in paragraph (b); or

2. If a quorum of the directors cannot be obtained for paragraph (a) and the committee cannot be designated under paragraph (b), selected by majority vote of the full board of directors (in which directors who are parties may participate); or

(d) By the shareholders by a majority vote of a quorum consisting of shareholders who were not parties to such proceeding or, if no such quorum is obtainable, by a majority vote of shareholders who were not parties to such proceeding.

(5) Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph (4) (c) shall evaluate the reasonableness of expenses and may authorize indemnification.

(6) Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or she is ultimately found not to be entitled to indemnification by the

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corporation pursuant to this section. Expenses incurred by other employees and agents may be paid in advance upon such terms or conditions that the board of directors deems appropriate.

~~(7) The indemnification and advancement of expenses provided pursuant to this section are not exclusive, and a corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw, agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his or her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:~~

~~(a) A violation of the criminal law, unless the director, officer, employee, or agent had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful;~~

~~(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit;~~

~~(c) In the case of a director, a circumstance under which the liability provisions of s. 607.0834 are applicable; or~~

~~(d) Willful misconduct or a conscious disregard for the best interests of the corporation in a proceeding by or in the right of the corporation to procure a judgment in its favor or in a proceeding by or in the right of a shareholder.~~

~~(8) Indemnification and advancement of expenses as provided~~

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~~in this section shall continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person, unless otherwise provided when authorized or ratified.~~

~~(9) Unless the corporation's articles of incorporation provide otherwise, notwithstanding the failure of a corporation to provide indemnification, and despite any contrary determination of the board or of the shareholders in the specific case, a director, officer, employee, or agent of the corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:~~

~~(a) The director, officer, employee, or agent is entitled to mandatory indemnification under subsection (3), in which case the court shall also order the corporation to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;~~

~~(b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the corporation of its power pursuant to subsection (7); or~~

~~(c) The director, officer, employee, or agent is fairly and~~

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reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in subsection (1), subsection (2), or subsection (7).

~~(10) For purposes of this section, the term "corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee, or agent of a constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, is in the same position under this section with respect to the resulting or surviving corporation as he or she would have with respect to such constituent corporation if its separate existence had continued.~~

~~(11) For purposes of this section:~~

~~(a) The term "other enterprises" includes employee benefit plans;~~

~~(b) The term "expenses" includes counsel fees, including those for appeal;~~

~~(c) The term "liability" includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses actually and reasonably incurred with respect to a proceeding;~~

~~(d) The term "proceeding" includes any threatened, pending, or completed action, suit, or other type of proceeding, whether civil, criminal, administrative, or investigative and whether~~

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~~formal or informal;~~

~~(e) The term "agent" includes a volunteer;~~

~~(f) The term "serving at the request of the corporation" includes any service as a director, officer, employee, or agent of the corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries; and~~

~~(g) The term "not opposed to the best interest of the corporation" describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.~~

~~(12) A corporation shall have power to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against the person and incurred by him or her in any such capacity or arising out of his or her status as such, whether or not the corporation would have the power to indemnify the person against such liability under the provisions of this section.~~

Section 107. Section 607.0851, Florida Statutes, is created to read:

607.0851 Permissible indemnification.—

(1) Except as otherwise provided in this section and in s. 607.0859, and not in limitation of indemnification allowed under s. 607.0858(1), a corporation may indemnify an individual who is

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5279 a party to a proceeding because the individual is or was a  
 5280 director or officer against liability incurred in the proceeding  
 5281 if:

5282 (a) The director or officer acted in good faith;

5283 (b) The director or officer acted in a manner he or she  
 5284 reasonably believed to be in, or not opposed to, the best  
 5285 interests of the corporation; and

5286 (c) In the case of any criminal proceeding, the director or  
 5287 officer had no reasonable cause to believe his or her conduct  
 5288 was unlawful.

5289 (2) The conduct of a director or officer with respect to an  
 5290 employee benefit plan for a purpose the director or officer  
 5291 reasonably believed to be in the best interests of the  
 5292 participants in, and the beneficiaries of, the plan is conduct  
 5293 that satisfies the requirement of paragraph (1)(b).

5294 (3) The termination of a proceeding by judgment, order,  
 5295 settlement, or conviction, or upon a plea of nolo contendere or  
 5296 its equivalent, does not, of itself, create a presumption that  
 5297 the director or officer did not meet the relevant standard of  
 5298 conduct described in this section.

5299 (4) Unless ordered by a court under s. 607.0854(1)(c), a  
 5300 corporation may not indemnify a director or an officer in  
 5301 connection with a proceeding by or in the right of the  
 5302 corporation except for expenses and amounts paid in settlement  
 5303 not exceeding, in the judgment of the board of directors, the  
 5304 estimated expense of litigating the proceeding to conclusion,  
 5305 actually and reasonably incurred in connection with the defense  
 5306 or settlement of such proceeding, including any appeal thereof,  
 5307 where such person acted in good faith and in a manner he or she

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5308 reasonably believed to be in, or not opposed to, the best  
 5309 interests of the corporation.

5310 Section 108. Section 607.0852, Florida Statutes, is created  
 5311 to read:

5312 607.0852 Mandatory indemnification.—A corporation must  
 5313 indemnify an individual who is or was a director or officer who  
 5314 was wholly successful, on the merits or otherwise, in the  
 5315 defense of any proceeding to which the individual was a party  
 5316 because he or she is or was a director or officer of the  
 5317 corporation against expenses incurred by the individual in  
 5318 connection with the proceeding.

5319 Section 109. Section 607.0853, Florida Statutes, is created  
 5320 to read:

5321 607.0853 Advance for expenses.—

5322 (1) A corporation may, before final disposition of a  
 5323 proceeding, advance funds to pay for or reimburse expenses  
 5324 incurred in connection with the proceeding by an individual who  
 5325 is a party to the proceeding because that individual is or was a  
 5326 director or an officer if the director or officer delivers to  
 5327 the corporation a signed written undertaking of the director or  
 5328 officer to repay any funds advanced if:

5329 (a) The director or officer is not entitled to mandatory  
 5330 indemnification under s. 607.0852; and

5331 (b) It is ultimately determined under s. 607.0854 or s.  
 5332 607.0855 that the director or officer has not met the relevant  
 5333 standard of conduct described in s. 607.0851 or the director or  
 5334 officer is not entitled to indemnification under s. 607.0859.

5335 (2) The undertaking required by paragraph (1)(b) must be an  
 5336 unlimited general obligation of the director or officer but need

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not be secured and may be accepted without reference to the financial ability of the director or officer to make repayment.

(3) Authorizations under this section must be made:

(a) By the board of directors:

1. If there are two or more qualified directors, by a majority vote of all of the qualified directors (a majority of whom shall for such purpose constitute a quorum) or by a majority of the members of a committee appointed by such vote and comprised of two or more qualified directors; or

2. If there are fewer than two qualified directors, by the vote necessary for action by the board of directors under s. 607.0824(3), in which authorization vote directors who are not qualified directors may participate; or

(b) By the shareholders, but shares owned by or voted under the control of a director or officer who at the time of the authorization is not a qualified director or is an officer who is a party to the proceeding may not be counted as a vote in favor of the authorization.

Section 110. Section 607.0854, Florida Statutes, is created to read:

607.0854 Court-ordered indemnification and advance for expenses.—

(1) Unless the corporation's articles of incorporation provide otherwise, notwithstanding the failure of a corporation to provide indemnification, and despite any contrary determination of the board of directors or of the shareholders in the specific case, a director or officer of the corporation who is a party to a proceeding because he or she is or was a director or officer may apply for indemnification or an advance

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for expenses, or both, to a court having jurisdiction over the corporation which is conducting the proceeding, or to a circuit court of competent jurisdiction. After receipt of an application and after giving any notice it considers necessary, the court may:

(a) Order indemnification if the court determines that the director or officer is entitled to mandatory indemnification under s. 607.0852;

(b) Order indemnification or advance for expenses if the court determines that the director or officer is entitled to indemnification or advance for expenses pursuant to a provision authorized by s. 607.0858(1); or

(c) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable to indemnify the director or officer or to advance expenses to the director or officer, even if he or she has not met the relevant standard of conduct set forth in s. 607.0851(1), has failed to comply with s. 607.0853, or was adjudged liable in a proceeding referred to in s. 607.0859. If the director or officer was adjudged liable, indemnification shall be limited to expenses incurred in connection with the proceeding.

(2) If the court determines that the director or officer is entitled to indemnification under paragraph (1)(a) or to indemnification or advance for expenses under paragraph (1)(b), it shall also order the corporation to pay the director's or officer's expenses incurred in connection with obtaining court-ordered indemnification or advance for expenses. If the court determines that the director or officer is entitled to

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5395 indemnification or advance for expenses under paragraph (1) (c),  
 5396 it may also order the corporation to pay the director's or  
 5397 officer's expenses to obtain court-ordered indemnification or  
 5398 advance for expenses.

5399 Section 111. Section 607.0855, Florida Statutes, is created  
 5400 to read:

5401 607.0855 Determination and authorization of  
 5402 indemnification.—

5403 (1) Unless ordered by a court under s. 607.0854(1) (c), a  
 5404 corporation may not indemnify a director or officer under s.  
 5405 607.0851 unless authorized for a specific proceeding after a  
 5406 determination has been made that indemnification is permissible  
 5407 because the director or officer has met the relevant standard of  
 5408 conduct set forth in s. 607.0851.

5409 (2) The determination shall be made:

5410 (a) If there are two or more qualified directors, by the  
 5411 board of directors by a majority vote of all of the qualified  
 5412 directors, a majority of whom shall for such purposes constitute  
 5413 a quorum, or by a majority of the members of a committee of two  
 5414 or more qualified directors appointed by such a vote; or

5415 (b) By independent special legal counsel:

5416 1. Selected in the manner prescribed by paragraph (a); or

5417 2. If there are fewer than two qualified directors,  
 5418 selected by the board of directors, in which selection directors  
 5419 who are not qualified directors may participate; or

5420 (c) By the shareholders, but shares owned by or voted under  
 5421 the control of a director or officer who, at the time of the  
 5422 determination, is not a qualified director or an officer who is  
 5423 a party to the proceeding may not be counted as votes in favor

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5424 of the determination.

5425 (3) Authorization of indemnification shall be made in the  
 5426 same manner as the determination that indemnification is  
 5427 permissible, except that if the determination of permissibility  
 5428 has been made by independent special legal counsel under  
 5429 paragraph (2) (b), any authorization of indemnification  
 5430 associated with such determination shall be made by either such  
 5431 independent special legal counsel or by those who otherwise  
 5432 would be entitled to select independent special legal counsel  
 5433 under paragraph (2) (b).

5434 Section 112. Section 607.0857, Florida Statutes, is created  
 5435 to read:

5436 607.0857 Insurance.—A corporation shall have the power to  
 5437 purchase and maintain insurance on behalf of and for the benefit  
 5438 of an individual who is or was a director or officer of the  
 5439 corporation, or who, while a director or officer of the  
 5440 corporation, is or was serving at the corporation's request as a  
 5441 director, officer, manager, member, partner, trustee, employee,  
 5442 or agent of another domestic or foreign corporation, limited  
 5443 liability company, partnership, joint venture, trust, employee  
 5444 benefit plan, or other enterprise or entity, against liability  
 5445 asserted against or incurred by the individual in that capacity  
 5446 or arising from his or her status as a director or officer,  
 5447 whether or not the corporation would have power to indemnify or  
 5448 advance expenses to the individual against the same liability  
 5449 under this chapter.

5450 Section 113. Section 607.0858, Florida Statutes, is created  
 5451 to read:

5452 607.0858 Variation by corporate action; application of

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subchapter.—

(1) The indemnification provided pursuant to ss. 607.0851 and 607.0852 and the advancement of expenses provided pursuant to s. 607.0853 are not exclusive, and a corporation may, by a provision in its articles of incorporation, bylaws or any agreement, or by vote of shareholders or disinterested directors, or otherwise, obligate itself in advance of the act or omission giving rise to a proceeding to provide any other or further indemnification or advancement of expenses to any of its directors or officers. Any such obligatory provision shall be deemed to satisfy the requirements for authorization referred to in ss. 607.0853(3) and 607.0855(3). Any such provision that obligates the corporation to provide indemnification to the fullest extent permitted by law shall be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in accordance with s. 607.0853 to the fullest extent permitted by law, unless the provision specifically provides otherwise.

(2) A right of indemnification or to advance for expenses created by this chapter or under subsection (1) and in effect at the time of an act or omission may not be eliminated or impaired with respect to such act or omission by an amendment of the articles of incorporation or bylaws or a resolution of the directors or shareholders, adopted after the occurrence of such act or omission, unless, in the case of a right created under subsection (1), the provision creating such right and in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such act or omission has occurred.

(3) Any provision pursuant to subsection (1) shall not

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obligate the corporation to indemnify or advance for expenses to a director or officer of a predecessor of the corporation, pertaining to conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of the board of directors or shareholders of a predecessor of the corporation in a merger or in a contract to which the predecessor is a party, existing at the time the merger takes effect, shall be governed by s. 607.1106(1)(d).

(4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation, limit any of the rights to indemnification or advance for expenses created by or pursuant to this chapter.

(5) Sections 607.0850-607.0859 do not limit a corporation's power to pay or reimburse expenses incurred by a director, an officer, an employee, or an agent in connection with appearing as a witness in a proceeding at a time when he or she is not a party.

(6) Sections 607.0850-607.0859 do not limit a corporation's power to indemnify, advance expenses to, or provide or maintain insurance on behalf of or for the benefit of an individual who is or was an employee or agent.

Section 114. Section 607.0859, Florida Statutes, is created to read:

607.0859 Overriding restrictions on indemnification.—

(1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a director or officer under s. 607.0851 or s. 607.0858 or advance expenses to a director or

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5511 officer under s. 607.0853 or s. 607.0858 if a judgment or other  
 5512 final adjudication establishes that his or her actions, or  
 5513 omissions to act, were material to the cause of action so  
 5514 adjudicated and constitute:

5515 (a) Willful or intentional misconduct or a conscious  
 5516 disregard for the best interests of the corporation in a  
 5517 proceeding by or in the right of the corporation to procure a  
 5518 judgment in its favor or in a proceeding by or in the right of a  
 5519 shareholder;

5520 (b) A transaction in which a director or officer derived an  
 5521 improper personal benefit;

5522 (c) A violation of the criminal law, unless the director or  
 5523 officer had reasonable cause to believe his or her conduct was  
 5524 lawful or had no reasonable cause to believe his or her conduct  
 5525 was unlawful; or

5526 (d) In the case of a director, a circumstance under which  
 5527 the liability provisions of s. 607.0834 are applicable.

5528 (2) A corporation may provide indemnification or advance  
 5529 expenses to a director or an officer only as allowed by ss.  
 5530 607.0850-607.0859.

5531 Section 115. Paragraphs (b), (d), (f), (h), (j), and (k) of  
 5532 subsection (1) and subsections (2), (5), and (6) of section  
 5533 607.0901, Florida Statutes, are amended to read:

5534 607.0901 Affiliated transactions.—

5535 (1) For purposes of this section:

5536 (b) "Affiliated transaction," when used in reference to the  
 5537 corporation and any interested shareholder, means:

5538 1. Any merger or consolidation of the corporation or any  
 5539 subsidiary of the corporation with:

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5540 a. The interested shareholder; or

5541 b. Any other corporation, partnership, limited liability  
 5542 company, or other entity, in each case, {whether or not itself  
 5543 an interested shareholder,} which is, or after such merger or  
 5544 consolidation would be, an affiliate or associate of the  
 5545 interested shareholder;

5546 2. Any sale, lease, exchange, mortgage, pledge, transfer,  
 5547 or other disposition (in one transaction or a series of  
 5548 transactions), except proportionately as a shareholder of such  
 5549 corporation, to or with the interested shareholder or any  
 5550 affiliate or associate of the interested shareholder, whether as  
 5551 part of a dissolution or otherwise, of assets of the corporation  
 5552 or any subsidiary of the corporation:

5553 a. Having an aggregate fair market value equal to 10 %  
 5554 percent or more of the aggregate fair market value of all the  
 5555 assets, determined on a consolidated basis, of the corporation;

5556 b. Having an aggregate fair market value equal to 10 %  
 5557 percent or more of the aggregate fair market value of all the  
 5558 outstanding shares of the corporation; or

5559 c. Representing 10 % percent or more of the earning power  
 5560 or net income, determined on a consolidated basis, of the  
 5561 corporation;

5562 3. The issuance or transfer by the corporation or any  
 5563 subsidiary of the corporation (in one transaction or a series of  
 5564 transactions) of any shares of the corporation or any subsidiary  
 5565 of the corporation which have an aggregate fair market value  
 5566 equal to 10 % percent or more of the aggregate fair market value  
 5567 of all the outstanding shares of the corporation to the  
 5568 interested shareholder or any affiliate or associate of the

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interested shareholder except:

a. Pursuant to the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into shares of the corporation or any subsidiary of the corporation which were outstanding prior to the time that the interested shareholder became such;

b. Pursuant to a merger under s. 607.11045;

c. Provided that the interested shareholder's proportionate share of the shares of any class or series of the corporation or of the voting shares of the corporation has not increased as a result thereof:

(I) Pursuant to a dividend or distribution paid or made, or the exercise, exchange, or conversion of securities exercisable for, exchangeable for, or convertible into, shares of the corporation which security is distributed, pro rata to all holders of a class or series of shares of such corporation subsequent to the time the interested shareholder became such;

(II) Pursuant to an exchange offer by the corporation to purchase shares of such corporation made on the same terms to all holders of such shares;

(III) Any issuance or transfer of shares by the corporation; of warrants or rights to purchase stock offered, or a dividend or distribution paid or made, pro rata to all shareholders of the corporation;

4. The adoption of any plan or proposal for the liquidation or dissolution of the corporation proposed by, or pursuant to any agreement, arrangement, or understanding (whether or not in writing) with, the interested shareholder or any affiliate or associate of the interested shareholder;

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5. Any reclassification of securities (including, without limitation, any stock split, stock dividend, or other distribution of shares in respect of shares, or any reverse stock split) or recapitalization of the corporation, or any merger or consolidation of the corporation with any subsidiary of the corporation, or any other transaction (whether or not with or into or otherwise involving the interested shareholder), with the interested shareholder or any affiliate or associate of the interested shareholder, which has the effect, directly or indirectly (in one transaction or a series of transactions during any 12-month period), of increasing by more than 10 ~~5~~ percent the percentage of the outstanding voting shares of the corporation or any subsidiary of the corporation beneficially owned by the interested shareholder; or

6. Any receipt by the interested shareholder or any affiliate or associate of the interested shareholder of the benefit, directly or indirectly (except proportionately as a shareholder of the corporation), of any loans, advances, guaranties, pledges, or other financial assistance or any tax credits or other tax advantages, other than those expressly allowed in subparagraph 3., provided by or through the corporation or any subsidiary of the corporation.

(d) "Associate," when used to indicate a relationship with any person, means any entity, other than the corporation or any of its subsidiaries, of which such person is an officer, director, or partner or is, directly or indirectly, the beneficial owner of 20 ~~10~~ percent or more of any class of voting shares; any trust or other estate in which such person has at least 20 percent ~~a substantial~~ beneficial interest or as to

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which such person serves as trustee or in a similar fiduciary capacity; and any relative or spouse of such person, or any relative of such spouse, who has the same residence home as such person or who is an officer or director of the corporation or any of its affiliates.

(f) "Control," "controlling," "controlled by," and "under common control with" means the possession, directly or indirectly, through the ownership of voting shares, by contract, arrangement, understanding, relationship, or otherwise, of the power to direct or cause the direction of the management and policies of a person. A person who is the owner of 20 percent or more of the outstanding voting shares of any corporation, partnership, unincorporated association, or other entity is presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary.

Notwithstanding the foregoing, a person shall not be deemed to have control of an entity a corporation if such person holds voting shares, in good faith and not for the purpose of circumventing this section, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of such entity corporation.

(h) Unless otherwise specified in the articles of incorporation initially filed with the department ~~of State~~, a "disinterested director" means as to any particular interested shareholder:

1. Any member of the board of directors of the corporation who was a member of the board of directors before the later of January 1, 1987, or the determination date; and

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2. Any member of the board of directors of the corporation who was recommended for election by, or was elected to fill a vacancy and received the affirmative vote of, a majority of the disinterested directors then on the board.

(j) "Fair market value" means:

1. In the case of shares: ~~the~~ the highest closing sale price of a share quoted during the 30-day period immediately preceding the date in question on the composite tape for shares listed on the New York Stock Exchange; or, if such shares are not quoted on the composite tape on the New York Stock Exchange, the highest closing sale price quoted during such period on the New York Stock Exchange; or, if such shares are not listed on such exchange, the highest closing sale price quoted during such period on the principal United States securities exchange registered under the Exchange Act on which such shares are listed; or, if such shares are not listed on any such exchange, the highest closing bid quotation with respect to a share during the 30-day period preceding the date in question on the National Association of Securities Dealers, Inc., automated quotations system or any other stock price quotation ~~similar~~ system then in general use; or, if no such quotations are available, the fair market value of a share on the date in question as determined by:

a. A majority of disinterested directors; or

b. If at such time there are no disinterested directors, by the board of directors of such corporation in good faith; and

2. In the case of property other than cash or shares, the fair market value of such property on the date in question as determined by:

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5685 a. A majority of the disinterested directors; or  
 5686 b. If at such time there are no disinterested directors, by  
 5687 the board of directors of such corporation in good faith.  
 5688 (k) "Interested shareholder" means any person who is the  
 5689 beneficial owner of more than 15 ~~40~~ percent of the outstanding  
 5690 voting shares of the corporation. However, the term "interested  
 5691 shareholder" shall not include:  
 5692 1. The corporation or any of its subsidiaries;  
 5693 2. Any savings, employee stock ownership, or other employee  
 5694 benefit plan of the corporation or any of its subsidiaries, or  
 5695 any fiduciary with respect to any such plan when acting in such  
 5696 capacity; or  
 5697 3. Any person whose ownership of shares in excess of the 15  
 5698 percent limitation is the result of action taken solely by the  
 5699 corporation; provided that such person shall be an interested  
 5700 shareholder if thereafter such person acquires additional shares  
 5701 of voting shares of the corporation, except as a result of  
 5702 further corporate action not caused, directly or indirectly, by  
 5703 such person. For the purpose of determining whether a person is  
 5704 an interested shareholder, the number of voting shares deemed to  
 5705 be outstanding shall include shares deemed owned by the  
 5706 interested shareholder through application of subparagraph (e)3.  
 5707 but shall not include any other voting shares that may be  
 5708 issuable pursuant to any contract, arrangement, or  
 5709 understanding, upon the exercise of conversion rights, exchange  
 5710 rights, warrants, or options, or otherwise.  
 5711 (2) Except to the extent as provided in subsections  
 5712 subsection (4) and (5), and with respect to such exceptions, in  
 5713 compliance with other applicable provisions of this chapter, a

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5714 corporation may not engage in any affiliated transaction with  
 5715 any interested shareholder for a period of 3 years following the  
 5716 time that such shareholder became an interested shareholder,  
 5717 unless:  
 5718 (a) Prior to the time that such shareholder became an  
 5719 interested shareholder, the board of directors of the  
 5720 corporation approved either the affiliated transaction or the  
 5721 transaction which resulted in the shareholder becoming an  
 5722 interested shareholder; or  
 5723 (b) Upon consummation of the transaction that resulted in  
 5724 the shareholder becoming an interested shareholder, the  
 5725 interested shareholder owned at least 85 percent of the voting  
 5726 shares of the corporation outstanding at the time the  
 5727 transaction commenced, excluding for purposes of determining the  
 5728 voting shares outstanding, but not the outstanding voting shares  
 5729 owned by the interested shareholder, those shares owned by  
 5730 persons who are directors and also officers and by employee  
 5731 stock plans in which employee participants do not have the right  
 5732 to determine confidentially whether shares held subject to the  
 5733 plan will be tendered in a tender or exchange offer; or  
 5734 (c) At or subsequent to the time that such shareholder  
 5735 became an interested shareholder, the affiliated transaction is  
 5736 approved by the board of directors and authorized at an annual  
 5737 or special meeting of shareholders, and not by written consent,  
 5738 by the affirmative vote of at least two-thirds of the  
 5739 outstanding voting shares which are not owned by the interested  
 5740 shareholder, in addition to any affirmative vote required by any  
 5741 other section of this act or by the articles of incorporation,  
 5742 an affiliated transaction shall be approved by the affirmative

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5743 ~~vote of the holders of two-thirds of the voting shares other~~  
 5744 ~~than the shares beneficially owned by the interested~~  
 5745 ~~shareholder.~~

5746 (5) The provisions of this section do not apply:

5747 (a) To any corporation the original articles of  
 5748 incorporation of which contain a provision expressly electing  
 5749 not to be governed by this section;

5750 (b) To any corporation which adopted an amendment to its  
 5751 articles of incorporation prior to July 1, 2018 ~~January 1, 1989~~,  
 5752 expressly electing not to be governed by this section, provided  
 5753 that such amendment does not apply to any affiliated transaction  
 5754 of the corporation with an interested shareholder whose  
 5755 determination date is on or prior to the effective date of such  
 5756 amendment;

5757 (c) To any corporation which adopts an amendment to its  
 5758 articles of incorporation or bylaws, approved by the affirmative  
 5759 vote of the holders, other than interested shareholders and  
 5760 their affiliates and associates, of a majority of the  
 5761 outstanding voting shares of the corporation, excluding the  
 5762 voting shares of interested shareholders and their affiliates  
 5763 and associates, expressly electing not to be governed by this  
 5764 section, provided that such amendment to the articles of  
 5765 incorporation or bylaws shall not be effective until 18 months  
 5766 after such vote of the corporation's shareholders and shall not  
 5767 apply to any affiliated transaction of the corporation with an  
 5768 interested shareholder whose determination date is on or prior  
 5769 to the effective date of such amendment; or

5770 (d) To any affiliated transaction of the corporation with  
 5771 an interested shareholder of the corporation which became an

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5772 interested shareholder inadvertently, if such interested  
 5773 shareholder, as soon as practicable, divests itself of a  
 5774 sufficient amount of the voting shares of the corporation so  
 5775 that it no longer is the beneficial owner, directly or  
 5776 indirectly, of 20 ~~40~~ percent or more of the outstanding voting  
 5777 shares of the corporation, and would not at any time within the  
 5778 3-year ~~5-year~~ period preceding the announcement date with  
 5779 respect to such affiliated transaction have been an interested  
 5780 shareholder but for such inadvertent acquisition.

5781 (6) Any corporation that elected not to be governed by this  
 5782 section, either through a provision in its original articles of  
 5783 incorporation or through an amendment to its articles of  
 5784 incorporation or bylaws may elect to be bound by the provisions  
 5785 of this section by adopting an amendment to its articles of  
 5786 incorporation or bylaws that repeals the original article or the  
 5787 amendment. In addition to any requirements of this chapter act,  
 5788 or the articles of incorporation or bylaws of the corporation,  
 5789 any such amendment shall be approved by the affirmative vote of  
 5790 the holders of two-thirds of the voting shares other than shares  
 5791 beneficially owned by any interested shareholder.

5792 Section 116. Paragraph (d) of subsection (2) of section  
 5793 607.0902, Florida Statutes, is amended to read:

5794 607.0902 Control-share acquisitions.—

5795 (2) "CONTROL-SHARE ACQUISITION."—

5796 (d) The acquisition of any shares of an issuing public  
 5797 corporation does not constitute a control-share acquisition if  
 5798 the acquisition is consummated in any of the following  
 5799 circumstances:

5800 1. Before July 2, 1987.

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5801 2. Pursuant to a contract existing before July 2, 1987.  
 5802 3. Pursuant to the laws of intestate succession or pursuant  
 5803 to a gift or testamentary transfer.  
 5804 4. Pursuant to the satisfaction of a pledge or other  
 5805 security interest created in good faith and not for the purpose  
 5806 of circumventing this section.  
 5807 5. Pursuant to a merger or share exchange effected in  
 5808 compliance with s. 607.1101, s. 607.1102, s. 607.1103, s.  
 5809 607.1104, or s. 607.1105 ~~s. 607.1107~~, if the issuing public  
 5810 corporation is a party to the agreement of merger or plan of  
 5811 share exchange.  
 5812 6. Pursuant to any savings, employee stock ownership, or  
 5813 other employee benefit plan of the issuing public corporation or  
 5814 any of its subsidiaries or any fiduciary with respect to any  
 5815 such plan when acting in such fiduciary capacity.  
 5816 7. Pursuant to an acquisition of shares of an issuing  
 5817 public corporation if the acquisition has been approved by the  
 5818 board of directors of such issuing public corporation before  
 5819 acquisition.  
 5820 Section 117. Subsection (1) of section 607.1001, Florida  
 5821 Statutes, is amended to read:  
 5822 607.1001 Authority to amend the articles of incorporation.—  
 5823 (1) A corporation may amend its articles of incorporation  
 5824 at any time to add or change a provision that is required or  
 5825 permitted in the articles of incorporation or to delete a  
 5826 provision not required to be contained in the articles of  
 5827 incorporation. Whether a provision is required or permitted in  
 5828 the articles of incorporation is determined as of the effective  
 5829 date of the amendment.

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5830 Section 118. Section 607.1002, Florida Statutes, is amended  
 5831 to read:  
 5832 607.1002 Amendment by board of directors.—Unless the  
 5833 articles of incorporation provide otherwise, a corporation's  
 5834 board of directors may adopt one or more amendments to the  
 5835 corporation's articles of incorporation without shareholder  
 5836 approval ~~action~~.  
 5837 (1) To extend the duration of the corporation if it was  
 5838 incorporated at a time when limited duration was required by  
 5839 law;  
 5840 (2) To delete the names and addresses of the initial  
 5841 directors;  
 5842 (3) To delete the name and address of the initial  
 5843 registered agent or registered office, if a statement of change  
 5844 is on file with the department ~~of State~~;  
 5845 (4) To delete any other information contained in the  
 5846 articles of incorporation that is solely of historical interest;  
 5847 (5) To delete the authorization for a class or series of  
 5848 shares authorized pursuant to s. 607.0602, if no shares of such  
 5849 class or series are issued;  
 5850 (6) To change the corporate name by substituting the word  
 5851 "corporation," "incorporated," or "company," or the abbreviation  
 5852 "corp.," "Inc.," or "Co.," for a similar word or abbreviation in  
 5853 the name, or by adding, deleting, or changing a geographical  
 5854 attribution for the name;  
 5855 (7) To change the par value for a class or series of  
 5856 shares;  
 5857 (8) To provide that if the corporation acquires its own  
 5858 shares, such shares belong to the corporation and constitute

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5859 treasury shares until disposed of or canceled by the  
5860 corporation; ~~or~~

5861 (9) To reflect a reduction in authorized shares, as a  
5862 result of the operation of s. 607.0631(2), when the corporation  
5863 has acquired its own shares and the articles of incorporation  
5864 prohibit the reissue of the acquired shares;

5865 (10) To delete a class of shares from the articles of  
5866 incorporation, as a result of the operation of s. 607.0631(2),  
5867 when there are no remaining shares of the class because the  
5868 corporation has acquired all shares of the class and the  
5869 articles of incorporation prohibit the reissue of the acquired  
5870 shares; or

5871 (11) ~~(9)~~ To make any other change expressly permitted by  
5872 this act to be made without shareholder approval ~~action~~.

5873 Section 119. Subsections (4), (6), and (8) of section  
5874 607.10025, Florida Statutes, are amended to read:

5875 607.10025 Shares; combination or division.—

5876 (4) If a division or combination is effected by a board  
5877 action without shareholder approval and includes an amendment to  
5878 the articles of incorporation, there shall be signed ~~executed~~ in  
5879 accordance with s. 607.0120 on behalf of the corporation and  
5880 filed in the office of the department of State articles of  
5881 amendment which shall set forth:

5882 (a) The name of the corporation.

5883 (b) The date of adoption by the board of directors of the  
5884 resolution approving the division or combination.

5885 (c) That the amendment to the articles of incorporation  
5886 does not adversely affect the rights or preferences of the  
5887 holders of outstanding shares of any class or series and does

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5888 not result in the percentage of authorized shares that remain  
5889 unissued after the division or combination exceeding the  
5890 percentage of authorized shares that were unissued before the  
5891 division or combination.

5892 (d) The class or series and number of shares subject to the  
5893 division or combination and the number of shares into which the  
5894 shares are to be divided or combined.

5895 (e) The amendment of the articles of incorporation made in  
5896 connection with the division or combination.

5897 (f) If the division or combination is to become effective  
5898 at a time subsequent to the time of filing, the date, which may  
5899 not exceed 90 days after the date of filing, when the division  
5900 or combination becomes effective.

5901 (6) If a division or combination is effected by action of  
5902 the board and of the shareholders, there shall be signed  
5903 ~~executed~~ on behalf of the corporation and filed with the  
5904 department of State articles of amendment as provided in s.  
5905 607.1006 s. ~~607.1003~~, which articles shall set forth, in  
5906 addition to the information required by s. 607.1006 s. ~~607.1003~~,  
5907 the information required in subsection (4).

5908 ~~(8) This section applies only to corporations with more~~  
5909 ~~than 35 shareholders of record.~~

5910 Section 120. Section 607.1003, Florida Statutes, is amended  
5911 to read:

5912 607.1003 Amendment by board of directors and shareholders.—  
5913 If a corporation has issued shares, an amendment to the articles  
5914 of incorporation shall be adopted in the following manner:

5915 (1) The proposed amendment shall first be adopted by the  
5916 board of directors. A corporation's board of directors may

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~~propose one or more amendments to the articles of incorporation for submission to the shareholders.~~

(2) (a) Except as provided in ss. 607.1002, 607.10025, and 607.1008, and, with respect to restatements that do not require shareholder approval, s. 607.1007, the amendment shall then be approved by the shareholders.

(b) In submitting the proposed amendment to the shareholders for approval, the board of directors shall recommend that the shareholders approve the amendment unless:

1. The board of directors makes a determination that because of a conflict of interest or other special circumstances it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board must inform the shareholders of the basis for its so proceeding without such recommendation ~~For the amendment to be adopted.~~

~~(a) The board of directors must recommend the amendment to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the amendment; and~~

~~(b) The shareholders entitled to vote on the amendment must approve the amendment as provided in subsection (5).~~

(3) The board of directors may set conditions for the approval of the amendment by the shareholders or the effectiveness of the amendment ~~condition its submission of the proposed amendment on any basis.~~

(4) If the amendment is required to be approved by the

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shareholders, and the approval is to be given at a meeting, the corporation must notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The notice must be given in accordance with s. 607.0705, state that the purpose, or one of the purposes, of the meeting is to consider the amendment, and must contain or be accompanied by a copy of the amendment. ~~The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice of meeting must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed amendment and contain or be accompanied by a copy or summary of the amendment.~~

(5) Unless this chapter ~~act~~, the articles of incorporation, or the board of directors, ~~(acting pursuant to subsection (3)),~~ requires a greater vote or a greater quorum, the approval of the amendment requires the approval of the shareholders at a meeting at which a quorum consisting of at least a majority of the shares entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote as a separate group on the amendment, except as provided in s. 607.1004(3), the approval of each such separate voting group at a meeting at which a quorum of the voting group exists consisting of at least a majority of the votes entitled to be cast on the amendment by that voting group.

(6) If the amendment by any voting group would create appraisal rights, approval of the amendment must also require the vote of a majority of the votes entitled to be cast by such voting group ~~vote by voting groups, the amendment to be adopted~~

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5975 ~~must be approved by:~~

5976 ~~(a) A majority of the votes entitled to be cast on the~~  
 5977 ~~amendment by any voting group with respect to which the~~  
 5978 ~~amendment would create dissenters' rights; and~~

5979 ~~(b) The votes required by ss. 607.0725 and 607.0726 by~~  
 5980 ~~every other voting group entitled to vote on the amendment.~~

5981 ~~(7)(6)~~ Unless otherwise provided in the articles of  
 5982 incorporation, the shareholders of a corporation having 35 or  
 5983 fewer shareholders may amend the articles of incorporation  
 5984 without an act of the directors at a meeting for which notice of  
 5985 the changes to be made is given. For purposes of this  
 5986 subsection, the term "shareholder" means a record shareholder, a  
 5987 beneficial shareholder, or an unrestricted voting trust  
 5988 beneficial owner.

5989 (8) If as a result of an amendment of the articles of  
 5990 incorporation one or more shareholders of a domestic corporation  
 5991 would become subject to new interest holder liability, approval  
 5992 of the amendment shall require the signing in connection with  
 5993 the amendment, by each such shareholder, of a separate written  
 5994 consent to become subject to such new interest holder liability,  
 5995 unless in the case of a shareholder that already has interest  
 5996 holder liability the terms and conditions of the new interest  
 5997 holder liability are substantially identical to those of the  
 5998 existing interest holder liability (other than changes that  
 5999 eliminate or reduce such interest holder liability).

6000 (9) For purposes of subsection (8) and s. 607.1009, the  
 6001 term "new interest holder liability" means interest holder  
 6002 liability of a person resulting from an amendment of the  
 6003 articles of incorporation if the person did not have interest

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6004 holder liability before the amendment becomes effective, or the  
 6005 person had interest holder liability before the amendment  
 6006 becomes effective, the terms and conditions of which are changed  
 6007 when the amendment becomes effective.

6008 Section 121. Section 607.1004, Florida Statutes, is amended  
 6009 to read:

6010 607.1004 Voting on amendments by voting groups.—

6011 (1) If the corporation has more than one class of shares  
 6012 outstanding, the holders of the outstanding shares of a class  
 6013 are entitled to vote as a separate voting group ~~class~~ (if  
 6014 shareholder voting is otherwise required by this chapter act)  
 6015 upon a proposed amendment to the articles of incorporation, if  
 6016 the amendment would:

6017 (a) Effect an exchange or reclassification of all or part  
 6018 of the shares of the class into shares of another class.

6019 (b) Effect an exchange or reclassification, or create a  
 6020 right of exchange, of all or part of the shares of another class  
 6021 into the shares of the class.

6022 (c) Change the designation, rights, preferences, or  
 6023 limitations of all or part of the shares of the class.

6024 (d) Change the shares of all or part of the class into a  
 6025 different number of shares of the same class.

6026 (e) Create a new class of shares having rights or  
 6027 preferences with respect to distributions or to dissolution that  
 6028 are prior or superior to the shares of the class.

6029 (f) Increase the rights, preferences, or number of  
 6030 authorized shares of any class that, after giving effect to the  
 6031 amendment, have rights or preferences with respect to  
 6032 distributions or to dissolution that are prior or superior to

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the shares of the class.

(g) Limit or deny an existing preemptive right of all or part of the shares of the class.

(h) Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(2) If a proposed amendment would affect a series of a class of shares in one or more of the ways described in subsection (1), the shares of that series are entitled to vote as a separate voting group ~~class~~ on the proposed amendment.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups under this section would affect those two or more classes or series in the same or substantially similar way, the holders of ~~the~~ shares of all the classes or series so affected must vote together as a single voting group on the proposed amendment, unless otherwise provided in the articles of incorporation or added as a condition by the board of directors pursuant to s. 607.1003(3).

(4) A class or series of shares is entitled to the voting rights granted by this section even if ~~although~~ the articles of incorporation provide that the shares are nonvoting shares.

Section 122. Section 607.1005, Florida Statutes, is amended to read:

607.1005 Amendment before issuance of shares.—If a corporation has not yet issued shares, its board of directors, or a majority of its incorporators if it has no ~~or~~ board of directors, may adopt one or more amendments to the corporation's articles of incorporation.

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Section 123. Section 607.1006, Florida Statutes, is amended to read:

607.1006 Articles of amendment.—

(1) After an amendment to the A corporation amending its articles of incorporation has been adopted and approved as required by this chapter, the corporation shall deliver to the department of State for filing articles of amendment which must ~~shall be signed executed~~ in accordance with s. 607.0120 and which must ~~shall~~ set forth:

(a) (1) The name of the corporation;

(b) (2) The text of each amendment adopted, or the information required by s. 607.0120(11)(e), if applicable;

(c) (3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself, which may be made dependent upon facts objectively ascertainable outside of the articles of amendment in accordance with s. 607.0120(11);

(d) (4) The date of each amendment's adoption; and

(e) (5) If an amendment:

1. Was adopted by the incorporators or board of directors without shareholder approval action, a statement that the amendment was duly adopted by the incorporators or by the board of directors, as the case may be, to that effect and that shareholder approval action was not required;

2. (6) ~~If an amendment was approved~~ Required approval by the shareholders, a statement that the number of votes cast for the amendment by the shareholders in a manner required by this chapter and by the articles of incorporation was sufficient for

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approval and if more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment, and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group; or

3. Is being filed pursuant to s. 607.0120(11)(e), a statement to that effect.

(2) Articles of amendment shall take effect at the effective date determined pursuant to s. 607.0123.

Section 124. Section 607.1007, Florida Statutes, is amended to read:

607.1007 Restated articles of incorporation.—

(1) A corporation's board of directors may restate its articles of incorporation at any time ~~with or~~ without shareholder approval, subject to subsection (2) ~~action~~.

(2) If the restated articles ~~The restatement may include~~ one or more new amendments that require to the articles. If the ~~restatement includes an amendment requiring~~ shareholder approval, the amendments ~~it~~ must be adopted and approved as provided in s. 607.1003.

(3) Notwithstanding subsection (1), if the board of directors submits a restatement for shareholder approval, and the approval is to be given at a meeting action, the corporation must shall notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at which the restatement is to be submitted for approval. The notice must be given of the ~~proposed shareholders' meeting~~ in accordance with s. 607.0705 and must. ~~The notice must also~~ state that the purpose, or one of

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the purposes, of the meeting is to consider the ~~proposed~~ restatement and must contain or be accompanied by a copy of the restatement ~~that identifies any amendment or other change it would make in the articles.~~

(4) A corporation ~~that restates~~ ~~restating~~ its articles of incorporation shall execute and deliver to the department ~~of~~ ~~State~~ for filing articles of restatement, that comply with the provisions of s. 607.0120, and to the extent applicable, s. 607.0202, setting forth:

(a) The name of the corporation;

(b) ~~and~~ The text of the restated articles of incorporation;

(c) A statement that the restated articles consolidate all amendments into a single document; and

(d) If one or more new amendments are included in the restated articles, the statements required under s. 607.1006 with respect to each new amendment ~~Together with a certificate setting forth.~~

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

~~(b) If the restatement contains an amendment to the articles requiring shareholder approval, the information required by s. 607.1006.~~

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to the articles of incorporation ~~them~~.

(6) The department ~~of State~~ may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the statements ~~certificate information~~

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required by subsection (4).

Section 125. Subsections (1), (2), and (3) of section 607.1008, Florida Statutes, are amended to read:

607.1008 Amendment pursuant to reorganization.—

(1) A corporation's articles of incorporation may be amended without action by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under the authority of a law of the United States or of this state ~~any federal or Florida statute if the articles of incorporation after amendment contain only provisions required or permitted by s. 607.0202.~~

(2) The individual or individuals designated by the court shall deliver to the department ~~of State~~ for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under a federal or Florida statute.

(3) Shareholders of a corporation undergoing reorganization do not have appraisal dissenters' ~~rights~~ except as and to the extent provided in the reorganization plan.

Section 126. Section 607.1009, Florida Statutes, is amended to read:

607.1009 Effect of amendment.—

(1) An amendment to articles of incorporation does not

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affect a cause of action existing against or in favor of the corporation, a proceeding to which the corporation is a party, or the existing rights of persons other than shareholders of the corporation. An amendment changing a corporation's name does not ~~affect~~ ~~abate~~ a proceeding brought by or against the corporation in its former name.

(2) A shareholder who becomes subject to new interest holder liability in respect of the corporation as a result of an amendment to the articles of incorporation shall have that new interest holder liability only in respect of interest holder liabilities that arise after the amendment becomes effective.

(3) Except as otherwise provided in the articles of incorporation of the corporation, the interest holder liability of a shareholder who had interest holder liability in respect of the corporation before the amendment becomes effective and has new interest holder liability after the amendment becomes effective shall be as follows:

(a) The amendment does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the amendment becomes effective.

(b) The provisions of the articles of incorporation of the corporation relating to interest holder liability as in effect immediately prior to the amendment shall continue to apply to the collection or discharge of any interest holder liabilities preserved by paragraph (a), as if the amendment had not occurred.

(c) The shareholder shall have such rights of contribution from other persons as are provided by the articles of incorporation relating to interest holder liability as in effect

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immediately prior to the amendment with respect to any interest holder liabilities preserved by paragraph (3)(a), as if the amendment had not occurred.

(d) The shareholder shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the amendment becomes effective.

Section 127. Subsection (1) of section 607.1020, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

607.1020 Amendment of bylaws by board of directors or shareholders.—

(1) A corporation's board of directors may amend or repeal the corporation's bylaws unless:

(a) The articles of incorporation or this ~~chapter act~~ reserves that power ~~the power to amend the bylaws generally or a particular bylaw provision~~ exclusively to the shareholders in whole or in part; or

(b) Except as provided in s. 607.0206(5), the shareholders, in amending, ~~or~~ repealing, or adopting the bylaws generally or a particular bylaw provision, ~~provide~~ expressly provide that the board of directors may not amend, ~~or~~ repeal, adopt, or reinstate the bylaws generally or that particular bylaw provision.

(3) A shareholder does not have a vested property right resulting from any provision in the bylaws.

Section 128. Subsection (1) of section 607.1021, Florida Statutes, is amended to read:

607.1021 Bylaw increasing quorum or voting requirements for shareholders.—

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(1) If authorized by the articles of incorporation, the shareholders may adopt or amend a bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of shareholders) than is required by this ~~chapter act~~. The adoption or amendment of a bylaw that adds, changes, or deletes a greater quorum or voting requirement for shareholders must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater.

Section 129. Section 607.1022, Florida Statutes, is amended to read:

607.1022 Bylaw increasing quorum or voting requirements for directors.—

(1) A bylaw that increases a ~~fixes a greater~~ quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that increases a ~~fixes a greater~~ quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) Action by the board of directors under subsection (1) to amend or repeal paragraph (1)(b) to adopt or amend a bylaw that changes the quorum or voting requirement for the board of

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6265 directors must meet the same quorum requirement and be adopted  
 6266 by the same vote required to take action under the quorum and  
 6267 voting requirement then in effect or proposed to be adopted,  
 6268 whichever is greater.

6269 Section 130. Section 607.1023, Florida Statutes, is created  
 6270 to read:

6271 607.1023 Bylaw provisions relating to the election of  
 6272 directors.-

6273 (1) Unless the articles of incorporation specifically  
 6274 prohibit the adoption of a bylaw pursuant to this section, alter  
 6275 the vote specified in s. 607.0728(1), or provide for cumulative  
 6276 voting, a corporation may elect in its bylaws to be governed in  
 6277 the election of directors as follows:

6278 (a) Each vote entitled to be cast may be voted for or  
 6279 against up to the number of candidates that is equal to the  
 6280 number of directors to be elected, or a shareholder may indicate  
 6281 an abstention, but without cumulating the votes;

6282 (b) To be elected, a nominee must have received a plurality  
 6283 of the votes cast by holders of shares entitled to vote in the  
 6284 election at a meeting at which a quorum is present, provided  
 6285 that a nominee who is elected but receives more votes against  
 6286 than for election shall serve as a director for a term that  
 6287 shall terminate on the date that is the earlier of 90 days from  
 6288 the date on which the voting results are determined pursuant to  
 6289 s. 607.0729(2) (e) or the date on which an individual is selected  
 6290 by the board of directors to fill the office held by such  
 6291 director, which selection shall be deemed to constitute the  
 6292 filling of a vacancy by the board to which s. 607.0809 applies.  
 6293 Subject to paragraph (c), a nominee who is elected but receives

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6294 more votes against than for election shall not serve as a  
 6295 director beyond the 90-day period referenced above; and

6296 (c) The board of directors may select any qualified  
 6297 individual to fill the office held by a director who received  
 6298 more votes against than for election.

6299 (2) Subsection (1) does not apply to an election of  
 6300 directors by a voting group if:

6301 (a) At the expiration of the time fixed under a provision  
 6302 requiring advance notification of director candidates; or

6303 (b) Absent such a provision, at a time fixed by the board  
 6304 of directors which is not more than 14 days before notice is  
 6305 given of the meeting at which the election is to occur,

6306 there are more candidates for election by the voting group than  
 6307 the number of directors to be elected, one or more of whom are  
 6308 properly proposed by shareholders. An individual shall not be  
 6309 considered a candidate for purposes of this subsection if the  
 6310 board of directors determines before the notice of meeting is  
 6311 given that such individual's candidacy does not create a bona  
 6312 fide election contest.

6313 (3) A bylaw electing to be governed by this section may be  
 6314 repealed:

6315 (a) If originally adopted by the shareholders, only by the  
 6316 shareholders, unless the bylaw otherwise provides; or

6317 (b) If adopted by the board of directors, by the board of  
 6318 directors or the shareholders.

6319 Section 131. Section 607.1101, Florida Statutes, is amended  
 6320 to read:

6321 607.1101 Merger.-  
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6323 (1) By complying with this chapter, including adopting a  
 6324 plan of merger in accordance with subsection (3) and complying  
 6325 with s. 607.1103:

6326 (a) One or more domestic corporations may merge with one or  
 6327 more domestic or foreign entities pursuant to a plan of merger,  
 6328 resulting in a survivor; and

6329 (b) Any two or more entities, each of which is either a  
 6330 domestic eligible entity or a foreign eligible entity, may  
 6331 merge, resulting in a survivor that is a domestic corporation  
 6332 created in the merger into another corporation if the board of  
 6333 directors of each corporation adopts and its shareholders (if  
 6334 required by s. 607.1103) approve a plan of merger.

6335 (2) A domestic eligible entity that is not a corporation  
 6336 may be a party to a merger with a domestic corporation, or may  
 6337 be created as the survivor in a merger in which a domestic  
 6338 corporation is a party, but only if the parties to the merger  
 6339 comply with the applicable provisions of this chapter and the  
 6340 merger is permitted by the organic law of the domestic eligible  
 6341 entity that is not a corporation. A foreign eligible entity may  
 6342 be a party to a merger with a domestic corporation, or may be  
 6343 created as the survivor in a merger in which a domestic  
 6344 corporation is a party, but only if the parties to the merger  
 6345 comply with the applicable provisions of this chapter and the  
 6346 merger is permitted by the organic law of the foreign eligible  
 6347 entity.

6348 (3) The plan of merger must ~~shall~~ set forth:

6349 (a) As to each party to the merger, its name, jurisdiction  
 6350 of formation, and type of entity;

6351 (b) The survivor's name, jurisdiction of formation, and

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6352 type of entity, and, if the survivor is to be created in the  
 6353 merger, a statement to that effect The name of each corporation  
 6354 planning to merge and the name of the surviving corporation into  
 6355 which each other corporation plans to merge, which is  
 6356 hereinafter designated as the surviving corporation;

6357 (c) ~~(b)~~ The terms and conditions of the proposed merger; and

6358 (d) ~~(c)~~ The manner and basis of converting:

6359 1. The shares of each domestic or foreign corporation and  
 6360 the eligible interests of each merging domestic or foreign  
 6361 eligible entity into:

6362 a. Shares or other securities.

6363 b. Eligible interests.

6364 c. Obligations.

6365 d. Rights to acquire shares, other securities, or eligible  
 6366 interests.

6367 e. Cash.

6368 f. Other property.

6369 g. Any combination of the foregoing; and

6370 2. Rights to acquire shares of each merging domestic or  
 6371 foreign corporation and rights to acquire eligible interests of  
 6372 each merging domestic or foreign eligible entity into:

6373 a. Shares or other securities.

6374 b. Eligible interests.

6375 c. Obligations.

6376 d. Rights to acquire shares, other securities, or eligible  
 6377 interests.

6378 e. Cash.

6379 f. Other property.

6380 g. Any combination of the foregoing;

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6381 (e) The articles of incorporation of any domestic or  
 6382 foreign corporation, or the public organic record of any other  
 6383 domestic or foreign eligible entity to be created by the merger,  
 6384 or if a new domestic or foreign corporation or other eligible  
 6385 entity is not to be created by the merger, any amendments to, or  
 6386 restatements of, the survivor's articles of incorporation or  
 6387 other public organic record;

6388 (f) The effective date and time of the merger, which may be  
 6389 on or after the filing date of the articles of merger; and

6390 (g) Any other provisions required by the laws under which  
 6391 any party to the merger is organized or by which it is governed,  
 6392 or by the articles of incorporation or organic rules of any such  
 6393 party corporation into shares, obligations, or other securities  
 6394 of the surviving corporation or any other corporation or, in  
 6395 whole or in part, into cash or other property and the manner and  
 6396 basis of converting rights to acquire shares of each corporation  
 6397 into rights to acquire shares, obligations, or other securities  
 6398 of the surviving or any other corporation or, in whole or in  
 6399 part, into cash or other property.

6400 (4)(3) In addition to the requirements of subsection (3), a  
 6401 The plan of merger may contain any other provision that is not  
 6402 prohibited by law set forth.

6403 ~~(a) Amendments to, or a restatement of, the articles of~~  
 6404 ~~incorporation of the surviving corporation;~~

6405 ~~(b) The effective date of the merger, which may be on or~~  
 6406 ~~after the date of filing the certificate; and~~

6407 ~~(c) Other provisions relating to the merger.~~

6408 (5) Terms of a plan of merger may be made dependent on  
 6409 facts objectively ascertainable outside the plan in accordance

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6410 with s. 607.0120(11).

6411 (6) A plan of merger may be amended only with the consent  
 6412 of each party to the merger, except as provided in the plan. A  
 6413 domestic party to a merger may approve an amendment to a plan:

6414 (a) In the same manner as the plan was approved, if the  
 6415 plan does not provide for the manner in which it may be amended;  
 6416 or

6417 (b) In the manner provided in the plan, except that  
 6418 shareholders, members, or interest holders that were entitled to  
 6419 vote on or consent to the approval of the plan are entitled to  
 6420 vote on or consent to any amendment to the plan that will  
 6421 change:

6422 1. The amount or kind of shares or other securities,  
 6423 eligible interests, obligations, rights to acquire shares, other  
 6424 securities, or eligible interests, cash, other property, or any  
 6425 combination of the foregoing, to be received under the plan by  
 6426 the shareholders, holders of rights to acquire shares, other  
 6427 securities, or eligible interests, members, or interest holders  
 6428 of any party to the merger;

6429 2. The articles of incorporation of any domestic  
 6430 corporation, or the organic rules of any other type of entity,  
 6431 that will be the survivor of the merger, except for changes  
 6432 permitted by s. 607.1002 or by comparable provisions of the  
 6433 organic law of any other type of entity; or

6434 3. Any of the other terms or conditions of the plan if the  
 6435 change would adversely affect such shareholders, members, or  
 6436 interest holders in any material respect.

6437 (7) The redomestication of a foreign insurer to this state  
 6438 under s. 628.520 shall be deemed a merger of a foreign

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corporation and a domestic corporation, and the surviving corporation shall be deemed to be a domestic corporation incorporated under the laws of this state. The redomestication of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a domestic corporation and a foreign corporation, and the surviving corporation shall be deemed to be a foreign corporation.

Section 132. Section 607.1102, Florida Statutes, is amended to read:

607.1102 Share exchange.—

(1) By complying with this chapter, including adopting a plan of share exchange in accordance with subsection (3) and complying with s. 607.1103:

(a) A domestic corporation may acquire all of the shares or rights to acquire shares of one or more classes or series of shares or rights to acquire shares of another domestic or foreign corporation, or all of the eligible interests of one or more classes or series of interests of a domestic or foreign eligible entity, pursuant to a plan of share exchange, in exchange for:

1. Shares or other securities.

2. Eligible interests.

3. Obligations.

4. Rights to acquire shares, other securities, or eligible interests.

5. Cash.

6. Other property.

7. Any combination of the foregoing; or

(b) All of the shares of one or more classes or series of

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shares or rights to acquire shares of a domestic corporation may be acquired by another domestic or foreign eligible entity, pursuant to a plan of share exchange, in exchange for:

1. Shares or other securities.

2. Eligible interests.

3. Obligations.

4. Rights to acquire shares, other securities, or eligible interests.

5. Cash.

6. Other property.

7. Any combination of the foregoing.

(2) A foreign eligible entity may be the acquired eligible entity in a share exchange only if the share exchange is permitted by the organic law of that eligible entity. A corporation may acquire all of the outstanding shares of one or more classes or series of another corporation if the board of directors of each corporation adopts and its shareholders (if required by s. 607.1103) approve a plan of share exchange.

(3)(2) The plan of share exchange must ~~shall~~ set forth:

(a) The name of each domestic or foreign eligible entity ~~the corporation~~ the shares or eligible interests of which will be acquired and the name of the domestic or foreign corporation or eligible entity that will acquire those shares or eligible interests acquiring corporation;

(b) The terms and conditions of the share exchange;

(c) The manner and basis of exchanging:

1. The shares of each domestic or foreign corporation, and the eligible interests of each domestic or foreign eligible entity, the shares or eligible interests that are to be acquired

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in the share exchange, into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing; and

2. Rights to acquire shares of each domestic or foreign corporation and rights to acquire eligible interests of each domestic or foreign eligible entity, that are to be acquired in the share exchange, into shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing; and

(d) Any other provisions required by the organic law governing the acquired eligible entity or its articles of incorporation or organic rules the shares to be acquired for shares, obligations, or other securities of the acquiring or any other corporation or, in whole or in part, for cash or other property, and the manner and basis of exchanging rights to acquire shares of the corporation to be acquired for rights to acquire shares, obligations, or, in whole or in part, other securities of the acquiring or any other corporation or, in whole or in part, for cash or other property.

(4)(3) In addition to the requirements of subsection (3), the plan of share exchange may contain any other provisions that are not prohibited by law set forth other provisions relating to the exchange.

(5) Terms of a plan of share exchange may be made dependent on facts objectively ascertainable outside the plan in accordance with s. 607.0120(11).

(6) A plan of share exchange may be amended only with the

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consent of each party to the share exchange, except as provided in the plan. A domestic eligible entity may approve an amendment to a plan:

(a) In the same manner as the plan was approved, if the plan does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan, except that shareholders, members, or interest holders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, or other property to be received under the plan by the shareholders, members, or interest holders of the acquired eligible entity; or

2. Any of the other terms or conditions of the plan if the change would adversely affect such shareholders, members, or interest holders in any material respect.

(7)(4) This section does not limit the power of a corporation to acquire all or part of the shares of one or more classes or series of another corporation or eligible interests of any other eligible entity through a voluntary exchange or otherwise.

Section 133. Section 607.1103, Florida Statutes, is amended to read:

607.1103 Action on a plan of merger or share exchange.—In the case of a domestic corporation that is a party to a merger or the acquired eligible entity in a share exchange, the plan of merger or the plan of share exchange must be adopted in the

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following manner:

(1) ~~The After adopting a plan of merger or the plan of share exchange shall first be adopted by, the board of directors of such domestic corporation each corporation party to the merger, and the board of directors of the corporation the shares of which will be acquired in the share exchange, shall submit the plan of merger (except as provided in subsection (7)) or the plan of share exchange for approval by its shareholders.~~

(2) (a) Except as provided in subsections (8), (10), and (11), and in ss. 607.11035 and 607.1104, the plan of merger or the plan of share exchange shall then be adopted by the shareholders.

(b) In submitting the plan of merger or the plan of share exchange to the shareholders for approval, the board of directors shall recommend that the shareholders approve the plan, or in the case of an offer referred to in s. 607.11035(1) (b), that the shareholders tender their shares to the offeror in response to the offer, unless:

1. The board of directors makes a determination that because of conflicts of interest or other special circumstances, it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board shall inform the shareholders of the basis for its so proceeding without such recommendation ~~For a plan of merger or share exchange to be approved:~~

~~(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that it should make no recommendation~~

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~~because of conflict of interest or other special circumstances and communicates the basis for its determination to the shareholders with the plan; and~~

~~(b) The shareholders entitled to vote must approve the plan as provided in subsection (5).~~

(3) The board of directors may set conditions for the approval condition its submission of the proposed merger or share exchange by the shareholders or the effectiveness of the plan of merger or the plan of share exchange on any basis.

(4) If the plan of merger or the plan of share exchange is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is submitted for approval. The corporation the shareholders of which are entitled to vote on the matter shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or the plan of share exchange, regardless of whether or not the meeting is an annual or a special meeting, and contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged into an existing foreign or domestic eligible entity, the notice must also include or be accompanied by a copy of the articles of incorporation and bylaws or the organic rules of that eligible entity into which the corporation is to be merged. If the corporation is to be merged with a domestic or foreign eligible entity and a new domestic or foreign eligible entity is to be

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6613 created pursuant to the merger, the notice must include or be  
 6614 accompanied by a copy of the articles of incorporation and  
 6615 bylaws or the organic rules of the new eligible entity.  
 6616 Furthermore, if applicable, the notice shall contain a clear and  
 6617 concise statement that, if the plan of merger or share exchange  
 6618 is effected, shareholders dissenting therefrom may be entitled,  
 6619 if they comply with the provisions of this chapter act regarding  
 6620 appraisal rights, to be paid the fair value of their shares, and  
 6621 shall be accompanied by a copy of ss. 607.1301-607.1340 ss-  
 6622 607.1301-607.1333.

6623 (5) Unless this chapter act, the articles of incorporation,  
 6624 or the board of directors (acting pursuant to subsection (3))  
 6625 requires a greater vote or a greater quorum in the respective  
 6626 case, approval of vote by classes, the plan of merger or the  
 6627 plan of share exchange shall require the approval of the  
 6628 shareholders at a meeting at which a quorum exists by a majority  
 6629 of the votes entitled to be cast on the plan, and, if any class  
 6630 or series of shares is entitled to vote as a separate group on  
 6631 the plan of merger or the plan of share exchange, the approval  
 6632 of each such separate voting group at a meeting at which a  
 6633 quorum of the voting group is present by a majority of the votes  
 6634 entitled to be cast on the merger or share exchange by that  
 6635 voting group to be authorized shall be approved by each class  
 6636 entitled to vote on the plan by a majority of all the votes  
 6637 entitled to be cast on the plan by that class.

6638 (6)(a) Subject to subsection (7), voting by a class or  
 6639 series as a separate voting group is required:

6640 1.(a) By each class or series of shares of the corporation  
 6641 that would be entitled to vote as a separate group on any

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6642 provision in the plan which, if such provision had been ~~on a~~  
 6643 plan of merger if the plan contains a provision which, if  
 6644 contained in a proposed amendment to the articles of  
 6645 incorporation of a surviving corporation, would have entitled,  
 6646 would entitle the class or series to vote as a separate voting  
 6647 group on the proposed amendment under s. 607.1004; or

6648 2. If the plan contains a provision that would allow the  
 6649 plan to be amended to include the type of amendment to the  
 6650 articles of incorporation referenced in subparagraph 1., by each  
 6651 class or series of shares of the corporation that would have  
 6652 been entitled to vote as a separate group on any such amendment  
 6653 to the articles of incorporation; or

6654 3. By each class or series of shares of the corporation  
 6655 that is to be converted under the plan of merger into shares,  
 6656 other securities, eligible interests, obligations, rights to  
 6657 acquire shares, other securities, or eligible interests, cash,  
 6658 property, or any combination of the foregoing; or

6659 4. If the plan contains a provision that would allow the  
 6660 plan to be amended to convert other classes or series of shares  
 6661 of the corporation, by each class or series of shares of the  
 6662 corporation that would have been entitled to vote as a separate  
 6663 group if the plan were to be so amended.

6664 (b) Subject to subsection (7), voting by a class or series  
 6665 as a separate voting group is required on a plan of share  
 6666 exchange:

6667 1. By each class or series that is to be exchanged in the  
 6668 exchange, with each class or series constituting a separate  
 6669 voting group; or

6670 2. If the plan contains a provision that would allow the

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6671 plan to be amended to include the type of amendment to the  
 6672 articles of incorporation referenced in subparagraph (a)1., by  
 6673 each class or series of shares of the corporation that would  
 6674 have been entitled to vote as a separate group on any such  
 6675 amendment to the articles of incorporation.

6676 (c) Subject to subsection (7), voting by a class or series  
 6677 as a separate voting group is required on a plan of merger or a  
 6678 plan of share exchange if the group is entitled under the  
 6679 articles of incorporation to vote as a voting group to approve  
 6680 the plan of merger or the plan of share exchange, respectively.

6681 (7) The articles of incorporation may expressly limit or  
 6682 eliminate the separate voting rights provided in subparagraphs  
 6683 (6) (a)3. or 4. or subparagraph (6) (b)1. as to any class or  
 6684 series of shares, except when the plan of merger or the plan for  
 6685 share exchange:

6686 (a) Includes what is or would be, in effect, an amendment  
 6687 subject to any one or more of subparagraphs (6) (a)1. and 2. and  
 6688 subparagraph (6) (b)2.; and

6689 (b) Will not affect a substantive business combination if  
 6690 the shares of such class or series of shares are to be converted  
 6691 or exchanged under such plan or if the plan contains any  
 6692 provisions which, if contained in a proposed amendment to  
 6693 articles of incorporation, would entitle the class or series to  
 6694 vote as a separate voting group on the proposed amendment under  
 6695 s. 607.1004.

6696 (8)(7) Unless the corporation's articles of incorporation  
 6697 provide otherwise, approval by the corporation's shareholders of  
 6698 Notwithstanding the requirements of this section, unless  
 6699 required by its articles of incorporation, action by the

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6700 ~~shareholders of the surviving corporation on a plan of merger is~~  
 6701 ~~not required if:~~

6702 (a) The corporation will survive the merger;

6703 ~~(b)(a)~~ The articles of incorporation of the surviving  
 6704 corporation will not differ (except for amendments enumerated in  
 6705 s. 607.1002) from its articles of incorporation before the  
 6706 merger; and

6707 ~~(c)(b)~~ Each shareholder of the surviving corporation whose  
 6708 shares were outstanding immediately prior to the effective date  
 6709 of the merger will hold the same number of shares, with  
 6710 identical designations, preferences, rights, and limitations,  
 6711 and relative rights, immediately after the effective date of the  
 6712 merger.

6713 ~~(8) Any plan of merger or share exchange may authorize the~~  
 6714 ~~board of directors of each corporation party to the merger or~~  
 6715 ~~share exchange to amend the plan at any time prior to the filing~~  
 6716 ~~of the articles of merger or share exchange. An amendment made~~  
 6717 ~~subsequent to the approval of the plan by the shareholders of~~  
 6718 ~~any corporation party to the merger or share exchange may not:~~

6719 ~~(a) Change the amount or kind of shares, securities, cash,~~  
 6720 ~~property, or rights to be received in exchange for or on~~  
 6721 ~~conversion of any or all of the shares of any class or series of~~  
 6722 ~~such corporation;~~

6723 ~~(b) Change any other terms and conditions of the plan if~~  
 6724 ~~such change would materially and adversely affect such~~  
 6725 ~~corporation or the holders of the shares of any class or series~~  
 6726 ~~of such corporation; or~~

6727 ~~(c) Except as specified in s. 607.1002 or without the vote~~  
 6728 ~~of shareholders entitled to vote on the matter, change any term~~

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of the articles of incorporation of any corporation the shareholders of which must approve the plan of merger or share exchange.

~~If articles of merger or share exchange already have been filed with the Department of State, amended articles of merger or share exchange shall be filed with the Department of State prior to the effective date of the merger or share exchange.~~

(9) If as a result of a merger or share exchange one or more shareholders of a domestic corporation would become subject to new interest holder liability, approval of the plan of merger or the plan of share exchange shall require, in connection with the transaction, the signing by each such shareholder of a separate written consent to become subject to such new interest holder liability, unless in the case of a shareholder that already has interest holder liability with respect to such domestic corporation:

(a) The new interest holder liability is with respect to a domestic or foreign corporation (which may be a different or the same domestic corporation in which the person is a shareholder); and

(b) The terms and conditions of the new interest holder liability are substantially identical to those of the existing interest holder liability (other than for changes that reduce or eliminate such interest holder liability).

