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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/19/2019	.	
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The Committee on Appropriations (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 3902 - 4174

and insert:

directors or shareholders of the corporation; 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,~~



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11 ~~agreements contrary to public policy include, but are not~~  
12 ~~limited to, agreements that reduce the duties of care and~~  
13 ~~loyalty to the corporation as required by ss. 607.0830 and~~  
14 ~~607.0832, exculpate directors from liability that may be imposed~~  
15 ~~under s. 607.0831, adversely affect shareholders' rights to~~  
16 ~~bring derivative actions under s. 607.07401, or abrogate~~  
17 ~~dissenters' rights under ss. 607.1301-607.1320.~~

18 (2) An agreement authorized by this section shall be:

19 (a)1. Set forth or referenced in the articles of  
20 incorporation or bylaws and approved by all persons who are  
21 shareholders at the time the agreement; or

22 2. Set forth in a written agreement that is signed by all  
23 persons who are shareholders at the time of the agreement and  
24 such written agreement is made known to the corporation; and.

25 (b) Subject to termination or amendment only by all persons  
26 who are shareholders at the time of the termination or  
27 amendment, unless the agreement provides otherwise ~~with respect~~  
28 ~~to termination and with respect to amendments that do not change~~  
29 ~~the designation, rights, preferences, or limitations of any of~~  
30 ~~the shares of a class or series.~~

31 (3) The existence of an agreement authorized by this  
32 section shall be noted conspicuously on the front or back of  
33 each certificate for outstanding shares or on the information  
34 statement required with respect to uncertified shares by s.  
35 607.0626(2). If at the time of the agreement the corporation has  
36 shares outstanding which are represented by certificates, the  
37 corporation shall recall such certificates and issue substitute  
38 certificates that comply with this subsection. The failure to  
39 note the existence of the agreement on the certificate or



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40 information statement shall not affect the validity of the  
41 agreement or any action taken pursuant to it. Any purchaser of  
42 shares who, at the time of purchase, did not have knowledge of  
43 the existence of the agreement shall be entitled to rescission  
44 of the purchase. A purchaser shall be deemed to have knowledge  
45 of the existence of the agreement if its existence is noted on  
46 the certificate or information statement for the shares in  
47 compliance with this subsection and, if the shares are not  
48 represented by a certificate, the information statement is  
49 delivered to the purchaser at or before ~~prior to~~ the time of the  
50 purchase of the shares. An action to enforce the right of  
51 rescission authorized by this subsection must be commenced  
52 within the earlier of 90 days after discovery of the existence  
53 of the agreement or 2 years after the time of purchase of the  
54 shares.

55 (4) An agreement authorized by this section shall cease to  
56 be effective when shares of the corporation are registered  
57 pursuant to s. 12 of the Securities Exchange Act of 1934 ~~listed~~  
58 ~~on a national securities exchange or regularly quoted in a~~  
59 ~~market maintained by one or more members of a national or~~  
60 ~~affiliated securities association.~~ If the agreement ceases to be  
61 effective for any reason, the board of directors may, if the  
62 agreement is contained or referred to in the corporation's  
63 articles of incorporation or bylaws, adopt an amendment to the  
64 articles of incorporation or bylaws, without shareholder action,  
65 to delete the agreement and any references to it.

66 (5) An agreement authorized by this section that limits or  
67 restricts the discretion or powers of the board of directors  
68 shall relieve the directors of, and impose upon the person or



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69 persons in whom such discretion or powers are vested, liability  
70 for acts or omissions imposed by law on directors to the extent  
71 that the discretion or powers of the directors are limited by  
72 the agreement.

73 (8) This section does not limit or invalidate agreements  
74 that are otherwise valid or authorized without regard to this  
75 section, including shareholder agreements between or among some  
76 or all of the shareholders or agreements between or among the  
77 corporation and one or more shareholders.

78 Section 72. Section 607.07401, Florida Statutes, is  
79 repealed.

80 Section 73. Section 607.0741, Florida Statutes, is created  
81 to read:

82 607.0741 Standing.—

83 (1) A shareholder may not commence a derivative proceeding  
84 unless the shareholder is a shareholder at the time the action  
85 is commenced and:

86 (a) Was a shareholder when the conduct giving rise to the  
87 action occurred; or

88 (b) Whose status as a shareholder devolved on the person  
89 through transfer or by operation of law from one who was a  
90 shareholder when the conduct giving rise to the action occurred.

91 (2) In ss. 607.0741-607.0747, the term "shareholder" means  
92 a record shareholder, a beneficial shareholder, or an  
93 unrestricted voting trust beneficial owner.

