

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**COMMERCE AND TOURISM**  
**Senator Gruters, Chair**  
**Senator Torres, Vice Chair**

**MEETING DATE:** Monday, March 11, 2019  
**TIME:** 1:30—3:30 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Building

**MEMBERS:** Senator Gruters, Chair; Senator Torres, Vice Chair; Senators Hutson, Stewart, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 892</b> Passidomo (Identical 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 ATD AP	Fav/CS Yeas 5 Nays 0
2	<b>SB 1098</b> Lee (Similar H 643)	Sales Tax Refund for Eligible Job Training Organizations; Providing that eligible job training organizations are entitled to receive a refund of a specified percentage of certain sales taxes remitted to the Department of Revenue; requiring such organizations to use the refund only for specified purposes; requiring that refunds be granted on a first-come, first-served basis, etc.  CM     03/11/2019 Favorable FT AP	Favorable Yeas 5 Nays 0
3	<b>SB 1162</b> Gainer (Similar H 191)	Northwest Florida Rural Inland Affected Counties Recovery Fund; Creating the Northwest Florida Rural Inland Affected Counties Recovery Fund within the Department of Economic Opportunity; requiring certain payments to be appropriated annually to the fund; requiring the department to grant awards to organizations and local governments for specified infrastructure projects and workforce programs, etc.  CM     03/11/2019 Temporarily Postponed ATD AP	Temporarily Postponed

**COMMITTEE MEETING EXPANDED AGENDA**

Commerce and Tourism

Monday, March 11, 2019, 1:30—3:30 p.m.

---

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 1112</b> Gruters (Compare S 1412, S 1642)	Taxation; Revising the definition of the term "inventory," for purposes of ad valorem taxation, to include certain rented construction, earthmoving, or industrial equipment; providing that certain marketplace providers are subject to dealer requirements for the registration, collection, and remittance of sales taxes; providing sales tax exemptions on the sale of specified disaster preparedness supplies during a specified timeframe, etc.  CM 03/11/2019 Favorable FT AP	Favorable Yeas 5 Nays 0

---

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.)

---

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

---

BILL: CS/SB 892

INTRODUCER: Committee on Commerce and Tourism and Senator Passidomo

SUBJECT: Business Organizations

DATE: March 11, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			JU	
3.			ATD	
4.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

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 (FRLLC), ch. 605, F.S.

The bill modifies and creates several provisions regarding corporate governance, including, but not limited to the following:

- Modifies the process for the correction of documents filed by a corporation;
- Authorizes articles of incorporation and bylaws to include exclusive forum provisions in limited circumstances;
- Permits proxy access provisions in a corporation’s bylaws;
- Modernizes service of process provisions for corporations;
- Allows remote participation at shareholder meetings;
- Modifies how a vacancy on a corporation’s board of directors is filled;
- Updates provisions regarding shareholder agreements;
- Clarifies the prescribed composition, operation, and authority of boards and committees;
- Reorganizes sections regarding derivative action and indemnification;
- Amends burdens of proof in provisions regarding director conflict of interest;

- Modifies the processes of judicial dissolution of a corporation and appointment of receivers and custodians made in the process thereof;
- Updates and modernizes laws regarding mergers, share exchanges, and conversions;
- Expands statute to allow corporate domestication in additional circumstances;
- Clarifies appraisal rights provisions; and
- Makes conforming changes to mirror the FRLCA 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 promulgates the Model Act, and most recently re-worked the Model Act in its entirety in 2016.<sup>2</sup> The FBCA was last updated as a whole in 1989, and therefore does not best reflect the modern state of corporate law.<sup>3</sup>

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

## III. Effect of Proposed Changes:

### 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 database of records.<sup>4</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 clarify that Part I of ch. 607, F.S., applies generally to corporations.

**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>5</sup> The corporation must state both the fact and the effect

---

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

<sup>2</sup> American Bar Association, *Model Business Corporation Act* (2016), [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. 11, 2019).

<sup>3</sup> Ch. 89-154, Laws of Fla.

<sup>4</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>5</sup> However, a foreign corporation may not make its certificate of authority dependent on extrinsic facts.

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 date and 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;
- Articles of incorporation must take effect no later than 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 signed on behalf of all who filed the underlying document, and must be filed with the Department prior to the effective date of the document that it requests to withdraw. 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.

**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 notice of filing by electronic mail, but limits the form of a notice of filing sent by U.S. mail to a filed copy.

**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 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.

**Section 10** amends s. 607.0127, F.S., to require certified copies of documents to bear the secretary of state's signature, in either original or facsimile form, and 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.

A certificate of status 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.

**Sections 13-15** amend ss. 607.01401-607.0143, F.S., to add definitions for use in ch. 607, F.S.

**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.

**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. **Section 12** amends s. 607.0130, F.S., to make a technical change that eliminates certain express powers of the Department, but does not reduce the Department's authority or power to administer the 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 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.

**Section 23** amends s. 607.0208, F.S., to define an internal corporate claim as any:

- Claim based on a director's, officer's, or shareholder's violation of duty;
- Derivative action or proceeding brought on the corporation's behalf;
- Action that asserts a claim arising pursuant to the articles of incorporation, bylaws, or ch. 607, F.S.;
- Action asserting a claim governed by the internal affairs doctrine.

**Sections 17, 21, and 23** amend ss. 607.0202, 607.0206, and 607.0208, F.S., to allow articles of incorporation and bylaws to include exclusive forum provisions relating to 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, 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** 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.

**Sections 1, 18, 19, and 22** amend ss. 607.0101, 607.0203, 607.0204, and 607.0207, F.S., to make clarifying and conforming changes that do not substantively change existing law.

#### **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.”

**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>6</sup>

**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>7</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.

---

<sup>6</sup> Ch. 98-101, § 15, Laws of Fla.

<sup>7</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** re-designate current law regarding a registered agent's resignation<sup>8</sup> or change of name or address<sup>9</sup> under their own sections—ss. 607.0503 and 607.05031, F.S., respectively.

**Section 35** creates s. 607.05032, F.S., which subjects delivery of notice to the Department to a different standard than that in s. 607.0141, F.S., Notice sent to the Department is not achieved until its actual receipt by the Department. A check sent to the Department is 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, 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>10</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 establish 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." **Section 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. **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, but any shares the corporation holds a fiduciary capacity may not be considered the corporation's property for the purpose of reducing its number of shares.

---

<sup>8</sup> Section 607.0502(2), F.S.

<sup>9</sup> Section 607.0502(3), F.S.

<sup>10</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>11</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** amends ss. 607.0701 and 607.0702, F.S., respectively, to clarify that shareholders may participate in meetings 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. **Section 59** outlines limits on participation in a meeting by remote communication in s. 607.0709, F.S.

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.

---

<sup>11</sup> A "scrip issue," also known as a "bonus issue," is a corporation's offer of free shares to existing shareholders, usually in proportion to their holdings and especially as an alternative to dividend payout. BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014).

### ***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 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 state that shareholders' electronic mail addresses may be excluded from the shareholder list, and remove a \$5,000 civil penalty for the improper sale or distribution of a shareholder's list. The Florida Bar opines that this grants courts judicial discretion in determining a penalty for improper disclosure of the shareholder list.

A shareholder 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 directly 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 an inspector of elections to determine voting results at shareholder meetings. The inspector of elections generally determines the validity and number of votes cast and keeps relevant books and records relating to corporations' shareholders. **Section 64** incorporates the role of an inspector of elections in current 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. Lastly, the

bill deems a determination made by an inspector of elections controlling, but also subjects the decision to de novo review by a court.

**Sections 70 and 71** 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 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 initiated by a shareholder.

**Sections 62, 65-67, and 69** make clarifying changes to ss. 607.0722, 607.0725-607.0728, 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 refuses to bring suit in support thereof.<sup>12</sup> A shareholder may not pursue a derivative action in court before he or she requests that the corporation take specific action. If the corporation refuses to act, or ignores the shareholder's request for at least 90 days, then the shareholder may bring the complaint in a court.

**Sections 72-79** conform Florida's current law regarding shareholder derivative actions, s. 607.07401, F.S., to the style of the Model Act. Additionally, the bill creates ss. 607.0741-607.0747 to:

- 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;
- Allow a shareholder to initiate a derivative action without waiting 90 days for the corporation to respond to his or her demand, if the shareholder is able to prove that such a demand would be futile;
- 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 accordance with the internal affairs doctrine,<sup>13</sup> allow court action as outlined in ss. 607.0743, 607.0745, and 607.0746, F.S., regarding foreign corporations, but ensure the application of their organic law otherwise.

---

<sup>12</sup> Deborah DeMott, *Shareholder Derivative Actions: Law and Practice*, § 1:1 (Nov. 2018)

<sup>13</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).

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

Where harm is threatened to or incurred by a corporation as a result of a deadlock between its directors, or of 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.

**Section 80** creates s. 607.0748, F.S., to permit a shareholder to petition a court to appoint a receiver or custodian to manage a corporation's business and affairs where the directors' activities harm or threaten the corporation. This remedy is limited to instances where the directors are deadlocked in their management of the corporation and the shareholders cannot break the deadlock, or the directors are acting fraudulently. Currently, a shareholder's only resolution to such harm is to seek judicial dissolution of the corporation under s. 607.1430, F.S., pursuant to which a court may also appoint a receiver or custodian.

**Section 81** creates s. 607.0749, F.S., to allow a court to appoint an impartial provisional director to remedy, outside of a judicial dissolution proceeding, a deadlock between directors that cannot be broken by shareholder action. The provisional director is vested with all the powers of an elected director 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 any other qualifications, if any, are set by the corporation's articles of incorporation.

**Section 83** clarifies s. 607.0802, F.S., to distinguish qualifications for nominees for directors from qualifications for current directors. Any qualification that applies expressly to nominees does not apply after the nominee has been appointed or elected to the board; conversely, any qualification prescribed during a director's term of office will not apply until the director has finished his or her term.

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

**Section 90** creates s. 607.08081, F.S., to allow a court acting pursuant to a shareholder derivative proceeding to remove a director where other remedies are inadequate and impracticable. This remedy is limited to cases in which:

- 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.

**Section 91** modifies s. 607.0809, F.S., governing how vacancies created by directors who were elected by a separate voting group will be filled, requiring the same voting group or remaining directors elected by that voting group, whichever applies, to 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** reduces the members of a board committee required from two to one, and allows the board to replace or fill any absent or disqualified members during his or her absence or disqualification. Additionally, the bill removes the restriction on a board committee's ability 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.

**Section 98** updates Florida's business judgment rule and clarifies directors' fiduciary duties in s. 607.0830, F.S. 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 100** amends s. 607.0832, F.S., relating to director conflict of interest. In particular, the bill requires the conflict of interest transaction to be fair to the corporation<sup>14</sup> at the time it is authorized. Additionally, the bill creates a shifting burden of proof, wherein 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, but 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.

**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, and (3) actual or probable

---

<sup>14</sup> The term "fair to the corporation" is defined 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.

breaches of duty to the corporation. Lastly, this section creates guidance dictating upon whom an officer may rely in reasonably discharging his or her duties.

**Sections 82, 84-85, 88-89, 92, 95, 99, 101, and 103** make clarifying changes to ss. 607.0801, 607.0803-607.0804, 607.0807-607.0808, 607.0820, 607.0824, 607.0831, 607.0833, and 607.08401, F.S., that 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>15</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** make several changes to Florida's current indemnification law (s. 607.0850, F.S.), including:

- Excluding employees and agents of a corporation from indemnification pursuant to law and specifying that a corporation may indemnify its employees or agents in its articles of incorporation, bylaws, or other agreement;
- Establishing a process for the board of directors to determine whether, and the extent to which, an officer or director may be indemnified in connection with a proceeding by or in the right of the corporation;
- Setting a new standard for mandatory indemnification, requiring an officer or director involved in a proceeding because of his or her role as a corporate director or officer to be “wholly successful”<sup>16</sup> in the action, rather than “successful on the merits;”
- Explicitly outlining how advancement of expenses is authorized by either the board of directors or shareholders; and
- Clarifying a corporation's ability to indemnify above and beyond indemnification provided for in law.

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

### **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>17</sup>

---

<sup>15</sup> BLACK'S LAW DICTIONARY, 837 (9<sup>th</sup> Ed. 2009).

<sup>16</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.”

<sup>17</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 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 administrative, 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 in corporations of 35 or more 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.

**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 127-128** make clarifying or conforming changes to ss. 607.1004-1008 and 607.1020-607.1021, F.S., that do not substantively affect existing law.

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

Current Florida law does not anticipate the merger of a domestic corporation with certain types of business entities, e.g., a limited liability corporation, or a foreign entity. **Section 131** makes several changes to s. 607.1101, F.S., to accommodate such mergers 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>18</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>19</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 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.

---

<sup>18</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>19</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).



**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, but the shareholder lacks a right to vote on the transaction.

**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, while still meeting its duty to engage in ongoing matters. 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.

**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.

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 Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of 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.



287142

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2019	.	
	.	
	.	
	.	

---

The Committee on Commerce and Tourism (Stewart) recommended the following:

**Senate Amendment**

Delete lines 9317 - 9413  
and insert:  
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



287142

11 notice of its dissolution with the department ~~of State~~ on the  
12 form prescribed by the department ~~of State~~ and request that  
13 persons with claims against the corporation which are not known  
14 to the dissolved corporation ~~or successor entity~~ present them in  
15 accordance with the notice. The notice must ~~shall~~:

16 1. (a) State the name of the corporation that is the subject  
17 of the and the date of dissolution;

18 2. (b) State that the corporation is the subject of a  
19 dissolution and the effective date of the dissolution ~~Describe~~  
20 ~~the information that must be included in a claim and provide a~~  
21 ~~mailing address to which the claim may be sent; and~~

22 3. Specify the information that must be included in a  
23 claim;

24 4. State that a claim must be in writing and provide a  
25 mailing address where a claim may be sent; and

26 5. (e) State that a claim against the corporation under this  
27 subsection will be barred unless a proceeding to enforce the  
28 claim is commenced within 4 years after the filing of the  
29 notice.

30 (b) (2) A dissolved corporation ~~or successor entity~~ may,  
31 within 10 days after filing articles of dissolution with the  
32 department ~~of State~~, publish a "Notice of Corporate  
33 Dissolution." The notice shall appear once a week for 2  
34 consecutive weeks in a newspaper of general circulation in a  
35 county in the state in which the corporation has its principal  
36 office, if any, or, if none, in a county in the state in which  
37 the corporation owns real or personal property. Such newspaper  
38 shall meet the requirements as are prescribed by law for such  
39 purposes. The notice must ~~shall~~:



287142

40 1. State the name of the corporation that is the subject of  
41 the dissolution;

42 2. State that the corporation is the subject of a  
43 dissolution and the effective date of the dissolution;

44 3. Specify the information that must be included in the  
45 claim;

46 4. State that a claim must be in writing and provide a  
47 mailing address where a claim may be sent; and

48 5. State that a claim against the corporation under this  
49 subsection will be barred unless a proceeding to enforce the  
50 claim is commenced within 4 years after the date of the second  
51 consecutive weekly publication of the notice authorized by this  
52 section.

53 ~~(a) State the name of the corporation and the date of~~  
54 ~~dissolution;~~

55 ~~(b) Describe the information that must be included in a~~  
56 ~~claim and provide a mailing address to which the claim may be~~  
57 ~~sent; and~~

58 ~~(c) State that a claim against the corporation under this~~  
59 ~~subsection will be barred unless a proceeding to enforce the~~  
60 ~~claim is commenced within 4 years after the date of the second~~  
61 ~~consecutive weekly publication of the notice authorized by this~~  
62 ~~section.~~

63 (2)(3) If the dissolved corporation or successor entity  
64 complies with paragraph (1) (a) or paragraph (1) (b) subsection  
65 (1) or subsection (2), unless sooner barred by another statute  
66 limiting actions, the claim of each of the following claimants  
67 with known or other claims is barred unless the claimant  
68 commences a proceeding to enforce the claim against the



287142

69 dissolved corporation within 4 years after the date of filing  
70 the notice with the department ~~of State~~ or the date of the  
71 second consecutive weekly publication, as applicable:

72 (a) A claimant who did not receive written notice under s.  
73 607.1406 ~~s. 607.1406(9), or whose claim was not provided for~~  
74 ~~under s. 607.1406(10), whether such claim is based on an event~~  
75 ~~occurring before or after the effective date of dissolution.~~

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

79 (c) A claimant whose claim is not a known claim under s.  
80 607.1406(5)

81 ~~(4) A claim may be entered under this section:~~

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

84 ~~(b) If the assets have been distributed in liquidation,~~  
85 ~~against a shareholder of the dissolved corporation to the extent~~  
86 ~~of such shareholder's pro rata share of the claim or the~~  
87 ~~corporate assets distributed to such shareholder in liquidation,~~  
88 ~~whichever is less, provided that the aggregate liability of any~~  
89 ~~shareholder of a dissolved corporation arising under this~~  
90 ~~section, s. 607.1406, or otherwise may not exceed the amount~~  
91 ~~distributed to the shareholder in dissolution.~~

92 (3) Nothing in this section shall preclude or relieve the  
93 corporation from its notification to claimants otherwise set  
94 forth in this chapter.

95 Section 181. Section 607.1408, Florida Statutes, is created  
96 to read:

97 607.1408 Claims against dissolved corporations;



287142

98 enforcement.—A claim that is not barred by s. 607.1406(4), by s.  
99 607.1407(2), or by another statute limiting actions may be  
100 enforced:

101 (1) Against the dissolved corporation, to the extent of its  
102 undistributed assets; or

103 (2) Except as provided in s. 607.1409(4), if the assets  
104 have been distributed in liquidation, against a shareholder of  
105 the dissolved corporation to the extent of the shareholder's pro  
106 rata share of the claim or the corporate assets distributed to  
107 the shareholder in liquidation, whichever is less, provided that  
108 the aggregate liability of any shareholder of a dissolved  
109 corporation arising under s. 607.1406, under s. 607.1407, or  
110 otherwise may not exceed the total amount of assets distributed  
111 to the shareholder in dissolution.

112 Section 182. Section 607.1409, Florida Statutes, is created  
113 to read:

114 607.1409 Court proceedings.—

115 (1) A dissolved corporation that has filed a notice under  
116 s. 607.1407(1)(a) or published a notice under s. 607.1407(1)(b)  
117 may file an application with the circuit court in

By Senator Passidomo

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.;

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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,

28-00272A-19

2019892\_\_

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,



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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;

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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;



28-00272A-19

2019892\_\_

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.;

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.;

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.

689

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."

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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:



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

- 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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

929 thereby.

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

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

934 607.0124 Correcting filed document; withdrawal of filed  
935 record before effectiveness.-

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

939 (a) The document contains an inaccuracy;

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

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

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

946 (2) A document is corrected:

947 (a) By preparing articles of correction that:

948 1. Describe the document (including its filing date) or  
949 attach a copy of the document to the articles of correction;

950 2. Specify the inaccuracy or defect to be corrected; and

951 3. Correct the inaccuracy or defect; and

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

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

28-00272A-19

2019892\_\_

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

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

962 (5) Unless otherwise provided for in s. 607.1107(2), s.  
963 607.11923(3), or s. 607.11934(3), a filing delivered to the  
964 department may be withdrawn before it takes effect by delivering  
965 a withdrawal statement to the department for filing.

966 (a) A withdrawal statement must:

967 1. Be signed by each person who signed the filing being  
968 withdrawn, except as otherwise agreed to by such persons;

969 2. Identify the filing to be withdrawn; and

970 3. If not signed by all persons who signed the filing being  
971 withdrawn, state that the filing is withdrawn in accordance with  
972 the agreement of all persons who signed the filing.

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

976 (6) ~~(4)~~ Articles of correction that are filed to correct  
977 false, misleading, or fraudulent information are not subject to  
978 a fee of the department ~~of State~~ if the articles of correction  
979 are delivered to the department ~~of State~~ within 15 days after  
980 the notification of filing sent pursuant to s. 607.0125(2).

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

983 607.0125 Filing duties of the department ~~of State~~.—

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



28-00272A-19

2019892\_\_

987           (2) The department ~~of State~~ files a document by stamping or  
988 otherwise endorsing the document as filed, together with the  
989 department's official title and ~~recording it as filed on the~~  
990 date and time of receipt. After filing a document, the  
991 department ~~of State~~ shall send a notice of the filing or a copy  
992 of the filing to the electronic mail address on file for the  
993 domestic or foreign corporation or its authorized representative  
994 or a copy of the filed document to the mailing address of such  
995 corporation or its authorized representative. If the record  
996 changes the electronic mail address of the corporation, the  
997 department ~~of State~~ must send such notice to the new electronic  
998 mail address and to the most recent prior electronic mail  
999 address. If the record changes the mailing address of the  
1000 corporation, the department ~~of State~~ must send such notice to  
1001 the new mailing address and to the most recent prior mailing  
1002 address.

1003           (3) If the department ~~of State~~ refuses to file a document,  
1004 the department ~~it~~ shall return the document ~~it~~ to the domestic  
1005 or foreign corporation or its representative within 15 days  
1006 after the document was received for filing, together with a  
1007 brief, written explanation of the reason for refusal.

1008           (4) The department's ~~Department of State's~~ duty to file  
1009 documents under this section is ministerial. The filing or  
1010 refusing to file a document does not:

1011           (a) Affect the validity or invalidity of the document in  
1012 whole or part;

1013           (b) Relate to the correctness or incorrectness of  
1014 information contained in the document;

1015           (c) Create a presumption that the document does or does not

28-00272A-19

2019892\_\_

1016 conform to the requirements of this chapter or that the ~~is valid~~  
1017 ~~or invalid or that~~ information contained in the document is  
1018 correct or incorrect.

1019 (5) If not otherwise provided by law and the provisions of  
1020 this chapter ~~act~~, the department ~~of State~~ shall determine, by  
1021 rule, the appropriate format for, number of copies of, manner of  
1022 execution of, method of electronic transmission of, and amount  
1023 of and method of payment of fees for, any document placed under  
1024 its jurisdiction.

1025 Section 9. Section 607.0126, Florida Statutes, is amended  
1026 to read:

1027 607.0126 Appeal from department's ~~Department of State's~~  
1028 refusal to file document.—If the department ~~of State~~ refuses to  
1029 file a document delivered to its office for filing, the person  
1030 who submitted the document for filing may petition the Circuit  
1031 Court of Leon County to compel filing of the document. The  
1032 document and the explanation from the department of the refusal  
1033 to file must be attached to the petition. The court may decide  
1034 the matter in a summary proceeding and ~~within 30 days after~~  
1035 ~~return of the document by the department by mail, as evidenced~~  
1036 ~~by the postmark, the domestic or foreign corporation may:~~

1037 ~~(1) Appeal the refusal pursuant to s. 120.68; or~~  
1038 ~~(2) Appeal the refusal to the circuit court of the county~~  
1039 ~~where the corporation's principal office (or, if none in this~~  
1040 ~~state, its registered office) is or will be located. The appeal~~  
1041 ~~is commenced by petitioning the court to compel filing the~~  
1042 ~~document and by attaching to the petition the document and the~~  
1043 ~~Department of State's explanation of its refusal to file. The~~  
1044 ~~matter shall promptly be tried de novo by the court without a~~

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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.~~

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

1161 ~~connection with such proceeding the department may, without~~  
1162 ~~prior approval by the court, file a lis pendens against any~~  
1163 ~~property owned by the corporation and may further certify any~~  
1164 ~~findings to the Department of Legal Affairs for the initiation~~  
1165 ~~of any action permitted pursuant to s. 607.0505 which the~~  
1166 ~~Department of Legal Affairs may deem appropriate.~~

1167 ~~(4) The department of State shall have the power and~~  
1168 ~~authority reasonably necessary to enable it to administer this~~  
1169 ~~act efficiently, to perform the duties herein imposed upon it,~~  
1170 ~~and to promulgate reasonable rules necessary to carry out its~~  
1171 ~~duties and functions under this chapter act.~~

1172 Section 13. Section 607.01401, Florida Statutes, is amended  
1173 to read:

1174 607.01401 Definitions.—As used in this chapter act, unless  
1175 the context otherwise requires, the term:

1176 (1) "Acquired eligible entity" means a domestic or foreign  
1177 eligible entity that will have all of one or more classes or  
1178 series of its shares or eligible interests acquired in a share  
1179 exchange.

1180 (2) "Acquiring eligible entity" means a domestic or foreign  
1181 eligible entity that will acquire all of one or more classes or  
1182 series of shares or eligible interests of the acquired eligible  
1183 entity in a share exchange.

1184 (3) "Applicable county" means: the county in this state in  
1185 which a corporation's principal office is located or was located  
1186 when an action is or was commenced; if the corporation has, and  
1187 at the time of such action had, no principal office in this  
1188 state, then in the county in which the corporation has, or at  
1189 the time of such action had, an office in this state; or if the

28-00272A-19

2019892\_\_

1190 corporation does not have an office in this state, then in the  
 1191 county in which the corporation's registered office is or was  
 1192 last located.

1193 (4) "Articles of incorporation" includes original, amended,  
 1194 and restated articles of incorporation, articles of share  
 1195 exchange, and articles of merger, and all amendments thereto.  
 1196 When used with respect to a foreign corporation, the term means  
 1197 the document of the foreign corporation that is equivalent to  
 1198 the articles of incorporation of a domestic corporation.

1199 (5) "Authorized entity" means:

1200 (a) A corporation for profit;

1201 (b) A limited liability company;

1202 (c) A limited liability partnership; or

1203 (d) A limited partnership, including a limited liability  
 1204 limited partnership.

1205 (6)~~(2)~~ "Authorized shares" means the shares of all classes  
 1206 a domestic or foreign corporation is authorized to issue.

1207 (7) "Beneficial shareholder" means a person who owns the  
 1208 beneficial interest in shares. Such person may be a record  
 1209 shareholder or a person on whose behalf shares are registered in  
 1210 the name of an intermediary or nominee.

1211 (8)~~(3)~~ "Business day" means Monday through Friday,  
 1212 excluding any day a national banking association is not open for  
 1213 normal business transactions.

1214 (9)~~(4)~~ "Conspicuous" means so written, displayed, or  
 1215 presented that a reasonable person against whom the writing is  
 1216 to operate should have noticed it. For example, text printing in  
 1217 italics, boldface, ~~or~~ a contrasting color, or ~~typing in~~  
 1218 capitals, or underlined text, is conspicuous.



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

- 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

28-00272A-19

2019892\_\_

1277 directly involving the physical transfer of paper or another  
1278 tangible medium, which:

1279 (a) ~~that~~ Is suitable for the retention, retrieval, and  
1280 reproduction of information by the recipient; and

1281 (b) Is retrievable in paper form by the recipient through  
1282 an automated process used in conventional commercial practice,  
1283 unless otherwise authorized under s. 607.0141.

1284

1285 For purposes of proxy voting in accordance with ss. 607.0721,  
1286 607.0722, and 607.0724, the term includes, but is not limited  
1287 to, telegrams, cablegrams, telephone transmissions, and  
1288 transmissions through the Internet.

1289 (28) (a) "Eligible entity" means:

1290 1. A domestic corporation;

1291 2. A foreign corporation;

1292 3. A non-profit corporation;

1293 4. A general partnership, including a limited liability  
1294 partnership;

1295 5. A limited partnership, including a limited liability  
1296 limited partnership;

1297 6. A limited liability company;

1298 7. A real estate investment trust; or

1299 8. Any other foreign or domestic entity that is organized  
1300 under an organic law.

1301 (b) The term does not include:

1302 1. An individual;

1303 2. A trust with a predominantly donative purpose or a  
1304 charitable trust;

1305 3. An association or relationship that is not a partnership

28-00272A-19

2019892\_\_

1306 solely by reason of s. 620.8202(2) or a similar provision of the  
1307 law of another jurisdiction;

1308 4. A decedent's estate; or

1309 5. A government or a governmental subdivision, agency or  
1310 instrumentality.

1311 (29) "Eligible interests" means interests or memberships.

1312 (30)-(10) "Employee" includes an officer but not a director.

1313 A director may accept duties that make him or her also an  
1314 employee.

1315 (31)-(11) "Entity" includes corporation and foreign  
1316 corporation; unincorporated association; business trust, estate,  
1317 limited liability company, partnership, trust, and two or more  
1318 persons having a joint or common economic interest; and state,  
1319 United States, and foreign governments.

1320 (32) "Expenses" means reasonable expenses of any kind that  
1321 are incurred in connection with a matter.

1322 (33) The phrase "facts objectively ascertainable outside  
1323 the plan or filed document" shall be interpreted as set forth in  
1324 s. 607.0120(11).

1325 (34) "Filing entity" means an entity, other than a limited  
1326 liability partnership, that is of a type that is created by  
1327 filing a public organic record or is required to file a public  
1328 organic record that evidences its creation.

1329 (35) "Foreign" means, with respect to an entity, an entity  
1330 governed as to its internal affairs by the organic law of a  
1331 jurisdiction other than this state.

1332 (36)-(12) "Foreign corporation" means an entity incorporated  
1333 or organized under laws other than the laws of this state which  
1334 would be a corporation for profit if incorporated under laws

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

1422 the partnership's statement of qualification or equivalent  
1423 document is filed.

1424 (47)-(17) "Mail" means the United States mail, facsimile  
1425 transmissions, and private mail carriers handling nationwide  
1426 mail services.

1427 (48)-(18) "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.



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

1509 association or a limited cooperative association;

1510 (f) The certificate of trust of a statutory trust or  
1511 similar record of a business trust; or

1512 (g) The articles of incorporation of a real estate  
1513 investment trust.

1514 (62) "Record," if used as a noun, means information that is  
1515 inscribed on a tangible medium or that is stored in an  
1516 electronic or other medium and is retrievable in perceivable  
1517 form.

1518 (63)~~(22)~~ "Record date" means the date fixed for determining  
1519 on which a corporation determines the identity of the  
1520 corporation's ~~its~~ shareholders and their share holdings for  
1521 purposes of this chapter. Unless another time is specified when  
1522 the record date is fixed, ~~act.~~ the determination shall be made  
1523 as of the close of the business at the principal office of the  
1524 corporation on the date so ~~on the record date unless another~~  
1525 time is fixed.

1526 (64) "Record shareholder" means:

1527 (a) The person in whose name shares are registered in the  
1528 records of the corporation; or

1529 (b) The person identified as a beneficial owner of shares  
1530 in the beneficial ownership certificate under s. 607.0723 on  
1531 file with the corporation to the extent of the rights granted by  
1532 such certificate.

1533 (65)~~(23)~~ "Secretary" means the corporate officer to whom  
1534 the board of directors has delegated responsibility under s.  
1535 607.08401 to maintain ~~for custody of~~ the minutes of the meetings  
1536 of the board of directors and of the shareholders and for  
1537 authenticating records of the corporation.

28-00272A-19

2019892\_\_

1538 (66) "Secretary of state" means the Secretary of State of  
1539 the State of Florida.

1540 (67)(24) "Shareholder" or "stockholder" means a record  
1541 shareholder one who is a holder of record of shares in a  
1542 corporation or the beneficial owner of shares to the extent of  
1543 the rights granted by a nominee certificate on file with a  
1544 corporation.

1545 (68)(25) "Shares" means the units into which the  
1546 proprietary interests in a corporation are divided.

1547 (69) "Share exchange" means a transaction pursuant to s.  
1548 607.1102.

1549 (70)(26) "Sign" or "signature" means, with present intent  
1550 to authenticate or adopt a document:

1551 (a) To execute or adopt a tangible symbol on a document,  
1552 which includes any manual facsimile or conformed signature; or

1553 (b) To attach or to logically associate with an electronic  
1554 transmission an electronic sound, symbol, or process, which  
1555 includes an electronic signature in an electronic transmission  
1556 any symbol, manual, facsimile, conformed, or electronic  
1557 signature adopted by a person with the intent to authenticate a  
1558 document.

1559 (71)(27) "State," when referring to a part of the United  
1560 States, includes a state and commonwealth (and their agencies  
1561 and governmental subdivisions) and a territory and insular  
1562 possession (and their agencies and governmental subdivisions) of  
1563 the United States.

1564 (72)(28) "Subscriber" means a person who subscribes for  
1565 shares in a corporation, whether before or after incorporation.

1566 (73) "Survivor," in a merger, means the domestic or foreign

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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; ~~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

28-00272A-19

2019892\_\_

1625 postpaid and correctly addressed to the shareholder's address  
1626 shown in the corporation's current record of shareholders; or

1627 2. When electronically transmitted to the shareholder in a  
1628 manner authorized by the shareholder.

1629 (b) Unless otherwise provided in the articles of  
1630 incorporation or bylaws, and without limiting the manner by  
1631 which notice otherwise may be given effectively to shareholders,  
1632 any notice to shareholders given by the corporation under any  
1633 provision of this chapter, the articles of incorporation, or the  
1634 bylaws shall be effective if given by a single written notice to  
1635 shareholders who share an address if consented to by the  
1636 shareholders at that address to whom such notice is given. Any  
1637 such consent shall be revocable by a shareholder by written  
1638 notice to the corporation, and if a written notice of revocation  
1639 is delivered to the corporation, the corporation must begin  
1640 providing individual notices, reports, and other statements to  
1641 the revoking shareholder no later than 30 days after delivery of  
1642 the written notice of revocation.

1643 (c) Any shareholder who fails to object in writing to the  
1644 corporation, within 60 days after having been given written  
1645 notice by the corporation of its intention to send the single  
1646 notice permitted under paragraph (b), shall be deemed to have  
1647 consented to receiving such single written notice.

1648 ~~(d) This subsection shall not apply to s. 607.0620, s.~~  
1649 ~~607.1402, or s. 607.1404.~~

1650 (4) Written notice to a domestic corporation or to a  
1651 foreign corporation authorized to transact business in this  
1652 state may be addressed:

1653 (a) To its registered agent at the corporation's ~~its~~

28-00272A-19

2019892\_\_

1654 registered office; or

1655 (b) To the corporation or the corporation's ~~its~~ secretary  
1656 at the corporation's ~~its~~ principal office or electronic mail  
1657 address as authorized and shown in its most recent annual report  
1658 or, in the case of a corporation that has not yet delivered an  
1659 annual report, in a domestic corporation's articles of  
1660 incorporation or in a foreign corporation's application for  
1661 certificate of authority.

1662 (5) (a) Except as provided in subsection (3) or elsewhere in  
1663 this chapter ~~act~~, written notice, if in a comprehensible form,  
1664 is effective at the earliest date of the following:

1665 1. ~~(a)~~ When received;

1666 2. ~~(b)~~ Five days after its deposit in the United States  
1667 mail, if mailed postpaid and correctly addressed; ~~or~~

1668 3. ~~(c)~~ On the date shown on the return receipt, if sent by  
1669 registered or certified mail, return receipt requested, and the  
1670 receipt is signed by or on behalf of the addressee; or

1671 4. When it enters an information processing system that the  
1672 recipient has designated or uses for the purposes of receiving  
1673 electronic transmissions or information of the type sent, and  
1674 from which the recipient is able to retrieve the electronic  
1675 transmission, and it is in a form capable of being processed by  
1676 that system.

1677 (b) Except as provided elsewhere in this chapter, oral  
1678 notice is effective when communicated directly to the person to  
1679 be notified in a comprehensible manner.

1680 (6) Except with respect to notice to directors by the  
1681 corporation, notice or other communications may be delivered by  
1682 electronic transmission if consented to by the recipient or if



28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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:

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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 demanding, 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;

28-00272A-19

2019892\_\_

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~~.

28-00272A-19

2019892\_\_

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.—

28-00272A-19

2019892\_\_

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  
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

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

1915 impose liability on a shareholder for the attorney fees or  
 1916 expenses of the corporation or any other party in connection  
 1917 with an internal corporate claim, as defined in s. 607.0208.

1918 Section 22. Subsections (1), (3), (4), and (5) of section  
 1919 607.0207, Florida Statutes, are amended to read:

1920 607.0207 Emergency bylaws.—

1921 (1) Unless the articles of incorporation provide otherwise,  
 1922 the board of directors ~~of a corporation~~ may adopt bylaws to be  
 1923 effective only in an emergency defined in subsection (5). The  
 1924 emergency bylaws, which are subject to amendment or repeal by  
 1925 the shareholders, may make all provisions necessary for managing  
 1926 the corporation during an emergency, including:

1927 (a) Procedures for calling a meeting of the board of  
 1928 directors;

1929 (b) Quorum requirements for the meeting; and

1930 (c) Designation of additional or substitute directors.

1931 (3) All provisions of the regular bylaws not inconsistent  
 1932 ~~consistent~~ with the emergency bylaws remain effective during the  
 1933 emergency. The emergency bylaws are not effective after the  
 1934 emergency ends.

1935 (4) Corporate action taken in good faith in accordance with  
 1936 the emergency bylaws:

1937 (a) Binds the corporation; and

1938 (b) May not be used to impose liability on a ~~corporate~~  
 1939 director, officer, employee, or agent of the corporation.

1940 (5) An emergency exists for purposes of this section if a  
 1941 quorum of the board of ~~corporation's~~ directors cannot readily be  
 1942 assembled because of some catastrophic event.

1943 Section 23. Section 607.0208, Florida Statutes, is created

28-00272A-19

2019892\_\_

1944 to read:

1945 607.0208 Forum selection.—

1946 (1) The articles of incorporation or the bylaws may require  
1947 that any or all internal corporate claims be brought exclusively  
1948 in any specified court or courts of this state and, if so  
1949 specified, in any additional courts in this state or in any  
1950 other jurisdictions with which the corporation has a reasonable  
1951 relationship.

1952 (2) A provision of the articles of incorporation or bylaws  
1953 adopted under subsection (1) does not have the effect of  
1954 conferring jurisdiction on any court or over any person or  
1955 claim, and does not apply if none of the courts specified by  
1956 such provision has the requisite personal and subject matter  
1957 jurisdiction. If the court or courts in this state specified in  
1958 a provision adopted under subsection (1) do not have the  
1959 requisite personal and subject matter jurisdiction and another  
1960 court in this state does have such jurisdiction, then the  
1961 internal corporate claim may be brought in such other court,  
1962 notwithstanding that such other court is not specified in such  
1963 provision, or in any other court outside the state specified in  
1964 such provision that has the requisite jurisdiction.

1965 (3) No provision of the articles of incorporation or the  
1966 bylaws may prohibit bringing an internal corporate claim in all  
1967 courts in this state or require such claims to be determined by  
1968 arbitration.

1969 (4) For the purposes of this section, "Internal corporate  
1970 claim" means:

1971 (a) Any claim that is based upon a violation of a duty  
1972 under the laws of this state by a current or former director,

28-00272A-19

2019892\_\_

1973  
1974  
1975  
1976  
1977  
1978  
1979  
1980  
1981  
1982  
1983  
1984  
1985  
1986  
1987  
1988  
1989  
1990  
1991  
1992  
1993  
1994  
1995  
1996  
1997  
1998  
1999  
2000  
2001

officer, or shareholder in such capacity;  
(b) Any derivative action or proceeding brought on behalf of the corporation;  
(c) Any action asserting a claim arising pursuant to this chapter or the articles of incorporation or bylaws; or  
(d) Any action asserting a claim governed by the internal affairs doctrine that is not included in paragraphs (a), (b), or (c).  
 Section 24. Section 607.0301, Florida Statutes, is amended to read:  
 607.0301 Purposes and application.—  
(1) Every corporation incorporated under this chapter has the purpose of engaging in any lawful business unless a more limited purpose is set forth in the articles of incorporation.  
(2) A corporation engaging in a business that is subject to regulation under another statute of this state may incorporate under this chapter only if permitted by, and subject to all limitations of, the other statute.  
~~(3) Corporations may be organized under this act for any lawful purpose or purposes, and~~ The provisions of this chapter ~~act~~ extend to all corporations, whether chartered by special acts or general laws, except that special statutes for the regulation and control of types of business and corporations shall control when in conflict herewith.  
 Section 25. Section 607.0302, Florida Statutes, is amended to read:  
 607.0302 General powers.—Unless its articles of incorporation provide otherwise, every corporation has perpetual duration and succession in its corporate name and has the same

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

2031 majority of the outstanding shares ~~stock~~ of which is owned,  
2032 directly or indirectly, by the contracting corporation; a  
2033 corporation which owns, directly or indirectly, a majority of  
2034 the outstanding shares ~~stock~~ of the contracting corporation; or  
2035 a corporation the majority of the outstanding shares ~~stock~~ of  
2036 which is owned, directly or indirectly, by a corporation which  
2037 owns, directly or indirectly, the majority of the outstanding  
2038 shares ~~stock~~ of the contracting corporation, which contracts of  
2039 guaranty and suretyship shall be deemed to be necessary or  
2040 convenient to the conduct, promotion, or attainment of the  
2041 business of the contracting corporation, and make other  
2042 contracts of guaranty and suretyship which are necessary or  
2043 convenient to the conduct, promotion, or attainment of the  
2044 business of the contracting corporation;

2045 (8) To lend money, invest and reinvest its funds, and  
2046 receive and hold real and personal property as security for  
2047 repayment;

2048 (9) To conduct its business, locate offices, and exercise  
2049 the powers granted by this chapter ~~act~~ within or without this  
2050 state;

2051 (10) To elect directors and appoint officers, employees,  
2052 and agents of the corporation and define their duties, fix their  
2053 compensation, and lend them money and credit;

2054 (11) To make and amend bylaws, not inconsistent with its  
2055 articles of incorporation or with the laws of this state, for  
2056 managing the business and regulating the affairs of the  
2057 corporation;

2058 (12) To make donations for the public welfare or for  
2059 charitable, scientific, or educational purposes;

28-00272A-19

2019892\_\_

2060 (13) To transact any lawful business that will aid  
2061 governmental policy;

2062 (14) To make payments or donations or do any other act not  
2063 inconsistent with law that furthers the business and affairs of  
2064 the corporation;

2065 (15) To pay pensions and establish pension plans, pension  
2066 trusts, profit-sharing plans, share bonus plans, share option  
2067 plans, and benefit or incentive plans for any or all of its  
2068 current or former directors, officers, employees, and agents and  
2069 for any or all of the current or former directors, officers,  
2070 employees, and agents of its subsidiaries;

2071 (16) To provide insurance for its benefit on the life of  
2072 any of its directors, officers, or employees, or on the life of  
2073 any shareholder for the purpose of acquiring at his or her death  
2074 shares of its stock owned by the shareholder or by the spouse or  
2075 children of the shareholder; and

2076 (17) To be a promoter, incorporator, partner, member,  
2077 associate, or manager of any corporation, partnership, joint  
2078 venture, trust, or other entity.

2079 Section 26. Subsections (3), (4), and (5) of section  
2080 607.0303, Florida Statutes, are amended to read:

2081 607.0303 Emergency powers.—

2082 (3) Corporate action taken in good faith during an  
2083 emergency under this section to further the ordinary business  
2084 affairs of the corporation:

2085 (a) Binds the corporation; and

2086 (b) May not be used to impose liability on a ~~corporate~~  
2087 director, officer, employee, or agent of the corporation.

2088 (4) No officer, director, or employee acting in accordance

28-00272A-19

2019892\_\_

2089 with any emergency bylaws shall be liable except for willful or  
2090 intentional misconduct.

2091 (5) An emergency exists for purposes of this section if a  
2092 quorum of the board of ~~corporation's~~ directors cannot readily be  
2093 assembled because of some catastrophic event.

2094 Section 27. Section 607.0304, Florida Statutes, is amended  
2095 to read:

2096 607.0304 Lack of power to act ~~Ultra vires.~~

2097 (1) Except as provided in subsection (2), the validity of  
2098 corporate action, including, but not limited to, any conveyance,  
2099 transfer, or encumbrance of real or personal property to or by a  
2100 corporation, may not be challenged on the ground that the  
2101 corporation lacks or lacked power to act.

2102 (2) A corporation's power to act may be challenged:

2103 (a) In a proceeding by a shareholder against the  
2104 corporation to enjoin the act;

2105 (b) In a proceeding by the corporation, directly,  
2106 derivatively, or through a receiver, trustee, or other legal  
2107 representative, or through shareholders in a representative  
2108 suit, against an incumbent or former officer, employee, or agent  
2109 of the corporation; or

2110 (c) In a proceeding by the Department of Legal Affairs  
2111 pursuant to s. 607.1403 or ~~Attorney General, as provided in this~~  
2112 ~~act, to dissolve the corporation or in a proceeding by the~~  
2113 ~~Attorney General~~ to enjoin the corporation from the transaction  
2114 of unauthorized business.

2115 (3) In a shareholder's proceeding under paragraph (2) (a) to  
2116 enjoin an unauthorized corporate act, the court may enjoin or  
2117 set aside the act, if equitable and if all affected persons are

28-00272A-19

2019892\_\_

2118 parties to the proceeding, and may award damages for loss (other  
2119 than anticipated profits) suffered by the corporation or another  
2120 party because of enjoining the unauthorized act.

2121 Section 28. Section 607.0401, Florida Statutes, is amended  
2122 to read:

2123 607.0401 Corporate name.—

2124 (1) A corporate name:

2125 (a)~~(1)~~ Must contain the word "corporation," "company," or  
2126 "incorporated" or the abbreviation "Corp.," or "Inc.," or "Co.,"  
2127 or the designation "Corp," or "Inc," or "Co," as will clearly  
2128 indicate that it is a corporation instead of a natural person,  
2129 partnership, or other eligible business entity.

2130 (b)~~(2)~~ May not contain language stating or implying that  
2131 the corporation is organized for a purpose other than that  
2132 permitted in this chapter ~~act~~ and its articles of incorporation.

2133 (c)~~(3)~~ May not contain language stating or implying that  
2134 the corporation is connected with a state or federal government  
2135 agency or a corporation or other entity chartered under the laws  
2136 of the United States.

2137 (d)~~(4)~~ Must be distinguishable from the names of all other  
2138 entities or filings that are on file with the department  
2139 ~~Division of Corporations~~, except fictitious name registrations  
2140 pursuant to s. 865.09, general partnership registrations  
2141 pursuant to s. 620.8105, and limited liability partnership  
2142 statements pursuant to s. 620.9001 which are organized,  
2143 registered, or reserved under the laws of this state. A name  
2144 that is different from the name of another entity or filing due  
2145 to any of the following is not considered distinguishable:

2146 1.~~(a)~~ A suffix.



28-00272A-19

2019892\_\_

- 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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

2205 country of incorporation.

2206 (5) A foreign corporation the registration of which is  
 2207 effective may thereafter qualify as a foreign corporation under  
 2208 the registered name or consent in writing to the use of that  
 2209 name by a corporation thereafter incorporated under this chapter  
 2210 ~~act~~ or by another foreign corporation thereafter authorized to  
 2211 transact business in this state. The registration terminates  
 2212 when the domestic corporation is incorporated or the foreign  
 2213 corporation qualifies or consents to the qualification of  
 2214 another foreign corporation under the registered name.

2215 (6) The department ~~of State~~ may revoke any registration if,  
 2216 after a hearing, it finds that the application therefor or any  
 2217 renewal thereof was not made in good faith.

2218 Section 31. Subsections (1), (3), (4), and (5) of section  
 2219 607.0501, Florida Statutes, are amended, and subsection (7) is  
 2220 added to that section, to read:

2221 607.0501 Registered office and registered agent.—

2222 (1) Each corporation shall designate ~~have~~ and continuously  
 2223 maintain in this state:

2224 (a) A registered office which may be the same as its place  
 2225 of business in this state; and

2226 (b) A registered agent, which must be ~~who may be either~~:

2227 1. An individual who resides in this state whose business  
 2228 address ~~office~~ is identical to the address of the ~~with such~~  
 2229 registered office;

2230 2. Another domestic entity that is an authorized entity and  
 2231 whose business address is identical to the address of the  
 2232 registered office; or

2233 3. A foreign entity authorized to transact business in this

28-00272A-19

2019892\_\_

2234 state which is an authorized entity and whose business address  
2235 is identical to the address of the registered office ~~Another~~  
2236 ~~corporation or not-for-profit corporation as defined in chapter~~  
2237 ~~617, authorized to transact business or conduct its affairs in~~  
2238 ~~this state, having a business office identical with the~~  
2239 ~~registered office; or~~

2240 ~~3. A foreign corporation or not-for-profit foreign~~  
2241 ~~corporation authorized pursuant to this chapter or chapter 617~~  
2242 ~~to transact business or conduct its affairs in this state,~~  
2243 ~~having a business office identical with the registered office.~~

2244 ~~(3) Each initial A registered agent, and each appointed~~  
2245 ~~pursuant to this section or a successor registered agent that is~~  
2246 ~~appointed, shall pursuant to s. 607.0502 on whom process may be~~  
2247 ~~served shall each file a statement in writing with the~~  
2248 ~~department, in the form and manner of State, in such form and~~  
2249 ~~manner as shall be prescribed by the department, accepting the~~  
2250 ~~appointment as a registered agent while simultaneously with his~~  
2251 ~~or her being designated as the registered agent. The. Such~~  
2252 ~~statement of acceptance must provide shall state that the~~  
2253 ~~registered agent is familiar with, and accepts, the obligations~~  
2254 ~~of that position.~~

2255 ~~(4) The duties of a registered agent are:~~

2256 ~~(a) To forward to the corporation at the address most~~  
2257 ~~recently supplied to the registered agent by the corporation, a~~  
2258 ~~process, notice, or demand pertaining to the corporation which~~  
2259 ~~is served on or received by the registered agent; and~~

2260 ~~(b) If the registered agent resigns, to provide the notice~~  
2261 ~~required under s. 607.0503 to the corporation at the address~~  
2262 ~~most recently supplied to the registered agent by the~~

28-00272A-19

2019892\_\_

2263 corporation.

2264 (5) The department ~~of State~~ shall maintain an accurate  
2265 record of the registered agents and registered office for  
2266 ~~offices for the~~ service of process and shall promptly furnish  
2267 any information disclosed thereby ~~promptly~~ upon request and  
2268 payment of the required fee.

2269 (6)~~(5)~~ A corporation may not prosecute or maintain an any  
2270 action in a court in this state until the corporation complies  
2271 with this section, pays to the department any amounts required  
2272 under this chapter, and, to the extent ordered by a court of  
2273 competent jurisdiction, with the provisions of this section or  
2274 s. 607.1507, as applicable, and pays to the department ~~of State~~  
2275 a penalty of \$5 for each day it has failed to so comply or \$500,  
2276 whichever is less.

2277 (7) A court may stay a proceeding commenced by a  
2278 corporation until the corporation complies with this section.

2279 Section 32. Section 607.0502, Florida Statutes, is amended  
2280 to read:

2281 607.0502 Change of registered office or registered agent;  
2282 ~~resignation of registered agent.~~

2283 (1) In order to change its registered agent or registered  
2284 office address, a corporation may deliver to the department for  
2285 filing change its registered office or its registered agent upon  
2286 filing with the Department of State a statement of change  
2287 containing the following setting forth:

2288 (a) The name of the corporation.

2289 (b) The name of its current registered agent. The street  
2290 address of its current registered office;

2291 (c) If the current registered agent is to be changed, the

28-00272A-19

2019892\_\_

2292 name of the new registered agent. ~~If the current registered~~  
2293 ~~office is to be changed, the street address of the new~~  
2294 ~~registered office;~~

2295 (d) The street address of its current registered office for  
2296 its current registered agent. ~~The name of its current registered~~  
2297 ~~agent;~~

2298 (e) If the street address of the current registered office  
2299 is to be changed, the new street address of the registered  
2300 office in this state ~~If its current registered agent is to be~~  
2301 ~~changed, the name of the new registered agent and the new~~  
2302 ~~agent's written consent (either on the statement or attached to~~  
2303 ~~it) to the appointment;~~

2304 (f) ~~That the street address of its registered office and~~  
2305 ~~the street address of the business office of its registered~~  
2306 ~~agent, as changed, will be identical;~~

2307 (g) ~~That such change was authorized by resolution duly~~  
2308 ~~adopted by its board of directors or by an officer of the~~  
2309 ~~corporation so authorized by the board of directors.~~

2310 (2) If the registered agent is changed, the written  
2311 acceptance of the successor registered agent described in s.  
2312 607.0501(3) must also be included in or attached to the  
2313 statement of change.

2314 (3) A statement of change is effective when filed by the  
2315 department.

2316 (4) The changes described in this section may also be made  
2317 on the corporation's annual report, in an application for  
2318 reinstatement filed with the department under s. 607.1622, or in  
2319 an amendment to or restatement of a company's articles of  
2320 incorporation in accordance with s. 607.1006 or s. 607.1007. ~~Any~~

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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:



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

2437 any other address in this state that is in fact the principal  
2438 office of the corporation in this state.

2439 (8) This section does not affect the right to serve  
2440 process, give notice, or make a demand in any other manner  
2441 provided by law ~~Process against any corporation may be served in~~  
2442 ~~accordance with chapter 48 or chapter 49.~~

2443 ~~(2) Any notice to or demand on a corporation under this act~~  
2444 ~~may be made to the chair of the board, the president, any vice~~  
2445 ~~president, the secretary, or the treasurer; to the registered~~  
2446 ~~agent of the corporation at the registered office of the~~  
2447 ~~corporation in this state; or to any other address in this state~~  
2448 ~~that is in fact the principal office of the corporation in this~~  
2449 ~~state.~~

2450 ~~(3) This section does not prescribe the only means, or~~  
2451 ~~necessarily the required means, of serving notice or demand on a~~  
2452 ~~corporation.~~

2453 Section 37. Paragraph (a) of subsection (1) and subsections  
2454 (5), (6), (10), and (12) of section 607.0505, Florida Statutes,  
2455 are amended to read:

2456 607.0505 Registered agent; duties.—

2457 (1) (a) Each corporation, foreign corporation, or alien  
2458 business organization that owns real property located in this  
2459 state, that owns a mortgage on real property located in this  
2460 state, or that transacts business in this state shall have and  
2461 continuously maintain in this state a registered office and a  
2462 registered agent and shall file with the department ~~of State~~  
2463 notice of the registered office and registered agent as provided  
2464 in ss. 607.0501 and 607.0502. The appointment of a registered  
2465 agent in compliance with s. 607.0501 or s. 607.1507 is

28-00272A-19

2019892\_\_

2466 sufficient for purposes of this section provided the registered  
2467 agent so appointed files, in such form and manner as prescribed  
2468 by the department ~~of State~~, an acceptance of the obligations  
2469 provided for in this section.

2470 (5) If a corporation, foreign corporation, or alien  
2471 business organization fails without lawful excuse to comply  
2472 timely or fully with a subpoena issued pursuant to subsection  
2473 (2), the Department of Legal Affairs may file an action in the  
2474 circuit court for the judicial circuit in which the corporation,  
2475 foreign corporation, or alien business organization is found or  
2476 transacts business or in which real property belonging to the  
2477 corporation, foreign corporation, or alien business organization  
2478 is located, for an order compelling compliance with the  
2479 subpoena. The failure without a lawful excuse to comply timely  
2480 or fully with an order compelling compliance with the subpoena  
2481 will result in a civil penalty of not more than \$1,000 for each  
2482 day of noncompliance with the order. In connection with such  
2483 proceeding, the Department of Legal Affairs may, without prior  
2484 approval by the court, file a lis pendens against real property  
2485 owned by the corporation, foreign corporation, or alien business  
2486 organization, which lis pendens shall set forth the legal  
2487 description of the real property and shall be filed in the  
2488 public records of the county where the real property is located.  
2489 If the lis pendens is filed in any county other than the county  
2490 in which the action is pending, the lis pendens which is filed  
2491 must be a certified copy of the original lis pendens. A judgment  
2492 or an order of payment entered pursuant to this subsection will  
2493 become a judgment lien against any real property owned by the  
2494 corporation, foreign corporation, or alien business organization

28-00272A-19

2019892\_\_

2495 when a certified copy of the judgment or order is recorded as  
2496 required by s. 55.10. The Department of Legal Affairs will be  
2497 able to avail itself of, and is entitled to use, any provision  
2498 of law or of the Florida Rules of Civil Procedure to further the  
2499 collecting or obtaining of payment pursuant to a judgment or  
2500 order of payment. The state, through the Attorney General, may  
2501 bid, at any judicial sale to enforce its judgment lien, an  
2502 amount up to the amount of the judgment or lien obtained  
2503 pursuant to this subsection. All moneys recovered under this  
2504 subsection shall be treated as forfeitures under ss. 895.01-  
2505 895.09 and used or distributed in accordance with the procedure  
2506 set forth in s. 895.09.

2507 (6) Information provided to, and records and transcriptions  
2508 of testimony obtained by, the Department of Legal Affairs  
2509 pursuant to this section are confidential and exempt from the  
2510 provisions of s. 119.07(1) while the investigation is active.  
2511 For purposes of this section, an investigation shall be  
2512 considered "active" while such investigation is being conducted  
2513 with a reasonable, good faith belief that it may lead to the  
2514 filing of an administrative, civil, or criminal proceeding. An  
2515 investigation does not cease to be active so long as the  
2516 Department of Legal Affairs is proceeding with reasonable  
2517 dispatch and there is a good faith belief that action may be  
2518 initiated by the Department of Legal Affairs or other  
2519 administrative or law enforcement agency. Except for active  
2520 criminal intelligence or criminal investigative information, as  
2521 defined in s. 119.011, and information which, if disclosed,  
2522 would reveal a trade secret, as defined in s. 688.002, or would  
2523 jeopardize the safety of an individual, all information,

28-00272A-19

2019892\_\_

2524 records, and transcriptions become public record when the  
2525 investigation is completed or ceases to be active. The  
2526 Department of Legal Affairs shall not disclose confidential  
2527 information, records, or transcriptions of testimony except  
2528 pursuant to the authorization by the Attorney General in any of  
2529 the following circumstances:

2530 (a) To a law enforcement agency participating in or  
2531 conducting a civil investigation under chapter 895, or  
2532 participating in or conducting a criminal investigation.

2533 (b) In the course of filing, participating in, or  
2534 conducting a judicial proceeding instituted pursuant to this  
2535 section or chapter 895.

2536 (c) In the course of filing, participating in, or  
2537 conducting a judicial proceeding to enforce an order or judgment  
2538 entered pursuant to this section or chapter 895.

2539 (d) In the course of a criminal or civil proceeding.

2540  
2541 A person or law enforcement agency which receives any  
2542 information, record, or transcription of testimony that has been  
2543 made confidential by this subsection shall maintain the  
2544 confidentiality of such material and shall not disclose such  
2545 information, record, or transcription of testimony except as  
2546 provided for herein. Any person who willfully discloses any  
2547 information, record, or transcription of testimony that has been  
2548 made confidential by this subsection, except as provided for  
2549 herein, is guilty of a misdemeanor of the first degree,  
2550 punishable as provided in s. 775.082 or s. 775.083. If any  
2551 information, record, or testimony obtained pursuant to  
2552 subsection (2) is offered in evidence in any judicial

28-00272A-19

2019892\_\_

2553 proceeding, the court may, in its discretion, seal that portion  
2554 of the record to further the policies of confidentiality set  
2555 forth herein.

2556 (10) The designation of a registered agent and a registered  
2557 office as required by subsection (1) for a corporation, foreign  
2558 corporation, or alien business organization which owns real  
2559 property in this state or a mortgage on real property in this  
2560 state is solely for the purposes of this chapter act; and,  
2561 notwithstanding s. 48.181, s. 607.1502, s. 607.1503, or any  
2562 other relevant section of the Florida Statutes, such designation  
2563 shall not be used in determining whether the corporation,  
2564 foreign corporation, or alien business organization is actually  
2565 doing business in this state.

2566 (12) Any alien business organization may withdraw its  
2567 registered agent designation by delivering an application for  
2568 certificate of withdrawal to the department ~~of State~~ for filing.  
2569 Such application shall set forth:

2570 (a) The name of the alien business organization and the  
2571 jurisdiction under the law of which it is incorporated or  
2572 organized.

2573 (b) That it is no longer required to maintain a registered  
2574 agent in this state.

2575 Section 38. Section 607.0601, Florida Statutes, is amended  
2576 to read:

2577 607.0601 Authorized shares.—

2578 (1) The articles of incorporation must set forth any  
2579 ~~prescribe the~~ classes of shares and series of shares within a  
2580 class, and the number of shares of each class and series, that  
2581 the corporation is authorized to issue. If more than one class

28-00272A-19

2019892\_\_

2582 or series of shares is authorized, the articles of incorporation  
2583 must prescribe a distinguishing designation for each class or  
2584 series, and before ~~prior to~~ the issuance of shares of a class or  
2585 series, describe the terms, including the preferences,  
2586 limitations, and relative rights of that class or series ~~must be~~  
2587 ~~described in the articles of incorporation.~~ All shares of a  
2588 class or series must have terms, including preferences,  
2589 limitations, and relative rights, identical with those of other  
2590 shares of the same class or series, except to the extent  
2591 otherwise permitted by this section, s. 607.0602, or s.  
2592 607.0624.

2593 (2) The articles of incorporation must authorize:

2594 (a) One or more classes or series of shares that together  
2595 have unlimited voting rights, and

2596 (b) One or more classes or series of shares (which may be  
2597 the same class or classes or series as those with voting rights)  
2598 that together are entitled to receive the net assets of the  
2599 corporation upon dissolution.

2600 (3) The articles of incorporation may authorize one or more  
2601 classes or series of shares that:

2602 (a) Have special, conditional, or limited voting rights, or  
2603 no right to vote, except to the extent otherwise provided  
2604 ~~prohibited~~ by this chapter act;

2605 (b) Are redeemable or convertible as specified in the  
2606 articles of incorporation:

2607 1. At the option of the corporation, the shareholder, or  
2608 another person or upon the occurrence of a specified ~~designated~~  
2609 event;

2610 2. For cash, indebtedness, securities, or other property;



28-00272A-19

2019892\_\_

2611 or

2612 3. At prices and in an amount specified, or determined, in  
2613 accordance with a formula ~~In a designated amount or in an amount~~  
2614 ~~determined in accordance with a designated formula or by~~  
2615 ~~reference to extrinsic data or events;~~

2616 (c) Entitle the holders to distributions calculated in any  
2617 manner, including dividends that may be cumulative,  
2618 noncumulative, or partially cumulative;

2619 (d) Have preference over any other class or series of  
2620 shares with respect to distributions, including ~~dividends and~~  
2621 distributions upon the dissolution of the corporation.

2622 (4) The description of the designations, preferences,  
2623 limitations, and relative rights of share classes or series in  
2624 subsection (3) is not exhaustive.

2625 (5) The terms of shares may be made dependent on facts  
2626 ascertainable outside the articles of incorporation in  
2627 accordance with s. 607.0120(11).

2628 (6)~~(5)~~ Shares which are entitled to preference in the  
2629 distribution of dividends or assets shall not be designated as  
2630 common shares. Shares which are not entitled to preference in  
2631 the distribution of dividends or assets shall be common shares  
2632 and shall not be designated as preferred shares.

2633 Section 39. Section 607.0602, Florida Statutes, is amended  
2634 to read:

2635 607.0602 Terms of class or series determined by board of  
2636 directors.—

2637 (1) If the articles of incorporation so provide, the board  
2638 of directors is authorized, without shareholder approval, to ~~may~~  
2639 ~~determine, in whole or part, the preferences, limitations, and~~

28-00272A-19

2019892\_\_

2640 ~~relative rights (within the limits set forth in s. 607.0601) of:~~

2641 (a) Classify any unissued class of shares into one or more  
2642 classes or into one or more series within a class; before the  
2643 ~~issuance of any shares of that class, or~~

2644 (b) Reclassify any unissued shares of any class into one or  
2645 more classes or into one or more series within one or more  
2646 classes; or

2647 (c) Reclassify any unissued shares of any series of any  
2648 class into one or more classes or into one or more series within  
2649 ~~a class before the issuance of any shares of that series.~~

2650 (2) If the board of directors acts pursuant to subsection  
2651 (1), it shall determine the terms, including the preferences,  
2652 limitations, and relative rights, to the extent allowed under s.  
2653 607.0601, of:

2654 (a) Any class of shares before the issuance of any shares  
2655 of that class; or

2656 (b) Any series within a class before the issuance of any  
2657 shares of that series.

2658 (3) Each class and each series of a class must be given a  
2659 distinguishing designation.

2660 (4)~~(3)~~ All shares of a series must have preferences,  
2661 limitations, and relative rights identical with those of other  
2662 shares of the same series and, except to the extent otherwise  
2663 provided in the description of the series, of those of other  
2664 series of the same class.

2665 (5)~~(4)~~ Before issuing any shares of a class or series  
2666 created under this section, the corporation shall ~~must~~ deliver  
2667 to the department ~~of State~~ for filing articles of amendment,  
2668 which are effective without shareholder action, that set forth:

28-00272A-19

2019892\_\_

- 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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

2727 legal representative shall be entitled to be paid the excess of  
2728 the sale proceeds over the sum of the amount due and unpaid on  
2729 the subscription and the reasonable expenses incurred in selling  
2730 the shares, but in no event shall the defaulting subscriber or  
2731 his or her legal representative be entitled to be paid an amount  
2732 greater than the amount paid by the subscriber on the  
2733 subscription.

2734 (6) A subscription agreement entered into after  
2735 incorporation is also subject to s. 607.0621.

2736 Section 42. Subsection (5) of section 607.0621, Florida  
2737 Statutes, is amended to read:

2738 607.0621 Issuance of shares.—

2739 (5) The corporation may place in escrow shares issued for a  
2740 contract for future services or benefits or a promissory note,  
2741 or make other arrangements to restrict the transfer of the  
2742 shares, and may credit distributions in respect of the shares  
2743 against their purchase price, until the services are performed,  
2744 the note is paid, or the benefits received. If the services are  
2745 not performed, the note is not paid, or the benefits are not  
2746 received, the shares escrowed or restricted and the  
2747 distributions credited may be canceled in whole or part.