(10) Unless the articles of incorporation otherwise provide, approval of a plan of share exchange by the shareholders of a domestic corporation is not required if the corporation is the acquiring eligible entity in the share

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exchange.

(11) Unless the articles of incorporation otherwise provide, shares in the acquired eligible entity not to be exchanged under the plan of share exchange are not entitled to vote on the plan. Unless a plan of merger or share exchange prohibits abandonment of the merger or share exchange without shareholder approval after a merger or share exchange has been authorized, the planned merger or share exchange may be abandoned (subject to any contractual rights) at any time prior to the filing of articles of merger or share exchange by any corporation party to the merger or share exchange, without further shareholder action, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors of such corporation.

Section 134. Section 607.11035, Florida Statutes, is created to read:

607.11035 Shareholder approval of a merger or share exchange in connection with a tender offer.—

(1) Unless the articles of incorporation otherwise provide, shareholder approval of a plan of merger or a plan of share exchange under s. 607.1103(1)(b) is not required if:

(a) The plan of merger or share exchange expressly:

1. Permits or requires the merger or share exchange to be effected under this section; and

2. Provides that, if the merger or share exchange is to be effected under this section, the merger or share exchange will be effected as soon as practicable following the satisfaction of the requirement in paragraph (f);

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6787 (b) Another party to the merger, the acquiring eligible  
 6788 entity in the share exchange, or a parent of another party to  
 6789 the merger or the parent of the acquiring eligible entity in the  
 6790 share exchange, makes an offer to purchase, on the terms  
 6791 provided in the plan of merger or the plan of share exchange,  
 6792 any and all of the outstanding shares of the corporation that,  
 6793 absent this section, would be entitled to vote on the plan of  
 6794 merger or the plan of share exchange, except that the offer may  
 6795 exclude shares of the corporation that are owned at the  
 6796 commencement of the offer by the corporation, the offeror, or  
 6797 any parent of the offeror, or by any wholly owned subsidiary of  
 6798 any of the foregoing;

6799 (c) The offer discloses that the plan of merger or the plan  
 6800 of share exchange provides that the merger or share exchange  
 6801 will be effected as soon as practicable following the  
 6802 satisfaction of the requirement in paragraph (f) and that the  
 6803 shares of the corporation that are not tendered in response to  
 6804 the offer will be treated pursuant to paragraph (h);

6805 (d) The offer remains open for at least 10 days;

6806 (e) The offeror purchases all shares properly tendered in  
 6807 response to the offer and not properly withdrawn;

6808 (f) The shares listed below are collectively entitled to  
 6809 cast at least the minimum number of votes on the merger or share  
 6810 exchange that, absent this section, would be required by this  
 6811 chapter and by the articles of incorporation for the approval of  
 6812 the merger or share exchange by the shareholders and by each  
 6813 other voting group entitled to vote on the merger or share  
 6814 exchange at a meeting at which all shares entitled to vote on  
 6815 the approval were present and voted;

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6816 1. Shares purchased by the offeror in accordance with the  
 6817 offer;

6818 2. Shares otherwise owned by the offeror or by any parent  
 6819 of the offeror or any wholly owned subsidiary of any of the  
 6820 foregoing; and

6821 3. Shares subject to an agreement that they are to be  
 6822 transferred, contributed, or delivered to the offeror, any  
 6823 parent of the offeror, or any wholly owned subsidiary of any of  
 6824 the foregoing in exchange for shares or eligible interests in  
 6825 such offeror, parent, or subsidiary;

6826 (g) The offeror or a wholly owned subsidiary of the offeror  
 6827 merges with or into, or effects a share exchange in which it  
 6828 acquires shares of, the corporation; and

6829 (h) Each outstanding share of each class or series of  
 6830 shares of the corporation that the offeror is offering to  
 6831 purchase in accordance with the offer, and that is not purchased  
 6832 in accordance with the offer, is to be converted in the merger  
 6833 into, or into the right to receive, or is to be exchanged in the  
 6834 share exchange for, or for the right to receive, the same amount  
 6835 and kind of securities, eligible interests, obligations, rights,  
 6836 cash, or other property to be paid or exchanged in accordance  
 6837 with the offer for each share of that class or series of shares  
 6838 that is tendered in response to the offer, except that shares of  
 6839 the corporation that are owned by the corporation or that are  
 6840 described in subparagraphs (f)2. or 3. need not be converted  
 6841 into or exchanged for the consideration described in this  
 6842 paragraph.

6843 (2) As used in this section, the term:

6844 (a) "Offer" means the offer referred to in paragraph

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(1) (b).

(b) "Offeror" means the person making the offer.

(c) "Parent" of an eligible entity means a person that owns, directly or indirectly through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible interests in that eligible entity.

(d) Shares tendered in response to the offer shall be deemed to have been "purchased" in accordance with the terms of the offer at the earliest time as of which:

1. The offeror has irrevocably accepted those shares for payment; and

2. In the case of shares represented by certificates, the offeror, or the offeror's designated depository or other agent, has physically received the certificates representing those shares, or, in the case of shares without certificates, those shares have been transferred into the account of the offeror or its designated depository or other agent, or an agent's message relating to those shares has been received by the offeror or its designated depository or other agent.

(e) "Wholly owned subsidiary" of a person means an eligible entity of or in which a person owns, directly or indirectly, all of the outstanding shares or eligible interests.

Section 135. Section 607.1104, Florida Statutes, is amended to read:

607.1104 Merger between parent and subsidiary or between subsidiaries ~~of subsidiary corporation.~~

(1) (a) A domestic or foreign parent eligible entity that owns shares of a domestic corporation which carry corporation ~~owning~~ at least 80 percent of the voting power ~~outstanding~~

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~~shares~~ of each class and series of the outstanding shares of the a subsidiary ~~corporation~~ may:

1. Merge the subsidiary into itself, if it is a domestic or foreign eligible entity, or into another domestic or foreign eligible entity in which the parent eligible entity owns at least 80 percent of the voting power of each class and series of the outstanding shares or eligible interests that have voting power; or

2. ~~may~~ Merge itself, if it is a domestic or foreign eligible entity, into such the subsidiary.

(b) Mergers under subparagraphs (a)1. and (a)2. do not require the approval of the board of directors or shareholders of the subsidiary unless the articles of incorporation or organic rules of the parent eligible entity or the articles of incorporation of the subsidiary otherwise provide. Section 607.1103(9) applies to a merger under this section. The articles of merger relating to a merger under this section do not need to be signed by the subsidiary, ~~or may merge the subsidiary into and with another subsidiary in which the parent corporation owns at least 80 percent of the outstanding shares of each class of the subsidiary without the approval of the shareholders of the parent or subsidiary. In a merger of a parent corporation into its subsidiary corporation, the approval of the shareholders of the parent corporation shall be required if the articles of incorporation of the surviving corporation will differ, except for amendments enumerated in s. 607.1002, from the articles of incorporation of the parent corporation before the merger, and the required vote shall be the greater of the vote required to approve the merger and the vote required to adopt each change to~~

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the articles of incorporation as if each change had been presented as an amendment to the articles of incorporation of the parent corporation.

~~(b) The board of directors of the parent shall adopt a plan of merger that sets forth:~~

1. The names of the parent and subsidiary corporations;

2. The manner and basis of converting the shares of the subsidiary or parent into shares, obligations, or other securities of the parent or any other corporation or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, and other securities of the surviving or any other corporation or, in whole or in part, into cash or other property;

3. If the merger is between the parent and a subsidiary corporation and the parent is not the surviving corporation, a provision for the pro rata issuance of shares of the subsidiary to the holders of the shares of the parent corporation upon surrender of any certificates therefor; and

4. A clear and concise statement that shareholders of the subsidiary who, except for the applicability of this section, would be entitled to vote and who dissent from the merger pursuant to s. 607.1321, may be entitled, if they comply with the provisions of this act regarding appraisal rights, to be paid the fair value of their shares.

(2) The parent shall, within 10 days after the effective date of a merger approved under subsection (1), notify each of the subsidiary's shareholders that the merger has become effective mail a copy or summary of the plan of merger to each

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shareholder of the subsidiary who does not waive the mailing requirement in writing.

(3) Except as provided for in subsections (1) and (2), a merger between a parent eligible entity and a domestic subsidiary corporation shall be governed by the provisions of ss. 607.1101-607.1107 that are applicable to mergers generally. The parent may not deliver articles of merger to the Department of State for filing until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of the subsidiary who did not waive the mailing requirement, or, if earlier, upon the waiver thereof by the holders of all of the outstanding shares of the subsidiary.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation (except for amendments enumerated in s. 607.1002).

(5) Two or more subsidiaries may be merged into the parent pursuant to this section.

Section 136. Subsections (1) and (3) of section 607.11045, Florida Statutes, are amended to read:

607.11045 Holding company formation by merger by certain corporations.—

(1) This section applies only to a corporation that has shares registered pursuant to s. 12 of the Securities Exchange Act of 1934 of any class or series which are either registered on a national securities exchange or designated as a national market system security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or held of record by not fewer than 2,000 shareholders.

(3) Notwithstanding the requirements of s. 607.1103, unless

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expressly required by its articles of incorporation, no vote of shareholders of a corporation is necessary to authorize a merger of the corporation with or into a wholly owned subsidiary of such corporation if:

(a) Such corporation and wholly owned subsidiary are the only constituent corporations to the merger;

(b) Each share or fraction of a share of the constituent corporation whose shares are being converted pursuant to the merger which are outstanding immediately prior to the effective date of the merger is converted in the merger into a share or equal fraction of share of a holding company having the same designations, rights, powers and preferences, and qualifications, limitations and restrictions thereof as the share of the constituent corporation being converted in the merger;

(c) The holding company and each of the constituent corporations to the merger are domestic corporations;

(d) The articles of incorporation and bylaws of the holding company immediately following the effective date of the merger contain provisions identical to the articles of incorporation and bylaws of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective date of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change,

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exchange, reclassification, or cancellation has become effective;

(e) As a result of the merger, the constituent corporation whose shares are being converted pursuant to the merger or its successor corporation becomes or remains a direct or indirect wholly owned subsidiary of the holding company;

(f) The directors of the constituent corporation become or remain the directors of the holding company upon the effective date of the merger;

(g) The articles of incorporation of the surviving corporation immediately following the effective date of the merger are identical to the articles of incorporation of the constituent corporation whose shares are being converted pursuant to the merger immediately prior to the effective date of the merger, except provisions regarding the incorporators, the corporate name, the registered office and agent, the initial board of directors, the initial subscribers for shares and matters solely of historical significance, and such provisions contained in any amendment to the articles of incorporation as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective. The articles of incorporation of the surviving corporation must be amended in the merger to contain a provision requiring, by specific reference to this section, that any act or transaction by or involving the surviving corporation, other than the election or removal of directors, which requires for its adoption under this chapter ~~act~~ or its articles of incorporation the approval of the shareholders of the surviving corporation

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also be approved by the shareholders of the holding company, or any successor by merger, by the same vote as is required by this chapter ~~act~~ or the articles of incorporation of the surviving corporation. The articles of incorporation of the surviving corporation may be amended in the merger to reduce the number of classes and shares which the surviving corporation is authorized to issue;

(h) The board of directors of the constituent corporation determines that the shareholders of the constituent corporation will not recognize gain or loss for United States federal income tax purposes; and

(i) The board of directors of such corporation adopts a plan of merger that sets forth:

1. The names of the constituent corporations;

2. The manner and basis of converting the shares of the corporation into shares of the holding company and the manner and basis of converting rights to acquire shares of such corporation into rights to acquire shares of the holding company; and

3. A provision for the pro rata issuance of shares of the holding company to the holders of shares of the corporation upon surrender of any certificates therefor.

Section 137. Section 607.1105, Florida Statutes, is amended to read:

607.1105 Articles of merger or share exchange.—

(1) After a plan of merger has been adopted and approved as required by this chapter or, if the merger is being effected under s. 607.1101(1)(b), the merger has been approved as required by the organic law governing the parties to the merger,

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the articles of merger must be signed by each party to the merger, except as provided in s. 607.1104(1). The articles must or share exchange is approved by the shareholders, or adopted by the board of directors if shareholder approval is not required, the surviving or acquiring corporation shall deliver to the Department of State for filing articles of merger or share exchange which shall be executed by each corporation as required by s. 607.0120 and which shall set forth:

(a) The name, jurisdiction of formation, and type of entity of each party of the merger;

(b) If not already identified as the survivor pursuant to paragraph (a), the name, jurisdiction of formation, and type of entity of the survivor;

(c) If the survivor of the merger is a domestic corporation and its articles of incorporation are being amended, or if a new domestic corporation is being created as a result of the merger:

1. The amendments to the survivor's articles of incorporation; or

2. The articles of incorporation of the new corporation;

(d) If the survivor of the merger is a domestic eligible entity, other than a domestic corporation, and its public organic record is being amended in connection with the merger, or if a new domestic eligible entity is being created as a result of the merger:

1. The amendments to the public organic record of the survivor; or

2. The public organic record of the new eligible entity;

(e) If the plan of merger required approval by the shareholders of a domestic corporation that is a party to the

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merger, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each such separate voting group, in the manner required by this chapter and the articles of incorporation of such domestic corporation;

(f) If the plan of merger did not require approval by the shareholders of a domestic corporation that is a party to the merger, a statement to that effect;

(g) As to each foreign corporation that is a party to the merger, a statement that the participation of the foreign corporation was duly authorized in accordance with such corporation's organic law;

(h) As to each domestic or foreign eligible entity that is a party to the merger and that is not a domestic or foreign corporation, a statement that the participation of the eligible entity in the merger was duly authorized in accordance with such eligible entity's organic law; and

(i) If the survivor is created by the merger and is a domestic limited liability partnership, the document required to elect that status, as an attachment.

(2) After a plan of share exchange in which the acquired eligible entity is a domestic corporation or other eligible entity has been adopted and approved as required by this chapter, articles of share exchange must be signed by the acquired eligible entity and the acquiring eligible entity. The articles must set forth:

(a) The name, jurisdiction of formation, and type of entity of the acquired eligible entity;

(b) The name, jurisdiction of formation, and type of entity

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of the domestic or foreign eligible entity that is the acquiring eligible entity; and

(c) A statement that the plan of share exchange was duly approved by the acquired eligible entity by:

1. The required vote or consent of each class or series of shares or eligible interests included in the exchange; and

2. The required vote or consent of each other class or series of shares or eligible interests entitled to vote on approval of the exchange by the articles of incorporation or the organic rules of the acquired eligible entity.

(3) In addition to the requirements of subsections (1) and (2), articles of merger or articles of share exchange may contain any other provision not prohibited by law.

(4) The articles of merger or the articles of share exchange shall be delivered to the department for filing, and, subject to subsection (5), the merger or share exchange shall take effect at the effective date determined in accordance with s. 607.0123.

(5) With respect to a merger in which one or more foreign entities is a party or a foreign eligible entity created by the merger is the survivor, the merger itself shall become effective at the later of:

(a) When all documents required to be filed in all foreign jurisdictions to effect the merger have become effective; or

(b) When the articles of merger take effect.

(6) Articles of merger required to be filed under this section may be combined with any filing required under the organic law governing any other domestic eligible entity involved in the transaction if the combined filing satisfies the

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requirements of both this section and the other organic law plan  
of merger or share exchange;

~~(b) The effective date of the merger or share exchange,  
which may be on or after the date of filing the articles of  
merger or share exchange, if the articles of merger or share  
exchange do not provide for an effective date of the merger or  
share exchange, then the effective date shall be the date on  
which the articles of merger or share exchange are filed;~~

~~(c) If shareholder approval was not required, a statement  
to that effect; and~~

~~(d) As to each corporation, to the extent applicable, the  
date of adoption of the plan of merger or share exchange by the  
shareholders or by the board of directors when no vote of the  
shareholders is required.~~

(7)(2) A copy of the articles of merger or share exchange,  
certified by the department of State, may be filed in the office  
of the official who is the recording officer of each county in  
this state in which real property of a constituent corporation  
other than the surviving corporation is situated.

Section 138. Section 607.1106, Florida Statutes, is amended  
to read:

607.1106 Effect of merger or share exchange.—

(1) When a merger becomes effective:

(a) The domestic or foreign eligible entity that is  
designated in the plan of merger as the survivor continues or  
comes into existence, as the case may be;

(b) The separate existence of every domestic or foreign  
eligible entity that is a party to the merger, other than the  
survivor, ceases ~~Every other corporation party to the merger~~

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~~merges into the surviving corporation and the separate existence  
of every corporation except the surviving corporation ceases;~~

(c)(b) All real property and other property, including any  
interest therein and all title thereto, owned by, and every  
contract right possessed by, each domestic or foreign eligible  
entity that is a party to the merger, other than the survivor,  
become the property and contract rights of and become vested in  
the survivor, The title to all real estate and other property,  
or any interest therein, owned by each corporation party to the  
merger is vested in the surviving corporation without transfer,  
reversion, or impairment;

(d)(e) All debts, obligations, and other liabilities of  
each domestic or foreign eligible entity that is a The surviving  
corporation shall thenceforth be responsible and liable for all  
the liabilities and obligations of each corporation party to the  
merger, other than the survivor, become debts, obligations, and  
liabilities of the survivor;

(e)(d) The name of the survivor may be, but need not be,  
substituted in any pending proceeding for the name of any party  
to the merger whose separate existence ceased in the merger Any  
claim existing or action or proceeding pending by or against any  
corporation party to the merger may be continued as if the  
merger did not occur or the surviving corporation may be  
substituted in the proceeding for the corporation which ceased  
existence;

(f)(e) Neither the rights of creditors nor any liens upon  
the property of any corporation party to the merger shall be  
impaired by such merger;

(g)(f) If the survivor is a domestic eligible entity, the

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articles of incorporation and bylaws or the organic rules of the survivor ~~surviving corporation~~ are amended to the extent provided in the plan of merger; and

(h) The articles of incorporation and bylaws or the organic rules of a survivor that is a domestic eligible entity and is created by the merger become effective;

(i) ~~(g)~~ The shares (and the rights to acquire shares, obligations, or other securities) of each domestic or foreign corporation party to the merger, and the eligible interests in any other eligible entity that is a party to the merger, that are to be converted in accordance with the terms of the merger into shares or other securities, eligible interests, ~~rights,~~ obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing, or other securities of the surviving or any other corporation or into cash or other property are converted, and the former holders of such the shares, rights to acquire shares, or other eligible interests are entitled only to the rights provided to them by those terms of the merger or to any rights they may have in the articles of merger or to their rights under s. 607.1302 or under the organic law governing the eligible entity;

(j) Except as provided by law or the plan of merger, all the rights, privileges, franchises, and immunities of each eligible entity that is a party to the merger, other than the survivor, become the rights, privileges, franchises, and immunities of the survivor; and

(k) If the survivor exists before the merger:

1. All the property and contract rights of the survivor

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remain its property and contract rights without transfer, reversion, or impairment;

2. The survivor remains subject to all of its debts, obligations, and other liabilities; and

3. Except as provided by law or the plan of merger, the survivor continues to hold all of its rights, privileges, franchises, and immunities.

(2) When a share exchange becomes effective, the shares, eligible interests, and rights to acquire shares or eligible interests in the acquired eligible entity that of each acquired corporation are to be exchanged in accordance with the terms of the share exchange for:

(a) Shares or other securities;

(b) Eligible interests;

(c) Obligations;

(d) Rights to acquire shares, other securities, or eligible interests;

(e) Cash;

(f) Other property; or

(g) Any combination of the foregoing

are entitled only to the rights provided to them by the terms of the share exchange, or to any as provided in the plan of exchange, and the former holders of the shares are entitled only to the exchange rights provided in the articles of share exchange or to their rights they may have under s. 607.1302 or the organic law governing the acquired eligible entity.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law

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governing or organic rules of a domestic or foreign eligible entity, the effect of a merger or share exchange on interest holder liability is as follows:

(a) A person who becomes subject to new interest holder liability in respect of an eligible entity as a result of a merger or share exchange shall have that new interest holder liability only in respect of interest holder liabilities that arise after the merger or share exchange becomes effective.

(b) If a person had interest holder liability with respect to a party to the merger or the acquired eligible entity before the merger or share exchange becomes effective with respect to shares or eligible interests of such party or acquired entity which were exchanged in the merger or share exchange, which were canceled in the merger, or the terms and conditions of which relating to interest holder liability were amended pursuant to the merger:

1. The merger or share exchange does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the merger or share exchange becomes effective.

2. The provisions of the organic law governing any eligible entity for which the person had that prior interest holder liability shall continue to apply to the collection or discharge of any interest holder liabilities preserved by subparagraph 1. as if the merger or share exchange had not occurred.

3. The person shall have such rights of contribution from other persons as are provided by the organic law governing the eligible entity for which the person had that prior interest holder liability with respect to any interest holder liabilities

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preserved by subparagraph 1. as if the merger or share exchange had not occurred.

4. The person shall not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the merger or share exchange becomes effective.

(c) If a person has interest holder liability both before and after a merger becomes effective with unchanged terms and conditions with respect to the eligible entity that is the survivor by reason of owning the same shares or eligible interests before and after the merger becomes effective, the merger has no effect on such interest holder liability.

(d) A share exchange has no effect on interest holder liability related to shares or eligible interests of the acquired eligible entity that were not exchanged in the share exchange.

(4) Upon a merger becoming effective, a foreign eligible entity that is the survivor of the merger is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights; and

(b) Agree that it will promptly pay any amount that the shareholders are entitled to under ss. 607.1301-607.1340.

(5) Except as provided in the organic law governing a party to a merger or in its articles of incorporation or organic rules, the merger does not give rise to any rights that an interest holder, governor, or third party would have upon a dissolution, liquidation, or winding up of that party. The

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merger does not require a party to the merger to wind up its affairs and does not constitute or cause its dissolution or termination.

(6) Property held for a charitable purpose under the law of this state by a domestic or foreign eligible entity immediately before a merger becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and only to the extent permitted by or pursuant to the laws of this state addressing cy pres or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to an eligible entity that is a party to a merger that is not the survivor and which takes effect or remains payable after the merger inures to the survivor.

(8) A trust obligation that would govern property if the property is directed to be transferred to a nonsurviving eligible entity will apply to property that is to be transferred instead to the survivor after a merger becomes effective.

Section 139. Section 607.1107, Florida Statutes, is amended to read:

607.1107 Abandonment of a merger or share exchange ~~Merger or share exchange with foreign corporations.-~~

(1) After a plan of merger or a plan of share exchange has been adopted and approved as required by this chapter, and before the articles of merger or the articles of share exchange have become effective, the plan may be abandoned by a domestic corporation that is a party to the plan without action by its

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shareholders in accordance with any procedures set forth in the plan of merger or the plan of share exchange or, if no such procedures are set forth in the plan, in the manner determined by the board of directors.

(2) If a merger or share exchange is abandoned under subsection (1) after articles of merger or articles of share exchange have been delivered to the department for filing but before the articles of merger or articles of share exchange have become effective, a statement of abandonment signed by all the parties that signed the articles of merger or articles of share exchange must be delivered to the department for filing before the articles of merger or articles of share exchange become effective. The statement shall take effect on filing, whereupon the merger or share exchange shall be deemed abandoned and shall not become effective. The statement of abandonment must contain:

(a) The name of each party to the merger or the names of the acquiring and acquired entities in a share exchange;

(b) The date on which the articles of merger or articles of share exchange were filed by the department; and

(c) A statement that the merger or share exchange has been abandoned in accordance with this section. ~~One or more foreign corporations may merge or enter into a share exchange with one or more domestic corporations if:~~

~~(a) In a merger, the merger is permitted by the law of the state or country under the law of which each foreign corporation is incorporated and each foreign corporation complies with that law in effecting the merger;~~

~~(b) In a share exchange, the corporation the shares of which will be acquired is a domestic corporation, whether or not~~

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7367 a share exchange is permitted by law of the state or country  
 7368 under the law of which the acquiring corporation is  
 7369 incorporated;  
 7370 (c) The foreign corporation complies with s. 607.1105 if it  
 7371 is the surviving corporation of the merger or acquiring  
 7372 corporation of the share exchange; and  
 7373 (d) Each domestic corporation complies with the applicable  
 7374 provisions of ss. 607.1101-607.1104 and, if it is the surviving  
 7375 corporation of the merger or acquiring corporation of the share  
 7376 exchange, with s. 607.1105.  
 7377 (2) Upon the merger becoming effective, the surviving  
 7378 foreign corporation of a merger, and the acquiring foreign  
 7379 corporation in a share exchange, is deemed:  
 7380 (a) To appoint the Secretary of State as its agent for  
 7381 service of process in a proceeding to enforce any obligation or  
 7382 the rights of dissenting shareholders of each domestic  
 7383 corporation party to the merger or share exchange; and  
 7384 (b) To agree that it will promptly pay to the dissenting  
 7385 shareholders of each domestic corporation party to the merger or  
 7386 share exchange the amount, if any, to which they are entitled  
 7387 under s. 607.1302.  
 7388 (3) This section does not limit the power of a foreign  
 7389 corporation to acquire all or part of the shares of one or more  
 7390 classes or series of a domestic corporation through a voluntary  
 7391 exchange or otherwise.  
 7392 (4) The effect of such merger shall be the same as in the  
 7393 case of the merger of domestic corporations if the surviving  
 7394 corporation is to be governed by the laws of this state. If the  
 7395 surviving corporation is to be governed by the laws of any state

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7396 other than this state, the effect of such merger shall be the  
 7397 same as in the case of the merger of domestic corporations  
 7398 except insofar as the laws of such other state provide  
 7399 otherwise.  
 7400 (5) The redomestication of a foreign insurer to this state  
 7401 under s. 628.520 shall be deemed a merger of a foreign  
 7402 corporation and a domestic corporation, and the surviving  
 7403 corporation shall be deemed to be a domestic corporation  
 7404 incorporated under the laws of this state. The redomestication  
 7405 of a Florida corporation to a foreign jurisdiction under s.  
 7406 628.525 shall be deemed a merger of a domestic corporation and a  
 7407 foreign corporation, and the surviving corporation shall be  
 7408 deemed to be a foreign corporation.  
 7409 Section 140. Section 607.1108, Florida Statutes, is  
 7410 repealed.  
 7411 Section 141. Section 607.1109, Florida Statutes, is  
 7412 repealed.  
 7413 Section 142. Section 607.11101, Florida Statutes, is  
 7414 repealed.  
 7415 Section 143. Section 607.1112, Florida Statutes, is  
 7416 repealed.  
 7417 Section 144. Section 607.1113, Florida Statutes, is  
 7418 repealed.  
 7419 Section 145. Section 607.1114, Florida Statutes, is  
 7420 repealed.  
 7421 Section 146. Section 607.1115, Florida Statutes, is  
 7422 repealed.  
 7423 Section 147. Section 607.11920, Florida Statutes, is  
 7424 created to read:

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7425 607.11920 Domestication.—

7426 (1) By complying with this section and ss. 607.11921-  
 7427 607.11924, as applicable, a foreign corporation may become a  
 7428 domestic corporation if the domestication is permitted by the  
 7429 organic law of the foreign corporation.

7430 (2) By complying with this section and ss. 607.11921-  
 7431 607.11924, as applicable, a domestic corporation may become a  
 7432 foreign corporation pursuant to a plan of domestication if the  
 7433 domestication is permitted by the organic law of the foreign  
 7434 corporation.

7435 (3) In a domestication under subsection (2), the  
 7436 domesticating eligible entity must enter into a plan of  
 7437 domestication. The plan of domestication must include:

7438 (a) The name of the domesticating corporation;

7439 (b) The name and jurisdiction of formation of the  
 7440 domesticated corporation;

7441 (c) The manner and basis of reclassifying the shares of the  
 7442 domesticating corporation into shares or other securities,  
 7443 obligations, rights to acquire shares or other securities, cash,  
 7444 other property, or any combination of the foregoing;

7445 (d) The proposed organic rules of the domesticated  
 7446 corporation which must be in writing; and

7447 (e) The other terms and conditions of the domestication.

7448 (4) In addition to the requirements of subsection (3), a  
 7449 plan of domestication may contain any other provision not  
 7450 prohibited by law.

7451 (5) The terms of a plan of domestication may be made  
 7452 dependent upon facts objectively ascertainable outside the plan  
 7453 in accordance with s. 607.0120(11).

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7454 (6) If a protected agreement of a domesticating corporation  
 7455 in effect immediately before the domestication becomes effective  
 7456 contains a provision applying to a merger of the corporation and  
 7457 the agreement does not refer to a domestication of the  
 7458 corporation, the provision applies to a domestication of the  
 7459 corporation as if the domestication were a merger until such  
 7460 time as the provision is first amended after January 1, 2020.

7461 Section 148. Section 607.11921, Florida Statutes, is  
 7462 created to read:

7463 607.11921 Action on a plan of domestication.—In the case of  
 7464 a domestication of a domestic corporation into a foreign  
 7465 jurisdiction, the plan of domestication shall be adopted in the  
 7466 following manner:

7467 (1) The plan of domestication must first be adopted by the  
 7468 board of directors of such domestic corporation.

7469 (2) (a) The plan of domestication must then be approved by  
 7470 the shareholders of such domestic corporation.

7471 (b) In submitting the plan of domestication to the  
 7472 shareholders for approval, the board of directors shall  
 7473 recommend that the shareholders approve the plan, unless:

7474 1. The board of directors makes a determination that  
 7475 because of conflicts of interest or other special circumstances  
 7476 it should not make such a recommendation; or

7477 2. Section 607.0826 applies.

7478 (c) If either subparagraph (b)1. or subparagraph (b)2.  
 7479 applies, the board shall inform the shareholders of the basis  
 7480 for its so proceeding without such recommendation.

7481 (3) The board of directors may set conditions for approval  
 7482 of the plan of domestication by the shareholders or the

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effectiveness of the plan of domestication.

(4) If the plan of domestication is required to be approved by the shareholders, and if the approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of domestication and must contain or be accompanied by a copy of the plan. The notice must include or be accompanied by a written copy of the organic rules of the domesticated eligible entity as they will be in effect immediately after the domestication.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan of domestication requires:

(a) The approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan; and

(b) Except as provided in subsection (6), the approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the plan by that voting group.

(6) The articles of incorporation may expressly limit or eliminate the separate voting rights provided in paragraph (5) (b) as to any class or series of shares, except when the public organic rules of the foreign corporation resulting from

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the domestication include what would be in effect an amendment that would entitle the class or series to vote as a separate group under s. 607.1004 if it were a proposed amendment of the articles of incorporation of a domestic domesticating corporation.

(7) If as a result of a domestication one or more shareholders of a domestic domesticating corporation would become subject to interest holder liability, approval of the plan of domestication shall require the signing in connection with the domestication, by each such shareholder, of a separate written consent to become subject to such interest holder liability, unless in the case of a shareholder that already has interest holder liability with respect to the domesticating corporation, the terms and conditions of the interest holder liability with respect to the domesticated corporation are substantially identical to those of the existing interest holder liability, other than for changes that eliminate or reduce such interest holder liability.

Section 149. Section 607.11922, Florida Statutes, is created to read:

607.11922 Articles of domestication; effectiveness.—

(1) Articles of domestication must be signed by the domesticating corporation after:

(a) A plan of domestication of a domestic corporation has been adopted and approved as required by this chapter; or

(b) A foreign corporation that is the domesticating corporation has approved a domestication as required by the applicable provisions of this chapter and under the foreign corporation's organic law.

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7541 (2) Articles of domestication must set forth:  
 7542 (a) The name of the domesticating corporation and its  
 7543 jurisdiction of formation;  
 7544 (b) The name and jurisdiction of formation of the  
 7545 domesticated corporation; and  
 7546 (c) 1. If the domesticating corporation is a domestic  
 7547 corporation, a statement that the plan of domestication was  
 7548 approved in accordance with this chapter; or  
 7549 2. If the domesticating corporation is a foreign  
 7550 corporation, a statement that the domestication was approved in  
 7551 accordance with its organic law.  
 7552 (3) If the domesticated corporation is to be a domestic  
 7553 corporation, articles of incorporation of the domesticated  
 7554 corporation that satisfy the requirements of s. 607.0202 must be  
 7555 attached to the articles of domestication. Provisions that would  
 7556 not be required to be included in restated articles of  
 7557 incorporation may be omitted from the articles of incorporation  
 7558 attached to the articles of domestication.  
 7559 (4) The articles of domestication shall be delivered to the  
 7560 department for filing and shall take effect at the effective  
 7561 date determined in accordance with s. 607.0123.  
 7562 (5) (a) If the domesticated corporation is a domestic  
 7563 corporation, the domestication becomes effective when the  
 7564 articles of domestication are effective.  
 7565 (b) If the domesticated corporation is a foreign  
 7566 corporation, the domestication becomes effective on the later of  
 7567 the date and time provided by the organic law of the  
 7568 domesticated corporation or when the articles of domestication  
 7569 are effective.

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7570 (6) If the domesticating corporation is a foreign  
 7571 corporation that is qualified to transact business in this state  
 7572 under ss. 607.1501-607.1532, its certificate of authority is  
 7573 automatically canceled when the domestication becomes effective.  
 7574 (7) A copy of the articles of domestication, certified by  
 7575 the department, may be filed in the official records of any  
 7576 county in this state in which the domesticating eligible entity  
 7577 holds an interest in real property.  
 7578 Section 150. Section 607.11923, Florida Statutes, is  
 7579 created to read:  
 7580 607.11923 Amendment of a plan of domestication;  
 7581 abandonment.—  
 7582 (1) A plan of domestication of a domestic corporation  
 7583 adopted under s. 607.11920(3) may be amended:  
 7584 (a) In the same manner as the plan of domestication was  
 7585 approved, if the plan does not provide for the manner in which  
 7586 it may be amended; or  
 7587 (b) In the manner provided in the plan of domestication,  
 7588 except that a shareholder that was entitled to vote on or  
 7589 consent to approval of the plan is entitled to vote on or  
 7590 consent to any amendment of the plan that will change:  
 7591 1. The amount or kind of shares or other securities,  
 7592 obligations, rights to acquire shares, other securities, or  
 7593 eligible interests, cash, other property, or any combination of  
 7594 the foregoing, to be received by any of the shareholders or  
 7595 holders of rights to acquire shares, other securities, or  
 7596 eligible interests of the domesticating corporation under the  
 7597 plan;  
 7598 2. The organic rules of the domesticated corporation that

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are to be in writing and that will be in effect immediately after the domestication becomes effective, except for changes that do not require approval of the shareholders of the domesticated corporation under its organic rules as set forth in the plan of domestication; or

3. Any of the other terms or conditions of the plan, if the change would adversely affect the shareholder in any material respect.

(2) After a plan of domestication has been adopted and approved by a domestic corporation as required by this chapter, and before the articles of domestication have become effective, the plan may be abandoned by the corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner determined by the board of directors of the domestic corporation.

(3) If a domestication is abandoned after the articles of domestication have been delivered to the department for filing but before the articles of domestication have become effective, a statement of abandonment signed by the domesticating corporation must be delivered to the department for filing before the articles of domestication become effective. The statement shall take effect upon filing, and the domestication shall be deemed abandoned and shall not become effective. The statement of abandonment must contain:

(a) The name of the domesticating corporation;

(b) The date on which the articles of domestication were filed by the department; and

(c) A statement that the domestication has been abandoned

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in accordance with this section.

Section 151. Section 607.11924, Florida Statutes, is created to read:

607.11924 Effect of domestication.—

(1) When a domestication becomes effective:

(a) All real property and other property owned by the domesticating corporation, including any interests therein and all title thereto, and every contract right possessed by the domesticating corporation, are the property and contract rights of the domesticated corporation without transfer, reversion, or impairment;

(b) All debts, obligations, and other liabilities of the domesticating corporation are the debts, obligations, and other liabilities of the domesticated corporation;

(c) The name of the domesticated corporation may be, but need not be, substituted for the name of the domesticating corporation in any pending proceeding;

(d) The organic rules of the domesticated corporation become effective;

(e) The shares or equity interests of the domesticating corporation are reclassified into shares or other securities, obligations, rights to acquire shares or other securities, cash, or other property in accordance with the terms of the domestication, and the shareholders or equity owners of the domesticating corporation are entitled only to the rights provided to them by those terms and to any appraisal rights they may have under the organic law of the domesticating corporation; and

(f) The domesticated corporation is:

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7657 1. Incorporated under and subject to the organic law of the  
 7658 domesticated corporation;  
 7659 2. The same corporation, without interruption, as the  
 7660 domesticating corporation; and  
 7661 3. Deemed to have been incorporated or formed on the date  
 7662 the domesticating corporation was originally incorporated.  
 7663 (2) In addition, when a domestication of a domestic  
 7664 corporation into a foreign jurisdiction becomes effective, the  
 7665 domesticated corporation is deemed to:  
 7666 (a) Appoint the secretary of state as its agent for service  
 7667 of process in a proceeding to enforce the rights of shareholders  
 7668 who exercise appraisal rights in connection with the  
 7669 domestication; and  
 7670 (b) Agree that it will promptly pay any amount that the  
 7671 shareholders are entitled to under ss. 607.1301-607.1340.  
 7672 (3) Except as otherwise provided in the organic law or  
 7673 organic rules of a domesticating foreign corporation, the  
 7674 interest holder liability of a shareholder or equity holder in a  
 7675 foreign corporation that is domesticated into this state who had  
 7676 interest holder liability in respect of such domesticating  
 7677 corporation before the domestication becomes effective shall be  
 7678 as follows:  
 7679 (a) The domestication does not discharge that prior  
 7680 interest holder liability with respect to any interest holder  
 7681 liabilities that arose before the domestication becomes  
 7682 effective.  
 7683 (b) The provisions of the organic law of the domesticating  
 7684 corporation shall continue to apply to the collection or  
 7685 discharge of any interest holder liabilities preserved by

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7686 paragraph (a), as if the domestication had not occurred.  
 7687 (c) The shareholder or equity holder shall have such rights  
 7688 of contribution from other persons as are provided by the  
 7689 organic law of the domesticating corporation with respect to any  
 7690 interest holder liabilities preserved by paragraph (a), as if  
 7691 the domestication had not occurred.  
 7692 (d) The shareholder or equity holder may not, by reason of  
 7693 such prior interest holder liability, have interest holder  
 7694 liability with respect to any interest holder liabilities that  
 7695 are incurred after the domestication becomes effective.  
 7696 (4) A shareholder or equity holder who becomes subject to  
 7697 interest holder liability in respect of the domesticated  
 7698 corporation as a result of the domestication shall have such  
 7699 interest holder liability only in respect of interest holder  
 7700 liabilities that arise after the domestication becomes  
 7701 effective.  
 7702 (5) A domestication does not constitute or cause the  
 7703 dissolution of the domesticating corporation.  
 7704 (6) Property held for charitable purposes under the laws of  
 7705 this state by a domestic or foreign corporation immediately  
 7706 before a domestication becomes effective may not, as a result of  
 7707 the transaction, be diverted from the objects for which it was  
 7708 donated, granted, devised, or otherwise transferred except and  
 7709 to the extent permitted by or pursuant to the laws of this state  
 7710 addressing cy pres or dealing with nondiversion of charitable  
 7711 assets.  
 7712 (7) A bequest, devise, gift, grant, or promise contained in  
 7713 a will or other instrument of donation, subscription, or  
 7714 conveyance which is made to the domesticating corporation and

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which takes effect or remains payable after the domestication inures to the domesticated corporation.

(8) A trust obligation that would govern property if transferred to the domesticating corporation applies to property that is transferred to the domesticated corporation after the domestication takes effect.

Section 152. Section 607.11930, Florida Statutes, is created to read:

607.11930 Conversion.—

(1) By complying with this chapter, including adopting a plan of conversion in accordance with s. 607.11931 and complying with s. 607.11932, a domestic corporation may become:

(a) A domestic eligible entity, other than a domestic corporation;

(b) If the conversion is permitted by the organic law of the foreign eligible entity, a foreign eligible entity.

(2) By complying with this section and ss. 607.11931-607.11935, as applicable, and applicable provisions of its organic law, a domestic eligible entity other than a domestic corporation may become a domestic corporation.

(3) By complying with this section and ss. 607.11931-607.11935, as applicable, and by complying with the applicable provisions of its organic law, a foreign eligible entity may become a domestic corporation, but only if the organic law of the foreign eligible entity permits it to become a corporation in another jurisdiction.

(4) If a protected agreement of a domestic converting eligible entity in effect immediately before the conversion becomes effective contains a provision applying to a merger of

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the corporation that is a converting eligible entity and the agreement does not refer to a conversion of the corporation, the provision applies to a conversion of the corporation as if the conversion were a merger, until such time as the provision is first amended after January 1, 2020.

Section 153. Section 607.11931, Florida Statutes, is created to read:

607.11931 Plan of conversion.—

(1) A domestic corporation may convert to a domestic or foreign eligible entity under this chapter by approving a plan of conversion. The plan of conversion must include:

(a) The name of the domestic converting corporation;

(b) The name, jurisdiction of formation, and type of entity of the converted eligible entity;

(c) The manner and basis of converting the shares of the domestic corporation, or the rights to acquire shares, obligations or other securities, of the domestic corporation into:

1. Shares.

2. Other securities.

3. Eligible interests.

4. Obligations.

5. Rights to acquire shares, other securities, or eligible interests.

6. Cash.

7. Other property.

8. Any combination of the foregoing;

(d) The other terms and conditions of the conversion; and

(e) The full text, as it will be in effect immediately

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after the conversion becomes effective, of the organic rules of the converted eligible entity which are to be in writing.

(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law.

(3) The terms of a plan of conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 607.0120(11).

Section 154. Section 607.11932, Florida Statutes, is created to read:

607.11932 Action on a plan of conversion.—In the case of a conversion of a domestic corporation to a domestic or foreign eligible entity other than a domestic corporation, the plan of conversion must be adopted in the following manner:

(1) The plan of conversion must first be adopted by the board of directors of such domestic corporation.

(2) (a) The plan of conversion shall then be approved by the shareholders of such domestic corporation.

(b) In submitting the plan of conversion to the shareholders for their approval, the board of directors shall recommend that the shareholders approve the plan of conversion unless:

1. The board of directors makes a determination that because of conflicts of interest or other special circumstances it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board of directors shall inform the shareholders of the basis for its so proceeding without such recommendation.

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(3) The board of directors may set conditions for approval of the plan of conversion by the shareholders or the effectiveness of the plan of conversion.

(4) If a plan of conversion is required to be approved by the shareholders, and if the approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for approval, in accordance with s. 607.0705. The notice must state that the purpose, or one of the purposes, of the meeting is to consider the plan of conversion and must contain or be accompanied by a copy of the plan. The notice must include or be accompanied by a written copy of the organic rules of the converted eligible entity as they will be in effect immediately after the conversion.

(5) Unless the articles of incorporation, or the board of directors acting pursuant to subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan of conversion requires:

(a) The approval of the shareholders at a meeting at which a quorum exists consisting of a majority of the votes entitled to be cast on the plan; and

(b) The approval of each class or series of shares voting as a separate voting group at a meeting at which a quorum of the voting group exists consisting of a majority of the votes entitled to be cast on the plan by that voting group.

(6) If as a result of the conversion one or more shareholders of the converting domestic corporation would become subject to interest holder liability, approval of the plan of

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conversion shall require the signing in connection with the transaction, by each such shareholder, of a separate written consent to become subject to such interest holder liability.

(7) If the converted eligible entity is a partnership or limited partnership, no shareholder of the converting domestic corporation shall, as a result of the conversion, become a general partner of the partnership or limited partnership, unless such shareholder specifically consents in writing to becoming a general partner of such partnership or limited partnership and, unless such written consent is obtained from each such shareholder, such conversion may not become effective under s. 607.11933. Any shareholder providing such consent in writing shall be deemed to have voted in favor of the plan of conversion pursuant to which the shareholder became a general partner.

(8) Sections 607.1301-607.1340 shall, insofar as they are applicable, apply to a conversion in accordance with this chapter of a domestic corporation into a domestic or foreign eligible entity that is not a domestic corporation.

Section 155. Section 607.11933, Florida Statutes, is created to read:

607.11933 Articles of conversion; effectiveness.-

(1) After a plan of conversion of a domestic corporation has been adopted and approved as required by this chapter, or a domestic or foreign eligible entity, other than a domestic corporation, that is the converting eligible entity has approved a conversion as required by its organic law, articles of conversion must be signed by the converting eligible entity as required by s. 607.0120 and must:

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(a) State the name, jurisdiction of formation, and type of entity of the converting eligible entity;

(b) State the name, jurisdiction of formation, and type of entity of the converted eligible entity;

(c) If the converting eligible entity is:

1. A domestic corporation, state that the plan of conversion was approved in accordance with this chapter; or

2. A domestic or foreign eligible entity other than a domestic corporation, state that the conversion was approved by the eligible entity in accordance with its organic law; and

(d) If the converted eligible entity is:

1. A domestic corporation or a domestic or foreign eligible entity that is not a domestic corporation, attach the public organic record of the converted eligible entity, except that provisions that would not be required to be included in a restated public organic record may be omitted; or

2. A domestic limited liability partnership, attach the filing or filings required to become a domestic limited liability partnership.

(2) If the converted eligible entity is a domestic corporation, its articles of incorporation must satisfy the requirements of section 607.0202, except that provisions that would not be required to be included in restated articles of incorporation may be omitted from the articles of incorporation. If the converted eligible entity is a domestic eligible entity that is not a domestic corporation, its public organic record, if any, must satisfy the applicable requirements of the organic law of this state, except that the public organic record does not need to be signed.

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(3) The articles of conversion shall be delivered to the department for filing, and shall take effect at the effective date determined in accordance with s. 607.0123.

(4) (a) If a converted eligible entity is a domestic eligible entity, the conversion becomes effective when the articles of conversion are effective.

(b) If the converted eligible entity is a foreign eligible entity, the conversion becomes effective at the later of:

1. The date and time provided by the organic law of that eligible entity; or

2. When the articles of conversion take effect.

(5) Articles of conversion required to be filed under this section may be combined with any filing required under the organic law of a domestic eligible entity that is the converting eligible entity or the converted eligible entity if the combined filing satisfies the requirements of both this section and the other organic law.

(6) If the converting eligible entity is a foreign eligible entity that is authorized to transact business in this state under a provision of law similar to ss. 607.1501-607.1532, its foreign qualification shall be canceled automatically on the effective date of its conversion.

(7) A copy of the articles of conversion, certified by the department, may be filed in the official records of any county in this state in which the converting eligible entity holds an interest in real property.

Section 156. Section 607.11934, Florida Statutes, is created to read:

607.11934 Amendment to a plan of conversion; abandonment.—

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(1) A plan of conversion of a converting eligible entity that is a domestic corporation may be amended:

(a) In the same manner as the plan of conversion was approved, if the plan does not provide for the manner in which it may be amended; or

(b) In the manner provided in the plan of conversion, except that shareholders that were entitled to vote on or consent to approval of the plan are entitled to vote on or consent to any amendment of the plan that will change:

1. The amount or kind of shares or other securities, eligible interests, obligations, rights to acquire shares, other securities, or eligible interests, cash, other property, or any combination of the foregoing, to be received by any of the shareholders of the converting corporation under the plan;

2. The organic rules of the converted eligible entity that will be in effect immediately after the conversion becomes effective, except for changes that do not require approval of the eligible interest holders of the converted eligible entity under its organic law or organic rules; or

3. Any other terms or conditions of the plan, if the change would adversely affect such shareholders in any material respect.

(2) After a plan of conversion has been adopted and approved by a converting eligible entity that is a domestic corporation in the manner required by this chapter and before the articles of conversion become effective, the plan may be abandoned by the domestic corporation without action by its shareholders in accordance with any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the

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manner determined by the board of directors of the domestic corporation.

(3) If a conversion is abandoned after the articles of conversion have been delivered to the department for filing but before the articles of conversion have become effective, a statement of abandonment signed by the converting eligible entity must be delivered to the department for filing before the articles of conversion become effective. The statement shall take effect on filing, and the conversion shall be deemed abandoned and shall not become effective. The statement of abandonment must contain:

(a) The name of the converting eligible entity;

(b) The date on which the articles of conversion were filed by the department; and

(c) A statement that the conversion has been abandoned in accordance with this section.

Section 157. Section 607.11935, Florida Statutes, is created to read:

607.11935 Effect of conversion.—

(1) When a conversion becomes effective:

(a) All real property and other property owned by, including any interest therein and all title thereto, and every contract right possessed by, the converting eligible entity remain the property and contract rights of the converted eligible entity without transfer, reversion, or impairment;

(b) All debts, obligations, and other liabilities of the converting eligible entity remain the debts, obligations, and other liabilities of the converted eligible entity;

(c) The name of the converted eligible entity may be, but

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need not be, substituted for the name of the converting eligible entity in any pending action or proceeding;

(d) If the converted eligible entity is a filing entity, a domestic corporation, or a domestic or foreign nonprofit corporation, its public organic record and its private organic rules become effective;

(e) If the converted eligible entity is a nonfiling entity, its private organic rules become effective;

(f) If the converted eligible entity is a limited liability partnership, the filing required to become a limited liability partnership and its private organic rules become effective;

(g) The shares, rights to acquire shares, eligible interests, other securities and obligations of the converting eligible entity are reclassified into shares, other securities, rights to acquire shares or other securities, eligible interests, obligations, cash, other property, or any combination thereof, in accordance with the terms of the conversion, and the shareholders or interest holders of the converting eligible entity are entitled only to the rights provided to them by those terms and to any rights they may have under s. 607.1302 or under the organic law of the converting eligible entity; and

(h) The converted eligible entity is:

1. Deemed to be incorporated or organized under and subject to the organic law of the converted eligible entity;

2. Deemed to be the same entity without interruption as the converting eligible entity; and

3. Deemed to have been incorporated or otherwise organized on the date that the converting eligible entity was originally incorporated or organized.

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8005 (2) When a conversion of a domestic corporation to a  
 8006 domestic or foreign eligible entity other than a domestic  
 8007 corporation becomes effective, the converted eligible entity is  
 8008 deemed to:

8009 (a) Appoint the secretary of state as its agent for service  
 8010 of process in a proceeding to enforce the rights of shareholders  
 8011 who exercise appraisal rights in connection with the conversion;  
 8012 and

8013 (b) Agree that it will promptly pay any amount that  
 8014 shareholders are entitled to under ss. 607.1301-607.1340.

8015 (3) Except as otherwise provided in the articles of  
 8016 incorporation of a domestic corporation or the organic law or  
 8017 organic rules of a domestic or foreign eligible entity other  
 8018 than a domestic corporation, a shareholder or eligible interest  
 8019 holder who becomes subject to interest holder liability in  
 8020 respect of a domestic corporation or domestic or foreign  
 8021 eligible entity other than a domestic eligible entity as a  
 8022 result of the conversion shall have such interest holder  
 8023 liability only in respect of interest holder liabilities that  
 8024 arise after the conversion becomes effective.

8025 (4) Except as otherwise provided in the organic law or the  
 8026 organic rules of the domestic or foreign eligible entity, the  
 8027 interest holder liability of an interest holder in a converting  
 8028 eligible entity that converts to a domestic corporation who had  
 8029 interest holder liability in respect of such converting eligible  
 8030 entity before the conversion becomes effective shall be as  
 8031 follows:

8032 (a) The conversion does not discharge that prior interest  
 8033 holder liability with respect to any interest holder liabilities

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8034 that arose before the conversion became effective.

8035 (b) The provisions of the organic law of the eligible  
 8036 entity shall continue to apply to the collection or discharge of  
 8037 any interest holder liabilities preserved by paragraph (a), as  
 8038 if the conversion had not occurred.

8039 (c) The eligible interest holder shall have such rights of  
 8040 contribution from other persons as are provided by the organic  
 8041 law of the eligible entity with respect to any interest holder  
 8042 liabilities preserved by paragraph (a), as if the conversion had  
 8043 not occurred.

8044 (d) The eligible interest holder may not, by reason of such  
 8045 prior interest holder liability, have interest holder liability  
 8046 with respect to any interest holder liabilities that arise after  
 8047 the conversion becomes effective.

8048 (5) A conversion does not require the converting eligible  
 8049 entity to wind up its affairs and does not constitute or cause  
 8050 the dissolution or termination of the entity.

8051 (6) Property held for charitable purposes under the laws of  
 8052 this state by a domestic or foreign eligible entity immediately  
 8053 before a conversion becomes effective may not, as a result of  
 8054 the transaction, be diverted from the objects for which it was  
 8055 donated, granted, devised, or otherwise transferred except and  
 8056 to the extent permitted by or pursuant to the laws of this state  
 8057 addressing cy pres or dealing with nondiversion of charitable  
 8058 assets.

8059 (7) A bequest, devise, gift, grant, or promise contained in  
 8060 a will or other instrument of donation, subscription, or  
 8061 conveyance which is made to the converting eligible entity and  
 8062 which takes effect or remains payable after the conversion

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inures to the converted eligible entity.

(8) A trust obligation that would govern property if transferred to the converting eligible entity applies to property that is to be transferred to the converted eligible entity after the conversion becomes effective.

Section 158. Section 607.1201, Florida Statutes, is amended to read:

607.1201 Disposition of assets not requiring shareholder approval ~~Sale of assets in regular course of business and mortgage of assets. Unless the articles of incorporation otherwise provide, no approval by shareholders is required to:~~

(1) ~~A corporation may, on the terms and conditions and for the consideration determined by the board of directors:~~

~~(a) Sell, lease, exchange, or otherwise dispose of any or all of the corporation's assets all, or substantially all, of its property in the usual and regular course of business;~~

~~(2) (b) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with or without recourse), create a security interest in, or otherwise encumber any or all of the corporation's assets, regardless of whether its property whether or not in the usual and regular course of business; or~~

~~(3) (c) Transfer any or all of the corporation's assets to one or more domestic or foreign corporations or other entities all of the shares or interests its property to a corporation all the shares of which are owned by the corporation; or~~

(4) Distribute assets pro rata to the holders of one or more classes or series of the corporation's shares, except to the extent that the distribution is part of a dissolution of the corporation under ss. 607.1401-607.14401.

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~~(2) Unless the articles of incorporation require it, approval by the shareholders of a transaction described in subsection (1) is not required.~~

Section 159. Section 607.1202, Florida Statutes, is amended to read:

607.1202 Shareholder approval of certain dispositions ~~Sale of assets other than in regular course of business.-~~

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property (with or without the good will), otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, but only if the board of directors proposes and its shareholders ~~of record~~ approve the proposed transaction.

(2) (a) To obtain the approval of the shareholders under subsection (1), the board of directors must first adopt a resolution approving the disposition, and thereafter, the disposition must also be approved by the corporation's shareholders.

(b) In submitting the disposition to the shareholders for approval, For a transaction to be authorized:

~~(a)~~ the board of directors must recommend the proposed transaction to the shareholders of record unless:

1. The board of directors makes a determination that determines that it should make no recommendation because of conflict of interest or other special circumstances it should not make such a recommendation; or

2. Section 607.0826 applies.

(c) If either subparagraph (b)1. or subparagraph (b)2.

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8121 applies, the board of directors shall inform the shareholders of  
 8122 the basis for its so proceeding without such recommendation and  
 8123 communicates the basis for its determination to the shareholders  
 8124 of record with the submission of the proposed transaction; and

8125 ~~(b) The shareholders entitled to vote must approve the~~  
 8126 ~~transaction as provided in subsection (5).~~

8127 (3) The board of directors may set conditions for approval  
 8128 of the disposition or the effectiveness of the disposition  
 8129 condition its submission of the proposed transaction on any  
 8130 basis.

8131 (4) If the disposition is required to be approved by the  
 8132 shareholders under subsection (1) and if the approval is to be  
 8133 given at the meeting, the corporation shall notify each  
 8134 shareholder of record, regardless of whether or not entitled to  
 8135 vote, of the proposed shareholders' meeting of shareholders at  
 8136 which the disposition is to be submitted for approval in  
 8137 accordance with s. 607.0705. The notice must shall also state  
 8138 that the purpose, or one of the purposes, of the meeting is to  
 8139 consider the disposition and shall contain a description of the  
 8140 disposition and the consideration to be received by the  
 8141 corporation sale, lease, exchange, or other disposition of all,  
 8142 or substantially all, the property of the corporation,  
 8143 regardless of whether or not the meeting is an annual or a  
 8144 special meeting, and shall contain or be accompanied by a  
 8145 description of the transaction. Furthermore, the notice shall  
 8146 contain a clear and concise statement that, if the transaction  
 8147 is effected, shareholders dissenting therefrom are or may be  
 8148 entitled, if they comply with the provisions of this act  
 8149 regarding appraisal rights, to be paid the fair value of their

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8150 shares and such notice ~~must shall~~ be accompanied by a copy of  
 8151 ~~ss. 607.1301-607.1340 ss. 607.1301-607.1333.~~

8152 (5) Unless this chapter ~~act~~, the articles of incorporation,  
 8153 or the board of directors (acting pursuant to subsection (4))  
 8154 ~~(3)~~ requires a greater vote or a greater quorum vote by voting  
 8155 groups, the approval of the disposition shall require the  
 8156 approval of the shareholders at a meeting at which a quorum  
 8157 exists consisting of transaction to be authorized shall be  
 8158 approved by a majority of all the votes entitled to be cast on  
 8159 the disposition transaction.

8160 (6) After a disposition has been approved by the  
 8161 shareholders under this chapter, and at any time before the  
 8162 disposition has been consummated, it may be abandoned by the  
 8163 corporation without action by the shareholders, subject to any  
 8164 contractual rights of other parties to the disposition Any plan  
 8165 or agreement providing for a sale, lease, exchange, or other  
 8166 disposition of property, or any resolution of the board of  
 8167 directors or shareholders approving such transaction, may  
 8168 authorize the board of directors of the corporation to amend the  
 8169 terms thereof at any time prior to the consummation of such  
 8170 transaction. An amendment made subsequent to the approval of the  
 8171 transaction by the shareholders of the corporation may not:

8172 ~~(a) Change the amount or kind of shares, securities, cash,~~  
 8173 ~~property, or rights to be received in exchange for the~~  
 8174 ~~corporation's property; or~~

8175 ~~(b) Change any other terms and conditions of the~~  
 8176 ~~transaction if such change would materially and adversely affect~~  
 8177 ~~the shareholders or the corporation.~~

8178 ~~(7) Unless a plan or agreement providing for a sale, lease,~~

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exchange, or other disposition of property, or any resolution of the board of directors or shareholders approving such transaction, prohibits abandonment of the transaction without shareholder approval after a transaction has been authorized, ~~the planned transaction may be abandoned (subject to any contractual rights) at any time prior to consummation thereof, without further shareholder action, in accordance with the procedure set forth in the plan, agreement, or resolutions providing for or approving such transaction or, if none is set forth, in the manner determined by the board of directors.~~

(7)(8) A disposition of assets in the course of dissolution is governed by ss. 607.1401-607.14401 transaction that constitutes a distribution is governed by s. 607.06401 and not by this section.

(8) For purposes of this section, the assets of a direct or indirect consolidated subsidiary shall be deemed to be the assets of the parent corporation.

(9) For purposes of this section, the term "shareholder" includes a beneficial shareholder and a voting trust beneficial owner.

Section 160. Section 607.1301, Florida Statutes, is amended to read:

607.1301 Appraisal rights; definitions.—The following definitions apply to ss. 607.1302-607.1340 ~~ss. 607.1302-607.1333~~:

(1) "Accrued interest" means interest from the date the corporate action becomes effective until the date of payment, at the rate of interest determined for judgments pursuant to s. 55.03, determined as of the effective date of the corporate

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action.

(2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive of such person thereof. For purposes of paragraph (6) (a) s. 607.1302(2) (d), a person is deemed to be an affiliate of its senior executives.

(3) "Corporate action" means an event described in s. 607.1302(1)

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(4)(3) "Corporation" means the domestic corporation that is the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1340 ss. 607.1322-607.1333, includes the domesticated eligible entity in a domestication, the covered eligible entity in a conversion, and the survivor of surviving entity in a merger.

(5)(4) "Fair value" means the value of the corporation's shares determined:

(a) Immediately before the effectiveness effectuation of the corporate action to which the shareholder objects.

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.

(c) For a corporation with 10 or fewer shareholders,

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8237 Without discounting for lack of marketability or minority  
 8238 status.  
 8239 ~~(5) "Interest" means interest from the effective date of~~  
 8240 ~~the corporate action until the date of payment, at the rate of~~  
 8241 ~~interest on judgments in this state on the effective date of the~~  
 8242 ~~corporate action.~~  
 8243 (6) "Interested transaction" means a corporate action  
 8244 described in s. 607.1302(1), other than a merger pursuant to s.  
 8245 607.1104, involving an interested person in which any of the  
 8246 shares or assets of the corporation are being acquired or  
 8247 converted. As used in this definition:  
 8248 (a) "Interested person" means a person, or an affiliate of  
 8249 a person, who at any time during the 1-year period immediately  
 8250 preceding approval by the board of directors of the corporate  
 8251 action:  
 8252 1. Was the beneficial owner of 20 percent or more of the  
 8253 voting power of the corporation, other than as owner of excluded  
 8254 shares;  
 8255 2. Had the power, contractually or otherwise, other than as  
 8256 owner of excluded shares, to cause the appointment or election  
 8257 of 25 percent or more of the directors to the board of directors  
 8258 of the corporation; or  
 8259 3. Was a senior executive or director of the corporation or  
 8260 a senior executive of any affiliate of the corporation, and will  
 8261 receive, as a result of the corporate action, a financial  
 8262 benefit not generally available to other shareholders as such,  
 8263 other than:  
 8264 a. Employment, consulting, retirement, or similar benefits  
 8265 established separately and not as part of or in contemplation of

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8266 the corporate action;  
 8267 b. Employment, consulting, retirement, or similar benefits  
 8268 established in contemplation of, or as part of, the corporate  
 8269 action that are not more favorable than those existing before  
 8270 the corporate action or, if more favorable, that have been  
 8271 approved on behalf of the corporation in the same manner as is  
 8272 provided in s. 607.0832; or  
 8273 c. In the case of a director of the corporation who, in the  
 8274 corporate action, will become a director or governor of the  
 8275 acquirer or any of its affiliates in the corporate action,  
 8276 rights and benefits as a director or governor that are provided  
 8277 on the same basis as those afforded by the acquirer generally to  
 8278 other directors or governors of such entity or such affiliate.  
 8279 (b) "Beneficial owner" means any person who, directly or  
 8280 indirectly, through any contract, arrangement, or understanding,  
 8281 other than a revocable proxy, has or shares the power to vote,  
 8282 or to direct the voting of, shares; except that a member of a  
 8283 national securities exchange is not deemed to be a beneficial  
 8284 owner of securities held directly or indirectly by it on behalf  
 8285 of another person if the member is precluded by the rules of the  
 8286 exchange from voting without instruction on contested matters or  
 8287 matters that may affect substantially the rights or privileges  
 8288 of the holders of the securities to be voted. When two or more  
 8289 persons agree to act together for the purpose of voting their  
 8290 shares of the corporation, each member of the group formed  
 8291 thereby is deemed to have acquired beneficial ownership, as of  
 8292 the date of the agreement, of all shares having voting power of  
 8293 the corporation beneficially owned by any member of the group.  
 8294 (c) "Excluded shares" means shares acquired pursuant to an

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8295 offer for all shares having voting power if the offer was made  
 8296 within 1 year before the corporate action for consideration of  
 8297 the same kind and of a value equal to or less than that paid in  
 8298 connection with the corporate action.

8299 ~~(7)(6)~~ "Preferred shares" means a class or series of shares  
 8300 the holders of which have preference over any other class or  
 8301 series of shares with respect to distributions.

8302 ~~(7) "Record shareholder" means the person in whose name~~  
 8303 ~~shares are registered in the records of the corporation or the~~  
 8304 ~~beneficial owner of shares to the extent of the rights granted~~  
 8305 ~~by a nominee certificate on file with the corporation.~~

8306 (8) "Senior executive" means the chief executive officer,  
 8307 chief operating officer, chief financial officer, or any  
 8308 individual anyone in charge of a principal business unit or  
 8309 function.

8310 (9) Notwithstanding s. 607.01401(67), "shareholder" means  
 8311 both a record shareholder, and a beneficial shareholder, and a  
 8312 voting trust beneficial owner.

8313 Section 161. Section 607.1302, Florida Statutes, is amended  
 8314 to read:

8315 607.1302 Right of shareholders to appraisal.—

8316 (1) A shareholder of a domestic corporation is entitled to  
 8317 appraisal rights, and to obtain payment of the fair value of  
 8318 that shareholder's shares, in the event of any of the following  
 8319 corporate actions:

8320 (a) Consummation of a domestication or a conversion of such  
 8321 corporation pursuant to s. 607.11921 or s. 607.11932, as  
 8322 applicable, s. 607.1112 if shareholder approval is required for  
 8323 the domestication or the conversion; and the shareholder is

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8324 ~~entitled to vote on the conversion under ss. 607.1103 and~~  
 8325 ~~607.1112(6), or the~~

8326 (b) Consummation of a merger to which such corporation is a  
 8327 party:

8328 1. If shareholder approval is required for the merger under  
 8329 s. 607.1103 or would be required but for s. 607.11035, except  
 8330 that appraisal rights may not be available to any shareholder of  
 8331 the corporation with respect to shares of any class or series  
 8332 that remains outstanding after consummation of the merger where  
 8333 the terms of such class or series have not been materially  
 8334 altered; and the shareholder is entitled to vote on the merger  
 8335 or

8336 2. If such corporation is a subsidiary and the merger is  
 8337 governed by s. 607.1104;

8338 (c)(b) Consummation of a share exchange to which the  
 8339 corporation is a party as the corporation whose shares will be  
 8340 ~~acquired if the shareholder is entitled to vote on the exchange,~~  
 8341 except that appraisal rights are not available to any  
 8342 shareholder of the corporation with respect to any class or  
 8343 series of shares of the corporation that is not acquired in the  
 8344 share exchange exchanged;

8345 (d)(e) Consummation of a disposition of assets pursuant to  
 8346 s. 607.1202 if the shareholder is entitled to vote on the  
 8347 disposition, including a sale in dissolution, except that  
 8348 appraisal rights shall not be available to any shareholder of  
 8349 the corporation with respect to shares or any class or series  
 8350 if:

8351 1. Under the terms of the corporate action approved by the  
 8352 shareholders there is to be distributed to shareholders in cash

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the corporation's net assets, in excess of a reasonable amount reserved to meet claims of the type described in ss. 607.1406 and 607.1407, within 1 year after the shareholders' approval of the action and in accordance with their respective interests determined at the time of distribution; and

2. The disposition of assets is not an interested transaction but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

(e)(d) An amendment of the articles of incorporation with respect to a the class or series of shares which reduces the number of shares of a class or series owned by the shareholder to a fraction of a share if the corporation has the obligation or the right to repurchase the fractional share so created;

(f)(e) Any other ~~amendment to the articles of incorporation,~~ merger, share exchange, ~~or~~ disposition of assets, or amendment to the articles of incorporation, in each case to the extent provided by the articles of incorporation, bylaws, or a resolution of the board of directors, except that no bylaw or board resolution providing for appraisal rights may be amended or otherwise altered except by shareholder approval;

(g) An amendment to the articles of incorporation or bylaws of the corporation, the effect of which is to alter or abolish voting or other rights with respect to such interest in a manner that is adverse to the interest of such shareholder, except as the right may be affected by the voting or other rights of new shares then being authorized of a new class or series of shares;

(h) An amendment to the articles of incorporation or bylaws

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of a corporation the effect of which is to adversely affect the interest of the shareholder by altering or abolishing appraisal rights under this section;

(i)(f) With regard to a class of shares prescribed in the articles of incorporation prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, any amendment of the articles of incorporation if the shareholder is entitled to vote on the amendment and if such amendment would adversely affect such shareholder by:

1. Altering or abolishing any preemptive rights attached to any of his or her shares;

2. Altering or abolishing the voting rights pertaining to any of his or her shares, except as such rights may be affected by the voting rights of new shares then being authorized of any existing or new class or series of shares;

3. Effecting an exchange, cancellation, or reclassification of any of his or her shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his or her percentage of equity in the corporation, or effecting a reduction or cancellation of accrued dividends or other arrearages in respect to such shares;

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

5. Making noncumulative, in whole or in part, dividends of any of the shareholder's preferred shares which had theretofore

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8411 been cumulative;

8412 6. Reducing the stated dividend preference of any of the  
8413 shareholder's preferred shares; or

8414 7. Reducing any stated preferential amount payable on any  
8415 of the shareholder's preferred shares upon voluntary or  
8416 involuntary liquidation;

8417 (j) ~~(g)~~ An amendment of the articles of incorporation of a  
8418 social purpose corporation to which s. 607.504 or s. 607.505  
8419 applies;

8420 (k) ~~(h)~~ An amendment of the articles of incorporation of a  
8421 benefit corporation to which s. 607.604 or s. 607.605 applies;

8422 (l) ~~(i)~~ A merger, domestication, conversion, or share  
8423 exchange of a social purpose corporation to which s. 607.504  
8424 applies; or

8425 (m) ~~(j)~~ A merger, domestication, conversion, or share  
8426 exchange of a benefit corporation to which s. 607.604 applies.