94 Section 74. Section 607.0742, Florida Statutes, is created  
95 to read:

96 607.0742 Complaint; demand and excuse.—A complaint in a  
97 proceeding brought in the right of a corporation must be



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98 verified and allege with particularity:

99 (1) The demand, if any, made to obtain the action desired  
100 by the shareholder from the board of directors; and

101 (2) Either:

102 (a) If such a demand was made, that the demand was refused,  
103 rejected, or ignored by the board of directors prior to the  
104 expiration of 90 days from the date the demand was made;

105 (b) If such a demand was made, why irreparable injury to  
106 the corporation or misapplication or waste of corporate assets  
107 causing material injury to the corporation would result by  
108 waiting for the expiration of a 90-day period from the date the  
109 demand was made; or

110 (c) The reason or reasons the shareholder did not make the  
111 effort to obtain the desired action from the board of directors  
112 or comparable authority.

113 Section 75. Section 607.0743, Florida Statutes, is created  
114 to read:

115 607.0743 Stay of proceedings.—If the corporation commences  
116 an inquiry into the allegations made in the demand or complaint,  
117 the court may stay any derivative proceeding for such period as  
118 the court deems appropriate.

119 Section 76. Section 607.0744, Florida Statutes, is created  
120 to read:

121 607.0744 Dismissal.—

122 (1) A derivative proceeding may be dismissed, in whole or  
123 in part, by the court on motion by the corporation if a group  
124 specified in subsection (2) or subsection (3) has determined in  
125 good faith, after conducting a reasonable inquiry upon which its  
126 conclusions are based, that the maintenance of the derivative



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127 proceeding is not in the best interests of the corporation. In  
128 all such cases, the corporation has the burden of proof  
129 regarding the qualifications, good faith, and reasonable inquiry  
130 of the group making the determination.

131 (2) Unless a panel is appointed pursuant to subsection (3),  
132 the determination required in subsection (1) shall be made by:

133 (a) A majority of qualified directors present at a meeting  
134 of the board of directors if the qualified directors constitute  
135 a quorum; or

136 (b) A majority vote of a committee consisting of two or  
137 more qualified directors appointed by majority vote of qualified  
138 directors present at a meeting of the board of directors,  
139 regardless of whether such qualified directors constitute a  
140 quorum.

141 (3) Upon motion by the corporation, the court may appoint a  
142 panel consisting of one or more disinterested and independent  
143 individuals to make a determination required in subsection (1).

144 (4) This section does not prevent the court from:

145 (a) Enforcing a person's rights under the corporation's  
146 articles of incorporation, bylaws or this chapter, including the  
147 person's rights to information under s. 607.1602; or

148 (b) Exercising its equitable or other powers, including  
149 granting extraordinary relief in the form of a temporary  
150 restraining order or preliminary injunction.

151 Section 77. Section 607.0745, Florida Statutes, is created  
152 to read:

153 607.0745 Discontinuance or settlement; notice.—

154 (1) A derivative action on behalf of a corporation may not  
155 be discontinued or settled without the court's approval.



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156       (2) If the court determines that a proposed discontinuance  
157 or settlement will substantially affect the interest of the  
158 corporation's shareholders or a class, series, or voting group  
159 of shareholders, the court shall direct that notice be given to  
160 the shareholders affected. The court may determine which party  
161 or parties to the derivative action shall bear the expense of  
162 giving the notice.

163       Section 78. Section 607.0746, Florida Statutes, is created  
164 to read:

165       607.0746 Proceeds and expenses.—On termination of the  
166 derivative proceeding the court may:

167       (1) Order the corporation to pay from the amount recovered  
168 in the derivative proceeding by the corporation the plaintiff's  
169 reasonable expenses, including reasonable attorney fees and  
170 costs, incurred in the derivative proceeding if it finds that,  
171 in the derivative proceeding, the plaintiff was successful in  
172 whole or in part; or

173       (2) Order the plaintiff to pay any of the defendant's  
174 reasonable expenses, including reasonable attorney fees and  
175 costs, incurred in defending the proceeding if it finds that the  
176 proceeding was commenced or maintained without reasonable cause  
177 or for an improper purpose.

178       Section 79. Section 607.0747, Florida Statutes, is created  
179 to read:

180       607.0747 Applicability to foreign corporations.—In any  
181 derivative proceeding in the right of a foreign corporation  
182 brought in the courts of this state, the matters covered by ss.  
183 607.0741-607.0747 shall be governed by the laws of the  
184 jurisdiction of incorporation of the foreign corporation except



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185 for ss. 607.0743, 607.0745, and 607.0746.  
186       Section 80. Section 607.0748, Florida Statutes, is created  
187 to read:  
188       607.0748 Shareholder action to appoint custodians or  
189 receivers.-  
190       (1) A circuit court may appoint one or more persons to be  
191 custodians or receivers of and for a corporation in a proceeding  
192 by a shareholder where it is established that:  
193       (a) The directors are deadlocked in the management of the  
194 corporate affairs, the shareholders are unable to break the  
195 deadlock, and irreparable injury to the corporation is  
196 threatened or being suffered; or  
197       (b) The directors or those in control of the corporation  
198 are acting fraudulently and irreparable injury to the  
199 corporation is threatened or being suffered.  
200       (2) The court:  
201       (a) May issue injunctions, appoint one or more temporary  
202 custodians or temporary receivers with all the powers and duties  
203 the court directs, take other action to preserve the corporate  
204 assets wherever located, and carry on the business of the  
205 corporation until a full hearing is held;  
206       (b) Shall hold a full hearing, after notifying all parties  
207 to the proceeding and any interested persons designated by the  
208 court, before appointing a custodian or receiver; and  
209       (c) Has jurisdiction over the corporation and all of its  
210 property, wherever located.  
211       (3) The court may appoint a natural person, a domestic  
212 eligible entity, or a foreign eligible entity authorized to  
213 transact business in this state as a custodian or receiver and





214 may require the custodian or receiver to post bond, with or  
215 without sureties, in an amount the court directs.