2748 Section 43. Subsection (5) of section 607.0622, Florida  
2749 Statutes, is amended to read:

2750 607.0622 Liability for shares issued before payment.—

2751 (5) No liability under this section may be asserted more  
2752 than 5 years after the earlier of:

2753 (a) The issuance of the shares ~~stock~~, or

2754 (b) The date of the subscription upon which the assessment  
2755 is sought.

28-00272A-19

2019892\_\_

2756 Section 44. Subsections (1) and (3) of section 607.0623,  
2757 Florida Statutes, are amended to read:

2758 607.0623 Share dividends.—

2759 (1) Unless the articles of incorporation provide otherwise,  
2760 shares may be issued pro rata and without consideration to the  
2761 corporation's shareholders or to the shareholders of one or more  
2762 classes or series or shares. An issuance of shares under this  
2763 subsection is a share dividend.

2764 (3) The board of directors may fix the record date for  
2765 determining shareholders entitled to a share dividend, but the  
2766 date may not be retroactive. If the board of directors does not  
2767 fix the record date for determining shareholders entitled to a  
2768 share dividend, the record date ~~is~~ is the date the board of  
2769 directors authorizes the share dividend.

2770 Section 45. Section 607.0624, Florida Statutes, is amended  
2771 to read:

2772 607.0624 Share rights, options, warrants, and awards.—

2773 (1) Unless the articles of incorporation provide otherwise,  
2774 a corporation may issue rights, options, or warrants for the  
2775 purchase of shares of the corporation of any class or series,  
2776 whether authorized but unissued shares of the corporation,  
2777 treasury shares, or shares of the corporation to be purchased or  
2778 acquired by the corporation. The board of directors shall  
2779 determine the terms and conditions upon which the rights,  
2780 options, or warrants are issued, including the consideration for  
2781 which the shares are to be issued. The authorization by the  
2782 board of directors for the corporation to issue such rights,  
2783 options, or warrants constitutes authorization for the issuance  
2784 of the shares for which the rights, options, or warrants are

28-00272A-19

2019892\_\_

2785 ~~exercisable their form and content, and the consideration for~~  
2786 ~~which the shares are to be issued.~~

2787 (2) The terms and conditions of such stock rights, and  
2788 options, or warrants, including those outstanding on January 1,  
2789 2020, may include restrictions or conditions that:

2790 (a) Preclude or limit the exercise, transfer, or receipt of  
2791 such rights, options, or warrants by any person or persons  
2792 owning or offering to acquire a specified number or percentage  
2793 of the outstanding shares of the corporation or by any  
2794 transferee or transferees of any such person or persons; or

2795 ~~(b) which are created and issued by a corporation formed~~  
2796 ~~under this chapter, or its successor, and which entitle the~~  
2797 ~~holders thereof to purchase from the corporation shares of any~~  
2798 ~~class or classes, whether authorized but unissued shares,~~  
2799 ~~treasury shares, or shares to be purchased or acquired by the~~  
2800 ~~corporation, may include, without limitation, restrictions, or~~  
2801 ~~conditions that preclude or limit the exercise, transfer,~~  
2802 ~~receipt, or holding of such rights or options by any person or~~  
2803 ~~persons, including any person or persons owning or offering to~~  
2804 ~~acquire a specified number or percentage of the outstanding~~  
2805 ~~common shares or other securities of the corporation, or any~~  
2806 ~~transferee or transferees of any such person or persons, or that~~  
2807 Invalidate or void such rights, ~~or~~ options, or warrants held by  
2808 any such person or persons or any such transferee or  
2809 transferees.

2810 (3) The board of directors may authorize a board committee  
2811 or the board of directors may authorize one or more officers, or  
2812 a board committee so authorized by the board of directors may  
2813 authorize one or more officers, to:

28-00272A-19

2019892\_\_

2814 (a) Designate the recipients of rights, options, warrants,  
2815 or other equity compensation awards that involve the issuance of  
2816 shares; and

2817 (b) Determine, within an amount and subject to any other  
2818 limitations established by the board of directors, a board  
2819 committee, and, if applicable, the shareholders, the number of  
2820 such rights, options, warrants, or other equity compensation  
2821 awards and the terms and conditions of such rights, options,  
2822 warrants, or awards to be received by the recipients, provided  
2823 that an officer may not use such authority to designate himself  
2824 or herself or any other persons as the board of directors or a  
2825 committee of the board may specify as a recipient of such  
2826 rights, options, warrants, or other equity compensation awards.

2827 (4) For purposes of this section, the term "shares"  
2828 includes a security convertible into or carrying a right to  
2829 subscribe for or acquire shares.

2830 Section 46. Subsections (1), (2), and (3) of section  
2831 607.0625, Florida Statutes, are amended to read:

2832 607.0625 Form and content of certificates.—

2833 (1) Shares may but need not be represented by certificates.  
2834 Unless this chapter ~~act~~ or another statute expressly provides  
2835 otherwise, the rights and obligations of shareholders are  
2836 identical, regardless of whether ~~or not~~ their shares are  
2837 represented by certificates.

2838 (2) At a minimum, each share certificate must state on its  
2839 face:

2840 (a) The name of the ~~issuing~~ corporation and that the  
2841 corporation is organized under the laws of this state;

2842 (b) The name of the person to whom issued; and



28-00272A-19

2019892\_\_

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:

28-00272A-19

2019892\_\_

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 ~~or~~ its subsidiaries, or  
2900 affiliates;

28-00272A-19

2019892\_\_

2901           2. Shares issued to satisfy conversion or option rights  
2902 created to provide compensation to directors, officers, agents,  
2903 or employees of the corporation, ~~or~~ its subsidiaries, or  
2904 affiliates;

2905           3. Shares authorized in the articles of incorporation that  
2906 are issued within 6 months from the effective date of  
2907 incorporation;

2908           4. Shares issued pursuant to a plan of reorganization  
2909 approved by a court of competent jurisdiction pursuant to a law  
2910 of this state or of the United States; or

2911           5. Shares issued for consideration other than money.

2912           (d) Holders of shares of any class or series without  
2913 general voting rights but with preferential rights to  
2914 distributions to receive the ~~or~~ net assets upon dissolution ~~and~~  
2915 ~~liquidation~~ have no preemptive rights with respect to shares of  
2916 any class or series.

2917           (e) Holders of shares of any class or series with general  
2918 voting rights but without preferential rights to distributions  
2919 ~~or net assets~~ upon dissolution ~~or liquidation~~ have no preemptive  
2920 rights with respect to shares of any class or series with  
2921 preferential rights to receive the net assets of the corporation  
2922 upon dissolution ~~distributions or assets~~ unless the shares with  
2923 preferential rights are convertible into or carry a right to  
2924 subscribe for or acquire the shares without preferential rights.

2925           Section 50. Subsections (3) and (5) of section 607.0631,  
2926 Florida Statutes, are amended, and subsection (6) is added to  
2927 that section, to read:

2928           607.0631 Corporation's acquisition of its own shares.—

2929           (3) Articles of amendment to effectuate a reduction in the

28-00272A-19

2019892\_\_

2930 authorized shares by the number of shares acquired by the  
2931 corporation may be adopted by the board of directors without  
2932 shareholder action, shall be delivered to the department of  
2933 ~~State~~ for filing, and shall set forth:

2934 (a) The name of the corporation;

2935 (b) The reduction in the number of authorized shares,  
2936 itemized by class and series; and

2937 (c) The total number of authorized shares, itemized by  
2938 class and series, remaining after reduction of the shares.

2939 (5) A corporation that has shares of any class or series  
2940 which are ~~either~~ registered on a national securities exchange ~~or~~  
2941 ~~designated as a national market system security on an~~  
2942 ~~interdealer quotation system by the National Association of~~  
2943 ~~Securities Dealers, Inc.,~~ may acquire such shares and designate,  
2944 either in the bylaws or in the resolutions of its board, that  
2945 shares so acquired by the corporation shall constitute treasury  
2946 shares.

2947 (6) Shares that a corporation acquires in a fiduciary  
2948 capacity for the benefit of any person other than the  
2949 corporation directly or indirectly through an entity controlled  
2950 by the corporation may not be deemed to have been acquired by  
2951 the corporation for purposes of this section.

2952 Section 51. Subsections (2), (3), (4), (6), (7), and (8) of  
2953 section 607.06401, Florida Statutes, are amended, and subsection  
2954 (9) is added to that section, to read:

2955 607.06401 Distributions to shareholders.—

2956 (2) The board of directors may fix the record date for  
2957 determining shareholders entitled to a distribution, but the  
2958 date may not be retroactive. If the board of directors does not

28-00272A-19

2019892\_\_

2959 fix the record date for determining shareholders entitled to a  
2960 distribution (other than one involving a purchase, redemption,  
2961 or other acquisition of the corporation's shares), the record  
2962 date ~~it~~ is the date the board of directors authorizes the  
2963 distribution.

2964 (3) No distribution may be made if, after giving it effect:

2965 (a) The corporation would not be able to pay its debts as  
2966 they become due in the usual course of the corporation's  
2967 activities and affairs ~~business~~; or

2968 (b) The corporation's total assets would be less than the  
2969 sum of its total liabilities plus (unless the articles of  
2970 incorporation permit otherwise) the amount that would be needed,  
2971 if the corporation were to be dissolved and wound up at the time  
2972 of the distribution, to satisfy the preferential rights upon  
2973 dissolution and winding up of shareholders whose preferential  
2974 rights are superior to those receiving the distribution.

2975 (4) The board of directors may base a determination that a  
2976 distribution is not prohibited under subsection (3) on:

2977 (a) ~~either on~~ Financial statements prepared on the basis of  
2978 accounting practices and principles that are reasonable under ~~in~~  
2979 the circumstances; or

2980 (b) ~~on~~ A fair valuation or other method that is reasonable  
2981 under ~~in~~ the circumstances. In the case of any distribution  
2982 based upon such a valuation, each such distribution shall be  
2983 identified as a distribution based upon a current valuation of  
2984 assets, and the amount per share paid on the basis of such  
2985 valuation shall be disclosed to the shareholders concurrent with  
2986 their receipt of the distribution.

2987 (6) Except as provided in subsection (8), the effect of a

28-00272A-19

2019892\_\_

2988  
2989  
2990  
2991  
2992  
2993  
2994  
2995  
2996  
2997  
2998  
2999  
3000  
3001  
3002  
3003  
3004  
3005  
3006  
3007  
3008  
3009  
3010  
3011  
3012  
3013  
3014  
3015  
3016

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 ~~is~~ 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

28-00272A-19

2019892\_\_

3017 interest ~~is~~ ~~are~~ made only if and to the extent that ~~payment~~ of a  
3018 distribution to shareholders could then be made under this  
3019 section. If such ~~the~~ indebtedness is issued as a distribution,  
3020 and by its terms provides that the payments ~~each payment~~ of  
3021 principal or interest are made only to the extent ~~is treated as~~  
3022 a distribution could be made under this section, then each  
3023 payment of principal and interest of that indebtedness is  
3024 treated as a distribution, the effect of which is measured on  
3025 the date the payment is actually made.

3026 (9) This section does not apply to distributions in  
3027 liquidation under ss. 607.1401-607.14401.

3028 Section 52. Section 607.0701, Florida Statutes, is amended  
3029 to read:

3030 607.0701 Annual meeting.—

3031 (1) Unless directors are elected by written consent in lieu  
3032 of an annual meeting pursuant to s. 607.0704, a corporation  
3033 shall hold a meeting of shareholders annually, for the election  
3034 of directors and for the transaction of any proper business, at  
3035 a time stated in or fixed in accordance with the bylaws.

3036 (2) Annual ~~shareholders'~~ meetings of shareholders may be  
3037 held in or out of this state at a place stated in or fixed in  
3038 accordance with the bylaws or, when not inconsistent with the  
3039 bylaws, stated in the notice of the annual meeting. If no place  
3040 is stated in or fixed in accordance with the bylaws, or stated  
3041 in the notice of the annual meeting, annual meetings shall be  
3042 held at the corporation's principal office.

3043 (3) The failure to hold the annual meeting at the time  
3044 stated in or fixed in accordance with a corporation's bylaws or  
3045 pursuant to this chapter ~~act~~ does not affect the validity of any

28-00272A-19

2019892\_\_

3046 corporate action and shall not work a forfeiture of or  
3047 dissolution of the corporation.

3048 (4) Participation of shareholders and proxy holders at an  
3049 annual meeting of shareholders by remote communication shall be  
3050 governed by and subject to the provisions of s. 607.0709 ~~if~~  
3051 ~~authorized by the board of directors, and subject to such~~  
3052 ~~guidelines and procedures as the board of directors may adopt,~~  
3053 ~~shareholders and proxy holders not physically present at an~~  
3054 ~~annual meeting of shareholders may, by means of remote~~  
3055 ~~communication:~~

3056 ~~(a) Participate in an annual meeting of shareholders.~~

3057 ~~(b) Be deemed present in person and vote at an annual~~  
3058 ~~meeting of shareholders, whether such meeting is to be held at a~~  
3059 ~~designated place or solely by means of remote communication,~~  
3060 ~~provided that:~~

3061 ~~1. The corporation shall implement reasonable measures to~~  
3062 ~~verify that each person deemed present and permitted to vote at~~  
3063 ~~the annual meeting by means of remote communication is a~~  
3064 ~~shareholder or proxy holder;~~

3065 ~~2. The corporation shall implement reasonable measures to~~  
3066 ~~provide such shareholders or proxy holders a reasonable~~  
3067 ~~opportunity to participate in the annual meeting and to vote on~~  
3068 ~~matters submitted to the shareholders, including, without~~  
3069 ~~limitation, an opportunity to communicate and to read or hear~~  
3070 ~~the proceedings of the annual meeting substantially concurrently~~  
3071 ~~with such proceedings; and~~

3072 ~~3. If any shareholder or proxy holder votes or takes other~~  
3073 ~~action at the annual meeting by means of remote communication, a~~  
3074 ~~record of such vote or other action shall be maintained by the~~



28-00272A-19

2019892\_\_

3075 ~~corporation.~~

3076 Section 53. Section 607.0702, Florida Statutes, is amended  
3077 to read:

3078 607.0702 Special meeting.—

3079 (1) A corporation shall hold a special meeting of  
3080 shareholders:

3081 (a) On call of its board of directors or the person or  
3082 persons authorized to do so by the articles of incorporation or  
3083 bylaws; or

3084 (b) If shareholders holding ~~the holders of~~ not less than 10  
3085 percent, unless a greater percentage not to exceed 50 percent is  
3086 required by the articles of incorporation, of all the votes  
3087 entitled to be cast on any issue proposed to be considered at  
3088 the proposed special meeting sign, date, and deliver to the  
3089 corporation's secretary one or more written demands for the  
3090 meeting describing the purpose or purposes for which it is to be  
3091 held. Unless otherwise provided in the articles of  
3092 incorporation, a written demand for a special meeting may be  
3093 revoked by a writing to that effect received by the corporation  
3094 prior to the receipt by the corporation of demands sufficient in  
3095 number to require the holding of a special meeting.

3096 (2) Special meetings of shareholders ~~shareholders' meetings~~  
3097 may be held in or out of the state at a place stated in or fixed  
3098 in accordance with the bylaws or, when not inconsistent with the  
3099 bylaws, in the notice of the special meeting. If no place is  
3100 stated in or fixed in accordance with the bylaws or in the  
3101 notice of the special meeting, special meetings shall be held at  
3102 the corporation's principal office.

3103 (3) Only business within the purpose or purposes described

28-00272A-19

2019892\_\_

3104 in the special meeting notice required by s. 607.0705 may be  
3105 conducted at a special meeting of shareholders ~~shareholders'~~  
3106 ~~meeting.~~

3107 (4) Participation of shareholders and proxy holders at a  
3108 special meeting of shareholders by remote communication shall be  
3109 governed by and subject to the provisions of s. 607.0709 ~~if~~  
3110 ~~authorized by the board of directors, and subject to such~~  
3111 ~~guidelines and procedures as the board of directors may adopt,~~  
3112 ~~shareholders and proxy holders not physically present at a~~  
3113 ~~special meeting of shareholders may, by means of remote~~  
3114 ~~communication:~~

3115 ~~(a) Participate in a special meeting of shareholders.~~

3116 ~~(b) Be deemed present in person and vote at a special~~  
3117 ~~meeting of shareholders, whether such meeting is to be held at a~~  
3118 ~~designated place or solely by means of remote communication,~~  
3119 ~~provided that:~~

3120 ~~1. The corporation shall implement reasonable measures to~~  
3121 ~~verify that each person deemed present and permitted to vote at~~  
3122 ~~the special meeting by means of remote communication is a~~  
3123 ~~shareholder or proxy holder;~~

3124 ~~2. The corporation shall implement reasonable measures to~~  
3125 ~~provide such shareholders or proxy holders a reasonable~~  
3126 ~~opportunity to participate in the special meeting and to vote on~~  
3127 ~~matters submitted to the shareholders, including, without~~  
3128 ~~limitation, an opportunity to communicate and to read or hear~~  
3129 ~~the proceedings of the special meeting substantially~~  
3130 ~~concurrently with such proceedings; and~~

3131 ~~3. If any shareholder or proxy holder votes or takes other~~  
3132 ~~action at the special meeting by means of remote communication,~~

28-00272A-19

2019892\_\_

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 ~~in~~ 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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

3191 to take the corporate action referred to therein unless, within  
3192 60 days of the date of the earliest dated consent delivered in  
3193 the manner required by this section, written consents signed by  
3194 shareholders owning a sufficient number of shares ~~the number of~~  
3195 ~~holders~~ required to authorize or take the action have been ~~are~~  
3196 delivered to the corporation by delivery as set forth in this  
3197 section.

3198 (3) Within 10 days after either written consents sufficient  
3199 to authorize or take the action have been delivered to the  
3200 corporation or such later date that tabulation of consents is  
3201 completed pursuant to an authorization under subsection (4)  
3202 ~~obtaining such authorization by written consent~~, notice must be  
3203 given to those shareholders who have not consented in writing or  
3204 who are not entitled to vote on the action. The notice shall  
3205 fairly summarize the material features of the authorized action  
3206 and, if the action be such for which appraisal dissenters'  
3207 rights are provided under this chapter act, the notice shall  
3208 contain a clear statement of the right of shareholders entitled  
3209 to assert appraisal rights under this chapter with respect to  
3210 the action dissenting therefrom to be paid the fair value of  
3211 their shares upon compliance with further provisions of this  
3212 chapter act regarding the rights of ~~dissenting~~ shareholders  
3213 entitled to assert appraisal rights under this chapter with  
3214 respect to the action.

3215 (4) A consent signed under this section has the effect of a  
3216 meeting vote and may be described as such in any document.  
3217 Unless the articles of incorporation, bylaws, or a resolution of  
3218 the board of directors provides for a reasonable delay to permit  
3219 tabulation of written consents, the action taken by written

28-00272A-19

2019892\_\_

3220 consent shall be effective when written consents signed by  
3221 shareholders owning a sufficient number of shares required to  
3222 authorize or take the action have been delivered to the  
3223 corporation.

3224 (5) In the event that the action to which the shareholders  
3225 consent is such as would have required the filing of a  
3226 certificate under any other section of this chapter ~~act~~ if such  
3227 action had been voted on by shareholders at a meeting thereof,  
3228 the certificate filed under such other section shall state that  
3229 written consent has been given in accordance with the provisions  
3230 of this section.

3231 (7) The notice requirements in subsection (3) do not delay  
3232 the effectiveness of actions taken by written consent, and a  
3233 failure to comply with such notice requirement does not  
3234 invalidate actions taken by written consent. This subsection may  
3235 not be deemed to limit judicial power to fashion any appropriate  
3236 remedy in favor of a shareholder adversely affected by a failure  
3237 to give such notice within the required time period.

3238 (8) If a corporation's articles of incorporation authorize  
3239 shareholders to cumulate their votes when electing directors  
3240 pursuant to s. 607.0728, directors may not be elected by written  
3241 consent of the shareholders unless the consent is unanimous.

3242 Section 56. Section 607.0705, Florida Statutes, is amended  
3243 to read:

3244 607.0705 Notice of meeting.—

3245 (1) A corporation shall notify shareholders of the date,  
3246 time, and place of each annual and special shareholders' meeting  
3247 no fewer than 10 or more than 60 days before the meeting date.  
3248 The notice must include the record date for determining the

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

3307 have been sent by first-class United States mail, addressed to  
3308 the shareholder at such person's ~~her or his~~ address as it  
3309 appears in the record of shareholders ~~on the share transfer~~  
3310 ~~books~~ of the corporation, maintained in accordance with s.  
3311 607.1601(4), and returned undeliverable, then the giving of such  
3312 notice to such person shall not be required. Any action or  
3313 meeting which is taken or held without notice to such person has  
3314 the same force and effect as if such notice has been duly given.  
3315 If any such person delivers to the corporation a written notice  
3316 setting forth such person's then current address, the  
3317 requirement that a notice be given to such person with respect  
3318 to future notices shall be reinstated. The obligation of the  
3319 ~~corporation to give notice of a shareholders' meeting to any~~  
3320 ~~such shareholder shall be reinstated once the corporation has~~  
3321 ~~received a new address for such shareholder for entry on its~~  
3322 ~~share transfer books.~~

3323 Section 57. Subsection (1) of section 607.0706, Florida  
3324 Statutes, is amended to read:

3325 607.0706 Waiver of notice.—

3326 (1) A shareholder may waive any notice required by this  
3327 chapter act, the articles of incorporation, or bylaws before or  
3328 after the date and time stated in the notice. The waiver must be  
3329 in writing, be signed by the shareholder entitled to the notice,  
3330 and be delivered to the corporation for filing by the  
3331 corporation with ~~inclusion in~~ the minutes or ~~filing with the~~  
3332 corporate records. Neither the business to be transacted at nor  
3333 the purpose of any regular or special meeting of the  
3334 shareholders need be specified in any written waiver of notice  
3335 unless so required by the articles of incorporation or the

28-00272A-19

2019892\_\_

3336 bylaws.

3337 Section 58. Subsections (1), (3), (4), (6), and (7) of  
3338 section 607.0707, Florida Statutes, are amended, and subsections  
3339 (8), (9), and (10) are added to that section, to read:

3340 607.0707 Record date.—

3341 (1) The bylaws may fix or provide the manner of fixing the  
3342 record date or dates for one or more voting groups ~~in order~~ to  
3343 determine the shareholders entitled to notice of a shareholders'  
3344 meeting, to demand a special meeting, to vote, or to take any  
3345 other action. If the bylaws do not fix or provide for fixing  
3346 such a record date, the board of directors ~~of the corporation~~  
3347 may fix the record date. In no event may a record date fixed by  
3348 the board of directors be a date preceding the date upon which  
3349 the resolution fixing the record date is adopted.

3350 (3) The bylaws may fix or provide the manner of fixing the  
3351 record date for determining shareholders entitled to take action  
3352 by the written consent of shareholders. If not otherwise  
3353 provided by or pursuant to the bylaws, the board of directors of  
3354 the corporation may set a record date for determining  
3355 shareholders entitled to take action by the written consent of  
3356 shareholders. In no event may a record date fixed by the board  
3357 of directors be a date preceding the date upon which the  
3358 resolution fixing the record date is adopted. If the bylaws do  
3359 not fix or provide for the manner of fixing such a record date  
3360 and if no such record date is fixed by the board of directors,  
3361 the record date for determining shareholders entitled to take  
3362 such action shall be the date that the first signed written  
3363 consent is delivered to the corporation pursuant to s. 607.0704  
3364 ~~If not otherwise provided by or pursuant to the bylaws and no~~

28-00272A-19

2019892\_\_

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'

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

3481 ~~arranged by voting group with the address of, and the number and~~  
3482 ~~class and series, if any, of shares held by, each.~~

3483 (2) The shareholders' list for notice must be available for  
3484 inspection by any shareholder for a period of 10 days prior to  
3485 the meeting or such shorter time as exists between the record  
3486 date and the meeting and continuing through the meeting at the  
3487 corporation's principal office, at a place identified in the  
3488 meeting notice in the city where the meeting will be held, or at  
3489 the office of the corporation's transfer agent or registrar. Any  
3490 separate shareholders' list for voting, if different, must be  
3491 similarly available for inspection promptly after the record  
3492 date for voting. A shareholder or the shareholder's agent or  
3493 attorney is entitled on written demand to inspect and, ~~the list~~  
3494 ~~(subject to the requirements of s. 607.1602(3)),~~ copy a list  
3495 during regular business hours and at his or her expense, during  
3496 the period it is available for inspection.

3497 (3) The corporation shall make the ~~shareholders'~~ list of  
3498 shareholders entitled to vote available at the meeting, and any  
3499 shareholder or the shareholder's agent or attorney is entitled  
3500 to inspect the list at any time during the meeting or any  
3501 adjournment.

3502 (5) If the requirements of this section have not been  
3503 substantially complied with or if the corporation refuses to  
3504 allow a shareholder or the shareholder's agent or attorney to  
3505 inspect a ~~the~~ shareholders' list, or copy a list pursuant to  
3506 subsection (2), before or at the meeting, the meeting shall be  
3507 adjourned until such requirements are complied with on the  
3508 demand of any shareholder in person or by proxy who failed to  
3509 get such access, or, if not adjourned upon such demand and such

28-00272A-19

2019892\_\_

3510 requirements are not complied with, the circuit court in the  
3511 applicable county ~~of the county where a corporation's principal~~  
3512 ~~office (or, if none in this state, its registered office) is~~  
3513 ~~located~~, on application of the shareholder, may summarily order  
3514 the inspection or copying at the corporation's expense and may  
3515 postpone the meeting for which the list was prepared until the  
3516 inspection or copying is complete.

3517 (7) A shareholder may not sell or otherwise distribute any  
3518 information or records inspected under this section, except to  
3519 the extent that such use is for a proper purpose as defined in  
3520 s. 607.1602(3). ~~Any person who violates this provision shall be~~  
3521 ~~subject to a civil penalty of \$5,000.~~

3522 Section 61. Subsections (1), (2), (3), and (4) of section  
3523 607.0721, Florida Statutes, are amended to read:

3524 607.0721 Voting entitlement of shares.-

3525 (1) Except as provided in subsections (2), (3), and (4) or  
3526 unless the articles of incorporation or this chapter act  
3527 provides otherwise, each outstanding share, regardless of class  
3528 or series, is entitled to one vote on each matter submitted to a  
3529 vote at a meeting of shareholders. Only shares are entitled to  
3530 vote. If the articles of incorporation provide for more or less  
3531 than one vote for any share on any matter, every reference in  
3532 this chapter act to a majority or other proportion of shares  
3533 shall refer to such a majority or other proportion of votes  
3534 entitled to be cast.

3535 (2) ~~The~~ Shares of a corporation are not entitled to vote if  
3536 they are owned by or otherwise belong to the corporation  
3537 directly, or indirectly through an entity of which a majority of  
3538 the voting power is held directly or indirectly by the



28-00272A-19

2019892\_\_

3539 ~~corporation or which is otherwise controlled by the, directly or~~  
3540 ~~indirectly, by a second corporation, domestic or foreign, and~~  
3541 ~~the first corporation owns, directly or indirectly, a majority~~  
3542 ~~of the shares entitled to vote for directors of the second~~  
3543 ~~corporation.~~

3544       (3) Shares held by the corporation in a fiduciary capacity  
3545 for the benefit of any person are entitled to vote unless they  
3546 are held for the benefit of, or otherwise belong to, the  
3547 corporation directly, or indirectly through an entity of which a  
3548 majority of the voting power is held directly or indirectly by  
3549 the corporation or which is otherwise controlled by the  
3550 corporation. For the purposes of this subsection, "voting power"  
3551 means the current power to vote in the election of directors of  
3552 a corporation or to elect, select, or appoint those persons who  
3553 will govern another entity ~~Subsection (2) does not limit the~~  
3554 ~~power of a corporation to vote any shares, including its own~~  
3555 ~~shares, held by it in a fiduciary capacity.~~

3556       (4) Redeemable shares are not entitled to vote on any  
3557 matter, and shall not be deemed to be outstanding, after  
3558 delivery of a written notice of redemption is effective mailed  
3559 ~~to the holders thereof~~ and a sum sufficient to redeem such  
3560 shares has been deposited with a bank, trust company, or other  
3561 financial institution upon an irrevocable obligation to pay the  
3562 holders the redemption price upon surrender of the shares.

3563       Section 62. Subsections (3) and (7) of section 607.0722,  
3564 Florida Statutes, are amended, and subsection (5) of that  
3565 section is republished, to read:

3566       607.0722 Proxies.—

3567       (3) An appointment of a proxy is effective when a signed

28-00272A-19

2019892\_\_

3568 appointment form or an electronic transmission of the  
3569 appointment is received by the inspector of election or by the  
3570 secretary or other officer or agent authorized to count ~~tabulate~~  
3571 votes. An appointment is valid for the term up to 11 months  
3572 ~~unless a longer period is expressly~~ provided in the appointment  
3573 form and, if no term is provided, is valid for 11 months unless  
3574 the appointment is irrevocable under subsection (5).

3575 (5) An appointment of a proxy is revocable by the  
3576 shareholder unless the appointment form or electronic  
3577 transmission conspicuously states that it is irrevocable and the  
3578 appointment is coupled with an interest. Appointments coupled  
3579 with an interest include the appointment of:

3580 (a) A pledgee;

3581 (b) A person who purchased or agreed to purchase the  
3582 shares;

3583 (c) A creditor of the corporation who extended credit to  
3584 the corporation under terms requiring the appointment;

3585 (d) An employee of the corporation whose employment  
3586 contract requires the appointment; or

3587 (e) A party to a voting agreement created under s.  
3588 607.0731.

3589 (7) Unless the appointment otherwise provides, an  
3590 appointment made irrevocable under subsection (5) continues in  
3591 effect after a transfer of the shares and a transferee takes  
3592 subject to the appointment, except that a transferee for value  
3593 of shares subject to an irrevocable appointment may revoke the  
3594 appointment if the transferee did not know of its existence when  
3595 the transferee ~~he or she~~ acquired the shares and the existence  
3596 of the irrevocable appointment was not noted conspicuously on

28-00272A-19

2019892\_\_

3597 the certificate representing the shares or on the information  
3598 statement for shares without certificates.

3599 Section 63. Section 607.0723, Florida Statutes, is amended  
3600 to read:

3601 607.0723 Shares held by intermediaries and nominees.—

3602 (1) A corporation's board of directors ~~corporation~~ may  
3603 establish a procedure under ~~by~~ which a person on whose behalf  
3604 ~~the beneficial owner of shares that are registered in the name~~  
3605 of an intermediary or a nominee may elect to be treated ~~is~~  
3606 ~~recognized~~ by the corporation as the record shareholder by  
3607 filing with the corporation a beneficial ownership certificate.  
3608 The terms, conditions, and limitations of such treatment shall  
3609 be specified in the procedure. To the extent such person is  
3610 treated under such procedure as having rights or privileges that  
3611 the record shareholder otherwise would have, the record  
3612 shareholder may not have those rights or privileges. The extent  
3613 of this recognition may be determined in the procedure.

3614 (2) The procedure must specify ~~may set forth~~:

3615 (a) The types of intermediaries or nominees to which it  
3616 applies;

3617 (b) The rights or privileges that the corporation  
3618 recognizes in a person with respect to whom a beneficial  
3619 ownership certificate is filed ~~beneficial owner~~;

3620 (c) The manner in which the procedure is selected, which  
3621 shall include that the beneficial ownership certificate be  
3622 signed or assented to by or on behalf of the record shareholder  
3623 and the person or persons on whose behalf the shares are held ~~by~~  
3624 ~~the nominee~~;

3625 (d) The information that must be provided when the

28-00272A-19

2019892\_\_

3626 procedure is selected;

3627 (e) The period for which selection of the procedure is  
3628 effective; ~~and~~

3629 (f) Requirements for notice to the corporation with respect  
3630 to the arrangement; and

3631 (g) The form and contents of the beneficial ownership  
3632 certificate.

3633 (3) The procedure may specify any other aspects of the  
3634 rights and duties created by the filing of a beneficial  
3635 ownership certificate.

3636 Section 64. Section 607.0724, Florida Statutes, is amended  
3637 to read:

3638 607.0724 ~~Corporation's~~ Acceptance of votes and other  
3639 instruments.-

3640 (1) If the name signed on a vote, ballot, consent, waiver,  
3641 shareholder demand, or proxy appointment corresponds to the name  
3642 of a shareholder, the corporation if acting in good faith is  
3643 entitled to accept the vote, ballot, consent, waiver,  
3644 shareholder demand, or proxy appointment and give it effect as  
3645 the act of the shareholder.

3646 (2) If the name signed on a vote, ballot, consent, waiver,  
3647 shareholder demand, or proxy appointment does not correspond to  
3648 the name of its shareholder, the corporation if acting in good  
3649 faith is nevertheless entitled to accept the vote, ballot,  
3650 consent, waiver, shareholder demand, or proxy appointment and  
3651 give it effect as the act of the shareholder if:

3652 (a) The shareholder is an entity and the name signed  
3653 purports to be that of an officer or agent of the entity;

3654 (b) The name signed purports to be that of an

28-00272A-19

2019892\_\_

3655 administrator, executor, guardian, personal representative, or  
3656 conservator representing the shareholder and, if the corporation  
3657 requests, evidence of fiduciary status acceptable to the  
3658 corporation has been presented with respect to the vote, ballot,  
3659 consent, waiver, shareholder demand, or proxy appointment;

3660 (c) The name signed purports to be that of a receiver,  
3661 trustee in bankruptcy, or assignee for the benefit of creditors  
3662 of the shareholder and, if the corporation requests, evidence of  
3663 this status acceptable to the corporation has been presented  
3664 with respect to the vote, ballot, consent, waiver, shareholder  
3665 demand, or proxy appointment;

3666 (d) The name signed purports to be that of a pledgee,  
3667 beneficial owner, or attorney in fact of the shareholder and, if  
3668 the corporation requests, evidence acceptable to the corporation  
3669 of the signatory's authority to sign for the shareholder has  
3670 been presented with respect to the vote, ballot, consent,  
3671 waiver, shareholder demand, or proxy appointment; or

3672 (e) Two or more persons are the shareholder as cotenants or  
3673 fiduciaries and the name signed purports to be the name of at  
3674 least one of the co\_owners and the person signing appears to be  
3675 acting on behalf of all the co\_owners.

3676 (3) The corporation is entitled to reject a vote, ballot,  
3677 consent, waiver, shareholder demand, or proxy appointment if the  
3678 person authorized to accept or reject such instrument ~~secretary~~  
3679 ~~or other officer or agent authorized to tabulate votes,~~ acting  
3680 in good faith, has reasonable basis for doubt about the validity  
3681 of the signature on it or about the signatory's authority to  
3682 sign for the shareholder.

3683 (4) Neither the corporation or any person authorized by it,

28-00272A-19

2019892\_\_

3684 nor any inspector of election under s. 607.0729, that ~~The~~  
3685 ~~corporation and its officer or agent who~~ accepts or rejects a  
3686 vote, ballot, consent, waiver, shareholder demand, or proxy  
3687 appointment in good faith and in accordance with the standards  
3688 of this section is ~~are not~~ liable in damages to the shareholder  
3689 for the consequences of the acceptance or rejection.

3690 (5) Corporate action based on the acceptance or rejection  
3691 of a vote, ballot, consent, waiver, shareholder demand, or proxy  
3692 appointment under this section is valid unless a court of  
3693 competent jurisdiction determines otherwise.

3694 (6) If an inspector of election has been appointed under s.  
3695 607.0729, the inspector of election may request information and  
3696 make determinations under subsections (1), (2), and (3). Any  
3697 determination made by the inspector of election under those  
3698 subsections is controlling.

3699 Section 65. Subsections (1), (2), (3), and (5) of section  
3700 607.0725, Florida Statutes, are amended, and subsection (8) is  
3701 added to that section, to read:

3702 607.0725 Quorum and voting requirements for voting groups.—

3703 (1) Shares entitled to vote as a separate voting group may  
3704 take action on a matter at a meeting only if a quorum of those  
3705 shares exists with respect to that matter. Unless the articles  
3706 of incorporation or this chapter ~~act~~ provides otherwise, a  
3707 majority of the votes entitled to be cast on the matter by the  
3708 voting group constitutes a quorum of that voting group for  
3709 action on that matter.

3710 (2) Once a share is represented for any purpose at a  
3711 meeting, it is deemed present for quorum purposes for the  
3712 remainder of the meeting and for any adjournment of that meeting

28-00272A-19

2019892\_\_

3713 unless a new record date is or must be fixed ~~set~~ for that  
3714 adjourned meeting.

3715 (3) If a quorum exists, action on a matter (other than the  
3716 election of directors) by a voting group is approved if the  
3717 votes cast within the voting group favoring the action exceed  
3718 the votes cast opposing the action, unless the articles of  
3719 incorporation or this chapter ~~act~~ requires a greater number of  
3720 affirmative votes.

3721 (5) The articles of incorporation may provide for a greater  
3722 voting requirement or a greater or lesser quorum requirement for  
3723 shareholders, or voting groups of shareholders, than is provided  
3724 by this chapter ~~act~~, but in no event shall a quorum consist of  
3725 less than one-third of the shares entitled to vote.

3726 (8) Whenever a provision of this chapter provides for  
3727 voting of classes or series as separate voting groups, the rules  
3728 provided in s. 607.1004 for amendments of articles of  
3729 incorporation apply to that provision.

3730 Section 66. Section 607.0726, Florida Statutes, is amended  
3731 to read:

3732 607.0726 Action by single and multiple voting groups.—

3733 (1) If the articles of incorporation or this chapter ~~act~~  
3734 provides for voting by a single voting group on a matter, action  
3735 on that matter is taken when voted upon by that voting group as  
3736 provided in s. 607.0725.

3737 (2) If the articles of incorporation or this chapter ~~act~~  
3738 provides for voting by two or more voting groups on a matter,  
3739 action on that matter is taken only when voted upon by each of  
3740 those voting groups counted separately as provided in s.  
3741 607.0725. Action may be taken by different voting groups ~~one~~

28-00272A-19

2019892\_\_

3742 ~~voting group on a matter at different times even though no~~  
3743 ~~action is taken by another voting group entitled to vote on the~~  
3744 ~~matter.~~

3745 Section 67. Subsection (1) of section 607.0728, Florida  
3746 Statutes, is amended to read:

3747 607.0728 Voting for directors; cumulative voting.—

3748 (1) Unless otherwise provided in the articles of  
3749 incorporation, or in a bylaw that fixes a greater voting  
3750 requirement for the election of directors and that is adopted by  
3751 the board of directors or shareholders of a corporation having  
3752 shares registered pursuant to s. 12 of the Securities Exchange  
3753 Act of 1934 ~~listed on a national securities exchange~~ at the time  
3754 of adoption, directors are elected by a plurality of the votes  
3755 cast by the shares entitled to vote in the election at a meeting  
3756 at which a quorum is present. A bylaw provision or amendment  
3757 adopted by shareholders which specifies the votes necessary for  
3758 the election of directors may not be further amended or repealed  
3759 by the board of directors.

3760 Section 68. Section 607.0729, Florida Statutes, is created  
3761 to read:

3762 607.0729 Voting procedures; inspectors of election.—

3763 (1) A corporation that has a class of shares registered  
3764 pursuant to s. 12 of the Securities Exchange Act of 1934 shall,  
3765 and any other corporation may, appoint one or more inspectors to  
3766 act at a meeting of shareholders in connection with determining  
3767 voting results. Each inspector will faithfully execute the  
3768 duties of inspector with strict impartiality and according to  
3769 the best of the inspector's ability. An inspector may be an  
3770 officer or employee of the corporation. The inspectors may



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

3887 authority to exercise the corporate powers or to manage the  
3888 business and affairs of the corporation, including the  
3889 resolution of any issue about which there exists a deadlock  
3890 among directors or shareholders; ~~or~~

3891 (g) Requires dissolution of the corporation at the request  
3892 of one or more of the shareholders or upon the occurrence of a  
3893 specified event or contingency; ~~-~~

3894 (h) Imposes a liability on a shareholder for the attorney  
3895 fees or expenses of the corporation or any other party in  
3896 connection with an internal corporate claim, as defined in s.  
3897 607.0208;

3898 (i) Establishes, including in lieu of a judicial  
3899 dissolution, a mechanism for breaking a deadlock among the  
3900 directors or shareholders of the corporation or for addressing  
3901 the occurrence or existence of a shareholder asserted oppressive  
3902 action; or

3903 (j) ~~(h)~~ Otherwise governs the exercise of the corporate  
3904 powers or the management of the business and affairs of the  
3905 corporation or the relationship between the shareholders, the  
3906 directors, and ~~or~~ the corporation, or among any of them, and is  
3907 not contrary to public policy. ~~For purposes of this paragraph,~~  
3908 ~~agreements contrary to public policy include, but are not~~  
3909 ~~limited to, agreements that reduce the duties of care and~~  
3910 ~~loyalty to the corporation as required by ss. 607.0830 and~~  
3911 ~~607.0832, exculpate directors from liability that may be imposed~~  
3912 ~~under s. 607.0831, adversely affect shareholders' rights to~~  
3913 ~~bring derivative actions under s. 607.07401, or abrogate~~  
3914 ~~dissenters' rights under ss. 607.1301-607.1320.~~

3915 (2) An agreement authorized by this section shall be:

28-00272A-19

2019892\_\_

3916 (a)1. Set forth or referenced in the articles of  
3917 incorporation or bylaws and approved by all persons who are  
3918 shareholders at the time the agreement; or

3919 2. Set forth in a written agreement that is signed by all  
3920 persons who are shareholders at the time of the agreement and  
3921 such written agreement is made known to the corporation; and.

3922 (b) Subject to termination or amendment only by all persons  
3923 who are shareholders at the time of the termination or  
3924 amendment, unless the agreement provides otherwise ~~with respect~~  
3925 ~~to termination and with respect to amendments that do not change~~  
3926 ~~the designation, rights, preferences, or limitations of any of~~  
3927 ~~the shares of a class or series.~~

3928 (3) The existence of an agreement authorized by this  
3929 section shall be noted conspicuously on the front or back of  
3930 each certificate for outstanding shares or on the information  
3931 statement required with respect to uncertified shares by s.  
3932 607.0626(2). If at the time of the agreement the corporation has  
3933 shares outstanding which are represented by certificates, the  
3934 corporation shall recall such certificates and issue substitute  
3935 certificates that comply with this subsection. The failure to  
3936 note the existence of the agreement on the certificate or  
3937 information statement shall not affect the validity of the  
3938 agreement or any action taken pursuant to it. Any purchaser of  
3939 shares who, at the time of purchase, did not have knowledge of  
3940 the existence of the agreement shall be entitled to rescission  
3941 of the purchase. A purchaser shall be deemed to have knowledge  
3942 of the existence of the agreement if its existence is noted on  
3943 the certificate or information statement for the shares in  
3944 compliance with this subsection and, if the shares are not

28-00272A-19

2019892\_\_

3945 represented by a certificate, the information statement is  
3946 delivered to the purchaser at or before ~~prior to~~ the time of the  
3947 purchase of the shares. An action to enforce the right of  
3948 rescission authorized by this subsection must be commenced  
3949 within the earlier of 90 days after discovery of the existence  
3950 of the agreement or 2 years after the time of purchase of the  
3951 shares.

3952 (4) An agreement authorized by this section shall cease to  
3953 be effective when shares of the corporation are registered  
3954 pursuant to s. 12 of the Securities Exchange Act of 1934 ~~listed~~  
3955 ~~on a national securities exchange or regularly quoted in a~~  
3956 ~~market maintained by one or more members of a national or~~  
3957 ~~affiliated securities association.~~ If the agreement ceases to be  
3958 effective for any reason, the board of directors may, if the  
3959 agreement is contained or referred to in the corporation's  
3960 articles of incorporation or bylaws, adopt an amendment to the  
3961 articles of incorporation or bylaws, without shareholder action,  
3962 to delete the agreement and any references to it.

3963 (5) An agreement authorized by this section that limits or  
3964 restricts the discretion or powers of the board of directors  
3965 shall relieve the directors of, and impose upon the person or  
3966 persons in whom such discretion or powers are vested, liability  
3967 for acts or omissions imposed by law on directors to the extent  
3968 that the discretion or powers of the directors are limited by  
3969 the agreement.

3970 (8) This section does not limit or invalidate agreements  
3971 that are otherwise valid or authorized without regard to this  
3972 section, including shareholder agreements between or among some  
3973 or all of the shareholders or agreements between or among the

28-00272A-19

2019892\_\_

3974 corporation and one or more shareholders.

3975 Section 72. Section 607.07401, Florida Statutes, is  
3976 repealed.

3977 Section 73. Section 607.0741, Florida Statutes, is created  
3978 to read:

3979 607.0741 Standing.—

3980 (1) A shareholder may not commence a derivative proceeding  
3981 unless the shareholder is a shareholder at the time the action  
3982 is commenced and:

3983 (a) Was a shareholder when the conduct giving rise to the  
3984 action occurred; or

3985 (b) Whose status as a shareholder devolved on the person  
3986 through transfer or by operation of law from one who was a  
3987 shareholder when the conduct giving rise to the action occurred.

3988 (2) In ss. 607.0741-607.0747, the term "shareholder" means  
3989 a record shareholder, a beneficial shareholder, or an  
3990 unrestricted voting trust beneficial owner.

3991 Section 74. Section 607.0742, Florida Statutes, is created  
3992 to read:

3993 607.0742 Complaint; demand and excuse.—A complaint in a  
3994 proceeding brought in the right of a corporation must be  
3995 verified and allege with particularity:

3996 (1) The demand, if any, made to obtain the action desired  
3997 by the shareholder from the board of directors; and

3998 (2) Either:

3999 (a) If such a demand was made, that the demand was refused,  
4000 rejected, or ignored by the board of directors prior to the  
4001 expiration of 90 days from the date the demand was made;

4002 (b) If such a demand was made, why irreparable injury to



28-00272A-19

2019892\_\_

4003 the corporation or misapplication or waste of corporate assets  
4004 causing material injury to the corporation would result by  
4005 waiting for the expiration of a 90-day period from the date the  
4006 demand was made; or

4007 (c) The reason or reasons the shareholder did not make the  
4008 effort to obtain the desired action from the board of directors  
4009 or comparable authority.

4010 Section 75. Section 607.0743, Florida Statutes, is created  
4011 to read:

4012 607.0743 Stay of proceedings.—If the corporation commences  
4013 an inquiry into the allegations made in the demand or complaint,  
4014 the court may stay any derivative proceeding for such period as  
4015 the court deems appropriate.

4016 Section 76. Section 607.0744, Florida Statutes, is created  
4017 to read:

4018 607.0744 Dismissal.—

4019 (1) A derivative proceeding may be dismissed, in whole or  
4020 in part, by the court on motion by the corporation if a group  
4021 specified in subsection (2) or subsection (3) has determined in  
4022 good faith, after conducting a reasonable inquiry upon which its  
4023 conclusions are based, that the maintenance of the derivative  
4024 proceeding is not in the best interests of the corporation. In  
4025 all such cases, the corporation has the burden of proof  
4026 regarding the qualifications, good faith, and reasonable inquiry  
4027 of the group making the determination.

4028 (2) Unless a panel is appointed pursuant to subsection (3),  
4029 the determination required in subsection (1) shall be made by:

4030 (a) A majority of qualified directors present at a meeting  
4031 of the board of directors if the qualified directors constitute

28-00272A-19

2019892\_\_

4032 a quorum; or

4033 (b) A majority vote of a committee consisting of two or  
4034 more qualified directors appointed by majority vote of qualified  
4035 directors present at a meeting of the board of directors,  
4036 regardless of whether such qualified directors constitute a  
4037 quorum.

4038 (3) Upon motion by the corporation, the court may appoint a  
4039 panel consisting of one or more disinterested and independent  
4040 individuals to make a determination required in subsection (1).

4041 (4) This section does not prevent the court from:

4042 (a) Enforcing a person's rights under the corporation's  
4043 articles of incorporation, bylaws or this chapter, including the  
4044 person's rights to information under s. 607.1602; or

4045 (b) Exercising its equitable or other powers, including  
4046 granting extraordinary relief in the form of a temporary  
4047 restraining order or preliminary injunction.

4048 Section 77. Section 607.0745, Florida Statutes, is created  
4049 to read:

4050 607.0745 Discontinuance or settlement; notice.-

4051 (1) A derivative action on behalf of a corporation may not  
4052 be discontinued or settled without the court's approval.

4053 (2) If the court determines that a proposed discontinuance  
4054 or settlement will substantially affect the interest of the  
4055 corporation's shareholders or a class, series, or voting group  
4056 of shareholders, the court shall direct that notice be given to  
4057 the shareholders affected. The court may determine which party  
4058 or parties to the derivative action shall bear the expense of  
4059 giving the notice.

4060 Section 78. Section 607.0746, Florida Statutes, is created

28-00272A-19

2019892\_\_

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:

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

4119 corporation; and

4120 (b) A receiver may dispose of all or any part of the assets  
4121 of the corporation, wherever located, at a public or private  
4122 sale, if authorized by the court, and may sue and defend in the  
4123 receiver's own name as receiver in all courts of this state.

4124 (5) During a custodianship, the court may redesignate the  
4125 custodian a receiver and, during a receivership, the court may  
4126 redesignate the receiver a custodian, in each case if doing so  
4127 is in the best interests of the corporation.

4128 (6) The court from time to time during the custodianship or  
4129 receivership may order compensation paid and expense  
4130 disbursements or reimbursements made to any custodian or  
4131 receiver from the assets of the corporation or proceeds from the  
4132 sale of its assets.

4133 Section 81. Section 607.0749, Florida Statutes, is created  
4134 to read:

4135 607.0749 Provisional director.—

4136 (1) In a proceeding by a shareholder, a provisional  
4137 director may be appointed in the discretion of the court if it  
4138 appears that such action by the court will remedy a situation in  
4139 which the directors are deadlocked in the management of the  
4140 corporate affairs and the shareholders are unable to break the  
4141 deadlock. A provisional director may be appointed  
4142 notwithstanding the absence of a vacancy on the board of  
4143 directors, and such director shall have all the rights and  
4144 powers of a duly elected director, including the right to notice  
4145 of and to vote at meetings of directors, until such time as the  
4146 provisional director is removed by order of the court or, unless  
4147 otherwise ordered by a court, removed by a vote of the

28-00272A-19

2019892\_\_

4148 shareholders sufficient either to elect a majority of the board  
4149 of directors or, if greater than majority voting is required by  
4150 the articles of incorporation or the bylaws, to elect the  
4151 requisite number of directors needed to take action. A  
4152 provisional director shall be an impartial person who is neither  
4153 a shareholder nor a creditor of the corporation or of any  
4154 subsidiary or affiliate of the corporation, and whose further  
4155 qualifications, if any, may be determined by the court.

4156 (2) A provisional director shall report from time to time  
4157 to the court concerning the matter complained of, or the status  
4158 of the deadlock, if any, and of the status of the corporation's  
4159 business, as the court shall direct. No provisional director  
4160 shall be liable for any action taken or decision made, except as  
4161 directors may be liable under s. 607.0831. In addition, the  
4162 provisional director shall submit to the court, if so directed,  
4163 recommendations as to the appropriate disposition of the action.  
4164 Whenever a provisional director is appointed, any officer or  
4165 director of the corporation may, from time to time, petition the  
4166 court for instructions clarifying the duties and  
4167 responsibilities of such officer or director.

4168 (3) In any proceeding under this section, the court shall  
4169 allow reasonable compensation to the provisional director for  
4170 services rendered and reimbursement or direct payment of  
4171 reasonable costs and expenses, which amounts shall be paid by  
4172 the corporation.

4173 Section 82. Section 607.0801, Florida Statutes, is amended  
4174 to read:

4175 607.0801 Requirement for and duties of board of directors.-

4176 (1) Except as may be provided in an agreement authorized

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

4235 directors elected in the manner provided in the articles of  
4236 incorporation may be greater than or less than those of any  
4237 other director or class of directors. If the articles of  
4238 incorporation provide that directors elected by the holders of a  
4239 voting group shall have more or less than one vote per director  
4240 on any matter, every reference in this chapter ~~act~~ to a majority  
4241 or other proportion of directors shall refer to a majority or  
4242 other proportion of the votes of such directors. If a  
4243 shareholders' agreement meeting the requirements of s. 607.0732,  
4244 or articles of incorporation or bylaws meeting the requirements  
4245 of s. 607.0732, provide that directors shall have more or less  
4246 than one vote per director on any matter, every reference in  
4247 this chapter to a majority or other proportion of directors  
4248 shall refer to a majority or other proportion of the votes of  
4249 such directors.

4250 Section 86. Subsections (2) and (5) of section 607.0805,  
4251 Florida Statutes, are amended to read:

4252 607.0805 Terms of directors generally.—

4253 (2) The terms of all other directors expire at the next  
4254 annual shareholders' meeting following their election, except to  
4255 the extent:

4256 (a) Provided in s. 607.0806;

4257 (b) Provided in s. 607.1023 if a bylaw electing to be  
4258 governed by that section is in effect; or

4259 (c) That a shorter term is specified in the articles of  
4260 incorporation in the event of a director nominee failing to  
4261 receive a specified vote for election ~~unless their terms are~~  
4262 ~~staggered under s. 607.0806.~~

4263 (5) Except to the extent otherwise provided in the articles

28-00272A-19

2019892\_\_

4264 of incorporation or under s. 607.1023, if a bylaw electing to be  
4265 governed by that section is in effect, despite the expiration of  
4266 a director's term, the director continues to serve until his or  
4267 her successor is elected and qualifies or until there is a  
4268 decrease in the number of directors.

4269 Section 87. Section 607.0806, Florida Statutes, is amended  
4270 to read:

4271 607.0806 Staggered terms for directors.—

4272 (1) ~~The directors of any corporation organized under this~~  
4273 ~~act may, by the~~ articles of incorporation, the initial bylaws or  
4274 ~~by an initial bylaw,~~ or by a bylaw adopted by a vote of the  
4275 shareholders, may provide for staggering the terms of directors  
4276 by dividing the total number of directors into two or three  
4277 groups, with each group containing half or one-third of the  
4278 total, as near as may be practicable. In that event, the terms  
4279 of the first group expire at the first annual shareholders'  
4280 meeting after their election, the terms of the second group  
4281 expire at the second annual shareholders' meeting after their  
4282 election, and the terms of the third group, if any, expire at  
4283 the third annual shareholders' meeting after their election. At  
4284 each annual shareholders' meeting held thereafter, directors  
4285 shall be elected for a term of two years or three years be  
4286 ~~divided into one, two, or three classes with the number of~~  
4287 ~~directors in each class being as nearly equal as possible; the~~  
4288 ~~term of office of those of the first class to expire at the~~  
4289 ~~annual meeting next ensuing; of the second class 1 year~~  
4290 ~~thereafter; of the third class 2 years thereafter; and at each~~  
4291 ~~annual election held after such classification and election,~~  
4292 ~~directors shall be chosen for a full term, as the case may be,~~

28-00272A-19

2019892\_\_

4293 to succeed those whose terms expire. If the directors have  
4294 staggered terms, then any increase or decrease in the number of  
4295 directors shall be so apportioned among the classes as to make  
4296 all classes as nearly equal in number as possible.

4297 (2) In the case of any Florida corporation in existence  
4298 prior to July 1, 1990, directors of such corporation divided  
4299 into four classes may continue to serve staggered terms as the  
4300 articles of incorporation or bylaws of such corporation provided  
4301 immediately prior to the effective date of this chapter ~~act~~,  
4302 unless and until the articles of incorporation or bylaws are  
4303 amended to alter or terminate such classes.

4304 Section 88. Section 607.0807, Florida Statutes, is amended  
4305 to read:

4306 607.0807 Resignation of directors.—

4307 (1) A director may resign at any time by delivering written  
4308 notice of resignation to the board of directors or its chair or  
4309 to the secretary of the corporation.

4310 (2) A resignation is effective when the notice of  
4311 resignation is delivered unless the notice of resignation  
4312 specifies a later effective date or an effective date determined  
4313 upon the subsequent happening of an event or events. If a  
4314 resignation is made effective at a later date or upon the  
4315 subsequent happening of an event or events, the board of  
4316 directors may fill the pending vacancy before the effective date  
4317 occurs if the board of directors provides that the successor  
4318 does not take office until the effective date.

4319 (3) A resignation that specifies a later effective date or  
4320 that is conditioned upon the subsequent happening of an event or  
4321 events or upon failing to receive a specified vote for election

28-00272A-19

2019892\_\_

4322 as a director may provide that the resignation is irrevocable.

4323 Section 89. Subsections (3) and (4) of section 607.0808,  
4324 Florida Statutes, are amended to read:

4325 607.0808 Removal of directors by shareholders.—

4326 (3) A director may be removed if the number of votes cast  
4327 to remove the director exceeds the number of votes cast not to  
4328 remove the director, except to the extent the articles of  
4329 incorporation or bylaws require a greater number; provided that  
4330 if cumulative voting is authorized, a director may not be  
4331 removed if, in the case of a meeting, the number of votes  
4332 sufficient to elect the director under cumulative voting is  
4333 voted against his or her removal and, if action is taken by less  
4334 than unanimous written consent, voting shareholders entitled to  
4335 the number of votes sufficient to elect the director under  
4336 cumulative voting do not consent to the removal. ~~If cumulate~~  
4337 ~~voting is not authorized, a director may be removed only if the~~  
4338 ~~number of votes cast to remove the director exceeds the number~~  
4339 ~~of votes cast not to remove him or her.~~

4340 (4) A director may be removed by the shareholders only at a  
4341 meeting of shareholders called for the purpose of removing the  
4342 director and the meeting notice must state that the, provided  
4343 ~~the notice of the meeting states that the purpose, or one of the~~  
4344 ~~purposes, of the meeting is~~ removal of the director is the  
4345 purpose of the meeting.

4346 Section 90. Section 607.08081, Florida Statutes, is created  
4347 to read:

4348 607.08081 Removal of directors by judicial proceedings.—

4349 (1) The circuit court in the applicable county may remove a  
4350 director from office, and may order other relief, including

28-00272A-19

2019892\_\_

4351 barring the director from reelection for a period prescribed by  
4352 the court, in a proceeding commenced by or in the right of the  
4353 corporation if the court finds that:

4354 (a) The director engaged in fraudulent conduct with respect  
4355 to the corporation or its shareholders, grossly abused the  
4356 position of director, or intentionally inflicted harm on the  
4357 corporation; and

4358 (b) Considering the director's course of conduct and the  
4359 inadequacy of other available remedies, removal or such other  
4360 relief would be in the best interest of the corporation.

4361 (2) A shareholder proceeding on behalf of the corporation  
4362 under paragraph (1)(a) shall comply with all of the requirements  
4363 of ss. 607.0741-607.0747, except s. 607.0741(1).

4364 Section 91. Section 607.0809, Florida Statutes, is amended  
4365 to read:

4366 607.0809 Vacancy on board.—

4367 (1) Unless the articles of incorporation provide otherwise,  
4368 if ~~Whenever~~ a vacancy occurs on a board of directors, including  
4369 a vacancy resulting from an increase in the number of  
4370 directors; ~~it may be filled by the affirmative vote of a~~  
4371 majority of the remaining directors, though less than a quorum  
4372 of the board of directors, or by the shareholders, unless the  
4373 articles of incorporation provide otherwise

4374 (a) The shareholders may fill the vacancy;

4375 (b) The board of directors may fill the vacancy; or

4376 (c) If the directors remaining in office are less than a  
4377 quorum, the vacancy may be filled by the affirmative vote of a  
4378 majority of all the directors then remaining in office.

4379 (2) If the vacant office was held by a director elected by

28-00272A-19

2019892\_\_

4380 a voting group of shareholders, only the holders of shares of  
4381 that voting group are entitled to vote to fill the vacancy if it  
4382 is filled by the shareholders, and only the remaining directors  
4383 elected by that voting group, even if less than a quorum, are  
4384 entitled to fill the vacancy if it is filled by the directors  
4385 ~~Whenever the holders of shares of any voting group are entitled~~  
4386 ~~to elect a class of one or more directors by the provisions of~~  
4387 ~~the articles of incorporation, vacancies in such class may be~~  
4388 ~~filled by holders of shares of that voting group or by a~~  
4389 ~~majority of the directors then in office elected by such voting~~  
4390 ~~group or by a sole remaining director so elected. If no director~~  
4391 ~~elected by such voting group remains in office, unless the~~  
4392 ~~articles of incorporation provide otherwise, directors not~~  
4393 ~~elected by such voting group may fill vacancies as provided in~~  
4394 ~~subsection (1).~~

4395 (3) A vacancy that will ~~may~~ occur at a specified later date  
4396 ~~(under s. 607.0807(2) by reason of a resignation effective at a~~  
4397 ~~later date~~ under s. 607.0807(2) or otherwise ~~or upon the~~  
4398 ~~subsequent happening of an event)~~ may be filled before the  
4399 vacancy occurs, but the new director may not take office until  
4400 the vacancy occurs.

4401 Section 92. Subsection (4) of section 607.0820, Florida  
4402 Statutes, is amended to read:

4403 607.0820 Meetings.—

4404 (4) Unless the articles of incorporation or bylaws provide  
4405 otherwise, the board of directors may permit any or all  
4406 directors to participate in any meeting of the board of  
4407 directors ~~a regular or special meeting by, or conduct the~~  
4408 ~~meeting~~ through the use of ~~7~~ any means of communication by which

28-00272A-19

2019892\_\_

4409 all directors participating may simultaneously hear each other  
4410 during the meeting. A director participating in a meeting by  
4411 this means is deemed to be present in person at the meeting.

4412 Section 93. Subsections (1) and (2) of section 607.0821,  
4413 Florida Statutes, are amended to read:

4414 607.0821 Action by directors without a meeting.—

4415 (1) Unless the articles of incorporation or bylaws provide  
4416 otherwise, action required or permitted by this chapter ~~act~~ to  
4417 be taken at a board of directors' meeting or committee meeting  
4418 may be taken without a meeting if the action is taken by all  
4419 members of the board or of the committee. The action must be  
4420 evidenced by one or more written consents describing the action  
4421 taken and signed by each director or committee member and  
4422 delivered to the corporation.

4423 (2) Action taken under this section is effective when the  
4424 last director signs the consent and delivers the consent to the  
4425 corporation, unless the consent specifies a different effective  
4426 date. A director's consent may be withdrawn by a revocation  
4427 signed by the director and delivered to the corporation prior to  
4428 delivery to the corporation of unrevoked written consents signed  
4429 by all the directors.

4430 Section 94. Section 607.0823, Florida Statutes, is amended  
4431 to read:

4432 607.0823 Waiver of notice.—Notice of a meeting of the board  
4433 of directors need not be given to any director who signs a  
4434 waiver of notice either before or after the meeting. Attendance  
4435 of a director at a meeting shall constitute a waiver of notice  
4436 of such meeting and a waiver of any and all objections to the  
4437 date, time, place, or purpose of the meeting, ~~the time of the~~

28-00272A-19

2019892\_\_

4438 ~~meeting,~~ or the manner in which it has been called or convened,  
4439 except when a director states, at the beginning of the meeting  
4440 or promptly upon arrival at the meeting, any objection to  
4441 holding the meeting or to the transaction of business because  
4442 the meeting is not lawfully called or convened and if the  
4443 director, after objection, does not vote for or consent to  
4444 action taken at the meeting.

4445 Section 95. Subsections (1), (2), and (3) of section  
4446 607.0824, Florida Statutes, are amended, present subsection (4)  
4447 of that section is redesignated as subsection (5), and a new  
4448 subsection (4) is added to that section, to read:

4449 607.0824 Quorum and voting.—

4450 (1) Unless the articles of incorporation or bylaws provide  
4451 for a greater or lesser number, or unless otherwise expressly  
4452 provided in this chapter require a different number, a quorum of  
4453 a board of directors consists of a majority of the number of  
4454 directors specified in or fixed in accordance with ~~prescribed by~~  
4455 the articles of incorporation or the bylaws.

4456 (2) The quorum of the board of directors specified in or  
4457 fixed in accordance with the articles of incorporation or bylaws  
4458 may not consist of less than ~~may authorize a quorum of a board~~  
4459 ~~of directors to consist of less than a majority but no fewer~~  
4460 ~~than~~ one-third of the specified or fixed ~~prescribed~~ number of  
4461 directors ~~determined under the articles of incorporation or the~~  
4462 ~~bylaws.~~

4463 (3) If a quorum is present when a vote is taken, the  
4464 affirmative vote of a majority of directors present is the act  
4465 of the board of directors unless the articles of incorporation  
4466 or bylaws require the vote of a greater number of directors or



28-00272A-19

2019892\_\_

4467 unless otherwise expressly provided for in this chapter.

4468 (4) If any directors have special voting rights in  
4469 compliance with the provisions of s. 607.0804, the quorum and  
4470 voting requirements of this section shall be determined  
4471 consistent with the provisions of s. 607.0804.