8427 (2) Notwithstanding subsection (1), the availability of  
8428 appraisal rights under paragraphs (1) (a), (b), (c), ~~and~~ (d), and  
8429 (e) shall be limited in accordance with the following  
8430 provisions:

8431 (a) Appraisal rights shall not be available for the holders  
8432 of shares of any class or series of shares which is:

8433 1. A covered security under s. 18(b)(1)(A) or (B) of the  
8434 Securities Act of 1933 ~~Listed on the New York Stock Exchange or~~  
8435 ~~the American Stock Exchange or designated as a national market~~  
8436 ~~system security on an interdealer quotation system by the~~  
8437 ~~National Association of Securities Dealers, Inc.; or~~

8438 2. Not a covered security, but traded in an organized  
8439 market and ~~Not so listed or designated, but~~ has at least 2,000

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8440 shareholders and the outstanding shares of such class or series  
8441 have a market value of at least \$20 ~~\$10~~ million, exclusive of  
8442 the value of outstanding such shares held by the corporation's  
8443 ~~its~~ subsidiaries, by the corporation's senior executives, by the  
8444 corporation's directors, and by the corporation's beneficial  
8445 shareholders and voting trust beneficial owners ~~shareholders~~  
8446 owning more than 10 percent of the outstanding such shares; or

8447 3. Issued by an open end management investment company  
8448 registered with the Securities and Exchange Commission under the  
8449 Investment Company Act of 1940 and which may be redeemed at the  
8450 option of the holder at net asset value.

8451 (b) The applicability of paragraph (a) shall be determined  
8452 as of:

8453 1. The record date fixed to determine the shareholders  
8454 entitled to receive notice of, ~~and to vote at,~~ the meeting of  
8455 shareholders to act upon the corporate action requiring  
8456 appraisal rights, or, in the case of an offer made pursuant to  
8457 s. 607.11035, the date of such offer; or

8458 2. If there will be no meeting of shareholders and no offer  
8459 is made pursuant to s. 607.11035, the close of business on the  
8460 day before the consummation of the corporate action or the  
8461 effective date of the amendment of the articles, as applicable  
8462 ~~on which the board of directors adopts the resolution~~  
8463 ~~recommending such corporate action.~~

8464 (c) Paragraph (a) ~~is not~~ shall not be applicable and  
8465 appraisal rights shall be available pursuant to subsection (1)  
8466 for the holders of any class or series of shares where the  
8467 corporate action is an interested transaction who are required  
8468 ~~by the terms of the corporate action requiring appraisal rights~~

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to accept for such shares anything other than cash or shares of any class or any series of shares of any corporation, or any other proprietary interest of any other entity, that satisfies the standards set forth in paragraph (a) at the time the corporate action becomes effective.

(d) Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant to subsection (1) for the holders of any class or series of shares if:

1. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or otherwise, pursuant to the corporate action by a person, or by an affiliate of a person, who:

a. Is, or at any time in the 1 year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

2. Any of the shares or assets of the corporation are being acquired or converted, whether by merger, share exchange, or

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otherwise, pursuant to such corporate action by a person, or by an affiliate of a person, who is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, a senior executive or director of the corporation or a senior executive of any affiliate thereof, and that senior executive or director will receive, as a result of the corporate action, a financial benefit not generally available to other shareholders as such, other than:

a. Employment, consulting, retirement, or similar benefits established separately and not as part of or in contemplation of the corporate action;

b. Employment, consulting, retirement, or similar benefits established in contemplation of, or as part of, the corporate action that are not more favorable than those existing before the corporate action or, if more favorable, that have been approved on behalf of the corporation in the same manner as is provided in s. 607.0832; or

c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

(e) For the purposes of paragraph (d) only, the term "beneficial owner" means any person who, directly or indirectly, through any contract, arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares, provided that a member of a national

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~~securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the recordholder of such securities if the member is precluded by the rules of such exchange from voting without instruction on contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted. When two or more persons agree to act together for the purpose of voting their shares of the corporation, each member of the group formed thereby shall be deemed to have acquired beneficial ownership, as of the date of such agreement, of all voting shares of the corporation beneficially owned by any member of the group.~~

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment to the articles of incorporation thereto may limit or eliminate appraisal rights for any class or series of preferred shares, except that:

(a) No such limitation or elimination shall be effective if the class or series does not have the right to vote separately as a voting group, alone or as part of a group, on the action or if the action is a domestication under s. 607.11920 or a conversion under s. 607.11901, or a merger having a similar effect as a domestication or conversion in which the domesticated eligible entity or the converted eligible entity is an eligible entity; and

(b) ~~but~~ Any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately before ~~prior to~~ the effective date of

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such amendment or that the corporation is or may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year after the effective date of such amendment ~~of that date~~ if such action would otherwise afford appraisal rights.

~~(4) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action:~~

~~(a) Was not effectuated in accordance with the applicable provisions of this section or the corporation's articles of incorporation, bylaws, or board of directors' resolution authorizing the corporate action; or~~

~~(b) Was procured as a result of fraud or material misrepresentation.~~

Section 162. Section 607.1303, Florida Statutes, is amended to read:

607.1303 Assertion of rights by nominees and beneficial owners.—

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust beneficial owner only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder or a voting trust beneficial owner and notifies the corporation in writing of the name and address of each beneficial shareholder or voting trust beneficial owner on whose behalf appraisal rights are being asserted. The rights of

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a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

(2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

(a) Submits to the corporation the record shareholder's written consent to the assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

(b) Does so with respect to all shares of the class or series that are beneficially owned by the beneficial shareholder or the voting trust beneficial owner.

Section 163. Subsections (1) and (3) of section 607.1320, Florida Statutes, are amended, and subsections (4) and (5) are added to that section, to read:

607.1320 Notice of appraisal rights.—

(1) If a proposed corporate action described in s. 607.1302(1) is to be submitted to a vote at a shareholders' meeting, the meeting notice (or, where no approval of such action is required pursuant to s. 607.11035, the offer made pursuant to s. 607.11035), must state that the corporation has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~ must accompany

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the meeting notice or offer sent to those record shareholders entitled to exercise appraisal rights.

(3) If a ~~the~~ proposed corporate action described in s. 607.1302(1) is to be approved by written consent of the shareholders pursuant to s. 607.0704:

(a) Written notice that appraisal rights are, are not, or may be available must be sent to each shareholder from whom a consent is solicited at the time consent of such shareholder is first solicited, and, if the corporation has concluded that appraisal rights are or may be available, a copy of ss. 607.1301-607.1340 must accompany such written notice; and

(b) Written notice that appraisal rights are, are not, or may be available must be delivered, at least 10 days before the corporate action becomes effective, to all nonconsenting and nonvoting shareholders, and, if the corporation has concluded that appraisal rights are or may be available, a copy of ss. 607.1301-607.1340 must accompany such written notice.

(4) Where a corporate action described in s. 607.1302(1) is proposed or a merger pursuant to s. 607.1104 is effected, and the corporation concludes that appraisal rights are or may be available, the notice referred to in subsection (1), paragraph (3)(a), or paragraph (3)(b) must be accompanied by:

(a) Financial statements of the corporation that issued the shares that may be or are subject to appraisal rights, consisting of a balance sheet as of the end of the fiscal year ending not more than 16 months before the date of the notice, an income statement for that fiscal year, and a cash flow statement for that fiscal year; however, if such financial statements are not reasonably available, the corporation must provide

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reasonably equivalent financial information; and

(b) The latest available interim financial statements, including year-to-date through the end of the interim period, of such corporation, if any.

(5) The right to receive the information described in subsection (4) may be waived in writing by a shareholder before or after the corporate action is effected ~~other than by a shareholders' meeting, the notice referred to in subsection (1) must be sent to all shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether or not consents are solicited from all shareholders, and include the materials described in s. 607.1322.~~

Section 164. Section 607.1321, Florida Statutes, is amended to read:

607.1321 Notice of intent to demand payment.—

(1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is submitted to a vote at a shareholders' meeting, ~~or is submitted to a shareholder pursuant to a consent vote under s. 607.0704,~~ a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation before the vote is taken, ~~or within 20 days after receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder meeting,~~ written notice of the shareholder's intent to demand payment if the proposed corporate action is effectuated; ~~and.~~

(b) Must not vote, or cause or permit to be voted, any shares of such class or series in favor of the proposed corporate action.

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(2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be approved by written consent, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares must not sign a consent in favor of the proposed corporate action with respect to that class or series of shares.

(3) If a proposed corporate action specified in s. 607.1302(1) does not require shareholder approval pursuant to s. 607.11035, a shareholder who wishes to assert appraisal rights with respect to any class or series of shares:

(a) Must deliver to the corporation before the shares are purchased pursuant to the offer a written notice of the shareholder's intent to demand payment if the proposed action is effected; and

(b) Must not tender, or cause or permit to be tendered, any shares of such class or series in response to such offer.

(4) ~~(2)~~ A shareholder who may otherwise be entitled to appraisal rights but does not satisfy the requirements of subsections (1), (2), or (3) ~~subsection (1)~~ is not entitled to payment under this chapter.

Section 165. Section 607.1322, Florida Statutes, is amended to read:

607.1322 Appraisal notice and form.—

(1) If a proposed corporate action requiring appraisal rights under s. 607.1302(1) becomes effective, the corporation must deliver a written appraisal notice and form required by paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321(1), (2), or (3) ~~s. 607.1321~~. In the case of a merger under s. 607.1104, the parent must deliver a

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written appraisal notice and form to all record shareholders who may be entitled to assert appraisal rights.

(2) The appraisal notice must be ~~delivered sent~~ no earlier than the date the corporate action became effective, and no later than 10 days after such date, and must:

(a) Supply a form that specifies the date that the corporate action became effective and that provides for the shareholder to state:

1. The shareholder's name and address.

2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.

3. That the shareholder did not vote for or consent to the transaction.

4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.

5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus accrued interest.

(b) State:

1. Where the form must be sent and where certificates for certificated shares must be deposited and the date by which those certificates must be deposited, which date may not be earlier than the date by which the corporation must receive for ~~receiving~~ the required form under subparagraph 2.

2. A date by which the corporation must receive the form, which date may not be fewer than 40 nor more than 60 days after the date the subsection (1) appraisal notice and form are sent, and state that the shareholder shall have waived the right to demand appraisal with respect to the shares unless the form is

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received by the corporation by such specified date.

3. The corporation's estimate of the fair value of the shares.

4. An offer to each shareholder who is entitled to appraisal rights to pay the corporation's estimate of fair value set forth in subparagraph 3.

5. That, if requested in writing, the corporation will provide to the shareholder so requesting, within 10 days after the date specified in subparagraph 2., the number of shareholders who return the forms by the specified date and the total number of shares owned by them.

6. The date by which the notice to withdraw under s. 607.1323 must be received, which date must be within 20 days after the date specified in subparagraph 2.

(c) If not previously provided, be accompanied by a copy of ss. 607.1301-607.1340

~~(c) Be accompanied by:~~

~~1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the end of the fiscal year ending not more than 15 months prior to the date of the corporation's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.~~

~~2. A copy of ss. 607.1301-607.1333.~~

Section 166. Subsections (1) and (3) of section 607.1323, Florida Statutes, are amended to read:

607.1323 Perfection of rights; right to withdraw.—

(1) A shareholder who receives notice pursuant to s. 607.1322 and who wishes to exercise appraisal rights must sign

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execute and return the form received pursuant to s. 607.1322(1) and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns the signed ~~executed~~ forms, that shareholder loses all rights as a shareholder, unless the shareholder withdraws pursuant to subsection (2).

(3) A shareholder who does not sign ~~execute~~ and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date set forth in the notice described in s. 607.1322(2) subsection (2), shall not be entitled to payment under ss. 607.1301-607.1340 ~~this chapter~~.

Section 167. Subsection (2) of section 607.1324, Florida Statutes, is amended to read:

607.1324 Shareholder's acceptance of corporation's offer.—

(2) Upon payment of the agreed value, the shareholder shall cease to have any right to receive any further consideration with respect to such ~~interest in the~~ shares.

Section 168. Section 607.1326, Florida Statutes, is amended to read:

607.1326 Procedure if shareholder is dissatisfied with offer.—

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of

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the shares and demand payment of that estimate plus accrued interest.

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus accrued interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

Section 169. Subsections (1), (2), (5), and (6) of section 607.1330, Florida Statutes, are amended to read:

607.1330 Court action.—

(1) If a shareholder makes demand for payment under s. 607.1326 which remains unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment demand and petition the court to determine the fair value of the shares and accrued interest from the date of the corporate action. If the corporation does not commence the proceeding within the 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence the proceeding in the name of the corporation.

(2) The proceeding shall be commenced in the circuit court in the applicable county. If by virtue of the corporate action becoming effective the entity has become a foreign eligible entity ~~appropriate court of the county in which the corporation's principal office, or, if none, its registered office, in this state is located. If the corporation is a foreign corporation~~ without a registered office in this state, the proceeding shall be commenced in the county in this state in

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which the principal office or registered office of the domestic corporation merged with the foreign eligible entity ~~corporation~~ was located immediately before the time the corporate action became effective. If such entity has, and immediately before the corporate action became effective had, no principal or registered office in this state, then the proceeding shall be commenced in the county in this state in which the corporation has, or immediately before the time the corporate action became effective had, an office in this state. If such entity has, or immediately before the time the corporate action became effective had, no office in this state, the proceeding shall be commenced in the county in which the corporation's registered office is or was last located at the time of the transaction.

(5) Each shareholder made a party to the proceeding is entitled to judgment for the amount of the fair value of such shareholder's shares, plus accrued interest, as found by the court.

(6) The corporation shall pay each such shareholder the amount found to be due within 10 days after final determination of the proceedings. Upon payment of the judgment, the shareholder shall cease to have any rights to receive any further consideration with respect to such shares other than any amounts ordered to be paid for court costs and attorney fees under s. 607.1331 interest in the shares.

Section 170. Subsection (4) of section 607.1331, Florida Statutes, is amended to read:

607.1331 Court costs and counsel fees.—

(4) To the extent the corporation fails to make a required payment pursuant to s. 607.1324, the shareholder may sue

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directly for the amount owed and, to the extent successful, shall be entitled to recover from the corporation all costs and expenses of the suit, including attorney counsel ~~fees~~.

Section 171. Section 607.1332, Florida Statutes, is amended to read:

607.1332 Disposition of acquired shares.—Shares acquired by a corporation pursuant to payment of the agreed value thereof or pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and disposed of by such corporation as authorized but unissued shares of the corporation, except that, in the case of a merger or share exchange, they may be held and disposed of as the plan of merger or share exchange otherwise provides. The shares of the survivor ~~surviving corporation~~ into which the shares of such shareholders demanding appraisal rights would have been converted had they assented to the merger shall have the status of authorized but unissued shares of the survivor ~~surviving corporation~~.

Section 172. Subsection (1) of section 607.1333, Florida Statutes, is amended to read:

607.1333 Limitation on corporate payment.—

(1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such event, the shareholder shall, at the shareholder's option:

(a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such event be deemed withdrawn with the consent of the corporation; or

(b) Retain his or her status as a claimant against the corporation and, if it is liquidated, be subordinated to the

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rights of creditors of the corporation, but have rights superior to the shareholders not asserting appraisal rights, and if the corporation ~~it~~ is not liquidated, retain his or her right to be paid for the shares, which right the corporation shall be obliged to satisfy when the restrictions of this section do not apply.

Section 173. Section 607.1340, Florida Statutes, is created to read:

607.1340 Other remedies limited.-

(1) A shareholder entitled to appraisal rights under this chapter may not challenge a completed corporate action for which appraisal rights are available unless such corporate action was either:

(a) Not authorized and approved in accordance with the applicable provisions of this chapter;

(b) Procured as a result of fraud, a material misrepresentation, or an omission of a material fact necessary to make statements made, in light of the circumstances in which they were made, not misleading.

(2) Nothing in this section operates to override or supersede the provisions of s. 607.0832.

Section 174. Section 607.1401, Florida Statutes, is amended to read:

607.1401 Dissolution by incorporators or directors.-If a corporation has not yet issued shares, its board of directors, or a majority of incorporators if it has no board of directors, ~~A majority of the incorporators or directors of a corporation that has not issued shares or has not commenced business~~ may dissolve the corporation by delivering to the department of

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~~State~~ for filing articles of dissolution that must set forth:

(1) The name of the corporation;

(2) The date of its incorporation ~~filing of its articles of incorporation;~~

(3) ~~Either.~~

~~(a) That none of the corporation's shares have been issued, or~~

~~(b) That the corporation has not commenced business;~~

(4) That no debt of the corporation remains unpaid;

(5) That the net assets of the corporation remaining after winding up, if any, have been distributed ~~to the shareholders, if shares were issued;~~ and

(6) That a majority of the incorporators or directors authorized the dissolution.

Section 175. Subsections (1) through (5) of section 607.1402, Florida Statutes, are amended to read:

607.1402 Dissolution by board of directors and shareholders; dissolution by written consent of shareholders.-

(1) A corporation's board of directors may propose dissolution for submission to the shareholders by first adopting a resolution authorizing the dissolution.

(2) (a) For a proposal to dissolve to be adopted, it must be approved by the shareholders pursuant to subsection (5).

(b) In submitting the proposal to dissolve to the shareholders for approval,

~~(a) the board of directors must recommend that dissolution to the shareholders approve the dissolution, unless:~~

1. The board of directors determines that because of conflict of interest or other special circumstances it should

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8933 make no recommendation; or  
 8934 2. Section 607.0826 applies.  
 8935 (c) If either subparagraph (b)1. or subparagraph (b)2.  
 8936 applies, the board must inform the shareholders of the basis for  
 8937 its so proceeding without such recommendation and communicates  
 8938 the basis for its determination to the shareholders; and  
 8939 ~~(b) The shareholders entitled to vote must approve the~~  
 8940 ~~proposal to dissolve as provided in subsection (5).~~  
 8941 (3) The board of directors may set conditions for the  
 8942 approval condition its submission of the proposal for  
 8943 dissolution by shareholders or for the effectiveness of the  
 8944 dissolution on any basis.  
 8945 (4) If the approval of the shareholders is to be given at a  
 8946 meeting, the corporation shall notify, in accordance with s.  
 8947 607.0705, each shareholder of record, regardless of whether or  
 8948 not entitled to vote, of the meeting of shareholders at which  
 8949 the dissolution is to be submitted for approval proposed  
 8950 ~~shareholders' meeting in accordance with s. 607.0705.~~ The notice  
 8951 must also state that the purpose, or one of the purposes, of the  
 8952 meeting is to consider dissolving the corporation.  
 8953 (5) Unless the articles of incorporation or the board of  
 8954 directors (acting pursuant to subsection (3)) require a greater  
 8955 vote or a vote by voting groups, the proposal to dissolve to be  
 8956 adopted must be approved by a majority of all the votes entitled  
 8957 to be cast on the proposal to dissolve that proposal.  
 8958 Section 176. Section 607.1403, Florida Statutes, is amended  
 8959 to read:  
 8960 607.1403 Articles of dissolution.—  
 8961 (1) At any time after dissolution is authorized, the

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8962 corporation may dissolve by delivering to the department ~~of~~  
 8963 ~~State~~ for filing articles of dissolution which ~~must~~ shall be  
 8964 ~~signed~~ executed in accordance with s. 607.0120 and which must  
 8965 ~~shall~~ set forth:  
 8966 (a) The name of the corporation;  
 8967 (b) The date dissolution was authorized;  
 8968 (c) If dissolution was approved by the shareholders, a  
 8969 statement that the proposal to dissolve was duly approved by the  
 8970 shareholders in the manner required by this chapter and by the  
 8971 articles of incorporation number cast for dissolution by the  
 8972 shareholders was sufficient for approval.  
 8973 ~~(d) If dissolution was approved by the shareholders and if~~  
 8974 ~~voting by voting groups was required, a statement that the~~  
 8975 ~~number cast for dissolution by the shareholders was sufficient~~  
 8976 ~~for approval must be separately provided for each voting group~~  
 8977 ~~entitled to vote separately on the plan to dissolve.~~  
 8978 (2) The articles of dissolution shall take effect at the  
 8979 effective date determined pursuant to s. 607.0123. A corporation  
 8980 is dissolved upon the effective date of its articles of  
 8981 dissolution.  
 8982 (3) For purposes of ss. 607.1401-607.1410, "dissolved  
 8983 corporation" means a corporation whose articles of dissolution  
 8984 have become effective and includes a successor entity. Further,  
 8985 for the purposes of this subsection, the term "successor entity"  
 8986 includes a trust, receivership, or other legal entity governed  
 8987 by the laws of this state to which the remaining assets and  
 8988 liabilities of a dissolved corporation are transferred and which  
 8989 exists solely for the purposes of prosecuting and defending  
 8990 suits by or against the dissolved corporation, thereby enabling

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8991 the dissolved corporation to settle and close the business of  
 8992 the dissolved corporation, to dispose of and convey the property  
 8993 of the dissolved corporation, to discharge the liabilities of  
 8994 the dissolved corporation, and to distribute to the dissolved  
 8995 corporation's shareholders any remaining assets, but not for the  
 8996 purpose of continuing the activities and affairs for which the  
 8997 dissolved corporation was organized.

8998 Section 177. Subsection (3) of section 607.1404, Florida  
 8999 Statutes, is amended to read:

9000 607.1404 Revocation of dissolution.—

9001 (3) After the revocation of dissolution is authorized, the  
 9002 corporation may revoke the dissolution by delivering to the  
 9003 department, within the 120-day period following the effective  
 9004 date of the articles of dissolution, of State for filing  
 9005 articles of revocation of dissolution, together with a copy of  
 9006 its articles of dissolution, that set forth:

9007 (a) The name of the corporation;

9008 (b) The effective date of the dissolution that was revoked;

9009 (c) The date that the revocation of dissolution was  
 9010 authorized;

9011 (d) If the corporation's board of directors or  
 9012 incorporators revoked the dissolution, a statement to that  
 9013 effect;

9014 (e) If the corporation's board of directors revoked a  
 9015 dissolution authorized by the shareholders, a statement that  
 9016 revocation was permitted by action by the board of directors  
 9017 alone pursuant to that authorization; and

9018 (f) If shareholder action was required to revoke the  
 9019 dissolution, a statement that the revocation was authorized by

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9020 the shareholders in the manner required by this chapter and by  
 9021 the articles of incorporation ~~the information required by s.~~  
 9022 ~~607.1403(1)(c) or (d).~~

9023 Section 178. Section 607.1405, Florida Statutes, is amended  
 9024 to read:

9025 607.1405 Effect of dissolution.—

9026 (1) A ~~dissolved~~ corporation that has dissolved continues  
 9027 its corporate existence but the dissolved corporation may not  
 9028 carry on any business except that appropriate to wind up and  
 9029 liquidate its business and affairs, including:

9030 (a) Collecting its assets;

9031 (b) Disposing of its properties that will not be  
 9032 distributed in kind to its shareholders;

9033 (c) Discharging or making provision for discharging its  
 9034 liabilities;

9035 (d) Making distributions of its remaining assets

9036 ~~Distributing its remaining property~~ among its shareholders  
 9037 according to their interests; and

9038 (e) Doing every other act necessary to wind up and  
 9039 liquidate its business and affairs.

9040 (2) Dissolution of a corporation does not:

9041 (a) Transfer title to the corporation's property;

9042 (b) Prevent transfer of its shares or securities, ~~although~~  
 9043 ~~the authorization to dissolve may provide for closing the~~  
 9044 ~~corporation's share transfer records;~~

9045 (c) Subject its directors or officers to standards of  
 9046 conduct different from those prescribed in ss. 607.0801-607.0859  
 9047 ~~ss. 607.0801-607.0850 except as provided in s. 607.1421(4);~~

9048 (d) Change quorum or voting requirements for its board of

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9049 directors or shareholders; change provisions for selection,  
 9050 resignation, or removal of its directors or officers or both; or  
 9051 change provisions for amending its bylaws;

9052 (e) Prevent commencement of a proceeding by or against the  
 9053 corporation in its corporate name;

9054 (f) Abate or suspend a proceeding pending by or against the  
 9055 corporation on the effective date of dissolution; or

9056 (g) Terminate the authority of the registered agent of the  
 9057 corporation.

9058 (3) A distribution in liquidation under this section may  
 9059 only be made by a dissolved corporation. For purposes of  
 9060 determining the shareholders entitled to receive a distribution  
 9061 in liquidation, the board of directors may fix a record date for  
 9062 determining shareholders entitled to a distribution in  
 9063 liquidation, which date may not be retroactive. If the board of  
 9064 directors does not fix a record date for determining  
 9065 shareholders entitled to a distribution in liquidation, the  
 9066 record date is the date the board of directors authorizes the  
 9067 distribution in liquidation.

9068 (4) The directors, officers, and agents of a corporation  
 9069 dissolved pursuant to s. 607.1403 shall not incur any personal  
 9070 liability thereby by reason of their status as directors,  
 9071 officers, and agents of a dissolved corporation, as  
 9072 distinguished from a corporation which is not dissolved.

9073 ~~(5)(4)~~ The name of a dissolved corporation ~~is not~~ shall not  
 9074 ~~be~~ available for assumption or use by another eligible entity  
 9075 until 1 year ~~corporation until 120 days~~ after the effective date  
 9076 of dissolution unless the dissolved corporation provides the  
 9077 department of State with a record an affidavit, signed as

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9078 ~~required by executed pursuant to~~ s. 607.0120, permitting the  
 9079 immediate assumption or use of the name by another eligible  
 9080 entity corporation.

9081 ~~(6)(5)~~ For purposes of this section, the circuit court may  
 9082 appoint a trustee, custodian, or receiver for any property owned  
 9083 or acquired by the corporation who may engage in any act  
 9084 permitted under subsection (1) if any director or officer of the  
 9085 dissolved corporation is unwilling or unable to serve or cannot  
 9086 be located.

9087 Section 179. Section 607.1406, Florida Statutes, is amended  
 9088 to read:

9089 607.1406 Known claims against dissolved corporation.—

9090 (1) A dissolved corporation may dispose of the known claims  
 9091 against it by giving written notice that satisfies the  
 9092 requirements of subsection (2) to its known claimants at any  
 9093 time after the effective date of the dissolution, but no later  
 9094 than the date that is 270 days before the date which is 3 years  
 9095 after the effective date of the dissolution.

9096 (2) The written notice must:

9097 (a) State the name of the corporation that is the subject  
 9098 of the dissolution;

9099 (b) State that the corporation is the subject of a  
 9100 dissolution and the effective date of the dissolution;

9101 (c) Specify the information that must be included in a  
 9102 claim;

9103 (d) State that a claim must be in writing and provide a  
 9104 mailing address where a claim may be sent;

9105 (e) State the deadline, which may not be fewer than 120  
 9106 days after the date the written notice is received by the

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9107 claimant, by which the dissolved corporation must receive the  
 9108 claim;

9109 (f) State that the claim will be barred if not received by  
 9110 the deadline;

9111 (g) State that the dissolved corporation may make  
 9112 distributions thereafter to other claimants and to the dissolved  
 9113 corporation's shareholders or persons interested without further  
 9114 notice; and

9115 (h) Be accompanied by a copy of ss. 607.1405-607.1410.

9116 (3) A dissolved corporation may reject, in whole or in  
 9117 part, a claim submitted by a claimant and received prior to the  
 9118 deadline specified in the written notice given pursuant to  
 9119 subsections (1) and (2) by mailing notice of the rejection to  
 9120 the claimant on or before the date that is the earlier of 90  
 9121 days after the dissolved corporation receives the claim or the  
 9122 date that is 150 days before the date which is 3 years after the  
 9123 effective date of the dissolution. A rejection notice sent by  
 9124 the dissolved corporation pursuant to this subsection must state  
 9125 that the claim will be barred unless the claimant, not later  
 9126 than 120 days after the claimant receives the rejection notice,  
 9127 commences an action in the circuit court in the applicable  
 9128 county against the dissolved corporation to enforce the claim.

9129 (4) A claim against the dissolved corporation is barred:

9130 (a) If a claimant who was given written notice pursuant to  
 9131 subsections (1) and (2) does not deliver the claim to the  
 9132 dissolved corporation by the specified deadline; or

9133 (b) If the claim was timely received by the dissolved  
 9134 corporation but was timely rejected by the dissolved corporation  
 9135 under subsection (3) and the claimant does not commence the

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9136 required action in the applicable county within 120 days after  
 9137 the claimant receives the rejection notice.

9138 (5) (a) For purposes of this section, "known claims" means  
 9139 any claim or liability that, as of the date of the giving of the  
 9140 written notice contemplated by subsections (1) and (2):

9141 1. Has matured sufficiently on or prior to the effective  
 9142 date of the dissolution to be legally capable of assertion  
 9143 against the dissolved corporation; or

9144 2. Is unmatured as of the effective date of the dissolution  
 9145 but will mature in the future solely based on the passage of  
 9146 time.

9147 (b) The term "known claims" does not include a claim based  
 9148 on an event occurring after the effective date of the  
 9149 dissolution or a claim that is a contingent claim.

9150 (6) The giving of any notice pursuant to this section does  
 9151 not revive any claim then barred or constitute acknowledgment by  
 9152 the dissolved corporation that any person to whom such notice is  
 9153 sent is a proper claimant and does not operate as a waiver of  
 9154 any defense or counterclaim in respect of any claim asserted by  
 9155 any person to whom such notice is sent.

9156 ~~(1) A dissolved corporation or successor entity, as defined~~  
 9157 ~~in subsection (15), may dispose of the known claims against it~~  
 9158 ~~by following the procedures described in subsections (2), (3),~~  
 9159 ~~and (4).~~

9160 ~~(2) The dissolved corporation or successor entity shall~~  
 9161 ~~deliver to each of its known claimants written notice of the~~  
 9162 ~~dissolution at any time after its effective date. The written~~  
 9163 ~~notice shall:~~

9164 ~~(a) Provide a reasonable description of the claim that the~~

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9165 claimant may be entitled to assert;

9166 ~~(b) State whether the claim is admitted or not admitted, in~~  
 9167 ~~whole or in part, and, if admitted:~~

9168 ~~1. The amount that is admitted, which may be as of a given~~  
 9169 ~~date; and~~

9170 ~~2. Any interest obligation if fixed by an instrument of~~  
 9171 ~~indebtedness;~~

9172 ~~(c) Provide a mailing address where a claim may be sent;~~

9173 ~~(d) State the deadline, which may not be fewer than 120~~  
 9174 ~~days after the effective date of the written notice, by which~~  
 9175 ~~confirmation of the claim must be delivered to the dissolved~~  
 9176 ~~corporation or successor entity; and~~

9177 ~~(e) State that the corporation or successor entity may make~~  
 9178 ~~distributions thereafter to other claimants and the~~  
 9179 ~~corporation's shareholders or persons interested as having been~~  
 9180 ~~such without further notice.~~

9181 ~~(3) A dissolved corporation or successor entity may reject,~~  
 9182 ~~in whole or in part, any claim made by a claimant pursuant to~~  
 9183 ~~this subsection by mailing notice of such rejection to the~~  
 9184 ~~claimant within 90 days after receipt of such claim and, in all~~  
 9185 ~~events, at least 150 days before expiration of 3 years following~~  
 9186 ~~the effective date of dissolution. A notice sent by the~~  
 9187 ~~dissolved corporation or successor entity pursuant to this~~  
 9188 ~~subsection shall be accompanied by a copy of this section.~~

9189 ~~(4) A dissolved corporation or successor entity electing to~~  
 9190 ~~follow the procedures described in subsections (2) and (3) shall~~  
 9191 ~~also give notice of the dissolution of the corporation to~~  
 9192 ~~persons with known claims, that are contingent upon the~~  
 9193 ~~occurrence or nonoccurrence of future events or otherwise~~

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9194 ~~conditional or unmatured, and request that such persons present~~  
 9195 ~~such claims in accordance with the terms of such notice. Such~~  
 9196 ~~notice shall be in substantially the same form, and sent in the~~  
 9197 ~~same manner, as described in subsection (2).~~

9198 ~~(5) A dissolved corporation or successor entity shall offer~~  
 9199 ~~any claimant whose known claim is contingent, conditional, or~~  
 9200 ~~unmatured such security as the corporation or such entity~~  
 9201 ~~determines is sufficient to provide compensation to the claimant~~  
 9202 ~~if the claim matures. The dissolved corporation or successor~~  
 9203 ~~entity shall deliver such offer to the claimant within 90 days~~  
 9204 ~~after receipt of such claim and, in all events, at least 150~~  
 9205 ~~days before expiration of 3 years following the effective date~~  
 9206 ~~of dissolution. If the claimant offered such security does not~~  
 9207 ~~deliver in writing to the dissolved corporation or successor~~  
 9208 ~~entity a notice rejecting the offer within 120 days after~~  
 9209 ~~receipt of such offer for security, the claimant is deemed to~~  
 9210 ~~have accepted such security as the sole source from which to~~  
 9211 ~~satisfy his or her claim against the corporation.~~

9212 ~~(6) A dissolved corporation or successor entity which has~~  
 9213 ~~given notice in accordance with subsections (2) and (4) shall~~  
 9214 ~~petition the circuit court in the county where the corporation's~~  
 9215 ~~principal office is located or was located at the effective date~~  
 9216 ~~of dissolution to determine the amount and form of security that~~  
 9217 ~~will be sufficient to provide compensation to any claimant who~~  
 9218 ~~has rejected the offer for security made pursuant to subsection~~  
 9219 ~~(5).~~

9220 ~~(7) A dissolved corporation or successor entity which has~~  
 9221 ~~given notice in accordance with subsection (2) shall petition~~  
 9222 ~~the circuit court in the county where the corporation's~~

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

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

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

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

~~(b) Shall post the security offered and not rejected pursuant to subsection (5);~~

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

~~(d) Shall pay or make provision for all other known obligations of the corporation or such successor entity.~~

~~Such claims or obligations shall be paid in full, and any such~~

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

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

~~(11) Directors of a dissolved corporation or governing~~

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

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

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

(14) The aggregate liability of any shareholder of a dissolved corporation for claims against the dissolved corporation arising under this section, s. 607.1407, or otherwise, may not exceed the amount distributed to the shareholder in dissolution.

(15) As used in this section or s. 607.1407, the term "successor entity" includes any trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of prosecuting and defending suits by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to

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discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

Section 180. Section 607.1407, Florida Statutes, is amended to read:

607.1407 Other Unknown claims against dissolved corporation.—

(1) A dissolved corporation ~~or successor entity, as defined in s. 607.1406(15),~~ may choose to execute one of the following procedures to resolve any claims other than known payment of unknown claims:-

(a) ~~(1)~~ A dissolved corporation ~~or successor entity~~ may file notice of its dissolution with the department ~~of State~~ on the form prescribed by the department ~~of State~~ and request that persons with claims against the corporation which are not known to the dissolved corporation ~~or successor entity~~ present them in accordance with the notice. The notice must ~~shall~~:

1.(a) State the name of the corporation that is the subject of the and the date of dissolution;

2.(b) State that the corporation is the subject of a dissolution and the effective date of the dissolution ~~Describe the information that must be included in a claim and provide a mailing address to which the claim may be sent; and~~

3. Specify the information that must be included in a claim;

4. State that a claim must be in writing and provide a mailing address where a claim may be sent; and

5.(c) State that a claim against the corporation under this

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

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

1. State the name of the corporation that is the subject of the dissolution;

2. State that the corporation is the subject of a dissolution and the effective date of the dissolution;

3. Specify the information that must be included in the claim;

4. State that a claim must be in writing and provide a mailing address where a claim may be sent; and

5. State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4 years after the date of the second consecutive weekly publication of the notice authorized by this section.

~~(a) State the name of the corporation and the date of dissolution;~~

~~(b) Describe the information that must be included in a~~

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~~claim and provide a mailing address to which the claim may be sent; and~~

~~(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the claim is commenced within 4 years after the date of the second consecutive weekly publication of the notice authorized by this section.~~

(2)(3) If the dissolved corporation or successor entity complies with paragraph (1)(a) or paragraph (1)(b) subsection (1) or subsection (2), unless sooner barred by another statute limiting actions, the claim of each of the following claimants with known or other claims is barred unless the claimant commences a proceeding to enforce the claim against the dissolved corporation within 4 years after the date of filing the notice with the department of State or the date of the second consecutive weekly publication, as applicable:

(a) A claimant who did not receive written notice under s. 607.1406 s. 607.1406(9), or whose claim was not provided for under s. 607.1406(10), whether such claim is based on an event occurring before or after the effective date of dissolution.

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

(c) A claimant whose claim is not a known claim under s. 607.1406(5)

~~(4) A claim may be entered under this section:~~

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

~~(b) If the assets have been distributed in liquidation,~~

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9397 ~~against a shareholder of the dissolved corporation to the extent~~  
 9398 ~~of such shareholder's pro rata share of the claim or the~~  
 9399 ~~corporate assets distributed to such shareholder in liquidation,~~  
 9400 ~~whichever is less, provided that the aggregate liability of any~~  
 9401 ~~shareholder of a dissolved corporation arising under this~~  
 9402 ~~section, s. 607.1406, or otherwise may not exceed the amount~~  
 9403 ~~distributed to the shareholder in dissolution.~~

9404 (3) Nothing in this section shall preclude or relieve the  
 9405 corporation from its notification to claimants otherwise set  
 9406 forth in this chapter.

9407 Section 181. Section 607.1408, Florida Statutes, is created  
 9408 to read:

9409 607.1408 Claims against dissolved corporations;  
 9410 enforcement.—A claim that is not barred by s. 607.1406(4), by s.  
 9411 607.1407(2), or by another statute limiting actions may be  
 9412 enforced:

9413 (1) Against the dissolved corporation, to the extent of its  
 9414 undistributed assets; or

9415 (2) Except as provided in s. 607.1409(4), if the assets  
 9416 have been distributed in liquidation, against a shareholder of  
 9417 the dissolved corporation to the extent of the shareholder's pro  
 9418 rata share of the claim or the corporate assets distributed to  
 9419 the shareholder in liquidation, whichever is less, provided that  
 9420 the aggregate liability of any shareholder of a dissolved  
 9421 corporation arising under s. 607.1406, under s. 607.1407, or  
 9422 otherwise may not exceed the total amount of assets distributed  
 9423 to the shareholder in dissolution.

9424 Section 182. Section 607.1409, Florida Statutes, is created  
 9425 to read:

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9426 607.1409 Court proceedings.—

9427 (1) A dissolved corporation that has filed a notice under  
 9428 s. 607.1407(1)(a) or published a notice under s. 607.1407(1)(b)  
 9429 may file an application with the circuit court in the applicable  
 9430 county for a determination of the amount and form of security to  
 9431 be provided for payment of claims that are contingent or have  
 9432 not been made known to the dissolved corporation or that are  
 9433 based on an event occurring after the effective date of  
 9434 dissolution but that, based on the facts known to the dissolved  
 9435 corporation, are reasonably estimated to arise after the  
 9436 effective date of dissolution. Provision need not be made for  
 9437 any claim that is or is reasonably anticipated to be barred  
 9438 under s. 607.1407(2).

9439 (2) Within 10 days after the filing of the application  
 9440 under subsection (1), notice of the proceeding shall be given by  
 9441 the dissolved corporation to each claimant holding a contingent  
 9442 claim whose identity and contingent claim is known to the  
 9443 dissolved corporation. Such notice shall be accompanied by a  
 9444 copy of ss. 607.1405-607.1410.

9445 (3) In any proceeding under this section, the court may  
 9446 appoint a guardian ad litem to represent all claimants whose  
 9447 identities are unknown. The reasonable fees and expenses of such  
 9448 guardian, including all reasonable expert witness fees, shall be  
 9449 paid by the dissolved corporation.

9450 (4) Provision by the dissolved corporation for security in  
 9451 the amount and the form ordered by the court under subsection  
 9452 (1) shall satisfy the dissolved corporation's obligations with  
 9453 respect to claims that are contingent, have not been made known  
 9454 to the dissolved corporation or are based on an event occurring

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9455 after the effective date of dissolution, and such claims may not  
 9456 be enforced against a shareholder who received assets in  
 9457 liquidation.

9458 Section 183. Section 607.1410, Florida Statutes, is created  
 9459 to read:

9460 607.1410 Director duties.—

9461 (1) Directors shall cause the dissolved corporation to  
 9462 discharge or make reasonable provision for the payment of claims  
 9463 and make distributions in liquidation of assets to shareholders  
 9464 after payment or provision for claims.

9465 (2) Directors of a dissolved corporation that has disposed  
 9466 of claims under s. 607.1406, s. 607.1407, or s. 607.1409 are not  
 9467 liable to any claimant or shareholder for a breach of subsection  
 9468 (1) with respect to claims against the dissolved corporation  
 9469 that are barred or satisfied in accordance with s. 607.1406, s.  
 9470 607.1407, or s. 607.1409.

9471 Section 184. Section 607.1420, Florida Statutes, is amended  
 9472 to read:

9473 607.1420 Grounds for Administrative dissolution.—

9474 (1) The department may of State may commence a proceeding  
 9475 under s. 607.1421 to administratively dissolve a corporation  
 9476 administratively if the corporation does not:

9477 (a) Deliver its annual report to the department. The  
 9478 corporation has failed to file its annual report and pay the  
 9479 annual report filing fee by 5 p.m. Eastern Time on the third  
 9480 Friday in September of each year;

9481 (b) Pay a fee or penalty due to the department under this  
 9482 chapter;

9483 (c) Appoint and maintain a registered agent and registered

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9484 office as required by s. 607.0501 ~~The corporation is without a~~  
 9485 ~~registered agent or registered office in this state for 30 days~~  
 9486 ~~or more;~~

9487 (d)(e) Deliver for filing a statement of change under s.  
 9488 607.0502 within 30 days after a change has occurred in the name  
 9489 or address of the agent unless, within 30 days after the change  
 9490 occurred:

9491 1. The agent filed a statement of change pursuant to s.  
 9492 607.05031; or

9493 2. The change was made in accordance with s. 607.0502(4)  
 9494 ~~The corporation does not notify the Department of State within~~  
 9495 ~~30 days that its registered agent or registered office has been~~  
 9496 ~~changed, that its registered agent has resigned, or that its~~  
 9497 ~~registered office has been discontinued;~~

9498 (e)(d) The corporation has failed to answer truthfully and  
 9499 fully, within the time prescribed by this chapter act,  
 9500 interrogatories propounded by the department of State; or  
 9501 (f)(e) The corporation's period of duration stated in its  
 9502 articles of incorporation expires has expired.

9503 (2) Administrative dissolution of a corporation for failure  
 9504 to file an annual report must occur on the fourth Friday in  
 9505 September of each year. The department shall issue a notice in a  
 9506 record of administrative dissolution to the corporation  
 9507 dissolved for failure to file an annual report. Issuance of the  
 9508 notice may be by electronic transmission to a corporation that  
 9509 has provided the department with an e-mail address.

9510 (3) If the department determines that one or more grounds  
 9511 exist for administratively dissolving a corporation under  
 9512 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the

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department shall serve notice in a record to the corporation of its intent to administratively dissolve the corporation. Issuance of the notice may be by electronic transmission to a corporation that has provided the department with an e-mail address.

(4) If, within 60 days after sending the notice of intent to administratively dissolve pursuant to subsection (3), a corporation does not correct each ground for dissolution under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) or demonstrate to the reasonable satisfaction of the department that each ground determined by the department does not exist, the department shall dissolve the corporation administratively and issue to the corporation a notice in a record of administrative dissolution that states the grounds for dissolution. Issuance of the notice of administrative dissolution may be by electronic transmission to a corporation that has provided the department with an e-mail address.

(5) A corporation that has been administratively dissolved continues in existence but may only carry on activities necessary to wind up its activities and affairs, liquidate and distribute its assets, and notify claimants under ss. 607.1405, 607.1406, and 607.1407.

(6) The administrative dissolution of a corporation does not terminate the authority of its registered agent for service of process. The foregoing enumeration in subsection (1) of grounds for administrative dissolution shall not exclude actions or special proceedings by the Department of Legal Affairs or any state officials for the annulment or dissolution of a corporation for other causes as provided in any other statute of

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~~this state.~~

Section 185. Section 607.1421, Florida Statutes, is repealed.

Section 186. Section 607.1422, Florida Statutes, is amended to read:

607.1422 Reinstatement following administrative dissolution.—

(1) A corporation that is administratively dissolved under s. 607.1420 or that was dissolved under s. 607.1421 before January 1, 2020, ~~s. 607.1421~~ may apply to the department of State for reinstatement at any time after the effective date of dissolution. The corporation must submit all fees and penalties then owed by the corporation at the rates provided by laws at the time the corporation applies for reinstatement, together with an application for reinstatement prescribed and furnished by the department, which is a reinstatement form prescribed and furnished by the Department of State or a current uniform business report signed by both the registered agent and an officer or director of the corporation and states:

(a) The name of the corporation;

(b) The street address of the corporations' principal office and mailing address;

(c) The date of the corporation's organization;

(d) The corporation's federal employer identification number or, if none, whether one has been applied for;

(e) The name, title or capacity, and address of at least one officer or director of the corporation; and

(f) Additional information that is necessary or appropriate to enable the department to carry out this chapter.

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9571 (2) In lieu of the requirement to file an application for  
 9572 reinstatement as described in subsection (1), an  
 9573 administratively dissolved corporation may submit all fees and  
 9574 penalties owed by the corporation at the rates provided by law  
 9575 at the time the corporation applies for reinstatement, together  
 9576 with a current annual report, signed by both the registered  
 9577 agent and an officer or director of the corporation, which  
 9578 contains the information described in subsection (1).  
 9579 (3) If the department determines that an application for  
 9580 reinstatement contains the information required under subsection  
 9581 (1) or subsection (2) and that the information is correct, upon  
 9582 payment of all required fees and penalties, the department shall  
 9583 reinstate the corporation.  
 9584 (4) When reinstatement under this section becomes  
 9585 effective:  
 9586 (a) The reinstatement relates back to and takes effect as  
 9587 of the effective date of the administrative dissolution.  
 9588 (b) The corporation may operate as if the administrative  
 9589 dissolution had never occurred.  
 9590 (c) The rights of a person arising out of an act or  
 9591 omission in reliance on the dissolution before the person knew  
 9592 or had notice of the reinstatement are not affected and all fees  
 9593 then owed by the corporation, computed at the rate provided by  
 9594 law at the time the corporation applies for reinstatement.  
 9595 ~~(2) If the Department of State determines that the~~  
 9596 ~~application contains the information required by subsection (1)~~  
 9597 ~~and that the information is correct, it shall reinstate the~~  
 9598 ~~corporation.~~  
 9599 ~~(3) When the reinstatement is effective, it relates back to~~

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9600 ~~and takes effect as of the effective date of the administrative~~  
 9601 ~~dissolution and the corporation resumes carrying on its business~~  
 9602 ~~as if the administrative dissolution had never occurred.~~  
 9603 (5)(4) The name of the dissolved corporation is not shall  
 9604 ~~not be~~ available for assumption or use by another eligible  
 9605 entity corporation until 1 year after the effective date of  
 9606 dissolution unless the dissolved corporation provides the  
 9607 department of State with a record signed as required by an  
 9608 ~~affidavit executed as required by s. 607.0120~~ permitting the  
 9609 immediate assumption or use of the name by another eligible  
 9610 entity corporation.  
 9611 (6)(5) If the name of the dissolved corporation has been  
 9612 lawfully assumed in this state by another business entity, the  
 9613 ~~department corporation, the Department of State~~ shall require  
 9614 the dissolved corporation to amend its articles of incorporation  
 9615 to change its name before accepting its application for  
 9616 reinstatement.  
 9617 Section 187. Section 607.1423, Florida Statutes, is amended  
 9618 to read:  
 9619 607.1423 Judicial review of Appeal from denial of  
 9620 reinstatement.—  
 9621 (1) If the department of State denies a corporation's  
 9622 application for reinstatement after following administrative  
 9623 dissolution, ~~the department it~~ shall serve the corporation under  
 9624 either s. 607.0504(1) or s. 607.0504(2) with a written notice  
 9625 that explains the reason or reasons for denial.  
 9626 (2) Within 30 days after service of a notice of denial of  
 9627 reinstatement, a corporation may appeal the denial by  
 9628 petitioning the Circuit Court of Leon County to set aside the

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9629 dissolution. The petition must be served on the department and  
 9630 contain a copy of the department's notice of administrative  
 9631 ~~After exhaustion of administrative remedies, the corporation may~~  
 9632 ~~appeal the denial of reinstatement to the appropriate court as~~  
 9633 ~~provided in s. 120.68 within 30 days after service of the notice~~  
 9634 ~~of denial is perfected. The corporation appeals by petitioning~~  
 9635 ~~the court to set aside the dissolution and attaching to the~~  
 9636 ~~petition copies of the Department of State's certificate of~~  
 9637 dissolution, the corporation's application for reinstatement,  
 9638 and the department's notice of denial.

9639 (3) The court may ~~summarily~~ order the department of State  
 9640 to reinstate the dissolved corporation or ~~may~~ take other action  
 9641 the court considers appropriate.

9642 (4) The court's final decision may be appealed as in other  
 9643 civil proceedings.

9644 Section 188. Section 607.1430, Florida Statutes, is amended  
 9645 to read:

9646 607.1430 Grounds for judicial dissolution.—

9647 (1) A circuit court may dissolve a corporation or order  
 9648 such other remedy as provided in s. 607.1434:

9649 ~~(1)~~ (a) In a proceeding by the Department of Legal Affairs  
 9650 to dissolve a corporation if it is established that:

9651 1. The corporation obtained its articles of incorporation  
 9652 through fraud; or

9653 2. The corporation has continued to exceed or abuse the  
 9654 authority conferred upon it by law.

9655 ~~(b)~~ The enumeration in subparagraphs 1. and 2. ~~paragraph (a)~~ of  
 9656 grounds for involuntary dissolution does not exclude actions or  
 9657

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9658 special proceedings by the Department of Legal Affairs or any  
 9659 state official for the annulment or dissolution of a corporation  
 9660 for other causes as provided in any other statute of this state;

9661 (b)(2) In a proceeding by a shareholder to dissolve a  
 9662 corporation if it is established that:

9663 1.(a) The directors are deadlocked in the management of the  
 9664 corporate affairs, the shareholders are unable to break the  
 9665 deadlock, and;

9666 a. Irreparable injury to the corporation is threatened or  
 9667 being suffered;

9668 b. The business and affairs of the corporation can no  
 9669 longer be conducted to the advantage of the shareholders  
 9670 generally because of the deadlock; or

9671 c. Both; or

9672 2.(b) The shareholders are deadlocked in voting power and  
 9673 have failed to elect successors to directors whose terms have  
 9674 expired or would have expired upon qualification of their  
 9675 successors;

9676 ~~(3) In a proceeding by a shareholder or group of~~  
 9677 ~~shareholders in a corporation having 35 or fewer shareholders if~~  
 9678 ~~it is established that:~~

9679 3.(a) The corporate assets are being misapplied or wasted,  
 9680 causing material injury to the corporation; or

9681 4.(b) The directors or those in control of the corporation  
 9682 have acted, are acting, or will ~~are reasonably expected to~~ act  
 9683 in a manner that is illegal, oppressive, or fraudulent;

9684 (c)(4) In a proceeding by a creditor if it is established  
 9685 that:

9686 1.(a) The creditor's claim has been reduced to judgment,

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the execution on the judgment returned unsatisfied, and the corporation is insolvent; or

2. (b) The corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or

(d) (5) In a proceeding by the corporation to have its voluntary dissolution continued under court supervision; or

(e) In a proceeding by a shareholder if the corporation has abandoned its business and has failed within a reasonable period of time to liquidate and distribute its assets and dissolve.

(2) Paragraph (1) (b) does not apply in the case of a corporation that, on the date of the filing of the proceeding, has shares that are:

(a) A covered security under s. 18(b) (1) (A) or (B) of the Securities Act of 1933; or

(b) Not a covered security, but are held by at least 300 shareholders and the shares outstanding have a market value of at least \$20 million, exclusive of the value of outstanding shares of the corporation held by the corporation's subsidiaries, by the corporation's senior executives, by the corporation's directors, and by the corporation's beneficial shareholders and voting trust beneficial owners owning more than 10 percent of the outstanding shares of the corporation.

(3) A proceeding by a shareholder under subparagraph (1) (b) 4. asserting that the directors or those in control of the corporation have acted, are acting, or will act in a manner that is oppressive may only be brought by a shareholder who at the time that such proceeding is commenced under subparagraph (1) (b) 4. owns at least 10 percent of the outstanding shares of

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the corporation.

(4) (a) In the event of a deadlock situation that satisfies subparagraph (1) (b) 1. or subparagraph (1) (b) 2., if the shareholders are subject to a shareholder agreement that complies with s. 607.0732 and contains a deadlock sale provision, then such deadlock sale provision shall apply to the resolution of such deadlock in lieu of the court entering an order of judicial dissolution or an order directing the purchase of petitioner's shares under s. 607.1436, so long as the provisions of such deadlock sale provision are initiated and effectuated within the time periods specified for the corporation to act under s. 607.1436 and in accordance with the terms of such deadlock sale provision.

(b) As used in this section, the term "deadlock sale provision" means a provision in a shareholder agreement that complies with s. 607.0732, which is or may be applicable in the event of a deadlock among the directors or shareholders of the corporation, which neither the directors nor the shareholders, as applicable, of the corporation are able to break; and which provides for a deadlock breaking mechanism, including, but not limited to:

1. A redemption or a purchase and sale of shares or other equity securities;

2. A governance change;

3. A sale of the corporation or all or substantially all of the assets of the corporation; or

4. A similar provision that, if initiated and effectuated, breaks the deadlock by causing the transfer of the shares or other equity securities, a governance change, or a sale of the

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9745 corporation or all or substantially all of the corporation's  
 9746 assets.

9747 (5) (a) In the event of oppressive action that satisfies  
 9748 subparagraph (1) (b) 4., if the shareholders are subject to a  
 9749 shareholder agreement that complies with s. 607.0732 and  
 9750 contains an oppressive action sale provision, then such  
 9751 oppressive action sale provision shall address such shareholder  
 9752 asserted oppressive action in lieu of the court entering an  
 9753 order of judicial dissolution or an order directing the purchase  
 9754 of petitioner's shares under s. 607.1436, so long as the  
 9755 provisions of such oppressive action sale provision are  
 9756 initiated and effectuated within the time periods specified for  
 9757 the corporation to act under s. 607.1436 and in accordance with  
 9758 the terms of such oppressive action sale provision.

9759 (b) For purposes of this section, the term "oppressive  
 9760 action sale provision" means a provision in a shareholder  
 9761 agreement that complies with s. 607.0732, which is or may be  
 9762 applicable in the event of a shareholder's assertion of the  
 9763 occurrence or existence of oppressive action; which neither the  
 9764 directors nor the shareholders, as applicable, of the  
 9765 corporation are able to address; and which provides for a  
 9766 mechanism for addressing the occurrence or existence of such  
 9767 shareholder asserted oppressive action including, but not  
 9768 limited to:

9769 1. A redemption or purchase and sale of shares or other  
 9770 equity securities;

9771 2. The sale of the corporation or of all or substantially  
 9772 all of the assets of the corporation; or

9773 3. A similar provision that, if initiated and effectuated,

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9774 causes the transfer of shares or other equity securities to be  
 9775 redeemed or purchased and sold or the sale of the corporation or  
 9776 of all or substantially all of the corporation's assets.

9777 (6) A deadlock sale provision or an oppressive action sale  
 9778 provision in a shareholder agreement which complies with s.  
 9779 607.0732 which is not initiated and effectuated before the court  
 9780 enters an order of judicial dissolution under subparagraph  
 9781 (1) (b) 1., subparagraph (1) (b) 2., or subparagraph (1) (b) 4., as  
 9782 the case may be, or an order directing the purchase of  
 9783 petitioner's interest under s. 607.1436, does not adversely  
 9784 affect the rights of shareholders to seek judicial dissolution  
 9785 under subparagraph (1) (b) 1., subparagraph (1) (b) 2., or  
 9786 subparagraph (1) (b) 4., as the case may be, or the rights of the  
 9787 corporation or one or more shareholders to purchase the  
 9788 petitioner's interest under s. 607.1436. The filing of an action  
 9789 for judicial dissolution on the grounds described in  
 9790 subparagraph (1) (b) 1., subparagraph (1) (b) 2., or subparagraph  
 9791 (1) (b) 4., as the case may be, or an election to purchase the  
 9792 petitioner's interest under s. 607.1436, does not adversely  
 9793 affect the right of a shareholder to initiate an available  
 9794 deadlock sale provision or an oppressive action sale provision  
 9795 under the shareholder agreement that complies with s. 607.0732  
 9796 or to enforce a shareholder-initiated or an automatically-  
 9797 initiated deadlock sale provision or oppressive action sale  
 9798 provision if the deadlock sale provision or the oppressive sale  
 9799 provision, as the case may be, is initiated and effectuated  
 9800 before the court enters an order of judicial dissolution under  
 9801 subparagraph (1) (b) 1., subparagraph (1) (b) 2., or subparagraph  
 9802 (1) (b) 4., as the case may be, or an order directing the purchase

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9803 of petitioner's interest under s. 607.1436.

9804 (7) For purposes of subsections (1), (2), and (3), the term  
 9805 "shareholder" means a record shareholder, a beneficial  
 9806 shareholder, or an unrestricted voting trust beneficial owner.

9807 Section 189. Subsections (1), (3), and (4) of section  
 9808 607.1431, Florida Statutes, are amended to read:

9809 607.1431 Procedure for judicial dissolution.—

9810 (1) Venue for a proceeding brought under s. 607.1430 lies  
 9811 in the circuit court in the applicable county of the county  
 9812 ~~where the corporation's principal office is or was last located,~~  
 9813 ~~as shown by the records of the Department of State, or, if none~~  
 9814 ~~in this state, where its registered office is or was last~~  
 9815 ~~located.~~

9816 (3) A court in a proceeding brought under s. 607.1430 ~~to~~  
 9817 ~~dissolve a corporation~~ may issue injunctions, appoint a receiver  
 9818 or custodian during the proceeding ~~pendente lite~~ with all powers  
 9819 and duties the court directs, take other action required to  
 9820 preserve the corporate assets wherever located, and carry on the  
 9821 business of the corporation until a full hearing can be held.

9822 (4) Within 30 days of the commencement of a proceeding  
 9823 under s. 607.1430(1)(b), the corporation shall deliver to all  
 9824 shareholders, other than the petitioner, a notice stating that  
 9825 the shareholders are entitled to avoid the dissolution of the  
 9826 corporation by electing to purchase the petitioner's shares  
 9827 under s. 607.1436 and accompanied by a copy of s. 607.1436.

9828 (5) If the court determines that any party has commenced,  
 9829 continued, or participated in a proceeding ~~an action~~ under s.  
 9830 607.1430 and has acted arbitrarily, frivolously, vexatiously, or  
 9831 not in good faith, the court may, in its discretion, award

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9832 attorney ~~attorney's~~ fees and other reasonable expenses to the  
 9833 other parties to the action who have been affected adversely by  
 9834 such actions.

9835 Section 190. Subsections (1) and (2), paragraph (a) of  
 9836 subsection (3), and subsections (4) and (5) of section 607.1432,  
 9837 Florida Statutes, are amended to read:

9838 607.1432 Receivership or custodianship.—

9839 (1) A court in a judicial proceeding brought under s.  
 9840 607.1430 ~~to dissolve a corporation~~ may appoint one or more  
 9841 receivers to wind up and liquidate, or one or more custodians to  
 9842 manage, the business and affairs of the corporation. The court  
 9843 shall hold a hearing, after notifying all parties to the  
 9844 proceeding and any interested persons designated by the court,  
 9845 before appointing a receiver or custodian. The court appointing  
 9846 a receiver or custodian has exclusive jurisdiction over the  
 9847 corporation and all of its property wherever located.

9848 (2) The court may appoint a natural person or an eligible  
 9849 entity ~~a corporation~~ authorized to act as a receiver or  
 9850 custodian. The eligible entity ~~corporation~~ may be a domestic  
 9851 eligible entity ~~corporation~~ or a foreign eligible entity  
 9852 ~~corporation~~ authorized to transact business in this state. The  
 9853 court may require the receiver or custodian to post bond, with  
 9854 or without sureties, in an amount the court directs.

9855 (3) The court shall describe the powers and duties of the  
 9856 receiver or custodian in its appointing order, which may be  
 9857 amended from time to time. Among other powers:

9858 (a) The receiver:

9859 1. May dispose of all or any part of the assets of the  
 9860 corporation wherever located, at a public or private sale, if

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authorized by the court; and

2. May sue and defend in his, ~~her, or its~~ or her own name as receiver of the corporation in all courts of this state.

(4) The court during a receivership may redesignate the receiver a custodian, and during a custodianship may redesignate the custodian a receiver, if doing so is determined by the court to be in the best interests of the corporation and its shareholders and creditors.

(5) The court from time to time during the receivership or custodianship may order compensation paid and expense disbursements or reimbursements made to the receiver or custodian and his, ~~her, or its~~ or her counsel from the assets of the corporation or proceeds from the sale of the assets.

Section 191. Section 607.1433, Florida Statutes, is amended to read:

607.1433 Judgment of dissolution.—

(1) If after a hearing in a proceeding under s. 607.1430 the court determines that one or more grounds for judicial dissolution described in s. 607.1430 exist, it may enter a judgment dissolving the corporation and specifying the effective date of the dissolution, and the clerk of the court shall deliver a certified copy of the judgment to the department of ~~State~~, which shall file it.

(2) After entering the judgment of dissolution, the court shall direct the winding up and liquidation of the corporation's business and affairs in accordance with s. 607.1405 and the notification of claimants in accordance with ss. 607.1406 and 607.1407 ~~s. 607.1406~~, subject to the provisions of subsection

(3).

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(3) In a proceeding for judicial dissolution, the court may require all creditors of the corporation to file with the clerk of the court or with the receiver, in such form as the court may prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for filing of claims. The court shall prescribe the method by which such notice of the deadline for filing claims shall be given to creditors and claimants. Prior to the date so fixed, the court may extend the time for the filing of claims by court order. Creditors and claimants failing to file proofs of claim on or before the date so fixed shall be barred ~~may be barred, by order of court,~~ from participating in the distribution of the assets of the corporation. Nothing in this section affects the enforceability of any recorded mortgage or lien or the perfected security interest or rights of a person in possession of real or personal property.

Section 192. Section 607.1434, Florida Statutes, is amended to read:

607.1434 Alternative remedies to judicial dissolution.—

(1) In a proceeding under an action for dissolution ~~pursuant to~~ s. 607.1430, the court may, as an alternative to directing the dissolution of the corporation and upon a showing of sufficient merit to warrant such remedy:

(a) (1) Appoint a receiver or custodian during the proceeding pendente lite as provided in s. 607.1432;

(b) (2) Appoint a provisional director as provided in s. 607.1435;

(c) (3) Order a purchase of the petitioning complaining

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shareholder's shares pursuant to s. 607.1436; or

~~(d) (4) Upon proof of good cause,~~ Make any order or grant any equitable relief other than dissolution or liquidation as in its discretion it may deem appropriate.

(2) Alternative remedies, such as the appointment of a receiver or custodian, may also be ordered in the discretion of the court, upon a showing of sufficient merit to warrant such remedy, in advance of directing the dissolution of the corporation or, after a judgment of dissolution is entered, to assist in facilitating the winding up of the corporation.

Section 193. Subsections (1) and (3) of section 607.1435, Florida Statutes, are amended to read:

607.1435 Provisional director.—

(1) In a proceeding under s. 607.1430, a provisional director may be appointed in the discretion of the court if it appears that such action by the court will remedy the grounds alleged by the complaining shareholder to support the jurisdiction of the court under s. 607.1430. A provisional director may be appointed notwithstanding the absence of a vacancy on the board of directors, and such director shall have all the rights and powers of a duly elected director, including the right to notice of and to vote at meetings of directors, until such time as the provisional director is removed by order of the court or, unless otherwise ordered by a court, removed by a vote of the shareholders sufficient either to elect a majority of the board of directors or, if greater than majority voting is required by the articles of incorporation or the bylaws, to elect the requisite number of directors needed to take action. A provisional director shall be an impartial person who is neither

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a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be determined by the court.

(3) In any proceeding under which a provisional director is appointed pursuant to this section, the court shall allow reasonable compensation to the provisional director for services rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts shall be paid by the corporation.

Section 194. Section 607.1436, Florida Statutes, is amended to read:

607.1436 Election to purchase instead of dissolution.—

(1) In a proceeding under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3) to dissolve a corporation,~~ the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to this section shall be irrevocable unless the court determines that it is equitable to set aside or modify the election.

(2) An election to purchase pursuant to this section may be filed with the court at any time within 90 days after the filing of the petition under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3) or~~ at such later time as the court in its discretion may allow. If the election to purchase is filed by one or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all shareholders, other than the petitioner. The notice must state the name and number of shares owned by the petitioner and the name and number of shares owned by each electing shareholder and must advise the recipients of their right to join in the election to purchase shares in accordance

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with this section. Shareholders who wish to participate must file notice of their intention to join in the purchase no later than 30 days after the effective date of the notice to them. All shareholders who have filed an election or notice of their intention to participate in the election to purchase thereby become parties to the proceeding and shall participate in the purchase in proportion to their ownership of shares as of the date the first election was filed, unless they otherwise agree or the court otherwise directs. After an election has been filed by the corporation or one or more shareholders, the proceeding under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3)~~ may not be discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her shares, unless the court determines that it would be equitable to the corporation and the shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other disposition.

(3) If, within 60 days after the filing of the first election, the parties reach agreement as to the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the parties.

(4) If the parties are unable to reach an agreement as provided for in subsection (3), the court, upon application of any party, may stay the proceeding to dissolve under s. 607.1430(1)(b) and shall, whether or not the proceeding is stayed, shall stay the s. 607.1430 proceedings and determine the fair value of the petitioner's shares as of the day before the date on which the petition under s. 607.1430 was filed or as of such other date as the court deems appropriate under the

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circumstances.

(5) Upon determining the fair value of the shares, the court shall enter an order directing the purchase upon such terms and conditions as the court deems appropriate, which may include payment of the purchase price in installments, when necessary in the interests of equity, provision for security to assure payment of the purchase price and any additional costs, fees, and expenses as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation of shares among such shareholders. In allocating the petitioner's shares among holders of different classes of shares, the court shall attempt to preserve any ~~the~~ existing distribution of voting rights among holders of different classes and series insofar as practicable and may direct that holders of any a specific class or classes or series shall not participate in the purchase. Interest may be allowed at the rate and from the date determined by the court to be equitable; however, if the court finds that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning shareholder had probable grounds for relief under s. 607.1430(1)(b) ~~s. 607.1430(3)~~, it may award expenses to the petitioning shareholder, including reasonable fees and expenses of counsel and of any experts employed by petitioner.