216 (4) The court shall describe the powers and duties of the  
217 custodian or receiver in its appointing order, which may be  
218 amended. Among other powers:

219 (a) A custodian may exercise all of the powers of the  
220 corporation, through or in place of its board of directors, to  
221 the extent necessary to manage the business and affairs of the  
222 corporation; and

223 (b) A receiver may dispose of all or any part of the assets  
224 of the corporation, wherever located, at a public or private  
225 sale, if authorized by the court, and may sue and defend in the  
226 receiver's own name as receiver in all courts of this state.

227 (5) During a custodianship, the court may redesignate the  
228 custodian a receiver and, during a receivership, the court may  
229 redesignate the receiver a custodian, in each case if doing so  
230 is in the best interests of the corporation.

231 (6) The court from time to time during the custodianship or  
232 receivership may order compensation paid and expense  
233 disbursements or reimbursements made to any custodian or  
234 receiver from the assets of the corporation or proceeds from the  
235 sale of its assets.

236 Section 81. Section 607.0749, Florida Statutes, is created  
237 to read:

238 607.0749 Provisional director.—

239 (1) In a proceeding by a shareholder, a provisional  
240 director may be appointed in the discretion of the court if it  
241 appears that such action by the court will remedy a situation in  
242 which the directors are deadlocked in the management of the



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243 corporate affairs and the shareholders are unable to break the  
244 deadlock. A provisional director may be appointed  
245 notwithstanding the absence of a vacancy on the board of  
246 directors, and such director shall have all the rights and  
247 powers of a duly elected director, including the right to notice  
248 of and to vote at meetings of directors, until such time as the  
249 provisional director is removed by order of the court or, unless  
250 otherwise ordered by a court, removed by a vote of the  
251 shareholders sufficient either to elect a majority of the board  
252 of directors or, if greater than majority voting is required by  
253 the articles of incorporation or the bylaws, to elect the  
254 requisite number of directors needed to take action. A  
255 provisional director shall be an impartial person who is neither  
256 a shareholder nor a creditor of the corporation or of any  
257 subsidiary or affiliate of the corporation, and whose further  
258 qualifications, if any, may be determined by the court.

259 (2) A provisional director shall report from time to time  
260 to the court concerning the matter complained of, or the status  
261 of the deadlock, if any, and of the status of the corporation's  
262 business, as the court shall direct. No provisional director  
263 shall be liable for any action taken or decision made, except as  
264 directors may be liable under s. 607.0831. In addition, the  
265 provisional director shall submit to the court, if so directed,  
266 recommendations as to the appropriate disposition of the action.  
267 Whenever a provisional director is appointed, any officer or  
268 director of the corporation may, from time to time, petition the  
269 court for instructions clarifying the duties and  
270 responsibilities of such officer or director.

271 (3) In any proceeding under this section, the court shall



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272 allow reasonable compensation to the provisional director for  
273 services rendered and reimbursement or direct payment of  
274 reasonable costs and expenses, which amounts shall be paid by  
275 the corporation.

276 Section 82. Section 607.0750, Florida Statutes, is created  
277 to read:

278 607.0750 Direct action by shareholder.-

279 (1) Subject to subsection (2), a shareholder may maintain a  
280 direct action against another shareholder, officer, director, or  
281 the company to enforce the shareholder's rights and otherwise  
282 protect the shareholder's interests, including rights and  
283 interests under the articles of incorporation, the bylaws or  
284 this chapter or arising independently of the shareholder  
285 relationship.

286 (2) A shareholder maintaining a direct action under this  
287 section must plead and prove either:

288 (a) An actual or threatened injury that is not solely the  
289 result of an injury suffered or threatened to be suffered by the  
290 corporation; or

291 (b) An actual or threatened injury resulting from a  
292 violation of a separate statutory or contractual duty owed by  
293 the alleged wrongdoer to the shareholder, even if the injury is  
294 in whole or in part the same as the injury suffered or  
295 threatened to be suffered by the corporation.

296  
297 ===== T I T L E A M E N D M E N T =====

298 And the title is amended as follows:

299 Delete line 218

300 and insert:



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301 services; creating s. 607.0750, F.S.; authorizing a  
302 shareholder to maintain certain actions against  
303 certain entities; providing requirements for such  
304 actions; amending s. 607.0801, F.S.; making technical