4472 Section 96. Section 607.0825, Florida Statutes, is amended  
4473 to read:

4474 607.0825 Committees.—

4475 (1) Unless this chapter, the articles of incorporation, or  
4476 the bylaws provide otherwise, the board of directors may  
4477 establish ~~provide, the board of directors, by resolution adopted~~  
4478 ~~by a majority of the full board of directors, may designate from~~  
4479 ~~among its members an executive committee and one or more other~~  
4480 board committees to perform functions of the board of directors.  
4481 Such committees shall be composed exclusively of one or more  
4482 directors ~~committees each of which, to the extent provided in~~  
4483 ~~such resolution or in the articles of incorporation or the~~  
4484 ~~bylaws of the corporation, shall have and may exercise all the~~  
4485 ~~authority of the board of directors, except that no such~~  
4486 ~~committee shall have the authority to:~~

4487 ~~(a) Approve or recommend to shareholders actions or~~  
4488 ~~proposals required by this act to be approved by shareholders.~~

4489 ~~(b) Fill vacancies on the board of directors or any~~  
4490 ~~committee thereof.~~

4491 ~~(c) Adopt, amend, or repeal the bylaws.~~

4492 ~~(d) Authorize or approve the reacquisition of shares unless~~  
4493 ~~pursuant to a general formula or method specified by the board~~  
4494 ~~of directors.~~

4495 ~~(e) Authorize or approve the issuance or sale or contract~~

28-00272A-19

2019892\_\_

4496 ~~for the sale of shares, or determine the designation and~~  
4497 ~~relative rights, preferences, and limitations of a voting group~~  
4498 ~~except that the board of directors may authorize a committee (or~~  
4499 ~~a senior executive officer of the corporation) to do so within~~  
4500 ~~limits specifically prescribed by the board of directors.~~

4501 (2) Unless this chapter, the articles of incorporation, or  
4502 the bylaws provide otherwise, the establishment of a board  
4503 committee, the appointment of members to such committee, the  
4504 dissolution of a previously created board committee, and the  
4505 removal of members from a previously created board committee  
4506 must be approved by a majority of all the directors in office  
4507 when the action is taken ~~Unless the articles of incorporation or~~  
4508 ~~bylaws provide otherwise, ss. 607.0820, 607.0822, 607.0823, and~~  
4509 ~~607.0824 which govern meetings, notice and waiver of notice, and~~  
4510 ~~quorum and voting requirements of the board of directors apply~~  
4511 ~~to committees and their members as well.~~

4512 (3) Sections 607.0820-607.0824, which govern meetings,  
4513 notice and waiver of notice, and quorum and voting requirements  
4514 of the board of directors, apply to board committees and their  
4515 members as well.

4516 (4) A board committee may exercise the powers of the board  
4517 of directors under s. 607.0801, except that a board committee  
4518 may not:

4519 (a) Authorize or approve the reacquisition of shares unless  
4520 pursuant to a formula or method, or within limits, prescribed by  
4521 the board of directors.

4522 (b) Approve, recommend to shareholders, or propose to  
4523 shareholders action that this chapter requires be approved by  
4524 shareholders.

28-00272A-19

2019892\_\_

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.~~

28-00272A-19

2019892\_\_

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:~~

28-00272A-19

2019892\_\_

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;

28-00272A-19

2019892\_\_

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.-

28-00272A-19

2019892\_\_

4641 (1) A director is not personally liable for monetary  
4642 damages to the corporation or any other person for any  
4643 statement, vote, decision to take or not to take action, or any  
4644 failure to take any action, as ~~or failure to act, regarding~~  
4645 ~~corporate management or policy, by~~ a director, unless:

4646 (a) The director breached or failed to perform his or her  
4647 duties as a director; and

4648 (b) The director's breach of, or failure to perform, those  
4649 duties constitutes any of the following:

4650 1. A violation of the criminal law, unless the director had  
4651 reasonable cause to believe his or her conduct was lawful or had  
4652 no reasonable cause to believe his or her conduct was unlawful.  
4653 A judgment or other final adjudication against a director in any  
4654 criminal proceeding for a violation of the criminal law estops  
4655 that director from contesting the fact that his or her breach,  
4656 or failure to perform, constitutes a violation of the criminal  
4657 law; but does not estop the director from establishing that he  
4658 or she had reasonable cause to believe that his or her conduct  
4659 was lawful or had no reasonable cause to believe that his or her  
4660 conduct was unlawful;

4661 2. A circumstance under which the ~~A~~ transaction at issue is  
4662 one from which the director derived an improper personal  
4663 benefit, either directly or indirectly;

4664 3. A circumstance under which the liability provisions of  
4665 s. 607.0834 are applicable;

4666 4. In a proceeding by or in the right of the corporation to  
4667 procure a judgment in its favor or by or in the right of a  
4668 shareholder, conscious disregard for the best interest of the  
4669 corporation, or willful or intentional misconduct; or

28-00272A-19

2019892\_\_

4670           5. In a proceeding by or in the right of someone other than  
4671 the corporation or a shareholder, recklessness or an act or  
4672 omission which was committed in bad faith or with malicious  
4673 purpose or in a manner exhibiting wanton and willful disregard  
4674 of human rights, safety, or property.

4675           (3) A director is deemed not to have derived an improper  
4676 personal benefit from any transaction if the transaction and the  
4677 nature of any personal benefit derived by the director are not  
4678 prohibited by state or federal law or regulation and, without  
4679 further limitation:

4680           (a) In an action other than a derivative suit regarding a  
4681 decision by the director to approve, reject, or otherwise affect  
4682 the outcome of an offer to purchase the shares ~~stock~~ of, or to  
4683 effect a merger of, the corporation, the transaction and the  
4684 nature of any personal benefits derived by a director are  
4685 disclosed or known to all directors voting on the matter, and  
4686 the transaction was authorized, approved, or ratified by at  
4687 least two directors who comprise a majority of the disinterested  
4688 directors (whether or not such disinterested directors  
4689 constitute a quorum); or

4690           (b) The transaction is fair to the corporation at the time  
4691 it is authorized, approved, or ratified as determined in  
4692 accordance with s. 607.0832 ~~and the nature of any personal~~  
4693 ~~benefits derived by a director are disclosed or known to the~~  
4694 ~~shareholders entitled to vote, and the transaction was~~  
4695 ~~authorized, approved, or ratified by the affirmative vote or~~  
4696 ~~written consent of such shareholders who hold a majority of the~~  
4697 ~~shares, the voting of which is not controlled by directors who~~  
4698 ~~derived a personal benefit from or otherwise had a personal~~



28-00272A-19

2019892\_\_

4699 ~~interest in the transaction; or~~

4700 ~~(c) 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.

28-00272A-19

2019892\_\_

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  
4753 because of that relationship or interest, because such director  
4754 or directors are present at the meeting of the board of  
4755 directors or a committee thereof which authorizes, approves, or  
4756 ratifies such transaction, or because his or her or their votes

28-00272A-19

2019892\_\_

4757 are counted for such purpose.

4758 (3) (a) In a proceeding challenging the validity of a  
4759 director's conflict of interest transaction or in a proceeding  
4760 seeking equitable relief, award of damages, or other sanctions  
4761 with respect to a director's conflict of interest transaction,  
4762 the person challenging the validity or seeking equitable relief,  
4763 award of damages, or other sanctions has the burden of proving  
4764 the lack of fairness of the transaction if:

4765 1. The material facts of the transaction and the director's  
4766 interest in the transaction were disclosed or known to the board  
4767 of directors or committee that authorizes, approves, or ratifies  
4768 the transaction and the transaction was authorized, approved, or  
4769 ratified by a vote of a majority of the qualified directors even  
4770 if the qualified directors constitute less than a quorum of the  
4771 board or the committee; however, the transaction cannot be  
4772 authorized, approved, or ratified under this subsection solely  
4773 by a single director; or

4774 2. The material facts of the transaction and the director's  
4775 interest in the transaction were disclosed or known to the  
4776 shareholders who voted upon such transaction and the transaction  
4777 was authorized, approved, or ratified by a majority of the votes  
4778 cast by disinterested shareholders or by the written consent of  
4779 disinterested shareholders representing a majority of the votes  
4780 that could be cast by all disinterested shareholders. Shares  
4781 owned by or voted under the control of a director who has a  
4782 relationship or interest in the director's conflict of interest  
4783 transaction may not be considered shares owned by a  
4784 disinterested shareholder and may not be counted in a vote of  
4785 shareholders to determine whether to authorize, approve, or

28-00272A-19

2019892\_\_

4786 ratify a director's conflict of interest transaction under this  
4787 subparagraph. The vote of those shares, however, is counted in  
4788 determining whether the transaction is approved under other  
4789 sections of this chapter. A majority of the shares, whether or  
4790 not present, that are entitled to be counted in a vote on the  
4791 transaction under this subparagraph constitutes a quorum for the  
4792 purpose of taking action under this section.

4793 (b) If neither of the conditions provided in paragraph (a)  
4794 has been satisfied, the person defending or asserting the  
4795 validity of a director's conflict of interest transaction has  
4796 the burden of proving its fairness in a proceeding challenging  
4797 the validity of the transaction.

4798 (4) The presence of or a vote cast by a director with an  
4799 interest in the transaction does not affect the validity of an  
4800 action taken under paragraph (3)(a) if the transaction is  
4801 otherwise authorized, approved, or ratified as provided in  
4802 subsection (3), but the presence or vote of the director may be  
4803 counted for purposes of determining whether the transaction is  
4804 approved under other sections of this chapter.

4805 (5) In addition to other grounds for challenge, a party  
4806 challenging the validity of the transaction is not precluded  
4807 from asserting and proving that a particular director or  
4808 shareholder was not disinterested on grounds of financial or  
4809 other interest for purposes of the vote on, consent to, or  
4810 approval of the transaction.

4811 (6) If directors' action under this section does not  
4812 otherwise satisfy a quorum or voting requirement applicable to  
4813 the authorization of the transaction by directors as required by  
4814 the articles of incorporation, the bylaws, this chapter, or any

28-00272A-19

2019892\_\_

4815 other law, an action to satisfy those authorization  
4816 requirements, whether as part of the same action or by way of  
4817 another action, must be taken by the board of directors or a  
4818 committee in order to authorize the transaction. In such action,  
4819 the vote or consent of directors who are not disinterested may  
4820 be counted.

4821 (7) Where shareholders' action under this section does not  
4822 satisfy a quorum or voting requirement applicable to the  
4823 authorization of the transaction by shareholders as required by  
4824 the articles of incorporation, the bylaws, this chapter, or any  
4825 other law, an action to satisfy those authorization  
4826 requirements, whether as part of the same action or by way of  
4827 another action, must be taken by the shareholders in order to  
4828 authorize the transaction. In such action, the vote or consent  
4829 of shareholders who are not disinterested shareholders may be  
4830 counted ~~No contract or other transaction between a corporation~~  
4831 ~~and one or more of its directors or any other corporation, firm,~~  
4832 ~~association, or entity in which one or more of its directors are~~  
4833 ~~directors or officers or are financially interested shall be~~  
4834 ~~either void or voidable because of such relationship or~~  
4835 ~~interest, because such director or directors are present at the~~  
4836 ~~meeting of the board of directors or a committee thereof which~~  
4837 ~~authorizes, approves, or ratifies such contract or transaction,~~  
4838 ~~or because his or her or their votes are counted for such~~  
4839 ~~purpose, if:~~

4840 ~~(a) The fact of such relationship or interest is disclosed~~  
4841 ~~or known to the board of directors or committee which~~  
4842 ~~authorizes, approves, or ratifies the contract or transaction by~~  
4843 ~~a vote or consent sufficient for the purpose without counting~~

28-00272A-19

2019892\_\_

4844 ~~the votes or consents of such interested directors;~~

4845 ~~(b) The fact of such relationship or interest is disclosed~~  
4846 ~~or known to the shareholders entitled to vote and they~~  
4847 ~~authorize, approve, or ratify such contract or transaction by~~  
4848 ~~vote or written consent; or~~

4849 ~~(c) The contract or transaction is fair and reasonable as~~  
4850 ~~to the corporation at the time it is authorized by the board, a~~  
4851 ~~committee, or the shareholders.~~

4852 ~~(2) For purposes of paragraph (1)(a) only, a conflict of~~  
4853 ~~interest transaction is authorized, approved, or ratified if it~~  
4854 ~~receives the affirmative vote of a majority of the directors on~~  
4855 ~~the board of directors, or on the committee, who have no~~  
4856 ~~relationship or interest in the transaction described in~~  
4857 ~~subsection (1), but a transaction may not be authorized,~~  
4858 ~~approved, or ratified under this section by a single director.~~  
4859 ~~If a majority of the directors who have no such relationship or~~  
4860 ~~interest in the transaction vote to authorize, approve, or~~  
4861 ~~ratify the transaction, a quorum is present for the purpose of~~  
4862 ~~taking action under this section. The presence of, or a vote~~  
4863 ~~cast by, a director with such relationship or interest in the~~  
4864 ~~transaction does not affect the validity of any action taken~~  
4865 ~~under paragraph (1)(a) if the transaction is otherwise~~  
4866 ~~authorized, approved, or ratified as provided in that~~  
4867 ~~subsection, but such presence or vote of those directors may be~~  
4868 ~~counted for purposes of determining whether the transaction is~~  
4869 ~~approved under other sections of this act.~~

4870 ~~(3) For purposes of paragraph (1)(b), a conflict of~~  
4871 ~~interest transaction is authorized, approved, or ratified if it~~  
4872 ~~receives the vote of a majority of the shares entitled to be~~

28-00272A-19

2019892\_\_

4873 ~~counted under this subsection. Shares owned by or voted under~~  
4874 ~~the control of a director who has a relationship or interest in~~  
4875 ~~the transaction described in subsection (1) may not be counted~~  
4876 ~~in a vote of shareholders to determine whether to authorize,~~  
4877 ~~approve, or ratify a conflict of interest transaction under~~  
4878 ~~paragraph (1)(b). The vote of those shares, however, is counted~~  
4879 ~~in determining whether the transaction is approved under other~~  
4880 ~~sections of this act. A majority of the shares, whether or not~~  
4881 ~~present, that are entitled to be counted in a vote on the~~  
4882 ~~transaction under this subsection constitutes a quorum for the~~  
4883 ~~purpose of taking action under this section.~~

4884 Section 101. Section 607.0833, Florida Statutes, is amended  
4885 to read:

4886 607.0833 Loans to officers, directors, and employees;  
4887 guaranty of obligations.—Any corporation may lend money to,  
4888 guarantee any obligation of, or otherwise assist any officer,  
4889 director, or employee of the corporation or of a subsidiary,  
4890 whenever, in the judgment of the board of directors, such loan,  
4891 guaranty, or assistance may reasonably be expected to benefit  
4892 the corporation. The loan, guaranty, or other assistance may be  
4893 with or without interest and may be unsecured or secured in such  
4894 manner as the board of directors shall approve, including~~7~~  
4895 ~~without limitation,~~ a pledge of shares of stock of the  
4896 corporation. Nothing in this section shall be deemed to deny,  
4897 limit, or restrict the powers of guaranty or warranty of any  
4898 corporation at common law or under any statute. Loans,  
4899 guarantees, or other types of assistance are subject to s.  
4900 607.0832.

4901 Section 102. Subsections (1) and (3) of section 607.0834,

28-00272A-19

2019892\_\_

4902 Florida Statutes, are amended to read:

4903 607.0834 Liability for unlawful distributions.—

4904 (1) A director who votes for or assents to a distribution  
4905 made in violation of s. 607.06401, s. 607.1410(1), or the  
4906 articles of incorporation is personally liable to the  
4907 corporation for the amount of the distribution that exceeds what  
4908 could have been distributed without violating s. 607.06401, s.  
4909 607.1410(1), or the articles of incorporation if it is  
4910 established that the director did not perform his or her duties  
4911 in compliance with s. 607.0830. In any proceeding commenced  
4912 under this section, a director has all of the defenses  
4913 ordinarily available to a director.

4914 (3) A proceeding under this section is barred unless it is  
4915 commenced:

4916 (a) Within 2 years after the date on which the effect of  
4917 the distribution was measured under s. 607.06401(6) or (8);~~—~~

4918 (b) Within 2 years after the date as of which the violation  
4919 of s. 607.06401 occurred as the consequence of disregard of a  
4920 restriction in the articles of incorporation;

4921 (c) Within 2 years after the date on which the distribution  
4922 of assets to shareholders under s. 607.1410(1) was made; or

4923 (d) With regard to contribution or recoupment under  
4924 subsection (2), within 1 year after the liability of the  
4925 claimant has been finally adjudicated under subsection (1).

4926 Section 103. Subsections (2) and (3) of section 607.08401,  
4927 Florida Statutes, are amended to read:

4928 607.08401 Required officers.—

4929 (2) The board of directors may appoint one or more  
4930 individuals to act as the officers of the corporation. A duly



28-00272A-19

2019892\_\_

4931 appointed officer may appoint one or more officers or assistant  
4932 officers if authorized by the bylaws or the board of directors.

4933 (3) The bylaws or the board of directors shall assign  
4934 ~~delegate~~ to one of the officers responsibility for preparing  
4935 minutes of the directors' and shareholders' meetings and for  
4936 authenticating records of the corporation required to be kept  
4937 pursuant to s. 607.1601(1) and (5).

4938 Section 104. Section 607.08411, Florida Statutes, is  
4939 created to read:

4940 607.08411 General standards for officers.-

4941 (1) An officer, when performing in such capacity, shall  
4942 act:

4943 (a) In good faith; and

4944 (b) In a manner the officer reasonably believes to be in  
4945 the best interests of the corporation.

4946 (2) An officer, when becoming informed in connection with a  
4947 decisionmaking function, shall discharge his or her duties with  
4948 the care that an ordinary prudent person in a like position  
4949 would reasonably believe appropriate under similar  
4950 circumstances.

4951 (3) The duty of an officer includes the obligation to:

4952 (a) Inform the superior officer to whom, or the board of  
4953 directors or the committee to which, the officer reports of  
4954 information about the affairs of the corporation known to the  
4955 officer, within the scope of the officer's functions, and known  
4956 or as should be known to the officer to be material to such  
4957 superior officer, board, or committee; and

4958 (b) Inform his or her superior officer, or another  
4959 appropriate person within the corporation, or the board of

28-00272A-19

2019892\_\_

4960 directors, or a committee thereof, of any actual or probable  
4961 material violation of law involving the corporation or material  
4962 breach of duty to the corporation by an officer, employee, or  
4963 agent of the corporation the officer believes has occurred or is  
4964 likely to occur.

4965 (4) In discharging his or her duties, an officer who does  
4966 not have knowledge that makes reliance unwarranted is entitled  
4967 to rely on the performance by any of the persons specified in  
4968 subsection (6) to whom the responsibilities were properly  
4969 delegated, formally or informally, by course of conduct.

4970 (5) In discharging his or her duties, an officer who does  
4971 not have knowledge that makes reliance unwarranted is entitled  
4972 to rely on information, opinions, reports, or statements,  
4973 including financial statements and other financial data,  
4974 prepared or presented by any of the persons specified in  
4975 subsection (6).

4976 (6) An officer is entitled to rely, in accordance with  
4977 subsection (4) or subsection (5), on:

4978 (a) One or more other officers of the corporation or one or  
4979 more employees of the corporation whom the officer reasonably  
4980 believes to be reliable and competent in the functions performed  
4981 or the information, opinions, reports, or statements provided;

4982 (b) Legal counsel, public accountants, or other persons  
4983 retained by the corporation as to matters involving skills or  
4984 expertise the officer reasonably believes are matters within the  
4985 particular person's professional or expert competence or as to  
4986 which the particular person merits confidence.

4987 Section 105. Section 607.0842, Florida Statutes, is amended  
4988 to read:

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

5047 involve services by, the individual to the plan or to  
5048 participants in or beneficiaries of the plan. The term includes,  
5049 unless the context otherwise requires, the estate, heirs,  
5050 executors, administrators, and personal representatives of a  
5051 director or officer.

5052 (4) "Expenses" includes reasonable attorney fees, including  
5053 those incurred in connection with any appeal.

5054 (5) "Liability" means the obligation to pay a judgment,  
5055 settlement, penalty, fine (including an excise tax assessed with  
5056 respect to an employee benefit plan), or reasonable expenses  
5057 incurred with respect to a proceeding.

5058 (6) "Party" means an individual who was, is, or is  
5059 threatened to be made, a defendant or respondent in a  
5060 proceeding.

5061 (7) "Proceeding" means any threatened, pending, or  
5062 completed action, suit, or proceeding, whether civil, criminal,  
5063 administrative, arbitrative, or investigative and whether formal  
5064 or informal.

5065 (8) "Serving at the corporation's request" includes any  
5066 service as a director, officer, employee, or agent of the  
5067 corporation that imposes duties on such persons, including  
5068 duties relating to an employee benefit plan and its participants  
5069 or beneficiaries.

5070 ~~(1) A corporation shall have power to indemnify any person~~  
5071 ~~who was or is a party to any proceeding (other than an action~~  
5072 ~~by, or in the right of, the corporation), by reason of the fact~~  
5073 ~~that he or she is or was a director, officer, employee, or agent~~  
5074 ~~of the corporation or is or was serving at the request of the~~  
5075 ~~corporation as a director, officer, employee, or agent of~~

28-00272A-19

2019892\_\_

5076 ~~another corporation, partnership, joint venture, trust, or other~~  
5077 ~~enterprise against liability incurred in connection with such~~  
5078 ~~proceeding, including any appeal thereof, if he or she acted in~~  
5079 ~~good faith and in a manner he or she reasonably believed to be~~  
5080 ~~in, or not opposed to, the best interests of the corporation~~  
5081 ~~and, with respect to any criminal action or proceeding, had no~~  
5082 ~~reasonable cause to believe his or her conduct was unlawful. The~~  
5083 ~~termination of any proceeding by judgment, order, settlement, or~~  
5084 ~~conviction or upon a plea of nolo contendere or its equivalent~~  
5085 ~~shall not, of itself, create a presumption that the person did~~  
5086 ~~not act in good faith and in a manner which he or she reasonably~~  
5087 ~~believed to be in, or not opposed to, the best interests of the~~  
5088 ~~corporation or, with respect to any criminal action or~~  
5089 ~~proceeding, had reasonable cause to believe that his or her~~  
5090 ~~conduct was unlawful.~~

5091 ~~(2) A corporation shall have power to indemnify any person,~~  
5092 ~~who was or is a party to any proceeding by or in the right of~~  
5093 ~~the corporation to procure a judgment in its favor by reason of~~  
5094 ~~the fact that the person is or was a director, officer,~~  
5095 ~~employee, or agent of the corporation or is or was serving at~~  
5096 ~~the request of the corporation as a director, officer, employee,~~  
5097 ~~or agent of another corporation, partnership, joint venture,~~  
5098 ~~trust, or other enterprise, against expenses and amounts paid in~~  
5099 ~~settlement not exceeding, in the judgment of the board of~~  
5100 ~~directors, the estimated expense of litigating the proceeding to~~  
5101 ~~conclusion, actually and reasonably incurred in connection with~~  
5102 ~~the defense or settlement of such proceeding, including any~~  
5103 ~~appeal thereof. Such indemnification shall be authorized if such~~  
5104 ~~person acted in good faith and in a manner he or she reasonably~~

28-00272A-19

2019892\_\_

5105 ~~believed to be in, or not opposed to, the best interests of the~~  
5106 ~~corporation, except that no indemnification shall be made under~~  
5107 ~~this subsection in respect of any claim, issue, or matter as to~~  
5108 ~~which such person shall have been adjudged to be liable unless,~~  
5109 ~~and only to the extent that, the court in which such proceeding~~  
5110 ~~was brought, or any other court of competent jurisdiction, shall~~  
5111 ~~determine upon application that, despite the adjudication of~~  
5112 ~~liability but in view of all circumstances of the case, such~~  
5113 ~~person is fairly and reasonably entitled to indemnity for such~~  
5114 ~~expenses which such court shall deem proper.~~

5115 ~~(3) To the extent that a director, officer, employee, or~~  
5116 ~~agent of a corporation has been successful on the merits or~~  
5117 ~~otherwise in defense of any proceeding referred to in subsection~~  
5118 ~~(1) or subsection (2), or in defense of any claim, issue, or~~  
5119 ~~matter therein, he or she shall be indemnified against expenses~~  
5120 ~~actually and reasonably incurred by him or her in connection~~  
5121 ~~therewith.~~

5122 ~~(4) Any indemnification under subsection (1) or subsection~~  
5123 ~~(2), unless pursuant to a determination by a court, shall be~~  
5124 ~~made by the corporation only as authorized in the specific case~~  
5125 ~~upon a determination that indemnification of the director,~~  
5126 ~~officer, employee, or agent is proper in the circumstances~~  
5127 ~~because he or she has met the applicable standard of conduct set~~  
5128 ~~forth in subsection (1) or subsection (2). Such determination~~  
5129 ~~shall be made:~~

5130 ~~(a) By the board of directors by a majority vote of a~~  
5131 ~~quorum consisting of directors who were not parties to such~~  
5132 ~~proceeding;~~

5133 ~~(b) If such a quorum is not obtainable or, even if~~

28-00272A-19

2019892\_\_

5134 ~~obtainable, by majority vote of a committee duly designated by~~  
5135 ~~the board of directors (in which directors who are parties may~~  
5136 ~~participate) consisting solely of two or more directors not at~~  
5137 ~~the time parties to the proceeding;~~

5138 ~~(c) By independent legal counsel:~~

5139 ~~1. Selected by the board of directors prescribed in~~  
5140 ~~paragraph (a) or the committee prescribed in paragraph (b); or~~

5141 ~~2. If a quorum of the directors cannot be obtained for~~  
5142 ~~paragraph (a) and the committee cannot be designated under~~  
5143 ~~paragraph (b), selected by majority vote of the full board of~~  
5144 ~~directors (in which directors who are parties may participate);~~  
5145 ~~or~~

5146 ~~(d) By the shareholders by a majority vote of a quorum~~  
5147 ~~consisting of shareholders who were not parties to such~~  
5148 ~~proceeding or, if no such quorum is obtainable, by a majority~~  
5149 ~~vote of shareholders who were not parties to such proceeding.~~

5150 ~~(5) Evaluation of the reasonableness of expenses and~~  
5151 ~~authorization of indemnification shall be made in the same~~  
5152 ~~manner as the determination that indemnification is permissible.~~  
5153 ~~However, if the determination of permissibility is made by~~  
5154 ~~independent legal counsel, persons specified by paragraph (4)(c)~~  
5155 ~~shall evaluate the reasonableness of expenses and may authorize~~  
5156 ~~indemnification.~~

5157 ~~(6) Expenses incurred by an officer or director in~~  
5158 ~~defending a civil or criminal proceeding may be paid by the~~  
5159 ~~corporation in advance of the final disposition of such~~  
5160 ~~proceeding upon receipt of an undertaking by or on behalf of~~  
5161 ~~such director or officer to repay such amount if he or she is~~  
5162 ~~ultimately found not to be entitled to indemnification by the~~



28-00272A-19

2019892\_\_

5163 ~~corporation pursuant to this section. Expenses incurred by other~~  
5164 ~~employees and agents may be paid in advance upon such terms or~~  
5165 ~~conditions that the board of directors deems appropriate.~~

5166 ~~(7) The indemnification and advancement of expenses~~  
5167 ~~provided pursuant to this section are not exclusive, and a~~  
5168 ~~corporation may make any other or further indemnification or~~  
5169 ~~advancement of expenses of any of its directors, officers,~~  
5170 ~~employees, or agents, under any bylaw, agreement, vote of~~  
5171 ~~shareholders or disinterested directors, or otherwise, both as~~  
5172 ~~to action in his or her official capacity and as to action in~~  
5173 ~~another capacity while holding such office. However,~~  
5174 ~~indemnification or advancement of expenses shall not be made to~~  
5175 ~~or on behalf of any director, officer, employee, or agent if a~~  
5176 ~~judgment or other final adjudication establishes that his or her~~  
5177 ~~actions, or omissions to act, were material to the cause of~~  
5178 ~~action so adjudicated and constitute:~~

5179 ~~(a) A violation of the criminal law, unless the director,~~  
5180 ~~officer, employee, or agent had reasonable cause to believe his~~  
5181 ~~or her conduct was lawful or had no reasonable cause to believe~~  
5182 ~~his or her conduct was unlawful;~~

5183 ~~(b) A transaction from which the director, officer,~~  
5184 ~~employee, or agent derived an improper personal benefit;~~

5185 ~~(c) In the case of a director, a circumstance under which~~  
5186 ~~the liability provisions of s. 607.0834 are applicable; or~~

5187 ~~(d) Willful misconduct or a conscious disregard for the~~  
5188 ~~best interests of the corporation in a proceeding by or in the~~  
5189 ~~right of the corporation to procure a judgment in its favor or~~  
5190 ~~in a proceeding by or in the right of a shareholder.~~

5191 ~~(8) Indemnification and advancement of expenses as provided~~

28-00272A-19

2019892\_\_

5192 ~~in this section shall continue as, unless otherwise provided~~  
5193 ~~when authorized or ratified, to a person who has ceased to be a~~  
5194 ~~director, officer, employee, or agent and shall inure to the~~  
5195 ~~benefit of the heirs, executors, and administrators of such a~~  
5196 ~~person, unless otherwise provided when authorized or ratified.~~

5197 ~~(9) Unless the corporation's articles of incorporation~~  
5198 ~~provide otherwise, notwithstanding the failure of a corporation~~  
5199 ~~to provide indemnification, and despite any contrary~~  
5200 ~~determination of the board or of the shareholders in the~~  
5201 ~~specific case, a director, officer, employee, or agent of the~~  
5202 ~~corporation who is or was a party to a proceeding may apply for~~  
5203 ~~indemnification or advancement of expenses, or both, to the~~  
5204 ~~court conducting the proceeding, to the circuit court, or to~~  
5205 ~~another court of competent jurisdiction. On receipt of an~~  
5206 ~~application, the court, after giving any notice that it~~  
5207 ~~considers necessary, may order indemnification and advancement~~  
5208 ~~of expenses, including expenses incurred in seeking court-~~  
5209 ~~ordered indemnification or advancement of expenses, if it~~  
5210 ~~determines that:~~

5211 ~~(a) The director, officer, employee, or agent is entitled~~  
5212 ~~to mandatory indemnification under subsection (3), in which case~~  
5213 ~~the court shall also order the corporation to pay the director~~  
5214 ~~reasonable expenses incurred in obtaining court-ordered~~  
5215 ~~indemnification or advancement of expenses;~~

5216 ~~(b) The director, officer, employee, or agent is entitled~~  
5217 ~~to indemnification or advancement of expenses, or both, by~~  
5218 ~~virtue of the exercise by the corporation of its power pursuant~~  
5219 ~~to subsection (7); or~~

5220 ~~(c) The director, officer, employee, or agent is fairly and~~

28-00272A-19

2019892\_\_

5221 ~~reasonably entitled to indemnification or advancement of~~  
5222 ~~expenses, or both, in view of all the relevant circumstances,~~  
5223 ~~regardless of whether such person met the standard of conduct~~  
5224 ~~set forth in subsection (1), subsection (2), or subsection (7).~~

5225 ~~(10) For purposes of this section, the term "corporation"~~  
5226 ~~includes, in addition to the resulting corporation, any~~  
5227 ~~constituent corporation (including any constituent of a~~  
5228 ~~constituent) absorbed in a consolidation or merger, so that any~~  
5229 ~~person who is or was a director, officer, employee, or agent of~~  
5230 ~~a constituent corporation, or is or was serving at the request~~  
5231 ~~of a constituent corporation as a director, officer, employee,~~  
5232 ~~or agent of another corporation, partnership, joint venture,~~  
5233 ~~trust, or other enterprise, is in the same position under this~~  
5234 ~~section with respect to the resulting or surviving corporation~~  
5235 ~~as he or she would have with respect to such constituent~~  
5236 ~~corporation if its separate existence had continued.~~

5237 ~~(11) For purposes of this section:~~

5238 ~~(a) The term "other enterprises" includes employee benefit~~  
5239 ~~plans;~~

5240 ~~(b) The term "expenses" includes counsel fees, including~~  
5241 ~~those for appeal;~~

5242 ~~(c) The term "liability" includes obligations to pay a~~  
5243 ~~judgment, settlement, penalty, fine (including an excise tax~~  
5244 ~~assessed with respect to any employee benefit plan), and~~  
5245 ~~expenses actually and reasonably incurred with respect to a~~  
5246 ~~proceeding;~~

5247 ~~(d) The term "proceeding" includes any threatened, pending,~~  
5248 ~~or completed action, suit, or other type of proceeding, whether~~  
5249 ~~civil, criminal, administrative, or investigative and whether~~

28-00272A-19

2019892\_\_

5250 ~~formal or informal;~~

5251 ~~(e) The term "agent" includes a volunteer;~~

5252 ~~(f) The term "serving at the request of the corporation"~~  
5253 ~~includes any service as a director, officer, employee, or agent~~  
5254 ~~of the corporation that imposes duties on such persons,~~  
5255 ~~including duties relating to an employee benefit plan and its~~  
5256 ~~participants or beneficiaries; and~~

5257 ~~(g) The term "not opposed to the best interest of the~~  
5258 ~~corporation" describes the actions of a person who acts in good~~  
5259 ~~faith and in a manner he or she reasonably believes to be in the~~  
5260 ~~best interests of the participants and beneficiaries of an~~  
5261 ~~employee benefit plan.~~

5262 ~~(12) A corporation shall have power to purchase and~~  
5263 ~~maintain insurance on behalf of any person who is or was a~~  
5264 ~~director, officer, employee, or agent of the corporation or is~~  
5265 ~~or was serving at the request of the corporation as a director,~~  
5266 ~~officer, employee, or agent of another corporation, partnership,~~  
5267 ~~joint venture, trust, or other enterprise against any liability~~  
5268 ~~asserted against the person and incurred by him or her in any~~  
5269 ~~such capacity or arising out of his or her status as such,~~  
5270 ~~whether or not the corporation would have the power to indemnify~~  
5271 ~~the person against such liability under the provisions of this~~  
5272 ~~section.~~

5273 Section 107. Section 607.0851, Florida Statutes, is created  
5274 to read:

5275 607.0851 Permissible indemnification.-

5276 (1) Except as otherwise provided in this section and in s.  
5277 607.0859, and not in limitation of indemnification allowed under  
5278 s. 607.0858(1), a corporation may indemnify an individual who is

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

5337 not be secured and may be accepted without reference to the  
5338 financial ability of the director or officer to make repayment.

5339 (3) Authorizations under this section must be made:

5340 (a) By the board of directors:

5341 1. If there are two or more qualified directors, by a  
5342 majority vote of all of the qualified directors (a majority of  
5343 whom shall for such purpose constitute a quorum) or by a  
5344 majority of the members of a committee appointed by such vote  
5345 and comprised of two or more qualified directors; or

5346 2. If there are fewer than two qualified directors, by the  
5347 vote necessary for action by the board of directors under s.  
5348 607.0824(3), in which authorization vote directors who are not  
5349 qualified directors may participate; or

5350 (b) By the shareholders, but shares owned by or voted under  
5351 the control of a director or officer who at the time of the  
5352 authorization is not a qualified director or is an officer who  
5353 is a party to the proceeding may not be counted as a vote in  
5354 favor of the authorization.

5355 Section 110. Section 607.0854, Florida Statutes, is created  
5356 to read:

5357 607.0854 Court-ordered indemnification and advance for  
5358 expenses.—

5359 (1) Unless the corporation's articles of incorporation  
5360 provide otherwise, notwithstanding the failure of a corporation  
5361 to provide indemnification, and despite any contrary  
5362 determination of the board of directors or of the shareholders  
5363 in the specific case, a director or officer of the corporation  
5364 who is a party to a proceeding because he or she is or was a  
5365 director or officer may apply for indemnification or an advance

28-00272A-19

2019892\_\_

5366 for expenses, or both, to a court having jurisdiction over the  
5367 corporation which is conducting the proceeding, or to a circuit  
5368 court of competent jurisdiction. After receipt of an application  
5369 and after giving any notice it considers necessary, the court  
5370 may:

5371 (a) Order indemnification if the court determines that the  
5372 director or officer is entitled to mandatory indemnification  
5373 under s. 607.0852;

5374 (b) Order indemnification or advance for expenses if the  
5375 court determines that the director or officer is entitled to  
5376 indemnification or advance for expenses pursuant to a provision  
5377 authorized by s. 607.0858(1); or

5378 (c) Order indemnification or advance for expenses if the  
5379 court determines, in view of all the relevant circumstances,  
5380 that it is fair and reasonable to indemnify the director or  
5381 officer or to advance expenses to the director or officer, even  
5382 if he or she has not met the relevant standard of conduct set  
5383 forth in s. 607.0851(1), has failed to comply with s. 607.0853,  
5384 or was adjudged liable in a proceeding referred to in s.  
5385 607.0859. If the director or officer was adjudged liable,  
5386 indemnification shall be limited to expenses incurred in  
5387 connection with the proceeding.

5388 (2) If the court determines that the director or officer is  
5389 entitled to indemnification under paragraph (1)(a) or to  
5390 indemnification or advance for expenses under paragraph (1)(b),  
5391 it shall also order the corporation to pay the director's or  
5392 officer's expenses incurred in connection with obtaining court-  
5393 ordered indemnification or advance for expenses. If the court  
5394 determines that the director or officer is entitled to



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

5453 subchapter.-

5454 (1) The indemnification provided pursuant to ss. 607.0851  
5455 and 607.0852 and the advancement of expenses provided pursuant  
5456 to s. 607.0853 are not exclusive, and a corporation may, by a  
5457 provision in its articles of incorporation, bylaws or any  
5458 agreement, or by vote of shareholders or disinterested  
5459 directors, or otherwise, obligate itself in advance of the act  
5460 or omission giving rise to a proceeding to provide any other or  
5461 further indemnification or advancement of expenses to any of its  
5462 directors or officers. Any such obligatory provision shall be  
5463 deemed to satisfy the requirements for authorization referred to  
5464 in ss. 607.0853(3) and 607.0855(3). Any such provision that  
5465 obligates the corporation to provide indemnification to the  
5466 fullest extent permitted by law shall be deemed to obligate the  
5467 corporation to advance funds to pay for or reimburse expenses in  
5468 accordance with s. 607.0853 to the fullest extent permitted by  
5469 law, unless the provision specifically provides otherwise.

5470 (2) A right of indemnification or to advance for expenses  
5471 created by this chapter or under subsection (1) and in effect at  
5472 the time of an act or omission may not be eliminated or impaired  
5473 with respect to such act or omission by an amendment of the  
5474 articles of incorporation or bylaws or a resolution of the  
5475 directors or shareholders, adopted after the occurrence of such  
5476 act or omission, unless, in the case of a right created under  
5477 subsection (1), the provision creating such right and in effect  
5478 at the time of such act or omission explicitly authorizes such  
5479 elimination or impairment after such act or omission has  
5480 occurred.

5481 (3) Any provision pursuant to subsection (1) shall not

28-00272A-19

2019892\_\_

5482 obligate the corporation to indemnify or advance for expenses to  
5483 a director or officer of a predecessor of the corporation,  
5484 pertaining to conduct with respect to the predecessor, unless  
5485 otherwise specifically provided. Any provision for  
5486 indemnification or advance for expenses in the articles of  
5487 incorporation, bylaws, or a resolution of the board of directors  
5488 or shareholders of a predecessor of the corporation in a merger  
5489 or in a contract to which the predecessor is a party, existing  
5490 at the time the merger takes effect, shall be governed by s.  
5491 607.1106(1) (d).

5492 (4) Subject to subsection (2), a corporation may, by a  
5493 provision in its articles of incorporation, limit any of the  
5494 rights to indemnification or advance for expenses created by or  
5495 pursuant to this chapter.

5496 (5) Sections 607.0850-607.0859 do not limit a corporation's  
5497 power to pay or reimburse expenses incurred by a director, an  
5498 officer, an employee, or an agent in connection with appearing  
5499 as a witness in a proceeding at a time when he or she is not a  
5500 party.

5501 (6) Sections 607.0850-607.0859 do not limit a corporation's  
5502 power to indemnify, advance expenses to, or provide or maintain  
5503 insurance on behalf of or for the benefit of an individual who  
5504 is or was an employee or agent.

5505 Section 114. Section 607.0859, Florida Statutes, is created  
5506 to read:

5507 607.0859 Overriding restrictions on indemnification.-

5508 (1) Unless ordered by a court under s. 607.0854(1) (c), a  
5509 corporation may not indemnify a director or officer under s.  
5510 607.0851 or s. 607.0858 or advance expenses to a director or

28-00272A-19

2019892\_\_

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:

28-00272A-19

2019892\_\_

- 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 ~~5~~
- 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 ~~5~~
- 5557 percent or more of the aggregate fair market value of all the
- 5558 outstanding shares of the corporation; or
- 5559 c. Representing 10 ~~5~~ 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 ~~5~~ 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

28-00272A-19

2019892\_\_

5569 interested shareholder except:

5570 a. Pursuant to the exercise, exchange, or conversion of  
5571 securities exercisable for, exchangeable for, or convertible  
5572 into shares of the corporation or any subsidiary of the  
5573 corporation which were outstanding prior to the time that the  
5574 interested shareholder became such;

5575 b. Pursuant to a merger under s. 607.11045;

5576 c. Provided that the interested shareholder's proportionate  
5577 share of the shares of any class or series of the corporation or  
5578 of the voting shares of the corporation has not increased as a  
5579 result thereof:

5580 (I) Pursuant to a dividend or distribution paid or made, or  
5581 the exercise, exchange, or conversion of securities exercisable  
5582 for, exchangeable for, or convertible into, shares of the  
5583 corporation which security is distributed, pro rata to all  
5584 holders of a class or series of shares of such corporation  
5585 subsequent to the time the interested shareholder became such;

5586 (II) Pursuant to an exchange offer by the corporation to  
5587 purchase shares of such corporation made on the same terms to  
5588 all holders of such shares;

5589 (III) Any issuance or transfer of shares by the  
5590 corporation; ~~of warrants or rights to purchase stock offered, or~~  
5591 ~~a dividend or distribution paid or made, pro rata to all~~  
5592 ~~shareholders of the corporation;~~

5593 4. The adoption of any plan or proposal for the liquidation  
5594 or dissolution of the corporation proposed by, or pursuant to  
5595 any agreement, arrangement, or understanding (whether or not in  
5596 writing) with, the interested shareholder or any affiliate or  
5597 associate of the interested shareholder;

28-00272A-19

2019892\_\_

5598           5. Any reclassification of securities (including, without  
5599 limitation, any stock split, stock dividend, or other  
5600 distribution of shares in respect of shares, or any reverse  
5601 stock split) or recapitalization of the corporation, or any  
5602 merger or consolidation of the corporation with any subsidiary  
5603 of the corporation, or any other transaction (whether or not  
5604 with or into or otherwise involving the interested shareholder),  
5605 with the interested shareholder or any affiliate or associate of  
5606 the interested shareholder, which has the effect, directly or  
5607 indirectly (in one transaction or a series of transactions  
5608 during any 12-month period), of increasing by more than 10 ~~5~~  
5609 percent the percentage of the outstanding voting shares of the  
5610 corporation or any subsidiary of the corporation beneficially  
5611 owned by the interested shareholder; or

5612           6. Any receipt by the interested shareholder or any  
5613 affiliate or associate of the interested shareholder of the  
5614 benefit, directly or indirectly (except proportionately as a  
5615 shareholder of the corporation), of any loans, advances,  
5616 guaranties, pledges, or other financial assistance or any tax  
5617 credits or other tax advantages, other than those expressly  
5618 allowed in subparagraph 3., provided by or through the  
5619 corporation or any subsidiary of the corporation.

5620           (d) "Associate," when used to indicate a relationship with  
5621 any person, means any entity, other than the corporation or any  
5622 of its subsidiaries, of which such person is an officer,  
5623 director, or partner or is, directly or indirectly, the  
5624 beneficial owner of 20 ~~10~~ percent or more of any class of voting  
5625 shares; any trust or other estate in which such person has at  
5626 least 20 percent ~~a substantial~~ beneficial interest or as to



28-00272A-19

2019892\_\_

5627 which such person serves as trustee or in a similar fiduciary  
5628 capacity; and any relative or spouse of such person, or any  
5629 relative of such spouse, who has the same residence ~~home~~ as such  
5630 person or who is an officer or director of the corporation or  
5631 any of its affiliates.

5632 (f) "Control," "controlling," "controlled by," and "under  
5633 common control with" means the possession, directly or  
5634 indirectly, through the ownership of voting shares, by contract,  
5635 arrangement, understanding, relationship, or otherwise, of the  
5636 power to direct or cause the direction of the management and  
5637 policies of a person. A person who is the owner of 20 percent or  
5638 more of the outstanding voting shares of any corporation,  
5639 partnership, unincorporated association, or other entity is  
5640 presumed to have control of such entity, in the absence of proof  
5641 by a preponderance of the evidence to the contrary.

5642 Notwithstanding the foregoing, a person shall not be deemed to  
5643 have control of an entity ~~a corporation~~ if such person holds  
5644 voting shares, in good faith and not for the purpose of  
5645 circumventing this section, as an agent, bank, broker, nominee,  
5646 custodian, or trustee for one or more beneficial owners who do  
5647 not individually or as a group have control of such entity  
5648 ~~corporation~~.

5649 (h) Unless otherwise specified in the articles of  
5650 incorporation initially filed with the department ~~of State~~, a  
5651 "disinterested director" means as to any particular interested  
5652 shareholder:

5653 1. Any member of the board of directors of the corporation  
5654 who was a member of the board of directors before the later of  
5655 January 1, 1987, or the determination date; and

28-00272A-19

2019892\_\_

5656           2. Any member of the board of directors of the corporation  
5657 who was recommended for election by, or was elected to fill a  
5658 vacancy and received the affirmative vote of, a majority of the  
5659 disinterested directors then on the board.

5660           (j) "Fair market value" means:

5661           1. In the case of shares:~~7~~ the highest closing sale price  
5662 of a share quoted during the 30-day period immediately preceding  
5663 the date in question on the composite tape for shares listed on  
5664 the New York Stock Exchange; or, if such shares are not quoted  
5665 on the composite tape on the New York Stock Exchange, the  
5666 highest closing sale price quoted during such period on the New  
5667 York Stock Exchange; or, if such shares are not listed on such  
5668 exchange, the highest closing sale price quoted during such  
5669 period on the principal United States securities exchange  
5670 registered under the Exchange Act on which such shares are  
5671 listed; or, if such shares are not listed on any such exchange,  
5672 the highest closing bid quotation with respect to a share during  
5673 the 30-day period preceding the date in question on the National  
5674 Association of Securities Dealers, Inc., automated quotations  
5675 system or any other stock price quotation ~~similar~~ system then in  
5676 general use; or, if no such quotations are available, the fair  
5677 market value of a share on the date in question as determined  
5678 by:

5679           a. A majority of disinterested directors; or

5680           b. If at such time there are no disinterested directors, by  
5681 the board of directors of such corporation in good faith; and

5682           2. In the case of property other than cash or shares, the  
5683 fair market value of such property on the date in question as  
5684 determined by:

28-00272A-19

2019892\_\_

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 ~~10~~ 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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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.

28-00272A-19

2019892\_\_

- 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.

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

5917 ~~propose one or more amendments to the articles of incorporation~~  
5918 ~~for submission to the shareholders.~~

5919 (2) (a) Except as provided in ss. 607.1002, 607.10025, and  
5920 607.1008, and, with respect to restatements that do not require  
5921 shareholder approval, s. 607.1007, the amendment shall then be  
5922 approved by the shareholders.

5923 (b) In submitting the proposed amendment to the  
5924 shareholders for approval, the board of directors shall  
5925 recommend that the shareholders approve the amendment unless:

5926 1. The board of directors makes a determination that  
5927 because of a conflict of interest or other special circumstances  
5928 it should not make such a recommendation; or

5929 2. Section 607.0826 applies.

5930 (c) If either subparagraph (b)1. or subparagraph (b)2.  
5931 applies, the board must inform the shareholders of the basis for  
5932 its so proceeding without such recommendation ~~For the amendment~~  
5933 ~~to be adopted:~~

5934 ~~(a) The board of directors must recommend the amendment to~~  
5935 ~~the shareholders, unless the board of directors determines that~~  
5936 ~~because of conflict of interest or other special circumstances~~  
5937 ~~it should make no recommendation and communicates the basis for~~  
5938 ~~its determination to the shareholders with the amendment; and~~

5939 ~~(b) The shareholders entitled to vote on the amendment must~~  
5940 ~~approve the amendment as provided in subsection (5).~~

5941 (3) The board of directors may set conditions for the  
5942 approval of the amendment by the shareholders or the  
5943 effectiveness of the amendment ~~condition its submission of the~~  
5944 ~~proposed amendment on any basis.~~

5945 (4) If the amendment is required to be approved by the

28-00272A-19

2019892\_\_

5946 shareholders, and the approval is to be given at a meeting, the  
5947 corporation must notify each shareholder, whether or not  
5948 entitled to vote, of the meeting of shareholders at which the  
5949 amendment is to be submitted for approval. The notice must be  
5950 given in accordance with s. 607.0705, state that the purpose, or  
5951 one of the purposes, of the meeting is to consider the  
5952 amendment, and must contain or be accompanied by a copy of the  
5953 amendment ~~The corporation shall notify each shareholder, whether~~  
5954 ~~or not entitled to vote, of the proposed shareholders' meeting~~  
5955 ~~in accordance with s. 607.0705. The notice of meeting must also~~  
5956 ~~state that the purpose, or one of the purposes, of the meeting~~  
5957 ~~is to consider the proposed amendment and contain or be~~  
5958 ~~accompanied by a copy or summary of the amendment.~~

5959 (5) Unless this chapter act, the articles of incorporation,  
5960 or the board of directors, ~~(acting pursuant to subsection (3), )~~  
5961 requires a greater vote or a greater quorum, the approval of the  
5962 amendment requires the approval of the shareholders at a meeting  
5963 at which a quorum consisting of at least a majority of the  
5964 shares entitled to be cast on the amendment exists, and, if any  
5965 class or series of shares is entitled to vote as a separate  
5966 group on the amendment, except as provided in s. 607.1004(3),  
5967 the approval of each such separate voting group at a meeting at  
5968 which a quorum of the voting group exists consisting of at least  
5969 a majority of the votes entitled to be cast on the amendment by  
5970 that voting group.

5971 (6) If the amendment by any voting group would create  
5972 appraisal rights, approval of the amendment must also require  
5973 the vote of a majority of the votes entitled to be cast by such  
5974 voting group ~~vote by voting groups, the amendment to be adopted~~

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

6033 the shares of the class.

6034 (g) Limit or deny an existing preemptive right of all or  
6035 part of the shares of the class.

6036 (h) Cancel or otherwise affect rights to distributions or  
6037 dividends that have accumulated but not yet been declared on all  
6038 or part of the shares of the class.

6039 (2) If a proposed amendment would affect a series of a  
6040 class of shares in one or more of the ways described in  
6041 subsection (1), the shares of that series are entitled to vote  
6042 as a separate voting group ~~class~~ on the proposed amendment.

6043 (3) If a proposed amendment that entitles the holders of  
6044 two or more classes or series of shares to vote as separate  
6045 voting groups under this section would affect those two or more  
6046 classes or series in the same or substantially similar way, the  
6047 holders of ~~the~~ shares of all the classes or series so affected  
6048 must vote together as a single voting group on the proposed  
6049 amendment, unless otherwise provided in the articles of  
6050 incorporation or added as a condition by the board of directors  
6051 pursuant to s. 607.1003(3).

6052 (4) A class or series of shares is entitled to the voting  
6053 rights granted by this section even if ~~although~~ the articles of  
6054 incorporation provide that the shares are nonvoting shares.

6055 Section 122. Section 607.1005, Florida Statutes, is amended  
6056 to read:

6057 607.1005 Amendment before issuance of shares.—If a  
6058 corporation has not yet issued shares, its board of directors,  
6059 or a majority of its incorporators if it has no ~~or~~ board of  
6060 directors, may adopt one or more amendments to the corporation's  
6061 articles of incorporation.

28-00272A-19

2019892\_\_

6062 Section 123. Section 607.1006, Florida Statutes, is amended  
6063 to read:

6064 607.1006 Articles of amendment.—

6065 (1) After an amendment to the A corporation amending its  
6066 articles of incorporation has been adopted and approved as  
6067 required by this chapter, the corporation shall deliver to the  
6068 department of State for filing articles of amendment which must  
6069 shall be signed executed in accordance with s. 607.0120 and  
6070 which must shall set forth:

6071 (a)(1) The name of the corporation;

6072 (b)(2) The text of each amendment adopted, or the  
6073 information required by s. 607.0120(11)(e), if applicable;

6074 (c)(3) If an amendment provides for an exchange,  
6075 reclassification, or cancellation of issued shares, provisions  
6076 for implementing the amendment if not contained in the amendment  
6077 itself, which may be made dependent upon facts objectively  
6078 ascertainable outside of the articles of amendment in accordance  
6079 with s. 607.0120(11);

6080 (d)(4) The date of each amendment's adoption; and

6081 (e)(5) If an amendment:

6082 1. Was adopted by the incorporators or board of directors  
6083 without shareholder approval action, a statement that the  
6084 amendment was duly adopted by the incorporators or by the board  
6085 of directors, as the case may be, to that effect and that  
6086 shareholder approval action was not required;

6087 2.(6) ~~If an amendment was approved~~ Required approval by the  
6088 shareholders, a statement that the number of votes cast for the  
6089 amendment by the shareholders in a manner required by this  
6090 chapter and by the articles of incorporation was sufficient for



28-00272A-19

2019892\_\_

6091 approval and if more than one voting group was entitled to vote  
6092 on the amendment, a statement designating each voting group  
6093 entitled to vote separately on the amendment, and a statement  
6094 that the number of votes cast for the amendment by the  
6095 shareholders in each voting group was sufficient for approval by  
6096 that voting group; or

6097 3. Is being filed pursuant to s. 607.0120(11)(e), a  
6098 statement to that effect.

6099 (2) Articles of amendment shall take effect at the  
6100 effective date determined pursuant to s. 607.0123.

6101 Section 124. Section 607.1007, Florida Statutes, is amended  
6102 to read:

6103 607.1007 Restated articles of incorporation.—

6104 (1) A corporation's board of directors may restate its  
6105 articles of incorporation at any time ~~with or~~ without  
6106 shareholder approval, subject to subsection (2) ~~action~~.

6107 (2) If the restated articles ~~The restatement may~~ include  
6108 one or more new amendments that require to the articles. ~~If the~~  
6109 ~~restatement includes an amendment requiring~~ shareholder  
6110 approval, the amendments ~~it~~ must be adopted and approved as  
6111 provided in s. 607.1003.

6112 (3) Notwithstanding subsection (1), if the board of  
6113 directors submits a restatement for shareholder approval, and  
6114 the approval is to be given at a meeting ~~action~~, the corporation  
6115 must ~~shall~~ notify each shareholder, whether or not entitled to  
6116 vote, of the meeting of shareholders at which the restatement is  
6117 to be submitted for approval. ~~The notice must be given of the~~  
6118 ~~proposed shareholders' meeting~~ in accordance with s. 607.0705  
6119 and must. ~~The notice must also~~ state that the purpose, or one of

28-00272A-19

2019892\_\_

6120 the purposes, of the meeting is to consider the ~~proposed~~  
6121 restatement and must contain or be accompanied by a copy of the  
6122 restatement ~~that identifies any amendment or other change it~~  
6123 ~~would make in the articles.~~

6124 (4) A corporation that restates ~~restating~~ its articles of  
6125 incorporation shall execute and deliver to the department ~~of~~  
6126 ~~State~~ for filing articles of restatement, that comply with the  
6127 provisions of s. 607.0120, and to the extent applicable, s.  
6128 607.0202, setting forth:

6129 (a) The name of the corporation;

6130 (b) ~~and~~ The text of the restated articles of incorporation;

6131 (c) A statement that the restated articles consolidate all  
6132 amendments into a single document; and

6133 (d) If one or more new amendments are included in the  
6134 restated articles, the statements required under s. 607.1006  
6135 with respect to each new amendment ~~Together with a certificate~~  
6136 ~~setting forth:~~

6137 (a) ~~Whether the restatement contains an amendment to the~~  
6138 ~~articles requiring shareholder approval and, if it does not,~~  
6139 ~~that the board of directors adopted the restatement; or~~

6140 (b) ~~If the restatement contains an amendment to the~~  
6141 ~~articles requiring shareholder approval, the information~~  
6142 ~~required by s. 607.1006.~~

6143 (5) Duly adopted restated articles of incorporation  
6144 supersede the original articles of incorporation and all  
6145 amendments to the articles of incorporation ~~them~~.

6146 (6) The department ~~of State~~ may certify restated articles  
6147 of incorporation, as the articles of incorporation currently in  
6148 effect, without including the statements ~~certificate information~~

28-00272A-19

2019892\_\_

6149 required by subsection (4).

6150 Section 125. Subsections (1), (2), and (3) of section  
6151 607.1008, Florida Statutes, are amended to read:

6152 607.1008 Amendment pursuant to reorganization.—

6153 (1) A corporation's articles of incorporation may be  
6154 amended without action by the board of directors or shareholders  
6155 to carry out a plan of reorganization ordered or decreed by a  
6156 court of competent jurisdiction under the authority of a law of  
6157 the United States or of this state ~~any federal or Florida~~  
6158 ~~statute if the articles of incorporation after amendment contain~~  
6159 ~~only provisions required or permitted by s. 607.0202.~~

6160 (2) The individual or individuals designated by the court  
6161 shall deliver to the department ~~of State~~ for filing articles of  
6162 amendment setting forth:

6163 (a) The name of the corporation;

6164 (b) The text of each amendment approved by the court;

6165 (c) The date of the court's order or decree approving the  
6166 articles of amendment;

6167 (d) The title of the reorganization proceeding in which the  
6168 order or decree was entered; and

6169 (e) A statement that the court had jurisdiction of the  
6170 proceeding under a federal or Florida statute.

6171 (3) Shareholders of a corporation undergoing reorganization  
6172 do not have appraisal ~~dissenters'~~ rights except as and to the  
6173 extent provided in the reorganization plan.

6174 Section 126. Section 607.1009, Florida Statutes, is amended  
6175 to read:

6176 607.1009 Effect of amendment.—

6177 (1) An amendment to articles of incorporation does not

28-00272A-19

2019892\_\_

6178 affect a cause of action existing against or in favor of the  
6179 corporation, a proceeding to which the corporation is a party,  
6180 or the existing rights of persons other than shareholders of the  
6181 corporation. An amendment changing a corporation's name does not  
6182 affect ~~abate~~ a proceeding brought by or against the corporation  
6183 in its former name.

6184 (2) A shareholder who becomes subject to new interest  
6185 holder liability in respect of the corporation as a result of an  
6186 amendment to the articles of incorporation shall have that new  
6187 interest holder liability only in respect of interest holder  
6188 liabilities that arise after the amendment becomes effective.

6189 (3) Except as otherwise provided in the articles of  
6190 incorporation of the corporation, the interest holder liability  
6191 of a shareholder who had interest holder liability in respect of  
6192 the corporation before the amendment becomes effective and has  
6193 new interest holder liability after the amendment becomes  
6194 effective shall be as follows:

6195 (a) The amendment does not discharge that prior interest  
6196 holder liability with respect to any interest holder liabilities  
6197 that arose before the amendment becomes effective.

6198 (b) The provisions of the articles of incorporation of the  
6199 corporation relating to interest holder liability as in effect  
6200 immediately prior to the amendment shall continue to apply to  
6201 the collection or discharge of any interest holder liabilities  
6202 preserved by paragraph (a), as if the amendment had not  
6203 occurred.

6204 (c) The shareholder shall have such rights of contribution  
6205 from other persons as are provided by the articles of  
6206 incorporation relating to interest holder liability as in effect

28-00272A-19

2019892\_\_

6207 immediately prior to the amendment with respect to any interest  
6208 holder liabilities preserved by paragraph (3) (a), as if the  
6209 amendment had not occurred.

6210 (d) The shareholder shall not, by reason of such prior  
6211 interest holder liability, have interest holder liability with  
6212 respect to any interest holder liabilities that arise after the  
6213 amendment becomes effective.

6214 Section 127. Subsection (1) of section 607.1020, Florida  
6215 Statutes, is amended, and subsection (3) is added to that  
6216 section, to read:

6217 607.1020 Amendment of bylaws by board of directors or  
6218 shareholders.—

6219 (1) A corporation's board of directors may amend or repeal  
6220 the corporation's bylaws unless:

6221 (a) The articles of incorporation or this chapter act  
6222 reserves that power ~~the power to amend the bylaws generally or a~~  
6223 ~~particular bylaw provision~~ exclusively to the shareholders in  
6224 whole or in part; or

6225 (b) Except as provided in s. 607.0206(5), the shareholders,  
6226 in amending, ~~or~~ repealing, or adopting the bylaws generally or a  
6227 particular bylaw provision, ~~provide~~ expressly provide that the  
6228 board of directors may not amend, ~~or~~ repeal, adopt, or reinstate  
6229 the bylaws generally or that particular bylaw provision.

6230 (3) A shareholder does not have a vested property right  
6231 resulting from any provision in the bylaws.

6232 Section 128. Subsection (1) of section 607.1021, Florida  
6233 Statutes, is amended to read:

6234 607.1021 Bylaw increasing quorum or voting requirements for  
6235 shareholders.—

28-00272A-19

2019892\_\_

6236 (1) If authorized by the articles of incorporation, the  
6237 shareholders may adopt or amend a bylaw that fixes a greater  
6238 quorum or voting requirement for shareholders (or voting groups  
6239 of shareholders) than is required by this chapter ~~act~~. The  
6240 adoption or amendment of a bylaw that adds, changes, or deletes  
6241 a greater quorum or voting requirement for shareholders must  
6242 meet the same quorum requirement and be adopted by the same vote  
6243 and voting groups required to take action under the quorum and  
6244 voting requirement then in effect or proposed to be adopted,  
6245 whichever is greater.

6246 Section 129. Section 607.1022, Florida Statutes, is amended  
6247 to read:

6248 607.1022 Bylaw increasing quorum or voting requirements for  
6249 directors.—

6250 (1) A bylaw that increases a ~~fixes a greater~~ quorum or  
6251 voting requirement for the board of directors may be amended or  
6252 repealed:

6253 (a) If originally adopted by the shareholders, only by the  
6254 shareholders, unless the bylaw otherwise provides; or

6255 (b) If originally adopted by the board of directors, either  
6256 by the shareholders or by the board of directors.

6257 (2) A bylaw adopted or amended by the shareholders that  
6258 increases a ~~fixes a greater~~ quorum or voting requirement for the  
6259 board of directors may provide that it may be amended or  
6260 repealed only by a specified vote of either the shareholders or  
6261 the board of directors.

6262 (3) Action by the board of directors under subsection (1)  
6263 to amend or repeal ~~paragraph (1)(b) to adopt or amend~~ a bylaw  
6264 that changes the quorum or voting requirement for the board of

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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  
6307 there are more candidates for election by the voting group than  
6308 the number of directors to be elected, one or more of whom are  
6309 properly proposed by shareholders. An individual shall not be  
6310 considered a candidate for purposes of this subsection if the  
6311 board of directors determines before the notice of meeting is  
6312 given that such individual's candidacy does not create a bona  
6313 fide election contest.

6314 (3) A bylaw electing to be governed by this section may be  
6315 repealed:

6316 (a) If originally adopted by the shareholders, only by the  
6317 shareholders, unless the bylaw otherwise provides; or

6318 (b) If adopted by the board of directors, by the board of  
6319 directors or the shareholders.

6320 Section 131. Section 607.1101, Florida Statutes, is amended  
6321 to read:

6322 607.1101 Merger.—



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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) ~~(e)~~ 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;

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

6439 corporation and a domestic corporation, and the surviving  
6440 corporation shall be deemed to be a domestic corporation  
6441 incorporated under the laws of this state. The redomestication  
6442 of a Florida corporation to a foreign jurisdiction under s.  
6443 628.525 shall be deemed a merger of a domestic corporation and a  
6444 foreign corporation, and the surviving corporation shall be  
6445 deemed to be a foreign corporation.

6446 Section 132. Section 607.1102, Florida Statutes, is amended  
6447 to read:

6448 607.1102 Share exchange.—

6449 (1) By complying with this chapter, including adopting a  
6450 plan of share exchange in accordance with subsection (3) and  
6451 complying with s. 607.1103:

6452 (a) A domestic corporation may acquire all of the shares or  
6453 rights to acquire shares of one or more classes or series of  
6454 shares or rights to acquire shares of another domestic or  
6455 foreign corporation, or all of the eligible interests of one or  
6456 more classes or series of interests of a domestic or foreign  
6457 eligible entity, pursuant to a plan of share exchange, in  
6458 exchange for:

6459 1. Shares or other securities.

6460 2. Eligible interests.

6461 3. Obligations.

6462 4. Rights to acquire shares, other securities, or eligible  
6463 interests.

6464 5. Cash.

6465 6. Other property.

6466 7. Any combination of the foregoing; or

6467 (b) All of the shares of one or more classes or series of

28-00272A-19

2019892\_\_

6468 shares or rights to acquire shares of a domestic corporation may  
 6469 be acquired by another domestic or foreign eligible entity,  
 6470 pursuant to a plan of share exchange, in exchange for:

6471 1. Shares or other securities.

6472 2. Eligible interests.

6473 3. Obligations.

6474 4. Rights to acquire shares, other securities, or eligible  
 6475 interests.

6476 5. Cash.

6477 6. Other property.

6478 7. Any combination of the foregoing.