(6) ~~The~~ Upon entry of an order under subsection (3) or subsection (5) shall be subject to the provisions of subsection (8), and the order shall not be entered unless and until the award is determined by the court to be permitted under the provisions of subsection (8). In determining compliance with s.

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10035 607.06401, the court may rely on an affidavit from the  
 10036 corporation as to compliance with that section as of the  
 10037 measurement date. Upon entry of an order under subsection (3) or  
 10038 subsection (5), the court shall dismiss the petition to dissolve  
 10039 the corporation under s. 607.1430(1)(b) ~~s. 607.1430~~ and the  
 10040 petitioning shareholder shall no longer have any rights or  
 10041 status as a shareholder of the corporation, except the right to  
 10042 receive the amounts awarded by the order of the court, which  
 10043 shall be enforceable in the same manner as any other judgment.

10044 (7) The purchase ordered pursuant to subsection (5) shall  
 10045 be made within 10 days after the date the order becomes final  
 10046 ~~unless, before that time, the corporation files with the court a~~  
 10047 ~~notice of its intention to adopt articles of dissolution~~  
 10048 ~~pursuant to ss. 607.1402 and 607.1403, which articles shall then~~  
 10049 ~~be adopted and filed within 50 days thereafter. Upon filing of~~  
 10050 ~~such articles of dissolution, the corporation shall be dissolved~~  
 10051 ~~in accordance with the provisions of ss. 607.1405 and 607.1406,~~  
 10052 ~~and the order entered pursuant to subsection (5) shall no longer~~  
 10053 ~~be of any force or effect, except that the court may award the~~  
 10054 ~~petitioning shareholder reasonable fees and expenses of counsel~~  
 10055 ~~and any experts in accordance with the provisions of subsection~~  
 10056 ~~(5) and the petitioner may continue to pursue any claims~~  
 10057 ~~previously asserted on behalf of the corporation.~~

10058 (8) Any payment by the corporation pursuant to an order  
 10059 under subsection (3) or subsection (5), other than an award of  
 10060 fees and expenses pursuant to subsection (5), is subject to the  
 10061 provisions of s. 607.06401. Unless otherwise provided in the  
 10062 court's order, the effect of the distribution under s. 607.06401  
 10063 shall be measured as of the date of the court's order under

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10064 subsection (3) or subsection (5).

10065 Section 195. Section 607.14401, Florida Statutes, is  
 10066 amended to read:

10067 607.14401 Deposit with Department of Financial Services.—  
 10068 Assets of a dissolved corporation that should be transferred to  
 10069 a creditor, claimant, or shareholder of the corporation who  
 10070 cannot be found or who is not competent to receive them shall be  
 10071 reduced to cash and deposited, within 6 months from the date  
 10072 fixed for the payment of the final liquidating distribution,  
 10073 with the Department of Financial Services for safekeeping, where  
 10074 such assets shall be held as abandoned property. When the  
 10075 creditor, claimant, or shareholder furnishes satisfactory proof  
 10076 of entitlement to the amount or assets deposited, the Department  
 10077 of Financial Services shall pay such person the creditor,  
 10078 claimant, or shareholder or his or her representative that  
 10079 amount ~~or those assets.~~

10080 Section 196. Section 607.1501, Florida Statutes, is amended  
 10081 to read:

10082 607.1501 Authority of foreign corporation to transact  
 10083 business required; activities not constituting transacting  
 10084 business.—

10085 (1) A foreign corporation may not transact business in this  
 10086 state until it obtains a certificate of authority from the  
 10087 department of State.

10088 (2) The following activities, among others, do not  
 10089 constitute transacting business within the meaning of subsection  
 10090 (1):

10091 (a) Maintaining, defending, mediating, arbitrating, or  
 10092 settling any proceeding.

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10093 (b) Carrying on any activity concerning the internal  
 10094 affairs of the foreign corporation, including holding meetings  
 10095 of its shareholders or board of directors ~~the board of directors~~  
 10096 ~~or shareholders or carrying on other activities concerning~~  
 10097 ~~internal corporate affairs.~~

10098 (c) Maintaining bank accounts in financial institutions.

10099 (d) Maintaining offices ~~officers~~ or agencies for the  
 10100 transfer, exchange, and registration of ~~the corporation's own~~  
 10101 securities of the foreign corporation or maintaining trustees or  
 10102 depositaries with respect to those securities.

10103 (e) Selling through independent contractors.

10104 (f) Soliciting or obtaining orders, whether by mail or  
 10105 through employees, agents, or otherwise, if the orders require  
 10106 acceptance outside this state before they become contracts.

10107 (g) Creating or acquiring indebtedness, mortgages, or ~~and~~  
 10108 security interests in real or personal property.

10109 (h) Securing or collecting debts or enforcing mortgages or  
 10110 ~~and~~ security interests in property securing the debts, and  
 10111 holding, protecting, or maintaining property so acquired.

10112 (i) Transacting business in interstate commerce.

10113 (j) Conducting an isolated transaction that is completed  
 10114 within 30 days and that is not one in the course of repeated  
 10115 transactions of a like nature.

10116 (k) Owning and controlling a subsidiary corporation  
 10117 incorporated in or limited liability company formed in, or  
 10118 transacting business within, this state; or voting the shares  
 10119 ~~stock~~ of any such subsidiary corporation; or voting the  
 10120 membership interests of any such limited liability company,  
 10121 which it has lawfully acquired.

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10122 (l) Owning a limited partnership interest in a limited  
 10123 partnership that is transacting ~~doing~~ business within this  
 10124 state, unless the ~~such~~ limited partner manages or controls the  
 10125 partnership or exercises the powers and duties of a general  
 10126 partner.

10127 (m) Owning, protecting, and maintaining, without more, real  
 10128 or personal property.

10129 (3) The list of activities in subsection (2) is not an  
 10130 exhaustive list of activities that do not constitute transacting  
 10131 business within the meaning of subsection (1).

10132 (4) This section does not apply in determining the contacts  
 10133 or activities that may subject a foreign corporation ~~has no~~  
 10134 ~~application to the question of whether any foreign corporation~~  
 10135 ~~is subject to service of process, taxation, or regulation under~~  
 10136 ~~the and suit in this state under any law of this state other~~  
 10137 ~~than this chapter.~~

10138 Section 197. Section 607.15015, Florida Statutes, is  
 10139 created to read:

10140 607.15015 Governing law.—

10141 (1) The law of the state or other jurisdiction under which  
 10142 a foreign corporation exists governs:

10143 (a) The organization and internal affairs of the foreign  
 10144 corporation; and

10145 (b) The interest holder liability of its shareholders.

10146 (2) A foreign corporation may not be denied a certificate  
 10147 of authority by reason of a difference between the laws of its  
 10148 jurisdiction of formation and the laws of this state.

10149 (3) A certificate of authority does not authorize a foreign  
 10150 corporation to engage in any business or exercise any power that

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10151 a corporation may not engage in or exercise in this state.  
 10152 Section 198. Section 607.1502, Florida Statutes, is amended  
 10153 to read:

10154 607.1502 Effect of failure to have a certificate of  
 10155 ~~Consequences of transacting business without~~ authority.-

10156 (1) A foreign corporation transacting business in this  
 10157 state or its successors may not prosecute or maintain an action  
 10158 or proceeding without a certificate of authority may not  
 10159 maintain a proceeding in any court in this state until it has  
 10160 obtained ~~obtains~~ a certificate of authority to transact business  
 10161 in this state.

10162 (2) The successor to a foreign corporation that transacted  
 10163 business in this state without a certificate of authority and  
 10164 the assignee of a cause of action arising out of that business  
 10165 may not prosecute or maintain a proceeding based on that cause  
 10166 of action in a any court in this state until the foreign  
 10167 corporation or its successor has obtained ~~obtains~~ a certificate  
 10168 of authority to transact business in this state.

10169 (3) A court may stay a proceeding commenced by a foreign  
 10170 corporation or its successor or assignee until it determines  
 10171 whether the foreign corporation or its successor requires a  
 10172 certificate of authority. If it so determines, the court may  
 10173 further stay the proceeding until the foreign corporation or its  
 10174 successor has obtained a ~~obtains the~~ certificate of authority to  
 10175 transact business in this state.

10176 (4) A foreign corporation which transacts business in this  
 10177 state without obtaining a certificate of authority is to do so  
 10178 ~~shall be~~ liable to this state for the years or parts thereof  
 10179 during which it transacted business in this state without

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10180 obtaining a certificate of authority in an amount equal to all  
 10181 fees and penalties that taxes which would have been imposed by  
 10182 this ~~chapter act~~ upon the foreign ~~such~~ corporation had it duly  
 10183 applied for and received a certificate of authority to transact  
 10184 business in this state as required under this chapter by this  
 10185 ~~act.~~ In addition to the payments thus prescribed, the foreign  
 10186 corporation may, to the extent ordered by a court of competent  
 10187 jurisdiction, such corporation shall be liable for a civil  
 10188 penalty of not less than \$500 but not ex more than \$1,000 for  
 10189 each year or part thereof during which it transacts business in  
 10190 this state without a certificate of authority. The department ~~of~~  
 10191 ~~State~~ may collect all penalties due under this subsection ~~and~~  
 10192 ~~may bring an action in circuit court to recover all penalties~~  
 10193 ~~and fees due and owing the state.~~

10194 (5) ~~Notwithstanding subsections (1) and (2),~~ The failure of  
 10195 a foreign corporation to have obtain a certificate of authority  
 10196 to transact business in this state does not impair the validity  
 10197 of any of its contracts, deeds, mortgages, security interests,  
 10198 or corporate acts or prevent the foreign corporation ~~it~~ from  
 10199 defending an action or any proceeding in this state.

10200 (6) A shareholder, officer, or director of a foreign  
 10201 corporation is not liable for the debts, obligations, or other  
 10202 liabilities of the foreign corporation solely because the  
 10203 foreign corporation transacted business in this state without a  
 10204 certificate of authority.

10205 (7) Section 607.15015(1) applies even if a foreign  
 10206 corporation fails to have a certificate of authority to transact  
 10207 business in this state.

10208 (8) If a foreign corporation transacts business in this

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10209 state without a certificate of authority or cancels its  
 10210 certificate of authority, it appoints the secretary of state as  
 10211 its agent for service of process for rights of action arising  
 10212 out of the transaction of business in this state.

10213 Section 199. Section 607.1503, Florida Statutes, is amended  
 10214 to read:

10215 607.1503 Application for certificate of authority.—

10216 (1) A foreign corporation may apply for a certificate of  
 10217 authority to transact business in this state by delivering an  
 10218 application to the department of State for filing. Such  
 10219 application shall be made on forms prescribed ~~and furnished~~ by  
 10220 the department. The application must contain the following  
 10221 ~~Department of State and shall set forth:~~

10222 (a) The name of the foreign corporation and, if the name  
 10223 does not comply with s. 607.0401, an alternate name adopted  
 10224 pursuant to as long as its name satisfies the requirements of s.  
 10225 607.0401, but if its name does not satisfy such requirements, a  
 10226 corporate name that otherwise satisfies the requirements of s.  
 10227 607.1506.

10228 (b) The name of the foreign corporation's jurisdiction of  
 10229 incorporation. jurisdiction under the law of which it is  
 10230 incorporated;

10231 (c) Its date of incorporation and period of duration.

10232 (d) The principal office and mailing address of the foreign  
 10233 corporation. street address of its principal office;

10234 (e) The name and street address in this state of, and the  
 10235 written acceptance by, the foreign corporation's initial  
 10236 registered agent in this state. of its registered office in this  
 10237 state and the name of its registered agent at that office;

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10238 (f) The names and usual business addresses of its current  
 10239 directors and officers.

10240 (g) ~~Such~~ Additional information as may be necessary or  
 10241 appropriate in order to enable the department of State to  
 10242 determine whether ~~the foreign such~~ corporation is entitled to  
 10243 file an application for certificate of authority to transact  
 10244 business in this state and to determine and assess the fees ~~and~~  
 10245 ~~taxes~~ payable as prescribed in this chapter act.

10246 (2) The foreign corporation shall deliver with a the  
 10247 completed application under subsection (1) a certificate of  
 10248 existence or a record ~~(or a document~~ of similar import,) duly  
 10249 authenticated, not more than 90 days prior to delivery of the  
 10250 application to the department of State, signed by the ~~Secretary~~  
 10251 ~~of State or other~~ official having custody of the foreign  
 10252 corporation's publicly filed records in its jurisdiction of  
 10253 incorporation corporate records in the jurisdiction under the  
 10254 law of which it is incorporated. A translation of the  
 10255 certificate, under oath of the translator, must be attached to a  
 10256 certificate which is in a language other than the English  
 10257 language.

10258 ~~(3) A foreign corporation shall not be denied authority to~~  
 10259 ~~transact business in this state by reason of the fact that the~~  
 10260 ~~laws of the jurisdiction under which such corporation is~~  
 10261 ~~organized governing its organization and internal affairs differ~~  
 10262 ~~from the laws of this state.~~

10263 Section 200. Section 607.1504, Florida Statutes, is amended  
 10264 to read:

10265 607.1504 Amended certificate of authority.—

10266 (1) A foreign corporation authorized to transact business

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10267 in this state shall deliver for filing an amendment to its ~~make~~  
 10268 ~~application to the Department of State to obtain an amended~~  
 10269 ~~certificate of authority to reflect a change in any of the~~  
 10270 ~~following if it changes:~~  
 10271 (a) Its name on the records of the department. ~~corporate~~  
 10272 ~~name;~~  
 10273 (b) ~~The period of its duration; or~~  
 10274 ~~(c) The jurisdiction of its incorporation.~~  
 10275 (c) The name and street address in this state of the  
 10276 foreign corporation's registered agent in this state, unless the  
 10277 change was timely made in accordance with s. 607.0502 or s.  
 10278 607.05031.  
 10279 (2) The amendment must be filed within 90 days after the  
 10280 occurrence of a change described in subsection (1), must be  
 10281 signed by an officer of the foreign corporation, and must state  
 10282 the following ~~Such application shall be made within 90 days~~  
 10283 ~~after the occurrence of any change mentioned in subsection (1),~~  
 10284 ~~shall be made on forms prescribed by the Department of State,~~  
 10285 ~~and shall be executed in accordance with s. 607.0120. The~~  
 10286 ~~foreign corporation shall deliver with the completed~~  
 10287 ~~application, a certificate, or a document of similar import,~~  
 10288 ~~authenticated as of a date not more than 90 days prior to~~  
 10289 ~~delivery of the application to the Department of State by the~~  
 10290 ~~Secretary of State or other official having custody of corporate~~  
 10291 ~~records in the jurisdiction under the laws of which it is~~  
 10292 ~~incorporated, evidencing the amendment. A translation of the~~  
 10293 ~~certificate, under oath or affirmation of the translator, must~~  
 10294 ~~be attached to a certificate that is in a language other than~~  
 10295 ~~English. The application shall set forth:~~

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10296 (a) The name of the foreign corporation as it appears on  
 10297 the records of the department ~~of State.~~  
 10298 (b) The jurisdiction of its incorporation.  
 10299 (c) The date the foreign corporation ~~it~~ was authorized to  
 10300 do business in this state.  
 10301 (d) If the name of the foreign corporation has been  
 10302 changed, the name relinquished and its new name, ~~the new name, a~~  
 10303 ~~statement that the change of name has been effected under the~~  
 10304 ~~laws of the jurisdiction of its incorporation, and the date the~~  
 10305 ~~change was effected.~~  
 10306 (e) If the amendment changes its period of duration, a  
 10307 statement of such change.  
 10308 (f) If the amendment changes the jurisdiction of  
 10309 incorporation of the foreign corporation, a statement of that  
 10310 ~~such~~ change.  
 10311 (3) The requirements of s. 607.1503 for obtaining an  
 10312 original certificate of authority apply to obtaining an amended  
 10313 certificate under this section unless the official having  
 10314 custody of the foreign corporation's publicly filed records in  
 10315 its jurisdiction of incorporation did not require an amendment  
 10316 to effectuate the change on its records.  
 10317 (4) Subject to subsection (3), a foreign corporation  
 10318 authorized to transact business in this state may make  
 10319 application to the department to obtain an amended certificate  
 10320 of authority to add, remove, or change the name, title,  
 10321 capacity, or address of an officer or director of the foreign  
 10322 corporation.  
 10323 Section 201. Section 607.1505, Florida Statutes, is amended  
 10324 to read:

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10325 607.1505 Effect of a certificate of authority.—

10326 (1) Unless the department determines than an application

10327 for a certificate of authority of a foreign corporation

10328 authorizes the foreign corporation to which it is issued to

10329 transact business in this state does not comply with the filing

10330 requirements of this chapter, the department shall, upon payment

10331 of all filing fees, authorize the foreign corporation to

10332 transact business in this state and file the application for

10333 certificate of authority subject, however, to the right of the

10334 Department of State to suspend or revoke the certificate as

10335 provided in this act.

10336 (2) The filing by the department of an application for a

10337 certificate of authority means that the foreign corporation that

10338 filed the application to transact business in this state has

10339 obtained a certificate of authority to transact business in this

10340 state and is authorized to transact business in this state,

10341 subject, however, to the right of the department to suspend or

10342 revoke the certificate of authority as provided in this chapter

10343 A foreign corporation with a valid certificate of authority has

10344 the same but no greater rights and has the same but no greater

10345 privileges as, and except as otherwise provided by this act is

10346 subject to the same duties, restrictions, penalties, and

10347 liabilities now or later imposed on, a domestic corporation of

10348 like character.

10349 ~~(3) This act does not authorize this state to regulate the~~

10350 ~~organization or internal affairs of a foreign corporation~~

10351 ~~authorized to transact business in this state.~~

10352 Section 202. Section 607.1506, Florida Statutes, is amended

10353 to read:

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10354 607.1506 Corporate name of foreign corporation.—

10355 (1) A foreign corporation whose name is unavailable under

10356 or whose name does not otherwise comply with s. 607.0401 shall

10357 use an alternate name the complies with s. 607.0401 is not

10358 entitled to file an application for a certificate of authority

10359 unless the corporate name of such corporation satisfies the

10360 requirements of s. 607.0401. If the corporate name of a foreign

10361 corporation does not satisfy the requirements of s. 607.0401,

10362 the foreign corporation, to obtain or maintain a certificate of

10363 authority to transact business in this state. An alternate name

10364 adopted for use in this state shall be cross-referenced to the

10365 actual name of the foreign corporation in the records of the

10366 department, provided that no cross-reference is required if the

10367 alternate name involves no more than adding the suffix

10368 "corporation," "company," or "incorporated" or the abbreviation

10369 "Corp.," or "Inc.," or "Co." or the designation "Corp.," or

10370 "Inc." or "Co." to the name. If the actual name of the foreign

10371 corporation subsequently becomes available in this state and the

10372 foreign corporation elects to operate in this state under its

10373 actual name, or the foreign corporation chooses to change its

10374 alternate name, a record approving the election or change, as

10375 the case may be, by its directors or shareholders, and signed as

10376 required pursuant to s. 607.0120, shall be delivered to the

10377 department for filing.

10378 ~~(a) May add the word "corporation," "company," or~~

10379 ~~"incorporated" or the abbreviation "Corp.," "Inc.," "Co.," or~~

10380 ~~the designation "Corp.," "Inc.," or "Co.," as will clearly indicate~~

10381 ~~that it is a corporation instead of a natural person,~~

10382 ~~partnership, or other business entity; or~~

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10383 ~~(b) May use an alternate name to transact business in this~~  
 10384 ~~state if its real name is unavailable. Any such alternate~~  
 10385 ~~corporate name, adopted for use in this state, shall be cross-~~  
 10386 ~~referenced to the real corporate name in the records of the~~  
 10387 ~~Division of Corporations. If the corporation's real corporate~~  
 10388 ~~name becomes available in this state or the corporation chooses~~  
 10389 ~~to change its alternate name, a copy of the resolution of its~~  
 10390 ~~board of directors changing or withdrawing the alternate name,~~  
 10391 ~~executed as required by s. 607.0120, shall be delivered for~~  
 10392 ~~filing.~~

10393 (2) A foreign corporation that adopts an alternate name  
 10394 under subsection (1) and obtains a certificate of authority with  
 10395 the alternate name need not comply with s. 865.09 with respect  
 10396 to the alternate name. The corporate name (including the  
 10397 alternate name) of a foreign corporation must be distinguishable  
 10398 upon the records of the Division of Corporations from:

10399 ~~(a) Any corporate name of a corporation incorporated or~~  
 10400 ~~authorized to transact business in this state;~~

10401 ~~(b) The alternate name of another foreign corporation~~  
 10402 ~~authorized to transact business in this state;~~

10403 ~~(c) The corporate name of a not-for-profit corporation~~  
 10404 ~~incorporated or authorized to transact business in this state;~~  
 10405 ~~and~~

10406 ~~(d) The names of all other entities or filings, except~~  
 10407 ~~fictitious name registrations pursuant to s. 865.09, organized~~  
 10408 ~~or registered under the laws of this state that are on file with~~  
 10409 ~~the Division of Corporations.~~

10410 (3) So long as a foreign corporation maintains a  
 10411 certificate of authority with an alternate name, a foreign

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10412 corporation shall transact business in this state under the  
 10413 alternate name unless the corporation is authorized under s.  
 10414 865.09 to transact business in this state under another name.

10415 ~~(4)(3)~~ If a foreign corporation authorized to transact  
 10416 business in this state changes its corporate name to one that  
 10417 does not ~~comply with~~ satisfy the requirements of s. 607.0401, it  
 10418 may not ~~thereafter~~ transact business in this state under the  
 10419 changed name until it complies with subsection (1) adopts a name  
 10420 satisfying the requirements of s. 607.0401 and obtains an  
 10421 amended certificate of authority under s. 607.1504.

10422 (5) Notwithstanding the foregoing, a foreign corporation  
 10423 may register under a name that is not otherwise distinguishable  
 10424 on the records of the department with the written consent of the  
 10425 other entity if the consent is filed with the department at the  
 10426 time of registration of such name and if such name is not  
 10427 identical to the name of the other entity.

10428 Section 203. Section 607.1507, Florida Statutes, is amended  
 10429 to read:

10430 607.1507 Registered office and registered agent of foreign  
 10431 corporation.—

10432 (1) Each foreign corporation authorized to transact  
 10433 business in this state shall designate and must continuously  
 10434 maintain in this state:

10435 (a) A registered office, which may be the same as that ~~may~~  
 10436 ~~be the same as any of its~~ place ~~places~~ of business in this  
 10437 state; and

10438 (b) A registered agent, which must ~~who may~~ be:

10439 1. An individual who resides in this state and whose  
 10440 business address is identical to the address of ~~office is~~

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10441 ~~identical with~~ the registered office;

10442 2. A domestic entity that is an authorized entity and whose  
10443 business address is identical to the address of the registered  
10444 office; or

10445 3. Another foreign entity authorized to transact business  
10446 in this state which is an authorized entity and whose business  
10447 address is identical to the address of ~~corporation or not-for-~~  
10448 ~~profit corporation as defined in chapter 617, the business~~  
10449 ~~office of which is identical with the registered office; or~~

10450 3. ~~Another foreign corporation or foreign not-for-profit~~  
10451 ~~corporation authorized pursuant to this chapter or chapter 617,~~  
10452 ~~to transact business or conduct its affairs in this state the~~  
10453 ~~business office of which is identical with the registered~~  
10454 ~~office.~~

10455 (2) This section does not apply to corporations that are  
10456 required by law to designate the Chief Financial Officer as  
10457 their attorney for service of process, associations subject to  
10458 the provisions of chapter 665, and banks and trust companies  
10459 subject to the financial institutions codes.

10460 (3) Each initial registered agent, and each successor  
10461 registered agent that is appointed, shall ~~A registered agent~~  
10462 ~~appointed pursuant to this section or a successor registered~~  
10463 ~~agent appointed pursuant to s. 607.1508 on whom process may be~~  
10464 ~~served shall each~~ file a statement in writing with the  
10465 department, in the form and manner ~~Department of State, in such~~  
10466 ~~form and manner as shall be~~ prescribed by the department,  
10467 accepting the appointment as a registered agent while  
10468 ~~simultaneously with his or her~~ being designated as the  
10469 registered agent. The ~~Such~~ statement of acceptance must provide

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10470 ~~shall state~~ that the registered agent is familiar with, and  
10471 accepts, the obligations of that position.

10472 (4) The duties of a registered agent are as follows:

10473 (a) To forward to the foreign corporation at the address  
10474 most recently supplied to the registered agent by the foreign  
10475 corporation, a process, notice, or demand pertaining to the  
10476 foreign corporation which is served on or received by the  
10477 registered agent; and

10478 (b) If the registered agent resigns, to provide the notice  
10479 required under s. 607.1509 to the foreign corporation at the  
10480 address most recently supplied to the registered agent by the  
10481 foreign corporation.

10482 (5) The department shall maintain an accurate record of the  
10483 registered agents and registered offices for service of process  
10484 and shall promptly furnish any information disclosed thereby  
10485 upon request and payment of the required fee.

10486 (6) A foreign corporation may not prosecute or maintain any  
10487 action in a court in this state until the foreign corporation  
10488 complies with the provisions of this section, pays to the  
10489 department the amounts required by this chapter, and, to the  
10490 extent ordered by a court of competent jurisdiction, pays to the  
10491 department a penalty of \$5 for each day it has failed to so  
10492 comply or \$500, whichever is less.

10493 (7) A court may stay a proceeding commenced by a foreign  
10494 corporation until the corporation complies with this section.

10495 Section 204. Section 607.1508, Florida Statutes, is amended  
10496 to read:

10497 607.1508 Change of registered office and registered agent  
10498 of foreign corporation.—

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10499 (1) In order to change its registered agent or registered  
 10500 office address, a foreign corporation authorized to transact  
 10501 business in this state may deliver to the department ~~change its~~  
 10502 ~~registered office or registered agent by delivering to the~~  
 10503 ~~Department of State~~ for filing a statement of change containing  
 10504 the following that sets forth:

10505 (a) The name of the foreign corporation. ~~Its name,~~  
 10506 (b) The name street address of its current registered  
 10507 office.~~;~~

10508 (c) If the current registered agent is to be changed, the  
 10509 name of the new registered agent.

10510 (d) The street address of its current registered office for  
 10511 its current registered agent.

10512 (e) If the street address of the current registered office  
 10513 is to be changed, the new street address of the registered  
 10514 office

10515 ~~(e) If the current registered office is to be changed, the~~  
 10516 ~~street address of its new registered office,~~

10517 ~~(d) The name of its current registered agent,~~  
 10518 ~~(e) If the current registered agent is to be changed, the~~  
 10519 ~~name of its new registered agent and the new agent's written~~  
 10520 ~~consent (either on the statement or attached to it) to the~~  
 10521 ~~appointment,~~

10522 ~~(f) That, after the change or changes are made, the street~~  
 10523 ~~address of its registered office and the business office of its~~  
 10524 ~~registered agent will be identical, and~~

10525 ~~(g) That such change was authorized by resolution duly~~  
 10526 ~~adopted by its board of directors or by an officer of the~~  
 10527 ~~corporation so authorized by the board of directors.~~

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10528 (2) If the registered agent is changed, the written  
 10529 acceptance of the successor registered agent described in s.  
 10530 607.1507(3) must also be included in or attached to the  
 10531 statement of change.

10532 (3) A statement of change is effective when filed by the  
 10533 department.

10534 (4) The changes described in this section may also be made  
 10535 on the foreign corporation's annual report or in an application  
 10536 for reinstatement filed with the department under s. 607.1622 ~~if~~  
 10537 ~~a registered agent changes the street address of her or his~~  
 10538 ~~business office, she or he may change the street address of the~~  
 10539 ~~registered office of any foreign corporation for which she or he~~  
 10540 ~~is the registered agent by notifying the corporation in writing~~  
 10541 ~~of the change and signing (either manually or in facsimile) and~~  
 10542 ~~delivering to the Department of State for filing a statement of~~  
 10543 ~~change that complies with the requirements of paragraphs (1)(a)-~~  
 10544 ~~(f) and recites that the corporation has been notified of the~~  
 10545 ~~change.~~

10546 Section 205. Section 607.1509, Florida Statutes, is amended  
 10547 to read:

10548 607.1509 Resignation of registered agent of foreign  
 10549 corporation.-

10550 (1) A registered agent may resign as agent for a foreign  
 10551 corporation by delivering to the department for filing a signed  
 10552 statement of resignation containing the name of the foreign  
 10553 corporation ~~The registered agent of a foreign corporation may~~  
 10554 ~~resign his or her agency appointment by signing and delivering~~  
 10555 ~~to the Department of State for filing a statement of resignation~~  
 10556 ~~and mailing a copy of such statement to the corporation at the~~

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~~corporation's principal office address shown in its most recent annual report or, if none, shown in its application for a certificate of authority or other most recently filed document. The statement of resignation must state that a copy of such statement has been mailed to the corporation at the address so stated. The statement of resignation may include a statement that the registered office is also discontinued.~~

(2) After delivering the statement of resignation to the department for filing, the registered agent must promptly mail a copy to the foreign corporation at its current mailing address. The agency appointment is terminated as of the 31st day after the date on which the statement was filed and, unless otherwise provided in the statement, termination of the agency acts as a termination of the registered office.

(3) A registered agent is terminated upon the earlier of:

(a) The 31st day after the department files the statement of resignation; or

(b) When a statement of change or other record designating a new registered agent is filed by the department.

(4) When a statement of resignation takes effect, the registered agent ceases to have responsibility for a matter thereafter tendered to it as agent for the foreign corporation. The resignation does not affect contractual rights that the foreign corporation has against the agent or that the agent has against the foreign corporation.

(5) A registered agent may resign from a foreign corporation regardless of whether the foreign corporation has active status.

Section 206. Section 607.15091, Florida Statutes, is

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created to read:

607.15091 Change of name or address by registered agent.—

(1) If a registered agent changes his or her name or address, the agent may deliver to the department for filing a statement of change containing the following:

(a) The name of the foreign corporation represented by the registered agent.

(b) The name of the registered agent as currently shown in the records of the department for the corporation.

(c) If the name of the registered agent has changed, its new name.

(d) If the address of the registered agent has changed, the new address.

(e) A statement that the registered agent has given the notice required under subsection (2).

(2) A registered agent shall promptly furnish notice of the statement of change and the changes made by the statement filed with the department to the represented foreign corporation.

Section 207. Section 607.15092, Florida Statutes, is created to read:

607.15092 Delivery of notice or other communication.—

(1) Except as otherwise provided in this chapter, permissible means of delivery of a notice or other communication includes delivery by hand, the United States Postal Service, a commercial delivery service, and electronic transmission, all as more particularly described in s. 607.0141.

(2) Except as provided in subsection (3), delivery to the department is effective only when a notice or other communication is received by the department.

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10615 (3) If a check is mailed to the department for payment of  
 10616 an annual report fee or the annual supplemental fee required  
 10617 under s. 607.193, the check shall be deemed to have been  
 10618 received by the department as of the postmark date appearing on  
 10619 the envelope or package transmitting the check if the envelope  
 10620 or package is received by the department.

10621 Section 208. Section 607.15101, Florida Statutes, is  
 10622 amended to read:

10623 607.15101 Service of process, notice, or demand on a  
 10624 foreign corporation.—

10625 (1) A foreign corporation may be served with process  
 10626 required or authorized by law by serving on its registered  
 10627 agent.

10628 (2) If a foreign corporation ceases to have a registered  
 10629 agent or if its registered agent cannot with reasonable  
 10630 diligence be served, the process required or permitted by law  
 10631 may instead be served on the chair of the board, the president,  
 10632 any vice president, the secretary, or the treasurer of the  
 10633 foreign corporation at the principal office of the foreign  
 10634 corporation in this state.

10635 (3) If the process cannot be served on a foreign  
 10636 corporation pursuant to subsection (1) or subsection (2), the  
 10637 process may be served on the secretary of state as an agent of  
 10638 the foreign corporation.

10639 (4) Service of process on the secretary of state may be  
 10640 made by delivering to and leaving with the department duplicate  
 10641 copies of the process.

10642 (5) Service is effectuated under subsection (3) on the date  
 10643 shown as received by the department.

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10644 (6) The department shall keep a record of each process  
 10645 served on the secretary of state pursuant to this section and  
 10646 record the time of and the action taken regarding the service.

10647 (7) Any notice or demand on a foreign corporation under  
 10648 this chapter may be given or made to the chair of the board, the  
 10649 president, any vice president, the secretary, or the treasurer  
 10650 of the foreign corporation; to the registered agent of the  
 10651 foreign corporation at the registered office of the foreign  
 10652 corporation in this state; or to any other address in this state  
 10653 that is in fact the principal office of the foreign corporation  
 10654 in this state.

10655 (8) This section does not affect the right to serve  
 10656 process, give notice, or make a demand in any other manner  
 10657 provided by law

10658 ~~(1) The registered agent of a foreign corporation~~  
 10659 ~~authorized to transact business in this state is the~~  
 10660 ~~corporation's agent for service of process, notice, or demand~~  
 10661 ~~required or permitted by law to be served on the foreign~~  
 10662 ~~corporation.~~

10663 ~~(2) A foreign corporation may be served by registered or~~  
 10664 ~~certified mail, return receipt requested, addressed to the~~  
 10665 ~~secretary of the foreign corporation at its principal office~~  
 10666 ~~shown in its application for a certificate of authority or in~~  
 10667 ~~its most recent annual report if the foreign corporation:~~

10668 ~~(a) Has no registered agent or its registered agent cannot~~  
 10669 ~~with reasonable diligence be served;~~

10670 ~~(b) Has withdrawn from transacting business in this state~~  
 10671 ~~under s. 607.1520; or~~

10672 ~~(c) Has had its certificate of authority revoked under s.~~

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10673 ~~607.1531.~~10674 ~~(3) Service is perfected under subsection (2) at the~~  
10675 ~~earliest of:~~10676 ~~(a) The date the foreign corporation receives the mail;~~10677 ~~(b) The date shown on the return receipt, if signed on~~  
10678 ~~behalf of the foreign corporation; or~~10679 ~~(c) Five days after its deposit in the United States mail,~~  
10680 ~~as evidenced by the postmark, if mailed postpaid and correctly~~  
10681 ~~addressed.~~10682 ~~(4) This section does not prescribe the only means, or~~  
10683 ~~necessarily the required means, of serving a foreign~~  
10684 ~~corporation. Process against any foreign corporation may also be~~  
10685 ~~served in accordance with chapter 48 or chapter 49.~~10686 ~~(5) Any notice to or demand on a foreign corporation made~~  
10687 ~~pursuant to this act may be made in accordance with the~~  
10688 ~~procedures for notice to or demand on domestic corporations~~  
10689 ~~under s. 607.0504.~~10690 Section 209. Section 607.1520, Florida Statutes, is amended  
10691 to read:10692 607.1520 Withdrawal and cancellation of certificate of  
10693 authority for of foreign corporation.-10694 (1) To cancel its certificate of authority to transact  
10695 business in this state, a foreign corporation must deliver to  
10696 the department for filing a notice of withdrawal of certificate  
10697 of authority. The certificate of authority is canceled when the  
10698 notice of withdrawal becomes effective pursuant to s. 607.0123.  
10699 The notice of withdrawal of certificate of authority must be  
10700 signed by an officer or director and state the following:10701 (a) The name of the foreign corporation as it appears on

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10702 the records of the department.10703 (b) The name of the foreign corporation's jurisdiction of  
10704 incorporation.10705 (c) The date the foreign corporation was authorized to  
10706 transact business in this state.10707 (d) That the foreign corporation is withdrawing its  
10708 certificate of authority in this state.10709 (e) That it revokes the authority of its registered agent  
10710 to accept service on its behalf and appoints the secretary of  
10711 state as its agent for service of process based on a cause of  
10712 action arising during the time it was authorized to transact  
10713 business in this state.10714 (f) A mailing address to which the secretary of state may  
10715 mail a copy of any process served on the secretary of state  
10716 under paragraph (e).10717 (g) A commitment to notify the department in the future of  
10718 any change in its mailing address ~~A foreign corporation~~  
10719 ~~authorized to transact business in this state may not withdraw~~  
10720 ~~from this state until it obtains a certificate of withdrawal~~  
10721 ~~from the Department of State.~~10722 ~~(2) A foreign corporation authorized to transact business~~  
10723 ~~in this state may apply for a certificate of withdrawal by~~  
10724 ~~delivering an application to the Department of State for filing.~~  
10725 ~~The application shall be made on forms prescribed and furnished~~  
10726 ~~by the Department of State and shall set forth:~~10727 ~~(a) The name of the foreign corporation and the~~  
10728 ~~jurisdiction under the law of which it is incorporated;~~10729 ~~(b) That it is not transacting business in this state and~~  
10730 ~~that it surrenders its authority to transact business in this~~

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10731 ~~state.~~

10732 ~~(e) That it revokes the authority of its registered agent~~  
 10733 ~~to accept service on its behalf and appoints the Department of~~  
 10734 ~~State as its agent for service of process based on a cause of~~  
 10735 ~~action arising during the time it was authorized to transact~~  
 10736 ~~business in this state;~~

10737 ~~(d) A mailing address to which the Department of State may~~  
 10738 ~~mail a copy of any process served on it under paragraph (c); and~~

10739 ~~(e) A commitment to notify the Department of State in the~~  
 10740 ~~future of any change in its mailing address.~~

10741 (2)(3) After the withdrawal of the foreign corporation is  
 10742 effective, service of process on the secretary of state  
 10743 ~~Department of State~~ under this section is service on the foreign  
 10744 corporation. Upon receipt of the process, the secretary of state  
 10745 ~~Department of State~~ shall mail a copy of the process to the  
 10746 foreign corporation at the mailing address set forth under  
 10747 paragraph (1) (f) subsection (2).

10748 Section 210. Section 607.1521, Florida Statutes, is created  
 10749 to read:

10750 607.1521 Withdrawal deemed on conversion to domestic filing  
 10751 entity.—A foreign corporation authorized to transact business in  
 10752 this state that converts to a domestic corporation or another  
 10753 domestic eligible entity that is organized, incorporated,  
 10754 registered, or otherwise formed through the delivery of a record  
 10755 to the department for filing is deemed to have withdrawn its  
 10756 certificate of authority on the effective date of the  
 10757 conversion.

10758 Section 211. Section 607.1522, Florida Statutes, is created  
 10759 to read:

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10760 607.1522 Withdrawal on dissolution, merger, or conversion  
 10761 to certain nonfiling entities.—

10762 (1) A foreign corporation that is authorized to transact  
 10763 business in this state that has dissolved and completed winding  
 10764 up, has merged into a foreign eligible entity that is not  
 10765 authorized to transact business in this state, or has converted  
 10766 to a domestic or foreign eligible entity that is not organized,  
 10767 incorporated, registered or otherwise formed through the public  
 10768 filing of a record, shall deliver a notice of withdrawal of  
 10769 certificate of authority to the department for filing in  
 10770 accordance with s. 607.1520.

10771 (2) After a withdrawal under this section of a foreign  
 10772 corporation that has converted to another type of entity is  
 10773 effective, service of process in any action or proceeding based  
 10774 on a cause of action arising during the time the foreign  
 10775 corporation was authorized to transact business in this state  
 10776 may be made pursuant to s. 607.15101.

10777 Section 212. Section 607.1523, Florida Statutes, is created  
 10778 to read:

10779 607.1523 Action by Department of Legal Affairs.—The  
 10780 Department of Legal Affairs may maintain an action to enjoin a  
 10781 foreign corporation from transacting business in this state in  
 10782 violation of this chapter.

10783 Section 213. Section 607.1530, Florida Statutes, is amended  
 10784 to read:

10785 607.1530 Grounds for Revocation of certificate of authority  
 10786 to transact business.—

10787 (1) A The Department of State may commence a proceeding  
 10788 under s. 607.1531 to revoke the certificate of authority of a

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10789 foreign corporation ~~authorized~~ to transact business in this  
 10790 state ~~may be revoked by the department if:~~  
 10791 (a)(1) The foreign corporation does not deliver its annual  
 10792 report to the department has failed to file its annual report  
 10793 ~~with the Department of State~~ by 5 p.m. Eastern Time on the third  
 10794 Friday in September of each year;-  
 10795 (b)(2) The foreign corporation does not pay a fee or  
 10796 penalty due to the department under this chapter;- ~~within the~~  
 10797 ~~time required by this act, any fees, taxes, or penalties imposed~~  
 10798 ~~by this act or other law.~~  
 10799 (c)(3) The foreign corporation does not appoint and  
 10800 maintain a registered agent as required by s. 607.1507; is  
 10801 ~~without a registered agent or registered office in this state~~  
 10802 ~~for 30 days or more.~~  
 10803 (d)(4) The foreign corporation does not deliver for filing  
 10804 a statement of a change under s. 607.1508 within 30 days after  
 10805 the change in the name or address of the agent has occurred,  
 10806 unless, within 30 days after the change occurred, either:  
 10807 1. The registered agent files a statement of change under  
 10808 s. 607.15091; or  
 10809 2. The change was made in accordance with s. 607.1508(4) or  
 10810 s. 607.1504(1) (c);  
 10811 (e) The foreign corporation has failed to amend its  
 10812 certificate of authority to reflect a change in its name on the  
 10813 records of the department or its jurisdiction of incorporation;  
 10814 (f) The foreign corporation's period of duration stated in  
 10815 its articles of incorporation has expired; notify the Department  
 10816 ~~of State under s. 607.1508 or s. 607.1509 that its registered~~  
 10817 ~~agent has resigned or that its registered office has been~~

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10818 ~~discontinued within 30 days of the resignation or~~  
 10819 ~~discontinuance.~~  
 10820 (g)(5) An incorporator, director, officer, or agent of the  
 10821 foreign corporation signs signed a document that she or he knew  
 10822 was false in a any material respect with the intent that the  
 10823 document be delivered to the department of State for filing;-  
 10824 (h)(6) The department of State receives a duly  
 10825 authenticated certificate from the Secretary of State or other  
 10826 official having custody of corporate records in the jurisdiction  
 10827 under the law of which the foreign corporation is incorporated  
 10828 stating that it has been dissolved or is no longer active on the  
 10829 official's records; or disappeared as the result of a merger.  
 10830 (i)(7) The foreign corporation has failed to answer  
 10831 truthfully and fully, within the time prescribed by this chapter  
 10832 act, interrogatories propounded by the department of State.  
 10833 (2) Revocation of a foreign corporation's certificate of  
 10834 authority for failure to file an annual report shall occur on  
 10835 the fourth Friday in September of each year. The department  
 10836 shall issue a notice in a record of the revocation to the  
 10837 revoked foreign corporation. Issuance of the notice may be by  
 10838 electronic transmission to a foreign corporation that has  
 10839 provided the department with an e-mail address.  
 10840 (3) If the department determines that one or more grounds  
 10841 exist under paragraph (1)(b) for revoking a foreign  
 10842 corporation's certificate of authority, the department shall  
 10843 issue a notice in a record to the foreign corporation of the  
 10844 department's intent to revoke the certificate of authority.  
 10845 Issuance of the notice may be by electronic transmission to a  
 10846 foreign corporation that has provided the department with an e-

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10847 mail address.

10848 (4) If, within 60 days after the department sends the  
 10849 notice of intent to revoke in accordance with subsection (3),  
 10850 the foreign corporation does not correct each ground for  
 10851 revocation or demonstrate to the reasonable satisfaction of the  
 10852 department that each ground determined by the department does  
 10853 not exist, the department shall revoke the foreign corporation's  
 10854 authority to transact business in this state and issue a notice  
 10855 in a record of revocation which states the grounds for  
 10856 revocation. Issuance of the notice may be by electronic  
 10857 transmission to a foreign corporation that has provided the  
 10858 department with an e-mail address.

10859 (5) Revocation of a foreign corporation's certificate of  
 10860 authority does not terminate the authority of the registered  
 10861 agent of the corporation.

10862 Section 214. Section 607.1531, Florida Statutes, is  
 10863 repealed.

10864 Section 215. Section 607.15315, Florida Statutes, is  
 10865 amended to read:

10866 607.15315 Revocation; application for Reinstatement  
 10867 following revocation of certificate of authority.-

10868 (1)(a) A foreign corporation the certificate of authority  
 10869 of which has been revoked pursuant to s. 607.1530 or former s.  
 10870 607.1531 may apply to the department of State for reinstatement  
 10871 at any time after the effective date of revocation of authority.  
 10872 The foreign corporation applying for reinstatement must submit  
 10873 all fees and penalties then owed by the foreign corporation at  
 10874 rates provided by law at the time the foreign corporation  
 10875 applies for reinstatement, together with an application for

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10876 reinstatement prescribed and furnished by the department, which  
 10877 is signed by both the registered agent and an officer or  
 10878 director of the company and states application must:

10879 (a)1. Recite The name under which of the foreign  
 10880 corporation is authorized to transact business in this state.  
 10881 and the effective date of its revocation of authority;

10882 (b)2- The street address of the corporation's principal  
 10883 office and mailing address. State that the ground or grounds for  
 10884 revocation of authority either did not exist or have been  
 10885 eliminated and that no further grounds currently exist for  
 10886 revocation of authority;

10887 (c) The jurisdiction of the foreign corporation's formation  
 10888 and the date on which it became qualified to transact business  
 10889 in this state.

10890 (d) The foreign corporation's federal employer  
 10891 identification number or, if none, whether one has been applied  
 10892 for.

10893 (e) The name, title or capacity, and address of at least  
 10894 one officer or director of the corporation.

10895 (f) Additional information that is necessary or appropriate  
 10896 to enable the department to carry out this chapter.

10897 (2) In lieu of the requirement to file an application for  
 10898 reinstatement as described in subsection (1), a foreign  
 10899 corporation whose certificate of authority has been revoked may  
 10900 submit all fees and penalties owed by the corporation at the  
 10901 rates provided by law at the time the corporation applies for  
 10902 reinstatement, together with a current annual report, signed by  
 10903 both the registered agent and an officer or director of the  
 10904 corporation, which contains the information described in

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10905 subsection (1).

10906 (3) If the department determines that an application for  
 10907 reinstatement contains the information required under subsection  
 10908 (1) or subsection (2) and that the information is correct, upon  
 10909 payment of all required fees and penalties, the department shall  
 10910 reinstate the foreign corporation's certificate of authority

10911 ~~3. State that the foreign corporation's name satisfies the~~  
 10912 ~~requirements of s. 607.1506; and~~

10913 ~~4. State that all fees owed by the corporation and computed~~  
 10914 ~~at the rate provided by law at the time the foreign corporation~~  
 10915 ~~applies for reinstatement have been paid; or~~

10916 ~~(b) As an alternative, the foreign corporation may submit a~~  
 10917 ~~current annual report, signed by the registered agent and an~~  
 10918 ~~officer or director, which substantially complies with the~~  
 10919 ~~requirements of paragraph (a).~~

10920 ~~(2) If the Department of State determines that the~~  
 10921 ~~application contains the information required by subsection (1)~~  
 10922 ~~and that the information is correct, it shall cancel the~~  
 10923 ~~certificate of revocation of authority and prepare a certificate~~  
 10924 ~~of reinstatement that recites its determination and prepare a~~  
 10925 ~~certificate of reinstatement, file the original of the~~  
 10926 ~~certificate, and serve a copy on the corporation under s.~~  
 10927 ~~607.0504(2).~~

10928 (4)(3) When a reinstatement becomes the reinstatement is  
 10929 effective, it relates back to and takes effect as of the  
 10930 effective date of the revocation of authority and the foreign  
 10931 corporation may operate in this state resumes carrying on its  
 10932 business as if the revocation of authority had never occurred.

10933 (5)(4) The name of the foreign corporation whose the

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10934 certificate of authority of which has been revoked is not  
 10935 available for assumption or use by another eligible entity  
 10936 ~~corporation~~ until 1 year after the effective date of revocation  
 10937 of authority unless the corporation provides the department of  
 10938 ~~State with a record signed an affidavit executed~~ as required by  
 10939 s. 607.0120 which authorizes ~~permitting~~ the immediate assumption  
 10940 or use of the name by another eligible entity corporation.

10941 ~~(6)(5)~~ If the name of the foreign corporation applying for  
 10942 reinstatement has been lawfully assumed in this state by another  
 10943 eligible entity, the department corporation, the Department of  
 10944 State shall require the foreign corporation to comply with s.  
 10945 607.1506 before accepting its application for reinstatement.

10946 Section 216. Section 607.1532, Florida Statutes, is amended  
 10947 to read:

10948 607.1532 Judicial review of denial of reinstatement Appeal  
 10949 from revocation.-

10950 (1) If the department denies a foreign corporation's  
 10951 application for reinstatement after revocation of its  
 10952 certificate of authority, the department shall serve the foreign  
 10953 corporation under s. 607.15101 with a written notice that  
 10954 explains the reason or reasons for the denial Department of  
 10955 State revokes the authority of any foreign corporation to  
 10956 transact business in this state pursuant to the provisions of  
 10957 this act, such foreign corporation may likewise appeal to the  
 10958 circuit court of the county where the registered office of such  
 10959 corporation in this state is situated by filing with the clerk  
 10960 of such court a petition setting forth a copy of its application  
 10961 for authority to transact business in this state and a copy of  
 10962 the certificate of revocation given by the Department of State,

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10963 ~~whereupon the matter shall be tried de novo by the court, and~~  
 10964 ~~the court shall either sustain the action of the Department of~~  
 10965 ~~State or direct the department to take such action as the court~~  
 10966 ~~deems proper.~~

10967 (2) Within 30 days after service of a notice of denial of  
 10968 reinstatement, a foreign corporation may appeal the denial by  
 10969 petitioning the Circuit Court of Leon County to set aside the  
 10970 revocation. The petition must be served on the department and  
 10971 contain a copy of the department's notice of revocation, the  
 10972 foreign corporation's application for reinstatement, and the  
 10973 department's notice of denial Appeals from all final orders and  
 10974 judgments entered by the circuit court under this section in  
 10975 review of any ruling or decision of the Department of State may  
 10976 be taken as in other civil actions.

10977 (3) The circuit court may order the department to reinstate  
 10978 the certificate of authority of the foreign corporation or take  
 10979 other action the court considers appropriate.

10980 (4) The circuit court's final decision may be appealed as  
 10981 in other civil proceedings.

10982 Section 217. Section 607.1601, Florida Statutes, is amended  
 10983 to read:

10984 607.1601 Corporate records.—

10985 (1) A corporation shall maintain the following records:  
 10986 ~~keep as permanent records minutes of all meetings of its~~  
 10987 ~~shareholders and board of directors, a record of all actions~~  
 10988 ~~taken by the shareholders or board of directors without a~~  
 10989 ~~meeting, and a record of all actions taken by a committee of the~~  
 10990 ~~board of directors in place of the board of directors on behalf~~  
 10991 ~~of the corporation.~~

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10992 ~~(2) A corporation shall maintain accurate accounting~~  
 10993 ~~records.~~

10994 ~~(3) A corporation or its agent shall maintain a record of~~  
 10995 ~~its shareholders in a form that permits preparation of a list of~~  
 10996 ~~the names and addresses of all shareholders in alphabetical~~  
 10997 ~~order by class of shares showing the number and series of shares~~  
 10998 ~~held by each.~~

10999 ~~(4) A corporation shall maintain its records in written~~  
 11000 ~~form or in another form capable of conversion into written form~~  
 11001 ~~within a reasonable time.~~

11002 ~~(5) A corporation shall keep a copy of the following~~  
 11003 ~~records:~~

11004 ~~(a) Its articles or restated articles of incorporation, as~~  
 11005 ~~and all amendments to them currently in effect;~~

11006 (b) Any notices to shareholders referred to in s.  
 11007 607.0120(11)(d) specifying facts on which a filed document is  
 11008 dependent, if such facts are not included in the articles of  
 11009 incorporation or otherwise available as specified in s.  
 11010 607.0120(11)(d);

11011 ~~(c)(b) Its bylaws, as or restated bylaws and all amendments~~  
 11012 ~~to them currently in effect;~~

11013 ~~(e) Resolutions adopted by its board of directors creating~~  
 11014 ~~one or more classes or series of shares and fixing their~~  
 11015 ~~relative rights, preferences, and limitations, if shares issued~~  
 11016 ~~pursuant to those resolutions are outstanding;~~

11017 ~~(d) The minutes of all shareholders' meetings and records~~  
 11018 ~~of all action taken by shareholders without a meeting for the~~  
 11019 ~~past 3 years;~~

11020 (d)(e) All written communications within the past 3 years

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11021 to ~~all~~ shareholders generally or to all shareholders of a class  
 11022 or series ~~within the past 3 years, including the financial~~  
 11023 ~~statements furnished for the past 3 years under s. 607.1620;~~  
 11024 (e) Minutes of all meetings of, and records of all actions  
 11025 taken without a meeting by, its shareholders, its board of  
 11026 directors, and any board committees established under s.  
 11027 607.0825;  
 11028 (f) A list of the names and business street addresses of  
 11029 its current directors and officers; and  
 11030 (g) Its most recent annual report delivered to the  
 11031 department ~~of State~~ under s. 607.1622.  
 11032 (2) A corporation shall maintain all annual financial  
 11033 statements prepared for the corporation for its last 3 fiscal  
 11034 years, or such shorter period of existence, and any audit or  
 11035 other reports with respect to such financial statements.  
 11036 (3) A corporation shall maintain accounting records in a  
 11037 form that permits preparation of its financial statements.  
 11038 (4) A corporation shall maintain a record of its current  
 11039 shareholders in alphabetical order by class or series of shares  
 11040 showing the address of, and the number and class or series of  
 11041 shares held by, each shareholder. This subsection does not  
 11042 require the corporation to include the electronic mail address  
 11043 or other electronic contact information of a shareholder in such  
 11044 record.  
 11045 (5) A corporation shall maintain the records specified in  
 11046 this section in a manner so that they may be available for  
 11047 inspection within a reasonable time.  
 11048 Section 218. Section 607.1602, Florida Statutes, is amended  
 11049 to read:

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11050 607.1602 Inspection of records by shareholders.—  
 11051 (1) A shareholder of a corporation is entitled to inspect  
 11052 and copy, during regular business hours at the corporation's  
 11053 principal office, any of the records of the corporation  
 11054 described in s. 607.1601(1), excluding minutes of meetings of,  
 11055 and records of actions taken without a meeting by, the  
 11056 corporation's board of directors and any board committees  
 11057 established under s. 607.0825, s. ~~607.1601(5)~~ if the shareholder  
 11058 gives the corporation written notice of the shareholder's ~~his or~~  
 11059 ~~her~~ demand at least 5 business days before the date on which the  
 11060 ~~shareholder~~ ~~he or she~~ wishes to inspect and copy.  
 11061 (2) A shareholder of a corporation is entitled to inspect  
 11062 and copy, during regular business hours at a reasonable location  
 11063 specified by the corporation, any of the following records of  
 11064 the corporation if the shareholder meets the requirements of  
 11065 subsection (3) and gives the corporation written notice of the  
 11066 shareholder's ~~his or her~~ demand at least 5 business days before  
 11067 the date on which the shareholder ~~he or she~~ wishes to inspect  
 11068 and copy:  
 11069 (a) Excerpts from minutes of any meeting of, or records of  
 11070 any actions taken without a meeting by, the corporation's board  
 11071 of directors and board committees maintained in accordance with  
 11072 s. 607.1601(1), ~~records of any action of a committee of the~~  
 11073 ~~board of directors while acting in place of the board of~~  
 11074 ~~directors on behalf of the corporation, minutes of any meeting~~  
 11075 ~~of the shareholders, and records of action taken by the~~  
 11076 ~~shareholders or board of directors without a meeting, to the~~  
 11077 ~~extent not subject to inspection under subsection (1);~~  
 11078 (b) The financial statements of the corporation maintained

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11079 in accordance with s. 607.1601(2);  
 11080 (c)(b) Accounting records of the corporation;  
 11081 (d)(e) The record of shareholders maintained in accordance  
 11082 with s. 607.1601(4); and  
 11083 (e)(d) Any other books and records.  
 11084 (3) A shareholder may inspect and copy the records  
 11085 described in subsection (2) only if:  
 11086 (a) The shareholder's demand is made in good faith and for  
 11087 a proper purpose;  
 11088 (b) The shareholder's demand ~~shareholder~~ describes with  
 11089 reasonable particularity the shareholder's ~~his or her~~ purpose  
 11090 and the records the shareholder ~~he or she~~ desires to inspect;  
 11091 and  
 11092 (c) The records are directly connected with the  
 11093 shareholder's purpose.  
 11094 (4) The corporation may impose reasonable restrictions on  
 11095 the disclosure, use, or distribution of, and reasonable  
 11096 obligations to maintain the confidentiality of, records  
 11097 described in subsection (2) ~~A shareholder of a Florida~~  
 11098 ~~corporation, or a shareholder of a foreign corporation~~  
 11099 ~~authorized to transact business in this state who resides in~~  
 11100 ~~this state, is entitled to inspect and copy, during regular~~  
 11101 ~~business hours at a reasonable location in this state specified~~  
 11102 ~~by the corporation, a copy of the records of the corporation~~  
 11103 ~~described in s. 607.1601(5)(b) and (f), if the shareholder gives~~  
 11104 ~~the corporation written notice of his or her demand at least 15~~  
 11105 ~~business days before the date on which he or she wishes to~~  
 11106 ~~inspect and copy.~~  
 11107 (5) For any meeting of shareholders for which the record

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11108 date for determining shareholders entitled to vote at the  
 11109 meeting is different than the record date for notice of the  
 11110 meeting, any person who becomes a shareholder subsequent to the  
 11111 record date for notice of the meeting and is entitled to vote at  
 11112 the meeting is entitled to obtain from the corporation upon  
 11113 request the notice and any other information provided by the  
 11114 corporation to shareholders in connection with the meeting,  
 11115 unless the corporation has made such information generally  
 11116 available to shareholders by posting it on its website or by  
 11117 other generally recognized means. Failure of a corporation to  
 11118 provide such information does not affect the validity of action  
 11119 taken at the meeting.  
 11120 (6) The right of inspection granted by this section may not  
 11121 be abolished or limited by a corporation's articles of  
 11122 incorporation or bylaws.  
 11123 (7)(5) This section does not affect:  
 11124 (a) The right of a shareholder to inspect and copy records  
 11125 under s. 607.0720 or, if the shareholder is in litigation with  
 11126 the corporation, to the same extent as any other litigant; or  
 11127 (b) The power of a court, independently of this chapter  
 11128 aet, to compel the production of corporate records for  
 11129 examination and to impose reasonable restrictions as provided in  
 11130 s. 607.1604(3), provided that, in the case of production of  
 11131 records described in subsection (2) at the request of the  
 11132 shareholder, the shareholder has met the requirements of  
 11133 subsection (3).  
 11134 (8)(6) A corporation may deny any demand for inspection  
 11135 made pursuant to subsection (2) if the demand was made for an  
 11136 improper purpose, or if the demanding shareholder has within 2

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years preceding his or her demand sold or offered for sale any list of shareholders of the corporation or any other corporation, has aided or abetted any person in procuring any list of shareholders for any such purpose, or has improperly used any information secured through any prior examination of the records of the corporation or any other corporation.

~~(9)(7)~~ A shareholder may not sell or otherwise distribute any information or records inspected under this section, except to the extent that such use is for a proper purpose as defined in subsection (11) (3). ~~Any person who violates this provision shall be subject to a civil penalty of \$5,000.~~

~~(10)(8)~~ For purposes of this section, the term "shareholder" means a record shareholder, a beneficial shareholder, or an unrestricted voting trust beneficial owner includes a beneficial owner whose shares are held in a voting trust or by a nominee on his or her behalf.

(11)(9) For purposes of this section, a "proper purpose" means a purpose reasonably related to such person's interest as a shareholder.

(12) The rights of a shareholder to obtain records under subsections (1) and (2) shall also apply to the records of subsidiaries of the corporation.

Section 219. Section 607.1603, Florida Statutes, is amended to read:

607.1603 Scope of inspection right.—

(1) A shareholder may appoint an agent or attorney to exercise the shareholder's inspection and copying rights under s. 607.1602 shareholder's agent or attorney has the same inspection and copying rights as the shareholder he or she

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~~represents.~~

(2) The corporation may, if reasonable, satisfy the right of a shareholder to copy records under s. 607.1602 by furnishing to the shareholder copies made by photocopy or other means chosen by the corporation, including furnishing copies through an electronic transmission includes, if reasonable, the right to receive copies made by photographic, xerographic, or other means.

(3) The corporation may impose a reasonable charge to cover the costs of providing copies of any documents to the shareholder which may be based on an estimate of such costs, covering the costs of labor and material, for copies of any documents provided to the shareholder. The charge may not exceed the estimated cost of production or reproduction of the records. If the records are kept in other than written form, the corporation shall convert such records into written form upon the request of any person entitled to inspect the same. The corporation shall bear the costs of converting any records described in s. 607.1601(5). The requesting shareholder shall bear the costs, including the cost of compiling the information requested, incurred to convert any records described in s. 607.1602(2).

(4) ~~If requested by a shareholder,~~ The corporation may ~~comply at its expense shall comply~~ with a shareholder's demand to inspect the records of shareholders under s. 607.1602(2)(d) ~~s. 607.1602(2)(e)~~ by providing the shareholder him or her with a list of ~~its~~ shareholders that was compiled no earlier than the date of the shareholder's demand of the nature described in s. 607.1601(3). Such a list must be compiled as of the last record

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11195 ~~date for which it has been compiled or as of a subsequent date~~  
 11196 ~~if specified by the shareholder.~~

11197 Section 220. Section 607.1604, Florida Statutes, is amended  
 11198 to read:

11199 607.1604 Court-ordered inspection.—

11200 (1) If a corporation does not allow a shareholder who  
 11201 complies with s. 607.1602(1) ~~or (4)~~ to inspect and copy any  
 11202 records required by that subsection to be available for  
 11203 inspection, the circuit court in the applicable county ~~where the~~  
 11204 ~~corporation's principal office (or, if none in this state, its~~  
 11205 ~~registered office) is located~~ may summarily order inspection and  
 11206 copying of the records demanded at the corporation's expense  
 11207 upon application of the shareholder. If the court orders  
 11208 inspection and copying of the records demanded under s.  
 11209 607.1601(1), it shall also order the corporation to pay the  
 11210 shareholder's expenses, including reasonable attorney fees,  
 11211 incurred to obtain the order and enforce its rights under this  
 11212 section.

11213 (2) If a corporation does not within a reasonable time  
 11214 allow a shareholder who complies with s. 607.1602(2) to inspect  
 11215 and copy the records required by that section ~~any other record,~~  
 11216 the shareholder who complies with s. 607.1602(3) ~~s. 607.1602(2)~~  
 11217 ~~and (3),~~ may apply to the circuit court in the applicable county  
 11218 ~~where the corporation's principal office (or, if none in this~~  
 11219 ~~state, its registered office) is located~~ for an order to permit  
 11220 inspection and copying of the records demanded. The court shall  
 11221 dispose of an application under this subsection on an expedited  
 11222 basis.

11223 (3) If the court orders inspection and ~~or~~ copying of the

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11224 records demanded under s. 607.1602(2), it may impose reasonable  
 11225 restrictions on the disclosure, use, or distribution of, and  
 11226 reasonable obligations to maintain the confidentiality of, such  
 11227 records, and it shall also order the corporation to pay the  
 11228 shareholder's expenses incurred ~~costs,~~ including reasonable  
 11229 attorney ~~attorney's~~ fees, reasonably incurred to obtain the  
 11230 order and enforce its rights under this section unless the  
 11231 corporation establishes that the corporation, or the officer,  
 11232 director, or agent, as the case may be, proves that it or she or  
 11233 he refused inspection in good faith because the corporation it  
 11234 or she or he had:

11235 (a) A reasonable basis for doubt about the right of the  
 11236 shareholder to inspect or copy the records demanded; or-

11237 (b) (4) Required If the court orders inspection or copying  
 11238 of the records demanded, it may impose reasonable restrictions  
 11239 on the disclosure, use, or distribution of, and reasonable  
 11240 obligations to maintain the confidentiality of, such the records  
 11241 demanded to which by the demanding shareholder had been  
 11242 unwilling to agree.

11243 Section 221. Section 607.1605, Florida Statutes, is amended  
 11244 to read:

11245 607.1605 Inspection rights of ~~records by~~ directors.—

11246 (1) A director of a corporation is entitled to inspect and  
 11247 copy the books, records, and documents of the corporation at any  
 11248 reasonable time to the extent reasonably related to the  
 11249 performance of the director's duties as a director, including  
 11250 duties as a member of a board committee, but not for any other  
 11251 purpose or in any manner that would violate any duty to the  
 11252 corporation.

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(2) The circuit court of the applicable county ~~in which the corporation's principal office or, if none in this state, its registered office is located~~ may order inspection and copying of the books, records, and documents at the corporation's expense, upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable attorney ~~counsel~~ fees, incurred in connection with the application.

Section 222. Section 607.1620, Florida Statutes, is amended to read:

607.1620 Financial statements for shareholders.—

(1) Upon the written request of any shareholder, a corporation shall deliver or make available to the requesting shareholder the corporation's annual financial statements for the most recent fiscal year of the corporation Unless modified by resolution of the shareholders within 120 days of the close of each fiscal year, a corporation shall furnish its shareholders annual financial statements which may be consolidated or combined statements of the corporation and one or more of its subsidiaries, as appropriate, that include a

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~~balance sheet as of the end of the fiscal year, an income statement for that year, and a statement of cash flows for that year. If annual financial statements have been are prepared for the corporation on the basis of generally accepted accounting principles for such specified period, the corporation shall deliver or make available such financial statements to the requesting shareholder, the annual financial statements must also be prepared on that basis.~~

~~(2) If the annual financial statements to be delivered or made available to the requesting shareholder are audited or otherwise are reported upon by a public accountant, the report of the public accountant shall also be delivered or made available to the requesting shareholder his or her report must accompany them. If not, the statements must be accompanied by a statement of the president or the person responsible for the corporation's accounting records:~~

~~(a) Stating his or her reasonable belief whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and~~

~~(b) Describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.~~

(2)(3) A Any corporation required by subsection (1) to deliver or make available furnish annual financial statements to a requesting shareholder shall deliver or make available such annual financial statements to such shareholder within 5 business days after the request if the annual financial statements have already been prepared and are available, or, if

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11311 the annual financial statements have not been prepared, must  
 11312 notify the shareholder within 5 business days that the annual  
 11313 financial statements have not yet been prepared, and must  
 11314 deliver or make available such annual financial statements to  
 11315 ~~the its shareholders shall furnish such annual financial~~  
 11316 ~~statements to each~~ shareholder within 120 days after the request  
 11317 ~~close of each fiscal year~~ or within such additional time  
 11318 thereafter as is reasonably necessary to enable the corporation  
 11319 to prepare its annual financial statements if, for reasons  
 11320 beyond the corporation's control, it is unable to prepare its  
 11321 annual financial statements within the prescribed period.  
 11322 ~~Thereafter, on written request from a shareholder who was not~~  
 11323 ~~furnished the statements, the corporation shall furnish him or~~  
 11324 ~~her the latest annual financial statements.~~

11325 (3) If requested by the requesting shareholder in its  
 11326 written request under subsection (1), the corporation shall  
 11327 promptly notify all other shareholders that the annual financial  
 11328 statements that have or are to be delivered or made available to  
 11329 the requesting shareholder have been or are being made available  
 11330 to the requesting shareholder and will also be delivered or made  
 11331 available to any other shareholder who makes its own written  
 11332 request to the corporation under subsection (1).