6479 (2) A foreign eligible entity may be the acquired eligible  
 6480 entity in a share exchange only if the share exchange is  
 6481 permitted by the organic law of that eligible entity ~~A~~  
 6482 ~~corporation may acquire all of the outstanding shares of one or~~  
 6483 ~~more classes or series of another corporation if the board of~~  
 6484 ~~directors of each corporation adopts and its shareholders (if~~  
 6485 ~~required by s. 607.1103) approve a plan of share exchange.~~

6486 (3) ~~(2)~~ The plan of share exchange must shall set forth:

6487 (a) The name of each domestic or foreign eligible entity  
 6488 ~~the corporation~~ the shares or eligible interests of which will  
 6489 be acquired and the name of the domestic or foreign corporation  
 6490 or eligible entity that will acquire those shares or eligible  
 6491 interests ~~acquiring corporation;~~

6492 (b) The terms and conditions of the share exchange;

6493 (c) The manner and basis of exchanging:

6494 1. The shares of each domestic or foreign corporation, and  
 6495 the eligible interests of each domestic or foreign eligible  
 6496 entity, the shares or eligible interests that are to be acquired

28-00272A-19

2019892\_\_

6497 in the share exchange, into shares or other securities, eligible  
6498 interests, obligations, rights to acquire shares, other  
6499 securities, or eligible interests, cash, other property, or any  
6500 combination of the foregoing; and

6501 2. Rights to acquire shares of each domestic or foreign  
6502 corporation and rights to acquire eligible interests of each  
6503 domestic or foreign eligible entity, that are to be acquired in  
6504 the share exchange, into shares or other securities, eligible  
6505 interests, obligations, rights to acquire shares, other  
6506 securities, or eligible interests, cash, other property, or any  
6507 combination of the foregoing; and

6508 (d) Any other provisions required by the organic law  
6509 governing the acquired eligible entity or its articles of  
6510 incorporation or organic rules ~~the shares to be acquired for~~  
6511 ~~shares, obligations, or other securities of the acquiring or any~~  
6512 ~~other corporation or, in whole or in part, for cash or other~~  
6513 ~~property, and the manner and basis of exchanging rights to~~  
6514 ~~acquire shares of the corporation to be acquired for rights to~~  
6515 ~~acquire shares, obligations, or, in whole or in part, other~~  
6516 ~~securities of the acquiring or any other corporation or, in~~  
6517 ~~whole or in part, for cash or other property.~~

6518 (4) ~~(3)~~ In addition to the requirements of subsection (3),  
6519 the plan of share exchange may contain any other provisions that  
6520 are not prohibited by law ~~set forth other provisions relating to~~  
6521 ~~the exchange.~~

6522 (5) Terms of a plan of share exchange may be made dependent  
6523 on facts objectively ascertainable outside the plan in  
6524 accordance with s. 607.0120(11).

6525 (6) A plan of share exchange may be amended only with the

28-00272A-19

2019892\_\_

6526 consent of each party to the share exchange, except as provided  
6527 in the plan. A domestic eligible entity may approve an amendment  
6528 to a plan:

6529 (a) In the same manner as the plan was approved, if the  
6530 plan does not provide for the manner in which it may be amended;  
6531 or

6532 (b) In the manner provided in the plan, except that  
6533 shareholders, members, or interest holders that were entitled to  
6534 vote on or consent to approval of the plan are entitled to vote  
6535 on or consent to any amendment of the plan that will change:

6536 1. The amount or kind of shares or other securities,  
6537 eligible interests, obligations, rights to acquire shares, other  
6538 securities, or eligible interests, cash, or other property to be  
6539 received under the plan by the shareholders, members, or  
6540 interest holders of the acquired eligible entity; or

6541 2. Any of the other terms or conditions of the plan if the  
6542 change would adversely affect such shareholders, members, or  
6543 interest holders in any material respect.

6544 (7)(4) This section does not limit the power of a  
6545 corporation to acquire all or part of the shares of one or more  
6546 classes or series of another corporation or eligible interests  
6547 of any other eligible entity through a voluntary exchange or  
6548 otherwise.

6549 Section 133. Section 607.1103, Florida Statutes, is amended  
6550 to read:

6551 607.1103 Action on a plan of merger or share exchange.-In  
6552 the case of a domestic corporation that is a party to a merger  
6553 or the acquired eligible entity in a share exchange, the plan of  
6554 merger or the plan of share exchange must be adopted in the



28-00272A-19

2019892\_\_

6555 following manner:

6556 (1) The ~~After adopting a plan of merger or the plan of~~  
6557 share exchange shall first be adopted by, the board of directors  
6558 of such domestic corporation ~~each corporation party to the~~  
6559 ~~merger, and the board of directors of the corporation the shares~~  
6560 ~~of which will be acquired in the share exchange, shall submit~~  
6561 ~~the plan of merger (except as provided in subsection (7)) or the~~  
6562 ~~plan of share exchange for approval by its shareholders.~~

6563 (2) (a) Except as provided in subsections (8), (10), and  
6564 (11), and in ss. 607.11035 and 607.1104, the plan of merger or  
6565 the plan of share exchange shall then be adopted by the  
6566 shareholders.

6567 (b) In submitting the plan of merger or the plan of share  
6568 exchange to the shareholders for approval, the board of  
6569 directors shall recommend that the shareholders approve the  
6570 plan, or in the case of an offer referred to in s.  
6571 607.11035(1) (b), that the shareholders tender their shares to  
6572 the offeror in response to the offer, unless:

6573 1. The board of directors makes a determination that  
6574 because of conflicts of interest or other special circumstances,  
6575 it should not make such a recommendation; or

6576 2. Section 607.0826 applies.

6577 (c) If either subparagraph (b)1. or subparagraph (b)2.  
6578 applies, the board shall inform the shareholders of the basis  
6579 for its so proceeding without such recommendation ~~For a plan of~~  
6580 ~~merger or share exchange to be approved:~~

6581 (a) ~~The board of directors must recommend the plan of~~  
6582 ~~merger or share exchange to the shareholders, unless the board~~  
6583 ~~of directors determines that it should make no recommendation~~

28-00272A-19

2019892\_\_

6584 ~~because of conflict of interest or other special circumstances~~  
6585 ~~and communicates the basis for its determination to the~~  
6586 ~~shareholders with the plan; and~~

6587 ~~(b) The shareholders entitled to vote must approve the plan~~  
6588 ~~as provided in subsection (5).~~

6589 (3) The board of directors may set conditions for the  
6590 approval condition its submission of the proposed merger or  
6591 share exchange by the shareholders or the effectiveness of the  
6592 plan of merger or the plan of share exchange ~~on any basis.~~

6593 (4) If the plan of merger or the plan of share exchange is  
6594 required to be approved by the shareholders, and if the approval  
6595 is to be given at a meeting, the corporation shall notify each  
6596 shareholder, regardless of whether entitled to vote, of the  
6597 meeting of shareholders at which the plan is submitted for  
6598 approval ~~The corporation the shareholders of which are entitled~~  
6599 ~~to vote on the matter shall notify each shareholder, whether or~~  
6600 ~~not entitled to vote, of the proposed shareholders' meeting in~~  
6601 ~~accordance with s. 607.0705. The notice shall also state that~~  
6602 ~~the purpose, or one of the purposes, of the meeting is to~~  
6603 ~~consider the plan of merger or the plan of share exchange,~~  
6604 ~~regardless of whether or not the meeting is an annual or a~~  
6605 ~~special meeting, and contain or be accompanied by a copy ~~or~~~~  
6606 ~~summary of the plan. If the corporation is to be merged into an~~  
6607 existing foreign or domestic eligible entity, the notice must  
6608 also include or be accompanied by a copy of the articles of  
6609 incorporation and bylaws or the organic rules of that eligible  
6610 entity into which the corporation is to be merged. If the  
6611 corporation is to be merged with a domestic or foreign eligible  
6612 entity and a new domestic or foreign eligible entity is to be

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

6729 ~~of the articles of incorporation of any corporation the~~  
6730 ~~shareholders of which must approve the plan of merger or share~~  
6731 ~~exchange.~~

6732  
6733 ~~If articles of merger or share exchange already have been filed~~  
6734 ~~with the Department of State, amended articles of merger or~~  
6735 ~~share exchange shall be filed with the Department of State prior~~  
6736 ~~to the effective date of the merger or share exchange.~~

6737 (9) If as a result of a merger or share exchange one or  
6738 more shareholders of a domestic corporation would become subject  
6739 to new interest holder liability, approval of the plan of merger  
6740 or the plan of share exchange shall require, in connection with  
6741 the transaction, the signing by each such shareholder of a  
6742 separate written consent to become subject to such new interest  
6743 holder liability, unless in the case of a shareholder that  
6744 already has interest holder liability with respect to such  
6745 domestic corporation:

6746 (a) The new interest holder liability is with respect to a  
6747 domestic or foreign corporation (which may be a different or the  
6748 same domestic corporation in which the person is a shareholder);  
6749 and

6750 (b) The terms and conditions of the new interest holder  
6751 liability are substantially identical to those of the existing  
6752 interest holder liability (other than for changes that reduce or  
6753 eliminate such interest holder liability).

6754 (10) Unless the articles of incorporation otherwise  
6755 provide, approval of a plan of share exchange by the  
6756 shareholders of a domestic corporation is not required if the  
6757 corporation is the acquiring eligible entity in the share

28-00272A-19

2019892\_\_

6758 exchange.

6759 (11) Unless the articles of incorporation otherwise  
6760 provide, shares in the acquired eligible entity not to be  
6761 exchanged under the plan of share exchange are not entitled to  
6762 vote on the plan ~~Unless a plan of merger or share exchange~~  
6763 ~~prohibits abandonment of the merger or share exchange without~~  
6764 ~~shareholder approval after a merger or share exchange has been~~  
6765 ~~authorized, the planned merger or share exchange may be~~  
6766 ~~abandoned (subject to any contractual rights) at any time prior~~  
6767 ~~to the filing of articles of merger or share exchange by any~~  
6768 ~~corporation party to the merger or share exchange, without~~  
6769 ~~further shareholder action, in accordance with the procedure set~~  
6770 ~~forth in the plan of merger or share exchange or, if none is set~~  
6771 ~~forth, in the manner determined by the board of directors of~~  
6772 ~~such corporation.~~

6773 Section 134. Section 607.11035, Florida Statutes, is  
6774 created to read:

6775 607.11035 Shareholder approval of a merger or share  
6776 exchange in connection with a tender offer.-

6777 (1) Unless the articles of incorporation otherwise provide,  
6778 shareholder approval of a plan of merger or a plan of share  
6779 exchange under s. 607.1103(1)(b) is not required if:

6780 (a) The plan of merger or share exchange expressly:

6781 1. Permits or requires the merger or share exchange to be  
6782 effected under this section; and

6783 2. Provides that, if the merger or share exchange is to be  
6784 effected under this section, the merger or share exchange will  
6785 be effected as soon as practicable following the satisfaction of  
6786 the requirement in paragraph (f);



28-00272A-19

2019892\_\_

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:

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

6845 (1) (b) .

6846 (b) "Offeror" means the person making the offer.

6847 (c) "Parent" of an eligible entity means a person that  
6848 owns, directly or indirectly through one or more wholly owned  
6849 subsidiaries, all of the outstanding shares of or eligible  
6850 interests in that eligible entity.

6851 (d) Shares tendered in response to the offer shall be  
6852 deemed to have been "purchased" in accordance with the terms of  
6853 the offer at the earliest time as of which:

6854 1. The offeror has irrevocably accepted those shares for  
6855 payment; and

6856 2. In the case of shares represented by certificates, the  
6857 offeror, or the offeror's designated depository or other agent,  
6858 has physically received the certificates representing those  
6859 shares, or, in the case of shares without certificates, those  
6860 shares have been transferred into the account of the offeror or  
6861 its designated depository or other agent, or an agent's message  
6862 relating to those shares has been received by the offeror or its  
6863 designated depository or other agent.

6864 (e) "Wholly owned subsidiary" of a person means an eligible  
6865 entity of or in which a person owns, directly or indirectly, all  
6866 of the outstanding shares or eligible interests.

6867 Section 135. Section 607.1104, Florida Statutes, is amended  
6868 to read:

6869 607.1104 Merger between parent and subsidiary or between  
6870 subsidiaries ~~of subsidiary corporation.~~

6871 (1) (a) A domestic or foreign parent eligible entity that  
6872 owns shares of a domestic corporation which carry ~~corporation~~  
6873 ~~owning~~ at least 80 percent of the voting power ~~outstanding~~

28-00272A-19

2019892\_\_

6874 ~~shares~~ of each class and series of the outstanding shares of the  
6875 a subsidiary corporation may:

6876 1. Merge the subsidiary into itself, if it is a domestic or  
6877 foreign eligible entity, or into another domestic or foreign  
6878 eligible entity in which the parent eligible entity owns at  
6879 least 80 percent of the voting power of each class and series of  
6880 the outstanding shares or eligible interests that have voting  
6881 power; or

6882 2. may Merge itself, if it is a domestic or foreign  
6883 eligible entity, into such the subsidiary.

6884 (b) Mergers under subparagraphs (a)1. and (a)2. do not  
6885 require the approval of the board of directors or shareholders  
6886 of the subsidiary unless the articles of incorporation or  
6887 organic rules of the parent eligible entity or the articles of  
6888 incorporation of the subsidiary otherwise provide. Section  
6889 607.1103(9) applies to a merger under this section. The articles  
6890 of merger relating to a merger under this section do not need to  
6891 be signed by the subsidiary, or may merge the subsidiary into  
6892 and with another subsidiary in which the parent corporation owns  
6893 at least 80 percent of the outstanding shares of each class of  
6894 the subsidiary without the approval of the shareholders of the  
6895 parent or subsidiary. In a merger of a parent corporation into  
6896 its subsidiary corporation, the approval of the shareholders of  
6897 the parent corporation shall be required if the articles of  
6898 incorporation of the surviving corporation will differ, except  
6899 for amendments enumerated in s. 607.1002, from the articles of  
6900 incorporation of the parent corporation before the merger, and  
6901 the required vote shall be the greater of the vote required to  
6902 approve the merger and the vote required to adopt each change to

28-00272A-19

2019892\_\_

6903 ~~the articles of incorporation as if each change had been~~  
6904 ~~presented as an amendment to the articles of incorporation of~~  
6905 ~~the parent corporation.~~

6906 ~~(b) The board of directors of the parent shall adopt a plan~~  
6907 ~~of merger that sets forth:~~

6908 ~~1. The names of the parent and subsidiary corporations;~~

6909 ~~2. The manner and basis of converting the shares of the~~  
6910 ~~subsidiary or parent into shares, obligations, or other~~  
6911 ~~securities of the parent or any other corporation or, in whole~~  
6912 ~~or in part, into cash or other property, and the manner and~~  
6913 ~~basis of converting rights to acquire shares of each corporation~~  
6914 ~~into rights to acquire shares, obligations, and other securities~~  
6915 ~~of the surviving or any other corporation or, in whole or in~~  
6916 ~~part, into cash or other property;~~

6917 ~~3. If the merger is between the parent and a subsidiary~~  
6918 ~~corporation and the parent is not the surviving corporation, a~~  
6919 ~~provision for the pro rata issuance of shares of the subsidiary~~  
6920 ~~to the holders of the shares of the parent corporation upon~~  
6921 ~~surrender of any certificates therefor; and~~

6922 ~~4. A clear and concise statement that shareholders of the~~  
6923 ~~subsidiary who, except for the applicability of this section,~~  
6924 ~~would be entitled to vote and who dissent from the merger~~  
6925 ~~pursuant to s. 607.1321, may be entitled, if they comply with~~  
6926 ~~the provisions of this act regarding appraisal rights, to be~~  
6927 ~~paid the fair value of their shares.~~

6928 ~~(2) The parent shall, within 10 days after the effective~~  
6929 ~~date of a merger approved under subsection (1), notify each of~~  
6930 ~~the subsidiary's shareholders that the merger has become~~  
6931 ~~effective mail a copy or summary of the plan of merger to each~~

28-00272A-19

2019892\_\_

6932 ~~shareholder of the subsidiary who does not waive the mailing~~  
6933 ~~requirement in writing.~~

6934 (3) Except as provided for in subsections (1) and (2), a  
6935 merger between a parent eligible entity and a domestic  
6936 subsidiary corporation shall be governed by the provisions of  
6937 ss. 607.1101-607.1107 that are applicable to mergers generally  
6938 ~~The parent may not deliver articles of merger to the Department~~  
6939 ~~of State for filing until at least 30 days after the date it~~  
6940 ~~mailed a copy of the plan of merger to each shareholder of the~~  
6941 ~~subsidiary who did not waive the mailing requirement, or, if~~  
6942 ~~earlier, upon the waiver thereof by the holders of all of the~~  
6943 ~~outstanding shares of the subsidiary.~~

6944 ~~(4) Articles of merger under this section may not contain~~  
6945 ~~amendments to the articles of incorporation of the parent~~  
6946 ~~corporation (except for amendments enumerated in s. 607.1002).~~

6947 ~~(5) Two or more subsidiaries may be merged into the parent~~  
6948 ~~pursuant to this section.~~

6949 Section 136. Subsections (1) and (3) of section 607.11045,  
6950 Florida Statutes, are amended to read:

6951 607.11045 Holding company formation by merger by certain  
6952 corporations.-

6953 (1) This section applies only to a corporation that has  
6954 shares registered pursuant to s. 12 of the Securities Exchange  
6955 Act of 1934 ~~of any class or series which are either registered~~  
6956 ~~on a national securities exchange or designated as a national~~  
6957 ~~market system security on an interdealer quotation system by the~~  
6958 ~~National Association of Securities Dealers, Inc., or held of~~  
6959 ~~record by not fewer than 2,000 shareholders.~~

6960 (3) Notwithstanding the requirements of s. 607.1103, unless

28-00272A-19

2019892\_\_

6961 expressly required by its articles of incorporation, no vote of  
6962 shareholders of a corporation is necessary to authorize a merger  
6963 of the corporation with or into a wholly owned subsidiary of  
6964 such corporation if:

6965 (a) Such corporation and wholly owned subsidiary are the  
6966 only constituent corporations to the merger;

6967 (b) Each share or fraction of a share of the constituent  
6968 corporation whose shares are being converted pursuant to the  
6969 merger which are outstanding immediately prior to the effective  
6970 date of the merger is converted in the merger into a share or  
6971 equal fraction of share of a holding company having the same  
6972 designations, rights, powers and preferences, and  
6973 qualifications, limitations and restrictions thereof as the  
6974 share of the constituent corporation being converted in the  
6975 merger;

6976 (c) The holding company and each of the constituent  
6977 corporations to the merger are domestic corporations;

6978 (d) The articles of incorporation and bylaws of the holding  
6979 company immediately following the effective date of the merger  
6980 contain provisions identical to the articles of incorporation  
6981 and bylaws of the constituent corporation whose shares are being  
6982 converted pursuant to the merger immediately prior to the  
6983 effective date of the merger, except provisions regarding the  
6984 incorporators, the corporate name, the registered office and  
6985 agent, the initial board of directors, the initial subscribers  
6986 for shares and matters solely of historical significance, and  
6987 such provisions contained in any amendment to the articles of  
6988 incorporation as were necessary to effect a change, exchange,  
6989 reclassification, or cancellation of shares, if such change,

28-00272A-19

2019892\_\_

6990 exchange, reclassification, or cancellation has become  
6991 effective;

6992 (e) As a result of the merger, the constituent corporation  
6993 whose shares are being converted pursuant to the merger or its  
6994 successor corporation becomes or remains a direct or indirect  
6995 wholly owned subsidiary of the holding company;

6996 (f) The directors of the constituent corporation become or  
6997 remain the directors of the holding company upon the effective  
6998 date of the merger;

6999 (g) The articles of incorporation of the surviving  
7000 corporation immediately following the effective date of the  
7001 merger are identical to the articles of incorporation of the  
7002 constituent corporation whose shares are being converted  
7003 pursuant to the merger immediately prior to the effective date  
7004 of the merger, except provisions regarding the incorporators,  
7005 the corporate name, the registered office and agent, the initial  
7006 board of directors, the initial subscribers for shares and  
7007 matters solely of historical significance, and such provisions  
7008 contained in any amendment to the articles of incorporation as  
7009 were necessary to effect a change, exchange, reclassification,  
7010 or cancellation of shares, if such change, exchange,  
7011 reclassification, or cancellation has become effective. The  
7012 articles of incorporation of the surviving corporation must be  
7013 amended in the merger to contain a provision requiring, by  
7014 specific reference to this section, that any act or transaction  
7015 by or involving the surviving corporation, other than the  
7016 election or removal of directors, which requires for its  
7017 adoption under this chapter ~~act~~ or its articles of incorporation  
7018 the approval of the shareholders of the surviving corporation



28-00272A-19

2019892\_\_

7019 also be approved by the shareholders of the holding company, or  
7020 any successor by merger, by the same vote as is required by this  
7021 chapter ~~act~~ or the articles of incorporation of the surviving  
7022 corporation. The articles of incorporation of the surviving  
7023 corporation may be amended in the merger to reduce the number of  
7024 classes and shares which the surviving corporation is authorized  
7025 to issue;

7026 (h) The board of directors of the constituent corporation  
7027 determines that the shareholders of the constituent corporation  
7028 will not recognize gain or loss for United States federal income  
7029 tax purposes; and

7030 (i) The board of directors of such corporation adopts a  
7031 plan of merger that sets forth:

7032 1. The names of the constituent corporations;

7033 2. The manner and basis of converting the shares of the  
7034 corporation into shares of the holding company and the manner  
7035 and basis of converting rights to acquire shares of such  
7036 corporation into rights to acquire shares of the holding  
7037 company; and

7038 3. A provision for the pro rata issuance of shares of the  
7039 holding company to the holders of shares of the corporation upon  
7040 surrender of any certificates therefor.

7041 Section 137. Section 607.1105, Florida Statutes, is amended  
7042 to read:

7043 607.1105 Articles of merger or share exchange.—

7044 (1) After a plan of merger has been adopted and approved as  
7045 required by this chapter or, if the merger is being effected  
7046 under s. 607.1101(1)(b), the merger has been approved as  
7047 required by the organic law governing the parties to the merger,

28-00272A-19

2019892\_\_

7048 the articles of merger must be signed by each party to the  
7049 merger, except as provided in s. 607.1104(1). The articles must  
7050 ~~or share exchange is approved by the shareholders, or adopted by~~  
7051 ~~the board of directors if shareholder approval is not required,~~  
7052 ~~the surviving or acquiring corporation shall deliver to the~~  
7053 ~~Department of State for filing articles of merger or share~~  
7054 ~~exchange which shall be executed by each corporation as required~~  
7055 ~~by s. 607.0120 and which shall set forth:~~

7056 (a) The name, jurisdiction of formation, and type of entity  
7057 of each party of the merger;

7058 (b) If not already identified as the survivor pursuant to  
7059 paragraph (a), the name, jurisdiction of formation, and type of  
7060 entity of the survivor;

7061 (c) If the survivor of the merger is a domestic corporation  
7062 and its articles of incorporation are being amended, or if a new  
7063 domestic corporation is being created as a result of the merger:

7064 1. The amendments to the survivor's articles of  
7065 incorporation; or

7066 2. The articles of incorporation of the new corporation;

7067 (d) If the survivor of the merger is a domestic eligible  
7068 entity, other than a domestic corporation, and its public  
7069 organic record is being amended in connection with the merger,  
7070 or if a new domestic eligible entity is being created as a  
7071 result of the merger:

7072 1. The amendments to the public organic record of the  
7073 survivor; or

7074 2. The public organic record of the new eligible entity;

7075 (e) If the plan of merger required approval by the  
7076 shareholders of a domestic corporation that is a party to the

28-00272A-19

2019892\_\_

7077 merger, a statement that the plan was duly approved by the  
7078 shareholders and, if voting by any separate voting group was  
7079 required, by each such separate voting group, in the manner  
7080 required by this chapter and the articles of incorporation of  
7081 such domestic corporation;

7082 (f) If the plan of merger did not require approval by the  
7083 shareholders of a domestic corporation that is a party to the  
7084 merger, a statement to that effect;

7085 (g) As to each foreign corporation that is a party to the  
7086 merger, a statement that the participation of the foreign  
7087 corporation was duly authorized in accordance with such  
7088 corporation's organic law;

7089 (h) As to each domestic or foreign eligible entity that is  
7090 a party to the merger and that is not a domestic or foreign  
7091 corporation, a statement that the participation of the eligible  
7092 entity in the merger was duly authorized in accordance with such  
7093 eligible entity's organic law; and

7094 (i) If the survivor is created by the merger and is a  
7095 domestic limited liability partnership, the document required to  
7096 elect that status, as an attachment.

7097 (2) After a plan of share exchange in which the acquired  
7098 eligible entity is a domestic corporation or other eligible  
7099 entity has been adopted and approved as required by this  
7100 chapter, articles of share exchange must be signed by the  
7101 acquired eligible entity and the acquiring eligible entity. The  
7102 articles must set forth:

7103 (a) The name, jurisdiction of formation, and type of entity  
7104 of the acquired eligible entity;

7105 (b) The name, jurisdiction of formation, and type of entity

28-00272A-19

2019892\_\_

7106 of the domestic or foreign eligible entity that is the acquiring  
7107 eligible entity; and

7108 (c) A statement that the plan of share exchange was duly  
7109 approved by the acquired eligible entity by:

7110 1. The required vote or consent of each class or series of  
7111 shares or eligible interests included in the exchange; and

7112 2. The required vote or consent of each other class or  
7113 series of shares or eligible interests entitled to vote on  
7114 approval of the exchange by the articles of incorporation or the  
7115 organic rules of the acquired eligible entity.

7116 (3) In addition to the requirements of subsections (1) and  
7117 (2), articles of merger or articles of share exchange may  
7118 contain any other provision not prohibited by law.

7119 (4) The articles of merger or the articles of share  
7120 exchange shall be delivered to the department for filing, and,  
7121 subject to subsection (5), the merger or share exchange shall  
7122 take effect at the effective date determined in accordance with  
7123 s. 607.0123.

7124 (5) With respect to a merger in which one or more foreign  
7125 entities is a party or a foreign eligible entity created by the  
7126 merger is the survivor, the merger itself shall become effective  
7127 at the later of:

7128 (a) When all documents required to be filed in all foreign  
7129 jurisdictions to effect the merger have become effective; or

7130 (b) When the articles of merger take effect.

7131 (6) Articles of merger required to be filed under this  
7132 section may be combined with any filing required under the  
7133 organic law governing any other domestic eligible entity  
7134 involved in the transaction if the combined filing satisfies the

28-00272A-19

2019892\_\_

7135 requirements of both this section and the other organic law plan  
 7136 of merger or share exchange;

7137 ~~(b) The effective date of the merger or share exchange,~~  
 7138 ~~which may be on or after the date of filing the articles of~~  
 7139 ~~merger or share exchange; if the articles of merger or share~~  
 7140 ~~exchange do not provide for an effective date of the merger or~~  
 7141 ~~share exchange, then the effective date shall be the date on~~  
 7142 ~~which the articles of merger or share exchange are filed;~~

7143 ~~(c) If shareholder approval was not required, a statement~~  
 7144 ~~to that effect; and~~

7145 ~~(d) As to each corporation, to the extent applicable, the~~  
 7146 ~~date of adoption of the plan of merger or share exchange by the~~  
 7147 ~~shareholders or by the board of directors when no vote of the~~  
 7148 ~~shareholders is required.~~

7149 (7)(2) A copy of the articles of merger or share exchange,  
 7150 certified by the department ~~of State~~, may be filed in the office  
 7151 of the official who is the recording officer of each county in  
 7152 this state in which real property of a constituent corporation  
 7153 other than the surviving corporation is situated.

7154 Section 138. Section 607.1106, Florida Statutes, is amended  
 7155 to read:

7156 607.1106 Effect of merger or share exchange.—

7157 (1) When a merger becomes effective:

7158 (a) The domestic or foreign eligible entity that is  
 7159 designated in the plan of merger as the survivor continues or  
 7160 comes into existence, as the case may be;

7161 (b) The separate existence of every domestic or foreign  
 7162 eligible entity that is a party to the merger, other than the  
 7163 survivor, ceases ~~Every other corporation party to the merger~~

28-00272A-19

2019892\_\_

7164 ~~merges into the surviving corporation and the separate existence~~  
7165 ~~of every corporation except the surviving corporation ceases;~~

7166 (c)-(b) All real property and other property, including any  
7167 interest therein and all title thereto, owned by, and every  
7168 contract right possessed by, each domestic or foreign eligible  
7169 entity that is a party to the merger, other than the survivor,  
7170 become the property and contract rights of and become vested in  
7171 the survivor, The title to all real estate and other property,  
7172 ~~or any interest therein, owned by each corporation party to the~~  
7173 ~~merger is vested in the surviving corporation without transfer,~~  
7174 ~~reversion, or impairment;~~

7175 (d)-(e) All debts, obligations, and other liabilities of  
7176 each domestic or foreign eligible entity that is a The surviving  
7177 ~~corporation shall thenceforth be responsible and liable for all~~  
7178 ~~the liabilities and obligations of each corporation party to the~~  
7179 ~~merger, other than the survivor, become debts, obligations, and~~  
7180 ~~liabilities of the survivor;~~

7181 (e)-(d) The name of the survivor may be, but need not be,  
7182 substituted in any pending proceeding for the name of any party  
7183 to the merger whose separate existence ceased in the merger Any  
7184 ~~claim existing or action or proceeding pending by or against any~~  
7185 ~~corporation party to the merger may be continued as if the~~  
7186 ~~merger did not occur or the surviving corporation may be~~  
7187 ~~substituted in the proceeding for the corporation which ceased~~  
7188 ~~existence;~~

7189 (f)-(e) Neither the rights of creditors nor any liens upon  
7190 the property of any corporation party to the merger shall be  
7191 impaired by such merger;

7192 (g)-(f) If the survivor is a domestic eligible entity, the

28-00272A-19

2019892\_\_

7193 articles of incorporation and bylaws or the organic rules of the  
7194 survivor ~~surviving corporation~~ are amended to the extent  
7195 provided in the plan of merger; ~~and~~

7196 (h) The articles of incorporation and bylaws or the organic  
7197 rules of a survivor that is a domestic eligible entity and is  
7198 created by the merger become effective;

7199 (i) ~~(g)~~ The shares (and the rights to acquire shares,  
7200 obligations, or other securities) of each domestic or foreign  
7201 corporation party to the merger, and the eligible interests in  
7202 any other eligible entity that is a party to the merger, that  
7203 are to be converted in accordance with the terms of the merger  
7204 into shares or other securities, eligible interests, rights,  
7205 obligations, rights to acquire shares, other securities, or  
7206 eligible interests, cash, other property, or any combination of  
7207 the foregoing, or other securities of the surviving or any other  
7208 ~~corporation or into cash or other property~~ are converted, and  
7209 the former holders of such the shares, rights to acquire shares,  
7210 or other eligible interests are entitled only to the rights  
7211 provided to them by those terms of the merger or to any rights  
7212 they may have in the articles of merger or to their rights under  
7213 s. 607.1302 or under the organic law governing the eligible  
7214 entity;

7215 (j) Except as provided by law or the plan of merger, all  
7216 the rights, privileges, franchises, and immunities of each  
7217 eligible entity that is a party to the merger, other than the  
7218 survivor, become the rights, privileges, franchises, and  
7219 immunities of the survivor; and

7220 (k) If the survivor exists before the merger:

7221 1. All the property and contract rights of the survivor

28-00272A-19

2019892\_\_

7222 remain its property and contract rights without transfer,  
7223 reversion, or impairment;

7224 2. The survivor remains subject to all of its debts,  
7225 obligations, and other liabilities; and

7226 3. Except as provided by law or the plan of merger, the  
7227 survivor continues to hold all of its rights, privileges,  
7228 franchises, and immunities.

7229 (2) When a share exchange becomes effective, the shares,  
7230 eligible interests, and rights to acquire shares or eligible  
7231 interests in the acquired eligible entity that ~~of each acquired~~  
7232 ~~corporation~~ are to be exchanged in accordance with the terms of  
7233 the share exchange for:

7234 (a) Shares or other securities;

7235 (b) Eligible interests;

7236 (c) Obligations;

7237 (d) Rights to acquire shares, other securities, or eligible  
7238 interests;

7239 (e) Cash;

7240 (f) Other property; or

7241 (g) Any combination of the foregoing

7242  
7243 are entitled only to the rights provided to them by the terms of  
7244 the share exchange, or to any ~~as provided in the plan of~~  
7245 ~~exchange, and the former holders of the shares are entitled only~~  
7246 ~~to the exchange rights provided in the articles of share~~  
7247 ~~exchange or to their rights they may have~~ under s. 607.1302 or  
7248 the organic law governing the acquired eligible entity.

7249 (3) Except as otherwise provided in the articles of  
7250 incorporation of a domestic corporation or the organic law



28-00272A-19

2019892\_\_

7251 governing or organic rules of a domestic or foreign eligible  
7252 entity, the effect of a merger or share exchange on interest  
7253 holder liability is as follows:

7254 (a) A person who becomes subject to new interest holder  
7255 liability in respect of an eligible entity as a result of a  
7256 merger or share exchange shall have that new interest holder  
7257 liability only in respect of interest holder liabilities that  
7258 arise after the merger or share exchange becomes effective.

7259 (b) If a person had interest holder liability with respect  
7260 to a party to the merger or the acquired eligible entity before  
7261 the merger or share exchange becomes effective with respect to  
7262 shares or eligible interests of such party or acquired entity  
7263 which were exchanged in the merger or share exchange, which were  
7264 canceled in the merger, or the terms and conditions of which  
7265 relating to interest holder liability were amended pursuant to  
7266 the merger:

7267 1. The merger or share exchange does not discharge that  
7268 prior interest holder liability with respect to any interest  
7269 holder liabilities that arose before the merger or share  
7270 exchange becomes effective.

7271 2. The provisions of the organic law governing any eligible  
7272 entity for which the person had that prior interest holder  
7273 liability shall continue to apply to the collection or discharge  
7274 of any interest holder liabilities preserved by subparagraph 1.  
7275 as if the merger or share exchange had not occurred.

7276 3. The person shall have such rights of contribution from  
7277 other persons as are provided by the organic law governing the  
7278 eligible entity for which the person had that prior interest  
7279 holder liability with respect to any interest holder liabilities

28-00272A-19

2019892\_\_

7280 preserved by subparagraph 1. as if the merger or share exchange  
7281 had not occurred.

7282 4. The person shall not, by reason of such prior interest  
7283 holder liability, have interest holder liability with respect to  
7284 any interest holder liabilities that arise after the merger or  
7285 share exchange becomes effective.

7286 (c) If a person has interest holder liability both before  
7287 and after a merger becomes effective with unchanged terms and  
7288 conditions with respect to the eligible entity that is the  
7289 survivor by reason of owning the same shares or eligible  
7290 interests before and after the merger becomes effective, the  
7291 merger has no effect on such interest holder liability.

7292 (d) A share exchange has no effect on interest holder  
7293 liability related to shares or eligible interests of the  
7294 acquired eligible entity that were not exchanged in the share  
7295 exchange.

7296 (4) Upon a merger becoming effective, a foreign eligible  
7297 entity that is the survivor of the merger is deemed to:

7298 (a) Appoint the secretary of state as its agent for service  
7299 of process in a proceeding to enforce the rights of shareholders  
7300 of each domestic corporation that is a party to the merger who  
7301 exercise appraisal rights; and

7302 (b) Agree that it will promptly pay any amount that the  
7303 shareholders are entitled to under ss. 607.1301-607.1340.

7304 (5) Except as provided in the organic law governing a party  
7305 to a merger or in its articles of incorporation or organic  
7306 rules, the merger does not give rise to any rights that an  
7307 interest holder, governor, or third party would have upon a  
7308 dissolution, liquidation, or winding up of that party. The

28-00272A-19

2019892\_\_

7309 merger does not require a party to the merger to wind up its  
7310 affairs and does not constitute or cause its dissolution or  
7311 termination.

7312 (6) Property held for a charitable purpose under the law of  
7313 this state by a domestic or foreign eligible entity immediately  
7314 before a merger becomes effective may not, as a result of the  
7315 transaction, be diverted from the objects for which it was  
7316 donated, granted, devised, or otherwise transferred except and  
7317 only to the extent permitted by or pursuant to the laws of this  
7318 state addressing cy pres or dealing with nondiversion of  
7319 charitable assets.

7320 (7) A bequest, devise, gift, grant, or promise contained in  
7321 a will or other instrument of donation, subscription, or  
7322 conveyance which is made to an eligible entity that is a party  
7323 to a merger that is not the survivor and which takes effect or  
7324 remains payable after the merger inures to the survivor.

7325 (8) A trust obligation that would govern property if the  
7326 property is directed to be transferred to a nonsurviving  
7327 eligible entity will apply to property that is to be transferred  
7328 instead to the survivor after a merger becomes effective.

7329 Section 139. Section 607.1107, Florida Statutes, is amended  
7330 to read:

7331 607.1107 Abandonment of a merger or share exchange ~~Merger~~  
7332 ~~or share exchange with foreign corporations.~~

7333 (1) After a plan of merger or a plan of share exchange has  
7334 been adopted and approved as required by this chapter, and  
7335 before the articles of merger or the articles of share exchange  
7336 have become effective, the plan may be abandoned by a domestic  
7337 corporation that is a party to the plan without action by its

28-00272A-19

2019892\_\_

7338 shareholders in accordance with any procedures set forth in the  
7339 plan of merger or the plan of share exchange or, if no such  
7340 procedures are set forth in the plan, in the manner determined  
7341 by the board of directors.

7342 (2) If a merger or share exchange is abandoned under  
7343 subsection (1) after articles of merger or articles of share  
7344 exchange have been delivered to the department for filing but  
7345 before the articles of merger or articles of share exchange have  
7346 become effective, a statement of abandonment signed by all the  
7347 parties that signed the articles of merger or articles of share  
7348 exchange must be delivered to the department for filing before  
7349 the articles of merger or articles of share exchange become  
7350 effective. The statement shall take effect on filing, whereupon  
7351 the merger or share exchange shall be deemed abandoned and shall  
7352 not become effective. The statement of abandonment must contain:

7353 (a) The name of each party to the merger or the names of  
7354 the acquiring and acquired entities in a share exchange;

7355 (b) The date on which the articles of merger or articles of  
7356 share exchange were filed by the department; and

7357 (c) A statement that the merger or share exchange has been  
7358 abandoned in accordance with this section. ~~One or more foreign~~  
7359 ~~corporations may merge or enter into a share exchange with one~~  
7360 ~~or more domestic corporations if:~~

7361 ~~(a) In a merger, the merger is permitted by the law of the~~  
7362 ~~state or country under the law of which each foreign corporation~~  
7363 ~~is incorporated and each foreign corporation complies with that~~  
7364 ~~law in effecting the merger;~~

7365 ~~(b) In a share exchange, the corporation the shares of~~  
7366 ~~which will be acquired is a domestic corporation, whether or not~~

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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:

28-00272A-19

2019892\_\_

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).

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

7483 effectiveness of the plan of domestication.

7484 (4) If the plan of domestication is required to be approved  
7485 by the shareholders, and if the approval of the shareholders is  
7486 to be given at a meeting, the corporation must notify each  
7487 shareholder, regardless of whether entitled to vote, of the  
7488 meeting of shareholders at which the plan of domestication is to  
7489 be submitted for approval. The notice must state that the  
7490 purpose, or one of the purposes, of the meeting is to consider  
7491 the plan of domestication and must contain or be accompanied by  
7492 a copy of the plan. The notice must include or be accompanied by  
7493 a written copy of the organic rules of the domesticated eligible  
7494 entity as they will be in effect immediately after the  
7495 domestication.

7496 (5) Unless the articles of incorporation, or the board of  
7497 directors acting pursuant to subsection (3), require a greater  
7498 vote or a greater quorum in the respective case, approval of the  
7499 plan of domestication requires:

7500 (a) The approval of the shareholders at a meeting at which  
7501 a quorum exists consisting of a majority of the votes entitled  
7502 to be cast on the plan; and

7503 (b) Except as provided in subsection (6), the approval of  
7504 each class or series of shares voting as a separate voting group  
7505 at a meeting at which a quorum of the voting group exists  
7506 consisting of a majority of the votes entitled to be cast on the  
7507 plan by that voting group.

7508 (6) The articles of incorporation may expressly limit or  
7509 eliminate the separate voting rights provided in paragraph  
7510 (5) (b) as to any class or series of shares, except when the  
7511 public organic rules of the foreign corporation resulting from

28-00272A-19

2019892\_\_

7512 the domestication include what would be in effect an amendment  
7513 that would entitle the class or series to vote as a separate  
7514 group under s. 607.1004 if it were a proposed amendment of the  
7515 articles of incorporation of a domestic domesticating  
7516 corporation.

7517 (7) If as a result of a domestication one or more  
7518 shareholders of a domestic domesticating corporation would  
7519 become subject to interest holder liability, approval of the  
7520 plan of domestication shall require the signing in connection  
7521 with the domestication, by each such shareholder, of a separate  
7522 written consent to become subject to such interest holder  
7523 liability, unless in the case of a shareholder that already has  
7524 interest holder liability with respect to the domesticating  
7525 corporation, the terms and conditions of the interest holder  
7526 liability with respect to the domesticated corporation are  
7527 substantially identical to those of the existing interest holder  
7528 liability, other than for changes that eliminate or reduce such  
7529 interest holder liability.

7530 Section 149. Section 607.11922, Florida Statutes, is  
7531 created to read:

7532 607.11922 Articles of domestication; effectiveness.-

7533 (1) Articles of domestication must be signed by the  
7534 domesticating corporation after:

7535 (a) A plan of domestication of a domestic corporation has  
7536 been adopted and approved as required by this chapter; or

7537 (b) A foreign corporation that is the domesticating  
7538 corporation has approved a domestication as required by the  
7539 applicable provisions of this chapter and under the foreign  
7540 corporation's organic law.

28-00272A-19

2019892\_\_

- 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.

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

7599 are to be in writing and that will be in effect immediately  
7600 after the domestication becomes effective, except for changes  
7601 that do not require approval of the shareholders of the  
7602 domesticated corporation under its organic rules as set forth in  
7603 the plan of domestication; or

7604 3. Any of the other terms or conditions of the plan, if the  
7605 change would adversely affect the shareholder in any material  
7606 respect.

7607 (2) After a plan of domestication has been adopted and  
7608 approved by a domestic corporation as required by this chapter,  
7609 and before the articles of domestication have become effective,  
7610 the plan may be abandoned by the corporation without action by  
7611 its shareholders in accordance with any procedures set forth in  
7612 the plan or, if no such procedures are set forth in the plan, in  
7613 the manner determined by the board of directors of the domestic  
7614 corporation.

7615 (3) If a domestication is abandoned after the articles of  
7616 domestication have been delivered to the department for filing  
7617 but before the articles of domestication have become effective,  
7618 a statement of abandonment signed by the domesticating  
7619 corporation must be delivered to the department for filing  
7620 before the articles of domestication become effective. The  
7621 statement shall take effect upon filing, and the domestication  
7622 shall be deemed abandoned and shall not become effective. The  
7623 statement of abandonment must contain:

7624 (a) The name of the domesticating corporation;

7625 (b) The date on which the articles of domestication were  
7626 filed by the department; and

7627 (c) A statement that the domestication has been abandoned

28-00272A-19

2019892\_\_

7628 in accordance with this section.

7629 Section 151. Section 607.11924, Florida Statutes, is  
7630 created to read:

7631 607.11924 Effect of domestication.—

7632 (1) When a domestication becomes effective:

7633 (a) All real property and other property owned by the  
7634 domesticating corporation, including any interests therein and  
7635 all title thereto, and every contract right possessed by the  
7636 domesticating corporation, are the property and contract rights  
7637 of the domesticated corporation without transfer, reversion, or  
7638 impairment;

7639 (b) All debts, obligations, and other liabilities of the  
7640 domesticating corporation are the debts, obligations, and other  
7641 liabilities of the domesticated corporation;

7642 (c) The name of the domesticated corporation may be, but  
7643 need not be, substituted for the name of the domesticating  
7644 corporation in any pending proceeding;

7645 (d) The organic rules of the domesticated corporation  
7646 become effective;

7647 (e) The shares or equity interests of the domesticating  
7648 corporation are reclassified into shares or other securities,  
7649 obligations, rights to acquire shares or other securities, cash,  
7650 or other property in accordance with the terms of the  
7651 domestication, and the shareholders or equity owners of the  
7652 domesticating corporation are entitled only to the rights  
7653 provided to them by those terms and to any appraisal rights they  
7654 may have under the organic law of the domesticating corporation;  
7655 and

7656 (f) The domesticated corporation is:

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

7715 which takes effect or remains payable after the domestication  
7716 inures to the domesticated corporation.

7717 (8) A trust obligation that would govern property if  
7718 transferred to the domesticating corporation applies to property  
7719 that is transferred to the domesticated corporation after the  
7720 domestication takes effect.

7721 Section 152. Section 607.11930, Florida Statutes, is  
7722 created to read:

7723 607.11930 Conversion.—

7724 (1) By complying with this chapter, including adopting a  
7725 plan of conversion in accordance with s. 607.11931 and complying  
7726 with s. 607.11932, a domestic corporation may become:

7727 (a) A domestic eligible entity, other than a domestic  
7728 corporation;

7729 (b) If the conversion is permitted by the organic law of  
7730 the foreign eligible entity, a foreign eligible entity.

7731 (2) By complying with this section and ss. 607.11931-  
7732 607.11935, as applicable, and applicable provisions of its  
7733 organic law, a domestic eligible entity other than a domestic  
7734 corporation may become a domestic corporation.

7735 (3) By complying with this section and ss. 607.11931-  
7736 607.11935, as applicable, and by complying with the applicable  
7737 provisions of its organic law, a foreign eligible entity may  
7738 become a domestic corporation, but only if the organic law of  
7739 the foreign eligible entity permits it to become a corporation  
7740 in another jurisdiction.

7741 (4) If a protected agreement of a domestic converting  
7742 eligible entity in effect immediately before the conversion  
7743 becomes effective contains a provision applying to a merger of

28-00272A-19

2019892\_\_

7744 the corporation that is a converting eligible entity and the  
7745 agreement does not refer to a conversion of the corporation, the  
7746 provision applies to a conversion of the corporation as if the  
7747 conversion were a merger, until such time as the provision is  
7748 first amended after January 1, 2020.

7749 Section 153. Section 607.11931, Florida Statutes, is  
7750 created to read:

7751 607.11931 Plan of conversion.—

7752 (1) A domestic corporation may convert to a domestic or  
7753 foreign eligible entity under this chapter by approving a plan  
7754 of conversion. The plan of conversion must include:

7755 (a) The name of the domestic converting corporation;

7756 (b) The name, jurisdiction of formation, and type of entity  
7757 of the converted eligible entity;

7758 (c) The manner and basis of converting the shares of the  
7759 domestic corporation, or the rights to acquire shares,  
7760 obligations or other securities, of the domestic corporation  
7761 into:

7762 1. Shares.

7763 2. Other securities.

7764 3. Eligible interests.

7765 4. Obligations.

7766 5. Rights to acquire shares, other securities, or eligible  
7767 interests.

7768 6. Cash.

7769 7. Other property.

7770 8. Any combination of the foregoing;

7771 (d) The other terms and conditions of the conversion; and

7772 (e) The full text, as it will be in effect immediately

28-00272A-19

2019892\_\_

7773 after the conversion becomes effective, of the organic rules of  
7774 the converted eligible entity which are to be in writing.

7775 (2) In addition to the requirements of subsection (1), a  
7776 plan of conversion may contain any other provision not  
7777 prohibited by law.

7778 (3) The terms of a plan of conversion may be made dependent  
7779 upon facts objectively ascertainable outside the plan in  
7780 accordance with section 607.0120(11).

7781 Section 154. Section 607.11932, Florida Statutes, is  
7782 created to read:

7783 607.11932 Action on a plan of conversion.—In the case of a  
7784 conversion of a domestic corporation to a domestic or foreign  
7785 eligible entity other than a domestic corporation, the plan of  
7786 conversion must be adopted in the following manner:

7787 (1) The plan of conversion must first be adopted by the  
7788 board of directors of such domestic corporation.

7789 (2) (a) The plan of conversion shall then be approved by the  
7790 shareholders of such domestic corporation.

7791 (b) In submitting the plan of conversion to the  
7792 shareholders for their approval, the board of directors shall  
7793 recommend that the shareholders approve the plan of conversion  
7794 unless:

7795 1. The board of directors makes a determination that  
7796 because of conflicts of interest or other special circumstances  
7797 it should not make such a recommendation; or

7798 2. Section 607.0826 applies.

7799 (c) If either subparagraph (b)1. or subparagraph (b)2.  
7800 applies, the board of directors shall inform the shareholders of  
7801 the basis for its so proceeding without such recommendation.

28-00272A-19

2019892\_\_

7802       (3) The board of directors may set conditions for approval  
7803 of the plan of conversion by the shareholders or the  
7804 effectiveness of the plan of conversion.

7805       (4) If a plan of conversion is required to be approved by  
7806 the shareholders, and if the approval is to be given at a  
7807 meeting, the corporation shall notify each shareholder,  
7808 regardless of whether entitled to vote, of the meeting of  
7809 shareholders at which the plan is to be submitted for approval,  
7810 in accordance with s. 607.0705. The notice must state that the  
7811 purpose, or one of the purposes, of the meeting is to consider  
7812 the plan of conversion and must contain or be accompanied by a  
7813 copy of the plan. The notice must include or be accompanied by a  
7814 written copy of the organic rules of the converted eligible  
7815 entity as they will be in effect immediately after the  
7816 conversion.

7817       (5) Unless the articles of incorporation, or the board of  
7818 directors acting pursuant to subsection (3), require a greater  
7819 vote or a greater quorum in the respective case, approval of the  
7820 plan of conversion requires:

7821       (a) The approval of the shareholders at a meeting at which  
7822 a quorum exists consisting of a majority of the votes entitled  
7823 to be cast on the plan; and

7824       (b) The approval of each class or series of shares voting  
7825 as a separate voting group at a meeting at which a quorum of the  
7826 voting group exists consisting of a majority of the votes  
7827 entitled to be cast on the plan by that voting group.

7828       (6) If as a result of the conversion one or more  
7829 shareholders of the converting domestic corporation would become  
7830 subject to interest holder liability, approval of the plan of

28-00272A-19

2019892\_\_

7831 conversion shall require the signing in connection with the  
7832 transaction, by each such shareholder, of a separate written  
7833 consent to become subject to such interest holder liability.

7834 (7) If the converted eligible entity is a partnership or  
7835 limited partnership, no shareholder of the converting domestic  
7836 corporation shall, as a result of the conversion, become a  
7837 general partner of the partnership or limited partnership,  
7838 unless such shareholder specifically consents in writing to  
7839 becoming a general partner of such partnership or limited  
7840 partnership and, unless such written consent is obtained from  
7841 each such shareholder, such conversion may not become effective  
7842 under s. 607.11933. Any shareholder providing such consent in  
7843 writing shall be deemed to have voted in favor of the plan of  
7844 conversion pursuant to which the shareholder became a general  
7845 partner.

7846 (8) Sections 607.1301-607.1340 shall, insofar as they are  
7847 applicable, apply to a conversion in accordance with this  
7848 chapter of a domestic corporation into a domestic or foreign  
7849 eligible entity that is not a domestic corporation.

7850 Section 155. Section 607.11933, Florida Statutes, is  
7851 created to read:

7852 607.11933 Articles of conversion; effectiveness.-

7853 (1) After a plan of conversion of a domestic corporation  
7854 has been adopted and approved as required by this chapter, or a  
7855 domestic or foreign eligible entity, other than a domestic  
7856 corporation, that is the converting eligible entity has approved  
7857 a conversion as required by its organic law, articles of  
7858 conversion must be signed by the converting eligible entity as  
7859 required by s. 607.0120 and must:

28-00272A-19

2019892\_\_

7860       (a) State the name, jurisdiction of formation, and type of  
7861 entity of the converting eligible entity;

7862       (b) State the name, jurisdiction of formation, and type of  
7863 entity of the converted eligible entity;

7864       (c) If the converting eligible entity is:

7865       1. A domestic corporation, state that the plan of  
7866 conversion was approved in accordance with this chapter; or

7867       2. A domestic or foreign eligible entity other than a  
7868 domestic corporation, state that the conversion was approved by  
7869 the eligible entity in accordance with its organic law; and

7870       (d) If the converted eligible entity is:

7871       1. A domestic corporation or a domestic or foreign eligible  
7872 entity that is not a domestic corporation, attach the public  
7873 organic record of the converted eligible entity, except that  
7874 provisions that would not be required to be included in a  
7875 restated public organic record may be omitted; or

7876       2. A domestic limited liability partnership, attach the  
7877 filing or filings required to become a domestic limited  
7878 liability partnership.

7879       (2) If the converted eligible entity is a domestic  
7880 corporation, its articles of incorporation must satisfy the  
7881 requirements of section 607.0202, except that provisions that  
7882 would not be required to be included in restated articles of  
7883 incorporation may be omitted from the articles of incorporation.

7884 If the converted eligible entity is a domestic eligible entity  
7885 that is not a domestic corporation, its public organic record,  
7886 if any, must satisfy the applicable requirements of the organic  
7887 law of this state, except that the public organic record does  
7888 not need to be signed.

28-00272A-19

2019892\_\_

7889       (3) The articles of conversion shall be delivered to the  
7890 department for filing, and shall take effect at the effective  
7891 date determined in accordance with s. 607.0123.

7892       (4) (a) If a converted eligible entity is a domestic  
7893 eligible entity, the conversion becomes effective when the  
7894 articles of conversion are effective.

7895       (b) If the converted eligible entity is a foreign eligible  
7896 entity, the conversion becomes effective at the later of:

7897       1. The date and time provided by the organic law of that  
7898 eligible entity; or

7899       2. When the articles of conversion take effect.

7900       (5) Articles of conversion required to be filed under this  
7901 section may be combined with any filing required under the  
7902 organic law of a domestic eligible entity that is the converting  
7903 eligible entity or the converted eligible entity if the combined  
7904 filing satisfies the requirements of both this section and the  
7905 other organic law.

7906       (6) If the converting eligible entity is a foreign eligible  
7907 entity that is authorized to transact business in this state  
7908 under a provision of law similar to ss. 607.1501-607.1532, its  
7909 foreign qualification shall be canceled automatically on the  
7910 effective date of its conversion.

7911       (7) A copy of the articles of conversion, certified by the  
7912 department, may be filed in the official records of any county  
7913 in this state in which the converting eligible entity holds an  
7914 interest in real property.

7915       Section 156. Section 607.11934, Florida Statutes, is  
7916 created to read:

7917       607.11934 Amendment to a plan of conversion; abandonment.-

28-00272A-19

2019892\_\_

7918       (1) A plan of conversion of a converting eligible entity  
7919 that is a domestic corporation may be amended:

7920       (a) In the same manner as the plan of conversion was  
7921 approved, if the plan does not provide for the manner in which  
7922 it may be amended; or

7923       (b) In the manner provided in the plan of conversion,  
7924 except that shareholders that were entitled to vote on or  
7925 consent to approval of the plan are entitled to vote on or  
7926 consent to any amendment of the plan that will change:

7927       1. The amount or kind of shares or other securities,  
7928 eligible interests, obligations, rights to acquire shares, other  
7929 securities, or eligible interests, cash, other property, or any  
7930 combination of the foregoing, to be received by any of the  
7931 shareholders of the converting corporation under the plan;

7932       2. The organic rules of the converted eligible entity that  
7933 will be in effect immediately after the conversion becomes  
7934 effective, except for changes that do not require approval of  
7935 the eligible interest holders of the converted eligible entity  
7936 under its organic law or organic rules; or

7937       3. Any other terms or conditions of the plan, if the change  
7938 would adversely affect such shareholders in any material  
7939 respect.

7940       (2) After a plan of conversion has been adopted and  
7941 approved by a converting eligible entity that is a domestic  
7942 corporation in the manner required by this chapter and before  
7943 the articles of conversion become effective, the plan may be  
7944 abandoned by the domestic corporation without action by its  
7945 shareholders in accordance with any procedures set forth in the  
7946 plan or, if no such procedures are set forth in the plan, in the



28-00272A-19

2019892\_\_

7947 manner determined by the board of directors of the domestic  
7948 corporation.

7949 (3) If a conversion is abandoned after the articles of  
7950 conversion have been delivered to the department for filing but  
7951 before the articles of conversion have become effective, a  
7952 statement of abandonment signed by the converting eligible  
7953 entity must be delivered to the department for filing before the  
7954 articles of conversion become effective. The statement shall  
7955 take effect on filing, and the conversion shall be deemed  
7956 abandoned and shall not become effective. The statement of  
7957 abandonment must contain:

7958 (a) The name of the converting eligible entity;

7959 (b) The date on which the articles of conversion were filed  
7960 by the department; and

7961 (c) A statement that the conversion has been abandoned in  
7962 accordance with this section.

7963 Section 157. Section 607.11935, Florida Statutes, is  
7964 created to read:

7965 607.11935 Effect of conversion.—

7966 (1) When a conversion becomes effective:

7967 (a) All real property and other property owned by,  
7968 including any interest therein and all title thereto, and every  
7969 contract right possessed by, the converting eligible entity  
7970 remain the property and contract rights of the converted  
7971 eligible entity without transfer, reversion, or impairment;

7972 (b) All debts, obligations, and other liabilities of the  
7973 converting eligible entity remain the debts, obligations, and  
7974 other liabilities of the converted eligible entity;

7975 (c) The name of the converted eligible entity may be, but

28-00272A-19

2019892\_\_

7976 need not be, substituted for the name of the converting eligible  
7977 entity in any pending action or proceeding;

7978 (d) If the converted eligible entity is a filing entity, a  
7979 domestic corporation, or a domestic or foreign nonprofit  
7980 corporation, its public organic record and its private organic  
7981 rules become effective;

7982 (e) If the converted eligible entity is a nonfiling entity,  
7983 its private organic rules become effective;

7984 (f) If the converted eligible entity is a limited liability  
7985 partnership, the filing required to become a limited liability  
7986 partnership and its private organic rules become effective;

7987 (g) The shares, rights to acquire shares, eligible  
7988 interests, other securities and obligations of the converting  
7989 eligible entity are reclassified into shares, other securities,  
7990 rights to acquire shares or other securities, eligible  
7991 interests, obligations, cash, other property, or any combination  
7992 thereof, in accordance with the terms of the conversion, and the  
7993 shareholders or interest holders of the converting eligible  
7994 entity are entitled only to the rights provided to them by those  
7995 terms and to any rights they may have under s. 607.1302 or under  
7996 the organic law of the converting eligible entity; and

7997 (h) The converted eligible entity is:

7998 1. Deemed to be incorporated or organized under and subject  
7999 to the organic law of the converted eligible entity;

8000 2. Deemed to be the same entity without interruption as the  
8001 converting eligible entity; and

8002 3. Deemed to have been incorporated or otherwise organized  
8003 on the date that the converting eligible entity was originally  
8004 incorporated or organized.

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

8063 inures to the converted eligible entity.

8064 (8) A trust obligation that would govern property if  
8065 transferred to the converting eligible entity applies to  
8066 property that is to be transferred to the converted eligible  
8067 entity after the conversion becomes effective.

8068 Section 158. Section 607.1201, Florida Statutes, is amended  
8069 to read:

8070 607.1201 Disposition of assets not requiring shareholder  
8071 approval ~~Sale of assets in regular course of business and~~  
8072 ~~mortgage of assets.~~ Unless the articles of incorporation  
8073 otherwise provide, no approval by shareholders is required to:

8074 (1) ~~A corporation may, on the terms and conditions and for~~  
8075 ~~the consideration determined by the board of directors:~~

8076 ~~(a)~~ Sell, lease, exchange, or otherwise dispose of any or  
8077 all of the corporation's assets ~~all, or substantially all, of~~  
8078 ~~its property~~ in the usual and regular course of business;

8079 ~~(2)~~ ~~(b)~~ Mortgage, pledge, dedicate to the repayment of  
8080 indebtedness (whether with or without recourse), create a  
8081 security interest in, or otherwise encumber any or all of the  
8082 corporation's assets, regardless of whether its property whether  
8083 ~~or not~~ in the usual and regular course of business; ~~or~~

8084 ~~(3)~~ ~~(c)~~ Transfer any or all of the corporation's assets to  
8085 one or more domestic or foreign corporations or other entities  
8086 all of the shares or interests ~~its property to a corporation all~~  
8087 ~~the shares~~ of which are owned by the corporation; or

8088 (4) Distribute assets pro rata to the holders of one or  
8089 more classes or series of the corporation's shares, except to  
8090 the extent that the distribution is part of a dissolution of the  
8091 corporation under ss. 607.1401-607.14401.

28-00272A-19

2019892\_\_

8092 ~~(2) Unless the articles of incorporation require it,~~  
8093 ~~approval by the shareholders of a transaction described in~~  
8094 ~~subsection (1) is not required.~~

8095 Section 159. Section 607.1202, Florida Statutes, is amended  
8096 to read:

8097 607.1202 Shareholder approval of certain dispositions ~~Sale~~  
8098 ~~of assets other than in regular course of business.-~~

8099 (1) A corporation may sell, lease, exchange, or otherwise  
8100 dispose of all, or substantially all, of its property (with or  
8101 without ~~the~~ good will), otherwise than in the usual and regular  
8102 course of business, on the terms and conditions and for the  
8103 consideration determined by the corporation's board of  
8104 directors, but only if the board of directors proposes and its  
8105 shareholders ~~of record~~ approve the proposed transaction.

8106 (2) (a) To obtain the approval of the shareholders under  
8107 subsection (1), the board of directors must first adopt a  
8108 resolution approving the disposition, and thereafter, the  
8109 disposition must also be approved by the corporation's  
8110 shareholders.

8111 (b) In submitting the disposition to the shareholders for  
8112 approval, For a transaction to be authorized:

8113 ~~(a)~~ the board of directors must recommend the proposed  
8114 transaction to the shareholders of record unless:

8115 1. The board of directors makes a determination that  
8116 ~~determines that it should make no recommendation~~ because of  
8117 conflict of interest or other special circumstances it should  
8118 not make such a recommendation; or

8119 2. Section 607.0826 applies.

8120 (c) If either subparagraph (b)1. or subparagraph (b)2.

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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,~~



28-00272A-19

2019892\_\_

8179 ~~exchange, or other disposition of property, or any resolution of~~  
8180 ~~the board of directors or shareholders approving such~~  
8181 ~~transaction, prohibits abandonment of the transaction without~~  
8182 ~~shareholder approval after a transaction has been authorized,~~  
8183 ~~the planned transaction may be abandoned (subject to any~~  
8184 ~~contractual rights) at any time prior to consummation thereof,~~  
8185 ~~without further shareholder action, in accordance with the~~  
8186 ~~procedure set forth in the plan, agreement, or resolutions~~  
8187 ~~providing for or approving such transaction or, if none is set~~  
8188 ~~forth, in the manner determined by the board of directors.~~

8189 (7)-(8) A disposition of assets in the course of dissolution  
8190 is governed by ss. 607.1401-607.14401 ~~transaction that~~  
8191 ~~constitutes a distribution is governed by s. 607.06401 and not~~  
8192 ~~by this section.~~

8193 (8) For purposes of this section, the assets of a direct or  
8194 indirect consolidated subsidiary shall be deemed to be the  
8195 assets of the parent corporation.

8196 (9) For purposes of this section, the term "shareholder"  
8197 includes a beneficial shareholder and a voting trust beneficial  
8198 owner.

8199 Section 160. Section 607.1301, Florida Statutes, is amended  
8200 to read:

8201 607.1301 Appraisal rights; definitions.—The following  
8202 definitions apply to ss. 607.1302-607.1340 ~~ss. 607.1302-~~  
8203 ~~607.1333:~~

8204 (1) "Accrued interest" means interest from the date the  
8205 corporate action becomes effective until the date of payment, at  
8206 the rate of interest determined for judgments pursuant to s.  
8207 55.03, determined as of the effective date of the corporate

28-00272A-19

2019892\_\_

8208 action.

8209 (2) "Affiliate" means a person that directly or indirectly  
8210 through one or more intermediaries controls, is controlled by,  
8211 or is under common control with another person or is a senior  
8212 executive of such person ~~thereof~~. For purposes of paragraph  
8213 (6) (a) ~~s. 607.1302(2)(d)~~, a person is deemed to be an affiliate  
8214 of its senior executives.

8215 (3) "Corporate action" means an event described in s.  
8216 607.1302(1)

8217 ~~(2)~~ "Beneficial shareholder" ~~means a person who is the~~  
8218 ~~beneficial owner of shares held in a voting trust or by a~~  
8219 ~~nominee on the beneficial owner's behalf.~~

8220 (4)~~(3)~~ "Corporation" means the domestic corporation that is  
8221 the issuer of the shares held by a shareholder demanding  
8222 appraisal and, for matters covered in ss. 607.1322-607.1340 ~~ss.~~  
8223 ~~607.1322-607.1333~~, includes the domesticated eligible entity in  
8224 a domestication, the covered eligible entity in a conversion,  
8225 and the survivor of surviving entity in a merger.

8226 (5)~~(4)~~ "Fair value" means the value of the corporation's  
8227 shares determined:

8228 (a) Immediately before the effectiveness ~~effectuation~~ of  
8229 the corporate action to which the shareholder objects.

8230 (b) Using customary and current valuation concepts and  
8231 techniques generally employed for similar businesses in the  
8232 context of the transaction requiring appraisal, excluding any  
8233 appreciation or depreciation in anticipation of the corporate  
8234 action unless exclusion would be inequitable to the corporation  
8235 and its remaining shareholders.

8236 (c) ~~For a corporation with 10 or fewer shareholders,~~

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

8353 the corporation's net assets, in excess of a reasonable amount  
8354 reserved to meet claims of the type described in ss. 607.1406  
8355 and 607.1407, within 1 year after the shareholders' approval of  
8356 the action and in accordance with their respective interests  
8357 determined at the time of distribution; and

8358 2. The disposition of assets is not an interested  
8359 transaction but not including a sale pursuant to court order or  
8360 a sale for cash pursuant to a plan by which all or substantially  
8361 all of the net proceeds of the sale will be distributed to the  
8362 shareholders within 1 year after the date of sale;

8363 (e) ~~(d)~~ An amendment of the articles of incorporation with  
8364 respect to a ~~the~~ class or series of shares which reduces the  
8365 number of shares of a class or series owned by the shareholder  
8366 to a fraction of a share if the corporation has the obligation  
8367 or the right to repurchase the fractional share so created;

8368 (f) ~~(e)~~ Any other amendment to the articles of  
8369 incorporation, merger, share exchange, or disposition of assets,  
8370 or amendment to the articles of incorporation, in each case to  
8371 the extent provided by the articles of incorporation, bylaws, or  
8372 a resolution of the board of directors, except that no bylaw or  
8373 board resolution providing for appraisal rights may be amended  
8374 or otherwise altered except by shareholder approval;

8375 (g) An amendment to the articles of incorporation or bylaws  
8376 of the corporation, the effect of which is to alter or abolish  
8377 voting or other rights with respect to such interest in a manner  
8378 that is adverse to the interest of such shareholder, except as  
8379 the right may be affected by the voting or other rights of new  
8380 shares then being authorized of a new class or series of shares;

8381 (h) An amendment to the articles of incorporation or bylaws

28-00272A-19

2019892\_\_

8382 of a corporation the effect of which is to adversely affect the  
8383 interest of the shareholder by altering or abolishing appraisal  
8384 rights under this section;

8385 (i)~~(f)~~ With regard to a class of shares prescribed in the  
8386 articles of incorporation prior to October 1, 2003, including  
8387 any shares within that class subsequently authorized by  
8388 amendment, any amendment of the articles of incorporation if the  
8389 shareholder is entitled to vote on the amendment and if such  
8390 amendment would adversely affect such shareholder by:

8391 1. Altering or abolishing any preemptive rights attached to  
8392 any of his or her shares;

8393 2. Altering or abolishing the voting rights pertaining to  
8394 any of his or her shares, except as such rights may be affected  
8395 by the voting rights of new shares then being authorized of any  
8396 existing or new class or series of shares;

8397 3. Effecting an exchange, cancellation, or reclassification  
8398 of any of his or her shares, when such exchange, cancellation,  
8399 or reclassification would alter or abolish the shareholder's  
8400 voting rights or alter his or her percentage of equity in the  
8401 corporation, or effecting a reduction or cancellation of accrued  
8402 dividends or other arrearages in respect to such shares;

8403 4. Reducing the stated redemption price of any of the  
8404 shareholder's redeemable shares, altering or abolishing any  
8405 provision relating to any sinking fund for the redemption or  
8406 purchase of any of his or her shares, or making any of his or  
8407 her shares subject to redemption when they are not otherwise  
8408 redeemable;

8409 5. Making noncumulative, in whole or in part, dividends of  
8410 any of the shareholder's preferred shares which had theretofore



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

8469 ~~to accept for such shares anything other than cash or shares of~~  
8470 ~~any class or any series of shares of any corporation, or any~~  
8471 ~~other proprietary interest of any other entity, that satisfies~~  
8472 ~~the standards set forth in paragraph (a) at the time the~~  
8473 ~~corporate action becomes effective.~~

8474 ~~(d) Paragraph (a) shall not be applicable and appraisal~~  
8475 ~~rights shall be available pursuant to subsection (1) for the~~  
8476 ~~holders of any class or series of shares if:~~

8477 ~~1. Any of the shares or assets of the corporation are being~~  
8478 ~~acquired or converted, whether by merger, share exchange, or~~  
8479 ~~otherwise, pursuant to the corporate action by a person, or by~~  
8480 ~~an affiliate of a person, who:~~

8481 ~~a. Is, or at any time in the 1-year period immediately~~  
8482 ~~preceding approval by the board of directors of the corporate~~  
8483 ~~action requiring appraisal rights was, the beneficial owner of~~  
8484 ~~20 percent or more of the voting power of the corporation,~~  
8485 ~~excluding any shares acquired pursuant to an offer for all~~  
8486 ~~shares having voting power if such offer was made within 1 year~~  
8487 ~~prior to the corporate action requiring appraisal rights for~~  
8488 ~~consideration of the same kind and of a value equal to or less~~  
8489 ~~than that paid in connection with the corporate action; or~~

8490 ~~b. Directly or indirectly has, or at any time in the 1-year~~  
8491 ~~period immediately preceding approval by the board of directors~~  
8492 ~~of the corporation of the corporate action requiring appraisal~~  
8493 ~~rights had, the power, contractually or otherwise, to cause the~~  
8494 ~~appointment or election of 25 percent or more of the directors~~  
8495 ~~to the board of directors of the corporation; or~~

8496 ~~2. Any of the shares or assets of the corporation are being~~  
8497 ~~acquired or converted, whether by merger, share exchange, or~~

28-00272A-19

2019892\_\_

8498 otherwise, pursuant to such corporate action by a person, or by  
8499 an affiliate of a person, who is, or at any time in the 1-year  
8500 period immediately preceding approval by the board of directors  
8501 of the corporate action requiring appraisal rights was, a senior  
8502 executive or director of the corporation or a senior executive  
8503 of any affiliate thereof, and that senior executive or director  
8504 will receive, as a result of the corporate action, a financial  
8505 benefit not generally available to other shareholders as such,  
8506 other than:

8507 a. ~~Employment, consulting, retirement, or similar benefits~~  
8508 ~~established separately and not as part of or in contemplation of~~  
8509 ~~the corporate action;~~

8510 b. ~~Employment, consulting, retirement, or similar benefits~~  
8511 ~~established in contemplation of, or as part of, the corporate~~  
8512 ~~action that are not more favorable than those existing before~~  
8513 ~~the corporate action or, if more favorable, that have been~~  
8514 ~~approved on behalf of the corporation in the same manner as is~~  
8515 ~~provided in s. 607.0832; or~~

8516 c. ~~In the case of a director of the corporation who will,~~  
8517 ~~in the corporate action, become a director of the acquiring~~  
8518 ~~entity in the corporate action or one of its affiliates, rights~~  
8519 ~~and benefits as a director that are provided on the same basis~~  
8520 ~~as those afforded by the acquiring entity generally to other~~  
8521 ~~directors of such entity or such affiliate.~~

8522 (c) ~~For the purposes of paragraph (d) only, the term~~  
8523 ~~"beneficial owner" means any person who, directly or indirectly,~~  
8524 ~~through any contract, arrangement, or understanding, other than~~  
8525 ~~a revocable proxy, has or shares the power to vote, or to direct~~  
8526 ~~the voting of, shares, provided that a member of a national~~

28-00272A-19

2019892\_\_

8527 ~~securities exchange shall not be deemed to be a beneficial owner~~  
8528 ~~of securities held directly or indirectly by it on behalf of~~  
8529 ~~another person solely because such member is the recordholder of~~  
8530 ~~such securities if the member is precluded by the rules of such~~  
8531 ~~exchange from voting without instruction on contested matters or~~  
8532 ~~matters that may affect substantially the rights or privileges~~  
8533 ~~of the holders of the securities to be voted. When two or more~~  
8534 ~~persons agree to act together for the purpose of voting their~~  
8535 ~~shares of the corporation, each member of the group formed~~  
8536 ~~thereby shall be deemed to have acquired beneficial ownership,~~  
8537 ~~as of the date of such agreement, of all voting shares of the~~  
8538 ~~corporation beneficially owned by any member of the group.~~

8539 (3) Notwithstanding any other provision of this section,  
8540 the articles of incorporation as originally filed or any  
8541 amendment to the articles of incorporation ~~thereto~~ may limit or  
8542 eliminate appraisal rights for any class or series of preferred  
8543 shares, except that:

8544 (a) No such limitation or elimination shall be effective if  
8545 the class or series does not have the right to vote separately  
8546 as a voting group, alone or as part of a group, on the action or  
8547 if the action is a domestication under s. 607.11920 or a  
8548 conversion under s. 607.11901, or a merger having a similar  
8549 effect as a domestication or conversion in which the  
8550 domesticated eligible entity or the converted eligible entity is  
8551 an eligible entity; and

8552 (b) ~~but~~ Any such limitation or elimination contained in an  
8553 amendment to the articles of incorporation that limits or  
8554 eliminates appraisal rights for any of such shares that are  
8555 outstanding immediately before ~~prior to~~ the effective date of

28-00272A-19

2019892\_\_

8556 such amendment or that the corporation is or may be required to  
8557 issue or sell thereafter pursuant to any conversion, exchange,  
8558 or other right existing immediately before the effective date of  
8559 such amendment shall not apply to any corporate action that  
8560 becomes effective within 1 year after the effective date of such  
8561 amendment ~~of that date~~ if such action would otherwise afford  
8562 appraisal rights.

8563 ~~(4) A shareholder entitled to appraisal rights under this~~  
8564 ~~chapter may not challenge a completed corporate action for which~~  
8565 ~~appraisal rights are available unless such corporate action:~~

8566 ~~(a) Was not effectuated in accordance with the applicable~~  
8567 ~~provisions of this section or the corporation's articles of~~  
8568 ~~incorporation, bylaws, or board of directors' resolution~~  
8569 ~~authorizing the corporate action; or~~

8570 ~~(b) Was procured as a result of fraud or material~~  
8571 ~~misrepresentation.~~

8572 Section 162. Section 607.1303, Florida Statutes, is amended  
8573 to read:

8574 607.1303 Assertion of rights by nominees and beneficial  
8575 owners.—

8576 (1) A record shareholder may assert appraisal rights as to  
8577 fewer than all the shares registered in the record shareholder's  
8578 name but owned by a beneficial shareholder or a voting trust  
8579 beneficial owner only if the record shareholder objects with  
8580 respect to all shares of the class or series owned by the  
8581 beneficial shareholder or a voting trust beneficial owner and  
8582 notifies the corporation in writing of the name and address of  
8583 each beneficial shareholder or voting trust beneficial owner on  
8584 whose behalf appraisal rights are being asserted. The rights of

28-00272A-19

2019892\_\_

8585 a record shareholder who asserts appraisal rights for only part  
8586 of the shares held of record in the record shareholder's name  
8587 under this subsection shall be determined as if the shares as to  
8588 which the record shareholder objects and the record  
8589 shareholder's other shares were registered in the names of  
8590 different record shareholders.

8591 (2) A beneficial shareholder and a voting trust beneficial  
8592 owner may assert appraisal rights as to shares of any class or  
8593 series held on behalf of the shareholder only if such  
8594 shareholder:

8595 (a) Submits to the corporation the record shareholder's  
8596 written consent to the assertion of such rights no later than  
8597 the date referred to in s. 607.1322(2)(b)2.

8598 (b) Does so with respect to all shares of the class or  
8599 series that are beneficially owned by the beneficial shareholder  
8600 or the voting trust beneficial owner.

8601 Section 163. Subsections (1) and (3) of section 607.1320,  
8602 Florida Statutes, are amended, and subsections (4) and (5) are  
8603 added to that section, to read:

8604 607.1320 Notice of appraisal rights.—

8605 (1) If a proposed corporate action described in s.  
8606 607.1302(1) is to be submitted to a vote at a shareholders'  
8607 meeting, the meeting notice (or, where no approval of such  
8608 action is required pursuant to s. 607.11035, the offer made  
8609 pursuant to s. 607.11035), must state that the corporation has  
8610 concluded that shareholders are, are not, or may be entitled to  
8611 assert appraisal rights under this chapter. If the corporation  
8612 concludes that appraisal rights are or may be available, a copy  
8613 of ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~ must accompany

28-00272A-19

2019892\_\_

8614 the meeting notice or offer sent to those record shareholders  
8615 entitled to exercise appraisal rights.

8616 (3) If a ~~the~~ proposed corporate action described in s.  
8617 607.1302(1) is to be approved by written consent of the  
8618 shareholders pursuant to s. 607.0704:

8619 (a) Written notice that appraisal rights are, are not, or  
8620 may be available must be sent to each shareholder from whom a  
8621 consent is solicited at the time consent of such shareholder is  
8622 first solicited, and, if the corporation has concluded that  
8623 appraisal rights are or may be available, a copy of ss.  
8624 607.1301-607.1340 must accompany such written notice; and

8625 (b) Written notice that appraisal rights are, are not, or  
8626 may be available must be delivered, at least 10 days before the  
8627 corporate action becomes effective, to all nonconsenting and  
8628 nonvoting shareholders, and, if the corporation has concluded  
8629 that appraisal rights are or may be available, a copy of ss.  
8630 607.1301-607.1340 must accompany such written notice.

8631 (4) Where a corporate action described in s. 607.1302(1) is  
8632 proposed or a merger pursuant to s. 607.1104 is effected, and  
8633 the corporation concludes that appraisal rights are or may be  
8634 available, the notice referred to in subsection (1), paragraph  
8635 (3) (a), or paragraph (3) (b) must be accompanied by:

8636 (a) Financial statements of the corporation that issued the  
8637 shares that may be or are subject to appraisal rights,  
8638 consisting of a balance sheet as of the end of the fiscal year  
8639 ending not more than 16 months before the date of the notice, an  
8640 income statement for that fiscal year, and a cash flow statement  
8641 for that fiscal year; however, if such financial statements are  
8642 not reasonably available, the corporation must provide



28-00272A-19

2019892\_\_

8643 reasonably equivalent financial information; and

8644 (b) The latest available interim financial statements,  
8645 including year-to-date through the end of the interim period, of  
8646 such corporation, if any.

8647 (5) The right to receive the information described in  
8648 subsection (4) may be waived in writing by a shareholder before  
8649 or after the corporate action is effected ~~other than by a~~  
8650 ~~shareholders' meeting, the notice referred to in subsection (1)~~  
8651 ~~must be sent to all shareholders at the time that consents are~~  
8652 ~~first solicited pursuant to s. 607.0704, whether or not consents~~  
8653 ~~are solicited from all shareholders, and include the materials~~  
8654 ~~described in s. 607.1322.~~

8655 Section 164. Section 607.1321, Florida Statutes, is amended  
8656 to read:

8657 607.1321 Notice of intent to demand payment.—

8658 (1) If a proposed corporate action requiring appraisal  
8659 rights under s. 607.1302 is submitted to a vote at a  
8660 shareholders' meeting, ~~or is submitted to a shareholder pursuant~~  
8661 ~~to a consent vote under s. 607.0704,~~ a shareholder who wishes to  
8662 assert appraisal rights with respect to any class or series of  
8663 shares:

8664 (a) Must deliver to the corporation before the vote is  
8665 taken, ~~or within 20 days after receiving the notice pursuant to~~  
8666 ~~s. 607.1320(3) if action is to be taken without a shareholder~~  
8667 ~~meeting,~~ written notice of the shareholder's intent to demand  
8668 payment if the proposed corporate action is effectuated; ~~and—~~

8669 (b) Must not vote, or cause or permit to be voted, any  
8670 shares of such class or series in favor of the proposed  
8671 corporate action.

28-00272A-19

2019892\_\_

8672       (2) If a proposed corporate action requiring appraisal  
8673 rights under s. 607.1302 is to be approved by written consent, a  
8674 shareholder who wishes to assert appraisal rights with respect  
8675 to any class or series of shares must not sign a consent in  
8676 favor of the proposed corporate action with respect to that  
8677 class or series of shares.

8678       (3) If a proposed corporate action specified in s.  
8679 607.1302(1) does not require shareholder approval pursuant to s.  
8680 607.11035, a shareholder who wishes to assert appraisal rights  
8681 with respect to any class or series of shares:

8682       (a) Must deliver to the corporation before the shares are  
8683 purchased pursuant to the offer a written notice of the  
8684 shareholder's intent to demand payment if the proposed action is  
8685 effected; and

8686       (b) Must not tender, or cause or permit to be tendered, any  
8687 shares of such class or series in response to such offer.

8688       (4)-(2) A shareholder who may otherwise be entitled to  
8689 appraisal rights but does not satisfy the requirements of  
8690 subsections (1), (2), or (3) subsection (1) is not entitled to  
8691 payment under this chapter.

8692       Section 165. Section 607.1322, Florida Statutes, is amended  
8693 to read:

8694       607.1322 Appraisal notice and form.—

8695       (1) If a proposed corporate action requiring appraisal  
8696 rights under s. 607.1302(1) becomes effective, the corporation  
8697 must deliver a written appraisal notice and form required by  
8698 paragraph (2) (a) to all shareholders who satisfied the  
8699 requirements of s. 607.1321(1), (2), or (3) ~~s. 607.1321~~. In the  
8700 case of a merger under s. 607.1104, the parent must deliver a

28-00272A-19

2019892\_\_

8701 written appraisal notice and form to all record shareholders who  
8702 may be entitled to assert appraisal rights.

8703 (2) The appraisal notice must be delivered ~~sent~~ no earlier  
8704 than the date the corporate action became effective, and no  
8705 later than 10 days after such date, and must:

8706 (a) Supply a form that specifies the date that the  
8707 corporate action became effective and that provides for the  
8708 shareholder to state:

8709 1. The shareholder's name and address.

8710 2. The number, classes, and series of shares as to which  
8711 the shareholder asserts appraisal rights.

8712 3. That the shareholder did not vote for or consent to the  
8713 transaction.

8714 4. Whether the shareholder accepts the corporation's offer  
8715 as stated in subparagraph (b)4.

8716 5. If the offer is not accepted, the shareholder's  
8717 estimated fair value of the shares and a demand for payment of  
8718 the shareholder's estimated value plus accrued interest.

8719 (b) State:

8720 1. Where the form must be sent and where certificates for  
8721 certificated shares must be deposited and the date by which  
8722 those certificates must be deposited, which date may not be  
8723 earlier than the date by which the corporation must receive ~~for~~  
8724 ~~receiving~~ the required form under subparagraph 2.

8725 2. A date by which the corporation must receive the form,  
8726 which date may not be fewer than 40 nor more than 60 days after  
8727 the date the subsection (1) appraisal notice and form are sent,  
8728 and state that the shareholder shall have waived the right to  
8729 demand appraisal with respect to the shares unless the form is

28-00272A-19

2019892\_\_

8730 received by the corporation by such specified date.

8731 3. The corporation's estimate of the fair value of the  
8732 shares.

8733 4. An offer to each shareholder who is entitled to  
8734 appraisal rights to pay the corporation's estimate of fair value  
8735 set forth in subparagraph 3.

8736 5. That, if requested in writing, the corporation will  
8737 provide to the shareholder so requesting, within 10 days after  
8738 the date specified in subparagraph 2., the number of  
8739 shareholders who return the forms by the specified date and the  
8740 total number of shares owned by them.

8741 6. The date by which the notice to withdraw under s.  
8742 607.1323 must be received, which date must be within 20 days  
8743 after the date specified in subparagraph 2.

8744 (c) If not previously provided, be accompanied by a copy of  
8745 ss. 607.1301-607.1340

8746 ~~(c) Be accompanied by:~~

8747 ~~1. Financial statements of the corporation that issued the~~  
8748 ~~shares to be appraised, consisting of a balance sheet as of the~~  
8749 ~~end of the fiscal year ending not more than 15 months prior to~~  
8750 ~~the date of the corporation's appraisal notice, an income~~  
8751 ~~statement for that year, a cash flow statement for that year,~~  
8752 ~~and the latest available interim financial statements, if any.~~

8753 ~~2. A copy of ss. 607.1301-607.1333.~~

8754 Section 166. Subsections (1) and (3) of section 607.1323,  
8755 Florida Statutes, are amended to read:

8756 607.1323 Perfection of rights; right to withdraw.—

8757 (1) A shareholder who receives notice pursuant to s.  
8758 607.1322 and who wishes to exercise appraisal rights must sign

28-00272A-19

2019892\_\_

8759 ~~execute~~ and return the form received pursuant to s. 607.1322(1)  
 8760 and, in the case of certificated shares, deposit the  
 8761 shareholder's certificates in accordance with the terms of the  
 8762 notice by the date referred to in the notice pursuant to s.  
 8763 607.1322(2)(b)2. Once a shareholder deposits that shareholder's  
 8764 certificates or, in the case of uncertificated shares, returns  
 8765 the signed ~~executed~~ forms, that shareholder loses all rights as  
 8766 a shareholder, unless the shareholder withdraws pursuant to  
 8767 subsection (2).

8768 (3) A shareholder who does not sign ~~execute~~ and return the  
 8769 form and, in the case of certificated shares, deposit that  
 8770 shareholder's share certificates if required, each by the date  
 8771 set forth in the notice described in s. 607.1322(2) ~~subsection~~  
 8772 ~~(2)~~, shall not be entitled to payment under ss. 607.1301-  
 8773 607.1340 ~~this chapter~~.

8774 Section 167. Subsection (2) of section 607.1324, Florida  
 8775 Statutes, is amended to read:

8776 607.1324 Shareholder's acceptance of corporation's offer.—

8777 (2) Upon payment of the agreed value, the shareholder shall  
 8778 cease to have any right to receive any further consideration  
 8779 with respect to such interest ~~in the~~ shares.

8780 Section 168. Section 607.1326, Florida Statutes, is amended  
 8781 to read:

8782 607.1326 Procedure if shareholder is dissatisfied with  
 8783 offer.—

8784 (1) A shareholder who is dissatisfied with the  
 8785 corporation's offer as set forth pursuant to s. 607.1322(2)(b)4.  
 8786 must notify the corporation on the form provided pursuant to s.  
 8787 607.1322(1) of that shareholder's estimate of the fair value of

28-00272A-19

2019892\_\_

8788 the shares and demand payment of that estimate plus accrued  
8789 interest.

8790 (2) A shareholder who fails to notify the corporation in  
8791 writing of that shareholder's demand to be paid the  
8792 shareholder's stated estimate of the fair value plus accrued  
8793 interest under subsection (1) within the timeframe set forth in  
8794 s. 607.1322(2)(b)2. waives the right to demand payment under  
8795 this section and shall be entitled only to the payment offered  
8796 by the corporation pursuant to s. 607.1322(2)(b)4.

8797 Section 169. Subsections (1), (2), (5), and (6) of section  
8798 607.1330, Florida Statutes, are amended to read:

8799 607.1330 Court action.—

8800 (1) If a shareholder makes demand for payment under s.  
8801 607.1326 which remains unsettled, the corporation shall commence  
8802 a proceeding within 60 days after receiving the payment demand  
8803 and petition the court to determine the fair value of the shares  
8804 and accrued interest from the date of the corporate action. If  
8805 the corporation does not commence the proceeding within the 60-  
8806 day period, any shareholder who has made a demand pursuant to s.  
8807 607.1326 may commence the proceeding in the name of the  
8808 corporation.

8809 (2) The proceeding shall be commenced in the circuit court  
8810 in the applicable county. If by virtue of the corporate action  
8811 becoming effective the entity has become a foreign eligible  
8812 entity ~~appropriate court of the county in which the~~  
8813 ~~corporation's principal office, or, if none, its registered~~  
8814 ~~office, in this state is located. If the corporation is a~~  
8815 ~~foreign corporation~~ without a registered office in this state,  
8816 the proceeding shall be commenced in the county in this state in

28-00272A-19

2019892\_\_

8817 which the principal office or registered office of the domestic  
8818 corporation merged with the foreign eligible entity ~~corporation~~  
8819 was located immediately before the time the corporate action  
8820 became effective. If such entity has, and immediately before the  
8821 corporate action became effective had, no principal or  
8822 registered office in this state, then the proceeding shall be  
8823 commenced in the county in this state in which the corporation  
8824 has, or immediately before the time the corporate action became  
8825 effective had, an office in this state. If such entity has, or  
8826 immediately before the time the corporate action became  
8827 effective had, no office in this state, the proceeding shall be  
8828 commenced in the county in which the corporation's registered  
8829 office is or was last located ~~at the time of the transaction.~~

8830 (5) Each shareholder made a party to the proceeding is  
8831 entitled to judgment for the amount of the fair value of such  
8832 shareholder's shares, plus accrued interest, as found by the  
8833 court.

8834 (6) The corporation shall pay each such shareholder the  
8835 amount found to be due within 10 days after final determination  
8836 of the proceedings. Upon payment of the judgment, the  
8837 shareholder shall cease to have any rights to receive any  
8838 further consideration with respect to such shares other than any  
8839 amounts ordered to be paid for court costs and attorney fees  
8840 under s. 607.1331 ~~interest in the shares.~~

8841 Section 170. Subsection (4) of section 607.1331, Florida  
8842 Statutes, is amended to read:

8843 607.1331 Court costs and counsel fees.—

8844 (4) To the extent the corporation fails to make a required  
8845 payment pursuant to s. 607.1324, the shareholder may sue

28-00272A-19

2019892\_\_

8846 directly for the amount owed and, to the extent successful,  
8847 shall be entitled to recover from the corporation all costs and  
8848 expenses of the suit, including attorney ~~counsel~~ fees.

8849 Section 171. Section 607.1332, Florida Statutes, is amended  
8850 to read:

8851 607.1332 Disposition of acquired shares.—Shares acquired by  
8852 a corporation pursuant to payment of the agreed value thereof or  
8853 pursuant to payment of the judgment entered therefor, as  
8854 provided in this chapter, may be held and disposed of by such  
8855 corporation as authorized but unissued shares of the  
8856 corporation, except that, in the case of a merger or share  
8857 exchange, they may be held and disposed of as the plan of merger  
8858 or share exchange otherwise provides. The shares of the survivor  
8859 ~~surviving corporation~~ into which the shares of such shareholders  
8860 demanding appraisal rights would have been converted had they  
8861 assented to the merger shall have the status of authorized but  
8862 unissued shares of the survivor ~~surviving corporation~~.

8863 Section 172. Subsection (1) of section 607.1333, Florida  
8864 Statutes, is amended to read:

8865 607.1333 Limitation on corporate payment.—

8866 (1) No payment shall be made to a shareholder seeking  
8867 appraisal rights if, at the time of payment, the corporation is  
8868 unable to meet the distribution standards of s. 607.06401. In  
8869 such event, the shareholder shall, at the shareholder's option:

8870 (a) Withdraw his or her notice of intent to assert  
8871 appraisal rights, which shall in such event be deemed withdrawn  
8872 with the consent of the corporation; or

8873 (b) Retain his or her status as a claimant against the  
8874 corporation and, if it is liquidated, be subordinated to the



28-00272A-19

2019892\_\_

8875 rights of creditors of the corporation, but have rights superior  
8876 to the shareholders not asserting appraisal rights, and if the  
8877 corporation ~~it~~ is not liquidated, retain his or her right to be  
8878 paid for the shares, which right the corporation shall be  
8879 obliged to satisfy when the restrictions of this section do not  
8880 apply.

8881 Section 173. Section 607.1340, Florida Statutes, is created  
8882 to read:

8883 607.1340 Other remedies limited.-

8884 (1) A shareholder entitled to appraisal rights under this  
8885 chapter may not challenge a completed corporate action for which  
8886 appraisal rights are available unless such corporate action was  
8887 either:

8888 (a) Not authorized and approved in accordance with the  
8889 applicable provisions of this chapter;

8890 (b) Procured as a result of fraud, a material  
8891 misrepresentation, or an omission of a material fact necessary  
8892 to make statements made, in light of the circumstances in which  
8893 they were made, not misleading.

8894 (2) Nothing in this section operates to override or  
8895 supersede the provisions of s. 607.0832.

8896 Section 174. Section 607.1401, Florida Statutes, is amended  
8897 to read:

8898 607.1401 Dissolution by incorporators or directors.-If a  
8899 corporation has not yet issued shares, its board of directors,  
8900 or a majority of incorporators if it has no board of directors,  
8901 ~~A majority of the incorporators or directors of a corporation~~  
8902 ~~that has not issued shares or has not commenced business~~ may  
8903 dissolve the corporation by delivering to the department of

28-00272A-19

2019892\_\_

8904 ~~State~~ for filing articles of dissolution that must set forth:

8905       (1) The name of the corporation;

8906       (2) The date of its incorporation ~~filing of its articles of~~

8907 ~~incorporation;~~

8908       (3) ~~Either:~~

8909       ~~(a) That none of the corporation's shares have been issued,~~

8910 ~~or~~

8911       ~~(b) That the corporation has not commenced business;~~

8912       (4) That no debt of the corporation remains unpaid;

8913       (5) That the net assets of the corporation remaining after

8914 winding up, if any, have been distributed ~~to the shareholders,~~

8915 ~~if shares were issued;~~ and

8916       (6) That a majority of the incorporators or directors

8917 authorized the dissolution.

8918       Section 175. Subsections (1) through (5) of section

8919 607.1402, Florida Statutes, are amended to read:

8920       607.1402 Dissolution by board of directors and

8921 shareholders; dissolution by written consent of shareholders.—

8922       (1) A corporation's board of directors may propose

8923 dissolution for submission to the shareholders by first adopting

8924 a resolution authorizing the dissolution.

8925       (2) (a) For a proposal to dissolve to be adopted, it must be

8926 approved by the shareholders pursuant to subsection (5).

8927       (b) In submitting the proposal to dissolve to the

8928 shareholders for approval,÷

8929       ~~(a) the board of directors must recommend that dissolution~~

8930 ~~to the shareholders approve the dissolution, unless:~~

8931       1. The board of directors determines that because of

8932 conflict of interest or other special circumstances it should

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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



28-00272A-19

2019892\_\_

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

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

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~~

28-00272A-19

2019892\_\_

9223 ~~principal office is located or was located at the effective date~~  
9224 ~~of dissolution to determine the amount and form of security~~  
9225 ~~which will be sufficient to provide compensation to claimants~~  
9226 ~~whose claims are known to the corporation or successor entity~~  
9227 ~~but whose identities are unknown. The court shall appoint a~~  
9228 ~~guardian ad litem to represent all claimants whose identities~~  
9229 ~~are unknown in any proceeding brought under this subsection. The~~  
9230 ~~reasonable fees and expenses of such guardian, including all~~  
9231 ~~reasonable expert witness fees, shall be paid by the petitioner~~  
9232 ~~in such proceeding.~~

9233 ~~(8) The giving of any notice or making of any offer~~  
9234 ~~pursuant to the provisions of this section shall not revive any~~  
9235 ~~claim then barred or constitute acknowledgment by the dissolved~~  
9236 ~~corporation or successor entity that any person to whom such~~  
9237 ~~notice is sent is a proper claimant and shall not operate as a~~  
9238 ~~waiver of any defense or counterclaim in respect of any claim~~  
9239 ~~asserted by any person to whom such notice is sent.~~

9240 ~~(9) A dissolved corporation or successor entity which has~~  
9241 ~~followed the procedures described in subsections (2)-(7):~~

9242 ~~(a) Shall pay the claims admitted or made and not rejected~~  
9243 ~~in accordance with subsection (3);~~

9244 ~~(b) Shall post the security offered and not rejected~~  
9245 ~~pursuant to subsection (5);~~

9246 ~~(c) Shall post any security ordered by the circuit court in~~  
9247 ~~any proceeding under subsections (6) and (7); and~~

9248 ~~(d) Shall pay or make provision for all other known~~  
9249 ~~obligations of the corporation or such successor entity.~~

9250  
9251 ~~Such claims or obligations shall be paid in full, and any such~~

28-00272A-19

2019892\_\_

9252 ~~provision for payments shall be made in full if there are~~  
9253 ~~sufficient funds. If there are insufficient funds, such claims~~  
9254 ~~and obligations shall be paid or provided for according to their~~  
9255 ~~priority and, among claims of equal priority, ratably to the~~  
9256 ~~extent of funds legally available therefor. Any remaining funds~~  
9257 ~~shall be distributed to the shareholders of the dissolved~~  
9258 ~~corporation; however, such distribution may not be made before~~  
9259 ~~the expiration of 150 days from the date of the last notice of~~  
9260 ~~rejections given pursuant to subsection (3). In the absence of~~  
9261 ~~actual fraud, the judgment of the directors of the dissolved~~  
9262 ~~corporation or the governing persons of such successor entity as~~  
9263 ~~to the provisions made for the payment of all obligations under~~  
9264 ~~paragraph (d) is conclusive.~~

9265 ~~(10) A dissolved corporation or successor entity which has~~  
9266 ~~not followed the procedures described in subsections (2) and (3)~~  
9267 ~~shall pay or make reasonable provision to pay all known claims~~  
9268 ~~and obligations, including all contingent, conditional, or~~  
9269 ~~unmatured claims known to the corporation or such successor~~  
9270 ~~entity and all claims which are known to the dissolved~~  
9271 ~~corporation or such successor entity but for which the identity~~  
9272 ~~of the claimant is unknown. Such claims shall be paid in full,~~  
9273 ~~and any such provision for payment made shall be made in full if~~  
9274 ~~there are sufficient funds. If there are insufficient funds,~~  
9275 ~~such claims and obligations shall be paid or provided for~~  
9276 ~~according to their priority and, among claims of equal priority,~~  
9277 ~~ratably to the extent of funds legally available therefor. Any~~  
9278 ~~remaining funds shall be distributed to the shareholders of the~~  
9279 ~~dissolved corporation.~~

9280 ~~(11) Directors of a dissolved corporation or governing~~

28-00272A-19

2019892\_\_

9281 ~~persons of a successor entity which has complied with subsection~~  
9282 ~~(9) or subsection (10) are not personally liable to the~~  
9283 ~~claimants of the dissolved corporation.~~

9284 ~~(12) A shareholder of a dissolved corporation the assets of~~  
9285 ~~which were distributed pursuant to subsection (9) or subsection~~  
9286 ~~(10) is not liable for any claim against the corporation in an~~  
9287 ~~amount in excess of such shareholder's pro rata share of the~~  
9288 ~~claim or the amount distributed to the shareholder, whichever is~~  
9289 ~~less.~~

9290 ~~(13) A shareholder of a dissolved corporation, the assets~~  
9291 ~~of which were distributed pursuant to subsection (9), is not~~  
9292 ~~liable for any claim against the corporation, which claim is~~  
9293 ~~known to the corporation or successor entity, on which a~~  
9294 ~~proceeding is not begun prior to the expiration of 3 years~~  
9295 ~~following the effective date of dissolution.~~

9296 ~~(14) The aggregate liability of any shareholder of a~~  
9297 ~~dissolved corporation for claims against the dissolved~~  
9298 ~~corporation arising under this section, s. 607.1407, or~~  
9299 ~~otherwise, may not exceed the amount distributed to the~~  
9300 ~~shareholder in dissolution.~~

9301 ~~(15) As used in this section or s. 607.1407, the term~~  
9302 ~~"successor entity" includes any trust, receivership, or other~~  
9303 ~~legal entity governed by the laws of this state to which the~~  
9304 ~~remaining assets and liabilities of a dissolved corporation are~~  
9305 ~~transferred and which exists solely for the purposes of~~  
9306 ~~prosecuting and defending suits by or against the dissolved~~  
9307 ~~corporation, enabling the dissolved corporation to settle and~~  
9308 ~~close the business of the dissolved corporation, to dispose of~~  
9309 ~~and convey the property of the dissolved corporation, to~~

28-00272A-19

2019892\_\_

9310 ~~discharge the liabilities of the dissolved corporation, and to~~  
 9311 ~~distribute to the dissolved corporation's shareholders any~~  
 9312 ~~remaining assets, but not for the purpose of continuing the~~  
 9313 ~~business for which the dissolved corporation was organized.~~

9314 Section 180. Section 607.1407, Florida Statutes, is amended  
 9315 to read:

9316 607.1407 Other Unknown claims against dissolved  
 9317 corporation. ~~A dissolved corporation or successor entity, as~~  
 9318 ~~defined in s. 607.1406(15), may choose to execute one of the~~  
 9319 ~~following procedures to resolve payment of unknown claims.~~

9320 (1) To resolve any claims other than known claims, a  
 9321 dissolved corporation ~~or successor entity~~ may file notice of its  
 9322 dissolution with the department ~~of State~~ on the form prescribed  
 9323 by the department ~~of State~~ and request that persons with claims  
 9324 against the corporation which are not known to the dissolved  
 9325 corporation ~~or successor entity~~ present them in accordance with  
 9326 the notice. The notice must ~~shall~~:

9327 (a) State the name of the corporation that is the subject  
 9328 of the ~~and the date of~~ dissolution;

9329 (b) State that the corporation is the subject of a  
 9330 dissolution and the effective date of the dissolution ~~Describe~~  
 9331 ~~the information that must be included in a claim and provide a~~  
 9332 ~~mailing address to which the claim may be sent; and~~

9333 (c) Specify the information that must be included in a  
 9334 claim;

9335 (d) State that a claim must be in writing and provide a  
 9336 mailing address where a claim may be sent; and

9337 (e) ~~(e)~~ State that a claim against the corporation under  
 9338 this subsection will be barred unless a proceeding to enforce



28-00272A-19

2019892\_\_

9339 the claim is commenced within 4 years after the filing of the  
9340 notice.

9341 ~~(2) A dissolved corporation or successor entity may, within~~  
9342 ~~10 days after filing articles of dissolution with the Department~~  
9343 ~~of State, publish a "Notice of Corporate Dissolution." The~~  
9344 ~~notice shall appear once a week for 2 consecutive weeks in a~~  
9345 ~~newspaper of general circulation in a county in the state in~~  
9346 ~~which the corporation has its principal office, if any, or, if~~  
9347 ~~none, in a county in the state in which the corporation owns~~  
9348 ~~real or personal property. Such newspaper shall meet the~~  
9349 ~~requirements as are prescribed by law for such purposes. The~~  
9350 ~~notice shall:~~

9351 ~~(a) State the name of the corporation and the date of~~  
9352 ~~dissolution;~~

9353 ~~(b) Describe the information that must be included in a~~  
9354 ~~claim and provide a mailing address to which the claim may be~~  
9355 ~~sent; and~~

9356 ~~(c) State that a claim against the corporation under this~~  
9357 ~~subsection will be barred unless a proceeding to enforce the~~  
9358 ~~claim is commenced within 4 years after the date of the second~~  
9359 ~~consecutive weekly publication of the notice authorized by this~~  
9360 ~~section.~~

9361 ~~(3) If the dissolved corporation or successor entity~~  
9362 ~~complies with subsection (1) or subsection (2), unless sooner~~  
9363 ~~barred by another statute limiting actions, the claim of each of~~  
9364 ~~the following claimants with known or other claims is barred~~  
9365 ~~unless the claimant commences a proceeding to enforce the claim~~  
9366 ~~against the dissolved corporation within 4 years after the date~~  
9367 ~~of filing the notice with the department of State or the date of~~

28-00272A-19

2019892\_\_

9368 ~~the second consecutive weekly publication, as applicable:~~

9369 (a) A claimant who did not receive written notice under s.  
9370 607.1406 ~~s. 607.1406(9), or whose claim was not provided for~~  
9371 ~~under s. 607.1406(10), whether such claim is based on an event~~  
9372 ~~occurring before or after the effective date of dissolution.~~

9373 (b) A claimant whose claim was timely sent to the dissolved  
9374 corporation but on which no action was taken by the dissolved  
9375 corporation.

9376 (c) A claimant whose claim is not a known claim under s.  
9377 607.1406(5)

9378 ~~(4) A claim may be entered under this section:~~

9379 ~~(a) Against the dissolved corporation, to the extent of its~~  
9380 ~~undistributed assets; or~~

9381 ~~(b) If the assets have been distributed in liquidation,~~  
9382 ~~against a shareholder of the dissolved corporation to the extent~~  
9383 ~~of such shareholder's pro rata share of the claim or the~~  
9384 ~~corporate assets distributed to such shareholder in liquidation,~~  
9385 ~~whichever is less, provided that the aggregate liability of any~~  
9386 ~~shareholder of a dissolved corporation arising under this~~  
9387 ~~section, s. 607.1406, or otherwise may not exceed the amount~~  
9388 ~~distributed to the shareholder in dissolution.~~

9389 (3) Nothing in this section shall preclude or relieve the  
9390 corporation from its notification to claimants otherwise set  
9391 forth in this chapter.

9392 Section 181. Section 607.1408, Florida Statutes, is created  
9393 to read:

9394 607.1408 Claims against dissolved corporations;  
9395 enforcement.—A claim that is not barred by s. 607.1406(4), by s.  
9396 607.1407(2), or by another statute limiting actions may be

28-00272A-19

2019892\_\_

9397 enforced:9398 (1) Against the dissolved corporation, to the extent of its  
9399 undistributed assets; or9400 (2) Except as provided in s. 607.1409(4), if the assets  
9401 have been distributed in liquidation, against a shareholder of  
9402 the dissolved corporation to the extent of the shareholder's pro  
9403 rata share of the claim or the corporate assets distributed to  
9404 the shareholder in liquidation, whichever is less, provided that  
9405 the aggregate liability of any shareholder of a dissolved  
9406 corporation arising under s. 607.1406, under s. 607.1407, or  
9407 otherwise may not exceed the total amount of assets distributed  
9408 to the shareholder in dissolution.9409 Section 182. Section 607.1409, Florida Statutes, is created  
9410 to read:9411 607.1409 Court proceedings.-9412 (1) A dissolved corporation that has filed a notice under  
9413 s. 607.1407(1) may file an application with the circuit court in  
9414 the applicable county for a determination of the amount and form  
9415 of security to be provided for payment of claims that are  
9416 contingent or have not been made known to the dissolved  
9417 corporation or that are based on an event occurring after the  
9418 effective date of dissolution but that, based on the facts known  
9419 to the dissolved corporation, are reasonably estimated to arise  
9420 after the effective date of dissolution. Provision need not be  
9421 made for any claim that is or is reasonably anticipated to be  
9422 barred under s. 607.1407(2).9423 (2) Within 10 days after the filing of the application  
9424 under subsection (1), notice of the proceeding shall be given by  
9425 the dissolved corporation to each claimant holding a contingent

28-00272A-19

2019892\_\_

9426 claim whose identity and contingent claim is known to the  
9427 dissolved corporation. Such notice shall be accompanied by a  
9428 copy of ss. 607.1405-607.1410.

9429 (3) In any proceeding under this section, the court may  
9430 appoint a guardian ad litem to represent all claimants whose  
9431 identities are unknown. The reasonable fees and expenses of such  
9432 guardian, including all reasonable expert witness fees, shall be  
9433 paid by the dissolved corporation.

9434 (4) Provision by the dissolved corporation for security in  
9435 the amount and the form ordered by the court under subsection  
9436 (1) shall satisfy the dissolved corporation's obligations with  
9437 respect to claims that are contingent, have not been made known  
9438 to the dissolved corporation or are based on an event occurring  
9439 after the effective date of dissolution, and such claims may not  
9440 be enforced against a shareholder who received assets in  
9441 liquidation.

9442 Section 183. Section 607.1410, Florida Statutes, is created  
9443 to read:

9444 607.1410 Director duties.—

9445 (1) Directors shall cause the dissolved corporation to  
9446 discharge or make reasonable provision for the payment of claims  
9447 and make distributions in liquidation of assets to shareholders  
9448 after payment or provision for claims.

9449 (2) Directors of a dissolved corporation that has disposed  
9450 of claims under s. 607.1406, s. 607.1407, or s. 607.1409 are not  
9451 liable to any claimant or shareholder for a breach of subsection  
9452 (1) with respect to claims against the dissolved corporation  
9453 that are barred or satisfied in accordance with s. 607.1406, s.  
9454 607.1407, or s. 607.1409.

28-00272A-19

2019892\_\_

9455 Section 184. Section 607.1420, Florida Statutes, is amended  
9456 to read:

9457 607.1420 ~~Grounds for~~ Administrative dissolution.—

9458 (1) The department may ~~of State may commence a proceeding~~  
9459 ~~under s. 607.1421 to administratively~~ dissolve a corporation  
9460 administratively if the corporation does not:

9461 (a) Deliver its annual report to the department ~~The~~  
9462 ~~corporation has failed to file its annual report and pay the~~  
9463 ~~annual report filing fee by 5 p.m. Eastern Time on the third~~  
9464 ~~Friday in September~~ of each year;

9465 (b) Pay a fee or penalty due to the department under this  
9466 chapter;

9467 (c) Appoint and maintain a registered agent and registered  
9468 office as required by s. 607.0501 ~~The corporation is without a~~  
9469 ~~registered agent or registered office in this state for 30 days~~  
9470 ~~or more~~;

9471 (d) ~~(e)~~ Deliver for filing a statement of change under s.  
9472 607.0502 within 30 days after a change has occurred in the name  
9473 or address of the agent unless, within 30 days after the change  
9474 occurred:

9475 1. The agent filed a statement of change pursuant to s.  
9476 607.05031; or

9477 2. The change was made in accordance with s. 607.0502(4)  
9478 ~~The corporation does not notify the Department of State within~~  
9479 ~~30 days that its registered agent or registered office has been~~  
9480 ~~changed, that its registered agent has resigned, or that its~~  
9481 ~~registered office has been discontinued~~;

9482 (e) ~~(d)~~ The corporation has failed to answer truthfully and  
9483 fully, within the time prescribed by this chapter ~~act~~,

28-00272A-19

2019892\_\_

9484 interrogatories propounded by the department ~~of State~~; or

9485 (f)~~(e)~~ The corporation's period of duration stated in its  
9486 articles of incorporation expires ~~has expired~~.

9487 (2) Administrative dissolution of a corporation for failure  
9488 to file an annual report must occur on the fourth Friday in  
9489 September of each year. The department shall issue a notice in a  
9490 record of administrative dissolution to the corporation  
9491 dissolved for failure to file an annual report. Issuance of the  
9492 notice may be by electronic transmission to a corporation that  
9493 has provided the department with an e-mail address.

9494 (3) If the department determines that one or more grounds  
9495 exist for administratively dissolving a corporation under  
9496 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the  
9497 department shall serve notice in a record to the corporation of  
9498 its intent to administratively dissolve the corporation.  
9499 Issuance of the notice may be by electronic transmission to a  
9500 corporation that has provided the department with an e-mail  
9501 address.

9502 (4) If, within 60 days after sending the notice of intent  
9503 to administratively dissolve pursuant to subsection (3), a  
9504 corporation does not correct each ground for dissolution under  
9505 paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d) or  
9506 demonstrate to the reasonable satisfaction of the department  
9507 that each ground determined by the department does not exist,  
9508 the department shall dissolve the corporation administratively  
9509 and issue to the corporation a notice in a record of  
9510 administrative dissolution that states the grounds for  
9511 dissolution. Issuance of the notice of administrative  
9512 dissolution may be by electronic transmission to a corporation

28-00272A-19

2019892\_\_

9513 that has provided the department with an e-mail address.

9514 (5) A corporation that has been administratively dissolved  
9515 continues in existence but may only carry on activities  
9516 necessary to wind up its activities and affairs, liquidate and  
9517 distribute its assets, and notify claimants under ss. 607.1405,  
9518 607.1406, and 607.1407.

9519 (6) The administrative dissolution of a corporation does  
9520 not terminate the authority of its registered agent for service  
9521 of process ~~The foregoing enumeration in subsection (1) of~~  
9522 ~~grounds for administrative dissolution shall not exclude actions~~  
9523 ~~or special proceedings by the Department of Legal Affairs or any~~  
9524 ~~state officials for the annulment or dissolution of a~~  
9525 ~~corporation for other causes as provided in any other statute of~~  
9526 ~~this state.~~

9527 Section 185. Section 607.1421, Florida Statutes, is  
9528 repealed.

9529 Section 186. Section 607.1422, Florida Statutes, is amended  
9530 to read:

9531 607.1422 Reinstatement following administrative  
9532 dissolution.—

9533 (1) A corporation that is administratively dissolved under  
9534 s. 607.1420 or that was dissolved under s. 607.1421 before  
9535 January 1, 2020, s. 607.1421 may apply to the department ~~of~~  
9536 ~~State~~ for reinstatement at any time after the effective date of  
9537 dissolution. The corporation must submit all fees and penalties  
9538 then owed by the corporation at the rates provided by laws at  
9539 the time the corporation applies for reinstatement, together  
9540 with an application for reinstatement prescribed and furnished  
9541 by the department, which is a reinstatement form prescribed and

28-00272A-19

2019892\_\_

9542 ~~furnished by the Department of State or a current uniform~~  
9543 ~~business report~~ signed by both the registered agent and an  
9544 officer or director of the corporation and states:

9545 (a) The name of the corporation;

9546 (b) The street address of the corporations' principal  
9547 office and mailing address;

9548 (c) The date of the corporation's organization;

9549 (d) The corporation's federal employer identification  
9550 number or, if none, whether one has been applied for;

9551 (e) The name, title or capacity, and address of at least  
9552 one officer or director of the corporation; and

9553 (f) Additional information that is necessary or appropriate  
9554 to enable the department to carry out this chapter.

9555 (2) In lieu of the requirement to file an application for  
9556 reinstatement as described in subsection (1), an  
9557 administratively dissolved corporation may submit all fees and  
9558 penalties owed by the corporation at the rates provided by law  
9559 at the time the corporation applies for reinstatement, together  
9560 with a current annual report, signed by both the registered  
9561 agent and an officer or director of the corporation, which  
9562 contains the information described in subsection (1).

9563 (3) If the department determines that an application for  
9564 reinstatement contains the information required under subsection  
9565 (1) or subsection (2) and that the information is correct, upon  
9566 payment of all required fees and penalties, the department shall  
9567 reinstate the corporation.

9568 (4) When reinstatement under this section becomes  
9569 effective:

9570 (a) The reinstatement relates back to and takes effect as



28-00272A-19

2019892\_\_

9571 of the effective date of the administrative dissolution.

9572 (b) The corporation may operate as if the administrative  
9573 dissolution had never occurred.

9574 (c) The rights of a person arising out of an act or  
9575 omission in reliance on the dissolution before the person knew  
9576 or had notice of the reinstatement are not affected ~~and all fees~~  
9577 ~~then owed by the corporation, computed at the rate provided by~~  
9578 ~~law at the time the corporation applies for reinstatement.~~

9579 ~~(2) If the Department of State determines that the~~  
9580 ~~application contains the information required by subsection (1)~~  
9581 ~~and that the information is correct, it shall reinstate the~~  
9582 ~~corporation.~~

9583 ~~(3) When the reinstatement is effective, it relates back to~~  
9584 ~~and takes effect as of the effective date of the administrative~~  
9585 ~~dissolution and the corporation resumes carrying on its business~~  
9586 ~~as if the administrative dissolution had never occurred.~~

9587 (5) ~~(4)~~ The name of the dissolved corporation is not shall  
9588 ~~not be~~ available for assumption or use by another eligible  
9589 entity corporation until 1 year after the effective date of  
9590 dissolution unless the dissolved corporation provides the  
9591 department of State with a record signed as required by an  
9592 ~~affidavit executed as required by s. 607.0120~~ permitting the  
9593 immediate assumption or use of the name by another eligible  
9594 entity corporation.

9595 (6) ~~(5)~~ If the name of the dissolved corporation has been  
9596 lawfully assumed in this state by another business entity, the  
9597 department corporation, ~~the Department of State~~ shall require  
9598 the dissolved corporation to amend its articles of incorporation  
9599 to change its name before accepting its application for

28-00272A-19

2019892\_\_

9600 reinstatement.

9601 Section 187. Section 607.1423, Florida Statutes, is amended  
9602 to read:

9603 607.1423 Judicial review of ~~Appeal from~~ denial of  
9604 reinstatement.—

9605 (1) If the department ~~of State~~ denies a corporation's  
9606 application for reinstatement after following administrative  
9607 dissolution, the department ~~it~~ shall serve the corporation under  
9608 either s. 607.0504(1) or s. 607.0504(2) with a written notice  
9609 that explains the reason or reasons for denial.

9610 (2) Within 30 days after service of a notice of denial of  
9611 reinstatement, a corporation may appeal the denial by  
9612 petitioning the Circuit Court of Leon County to set aside the  
9613 dissolution. The petition must be served on the department and  
9614 contain a copy of the department's notice of administrative  
9615 ~~After exhaustion of administrative remedies, the corporation may~~  
9616 ~~appeal the denial of reinstatement to the appropriate court as~~  
9617 ~~provided in s. 120.68 within 30 days after service of the notice~~  
9618 ~~of denial is perfected. The corporation appeals by petitioning~~  
9619 ~~the court to set aside the dissolution and attaching to the~~  
9620 ~~petition copies of the Department of State's certificate of~~  
9621 ~~dissolution, the corporation's application for reinstatement,~~  
9622 and the department's notice of denial.

9623 (3) The court may ~~summarily~~ order the department ~~of State~~  
9624 to reinstate the dissolved corporation or ~~may~~ take other action  
9625 the court considers appropriate.

9626 (4) The court's final decision may be appealed as in other  
9627 civil proceedings.

9628 Section 188. Section 607.1430, Florida Statutes, is amended

28-00272A-19

2019892\_\_

9629  
9630  
9631  
9632  
9633  
9634  
9635  
9636  
9637  
9638  
9639  
9640  
9641  
9642  
9643  
9644  
9645  
9646  
9647  
9648  
9649  
9650  
9651  
9652  
9653  
9654  
9655  
9656  
9657

to read:

607.1430 Grounds for judicial dissolution.—

(1) A circuit court may dissolve a corporation or order such other remedy as provided in s. 607.1434:

~~(1)~~ (a) In a proceeding by the Department of Legal Affairs to dissolve a corporation if it is established that:

1. The corporation obtained its articles of incorporation through fraud; or
2. The corporation has continued to exceed or abuse the authority conferred upon it by law.

~~(b)~~ The enumeration in subparagraphs 1. and 2. ~~paragraph (a)~~ of grounds for involuntary dissolution does not exclude actions or special proceedings by the Department of Legal Affairs or any state official for the annulment or dissolution of a corporation for other causes as provided in any other statute of this state;

(b) ~~(2)~~ In a proceeding by a shareholder to dissolve a corporation if it is established that:

1. ~~(a)~~ The directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, and:
  - a. Irreparable injury to the corporation is threatened or being suffered;
  - b. The business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally because of the deadlock; or
  - c. Both; or
2. ~~(b)~~ The shareholders are deadlocked in voting power and have failed to elect successors to directors whose terms have

28-00272A-19

2019892\_\_

9658 expired or would have expired upon qualification of their  
9659 successors;

9660 ~~(3) In a proceeding by a shareholder or group of~~  
9661 ~~shareholders in a corporation having 35 or fewer shareholders if~~  
9662 ~~it is established that:~~

9663 3.(a) The corporate assets are being misapplied or wasted,  
9664 causing material injury to the corporation; or

9665 4.(b) The directors or those in control of the corporation  
9666 have acted, are acting, or will ~~are reasonably expected to~~ act  
9667 in a manner that is illegal, oppressive, or fraudulent;

9668 (c) ~~(4)~~ In a proceeding by a creditor if it is established  
9669 that:

9670 1.(a) The creditor's claim has been reduced to judgment,  
9671 the execution on the judgment returned unsatisfied, and the  
9672 corporation is insolvent; or

9673 2.(b) The corporation has admitted in writing that the  
9674 creditor's claim is due and owing and the corporation is  
9675 insolvent; ~~or~~

9676 (d) ~~(5)~~ In a proceeding by the corporation to have its  
9677 voluntary dissolution continued under court supervision; or

9678 (e) In a proceeding by a shareholder if the corporation has  
9679 abandoned its business and has failed within a reasonable period  
9680 of time to liquidate and distribute its assets and dissolve.

9681 (2) Paragraph (1)(b) does not apply in the case of a  
9682 corporation that, on the date of the filing of the proceeding,  
9683 has shares that are:

9684 (a) A covered security under s. 18(b)(1)(A) or (B) of the  
9685 Securities Act of 1933; or

9686 (b) Not a covered security, but are held by at least 300

28-00272A-19

2019892\_\_

9687 shareholders and the shares outstanding have a market value of  
9688 at least \$20 million, exclusive of the value of outstanding  
9689 shares of the corporation held by the corporation's  
9690 subsidiaries, by the corporation's senior executives, by the  
9691 corporation's directors, and by the corporation's beneficial  
9692 shareholders and voting trust beneficial owners owning more than  
9693 10 percent of the outstanding shares of the corporation.

9694 (3) A proceeding by a shareholder under subparagraph  
9695 (1) (b) 4. asserting that the directors or those in control of the  
9696 corporation have acted, are acting, or will act in a manner that  
9697 is oppressive may only be brought by a shareholder who at the  
9698 time that such proceeding is commenced under subparagraph  
9699 (1) (b) 4. owns at least 10 percent of the outstanding shares of  
9700 the corporation.

9701 (4) (a) In the event of a deadlock situation that satisfies  
9702 subparagraph (1) (b) 1. or subparagraph (1) (b) 2., if the  
9703 shareholders are subject to a shareholder agreement that  
9704 complies with s. 607.0732 and contains a deadlock sale  
9705 provision, then such deadlock sale provision shall apply to the  
9706 resolution of such deadlock in lieu of the court entering an  
9707 order of judicial dissolution or an order directing the purchase  
9708 of petitioner's shares under s. 607.1436, so long as the  
9709 provisions of such deadlock sale provision are initiated and  
9710 effectuated within the time periods specified for the  
9711 corporation to act under s. 607.1436 and in accordance with the  
9712 terms of such deadlock sale provision.

9713 (b) As used in this section, the term "deadlock sale  
9714 provision" means a provision in a shareholder agreement that  
9715 complies with s. 607.0732, which is or may be applicable in the

28-00272A-19

2019892\_\_

9716 event of a deadlock among the directors or shareholders of the  
9717 corporation, which neither the directors nor the shareholders,  
9718 as applicable, of the corporation are able to break; and which  
9719 provides for a deadlock breaking mechanism, including, but not  
9720 limited to:

9721 1. A redemption or a purchase and sale of shares or other  
9722 equity securities;

9723 2. A governance change;

9724 3. A sale of the corporation or all or substantially all of  
9725 the assets of the corporation; or

9726 4. A similar provision that, if initiated and effectuated,  
9727 breaks the deadlock by causing the transfer of the shares or  
9728 other equity securities, a governance change, or a sale of the  
9729 corporation or all or substantially all of the corporation's  
9730 assets.

9731 (5) (a) In the event of oppressive action that satisfies  
9732 subparagraph (1) (b) 4., if the shareholders are subject to a  
9733 shareholder agreement that complies with s. 607.0732 and  
9734 contains an oppressive action sale provision, then such  
9735 oppressive action sale provision shall address such shareholder  
9736 asserted oppressive action in lieu of the court entering an  
9737 order of judicial dissolution or an order directing the purchase  
9738 of petitioner's shares under s. 607.1436, so long as the  
9739 provisions of such oppressive action sale provision are  
9740 initiated and effectuated within the time periods specified for  
9741 the corporation to act under s. 607.1436 and in accordance with  
9742 the terms of such oppressive action sale provision.

9743 (b) For purposes of this section, the term "oppressive  
9744 action sale provision" means a provision in a shareholder

28-00272A-19

2019892\_\_

9745 agreement that complies with s. 607.0732, which is or may be  
9746 applicable in the event of a shareholder's assertion of the  
9747 occurrence or existence of oppressive action; which neither the  
9748 directors nor the shareholders, as applicable, of the  
9749 corporation are able to address; and which provides for a  
9750 mechanism for addressing the occurrence or existence of such  
9751 shareholder asserted oppressive action including, but not  
9752 limited to:

9753 1. A redemption or purchase and sale of shares or other  
9754 equity securities;

9755 2. The sale of the corporation or of all or substantially  
9756 all of the assets of the corporation; or

9757 3. A similar provision that, if initiated and effectuated,  
9758 causes the transfer of shares or other equity securities to be  
9759 redeemed or purchased and sold or the sale of the corporation or  
9760 of all or substantially all of the corporation's assets.

9761 (6) A deadlock sale provision or an oppressive action sale  
9762 provision in a shareholder agreement which complies with s.  
9763 607.0732 which is not initiated and effectuated before the court  
9764 enters an order of judicial dissolution under subparagraph  
9765 (1) (b)1., subparagraph (1) (b)2., or subparagraph (1) (b)4., as  
9766 the case may be, or an order directing the purchase of  
9767 petitioner's interest under s. 607.1436, does not adversely  
9768 affect the rights of shareholders to seek judicial dissolution  
9769 under subparagraph (1) (b)1., subparagraph (1) (b)2., or  
9770 subparagraph (1) (b)4., as the case may be, or the rights of the  
9771 corporation or one or more shareholders to purchase the  
9772 petitioner's interest under s. 607.1436. The filing of an action  
9773 for judicial dissolution on the grounds described in

28-00272A-19

2019892\_\_

9774 subparagraph (1)(b)1., subparagraph (1)(b)2., or subparagraph  
9775 (1)(b)4., as the case may be, or an election to purchase the  
9776 petitioner's interest under s. 607.1436, does not adversely  
9777 affect the right of a shareholder to initiate an available  
9778 deadlock sale provision or an oppressive action sale provision  
9779 under the shareholder agreement that complies with s. 607.0732  
9780 or to enforce a shareholder-initiated or an automatically-  
9781 initiated deadlock sale provision or oppressive action sale  
9782 provision if the deadlock sale provision or the oppressive sale  
9783 provision, as the case may be, is initiated and effectuated  
9784 before the court enters an order of judicial dissolution under  
9785 subparagraph (1)(b)1., subparagraph (1)(b)2., or subparagraph  
9786 (1)(b)4., as the case may be, or an order directing the purchase  
9787 of petitioner's interest under s. 607.1436.

9788 (7) For purposes of subsections (1), (2), and (3), the term  
9789 "shareholder" means a record shareholder, a beneficial  
9790 shareholder, or an unrestricted voting trust beneficial owner.

9791 Section 189. Subsections (1), (3), and (4) of section  
9792 607.1431, Florida Statutes, are amended to read:

9793 607.1431 Procedure for judicial dissolution.—

9794 (1) Venue for a proceeding brought under s. 607.1430 lies  
9795 in the circuit court in the applicable county ~~of the county~~  
9796 ~~where the corporation's principal office is or was last located,~~  
9797 ~~as shown by the records of the Department of State, or, if none~~  
9798 ~~in this state, where its registered office is or was last~~  
9799 ~~located.~~

9800 (3) A court in a proceeding brought under s. 607.1430 ~~to~~  
9801 ~~dissolve a corporation~~ may issue injunctions, appoint a receiver  
9802 or custodian during the proceeding ~~pendente lite~~ with all powers



28-00272A-19

2019892\_\_

9803 and duties the court directs, take other action required to  
9804 preserve the corporate assets wherever located, and carry on the  
9805 business of the corporation until a full hearing can be held.

9806 (4) Within 30 days of the commencement of a proceeding  
9807 under s. 607.1430(1)(b), the corporation shall deliver to all  
9808 shareholders, other than the petitioner, a notice stating that  
9809 the shareholders are entitled to avoid the dissolution of the  
9810 corporation by electing to purchase the petitioner's shares  
9811 under s. 607.1436 and accompanied by a copy of s. 607.1436.

9812 (5) If the court determines that any party has commenced,  
9813 continued, or participated in a proceeding ~~an action~~ under s.  
9814 607.1430 and has acted arbitrarily, frivolously, vexatiously, or  
9815 not in good faith, the court may, in its discretion, award  
9816 attorney ~~attorney's~~ fees and other reasonable expenses to the  
9817 other parties to the action who have been affected adversely by  
9818 such actions.

9819 Section 190. Subsections (1) and (2), paragraph (a) of  
9820 subsection (3), and subsections (4) and (5) of section 607.1432,  
9821 Florida Statutes, are amended to read:

9822 607.1432 Receivership or custodianship.—

9823 (1) A court in a judicial proceeding brought under s.  
9824 607.1430 ~~to dissolve a corporation~~ may appoint one or more  
9825 receivers to wind up and liquidate, or one or more custodians to  
9826 manage, the business and affairs of the corporation. The court  
9827 shall hold a hearing, after notifying all parties to the  
9828 proceeding and any interested persons designated by the court,  
9829 before appointing a receiver or custodian. The court appointing  
9830 a receiver or custodian has exclusive jurisdiction over the  
9831 corporation and all of its property wherever located.

28-00272A-19

2019892\_\_

9832 (2) The court may appoint a natural person or an eligible  
9833 entity ~~a corporation~~ authorized to act as a receiver or  
9834 custodian. The eligible entity ~~corporation~~ may be a domestic  
9835 eligible entity ~~corporation~~ or a foreign eligible entity  
9836 ~~corporation~~ authorized to transact business in this state. The  
9837 court may require the receiver or custodian to post bond, with  
9838 or without sureties, in an amount the court directs.

9839 (3) The court shall describe the powers and duties of the  
9840 receiver or custodian in its appointing order, which may be  
9841 amended from time to time. Among other powers:

9842 (a) The receiver:

9843 1. May dispose of all or any part of the assets of the  
9844 corporation wherever located, at a public or private sale, if  
9845 authorized by the court; and

9846 2. May sue and defend in his, her, or its ~~or her~~ own name  
9847 as receiver of the corporation in all courts of this state.

9848 (4) The court during a receivership may redesignate the  
9849 receiver a custodian, and during a custodianship may redesignate  
9850 the custodian a receiver, if doing so is determined by the court  
9851 to be in the best interests of the corporation and its  
9852 shareholders and creditors.

9853 (5) The court from time to time during the receivership or  
9854 custodianship may order compensation paid and expense  
9855 disbursements or reimbursements made to the receiver or  
9856 custodian and his, her, or its ~~or her~~ counsel from the assets of  
9857 the corporation or proceeds from the sale of the assets.

9858 Section 191. Section 607.1433, Florida Statutes, is amended  
9859 to read:

9860 607.1433 Judgment of dissolution.—

28-00272A-19

2019892\_\_

9861 (1) If after a hearing in a proceeding under s. 607.1430  
9862 the court determines that one or more grounds for judicial  
9863 dissolution described in s. 607.1430 exist, it may enter a  
9864 judgment dissolving the corporation and specifying the effective  
9865 date of the dissolution, and the clerk of the court shall  
9866 deliver a certified copy of the judgment to the department ~~of~~  
9867 ~~State~~, which shall file it.