11333 (4) A corporation may fulfill its responsibilities under  
 11334 this section by delivering the specified annual financial  
 11335 statements, by posting the specified annual financial statements  
 11336 on its website, by any other generally recognized means, or in  
 11337 any other manner permitted by the applicable rules and  
 11338 regulations of the United States Securities and Exchange  
 11339 Commission.

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11340 (5) Notwithstanding subsections (1), (2), and (3):  
 11341 (a) As a condition to delivering or making available annual  
 11342 financial statements to any requesting shareholder, the  
 11343 corporation may require the requesting shareholder to agree to  
 11344 reasonable restrictions on the confidentiality, use, and  
 11345 distribution of such annual financial statements; and  
 11346 (b) The corporation may, if it reasonably determines that  
 11347 the shareholder's request is not made in good faith or for a  
 11348 proper purpose, decline to deliver or make available such annual  
 11349 financial statements to that shareholder.  
 11350 (6) If a corporation does not respond to a shareholder's  
 11351 request for annual financial statements pursuant to this section  
 11352 in accordance with subsection (3) within the applicable period  
 11353 specified in subsection (2):  
 11354 (a) The requesting shareholder may apply to the circuit  
 11355 court in the applicable county for an order requiring delivery  
 11356 of or access to the requested annual financial statements. The  
 11357 court shall dispose of an application under this subsection on  
 11358 an expedited basis.  
 11359 (b) If the court orders delivery or access to the requested  
 11360 annual financial statements, it may impose reasonable  
 11361 restrictions on their confidentiality, use, or distribution.  
 11362 (c) In such proceeding, if the corporation has declined to  
 11363 deliver or make available such annual financial statements  
 11364 because the shareholder had been unwilling to agree to  
 11365 restrictions proposed by the corporation on the confidentiality,  
 11366 use, and distribution of such financials statements, the  
 11367 corporation shall have the burden of demonstrating that the  
 11368 restrictions proposed by the corporation were reasonable.

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11369 (d) In such proceeding, if the corporation has declined to  
 11370 deliver or make available such annual financial statements  
 11371 pursuant to s. 607.1620(5)(b), the corporation shall have the  
 11372 burden of demonstrating that it had reasonably determined that  
 11373 the shareholder's request was not made in good faith or for a  
 11374 proper purpose.

11375 (7) If the court orders delivery or access to the requested  
 11376 annual financial statements it shall order the corporation to  
 11377 pay the shareholder's expenses, including reasonable attorney  
 11378 fees, incurred to obtain such order unless the corporation  
 11379 establishes that it had refused delivery or access to the  
 11380 requested annual financial statements because the shareholder  
 11381 had refused to agree to reasonable restrictions on the  
 11382 confidentiality, use, or distribution of the annual financial  
 11383 statements or that the corporation had reasonably determined  
 11384 that the shareholder's request was not made in good faith or for  
 11385 a proper purpose

11386 ~~(4) If a corporation does not comply with the shareholder's~~  
 11387 ~~request for annual financial statements pursuant to this section~~  
 11388 ~~within 30 days of delivery of such request to the corporation,~~  
 11389 ~~the circuit court in the county where the corporation's~~  
 11390 ~~principal office (or, if none in this state, its registered~~  
 11391 ~~office) is located may, upon application of the shareholder,~~  
 11392 ~~summarily order the corporation to furnish such financial~~  
 11393 ~~statements. If the court orders the corporation to furnish the~~  
 11394 ~~shareholder with the financial statements demanded, it shall~~  
 11395 ~~also order the corporation to pay the shareholder's costs,~~  
 11396 ~~including reasonable attorney's fees, reasonably incurred to~~  
 11397 ~~obtain the order and otherwise enforce its rights under this~~

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11398 ~~section.~~

11399 ~~(5) The requirement to furnish annual financial statements~~  
 11400 ~~as described in this section shall be satisfied by sending such~~  
 11401 ~~annual financial statements by mail or electronic transmission.~~  
 11402 ~~If a corporation has an outstanding class of securities~~  
 11403 ~~registered under s. 12 of the Securities Exchange Act of 1934,~~  
 11404 ~~as amended, the requirement to furnish annual financial~~  
 11405 ~~statements may be satisfied by complying with 17 C.F.R. s.~~  
 11406 ~~240.14a-16, as amended, with respect to the obligation of a~~  
 11407 ~~corporation to furnish an annual financial report to~~  
 11408 ~~shareholders pursuant to 17 C.F.R. s. 240.14a-3(b), as amended.~~

11409 Section 223. Section 607.1621, Florida Statutes, is  
 11410 repealed.

11411 Section 224. Section 607.1622, Florida Statutes, is amended  
 11412 to read:

11413 607.1622 Annual report for department of State.—

11414 (1) Each domestic corporation and each foreign corporation  
 11415 authorized to transact business in this state shall deliver to  
 11416 the department for filing an annual report that states the  
 11417 following of State for filing a sworn annual report on such  
 11418 forms as the Department of State prescribes that sets forth:

11419 (a) The name of the corporation or, if a foreign  
 11420 corporation, the name under which the foreign corporation is  
 11421 authorized to transact business in this state and the state or  
 11422 country under the law of which it is incorporated;

11423 (b) The date of its incorporation and or, if a foreign  
 11424 corporation, the jurisdiction of its incorporation and the date  
 11425 on which it became qualified to transact date on which it was  
 11426 admitted to do business in this state;

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11427 (c) The street address of its principal office and the  
 11428 mailing address of the corporation;  
 11429 (d) The corporation's federal employer identification  
 11430 number, if any, or, if none, whether one has been applied for;  
 11431 (e) The names and business street addresses of its  
 11432 directors and principal officers; and  
 11433 ~~(f) The street address of its registered office and the~~  
 11434 ~~name of its registered agent at that office in this state;~~  
 11435 ~~(g) Language permitting a voluntary contribution of \$5 per~~  
 11436 ~~taxpayer, which contribution shall be transferred into the~~  
 11437 ~~Election Campaign Financing Trust Fund. A statement providing an~~  
 11438 ~~explanation of the purpose of the trust fund shall also be~~  
 11439 ~~included; and~~  
 11440 (f)(h) Any additional information that is such additional  
 11441 information as may be necessary or appropriate to enable the  
 11442 department of State to carry out the provisions of this chapter  
 11443 act.  
 11444 (2) If an annual report contains the name and address of a  
 11445 registered agent which differs from the information shown in the  
 11446 records of the department immediately before the annual report  
 11447 becomes effective, the differing information in the annual  
 11448 report is considered a statement of change under s. 607.0502  
 11449 ~~Proof to the satisfaction of the Department of State that on or~~  
 11450 ~~before May 1 such report was deposited in the United States mail~~  
 11451 ~~in a sealed envelope, properly addressed with postage prepaid,~~  
 11452 ~~shall be deemed compliance with this requirement.~~  
 11453 (3) If an annual report does not contain the information  
 11454 required in ~~by~~ this section, the department ~~of State~~ shall  
 11455 promptly notify the reporting domestic corporation or foreign

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11456 corporation ~~in writing and return the report to it for~~  
 11457 ~~correction.~~ If the report is corrected to contain the  
 11458 information required in subsection (1) by this section and  
 11459 delivered to the department ~~of State~~ within 30 days after the  
 11460 effective date of the notice, it will be considered timely  
 11461 delivered ~~is deemed to be timely filed.~~  
 11462 ~~(4) Each report shall be executed by the corporation by an~~  
 11463 ~~officer or director or, if the corporation is in the hands of a~~  
 11464 ~~receiver or trustee, shall be executed on behalf of the~~  
 11465 ~~corporation by such receiver or trustee, and the signing thereof~~  
 11466 ~~shall have the same legal effect as if made under oath, without~~  
 11467 ~~the necessity of appending such oath thereto.~~  
 11468 (4)(5) The first annual report must be delivered to the  
 11469 department of State between January 1 and May 1 of the year  
 11470 following the calendar year in which a domestic corporation's  
 11471 articles of incorporation became effective ~~corporation was~~  
 11472 ~~incorporated~~ or a foreign corporation obtained its certificate  
 11473 of authority ~~was authorized~~ to transact business in this state.  
 11474 Subsequent annual reports must be delivered to the department ~~of~~  
 11475 ~~State~~ between January 1 and May 1 of each calendar year  
 11476 thereafter. If one or more forms of annual report are submitted  
 11477 for a calendar year, the department shall file each of them and  
 11478 make the information contained in them part of the official  
 11479 record. The first form of annual report filed in a calendar year  
 11480 shall be considered the annual report for the calendar year, and  
 11481 each report filed after that one in the same calendar year shall  
 11482 be treated as an amended report for that calendar year the  
 11483 subsequent calendar years.  
 11484 (5)(6) Information in the annual report must be current as

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of the date the annual report is delivered to the department for  
filing executed on behalf of the corporation.

~~(7) If an additional updated report is received, the~~  
~~department shall file the document and make the information~~  
~~contained therein part of the official record.~~

~~(6)(8)~~ A domestic corporation or foreign corporation that  
fails Any corporation failing to file an annual report that  
which complies with the requirements of this section may not  
prosecute or maintain shall not be permitted to maintain or  
defend any action in any court of this state until the such  
report is filed and all fees and penalties taxes due under this  
chapter act are paid, and shall be subject to dissolution or  
cancellation of its certificate of authority to transact de  
business as provided in this chapter act.

~~(7)(9)~~ The department shall prescribe the forms, which may  
be in an electronic format, on which to make the annual report  
called for in this section and may substitute the uniform  
business report, pursuant to s. 606.06, as a means of satisfying  
the requirement of this chapter part.

(8) As a condition of a merger under s. 607.1101, each  
party to a merger which exists under the laws of this state, and  
each party to the merger which exists under the laws of another  
jurisdiction and has a certificate of authority to transact  
business or conduct its affairs in this state, must be active  
and current in filing its annual reports in the records of the  
department through December 31 of the calendar year in which the  
articles of merger are submitted to the department for filing.

(9) As a condition of a conversion of an entity to a  
corporation under s. 607.11930, the entity, if it exists under

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the laws of this state or if it exists under the laws of another  
jurisdiction and has a certificate of authority to transact  
business or conduct its affairs in this state, must be active  
and current in filing its annual reports in the records of the  
department through December 31 of the calendar year in which the  
articles of conversion are submitted to the department for  
filing.

(10) As a condition of a conversion of a domestic  
corporation to another type of entity under s. 607.11930, the  
domestic corporation converting to the other type of entity must  
be active and current in filing its annual reports in the  
records of the department through December 31 of the calendar  
year in which the articles of conversion are submitted to the  
department for filing.

(11) As a condition of a share exchange between a  
corporation and another entity under s. 607.1102, the  
corporation, and each other entity that is a party to the share  
exchange which exists under the laws of this state, and each  
party to the share exchange which exists under the laws of  
another jurisdiction and has a certificate of authority to  
transact business or conduct its affairs in this state, must be  
active and current in filing its annual reports in the records  
of the department through December 31 of the calendar year in  
which the articles of share exchange are submitted to the  
department for filing.

(12) As a condition of domestication of a domestic  
corporation into a foreign jurisdiction under s. 607.11920, the  
domestic corporation domesticating into a foreign jurisdiction  
must be active and current in filing its annual reports in the

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11543 records of the department through December 31 of the calendar  
 11544 year in which the articles of domestication are submitted to the  
 11545 department for filing.

11546 Section 225. Section 607.1701, Florida Statutes, is amended  
 11547 to read:

11548 607.1701 Application to existing domestic corporation.—This  
 11549 chapter act applies to all domestic corporations in existence on  
 11550 January 1, 2020 July 1, 1990, that were incorporated under any  
 11551 general statute of this state providing for incorporation of  
 11552 corporations for profit if power to amend or repeal the statute  
 11553 under which the corporation was incorporated was reserved.

11554 Section 226. Section 607.1702, Florida Statutes, is amended  
 11555 to read:

11556 607.1702 Application to qualified foreign corporations.—A  
 11557 foreign corporation authorized to transact business in this  
 11558 state on January 1, 2020 July 1, 1990, is subject to this  
 11559 chapter, is deemed to be authorized to transact business in this  
 11560 state, and ~~act but~~ is not required to obtain a new certificate  
 11561 of authority to transact business under this chapter act.

11562 Section 227. Section 607.1711, Florida Statutes, is amended  
 11563 to read:

11564 607.1711 Application to foreign and interstate commerce.—  
 11565 The provisions of this chapter act apply to commerce with  
 11566 foreign nations and among the several states only insofar as the  
 11567 same may be permitted under the Constitution and laws of the  
 11568 United States.

11569 Section 228. Section 607.1801, Florida Statutes, is  
 11570 repealed.

11571 Section 229. Section 607.1907, Florida Statutes, is amended

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11572 to read:

11573 607.1907 Saving provision ~~Effect of repeal of prior acts.—~~

11574 (1) Except as to procedural provisions, this act does not  
 11575 affect a pending action or proceeding or a right accrued before  
 11576 January 1, 2020, and a pending civil action or proceeding may be  
 11577 completed, and a right accrued may be enforced, as if this act  
 11578 had not become effective provided in subsection (2), the repeal  
 11579 of a statute by this act does not affect:

11580 ~~(a) The operation of the statute or any action taken under~~  
 11581 ~~it before its repeal, including, without limiting the generality~~  
 11582 ~~of the foregoing, the continuing validity of any provision of~~  
 11583 ~~the articles of incorporation or bylaws of a corporation~~  
 11584 ~~authorized by the statute at the time of its adoption;~~

11585 ~~(b) Any ratification, right, remedy, privilege, obligation,~~  
 11586 ~~or liability acquired, accrued, or incurred under the statute~~  
 11587 ~~before its repeal;~~

11588 ~~(c) Any violation of the statute, or any penalty,~~  
 11589 ~~forfeiture, or punishment incurred because of the violation,~~  
 11590 ~~before its repeal;~~

11591 ~~(d) Any proceeding, merger, consolidation, sale of assets,~~  
 11592 ~~reorganization, or dissolution commenced under the statute~~  
 11593 ~~before its repeal, and the proceeding, merger, consolidation,~~  
 11594 ~~sale of assets, reorganization, or dissolution may be completed~~  
 11595 ~~in accordance with the statute as if it had not been repealed.~~

11596 (2) If a penalty or punishment ~~imposed~~ for violation of a  
 11597 statute or rule ~~repealed by this act~~ is reduced by this act, the  
 11598 penalty or punishment, if not already imposed, shall be imposed  
 11599 in accordance with this act.

11600 Section 230. Section 607.1908, Florida Statutes, is created

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11601 to read:

11602 607.1908 Severability clause.—If any provision of this  
 11603 chapter or its application to any person or circumstance is held  
 11604 invalid, the invalidity does not affect other provisions or  
 11605 applications of this chapter which can be given effect without  
 11606 the invalid provision or application, and to this end the  
 11607 provisions of this chapter are severable.

11608 Section 231. Subsections (2) and (3) of section 607.504,  
 11609 Florida Statutes, are amended to read:

11610 607.504 Election of social purpose corporation status.—

11611 (2) A plan of merger, domestication, conversion, or share  
 11612 exchange must be adopted by the minimum status vote if an entity  
 11613 that is not a social purpose corporation is a party to the  
 11614 merger, domestication, or conversion or if the exchanging entity  
 11615 in a share exchange and the surviving, new, or resulting entity  
 11616 is, or will be, a social purpose corporation.

11617 (3) If an entity elects to become a social purpose  
 11618 corporation by amendment of the articles of incorporation or by  
 11619 a merger, conversion, or share exchange, the shareholders of the  
 11620 entity are entitled to appraisal rights under and pursuant to  
 11621 ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~.

11622 Section 232. Subsections (2) and (3) of section 607.604,  
 11623 Florida Statutes, are amended to read:

11624 607.604 Election of benefit corporation status.—

11625 (2) A plan of merger, domestication, conversion, or share  
 11626 exchange must be adopted by the minimum status vote if an entity  
 11627 that is not a benefit corporation is a party to a merger,  
 11628 domestication, or conversion or if the exchanging entity in a  
 11629 share exchange and the surviving, new, or resulting entity is,

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11630 or will be, a benefit corporation.

11631 (3) If an entity elects to become a benefit corporation by  
 11632 amendment of the articles of incorporation or by a merger,  
 11633 domestication, conversion, or share exchange, the shareholders  
 11634 of the entity are entitled to appraisal rights under and  
 11635 pursuant to ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~.

11636 Section 233. Paragraph (b) of subsection (23) and  
 11637 subsections (55) and (58) of section 605.0102, Florida Statutes,  
 11638 are amended to read:

11639 605.0102 Definitions.—As used in this chapter, the term:  
 11640 (23)

11641 (b) "Entity" does not include:

11642 1. An individual;

11643 2. A trust with a predominantly donative purpose or a  
 11644 charitable trust;

11645 3. An association or relationship that is not a partnership  
 11646 solely by reason of s. 620.8202(2) ~~s. 620.8202(3)~~ or a similar  
 11647 provision of the law of another jurisdiction;

11648 4. A decedent's estate; or

11649 5. A government or a governmental subdivision, agency, or  
 11650 instrumentality.

11651 (55) "Private organic rules" means the rules, whether or  
 11652 not in a record, which govern the internal affairs of an entity,  
 11653 are binding on all its interest holders, and are not part of its  
 11654 public organic record, if any. Where private organic rules have  
 11655 been amended or restated, the term means the private organic  
 11656 rules as last amended or restated. The term includes:

11657 (a) The bylaws of a business corporation.

11658 (b) The bylaws of a nonprofit corporation.

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11659 (c) The partnership agreement of a general partnership.  
 11660 (d) The partnership agreement of a limited partnership.  
 11661 (e) The operating agreement, limited liability company  
 11662 agreement, or similar agreement of a limited liability company.  
 11663 (f) The bylaws, trust instrument, or similar rules of a  
 11664 real estate investment trust.  
 11665 (g) The trust instrument of a statutory trust or similar  
 11666 rules of a business trust or common law business trust.  
 11667 (58) "Public organic record" means a record, the filing of  
 11668 which by a governmental body is required to form an entity, and  
 11669 an amendment to or restatement of that record. Where a public  
 11670 organic record has been amended or restated, the term means the  
 11671 public organic record as last amended or restated. The term  
 11672 includes the following:  
 11673 (a) The articles of incorporation of a business  
 11674 corporation.  
 11675 (b) The articles of incorporation of a nonprofit  
 11676 corporation.  
 11677 (c) The certificate of limited partnership of a limited  
 11678 partnership.  
 11679 (d) The articles of organization of a limited liability  
 11680 company.  
 11681 (e) The articles of incorporation of a general cooperative  
 11682 association or a limited cooperative association.  
 11683 (f) The certificate of trust of a statutory trust or  
 11684 similar record of a business trust.  
 11685 (g) The articles of incorporation of a real estate  
 11686 investment trust.  
 11687 Section 234. Paragraph (i) of subsection (3) of section

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11688 605.0105, Florida Statutes, is amended to read:  
 11689 605.0105 Operating agreement; scope, function, and  
 11690 limitations.—  
 11691 (3) An operating agreement may not do any of the following:  
 11692 (i) Vary the grounds for dissolution specified in s.  
 11693 605.0702. Neither a deadlock resolution mechanism nor an  
 11694 oppressive action sale varies the grounds for dissolution for  
 11695 the purposes of this paragraph.  
 11696 Section 235. Paragraphs (a) and (b) of subsection (1) of  
 11697 section 605.0112, Florida Statutes, are amended, and subsection  
 11698 (6) is added to that section, to read:  
 11699 605.0112 Name.—  
 11700 (1) The name of a limited liability company:  
 11701 (a) Must contain the words "limited liability company" or  
 11702 the abbreviation "L.L.C." or "LLC—" as will clearly indicate  
 11703 that it is a limited liability company instead of a natural  
 11704 person, partnership, corporation, or other business entity.  
 11705 (b) Must be distinguishable in the records of the ~~Division~~  
 11706 ~~of Corporations of the~~ department from the names of all other  
 11707 entities or filings that are on file with the department  
 11708 ~~division~~, except fictitious name registrations pursuant to s.  
 11709 865.09, general partnership registrations pursuant to s.  
 11710 620.8105, and limited liability partnership statements pursuant  
 11711 to s. 620.9001 which are organized, registered, or reserved  
 11712 under the laws of this state; however, a limited liability  
 11713 company may register under a name that is not otherwise  
 11714 distinguishable on the records of the department division with  
 11715 the written consent of the other owner entity if the consent is  
 11716 filed with the department division at the time of registration

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11717 of such name and if such name is not identical to the name of  
 11718 the other entity. A name that is different from the name of  
 11719 another entity or filing due to any of the following is not  
 11720 considered distinguishable:

- 11721 1. A suffix.
- 11722 2. A definite or indefinite article.
- 11723 3. The word "and" and the symbol "&."
- 11724 4. The singular, plural, or possessive form of a word.
- 11725 5. ~~A recognized abbreviation of a root word.~~
- 11726 ~~6.~~ A punctuation mark or a symbol.
- 11727 (6) A limited liability company in existence before January  
 11728 1, 2020, that has a name that does not clearly indicate that it  
 11729 is a limited liability company instead of a natural person,  
 11730 partnership, corporation, or other business entity may continue  
 11731 using such name until the limited liability company dissolves or  
 11732 amends its name in the records of the department.

11733 Section 236. Section 605.01125, Florida Statutes, is  
 11734 created to read:

11735 605.01125 Reserved name.—

11736 (1) A person may reserve the exclusive use of the name of a  
 11737 limited liability company, including an alternate name for a  
 11738 foreign limited liability company whose name is not available,  
 11739 by delivering an application to the department for filing. The  
 11740 application must set forth the name and address of the applicant  
 11741 and the name proposed to be reserved. If the department finds  
 11742 that the name of the limited liability company applied for is  
 11743 available, it must reserve the name for the applicant's  
 11744 exclusive use for a nonrenewable 120-day period.

11745 (2) The owner of a reserved name of a limited liability

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11746 company may transfer the reservation to another person by  
 11747 delivering to the department a signed notice of the transfer  
 11748 that states the name and address of the transferee.

11749 (3) The department may revoke any reservation if, after a  
 11750 hearing, it finds that the application therefor or any transfer  
 11751 thereof was not made in good faith.

11752 Section 237. Subsections (1) and (5) of section 605.0113,  
 11753 Florida Statutes, are amended, and subsection (6) is added to  
 11754 that section, to read:

11755 605.0113 Registered agent.—

11756 (1) Each limited liability company and each foreign limited  
 11757 liability company that has a certificate of authority under s.  
 11758 605.0902 shall designate and continuously maintain in this  
 11759 state:

11760 (a) A registered office, which may be the same as its place  
 11761 of business in this state; and

11762 (b) A registered agent, who must be:

11763 1. An individual who resides in this state and whose  
 11764 business address is identical to the address of the registered  
 11765 office; ~~or~~

11766 2. Another domestic entity that is an authorized entity and  
 11767 whose business address is identical to the address of the  
 11768 registered office; or

11769 3. A foreign entity authorized to transact business in this  
 11770 state that is an authorized entity and ~~A foreign or domestic~~  
 11771 entity authorized to transact business in this state whose  
 11772 business address is identical to the address of the registered  
 11773 office.

11774 (5) A limited liability company and each foreign limited

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11775 liability company that has a certificate of authority under s.  
 11776 605.0902 may not prosecute ~~or maintain, maintain, or defend~~ an  
 11777 action in a court in this state until the limited liability  
 11778 company complies with this section, pays to the department any  
 11779 amounts required under this chapter, and, to the extent ordered  
 11780 by a court of competent jurisdiction, and pays to the department  
 11781 a penalty of \$5 for each day it has failed to comply or \$500,  
 11782 whichever is less, and pays any other amounts required under  
 11783 this chapter.

11784 (6) For the purposes of this section, "authorized entity"  
 11785 means:

11786 (a) A corporation for profit.

11787 (b) A limited liability company.

11788 (c) A limited liability partnership.

11789 (d) A limited partnership, including a limited liability  
 11790 limited partnership.

11791 Section 238. Paragraphs (c), (d), and (e) of subsection (1)  
 11792 of section 605.0114, Florida Statutes, are amended to read:

11793 605.0114 Change of registered agent or registered office.—

11794 (1) In order to change its registered agent or registered  
 11795 office address, a limited liability company or a foreign limited  
 11796 liability company may deliver to the department for filing a  
 11797 statement of change containing the following:

11798 (c) If the current registered agent is to be changed, the  
 11799 name of the new registered agent.

11800 (d) The street address of its current registered office for  
 11801 its current registered agent.

11802 (e) If the street address of the current registered office  
 11803 is to be changed, the new street address of the registered

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11804 office in this state.

11805 Section 239. Subsection (2) of section 605.0115, Florida  
 11806 Statutes, is amended to read:

11807 605.0115 Resignation of registered agent.—

11808 (2) After delivering the statement of resignation ~~to with~~  
 11809 the department for filing, the registered agent must promptly  
 11810 ~~shall~~ mail a copy to the limited liability company's or foreign  
 11811 limited liability company's current mailing address.

11812 Section 240. Paragraphs (b) through (e) of subsection (1)  
 11813 of section 605.0116, Florida Statutes, are amended to read:

11814 605.0116 Change of name or address by registered agent.—

11815 (1) If a registered agent changes his or her name or  
 11816 address, the agent may deliver to the department for filing a  
 11817 statement of change that provides the following:

11818 (b) The name of the registered agent as currently shown in  
 11819 the records of the department for the limited liability company  
 11820 or foreign limited liability company.

11821 (c) If the name of the registered agent has changed, its  
 11822 new name.

11823 (d) If the address of the registered agent has changed, the  
 11824 new address.

11825 (e) A statement that the registered agent has given the  
 11826 notice required under subsection (2).

11827 Section 241. Present subsection (7) of section 605.0117,  
 11828 Florida Statutes, is redesignated as subsection (8), subsections  
 11829 (1), (2), (3), (4), and (6) of that section are amended, and a  
 11830 new subsection (7) is added to that section, to read:

11831 605.0117 Service of process, notice, or demand.—

11832 (1) A limited liability company or registered foreign

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11833 limited liability company may be served with process, ~~notice, or~~  
 11834 ~~a demand~~ required or authorized by law by serving on its  
 11835 registered agent.

11836 (2) If a limited liability company or registered foreign  
 11837 limited liability company ceases to have a registered agent or  
 11838 if its registered agent cannot with reasonable diligence be  
 11839 served, the process, ~~notice, or demand~~ required or permitted by  
 11840 law may instead be served:

11841 (a) On a member of a member-managed limited liability  
 11842 company or registered foreign limited liability company; or

11843 (b) On a manager of a manager-managed limited liability  
 11844 company or registered foreign limited liability company.

11845 (3) If the process, ~~notice, or demand~~ cannot be served on a  
 11846 limited liability company or registered foreign limited  
 11847 liability company pursuant to subsection (1) or subsection (2),  
 11848 the process, ~~notice, or demand~~ may be served on the secretary of  
 11849 state department as an agent of the company.

11850 (4) Service of process on the secretary of state ~~with~~  
 11851 ~~process, notice, or a demand on the department~~ may be made by  
 11852 delivering to and leaving with the department duplicate copies  
 11853 of the process, ~~notice, or demand~~.

11854 (6) The department shall keep a record of each process,  
 11855 ~~notice, and demand~~ served pursuant to this section and record  
 11856 the time of and the action taken regarding the service.

11857 (7) Any notice or demand on a limited liability company or  
 11858 registered foreign limited liability company under this chapter  
 11859 may be given or made to any member of a member-managed limited  
 11860 liability company or registered foreign limited liability  
 11861 company or to any manager of a manager-managed limited liability

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11862 company or registered foreign limited liability company; to the  
 11863 registered agent of the limited liability company or registered  
 11864 foreign limited liability company at the registered office of  
 11865 the limited liability company or registered foreign limited  
 11866 liability company in this state; or to any other address in this  
 11867 state that is in fact the principal office of the limited  
 11868 liability company or registered foreign limited liability  
 11869 company in this state.

11870 Section 242. Subsection (3) of section 605.0118, Florida  
 11871 Statutes, is amended to read:

11872 605.0118 Delivery of record.—

11873 (3) If a check is mailed to the department for payment of  
 11874 an annual report fee or the annual supplemental fee required  
 11875 under s. 607.193, the check shall be deemed to have been  
 11876 received by the department as of the postmark date appearing on  
 11877 the envelope or package transmitting the check if the envelope  
 11878 or package is received by the department.

11879 Section 243. Section 605.0207, Florida Statutes, is amended  
 11880 to read:

11881 605.0207 Effective date and time.—Except as otherwise  
 11882 provided in s. 605.0208, and subject to s. 605.0209(3), any  
 11883 document delivered to the department for filing under this  
 11884 chapter may specify an effective time and a delayed effective  
 11885 date. In the case of initial articles of organization, a prior  
 11886 effective date may be specified in the articles of organization  
 11887 if such date is within 5 business days before the date of  
 11888 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and  
 11889 605.0209, a record filed by the department is effective:

11890 (1) If the record filed does not specify an effective time

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11891 and does not specify a prior or a delayed effective date, on the  
 11892 date and at the time the record is accepted ~~filed~~ as evidenced  
 11893 by the department's endorsement of the date and time on the  
 11894 filing record.

11895 (2) If the record filed specifies an effective time, but  
 11896 not a prior or delayed effective date, on the date the record is  
 11897 filed at the time specified in the filing record.

11898 (3) If the record filed specifies a delayed effective date,  
 11899 but not an effective time, at 12:01 a.m. on the earlier of:

11900 (a) The specified date; or

11901 (b) The 90th day after the record is filed.

11902 (4) If the record filed specifies a delayed effective date  
 11903 and an effective time, at the specified time on or the earlier  
 11904 of:

11905 (a) The specified date; or

11906 (b) The 90th day after the record is filed.

11907 (5) (4) If the record filed is the initial articles of  
 11908 organization and specifies an effective a date before the  
 11909 effective date of the filing, but no effective time, at 12:01  
 11910 a.m. on the later of:

11911 (a) The specified date; or

11912 (b) The 5th business day before the record is filed.

11913 (6) (5) If the record filed is the initial articles of  
 11914 organization and specifies an effective time and an effective a  
 11915 delayed effective date, at the specified time on the earlier of:

11916 (a) The specified date; or

11917 (b) The 90th day after the record is filed.

11918 (6) If the record specifies an effective time and a prior  
 11919 effective date before the date of the filing, at the specified

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11920 time on the later of:

11921 (a) The specified date; or

11922 (b) The 5th business day before the record is filed.

11923 (7) If a filed document does not specify the time zone or  
 11924 place at which the date or time, or both, is to be determined,  
 11925 the date or time, or both, at which it becomes effective shall  
 11926 be those prevailing at the place of filing in this state.

11927 Section 244. Subsection (3) of section 605.0209, Florida  
 11928 Statutes, is amended to read:

11929 605.0209 Correcting filed record.—

11930 (3) A statement of correction:

11931 (a) May not state a delayed effective date;

11932 (b) Must be signed by the person correcting the filed  
 11933 record;

11934 (c) Must identify the filed record to be corrected,  
 11935 including such record's filing date, or attach a copy of the  
 11936 record to the statement of correction;

11937 (d) Must specify the inaccuracy or defect to be corrected;  
 11938 and

11939 (e) Must correct the inaccuracy or defect.

11940 Section 245. Subsection (7) of section 605.0210, Florida  
 11941 Statutes, is amended to read:

11942 605.0210 Duty of department to file; review of refusal to  
 11943 file; transmission of information by department.—

11944 (7) If the department refuses to file a record delivered to  
 11945 its office for filing, the person who submitted the record for  
 11946 filing may petition the Circuit Court of Leon County to compel  
 11947 filing of the record. The record and the explanation from ~~of~~ the  
 11948 department of the refusal to file must be attached to the

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11949 petition. The court may decide the matter in a summary  
 11950 proceeding and the court may summarily order the department to  
 11951 file the record or take other action the court considers  
 11952 appropriate. The court's final decision may be appealed as in  
 11953 other civil proceedings.

11954 Section 246. Paragraph (a) of subsection (2) and subsection  
 11955 (3) of section 605.0211, Florida Statutes, are amended to read:  
 11956 605.0211 Certificate of status.—

11957 (2) The department, upon request and payment of the  
 11958 requisite fee, shall furnish a certificate of status for a  
 11959 foreign limited liability company if the records filed show that  
 11960 the department has filed a certificate of authority. A  
 11961 certificate of status for a foreign limited liability company  
 11962 must state the following:

11963 (a) The foreign limited liability company's name and any a  
 11964 current alternate name adopted under s. 605.0906(1) for use in  
 11965 this state.

11966 (3) Subject to any qualification stated in the certificate  
 11967 of status, a certificate of status issued by the department is  
 11968 conclusive evidence that the domestic limited liability company  
 11969 is in existence and is of active status in this state or the  
 11970 foreign limited liability company is authorized to transact  
 11971 business in this state and is of active status in this state.

11972 Section 247. Section 605.0215, Florida Statutes, is amended  
 11973 to read:

11974 605.0215 Certificates to be received in evidence and  
 11975 evidentiary effect of copy of filed document.—All certificates  
 11976 issued by the department in accordance with this chapter shall  
 11977 be taken and received in all courts, public offices, and

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11978 official bodies as prima facie evidence of the facts stated. A  
 11979 certificate from the department delivered with a copy of a  
 11980 document filed by the department bearing the signature of the  
 11981 secretary of state, which may be in facsimile, and the seal of  
 11982 this state is conclusive evidence that the original document is  
 11983 on file with the department.

11984 Section 248. Subsections (1) through (4) of section  
 11985 605.04092, Florida Statutes, are amended to read:

11986 605.04092 Conflict of interest transactions.—

11987 (1) As used in this section, the following terms and  
 11988 definitions apply:

11989 (a) A member or manager is "indirectly" a party to a  
 11990 transaction if that member or manager has a material financial  
 11991 interest in or is a director, officer, member, manager, or  
 11992 partner of a person, other than the limited liability company,  
 11993 who is a party to the transaction.

11994 (b) A member or manager has an "indirect material financial  
 11995 interest" if a ~~spouse or other~~ family member has a material  
 11996 financial interest in the transaction, other than having an  
 11997 indirect interest as a member or manager of the limited  
 11998 liability company, or if the transaction is with an entity,  
 11999 other than the limited liability company, which has a material  
 12000 financial interest in the transaction and controls, or is  
 12001 controlled by, the member or manager or another person specified  
 12002 in this subsection.

12003 (c) "Fair to the limited liability company" means that the  
 12004 transaction, as a whole, is beneficial to the limited liability  
 12005 company and its members, taking into appropriate account whether  
 12006 it is:

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12007 1. Fair in terms of the member's or manager's dealings with  
 12008 the limited liability company in connection with that  
 12009 transaction; and

12010 2. Comparable to what might have been obtainable in an  
 12011 arm's length transaction.

12012 (d) "Family member" includes any of the following:

12013 1. The member's or manager's spouse.

12014 2. A child, stepchild, parent, stepparent, grandparent,  
 12015 sibling, step sibling, or half sibling of the member or manager  
 12016 or the member's or manager's spouse.

12017 (e) "Manager's conflict of interest transaction" means a  
 12018 transaction between a limited liability company and one or more  
 12019 of its managers, or another entity in which one or more of the  
 12020 limited liability company's managers is directly or indirectly a  
 12021 party to the transaction, other than being an indirect party as  
 12022 a result of being a member of the limited liability company, and  
 12023 has a direct or indirect material financial interest or other  
 12024 material interest.

12025 (f) "Material financial interest" or "other material  
 12026 interest" means a financial or other interest in the transaction  
 12027 that would reasonably be expected to impair the objectivity of  
 12028 the judgment of the member or manager when participating in the  
 12029 action on the authorization of the transaction.

12030 (g) "Member's conflict of interest transaction" means a  
 12031 transaction between a limited liability company and one or more  
 12032 of its members, or another entity in which one or more of the  
 12033 limited liability company's members is directly or indirectly a  
 12034 party to the transaction, other than being an indirect party as  
 12035 a result of being a member of the limited liability company, and

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12036 has a direct or indirect material financial interest or other  
 12037 material interest.

12038 (2) If the requirements of this section have been  
 12039 satisfied, a member's conflict of interest transaction or a  
 12040 manager's conflict of interest transaction between a limited  
 12041 liability company and one or more of its members or managers, or  
 12042 another entity in which one or more of the limited liability  
 12043 company's members or managers have a financial or other  
 12044 interest, is not void or voidable because of that relationship  
 12045 or interest; because the members or managers are present at the  
 12046 meeting of the members or managers at which the transaction was  
 12047 authorized, approved, effectuated, or ratified; or because the  
 12048 votes of the members or managers are counted for such purpose.

12049 (3) If a member's conflict of interest transaction or a  
 12050 manager's conflict of interest transaction is fair to the  
 12051 limited liability company at the time it is authorized,  
 12052 approved, effectuated, or ratified, the fact that a member or  
 12053 manager of the limited liability company is directly or  
 12054 indirectly a party to the transaction, other than being an  
 12055 indirect party as a result of being a member or manager of the  
 12056 limited liability company, or has a direct or indirect material  
 12057 financial interest or other interest in the transaction, other  
 12058 than having an indirect interest as a result of being a member  
 12059 or manager of the limited liability company, is not grounds for  
 12060 equitable relief and does not give rise to an award of damages  
 12061 or other sanctions.

12062 (4) (a) In a proceeding challenging the validity of a  
 12063 member's conflict of interest transaction or a manager's  
 12064 conflict of interest transaction or in a proceeding seeking

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12065 equitable relief, award of damages, or other sanctions with  
 12066 respect to a member's conflict of interest transaction or a  
 12067 manager's conflict of interest transaction, described in  
 12068 subsection (3), the person challenging the validity or seeking  
 12069 equitable relief, award of damages, or other sanctions has the  
 12070 burden of proving the lack of fairness of the transaction if:  
 12071 1. In a manager-managed limited liability company, the  
 12072 material facts of the transaction and the member's or manager's  
 12073 interest in the transaction were disclosed or known to the  
 12074 managers or a committee of managers who voted upon the  
 12075 transaction and the transaction was authorized, approved, or  
 12076 ratified by a majority of the disinterested managers even if the  
 12077 disinterested managers constitute less than a quorum; however,  
 12078 the transaction cannot be authorized, approved, or ratified  
 12079 under this subsection solely by a single manager; and  
 12080 2. In a member-managed limited liability company, or a  
 12081 manager-managed limited liability company in which the managers  
 12082 have failed to or cannot act under subparagraph 1., the material  
 12083 facts of the transaction and the member's or manager's interest  
 12084 in the transaction were disclosed or known to the members who  
 12085 voted upon such transaction and the transaction was authorized,  
 12086 approved, or ratified by a majority-in-interest of the  
 12087 disinterested members even if the disinterested members  
 12088 constitute less than a quorum; however, the transaction cannot  
 12089 be authorized, approved, or ratified under this subsection  
 12090 solely by a single member; or  
 12091 (b) If neither of the conditions provided in paragraph (a)  
 12092 has been satisfied, the person defending or asserting the  
 12093 validity of a member's conflict of interest transaction or a

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12094 manager's conflict of interest transaction described in  
 12095 subsection (3) has the burden of proving its fairness in a  
 12096 proceeding challenging the validity of the transaction.  
 12097 Section 249. Paragraph (c) of subsection (3) of section  
 12098 605.0410, Florida Statutes, is amended to read:  
 12099 605.0410 Records to be kept; rights of member, manager, and  
 12100 person dissociated to information.—  
 12101 (3) In a manager-managed limited liability company, the  
 12102 following rules apply:  
 12103 (c) Within 10 days after receiving a demand pursuant to  
 12104 subparagraph (b)2. ~~(2)-(b)2.~~, the company shall, in a record,  
 12105 inform the member who made the demand of:  
 12106 1. The information that the company will provide in  
 12107 response to the demand and when and where the company will  
 12108 provide the information; and  
 12109 2. The company's reasons for declining, if the company  
 12110 declines to provide any demanded information.  
 12111 Section 250. Paragraph (b) of subsection (1) and subsection  
 12112 (2) of section 605.0702, Florida Statutes, are amended, and  
 12113 subsections (3), (4), and (5) are added to that section, to  
 12114 read:  
 12115 605.0702 Grounds for judicial dissolution.—  
 12116 (1) A circuit court may dissolve a limited liability  
 12117 company:  
 12118 (b) In a proceeding by a manager or member to dissolve the  
 12119 limited liability company if it is established that:  
 12120 1. The conduct of all or substantially all of the company's  
 12121 activities and affairs is unlawful;  
 12122 2. It is not reasonably practicable to carry on the

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12123 company's activities and affairs in conformity with the articles  
12124 of organization and the operating agreement;

12125 3. The managers or members in control of the company have  
12126 acted, are acting, or ~~will be reasonably expected to~~ act in a  
12127 manner that is illegal, oppressive, or fraudulent;

12128 4. The limited liability company's assets are being  
12129 misappropriated or wasted, causing injury to the limited  
12130 liability company, or in a proceeding by a member, causing  
12131 injury to one or more of its members; or

12132 5. The managers or the members of the limited liability  
12133 company are deadlocked in the management of the limited  
12134 liability company's activities and affairs, the members are  
12135 unable to break the deadlock, and irreparable injury to the  
12136 limited liability company is threatened or being suffered.

12137 (2) (a) If the managers or the members of the limited  
12138 liability company are deadlocked in the management of the  
12139 limited liability company's activities and affairs, the members  
12140 are unable to break the deadlock, and irreparable injury to the  
12141 limited liability company is threatened or being suffered, if  
12142 the operating agreement contains a deadlock sale provision that  
12143 has been initiated before the time that the court determines  
12144 that the grounds for judicial dissolution exist under  
12145 subparagraph (1) (b) 5., then such deadlock sale provision applies  
12146 to the resolution of such deadlock instead of the court entering  
12147 an order of judicial dissolution or an order directing the  
12148 purchase of petitioner's interest under s. 605.0706, so long as  
12149 the provisions of such deadlock sale provision are thereafter  
12150 initiated and effectuated in accordance with the terms of such  
12151 deadlock sale provision or otherwise pursuant to an agreement of

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12152 the members of the company.

12153 (b) As used in this section, the term "deadlock sale  
12154 provision" means a provision in an operating agreement which is  
12155 or may be applicable in the event of a deadlock among the  
12156 managers or the members of the limited liability company which  
12157 the members of the company are unable to break and which  
12158 provides for a deadlock breaking mechanism, including, but not  
12159 limited to:

12160 1. A redemption or a purchase and sale of interests; ~~or~~

12161 2. A governance change, among or between members;

12162 3. The sale of the company or all or substantially all of  
12163 the assets of the company; or

12164 4. A similar provision that, if initiated and effectuated,  
12165 breaks the deadlock by causing the transfer of interests, a  
12166 governance change, or the sale of all or substantially all of  
12167 the company's assets. ~~A deadlock sale provision in an operating  
12168 agreement which is not initiated and effectuated before the  
12169 court enters an order of judicial dissolution under subparagraph  
12170 (1) (b) 5. or an order directing the purchase of petitioner's  
12171 interest under s. 605.0706 does not adversely affect the rights  
12172 of members and managers to seek judicial dissolution under  
12173 subparagraph (1) (b) 5. or the rights of the company or one or  
12174 more members to purchase the petitioner's interest under s.  
12175 605.0706. The filing of an action for judicial dissolution on  
12176 the grounds described in subparagraph (1) (b) 5. or an election to  
12177 purchase the petitioner's interest under s. 605.0706 does not  
12178 adversely affect the right of a member to initiate an available  
12179 deadlock sale provision under the operating agreement or to  
12180 enforce a member-initiated or an automatically-initiated~~

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12181 ~~deadlock sale provision if the deadlock sale provision is~~  
 12182 ~~initiated and effectuated before the court enters an order of~~  
 12183 ~~judicial dissolution under subparagraph (1)(b)5. or an order~~  
 12184 ~~directing the purchase of petitioner's interest under s.~~  
 12185 ~~605.0706.~~

12186 (3) A proceeding by a member under subparagraph (1)(b)3.  
 12187 asserting that the members or managers in control of the limited  
 12188 liability company have acted, are acting, or will act in a  
 12189 manner that is oppressive may only be brought by a member who,  
 12190 at the time that such proceeding is commenced, owns at least 10  
 12191 percent of the outstanding membership interests of the limited  
 12192 liability company.

12193 (4)(a) In the event of oppressive action that satisfies  
 12194 subparagraph (1)(b)3., if the members are subject to an  
 12195 operating agreement that contains an oppressive action sale  
 12196 provision, then such oppressive action sale provision shall  
 12197 address such member asserted oppressive action in lieu of the  
 12198 court entering an order of judicial dissolution or an order  
 12199 directing the purchase of petitioner's interest under s.  
 12200 605.0706, so long as the provisions of such oppressive action  
 12201 sale provision are initiated and effectuated within the time  
 12202 periods specified for the company to act under s. 605.0706 and  
 12203 in accordance with the terms of such oppressive action sale  
 12204 provision.

12205 (b) For the purposes of this section, the term "oppressive  
 12206 action sale provision" means a provision in an operating  
 12207 agreement that is or may be applicable in the event of a  
 12208 member's assertion of the occurrence or existence of oppressive  
 12209 action which neither the members nor the managers, as

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12210 applicable, of the company are able to address and which  
 12211 provides for a mechanism for addressing the occurrence or  
 12212 existence of such member asserted oppressive action including,  
 12213 but not limited to:

12214 1. A redemption or purchase and sale of interests;  
 12215 2. The sale of the company or of all or substantially all  
 12216 of the assets of the company; or  
 12217 3. A similar provision that, if initiated and effectuated,  
 12218 causes the transfer of interests to be redeemed or purchased and  
 12219 sold or the sale of the company or of all or substantially all  
 12220 of the company's assets.

12221 (5) A deadlock sale provision or an oppressive action sale  
 12222 provision in an operating agreement which is not initiated and  
 12223 effectuated before the court enters an order of judicial  
 12224 dissolution under subparagraph (1)(b)3. or subparagraph  
 12225 (1)(b)5., as the case may be, or an order directing the purchase  
 12226 of petitioner's interest under s. 605.0706, does not adversely  
 12227 affect the rights of members and managers to seek judicial  
 12228 dissolution under subparagraph (1)(b)3. or subparagraph  
 12229 (1)(b)5., as the case may be, or the rights of the company or  
 12230 one or more members to purchase the petitioner's interest under  
 12231 s. 605.0706. The filing of an action for judicial dissolution on  
 12232 the grounds described in subparagraph (1)(b)3. or subparagraph  
 12233 (1)(b)5., as the case may be, or an election to purchase the  
 12234 petitioner's interest under s. 605.0706, does not adversely  
 12235 affect the right of a member to initiate an available deadlock  
 12236 sale provision or an oppressive action sale provision under the  
 12237 operating agreement or to enforce a member-initiated or an  
 12238 automatically-initiated deadlock sale provision or oppressive

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12239 action sale provision if the deadlock sale provision or the  
 12240 oppressive sale provision, as the case may be, is initiated and  
 12241 effectuated before the court enters an order of judicial  
 12242 dissolution under subparagraph (1)(b)3. or subparagraph  
 12243 (1)(b)5., as the case may be, or an order directing the purchase  
 12244 of petitioner's interest under s. 605.0706.

12245 Section 251. Subsections (1), (2), (4), (5), (6), (7), and  
 12246 (8) of section 605.0706, Florida Statutes, are amended to read:

12247 605.0706 Election to purchase instead of dissolution.—

12248 (1) In a proceeding initiated by a member of a limited  
 12249 liability company under s. 605.0702(1)(b) ~~to dissolve the~~  
 12250 ~~company~~, the company may elect, or, if it fails to elect, one or  
 12251 more other members may elect, to purchase the entire interest of  
 12252 the petitioner in the company at the fair value of the interest.  
 12253 An election pursuant to this section is irrevocable unless the  
 12254 court determines that it is equitable to set aside or modify the  
 12255 election.

12256 (2) An election to purchase pursuant to this section may be  
 12257 filed with the court within 90 days after the filing of the  
 12258 petition by the petitioning member under s. 605.0702(1)(b) ~~or~~  
 12259 ~~(2)~~ or at such later time as the court may allow. If the  
 12260 election to purchase is filed, the company shall within 10 days  
 12261 thereafter give written notice to all members, other than the  
 12262 petitioning member. The notice must describe the interest in the  
 12263 company owned by each petitioning member and must advise the  
 12264 recipients of their right to join in the election to purchase  
 12265 the petitioning member's interest in accordance with this  
 12266 section. Members who wish to participate must file notice of  
 12267 their intention to join in the purchase within 30 days after the

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12268 effective date of the notice. A member who has filed an election  
 12269 or notice of the intent to participate in the election to  
 12270 purchase thereby becomes a party to the proceeding and shall  
 12271 participate in the purchase in proportion to the ownership  
 12272 interest as of the date the first election was filed unless the  
 12273 members otherwise agree or the court otherwise directs. After an  
 12274 election to purchase has been filed by the limited liability  
 12275 company or one or more members, the proceeding under s.  
 12276 605.0702(1)(b) ~~or (2)~~ may not be discontinued or settled, and  
 12277 the petitioning member may not sell or otherwise dispose of the  
 12278 interest of the petitioner in the company unless the court  
 12279 determines that it would be equitable to the company and the  
 12280 members, other than the petitioner, to authorize such  
 12281 discontinuance, settlement, sale, or other disposition or the  
 12282 sale is pursuant to a deadlock sale provision described in s.  
 12283 605.0702(1)(b).

12284 (4) If the parties are unable to reach an agreement as  
 12285 provided for in subsection (3), the court, upon application of a  
 12286 party, may ~~shall~~ stay the proceedings to dissolve under s.  
 12287 605.0702(1)(b) and shall, whether or not the proceeding is  
 12288 stayed, determine the fair value of the petitioner's interest as  
 12289 of the day before the date on which the petition was filed or as  
 12290 of such other date as the court deems appropriate under the  
 12291 circumstances.

12292 (5) Upon determining the fair value of the petitioner's  
 12293 interest in the company, unless the petitioner's interest has  
 12294 been acquired pursuant to a deadlock sale provision before the  
 12295 order, the court shall enter an order directing the purchase  
 12296 upon such terms and conditions as the court deems appropriate,

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12297 which may include: payment of the purchase price in  
 12298 installments, when necessary in the interests of equity; a  
 12299 provision for security to ensure payment of the purchase price  
 12300 and additional costs, fees, and expenses as may have been  
 12301 awarded; and, if the interest is to be purchased by members, the  
 12302 allocation of the interest among those members. In allocating  
 12303 the petitioner's interest among holders of different classes or  
 12304 series of interests in the company, the court shall attempt to  
 12305 preserve any the existing distribution of voting rights among  
 12306 holders of different classes or series insofar as practicable  
 12307 and may direct that holders of any a specific class or classes  
 12308 or series may not participate in the purchase. Interest may be  
 12309 allowed at the rate and from the date determined by the court to  
 12310 be equitable; however, if the court finds that the refusal of  
 12311 the petitioning member to accept an offer of payment was  
 12312 arbitrary or otherwise not in good faith, payment of interest is  
 12313 not allowed. If the court finds that the petitioning member had  
 12314 probable grounds for relief under s. 605.0702(1)(b) ~~or~~  
 12315 ~~605.0702(1)(b)3. or 4.~~, it may award expenses to the petitioning  
 12316 member, including reasonable fees and expenses of counsel and of  
 12317 experts employed by petitioner.

12318 (6) ~~The Upon~~ entry of an order under subsection (3) or  
 12319 subsection (5) shall be subject to subsection (8), and the order  
 12320 may not be entered unless the award is determined by the court  
 12321 to be allowed under subsection (8). In determining compliance  
 12322 with s. 605.0405, the court may rely on an affidavit from the  
 12323 limited liability company as to compliance with that section as  
 12324 of the measurement date. Upon entry of an order under subsection  
 12325 (3) or subsection (5), the court shall dismiss the petition to

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12326 dissolve the limited liability company under s. 605.0702(1)(b),  
 12327 and the petitioning member shall no longer have rights or status  
 12328 as a member of the limited liability company except the right to  
 12329 receive the amounts awarded by the order of the court, which  
 12330 shall be enforceable in the same manner as any other judgment.

12331 (7) The purchase ordered pursuant to subsection (5) shall  
 12332 ~~must~~ be made within 10 days after the date the order becomes  
 12333 final ~~unless, before that time, the limited liability company~~  
 12334 ~~files with the court a notice of its intention to dissolve~~  
 12335 ~~pursuant to s. 605.0701(2), in which case articles of~~  
 12336 ~~dissolution for the company must be filed within 50 days~~  
 12337 ~~thereafter. Upon filing of such articles of dissolution, the~~  
 12338 ~~limited liability company shall be wound up in accordance with~~  
 12339 ~~ss. 605.0709-605.0713, and the order entered pursuant to~~  
 12340 ~~subsection (5) shall no longer be of force or effect except that~~  
 12341 ~~the court may award the petitioning member reasonable fees and~~  
 12342 ~~expenses of counsel and experts in accordance with subsection~~  
 12343 ~~(5), and the petitioner may continue to pursue any claims~~  
 12344 ~~previously asserted on behalf of the limited liability company.~~

12345 (8) Any award ~~A payment by the limited liability company~~  
 12346 pursuant to an order under subsection (3) or subsection (5),  
 12347 other than an award of fees and expenses pursuant to subsection  
 12348 (5), is subject to s. 605.0405. Unless otherwise provided in the  
 12349 court's order, the effect of a distribution under s. 605.0405  
 12350 shall be measured as of the date of the court's order under  
 12351 subsection (3) or subsection (5).

12352 Section 252. Subsection (5) of section 605.0715, Florida  
 12353 Statutes, is amended, and subsection (6) is added to that  
 12354 section, to read:

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12355 605.0715 Reinstatement.—

12356 (5) The name of the dissolved limited liability company is  
 12357 not available for assumption or use by another business entity  
 12358 until 1 year after the effective date of dissolution unless the  
 12359 dissolved limited liability company provides the department with  
 12360 a record executed as required pursuant to s. 605.0203 permitting  
 12361 the immediate assumption or use of the name by another business  
 12362 entity limited liability company.

12363 (6) If the name of the dissolved limited liability company  
 12364 has been lawfully assumed in this state by another business  
 12365 entity, the department shall require the dissolved limited  
 12366 liability company to amend its articles of incorporation to  
 12367 change its name before accepting the application for  
 12368 reinstatement.

12369 Section 253. Subsections (2) and (3) of section 605.0716,  
 12370 Florida Statutes, are amended, and subsection (4) is added to  
 12371 that section, to read:

12372 605.0716 Judicial review of denial of reinstatement.—

12373 (2) Within 30 days after service of a notice of denial of  
 12374 reinstatement, a limited liability company may appeal the denial  
 12375 by petitioning the Circuit Court of Leon County in the  
 12376 applicable county, as defined in s. 605.0711(15), to set aside  
 12377 the dissolution. The petition must be served on the department  
 12378 and contain a copy of the department's notice of administrative  
 12379 dissolution, the company's application for reinstatement, and  
 12380 the department's notice of denial.

12381 (3) The circuit court may order the department to reinstate  
 12382 a dissolved limited liability company or take other action the  
 12383 court considers appropriate.

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12384 (4) The circuit court's final decision may be appealed as  
 12385 in other civil proceedings.

12386 Section 254. Section 605.0803, Florida Statutes, is amended  
 12387 to read:

12388 605.0803 Proper plaintiff.—A derivative action to enforce a  
 12389 right of a limited liability company may be commenced ~~maintained~~  
 12390 only by a person who is a member at the time the action is  
 12391 commenced and:

12392 (1) Was a member when the conduct giving rise to the action  
 12393 occurred; or

12394 (2) Whose status as a member devolved on the person by  
 12395 operation of law or pursuant to the terms of the operating  
 12396 agreement from a person who was a member when at the time of the  
 12397 conduct giving rise to the action occurred.

12398 Section 255. Subsection (2) of section 605.0903, Florida  
 12399 Statutes, is amended to read:

12400 605.0903 Effect of a certificate of authority.—

12401 (2) The filing by the department of an application for a  
 12402 certificate of authority means ~~authorizes~~ the foreign limited  
 12403 liability company that filed ~~files~~ the application to transact  
 12404 business in this state has obtained a certificate of authority  
 12405 to transact business in this state and is authorized to transact  
 12406 business in this state, subject, however, to the right of the  
 12407 department to suspend or revoke the certificate of authority as  
 12408 provided in this chapter.

12409 Section 256. Subsections (3) and (4) of section 605.0904,  
 12410 Florida Statutes, are amended to read:

12411 605.0904 Effect of failure to have certificate of  
 12412 authority.—

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12413 (3) A court may stay a proceeding commenced by a foreign  
 12414 limited liability company or its successor or assignee until it  
 12415 determines whether the foreign limited liability company or its  
 12416 successor requires a certificate of authority. If it so  
 12417 determines, the court may further stay the proceeding until the  
 12418 foreign limited liability company or its successor has obtained  
 12419 a certificate of authority to transact business in  
 12420 this state.

12421 (4) The failure of a foreign limited liability company to  
 12422 have a certificate of authority to transact business in this  
 12423 state does not impair the validity of any contract, deed,  
 12424 mortgage, security interest, a contract or act of the foreign  
 12425 limited liability company or prevent the foreign limited  
 12426 liability company from defending an action or proceeding in this  
 12427 state.

12428 Section 257. Subsections (1) and (4) of section 605.0906,  
 12429 Florida Statutes, are amended to read:

12430 605.0906 Noncomplying name of foreign limited liability  
 12431 company.—

12432 (1) A foreign limited liability company whose name is  
 12433 unavailable under or whose name does not otherwise comply with  
 12434 s. 605.0112 shall may use an alternate name that complies with  
 12435 s. 605.0112 to transact business in this state. An alternate  
 12436 name adopted for use in this state shall be cross-referenced to  
 12437 the actual name of the foreign limited liability company in the  
 12438 records of the department. If the actual name of the foreign  
 12439 limited liability company subsequently becomes available in this  
 12440 state or the foreign limited liability company chooses to change  
 12441 its alternate name, a copy of the record approving the change by

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12442 its members, managers, or other persons having the authority to  
 12443 do so, and executed as required pursuant to s. 605.0203, shall  
 12444 be delivered to the department for filing.

12445 (4) If a foreign limited liability company authorized to  
 12446 transact business in this state changes its name to one that  
 12447 does not comply with s. 605.0112, it may not thereafter transact  
 12448 business in this state until it complies with subsection (1) and  
 12449 obtains an amended certificate of authority pursuant to s.  
 12450 605.0907.

12451 Section 258. Paragraph (d) of subsection (1) and  
 12452 subsections (2) and (4) of section 605.0907, Florida Statutes,  
 12453 are amended to read:

12454 605.0907 Amendment to certificate of authority.—

12455 (1) A foreign limited liability company authorized to  
 12456 transact business in this state shall deliver for filing an  
 12457 amendment to its certificate of authority to reflect the change  
 12458 of any of the following:

12459 ~~(d) Any person identified in accordance with s.~~  
 12460 ~~605.0902(1)(c), or a change in the title or capacity or address~~  
 12461 ~~of that person.~~

12462 (2) The amendment must be filed within 90 ~~30~~ days after the  
 12463 occurrence of a change described in subsection (1), must be  
 12464 signed by an authorized representative of the foreign limited  
 12465 liability company, and must state the following:

12466 (a) The name of the foreign limited liability company as it  
 12467 appears on the records of the department.

12468 (b) Its jurisdiction of formation.

12469 (c) The date the foreign limited liability company was  
 12470 authorized to transact business in this state.

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12471 (d) If the name of the foreign limited liability company  
 12472 has been changed, the name relinquished and its new name.  
 12473 (e) If the amendment changes the jurisdiction of formation  
 12474 of the foreign limited liability company, a statement of that  
 12475 change.  
 12476 (4) The requirements of s. 605.0902 ~~s. 605.0902(2)~~ for  
 12477 obtaining an original certificate of authority apply to  
 12478 obtaining an amended certificate under this section unless the  
 12479 ~~Secretary of State or other~~ official having custody of the  
 12480 foreign limited liability company's publicly filed records in  
 12481 its jurisdiction of formation did not require an amendment to  
 12482 effectuate the change on its records.  
 12483 Section 259. Subsection (1) of section 605.0908, Florida  
 12484 Statutes, is amended to read:  
 12485 605.0908 Revocation of certificate of authority.—  
 12486 (1) A certificate of authority of a foreign limited  
 12487 liability company to transact business in this state may be  
 12488 revoked by the department if:  
 12489 (a) The foreign limited liability company does not deliver  
 12490 its annual report to the department by 5 p.m. Eastern Time on  
 12491 the third Friday in September of each year;  
 12492 (b) The foreign limited liability company does not pay a  
 12493 fee or penalty due to the department under this chapter;  
 12494 (c) The foreign limited liability company does not appoint  
 12495 and maintain a registered agent as required under s. 605.0113;  
 12496 (d) The foreign limited liability company does not deliver  
 12497 for filing a statement of a change under s. 605.0114 within 30  
 12498 days after a change in the name or address of the agent has  
 12499 occurred ~~in the name or address of the agent~~, unless, within 30

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12500 days after the change occurred, either:  
 12501 1. The registered agent files a statement of change under  
 12502 s. 605.0116; or  
 12503 2. The change was made in accordance with s. 605.0114(4).  
 12504 ~~or s. 605.0907(1)(d).~~  
 12505 (e) The foreign limited liability company has failed to  
 12506 amend its certificate of authority to reflect a change in its  
 12507 name on the records of the department or its jurisdiction of  
 12508 formation;  
 12509 (f) The department receives a duly authenticated  
 12510 certificate from the official having custody of records in the  
 12511 company's jurisdiction of formation stating that it has been  
 12512 dissolved or is no longer active on the official's records;  
 12513 (g) The foreign limited liability company's period of  
 12514 duration has expired;  
 12515 (h) A member, manager, or agent of the foreign limited  
 12516 liability company signs a document that the member, manager, or  
 12517 agent knew was false in a material respect with the intent that  
 12518 the document be delivered to the department for filing;  
 12519 (i) The foreign limited liability company has failed to  
 12520 answer truthfully and fully, within the time prescribed in s.  
 12521 605.1104, interrogatories propounded by the department.  
 12522 Section 260. Section 605.09091, Florida Statutes, is  
 12523 created to read:  
 12524 605.09091 Judicial review of denial of reinstatement.—  
 12525 (1) If the department denies a foreign limited liability  
 12526 company's application for reinstatement after revocation of its  
 12527 certificate of authority, the department shall serve the foreign  
 12528 limited liability company, pursuant to s. 605.0117(7), with a

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12529 written notice that explains the reason or reasons for the  
 12530 denial.

12531 (2) Within 30 days after service of a notice of denial of  
 12532 reinstatement, a foreign limited liability company may appeal  
 12533 the denial by petitioning the Circuit Court of Leon County to  
 12534 set aside the revocation. The petition must be served on the  
 12535 department and must contain a copy of the department's notice of  
 12536 revocation, the foreign limited liability company's application  
 12537 for reinstatement, and the department's notice of denial.

12538 (3) The circuit court may order the department to reinstate  
 12539 the certificate of authority of the foreign limited liability  
 12540 company or take other action the court considers appropriate.

12541 (4) The circuit court's final decision may be appealed as  
 12542 in other civil proceedings.

12543 Section 261. Section 605.0910, Florida Statutes, is amended  
 12544 to read:

12545 605.0910 Withdrawal and cancellation of certificate of  
 12546 authority.—

12547 (1) To cancel its certificate of authority to transact  
 12548 business in this state, a foreign limited liability company must  
 12549 deliver to the department for filing a notice of withdrawal of  
 12550 certificate of authority. The certificate of authority is  
 12551 canceled when the notice becomes effective pursuant to s.  
 12552 605.0207. The notice of withdrawal of certificate of authority  
 12553 must be signed by an authorized representative and state the  
 12554 following:

12555 (a) ~~(1)~~ The name of the foreign limited liability company as  
 12556 it appears on the records of the department.

12557 (b) ~~(2)~~ The name of the foreign limited liability company's

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12558 jurisdiction of formation.

12559 (c) ~~(3)~~ The date the foreign limited liability company was  
 12560 authorized to transact business in this state.

12561 (d) ~~(4)~~ That the foreign limited liability company is  
 12562 withdrawing its certificate of authority in this state.

12563 (e) That the foreign limited liability company revokes the  
 12564 authority of its registered agent to accept service on its  
 12565 behalf and appoints the secretary of state as its agent for  
 12566 service of process based on a cause of action arising during the  
 12567 time the foreign limited liability company was authorized to  
 12568 transact business in this state.

12569 (f) A mailing address to which the department may mail a  
 12570 copy of any process served on the secretary of state under  
 12571 paragraph (e).

12572 (g) A commitment to notify the department in the future of  
 12573 any change in its mailing address.

12574 (2) After the withdrawal of the foreign limited liability  
 12575 company is effective, service of process on the secretary of  
 12576 state under this section is service on the foreign limited  
 12577 liability company. Upon receipt of the process, the department  
 12578 shall mail a copy of the process to the foreign limited  
 12579 liability company at the mailing address set forth under  
 12580 paragraph (1) (f).

12581 Section 262. Section 605.0911, Florida Statutes, is amended  
 12582 to read:

12583 605.0911 Withdrawal deemed on conversion to domestic filing  
 12584 entity.—A registered foreign limited liability company  
 12585 authorized to transact business in this state that converts to a  
 12586 domestic limited liability company or to another domestic entity

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12587 that is organized, incorporated, registered or otherwise formed  
 12588 through the delivery of a record to the department for filing is  
 12589 deemed to have withdrawn its certificate of authority on the  
 12590 effective date of the conversion.

12591 Section 263. Section 605.0912, Florida Statutes, is amended  
 12592 to read:

12593 605.0912 Withdrawal on dissolution, merger, or conversion  
 12594 to nonfiling entity.—

12595 (1) A registered foreign limited liability company that has  
 12596 dissolved and completed winding up, has merged into a foreign  
 12597 entity that is not authorized to transact business ~~registered~~ in  
 12598 this state, or has converted to a domestic or foreign entity  
 12599 that is not organized, incorporated, registered or otherwise  
 12600 formed through the public filing of a record, shall deliver a  
 12601 notice of withdrawal of certificate of authority to the  
 12602 department for filing in accordance with s. 605.0910.

12603 (2) After a withdrawal under this section of a foreign  
 12604 limited liability company entity that has converted to another  
 12605 type of entity is effective, service of process in any action or  
 12606 proceeding based on a cause of action arising during the time  
 12607 the foreign limited liability company was authorized to transact  
 12608 ~~registered to do~~ business in this state may be made pursuant to  
 12609 s. 605.0117.

12610 Section 264. Subsection (6) of section 605.1025, Florida  
 12611 Statutes, is amended to read:

12612 605.1025 Articles of merger.—

12613 (6) A limited liability company is not required to deliver  
 12614 articles of merger for filing pursuant to subsection (1) if the  
 12615 limited liability company is named as a merging entity or

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12616 surviving entity in articles of merger or a certificate of  
 12617 merger filed for the same merger in accordance with s. 607.1105  
 12618 ~~s. 607.1109~~, s. 617.1108, s. 620.2108(3), or s. 620.8918(3), and  
 12619 if such articles of merger or certificate of merger  
 12620 substantially comply with the requirements of this section. In  
 12621 such a case, the other articles of merger or certificate of  
 12622 merger may also be used for purposes of subsection (5).

12623 Section 265. Subsection (5) of section 605.1035, Florida  
 12624 Statutes, is amended to read:

12625 605.1035 Articles of interest exchange.—

12626 (5) A limited liability company is not required to deliver  
 12627 articles of interest exchange for filing pursuant to subsection  
 12628 (1) if the domestic limited liability company is named as an  
 12629 acquired entity or as an acquiring entity in the articles of  
 12630 share exchange filed for the same interest exchange in  
 12631 accordance with s. 607.1105 ~~s. 607.1105(1)~~ and if such articles  
 12632 of share exchange substantially comply with the requirements of  
 12633 this section.