9868 (2) After entering the judgment of dissolution, the court  
9869 shall direct the winding up and liquidation of the corporation's  
9870 business and affairs in accordance with s. 607.1405 and the  
9871 notification of claimants in accordance with ss. 607.1406 and  
9872 607.1407 ~~s. 607.1406~~, subject to the provisions of subsection  
9873 (3).

9874 (3) In a proceeding for judicial dissolution, the court may  
9875 require all creditors of the corporation to file with the clerk  
9876 of the court or with the receiver, in such form as the court may  
9877 prescribe, proofs under oath of their respective claims. If the  
9878 court requires the filing of claims, it shall fix a date, which  
9879 shall be not less than 4 months from the date of the order, as  
9880 the last day for filing of claims. The court shall prescribe the  
9881 method by which such notice of the deadline for filing claims  
9882 shall be given to creditors and claimants. Prior to the date so  
9883 fixed, the court may extend the time for the filing of claims by  
9884 court order. Creditors and claimants failing to file proofs of  
9885 claim on or before the date so fixed shall be barred ~~may be~~  
9886 ~~barred, by order of court,~~ from participating in the  
9887 distribution of the assets of the corporation. Nothing in this  
9888 section affects the enforceability of any recorded mortgage or  
9889 lien or the perfected security interest or rights of a person in

28-00272A-19

2019892\_\_

9890 possession of real or personal property.

9891 Section 192. Section 607.1434, Florida Statutes, is amended  
9892 to read:

9893 607.1434 Alternative remedies to judicial dissolution.—

9894 (1) In a proceeding under an action for dissolution  
9895 pursuant to s. 607.1430, the court may, as an alternative to  
9896 directing the dissolution of the corporation and upon a showing  
9897 of sufficient merit to warrant such remedy:

9898 (a) ~~(1)~~ Appoint a receiver or custodian during the  
9899 proceeding ~~pendente lite~~ as provided in s. 607.1432;

9900 (b) ~~(2)~~ Appoint a provisional director as provided in s.  
9901 607.1435;

9902 (c) ~~(3)~~ Order a purchase of the petitioning ~~complain~~  
9903 shareholder's shares pursuant to s. 607.1436; or

9904 (d) ~~(4)~~ Upon proof of good cause, Make any order or grant  
9905 any equitable relief other than dissolution ~~or liquidation~~ as in  
9906 its discretion it may deem appropriate.

9907 (2) Alternative remedies, such as the appointment of a  
9908 receiver or custodian, may also be ordered in the discretion of  
9909 the court, upon a showing of sufficient merit to warrant such  
9910 remedy, in advance of directing the dissolution of the  
9911 corporation or, after a judgment of dissolution is entered, to  
9912 assist in facilitating the winding up of the corporation.

9913 Section 193. Subsections (1) and (3) of section 607.1435,  
9914 Florida Statutes, are amended to read:

9915 607.1435 Provisional director.—

9916 (1) In a proceeding under s. 607.1430, a provisional  
9917 director may be appointed in the discretion of the court if it  
9918 appears that such action by the court will remedy the grounds

28-00272A-19

2019892\_\_

9919 alleged by the complaining shareholder to support the  
9920 jurisdiction of the court under s. 607.1430. A provisional  
9921 director may be appointed notwithstanding the absence of a  
9922 vacancy on the board of directors, and such director shall have  
9923 all the rights and powers of a duly elected director, including  
9924 the right to notice of and to vote at meetings of directors,  
9925 until such time as the provisional director is removed by order  
9926 of the court or, unless otherwise ordered by a court, removed by  
9927 a vote of the shareholders sufficient either to elect a majority  
9928 of the board of directors or, if greater than majority voting is  
9929 required by the articles of incorporation or the bylaws, to  
9930 elect the requisite number of directors needed to take action. A  
9931 provisional director shall be an impartial person who is neither  
9932 a shareholder nor a creditor of the corporation or of any  
9933 subsidiary or affiliate of the corporation, and whose further  
9934 qualifications, if any, may be determined by the court.

9935 (3) In any proceeding under which a provisional director is  
9936 appointed pursuant to this section, the court shall allow  
9937 reasonable compensation to the provisional director for services  
9938 rendered and reimbursement or direct payment of reasonable costs  
9939 and expenses, which amounts shall be paid by the corporation.

9940 Section 194. Section 607.1436, Florida Statutes, is amended  
9941 to read:

9942 607.1436 Election to purchase instead of dissolution.—

9943 (1) In a proceeding under s. 607.1430(1)(b) ~~s. 607.1430(2)~~  
9944 ~~or (3) to dissolve a corporation~~, the corporation may elect or,  
9945 if it fails to elect, one or more shareholders may elect to  
9946 purchase all shares owned by the petitioning shareholder at the  
9947 fair value of the shares. An election pursuant to this section

28-00272A-19

2019892\_\_

9948 shall be irrevocable unless the court determines that it is  
9949 equitable to set aside or modify the election.

9950 (2) An election to purchase pursuant to this section may be  
9951 filed with the court at any time within 90 days after the filing  
9952 of the petition under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3)~~ or  
9953 at such later time as the court in its discretion may allow. If  
9954 the election to purchase is filed by one or more shareholders,  
9955 the corporation shall, within 10 days thereafter, give written  
9956 notice to all shareholders, other than the petitioner. The  
9957 notice must state the name and number of shares owned by the  
9958 petitioner and the name and number of shares owned by each  
9959 electing shareholder and must advise the recipients of their  
9960 right to join in the election to purchase shares in accordance  
9961 with this section. Shareholders who wish to participate must  
9962 file notice of their intention to join in the purchase no later  
9963 than 30 days after the effective date of the notice to them. All  
9964 shareholders who have filed an election or notice of their  
9965 intention to participate in the election to purchase thereby  
9966 become parties to the proceeding and shall participate in the  
9967 purchase in proportion to their ownership of shares as of the  
9968 date the first election was filed, unless they otherwise agree  
9969 or the court otherwise directs. After an election has been filed  
9970 by the corporation or one or more shareholders, the proceeding  
9971 under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3)~~ may not be  
9972 discontinued or settled, nor may the petitioning shareholder  
9973 sell or otherwise dispose of his or her shares, unless the court  
9974 determines that it would be equitable to the corporation and the  
9975 shareholders, other than the petitioner, to permit such  
9976 discontinuance, settlement, sale, or other disposition.

28-00272A-19

2019892\_\_

9977 (3) If, within 60 days after the filing of the first  
9978 election, the parties reach agreement as to the fair value and  
9979 terms of the purchase of the petitioner's shares, the court  
9980 shall enter an order directing the purchase of the petitioner's  
9981 shares upon the terms and conditions agreed to by the parties.

9982 (4) If the parties are unable to reach an agreement as  
9983 provided for in subsection (3), the court, upon application of  
9984 any party, may stay the proceeding to dissolve under s.  
9985 607.1430(1)(b) and shall, whether or not the proceeding is  
9986 stayed, shall ~~stay the s. 607.1430 proceedings~~ and determine the  
9987 fair value of the petitioner's shares as of the day before the  
9988 date on which the petition under s. 607.1430 was filed or as of  
9989 such other date as the court deems appropriate under the  
9990 circumstances.

9991 (5) Upon determining the fair value of the shares, the  
9992 court shall enter an order directing the purchase upon such  
9993 terms and conditions as the court deems appropriate, which may  
9994 include payment of the purchase price in installments, when  
9995 necessary in the interests of equity, provision for security to  
9996 assure payment of the purchase price and any additional costs,  
9997 fees, and expenses as may have been awarded, and, if the shares  
9998 are to be purchased by shareholders, the allocation of shares  
9999 among such shareholders. In allocating the petitioner's shares  
10000 among holders of different classes of shares, the court shall  
10001 attempt to preserve any ~~the~~ existing distribution of voting  
10002 rights among holders of different classes and series insofar as  
10003 practicable and may direct that holders of any ~~a~~ specific class  
10004 or classes or series shall not participate in the purchase.  
10005 Interest may be allowed at the rate and from the date determined

28-00272A-19

2019892\_\_

10006 by the court to be equitable; however, if the court finds that  
10007 the refusal of the petitioning shareholder to accept an offer of  
10008 payment was arbitrary or otherwise not in good faith, no  
10009 interest shall be allowed. If the court finds that the  
10010 petitioning shareholder had probable grounds for relief under s.  
10011 607.1430(1)(b) ~~s. 607.1430(3)~~, it may award expenses to the  
10012 petitioning shareholder, including reasonable fees and expenses  
10013 of counsel and of any experts employed by petitioner.

10014 (6) The ~~Upon~~ entry of an order under subsection (3) or  
10015 subsection (5) shall be subject to the provisions of subsection  
10016 (8), and the order shall not be entered unless and until the  
10017 award is determined by the court to be permitted under the  
10018 provisions of subsection (8). In determining compliance with s.  
10019 607.06401, the court may rely on an affidavit from the  
10020 corporation as to compliance with that section as of the  
10021 measurement date. Upon entry of an order under subsection (3) or  
10022 subsection (5), the court shall dismiss the petition to dissolve  
10023 the corporation under s. 607.1430(1)(b) ~~s. 607.1430~~ and the  
10024 petitioning shareholder shall no longer have any rights or  
10025 status as a shareholder of the corporation, except the right to  
10026 receive the amounts awarded by the order of the court, which  
10027 shall be enforceable in the same manner as any other judgment.

10028 (7) The purchase ordered pursuant to subsection (5) shall  
10029 be made within 10 days after the date the order becomes final  
10030 ~~unless, before that time, the corporation files with the court a~~  
10031 ~~notice of its intention to adopt articles of dissolution~~  
10032 ~~pursuant to ss. 607.1402 and 607.1403, which articles shall then~~  
10033 ~~be adopted and filed within 50 days thereafter. Upon filing of~~  
10034 ~~such articles of dissolution, the corporation shall be dissolved~~



28-00272A-19

2019892\_\_

10035 ~~in accordance with the provisions of ss. 607.1405 and 607.1406,~~  
10036 ~~and the order entered pursuant to subsection (5) shall no longer~~  
10037 ~~be of any force or effect, except that the court may award the~~  
10038 ~~petitioning shareholder reasonable fees and expenses of counsel~~  
10039 ~~and any experts in accordance with the provisions of subsection~~  
10040 ~~(5) and the petitioner may continue to pursue any claims~~  
10041 ~~previously asserted on behalf of the corporation.~~

10042 (8) Any payment by the corporation pursuant to an order  
10043 under subsection (3) or subsection (5), other than an award of  
10044 fees and expenses pursuant to subsection (5), is subject to the  
10045 provisions of s. 607.06401. Unless otherwise provided in the  
10046 court's order, the effect of the distribution under s. 607.06401  
10047 shall be measured as of the date of the court's order under  
10048 subsection (3) or subsection (5).

10049 Section 195. Section 607.14401, Florida Statutes, is  
10050 amended to read:

10051 607.14401 Deposit with Department of Financial Services.—  
10052 Assets of a dissolved corporation that should be transferred to  
10053 a creditor, claimant, or shareholder of the corporation who  
10054 cannot be found or who is not competent to receive them shall be  
10055 reduced to cash and deposited, ~~within 6 months from the date~~  
10056 ~~fixed for the payment of the final liquidating distribution,~~  
10057 with the Department of Financial Services for safekeeping, ~~where~~  
10058 ~~such assets shall be held as abandoned property.~~ When the  
10059 creditor, claimant, or shareholder furnishes satisfactory proof  
10060 of entitlement to the amount or assets deposited, the Department  
10061 of Financial Services shall pay such person ~~the creditor,~~  
10062 ~~claimant, or shareholder~~ or his or her representative that  
10063 amount ~~or those assets.~~

28-00272A-19

2019892\_\_

10064 Section 196. Section 607.1501, Florida Statutes, is amended  
10065 to read:

10066 607.1501 Authority of foreign corporation to transact  
10067 business required; activities not constituting transacting  
10068 business.—

10069 (1) A foreign corporation may not transact business in this  
10070 state until it obtains a certificate of authority from the  
10071 department ~~of State.~~

10072 (2) The following activities, among others, do not  
10073 constitute transacting business within the meaning of subsection  
10074 (1):

10075 (a) Maintaining, defending, mediating, arbitrating, or  
10076 settling any proceeding.

10077 (b) Carrying on any activity concerning the internal  
10078 affairs of the foreign corporation, including holding meetings  
10079 of its shareholders or board of directors ~~the board of directors~~  
10080 ~~or shareholders or carrying on other activities concerning~~  
10081 ~~internal corporate affairs.~~

10082 (c) Maintaining bank accounts in financial institutions.

10083 (d) Maintaining offices ~~officers~~ or agencies for the  
10084 transfer, exchange, and registration of ~~the corporation's own~~  
10085 securities of the foreign corporation or maintaining trustees or  
10086 depositaries with respect to those securities.

10087 (e) Selling through independent contractors.

10088 (f) Soliciting or obtaining orders, whether by mail or  
10089 through employees, agents, or otherwise, if the orders require  
10090 acceptance outside this state before they become contracts.

10091 (g) Creating or acquiring indebtedness, mortgages, or ~~and~~  
10092 security interests in real or personal property.

28-00272A-19

2019892\_\_

10093 (h) Securing or collecting debts or enforcing mortgages or  
10094 ~~and~~ security interests in property securing the debts, and  
10095 holding, protecting, or maintaining property so acquired.

10096 (i) Transacting business in interstate commerce.

10097 (j) Conducting an isolated transaction that is completed  
10098 within 30 days and that is not one in the course of repeated  
10099 transactions of a like nature.

10100 (k) Owning and controlling a subsidiary corporation  
10101 incorporated in or limited liability company formed in, or  
10102 transacting business within, this state; ~~or~~ voting the shares  
10103 ~~stock~~ of any such subsidiary corporation; or voting the  
10104 membership interests of any such limited liability company,  
10105 which it has lawfully acquired.

10106 (l) Owning a limited partnership interest in a limited  
10107 partnership that is transacting ~~doing~~ business within this  
10108 state, unless the ~~such~~ limited partner manages or controls the  
10109 partnership or exercises the powers and duties of a general  
10110 partner.

10111 (m) Owning, protecting, and maintaining, without more, real  
10112 or personal property.

10113 (3) The list of activities in subsection (2) is not an  
10114 exhaustive list of activities that do not constitute transacting  
10115 business within the meaning of subsection (1).

10116 (4) This section does not apply in determining the contacts  
10117 or activities that may subject a foreign corporation ~~has no~~  
10118 ~~application to the question of whether any foreign corporation~~  
10119 ~~is subject to service of process, taxation, or regulation under~~  
10120 the and suit in this state under any law of this state other  
10121 than this chapter.

28-00272A-19

2019892\_\_

10122 Section 197. Section 607.15015, Florida Statutes, is  
10123 created to read:

10124 607.15015 Governing law.—

10125 (1) The law of the state or other jurisdiction under which  
10126 a foreign corporation exists governs:

10127 (a) The organization and internal affairs of the foreign  
10128 corporation; and

10129 (b) The interest holder liability of its shareholders.

10130 (2) A foreign corporation may not be denied a certificate  
10131 of authority by reason of a difference between the laws of its  
10132 jurisdiction of formation and the laws of this state.

10133 (3) A certificate of authority does not authorize a foreign  
10134 corporation to engage in any business or exercise any power that  
10135 a corporation may not engage in or exercise in this state.

10136 Section 198. Section 607.1502, Florida Statutes, is amended  
10137 to read:

10138 607.1502 Effect of failure to have a certificate of  
10139 ~~Consequences of transacting business without~~ authority.—

10140 (1) A foreign corporation transacting business in this  
10141 state or its successors may not prosecute or maintain an action  
10142 ~~or proceeding without a certificate of authority may not~~  
10143 ~~maintain a proceeding in any court~~ in this state until it has  
10144 obtained ~~obtains~~ a certificate of authority to transact business  
10145 in this state.

10146 (2) The successor to a foreign corporation that transacted  
10147 business in this state without a certificate of authority and  
10148 the assignee of a cause of action arising out of that business  
10149 may not prosecute or maintain a proceeding based on that cause  
10150 of action in a any court in this state until the foreign

28-00272A-19

2019892\_\_

10151 corporation or its successor has obtained ~~obtains~~ a certificate  
10152 of authority to transact business in this state.

10153 (3) A court may stay a proceeding commenced by a foreign  
10154 corporation or its successor or assignee until it determines  
10155 whether the foreign corporation or its successor requires a  
10156 certificate of authority. If it so determines, the court may  
10157 further stay the proceeding until the foreign corporation or its  
10158 successor has obtained a ~~obtains the~~ certificate of authority to  
10159 transact business in this state.

10160 (4) A foreign corporation which transacts business in this  
10161 state without obtaining a certificate of authority ~~is to do so~~  
10162 ~~shall be~~ liable to this state for the years or parts thereof  
10163 during which it transacted business in this state without  
10164 obtaining a certificate of authority in an amount equal to all  
10165 fees and penalties that ~~taxes which~~ would have been imposed by  
10166 this chapter act upon the foreign ~~such~~ corporation had it duly  
10167 applied for and received a certificate of authority to transact  
10168 business in this state as required under this chapter ~~by this~~  
10169 ~~act~~. In addition to the payments thus prescribed, the foreign  
10170 corporation may, to the extent ordered by a court of competent  
10171 jurisdiction, ~~such corporation shall~~ be liable for a civil  
10172 penalty of not less than \$500 but not ~~or~~ more than \$1,000 for  
10173 each year or part thereof during which it transacts business in  
10174 this state without a certificate of authority. The department ~~of~~  
10175 ~~State~~ may collect all penalties due under this subsection ~~and~~  
10176 ~~may bring an action in circuit court to recover all penalties~~  
10177 ~~and fees due and owing the state.~~

10178 (5) ~~Notwithstanding subsections (1) and (2),~~ The failure of  
10179 a foreign corporation to have ~~obtain~~ a certificate of authority

28-00272A-19

2019892\_\_

10180 to transact business in this state does not impair the validity  
10181 of any of its contracts, deeds, mortgages, security interests,  
10182 or corporate acts or prevent the foreign corporation ~~it~~ from  
10183 defending an action or ~~any~~ proceeding in this state.

10184 (6) A shareholder, officer, or director of a foreign  
10185 corporation is not liable for the debts, obligations, or other  
10186 liabilities of the foreign corporation solely because the  
10187 foreign corporation transacted business in this state without a  
10188 certificate of authority.

10189 (7) Section 607.15015(1) applies even if a foreign  
10190 corporation fails to have a certificate of authority to transact  
10191 business in this state.

10192 (8) If a foreign corporation transacts business in this  
10193 state without a certificate of authority or cancels its  
10194 certificate of authority, it appoints the secretary of state as  
10195 its agent for service of process for rights of action arising  
10196 out of the transaction of business in this state.

10197 Section 199. Section 607.1503, Florida Statutes, is amended  
10198 to read:

10199 607.1503 Application for certificate of authority.—

10200 (1) A foreign corporation may apply for a certificate of  
10201 authority to transact business in this state by delivering an  
10202 application to the department ~~of State~~ for filing. Such  
10203 application shall be made on forms prescribed ~~and furnished~~ by  
10204 the department. The application must contain the following  
10205 ~~Department of State and shall set forth:~~

10206 (a) The name of the foreign corporation and, if the name  
10207 does not comply with s. 607.0401, an alternate name adopted  
10208 pursuant to ~~as long as its name satisfies the requirements of s.~~

28-00272A-19

2019892\_\_

10209 ~~607.0401, but if its name does not satisfy such requirements, a~~  
 10210 ~~corporate name that otherwise satisfies the requirements of s.~~  
 10211 ~~607.1506.~~

10212 (b) The name of the foreign corporation's jurisdiction of  
 10213 incorporation. ~~jurisdiction under the law of which it is~~  
 10214 ~~incorporated;~~

10215 (c) Its date of incorporation and period of duration.

10216 (d) The principal office and mailing address of the foreign  
 10217 corporation. ~~street address of its principal office;~~

10218 (e) The name and street address in this state of, and the  
 10219 written acceptance by, the foreign corporation's initial  
 10220 registered agent in this state. ~~of its registered office in this~~  
 10221 ~~state and the name of its registered agent at that office;~~

10222 (f) The names and usual business addresses of its current  
 10223 directors and officers.

10224 (g) ~~Such~~ Additional information as may be necessary or  
 10225 appropriate in order to enable the department ~~of State~~ to  
 10226 determine whether the foreign ~~such~~ corporation is entitled to  
 10227 file an application for certificate of authority to transact  
 10228 business in this state and to determine and assess the fees ~~and~~  
 10229 ~~taxes~~ payable as prescribed in this chapter ~~act~~.

10230 (2) The foreign corporation shall deliver with a ~~the~~  
 10231 completed application under subsection (1) a certificate of  
 10232 existence or a record ~~(or a document~~ of similar import,) duly  
 10233 authenticated, not more than 90 days prior to delivery of the  
 10234 application to the department ~~of State~~, signed by the ~~Secretary~~  
 10235 ~~of State or other~~ official having custody of the foreign  
 10236 corporation's publicly filed records in its jurisdiction of  
 10237 incorporation ~~corporate records in the jurisdiction under the~~

28-00272A-19

2019892\_\_

10238 ~~law of which it is incorporated.~~ A translation of the  
10239 certificate, under oath of the translator, must be attached to a  
10240 certificate which is in a language other than the English  
10241 language.

10242 ~~(3) A foreign corporation shall not be denied authority to~~  
10243 ~~transact business in this state by reason of the fact that the~~  
10244 ~~laws of the jurisdiction under which such corporation is~~  
10245 ~~organized governing its organization and internal affairs differ~~  
10246 ~~from the laws of this state.~~

10247 Section 200. Section 607.1504, Florida Statutes, is amended  
10248 to read:

10249 607.1504 Amended certificate of authority.—

10250 (1) A foreign corporation authorized to transact business  
10251 in this state shall deliver for filing an amendment to its ~~make~~  
10252 ~~application to the Department of State to obtain an amended~~  
10253 ~~certificate of authority to reflect a change in any of the~~  
10254 following if it changes:

10255 (a) Its name on the records of the department. ~~corporate~~  
10256 ~~name;~~

10257 (b) ~~The period of its duration; or~~

10258 ~~(e) The jurisdiction of its incorporation.~~

10259 (c) The name and street address in this state of the  
10260 foreign corporation's registered agent in this state, unless the  
10261 change was timely made in accordance with s. 607.0502 or s.  
10262 607.05031.

10263 (2) The amendment must be filed within 90 days after the  
10264 occurrence of a change described in subsection (1), must be  
10265 signed by an officer of the foreign corporation, and must state  
10266 the following ~~Such application shall be made within 90 days~~



28-00272A-19

2019892\_\_

10267 ~~after the occurrence of any change mentioned in subsection (1),~~  
10268 ~~shall be made on forms prescribed by the Department of State,~~  
10269 ~~and shall be executed in accordance with s. 607.0120. The~~  
10270 ~~foreign corporation shall deliver with the completed~~  
10271 ~~application, a certificate, or a document of similar import,~~  
10272 ~~authenticated as of a date not more than 90 days prior to~~  
10273 ~~delivery of the application to the Department of State by the~~  
10274 ~~Secretary of State or other official having custody of corporate~~  
10275 ~~records in the jurisdiction under the laws of which it is~~  
10276 ~~incorporated, evidencing the amendment. A translation of the~~  
10277 ~~certificate, under oath or affirmation of the translator, must~~  
10278 ~~be attached to a certificate that is in a language other than~~  
10279 ~~English. The application shall set forth:~~

10280 (a) The name of the foreign corporation as it appears on  
10281 the records of the department ~~of State.~~

10282 (b) The jurisdiction of its incorporation.

10283 (c) The date the foreign corporation ~~it~~ was authorized to  
10284 do business in this state.

10285 (d) If the name of the foreign corporation has been  
10286 changed, the name relinquished and its new name, ~~the new name,~~ a  
10287 ~~statement that the change of name has been effected under the~~  
10288 ~~laws of the jurisdiction of its incorporation, and the date the~~  
10289 ~~change was effected.~~

10290 (e) If the amendment changes its period of duration, a  
10291 statement of such change.

10292 (f) If the amendment changes the jurisdiction of  
10293 incorporation of the foreign corporation, a statement of that  
10294 ~~such~~ change.

10295 (3) The requirements of s. 607.1503 for obtaining an

28-00272A-19

2019892\_\_

10296 original certificate of authority apply to obtaining an amended  
10297 certificate under this section unless the official having  
10298 custody of the foreign corporation's publicly filed records in  
10299 its jurisdiction of incorporation did not require an amendment  
10300 to effectuate the change on its records.

10301 (4) Subject to subsection (3), a foreign corporation  
10302 authorized to transact business in this state may make  
10303 application to the department to obtain an amended certificate  
10304 of authority to add, remove, or change the name, title,  
10305 capacity, or address of an officer or director of the foreign  
10306 corporation.

10307 Section 201. Section 607.1505, Florida Statutes, is amended  
10308 to read:

10309 607.1505 Effect of a certificate of authority.—

10310 (1) Unless the department determines than an application  
10311 for a certificate of authority of a foreign corporation  
10312 authorizes the foreign corporation to which it is issued to  
10313 transact business in this state does not comply with the filing  
10314 requirements of this chapter, the department shall, upon payment  
10315 of all filing fees, authorize the foreign corporation to  
10316 transact business in this state and file the application for  
10317 certificate of authority ~~subject, however, to the right of the~~  
10318 ~~Department of State to suspend or revoke the certificate as~~  
10319 ~~provided in this act.~~

10320 (2) The filing by the department of an application for a  
10321 certificate of authority means that the foreign corporation that  
10322 filed the application to transact business in this state has  
10323 obtained a certificate of authority to transact business in this  
10324 state and is authorized to transact business in this state,

28-00272A-19

2019892\_\_

10325 subject, however, to the right of the department to suspend or  
 10326 revoke the certificate of authority as provided in this chapter  
 10327 ~~A foreign corporation with a valid certificate of authority has~~  
 10328 ~~the same but no greater rights and has the same but no greater~~  
 10329 ~~privileges as, and except as otherwise provided by this act is~~  
 10330 ~~subject to the same duties, restrictions, penalties, and~~  
 10331 ~~liabilities now or later imposed on, a domestic corporation of~~  
 10332 ~~like character.~~

10333 ~~(3) This act does not authorize this state to regulate the~~  
 10334 ~~organization or internal affairs of a foreign corporation~~  
 10335 ~~authorized to transact business in this state.~~

10336 Section 202. Section 607.1506, Florida Statutes, is amended  
 10337 to read:

10338 607.1506 Corporate name of foreign corporation.-

10339 (1) A foreign corporation whose name is unavailable under  
 10340 or whose name does not otherwise comply with s. 607.0401 shall  
 10341 use an alternate name the complies with s. 607.0401 ~~is not~~  
 10342 ~~entitled to file an application for a certificate of authority~~  
 10343 ~~unless the corporate name of such corporation satisfies the~~  
 10344 ~~requirements of s. 607.0401. If the corporate name of a foreign~~  
 10345 ~~corporation does not satisfy the requirements of s. 607.0401,~~  
 10346 ~~the foreign corporation, to obtain or maintain a certificate of~~  
 10347 ~~authority to transact business in this state.~~ An alternate name  
 10348 adopted for use in this state shall be cross-referenced to the  
 10349 actual name of the foreign corporation in the records of the  
 10350 department, provided that no cross-reference is required if the  
 10351 alternate name involves no more than adding the suffix  
 10352 "corporation," "company," or "incorporated" or the abbreviation  
 10353 "Corp.," or "Inc.," or "Co." or the designation "Corp.," or

28-00272A-19

2019892\_\_

10354 "Inc." or "Co." to the name. If the actual name of the foreign  
10355 corporation subsequently becomes available in this state and the  
10356 foreign corporation elects to operate in this state under its  
10357 actual name, or the foreign corporation chooses to change its  
10358 alternate name, a record approving the election or change, as  
10359 the case may be, by its directors or shareholders, and signed as  
10360 required pursuant to s. 607.0120, shall be delivered to the  
10361 department for filing.

10362 ~~(a) May add the word "corporation," "company," or~~  
10363 ~~"incorporated" or the abbreviation "Corp.," "Inc.," "Co.," or~~  
10364 ~~the designation "Corp.," "Inc.," or "Co.," as will clearly indicate~~  
10365 ~~that it is a corporation instead of a natural person,~~  
10366 ~~partnership, or other business entity; or~~

10367 ~~(b) May use an alternate name to transact business in this~~  
10368 ~~state if its real name is unavailable. Any such alternate~~  
10369 ~~corporate name, adopted for use in this state, shall be cross-~~  
10370 ~~referenced to the real corporate name in the records of the~~  
10371 ~~Division of Corporations. If the corporation's real corporate~~  
10372 ~~name becomes available in this state or the corporation chooses~~  
10373 ~~to change its alternate name, a copy of the resolution of its~~  
10374 ~~board of directors changing or withdrawing the alternate name,~~  
10375 ~~executed as required by s. 607.0120, shall be delivered for~~  
10376 ~~filing.~~

10377 (2) A foreign corporation that adopts an alternate name  
10378 under subsection (1) and obtains a certificate of authority with  
10379 the alternate name need not comply with s. 865.09 with respect  
10380 to the alternate name ~~The corporate name (including the~~  
10381 ~~alternate name) of a foreign corporation must be distinguishable~~  
10382 ~~upon the records of the Division of Corporations from:~~

28-00272A-19

2019892\_\_

10383       ~~(a) Any corporate name of a corporation incorporated or~~  
10384 ~~authorized to transact business in this state;~~

10385       ~~(b) The alternate name of another foreign corporation~~  
10386 ~~authorized to transact business in this state;~~

10387       ~~(c) The corporate name of a not for profit corporation~~  
10388 ~~incorporated or authorized to transact business in this state;~~  
10389 ~~and~~

10390       ~~(d) The names of all other entities or filings, except~~  
10391 ~~fictitious name registrations pursuant to s. 865.09, organized~~  
10392 ~~or registered under the laws of this state that are on file with~~  
10393 ~~the Division of Corporations.~~

10394       (3) So long as a foreign corporation maintains a  
10395 certificate of authority with an alternate name, a foreign  
10396 corporation shall transact business in this state under the  
10397 alternate name unless the corporation is authorized under s.  
10398 865.09 to transact business in this state under another name.

10399       (4)~~(3)~~ If a foreign corporation authorized to transact  
10400 business in this state changes its corporate name to one that  
10401 does not comply with ~~satisfy the requirements of s. 607.0401, it~~  
10402 may not thereafter ~~transact business in this state under the~~  
10403 changed name until it complies with subsection (1) ~~adopts a name~~  
10404 satisfying the requirements of s. 607.0401 ~~and obtains an~~  
10405 amended certificate of authority under s. 607.1504.

10406       (5) Notwithstanding the foregoing, a foreign corporation  
10407 may register under a name that is not otherwise distinguishable  
10408 on the records of the department with the written consent of the  
10409 other entity if the consent is filed with the department at the  
10410 time of registration of such name and if such name is not  
10411 identical to the name of the other entity.

28-00272A-19

2019892\_\_

10412 Section 203. Section 607.1507, Florida Statutes, is amended  
10413 to read:

10414 607.1507 Registered office and registered agent of foreign  
10415 corporation.—

10416 (1) Each foreign corporation authorized to transact  
10417 business in this state shall designate and ~~must~~ continuously  
10418 maintain in this state:

10419 (a) A registered office, which may be the same as ~~that may~~  
10420 ~~be the same as any of its~~ place ~~places~~ of business in this  
10421 state; and

10422 (b) A registered agent, which must ~~who may~~ be:

10423 1. An individual who resides in this state and whose  
10424 business address is identical to the address of ~~office is~~  
10425 ~~identical with~~ the registered office;

10426 2. A domestic entity that is an authorized entity and whose  
10427 business address is identical to the address of the registered  
10428 office; or

10429 3. Another foreign entity authorized to transact business  
10430 in this state which is an authorized entity and whose business  
10431 address is identical to the address of ~~corporation or not-for-~~  
10432 ~~profit corporation as defined in chapter 617, the business~~  
10433 ~~office of which is identical with~~ the registered office; ~~or~~

10434 ~~3. Another foreign corporation or foreign not-for-profit~~  
10435 ~~corporation authorized pursuant to this chapter or chapter 617,~~  
10436 ~~to transact business or conduct its affairs in this state the~~  
10437 ~~business office of which is identical with the registered~~  
10438 ~~office.~~

10439 (2) This section does not apply to corporations that are  
10440 required by law to designate the Chief Financial Officer as

28-00272A-19

2019892\_\_

10441 their attorney for service of process, associations subject to  
10442 the provisions of chapter 665, and banks and trust companies  
10443 subject to the financial institutions codes.

10444 (3) Each initial registered agent, and each successor  
10445 registered agent that is appointed, shall ~~A registered agent~~  
10446 ~~appointed pursuant to this section or a successor registered~~  
10447 ~~agent appointed pursuant to s. 607.1508 on whom process may be~~  
10448 ~~served shall each file a statement in writing with the~~  
10449 ~~department, in the form and manner~~ ~~Department of State, in such~~  
10450 ~~form and manner as shall be~~ prescribed by the department,  
10451 accepting the appointment as ~~a~~ registered agent while  
10452 simultaneously ~~with his or her~~ being designated as the  
10453 registered agent. The ~~Such~~ statement of acceptance must provide  
10454 ~~shall state~~ that the registered agent is familiar with, and  
10455 accepts, the obligations of that position.

10456 (4) The duties of a registered agent are as follows:

10457 (a) To forward to the foreign corporation at the address  
10458 most recently supplied to the registered agent by the foreign  
10459 corporation, a process, notice, or demand pertaining to the  
10460 foreign corporation which is served on or received by the  
10461 registered agent; and

10462 (b) If the registered agent resigns, to provide the notice  
10463 required under s. 607.1509 to the foreign corporation at the  
10464 address most recently supplied to the registered agent by the  
10465 foreign corporation.

10466 (5) The department shall maintain an accurate record of the  
10467 registered agents and registered offices for service of process  
10468 and shall promptly furnish any information disclosed thereby  
10469 upon request and payment of the required fee.

28-00272A-19

2019892\_\_

10470       (6) A foreign corporation may not prosecute or maintain any  
10471 action in a court in this state until the foreign corporation  
10472 complies with the provisions of this section, pays to the  
10473 department the amounts required by this chapter, and, to the  
10474 extent ordered by a court of competent jurisdiction, pays to the  
10475 department a penalty of \$5 for each day it has failed to so  
10476 comply or \$500, whichever is less.

10477       (7) A court may stay a proceeding commenced by a foreign  
10478 corporation until the corporation complies with this section.

10479       Section 204. Section 607.1508, Florida Statutes, is amended  
10480 to read:

10481       607.1508 Change of registered office and registered agent  
10482 of foreign corporation.—

10483       (1) In order to change its registered agent or registered  
10484 office address, a foreign corporation authorized to transact  
10485 business in this state may deliver to the department ~~change its~~  
10486 ~~registered office or registered agent by delivering to the~~  
10487 ~~Department of State~~ for filing a statement of change containing  
10488 the following ~~that sets forth~~:

10489       (a) The name of the foreign corporation. ~~Its name;~~

10490       (b) The name ~~street address~~ of its current registered  
10491 office. ~~†~~

10492       (c) If the current registered agent is to be changed, the  
10493 name of the new registered agent.

10494       (d) The street address of its current registered office for  
10495 its current registered agent.

10496       (e) If the street address of the current registered office  
10497 is to be changed, the new street address of the registered  
10498 office



28-00272A-19

2019892\_\_

10499 ~~(c) If the current registered office is to be changed, the~~  
10500 ~~street address of its new registered office;~~

10501 ~~(d) The name of its current registered agent;~~

10502 ~~(e) If the current registered agent is to be changed, the~~  
10503 ~~name of its new registered agent and the new agent's written~~  
10504 ~~consent (either on the statement or attached to it) to the~~  
10505 ~~appointment;~~

10506 ~~(f) That, after the change or changes are made, the street~~  
10507 ~~address of its registered office and the business office of its~~  
10508 ~~registered agent will be identical; and~~

10509 ~~(g) That such change was authorized by resolution duly~~  
10510 ~~adopted by its board of directors or by an officer of the~~  
10511 ~~corporation so authorized by the board of directors.~~

10512 (2) If the registered agent is changed, the written  
10513 acceptance of the successor registered agent described in s.  
10514 607.1507(3) must also be included in or attached to the  
10515 statement of change.

10516 (3) A statement of change is effective when filed by the  
10517 department.

10518 (4) The changes described in this section may also be made  
10519 on the foreign corporation's annual report or in an application  
10520 for reinstatement filed with the department under s. 607.1622 ~~if~~  
10521 ~~a registered agent changes the street address of her or his~~  
10522 ~~business office, she or he may change the street address of the~~  
10523 ~~registered office of any foreign corporation for which she or he~~  
10524 ~~is the registered agent by notifying the corporation in writing~~  
10525 ~~of the change and signing (either manually or in facsimile) and~~  
10526 ~~delivering to the Department of State for filing a statement of~~  
10527 ~~change that complies with the requirements of paragraphs (1) (a)-~~

28-00272A-19

2019892\_\_

10528 ~~(f) and recites that the corporation has been notified of the~~  
10529 ~~change.~~

10530 Section 205. Section 607.1509, Florida Statutes, is amended  
10531 to read:

10532 607.1509 Resignation of registered agent of foreign  
10533 corporation.—

10534 (1) A registered agent may resign as agent for a foreign  
10535 corporation by delivering to the department for filing a signed  
10536 statement of resignation containing the name of the foreign  
10537 corporation ~~The registered agent of a foreign corporation may~~  
10538 ~~resign his or her agency appointment by signing and delivering~~  
10539 ~~to the Department of State for filing a statement of resignation~~  
10540 ~~and mailing a copy of such statement to the corporation at the~~  
10541 ~~corporation's principal office address shown in its most recent~~  
10542 ~~annual report or, if none, shown in its application for a~~  
10543 ~~certificate of authority or other most recently filed document.~~  
10544 ~~The statement of resignation must state that a copy of such~~  
10545 ~~statement has been mailed to the corporation at the address so~~  
10546 ~~stated. The statement of resignation may include a statement~~  
10547 ~~that the registered office is also discontinued.~~

10548 (2) After delivering the statement of resignation to the  
10549 department for filing, the registered agent must promptly mail a  
10550 copy to the foreign corporation at its current mailing address  
10551 ~~The agency appointment is terminated as of the 31st day after~~  
10552 ~~the date on which the statement was filed and, unless otherwise~~  
10553 ~~provided in the statement, termination of the agency acts as a~~  
10554 ~~termination of the registered office.~~

10555 (3) A registered agent is terminated upon the earlier of:

10556 (a) The 31st day after the department files the statement

28-00272A-19

2019892\_\_

10557 of resignation; or

10558 (b) When a statement of change or other record designating  
10559 a new registered agent is filed by the department.

10560 (4) When a statement of resignation takes effect, the  
10561 registered agent ceases to have responsibility for a matter  
10562 thereafter tendered to it as agent for the foreign corporation.  
10563 The resignation does not affect contractual rights that the  
10564 foreign corporation has against the agent or that the agent has  
10565 against the foreign corporation.

10566 (5) A registered agent may resign from a foreign  
10567 corporation regardless of whether the foreign corporation has  
10568 active status.

10569 Section 206. Section 607.15091, Florida Statutes, is  
10570 created to read:

10571 607.15091 Change of name or address by registered agent.-

10572 (1) If a registered agent changes his or her name or  
10573 address, the agent may deliver to the department for filing a  
10574 statement of change containing the following:

10575 (a) The name of the foreign corporation represented by the  
10576 registered agent.

10577 (b) The name of the registered agent as currently shown in  
10578 the records of the department for the corporation.

10579 (c) If the name of the registered agent has changed, its  
10580 new name.

10581 (d) If the address of the registered agent has changed, the  
10582 new address.

10583 (e) A statement that the registered agent has given the  
10584 notice required under subsection (2).

10585 (2) A registered agent shall promptly furnish notice of the

28-00272A-19

2019892\_\_

10586 statement of change and the changes made by the statement filed  
10587 with the department to the represented foreign corporation.

10588 Section 207. Section 607.15092, Florida Statutes, is  
10589 created to read:

10590 607.15092 Delivery of notice or other communication.-

10591 (1) Except as otherwise provided in this chapter,  
10592 permissible means of delivery of a notice or other communication  
10593 includes delivery by hand, the United States Postal Service, a  
10594 commercial delivery service, and electronic transmission, all as  
10595 more particularly described in s. 607.0141.

10596 (2) Except as provided in subsection (3), delivery to the  
10597 department is effective only when a notice or other  
10598 communication is received by the department.

10599 (3) If a check is mailed to the department for payment of  
10600 an annual report fee or the annual supplemental fee required  
10601 under s. 607.193, the check shall be deemed to have been  
10602 received by the department as of the postmark date appearing on  
10603 the envelope or package transmitting the check if the envelope  
10604 or package is received by the department.

10605 Section 208. Section 607.15101, Florida Statutes, is  
10606 amended to read:

10607 607.15101 Service of process, notice, or demand on a  
10608 foreign corporation.-

10609 (1) A foreign corporation may be served with process  
10610 required or authorized by law by serving on its registered  
10611 agent.

10612 (2) If a foreign corporation ceases to have a registered  
10613 agent or if its registered agent cannot with reasonable  
10614 diligence be served, the process required or permitted by law

28-00272A-19

2019892\_\_

10615 may instead be served on the chair of the board, the president,  
10616 any vice president, the secretary, or the treasurer of the  
10617 foreign corporation at the principal office of the foreign  
10618 corporation in this state.

10619 (3) If the process cannot be served on a foreign  
10620 corporation pursuant to subsection (1) or subsection (2), the  
10621 process may be served on the secretary of state as an agent of  
10622 the foreign corporation.

10623 (4) Service of process on the secretary of state may be  
10624 made by delivering to and leaving with the department duplicate  
10625 copies of the process.

10626 (5) Service is effectuated under subsection (3) on the date  
10627 shown as received by the department.

10628 (6) The department shall keep a record of each process  
10629 served on the secretary of state pursuant to this section and  
10630 record the time of and the action taken regarding the service.

10631 (7) Any notice or demand on a foreign corporation under  
10632 this chapter may be given or made to the chair of the board, the  
10633 president, any vice president, the secretary, or the treasurer  
10634 of the foreign corporation; to the registered agent of the  
10635 foreign corporation at the registered office of the foreign  
10636 corporation in this state; or to any other address in this state  
10637 that is in fact the principal office of the foreign corporation  
10638 in this state.

10639 (8) This section does not affect the right to serve  
10640 process, give notice, or make a demand in any other manner  
10641 provided by law

10642 ~~(1) The registered agent of a foreign corporation~~  
10643 ~~authorized to transact business in this state is the~~

28-00272A-19

2019892\_\_

10644 ~~corporation's agent for service of process, notice, or demand~~  
10645 ~~required or permitted by law to be served on the foreign~~  
10646 ~~corporation.~~

10647 ~~(2) A foreign corporation may be served by registered or~~  
10648 ~~certified mail, return receipt requested, addressed to the~~  
10649 ~~secretary of the foreign corporation at its principal office~~  
10650 ~~shown in its application for a certificate of authority or in~~  
10651 ~~its most recent annual report if the foreign corporation:~~

10652 ~~(a) Has no registered agent or its registered agent cannot~~  
10653 ~~with reasonable diligence be served;~~

10654 ~~(b) Has withdrawn from transacting business in this state~~  
10655 ~~under s. 607.1520; or~~

10656 ~~(c) Has had its certificate of authority revoked under s.~~  
10657 ~~607.1531.~~

10658 ~~(3) Service is perfected under subsection (2) at the~~  
10659 ~~earliest of:~~

10660 ~~(a) The date the foreign corporation receives the mail;~~

10661 ~~(b) The date shown on the return receipt, if signed on~~  
10662 ~~behalf of the foreign corporation; or~~

10663 ~~(c) Five days after its deposit in the United States mail,~~  
10664 ~~as evidenced by the postmark, if mailed postpaid and correctly~~  
10665 ~~addressed.~~

10666 ~~(4) This section does not prescribe the only means, or~~  
10667 ~~necessarily the required means, of serving a foreign~~  
10668 ~~corporation. Process against any foreign corporation may also be~~  
10669 ~~served in accordance with chapter 48 or chapter 49.~~

10670 ~~(5) Any notice to or demand on a foreign corporation made~~  
10671 ~~pursuant to this act may be made in accordance with the~~  
10672 ~~procedures for notice to or demand on domestic corporations~~

28-00272A-19

2019892\_\_

10673 ~~under s. 607.0504.~~

10674 Section 209. Section 607.1520, Florida Statutes, is amended  
10675 to read:

10676 607.1520 Withdrawal and cancellation of certificate of  
10677 authority for ~~of~~ foreign corporation.-

10678 (1) To cancel its certificate of authority to transact  
10679 business in this state, a foreign corporation must deliver to  
10680 the department for filing a notice of withdrawal of certificate  
10681 of authority. The certificate of authority is canceled when the  
10682 notice of withdrawal becomes effective pursuant to s. 607.0123.  
10683 The notice of withdrawal of certificate of authority must be  
10684 signed by an officer or director and state the following:

10685 (a) The name of the foreign corporation as it appears on  
10686 the records of the department.

10687 (b) The name of the foreign corporation's jurisdiction of  
10688 incorporation.

10689 (c) The date the foreign corporation was authorized to  
10690 transact business in this state.

10691 (d) That the foreign corporation is withdrawing its  
10692 certificate of authority in this state.

10693 (e) That it revokes the authority of its registered agent  
10694 to accept service on its behalf and appoints the secretary of  
10695 state as its agent for service of process based on a cause of  
10696 action arising during the time it was authorized to transact  
10697 business in this state.

10698 (f) A mailing address to which the secretary of state may  
10699 mail a copy of any process served on the secretary of state  
10700 under paragraph (e).

10701 (g) A commitment to notify the department in the future of

28-00272A-19

2019892\_\_

10702 any change in its mailing address ~~A foreign corporation~~  
10703 ~~authorized to transact business in this state may not withdraw~~  
10704 ~~from this state until it obtains a certificate of withdrawal~~  
10705 ~~from the Department of State.~~

10706 ~~(2) A foreign corporation authorized to transact business~~  
10707 ~~in this state may apply for a certificate of withdrawal by~~  
10708 ~~delivering an application to the Department of State for filing.~~  
10709 ~~The application shall be made on forms prescribed and furnished~~  
10710 ~~by the Department of State and shall set forth:~~

10711 ~~(a) The name of the foreign corporation and the~~  
10712 ~~jurisdiction under the law of which it is incorporated;~~

10713 ~~(b) That it is not transacting business in this state and~~  
10714 ~~that it surrenders its authority to transact business in this~~  
10715 ~~state;~~

10716 ~~(c) That it revokes the authority of its registered agent~~  
10717 ~~to accept service on its behalf and appoints the Department of~~  
10718 ~~State as its agent for service of process based on a cause of~~  
10719 ~~action arising during the time it was authorized to transact~~  
10720 ~~business in this state;~~

10721 ~~(d) A mailing address to which the Department of State may~~  
10722 ~~mail a copy of any process served on it under paragraph (c); and~~

10723 ~~(e) A commitment to notify the Department of State in the~~  
10724 ~~future of any change in its mailing address.~~

10725 ~~(2)~~(3) After the withdrawal of the foreign corporation is  
10726 effective, service of process on the secretary of state  
10727 ~~Department of State~~ under this section is service on the foreign  
10728 corporation. Upon receipt of the process, the secretary of state  
10729 ~~Department of State~~ shall mail a copy of the process to the  
10730 foreign corporation at the mailing address set forth under



28-00272A-19

2019892\_\_

10731 paragraph (1)(f) ~~subsection (2)~~.

10732 Section 210. Section 607.1521, Florida Statutes, is created  
10733 to read:

10734 607.1521 Withdrawal deemed on conversion to domestic filing  
10735 entity.—A foreign corporation authorized to transact business in  
10736 this state that converts to a domestic corporation or another  
10737 domestic eligible entity that is organized, incorporated,  
10738 registered, or otherwise formed through the delivery of a record  
10739 to the department for filing is deemed to have withdrawn its  
10740 certificate of authority on the effective date of the  
10741 conversion.

10742 Section 211. Section 607.1522, Florida Statutes, is created  
10743 to read:

10744 607.1522 Withdrawal on dissolution, merger, or conversion  
10745 to certain nonfiling entities.—

10746 (1) A foreign corporation that is authorized to transact  
10747 business in this state that has dissolved and completed winding  
10748 up, has merged into a foreign eligible entity that is not  
10749 authorized to transact business in this state, or has converted  
10750 to a domestic or foreign eligible entity that is not organized,  
10751 incorporated, registered or otherwise formed through the public  
10752 filing of a record, shall deliver a notice of withdrawal of  
10753 certificate of authority to the department for filing in  
10754 accordance with s. 607.1520.

10755 (2) After a withdrawal under this section of a foreign  
10756 corporation that has converted to another type of entity is  
10757 effective, service of process in any action or proceeding based  
10758 on a cause of action arising during the time the foreign  
10759 corporation was authorized to transact business in this state

28-00272A-19

2019892\_\_

10760 may be made pursuant to s. 607.15101.

10761 Section 212. Section 607.1523, Florida Statutes, is created  
10762 to read:

10763 607.1523 Action by Department of Legal Affairs.—The  
10764 Department of Legal Affairs may maintain an action to enjoin a  
10765 foreign corporation from transacting business in this state in  
10766 violation of this chapter.

10767 Section 213. Section 607.1530, Florida Statutes, is amended  
10768 to read:

10769 607.1530 ~~Grounds for~~ Revocation of certificate of authority  
10770 to transact business.—

10771 (1) ~~A The Department of State may commence a proceeding~~  
10772 under s. 607.1531 to revoke the certificate of authority of a  
10773 foreign corporation authorized to transact business in this  
10774 state may be revoked by the department if:

10775 (a) ~~(1)~~ The foreign corporation does not deliver its annual  
10776 report to the department ~~has failed to file its annual report~~  
10777 with the Department of State by 5 p.m. Eastern Time on the third  
10778 Friday in September of each year;

10779 (b) ~~(2)~~ The foreign corporation does not pay a fee or  
10780 penalty due to the department under this chapter; ~~within the~~  
10781 ~~time required by this act, any fees, taxes, or penalties imposed~~  
10782 ~~by this act or other law.~~

10783 (c) ~~(3)~~ The foreign corporation does not appoint and  
10784 maintain a registered agent as required by s. 607.1507; ~~is~~  
10785 ~~without a registered agent or registered office in this state~~  
10786 ~~for 30 days or more.~~

10787 (d) ~~(4)~~ The foreign corporation does not deliver for filing  
10788 a statement of a change under s. 607.1508 within 30 days after

28-00272A-19

2019892\_\_

10789 the change in the name or address of the agent has occurred,  
10790 unless, within 30 days after the change occurred, either:

10791 1. The registered agent files a statement of change under  
10792 s. 607.15091; or

10793 2. The change was made in accordance with s. 607.1508(4) or  
10794 s. 607.1504(1)(c);

10795 (e) The foreign corporation has failed to amend its  
10796 certificate of authority to reflect a change in its name on the  
10797 records of the department or its jurisdiction of incorporation;

10798 (f) The foreign corporation's period of duration stated in  
10799 its articles of incorporation has expired; ~~notify the Department~~  
10800 ~~of State under s. 607.1508 or s. 607.1509 that its registered~~  
10801 ~~agent has resigned or that its registered office has been~~  
10802 ~~discontinued within 30 days of the resignation or~~  
10803 ~~discontinuance.~~

10804 (g) ~~(5)~~ An incorporator, director, officer, or agent of the  
10805 foreign corporation signs ~~signed~~ a document that she or he knew  
10806 was false in a ~~any~~ material respect with the intent that the  
10807 document be delivered to the department ~~of State~~ for filing;

10808 (h) ~~(6)~~ The department ~~of State~~ receives a duly  
10809 authenticated certificate from the ~~Secretary of State or other~~  
10810 official having custody of corporate records in the jurisdiction  
10811 under the law of which the foreign corporation is incorporated  
10812 stating that it has been dissolved or is no longer active on the  
10813 official's records; or ~~disappeared as the result of a merger.~~

10814 (i) ~~(7)~~ The foreign corporation has failed to answer  
10815 truthfully and fully, within the time prescribed by this chapter  
10816 ~~act~~, interrogatories propounded by the department ~~of State~~.

10817 (2) Revocation of a foreign corporation's certificate of

28-00272A-19

2019892\_\_

10818 authority for failure to file an annual report shall occur on  
10819 the fourth Friday in September of each year. The department  
10820 shall issue a notice in a record of the revocation to the  
10821 revoked foreign corporation. Issuance of the notice may be by  
10822 electronic transmission to a foreign corporation that has  
10823 provided the department with an e-mail address.

10824 (3) If the department determines that one or more grounds  
10825 exist under paragraph (1) (b) for revoking a foreign  
10826 corporation's certificate of authority, the department shall  
10827 issue a notice in a record to the foreign corporation of the  
10828 department's intent to revoke the certificate of authority.  
10829 Issuance of the notice may be by electronic transmission to a  
10830 foreign corporation that has provided the department with an e-  
10831 mail address.

10832 (4) If, within 60 days after the department sends the  
10833 notice of intent to revoke in accordance with subsection (3),  
10834 the foreign corporation does not correct each ground for  
10835 revocation or demonstrate to the reasonable satisfaction of the  
10836 department that each ground determined by the department does  
10837 not exist, the department shall revoke the foreign corporation's  
10838 authority to transact business in this state and issue a notice  
10839 in a record of revocation which states the grounds for  
10840 revocation. Issuance of the notice may be by electronic  
10841 transmission to a foreign corporation that has provided the  
10842 department with an e-mail address.

10843 (5) Revocation of a foreign corporation's certificate of  
10844 authority does not terminate the authority of the registered  
10845 agent of the corporation.

10846 Section 214. Section 607.1531, Florida Statutes, is

28-00272A-19

2019892\_\_

10847 repealed.

10848 Section 215. Section 607.15315, Florida Statutes, is  
10849 amended to read:

10850 607.15315 ~~Revocation; application for~~ Reinstatement  
10851 following revocation of certificate of authority.-

10852 (1)~~(a)~~ A foreign corporation the certificate of authority  
10853 of which has been revoked pursuant to s. 607.1530 or former s.  
10854 607.1531 may apply to the department of State for reinstatement  
10855 at any time after the effective date of revocation of authority.  
10856 The foreign corporation applying for reinstatement must submit  
10857 all fees and penalties then owed by the foreign corporation at  
10858 rates provided by law at the time the foreign corporation  
10859 applies for reinstatement, together with an application for  
10860 reinstatement prescribed and furnished by the department, which  
10861 is signed by both the registered agent and an officer or  
10862 director of the company and states ~~application must:~~

10863 (a)1. Recite The name under which of the foreign  
10864 corporation is authorized to transact business in this state.  
10865 and the effective date of its revocation of authority;

10866 (b)2. The street address of the corporation's principal  
10867 office and mailing address. State that the ground or grounds for  
10868 revocation of authority either did not exist or have been  
10869 eliminated and that no further grounds currently exist for  
10870 revocation of authority;

10871 (c) The jurisdiction of the foreign corporation's formation  
10872 and the date on which it became qualified to transact business  
10873 in this state.

10874 (d) The foreign corporation's federal employer  
10875 identification number or, if none, whether one has been applied

28-00272A-19

2019892\_\_

10876 for.

10877 (e) The name, title or capacity, and address of at least  
10878 one officer or director of the corporation.

10879 (f) Additional information that is necessary or appropriate  
10880 to enable the department to carry out this chapter.

10881 (2) In lieu of the requirement to file an application for  
10882 reinstatement as described in subsection (1), a foreign  
10883 corporation whose certificate of authority has been revoked may  
10884 submit all fees and penalties owed by the corporation at the  
10885 rates provided by law at the time the corporation applies for  
10886 reinstatement, together with a current annual report, signed by  
10887 both the registered agent and an officer or director of the  
10888 corporation, which contains the information described in  
10889 subsection (1).

10890 (3) If the department determines that an application for  
10891 reinstatement contains the information required under subsection  
10892 (1) or subsection (2) and that the information is correct, upon  
10893 payment of all required fees and penalties, the department shall  
10894 reinstate the foreign corporation's certificate of authority

10895 ~~3. State that the foreign corporation's name satisfies the~~  
10896 ~~requirements of s. 607.1506; and~~

10897 ~~4. State that all fees owed by the corporation and computed~~  
10898 ~~at the rate provided by law at the time the foreign corporation~~  
10899 ~~applies for reinstatement have been paid; or~~

10900 ~~(b) As an alternative, the foreign corporation may submit a~~  
10901 ~~current annual report, signed by the registered agent and an~~  
10902 ~~officer or director, which substantially complies with the~~  
10903 ~~requirements of paragraph (a).~~

10904 ~~(2) If the Department of State determines that the~~

28-00272A-19

2019892\_\_

10905 ~~application contains the information required by subsection (1)~~  
10906 ~~and that the information is correct, it shall cancel the~~  
10907 ~~certificate of revocation of authority and prepare a certificate~~  
10908 ~~of reinstatement that recites its determination and prepare a~~  
10909 ~~certificate of reinstatement, file the original of the~~  
10910 ~~certificate, and serve a copy on the corporation under s.~~  
10911 ~~607.0504(2).~~

10912 (4)~~(3)~~ When a reinstatement becomes ~~the reinstatement is~~  
10913 ~~effective, it relates back to and takes effect as of the~~  
10914 ~~effective date of the revocation of authority and the foreign~~  
10915 ~~corporation~~ may operate in this state ~~resumes carrying on its~~  
10916 ~~business~~ as if the revocation of authority had never occurred.

10917 (5)~~(4)~~ The name of the foreign corporation whose ~~the~~  
10918 ~~certificate of authority of which has been revoked is not~~  
10919 ~~available for assumption or use by another~~ eligible entity  
10920 ~~corporation~~ until 1 year after the effective date of revocation  
10921 ~~of authority unless the corporation provides the department of~~  
10922 ~~State with a record signed an affidavit executed~~ as required by  
10923 ~~s. 607.0120~~ which authorizes ~~permitting~~ the immediate assumption  
10924 ~~or use of the name by another~~ eligible entity ~~corporation~~.

10925 (6)~~(5)~~ If the name of the foreign corporation applying for  
10926 reinstatement has been lawfully assumed in this state by another  
10927 eligible entity, the department ~~corporation, the Department of~~  
10928 ~~State~~ shall require the foreign corporation to comply with s.  
10929 607.1506 before accepting its application for reinstatement.

10930 Section 216. Section 607.1532, Florida Statutes, is amended  
10931 to read:

10932 607.1532 Judicial review of denial of reinstatement ~~Appeal~~  
10933 ~~from revocation.~~

28-00272A-19

2019892\_\_

10934           (1) If the department denies a foreign corporation's  
10935 application for reinstatement after revocation of its  
10936 certificate of authority, the department shall serve the foreign  
10937 corporation under s. 607.15101 with a written notice that  
10938 explains the reason or reasons for the denial ~~Department of~~  
10939 ~~State revokes the authority of any foreign corporation to~~  
10940 ~~transact business in this state pursuant to the provisions of~~  
10941 ~~this act, such foreign corporation may likewise appeal to the~~  
10942 ~~circuit court of the county where the registered office of such~~  
10943 ~~corporation in this state is situated by filing with the clerk~~  
10944 ~~of such court a petition setting forth a copy of its application~~  
10945 ~~for authority to transact business in this state and a copy of~~  
10946 ~~the certificate of revocation given by the Department of State,~~  
10947 ~~whereupon the matter shall be tried de novo by the court, and~~  
10948 ~~the court shall either sustain the action of the Department of~~  
10949 ~~State or direct the department to take such action as the court~~  
10950 ~~deems proper.~~

10951           (2) Within 30 days after service of a notice of denial of  
10952 reinstatement, a foreign corporation may appeal the denial by  
10953 petitioning the Circuit Court of Leon County to set aside the  
10954 revocation. The petition must be served on the department and  
10955 contain a copy of the department's notice of revocation, the  
10956 foreign corporation's application for reinstatement, and the  
10957 department's notice of denial ~~Appeals from all final orders and~~  
10958 ~~judgments entered by the circuit court under this section in~~  
10959 ~~review of any ruling or decision of the Department of State may~~  
10960 ~~be taken as in other civil actions.~~

10961           (3) The circuit court may order the department to reinstate  
10962 the certificate of authority of the foreign corporation or take



28-00272A-19

2019892\_\_

10963 other action the court considers appropriate.

10964 (4) The circuit court's final decision may be appealed as  
10965 in other civil proceedings.

10966 Section 217. Section 607.1601, Florida Statutes, is amended  
10967 to read:

10968 607.1601 Corporate records.—

10969 (1) A corporation shall maintain the following records:  
10970 ~~keep as permanent records minutes of all meetings of its~~  
10971 ~~shareholders and board of directors, a record of all actions~~  
10972 ~~taken by the shareholders or board of directors without a~~  
10973 ~~meeting, and a record of all actions taken by a committee of the~~  
10974 ~~board of directors in place of the board of directors on behalf~~  
10975 ~~of the corporation.~~

10976 ~~(2) A corporation shall maintain accurate accounting~~  
10977 ~~records.~~

10978 ~~(3) A corporation or its agent shall maintain a record of~~  
10979 ~~its shareholders in a form that permits preparation of a list of~~  
10980 ~~the names and addresses of all shareholders in alphabetical~~  
10981 ~~order by class of shares showing the number and series of shares~~  
10982 ~~held by each.~~

10983 ~~(4) A corporation shall maintain its records in written~~  
10984 ~~form or in another form capable of conversion into written form~~  
10985 ~~within a reasonable time.~~

10986 ~~(5) A corporation shall keep a copy of the following~~  
10987 ~~records:~~

10988 (a) Its articles or restated articles of incorporation, as  
10989 and all amendments to them currently in effect;

10990 (b) Any notices to shareholders referred to in s.  
10991 607.0120(11) (d) specifying facts on which a filed document is

28-00272A-19

2019892\_\_

10992 dependent, if such facts are not included in the articles of  
10993 incorporation or otherwise available as specified in s.  
10994 607.0120(11)(d);

10995 ~~(c)(b) Its bylaws, as or restated bylaws and all amendments~~  
10996 ~~to them currently in effect;~~

10997 ~~(e) Resolutions adopted by its board of directors creating~~  
10998 ~~one or more classes or series of shares and fixing their~~  
10999 ~~relative rights, preferences, and limitations, if shares issued~~  
11000 ~~pursuant to those resolutions are outstanding;~~

11001 ~~(d) The minutes of all shareholders' meetings and records~~  
11002 ~~of all action taken by shareholders without a meeting for the~~  
11003 ~~past 3 years;~~

11004 ~~(d)(e) All written communications within the past 3 years~~  
11005 ~~to all shareholders generally or to all shareholders of a class~~  
11006 ~~or series within the past 3 years, including the financial~~  
11007 ~~statements furnished for the past 3 years under s. 607.1620;~~

11008 ~~(e) Minutes of all meetings of, and records of all actions~~  
11009 ~~taken without a meeting by, its shareholders, its board of~~  
11010 ~~directors, and any board committees established under s.~~  
11011 ~~607.0825;~~

11012 (f) A list of the names and business street addresses of  
11013 its current directors and officers; and

11014 (g) Its most recent annual report delivered to the  
11015 department of State under s. 607.1622.

11016 (2) A corporation shall maintain all annual financial  
11017 statements prepared for the corporation for its last 3 fiscal  
11018 years, or such shorter period of existence, and any audit or  
11019 other reports with respect to such financial statements.

11020 (3) A corporation shall maintain accounting records in a

28-00272A-19

2019892\_\_

11021 form that permits preparation of its financial statements.

11022 (4) A corporation shall maintain a record of its current  
11023 shareholders in alphabetical order by class or series of shares  
11024 showing the address of, and the number and class or series of  
11025 shares held by, each shareholder. This subsection does not  
11026 require the corporation to include the electronic mail address  
11027 or other electronic contact information of a shareholder in such  
11028 record.

11029 (5) A corporation shall maintain the records specified in  
11030 this section in a manner so that they may be available for  
11031 inspection within a reasonable time.

11032 Section 218. Section 607.1602, Florida Statutes, is amended  
11033 to read:

11034 607.1602 Inspection of records by shareholders.—

11035 (1) A shareholder of a corporation is entitled to inspect  
11036 and copy, during regular business hours at the corporation's  
11037 principal office, any of the records of the corporation  
11038 described in s. 607.1601(1), excluding minutes of meetings of,  
11039 and records of actions taken without a meeting by, the  
11040 corporation's board of directors and any board committees  
11041 established under s. 607.0825, ~~s. 607.1601(5)~~ if the shareholder  
11042 gives the corporation written notice of the shareholder's ~~his or~~  
11043 ~~her~~ demand at least 5 business days before the date on which the  
11044 ~~shareholder~~ ~~he or she~~ wishes to inspect and copy.

11045 (2) A shareholder of a corporation is entitled to inspect  
11046 and copy, during regular business hours at a reasonable location  
11047 specified by the corporation, any of the following records of  
11048 the corporation if the shareholder meets the requirements of  
11049 subsection (3) and gives the corporation written notice of the

28-00272A-19

2019892\_\_

11050 shareholder's ~~his or her~~ demand at least 5 business days before  
11051 the date on which the shareholder ~~he or she~~ wishes to inspect  
11052 and copy:

11053 (a) Excerpts from minutes of any meeting of, or records of  
11054 any actions taken without a meeting by, the corporation's board  
11055 of directors and board committees maintained in accordance with  
11056 s. 607.1601(1), ~~records of any action of a committee of the~~  
11057 ~~board of directors while acting in place of the board of~~  
11058 ~~directors on behalf of the corporation, minutes of any meeting~~  
11059 ~~of the shareholders, and records of action taken by the~~  
11060 ~~shareholders or board of directors without a meeting, to the~~  
11061 ~~extent not subject to inspection under subsection (1);~~

11062 (b) The financial statements of the corporation maintained  
11063 in accordance with s. 607.1601(2);

11064 (c) ~~(b)~~ Accounting records of the corporation;

11065 (d) ~~(e)~~ The record of shareholders maintained in accordance  
11066 with s. 607.1601(4); and

11067 (e) ~~(d)~~ Any other books and records.

11068 (3) A shareholder may inspect and copy the records  
11069 described in subsection (2) only if:

11070 (a) The shareholder's demand is made in good faith and for  
11071 a proper purpose;

11072 (b) The shareholder's demand ~~shareholder~~ describes with  
11073 reasonable particularity the shareholder's ~~his or her~~ purpose  
11074 and the records the shareholder ~~he or she~~ desires to inspect;  
11075 and

11076 (c) The records are directly connected with the  
11077 shareholder's purpose.

11078 (4) The corporation may impose reasonable restrictions on

28-00272A-19

2019892\_\_

11079 the disclosure, use, or distribution of, and reasonable  
11080 obligations to maintain the confidentiality of, records  
11081 described in subsection (2) ~~A shareholder of a Florida~~  
11082 ~~corporation, or a shareholder of a foreign corporation~~  
11083 ~~authorized to transact business in this state who resides in~~  
11084 ~~this state, is entitled to inspect and copy, during regular~~  
11085 ~~business hours at a reasonable location in this state specified~~  
11086 ~~by the corporation, a copy of the records of the corporation~~  
11087 ~~described in s. 607.1601(5)(b) and (f), if the shareholder gives~~  
11088 ~~the corporation written notice of his or her demand at least 15~~  
11089 ~~business days before the date on which he or she wishes to~~  
11090 ~~inspect and copy.~~

11091 (5) For any meeting of shareholders for which the record  
11092 date for determining shareholders entitled to vote at the  
11093 meeting is different than the record date for notice of the  
11094 meeting, any person who becomes a shareholder subsequent to the  
11095 record date for notice of the meeting and is entitled to vote at  
11096 the meeting is entitled to obtain from the corporation upon  
11097 request the notice and any other information provided by the  
11098 corporation to shareholders in connection with the meeting,  
11099 unless the corporation has made such information generally  
11100 available to shareholders by posting it on its website or by  
11101 other generally recognized means. Failure of a corporation to  
11102 provide such information does not affect the validity of action  
11103 taken at the meeting.

11104 (6) The right of inspection granted by this section may not  
11105 be abolished or limited by a corporation's articles of  
11106 incorporation or bylaws.

11107 (7) ~~(5)~~ This section does not affect:

28-00272A-19

2019892\_\_

11108 (a) The right of a shareholder to inspect and copy records  
11109 under s. 607.0720 or, if the shareholder is in litigation with  
11110 the corporation, to the same extent as any other litigant; or

11111 (b) The power of a court, independently of this chapter  
11112 ~~act~~, to compel the production of corporate records for  
11113 examination and to impose reasonable restrictions as provided in  
11114 s. 607.1604(3), provided that, in the case of production of  
11115 records described in subsection (2) at the request of the  
11116 shareholder, the shareholder has met the requirements of  
11117 subsection (3).

11118 (8)~~(6)~~ A corporation may deny any demand for inspection  
11119 made pursuant to subsection (2) if the demand was made for an  
11120 improper purpose, or if the demanding shareholder has within 2  
11121 years preceding his or her demand sold or offered for sale any  
11122 list of shareholders of the corporation or any other  
11123 corporation, has aided or abetted any person in procuring any  
11124 list of shareholders for any such purpose, or has improperly  
11125 used any information secured through any prior examination of  
11126 the records of the corporation or any other corporation.

11127 (9)~~(7)~~ A shareholder may not sell or otherwise distribute  
11128 any information or records inspected under this section, except  
11129 to the extent that such use is for a proper purpose as defined  
11130 in subsection (11) ~~(3)~~. ~~Any person who violates this provision~~  
11131 ~~shall be subject to a civil penalty of \$5,000.~~

11132 (10)~~(8)~~ For purposes of this section, the term  
11133 "shareholder" means a record shareholder, a beneficial  
11134 shareholder, or an unrestricted voting trust beneficial owner  
11135 ~~includes a beneficial owner whose shares are held in a voting~~  
11136 ~~trust or by a nominee on his or her behalf.~~

28-00272A-19

2019892\_\_

11137 (11)~~(9)~~ For purposes of this section, a "proper purpose"  
11138 means a purpose reasonably related to such person's interest as  
11139 a shareholder.

11140 (12) The rights of a shareholder to obtain records under  
11141 subsections (1) and (2) shall also apply to the records of  
11142 subsidiaries of the corporation.

11143 Section 219. Section 607.1603, Florida Statutes, is amended  
11144 to read:

11145 607.1603 Scope of inspection right.—

11146 (1) A shareholder may appoint an agent or attorney to  
11147 exercise the shareholder's inspection and copying rights under  
11148 s. 607.1602 ~~shareholder's agent or attorney has the same~~  
11149 ~~inspection and copying rights as the shareholder he or she~~  
11150 ~~represents.~~

11151 (2) The corporation may, if reasonable, satisfy the right  
11152 of a shareholder to copy records under s. 607.1602 by furnishing  
11153 to the shareholder copies made by photocopy or other means  
11154 chosen by the corporation, including furnishing copies through  
11155 an electronic transmission ~~includes, if reasonable, the right to~~  
11156 ~~receive copies made by photographic, xerographic, or other~~  
11157 ~~means.~~

11158 (3) The corporation may impose a reasonable charge to cover  
11159 the costs of providing copies of any documents to the  
11160 shareholder which may be based on an estimate of such costs,  
11161 ~~covering the costs of labor and material, for copies of any~~  
11162 ~~documents provided to the shareholder. The charge may not exceed~~  
11163 ~~the estimated cost of production or reproduction of the records.~~  
11164 ~~If the records are kept in other than written form, the~~  
11165 ~~corporation shall convert such records into written form upon~~

28-00272A-19

2019892\_\_

11166 ~~the request of any person entitled to inspect the same. The~~  
11167 ~~corporation shall bear the costs of converting any records~~  
11168 ~~described in s. 607.1601(5). The requesting shareholder shall~~  
11169 ~~bear the costs, including the cost of compiling the information~~  
11170 ~~requested, incurred to convert any records described in s.~~  
11171 ~~607.1602(2).~~

11172 (4) ~~If requested by a shareholder,~~ The corporation may  
11173 comply at its expense ~~shall comply~~ with a shareholder's demand  
11174 to inspect the records of shareholders under s. 607.1602(2)(d)  
11175 ~~s. 607.1602(2)(e)~~ by providing the shareholder ~~him or her~~ with a  
11176 list of ~~its~~ shareholders that was compiled no earlier than the  
11177 date of the shareholder's demand ~~of the nature described in s.~~  
11178 ~~607.1601(3). Such a list must be compiled as of the last record~~  
11179 ~~date for which it has been compiled or as of a subsequent date~~  
11180 ~~if specified by the shareholder.~~

11181 Section 220. Section 607.1604, Florida Statutes, is amended  
11182 to read:

11183 607.1604 Court-ordered inspection.—

11184 (1) If a corporation does not allow a shareholder who  
11185 complies with s. 607.1602(1) ~~or (4)~~ to inspect and copy any  
11186 records required by that subsection to be available for  
11187 inspection, the circuit court in the applicable county ~~where the~~  
11188 ~~corporation's principal office (or, if none in this state, its~~  
11189 ~~registered office) is located~~ may summarily order inspection and  
11190 copying of the records demanded at the corporation's expense  
11191 upon application of the shareholder. If the court orders  
11192 inspection and copying of the records demanded under s.  
11193 607.1601(1), it shall also order the corporation to pay the  
11194 shareholder's expenses, including reasonable attorney fees,



28-00272A-19

2019892\_\_

11195 incurred to obtain the order and enforce its rights under this  
11196 section.

11197 (2) If a corporation does not within a reasonable time  
11198 allow a shareholder who complies with s. 607.1602(2) to inspect  
11199 and copy the records required by that section ~~any other record,~~  
11200 the shareholder who complies with s. 607.1602(3) ~~s. 607.1602(2)~~  
11201 ~~and (3),~~ may apply to the circuit court in the applicable county  
11202 ~~where the corporation's principal office (or, if none in this~~  
11203 ~~state, its registered office) is located~~ for an order to permit  
11204 inspection and copying of the records demanded. The court shall  
11205 dispose of an application under this subsection on an expedited  
11206 basis.

11207 (3) If the court orders inspection and ~~or~~ copying of the  
11208 records demanded under s. 607.1602(2), it may impose reasonable  
11209 restrictions on the disclosure, use, or distribution of, and  
11210 reasonable obligations to maintain the confidentiality of, such  
11211 records, and it shall also order the corporation to pay the  
11212 shareholder's expenses incurred ~~costs,~~ including reasonable  
11213 attorney ~~attorney's~~ fees, ~~reasonably~~ incurred to obtain the  
11214 order and enforce its rights under this section unless the  
11215 corporation establishes that the corporation, ~~or the officer,~~  
11216 ~~director, or agent, as the case may be, proves that it or she or~~  
11217 ~~he~~ refused inspection in good faith because the corporation ~~it~~  
11218 ~~or she or he~~ had:

11219 (a) A reasonable basis for doubt about the right of the  
11220 shareholder to inspect or copy the records demanded; or-

11221 (b) ~~(4) Required~~ Required ~~If the court orders inspection or copying~~  
11222 ~~of the records demanded, it may impose~~ reasonable restrictions  
11223 on the disclosure, use, or distribution of, and reasonable

28-00272A-19

2019892\_\_

11224 obligations to maintain the confidentiality of, such the records  
11225 demanding to which by the demanding shareholder had been  
11226 unwilling to agree.

11227 Section 221. Section 607.1605, Florida Statutes, is amended  
11228 to read:

11229 607.1605 Inspection rights of ~~records by~~ directors.—

11230 (1) A director of a corporation is entitled to inspect and  
11231 copy the books, records, and documents of the corporation at any  
11232 reasonable time to the extent reasonably related to the  
11233 performance of the director's duties as a director, including  
11234 duties as a member of a board committee, but not for any other  
11235 purpose or in any manner that would violate any duty to the  
11236 corporation.

11237 (2) The circuit court of the applicable county ~~in which the~~  
11238 ~~corporation's principal office or, if none in this state, its~~  
11239 ~~registered office is located~~ may order inspection and copying of  
11240 the books, records, and documents at the corporation's expense,  
11241 upon application of a director who has been refused such  
11242 inspection rights, unless the corporation establishes that the  
11243 director is not entitled to such inspection rights. The court  
11244 shall dispose of an application under this subsection on an  
11245 expedited basis.

11246 (3) If an order is issued, the court may include provisions  
11247 protecting the corporation from undue burden or expense and  
11248 prohibiting the director from using information obtained upon  
11249 exercise of the inspection rights in a manner that would violate  
11250 a duty to the corporation, and may also order the corporation to  
11251 reimburse the director for the director's costs, including  
11252 reasonable attorney ~~counsel~~ fees, incurred in connection with

28-00272A-19

2019892\_\_

11253 the application.

11254 Section 222. Section 607.1620, Florida Statutes, is amended  
11255 to read:

11256 607.1620 Financial statements for shareholders.-

11257 (1) Upon the written request of any shareholder, a  
11258 corporation shall deliver or make available to the requesting  
11259 shareholder the corporation's annual financial statements for  
11260 the most recent fiscal year of the corporation ~~Unless modified~~  
11261 ~~by resolution of the shareholders within 120 days of the close~~  
11262 ~~of each fiscal year, a corporation shall furnish its~~  
11263 ~~shareholders annual financial statements which may be~~  
11264 ~~consolidated or combined statements of the corporation and one~~  
11265 ~~or more of its subsidiaries, as appropriate, that include a~~  
11266 ~~balance sheet as of the end of the fiscal year, an income~~  
11267 ~~statement for that year, and a statement of cash flows for that~~  
11268 ~~year.~~ If annual financial statements have been ~~are~~ prepared for  
11269 the corporation on the basis of generally accepted accounting  
11270 principles for such specified period, the corporation shall  
11271 deliver or make available such financial statements to the  
11272 requesting shareholder, ~~the annual financial statements must~~  
11273 ~~also be prepared on that basis.~~

11274 ~~(2)~~ If the annual financial statements to be delivered or  
11275 made available to the requesting shareholder are audited or  
11276 otherwise ~~are~~ reported upon by a public accountant, the report  
11277 of the public accountant shall also be delivered or made  
11278 available to the requesting shareholder ~~his or her report must~~  
11279 ~~accompany them. If not, the statements must be accompanied by a~~  
11280 ~~statement of the president or the person responsible for the~~  
11281 ~~corporation's accounting records:~~

28-00272A-19

2019892\_\_

11282 ~~(a) Stating his or her reasonable belief whether the~~  
11283 ~~statements were prepared on the basis of generally accepted~~  
11284 ~~accounting principles and, if not, describing the basis of~~  
11285 ~~preparation; and~~

11286 ~~(b) Describing any respects in which the statements were~~  
11287 ~~not prepared on a basis of accounting consistent with the~~  
11288 ~~statements prepared for the preceding year.~~

11289 (2)(3) A Any corporation required by subsection (1) to  
11290 deliver or make available ~~furnish~~ annual financial statements to  
11291 a requesting shareholder shall deliver or make available such  
11292 annual financial statements to such shareholder within 5  
11293 business days after the request if the annual financial  
11294 statements have already been prepared and are available, or, if  
11295 the annual financial statements have not been prepared, must  
11296 notify the shareholder within 5 business days that the annual  
11297 financial statements have not yet been prepared, and must  
11298 deliver or make available such annual financial statements to  
11299 ~~the its shareholders shall furnish such annual financial~~  
11300 ~~statements to each shareholder within 120 days after the request~~  
11301 ~~close of each fiscal year or within such additional time~~  
11302 ~~thereafter as is reasonably necessary to enable the corporation~~  
11303 ~~to prepare its annual financial statements if, for reasons~~  
11304 ~~beyond the corporation's control, it is unable to prepare its~~  
11305 ~~annual financial statements within the prescribed period.~~  
11306 ~~Thereafter, on written request from a shareholder who was not~~  
11307 ~~furnished the statements, the corporation shall furnish him or~~  
11308 ~~her the latest annual financial statements.~~

11309 (3) If requested by the requesting shareholder in its  
11310 written request under subsection (1), the corporation shall

28-00272A-19

2019892\_\_

11311 promptly notify all other shareholders that the annual financial  
11312 statements that have or are to be delivered or made available to  
11313 the requesting shareholder have been or are being made available  
11314 to the requesting shareholder and will also be delivered or made  
11315 available to any other shareholder who makes its own written  
11316 request to the corporation under subsection (1).

11317 (4) A corporation may fulfill its responsibilities under  
11318 this section by delivering the specified annual financial  
11319 statements, by posting the specified annual financial statements  
11320 on its website, by any other generally recognized means, or in  
11321 any other manner permitted by the applicable rules and  
11322 regulations of the United States Securities and Exchange  
11323 Commission

11324 (5) Notwithstanding subsections (1), (2), and (3):

11325 (a) As a condition to delivering or making available annual  
11326 financial statements to any requesting shareholder, the  
11327 corporation may require the requesting shareholder to agree to  
11328 reasonable restrictions on the confidentiality, use, and  
11329 distribution of such annual financial statements; and

11330 (b) The corporation may, if it reasonably determines that  
11331 the shareholder's request is not made in good faith or for a  
11332 proper purpose, decline to deliver or make available such annual  
11333 financial statements to that shareholder.

11334 (6) If a corporation does not respond to a shareholder's  
11335 request for annual financial statements pursuant to this section  
11336 in accordance with subsection (3) within the applicable period  
11337 specified in subsection (2):

11338 (a) The requesting shareholder may apply to the circuit  
11339 court in the applicable county for an order requiring delivery

28-00272A-19

2019892\_\_

11340 of or access to the requested annual financial statements. The  
11341 court shall dispose of an application under this subsection on  
11342 an expedited basis.

11343 (b) If the court orders delivery or access to the requested  
11344 annual financial statements, it may impose reasonable  
11345 restrictions on their confidentiality, use, or distribution.

11346 (c) In such proceeding, if the corporation has declined to  
11347 deliver or make available such annual financial statements  
11348 because the shareholder had been unwilling to agree to  
11349 restrictions proposed by the corporation on the confidentiality,  
11350 use, and distribution of such financials statements, the  
11351 corporation shall have the burden of demonstrating that the  
11352 restrictions proposed by the corporation were reasonable.

11353 (d) In such proceeding, if the corporation has declined to  
11354 deliver or make available such annual financial statements  
11355 pursuant to s. 607.1620(5)(b), the corporation shall have the  
11356 burden of demonstrating that it had reasonably determined that  
11357 the shareholder's request was not made in good faith or for a  
11358 proper purpose.

11359 (7) If the court orders delivery or access to the requested  
11360 annual financial statements it shall order the corporation to  
11361 pay the shareholder's expenses, including reasonable attorney  
11362 fees, incurred to obtain such order unless the corporation  
11363 establishes that it had refused delivery or access to the  
11364 requested annual financial statements because the shareholder  
11365 had refused to agree to reasonable restrictions on the  
11366 confidentiality, use, or distribution of the annual financial  
11367 statements or that the corporation had reasonably determined  
11368 that the shareholder's request was not made in good faith or for

28-00272A-19

2019892\_\_

11369 a proper purpose

11370 ~~(4) If a corporation does not comply with the shareholder's~~  
11371 ~~request for annual financial statements pursuant to this section~~  
11372 ~~within 30 days of delivery of such request to the corporation,~~  
11373 ~~the circuit court in the county where the corporation's~~  
11374 ~~principal office (or, if none in this state, its registered~~  
11375 ~~office) is located may, upon application of the shareholder,~~  
11376 ~~summarily order the corporation to furnish such financial~~  
11377 ~~statements. If the court orders the corporation to furnish the~~  
11378 ~~shareholder with the financial statements demanded, it shall~~  
11379 ~~also order the corporation to pay the shareholder's costs,~~  
11380 ~~including reasonable attorney's fees, reasonably incurred to~~  
11381 ~~obtain the order and otherwise enforce its rights under this~~  
11382 ~~section.~~

11383 ~~(5) The requirement to furnish annual financial statements~~  
11384 ~~as described in this section shall be satisfied by sending such~~  
11385 ~~annual financial statements by mail or electronic transmission.~~  
11386 ~~If a corporation has an outstanding class of securities~~  
11387 ~~registered under s. 12 of the Securities Exchange Act of 1934,~~  
11388 ~~as amended, the requirement to furnish annual financial~~  
11389 ~~statements may be satisfied by complying with 17 C.F.R. s.~~  
11390 ~~240.14a-16, as amended, with respect to the obligation of a~~  
11391 ~~corporation to furnish an annual financial report to~~  
11392 ~~shareholders pursuant to 17 C.F.R. s. 240.14a-3(b), as amended.~~

11393 Section 223. Section 607.1621, Florida Statutes, is  
11394 repealed.

11395 Section 224. Section 607.1622, Florida Statutes, is amended  
11396 to read:

11397 607.1622 Annual report for department of State.-

28-00272A-19

2019892\_\_

11398 (1) Each domestic corporation and each foreign corporation  
 11399 authorized to transact business in this state shall deliver to  
 11400 the department for filing an annual report that states the  
 11401 following ~~of State for filing a sworn annual report on such~~  
 11402 ~~forms as the Department of State prescribes that sets forth:~~

11403 (a) The name of the corporation or, if a foreign  
 11404 corporation, the name under which the foreign corporation is  
 11405 authorized to transact business in this state ~~and the state or~~  
 11406 ~~country under the law of which it is incorporated;~~

11407 (b) The date of its incorporation and ~~or~~, if a foreign  
 11408 corporation, the jurisdiction of its incorporation and the date  
 11409 on which it became qualified to transact ~~date on which it was~~  
 11410 ~~admitted to do~~ business in this state;

11411 (c) The street address of its principal office and the  
 11412 mailing address of the corporation;

11413 (d) The corporation's federal employer identification  
 11414 number, if any, or, if none, whether one has been applied for;

11415 (e) The names and business street addresses of its  
 11416 directors and principal officers; and

11417 ~~(f) The street address of its registered office and the~~  
 11418 ~~name of its registered agent at that office in this state;~~

11419 ~~(g) Language permitting a voluntary contribution of \$5 per~~  
 11420 ~~taxpayer, which contribution shall be transferred into the~~  
 11421 ~~Election Campaign Financing Trust Fund. A statement providing an~~  
 11422 ~~explanation of the purpose of the trust fund shall also be~~  
 11423 ~~included; and~~

11424 (f)(h) Any additional information that is ~~Such additional~~  
 11425 ~~information as may be~~ necessary or appropriate to enable the  
 11426 department ~~of State~~ to carry out the provisions of this chapter



28-00272A-19

2019892\_\_

11427 act.

11428 (2) If an annual report contains the name and address of a  
11429 registered agent which differs from the information shown in the  
11430 records of the department immediately before the annual report  
11431 becomes effective, the differing information in the annual  
11432 report is considered a statement of change under s. 607.0502  
11433 ~~Proof to the satisfaction of the Department of State that on or~~  
11434 ~~before May 1 such report was deposited in the United States mail~~  
11435 ~~in a sealed envelope, properly addressed with postage prepaid,~~  
11436 ~~shall be deemed compliance with this requirement.~~

11437 (3) If an annual report does not contain the information  
11438 required in ~~by~~ this section, the department ~~of State~~ shall  
11439 promptly notify the reporting domestic corporation or foreign  
11440 corporation ~~in writing and return the report to it for~~  
11441 ~~correction~~. If the report is corrected to contain the  
11442 information required in subsection (1) ~~by this section~~ and  
11443 delivered to the department ~~of State~~ within 30 days after the  
11444 effective date of the notice, it will be considered timely  
11445 delivered ~~is deemed to be timely filed~~.

11446 (4) ~~Each report shall be executed by the corporation by an~~  
11447 ~~officer or director or, if the corporation is in the hands of a~~  
11448 ~~receiver or trustee, shall be executed on behalf of the~~  
11449 ~~corporation by such receiver or trustee, and the signing thereof~~  
11450 ~~shall have the same legal effect as if made under oath, without~~  
11451 ~~the necessity of appending such oath thereto.~~

11452 (4)~~(5)~~ The first annual report must be delivered to the  
11453 department ~~of State~~ between January 1 and May 1 of the year  
11454 following the calendar year in which a domestic corporation's  
11455 articles of incorporation became effective ~~corporation was~~

28-00272A-19

2019892\_\_

11456 ~~incorporated~~ or a foreign corporation obtained its certificate  
11457 of authority ~~was authorized~~ to transact business in this state.  
11458 Subsequent annual reports must be delivered to the department ~~of~~  
11459 ~~State~~ between January 1 and May 1 of each calendar year  
11460 thereafter. If one or more forms of annual report are submitted  
11461 for a calendar year, the department shall file each of them and  
11462 make the information contained in them part of the official  
11463 record. The first form of annual report filed in a calendar year  
11464 shall be considered the annual report for the calendar year, and  
11465 each report filed after that one in the same calendar year shall  
11466 be treated as an amended report for that calendar year ~~the~~  
11467 ~~subsequent calendar years~~.

11468 (5) ~~(6)~~ Information in the annual report must be current as  
11469 of the date the annual report is delivered to the department for  
11470 filing ~~executed on behalf of the corporation~~.

11471 ~~(7)~~ ~~If an additional updated report is received, the~~  
11472 ~~department shall file the document and make the information~~  
11473 ~~contained therein part of the official record~~.

11474 (6) ~~(8)~~ A domestic corporation or foreign corporation that  
11475 fails ~~Any corporation failing to file an annual report that~~  
11476 ~~which~~ complies with the requirements of this section may not  
11477 prosecute or maintain ~~shall not be permitted to maintain or~~  
11478 ~~defend~~ any action in any court of this state until the ~~such~~  
11479 report is filed and all fees and penalties ~~taxes~~ due under this  
11480 chapter ~~act~~ are paid, and shall be subject to dissolution or  
11481 cancellation of its certificate of authority to transact ~~do~~  
11482 business as provided in this chapter ~~act~~.

11483 (7) ~~(9)~~ The department shall prescribe the forms, which may  
11484 be in an electronic format, on which to make the annual report

28-00272A-19

2019892\_\_

11485 called for in this section and may substitute the uniform  
11486 business report, pursuant to s. 606.06, as a means of satisfying  
11487 the requirement of this chapter ~~part~~.

11488 (8) As a condition of a merger under s. 607.1101, each  
11489 party to a merger which exists under the laws of this state, and  
11490 each party to the merger which exists under the laws of another  
11491 jurisdiction and has a certificate of authority to transact  
11492 business or conduct its affairs in this state, must be active  
11493 and current in filing its annual reports in the records of the  
11494 department through December 31 of the calendar year in which the  
11495 articles of merger are submitted to the department for filing.

11496 (9) As a condition of a conversion of an entity to a  
11497 corporation under s. 607.11930, the entity, if it exists under  
11498 the laws of this state or if it exists under the laws of another  
11499 jurisdiction and has a certificate of authority to transact  
11500 business or conduct its affairs in this state, must be active  
11501 and current in filing its annual reports in the records of the  
11502 department through December 31 of the calendar year in which the  
11503 articles of conversion are submitted to the department for  
11504 filing.

11505 (10) As a condition of a conversion of a domestic  
11506 corporation to another type of entity under s. 607.11930, the  
11507 domestic corporation converting to the other type of entity must  
11508 be active and current in filing its annual reports in the  
11509 records of the department through December 31 of the calendar  
11510 year in which the articles of conversion are submitted to the  
11511 department for filing.

11512 (11) As a condition of a share exchange between a  
11513 corporation and another entity under s. 607.1102, the

28-00272A-19

2019892\_\_

11514 corporation, and each other entity that is a party to the share  
11515 exchange which exists under the laws of this state, and each  
11516 party to the share exchange which exists under the laws of  
11517 another jurisdiction and has a certificate of authority to  
11518 transact business or conduct its affairs in this state, must be  
11519 active and current in filing its annual reports in the records  
11520 of the department through December 31 of the calendar year in  
11521 which the articles of share exchange are submitted to the  
11522 department for filing.

11523 (12) As a condition of domestication of a domestic  
11524 corporation into a foreign jurisdiction under s. 607.11920, the  
11525 domestic corporation domesticating into a foreign jurisdiction  
11526 must be active and current in filing its annual reports in the  
11527 records of the department through December 31 of the calendar  
11528 year in which the articles of domestication are submitted to the  
11529 department for filing.

11530 Section 225. Section 607.1701, Florida Statutes, is amended  
11531 to read:

11532 607.1701 Application to existing domestic corporation.—This  
11533 chapter act applies to all domestic corporations in existence on  
11534 January 1, 2020 ~~July 1, 1990~~, that were incorporated under any  
11535 general statute of this state providing for incorporation of  
11536 corporations for profit if power to amend or repeal the statute  
11537 under which the corporation was incorporated was reserved.

11538 Section 226. Section 607.1702, Florida Statutes, is amended  
11539 to read:

11540 607.1702 Application to qualified foreign corporations.—A  
11541 foreign corporation authorized to transact business in this  
11542 state on January 1, 2020 ~~July 1, 1990~~, is subject to this

28-00272A-19

2019892\_\_

11543 chapter, is deemed to be authorized to transact business in this  
11544 state, and ~~act but~~ is not required to obtain a new certificate  
11545 of authority to transact business under this chapter ~~act~~.

11546 Section 227. Section 607.1711, Florida Statutes, is amended  
11547 to read:

11548 607.1711 Application to foreign and interstate commerce.—  
11549 The provisions of this chapter ~~act~~ apply to commerce with  
11550 foreign nations and among the several states only insofar as the  
11551 same may be permitted under the Constitution and laws of the  
11552 United States.

11553 Section 228. Section 607.1801, Florida Statutes, is  
11554 repealed.

11555 Section 229. Section 607.1907, Florida Statutes, is amended  
11556 to read:

11557 607.1907 Saving provision ~~Effect of repeal of prior acts.—~~

11558 (1) Except as to procedural provisions, this act does not  
11559 affect a pending action or proceeding or a right accrued before  
11560 January 1, 2020, and a pending civil action or proceeding may be  
11561 completed, and a right accrued may be enforced, as if this act  
11562 had not become effective ~~provided in subsection (2), the repeal~~  
11563 ~~of a statute by this act does not affect:~~

11564 ~~(a) The operation of the statute or any action taken under~~  
11565 ~~it before its repeal, including, without limiting the generality~~  
11566 ~~of the foregoing, the continuing validity of any provision of~~  
11567 ~~the articles of incorporation or bylaws of a corporation~~  
11568 ~~authorized by the statute at the time of its adoption;~~

11569 ~~(b) Any ratification, right, remedy, privilege, obligation,~~  
11570 ~~or liability acquired, accrued, or incurred under the statute~~  
11571 ~~before its repeal;~~

28-00272A-19

2019892\_\_

11572 ~~(c) Any violation of the statute, or any penalty,~~  
11573 ~~forfeiture, or punishment incurred because of the violation,~~  
11574 ~~before its repeal;~~

11575 ~~(d) Any proceeding, merger, consolidation, sale of assets,~~  
11576 ~~reorganization, or dissolution commenced under the statute~~  
11577 ~~before its repeal, and the proceeding, merger, consolidation,~~  
11578 ~~sale of assets, reorganization, or dissolution may be completed~~  
11579 ~~in accordance with the statute as if it had not been repealed.~~

11580 (2) If a penalty or punishment ~~imposed~~ for violation of a  
11581 statute or rule repealed by this act is reduced by this act, the  
11582 penalty or punishment, if not already imposed, shall be imposed  
11583 in accordance with this act.

11584 Section 230. Section 607.1908, Florida Statutes, is created  
11585 to read:

11586 607.1908 Severability clause.—If any provision of this  
11587 chapter or its application to any person or circumstance is held  
11588 invalid, the invalidity does not affect other provisions or  
11589 applications of this chapter which can be given effect without  
11590 the invalid provision or application, and to this end the  
11591 provisions of this chapter are severable.

11592 Section 231. Subsections (2) and (3) of section 607.504,  
11593 Florida Statutes, are amended to read:

11594 607.504 Election of social purpose corporation status.—

11595 (2) A plan of merger, domestication, conversion, or share  
11596 exchange must be adopted by the minimum status vote if an entity  
11597 that is not a social purpose corporation is a party to the  
11598 merger, domestication, or conversion or if the exchanging entity  
11599 in a share exchange and the surviving, new, or resulting entity  
11600 is, or will be, a social purpose corporation.

28-00272A-19

2019892\_\_

11601 (3) If an entity elects to become a social purpose  
11602 corporation by amendment of the articles of incorporation or by  
11603 a merger, conversion, or share exchange, the shareholders of the  
11604 entity are entitled to appraisal rights under and pursuant to  
11605 ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~.

11606 Section 232. Subsections (2) and (3) of section 607.604,  
11607 Florida Statutes, are amended to read:

11608 607.604 Election of benefit corporation status.—

11609 (2) A plan of merger, domestication, conversion, or share  
11610 exchange must be adopted by the minimum status vote if an entity  
11611 that is not a benefit corporation is a party to a merger,  
11612 domestication, or conversion or if the exchanging entity in a  
11613 share exchange and the surviving, new, or resulting entity is,  
11614 or will be, a benefit corporation.

11615 (3) If an entity elects to become a benefit corporation by  
11616 amendment of the articles of incorporation or by a merger,  
11617 domestication, conversion, or share exchange, the shareholders  
11618 of the entity are entitled to appraisal rights under and  
11619 pursuant to ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~.

11620 Section 233. Paragraph (b) of subsection (23) and  
11621 subsections (55) and (58) of section 605.0102, Florida Statutes,  
11622 are amended to read:

11623 605.0102 Definitions.—As used in this chapter, the term:

11624 (23)

11625 (b) "Entity" does not include:

11626 1. An individual;

11627 2. A trust with a predominantly donative purpose or a  
11628 charitable trust;

11629 3. An association or relationship that is not a partnership

28-00272A-19

2019892\_\_

11630 solely by reason of s. 620.8202(2) ~~s. 620.8202(3)~~ or a similar  
11631 provision of the law of another jurisdiction;

11632 4. A decedent's estate; or

11633 5. A government or a governmental subdivision, agency, or  
11634 instrumentality.

11635 (55) "Private organic rules" means the rules, whether or  
11636 not in a record, which govern the internal affairs of an entity,  
11637 are binding on all its interest holders, and are not part of its  
11638 public organic record, if any. Where private organic rules have  
11639 been amended or restated, the term means the private organic  
11640 rules as last amended or restated. The term includes:

11641 (a) The bylaws of a business corporation.

11642 (b) The bylaws of a nonprofit corporation.

11643 (c) The partnership agreement of a general partnership.

11644 (d) The partnership agreement of a limited partnership.

11645 (e) The operating agreement, limited liability company  
11646 agreement, or similar agreement of a limited liability company.

11647 (f) The bylaws, trust instrument, or similar rules of a  
11648 real estate investment trust.

11649 (g) The trust instrument of a statutory trust or similar  
11650 rules of a business trust or common law business trust.

11651 (58) "Public organic record" means a record, the filing of  
11652 which by a governmental body is required to form an entity, and  
11653 an amendment to or restatement of that record. Where a public  
11654 organic record has been amended or restated, the term means the  
11655 public organic record as last amended or restated. The term  
11656 includes the following:

11657 (a) The articles of incorporation of a business  
11658 corporation.



28-00272A-19

2019892\_\_

11659 (b) The articles of incorporation of a nonprofit  
11660 corporation.

11661 (c) The certificate of limited partnership of a limited  
11662 partnership.

11663 (d) The articles of organization of a limited liability  
11664 company.

11665 (e) The articles of incorporation of a general cooperative  
11666 association or a limited cooperative association.

11667 (f) The certificate of trust of a statutory trust or  
11668 similar record of a business trust.

11669 (g) The articles of incorporation of a real estate  
11670 investment trust.

11671 Section 234. Paragraph (i) of subsection (3) of section  
11672 605.0105, Florida Statutes, is amended to read:

11673 605.0105 Operating agreement; scope, function, and  
11674 limitations.—

11675 (3) An operating agreement may not do any of the following:

11676 (i) Vary the grounds for dissolution specified in s.  
11677 605.0702. Neither a deadlock resolution mechanism nor an  
11678 oppressive action sale varies the grounds for dissolution for  
11679 the purposes of this paragraph.

11680 Section 235. Paragraphs (a) and (b) of subsection (1) of  
11681 section 605.0112, Florida Statutes, are amended, and subsection  
11682 (6) is added to that section, to read:

11683 605.0112 Name.—

11684 (1) The name of a limited liability company:

11685 (a) Must contain the words "limited liability company" or  
11686 the abbreviation "L.L.C." or "LLC—" as will clearly indicate  
11687 that it is a limited liability company instead of a natural

28-00272A-19

2019892\_\_

11688 person, partnership, corporation, or other business entity.

11689 (b) Must be distinguishable in the records of the ~~Division~~  
11690 ~~of Corporations of the~~ department from the names of all other  
11691 entities or filings that are on file with the department  
11692 ~~division~~, except fictitious name registrations pursuant to s.  
11693 865.09, general partnership registrations pursuant to s.  
11694 620.8105, and limited liability partnership statements pursuant  
11695 to s. 620.9001 which are organized, registered, or reserved  
11696 under the laws of this state; however, a limited liability  
11697 company may register under a name that is not otherwise  
11698 distinguishable on the records of the department ~~division~~ with  
11699 the written consent of the other ~~owner~~ entity if the consent is  
11700 filed with the department ~~division~~ at the time of registration  
11701 of such name and if such name is not identical to the name of  
11702 the other entity. A name that is different from the name of  
11703 another entity or filing due to any of the following is not  
11704 considered distinguishable:

- 11705 1. A suffix.
- 11706 2. A definite or indefinite article.
- 11707 3. The word "and" and the symbol "&."
- 11708 4. The singular, plural, or possessive form of a word.
- 11709 5. ~~A recognized abbreviation of a root word.~~
- 11710 6. A punctuation mark or a symbol.

11711 (6) A limited liability company in existence before January  
11712 1, 2020, that has a name that does not clearly indicate that it  
11713 is a limited liability company instead of a natural person,  
11714 partnership, corporation, or other business entity may continue  
11715 using such name until the limited liability company dissolves or  
11716 amends its name in the records of the department.

28-00272A-19

2019892\_\_

11717 Section 236. Section 605.01125, Florida Statutes, is  
11718 created to read:

11719 605.01125 Reserved name.—

11720 (1) A person may reserve the exclusive use of the name of a  
11721 limited liability company, including an alternate name for a  
11722 foreign limited liability company whose name is not available,  
11723 by delivering an application to the department for filing. The  
11724 application must set forth the name and address of the applicant  
11725 and the name proposed to be reserved. If the department finds  
11726 that the name of the limited liability company applied for is  
11727 available, it must reserve the name for the applicant's  
11728 exclusive use for a nonrenewable 120-day period.

11729 (2) The owner of a reserved name of a limited liability  
11730 company may transfer the reservation to another person by  
11731 delivering to the department a signed notice of the transfer  
11732 that states the name and address of the transferee.

11733 (3) The department may revoke any reservation if, after a  
11734 hearing, it finds that the application therefor or any transfer  
11735 thereof was not made in good faith.

11736 Section 237. Subsections (1) and (5) of section 605.0113,  
11737 Florida Statutes, are amended, and subsection (6) is added to  
11738 that section, to read:

11739 605.0113 Registered agent.—

11740 (1) Each limited liability company and each foreign limited  
11741 liability company that has a certificate of authority under s.  
11742 605.0902 shall designate and continuously maintain in this  
11743 state:

11744 (a) A registered office, which may be the same as its place  
11745 of business in this state; and

28-00272A-19

2019892\_\_

- 11746 (b) A registered agent, who must be:
- 11747 1. An individual who resides in this state and whose
- 11748 business address is identical to the address of the registered
- 11749 office; ~~or~~
- 11750 2. Another domestic entity that is an authorized entity and
- 11751 whose business address is identical to the address of the
- 11752 registered office; or
- 11753 3. A foreign entity authorized to transact business in this
- 11754 state that is an authorized entity and ~~A foreign or domestic~~
- 11755 ~~entity authorized to transact business in this state~~ whose
- 11756 business address is identical to the address of the registered
- 11757 office.
- 11758 (5) A limited liability company and each foreign limited
- 11759 liability company that has a certificate of authority under s.
- 11760 605.0902 may not prosecute or maintain, ~~maintain, or defend~~ an
- 11761 action in a court in this state until the limited liability
- 11762 company complies with this section, pays to the department any
- 11763 amounts required under this chapter, and, to the extent ordered
- 11764 by a court of competent jurisdiction, ~~and~~ pays to the department
- 11765 a penalty of \$5 for each day it has failed to comply or \$500,
- 11766 whichever is less, and pays any other amounts required under
- 11767 this chapter.
- 11768 (6) For the purposes of this section, "authorized entity"
- 11769 means:
- 11770 (a) A corporation for profit.
- 11771 (b) A limited liability company.
- 11772 (c) A limited liability partnership.
- 11773 (d) A limited partnership, including a limited liability
- 11774 limited partnership.

28-00272A-19

2019892\_\_

11775 Section 238. Paragraphs (c), (d), and (e) of subsection (1)  
11776 of section 605.0114, Florida Statutes, are amended to read:

11777 605.0114 Change of registered agent or registered office.—

11778 (1) In order to change its registered agent or registered  
11779 office address, a limited liability company or a foreign limited  
11780 liability company may deliver to the department for filing a  
11781 statement of change containing the following:

11782 (c) If the current registered agent is to be changed, the  
11783 name of the new registered agent.

11784 (d) The street address of its current registered office for  
11785 its current registered agent.

11786 (e) If the street address of the current registered office  
11787 is to be changed, the new street address of the registered  
11788 office in this state.

11789 Section 239. Subsection (2) of section 605.0115, Florida  
11790 Statutes, is amended to read:

11791 605.0115 Resignation of registered agent.—

11792 (2) After delivering the statement of resignation to ~~with~~  
11793 the department for filing, the registered agent must promptly  
11794 ~~shall~~ mail a copy to the limited liability company's or foreign  
11795 limited liability company's current mailing address.

11796 Section 240. Paragraphs (b) through (e) of subsection (1)  
11797 of section 605.0116, Florida Statutes, are amended to read:

11798 605.0116 Change of name or address by registered agent.—

11799 (1) If a registered agent changes his or her name or  
11800 address, the agent may deliver to the department for filing a  
11801 statement of change that provides the following:

11802 (b) The name of the registered agent as currently shown in  
11803 the records of the department for the limited liability company

28-00272A-19

2019892\_\_

11804 or foreign limited liability company.

11805 (c) If the name of the registered agent has changed, its  
11806 new name.

11807 (d) If the address of the registered agent has changed, the  
11808 new address.

11809 (e) A statement that the registered agent has given the  
11810 notice required under subsection (2).

11811 Section 241. Present subsection (7) of section 605.0117,  
11812 Florida Statutes, is redesignated as subsection (8), subsections  
11813 (1), (2), (3), (4), and (6) of that section are amended, and a  
11814 new subsection (7) is added to that section, to read:

11815 605.0117 Service of process, notice, or demand.—

11816 (1) A limited liability company or registered foreign  
11817 limited liability company may be served with process, ~~notice, or~~  
11818 ~~a demand~~ required or authorized by law by serving on its  
11819 registered agent.

11820 (2) If a limited liability company or registered foreign  
11821 limited liability company ceases to have a registered agent or  
11822 if its registered agent cannot with reasonable diligence be  
11823 served, the process, ~~notice, or demand~~ required or permitted by  
11824 law may instead be served:

11825 (a) On a member of a member-managed limited liability  
11826 company or registered foreign limited liability company; or

11827 (b) On a manager of a manager-managed limited liability  
11828 company or registered foreign limited liability company.

11829 (3) If the process, ~~notice, or demand~~ cannot be served on a  
11830 limited liability company or registered foreign limited  
11831 liability company pursuant to subsection (1) or subsection (2),  
11832 the process, ~~notice, or demand~~ may be served on the secretary of

28-00272A-19

2019892\_\_

11833 ~~state department~~ as an agent of the company.

11834 (4) Service of process on the secretary of state ~~with~~  
11835 ~~process, notice, or a demand on the department~~ may be made by  
11836 delivering to and leaving with the department duplicate copies  
11837 of the process, ~~notice, or demand~~.

11838 (6) The department shall keep a record of each process, ~~notice,~~  
11839 ~~and demand~~ served pursuant to this section and record  
11840 the time of and the action taken regarding the service.

11841 (7) Any notice or demand on a limited liability company or  
11842 registered foreign limited liability company under this chapter  
11843 may be given or made to any member of a member-managed limited  
11844 liability company or registered foreign limited liability  
11845 company or to any manager of a manager-managed limited liability  
11846 company or registered foreign limited liability company; to the  
11847 registered agent of the limited liability company or registered  
11848 foreign limited liability company at the registered office of  
11849 the limited liability company or registered foreign limited  
11850 liability company in this state; or to any other address in this  
11851 state that is in fact the principal office of the limited  
11852 liability company or registered foreign limited liability  
11853 company in this state.

11854 Section 242. Subsection (3) of section 605.0118, Florida  
11855 Statutes, is amended to read:

11856 605.0118 Delivery of record.—

11857 (3) If a check is mailed to the department for payment of  
11858 an annual report fee or the annual supplemental fee required  
11859 under s. 607.193, the check shall be deemed to have been  
11860 received by the department as of the postmark date appearing on  
11861 the envelope or package transmitting the check if the envelope

28-00272A-19

2019892\_\_

11862 or package is received by the department.

11863 Section 243. Section 605.0207, Florida Statutes, is amended  
11864 to read:

11865 605.0207 Effective date and time.—Except as otherwise  
11866 provided in s. 605.0208, and subject to s. 605.0209(3), any  
11867 document delivered to the department for filing under this  
11868 chapter may specify an effective time and a delayed effective  
11869 date. In the case of initial articles of organization, a prior  
11870 effective date may be specified in the articles of organization  
11871 if such date is within 5 business days before the date of  
11872 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and  
11873 605.0209, a record filed by the department is effective:

11874 (1) If the record filed does not specify an effective time  
11875 and does not specify a prior or a delayed effective date, on the  
11876 date and at the time the record is accepted filed as evidenced  
11877 by the department's endorsement of the date and time on the  
11878 filing record.

11879 (2) If the record filed specifies an effective time, but  
11880 not a prior or delayed effective date, on the date the record is  
11881 filed at the time specified in the filing record.

11882 (3) If the record filed specifies a delayed effective date,  
11883 but not an effective time, at 12:01 a.m. on the earlier of:

11884 (a) The specified date; or

11885 (b) The 90th day after the record is filed.

11886 (4) If the record filed specifies a delayed effective date  
11887 and an effective time, at the specified time on or the earlier  
11888 of:

11889 (a) The specified date; or

11890 (b) The 90th day after the record is filed.



28-00272A-19

2019892\_\_

11891        (5)~~(4)~~ If the record filed is the initial articles of  
11892 organization and specifies an effective a date before the  
11893 effective date of the filing, but no effective time, at 12:01  
11894 a.m. on the later of:

11895            (a) The specified date; or

11896            (b) The 5th business day before the record is filed.

11897        (6)~~(5)~~ If the record filed is the initial articles of  
11898 organization and specifies an effective time and an effective a  
11899 delayed effective date, at the specified time on the earlier of:

11900            ~~(a) The specified date; or~~

11901            ~~(b) The 90th day after the record is filed.~~

11902        ~~(6) If the record specifies an effective time and a prior~~  
11903 effective date before the date of the filing, at the specified  
11904 time on the later of:

11905            (a) The specified date; or

11906            (b) The 5th business day before the record is filed.

11907        (7) If a filed document does not specify the time zone or  
11908 place at which the date or time, or both, is to be determined,  
11909 the date or time, or both, at which it becomes effective shall  
11910 be those prevailing at the place of filing in this state.

11911        Section 244. Subsection (3) of section 605.0209, Florida  
11912 Statutes, is amended to read:

11913        605.0209 Correcting filed record.—

11914        (3) A statement of correction:

11915            (a) May not state a delayed effective date;

11916            (b) Must be signed by the person correcting the filed  
11917 record;

11918            (c) Must identify the filed record to be corrected,  
11919 including such record's filing date, or attach a copy of the

28-00272A-19

2019892\_\_

11920 record to the statement of correction;  
 11921 (d) Must specify the inaccuracy or defect to be corrected;  
 11922 and  
 11923 (e) Must correct the inaccuracy or defect.  
 11924 Section 245. Subsection (7) of section 605.0210, Florida  
 11925 Statutes, is amended to read:  
 11926 605.0210 Duty of department to file; review of refusal to  
 11927 file; transmission of information by department.-  
 11928 (7) If the department refuses to file a record delivered to  
 11929 its office for filing, the person who submitted the record for  
 11930 filing may petition the Circuit Court of Leon County to compel  
 11931 filing of the record. The record and the explanation from ~~of~~ the  
 11932 department of the refusal to file must be attached to the  
 11933 petition. The court may decide the matter in a summary  
 11934 proceeding and the court may summarily order the department to  
 11935 file the record or take other action the court considers  
 11936 appropriate. The court's final decision may be appealed as in  
 11937 other civil proceedings.  
 11938 Section 246. Paragraph (a) of subsection (2) and subsection  
 11939 (3) of section 605.0211, Florida Statutes, are amended to read:  
 11940 605.0211 Certificate of status.-  
 11941 (2) The department, upon request and payment of the  
 11942 requisite fee, shall furnish a certificate of status for a  
 11943 foreign limited liability company if the records filed show that  
 11944 the department has filed a certificate of authority. A  
 11945 certificate of status for a foreign limited liability company  
 11946 must state the following:  
 11947 (a) The foreign limited liability company's name and any ~~a~~  
 11948 current alternate name adopted under s. 605.0906(1) for use in

28-00272A-19

2019892\_\_

11949 this state.

11950 (3) Subject to any qualification stated in the certificate  
11951 of status, a certificate of status issued by the department is  
11952 conclusive evidence that the domestic limited liability company  
11953 is in existence and is of active status in this state or the  
11954 foreign limited liability company is authorized to transact  
11955 business in this state and is of active status in this state.

11956 Section 247. Section 605.0215, Florida Statutes, is amended  
11957 to read:

11958 605.0215 Certificates to be received in evidence and  
11959 evidentiary effect of copy of filed document.—All certificates  
11960 issued by the department in accordance with this chapter shall  
11961 be taken and received in all courts, public offices, and  
11962 official bodies as prima facie evidence of the facts stated. A  
11963 certificate from the department delivered with a copy of a  
11964 document filed by the department bearing the signature of the  
11965 secretary of state, which may be in facsimile, and the seal of  
11966 this state is conclusive evidence that the original document is  
11967 on file with the department.

11968 Section 248. Subsections (1) through (4) of section  
11969 605.04092, Florida Statutes, are amended to read:

11970 605.04092 Conflict of interest transactions.—

11971 (1) As used in this section, the following terms and  
11972 definitions apply:

11973 (a) A member or manager is "indirectly" a party to a  
11974 transaction if that member or manager has a material financial  
11975 interest in or is a director, officer, member, manager, or  
11976 partner of a person, other than the limited liability company,  
11977 who is a party to the transaction.

28-00272A-19

2019892\_\_

11978 (b) A member or manager has an "indirect material financial  
11979 interest" if a ~~spouse or other~~ family member has a material  
11980 financial interest in the transaction, other than having an  
11981 indirect interest as a member or manager of the limited  
11982 liability company, or if the transaction is with an entity,  
11983 other than the limited liability company, which has a material  
11984 financial interest in the transaction and controls, or is  
11985 controlled by, the member or manager or another person specified  
11986 in this subsection.

11987 (c) "Fair to the limited liability company" means that the  
11988 transaction, as a whole, is beneficial to the limited liability  
11989 company and its members, taking into appropriate account whether  
11990 it is:

11991 1. Fair in terms of the member's or manager's dealings with  
11992 the limited liability company in connection with that  
11993 transaction; and

11994 2. Comparable to what might have been obtainable in an  
11995 arm's length transaction.

11996 (d) "Family member" includes any of the following:

11997 1. The member's or manager's spouse.

11998 2. A child, stepchild, parent, stepparent, grandparent,  
11999 sibling, step sibling, or half sibling of the member or manager  
12000 or the member's or manager's spouse.

12001 (e) "Manager's conflict of interest transaction" means a  
12002 transaction between a limited liability company and one or more  
12003 of its managers, or another entity in which one or more of the  
12004 limited liability company's managers is directly or indirectly a  
12005 party to the transaction, other than being an indirect party as  
12006 a result of being a member of the limited liability company, and

28-00272A-19

2019892\_\_

12007 has a direct or indirect material financial interest or other  
12008 material interest.

12009 (f) "Material financial interest" or "other material  
12010 interest" means a financial or other interest in the transaction  
12011 that would reasonably be expected to impair the objectivity of  
12012 the judgment of the member or manager when participating in the  
12013 action on the authorization of the transaction.

12014 (g) "Member's conflict of interest transaction" means a  
12015 transaction between a limited liability company and one or more  
12016 of its members, or another entity in which one or more of the  
12017 limited liability company's members is directly or indirectly a  
12018 party to the transaction, other than being an indirect party as  
12019 a result of being a member of the limited liability company, and  
12020 has a direct or indirect material financial interest or other  
12021 material interest.

12022 (2) If the requirements of this section have been  
12023 satisfied, a member's conflict of interest transaction or a  
12024 manager's conflict of interest transaction between a limited  
12025 liability company and one or more of its members or managers, or  
12026 another entity in which one or more of the limited liability  
12027 company's members or managers have a financial or other  
12028 interest, is not void or voidable because of that relationship  
12029 or interest; because the members or managers are present at the  
12030 meeting of the members or managers at which the transaction was  
12031 authorized, approved, effectuated, or ratified; or because the  
12032 votes of the members or managers are counted for such purpose.

12033 (3) If a member's conflict of interest transaction or a  
12034 manager's conflict of interest transaction is fair to the  
12035 limited liability company at the time it is authorized,

28-00272A-19

2019892\_\_

12036 approved, effectuated, or ratified, the fact that a member or  
12037 manager of the limited liability company is directly or  
12038 indirectly a party to the transaction, other than being an  
12039 indirect party as a result of being a member or manager of the  
12040 limited liability company, or has a direct or indirect material  
12041 financial interest or other interest in the transaction, other  
12042 than having an indirect interest as a result of being a member  
12043 or manager of the limited liability company, is not grounds for  
12044 equitable relief and does not give rise to an award of damages  
12045 or other sanctions.

12046 (4) (a) In a proceeding challenging the validity of a  
12047 member's conflict of interest transaction or a manager's  
12048 conflict of interest transaction or in a proceeding seeking  
12049 equitable relief, award of damages, or other sanctions with  
12050 respect to a member's conflict of interest transaction or a  
12051 manager's conflict of interest transaction, ~~described in~~  
12052 ~~subsection (3),~~ the person challenging the validity or seeking  
12053 equitable relief, award of damages, or other sanctions has the  
12054 burden of proving the lack of fairness of the transaction if:

12055 1. In a manager-managed limited liability company, the  
12056 material facts of the transaction and the member's or manager's  
12057 interest in the transaction were disclosed or known to the  
12058 managers or a committee of managers who voted upon the  
12059 transaction and the transaction was authorized, approved, or  
12060 ratified by a majority of the disinterested managers even if the  
12061 disinterested managers constitute less than a quorum; however,  
12062 the transaction cannot be authorized, approved, or ratified  
12063 under this subsection solely by a single manager; and

12064 2. In a member-managed limited liability company, or a

28-00272A-19

2019892\_\_

12065 manager-managed limited liability company in which the managers  
 12066 have failed to or cannot act under subparagraph 1., the material  
 12067 facts of the transaction and the member's or manager's interest  
 12068 in the transaction were disclosed or known to the members who  
 12069 voted upon such transaction and the transaction was authorized,  
 12070 approved, or ratified by a majority-in-interest of the  
 12071 disinterested members even if the disinterested members  
 12072 constitute less than a quorum; however, the transaction cannot  
 12073 be authorized, approved, or ratified under this subsection  
 12074 solely by a single member; or

12075 (b) If neither of the conditions provided in paragraph (a)  
 12076 has been satisfied, the person defending or asserting the  
 12077 validity of a member's conflict of interest transaction or a  
 12078 manager's conflict of interest transaction ~~described in~~  
 12079 ~~subsection (3)~~ has the burden of proving its fairness in a  
 12080 proceeding challenging the validity of the transaction.

12081 Section 249. Paragraph (c) of subsection (3) of section  
 12082 605.0410, Florida Statutes, is amended to read:

12083 605.0410 Records to be kept; rights of member, manager, and  
 12084 person dissociated to information.—

12085 (3) In a manager-managed limited liability company, the  
 12086 following rules apply:

12087 (c) Within 10 days after receiving a demand pursuant to  
 12088 subparagraph (b)2. ~~(2)(b)2.~~, the company shall, in a record,  
 12089 inform the member who made the demand of:

12090 1. The information that the company will provide in  
 12091 response to the demand and when and where the company will  
 12092 provide the information; and

12093 2. The company's reasons for declining, if the company

28-00272A-19

2019892\_\_

12094 declines to provide any demanded information.

12095 Section 250. Paragraph (b) of subsection (1) and subsection  
12096 (2) of section 605.0702, Florida Statutes, are amended, and  
12097 subsections (3), (4), and (5) are added to that section, to  
12098 read:

12099 605.0702 Grounds for judicial dissolution.—

12100 (1) A circuit court may dissolve a limited liability  
12101 company:

12102 (b) In a proceeding by a manager or member to dissolve the  
12103 limited liability company if it is established that:

12104 1. The conduct of all or substantially all of the company's  
12105 activities and affairs is unlawful;

12106 2. It is not reasonably practicable to carry on the  
12107 company's activities and affairs in conformity with the articles  
12108 of organization and the operating agreement;

12109 3. The managers or members in control of the company have  
12110 acted, are acting, or will ~~are reasonably expected to~~ act in a  
12111 manner that is illegal, oppressive, or fraudulent;

12112 4. The limited liability company's assets are being  
12113 misappropriated or wasted, causing injury to the limited  
12114 liability company, or in a proceeding by a member, causing  
12115 injury to one or more of its members; or

12116 5. The managers or the members of the limited liability  
12117 company are deadlocked in the management of the limited  
12118 liability company's activities and affairs, the members are  
12119 unable to break the deadlock, and irreparable injury to the  
12120 limited liability company is threatened or being suffered.

12121 (2) (a) If the managers or the members of the limited  
12122 liability company are deadlocked in the management of the



28-00272A-19

2019892\_\_

12123 limited liability company's activities and affairs, the members  
12124 are unable to break the deadlock, and irreparable injury to the  
12125 limited liability company is threatened or being suffered, if  
12126 the operating agreement contains a deadlock sale provision that  
12127 has been initiated before the time that the court determines  
12128 that the grounds for judicial dissolution exist under  
12129 subparagraph (1)(b)5., then such deadlock sale provision applies  
12130 to the resolution of such deadlock instead of the court entering  
12131 an order of judicial dissolution or an order directing the  
12132 purchase of petitioner's interest under s. 605.0706, so long as  
12133 the provisions of such deadlock sale provision are thereafter  
12134 initiated and effectuated in accordance with the terms of such  
12135 deadlock sale provision or otherwise pursuant to an agreement of  
12136 the members of the company.

12137 (b) As used in this section, the term "deadlock sale  
12138 provision" means a provision in an operating agreement which is  
12139 or may be applicable in the event of a deadlock among the  
12140 managers or the members of the limited liability company which  
12141 the members of the company are unable to break and which  
12142 provides for a deadlock breaking mechanism, including, but not  
12143 limited to:

- 12144 1. A redemption or a purchase and sale of interests; ~~or~~
- 12145 2. A governance change, among or between members;
- 12146 3. The sale of the company or all or substantially all of  
12147 the assets of the company; or
- 12148 4. A similar provision that, if initiated and effectuated,  
12149 breaks the deadlock by causing the transfer of interests, a  
12150 governance change, or the sale of all or substantially all of  
12151 the company's assets. ~~A deadlock sale provision in an operating~~

28-00272A-19

2019892\_\_

12152 ~~agreement which is not initiated and effectuated before the~~  
12153 ~~court enters an order of judicial dissolution under subparagraph~~  
12154 ~~(1)(b)5. or an order directing the purchase of petitioner's~~  
12155 ~~interest under s. 605.0706 does not adversely affect the rights~~  
12156 ~~of members and managers to seek judicial dissolution under~~  
12157 ~~subparagraph (1)(b)5. or the rights of the company or one or~~  
12158 ~~more members to purchase the petitioner's interest under s.~~  
12159 ~~605.0706. The filing of an action for judicial dissolution on~~  
12160 ~~the grounds described in subparagraph (1)(b)5. or an election to~~  
12161 ~~purchase the petitioner's interest under s. 605.0706 does not~~  
12162 ~~adversely affect the right of a member to initiate an available~~  
12163 ~~deadlock sale provision under the operating agreement or to~~  
12164 ~~enforce a member-initiated or an automatically-initiated~~  
12165 ~~deadlock sale provision if the deadlock sale provision is~~  
12166 ~~initiated and effectuated before the court enters an order of~~  
12167 ~~judicial dissolution under subparagraph (1)(b)5. or an order~~  
12168 ~~directing the purchase of petitioner's interest under s.~~  
12169 ~~605.0706.~~

12170 (3) A proceeding by a member under subparagraph (1)(b)3.  
12171 asserting that the members or managers in control of the limited  
12172 liability company have acted, are acting, or will act in a  
12173 manner that is oppressive may only be brought by a member who,  
12174 at the time that such proceeding is commenced, owns at least 10  
12175 percent of the outstanding membership interests of the limited  
12176 liability company.

12177 (4) (a) In the event of oppressive action that satisfies  
12178 subparagraph (1)(b)3., if the members are subject to an  
12179 operating agreement that contains an oppressive action sale  
12180 provision, then such oppressive action sale provision shall

28-00272A-19

2019892\_\_

12181 address such member asserted oppressive action in lieu of the  
12182 court entering an order of judicial dissolution or an order  
12183 directing the purchase of petitioner's interest under s.  
12184 605.0706, so long as the provisions of such oppressive action  
12185 sale provision are initiated and effectuated within the time  
12186 periods specified for the company to act under s. 605.0706 and  
12187 in accordance with the terms of such oppressive action sale  
12188 provision.

12189 (b) For the purposes of this section, the term "oppressive  
12190 action sale provision" means a provision in an operating  
12191 agreement that is or may be applicable in the event of a  
12192 member's assertion of the occurrence or existence of oppressive  
12193 action which neither the members nor the managers, as  
12194 applicable, of the company are able to address and which  
12195 provides for a mechanism for addressing the occurrence or  
12196 existence of such member asserted oppressive action including,  
12197 but not limited to:

12198 1. A redemption or purchase and sale of interests;  
12199 2. The sale of the company or of all or substantially all  
12200 of the assets of the company; or  
12201 3. A similar provision that, if initiated and effectuated,  
12202 causes the transfer of interests to be redeemed or purchased and  
12203 sold or the sale of the company or of all or substantially all  
12204 of the company's assets.

12205 (5) A deadlock sale provision or an oppressive action sale  
12206 provision in an operating agreement which is not initiated and  
12207 effectuated before the court enters an order of judicial  
12208 dissolution under subparagraph (1) (b)3. or subparagraph  
12209 (1) (b)5., as the case may be, or an order directing the purchase

28-00272A-19

2019892\_\_

12210 of petitioner's interest under s. 605.0706, does not adversely  
12211 affect the rights of members and managers to seek judicial  
12212 dissolution under subparagraph (1)(b)3. or subparagraph  
12213 (1)(b)5., as the case may be, or the rights of the company or  
12214 one or more members to purchase the petitioner's interest under  
12215 s. 605.0706. The filing of an action for judicial dissolution on  
12216 the grounds described in subparagraph (1)(b)3. or subparagraph  
12217 (1)(b)5., as the case may be, or an election to purchase the  
12218 petitioner's interest under s. 605.0706, does not adversely  
12219 affect the right of a member to initiate an available deadlock  
12220 sale provision or an oppressive action sale provision under the  
12221 operating agreement or to enforce a member-initiated or an  
12222 automatically-initiated deadlock sale provision or oppressive  
12223 action sale provision if the deadlock sale provision or the  
12224 oppressive sale provision, as the case may be, is initiated and  
12225 effectuated before the court enters an order of judicial  
12226 dissolution under subparagraph (1)(b)3. or subparagraph  
12227 (1)(b)5., as the case may be, or an order directing the purchase  
12228 of petitioner's interest under s. 605.0706.

12229 Section 251. Subsections (1), (2), (4), (5), (6), (7), and  
12230 (8) of section 605.0706, Florida Statutes, are amended to read:

12231 605.0706 Election to purchase instead of dissolution.—

12232 (1) In a proceeding initiated by a member of a limited  
12233 liability company under s. 605.0702(1)(b) ~~to dissolve the~~  
12234 ~~company~~, the company may elect, or, if it fails to elect, one or  
12235 more other members may elect, to purchase the entire interest of  
12236 the petitioner in the company at the fair value of the interest.  
12237 An election pursuant to this section is irrevocable unless the  
12238 court determines that it is equitable to set aside or modify the

28-00272A-19

2019892\_\_

12239 election.

12240 (2) An election to purchase pursuant to this section may be  
12241 filed with the court within 90 days after the filing of the  
12242 petition by the petitioning member under s. 605.0702(1)(b) ~~or~~  
12243 ~~(2)~~ or at such later time as the court may allow. If the  
12244 election to purchase is filed, the company shall within 10 days  
12245 thereafter give written notice to all members, other than the  
12246 petitioning member. The notice must describe the interest in the  
12247 company owned by each petitioning member and must advise the  
12248 recipients of their right to join in the election to purchase  
12249 the petitioning member's interest in accordance with this  
12250 section. Members who wish to participate must file notice of  
12251 their intention to join in the purchase within 30 days after the  
12252 effective date of the notice. A member who has filed an election  
12253 or notice of the intent to participate in the election to  
12254 purchase thereby becomes a party to the proceeding and shall  
12255 participate in the purchase in proportion to the ownership  
12256 interest as of the date the first election was filed unless the  
12257 members otherwise agree or the court otherwise directs. After an  
12258 election to purchase has been filed by the limited liability  
12259 company or one or more members, the proceeding under s.  
12260 605.0702(1)(b) ~~or (2)~~ may not be discontinued or settled, and  
12261 the petitioning member may not sell or otherwise dispose of the  
12262 interest of the petitioner in the company unless the court  
12263 determines that it would be equitable to the company and the  
12264 members, other than the petitioner, to authorize such  
12265 discontinuance, settlement, sale, or other disposition or the  
12266 sale is pursuant to a deadlock sale provision described in s.  
12267 605.0702(1)(b).