12634 Section 266. Subsection (5) of section 605.1061, Florida  
 12635 Statutes, is amended to read:

12636 605.1061 Appraisal rights; definitions.—The following  
 12637 definitions apply to this section and to ss. 605.1006 and  
 12638 605.1062-605.1072:

12639 (5) "Fair value" means the value of the member's membership  
 12640 interest determined:

12641 (a) Immediately before the effectiveness ~~effectuation~~ of  
 12642 the appraisal event to which the member objects;

12643 (b) Using customary and current valuation concepts and  
 12644 techniques generally employed for similar businesses in the

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12645 context of the transaction requiring appraisal, excluding any  
 12646 appreciation or depreciation in anticipation of the transaction  
 12647 to which the member objects, unless exclusion would be  
 12648 inequitable to the limited liability company and its remaining  
 12649 members; and  
 12650 (c) Without discounting for lack of marketability or  
 12651 minority status.  
 12652 Section 267. Subsection (3) of section 605.1063, Florida  
 12653 Statutes, is amended to read:  
 12654 605.1063 Notice of appraisal rights.—  
 12655 (3) If the appraisal event is to be approved by written  
 12656 consent of the members pursuant to s. 60.04073 ~~other than by a~~  
 12657 ~~members' meeting~~;  
 12658 (a) Written notice that appraisal rights are, are not, or  
 12659 may be available must be sent to each member from whom a consent  
 12660 is solicited at the time consent of such member is first  
 12661 solicited, and if the limited liability company has concluded  
 12662 that appraisal rights are or may be available, a copy of ss.  
 12663 605.1006 and 605.1061-605.1072 must accompany such written  
 12664 notice; or  
 12665 (b) Written notice that appraisal rights are, are not, or  
 12666 may be available must be delivered, at least 10 days before the  
 12667 appraisal event becomes effective, to all nonconsenting and  
 12668 nonvoting members, and, if the limited liability company has  
 12669 concluded that appraisal rights are or may be available, a copy  
 12670 of ss. 605.1006 and 605.1061-605.1072 must accompany such  
 12671 written notice.  
 12672 Section 268. Section 605.1072, Florida Statutes, is amended  
 12673 to read:

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12674 605.1072 Other remedies limited.—  
 12675 (1) A member entitled to appraisal rights under this  
 12676 chapter may not challenge a ~~The legality of a proposed or~~  
 12677 completed appraisal event for which appraisal rights are  
 12678 available unless such completed appraisal event was either: may  
 12679 ~~not be contested, and the appraisal event may not be enjoined,~~  
 12680 ~~set aside, or rescinded, in a legal or equitable proceeding by a~~  
 12681 ~~member after the members have approved the appraisal event.~~  
 12682 ~~(2) Subsection (1) does not apply to an appraisal event~~  
 12683 ~~that:~~  
 12684 (a) ~~Was~~ Not authorized and approved in accordance with the  
 12685 applicable provisions of this chapter, the organic rules of the  
 12686 limited liability company, or the resolutions of the members  
 12687 authorizing the appraisal event. ~~or~~  
 12688 (b) ~~Was~~ Procured as a result of fraud, a material  
 12689 misrepresentation, or an omission of a material fact that is  
 12690 necessary to make statements made, in light of the circumstances  
 12691 in which they were made, not misleading.  
 12692 (2) Nothing in this section operates to override or  
 12693 supersede s. 605.04092.  
 12694 Section 269. Subsection (16) of section 617.0302, Florida  
 12695 Statutes, is amended to read:  
 12696 617.0302 Corporate powers.—Every corporation not for profit  
 12697 organized under this chapter, unless otherwise provided in its  
 12698 articles of incorporation or bylaws, shall have power to:  
 12699 (16) Merge with other corporations or other eligible  
 12700 ~~business~~ entities identified in s. 607.1101 ~~s. 607.1108(1)~~, both  
 12701 for profit and not for profit, domestic and foreign, if the  
 12702 surviving corporation or other surviving eligible business

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12703 entity is a corporation not for profit or other eligible  
 12704 ~~business~~ entity that has been organized as a not-for-profit  
 12705 entity under a governing statute or other applicable law that  
 12706 permits such a merger.

12707 Section 270. Subsections (1) and (5) of section 617.0501,  
 12708 Florida Statutes, are amended, and subsection (6) is added to  
 12709 that section, to read:

12710 617.0501 Registered office and registered agent.—

12711 (1) Each corporation shall have and continuously maintain  
 12712 in this state:

12713 (a) A registered office which may be the same as its  
 12714 principal office; and

12715 (b) A registered agent, who may be either:

12716 1. An individual who resides in this state whose business  
 12717 office is identical with such registered office; or

12718 2. Another domestic entity that is an authorized entity  
 12719 whose business address is identical to the address of the  
 12720 registered office, or a foreign entity authorized to transact  
 12721 business in this state that is an authorized entity and whose  
 12722 business address is identical to the address of A corporation  
 12723 ~~for profit or not for profit, authorized to transact business or~~  
 12724 ~~conduct its affairs in this state, having a business office~~  
 12725 ~~identical with the registered office.~~

12726 (5) A corporation may not prosecute or maintain any action  
 12727 in a court in this state until the corporation complies with  
 12728 this section or s. 617.1508, as applicable, ~~and~~ pays to the  
 12729 Department of State any amounts required under this chapter,  
 12730 and, to the extent ordered by a court of competent jurisdiction,  
 12731 pays to the Department of State a penalty of \$5 for each day it

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12732 has failed to so comply or \$500, whichever is less.

12733 (6) For the purposes of this section, the term "authorized  
 12734 entity" means:

12735 (a) A corporation for profit;

12736 (b) A limited liability company;

12737 (c) A limited liability partnership; or

12738 (d) A limited partnership, including a limited liability  
 12739 limited partnership.

12740 Section 271. Section 617.05015, Florida Statutes, is  
 12741 created to read:

12742 617.05015 Reserved name.—

12743 (1) A person may reserve the exclusive use of the name of a  
 12744 corporation, including an alternate name for a foreign  
 12745 corporation whose name is not available, by delivering an  
 12746 application to the department for filing. The application must  
 12747 set forth the name and address of the applicant and the name  
 12748 proposed to be reserved. If the department finds that the name  
 12749 of the corporation applied for is available, it shall reserve  
 12750 the name for the applicant's exclusive use for a nonrenewable  
 12751 120-day period.

12752 (2) The owner of a reserved name of a corporation may  
 12753 transfer the reservation to another person by delivering to the  
 12754 department a signed notice of the transfer that states the name  
 12755 and address of the transferee.

12756 (3) The department may revoke any reservation if, after a  
 12757 hearing, it finds that the application therefor or any transfer  
 12758 thereof was not made in good faith.

12759 Section 272. Section 617.0831, Florida Statutes, is amended  
 12760 to read:

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12761 617.0831 Indemnification and liability of officers,  
 12762 directors, employees, and agents.—Except as provided in s.  
 12763 617.0834, s. 607.0831 and ss. 607.0850-607.0859 ~~ss. 607.0831 and~~  
 12764 ~~607.0850~~ apply to a corporation organized under this act and a  
 12765 rural electric cooperative organized under chapter 425. Any  
 12766 reference to “directors” in those sections includes the  
 12767 directors, managers, or trustees of a corporation organized  
 12768 under this act or of a rural electric cooperative organized  
 12769 under chapter 425. However, the term “director” as used in s.  
 12770 607.0831 and ss. 607.0850-607.0859 ~~ss. 607.0831 and 607.0850~~  
 12771 does not include a director appointed by the developer to the  
 12772 board of directors of a condominium association under chapter  
 12773 718, a cooperative association under chapter 719, a homeowners’  
 12774 association defined in s. 720.301, or a timeshare managing  
 12775 entity under chapter 721. Any reference to “shareholders” in  
 12776 those sections includes members of a corporation organized under  
 12777 this act and members of a rural electric cooperative organized  
 12778 under chapter 425.

12779 Section 273. Section 617.1102, Florida Statutes, is amended  
 12780 to read:

12781 617.1102 Limitation on merger.—A corporation not for profit  
 12782 organized under this chapter may merge with one or more other  
 12783 eligible business entities, as identified in s. 607.1101(1) ~~or~~  
 12784 ~~607.1108(1)~~, only if the surviving entity of such merger is a  
 12785 corporation not for profit or other eligible business entity  
 12786 that has been organized as a not-for-profit entity under a  
 12787 governing statute or other applicable law that allows such a  
 12788 merger.

12789 Section 274. Section 617.1108, Florida Statutes, is amended

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12790 to read:

12791 617.1108 Merger of domestic corporation and other eligible  
 12792 ~~business~~ entities.—

12793 (1) Subject to s. 617.0302(16) and other applicable  
 12794 provisions of this chapter, ss. 607.1101, 607.1103, 607.1105,  
 12795 607.1106, and 607.1107 ~~ss. 607.1108, 607.1109, and 607.1101~~  
 12796 shall apply to a merger involving a corporation not for profit  
 12797 organized under this act and one or more other eligible business  
 12798 entities identified in s. 607.1108(1).

12799 (2) A domestic corporation not for profit organized under  
 12800 this chapter is not required to file articles of merger pursuant  
 12801 ~~pur-suant~~ to this section if the corporation not for profit is  
 12802 named as a party or constituent organization in articles of  
 12803 merger or a certificate of merger filed for the same merger in  
 12804 accordance with s. 605.1025, s. 607.1105 ~~or 607.1109~~, s.  
 12805 620.2108(3), or s. 620.8918(1) and (2). In such a case, the  
 12806 other articles of merger or certificate of merger may also be  
 12807 used for purposes of subsection (3).

12808 (3) A copy of the articles of merger or certificate of  
 12809 merger, certified by the Department of State, may be filed in  
 12810 the office of the official who is the recording officer of each  
 12811 county in this state in which real property of a party to the  
 12812 merger, other than the surviving entity, is situated.

12813 Section 275. Section 617.1507, Florida Statutes, is amended  
 12814 to read:

12815 617.1507 Registered office and registered agent of foreign  
 12816 corporation.—

12817 (1) Each foreign corporation authorized to conduct its  
 12818 affairs in this state must continuously maintain in this state:

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12819 (a) A registered office that may be the same as any of the  
 12820 places it conducts its affairs; and  
 12821 (b) A registered agent, who may be:  
 12822 1. An individual who resides in this state and whose  
 12823 business office is identical with the registered office;  
 12824 2. Another domestic entity that is an authorized entity  
 12825 whose business address is identical to the address of the  
 12826 registered office; or  
 12827 3. A foreign entity authorized to transact business in this  
 12828 state that is an authorized entity and whose business address is  
 12829 identical to the address of ~~A domestic corporation for profit or~~  
 12830 ~~not for profit the business office of which is identical with~~  
 12831 ~~the registered office; or~~  
 12832 3. ~~A foreign corporation for profit or not for profit~~  
 12833 ~~authorized to transact business or conduct its affairs in this~~  
 12834 ~~state the business office of which is identical with the~~  
 12835 ~~registered office.~~  
 12836 (2) A registered agent appointed pursuant to this section  
 12837 or a successor registered agent appointed pursuant to s.  
 12838 617.1508 on whom process may be served shall each file a  
 12839 statement in writing with the Department of State, in such form  
 12840 and manner as shall be prescribed by the department, accepting  
 12841 the appointment as a registered agent simultaneously with his or  
 12842 her being designated. Such statement of acceptance shall state  
 12843 that the registered agent is familiar with, and accepts, the  
 12844 obligations of that position.  
 12845 (3) For purposes of this section, "authorized entity"  
 12846 means:  
 12847 (a) A corporation for profit;

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12848 (b) A limited liability company;  
 12849 (c) A limited liability partnership; or  
 12850 (d) A limited partnership, including a limited liability  
 12851 limited partnership.  
 12852 Section 276. Subsections (2), (3), and (4) of section  
 12853 620.1108, Florida Statutes, are amended, and subsection (6) is  
 12854 added to that section, to read:  
 12855 620.1108 Name.—  
 12856 (2) The name of a limited partnership that is not a limited  
 12857 liability limited partnership must contain the phrase "limited  
 12858 partnership" or "limited" or the abbreviation "L.P." or "Ltd."  
 12859 or the designation "LP," and may not contain the phrase "limited  
 12860 liability limited partnership" or the abbreviation "L.L.L.P." or  
 12861 the designation "LLLP," as will clearly indicate that it is a  
 12862 limited partnership instead of a natural person, corporation,  
 12863 limited liability company, or other business entity.  
 12864 (3) The name of a limited liability limited partnership  
 12865 must contain the phrase "limited liability limited partnership"  
 12866 or the abbreviation "L.L.L.P." or designation "LLLP," as will  
 12867 clearly indicate that it is a limited liability limited  
 12868 partnership instead of a natural person or other business  
 12869 entity, except that a limited liability limited partnership  
 12870 organized prior to January 1, 2006, that was the effective date  
 12871 ~~of this act that is~~ using an abbreviation or designation  
 12872 permitted under prior law shall be entitled to continue using  
 12873 such abbreviation or designation until its dissolution.  
 12874 (4) The name of a limited partnership must be  
 12875 distinguishable in the records of the Department of State from  
 12876 the names of all other entities or filings that are on file with

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12877 the Department of State, except fictitious name registrations  
 12878 pursuant to s. 865.09, general partnership registrations  
 12879 pursuant to s. 620.8105, and limited liability partnership  
 12880 statements pursuant to s. 620.9001 which are organized,  
 12881 registered, or reserved under the laws of this state; however, a  
 12882 limited partnership or a limited liability limited partnership  
 12883 may register under a name that is not otherwise distinguishable  
 12884 on the records of the Department of State with the written  
 12885 consent of the other entity if the consent is filed with the  
 12886 Department of State at the time of registration of such name and  
 12887 if such name is not identical to the name of the other entity. A  
 12888 name that is different from the name of another entity or filing  
 12889 due to any of the following is not considered distinguishable:  
 12890 (a) A suffix.  
 12891 (b) A definite or indefinite article.  
 12892 (c) The word "and" and the symbol "&."  
 12893 (d) The singular, plural, or possessive form of a word.  
 12894 (e) ~~A recognized abbreviation of a root word.~~  
 12895 ~~(f) A punctuation mark or a symbol.~~  
 12896 (6) A limited partnership or a limited liability limited  
 12897 partnership in existence before January 1, 2020, that has a name  
 12898 that does not clearly indicate that it is a limited partnership  
 12899 or a limited liability limited partnership instead of a natural  
 12900 person, corporation, limited liability company, or other  
 12901 business entity may continue using its name until it dissolves  
 12902 or amends its name in the records of the Department of State.  
 12903 Section 277. Section 620.11085, Florida Statutes, is  
 12904 created to read:  
 12905 620.11085 Reserved name.-

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12906 (1) A person may reserve the exclusive use of the name of a  
 12907 limited partnership, including an alternate name for a foreign  
 12908 limited partnership whose name is not available, by delivering  
 12909 an application to the Department of State for filing. The  
 12910 application must set forth the name and address of the applicant  
 12911 and the name proposed to be reserved. If the department finds  
 12912 that the name of the limited partnership applied for is  
 12913 available, it must reserve the name for the applicant's  
 12914 exclusive use for a nonrenewable 120-day period.  
 12915 (2) The owner of a reserved name of a limited partnership  
 12916 may transfer the reservation to another person by delivering to  
 12917 the Department of State a signed notice of the transfer that  
 12918 states the name and address of the transferee.  
 12919 (3) The Department of State may revoke any reservation if,  
 12920 after a hearing, it finds that the application therefor or any  
 12921 transfer thereof was not made in good faith.  
 12922 Section 278. Paragraph (c) of subsection (1) of section  
 12923 620.2104, Florida Statutes, is amended to read:  
 12924 620.2104 Filings required for conversion; effective date.-  
 12925 (1) After a plan of conversion is approved:  
 12926 (c) A converting limited partnership is not required to  
 12927 file a certificate of conversion pursuant to paragraph (a) if  
 12928 the converting limited partnership files articles of conversion  
 12929 or a certificate of conversion that substantially complies with  
 12930 the requirements of this section pursuant to s. 605.1045, s.  
 12931 607.1105 ~~s. 607.1115~~, or s. 620.8914(1)(b) and contains the  
 12932 signatures required by this chapter. In such a case, the other  
 12933 certificate of conversion may also be used for purposes of s.  
 12934 620.2105(4) .

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12935 Section 279. Subsection (3) of section 620.2108, Florida  
 12936 Statutes, is amended to read:  
 12937 620.2108 Filings required for merger; effective date.—  
 12938 (3) Each constituent limited partnership shall deliver the  
 12939 certificate of merger for filing in the Department of State  
 12940 unless the constituent limited partnership is named as a party  
 12941 or constituent organization in articles of merger or a  
 12942 certificate of merger filed for the same merger in accordance  
 12943 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s.  
 12944 620.8918(1) and (2) and such articles of merger or certificate  
 12945 of merger substantially complies with the requirements of this  
 12946 section. In such a case, the other articles of merger or  
 12947 certificate of merger may also be used for purposes of s.  
 12948 620.2109(3).  
 12949 Section 280. Subsection (3) of section 620.8918, Florida  
 12950 Statutes, is amended to read:  
 12951 620.8918 Filings required for merger; effective date.—  
 12952 (3) Each domestic constituent partnership shall deliver the  
 12953 certificate of merger for filing with the Department of State,  
 12954 unless the domestic constituent partnership is named as a party  
 12955 or constituent organization in articles of merger or a  
 12956 certificate of merger filed for the same merger in accordance  
 12957 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s.  
 12958 620.2108(3). The articles of merger or certificate of merger  
 12959 must substantially comply with the requirements of this section.  
 12960 In such a case, the other articles of merger or certificate of  
 12961 merger may also be used for purposes of s. 620.8919(3). Each  
 12962 domestic constituent partnership in the merger shall also file a  
 12963 registration statement in accordance with s. 620.8105(1) if it

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12964 does not have a currently effective registration statement filed  
 12965 with the Department of State.  
 12966 Section 281. Paragraph (b) of subsection (2) and subsection  
 12967 (4) of section 621.12, Florida Statutes, are amended to read:  
 12968 621.12 Identification with individual shareholders or  
 12969 individual members.—  
 12970 (2) The name shall also contain:  
 12971 (b)1. In the case of a professional corporation, the words  
 12972 "professional association," or the abbreviation "P.A." or the  
 12973 designation "PA"; or  
 12974 2. In the case of a professional limited liability company  
 12975 formed before January 1, 2014, the words "professional limited  
 12976 company" or "professional limited liability company," the  
 12977 abbreviation "P.L." or "P.L.L.C." or the designation "PL" or  
 12978 "PLLC," in lieu of the words "limited company" or "limited  
 12979 liability company," or the abbreviation "L.C." or "L.L.C." or  
 12980 the designation "LC" or "LLC" as otherwise required under s.  
 12981 605.0112 or former s. 608.406.  
 12982 3. In the case of a professional limited liability company  
 12983 formed on or after January 1, 2014, the words "professional  
 12984 limited liability company," the abbreviation "P.L.L.C." or the  
 12985 designation "PLLC," in lieu of the words "limited liability  
 12986 company," or the abbreviation "L.L.C." or the designation "LLC"  
 12987 as otherwise required under s. 605.0112.  
 12988 (4) It shall be permissible, however, for the corporation  
 12989 or limited liability company to render professional services and  
 12990 to exercise its authorized powers under a name which is  
 12991 identical to its name or contains any one or more of the last  
 12992 names of any shareholder or member included in such name except

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12993 that the word "chartered," the words "professional association,"  
 12994 "professional limited company," or "professional limited  
 12995 liability company," the abbreviations "P.A.," "P.L.," or  
 12996 "P.L.L.C.," or the designation "PA," "PL," or "PLLC" may be  
 12997 omitted, provided that the corporation or limited liability  
 12998 company has first registered the name to be so used in the  
 12999 manner required for the registration of fictitious names.

13000 Section 282. Paragraph (e) of subsection (14) of section  
 13001 865.09, Florida Statutes, is amended to read:

13002 865.09 Fictitious name registration.—

13003 (14) PROHIBITION.—A fictitious name registered as provided  
 13004 in this section may not contain the following words,  
 13005 abbreviations, or designations:

13006 (e) "Professional association," "PA," "P.A.," or  
 13007 "chartered," unless the person or business for which the name is  
 13008 registered is organized as a professional corporation pursuant  
 13009 to chapter 621, or is organized as a professional corporation  
 13010 pursuant to a similar law of another jurisdiction and has  
 13011 obtained a certificate of authority to transact business in this  
 13012 state pursuant to chapter 607.

13013 Section 283. Subsection (1) of section 662.150, Florida  
 13014 Statutes, is amended to read:

13015 662.150 Domestication of a foreign family trust company.—

13016 (1) A foreign family trust company lawfully organized and  
 13017 currently in good standing with the state regulatory agency in  
 13018 the jurisdiction where it is organized may become domesticated  
 13019 in this state by:

13020 (a) Filing with the Department of State articles a  
 13021 ~~certificate~~ of domestication and articles of incorporation in

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13022 accordance with and subject to s. 607.11922 ~~s. 607.1801~~ or by  
 13023 filing articles of conversion in accordance with s. 605.1045 or  
 13024 s. 607.11933; and

13025 (b) Filing an application for a license to begin operations  
 13026 as a licensed family trust company in accordance with s.  
 13027 662.121, which must first be approved by the office, or by  
 13028 filing the prescribed form with the office to register as a  
 13029 family trust company to begin operations in accordance with s.  
 13030 662.122.

13031 Section 284. Subsection (1) of section 331.355, Florida  
 13032 Statutes, is amended to read:

13033 331.355 Use of name; ownership rights to intellectual  
 13034 property.—

13035 (1) (a) The corporate name of a corporation incorporated or  
 13036 authorized to transact business in this state, or the name of  
 13037 any person or business entity transacting business in this  
 13038 state, may not use the words "Space Florida," "Florida Space  
 13039 Authority," "Florida Aerospace Finance Corporation," "Florida  
 13040 Space Research Institute," "spaceport Florida," or "Florida  
 13041 spaceport" in its name unless the Space Florida board of  
 13042 directors gives written approval for such use.

13043 (b) The Department of State may dissolve, pursuant to s.  
 13044 607.1420 ~~s. 607.1421~~, any corporation that violates paragraph  
 13045 (a).

13046 Section 285. Paragraph (a) of subsection (4) of section  
 13047 339.12, Florida Statutes, is amended to read:

13048 339.12 Aid and contributions by governmental entities for  
 13049 department projects; federal aid.—

13050 (4) (a) Prior to accepting the contribution of road bond

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13051 proceeds, time warrants, or cash for which reimbursement is  
 13052 sought, the department shall enter into agreements with the  
 13053 governing body of the governmental entity for the project or  
 13054 project phases in accordance with specifications agreed upon  
 13055 between the department and the governing body of the  
 13056 governmental entity. The department in no instance is to receive  
 13057 from such governmental entity an amount in excess of the actual  
 13058 cost of the project or project phase. By specific provision in  
 13059 the written agreement between the department and the governing  
 13060 body of the governmental entity, the department may agree to  
 13061 reimburse the governmental entity for the actual amount of the  
 13062 bond proceeds, time warrants, or cash used on a highway project  
 13063 or project phases that are not revenue producing and are  
 13064 contained in the department's adopted work program, or any  
 13065 public transportation project contained in the adopted work  
 13066 program. Subject to appropriation of funds by the Legislature,  
 13067 the department may commit state funds for reimbursement of such  
 13068 projects or project phases. Reimbursement to the governmental  
 13069 entity for such a project or project phase must be made from  
 13070 funds appropriated by the Legislature, and reimbursement for the  
 13071 cost of the project or project phase is to begin in the year the  
 13072 project or project phase is scheduled in the work program as of  
 13073 the date of the agreement. Funds advanced pursuant to this  
 13074 section, which were originally designated for transportation  
 13075 purposes and so reimbursed to a county or municipality, shall be  
 13076 used by the county or municipality for any transportation  
 13077 expenditure authorized under s. 336.025(7). Also, cities and  
 13078 counties may receive funds from persons, and reimburse those  
 13079 persons, for the purposes of this section. Such persons may

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13080 include, but are not limited to, those persons defined in s.  
 13081 607.01401(56) ~~s. 607.01401(19)~~.  
 13082 Section 286. Section 628.530, Florida Statutes, is amended  
 13083 to read:  
 13084 628.530 Effects of redomestication.—The certificate of  
 13085 authority, agents appointments and licenses, rates, and other  
 13086 items which the office or department allows, in its discretion,  
 13087 which are in existence at the time any insurer licensed to  
 13088 transact the business of insurance in this state transfers its  
 13089 corporate domicile to this or any other state by merger,  
 13090 consolidation, merger pursuant to s. 607.1101(7) ~~s. 607.1107(5)~~,  
 13091 or any other lawful method shall continue in full force and  
 13092 effect upon such transfer if such insurer remains duly qualified  
 13093 to transact the business of insurance in this state. All  
 13094 outstanding policies of any transferring insurer shall remain in  
 13095 full force and effect and need not be endorsed as to the new  
 13096 name of the company or its new location unless so ordered by the  
 13097 office. Every transferring insurer shall file new policy forms  
 13098 with the office on or before the effective date of the transfer,  
 13099 but may use existing policy forms with appropriate endorsements  
 13100 if allowed by, and under such conditions as are approved by, the  
 13101 office. However, every such transferring insurer shall notify  
 13102 the office of the details of the proposed transfer and shall  
 13103 file promptly any resulting amendments to corporate documents  
 13104 filed or required to be filed with the office.  
 13105 Section 287. Section 631.0515, Florida Statutes, is amended  
 13106 to read:  
 13107 631.0515 Appointment of receiver; insurance holding  
 13108 company.—A delinquency proceeding pursuant to this chapter

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13109 constitutes the sole and exclusive method of dissolving,  
 13110 liquidating, rehabilitating, reorganizing, conserving, or  
 13111 appointing a receiver of a Florida corporation which is not  
 13112 insolvent as defined by s. 607.01401 ~~s. 607.01401(16)~~; which  
 13113 through its shareholders, board of directors, or governing body  
 13114 is deadlocked in the management of its affairs; and which  
 13115 directly or indirectly owns all of the stock of a Florida  
 13116 domestic insurer. The department may petition for an order  
 13117 directing it to rehabilitate such corporation if the interests  
 13118 of policyholders or the public will be harmed as a result of the  
 13119 deadlock. The department shall use due diligence to resolve the  
 13120 deadlock. Whether or not the department petitions for an order,  
 13121 the circuit court shall not have jurisdiction pursuant to s.  
 13122 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or  
 13123 appoint receivers with respect to, a Florida corporation which  
 13124 directly or indirectly owns all of the stock of a Florida  
 13125 domestic insurer and which is not insolvent as defined by s.  
 13126 607.01401 ~~s. 607.01401(16)~~. However, a managing general agent or  
 13127 holding company with a controlling interest in a domestic  
 13128 insurer in this state is subject to jurisdiction of the court  
 13129 under the provisions of s. 631.025.

13130 Section 288. Subsection (5) of section 658.44, Florida  
 13131 Statutes, is amended to read:

13132 658.44 Approval by stockholders; rights of dissenters;  
 13133 preemptive rights.—

13134 (5) The fair value, as defined in s. 607.1301(5) ~~s.-~~  
 13135 ~~607.1301(4)~~, of dissenting shares of each constituent state bank  
 13136 or state trust company, the owners of which have not accepted an  
 13137 offer for such shares made pursuant to subsection (3), shall be

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13138 determined pursuant to ss. 607.1326-607.1331 except as the  
 13139 procedures for notice and demand are otherwise provided in this  
 13140 section as of the effective date of the merger.

13141 Section 289. Section 663.03, Florida Statutes, is amended  
 13142 to read:

13143 663.03 Applicability of the Florida Business Corporation  
 13144 Act.—Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the  
 13145 provisions of part I of chapter 607 not in conflict with the  
 13146 financial institutions codes which relate to foreign  
 13147 corporations apply to all international banking corporations and  
 13148 their offices doing business in this state.

13149 Section 290. Section 663.403, Florida Statutes, is amended  
 13150 to read:

13151 663.403 Applicability of the Florida Business Corporation  
 13152 Act.—Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the  
 13153 provisions of part I of chapter 607 which are not in conflict  
 13154 with the financial institutions codes and which relate to  
 13155 foreign corporations apply to all international trust entities  
 13156 and their offices doing business in this state.

13157 Section 291. Section 694.16, Florida Statutes, is amended  
 13158 to read:

13159 694.16 Conveyances by merger or conversion of business  
 13160 entities.—As to any merger or conversion of business entities  
 13161 prior to June 15, 2000, the title to all real estate, or any  
 13162 interest therein, owned by a business entity that was a party to  
 13163 a merger or a conversion is vested in the surviving entity  
 13164 without reversion or impairment, notwithstanding the requirement  
 13165 of a deed which was previously required by former s. 607.11101,  
 13166 former s. 608.4383, former s. 620.204, former s. 620.8904, or

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13167 former s. 620.8906.

13168 Section 292. This act shall take effect on January 1, 2020.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 11, 2019

---

I respectfully request that **Senate Bill # 892**, relating to Business Organizations, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo", followed by a horizontal line.

---

Senator Kathleen Passidomo  
Florida Senate, District 28

## **Proposed Modifications to Chapter 607 (Florida Business Corporation Act)**

**January 24, 2019**

The Florida Bar Business Law Section ("Section") has a long history of proposing entity statutes for our state. The Section comprehensively updated and modernized Florida's corporate statute in the late 1980s, updated Florida's partnership statute in the mid 1990s, updated Florida's limited partnership statute in the early 2000s, and updated Florida's LLC statute in the late 1990s and, in a far more comprehensive fashion, in 2013, and the Section is now – once again – proposing to update and modernize Florida's corporate statute.

When it comes to for-profit corporations in Florida, Florida generally follows the revised Model Business Corporation Act (the "Model Act"), which is promulgated by the Corporate Laws Committee of the ABA Business Law Section. Although the Model Act has changed extensively over the past thirty-five years, Chapter 607 of the Florida Statutes, which is known as the Florida Business Corporation Act ("FBCA"), has been overhauled only once (in 1989), and otherwise has endured patchwork amendments, with more significant changes in 1996 and 2003. Recently, in 2016, the Model Act itself was updated and modernized in its entirety. For all of these reasons, it has been deemed a necessity to consider comprehensively amending Florida's corporate statute so that Florida keeps pace with modern statutory developments relating to corporations.

There are a large number of entities organized in Florida. At the beginning of 2018, Florida had 760,000 corporations and almost 1.2 million limited liability companies in existence - probably more than any other state – growing at the rate of about 100,000 new corporations and more than 250,000 new LLCs per year (while the net growth is smaller, because many corporations and LLCs are dissolved each year, it is still significant growth under any circumstances). Because so many of the users of Florida's entity statutes are private companies, Florida's entity laws have tended to be as proscriptive as possible to offer clarity in our law for users that range from non-lawyers, to lawyers who are not necessary experts in entity matters, and to judges, all of whom are able to benefit from the proscriptive guidance in our State's entity statutes.

In 2014, a drafting task force (the "Drafting Subcommittee") was organized under the auspices of the Corporations, Securities and Financial Services Committee of the Section to make recommendations as to proposed changes to the FBCA. The Drafting Subcommittee's mission statement was to comprehensively study Florida's business corporation statute and to propose a more cohesive revision and set of amendments with the purpose of (i) bringing Florida's business corporation statute in line with the revisions to the Model Act and the trends affecting the use of corporations by businesses today, (ii) maintaining Florida's competitiveness with other jurisdictions, (iii) seeking to fix issues presented by the existing statute that have been experienced by practitioners in practice and in litigating disputes concerning the operations of Florida corporations, and (iv) continuing to encourage formation and use of Florida corporations, where appropriate.

The proposal includes changes to Chapter 607 of the Florida Statutes, harmonizing changes to other Florida entity statutes to make them consistent with revised Chapter 607, and necessary

corrections to cross references appearing in other Chapter 607 sections and in other Florida Statutes.

The proposal follows, for the most part, the 2016 version of the Model Act, yet deviates in a number of respects by:

- (i) retaining certain non-Model Act provisions already contained in existing Chapter 607;
- (ii) borrowing language from the Delaware General Corporation Law; and
- (iii) borrowing parallel language and approaches from Chapter 605 (the Florida Revised Limited Liability Company Act) for purposes of harmonizing the two statutes on issues where harmonization is considered appropriate.

The proposal contemplates that if it is passed by the Florida legislature during the 2019 legislative session, it will become effective for all Florida corporations as of January 1, 2020.

If you have any questions about the proposal, please feel free to contact the co-chairs of the Drafting Subcommittee, Philip B. Schwartz ([philip.schwartz@akerman.com](mailto:philip.schwartz@akerman.com)) and Gary I. Teblum ([gteblum@trenam.com](mailto:gteblum@trenam.com)).

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

892

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title 204 S Monroe St

Address Tallahassee FL 32301

Street

Phone 850 251 0844

City

State

Zip

Email SS@cardinaspartners.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing TAX Section of the FL BAR

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

892

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Philip Schwartz

Job Title

Address 350 East Las Olas Blvd. 16<sup>th</sup> FL

Phone 954 468 2455

Street

City FT. Lauderdale FL 33331

City

State

Zip

Email Philip.Schwartz@akem.com

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Business Law Section, FL Bar

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1136

INTRODUCER: Senators Harrell and Perry

SUBJECT: Cyberharassment

DATE: March 22, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Erickson	Jones	CJ	<b>Favorable</b>
2. Davis	Cibula	JU	<b>Favorable</b>
3. _____	_____	RC	_____

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## **I. Summary:**

SB 1136 amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person which contains or conveys the personal identification information of the depicted person *to an Internet website* without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill expands the definition to prohibit dissemination *via electronic means to another person*, in addition to publishing an image on an Internet website in the manner described.

The bill also amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexually explicit images of another person via electronic means in the manner described, makes conforming changes to the definition of the term "sexually cyberharass," and defines "personal identification information."

The Department of Corrections estimates that this bill will have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

## **II. Present Situation:**

Section 784.049, F.S., prohibits and punishes sexual cyberharassment. The term "sexually cyberharass" means to publish a sexually explicit image<sup>1</sup> of a person that contains or conveys the personal identification information<sup>2</sup> of the depicted person to an Internet website without the

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<sup>1</sup> "Sexually explicit image" means any image depicting nudity or depicting any person engaging in sexual conduct. Section 784.049(2)(d), F.S.

<sup>2</sup> Section 784.049(2)(b), F.S., defines "personal identification information" by reference to the definition of that term in s. 817.568, F.S. Section 817.568(1)(f), F.S., defines "personal identification information" as any name or number that may be

depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.<sup>3</sup>

A person who willfully and maliciously sexually cyberharasses another person generally commits a first degree misdemeanor.<sup>4</sup> However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony.<sup>5</sup>

Further, an aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief in order to prevent or remedy a violation of this section, including:

- Injunctive relief;
- Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater; and
- Reasonable attorney fees and costs.<sup>6</sup>

The criminal and civil penalties of this section do not apply to:

- A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11, F.S., that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or
- A law enforcement officer, as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.<sup>7</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person which contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill provides that sexual cyberharassment also includes the willful and malicious dissemination of such images via electronic means in the manner described.

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used, alone or in conjunction with any other information, to identify a specific person, and includes an extensive list of specific information such as name, postal or electronic mail address, telephone number, social security number, date of birth, driver license or identification number, bank account number, and credit or debit card number.

<sup>3</sup> Section 784.049(2)(c), F.S.

<sup>4</sup> Section 784.049(3)(a), F.S.

<sup>5</sup> Section 784.049(3)(b), F.S.

<sup>6</sup> Section 784.049(5), F.S.

<sup>7</sup> Section 784.049(6), F.S.

A sexual cyberharassment violation is generally a first degree misdemeanor, which is punishable by up to one year in county jail and a fine of up to \$1,000.<sup>8</sup> However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony, which is punishable by up to five years in state prison and a fine of up to \$5,000.<sup>9</sup>

An aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief.<sup>10</sup>

The bill amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexual images of another person via electronic means in the manner described.

The bill amends the definition of “sexually cyberharass.” As amended, “sexually cyberharass” means to publish on an Internet website or to disseminate via electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

Currently, “personal identification information” is defined by reference to a definition of that term in s. 817.568, F.S. The bill defines “personal identification information” as any information that identifies an individual, including, but not limited to, a name, a postal or an e-mail address, a telephone number, a social security number, a date of birth, or any unique physical representation.

The bill is effective July 1, 2019.

#### **IV. Constitutional Issues:**

**A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

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<sup>8</sup> Sections 775.082 and 775.083, F.S.

<sup>9</sup> Sections 775.082 and 775.083, F.S.

<sup>10</sup> See “Present Situation” section of this analysis for a detailed description of some of the available relief.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections' legislative analysis states that the Department, in the last 3 years, has recorded two probation admissions and no prison admissions related to this offense. The Department estimates that this crime will increase the number of violations, but the number is not known, therefore, the impact of the bill is indeterminate.<sup>11</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 784.049 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 901.15, 901.41, and 933.18.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>11</sup> Department of Corrections, *2019 Agency Legislative Bill Analysis* (March 11, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28443>.

By Senator Harrell

25-01198-19

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1 A bill to be entitled  
 2 An act relating to cyberharassment; amending s.  
 3 784.049, F.S.; revising legislative intent; redefining  
 4 the terms "personal identifying information" and  
 5 "sexually cyberharass"; providing criminal penalties;  
 6 reenacting ss. 901.15(16), 901.41(5), and 933.18(11),  
 7 F.S., relating to lawful arrests by officers without a  
 8 warrant, prearrest diversion programs, and when a  
 9 warrant may be issued for the search of a private  
 10 dwelling, respectively, to incorporate the amendment  
 11 made to s. 784.049, F.S., in references thereto;  
 12 providing an effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Section 784.049, Florida Statutes, is amended to  
 17 read:  
 18 784.049 Sexual cyberharassment.—  
 19 (1) The Legislature finds that:  
 20 (a) A person depicted in a sexually explicit image taken  
 21 with the person's consent has a reasonable expectation that the  
 22 image will remain private.  
 23 (b) It is becoming a common practice for persons to publish  
 24 a sexually explicit image of another to Internet websites or to  
 25 disseminate such sexually explicit image of another by  
 26 electronic means without the depicted person's consent, for no  
 27 legitimate purpose, with the intent of causing substantial  
 28 emotional distress to the depicted person.  
 29 (c) When such images are published on Internet websites or

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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30 disseminated via electronic means, they are able to be viewed  
 31 indefinitely by persons worldwide and are able to be easily  
 32 reproduced and shared.  
 33 (d) The publication of such images on Internet websites or  
 34 the dissemination of such images via electronic means creates a  
 35 permanent record of the depicted person's private nudity or  
 36 private sexually explicit conduct.  
 37 (e) The existence of such images on Internet websites or  
 38 the dissemination of such images without the consent of all  
 39 parties depicted causes those depicted ~~in such images~~  
 40 significant psychological harm.  
 41 (f) Safeguarding the psychological well-being of persons  
 42 depicted in such images is compelling.  
 43 (2) As used in this section, the term:  
 44 (a) "Image" includes, but is not limited to, any  
 45 photograph, picture, motion picture, film, video, or  
 46 representation.  
 47 (b) "Personal identification information" means any  
 48 information that identifies an individual, including, but not  
 49 limited to, a name, a postal or an e-mail address, a telephone  
 50 number, a social security number, a date of birth, or any unique  
 51 physical representation ~~has the same meaning as provided in s.~~  
 52 ~~817.568.~~  
 53 (c) "Sexually cyberharass" means to publish on an Internet  
 54 website or to disseminate via electronic means to another person  
 55 a sexually explicit image of a person that contains or conveys  
 56 the personal identification information of the depicted person  
 57 ~~to an Internet website~~ without the depicted person's consent,  
 58 for no legitimate purpose, with the intent of causing

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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substantial emotional distress to the depicted person.

(d) "Sexually explicit image" means any image depicting nudity, as defined in s. 847.001, or depicting a person engaging in sexual conduct, as defined in s. 847.001.

(3) (a) Except as provided in paragraph (b), a person who willfully and maliciously sexually cyberharasses another person commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(b) A person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(4) (a) A law enforcement officer may arrest, without a warrant, any person that he or she has probable cause to believe has violated this section.

(b) Upon proper affidavits being made, a search warrant may be issued to further investigate violations of this section, including warrants issued to search a private dwelling.

(5) An aggrieved person may initiate a civil action against a person who violates this section to obtain all appropriate relief in order to prevent or remedy a violation of this section, including the following:

(a) Injunctive relief.

(b) Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater.

(c) Reasonable attorney fees and costs.

(6) The criminal and civil penalties of this section do not apply to:

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(a) A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11, that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or

(b) A law enforcement officer, as defined in s. 943.10, or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.

(7) A violation of this section is committed within this state if any conduct that is an element of the offense, or any harm to the depicted person resulting from the offense, occurs within this state.

Section 2. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (16) of section 901.15, Florida Statutes, is reenacted to read:

901.15 When arrest by officer without warrant is lawful.—A law enforcement officer may arrest a person without a warrant when:

(16) There is probable cause to believe that the person has committed a criminal act of sexual cyberharassment as described in s. 784.049.

Section 3. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (5) of section 901.41, Florida

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Statutes, is reenacted to read:

901.41 Prearrest diversion programs.—

(5) ELIGIBILITY.—A violent misdemeanor, a misdemeanor crime of domestic violence, as defined in s. 741.28, or a misdemeanor under s. 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048, s. 784.0487, or s. 784.049 does not qualify for a civil citation or prearrest diversion program.

Section 4. For the purpose of incorporating the amendment made by this act to section 784.049, Florida Statutes, in a reference thereto, subsection (11) of section 933.18, Florida Statutes, is reenacted to read:

933.18 When warrant may be issued for search of private dwelling.—No search warrant shall issue under this chapter or under any other law of this state to search any private dwelling occupied as such unless:

(11) An instrumentality or means by which sexual cyberharassment has been committed in violation of s. 784.049, or evidence relevant to proving that sexual cyberharassment has been committed in violation of s. 784.049, is contained therein.

If, during a search pursuant to a warrant issued under this section, a child is discovered and appears to be in imminent danger, the law enforcement officer conducting such search may remove the child from the private dwelling and take the child into protective custody pursuant to chapter 39. The term "private dwelling" shall be construed to include the room or rooms used and occupied, not transiently but solely as a residence, in an apartment house, hotel, boardinghouse, or lodginghouse. No warrant shall be issued for the search of any

25-01198-19

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private dwelling under any of the conditions hereinabove mentioned except on sworn proof by affidavit of some creditable witness that he or she has reason to believe that one of said conditions exists, which affidavit shall set forth the facts on which such reason for belief is based.

Section 5. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Health Policy, *Chair*  
Appropriations Subcommittee on Health  
and Human Services, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Children, Families, and Elder Affairs  
Military and Veterans Affairs and Space

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL  
25th District

March 13, 2019

Senator David Simmons  
404 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399

Chair Simmons,

I respectfully request that **SB 1136 – Cyberharassment** be placed on the next available agenda for the Judiciary Committee Meeting. **SB 1136** passed its last Committee.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell  
Senate District 25

Cc: Tom Cibula, Staff Director  
Joyce Butler, Committee Administrative Assistant

### REPLY TO:

- ☐ 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- ☐ 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

Meeting Date

1136

Bill Number (if applicable)Topic CyberharrassmentAmendment Barcode (if applicable)Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922StreetTallahasseeFL32308Email barney@barneybishop.comCityStateZipSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Smart Justice AllianceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 762

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Duties and Obligations of Sheriffs (formerly Trial Court Security)

DATE: March 26, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	<b>Fav/CS</b>
2.			IS	
3.			ACJ	
4.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 762 addresses the decision-making authority and responsibilities of two constitutional officers, the chief judge of a circuit court and the county sheriff, in providing courthouse security. The bill clarifies the decision-making authority for courthouse security, providing that:

- The sheriff, county commissioners, and chief judge of the circuit must develop a comprehensive plan for courthouse security.
- The sheriff retains operational control in accord with the comprehensive security plan.
- The chief judge retains decision-making authority to carry out his or her administrative functions concerning the protection of due process rights and the scheduling and conduct of trials and other judicial proceedings in accord with the comprehensive plan.

Because the sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities, the chief judge has authority to direct these officers to ensure the proper conduct of trials and judicial proceedings. However, the sheriff retains operational control as to how security is provided. For example, the chief judge may request two bailiffs in a courtroom for high profile cases, but the sheriff will designate the two deputies who will serve as bailiffs.

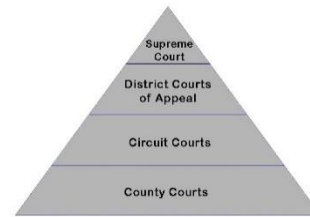
The bill is effective July 1, 2019.

## II. Present Situation:

### Florida's Court System

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.<sup>1</sup>



The Constitution provides that “[n]o other courts may be established by the state, any political subdivision or any municipality.”<sup>2</sup>

### Court System Administration

The Constitution vests the Florida Supreme Court with broad authority to administer the state courts system and establish court rules of procedure.<sup>3</sup> The chief justice of the Florida Supreme Court is constitutionally designated as the “chief administrative officer of the judicial system.”<sup>4</sup> The Constitution also directs that a chief judge be chosen for each district court of appeal and each circuit court.<sup>5</sup>

### *Chief Judge of the Circuit Court*

The chief judge of the circuit court has administrative supervision responsibility for, not only the circuit court, but also the county courts within his or her circuit.<sup>6</sup> Currently, there are 20 judicial circuits and 67 county courts, one in each of Florida’s 67 counties<sup>7</sup> as constitutionally required.<sup>8</sup>

The following maps illustrate the territorial jurisdictions of the circuit and county courts. Note, some circuits contain multiple counties, particularly in North Florida; whereas, some circuits contain only one county, particularly in the larger metropolitan areas in Central and South Florida.<sup>9</sup>

<sup>1</sup> FLA. CONST. art. V., s. 1.

<sup>2</sup> *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).

<sup>3</sup> FLA. CONST. art. V, s. 2(a).

<sup>4</sup> FLA. CONST. art. V, s. 2(b).

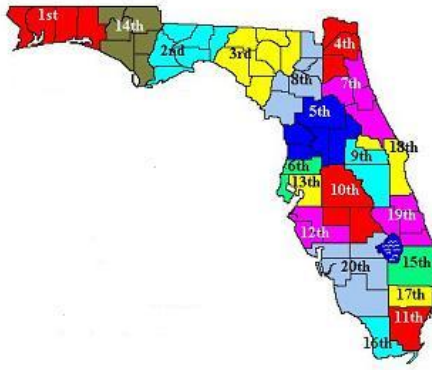
<sup>5</sup> FLA. CONST. art. V, s. 2(c), (d).

<sup>6</sup> FLA. CONST. art. V, s. 2(d). Additionally, the chief judge is constitutionally chosen “as provided by supreme court rule.” *Id.*

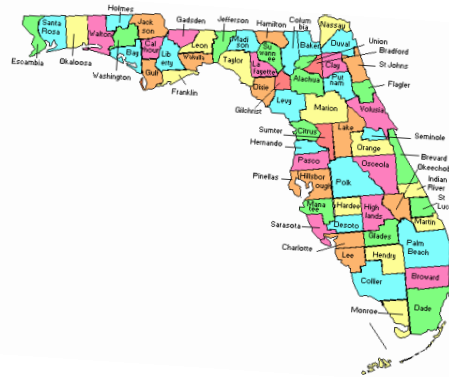
<sup>7</sup> Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019).

<sup>8</sup> FLA. CONST. art. V, s. 6(a) (“There shall be a county court in each county.”).

<sup>9</sup> Ron DeSantis, 46<sup>th</sup> Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Jan. 29, 2019).



Twenty Judicial Circuits



Sixty-Seven Counties

The chief judge exercises “administrative supervision over all the trial courts within the judicial circuit and over the judges and other officers of such courts.”<sup>10</sup> In exercising his or her responsibility, the chief judge has the power to:

- Assign judges to court divisions and determine the length of the assignment.
- Regulate the use of courtrooms.
- Supervise dockets and calendars.
- Require attendance of all other officers of the court.
- Do everything necessary to promote the prompt and efficient administration of justice in the courts.
- Delegate to the trial court administrator, by administrative order, the authority to bind the circuit in contract.
- Manage, operate, and oversee the jury system.
- Report data to the Chief Justice of the Supreme Court concerning the circuit’s caseload, status of dockets, disposition of cases, and other relevant information.
- Consult with the clerk of court to determine the priority of services provided by the clerk to the trial courts.<sup>11</sup>

### County Responsibilities for Funding Court-Related Functions

Under Article V, s. 14 of the Florida Constitution, the state is responsible for most of the costs of the state courts system. However, the Constitution requires counties to:

[F]und the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and *security of facilities for the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks of the circuit and county courts performing court-related functions.*<sup>12</sup>

<sup>10</sup> Section 43.26, F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Emphasis added.

The constitutional responsibility for counties to fund court-related functions is implemented in s. 29.008, F.S., which also defines many of the key terms from the constitutional provision above. Among these terms, s. 29.008(1)(a), F.S. defines “facility” as follows:

“Facility” means reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing legal materials for use by the general public and personnel, equipment, or functions of the circuit or county courts, public defenders’ offices, state attorneys’ offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term “facility” includes all wiring necessary for court reporting services. The term also includes access to parking for such facilities in connection with such court-related functions that may be available free or from a private provider or a local government for a fee. . . .

1. As of July 1, 2005, equipment and furnishings shall be limited to that appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel. Court reporting equipment in these areas or facilities is not a responsibility of the county.

2. Equipment and furnishings under this paragraph in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders, shall be transferred to the state at no charge. This provision does not apply to any communications services as defined in paragraph (f).

Additionally, s. 29.008(1)(e), F.S. defines “security” as follows:

“Security” includes but is not limited to, all reasonable and necessary costs of services of *law enforcement officers or licensed security guards* and all electronic, cellular, or digital monitoring and screening devices necessary to ensure the safety and security of all persons visiting or working in a facility; to provide for security of the facility, including protection of property owned by the county or the state; and for security of prisoners brought to any facility. This includes bailiffs while providing courtroom and other security for each judge and other quasi-judicial officers.<sup>13</sup>

## **Sheriffs**

Sheriffs are constitutional county officers.<sup>14</sup> As a constitutional officer, a sheriff exercises independent authority and discretion in carrying out his or her various duties and in appointing and disciplining deputies.<sup>15</sup> The sheriff’s duties include, among other things, conserving the

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<sup>13</sup> Emphasis added.

<sup>14</sup> FLA. CONST. art. VIII, s. (d).

<sup>15</sup> See generally *Demings v. Orange County Citizens Review Bd.*, 15 So. 3d 604, 610–11 (Fla. 5th DCA 2009).

county peace by suppressing riots and making arrests as necessary; and executing process on behalf of the Florida Supreme Court, circuit courts, county courts, and board of county commissioners in the sheriff's county.<sup>16</sup>

### ***Sheriffs' Courtroom Duties***

The sheriff is “the executive officer of the circuit court of the county.”<sup>17</sup> As such, the sheriff or and his or her deputies execute all service of court process in both civil and criminal matters and attend all sessions of court.<sup>18</sup> In attending all sessions of court, the sheriff or his or her deputies serve as bailiffs and take charge of the jury, carry out service of process, keep order, and so forth. However, it is the sheriff, not the chief judge, who appoints any deputy to serve as a bailiff in a courtroom.<sup>19</sup>

### ***Beyond the Courtroom: Security in other Court Facilities***

Although sheriffs and their deputies are required to serve as bailiffs in the courtrooms around the state, unless contracted to do so with the county government, the sheriffs are not constitutionally or statutorily required to take responsibility for the security of all court facilities. Rather, county governments are responsible to provide for and fund security for court facilities and, as set out in s. 29.008(1)(e), F.S., *supra*, security may be provided by “law enforcement officers” such as municipal police officers,<sup>20</sup> or “licensed security guards.”

### ***Tensions Between Sheriffs and Chief Circuit Court Judges***

Tensions between sheriffs and chief circuit court judges often arise when determining the scope of each constitutional officers' authority in how courtroom and other court facility security is to be provided.<sup>21</sup> A recent appellate court opinion relied on the definitions of “facility” and “security” in s. 29.008, F.S., *supra*, as the basis for permitting an administrative order of the chief judge to stand which ordered the sheriff to secure a building used by the court.<sup>22</sup> The particular building at issue did not include courtrooms. The sheriff objected to the amount of control the chief judge exerted over the sheriff because the order required the sheriff to *exclusively* provide security to the facility in question. Additionally, the sheriff objected to the potential funding issues caused by the security requirements in the chief judge's order.<sup>23</sup>

<sup>16</sup> See generally s. 30.15, F.S.

<sup>17</sup> Section 26.49, F.S. See also s. 34.07, F.S. (sheriff is executive officer of county courts).

<sup>18</sup> Section. 30.15(1)(a)-(c), F.S.

<sup>19</sup> *State ex rel. Wainwright v. Booth*, 291 So. 2d 74, 76–77 (Fla. 2d DCA 1974), writ discharged sub nom. *Booth v. Wainwright*, 300 So. 2d 257 (Fla. 1974).

<sup>20</sup> Section 943.10(1), F.S. (“Law enforcement officer means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state”).

<sup>21</sup> See, e.g., *State ex rel. Wainwright v. Booth*, 291 So. 2d 74, 76–77 (Fla. 2d DCA 1974), writ discharged sub nom. *Booth v. Wainwright*, 300 So. 2d 257 (Fla. 1974) (challenging the validity of a chief judge's order requiring Department of Corrections to provide supplemental security to sheriff during a murder trial).

<sup>22</sup> *Knight v. Chief Judge of Florida's Twelfth Judicial Circuit*, 235 So. 3d 996, 999 (Fla. 2d DCA 2017) (denying the sheriff's writ for petition of certiorari for failure to meet the burden of showing the chief judge had exceeded his authority by issuing an administrative order directing the sheriff to provide security in portions of the court facilities where no court proceedings are held).

<sup>23</sup> *Id.* at 997-1000.

### **III. Effect of Proposed Changes:**

CS/SB 762 addresses the decision-making authority and responsibilities of the chief judge and the county sheriff in providing courthouse security. The bill clarifies the decision-making authority for courthouse security, providing that:

- The sheriff, county commissioners, and chief judge of the circuit must develop a comprehensive plan for courthouse security.
- The sheriff retains operational control in accord with the comprehensive security plan.
- The chief judge retains decision-making authority to carry out his or her administrative functions concerning the protection of due process rights and the scheduling and conduct of trials and other judicial proceedings in accord with the comprehensive plan.

Because the sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities, the chief judge has authority to direct these officers to ensure the proper conduct of trials and judicial proceedings. However, the sheriff retains operational control as to how security is provided. For example, the chief judge may request two bailiffs in a courtroom for high profile cases, but the sheriff will designate the two deputies who will serve as bailiffs.

The bill is effective July 1, 2019.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None identified.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 30.15 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 25, 2019:**

The Committee Substitute:

- Replaces the requirement that sheriffs and chief judges coordinate on trial court security with the requirement that sheriffs coordinate with both the county commissioners and the chief judges to develop a comprehensive plan for trial court security.
- Clarifies that sheriffs retain operational authority under the comprehensive plan.
- Clarifies that chief judges retain decision-making authority under the comprehensive plan.
- Removes statutory construction provision.
- Amends the title, changing it to duties and obligations of sheriffs.

**B. Amendments:**

None.



856104

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2019	.	
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	.	
	.	

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The Committee on Judiciary (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (4) is added to section 30.15,  
Florida Statutes, to read:

30.15 Powers, duties, and obligations.—

(4) (a) In accordance with each county's obligation under s.  
14, Art. V of the State Constitution and s. 29.008 to fund  
security for trial court facilities, the sheriff of each county  
shall coordinate with the board of county commissioners of that



856104

county and the chief judge of the circuit in which that county is located on the development of a comprehensive plan for the provision of security for trial court facilities. Each sheriff shall retain authority over the implementation and provision of law enforcement services associated with the plan. The chief judge of the circuit shall retain decision-making authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trial and other judicial proceedings as part of his or her responsibility for the administrative supervision of trial courts under s. 43.26.

(b) Sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities under this subsection.

Section 2. This act shall take effect July 1, 2019.

===== T I T L E   A M E N D M E N T =====  
And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to security in trial court facilities;  
amending s. 30.15, F.S.; requiring each sheriff to  
coordinate with certain boards of county commissioners  
and chief judges to develop a comprehensive plan for  
security of trial court facilities; specifying that  
sheriffs and chief judges retain certain authorities;  
specifying that sheriffs and their deputies,  
employees, and contractors are officers of the court  
under specified circumstances; providing an effective



856104

41

date.



918110

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

**Senate Amendment to Amendment (856104)**

In title, delete line 32  
and insert:  
An act relating to duties and obligations of sheriffs;



906684

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/26/2019	.	
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The Committee on Judiciary (Rodriguez) recommended the following:

**Senate Amendment**

In title, delete line 2  
and insert:  
An act relating to duties and obligations of sheriffs;  
amending s.

By Senator Gruters

23-00574-19

2019762\_\_

A bill to be entitled

An act relating to trial court security; amending s. 30.15, F.S.; requiring sheriffs to provide security for trial court facilities; requiring sheriffs to coordinate with the chief judge on security matters for trial court facilities and to retain operational control over how they provide security for such facilities; specifying that the chief judge retains certain decision-making authority; specifying that sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities; providing construction; providing an effective date.

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

Section 1. Subsection (4) is added to section 30.15, Florida Statutes, to read:

30.15 Powers, duties, and obligations.—

(4) (a) Sheriffs, in their respective counties, shall provide security for trial court facilities. Sheriffs shall coordinate with the chief judge of the judicial circuit in which their county is located on all security matters for such facilities, but shall retain operational control over the manner in which security is provided. The chief judge of the judicial circuit shall retain decision-making authority to ensure the protection of due process rights, including, but not limited to, the scheduling and conduct of trials and other judicial proceedings, as part of his or her responsibility for the

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

23-00574-19

2019762\_\_

administrative supervision of the trial courts under s. 43.26.

(b) Sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities under this subsection.

(c) This subsection may not be construed to affect or erode the authority of counties under s. 14, Art. V of the State Constitution or s. 29.008 to otherwise fund security of facilities as the term "security" is defined in s. 29.008(1)(e).

Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Commerce and Tourism, *Chair*  
Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Banking and Insurance

## JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

## SENATOR JOE GRUTERS

23rd District

February 20th, 2019

The Honorable David Simmons, Chair  
Judiciary Committee  
515 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that Senate Bill 762, Trial Court Security, be placed on the agenda of the next Judiciary Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me.  
Thank you for your time and consideration.

Warm regards,



Joe Gruters

cc: Tom Cibula, Staff Director  
Joyce Butler, Committee Administrative Assistant

## REPLY TO:

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19  
Meeting Date

762  
Bill Number (if applicable)

Topic Trial Court Security

856104  
Amendment Barcode (if applicable)

Name Lisa Kiel

Job Title State Courts Administrator

Address 500 S. Duval St.  
Street

Phone 850-922-5081

Tallahassee FL 32399  
City State Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ of amendment In Support ☐ Against  
(The Chair will read this information into the record.)

Representing State Courts System

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

3/25/2019

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

762

Meeting DateBill Number (if applicable)

856104

Topic Court SecurityAmendment Barcode (if applicable)Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165StreetTallahasseeFL32308CityStateZipEmail mdunagan@flsheriffs.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

March 25, 2019

*Meeting Date*

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

762

*Bill Number (if applicable)*

Topic Trial Court Security

*Amendment Barcode (if applicable)*

Name Lisa Hurley

Job Title \_\_\_\_\_

Address 311 E. Park Ave.

Phone 850.224.5081

*Street*

Tallahassee

Florida

32301

*City*

*State*

*Zip*

Email lhurley@smithbryanandmyers.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Association of Counties

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

*Meeting Date*

762

*Bill Number (if applicable)*

Topic Trial Court Security

*Amendment Barcode (if applicable)*

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

*Street*

Tallahassee

FL

32308

Email barney@barneybishop.com

*City*

*State*

*Zip*

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Smart Justice Alliance

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

***This form is part of the public record for this meeting.***

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1188

INTRODUCER: Senator Gruters

SUBJECT: Courts

DATE: March 22, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	<b>Favorable</b>
2.			CF	
3.			RC	

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## **I. Summary:**

SB 1188 assists public guardians as they seek to meet the needs of their incapacitated wards.

The bill clarifies that public guardians are exempted from paying any court-related fees or charges normally assessed by clerks for accessing public records. The bill also requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian's ward. Currently, courts have the discretion to waive those costs and fees.

Finally, the bill allows additional medical personnel, physician assistants and advance practice registered nurses, to conduct the required annual medical exam of a ward and prepare a report of the exam for the court. Currently, only physicians are allowed to conduct the exams and prepare the reports.

## **II. Present Situation:**

### **Public Guardians**

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.<sup>1</sup> Public guardians generally and primarily serve incapacitated people who have limited financial means.<sup>2,3</sup>

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<sup>1</sup> Section 744.2007(1), F.S.

<sup>2</sup> Section 744.2007(3), F.S.

<sup>3</sup> The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.

### **Circuit Court Clerks' Duty to Provide Access to Public Records and Waive Fees**

The clerks of the circuit courts are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request, and without charge.<sup>4</sup> Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.<sup>5</sup> While these two provisions make clear that a public guardian is entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges “apply only to state agencies and state entities and the party represented by the agency or entity.” Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

### **Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians**

Florida’s extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward.<sup>6</sup> An additional statute provides that a court *may* waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward for whom a public guardian has been appointed.<sup>7</sup> The court’s ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

### **Annual Guardianship Plan and Physician’s Report**

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward’s condition, including the ward’s current needs and how those needs will be met in the coming year. The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A resume of any professional medical treatment received during the preceding year.
- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period and which contains an evaluation of the ward’s condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.

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<sup>4</sup> Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf Section 28.345(1), F.S.

<sup>5</sup> Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.

<sup>6</sup> Section 744.2008(1), F.S.

<sup>7</sup> Section 744.2008(2), F.S.

Proponents of this bill assert that at least 95 percent of the public guardians' wards live in nursing homes where physicians seldom visit. However, because the statute specifically requires a physician's report, courts will not accept the signature of a physician's assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

### **III. Effect of Proposed Changes:**

#### **Clarifying Language for Court-related Fees and Charges**

The bill adds language to s. 28.345(3), F.S., to clarify that public guardians are exempted from the clerks' assessment of fees and charges. This is accomplished by stating that the "entities listed in subsections (1) and (2)," the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

#### **Court's Discretion to Waive Court Costs and Filing Fees**

Section 744.2008(2), F.S., is amended to mandate that a court "shall" waive any court costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward for whom a public guardian has been appointed. Accordingly, courts will be prohibited from imposing court costs or filing fees under those circumstances.

#### **Annual Guardianship Plan and Physician's Report**

The annual guardianship plan detailing a ward's needs and how those needs will be met is amended to permit a physician assistant or an advanced practice registered nurse to examine the ward and complete the report. The physician assistant must be acting pursuant to s. 458.347(4)(d), F.S., or s. 459.022(4)(d), F.S., under the supervision of a licensed physician, pursuant to a written protocol, and limited to the supervising physician's practice in connection with a county health department. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.<sup>8</sup>

By increasing the scope of who may examine the ward and determine his or her level of capacity for the annual report, the public guardian will be better able to meet the ward's needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2019.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>8</sup> The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill will likely result in the loss of revenues to clerks and to courts to the extent that the bill waives fees and costs applied to public guardians. However, the bill may likely result in reduced costs for the annual medical exams for wards.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Gruters

23-00616A-19

20191188\_\_

A bill to be entitled

An act relating to courts; amending s. 28.345, F.S.; specifying that certain exemptions from court-related fees and charges apply to certain entities; amending s. 744.2008, F.S.; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; amending s. 744.3675, F.S.; providing that a certain examination report related to annual guardianship plans may be prepared by a physician assistant or an advanced practice registered nurse; providing an effective date.

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

Section 1. Section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

(2) Notwithstanding any other provision of this chapter or

Page 1 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

23-00616A-19

20191188\_\_

law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, criminal conflict and civil regional counsel, public defenders, and state agencies, while acting in their official capacity, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

(3) The exemptions from fees or charges provided in this section apply only to entities listed in subsections (1) and (2), state agencies and state entities, and the party represented by the agency or entity.

Section 2. Subsection (2) of section 744.2008, Florida Statutes, is amended to read:

744.2008 Costs of public guardian.—

(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward for whom a public guardian has been appointed guardian, the court shall ~~may~~ waive any court costs or filing fees.

Section 3. Paragraph (b) of subsection (1) of section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward,

Page 2 of 3

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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including:

1. A resume of any professional medical treatment given to the ward during the preceding year.

2. The report of a physician, a physician assistant acting pursuant to s. 458.347(4)(d) or s. 459.022(4)(d), or an advanced practice registered nurse acting pursuant to s. 464.012(3), who examined the ward no more than 90 days before the beginning of the applicable reporting period. The report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward.

3. The plan for providing medical, mental health, and rehabilitative services in the coming year.

Section 4. This act shall take effect July 1, 2019.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Commerce and Tourism, *Chair*  
Finance and Tax, *Vice Chair*  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Banking and Insurance

**JOINT COMMITTEE:**

Joint Committee on Public Counsel Oversight

**SENATOR JOE GRUTERS**

23rd District

March 18, 2019

The Honorable David Simmons, Chair  
Judiciary Committee  
420 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that Senate Bill 1188, Courts be placed on the agenda of the next Judiciary meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters". The signature is written in a cursive, flowing style.

Joe Gruters

cc: Tom Cibula, Staff Director  
Joyce Butler, Committee Administrative Assistant

**REPLY TO:**

- ☐ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- ☐ 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

WAIVE IN SUPPORT

THE FLORIDA SENATE

## APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1188

Bill Number (if applicable)

Topic SB 1188

Amendment Barcode (if applicable)

Name Alison Carvajal

Job Title Lobbyist

Address 120 S Monroe St

Phone \_\_\_\_\_

Street

TUA

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25

Meeting Date

1188

Bill Number (if applicable)

Topic SB 1188

Amendment Barcode (if applicable)

Name BRYAN CHERRY

Job Title Lobbyist

Address 301 S. Monroe STE 303

Phone (850) 544-5673

Tallahassee FL 32301  
City State Zip

Email bryan@pinpointresults.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FL. Public Guardian Coalition

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1238

INTRODUCER: Senator Mayfield

SUBJECT: Safety of Religious Institutions

DATE: March 22, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	<b>Favorable</b>
2. _____	_____	CJ	_____
3. _____	_____	RC	_____

---

## **I. Summary:**

SB 1238 enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution. The bill also enables a private or religious school to designate a person to carry a firearm on the school's property. If a school exercises this option, its governing board or body must create policies and procedures that the designees must meet.

Under current law, a person who has a concealed firearm license is authorized to carry a concealed handgun on the typical property of a religious institution, such as a church property that is not also home to a school. However, a license does not authorize a person to possess a firearm on the property of a school, whether public or private, from preschool through college.

## **II. Present Situation:**

### **Overview**

A person who holds a concealed firearm license may carry a concealed firearm on the property of a religious institution unless the property is also home to a school. This right is subject to a religious institution's authority to prohibit the carrying of firearms on its property.

The law broadly prohibits a person, including a licenseholder, from carrying a firearm on public or private school property, from preschool through the postsecondary level.

## Lawful Concealed Carry of Firearms

Although the law generally prohibits a person from carrying a firearm on his or her person, this prohibition is subject to several exceptions. Of these exceptions, perhaps the most well-known and broadly applicable is the concealed firearm license.<sup>1, 2</sup>

The license authorizes a person to carry a concealed handgun “throughout the state.” However, the license does not authorize a person to carry a firearm into any of a list of places, including “school facilities and administration buildings” and “college or university facilities.” This list of places that are off-limits even for licensed carry does *not* include the property of a religious institution. So, a licensee generally may carry a concealed handgun when he or she goes to meet with his or her congregation, but not if they are meeting at a school facility or building, a college or university facility, or any other place at which licensed carry is illegal.<sup>3</sup>

To obtain a concealed firearm license, a person must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:<sup>4</sup>

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;<sup>5</sup>

---

<sup>1</sup> As of December 31, 2018, 1,941,180 Floridians held a standard concealed firearm license. Fla. Dept. of Ag., *Number of Licensees by Type*, [http://www.freshfromflorida.com/content/download/7471/118627/Number\\_of\\_Licensees\\_By\\_Type.pdf](http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf).

<sup>2</sup> Additional exceptions to the prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

<sup>3</sup> As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

<sup>4</sup> Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S., which also sets forth criteria for the mandatory revocation of a license.

<sup>5</sup> See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

While the licensing statute states that the concealed carry license “*does not authorize*” carrying into any school building or facility, another statute broadly *prohibits* the possession of a firearm on any public or private school property regardless of whether a person has a license.

### **Prohibited Possession of a Firearm on School Property**

Section 790.115, F.S., broadly prohibits a person from possessing a firearm on the property of any “school,” meaning any preschool through postsecondary school, whether public or private.<sup>6</sup> As such, property covered by the ban appears to include property shared by a religious institution and a school, and may even include the property of a church that hosts a voluntary prekindergarten (VPK) program.

There are three exceptions to the general ban on possessing a firearm on school property. The first allows a person to possess a firearm “as authorized in support of school-sanctioned activities.” The second exception allows a person to carry a firearm in a case to a firearms training program or to a firearms training range at a career center. The third exception generally allows a person to store a firearm inside a parked car.<sup>7</sup>

The penalty for violating the ban on firearms on school property varies depending on whether the violator has a concealed firearm license.<sup>8</sup>

### **Federal Law**

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place an individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.<sup>9</sup> However, this

<sup>6</sup> It also means any career center. Section 790.115(2)(a), F.S.

<sup>7</sup> Section 790.115(2)(a), F.S. Also, the ban does not apply to law enforcement officers. Section 790.115(3), F.S.

<sup>8</sup> A non-licensee who willfully and knowingly possesses a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. *See* ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser crime, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

<sup>9</sup> 18 U.S.C. § 922(q)(2)(A).

prohibition does not apply to a person who is licensed by his or her state to carry a concealed handgun.<sup>10</sup>

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting *students* from possessing firearms at or near schools. This prohibition is also subject to exceptions.<sup>11</sup> The act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”<sup>12</sup>

### **Right to Exclude Anyone Possessing a Firearm**

A religious institution is free to prohibit firearm possession on its property, regardless of whether the property also contains a school. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”<sup>13</sup> The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”<sup>14</sup>

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

Trespassing with a firearm is a third degree felony,<sup>15</sup> punishable by up to 5 years in prison,<sup>16</sup> 5 years of probation, and a fine not to exceed \$5,000.<sup>17</sup>

### **III. Effect of Proposed Changes:**

The bill enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution. The bill also enables a private or religious school to designate a person to carry a firearm on the school’s property. If a school exercises this option, its governing board or body must create policies and procedures the designees must meet.

The bill is effective July 1, 2019.

---

<sup>10</sup> See 18 U.S.C. § 922(q)(2)(B)(ii).

<sup>11</sup> See 20 U.S.C. § 7961.

<sup>12</sup> 20 U.S.C. § 7961(g).

<sup>13</sup> FLA. CONST. art. I, s. 2.

<sup>14</sup> *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

<sup>15</sup> Section 810.08(2)(c), F.S.

<sup>16</sup> Section 775.082(3)(e), F.S.

<sup>17</sup> Section 775.083(1)(c), F.S.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 790.06 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

---

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

---

By Senator Mayfield

17-01433A-19

20191238\_\_

1 A bill to be entitled  
 2 An act relating to the safety of religious  
 3 institutions; amending s. 790.06, F.S.; authorizing a  
 4 church, a synagogue, or other religious institution to  
 5 allow a concealed weapons or concealed firearms  
 6 licensee to carry a firearm on the property of that  
 7 church, synagogue, or other religious institution for  
 8 certain purposes; authorizing a private school or a  
 9 religious school to designate a person to carry a  
 10 firearm on that school's property; requiring the  
 11 governing board or body of such school to create  
 12 certain policies and procedures if it designates such  
 13 person; providing an effective date.  
 14  
 15 Be It Enacted by the Legislature of the State of Florida:  
 16  
 17 Section 1. Subsection (12) of section 790.06, Florida  
 18 Statutes, is amended to read:  
 19 790.06 License to carry concealed weapon or firearm.—  
 20 (12) (a) A license issued under this section does not  
 21 authorize any person to openly carry a handgun or carry a  
 22 concealed weapon or firearm into:  
 23 1. Any place of nuisance as defined in s. 823.05;  
 24 2. Any police, sheriff, or highway patrol station;  
 25 3. Any detention facility, prison, or jail;  
 26 4. Any courthouse;  
 27 5. Any courtroom, except that nothing in this section would  
 28 preclude a judge from carrying a concealed weapon or determining  
 29 who will carry a concealed weapon in his or her courtroom;

Page 1 of 3

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

17-01433A-19

20191238\_\_

30 6. Any polling place;  
 31 7. Any meeting of the governing body of a county, public  
 32 school district, municipality, or special district;  
 33 8. Any meeting of the Legislature or a committee thereof;  
 34 9. Any school, college, or professional athletic event not  
 35 related to firearms;  
 36 10. Any elementary or secondary school facility or  
 37 administration building;  
 38 11. Any career center;  
 39 12. Any portion of an establishment licensed to dispense  
 40 alcoholic beverages for consumption on the premises, which  
 41 portion of the establishment is primarily devoted to such  
 42 purpose;  
 43 13. Any college or university facility unless the licensee  
 44 is a registered student, employee, or faculty member of such  
 45 college or university and the weapon is a stun gun or nonlethal  
 46 electric weapon or device designed solely for defensive purposes  
 47 and the weapon does not fire a dart or projectile;  
 48 14. The inside of the passenger terminal and sterile area  
 49 of any airport, provided that no person shall be prohibited from  
 50 carrying any legal firearm into the terminal, which firearm is  
 51 encased for shipment for purposes of checking such firearm as  
 52 baggage to be lawfully transported on any aircraft; or  
 53 15. Any place where the carrying of firearms is prohibited  
 54 by federal law.  
 55 (b) A person licensed under this section may ~~shall~~ not be  
 56 prohibited from carrying or storing a firearm in a vehicle for  
 57 lawful purposes.  
 58 (c) Notwithstanding any other law, for the purposes of

Page 2 of 3

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17-01433A-19

20191238\_\_

59 safety, security, personal protection, or other lawful purposes:

60 1. A church, a synagogue, or any other religious  
61 institution may authorize a person licensed under this section  
62 to carry a firearm on property owned, rented, leased, borrowed,  
63 or otherwise lawfully used by the church, synagogue, or other  
64 religious institution.

65 2. A private school or a religious school may designate a  
66 person to carry a firearm on the property of that school. If a  
67 private school or a religious school chooses to designate a  
68 person, the governing board or body of that school must create  
69 policies and procedures the designee must meet.

70 (d)(e) This section does not modify the terms or conditions  
71 of s. 790.251(7).

72 (e)(d) Any person who knowingly and willfully violates any  
73 provision of this subsection commits a misdemeanor of the second  
74 degree, punishable as provided in s. 775.082 or s. 775.083.

75 Section 2. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government, *Chair*  
Children, Families, and Elder Affairs, *Vice Chair*  
Appropriations  
Environment and Natural Resources  
Health Policy

SENATOR DEBBIE MAYFIELD  
17th District

March 5, 2019

The Honorable David Simmons  
Chair, Judiciary  
406 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Re: SB 1238

Dear Chair Simmons,

I am respectfully requesting Senate Bill 1238, a bill relating to Safety of Religious Institutions, be placed on the agenda for your Judiciary Committee.

I appreciate your consideration of this bill and I look forward to working with you and the Judiciary Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in cursive script, appearing to read "Debbie Mayfield".

Debbie Mayfield  
State Senator, District 17

Cc: Tom Cibula, Joyce Butler, Valerie Clarke, Carolyn Grzan, Diane Suddes

REPLY TO:

- ☐ 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

BILL GALVANO  
President of the Senate

DAVID SIMMONS  
President Pro Tempore

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/2019

SB-1238

*Meeting Date*

*Bill Number (if applicable)*

Topic Safety of Religious Institutions

*Amendment Barcode (if applicable)*

Name Sheriff Wayne Ivey, Brevard County

Job Title Sheriff

Address 7005 Park Ave.

Phone (321)427-7231

*Street*

Titusville

FL

*City*

*State*

*Zip*

Email

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing The Florida Sheriffs Association

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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3/25/2019

SB-1238

*Meeting Date*

*Bill Number (if applicable)*

Topic Safety of Religious Institutions

*Amendment Barcode (if applicable)*

Name Marion P. Hammer

Job Title \_\_\_\_\_

Address PO Box 1387

Phone 850-222-9518

*Street*

Tallahassee

FL

32302

*City*

*State*

*Zip*

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
*(The Chair will read this information into the record.)*

Representing National Rifle Association & Unified Sportsmen of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

501238

Bill Number (if applicable)

Topic Guns Religious Institutions

Amendment Barcode (if applicable)

Name Liza Buckley

Job Title \_\_\_\_\_

Address 911 Blackwood Ave  
Street

Phone 850-523-0187

Tallahassee, FL  
City

State

32303  
Zip

Email lizambuck@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/19  
Meeting Date

1238  
Bill Number (if applicable)

Topic Guns- Religious Institutions

Amendment Barcode (if applicable)

Name Jamie Ito

Job Title Attorney

Address 411 Wilson Ave

Phone 850 284 9517

Tallahassee FL 32303  
City State Zip

Email jamie.ito@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing \_\_\_\_\_

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/19

Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1238

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Beth Dumond

Job Title Volunteer, Moms Demand Action

Address 6316 Mallard Trace Dr

Street

Phone (850) 284-4057

Tallahassee FL 32312

City

State

Zip

Email edumondbf@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Moms Demand Action

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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## APPEARANCE RECORD

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3-25-19

Meeting Date

1238

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Susan Smith

Job Title \_\_\_\_\_

Address 16111 Vanderbilt DrPhone 813-926-2768

Street

Odessa

State

FL

Zip

33556Email stsmith222@aol.com

City

Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)Representing SelfAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1238

Meeting Date

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Spike Gram

Job Title Concerned Citizen

Address 1808 Chawkebin Nene

Phone

Street

Tallahassee FL

32301

City

State

Zip

Email spikester32309@gmail

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/25/19  
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1238  
Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Angie GARD

Job Title V.P. Education

Address \_\_\_\_\_  
Street

Phone \_\_\_\_\_

City

State

Zip

Email \_\_\_\_\_

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida PTA

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

MARCH 25, 2019  
Meeting Date

SB1238  
Bill Number (if applicable)

Topic safety of Religious Institutions

Amendment Barcode (if applicable)

Name Douglas A. Hahn

Job Title citizen

Address 2076 West Forest Drive  
Street

Phone 436-233-1772

Tallahassee FL 32303-5113  
City State Zip

Email doughahn63301@aol.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: SB 1656

INTRODUCER: Senator Lee

SUBJECT: Amendment of Criminal Statutes

DATE: March 22, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stallard	Cibula	JU	<b>Favorable</b>
2. _____	_____	CJ	_____
3. _____	_____	RC	_____

---

## I. Summary:

SB 1656 creates a savings statute for criminal laws which provides that, unless expressly intended by the Legislature, an amendment, reenactment, or revision of a criminal statute does not affect or abate:

- The prior operation of the statute or any prosecution or enforcement under the statute;
- A violation of the statute based on any act or omission occurring prior to the effective date of the act; or
- A prior penalty, forfeiture, or punishment incurred or imposed under the statute.

In other words, the bill recognizes that the Legislature has the authority to amend criminal statutes in a way that retroactively effects the prosecution or enforcement of a criminal statute or that reduces penalties for prior violations of a statute. However, the bill provides that if the Legislature exercises this authority, it must expressly state its intent to apply an amendment retroactively.

## II. Present Situation:

With the voter's approval of Amendment 11 on the 2018 general election ballot, Florida's constitutional savings clause in Article X, section 9 of the State Constitution was changed as follows:

SECTION 9. Repeal of criminal statutes.—~~Repeal or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed before such repeal.

Accordingly, the constitutional savings clause no longer prohibits statutory amendments that:

- Reduce a punishment for a crime committed before the amendment;
- Affect a prosecution for a crime committed before the amendment; or

- Repeal a punishment for a crime committed before the repeal.

### **Abatement**

The constitutional savings clause first appeared in a Florida Constitution in 1885. Court opinions interpreting the savings clause explain that its purpose was to prevent the repeal or amendment of a criminal statute from automatically nullifying its effect on pending cases.<sup>1</sup> This automatic nullification is sometimes referred to as “abatement.”<sup>2</sup> Accordingly, a savings clause prevents abatement, thus “saving” pending cases from the automatic nullification of a repealed or amended law.<sup>3</sup>

The savings clause appears to have been added to the Constitution to overrule an 1882 opinion by the Florida Supreme Court. In this opinion, the Court nullified a conviction for assault with intent to murder because the assault statute was repealed after the defendant committed the crime but before the prosecution occurred.<sup>4</sup> The fact that the assault statute had been replaced by a similar law made no difference.<sup>5</sup>

### **Remaining Restrictions on Retroactive Application of Amendments to Criminal Statutes**

Though Article X, section 9 of the Florida Constitution no longer prohibits retroactive application of amendments to criminal statutes, several other restrictions on the retroactive application of these amendments remain in place.

#### ***Ex post facto laws are prohibited***

Both the Florida Constitution and the United States Constitution prohibit the passage of an ex post facto law.<sup>6</sup> An ex post facto law would include a law that imposes a new or increased punishment on an act that occurred before the law took effect.<sup>7</sup>

<sup>1</sup> See *State v. Watts*, 558 So. 2d 994, 999 (Fla. 1990) (discussing *Higginbotham v. State*, 19 Fla. 557, 559 (Fla. 1882)).

<sup>2</sup> See generally, *Holiday v. United States*, 683 A.2d 61, 66 (D.C. Cir. 1996).

<sup>3</sup> See *State v. Reininger*, 254 So. 3d 996, 999 (Fla. 4th DCA 2018)

<sup>4</sup> *State v. Watts*, 558 So. 2d 994, 999 (Fla. 1990).

<sup>5</sup> See *Higginbotham v. State*, 19 Fla. 557, 559 (Fla. 1882) (“It has been well settled by repeated decisions that if the law which created the offence is repealed, after the repealing law takes effect no further proceeding can be taken under the law so repealed, and this principle is held to apply to the proceedings in the appellate court upon appeal as well as to the court having original cognizance of the offence, and as well when the repeal took effect after the removal of the cause to the appellate court as before.” (citing *Wall v. State*, 18 Texas 682 (1857)).

<sup>6</sup> See FLA. CONST. art. I, s. 10; U.S. CONST. art. 1, s. 9, cl. 3.

<sup>7</sup> The Florida Supreme Court recently reiterated the 200-year-old categories of ex post facto laws as articulated by the United States Supreme Court:

1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

*Shenfeld v. State* 44 So. 3d 96, 100 (Fla. 2010) (citing *Calder v. Bull*, 3 U.S. 386, 390-91 (1798)).

### ***General Restrictions on Retroactive Application of Statutory Changes***

As the Florida Supreme Court has repeatedly stated,

The general rule is that a substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but that a procedural or remedial statute is to operate retrospectively.<sup>8</sup>

But even when the Legislature has expressly intended a statutory change to apply retroactively, the courts have disallowed it if it impairs vested rights, creates new obligations, or imposes new penalties.<sup>9</sup>

### **Definition of Terms used in the Amended Savings Clause**

The full meaning and effect of the changes to the constitutional savings clause is dependent on the meaning of its key terms. The term “criminal statute” is not defined in the Florida Constitution or in the statutes. However, in the context of the savings clause the Florida Supreme Court has long defined the term “criminal statute” as

an act of the Legislature as an organized body, defining crime, treating of its nature, or providing for its punishment. It is sufficiently broad and comprehensive as to include within its scope and meaning all those acts of the Legislature as an organized body which deal in any way with crime or its punishment.<sup>10</sup>

### **“Amendment” and “Repeal”**

Additionally, the terms “amendment” and “repeal” are not defined in the Florida Constitution or the statutes. Thus, the meaning of these terms is at least somewhat dependent on how they have been defined or described in case law. There, the courts have not always indicated that these words refer to mutually exclusive concepts. In fact, in some cases, the courts seem to use the words as functional equivalents—e.g., an “amendment” that “repealed” a statutory provision.<sup>11</sup> However, the courts do not *always* describe an amendment as a repeal, or as causing a repeal.<sup>12</sup>

---

<sup>8</sup> *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citing *Arrow Air, Inc. v. Walsh*, 645 So.2d 422 (Fla.1994); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla.1994); *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla.1961)); *see generally*, *Smiley v. State*, 966 So. 2d 330 (Fla. 2007) (indicating that these principles apply in the context of criminal law as well as civil law.).

<sup>9</sup> *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citing *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla.1994); *State v. Lavazzoli*, 434 So.2d 321 (Fla.1983); *Seaboard Sys. R.R. v. Clemente*, 467 So.2d 348 (Fla. 3d DCA 1985).

<sup>10</sup> *Washington v. Dowling*, 109 So. 588, 591 (Fla. 1926); *see also*, *Smiley v. State*, 966 So. 2d 330, 337 (Fla. 2007) (reaffirming the definition set forth in *Washington v. Dowling*).

<sup>11</sup> *See, e.g., L. Ross, Inc., v. R.W. Roberts Const. Co., Inc.*, 466 So. 2d 1096 (Fla. 5th DCA 1985) (stating, for example, “the legislative **amendment** of section 627.756, Florida Statutes (1983), which **repealed** the twelve and a half percent limitation on the amount of attorney’s fees recoverable from sureties under section 627.428, increased the substantive statutory obligation of the surety to pay attorney’s fees.” (Emphasis added)); *State v. Richardson*, 915 So. 2d 86 (Fla. 2005) (stating the Legislature had “effectively repealed” a provision when it substantially “amended” a statute and did not include the provision in the amended version.).

<sup>12</sup> *See e.g., Macchione v. State*, 123 So. 3d 114 (Fla. 2013) (describing various amendments to s. 836.10, F.S., including the deletion of language, without describing any of the changes as a repeal).

### **III. Effect of Proposed Changes:**

SB 1656 creates a savings statute for criminal laws which provides that, unless expressly intended by the Legislature, an amendment, reenactment, or revision of a criminal statute does not affect or abate:

- The prior operation of the statute or any prosecution or enforcement under the statute;
- A violation of the statute based on any act or omission occurring prior to the effective date of the act; or
- A prior penalty, forfeiture, or punishment incurred or imposed under the statute.

However, the bill provides that, if the Legislature intends to retroactively apply a reenactment, revision, or amendment of a criminal statute, it may do so by expressly stating its intent in the legislation. However, an amendment, revision, or reenactment of a criminal statute which has the effect of repealing it would likely exceed the Legislature's authority under the constitutional savings clause if the amendment, revision, or repeal affects prosecution for any crime committed before the amendment took effect.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

#### **D. State Tax or Fee Increases:**

None.

#### **E. Other Constitutional Issues:**

None identified.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 775.022 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Lee

20-01376B-19

20191656\_\_

A bill to be entitled

An act relating to amendment of criminal statutes; creating s. 775.022, F.S.; defining the term "criminal statute"; providing that an act of the Legislature which reenacts, revises, or amends a criminal statute may not be considered a repeal under a specified provision of the State Constitution; specifying that the reenactment, revision, or amendment of an existing criminal statute only operates prospectively unless expressly provided otherwise in such an act; providing an effective date.

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

Section 1. Section 775.022, Florida Statutes, is created to read:

775.022 Effect of reenactment, revision, or amendment of criminal statutes.-

(1) As used in this section, the term "criminal statute" means chapters 775-896 and any other law of this state which prohibits an act or omission and provides a criminal penalty, regardless of the degree of the offense.

(2) Any act of the Legislature reenacting, revising, or amending a criminal statute may not be considered a repeal of such statute for purposes of s. 9, Art. X of the State Constitution.

(3) Except as expressly provided in an act of the Legislature, the reenactment, revision, or amendment by law of an existing criminal statute operates prospectively and does not

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

20-01376B-19

20191656\_\_

affect or abate any of the following:

(a) The prior operation of the statute or any prosecution or enforcement thereunder.

(b) Any violation of the statute based on any act or omission occurring prior to the effective date of the act.

(c) Any prior penalty, prior forfeiture, or prior punishment incurred or imposed under the statute.

Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 8, 2019

---

I respectfully request that **Senate Bill #1656**, relating to Amendment of Criminal Statutes, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

A handwritten signature in black ink that reads "Tom Lee". The signature is written in a cursive, flowing style.

---

Senator Tom Lee  
Florida Senate, District 20

## THE FLORIDA SENATE

**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

Meeting Date

1656

Bill Number (if applicable)

Topic Amendment of Criminal Statutes

Amendment Barcode (if applicable)

Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville Road

Street

Tallahassee

City

FL

State

32308

Zip

Phone 850.510.9922Email barney@barneybishop.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Smart Justice AllianceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 11056

Bill Number (if applicable)

Topic Retroactivity

Amendment Barcode (if applicable)

Name LAurette Philipsen

Job Title \_\_\_\_\_

Address 7240 Westwind Dr  
Street

Phone 727-484-0237

Port Richey FL 34668  
City State Zip

Email Disneygramma006 @  
ADL.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing myself & Florida Cares

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

# APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

MARCH 25, 2019  
Meeting Date

SB 1656  
Bill Number (if applicable)

Topic RETROACTIVITY

Amendment Barcode (if applicable)

Name PAUL LEROUX

Job Title \_\_\_\_\_

Address 4765 ARROW DR  
Street

Phone 407-443-1459

ORLANDO FL 32812  
City State Zip

Email XUOREH7@GMAIL.COM

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing FLORIDA CARES CHARITY

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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## THE FLORIDA SENATE

**APPEARANCE RECORD**

3/25/2019

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1656

Meeting DateBill Number (if applicable)Topic Amendment of Criminal StatutesAmendment Barcode (if applicable)Name Matt DunaganJob Title Deputy DirectorAddress 2617 Mahan DrivePhone 850-877-2165StreetTallahasseeFL32308CityStateZipEmail mdunagan@flsheriffs.orgSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Sheriffs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

1656

Bill Number (if applicable)

Topic CRIMINAL STATUTES

Amendment Barcode (if applicable)

Name Bill Cervone

Job Title STATE ATTORNEY - 8 CIR

Address 120 W UNIVERSITY AVE  
Street

Phone 552-374-3686

Gainesville

FL

32601

City

State

Zip

Email cervoneb@sos.fl.gov

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Florida Prosecuting Attorneys Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19  
Meeting Date

1656  
Bill Number (if applicable)

Topic Amendment of Criminal Statutes

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title \_\_\_\_\_

Address 104 S. Monroe Street

Phone 850-425-1344

Street

Tallahassee  
City

FL  
State

32301  
Zip

Email TcgLobby@aol.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing ACLU of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

## THE FLORIDA SENATE

**APPEARANCE RECORD**

3/25/19

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1656

Meeting DateBill Number (if applicable)Topic Amendment of Criminal StatutesAmendment Barcode (if applicable)Name Chief Gary HesterJob Title Government AffairsAddress 2636 Mitcham DrivePhone 850-219-3631StreetTallahasseeFL32308CityStateZipEmail ghester@fpca.comSpeaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Police Chiefs AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

SB 1656

Bill Number (if applicable)

Topic

Amendment to Criminal Statutes

Amendment Barcode (if applicable)

Name

Richard Martin

Job Title

General Counsel, Attorney General

Address

PZ-01 The Capitol

Phone

850-245-0187

Street

Tallahassee

FL

32399

City

State

Zip

Email

richard.martin@

myfloridalegal.com

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Attorney General

Appearing at request of Chair:

☐

Yes

☐

No

Lobbyist registered with Legislature:

☒

Yes

☐

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

9/25/19  
Meeting Date

1656  
Bill Number (if applicable)

Topic Retraction of The Bill

Amendment Barcode (if applicable)

Name Dubin Saldana

Job Title Youth Crime Prevention Coach

Address 5838 Tomoka Dr.  
Street

Phone 305-619-3080

Orlando FL 32838  
City State Zip

Email RuCamp@outlook.com

Speaking: ☐ For ☒ Against ☐ Information

Waive Speaking: ☐ In Support ☒ Against  
(The Chair will read this information into the record.)

Representing Independent

Appearing at request of Chair: ☐ Yes ☐ No      Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1694

INTRODUCER: Senator Flores

SUBJECT: Takings Claims Within Areas of Critical State Concern

DATE: March 22, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2. _____	_____	<u>CA</u>	_____
3. _____	_____	<u>AP</u>	_____

---

**I. Summary:**

SB 1694 provides that the state and the local government located in an area of critical state concern must share equally in judgments if they both are defendants in property rights-related litigation and if:

- The court has found liability against both the state and local government;
- The regulation restricting development or use, which was the basis of the judgment, was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation adopted by the local government restricting development or use, which was the basis of the judgment, was necessary to comply with the guiding principles for the area or other obligations for the area.

**II. Present Situation:**

The adoption of development regulations can impose significant burdens on a property owner's rights. These regulations can be especially significant in areas designated as areas of critical state concern.

**Areas of Critical State Concern**

Areas of critical state concern are designated by the Administration Commission, which is composed of the Governor and Cabinet, following a process set forth in statute.<sup>1</sup> Areas that qualify for designation include only:

An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state

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<sup>1</sup> Section 380.05, F.S.

or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources.<sup>2</sup>

Once designated, the area's land planning regulations must comply with the principles guiding development specified by the Administration Commission which must be approved by the Department of Economic Opportunity.<sup>3</sup>

Several areas have been designated as an area of critical state concern or have had their designations ratified by statute. These areas include the Big Cypress Area,<sup>4</sup> the Green Swamp Area,<sup>5</sup> the Apalachicola Bay Area,<sup>6</sup> and the Florida Keys Area.<sup>7</sup>

With respect to the Florida Keys Area, land planning regulations that are subject to approval by the state must be consistent with the principles of protecting many different natural resources and making affordable housing available.<sup>8</sup> Additionally, these regulations must be consistent with "maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours."<sup>9</sup>

A specific regulation that may form the basis of property rights-related litigation in the Florida Keys Area is the Monroe County Rate of Growth Ordinance.<sup>10</sup> Under this ordinance, Monroe County permits for new residential development are subject to an annual cap of 197 units plus unused allocations from previous years. Additionally, at least 71 but not more than 126 of the 197 permits must be allocated to affordable housing.

According to representatives from Monroe County, the total number of development permits that may be issued in the future is also capped in order to allow for sufficient hurricane evacuation clearance time. As a result, the number of undeveloped lots for which owners may seek development permits exceeds the total number of permits that will ultimately be available. This is expected to provide the impetus for additional property-rights related litigation when the available permits are exhausted in 2023.

### **Informal Agreement for Shared Defense and Liability with the State**

Because the state and the local government in an area designated as an area of critical state concern are involved in the applicable land planning regulations, both the state and the area can be defendants in property-rights based litigation or litigation involving inverse condemnation or takings claims.

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<sup>2</sup> Section 380.05(2), F.S.

<sup>3</sup> Section 380.05(6), F.S.

<sup>4</sup> Section 380.055, F.S.

<sup>5</sup> Section 380.0551, F.S.

<sup>6</sup> Section 380.0555, F.S.

<sup>7</sup> Section 380.0552, F.S.

<sup>8</sup> Section 380.0552(1)(d).

<sup>9</sup> Section 380.0552(9)(a)2., F.S.

<sup>10</sup> Rule 28-20.140(2), F.A.C.

With respect to Monroe County and the Florida Keys Area, the state and Monroe County have been operating under an informal agreement for 14 years to defend against property-rights related litigation and share equally in judgments awarded against them.<sup>11</sup> Judgments in property-rights related litigation arising out of the state-approved Monroe County land development regulations are starting to be entered. And in a judgment provided as an example by Monroe County, the judgment was entered against the county and the state, jointly and severally.<sup>12,13</sup>

### **Eminent Domain and Inverse Condemnation**

In an eminent domain action the government, as the plaintiff, asserts its power to take private property for a public use. In compliance with the United States Constitution, the government must compensate the land owner for the loss.<sup>14</sup> The Florida Constitution similarly states that no private property may be taken except for a public purpose and each owner must be fully compensated.<sup>15</sup> In an inverse condemnation action, however, the government has “taken” private property without the owner’s consent, either through its activities or conduct, and without adequate compensation. Because the government has not adequately compensated the property owner, the property owner is the plaintiff who sues to recover the value of property that has been taken.<sup>16</sup>

There are several forms of takings, one being by regulatory action. In those instances, the trial judge is the trier of all legal and factual issues, except for the issue of what constitutes just compensation for damages.<sup>17</sup> Damages are determined by a jury. For a landowner to be fully compensated, prejudgment interest reaching back to the date of the taking must be permitted.<sup>18</sup> Attorney fees and costs are also recoverable at the trial level and on appeal.<sup>19</sup>

### **Relief from Burdens on Real Property Rights, Chapter 70, F.S.**

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Act” in 1995. The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking

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<sup>11</sup> Correspondence from Jonathan A. Glogau explaining the Monroe County land development regulations and the informal agreement with the state dated March 6, 2019. (On file with the Committee on Judiciary).

<sup>12</sup> *Thomas and Collins v. Monroe County*, Case No. 04-CA-379-M (Fla. 16th Cir. Ct. Feb. 15, 2017)

<sup>13</sup> The Legislature acknowledged in s.7, ch. 2006-223, Laws of Fla., that the state may have some liability for inverse condemnation actions in the Florida Keys Area due to the state’s role in adopting land use regulations for the area as follows:

If the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes.

<sup>14</sup> The Fifth Amendment to the United States Constitution provides “ . . . nor shall private property be taken for public use without just compensation.”

<sup>15</sup> FLA. CONST. art. X, s. 6.

<sup>16</sup> 21 FLA. JUR 2d Eminent Domain, s. 227.

<sup>17</sup> *Id.*, at s. 240.

<sup>18</sup> 21 FLA. JUR 2d Eminent Domain at s. 241.

<sup>19</sup> *Id.*, at s. 242.

under either the State Constitution or the United States Constitution.<sup>20</sup> The act provides a process whereby private landowners may seek relief and recover damages when their property is inordinately burdened by the actions of a government.<sup>21</sup>

### III. Effect of Proposed Changes:

The bill provides that the state and the local government located in an area of critical state concern must share equally in any award of compensation, costs, attorney fees, and prejudgment interest if:

- The court has determined that both the state and the local government are liable;
- The regulation that restricts development or use of the property was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation that restricts development or use of the property adopted by the local government was necessary for the local government to comply with the principles for guiding development established for the area or other obligations of the area under the area of critical state concern designation.

These proceedings must be brought pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act of ch. 70, F.S., a claim for inverse condemnation, or any other property-rights related action when the state is named as a codefendant or a third-party defendant by a local government in an area of critical state concern. A third-party defendant is “brought into a lawsuit by the original defendant”<sup>22</sup> who alleges that the third-party defendant is at fault, or at least partially at fault, for the actions giving rise to the plaintiff’s lawsuit.

The court must enter separate judgments for the apportioned amount against the state and local government, notwithstanding other provisions of law.<sup>23</sup>

A governmental entity named as a judgment debtor<sup>24</sup> is only liable for postjudgment interest<sup>25</sup> on the judgment entered against it. The governmental entity is not liable for postjudgment interest on the judgment entered against the other governmental entity. However, the bill does not prohibit a court from awarding a separate judgment for attorney fees and costs made under these provisions.

The bill takes effect July 1, 2019.

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<sup>20</sup> Section 70.001, F.S.

<sup>21</sup> Amber L. Ketterer and Rafael E. Suarez-Rivas, *The Bert J. Harris, Jr., Private Property Rights Protection Act: An Overview, Recent Developments, and What the Future May Hold*, THE FLORIDA BAR JOURNAL, (Sept./Oct. 2015), <https://www.floridabar.org/the-florida-bar-journal/the-bert-j-harris-jr-private-property-rights-protection-act-an-overview-recent-developments-and-what-the-future-may-hold/>.

<sup>22</sup> BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>23</sup> The bill cites specifically to s. 11.066, F.S., and s. 7, chapter 2006-223. Section 11.066, F.S., provides that the presumption that the state, when exercising its inherent police power, is presumed to be acting to prevent a public harm, but that presumption may be rebutted in a suit seeking monetary damages from the state or a state agency only by clear and convincing evidence to the contrary. Section 7, chapter 2006-223 is discussed above in footnote 13.

<sup>24</sup> A judgment debtor is someone “against whom a money judgment has been entered but not yet satisfied.” BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>25</sup> Postjudgment interest is the amount of interest that a creditor is allowed to collect from a debtor after a judgment is rendered until the date it is paid by the debtor. TheLaw.com Dictionary <https://dictionary.thelaw.com/postjudgment-interest/>.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

No agency analyses have been provided that estimate the fiscal impact of this bill. However, the bill will provide the affected state and local governments with some certainty on their liability in property-rights related litigation in areas of critical state concern.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 380.0501 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Flores

39-01050A-19

20191694\_\_

A bill to be entitled

An act relating to takings claims within areas of critical state concern; creating s. 380.0501, F.S.; providing for the apportionment of awards of damages for takings claims within areas of critical state concern; providing an effective date.

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

Section 1. Section 380.0501, Florida Statutes, is created to read:

380.0501 Apportionment of awards of damages for takings claims within an area of critical state concern.-

(1) In any proceeding brought pursuant to chapter 70, any claim for inverse condemnation, or any other property-rights related action for compensation in which the state is named as a codefendant with a local government located in an area of critical state concern or named as a third-party defendant by a local government located in an area of critical state concern, the court shall require the state and the local government to equally pay any award of compensation, costs, attorney fees, and prejudgment interest to the property owner if:

(a) The court has found liability against both the state and the local government;

(b) The regulation restricting development or use of the property was mandated or approved by the state land planning agency or the Administration Commission under s. 380.05; or

(c) The regulation restricting development or use of the property adopted by the local government was necessary for the

39-01050A-19

20191694\_\_

local government to comply with the principles for guiding development established for the area or other obligations under the area of critical state concern designation.

(2) Notwithstanding s. 11.066 or s. 7, chapter 2006-223, Laws of Florida, the court shall enter separate judgments for the apportioned amount against the state and local government.

(3) A governmental entity named as a judgment debtor in a judgment entered under this section is only liable for postjudgment interest on the judgment entered against it and is not liable for postjudgment interest on the judgment entered against the other governmental entity. This section does not prohibit a court from awarding a separate judgment for attorney fees and costs pursuant to the limitations set forth in this section.

Section 2. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 12, 2019

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I respectfully request that **Senate Bill #1694**, relating to Takings Claims Within Areas of Critical State Concern, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

*Anitere Flores*

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Senator Anitere Flores  
Florida Senate, District 39

March 6, 2019

William Chorba  
General Counsel  
Department of Economic Opportunity  
107 East Madison Street  
Caldwell Building  
Tallahassee, Florida 32399-4120

**Re: Monroe County and State Litigation Partnership**

Dear Mr. Chorba:

I am a recently retired attorney having served in the Office of the Attorney General for over 30 years. My title was Special Counsel, Chief of Complex Litigation for many of those years. One of my many responsibilities was representation of the Department of Community Affairs and then Department of Economic Opportunity in a series of inverse condemnation cases filed against Monroe County and the State beginning in 2004.

After the adoption of the Monroe County 2010 Comprehensive Plan, several groups of landowners filed lawsuits claiming that the adoption of the Plan and the Rate of Growth Ordinance (ROGO) used to implement the Plan denied them all reasonable use of their properties resulting in the government taking those properties. Those suits sought full compensation under the provisions of the Florida Constitution. Initially, those suits were filed against Monroe County. Monroe County was designated under ch. 380, Fla. Stat. as an Area of Critical State Concern. Because of that designation, the Department is responsible for reviewing and approving amendments to the County's comprehensive plans and land development regulations to ensure they are consistent with the state statutory principles that must guide development in the Florida Keys. In addition, the Administration Commission, comprised of the Governor and Cabinet, has authority to adopt and insert provisions into the Monroe County plan.

ROGO is a point-based system used to allocate the limited number of building permits that the State allows Monroe County to issue each year based on

infrastructure and environmental factors. A property owner's ROGO allocation application is scored and the applications with the highest scores are allocated permits for the current year. This limit on permits was enacted to ensure proper evacuation times in the event of a catastrophic hurricane hitting the Keys. Because this is an issue of state concern, the State Administration Commission required the adoption of ROGO.

Because ROGO and other state-mandated regulations were the basis of the inverse condemnation claims, Monroe County brought the State into the early cases as a third-party defendant (the State was then named as a direct defendant by property owners in several cases). When it became apparent that the State was going to be involved in defending these cases, a meeting was convened which included the undersigned, the Secretary and General Counsel of the DCA, a representative of the County Commission, the County Attorney and the County's outside counsel. During that meeting it was agreed by all that the most efficient way to defend these cases was for the County and the State to work together as partners. It was also agreed that if a judgment was ever entered in a landowner's favor, the State and County would each shoulder half the payment. From the State's position, this compromise made sense because, any judgment being joint and several, the State would have had to defend either a contribution/subrogation claim by Monroe County or an attempt by the landowner to seek satisfaction of the entire judgment. The prospect of a favorable outcome (i.e. better than 50/50) against Monroe County in Monroe County seemed slim at the time.

After this meeting, the undersigned and representatives of the DCA met with Gov. Jeb Bush. At that meeting, the situation outlined above was presented to the Governor. After a long discussion, the Governor agreed that a partnership between the County and the State was both an effective way to marshal our defenses and, because the limitations causing the alleged takings were either mandated by or adopted by the state, an equitable division of responsibility.

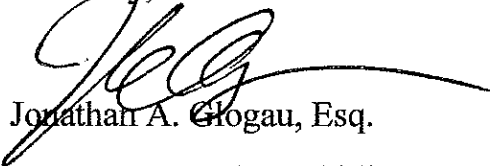
Based on those agreements, the County and State worked diligently as equal partners for over 14 years. This partnership proved successful at both the trial and appellate levels. In *Emmert*, for example, the County and State prevailed against vested rights and inverse condemnation claims relating to red-flag wetland regulations that were compelled by the State. In *Collins*, the County and State prevailed against ROGO-related inverse condemnation claims of nine out of ten plaintiffs (an appeal remains pending on the judgment of liability in favor of

Donald Davis, the tenth Plaintiff). In *Galleon Bay*, the County and State prevailed at the trial level, but the Third District reversed and mandated a finding of a taking. In the subsequent jury trial on compensation, the County and State effectively collaborated to obtain a jury verdict for \$285,000 (almost exactly our appraisal) in the face of a \$3 million claim by the Plaintiff. My understanding is that the Third District affirmed that verdict last month.

It is my belief that the success of the governments in defending these cases forestalled the filing of taking cases on many of the thousands of remaining vacant privately-held lots in Monroe County saving the County and State an incalculable amount of money. By any measure, the agreement between the County and the State has been a great success and, although this agreement has never been reduced to writing, I believe it should continue to be honored.

As I mentioned at the beginning, I am recently retired and living in Tallahassee. I would be happy to speak with representatives of the State or attend a meeting to discuss this matter.

Sincerely,



Jonathan A. Glogau, Esq.

cc: Robert Shillinger  
Monroe County Florida

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/25/2019  
Meeting Date

SB 1694  
Bill Number (if applicable)

Topic Takings Claims Within Areas of Critical State Concern

Amendment Barcode (if applicable)

Name David Migut

Job Title City Attorney - City of Marathon

Address 9805 Overseas Highway  
Street

Phone (305) 289-4130

Marathon FL 33050  
City State Zip

Email migutd@ci.marathon.fl.us

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing City of Marathon

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19

Meeting Date

1694

Bill Number (if applicable)

Topic Takings Cases in the Keys

Amendment Barcode (if applicable)

Name Bob Shillinger

Job Title Monroe County Attorney

Address 1111 12th Street, Suite 408

Street

Key West

City

FL

State

33040

Zip

Phone 305-292-3470

Email shillinger-bob@monroecounty-fl.gov

Speaking: ☒ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Monroe County

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3-25-19

Meeting Date

1694

Bill Number (if applicable)

Topic

7a Kings Cases in the keys

Amendment Barcode (if applicable)

Name

Michelle Coldiron

Job Title

County Commissioner

Address

1111 2th St.

Phone

305 360-7666

Street

Key West

FL 33040

Email

Coldiron-Michelle@monroeCountyFL.gov

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

Waive Speaking:

☒

In Support

☐

Against

(The Chair will read this information into the record.)

Representing

Monroe County

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1742

INTRODUCER: Senator Gainer

SUBJECT: Correctional Facility Employees

DATE: March 22, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u><b>Pre-meeting</b></u>
2. _____	_____	<u>ACJ</u>	_____
3. _____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1742 addresses the problem of employees introducing, possessing, and transmitting contraband, such as cell phones or other communication devices, at correctional institutions. The bill increases the offense of introducing cell phones or other communication devices from a third degree felony to a second degree felony and enhances the offense level one level above the ranking specified in the offense severity ranking chart. The bill also adds the offense of introducing any type of contraband by an employee of a correctional institution to the offenses for which a person may be required to forfeit his or her retirement benefits.

**II. Present Situation:**

**Introduction or Possession of Contraband in a Correctional Institution**

Section 944.47, F.S., prohibits introducing contraband into a state correctional institution, transmitting contraband to an inmate outside the grounds of a state correctional institution, and possessing contraband on the grounds of a state correctional institution.<sup>1</sup> The statute provides that, except through regular channels as authorized by the officer in charge, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any enumerated articles declared to be contraband.

A person commits a third degree felony if the contraband is:

- Any written or recorded communication;
- Currency;
- Food or clothing; or

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<sup>1</sup> A state correctional institution means “any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department.” Section 944.02(8), F.S.

- A cell phone, or other portable communication device such as a pager, laptop, or similar device, intentionally and unlawfully introduced without prior authorization from the officer in charge.

A person commits a second degree felony if the contraband involves:

- An intoxicating beverage;
- A controlled substance as defined in s. 893.02(4), F.S., or similar drug; or
- A firearm, weapon, or explosive substance.

### **Criminal Punishment Code – Offense Severity Ranking Chart**

The Criminal Punishment Code<sup>2</sup> is Florida’s primary sentencing policy. It applies to all felonies, except capital felonies, committed on or after October 1, 1998. Noncapital felonies sentenced under the Code receive an offense severity level ranking from least severe, Level 1 to the most severe, Level 10.<sup>3</sup> Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a drug trafficking offense.<sup>4</sup> The state attorney’s office prepares the scoresheet and presents it to defense counsel for review. The sentencing judge must review the scoresheet for accuracy before signing it.<sup>5</sup>

### **Forfeiture of Retirement Benefits for Committing Specified Offenses**

#### ***Florida Constitution***

The Florida Constitution authorizes the forfeiture of retirement or pension benefits for a public officer or employee who is convicted of a felony. Article II, section 8(d) of the Florida Constitution states that

Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

#### ***Florida Statutes***

The Legislature implemented the constitutional provisions in 1984 by enacting s. 112.3173, F.S., which has often been revised. Section 112.3173(3), F.S., dealing with the forfeiture of retirement benefits, currently states that any public officer or employee who is convicted of a specified offense that was committed before retirement, or who was terminated because of his or her admitted commission, aid, or abetment of one of the specified offenses

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<sup>2</sup> Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

<sup>3</sup> Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

<sup>4</sup> Florida Senate Bill Analysis and Fiscal Impact Statement, *Committee Substitute/Senate Bill 1030*, 2 (March 18, 2019), <http://www.flsenate.gov/Session/Bill/2019/1030/Analyses/2019s01030.cj.PDF>.

<sup>5</sup> Florida Department of Corrections and Office of the State Courts Administrator, *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 5 (2018), [http://www.dc.state.fl.us/pub/sen\\_cpcm/cpc\\_manual.pdf](http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf).

Shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

### ***Specified Offenses***

The specified offenses are:

- Embezzlement of public funds;
- Theft by a public officer or employee from his or her employer;
- Bribery in connection with the employment of a public officer or employee;
- Bribery, unlawful compensation, corruption, official misconduct, disclosure or use of confidential criminal or justice information, and bid tampering as defined in ch. 838, F.S.;
- An impeachable offense;<sup>6</sup>
- A felony offense by a public officer or employee who uses or attempts to use his or her position to obtain a profit, gain, or other advantage; or
- A felony lewd and lascivious offense against a victim younger than 16 years of age or a felony sexual battery against a victim younger than age 18 through the use or attempted use of power or position of the public office or employment position.<sup>7</sup>

## **III. Effect of Proposed Changes:**

### **Penalties for Introducing Contraband**

SB 1742 increases the penalty for introducing, transmitting or attempting to transmit, or possessing a cell phone or other portable communication device intentionally and unlawfully inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge. The term “portable communication device” is defined to cover a variety of communication devices that exist or new technology that is developed for similar purposes. The penalty is increased from a third degree felony to a second degree felony. A third degree felony is punishable by a fine of \$5,000 and imprisonment not to exceed 5 years.<sup>8</sup> A second degree felony is punishable by a fine of \$10,000 and imprisonment not to exceed 15 years.<sup>9</sup>

### **Offenses Committed by Employees**

The bill enhances the penalty for introducing any type of contraband when the offense is committed by an employee who uses his or her position to introduce the contraband into a state correctional institution. The bill increases the offense one level above the ranking specified in the offense severity ranking chart. “Employee” means an employee of the Department of Corrections or a private vendor under contract with the Department of Corrections or the Department of Management Services, and includes persons such as contractors, volunteers, or

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<sup>6</sup> The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal, judges of circuit courts, and judges of county courts are liable to impeachment for committing a misdemeanor in office. FLA. CONST. art. III, s. 17. Public officers are subject to impeachment for violating the Code of Ethics for Public Officers and Employees as well as the ethics provisions in the State Constitution. Section 112.317(1)(a)1., F.S.

<sup>7</sup> Section 112.3173(2)(e), F.S.

<sup>8</sup> Sections 775.083 and 775.082, F.S.

<sup>9</sup> *Id.*

law enforcement officers who are within a state correctional facility to perform a professional service.<sup>10</sup>

#### **Forfeiture of Retirement Benefits**

Finally, the bill includes introducing contraband by an employee at a correctional institution to the list of offenses that may result in the forfeiture of retirement benefits. Adding this provision to the statutes provides a more explicit forfeiture process than is expressed under current law.

The bill takes effect October 1, 2019.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections states that, because it is unknown how many cases could be prosecuted under this bill or what the sentence length might be, the impact on the

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<sup>10</sup> Section 944.115(2)(b), F.S.

prison system is indeterminate at this time.<sup>11</sup> The Criminal Justice Impact Conference adopted estimate is that the bill will have a positive insignificant impact, which is an increase of 10 or fewer prison beds.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 112.3173 and 944.47.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>11</sup> Department of Corrections, *House Bill 41 Agency Legislative Bill Analysis* (Feb. 15, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=27862>.

<sup>12</sup> Criminal Justice Impact Conference, *Narrative Analyses of Adopted Impacts, CS/HB 41* (Updated through Feb. 27, 2019), <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB41.pdf>.

By Senator Gainer

2-01319A-19

20191742\_\_

1 A bill to be entitled  
 2 An act relating to correctional facility employees;  
 3 amending s. 112.3173, F.S.; providing for forfeiture  
 4 of retirement benefits of correctional facility  
 5 employees who commit certain violations; amending s.  
 6 944.47, F.S.; providing enhanced penalties for  
 7 offenses involving introduction of contraband in  
 8 correctional facilities when committed by correctional  
 9 facility employees; providing an effective date.  
 10  
 11 Be It Enacted by the Legislature of the State of Florida:  
 12  
 13 Section 1. Paragraph (e) of subsection (2) of section  
 14 112.3173, Florida Statutes, is amended to read:  
 15 112.3173 Felonies involving breach of public trust and  
 16 other specified offenses by public officers and employees;  
 17 forfeiture of retirement benefits.—  
 18 (2) DEFINITIONS.—As used in this section, unless the  
 19 context otherwise requires, the term:  
 20 (e) "Specified offense" means:  
 21 1. The committing, aiding, or abetting of an embezzlement  
 22 of public funds;  
 23 2. The committing, aiding, or abetting of any theft by a  
 24 public officer or employee from his or her employer;  
 25 3. Bribery in connection with the employment of a public  
 26 officer or employee;  
 27 4. Any felony specified in chapter 838, except ss. 838.15  
 28 and 838.16;  
 29 5. The committing of an impeachable offense;

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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30 6. The committing of any felony by a public officer or  
 31 employee who, willfully and with intent to defraud the public or  
 32 the public agency for which the public officer or employee acts  
 33 or in which he or she is employed of the right to receive the  
 34 faithful performance of his or her duty as a public officer or  
 35 employee, realizes or obtains, or attempts to realize or obtain,  
 36 a profit, gain, or advantage for himself or herself or for some  
 37 other person through the use or attempted use of the power,  
 38 rights, privileges, duties, or position of his or her public  
 39 office or employment position; ~~or~~  
 40 7. The committing on or after October 1, 2008, of any  
 41 felony defined in s. 800.04 against a victim younger than 16  
 42 years of age, or any felony defined in chapter 794 against a  
 43 victim younger than 18 years of age, by a public officer or  
 44 employee through the use or attempted use of power, rights,  
 45 privileges, duties, or position of his or her public office or  
 46 employment position; or  
 47 8. The committing on or after October 1, 2019, of any  
 48 violation described in s. 944.47(2)(b).  
 49 Section 2. Section 944.47, Florida Statutes, is amended to  
 50 read:  
 51 944.47 Introduction, removal, or possession of contraband  
 52 ~~certain articles unlawful; penalty.—~~  
 53 (1)(a) Except through regular channels as authorized by the  
 54 officer in charge of the correctional institution, it is  
 55 unlawful to introduce into or upon the grounds of any state  
 56 correctional institution, or to take or attempt to take or send  
 57 or attempt to send therefrom, any of the following articles  
 58 which are hereby declared to be contraband for the purposes of

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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59 this section, ~~to wit~~:

60 1. Any written or recorded communication or any currency or  
61 coin given or transmitted, or intended to be given or  
62 transmitted, to any inmate of any state correctional  
63 institution.

64 2. Any article of food or clothing given or transmitted, or  
65 intended to be given or transmitted, to any inmate of any state  
66 correctional institution.

67 3. Any intoxicating beverage or beverage which causes or  
68 may cause an intoxicating effect.

69 4. Any controlled substance as defined in s. 893.02(4) or  
70 any prescription or nonprescription drug having a hypnotic,  
71 stimulating, or depressing effect.

72 5. Any firearm or weapon of any kind or any explosive  
73 substance.

74 6. Any cellular telephone or other portable communication  
75 device intentionally and unlawfully introduced inside the secure  
76 perimeter of any state correctional institution without prior  
77 authorization or consent from the officer in charge of such  
78 correctional institution. As used in this subparagraph, the term  
79 "portable communication device" means any device carried, worn,  
80 or stored which is designed or intended to receive or transmit  
81 verbal or written messages, access or store data, or connect  
82 electronically to the Internet or any other electronic device  
83 and which allows communications in any form. Such devices  
84 include, but are not limited to, portable two-way pagers, hand-  
85 held radios, cellular telephones, Blackberry-type devices,  
86 personal digital assistants or PDA's, laptop computers, or any  
87 components of these devices which are intended to be used to

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88 assemble such devices. The term also includes any new technology  
89 that is developed for similar purposes. Excluded from this  
90 definition is any device having communication capabilities which  
91 has been approved or issued by the department for investigative  
92 or institutional security purposes or for conducting other state  
93 business.

94 (b) It is unlawful to transmit or attempt to transmit to,  
95 or cause or attempt to cause to be transmitted to or received  
96 by, any inmate of any state correctional institution any article  
97 or thing declared by this subsection to be contraband, at any  
98 place which is outside the grounds of such institution, except  
99 through regular channels as authorized by the officer in charge  
100 of such correctional institution.

101 (c) It is unlawful for any inmate of any state correctional  
102 institution or any person while upon the grounds of any state  
103 correctional institution to be in actual or constructive  
104 possession of any article or thing declared by this section to  
105 be contraband, except as authorized by the officer in charge of  
106 such correctional institution.

107 (2) (a) A person who violates ~~any provision of~~ this section  
108 as it pertains to an article of contraband described in  
109 subparagraph (1) (a) 1. or subparagraph (1) (a) 2. ~~or subparagraph~~  
110 ~~(1) (a) 6.~~ commits a felony of the third degree, punishable as  
111 provided in s. 775.082, s. 775.083, or s. 775.084. Otherwise in  
112 ~~all other cases,~~ a violation of ~~a provision of~~ this section is  
113 ~~constitutes~~ a felony of the second degree, punishable as  
114 provided in s. 775.082, s. 775.083, or s. 775.084.

115 (b) A violation of this section by an employee, as defined  
116 in s. 944.115(2) (b), who uses or attempts to use the powers,

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117 rights, privileges, duties, or position of his or her employment  
118 in the commission of the violation is ranked one level above the  
119 ranking specified in s. 921.0022 or s. 921.0023 for the offense  
120 committed.

121 Section 3. This act shall take effect October 1, 2019.

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: CS/SB 1200

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Construction Bonds

DATE: March 26, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	<b>Fav/CS</b>
2.			CA	
3.			RC	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1200 increases the amount of information that a subcontractor must provide to a contractor through a Notice of Nonpayment before the subcontractor may initiate a lawsuit for payment from the contractor's payment bond. These notices must further be declared to be true to the best of the subcontractor's knowledge and belief.

Finally, the bill adds contractors to the list of individuals or entities who are entitled to the benefits of a one-way attorney fee statute for prevailing in litigation against a surety that issues a payment or performance bond for a construction project.

**II. Present Situation:**

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors have an interest in receiving payment for their work. Mechanisms that address these interests of property owners and subcontractors are set forth in the construction lien laws in part I of chapter 713, F.S., for private construction contracts and in s. 255.05, F.S., for public construction contracts.

These mechanisms are especially important where many subcontractors who are not in privity with the owner perform work on a construction project. A subcontractor not in privity with the owner has a contract with the contractor or another subcontractor, but no direct contractual

relationship with the owner. As a result, a subcontractor's identity, work, and charges for services might be unknown to the owner or contractor unless he or she complies with the notice requirements of the lien laws.

### **Payment Bonds**

Under the construction lien laws, a subcontractor may record a lien against the property improved as a means of securing payment of any amounts owed by the owner of the property. However, if the contractor provides a payment bond to secure the payment of subcontractors, the subcontractors must make claims against the bond instead of enforcing liens against the improved property.<sup>1</sup>

A payment bond is generally required for public construction contracts and is an option for private construction contracts. These bonds are conditioned on the contractor promptly paying all subcontractors including sub-subcontractors, laborers, and material suppliers who furnish labor, services, or materials under the contractor's contract.

### ***Notices of Commencement***

Payment bonds must be recorded in the official records with the clerk of court along with the Notice of Commencement for the construction project. These documents serve a purpose of informing subcontractors of the identity of the contractor responsible for the construction project and the identity of the surety that issued the payment bond.

### ***Notices to Contractor***

A Notice to Contractor serves a purpose of informing a contractor of the identity of a subcontractor who is not in privity with the contractor. Providing a Notice to Contractor is the first step that a subcontractor must take to preserve rights to make a claim against a payment bond to make its identity and work known to the contractor.

A Notice to Contractor must include a general description of the materials or services that the subcontractor has furnished or will furnish for the construction project and the subcontractor's name and address and a statement that the subcontractor intends to look to the payment bond to secure payment.<sup>2</sup> The notice may be served before the subcontractor begins or within 45 days after beginning to furnish labor, materials, or supplies.

### ***Notices of Nonpayment***

As a next step to preserve rights to make a claim against a payment bond, the subcontractor must serve a Notice of Nonpayment on the contractor and the surety.<sup>3</sup> With respect to public construction contracts, a subcontractor must serve the notice no earlier than 45 days after the first furnishing of labor, services, or materials.<sup>4</sup> With respect to private contracts, a subcontractor is not required to wait any period of time or wait until a payment is delinquent before serving a

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<sup>1</sup> Sections 255.05(1)(c), F.S.; s. 713.23(1)(a), F.S.

<sup>2</sup> Section 255.05(2)(a)2., F.S.; s. 713.23(1)(c), F.S.

<sup>3</sup> Section 255.05(2)(a)2., F.S.; s. 713.23(1)(d), F.S.

<sup>4</sup> Section 255.05(2)(a)2., F.S.

notice of nonpayment, but the notice must be served no later than 90 days after the final furnishing of labor, services, or materials.<sup>5</sup>

The statute relating to payment bonds for private contracts requires a subcontractor to include in a Notice of Nonpayment a description of the labor, services, and materials furnished and the amounts due and unpaid by the contractor.<sup>6</sup> However, the statute relating to payment bonds for public construction projects does not identify any specific information that must be included in a Notice of Nonpayment.

### ***Enforcing and Contesting a Claim Against a Payment Bond***

After serving the Notice of Nonpayment, a subcontractor generally must initiate a lawsuit to enforce a claim against a payment bond within 1 year after the final furnishing of labor, materials, or supplies.<sup>7</sup> However, the contractor may shorten that time period by serving the subcontractor with a Notice of Contest of Claim Against Payment Bond. Once served, the subcontractor must initiate a legal action to enforce the claim against the bond within 60 days.<sup>8</sup>

### **Accountings Under Oath**

A contractor who has furnished a payment bond may demand that a subcontractor filing a Notice to Contractor provide a written accounting made under oath. These accountings require a subcontractor to supply more detailed information about its work and charges than it must supply in a Notice to Contractor or a Notice of Nonpayment. Specifically, this accounting must show the

nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the [subcontractor].<sup>9</sup>

As a consequence of providing a false accounting or failing to timely provide the accounting, a subcontractor loses the right to make a claim against the payment bond.<sup>10</sup>

### **Effects of Errors or Omissions in Required Lien Law Notices**

The construction lien laws generally do not authorize a penalty or sanction for the negligent inclusion or omission of information in the various notices required to perfect liens which have not prejudiced the owner of an improved property or a contractor.

However, the lien laws describe a fraudulent lien as a lien in which a subcontractor willfully exaggerates the amount of the lien or in which the subcontractor willfully includes a claim for

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<sup>5</sup> Section 713.23(1)(d), F.S.

<sup>6</sup> Section 713.23(1)(d), F.S.

<sup>7</sup> Section 255.05(10), F.S.; s. 713.23(1)(e), F.S.

<sup>8</sup> Section 255.05(2)(a)1., F.S.; s. 713.23(1)(e), F.S.

<sup>9</sup> Section 713.16(4), F.S. Except for differences in punctuation, provisions of s. 255.05(8), F.S., which relate to bonds for public construction projects, are identical.

<sup>10</sup> Section 713.16(4), F.S.; s. 255.05(8), F.S.

work not performed upon or materials not furnished.<sup>11</sup> A fraudulent lien also includes a lien in which “the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration.”<sup>12</sup> A person who willfully files a fraudulent lien commits a third degree felony.<sup>13</sup> The statute defining and prohibiting fraudulent liens, however, does not appear to apply to similar fraudulent claims against a payment bond.

### **Attorney Fees in Suits Against a Surety**

Section 627.428, F.S., is a one-way attorney fee statute that requires a court to award attorney fees and costs to an insured or beneficiary who prevails in a lawsuit against an insurer. This statute applies to “owners, subcontractors, laborers, and materialmen” who are deemed to be insureds or beneficiaries in suits against a surety under a performance bond for a construction contract.<sup>14</sup> Absent from the list of individuals entitled to the benefits of the one-way attorney fee statute are contractors. A contractor, however, may have an interest in the completion or performance of a construction contract similar to that of an owner if the contractor requires a subcontractor to secure a performance bond.

## **III. Effect of Proposed Changes:**

### **Notices of Nonpayment (Sections 1 & 4)**

#### ***Requirements for Additional Details***

This bill requires subcontractors who are not in privity, meaning those who do not have a contractual relationship, with a contractor to provide additional details and supporting documentation for the work and services they have provided as a prerequisite to filing a claim against a payment bond.

Specifically, when providing a contractor and surety with a notice of nonpayment, which is the final step before enforcing a claim against a bond, the notice must state the:

- Nature of the labor or services performed;
- Nature of the labor or services to be performed, if known;
- Materials furnished; the materials to be furnished, if known;
- Amount paid on account to date; the amount due; and
- Amount to become due, if known.

#### ***Form Notices of Nonpayment***

The construction lien laws in chapter 713, F.S., supply a form that subcontractors not in privity with a contractor must use for a notice of nonpayment. However, s. 255.05, F.S., which authorizes notices of nonpayment as a prerequisite to claims against a payment bond for a public construction contract, does not contain a form for the notice. The bill supplies a form consistent with the revised requirements for the notice of nonpayment for public construction contracts and similarly revises the existing form for the notices in chapter 713, F.S.

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<sup>11</sup> Section 713.31(2)(a), F.S.

<sup>12</sup> *Id.*

<sup>13</sup> Section 713.31(3), F.S.

<sup>14</sup> Section 627.756(1), F.S.

Additionally, notices of nonpayment must be made under oath and contain this declaration: “I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.”<sup>15</sup>

### ***Fraudulent Notices of Nonpayment***

The bill provides that the service of a fraudulent notice of nonpayment is a complete defense to the claimant’s claim against a bond. The bill defines a fraudulent notice of nonpayment in connection with a payment bond in a manner similar to how a fraudulent lien is described in the construction lien laws in chapter 713, F.S.<sup>16</sup>

As provided in the bill, a notice of nonpayment is fraudulent if a subcontractor willfully exaggerates the amount due, willfully includes a claim for work not performed or materials not furnished for the subject improvement, or prepares the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a notice is not fraudulent because of minor mistakes or errors or a good faith dispute as to the amount due. Moreover, the bill provides that the negligent inclusion or omission of information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim.

### **Suits Against Sureties (Section 2)**

The bill provides that contractors, like owners, subcontractors, laborers, and materialmen under existing law, are entitled to the benefit of the one-way attorney fee statute, s. 627.428, F.S., if they prevail in a lawsuit against a surety under a payment or performance bond.

### **Effective Date and Application (Sections 5&6)**

The bill takes effect on October 1, 2019, and the changes relating to suits by a contractor against a surety will apply to payment or performance bonds issued after the effective date of the bill.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

### **B. Public Records/Open Meetings Issues:**

None.

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<sup>15</sup> A person who is convicted of a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000.

<sup>16</sup> For the specific language describing a fraudulent lien, see s. 713.31(2)(a), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by requiring subcontractors to supply additional details to support a potential claim against a payment bond, may help contractors avoid overpayments to subcontractors. On the other hand, the requirement for more specific information relating to a subcontractor's work and charges will create additional paperwork burdens.

The provision of this bill that gives contractors the benefit of a one-way attorney fee statute in litigation against a surety under a payment or performance bond will help contractors vindicate their rights, but it may encourage additional litigation and result in additional costs to sureties.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 255.05, 627.756, 627.428, and 713.23.

This bill reenacts section 627.428 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Judiciary on March 25, 2019:**

The committee substitute differs from the underlying bill in that it:

- Replaces requirements that notices of nonpayment be verified to be true under penalty of perjury with a requirement that the notices be made under oath and declared to be true to the best of a subcontractor's knowledge and belief.
- Does not include requirements that supporting documentation be attached to a notice of nonpayment.
- Does not include provisions entitling the prevailing party to attorney fees in litigation regarding a claim against a payment bond.
- Does not include changes to the statute governing conditional payment bonds.

**B. Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2019	.	
	.	
	.	
	.	

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The Committee on Judiciary (Stargel) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraph (a) of subsection (2) of section  
255.05, Florida Statutes, is amended to read:

255.05 Bond of contractor constructing public buildings;  
form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor,  
services, or materials on a project, a contractor or the  
contractor's agent or attorney may elect to shorten the time



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within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM  
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ....., and served on the undersigned on ....., ....., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., .....

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is ~~shall be~~ extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45



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41 days after commencing to furnish labor, services, or materials  
42 for the prosecution of the work, serve ~~furnish~~ the contractor  
43 with a written notice that he or she intends to look to the bond  
44 for protection. A claimant who is not in privity with the  
45 contractor and who has not received payment for furnishing his  
46 or her labor, services, or materials shall serve a written  
47 notice of nonpayment on ~~deliver to~~ the contractor and on to the  
48 ~~surety written notice of the performance of the labor or~~  
49 ~~delivery of the materials or supplies and of the nonpayment.~~ The  
50 notice of nonpayment shall be under oath and served during the  
51 progress of the work or thereafter but may not be served earlier  
52 than 45 days after the first furnishing of labor, services, or  
53 materials by the claimant or later than 90 days after the final  
54 furnishing of the labor, services, or materials by the claimant  
55 or, with respect to rental equipment, ~~not~~ later than 90 days  
56 after the date that the rental equipment was last on the job  
57 site available for use. The notice of nonpayment must state the  
58 nature of the labor or services performed; the nature of the  
59 labor or services to be performed, if known; the materials  
60 furnished; the materials to be furnished, if known; the amount  
61 paid on account to date; the amount due; and the amount to  
62 become due, if known. All such information given must be current  
63 as of the stated date of the notice. Any notice of nonpayment  
64 served by a claimant who is not in privity with the contractor  
65 which includes sums for retainage must specify the portion of  
66 the amount claimed for retainage. An action for the labor,  
67 services, or materials, ~~or supplies~~ may not be instituted  
68 against the contractor or the surety unless the notice to the  
69 contractor and notice of nonpayment have been served, if



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required by this section. Notices required or permitted under this section must ~~shall~~ be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount due, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount due, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of



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a fraudulent notice of nonpayment is a complete defense to the  
claimant's claim against the bond. The notice of nonpayment  
under this subparagraph must be in substantially the following  
form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or  
materials)... for the improvement of the real property  
identified as ...(property description).... The corresponding  
amount now due and unpaid is \$ .....

2. Claimant has been paid on account to date the amount of  
\$ .... for previously furnishing ...(describe labor, service, or  
materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, service,  
or materials)... for this improvement in the future (if known),  
and the corresponding amount expected to become due is \$ ....  
(if known).

I declare that I have read the foregoing Notice of Nonpayment  
and that the facts stated in it are true to the best of my  
knowledge and belief.

DATED on ....., .....

...(signature and address of claimant)...



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STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and  
subscribed before me this .... day of ...., ...(year)..., by  
...(name of signatory)....

...(Signature of Notary Public - State of Florida)...  
...(Print, Type, or Stamp Commissioned Name of Notary  
Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 2. Subsection (1) of section 627.756, Florida  
Statutes, is amended to read:

627.756 Bonds for construction contracts; attorney fees in  
case of suit.—

(1) Section 627.428 applies to suits brought by owners,  
contractors, subcontractors, laborers, and materialmen against a  
surety insurer under payment or performance bonds written by the  
insurer under the laws of this state to indemnify against  
pecuniary loss by breach of a building or construction contract.  
Owners, contractors, subcontractors, laborers, and materialmen  
shall be deemed to be insureds or beneficiaries for the purposes  
of this section.

Section 3. For the purpose of incorporating the amendment  
made by this act to section 627.756, Florida Statutes, in a  
reference thereto, section 627.428, Florida Statutes, is



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reenacted to read:

627.428 Attorney's fee.—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

(2) As to suits based on claims arising under life insurance policies or annuity contracts, no such attorney's fee shall be allowed if such suit was commenced prior to expiration of 60 days after proof of the claim was duly filed with the insurer.

(3) When so awarded, compensation or fees of the attorney shall be included in the judgment or decree rendered in the case.

Section 4. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must ~~is~~ required, as a condition precedent to recovery under the bond, ~~to~~ serve a written notice of nonpayment to the contractor and the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served ~~not~~



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186 later than 90 days after the final furnishing of labor,  
187 services, or materials by the lienor, or, with respect to rental  
188 equipment, later than 90 days after the date the rental  
189 equipment was on the job site and available for use. The notice  
190 of nonpayment must state the nature of the labor or services  
191 performed; the nature of the labor or services to be performed,  
192 if known; the materials furnished; the materials to be  
193 furnished, if known; the amount paid on account to date; the  
194 amount due; and the amount to become due, if known. All such  
195 information given must be current as of the stated date of the  
196 notice. A notice of nonpayment that includes sums for retainage  
197 must specify the portion of the amount claimed for retainage.  
198 The required. ~~A written~~ notice satisfies this condition  
199 precedent with respect to the payment described in the notice of  
200 nonpayment, including unpaid finance charges due under the  
201 lienor's contract, and with respect to any other payments which  
202 become due to the lienor after the date of the notice of  
203 nonpayment. The time period for serving a ~~written~~ notice of  
204 nonpayment shall be measured from the last day of furnishing  
205 labor, services, or materials by the lienor and may ~~shall~~ not be  
206 measured by other standards, such as the issuance of a  
207 certificate of occupancy or the issuance of a certificate of  
208 substantial completion. The failure of a lienor to receive  
209 retainage sums not in excess of 10 percent of the value of  
210 labor, services, or materials furnished by the lienor is not  
211 considered a nonpayment requiring the service of the notice  
212 provided under this paragraph. If the payment bond is not  
213 recorded before commencement of construction, the time period  
214 for the lienor to serve a notice of nonpayment may at the option



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of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount due, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount due, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must ~~may~~ be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)..  
...(name of surety and address)...

The undersigned notifies you that:

1. The lienor ~~he or she~~ has furnished ...(describe labor, services, or materials)...for the improvement of the real



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property identified as ...(property description).... The  
corresponding amount now due and unpaid is \$.....

2. The lienor has been paid on account to date the amount  
of \$.... for previously furnishing ...(describe labor, services,  
or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor,  
service, or materials)... for this improvement in the future (if  
known), and the corresponding amount expected to become due is  
\$.... (if known).

I declare that I have read the foregoing Notice of Nonpayment  
and that the facts stated in it are true to the best of my  
knowledge and belief.

DATED on ....., .....

...(signature and address of lienor)...

STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and  
subscribed before me this .... day of ....., ...(year)...., by  
...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary  
Public)...

Personally Known .... OR Produced Identification ....



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Type of Identification Produced.....

Section 5. The amendments made by this act to s. 627.756, Florida Statutes, apply only to payment or performance bonds issued on or after October 1, 2019.

Section 6. This act shall take effect October 1, 2019.

===== T I T L E   A M E N D M E N T =====

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled  
An act relating to construction bonds; amending s.  
255.05, F.S.; requiring a notice of nonpayment to be  
under oath; requiring the notice to contain certain  
statements; specifying that certain negligent  
inclusions or omissions do not constitute a default  
that operates to default an otherwise valid bond  
claim; specifying that a claimant who serves a  
fraudulent notice of nonpayment forfeits his or her  
rights under a bond; providing that the service of a  
fraudulent notice of nonpayment is a complete defense  
to the claimant's claim against the bond; requiring a  
notice of nonpayment to be in a prescribed form;  
amending s. 627.756, F.S.; providing that a provision  
relating to attorney fees applies to certain suits  
brought by contractors; deeming contractors to be  
insureds or beneficiaries in relation to bonds for  
construction contracts; reenacting s. 627.428, F.S.,



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relating to attorney fees; amending s. 713.23, F.S.;  
requiring a lienor to serve a notice of nonpayment  
under oath to specified entities during a certain  
period of time; requiring a notice of nonpayment to  
contain certain statements; specifying that certain  
negligent inclusions or omissions do not constitute a  
default that operates to default an otherwise valid  
bond claim; specifying that a lienor who serves a  
fraudulent notice of nonpayment forfeits his or her  
rights under the bond; providing that the service of a  
fraudulent notice of nonpayment is a complete defense  
to the lienor's claim against the bond; requiring a  
notice of nonpayment to be in a prescribed form;  
providing applicability; providing an effective date.

By Senator Stargel

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1 A bill to be entitled  
 2 An act relating to construction bonds; amending s.  
 3 255.05, F.S.; requiring a notice of nonpayment to be  
 4 verified; requiring the notice to contain certain  
 5 statements; requiring a claimant to attach certain  
 6 documents to a notice of nonpayment; specifying that a  
 7 claimant who serves a fraudulent notice of nonpayment  
 8 forfeits his or her rights under a bond; providing  
 9 that the service of a fraudulent notice of nonpayment  
 10 is a complete defense to the claimant's claim against  
 11 the bond and entitles the prevailing party to attorney  
 12 fees; requiring a notice of nonpayment to be in a  
 13 prescribed form; amending s. 627.756, F.S.; providing  
 14 that a provision relating to attorney fees applies to  
 15 certain suits brought by contractors; deeming  
 16 contractors to be insureds or beneficiaries in  
 17 relation to bonds for construction contracts;  
 18 reenacting s. 627.428, F.S., relating to attorney  
 19 fees; amending s. 713.23, F.S.; requiring a lienor to  
 20 serve a verified notice of nonpayment to specified  
 21 entities during a certain period of time; requiring a  
 22 notice of nonpayment to contain certain statements;  
 23 requiring a lienor to attach certain documents to a  
 24 notice of nonpayment; specifying that a lienor who  
 25 serves a fraudulent notice of nonpayment forfeits his  
 26 or her rights under the bond; providing that the  
 27 service of a fraudulent notice of nonpayment is a  
 28 complete defense to the lienor's claim against the  
 29 bond and entitles the prevailing party to attorney

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30 fees; requiring a notice of nonpayment to be in a  
 31 prescribed form; amending s. 713.245, F.S.; providing  
 32 that a contractor may record a notice identifying a  
 33 project bond as a conditional payment bond before  
 34 project commencement to make the duty of a surety to  
 35 pay lienors coextensive with the contractor's duty to  
 36 pay; providing that failure to list or record a bond  
 37 as a conditional payment bond does not convert such a  
 38 bond into a common law bond or a bond furnished under  
 39 a specified provision; revising the statement that  
 40 must be included on a conditional payment bond;  
 41 providing applicability; providing an effective date.  
 42  
 43 Be It Enacted by the Legislature of the State of Florida:  
 44  
 45 Section 1. Paragraph (a) of subsection (2) of section  
 46 255.05, Florida Statutes, is amended to read:  
 47 255.05 Bond of contractor constructing public buildings;  
 48 form; action by claimants.—  
 49 (2)(a)1. If a claimant is no longer furnishing labor,  
 50 services, or materials on a project, a contractor or the  
 51 contractor's agent or attorney may elect to shorten the time  
 52 within which an action to enforce any claim against a payment  
 53 bond must be commenced by recording in the clerk's office a  
 54 notice in substantially the following form:  
 55  
 56 NOTICE OF CONTEST OF CLAIM  
 57 AGAINST PAYMENT BOND  
 58

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To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ....., and served on the undersigned on ....., ....., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., .....

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is ~~shall be~~ extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest to the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve ~~furnish~~ the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on ~~deliver to~~ the contractor and on ~~to~~ the

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surety ~~written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment.~~ The notice of nonpayment shall be verified in accordance with s. 92.525 and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, ~~not~~ later than 90 days after the date that the rental equipment was last on the job site available for use. The notice of nonpayment must state the nature of the labor or services performed; the nature of the labor or services to be performed, if known; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known. All such information given must be current as of the stated date of the notice. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. The claimant shall also include, as attachments to the notice of nonpayment, copies of the following documents to substantiate the amount claimed as unpaid in the notice, if such documents exist: the claimant's contract or purchase order and any amendments or change orders directed thereto; invoices, pay requests, bills of lading, delivery receipts, or similar documents, as applicable; and a statement of account reflecting all payments requested and received for the labor, services, or materials. An action for the labor, materials, or supplies may not be instituted against the contractor or the surety unless

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the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section ~~must shall~~ be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety shall be measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount due, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount due, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond, entitling the prevailing

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party to attorney fees under this subparagraph. The notice of nonpayment under this subparagraph must be in substantially the following form:

#### NOTICE OF NONPAYMENT

To: ... (name of contractor and address)...

... (name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ... (describe labor, services, or materials) ... for the improvement of the real property identified as ... (property description) ... The corresponding amount now due and unpaid is \$ ....

2. Claimant has been paid on account to date the amount of \$ .... for previously furnishing ... (describe labor, service, or materials) ... for this improvement.

3. Claimant expects to furnish ... (describe labor, service, or materials) ... for this improvement in the future (if known), and the corresponding amount expected to become due is \$ .... (if known).

Under penalties of perjury, I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true.

DATED on ....., .....

... (signature and address of claimant)...

Section 2. Subsection (1) of section 627.756, Florida

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Statutes, is amended to read:

627.756 Bonds for construction contracts; attorney fees in case of suit.—

(1) Section 627.428 applies to suits brought by owners, contractors, subcontractors, laborers, and materialmen against a surety insurer under payment or performance bonds written by the insurer under the laws of this state to indemnify against pecuniary loss by breach of a building or construction contract. Owners, contractors, subcontractors, laborers, and materialmen shall be deemed to be insureds or beneficiaries for the purposes of this section.

Section 3. Section 627.428, Florida Statutes, is reenacted to read:

627.428 Attorney's fee.—

(1) Upon the rendition of a judgment or decree by any of the courts of this state against an insurer and in favor of any named or omnibus insured or the named beneficiary under a policy or contract executed by the insurer, the trial court or, in the event of an appeal in which the insured or beneficiary prevails, the appellate court shall adjudge or decree against the insurer and in favor of the insured or beneficiary a reasonable sum as fees or compensation for the insured's or beneficiary's attorney prosecuting the suit in which the recovery is had.

(2) As to suits based on claims arising under life insurance policies or annuity contracts, no such attorney's fee shall be allowed if such suit was commenced prior to expiration of 60 days after proof of the claim was duly filed with the insurer.

(3) When so awarded, compensation or fees of the attorney

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shall be included in the judgment or decree rendered in the case.

Section 4. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must ~~is~~ required, as a condition precedent to recovery under the bond, ~~to~~ serve a written notice of nonpayment to the contractor and the surety. The notice must be verified in accordance with s. 92.525 and must be served during the progress of the work or thereafter, but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the lienor or ~~not~~ later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was last on the job site and available for use. The notice of nonpayment must state the nature of the labor or services performed; the nature of the labor or services to be performed, if known; the materials furnished; the materials to be furnished, if known; the amount paid on account to date; the amount due; and the amount to become due, if known. All such information given must be current as of the stated date of the notice. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The lienor must also include, as attachments to the notice of nonpayment, copies of the following documents to substantiate the amount claimed as unpaid in the notice, if such documents

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233 exist: the lienor's contract or purchase order and any  
 234 amendments or change orders directed thereto; invoices, pay  
 235 requests, bills of lading, delivery receipts, or similar  
 236 documents, as applicable; and a statement of account reflecting  
 237 all payments requested and received for the labor, services, or  
 238 materials. The required. A ~~written~~ notice satisfies this  
 239 condition precedent with respect to the payment described in the  
 240 notice of nonpayment, including unpaid finance charges due under  
 241 the lienor's contract, and with respect to any other payments  
 242 which become due to the lienor after the date of the notice of  
 243 nonpayment. The time period for serving a ~~written~~ notice of  
 244 nonpayment shall be measured from the last day of furnishing  
 245 labor, services, or materials by the lienor and ~~may~~ shall not be  
 246 measured by other standards, such as the issuance of a  
 247 certificate of occupancy or the issuance of a certificate of  
 248 substantial completion. The failure of a lienor to receive  
 249 retainage sums not in excess of 10 percent of the value of  
 250 labor, services, or materials furnished by the lienor is not  
 251 considered a nonpayment requiring the service of the notice  
 252 provided under this paragraph. If the payment bond is not  
 253 recorded before commencement of construction, the time period  
 254 for the lienor to serve a notice of nonpayment may at the option  
 255 of the lienor be calculated from the date specified in this  
 256 section or the date the lienor is served a copy of the bond.  
 257 However, the limitation period for commencement of an action on  
 258 the payment bond as established in paragraph (e) may not be  
 259 expanded. A lienor who serves a fraudulent notice of nonpayment  
 260 forfeits his or her rights under the bond. A notice of  
 261 nonpayment is fraudulent if the lienor has willfully exaggerated

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262 the amount due, willfully included a claim for work not  
 263 performed or materials not furnished for the subject  
 264 improvement, or prepared the notice with such willful and gross  
 265 negligence as to amount to a willful exaggeration. However, a  
 266 minor mistake or error in a notice of nonpayment, or a good  
 267 faith dispute as to the amount due, does not constitute a  
 268 willful exaggeration that operates to defeat an otherwise valid  
 269 claim against the bond. The service of a fraudulent notice of  
 270 nonpayment is a complete defense to the lienor's claim against  
 271 the bond, entitling the prevailing party to attorney fees under  
 272 s. 713.29. The notice under this paragraph ~~must~~ may be in  
 273 substantially the following form:

## NOTICE OF NONPAYMENT

274  
 275  
 276  
 277 To ...(name of contractor and address)...  
 278 ...(name of surety and address)...  
 279 The undersigned lienor notifies you that:  
 280 1. The lienor ~~he or she~~ has furnished ...(describe labor,  
 281 services, or materials)...for the improvement of the real  
 282 property identified as ...(property description).... The  
 283 corresponding amount now due and unpaid is \$....  
 284 2. The lienor has been paid on account to date the amount  
 285 of \$.... for previously furnishing ...(describe labor, services,  
 286 or materials)... for this improvement.  
 287 3. The lienor expects to furnish ...(describe labor,  
 288 service, or materials)... for this improvement in the future (if  
 289 known), and the corresponding amount expected to become due is  
 290 \$.... (if known).

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291  
292 Under penalties of perjury, I declare that I have read the  
293 foregoing Notice of Nonpayment and that the facts stated in it  
294 are true.

295  
296 DATED on ....., .....

297  
298 ... (signature and address of lienor)...

299 Section 5. Subsection (1) of section 713.245, Florida  
300 Statutes, is amended to read:

301 713.245 Conditional payment bond.—

302 (1) Notwithstanding any provisions of ss. 713.23 and 713.24  
303 to the contrary, if the contractor's written contractual  
304 obligation to pay lienors is expressly conditioned upon and  
305 limited to the payments made by the owner to the contractor, the  
306 duty of the surety to pay lienors will be coextensive with the  
307 duty of the contractor to pay, if the following provisions are  
308 complied with:

309 (a) The bond is listed in the notice of commencement for  
310 the project as a conditional payment bond and is recorded  
311 together with the notice of commencement for the project before  
312 prior to commencement of the project, or the contractor records  
313 a notice identifying the bond for the project as a conditional  
314 payment bond, with the bond attached, before commencement of the  
315 project. Failure to comply with this paragraph does not convert  
316 a conditional payment bond into a common law bond or into a bond  
317 furnished under s. 713.23.

318 (b) The words "conditional payment bond" are contained in  
319 the title of the bond at the top of the front page.

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320 (c) The bond contains on the front page, capitalized and in  
321 at least 10-point type, the statement: "THIS BOND ONLY COVERS  
322 CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND  
323 LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE  
324 LABOR, SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS  
325 BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR  
326 FILING A CLAIM OF LIEN ON THIS PROJECT."

327 Section 6. The amendments made by this act to ss. 627.756  
328 and 713.245, Florida Statutes, apply only to payment or  
329 performance bonds issued on or after October 1, 2019.

330 Section 7. This act shall take effect October 1, 2019.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Education, *Chair*  
Appropriations  
Education  
Ethics and Elections  
Finance and Tax  
Judiciary  
Rules

**JOINT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**SENATOR KELLI STARGEL**  
22nd District

March 8, 2019

The Honorable David Simmons  
Senate Committee on Judiciary, Chair  
404 Senate Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100  
(850) 487-5009

Dear Chair Simmons:

I respectfully request that SB 1200, related to *Construction Bonds*, be placed on the Judiciary meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Kelli Stargel  
State Senator, District 22

Cc: Tom Cibula/Staff Director  
Joyce Butler/AA

**REPLY TO:**

- ☐ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- ☐ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/25/19  
Meeting Date

Topic Construction Bonds

Name Bruce Kershner

Job Title

Address 231 West Bay Ave.  
Street  
Longwood FL 32750  
City State Zip

Phone 407 830 1882

Email BKershner

Speaking: ☐ For ☐ Against ☒ Information

Waive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing NACM-Improved Construction Practices Committee

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

SB 1200  
Bill Number (if applicable)  
603720  
Amendment Barcode (if applicable)

## THE FLORIDA SENATE

**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/25/2019

1200

Meeting DateBill Number (if applicable)Topic Construction BondsAmendment Barcode (if applicable)Name Warren Husband

Job Title \_\_\_\_\_

Address PO Box 10909Phone (850) 205-9000StreetTallahasseeFL32302CityStateZip

Email \_\_\_\_\_

Speaking: ☒ For ☐ Against ☐ InformationWaive Speaking: ☐ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Securities Industry & Financial Markets AssociationAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

---

Prepared By: The Professional Staff of the Committee on Judiciary

---

BILL: CS/SB 1134

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: March 22, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	<b>Fav/CS</b>
2.	Stallard	Cibula	JU	<b>Favorable</b>
3.			RC	

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1134 authorizes a prosecution for the crime of tampering with an electronic monitoring device to occur in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

Under s. 843.23, F.S., the crime of “tampering with an electronic monitoring device,” includes not only “tampering” with an EMD, but also the intentional and unauthorized:

- Removal, destruction, alteration, damaging, or circumvention of the operation of an EMD worn or used by that person or another person; or
- Request, authorization, or solicitation of a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD.

However, to violate the statute, the use of the EMD must have been ordered by a court or the Florida Commission on Offender Review.

To the extent the bill results in additional prosecutions of this offense, the bill will likely result in an indeterminate positive bed impact (i.e. an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## II. Present Situation:

### Use of Electronic Monitoring in Florida's Criminal Justice System

There are several stages of the criminal justice system in which a court or another authorized entity may order a person to wear an electronic monitoring device (EMD). An EMD is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed. Electronic monitoring systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring.<sup>1</sup> Some of the instances in which a person may be placed on electronic monitoring include:

- A court order allowing the release from custody to a pretrial release program while the defendant awaits trial.<sup>2</sup>
- A judge placing an offender on probation<sup>3</sup> or community control<sup>4</sup> in lieu of or in addition to incarceration.<sup>5</sup>
- Supervision by the Florida Commission on Offender Review.<sup>6</sup>

Section 843.23, F.S., "Tampering with an electronic monitoring device," prohibits several acts in addition to "tampering," including the intentional and unauthorized:

- Removal, destruction, alteration, damaging, or circumvention of the operation of an EMD that must be worn or used by that person or another person; or

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<sup>1</sup> Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October 2014, available at [https://www.ojjdp.gov/mpg/litreviews/Home\\_Confinement\\_EM.pdf](https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf).

<sup>2</sup> Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 1, 2, and 8-9, November 2018, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf>; See also s. 907.041, F.S., which provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with an enumerated dangerous crime.

<sup>3</sup> Section 948.001(8), F.S. Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose. Standard conditions of probation are enumerated in s. 948.03, F.S., and are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

<sup>4</sup> Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

<sup>5</sup> Sections 948.01 and 948.11, F.S. The Florida Department of Corrections (FDC) supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control. FDC, *Introduction to Community Corrections*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 22, 2019).

<sup>6</sup> Section 947.1405(7), (8), and (10), F.S.

- Request, authorization, or solicitation of a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD.

However, for these acts to constitute a violation of this section, the wearing of the EMD must have been ordered by a court or the Florida Commission on Offender Review.<sup>7</sup>

Committing any of these acts is a third degree felony.<sup>8</sup>

### Venue

As provided in the State Constitution, a criminal defendant has a right to be prosecuted in the county where the offense was committed.<sup>9</sup> However, if the county is not known, the Constitution provides that indictment or information may charge venue in two or more counties if the state can prove that the crime was committed in that area.<sup>10</sup> Under these circumstances, “the accused may elect the county in which he or she will be tried.”<sup>11</sup>

As another exception to the general rule on venue for criminal prosecutions, a court may change the venue to protect a defendant’s due process rights to a fair and impartial jury.<sup>12, 13</sup>

Application of the general rule that a defendant be tried where the crime was committed can be complicated if the elements of a crime or resulting harm transcend the boundaries of county. Accordingly, several statutes in ch. 910, F.S., address venue for these crimes and circumstances. For example, a person who:

- Aids, abets, or procures the commission of an offense in another county may be tried in either the county where the aiding, etc., occurred or the county where the crime occurred.<sup>14</sup>
- Counsels, hires, or procures a felony to be committed may be tried in the same county in which the principal felon might be tried.<sup>15</sup>

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<sup>7</sup> Section 843.23(2), F.S.

<sup>8</sup> A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>9</sup> FLA. CONST. art. 1, s. 16(a); s. 910.03(1), F.S.

<sup>10</sup> *See Id.*

<sup>11</sup> *See* s. 910.03(1), F.S.

<sup>12</sup> *See* s. 910.03(2) and (3), F.S.

<sup>13</sup> Additionally, a defendant who is outside the county of the crime may plead guilty or nolo contendere and waive his or her right to trial. *See* s. 910.035, F.S.

<sup>14</sup> Section 910.04, F.S.

<sup>15</sup> Section 910.12, F.S.

- Becomes an accessory after the fact<sup>16</sup> to a felony may be tried in the county in which he or she became an accessory or in any county in which the principal in the first-degree<sup>17</sup> might be tried.<sup>18</sup>
- Commits any acts constituting one offense in two or more counties may be tried in any county in which any of the acts occurred.<sup>19</sup>
- Is in one county and commits an offense in another county may be tried in either county.<sup>20</sup>
- Commits a homicide may be tried in the county in which:
  - The physical contact that causes death occurs; or
  - The death itself occurs.<sup>21</sup>

### III. Effect of Proposed Changes:

CS/SB 1134 authorizes a prosecution for the crime of tampering with an EMD to occur in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

The bill is effective October 1, 2019.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

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<sup>16</sup> Section 777.03, F.S., provides that an “accessory after the fact” means any person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a specified crime. Provisions of the section address specific degrees or types of offenses.

<sup>17</sup> Section 777.011, F.S., provides that “principal in the first degree” means a person who commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed. A principal in the first degree may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

<sup>18</sup> Section 910.13, F.S.

<sup>19</sup> Section 910.05, F.S.

<sup>20</sup> Section 910.06, F.S.

<sup>21</sup> Section 910.09, F.S.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

The bill appears to authorize a prosecutor to choose a venue for an EMD tampering trial which is inconsistent with the constitutional limitations on where a criminal prosecution may occur. Article I, section 16 of the Florida Constitution states that in all criminal prosecutions the accused person has the right to a trial “in the county where the crime was committed,” unless the county is not known. However, even if the county of the crime is not known to the prosecution, it must choose two or more adjacent counties and prove that the crime happened in that area.

The bill permits a prosecutor to try a person accused of tampering with an EMD in any of three places, including “the jurisdiction of the court or authority that entered the order for electronic monitoring,” or the jurisdiction where an EMD is found. However, in a given case, the tampering might not have occurred in either of these places.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill permits the offense of tampering with an EMD to be prosecuted in specified locations. To the extent this provision allows prosecutions of this offense that would otherwise be barred due to lack of jurisdiction, there could be additional persons convicted and sentenced to prison under the bill. However, the bill will likely result in an insignificant positive bed impact (i.e. an increase of 10 or fewer prison beds).<sup>22</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>22</sup> The Office of Economic and Demographic Research (EDR) reports that there were 34 offenders sentenced in FY 2017-18 for tampering with an EMD, four of which were sentenced to prison. Further, EDR provides that the mean sentence length of such offenders is equal to 33.8 months. Email from EDR Staff, Re: SB 1134, March 7, 2019 (on file with the Senate Criminal Justice Committee).

**VIII. Statutes Affected:**

This bill substantially amends section 843.23 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Criminal Justice on March 11, 2019:**

The Committee Substitute changes the effective date to October 1, 2019, and makes technical changes to ensure the language is:

- Consistent throughout with the term “electronic monitoring device.”
- Clear related to the instances of when the offense of tampering with an electronic monitoring device may be prosecuted.

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senator Simmons

591-02889-19

20191134c1

A bill to be entitled

An act relating to electronic monitoring devices; amending s. 843.23, F.S.; specifying the jurisdictions under which certain prohibited acts relating to electronic monitoring devices may be prosecuted; providing an effective date.

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

Section 1. Section 843.23, Florida Statutes, is amended to read:

843.23 Tampering with an electronic monitoring device.—

(1) As used in this section, the term "electronic monitoring device" includes any device that is used to track the location of a person.

(2) It is unlawful for a person to intentionally and without authority:

(a) Remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device that must be worn or used by that person or another person pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review; or

(b) Request, authorize, or solicit a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an electronic monitoring device required to be worn or used pursuant to a court order or pursuant to an order by the Florida Commission on Offender Review.

(3) A violation of this section may be prosecuted in:

(a) The jurisdiction of the court or authority that entered

Page 1 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

591-02889-19

20191134c1

the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;

(b) The jurisdiction where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or

(c) The jurisdiction where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

(4) (3) A person who violates this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Judiciary

**Subject:** Committee Agenda Request

**Date:** March 12, 2019

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I respectfully request that **Senate Bill 1134**, relating to Electronic Monitoring Devices, be placed on the:

- ☐ committee agenda at your earliest possible convenience.
- ☒ next committee agenda.

Thank you,

A handwritten signature in black ink, appearing to read "David Simmons", with a stylized flourish at the end.

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Senator David Simmons  
Florida Senate, District 9

## THE FLORIDA SENATE

**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.25.19

*Meeting Date*

1134

*Bill Number (if applicable)*Topic Electronic Monitoring Devices*Amendment Barcode (if applicable)*Name Barney Bishop IIIJob Title President & CEOAddress 2215 Thomasville RoadPhone 850.510.9922*Street*TallahasseeFL32308Email barney@barneybishop.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)Representing Florida Smart Justice AllianceAppearing at request of Chair: ☐ Yes ☒ NoLobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

03/25/2019

Meeting Date

1134

Bill Number (if applicable)

Topic Tampering with an Electronic Monitoring Device

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Lobbyist

Address 205 S. Adams St.

Street

Phone 931-265-8999

Tallahassee

City

FL

State

32301

Zip

Email lauren@ericksconsultants.com

Speaking: ☐ For ☐ Against ☐ Information

Waive Speaking: ☒ In Support ☐ Against  
(The Chair will read this information into the record.)

Representing Seminole County Sheriffs Office

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

*While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.*

**This form is part of the public record for this meeting.**

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Judiciary

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BILL: SB 1246

INTRODUCER: Senator Wright

SUBJECT: Construction Defects

DATE: March 15, 2019

REVISED: \_\_\_\_\_

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Tulloch	Cibula	JU	<b>Pre-meeting</b>
2. _____	_____	IT	_____
3. _____	_____	RC	_____

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**I. Summary:**

SB 1246 overhauls Chapter 558 and makes court-ordered, non-binding arbitration mandatory in all construction defect cases. In overhauling ch. 58, F.S., the bill does the following:

- Amends the Legislature's findings in s. 558.001, F.S., clarifying that arbitration is not merely an alternative to litigation but is an effective and cost-efficient method of resolving construction defect claims.
- Repeals the pre-suit notice and opportunity to repair requirements set out in ss. 558.003, 558.004, and 558.005, F.S. and removes corresponding definitions in s. 558.002, F.S.
- Creates s. 558.0045, F.S. requiring court-ordered, non-binding arbitration for any action involving a construction defect.

Under the new procedures requiring non-binding arbitration for construction defect claims, although the parties must elect in writing within 30 days whether to be bound by the arbitrator's determination or to pursue a traditional lawsuit concerning any unresolved claims. In either event, the arbitrator or the jury must make specific written findings in determining the monetary award against a party (contractor, sub-contractor, etc.). These findings must relate to the:

- Nature of the defect;
- Amount awarded against each separate party; and
- Reasons the amount is being awarded against that party (including the amount of the award attributable to each party's repair or replacement of its own defective work as well as the cost to repair and replace damage cause to the non-defective work of other parties).

The bill also specifies that it should not be construed as precluding the parties from entering settlement agreements on their claims either before or after the arbitration process.

The bill is effective July 1, 2019.

## II. Present Situation:

### Construction Defect Claims

Florida law defines a construction defect as a deficiency in or arising out of “the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property.”<sup>1</sup> Construction deficiencies may result from:

- Defective material, products, or components used in the construction or remodeling.
- A code violation giving rise to a cause of action pursuant to s. 553.84, F.S.
- Construction design that fails to meet the applicable professional standards of care at the time of governmental approval.
- Construction or remodeling practices that fail to adhere to accepted trade standards, i.e., poor workmanship.

### Alternative Dispute Resolution for Construction Defect Claims: Pre-Suit Notice and Opportunity to Repair

Before a property owner may file a lawsuit asserting a construction defect claim, he or she must first follow the pre-suit notice procedure set out in ch. 558, F.S.<sup>2</sup> The pre-suit notice procedure is meant to act as an alternative dispute resolution method<sup>3</sup> of resolving construction defect claims without resorting to lengthy and expensive traditional litigation.<sup>4</sup> The procedure gives the party responsible for the defect an opportunity to repair it, offer a monetary settlement, or both.<sup>5</sup>

The pre-suit notice procedures require the following steps. Note, the timelines are longer if the property owner is an “association” representing more than 20 parcels.<sup>6</sup>

#### *Step 1 - Notice of Claim<sup>7</sup>*

The property owner’s first step is to serve a written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, and provide a reasonably detailed description and location of the defect and any known damage or loss resulting from the defect. Although a property owner is encouraged to serve the notice of claim within 15 days of the discovery of a defect, a notice of claim must be served at least 60 days before the property owner files legal action, or at least 120 days prior if the property owner is an association.<sup>8</sup>

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<sup>1</sup> Section 558.002(5), F.S.

<sup>2</sup> Section 558.003, F.S. (noting that a lawsuit will be stayed until the claimant has complied with the pre-suit notice procedure).

<sup>3</sup> *Altman Contractors, Inc. v. Crum & Forseter Specialty Ins. Co.*, 232 So. 3d 273, 278 (Fla. 2017). See discussion, *infra*.

<sup>4</sup> Section 558.01, F.S.

<sup>5</sup> Section 558.04(5), F.S.

<sup>6</sup> “Association” means a condominium owners’ association, different types of homeowners’ associations, or association operating a property cooperative. See s. 558.002(2), F.S. (“‘Association’ has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075”).

<sup>7</sup> Section 558.005, F.S. provides statutory “Chapter 558 Notice of Claim” language that may be applicable based on the timeframe of the claim.

<sup>8</sup> Section 558.004(1), F.S.

### ***Step 2 - Reasonable Inspection***

Once the notice of claim is served, the recipient has either 30 days, or 50 days if the property owner is an association, to inspect the property. The purpose of the recipient's inspection is to determine the nature and cause of each alleged construction defect and the extent of any repairs or replacements necessary to remedy each defect.<sup>9</sup>

### ***Step 3 - Settlement Offers***

After inspecting the property, the recipient must decide whether it disputes or agrees there is a defect. In either event, the recipient must inform the owner of the property in writing within 45 days of service after the claim, or 75 days if the owner is an association, whether the recipient: (1) disputes the claim and will not make an offer to repair or settle the claim; (2) agrees there is a defect and offers to either (a) repair the defect, (b) settle the claim by the monetary payment, or (c) settle the claim by a combination of monetary payment and repairs; or (3) agrees there is a defect but makes a conditional offer of insurance proceeds as payment or partial payment to be determined by the recipient's insurer within 30 days.<sup>10</sup>

In the case of an offer contingent on insurance proceeds, notice to the insurer must occur at the same time the property owner is notified of the settlement offer.<sup>11</sup>

If the recipient disputes the claim or fails to respond in writing, the property owner may proceed with a traditional lawsuit. However, if the property owner receives a timely settlement offer, the property owner must serve a written notice accepting or rejecting the offer within 45 days. Any court action will be stayed until the property owner complies with this requirement.<sup>12</sup>

### ***Effects of Pre-Suit Procedure on Lawsuits, Arbitration Clauses, and Insurance Policies***

The pre-suit notice procedure affects **traditional lawsuits** by tolling the applicable statute of limitations once the notice of claim is served, but provides these periods may be extended by stipulation of the parties.<sup>13</sup> Otherwise, the pre-suit notice procedure does not bar, limit, or create any rights, causes of action, or defenses in a traditional legal action.<sup>14</sup>

Additionally, the failure of a recipient of a notice of claim to respond with an offer a settlement is not construed as an admission of liability and is not admissible in a court proceeding as evidence of an admission against the recipient's interest.<sup>15</sup> Finally, if a party fails to provide information requested by another other party (such as design plans, photographs, etc.) during the

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<sup>9</sup> Section 558.004(2), F.S.

<sup>10</sup> Section 558.004(5), (6), F.S.

<sup>11</sup> Section 558.004(5)(e), F.S.

<sup>12</sup> Section 558.004(7), F.S.

<sup>13</sup> Section 558.004(10), F.S. *See also* s. 95.11 F.S. for applicable statute of limitations provision.

<sup>14</sup> Section 558.004(12), F.S.

<sup>15</sup> Section 558.004(9), F.S. *Compare* Fla. R. Civ. P. 1.110(e) (providing that the defendant's failure in an answer or other responsive pleading to deny the claim and allegations in a complaint filed in a civil lawsuit may be deemed an admission). *See generally* s. 90.408, F.S. ("Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.").

pre-suit notice period, such failure may result in sanctions for discovery violations if the claim proceeds to trial.<sup>16</sup>

Concerning another form of alternative dispute resolution, **arbitration**,<sup>17</sup> the pre-suit notice procedures control over a conflicting “arbitration clause in a contract for the sale, design, construction, or remodeling of real property.”<sup>18</sup>

Additionally, the pre-suit notice procedure does not relieve any party from complying with its contractual obligations under a **liability insurance policy** as a condition precedent for coverage.<sup>19</sup> Also, a “notice of claim” for purposes of chapter 558, F.S. “shall not constitute a claim for insurance purposes unless the terms of the policy specify otherwise.”<sup>20</sup>

### **The Florida Supreme Court’s Decision in *Altman Contractors v. Crum & Forster Specialty Insurance Company***<sup>21</sup>

The pre-suit notice procedures of chapter 558, F.S., set out above, were recently examined in the case of *Altman Contractors v. Crum & Forster Specialty Insurance Company (Altman)*. In *Altman*, the Florida Supreme Court was asked to review the following question certified by the U.S. Court of Appeals of the Eleventh Circuit:

Is the notice and repair process in chapter 558, F.S., a ‘suit’ within the meaning of the commercial general liability policy issued by C&F to Altman?<sup>22</sup>

The question in *Altman* arose after Altman, the general contractor on a commercial condominium project, was served with multiple notices of claim of construction defects by the property owner, a condominium association. Altman was insured by Crum & Foster Specialty Insurance Company (C&F) “through seven consecutive one-year commercial general liability (CGL) insurance policies, all of which were materially the same.”<sup>23</sup> The policy contained the following clause:

We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.<sup>24</sup>

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<sup>16</sup> Section 558.004(15), F.S.

<sup>17</sup> Discussed further, *infra*.

<sup>18</sup> Section 558.004(14).

<sup>19</sup> Section 558.004(13), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> 232 So. 3d 273 (Fla. 2017).

<sup>22</sup> *Id.* at 274.

<sup>23</sup> *Id.* at 275.

<sup>24</sup> *Id.*

The policy further defined the term “suit” as a “civil proceeding” for damages or injuries covered by the policy. It also provided that the term “suit” included mandatory arbitration proceedings and, with the insurer’s consent, non-mandatory arbitration proceedings; and included “[a]ny other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.”<sup>25</sup>

Based on the policy language, the majority opinion in *Altman* answered the Eleventh Circuit’s question in the affirmative, holding as follows:

[W]e answer the certified question in the affirmative and hold that the notice and repair process set forth in chapter 558 constitutes a “suit” within the meaning of *the commercial general liability policy issued by C & F to Altman*. Although the chapter 558 process does not constitute a “civil proceeding,” it is included in the policy’s definition of “suit” as an “alternative dispute resolution proceeding” to which the insurer’s consent is required to invoke the insurer’s duty to defend the insured.<sup>26</sup>

In reaching this holding, the majority first reasoned that the chapter 558 pre-suit notice procedure did not meet the policy’s initial definition of a “suit” as a “civil proceeding.” The majority looked to the common definition of a “civil proceeding,” which is a mandatory process to adjudicate or enforce rights, regulations, laws, and remedies. Because ch. 558, F.S., does not require that a contractor or other recipient of a notice of claim actually participate in the pre-suit notice procedure, the majority reasoned that the pre-suit notice procedure is not a “civil proceeding” for purposes of the policy’s definition.<sup>27</sup> However, because the policy’s definition of a “suit” includes “any alternative dispute resolution proceeding,” the majority reasoned that the chapter 558 pre-suit notice procedure met the policy’s definition of a “suit” because it explicitly refers to itself as a method of alternative dispute resolution.<sup>28</sup>

Both Justice Lewis, in his concurring opinion, and Justice Lawson, in his opinion concurring in part, dissenting part, pointed out that workmanship (construction) defects are not generally covered by the type of policy at issue in *Altman*, a general commercial liability policy.<sup>29</sup> General commercial liability policies “provide protection for personal injury or for property damage caused by the completed product, but not for the replacement and repair of that product.”<sup>30</sup> Additionally, Justice Lawson pointed out that the pre-suit notice procedures in ch. 558, F.S., does not meet the common definition of a “proceeding” because it does not provide for third-party facilitation of the process, nor does it provide a way to determine damages.<sup>31</sup> Finally, Justice Lawson pointed out that the language of s. 558.004(13), F.S., stating that a notice of claim does not “constitute a claim for insurances purposes” makes it clear that “insurer participation is not intended.”<sup>32</sup> As Justice Lawson explained,

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<sup>25</sup> *Id.*

<sup>26</sup> *Id.* at 279.

<sup>27</sup> *Id.* at 278.

<sup>28</sup> *Id.* at 278.

<sup>29</sup> *Id.* at 279-80, 283.

<sup>30</sup> *Id.* at 279 (quoting *LaMarche v. Shelby Mut. Ins. Co.*, 390 So. 2d 325, 326 (Fla. 1980)(citation omitted).

<sup>31</sup> *Id.* at 284.

<sup>32</sup> *Id.*

To me, this reflects the Legislature’s understanding that the singular type of claim for which it was establishing this process—a construction defect claim—does not generally involve insurance. And, in light of this understanding, the Legislature very carefully drafted the statute so as to exclude from the chapter 558 process secondary claims for personal injury or property damage caused by a construction defect (to which insurance would typically apply). Therefore, the majority construes the statute as applying to a type of claim that the plain language of the statute excludes from the chapter 558 process.<sup>33</sup>

### Implications of the *Altman* Decision

The *Altman* decision has created questions concerning the decision’s impact on the duties of insureds toward insurers in their commercial general liability (CGL) policies. Many of these questions were presented in a recent article in The Florida Bar Journal:

If a Ch. 558 notice of claim is a “suit” for purposes of a CGL policy, is the insured now obligated to notify its insurer each time it receives a Ch. 558 notice of claim? The answer is not clear from the court’s decision, and a wrong guess by an insured could result in a loss of coverage. The court’s opinion, unfortunately, provides no answer.

Assuming an insured provides notice of receipt of a Ch. 558 notice of claim, the immediate impact of the *Altman* decision is to shift the terms of the debate from whether a Ch. 558 notice of claim could *ever* constitute a suit for insurance purposes to a more fact-intensive inquiry. Did the insured provide timely notice to the insurer of the written notice of claim? Did the insurer consent (expressly or by implication) to the insured’s participation in the Ch. 558 process? Did the insured make voluntary payments to resolve the claim for which there is no coverage under the policy? These matters were all contested in the *Altman* case, and are likely to be contested in future cases.<sup>34</sup>

### Arbitration

Arbitration is a form of alternative dispute resolution, permitting the parties to resolve claims and disputes outside the traditional litigation process. When one or more parties submit a dispute to arbitration, the parties’ claims are decided by one or more impartial persons known as arbitrators, who will render a final and potentially binding decision.<sup>35</sup>

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<sup>33</sup> *Id.* at 285.

<sup>34</sup> Reese J. Henderson, Jr., *Altman Contractors, Inc. V. Crum & Forster Specialty Insurance Company: Balancing The Interests Surrounding Potential Insurance Coverage For Ch. 558 Notices Of Claim*, FLA. BAR JOURNAL, Vol. 92, No. 9, p. 11, available at <https://www.floridabar.org/the-florida-bar-journal/altman-contractors-inc-v-crum-forster-specialty-insurance-company-balancing-the-interests-surrounding-potential-insurance-coverage-for-ch-558-notices-of-claim/> (last visited March 14, 2019).

<sup>35</sup> American Arbitration Association, *Arbitration*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019). See also s. 682.011(2), F.S. (defining “arbitrator”).

The advantage of arbitration for the parties is it is quicker and more economical than traditional litigation.<sup>36</sup> Additionally, the arbitrators may have specialized industry knowledge concerning the subject matter of the dispute and, thus, a better understanding of the dispute than a judge or jury.<sup>37</sup> The disadvantage, at least to parties to binding arbitration, is that the parties give up substantial safeguards that litigants in court proceedings enjoy, which may include the discovery process where parties obtain information from one another.<sup>38</sup>

### ***Revised Florida Arbitration Code***

In Florida, arbitration proceedings are governed by the Revised Florida Arbitration Code (FAC).<sup>39</sup> The FAC prescribes a framework governing the rights and procedures under arbitration agreements made on or after July 1, 2013, and applies to all agreements to arbitration as of July 1, 2016.<sup>40</sup> Unless interstate commerce is implicated,<sup>41</sup> the FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, appointment of arbitrators, arbitration hearing process and procedure, entry and enforcement of arbitration awards, and appeals.<sup>42</sup>

### ***Federal Arbitration Act***

Pre-dispute arbitration agreements involving interstate commerce are governed by the Federal Arbitration Act (FAA).<sup>43</sup> The FAA established a federal policy that favors and encourages the use of arbitration to resolve disputes. Due to this federal policy, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power to use in noncommercial consumer contracts.<sup>44</sup>

### ***Mandatory Non-binding Arbitration***

In Florida, a court may “refer any contested civil action filed in a circuit or county court to non-binding arbitration” by either its own motion or the request of the party.<sup>45</sup> Non-binding arbitration is conducted in accordance with Florida Rule of Civil Procedure 1.820 and “provides

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<sup>36</sup> *Id.* See also *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009) (Altenbernd, J., specially concurring) (noting “[a]rbitration was intended to create a speedy and economically efficient dispute resolution process”).

<sup>37</sup> American Arbitration Association, *Vetted National Roster of Arbitrators*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019) (noting that arbitration panels are comprised of “distinguished judges as well as leaders in the legal and business communities with industry-specific knowledge and expertise.”).

<sup>38</sup> Amanda Perwin, *Mandatory Binding Arbitration: Civil Injustice By Corporate America*, White Paper for the Center for Justice & Democracy, No. 13, p. 3 (August 2005), available at <http://centerjd.org/content/white-paper-mandatory-binding-arbitration-civil-injustice-corporate-america> (last visited March 14, 2019).

<sup>39</sup> See ch. 682, F.S. and ch. 2013-232, Laws of Fla., based on the 2000 revision of the Uniform Arbitration Act. The FAC was originally enacted in 1957, ch. 57-402, Laws of Fla., and is based on the 1955 Uniform Arbitration Act (UAA). It was subsequently amended in 1967. See ch. 67-254, Laws of Fla.

<sup>40</sup> Section 682.013, F.S.

<sup>41</sup> *O’Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).

<sup>42</sup> See generally ch. 682, F.S.

<sup>43</sup> See 9 U.S.C.A. ss. 1-16.

<sup>44</sup> Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361, 366 (Fall 2010).

<sup>45</sup> *Contractor’s Mgmt. Sys. of NH, Inc. v. Acree Air Conditioning, Inc.*, 799 So. 2d 320, 321 (Fla. 2d DCA 2001); s. 44.103(2), F.S.

the procedural processes of standard arbitration but with an informal hearing on the dispute's merits and without the finality of a binding decision.”<sup>46</sup>

The Legislature has required non-binding mandatory arbitration in other situations. For example, s. 718.1255, F.S. provides for mandatory non-binding arbitration to resolve disputes between a condominium association board and the unit owners pertaining to issues within the scope of the condominium association's authority.

### III. Effect of Proposed Changes:

SB 1246 overhauls ch. 558, F.S., and requires court-ordered mandatory arbitration in all construction defect cases.

#### *Amended Provisions*

Section 1 amends the Legislature's findings in s. 558.001, F.S., removing less definitive language and clarifying arbitration is not merely an alternative to litigation but an effective and cost-efficient method of resolving construction defect claims.

Section 2 removes three definitions in s. 558.002, F.S.:

- (1) “Association,” which includes, by cross-reference to their statutory definitions, a condominium owners' association, homeowners' associations, and association operating a property cooperative.<sup>47</sup>
- (2) “Completion of building improvement” which means a “certificate of occupancy.”
- (3) “Service” means “delivery by certified mail . . . by hand delivery, or by and courier with written evidence of delivery.”

Although the definition for (1) “association” is deleted by the bill, the definition of a “claimant” remains the same in s. 558.002, F.S., and means “a property owner, including a subsequent purchaser or *association*.”<sup>48</sup> Otherwise, it appears all three definitions are removed because they correspond to the repealed provisions in sections 4, 5, and 6.

#### *Repealed Provisions*

Sections 4, 5, and 6 repeal the current pre-suit notice and opportunity to repair requirements set out in ss. 558.003, 558.004, and 558.005, F.S.

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<sup>46</sup> American Arbitration Association, *Non-binding Arbitration*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019) (stating further that “Non-binding arbitration can be valuable for less complex business-to-business and business-to-consumer disputes where the parties may be too far apart in their viewpoints to mediate or are in need of an evaluation of their respective positions.”).

<sup>47</sup> See s. 558.002(2), F.S. (“‘Association’ has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075”).

<sup>48</sup> Section 558.002(3), F.S. (emphasis added).

***New Provisions***

Section 3 creates s. 558.0045, F.S. which requires court-ordered, mandatory, non-binding arbitration for any action involving a construction defect, including civil lawsuits and arbitration actions.

Procedurally, the bill provides that mandatory, non-binding arbitrations conducted under this section must be conducted in accord with ch. 682, F.S. The time arbitration must be commenced is (1) once all the proper parties have been joined to the action, but (2) no later than 180 days after the action is brought. However, any party joined to the action after 180 days is still subject to mandatory, non-binding arbitration.

The bill also requires that specific findings be made by the fact-finder, be it the arbitrator or a jury in the event the parties opt not to be bound by the arbitrator's determination and pursue a traditional law suit. The fact-finder must make the following specific findings in determining an award against a party (including a contractor, sub-contractor, supplier, of design professional):

- The nature of the defect;
- The amount awarded against each separate party (contractor, sub-contractor, design professionals, and suppliers); and
- The reasons the amount is being awarded against that party, including:
  - The amount attributable to each party's repair or replacement of its own defective work.
  - The amount attributable to the cost to repair and replace damage cause to the non-defective work of other parties.
  - Any other damages awarded against the party.

Although arbitration is mandatory, it is not binding. Each party must elect in writing to be bound by the arbitration award within 30 days after it is rendered. If a party does not agree to be bound by the arbitration award, that party may proceed with a traditional lawsuit on any unresolved portions of the claim.

However, the parties may still settle any claims during the arbitration process. The bill specifically states that it should not be construed to preclude partial settlements and compromises of claims by the parties either before or after arbitration.

Additionally, the bill states that it does not affect the rights and duties of insureds and insurance carriers under their policies. However, the bill provides that subrogation (the insurance company stepping in to defend its insured in arbitration or a lawsuit) applies only to the scope of work by the policy's named insured.

Section 7 provides that the bill is effective July 1, 2019.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

The bill will affect insurers who insure contractors, subcontractors, and others under policies containing similarly written provisions to the one in *Altman Contractors* concerning the duty to provide a defense to a lawsuit. Mandatory, non-binding arbitration meets the definition of a “suit” in the policy provision at issue in *Altman Contractors*, and will trigger the insurance company’s duty to defend the insured when an otherwise covered claim of construction defect is raised by a property owner.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 558.001, 558.002.

This bill creates the following sections of the Florida Statutes: 558.0045.

This bill repeals the following sections of the Florida Statutes: 558.003, 558.004, 558.005.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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By Senator Wright

14-01462A-19

20191246\_\_

A bill to be entitled

An act relating to construction defects; amending s. 558.001, F.S.; revising legislative findings; providing applicability; amending s. 558.002, F.S.; deleting terms; creating s. 558.0045, F.S.; providing applicability; requiring courts to require parties in actions involving construction defects to take part in nonbinding arbitration; providing requirements for the arbitration; requiring an arbitrator to include certain information in his or her award if he or she makes certain findings; authorizing parties to agree to be bound by the arbitration award; authorizing a party that does not agree to be bound by the award to proceed with certain actions; providing construction; requiring a jury verdict and a final judgment to contain specified information in certain proceedings; specifying that claims against certain parties are subject to certain mandatory nonbinding arbitration; providing applicability relating to insureds and insurance carriers; repealing s. 558.003, F.S., relating to action and compliance; repealing s. 558.004, F.S., relating to notice and opportunity to repair; repealing s. 558.005, F.S., relating to contract provisions and applicability; providing an effective date.

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

Section 1. Section 558.001, Florida Statutes, is amended to

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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read:

558.001 Legislative findings and declaration.—The Legislature finds that it is beneficial to have an effective and cost-efficient ~~alternative~~ method to resolve construction disputes that would reduce ~~the need for~~ litigation as well as protect the rights of property owners. An effective alternative dispute resolution mechanism in ~~certain~~ construction defect matters should involve the claimant and the ~~filing a notice of claim with the~~ contractor, subcontractor, supplier, or design professional that the claimant asserts is responsible for the defect, and should provide the claimant and the contractor, subcontractor, supplier, or design professional, and the insurer of the contractor, subcontractor, supplier, or design professional, with an opportunity to resolve the claim through meaningful arbitration of the claim ~~confidential settlement negotiations~~ without resort to extended litigation. This chapter does not preclude resolution of claims through settlement negotiations ~~further legal process~~.

Section 2. Subsections (2), (4), and (9) of section 558.002, Florida Statutes, are amended to read:

558.002 Definitions.—As used in this chapter, the term:

(2) ~~"Association" has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.~~

(4) ~~"Completion of a building or improvement" means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is~~

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**CODING:** Words ~~stricken~~ are deletions; words underlined are additions.

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59 ~~issued, the term means substantial completion of construction,~~  
 60 ~~finishing, and equipping of the building or improvement~~  
 61 ~~according to the plans and specifications.~~

62 ~~(9) "Service" means delivery by certified mail with a~~  
 63 ~~United States Postal Service record of evidence of delivery or~~  
 64 ~~attempted delivery to the last known address of the addressee,~~  
 65 ~~by hand delivery, or by delivery by any courier with written~~  
 66 ~~evidence of delivery.~~

67 Section 3. Section 558.0045, Florida Statutes, is created  
 68 to read:

69 558.0045 Construction defect litigation; special  
 70 requirements.—

71 (1) This section applies to all actions involving  
 72 construction defects, including civil suits and arbitrations.

73 (2) In any action involving construction defects, the court  
 74 shall require that the parties take part in nonbinding  
 75 arbitration. Such arbitration must be conducted in accordance  
 76 with chapter 682, except as otherwise provided in this section.  
 77 The mandatory arbitration must take place once all proper  
 78 parties have been joined in the action, but not later than 180  
 79 days after the action is brought.

80 (3) If the arbitrator finds in favor of a claimant as to  
 81 one or more parties on the construction defect claim, the award  
 82 must include a detailed description of the nature of the defect  
 83 and of the monetary amount awarded against each separate party,  
 84 including the monetary amount of the award attributable to each  
 85 of the following:

86 (a) Repairing or replacing the party's own defective work.

87 (b) Repairing or replacing other nondefective property

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88 damaged by that party's defective work.

89 (c) Other damages being awarded against the party.

90 (4) Any party to the arbitration may agree in writing to be  
 91 bound by the arbitration award as to claims between the parties.  
 92 Such election to be bound must be exercised within 30 days after  
 93 the arbitration award. If a party does not agree to be bound by  
 94 the arbitration award, such party may proceed with the civil  
 95 action on the unresolved portions of the claim. This chapter may  
 96 not be construed to preclude a partial settlement or compromise  
 97 of the claim as agreed to by the parties before or after the  
 98 arbitration.

99 (5) With regard to any parties who do not agree to be bound  
 100 by the arbitration and who proceed to trial in the action, the  
 101 jury verdict and final judgment must include a detailed  
 102 description of the nature of the defect and of the monetary  
 103 amount awarded against each separate party, including the  
 104 monetary amount of the award attributable to each of the  
 105 following:

106 (a) Repairing or replacing the party's own defective work.

107 (b) Repairing or replacing other nondefective property  
 108 damaged by that party's defective work.

109 (c) Other damages being awarded against the party.

110 (6) Any claims against parties joined after the 180-day  
 111 period set forth in subsection (2) are also subject to mandatory  
 112 nonbinding arbitration under subsections (2) and (3).

113 (7) This chapter does not affect the rights and duties of  
 114 insureds and insurance carriers under their policies, but any  
 115 defense, with or without a reservation of rights, provided by an  
 116 insurer to a party, including any party asserting additional

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117 insured status, in proceedings subject to this chapter and in  
118 any action involving a construction defect applies only to the  
119 scope of work of its named insured.

120 Section 4. Section 558.003, Florida Statutes, is repealed.

121 Section 5. Section 558.004, Florida Statutes, is repealed.

122 Section 6. Section 558.005, Florida Statutes, is repealed.

123 Section 7. This act shall take effect July 1, 2019.

# CourtSmart Tag Report

**Room:** EL 110

**Case No.:**

**Type:**

**Caption:** Senate Judiciary Committee

**Judge:**

**Started:** 3/25/2019 4:01:56 PM

**Ends:** 3/25/2019 6:00:00 PM **Length:** 01:58:05

4:01:55 PM Meeting called to order by Chair Simmons  
4:01:58 PM Roll call by Administrative Assistant Joyce Butler  
4:02:00 PM Announcement of a quorum is present  
4:02:13 PM Chair Simmons announced to silence all electronic devices.  
4:02:26 PM Chair Simmons stated SB 1742 TP'd  
4:03:49 PM Chair Simmons stated SB 1246 TP'd  
4:05:00 PM Chair Simmons asked to turn to TAB 3 SB 1136 Senator Harrell's bill  
4:05:19 PM SB 1136 presented by Senator Harrell  
4:08:00 PM Chair Simmons asked for speaker cards  
4:08:12 PM Barney Bishop III waives in support  
4:09:30 PM Chair Simmons asked Senator Harrell to close on SB 1136  
4:09:33 PM Senator Harell closes on SB 1136  
4:09:36 PM Chair Simmons asked Joyce to call roll on SB 1136  
4:09:40 PM Joyce called the roll on SB 1136  
4:09:52 PM Chair Simmons stated SB 1136 Reported Favorably  
4:10:00 PM Chair Simmons asked to turn to TAB 1 SB 76 Senator Simpson's bill  
4:10:16 PM CS/CS/SB 76 presented by Senator Simpson  
4:11:00 PM Chair Simmons turned the chair over to Vice-Chair Rodriguez  
4:11:02 PM Senator Simmons presented Substitute Amendment Barcode 524280  
4:15:19 PM Vice-Chair Rodriguez stated the Amendment is adopted  
4:16:24 PM The Delete-all amendment barcode 878202 was replaced by Amendment 524280  
4:16:30 PM Vice-Chair Rodriguez turned the chair back over to the Chair Simmons  
4:17:39 PM Question by Vice-Chair Rodriguez  
4:18:20 PM Response by Senator Simpson  
4:18:52 PM Question by Senator Stargel  
4:18:58 PM Response by Chair Simmons  
4:20:43 PM Speaker Lisa Hurley waives in support  
4:20:54 PM Speaker Mark Merwitzer in support  
4:23:19 PM Speaker Devon West waives in support  
4:23:42 PM Speaker Barney Bishop waives in support  
4:23:50 PM Speaker Danielle Thomas in support  
4:24:57 PM Speaker Keyna Cory in support  
4:25:33 PM Speaker Katie Petros in support  
4:26:08 PM Speaker William Smith waives in support  
4:27:10 PM Speaker Jim Cordero waives in support  
4:27:35 PM Speaker Deborah Lawson waives in support  
4:27:47 PM Speaker Matt Dunagan waives in support  
4:27:55 PM Speaker Debbie Wanincoff  
4:33:09 PM Speaker Mary Lencullen waives in support  
4:33:26 PM Speaker Demetrius DeBranca in support  
4:37:56 PM Speaker Jim Magill waives in support  
4:38:04 PM Speaker Stephen waives in support

4:38:09 PM Speaker Lee Moffitt waives in support  
4:38:17 PM Speaker Chief Gary Hester waives in support  
4:38:27 PM Speaker Jess McCarty waives in support  
4:38:34 PM Speaker Nancy Lawthur waives in support  
4:38:47 PM Speaker Carl McCeiska waives in support  
4:39:01 PM Speaker Becky Alfonso waives in support  
4:39:11 PM Speaker Logan McBaddin waives in support  
4:39:22 PM Speaker Ben Stevens waives in support  
4:39:48 PM Chair Simmons asked was there any debate  
4:39:53 PM Debate by Vice-Chair Rodriguez  
4:39:59 PM Senator Simpson closes on CS/CS/CS/SB 76  
4:41:37 PM Chair Simmons asked Joyce to call the roll on CS/CS/CS/SB 76  
4:41:39 PM Joyce called the roll on CS/CS/CS/SB 76  
4:42:00 PM Chair Simmons stated by your vote CS/CS/CS/SB 76 will be Reported Favorably  
4:42:16 PM Chair Simmons asked to turn to TAB 2 CS/SB 892 by Senator Passidomo  
4:42:35 PM CS/SB 892 presented by Senator Passidomo  
4:45:52 PM Amendment Barcode 632722 presented by Senator Passidomo  
4:46:18 PM Amendment adopted  
4:46:56 PM Amendment Barcode 855672 presented by Senator Passidomo  
4:47:27 PM Amendment adopted  
4:47:42 PM Amendment Barcode 855524 presented by Senator Passidomo  
4:48:00 PM Amendment adopted  
4:48:19 PM Amendment Barcode 813292 presented by Senator Passidomo  
4:48:38 PM Amendment adopted  
4:49:15 PM Speaker Philip Schwartz waives in support  
4:49:32 PM Speaker Stephen Shiver waives in support  
4:49:40 PM Chair Simmons asked Senator Passidomo to close on CS/CS/SB 892  
4:49:58 PM Senator Passidomo closes on CS/CS/SB 892  
4:50:00 PM Chair Simmons asked to turn to TAB 8 Senator Flores to presente SB 1694  
4:50:33 PM Chair Simmons asked Joyce to call the Roll on CS/CS/SB 892  
4:50:50 PM Chair Simmons stated by your vote CS/CS/SB 892 Reported Favorably  
4:51:35 PM SB 1694 presented by Senator Flores  
4:53:25 PM Chair Simmons asked for speaker cards  
4:53:31 PM David Migut waives in support  
4:53:41 PM Bob Shillinger in support  
4:53:57 PM Michelle Coldiron waives in support  
4:54:17 PM Chair Simmons asked Senator Flores to close on SB 1694  
4:54:59 PM Senator Flores closes on SB 1694  
4:55:17 PM Chair Simmons asked Joyce to call the roll on SB 1694  
4:55:20 PM Joyce call the Roll on SB 1694  
4:56:12 PM Chair Simmons stated SB 1694 Reported Favorably  
4:56:18 PM Chair Simmons asked to turn to TAB 5 Senator Gruters to present SB 1188  
4:56:23 PM SB 1188 presented by Senator Gruters  
4:58:30 PM Chair Simmons asked for speaker cards  
4:58:33 PM Barney Bishop III waives in support  
4:59:33 PM Corinne Mixon waives in support  
4:59:47 PM Allison Carvajal waives in support  
5:00:07 PM Bryan Cherry waives in support  
5:00:17 PM Chair Simmons asked Joyce to call roll for SB 1188  
5:00:26 PM Joyce called roll for SB 1188  
5:00:50 PM Chair Simmons stated by your vote SB 1188 Reported Favorably  
5:00:55 PM Chair Simmons asked to turn to TAB 4 SB 762 by Senator Gruters

5:01:01 PM SB 762 presented by Senator Gruters  
5:01:17 PM Chair Simmons stated there is amendment barcode 856104 by Senator Gruters  
5:01:20 PM Amendment Barcode 856104 presented by Senator Gruters  
5:02:17 PM Chair Simmons stated any questions, debate, speaker cards  
5:02:39 PM Lisa Kiel waives in support  
5:03:08 PM Matt Dunaghan waives in support  
5:03:46 PM Chair Simmons asked any objection to the amendment the Amendment adopted  
5:03:50 PM Chair Simmons asked we have a late-filed amendment barcode 918110 by Vice-Chair Rodriguez  
5:04:12 PM Late Filed Amendment Barcode 918110 presented by Senator Rodriguez  
5:05:07 PM Question by Senator Baxley  
5:05:13 PM Response by Senator Rodriguez  
5:05:47 PM Chair Simmons stated without objections the Amendment adopted  
5:05:50 PM Chair Simmons asked fir speaker cards on the bill as amended  
5:06:53 PM Lisa Hurley waives in support  
5:07:15 PM Barney Bishop III waives in support  
5:07:30 PM Chair Simmons asked Joyce to call roll for CS/SB 762  
5:07:37 PM Joyce call Roll for CS/SB 762  
5:07:46 PM Chair Simmons stated by your vote CS/SB 762 Reported Favorably  
5:07:50 PM Chair Simmons asked to turn to TAB 10 SB 1200 by Senator Stargel  
5:08:43 PM SB 1200 presented by Senator Stargel  
5:08:50 PM Chair Simmons stated we have an amendment barcode 603720 by Senator Stargel  
5:09:22 PM Amendment Barcode 603720 presented by Senator Stargel  
5:10:53 PM Chair Simmons asked for questions, debate, speaker cards  
5:11:04 PM Bruce Kershner speaking for information  
5:11:55 PM Chair Simmons stated the Amendment adopted  
5:12:00 PM Chair Simmons asked for questions, debate, speaker cards of the bill as amended  
5:12:11 PM Warren Husband waives in support  
5:12:15 PM Chair Simmons asked Joyce to call roll on CS/SB 1200  
5:13:03 PM Joyce call Roll on CS/SB 1200  
5:13:15 PM Chair stated by your vote CS/SB 1200 Reported Favorably  
5:13:25 PM Chair Simmons asked to turn to TAB 6 SB 1238 by Senator Mayfield  
5:13:32 PM SB 1238 presented by Senator Mayfield  
5:15:20 PM Chair Simmons asked are there any questions  
5:15:28 PM Question by Vice-Chair Rodriguez  
5:15:37 PM Response by Senator Mayfield  
5:15:56 PM Question by Vice-Chair Rodriguez  
5:16:09 PM Response by Senator Mayfield  
5:17:37 PM Question by Vice-Chair Rodriguez  
5:17:43 PM Response by Senator Mayfield  
5:18:36 PM Question by Senator Hudson  
5:18:41 PM Response by Senator Mayfield  
5:18:50 PM Chair Simmons asked for speaker cards  
5:19:05 PM Sheriff Wayne Ivey in support  
5:20:41 PM Marion Hammer in support  
5:22:41 PM Lisa Buckley waives in opposition  
5:23:00 PM Jamie Ito waives in opposition  
5:23:19 PM Beth Dumond in opposition  
5:28:23 PM Susan Smith waives in opposition  
5:28:38 PM Spike Grom waives in opposition  
5:28:48 PM Angie Gallo in opposition  
5:29:56 PM Douglas Hahn waives in opposition

**5:30:12 PM** Chair Simmons asked are there any debate  
**5:30:16 PM** Debate by Senator Baxley  
**5:35:35 PM** Chair Simmons asked Senator Mayfield to close on SB 1238  
**5:35:41 PM** Senator Mayfield closes on SB 1238  
**5:35:50 PM** Chair Simmons asked Joyce to call roll for SB 1238  
**5:36:00 PM** Joyce call Roll for SB 1238  
**5:36:56 PM** Chair Simmons stated by your vote SB 1238 Reported Favorably  
**5:37:15 PM** Chair Simmons asked to turn to TAB 7 by Senator Lee SB 1656  
**5:37:35 PM** SB 1656 presented by Senator Lee  
**5:39:00 PM** Chair Simmons asked are there any questions  
**5:40:55 PM** Question by Senator Gibson  
**5:42:41 PM** Question by Senator Gibson  
**5:43:42 PM** Response by Senator Lee  
**5:44:17 PM** Chair Simmons asked for speaker cards  
**5:45:03 PM** Barney Bishop III waives in support  
**5:45:20 PM** Speaker Laurette Philipsen in opposition  
**5:48:51 PM** Question by Senator Gibson  
**5:49:04 PM** Response by Speaker Laurette Philipsen  
**5:49:58 PM** Speaker Paul Heroux in opposition  
**5:53:28 PM** Matt Dunagan waives in support  
**5:53:43 PM** Bill Cervone waives in support  
**5:54:02 PM** Pamela Burch Fort waives in opposition  
**5:54:18 PM** Chief Gary Hester waives in support  
**5:54:32 PM** Richard Martin waives in support  
**5:54:44 PM** Speaker Dubin Soldono in opposition  
**5:55:17 PM** Chair Simmons asked for debate  
**5:55:22 PM** Debate by Senator Gibson  
**5:55:52 PM** Debate by Senator Rodriguez  
**5:56:39 PM** Chair Simmons asked Joyce to call roll for SB 1656  
**5:56:48 PM** Joyce call Roll for SB 1656  
**5:57:10 PM** Chair Simmons stated by your vote SB 1656 Reported Favorably  
**5:57:28 PM** Senator Gibson motions to be shown voting affirmative on 1136, no on 76, yes on 892  
**5:58:10 PM** Senator Stargel votes yes on 1136  
**5:58:17 PM** Chair turned the chair over to Vice Chair Rodriguez for TAB 11 by Chair Simmons SB 1134  
**5:58:26 PM** CS/SB 1134 presented by Senator Simmons  
**5:58:30 PM** Vice-Chair Rodriguez ask for questions, debate speaker cards  
**5:59:05 PM** Lauren Jackson waive in support  
**5:59:15 PM** Barney Bishop waives in support  
**5:59:18 PM** Vice-Chair Rodriguez asked Joyce to call roll for SB 1134  
**5:59:21 PM** Joyce call Roll for SB 1134  
**5:59:27 PM** Vice-Chair Rodriguez stated by your vote CS/SB 1134 Reported Favorably  
**5:59:49 PM** Chair Simmons stated no more business before this Committee Senator Stargel move we rise  
**5:59:50 PM** Meeting adjourned