28-00272A-19

2019892\_\_

12268 (4) If the parties are unable to reach an agreement as  
12269 provided for in subsection (3), the court, upon application of a  
12270 party, may ~~shall~~ stay the proceedings to dissolve under s.  
12271 605.0702(1)(b) and shall, whether or not the proceeding is  
12272 stayed, determine the fair value of the petitioner's interest as  
12273 of the day before the date on which the petition was filed or as  
12274 of such other date as the court deems appropriate under the  
12275 circumstances.

12276 (5) Upon determining the fair value of the petitioner's  
12277 interest in the company, unless the petitioner's interest has  
12278 been acquired pursuant to a deadlock sale provision before the  
12279 order, the court shall enter an order directing the purchase  
12280 upon such terms and conditions as the court deems appropriate,  
12281 which may include: payment of the purchase price in  
12282 installments, when necessary in the interests of equity; a  
12283 provision for security to ensure payment of the purchase price  
12284 and additional costs, fees, and expenses as may have been  
12285 awarded; and, if the interest is to be purchased by members, the  
12286 allocation of the interest among those members. In allocating  
12287 the petitioner's interest among holders of different classes or  
12288 series of interests in the company, the court shall attempt to  
12289 preserve any ~~the~~ existing distribution of voting rights among  
12290 holders of different classes or series insofar as practicable  
12291 and may direct that holders of any a specific class or classes  
12292 or series may not participate in the purchase. Interest may be  
12293 allowed at the rate and from the date determined by the court to  
12294 be equitable; however, if the court finds that the refusal of  
12295 the petitioning member to accept an offer of payment was  
12296 arbitrary or otherwise not in good faith, payment of interest is

28-00272A-19

2019892\_\_

12297 not allowed. If the court finds that the petitioning member had  
12298 probable grounds for relief under s. 605.0702(1)(b) ~~s.~~  
12299 ~~605.0702(1)(b)3. or 4.~~, it may award expenses to the petitioning  
12300 member, including reasonable fees and expenses of counsel and of  
12301 experts employed by petitioner.

12302 (6) The ~~Upon~~ entry of an order under subsection (3) or  
12303 subsection (5) shall be subject to subsection (8), and the order  
12304 may not be entered unless the award is determined by the court  
12305 to be allowed under subsection (8). In determining compliance  
12306 with s. 605.0405, the court may rely on an affidavit from the  
12307 limited liability company as to compliance with that section as  
12308 of the measurement date. Upon entry of an order under subsection  
12309 (3) or subsection (5), the court shall dismiss the petition to  
12310 dissolve the limited liability company under s. 605.0702(1)(b),  
12311 and the petitioning member shall no longer have rights or status  
12312 as a member of the limited liability company except the right to  
12313 receive the amounts awarded by the order of the court, which  
12314 shall be enforceable in the same manner as any other judgment.

12315 (7) The purchase ordered pursuant to subsection (5) shall  
12316 ~~must~~ be made within 10 days after the date the order becomes  
12317 final ~~unless, before that time, the limited liability company~~  
12318 ~~files with the court a notice of its intention to dissolve~~  
12319 ~~pursuant to s. 605.0701(2), in which case articles of~~  
12320 ~~dissolution for the company must be filed within 50 days~~  
12321 ~~thereafter. Upon filing of such articles of dissolution, the~~  
12322 ~~limited liability company shall be wound up in accordance with~~  
12323 ~~ss. 605.0709-605.0713, and the order entered pursuant to~~  
12324 ~~subsection (5) shall no longer be of force or effect except that~~  
12325 ~~the court may award the petitioning member reasonable fees and~~

28-00272A-19

2019892\_\_

12326 ~~expenses of counsel and experts in accordance with subsection~~  
12327 ~~(5), and the petitioner may continue to pursue any claims~~  
12328 ~~previously asserted on behalf of the limited liability company.~~

12329 (8) Any award ~~A payment by the limited liability company~~  
12330 pursuant to an order under subsection (3) or subsection (5),  
12331 other than an award of fees and expenses pursuant to subsection  
12332 (5), is subject to s. 605.0405. Unless otherwise provided in the  
12333 court's order, the effect of a distribution under s. 605.0405  
12334 shall be measured as of the date of the court's order under  
12335 subsection (3) or subsection (5).

12336 Section 252. Subsection (5) of section 605.0715, Florida  
12337 Statutes, is amended, and subsection (6) is added to that  
12338 section, to read:

12339 605.0715 Reinstatement.—

12340 (5) The name of the dissolved limited liability company is  
12341 not available for assumption or use by another business entity  
12342 until 1 year after the effective date of dissolution unless the  
12343 dissolved limited liability company provides the department with  
12344 a record executed as required pursuant to s. 605.0203 permitting  
12345 the immediate assumption or use of the name by another business  
12346 entity ~~limited liability company~~.

12347 (6) If the name of the dissolved limited liability company  
12348 has been lawfully assumed in this state by another business  
12349 entity, the department shall require the dissolved limited  
12350 liability company to amend its articles of incorporation to  
12351 change its name before accepting the application for  
12352 reinstatement.

12353 Section 253. Subsections (2) and (3) of section 605.0716,  
12354 Florida Statutes, are amended, and subsection (4) is added to



28-00272A-19

2019892\_\_

12355 that section, to read:

12356 605.0716 Judicial review of denial of reinstatement.—

12357 (2) Within 30 days after service of a notice of denial of  
 12358 reinstatement, a limited liability company may appeal the denial  
 12359 by petitioning the Circuit Court of Leon County ~~in the~~  
 12360 ~~applicable county, as defined in s. 605.0711(15),~~ to set aside  
 12361 the dissolution. The petition must be served on the department  
 12362 and contain a copy of the department’s notice of administrative  
 12363 dissolution, the company’s application for reinstatement, and  
 12364 the department’s notice of denial.

12365 (3) The circuit court may order the department to reinstate  
 12366 a dissolved limited liability company or take other action the  
 12367 court considers appropriate.

12368 (4) The circuit court’s final decision may be appealed as  
 12369 in other civil proceedings.

12370 Section 254. Section 605.0803, Florida Statutes, is amended  
 12371 to read:

12372 605.0803 Proper plaintiff.—A derivative action to enforce a  
 12373 right of a limited liability company may be commenced ~~maintained~~  
 12374 only by a person who is a member at the time the action is  
 12375 commenced and:

12376 (1) Was a member when the conduct giving rise to the action  
 12377 occurred; or

12378 (2) Whose status as a member devolved on the person by  
 12379 operation of law or pursuant to the terms of the operating  
 12380 agreement from a person who was a member when ~~at the time of~~ the  
 12381 conduct giving rise to the action occurred.

12382 Section 255. Subsection (2) of section 605.0903, Florida  
 12383 Statutes, is amended to read:

28-00272A-19

2019892\_\_

12384 605.0903 Effect of a certificate of authority.—  
 12385 (2) The filing by the department of an application for a  
 12386 certificate of authority means ~~authorizes~~ the foreign limited  
 12387 liability company that filed ~~files~~ the application to transact  
 12388 business in this state has obtained a certificate of authority  
 12389 to transact business in this state and is authorized to transact  
 12390 business in this state, subject, however, to the right of the  
 12391 department to suspend or revoke the certificate of authority as  
 12392 provided in this chapter.

12393 Section 256. Subsections (3) and (4) of section 605.0904,  
 12394 Florida Statutes, are amended to read:

12395 605.0904 Effect of failure to have certificate of  
 12396 authority.—

12397 (3) A court may stay a proceeding commenced by a foreign  
 12398 limited liability company or its successor or assignee until it  
 12399 determines whether the foreign limited liability company or its  
 12400 successor requires a certificate of authority. If it so  
 12401 determines, the court may further stay the proceeding until the  
 12402 foreign limited liability company or its successor has obtained  
 12403 a ~~obtains~~ the certificate of authority to transact business in  
 12404 this state.

12405 (4) The failure of a foreign limited liability company to  
 12406 have a certificate of authority to transact business in this  
 12407 state does not impair the validity of any contract, deed,  
 12408 mortgage, security interest, ~~a contract~~ or act of the foreign  
 12409 limited liability company or prevent the foreign limited  
 12410 liability company from defending an action or proceeding in this  
 12411 state.

12412 Section 257. Subsections (1) and (4) of section 605.0906,

28-00272A-19

2019892\_\_

12413 Florida Statutes, are amended to read:

12414       605.0906 Noncomplying name of foreign limited liability  
12415 company.—

12416       (1) A foreign limited liability company whose name is  
12417 unavailable under or whose name does not otherwise comply with  
12418 s. 605.0112 shall ~~may~~ use an alternate name that complies with  
12419 s. 605.0112 to transact business in this state. An alternate  
12420 name adopted for use in this state shall be cross-referenced to  
12421 the actual name of the foreign limited liability company in the  
12422 records of the department. If the actual name of the foreign  
12423 limited liability company subsequently becomes available in this  
12424 state or the foreign limited liability company chooses to change  
12425 its alternate name, a copy of the record approving the change by  
12426 its members, managers, or other persons having the authority to  
12427 do so, and executed as required pursuant to s. 605.0203, shall  
12428 be delivered to the department for filing.

12429       (4) If a foreign limited liability company authorized to  
12430 transact business in this state changes its name to one that  
12431 does not comply with s. 605.0112, it may not thereafter transact  
12432 business in this state until it complies with subsection (1) and  
12433 obtains an amended certificate of authority pursuant to s.  
12434 605.0907.

12435       Section 258. Paragraph (d) of subsection (1) and  
12436 subsections (2) and (4) of section 605.0907, Florida Statutes,  
12437 are amended to read:

12438       605.0907 Amendment to certificate of authority.—

12439       (1) A foreign limited liability company authorized to  
12440 transact business in this state shall deliver for filing an  
12441 amendment to its certificate of authority to reflect the change

28-00272A-19

2019892\_\_

12442 of any of the following:

12443 ~~(d) Any person identified in accordance with s.~~  
12444 ~~605.0902(1)(c), or a change in the title or capacity or address~~  
12445 ~~of that person.~~

12446 (2) The amendment must be filed within 90 ~~30~~ days after the  
12447 occurrence of a change described in subsection (1), must be  
12448 signed by an authorized representative of the foreign limited  
12449 liability company, and must state the following:

12450 (a) The name of the foreign limited liability company as it  
12451 appears on the records of the department.

12452 (b) Its jurisdiction of formation.

12453 (c) The date the foreign limited liability company was  
12454 authorized to transact business in this state.

12455 (d) If the name of the foreign limited liability company  
12456 has been changed, the name relinquished and its new name.

12457 (e) If the amendment changes the jurisdiction of formation  
12458 of the foreign limited liability company, a statement of that  
12459 change.

12460 (4) The requirements of s. 605.0902 ~~s. 605.0902(2)~~ for  
12461 obtaining an original certificate of authority apply to  
12462 obtaining an amended certificate under this section unless the  
12463 ~~Secretary of State or other~~ official having custody of the  
12464 foreign limited liability company's publicly filed records in  
12465 its jurisdiction of formation did not require an amendment to  
12466 effectuate the change on its records.

12467 Section 259. Subsection (1) of section 605.0908, Florida  
12468 Statutes, is amended to read:

12469 605.0908 Revocation of certificate of authority.—

12470 (1) A certificate of authority of a foreign limited

28-00272A-19

2019892\_\_

12471 liability company to transact business in this state may be  
12472 revoked by the department if:

12473 (a) The foreign limited liability company does not deliver  
12474 its annual report to the department by 5 p.m. Eastern Time on  
12475 the third Friday in September of each year.†

12476 (b) The foreign limited liability company does not pay a  
12477 fee or penalty due to the department under this chapter.†

12478 (c) The foreign limited liability company does not appoint  
12479 and maintain a registered agent as required under s. 605.0113.†

12480 (d) The foreign limited liability company does not deliver  
12481 for filing a statement of a change under s. 605.0114 within 30  
12482 days after a change in the name or address of the agent has  
12483 occurred ~~in the name or address of the agent~~, unless, within 30  
12484 days after the change occurred, either:

12485 1. The registered agent files a statement of change under  
12486 s. 605.0116; or

12487 2. The change was made in accordance with s. 605.0114(4).†  
12488 ~~or s. 605.0907(1)(d).†~~

12489 (e) The foreign limited liability company has failed to  
12490 amend its certificate of authority to reflect a change in its  
12491 name on the records of the department or its jurisdiction of  
12492 formation.†

12493 (f) The department receives a duly authenticated  
12494 certificate from the official having custody of records in the  
12495 company's jurisdiction of formation stating that it has been  
12496 dissolved or is no longer active on the official's records.†

12497 (g) The foreign limited liability company's period of  
12498 duration has expired.†

12499 (h) A member, manager, or agent of the foreign limited

28-00272A-19

2019892\_\_

12500 liability company signs a document that the member, manager, or  
12501 agent knew was false in a material respect with the intent that  
12502 the document be delivered to the department for filing.~~;~~~~or~~

12503 (i) The foreign limited liability company has failed to  
12504 answer truthfully and fully, within the time prescribed in s.  
12505 605.1104, interrogatories propounded by the department.

12506 Section 260. Section 605.09091, Florida Statutes, is  
12507 created to read:

12508 605.09091 Judicial review of denial of reinstatement.-

12509 (1) If the department denies a foreign limited liability  
12510 company's application for reinstatement after revocation of its  
12511 certificate of authority, the department shall serve the foreign  
12512 limited liability company, pursuant to s. 605.0117(7), with a  
12513 written notice that explains the reason or reasons for the  
12514 denial.

12515 (2) Within 30 days after service of a notice of denial of  
12516 reinstatement, a foreign limited liability company may appeal  
12517 the denial by petitioning the Circuit Court of Leon County to  
12518 set aside the revocation. The petition must be served on the  
12519 department and must contain a copy of the department's notice of  
12520 revocation, the foreign limited liability company's application  
12521 for reinstatement, and the department's notice of denial.

12522 (3) The circuit court may order the department to reinstate  
12523 the certificate of authority of the foreign limited liability  
12524 company or take other action the court considers appropriate.

12525 (4) The circuit court's final decision may be appealed as  
12526 in other civil proceedings.

12527 Section 261. Section 605.0910, Florida Statutes, is amended  
12528 to read:

28-00272A-19

2019892\_\_

12529 605.0910 Withdrawal and cancellation of certificate of  
12530 authority.—

12531 (1) To cancel its certificate of authority to transact  
12532 business in this state, a foreign limited liability company must  
12533 deliver to the department for filing a notice of withdrawal of  
12534 certificate of authority. The certificate of authority is  
12535 canceled when the notice becomes effective pursuant to s.  
12536 605.0207. The notice of withdrawal of certificate of authority  
12537 must be signed by an authorized representative and state the  
12538 following:

12539 (a) ~~(1)~~ The name of the foreign limited liability company as  
12540 it appears on the records of the department.

12541 (b) ~~(2)~~ The name of the foreign limited liability company's  
12542 jurisdiction of formation.

12543 (c) ~~(3)~~ The date the foreign limited liability company was  
12544 authorized to transact business in this state.

12545 (d) ~~(4)~~ That the foreign limited liability company is  
12546 withdrawing its certificate of authority in this state.

12547 (e) That the foreign limited liability company revokes the  
12548 authority of its registered agent to accept service on its  
12549 behalf and appoints the secretary of state as its agent for  
12550 service of process based on a cause of action arising during the  
12551 time the foreign limited liability company was authorized to  
12552 transact business in this state.

12553 (f) A mailing address to which the department may mail a  
12554 copy of any process served on the secretary of state under  
12555 paragraph (e).

12556 (g) A commitment to notify the department in the future of  
12557 any change in its mailing address.

28-00272A-19

2019892\_\_

12558       (2) After the withdrawal of the foreign limited liability  
12559 company is effective, service of process on the secretary of  
12560 state under this section is service on the foreign limited  
12561 liability company. Upon receipt of the process, the department  
12562 shall mail a copy of the process to the foreign limited  
12563 liability company at the mailing address set forth under  
12564 paragraph (1) (f).

12565       Section 262. Section 605.0911, Florida Statutes, is amended  
12566 to read:

12567       605.0911 Withdrawal deemed on conversion to domestic filing  
12568 entity.—A registered foreign limited liability company  
12569 authorized to transact business in this state that converts to a  
12570 domestic limited liability company or to another domestic entity  
12571 that is organized, incorporated, registered or otherwise formed  
12572 through the delivery of a record to the department for filing is  
12573 deemed to have withdrawn its certificate of authority on the  
12574 effective date of the conversion.

12575       Section 263. Section 605.0912, Florida Statutes, is amended  
12576 to read:

12577       605.0912 Withdrawal on dissolution, merger, or conversion  
12578 to nonfiling entity.—

12579       (1) A registered foreign limited liability company that has  
12580 dissolved and completed winding up, has merged into a foreign  
12581 entity that is not authorized to transact business ~~registered~~ in  
12582 this state, or has converted to a domestic or foreign entity  
12583 that is not organized, incorporated, registered or otherwise  
12584 formed through the public filing of a record, shall deliver a  
12585 notice of withdrawal of certificate of authority to the  
12586 department for filing in accordance with s. 605.0910.



28-00272A-19

2019892\_\_

12587 (2) After a withdrawal under this section of a foreign  
12588 limited liability company ~~entity~~ that has converted to another  
12589 type of entity is effective, service of process in any action or  
12590 proceeding based on a cause of action arising during the time  
12591 the foreign limited liability company was authorized to transact  
12592 ~~registered to do~~ business in this state may be made pursuant to  
12593 s. 605.0117.

12594 Section 264. Subsection (6) of section 605.1025, Florida  
12595 Statutes, is amended to read:

12596 605.1025 Articles of merger.—

12597 (6) A limited liability company is not required to deliver  
12598 articles of merger for filing pursuant to subsection (1) if the  
12599 limited liability company is named as a merging entity or  
12600 surviving entity in articles of merger or a certificate of  
12601 merger filed for the same merger in accordance with s. 607.1105  
12602 ~~s. 607.1109~~, s. 617.1108, s. 620.2108(3), or s. 620.8918(3), and  
12603 if such articles of merger or certificate of merger  
12604 substantially comply with the requirements of this section. In  
12605 such a case, the other articles of merger or certificate of  
12606 merger may also be used for purposes of subsection (5).

12607 Section 265. Subsection (5) of section 605.1035, Florida  
12608 Statutes, is amended to read:

12609 605.1035 Articles of interest exchange.—

12610 (5) A limited liability company is not required to deliver  
12611 articles of interest exchange for filing pursuant to subsection  
12612 (1) if the domestic limited liability company is named as an  
12613 acquired entity or as an acquiring entity in the articles of  
12614 share exchange filed for the same interest exchange in  
12615 accordance with s. 607.1105 ~~s. 607.1105(1)~~ and if such articles

28-00272A-19

2019892\_\_

12616 of share exchange substantially comply with the requirements of  
12617 this section.

12618 Section 266. Subsection (5) of section 605.1061, Florida  
12619 Statutes, is amended to read:

12620 605.1061 Appraisal rights; definitions.—The following  
12621 definitions apply to this section and to ss. 605.1006 and  
12622 605.1062-605.1072:

12623 (5) "Fair value" means the value of the member's membership  
12624 interest determined:

12625 (a) Immediately before the effectiveness ~~effectuation~~ of  
12626 the appraisal event to which the member objects;

12627 (b) Using customary and current valuation concepts and  
12628 techniques generally employed for similar businesses in the  
12629 context of the transaction requiring appraisal, excluding any  
12630 appreciation or depreciation in anticipation of the transaction  
12631 to which the member objects, unless exclusion would be  
12632 inequitable to the limited liability company and its remaining  
12633 members; and

12634 (c) Without discounting for lack of marketability or  
12635 minority status.

12636 Section 267. Subsection (3) of section 605.1063, Florida  
12637 Statutes, is amended to read:

12638 605.1063 Notice of appraisal rights.—

12639 (3) If the appraisal event is to be approved by written  
12640 consent of the members pursuant to s. 60.04073 ~~other than by a~~  
12641 ~~members' meeting~~:

12642 (a) Written notice that appraisal rights are, are not, or  
12643 may be available must be sent to each member from whom a consent  
12644 is solicited at the time consent of such member is first

28-00272A-19

2019892\_\_

12645 solicited, and if the limited liability company has concluded  
 12646 that appraisal rights are or may be available, a copy of ss.  
 12647 605.1006 and 605.1061-605.1072 must accompany such written  
 12648 notice; or

12649 (b) Written notice that appraisal rights are, are not, or  
 12650 may be available must be delivered, at least 10 days before the  
 12651 appraisal event becomes effective, to all nonconsenting and  
 12652 nonvoting members, and, if the limited liability company has  
 12653 concluded that appraisal rights are or may be available, a copy  
 12654 of ss. 605.1006 and 605.1061-605.1072 must accompany such  
 12655 written notice.

12656 Section 268. Section 605.1072, Florida Statutes, is amended  
 12657 to read:

12658 605.1072 Other remedies limited.-

12659 (1) A member entitled to appraisal rights under this  
 12660 chapter may not challenge a ~~The legality of a proposed or~~  
 12661 completed appraisal event for which appraisal rights are  
 12662 available unless such completed appraisal event was either: may  
 12663 ~~not be contested, and the appraisal event may not be enjoined,~~  
 12664 ~~set aside, or rescinded, in a legal or equitable proceeding by a~~  
 12665 ~~member after the members have approved the appraisal event.~~

12666 ~~(2) Subsection (1) does not apply to an appraisal event~~  
 12667 ~~that:~~

12668 (a) ~~Was~~ Not authorized and approved in accordance with the  
 12669 applicable provisions of this chapter, the organic rules of the  
 12670 limited liability company, or the resolutions of the members  
 12671 authorizing the appraisal event. ~~or~~

12672 (b) ~~Was~~ Procured as a result of fraud, a material  
 12673 misrepresentation, or an omission of a material fact that is

28-00272A-19

2019892\_\_

12674 necessary to make statements made, in light of the circumstances  
12675 in which they were made, not misleading.

12676 (2) Nothing in this section operates to override or  
12677 supersede s. 605.04092.

12678 Section 269. Subsection (16) of section 617.0302, Florida  
12679 Statutes, is amended to read:

12680 617.0302 Corporate powers.—Every corporation not for profit  
12681 organized under this chapter, unless otherwise provided in its  
12682 articles of incorporation or bylaws, shall have power to:

12683 (16) Merge with other corporations or other eligible  
12684 ~~business~~ entities identified in s. 607.1101 ~~s. 607.1108(1)~~, both  
12685 for profit and not for profit, domestic and foreign, if the  
12686 surviving corporation or other surviving eligible ~~business~~  
12687 entity is a corporation not for profit or other eligible  
12688 ~~business~~ entity that has been organized as a not-for-profit  
12689 entity under a governing statute or other applicable law that  
12690 permits such a merger.

12691 Section 270. Subsections (1) and (5) of section 617.0501,  
12692 Florida Statutes, are amended, and subsection (6) is added to  
12693 that section, to read:

12694 617.0501 Registered office and registered agent.—

12695 (1) Each corporation shall have and continuously maintain  
12696 in this state:

12697 (a) A registered office which may be the same as its  
12698 principal office; and

12699 (b) A registered agent, who may be either:

12700 1. An individual who resides in this state whose business  
12701 office is identical with such registered office; or

12702 2. Another domestic entity that is an authorized entity

28-00272A-19

2019892\_\_

12703 whose business address is identical to the address of the  
12704 registered office, or a foreign entity authorized to transact  
12705 business in this state that is an authorized entity and whose  
12706 business address is identical to the address of ~~A corporation~~  
12707 ~~for profit or not for profit, authorized to transact business or~~  
12708 ~~conduct its affairs in this state, having a business office~~  
12709 ~~identical with~~ the registered office.

12710 (5) A corporation may not prosecute or maintain any action  
12711 in a court in this state until the corporation complies with  
12712 this section or s. 617.1508, as applicable, ~~and~~ pays to the  
12713 Department of State any amounts required under this chapter,  
12714 and, to the extent ordered by a court of competent jurisdiction,  
12715 pays to the Department of State a penalty of \$5 for each day it  
12716 has failed to so comply or \$500, whichever is less.

12717 (6) For the purposes of this section, the term "authorized  
12718 entity" means:

- 12719 (a) A corporation for profit;  
12720 (b) A limited liability company;  
12721 (c) A limited liability partnership; or  
12722 (d) A limited partnership, including a limited liability  
12723 limited partnership.

12724 Section 271. Section 617.05015, Florida Statutes, is  
12725 created to read:

12726 617.05015 Reserved name.—

12727 (1) A person may reserve the exclusive use of the name of a  
12728 corporation, including an alternate name for a foreign  
12729 corporation whose name is not available, by delivering an  
12730 application to the department for filing. The application must  
12731 set forth the name and address of the applicant and the name

28-00272A-19

2019892\_\_

12732 proposed to be reserved. If the department finds that the name  
12733 of the corporation applied for is available, it shall reserve  
12734 the name for the applicant's exclusive use for a nonrenewable  
12735 120-day period.

12736 (2) The owner of a reserved name of a corporation may  
12737 transfer the reservation to another person by delivering to the  
12738 department a signed notice of the transfer that states the name  
12739 and address of the transferee.

12740 (3) The department may revoke any reservation if, after a  
12741 hearing, it finds that the application therefor or any transfer  
12742 thereof was not made in good faith.

12743 Section 272. Section 617.0831, Florida Statutes, is amended  
12744 to read:

12745 617.0831 Indemnification and liability of officers,  
12746 directors, employees, and agents.—Except as provided in s.  
12747 617.0834, s. 607.0831 and ss. 607.0850-607.0859 ~~ss. 607.0831 and~~  
12748 ~~607.0850~~ apply to a corporation organized under this act and a  
12749 rural electric cooperative organized under chapter 425. Any  
12750 reference to "directors" in those sections includes the  
12751 directors, managers, or trustees of a corporation organized  
12752 under this act or of a rural electric cooperative organized  
12753 under chapter 425. However, the term "director" as used in s.  
12754 607.0831 and ss. 607.0850-607.0859 ~~ss. 607.0831 and 607.0850~~  
12755 does not include a director appointed by the developer to the  
12756 board of directors of a condominium association under chapter  
12757 718, a cooperative association under chapter 719, a homeowners'  
12758 association defined in s. 720.301, or a timeshare managing  
12759 entity under chapter 721. Any reference to "shareholders" in  
12760 those sections includes members of a corporation organized under

28-00272A-19

2019892\_\_

12761 this act and members of a rural electric cooperative organized  
12762 under chapter 425.

12763 Section 273. Section 617.1102, Florida Statutes, is amended  
12764 to read:

12765 617.1102 Limitation on merger.—A corporation not for profit  
12766 organized under this chapter may merge with one or more other  
12767 eligible business entities, as identified in s. 607.1101(1) ~~s.~~  
12768 ~~607.1108(1)~~, only if the surviving entity of such merger is a  
12769 corporation not for profit or other eligible business entity  
12770 that has been organized as a not-for-profit entity under a  
12771 governing statute or other applicable law that allows such a  
12772 merger.

12773 Section 274. Section 617.1108, Florida Statutes, is amended  
12774 to read:

12775 617.1108 Merger of domestic corporation and other eligible  
12776 ~~business~~ entities.—

12777 (1) Subject to s. 617.0302(16) and other applicable  
12778 provisions of this chapter, ss. 607.1101, 607.1103, 607.1105,  
12779 607.1106, and 607.1107 ~~ss. 607.1108, 607.1109, and 607.11101~~  
12780 shall apply to a merger involving a corporation not for profit  
12781 organized under this act and one or more other eligible business  
12782 entities identified in s. 607.1108(1).

12783 (2) A domestic corporation not for profit organized under  
12784 this chapter is not required to file articles of merger pursuant  
12785 ~~pur-suant~~ to this section if the corporation not for profit is  
12786 named as a party or constituent organization in articles of  
12787 merger or a certificate of merger filed for the same merger in  
12788 accordance with s. 605.1025, s. 607.1105 ~~s. 607.1109~~, s.  
12789 620.2108(3), or s. 620.8918(1) and (2). In such a case, the

28-00272A-19

2019892\_\_

12790 other articles of merger or certificate of merger may also be  
12791 used for purposes of subsection (3).

12792 (3) A copy of the articles of merger or certificate of  
12793 merger, certified by the Department of State, may be filed in  
12794 the office of the official who is the recording officer of each  
12795 county in this state in which real property of a party to the  
12796 merger, other than the surviving entity, is situated.

12797 Section 275. Section 617.1507, Florida Statutes, is amended  
12798 to read:

12799 617.1507 Registered office and registered agent of foreign  
12800 corporation.—

12801 (1) Each foreign corporation authorized to conduct its  
12802 affairs in this state must continuously maintain in this state:

12803 (a) A registered office that may be the same as any of the  
12804 places it conducts its affairs; and

12805 (b) A registered agent, who may be:

12806 1. An individual who resides in this state and whose  
12807 business office is identical with the registered office;

12808 2. Another domestic entity that is an authorized entity  
12809 whose business address is identical to the address of the  
12810 registered office; or

12811 3. A foreign entity authorized to transact business in this  
12812 state that is an authorized entity and whose business address is  
12813 identical to the address of ~~A domestic corporation for profit or~~  
12814 ~~not for profit the business office of which is identical with~~  
12815 ~~the registered office; or~~

12816 3. ~~A foreign corporation for profit or not for profit~~  
12817 ~~authorized to transact business or conduct its affairs in this~~  
12818 ~~state the business office of which is identical with the~~



28-00272A-19

2019892\_\_

12819 ~~registered office.~~

12820 (2) A registered agent appointed pursuant to this section  
12821 or a successor registered agent appointed pursuant to s.  
12822 617.1508 on whom process may be served shall each file a  
12823 statement in writing with the Department of State, in such form  
12824 and manner as shall be prescribed by the department, accepting  
12825 the appointment as a registered agent simultaneously with his or  
12826 her being designated. Such statement of acceptance shall state  
12827 that the registered agent is familiar with, and accepts, the  
12828 obligations of that position.

12829 (3) For purposes of this section, "authorized entity"  
12830 means:

12831 (a) A corporation for profit;

12832 (b) A limited liability company;

12833 (c) A limited liability partnership; or

12834 (d) A limited partnership, including a limited liability  
12835 limited partnership.

12836 Section 276. Subsections (2), (3), and (4) of section  
12837 620.1108, Florida Statutes, are amended, and subsection (6) is  
12838 added to that section, to read:

12839 620.1108 Name.—

12840 (2) The name of a limited partnership that is not a limited  
12841 liability limited partnership must contain the phrase "limited  
12842 partnership" or "limited" or the abbreviation "L.P." or "Ltd."  
12843 or the designation "LP," and may not contain the phrase "limited  
12844 liability limited partnership" or the abbreviation "L.L.L.P." or  
12845 the designation "LLLP,~~-~~" as will clearly indicate that it is a  
12846 limited partnership instead of a natural person, corporation,  
12847 limited liability company, or other business entity.

28-00272A-19

2019892\_\_

12848 (3) The name of a limited liability limited partnership  
12849 must contain the phrase "limited liability limited partnership"  
12850 or the abbreviation "L.L.L.P." or designation "LLLP," as will  
12851 clearly indicate that it is a limited liability limited  
12852 partnership instead of a natural person or other business  
12853 entity, except that a limited liability limited partnership  
12854 organized prior to January 1, 2006, that was ~~the effective date~~  
12855 ~~of this act that is~~ using an abbreviation or designation  
12856 permitted under prior law shall be entitled to continue using  
12857 such abbreviation or designation until its dissolution.

12858 (4) The name of a limited partnership must be  
12859 distinguishable in the records of the Department of State from  
12860 the names of all other entities or filings that are on file with  
12861 the Department of State, except fictitious name registrations  
12862 pursuant to s. 865.09, general partnership registrations  
12863 pursuant to s. 620.8105, and limited liability partnership  
12864 statements pursuant to s. 620.9001 which are organized,  
12865 registered, or reserved under the laws of this state; however, a  
12866 limited partnership or a limited liability limited partnership  
12867 may register under a name that is not otherwise distinguishable  
12868 on the records of the Department of State with the written  
12869 consent of the other entity if the consent is filed with the  
12870 Department of State at the time of registration of such name and  
12871 if such name is not identical to the name of the other entity. A  
12872 name that is different from the name of another entity or filing  
12873 due to any of the following is not considered distinguishable:  
12874 (a) A suffix.  
12875 (b) A definite or indefinite article.  
12876 (c) The word "and" and the symbol "&."

28-00272A-19

2019892\_\_

- 12877 (d) The singular, plural, or possessive form of a word.
- 12878 (e) ~~A recognized abbreviation of a root word.~~
- 12879 ~~(f)~~ A punctuation mark or a symbol.
- 12880 (6) A limited partnership or a limited liability limited
- 12881 partnership in existence before January 1, 2020, that has a name
- 12882 that does not clearly indicate that it is a limited partnership
- 12883 or a limited liability limited partnership instead of a natural
- 12884 person, corporation, limited liability company, or other
- 12885 business entity may continue using its name until it dissolves
- 12886 or amends its name in the records of the Department of State.
- 12887 Section 277. Section 620.11085, Florida Statutes, is
- 12888 created to read:
- 12889 620.11085 Reserved name.—
- 12890 (1) A person may reserve the exclusive use of the name of a
- 12891 limited partnership, including an alternate name for a foreign
- 12892 limited partnership whose name is not available, by delivering
- 12893 an application to the Department of State for filing. The
- 12894 application must set forth the name and address of the applicant
- 12895 and the name proposed to be reserved. If the department finds
- 12896 that the name of the limited partnership applied for is
- 12897 available, it must reserve the name for the applicant's
- 12898 exclusive use for a nonrenewable 120-day period.
- 12899 (2) The owner of a reserved name of a limited partnership
- 12900 may transfer the reservation to another person by delivering to
- 12901 the Department of State a signed notice of the transfer that
- 12902 states the name and address of the transferee.
- 12903 (3) The Department of State may revoke any reservation if,
- 12904 after a hearing, it finds that the application therefor or any
- 12905 transfer thereof was not made in good faith.

28-00272A-19

2019892\_\_

12906 Section 278. Paragraph (c) of subsection (1) of section  
12907 620.2104, Florida Statutes, is amended to read:

12908 620.2104 Filings required for conversion; effective date.-

12909 (1) After a plan of conversion is approved:

12910 (c) A converting limited partnership is not required to  
12911 file a certificate of conversion pursuant to paragraph (a) if  
12912 the converting limited partnership files articles of conversion  
12913 or a certificate of conversion that substantially complies with  
12914 the requirements of this section pursuant to s. 605.1045, s.  
12915 607.1105 ~~s. 607.1115~~, or s. 620.8914(1) (b) and contains the  
12916 signatures required by this chapter. In such a case, the other  
12917 certificate of conversion may also be used for purposes of s.  
12918 620.2105(4).

12919 Section 279. Subsection (3) of section 620.2108, Florida  
12920 Statutes, is amended to read:

12921 620.2108 Filings required for merger; effective date.-

12922 (3) Each constituent limited partnership shall deliver the  
12923 certificate of merger for filing in the Department of State  
12924 unless the constituent limited partnership is named as a party  
12925 or constituent organization in articles of merger or a  
12926 certificate of merger filed for the same merger in accordance  
12927 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s.  
12928 620.8918(1) and (2) and such articles of merger or certificate  
12929 of merger substantially complies with the requirements of this  
12930 section. In such a case, the other articles of merger or  
12931 certificate of merger may also be used for purposes of s.  
12932 620.2109(3).

12933 Section 280. Subsection (3) of section 620.8918, Florida  
12934 Statutes, is amended to read:

28-00272A-19

2019892\_\_

12935           620.8918 Filings required for merger; effective date.—

12936           (3) Each domestic constituent partnership shall deliver the

12937 certificate of merger for filing with the Department of State,

12938 unless the domestic constituent partnership is named as a party

12939 or constituent organization in articles of merger or a

12940 certificate of merger filed for the same merger in accordance

12941 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s.

12942 620.2108(3). The articles of merger or certificate of merger

12943 must substantially comply with the requirements of this section.

12944 In such a case, the other articles of merger or certificate of

12945 merger may also be used for purposes of s. 620.8919(3). Each

12946 domestic constituent partnership in the merger shall also file a

12947 registration statement in accordance with s. 620.8105(1) if it

12948 does not have a currently effective registration statement filed

12949 with the Department of State.

12950           Section 281. Paragraph (b) of subsection (2) and subsection

12951 (4) of section 621.12, Florida Statutes, are amended to read:

12952           621.12 Identification with individual shareholders or

12953 individual members.—

12954           (2) The name shall also contain:

12955           (b)1. In the case of a professional corporation, the words

12956 "professional association," or the abbreviation "P.A." or the

12957 designation "PA"; or

12958           2. In the case of a professional limited liability company

12959 formed before January 1, 2014, the words "professional limited

12960 company" or "professional limited liability company," the

12961 abbreviation "P.L." or "P.L.L.C." or the designation "PL" or

12962 "PLLC," in lieu of the words "limited company" or "limited

12963 liability company," or the abbreviation "L.C." or "L.L.C." or

28-00272A-19

2019892\_\_

12964 the designation "LC" or "LLC" as otherwise required under s.  
12965 605.0112 or former s. 608.406.

12966 3. In the case of a professional limited liability company  
12967 formed on or after January 1, 2014, the words "professional  
12968 limited liability company," the abbreviation "P.L.L.C." or the  
12969 designation "PLLC," in lieu of the words "limited liability  
12970 company," or the abbreviation "L.L.C." or the designation "LLC"  
12971 as otherwise required under s. 605.0112.

12972 (4) It shall be permissible, however, for the corporation  
12973 or limited liability company to render professional services and  
12974 to exercise its authorized powers under a name which is  
12975 identical to its name or contains any one or more of the last  
12976 names of any shareholder or member included in such name except  
12977 that the word "chartered," the words "professional association,"  
12978 "professional limited company," or "professional limited  
12979 liability company," the abbreviations "P.A.," "P.L.," or  
12980 "P.L.L.C.," or the designation "PA," "PL," or "PLLC" may be  
12981 omitted, provided that the corporation or limited liability  
12982 company has first registered the name to be so used in the  
12983 manner required for the registration of fictitious names.

12984 Section 282. Paragraph (e) of subsection (14) of section  
12985 865.09, Florida Statutes, is amended to read:

12986 865.09 Fictitious name registration.—

12987 (14) PROHIBITION.—A fictitious name registered as provided  
12988 in this section may not contain the following words,  
12989 abbreviations, or designations:

12990 (e) "Professional association," "PA," "P.A.," or  
12991 "chartered," unless the person or business for which the name is  
12992 registered is organized as a professional corporation pursuant

28-00272A-19

2019892\_\_

12993 to chapter 621, or is organized as a professional corporation  
12994 pursuant to a similar law of another jurisdiction and has  
12995 obtained a certificate of authority to transact business in this  
12996 state pursuant to chapter 607.

12997 Section 283. Subsection (1) of section 662.150, Florida  
12998 Statutes, is amended to read:

12999 662.150 Domestication of a foreign family trust company.—

13000 (1) A foreign family trust company lawfully organized and  
13001 currently in good standing with the state regulatory agency in  
13002 the jurisdiction where it is organized may become domesticated  
13003 in this state by:

13004 (a) Filing with the Department of State articles a  
13005 ~~certificate~~ of domestication and articles of incorporation in  
13006 accordance with and subject to s. 607.11922 ~~s. 607.1801~~ or by  
13007 filing articles of conversion in accordance with s. 605.1045 or  
13008 s. 607.11933; and

13009 (b) Filing an application for a license to begin operations  
13010 as a licensed family trust company in accordance with s.  
13011 662.121, which must first be approved by the office, or by  
13012 filing the prescribed form with the office to register as a  
13013 family trust company to begin operations in accordance with s.  
13014 662.122.

13015 Section 284. Subsection (1) of section 331.355, Florida  
13016 Statutes, is amended to read:

13017 331.355 Use of name; ownership rights to intellectual  
13018 property.—

13019 (1) (a) The corporate name of a corporation incorporated or  
13020 authorized to transact business in this state, or the name of  
13021 any person or business entity transacting business in this

28-00272A-19

2019892\_\_

13022 state, may not use the words "Space Florida," "Florida Space  
13023 Authority," "Florida Aerospace Finance Corporation," "Florida  
13024 Space Research Institute," "spaceport Florida," or "Florida  
13025 spaceport" in its name unless the Space Florida board of  
13026 directors gives written approval for such use.

13027 (b) The Department of State may dissolve, pursuant to s.  
13028 607.1420 ~~s. 607.1421~~, any corporation that violates paragraph  
13029 (a).

13030 Section 285. Paragraph (a) of subsection (4) of section  
13031 339.12, Florida Statutes, is amended to read:

13032 339.12 Aid and contributions by governmental entities for  
13033 department projects; federal aid.—

13034 (4) (a) Prior to accepting the contribution of road bond  
13035 proceeds, time warrants, or cash for which reimbursement is  
13036 sought, the department shall enter into agreements with the  
13037 governing body of the governmental entity for the project or  
13038 project phases in accordance with specifications agreed upon  
13039 between the department and the governing body of the  
13040 governmental entity. The department in no instance is to receive  
13041 from such governmental entity an amount in excess of the actual  
13042 cost of the project or project phase. By specific provision in  
13043 the written agreement between the department and the governing  
13044 body of the governmental entity, the department may agree to  
13045 reimburse the governmental entity for the actual amount of the  
13046 bond proceeds, time warrants, or cash used on a highway project  
13047 or project phases that are not revenue producing and are  
13048 contained in the department's adopted work program, or any  
13049 public transportation project contained in the adopted work  
13050 program. Subject to appropriation of funds by the Legislature,



28-00272A-19

2019892\_\_

13051 the department may commit state funds for reimbursement of such  
 13052 projects or project phases. Reimbursement to the governmental  
 13053 entity for such a project or project phase must be made from  
 13054 funds appropriated by the Legislature, and reimbursement for the  
 13055 cost of the project or project phase is to begin in the year the  
 13056 project or project phase is scheduled in the work program as of  
 13057 the date of the agreement. Funds advanced pursuant to this  
 13058 section, which were originally designated for transportation  
 13059 purposes and so reimbursed to a county or municipality, shall be  
 13060 used by the county or municipality for any transportation  
 13061 expenditure authorized under s. 336.025(7). Also, cities and  
 13062 counties may receive funds from persons, and reimburse those  
 13063 persons, for the purposes of this section. Such persons may  
 13064 include, but are not limited to, those persons defined in s.  
 13065 607.01401(56) ~~s. 607.01401(19)~~.

13066 Section 286. Section 628.530, Florida Statutes, is amended  
 13067 to read:

13068 628.530 Effects of redomestication.—The certificate of  
 13069 authority, agents appointments and licenses, rates, and other  
 13070 items which the office or department allows, in its discretion,  
 13071 which are in existence at the time any insurer licensed to  
 13072 transact the business of insurance in this state transfers its  
 13073 corporate domicile to this or any other state by merger,  
 13074 consolidation, merger pursuant to s. 607.1101(7) ~~s. 607.1107(5)~~,  
 13075 or any other lawful method shall continue in full force and  
 13076 effect upon such transfer if such insurer remains duly qualified  
 13077 to transact the business of insurance in this state. All  
 13078 outstanding policies of any transferring insurer shall remain in  
 13079 full force and effect and need not be endorsed as to the new

28-00272A-19

2019892\_\_

13080 name of the company or its new location unless so ordered by the  
13081 office. Every transferring insurer shall file new policy forms  
13082 with the office on or before the effective date of the transfer,  
13083 but may use existing policy forms with appropriate endorsements  
13084 if allowed by, and under such conditions as are approved by, the  
13085 office. However, every such transferring insurer shall notify  
13086 the office of the details of the proposed transfer and shall  
13087 file promptly any resulting amendments to corporate documents  
13088 filed or required to be filed with the office.

13089 Section 287. Section 631.0515, Florida Statutes, is amended  
13090 to read:

13091 631.0515 Appointment of receiver; insurance holding  
13092 company.—A delinquency proceeding pursuant to this chapter  
13093 constitutes the sole and exclusive method of dissolving,  
13094 liquidating, rehabilitating, reorganizing, conserving, or  
13095 appointing a receiver of a Florida corporation which is not  
13096 insolvent as defined by s. 607.01401 ~~s. 607.01401(16)~~; which  
13097 through its shareholders, board of directors, or governing body  
13098 is deadlocked in the management of its affairs; and which  
13099 directly or indirectly owns all of the stock of a Florida  
13100 domestic insurer. The department may petition for an order  
13101 directing it to rehabilitate such corporation if the interests  
13102 of policyholders or the public will be harmed as a result of the  
13103 deadlock. The department shall use due diligence to resolve the  
13104 deadlock. Whether or not the department petitions for an order,  
13105 the circuit court shall not have jurisdiction pursuant to s.  
13106 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or  
13107 appoint receivers with respect to, a Florida corporation which  
13108 directly or indirectly owns all of the stock of a Florida

28-00272A-19

2019892\_\_

13109 domestic insurer and which is not insolvent as defined by s.  
 13110 607.01401 ~~s. 607.01401(16)~~. However, a managing general agent or  
 13111 holding company with a controlling interest in a domestic  
 13112 insurer in this state is subject to jurisdiction of the court  
 13113 under the provisions of s. 631.025.

13114 Section 288. Subsection (5) of section 658.44, Florida  
 13115 Statutes, is amended to read:

13116 658.44 Approval by stockholders; rights of dissenters;  
 13117 preemptive rights.-

13118 (5) The fair value, as defined in s. 607.1301(5) ~~s.~~  
 13119 ~~607.1301(4)~~, of dissenting shares of each constituent state bank  
 13120 or state trust company, the owners of which have not accepted an  
 13121 offer for such shares made pursuant to subsection (3), shall be  
 13122 determined pursuant to ss. 607.1326-607.1331 except as the  
 13123 procedures for notice and demand are otherwise provided in this  
 13124 section as of the effective date of the merger.

13125 Section 289. Section 663.03, Florida Statutes, is amended  
 13126 to read:

13127 663.03 Applicability of the Florida Business Corporation  
 13128 Act.-Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the  
 13129 provisions of part I of chapter 607 not in conflict with the  
 13130 financial institutions codes which relate to foreign  
 13131 corporations apply to all international banking corporations and  
 13132 their offices doing business in this state.

13133 Section 290. Section 663.403, Florida Statutes, is amended  
 13134 to read:

13135 663.403 Applicability of the Florida Business Corporation  
 13136 Act.-Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the  
 13137 provisions of part I of chapter 607 which are not in conflict

28-00272A-19

2019892\_\_

13138 with the financial institutions codes and which relate to  
13139 foreign corporations apply to all international trust entities  
13140 and their offices doing business in this state.

13141 Section 291. Section 694.16, Florida Statutes, is amended  
13142 to read:

13143 694.16 Conveyances by merger or conversion of business  
13144 entities.—As to any merger or conversion of business entities  
13145 prior to June 15, 2000, the title to all real estate, or any  
13146 interest therein, owned by a business entity that was a party to  
13147 a merger or a conversion is vested in the surviving entity  
13148 without reversion or impairment, notwithstanding the requirement  
13149 of a deed which was previously required by former s. 607.11101,  
13150 former s. 608.4383, former s. 620.204, former s. 620.8904, or  
13151 former s. 620.8906.

13152 Section 292. This act shall take effect on January 1, 2020.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Appropriations  
Appropriations Subcommittee on Health and Human Services  
Ethics and Elections  
Innovation, Industry and Technology  
Rules

### SENATOR KATHLEEN PASSIDOMO

Majority Leader  
28th District

February 20, 2019

Honorable Joe Gruters  
324 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**Re: Senate Bill 892**

Dear Chairman Gruters:

Senate Bill 892, *Business Organizations*, has been referred to the Committee on Commerce and Tourism.

I respectfully request that you place SB 892 on your committee agenda at the earliest opportunity. I am available to speak with you at your convenience if you have any questions about the bill. Thank you for your consideration.

Respectfully,

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo  
District 28

cc: Todd McKay, Staff Director  
cc: Madeline Reeve, Administrative Assistant

#### REPLY TO:

- 3299 East Tamiami Trail, Suite 203, Naples, Florida 34112 (239) 417-6205
- 25 East Hickpoochee Avenue, Room J-126, LaBelle, Florida 33935 (863) 674-7122
- 330 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5028

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)

3/11/19

Meeting Date

SB 892

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Philip B Schwartz

Job Title Attorney

Address A Kerman LLP 350 East Las Olas

Phone (305) 790-3536

Street 16th FL

FT. Lauderdale, FL 33331

Email philip.schwartz@akerman.com

City

State

Zip

Speaking: [X] For [ ] Against [ ] Information

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

Representing

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [ ] Yes [X] 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**

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

3/11/19  
Meeting Date

513 892

Bill Number (if applicable)

Amendment Stewart

Amendment Barcode (if applicable)

Topic Corporate / Bus. Org.

Name Ron Book

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

Address 104 W. Jefferson

Street

City

TCH

State

32301

Zip

Phone 850 224-3427

Email ron@RLBookPA.com

Speaking:  For  Against  Information

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

Representing Gannett Newspapers

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)

Meeting Date

892  
Bill Number (if applicable)

Topic CORPORATIONS

287142  
Amendment Barcode (if applicable)

Name WAYNE MALABY

Job Title

Address 32 Via Del Corso

Phone

Street

PB 6 FL 33418

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing AMERICAN TRADER MEDIA

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**  
**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 Commerce and Tourism

---

BILL: SB 1098

INTRODUCER: Senator Lee

SUBJECT: Sales Tax Refund for Eligible Job Training Organizations

DATE: March 8, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Little	McKay	CM	<b>Favorable</b>
2.			FT	
3.			AP	

---

**I. Summary:**

SB 1098 creates a sales tax refund for eligible job training organizations. Under the bill, an eligible job training organization may apply for a refund of 10 percent of the sales tax the organization remitted to the Department of Revenue (DOR) on its sales of donated goods during the previous state fiscal year.

The Department of Economic Opportunity (DEO) is required to determine an applicant's eligibility for the sales tax refund and certify the eligibility of organizations that meet the specified requirements. The total amount of sales tax refunds issued may not exceed \$2 million in any state fiscal year.

The bill limits the use of a sales tax refund issued to an eligible job training organization to the following purposes:

- Growth in employment hours;
- Job training and employment services to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment; or
- Job training and employment services for veterans.

An eligible job training organization that receives a refund must annually report eligibility information to the DEO, including how the previously issued refund was used. If the DEO determines an organization no longer qualifies for the refund, the DEO must immediately notify the DOR, which is prohibited from issuing a refund after receiving such notification. The bill authorizes the DOR to audit any refund within 4 years of the refund and subjects the overpayment of a refund or a refund issued to an ineligible job training organization to repayment.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Florida Sales and Use Tax

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rentals of commercial real estate, and a limited number of services.<sup>1</sup>

In addition to the state level tax, counties are authorized to levy surtaxes under certain situations.<sup>2</sup> Surtaxes apply to all transactions occurring in the county that are subject to the state level tax.<sup>3</sup>

Generally, sales tax is added to the price of taxable goods or services, and the tax is collected from the purchaser at the time of sale.<sup>4</sup> Anyone that sells taxable goods or services in Florida must register with the DOR as a sales tax dealer to collect, report, and remit sales tax.<sup>5</sup> The DOR is authorized to audit organizations in the state for the purpose of determining whether such taxes are properly collected, reported, and paid.<sup>6</sup>

### Charitable Organizations

Charitable organizations are eligible to receive tax-deductible contributions.<sup>7</sup> To qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code an organization must be organized and operated exclusively for an exempt purpose,<sup>8</sup> none of its earnings may inure to any private shareholder or individual, and it cannot be an action organization.<sup>9</sup> Additionally, organizations that qualify under section 501(c)(3) may be eligible for other tax benefits, such as state and federal sales, property, and income tax exemptions.<sup>10</sup>

---

<sup>1</sup> See s. 212.05, F.S.

<sup>2</sup> Section 212.055, F.S.

<sup>3</sup> Section 212.054, F.S.

<sup>4</sup> Sections 212.06(3) and 212.07(2), F.S.

<sup>5</sup> Section 212.18(3)(a), F.S.; Department of Revenue, *Florida Sales and Use Tax*, GT-800013, Revised 1/19, available at [http://floridarevenue.com/Forms\\_library/current/gt800013.pdf](http://floridarevenue.com/Forms_library/current/gt800013.pdf) (last visited March 8, 2019).

<sup>6</sup> Section 212.13(3), F.S.

<sup>7</sup> 26 U.S.C. s. 170

<sup>8</sup> Exempt purposes under section 501(c)(3) include: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals." IRS, *Exempt Purposes – Internal Revenue Code Section 501(c)(3)*, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3> (last visited March 8, 2019).

<sup>9</sup> The prohibition on the organization being an "action organization" means that the organization "may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates." IRS, *Exemption Requirements - 501(c)(3) Organizations*, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations> (last visited March 8, 2019).

<sup>10</sup> See Internal Revenue Service, *Federal Tax Obligations of Non-Profit Corporations*, available at <https://www.irs.gov/pub/irs-pdf/n844.pdf> (last visited March 8, 2019). "Nonprofit organizations may qualify for exemption from some Florida taxes. Each tax is separate and distinct and has its own requirements. As a result, exemption from one tax does not necessarily exempt the organization from all taxes and not all Florida tax exemptions require the organization obtain a federal tax-exempt status." Department of Revenue, *Nonprofit Organizations*, available at <http://floridarevenue.com/taxes/businesses/Pages/nonprofit.aspx> (last visited March 8, 2019).

## Qualified Job Training Organizations Program

Section 288.1097, F.S., allows a “qualified job training organization” to receive grant funding from the DEO.

To be eligible, a job training organization must:

- Be exempt under s. 501(c)(3) or (4) of the Internal Revenue Code;
- Provide job training and employment services to individuals who have workplace disadvantages or disabilities;
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities;
- Collect Florida sales tax;
- Specialize in the retail sale of donated items;
- Operate statewide through more than 100 locations;
- Use a majority of its revenues for job training and placement programs that create jobs and foster economic development; and
- Be certified by the DEO that the organization meets the requirements described above.

The DEO is permitted to release funds to the organization pursuant to a contract with the organization. The contract must require the organization to meet certain performance conditions in order to receive the grant funds. The performance conditions must include “net new employment in the state, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements including any provisions for repayment...” and that salaries paid to officers and employees of the organization meet certain Internal Revenue Code requirements.<sup>11</sup>

The organization must use the grant funds “solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities.” The statute also requires the following results to be met within a 10-year period:

- Creation of at least 5,000 direct, new jobs;
- Minimum of 23,000 new clients served;
- Production of a minimum of \$24 million in new sales tax revenues from increased sales;
- Minimum of \$42 million in new salaries; and
- Minimum of \$6 million for job placement services.

No funds have ever been appropriated to this program.

### III. Effect of Proposed Changes:

The bill creates a sales tax refund for an eligible job training organization on the organization’s sales of goods donated to the organization and requires the organization to use the refund for specific employment purposes.<sup>12</sup>

To be eligible for the refund, a job training organization must:

---

<sup>11</sup> Section 288.1097(2), F.S.

<sup>12</sup> The bill creates s. 212.094, F.S.

- Be exempt under s. 501(c)(3) of the Internal Revenue Code;
- Provide job training and employment services to low-income persons,<sup>13</sup> individuals who have workplace disadvantages, or individuals with barriers to employment; and
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities.

The bill also specifies that an eligible job training organization consisting of commonly owned and controlled entities is deemed to be a single organization.

An eligible job training organization is entitled to a refund equal to 10 percent of the sales tax remitted to the DOR during the prior state fiscal year on the organization's sales of goods donated to the organization. The total amount of sales tax refunds issued to eligible job training organizations may not exceed \$2 million in any state fiscal year. Refunds are granted on a first-come, first-served basis.

The organization must use the refund for any of the following purposes:

- Growth in employment hours.<sup>14</sup>
- Job training and employment services<sup>15</sup> to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment.
- Job training and employment services for veterans.

An organization seeking a refund must first submit an application to the DEO by July 15. The application must establish that the organization meets the eligibility requirements and ensure that the refund will be used exclusively for the purposes listed above. The application must also include any supporting information set forth by the DEO in rule. The DEO is required to verify the application and notify the organization of the DEO's determination within 15 days of receiving a complete application. The bill authorizes the DEO to adopt rules necessary to administer the sales tax refund, including rules for the approval and disapproval of applications by organizations.

For approved applications, the DEO must send the eligible job training organization a notice that includes a certification that the organization is eligible to receive the sales tax refund. The decision of the DEO must be in writing, or in e-mail if agreed to by the organization. The DEO must send a copy of the notice and the certification, if applicable, to the DOR. The DEO's issuance of a certification remains in effect as long as the eligible job training organization remains in compliance with the requirements of the law.

---

<sup>13</sup> "Low-income persons" means "one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater." Section 420.0004(11), F.S.

<sup>14</sup> "Growth in employment hours" is defined by the bill as "the growth in the number of hours worked by employees at an eligible job training organization in the most recently completed state fiscal year, compared to the number of hours worked by employees at the eligible job training organization in the state fiscal year immediately prior to the most recently completed state fiscal year."

<sup>15</sup> "Job training and employment services" is defined by the bill as "programs and services that improve job readiness, to assist workers in gaining employment and adapting to the changing labor market, and to help workers achieve employment success through self-sufficiency."

An eligible job training organization that is certified by the DEO must then apply to the DOR between August 1 and August 31 of each year that the organization seeks a refund. The first application for a refund submitted to the DOR must include a copy of the DEO certification. An application must also include any information required by the DOR.

By August 1 following each state fiscal year that an eligible job training organization received a refund, the organization is required to provide a report to the DEO describing the use of the refund. The report must include the following:

- The amount of the refund used to create growth in employment hours;
- The total growth in employment hours;
- The amount of the refund used for job training and employment services;
- The number of individuals who participated in job training and employment services at the eligible job training organization; and
- A statement declaring that the organization continues to meet the necessary requirements to remain eligible for the sales tax refund.

If the DEO determines that a job training organization no longer qualifies for the refund, the DEO must notify the DOR immediately. The DOR is prohibited from issuing a refund after receiving such notification. The bill also provides that the DOR has the authority to audit any refund within 4 years after the date the refund was granted. The overpayment of a refund, or a refund issued to an ineligible job training organization, is subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

The bill takes effect on July 1, 2019.

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

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

Article VII, s. 18, of the Florida Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues. Except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2018-2019 is approximately \$2.05 million or less.<sup>16,17,18</sup>

---

<sup>16</sup> FLA. CONST. art. VII, s. 18(d).

<sup>17</sup> Based on the Demographic Estimating Conference's population estimate adopted on December 5, 2017. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 1, 2019).

<sup>18</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 1, 2019).

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The bill creates a sales tax refund for eligible job training organizations equal to 10 percent of the sales tax remitted to the DOR on its sales of goods donated to the organization during the prior state fiscal year.

**B. Private Sector Impact:**

The bill will likely have a positive fiscal impact on eligible job training organizations that receive a sales tax refund.

**C. Government Sector Impact:**

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill.

The DEO has stated that any costs related to increased workload to administer the provisions of this bill can be absorbed within existing resources.<sup>19</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 212.094 of the Florida Statutes.

---

<sup>19</sup> Department of Economic Opportunity, *2019 Agency Legislative Bill Analysis: HB 643*, February 19, 2019.

**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 Lee

20-01006-19

20191098\_\_

1                                   A bill to be entitled  
2       An act relating to a sales tax refund for eligible job  
3       training organizations; creating s. 212.094, F.S.;  
4       defining terms; providing that eligible job training  
5       organizations are entitled to receive a refund of a  
6       specified percentage of certain sales taxes remitted  
7       to the Department of Revenue; requiring such  
8       organizations to use the refund only for specified  
9       purposes; specifying a limit on the total amount of  
10      refunds issued by the department in any state fiscal  
11      year; requiring that refunds be granted on a first-  
12      come, first-served basis; specifying requirements for  
13      applying for a certain certification with the  
14      Department of Economic Opportunity; specifying  
15      requirements and procedures for the Department of  
16      Economic Opportunity in reviewing and approving  
17      applications; specifying that certifications remain  
18      valid so long as such organizations comply with  
19      certain requirements; providing that such  
20      organizations must annually apply for refunds with the  
21      Department of Revenue within a certain timeframe;  
22      providing requirements for refund applications;  
23      providing construction; requiring such organizations,  
24      under certain circumstances and at certain timeframes,  
25      to provide a specified report to the Department of  
26      Economic Opportunity; authorizing the Department of  
27      Economic Opportunity to adopt rules; requiring the  
28      Department of Economic Opportunity to notify the  
29      Department of Revenue under certain circumstances;



20-01006-19

20191098\_\_

30 prohibiting the Department of Revenue from issuing  
31 refunds after receiving such notifications;  
32 authorizing the Department of Revenue to audit any  
33 refunds within a certain timeframe; providing that  
34 refund overpayments and refunds issued to ineligible  
35 organizations are subject to repayment and specified  
36 interest; providing an effective date.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Section 212.094, Florida Statutes, is created to  
41 read:

42 212.094 Sales tax refund for eligible job training  
43 organizations.-

44 (1) As used in this section, the term:

45 (a) "Eligible job training organization" means an  
46 organization that:

47 1. Is an exempt organization under s. 501(c)(3) of the  
48 Internal Revenue Code of 1986, as amended;

49 2. Provides job training and employment services to low-  
50 income persons as defined in s. 420.0004, individuals who have  
51 workplace disadvantages, or individuals with barriers to  
52 employment; and

53 3. Is accredited by the Commission on Accreditation of  
54 Rehabilitation Facilities.

55 (b) "Growth in employment hours" means the growth in the  
56 number of hours worked by employees at an eligible job training  
57 organization in the most recently completed state fiscal year,  
58 compared to the number of hours worked by employees at the

20-01006-19

20191098\_\_

59 eligible job training organization in the state fiscal year  
60 immediately before the most recently completed state fiscal  
61 year.

62 (c) "Job training and employment services" means programs  
63 and services that are provided to improve job readiness, to  
64 assist workers in gaining employment and adapting to the  
65 changing labor market, and to help workers achieve success  
66 through self-sufficiency.

67 (2) An eligible job training organization is entitled to a  
68 refund of 10 percent of the sales tax remitted to the department  
69 during the most recently completed state fiscal year on its  
70 sales of goods donated to the organization. The organization  
71 must reserve the refund exclusively for use in any of the  
72 following:

73 (a) Growth in employment hours.

74 (b) Job training and employment services to low-income  
75 persons as defined in s. 420.0004, individuals who have  
76 workplace disadvantages, and individuals with barriers to  
77 employment.

78 (c) Job training and employment services for veterans.

79 (3) The total amount of refunds that the department may  
80 issue under this section may not exceed \$2 million in any state  
81 fiscal year. Refunds must be granted on a first-come, first-  
82 served basis.

83 (4) An organization seeking a refund under this section  
84 must first submit an application to the Department of Economic  
85 Opportunity by July 15, which sets forth that the organization  
86 meets the requirements under paragraph (1)(a) and that the  
87 refund will be used exclusively for the purposes listed in

20-01006-19

20191098\_\_

88 subsection (2). The organization must submit supporting  
89 information as prescribed by the Department of Economic  
90 Opportunity by rule.

91 (5) (a) The Department of Economic Opportunity shall verify  
92 the application and notify the organization of its determination  
93 within 15 days after receiving a complete application. The  
94 Department of Economic Opportunity shall communicate its  
95 decision in writing or, if agreed to by the applicant, via e-  
96 mail.

97 (b) If the Department of Economic Opportunity approves the  
98 application, the notice sent to the eligible job training  
99 organization must include a certification that the organization  
100 is eligible to receive a refund of certain sales and use tax  
101 remitted under this chapter. The Department of Economic  
102 Opportunity shall transmit a copy of the notice and  
103 certification, if applicable, to the department.

104 (c) Upon the Department of Economic Opportunity's issuance  
105 of a certification, the certification remains valid so long as  
106 the eligible job training organization is in compliance with the  
107 requirements of this section.

108 (6) An eligible job training organization certified under  
109 this section must apply to the department between August 1 and  
110 August 31 of each year to receive a refund. A copy of the  
111 certification must be included in an eligible job training  
112 organization's first application for a refund, but is not  
113 required to be included in subsequent applications. The  
114 organization must submit any information required by the  
115 department as part of its application for the refund.

116 (7) For purposes of this section, an eligible job training

20-01006-19

20191098\_\_

117 organization comprised of commonly owned and controlled entities  
118 is deemed to be a single organization.

119 (8) By August 1 following each state fiscal year in which  
120 an eligible job training organization received a refund pursuant  
121 to subsection (2), the organization must provide a report to the  
122 Department of Economic Opportunity regarding the use of the  
123 funds in accordance with subsection (2). The report must include  
124 at least all of the following:

125 (a) The amount of the refund used to create growth in  
126 employment hours.

127 (b) The total growth in employment hours.

128 (c) The amount of the refund used for job training and  
129 employment services.

130 (d) The number of individuals who participated in job  
131 training and employment services at the eligible job training  
132 organization.

133 (e) A statement declaring that the eligible job training  
134 organization continues to meet the requirements of this section.

135 (9) (a) The Department of Economic Opportunity may adopt  
136 rules to administer this section, including rules for the  
137 approval and disapproval of applications.

138 (b) If the Department of Economic Opportunity determines  
139 that an eligible job training organization no longer qualifies  
140 for the refund under this section, the Department of Economic  
141 Opportunity must notify the department immediately. The  
142 department may not issue a refund after receiving such  
143 notification.

144 (c) Notwithstanding s. 95.091(3)(a)6.b., the department may  
145 audit any refund within 4 years after a refund is granted. The

20-01006-19

20191098\_\_

146 overpayment of a refund or a refund issued to an ineligible  
147 organization is subject to repayment and interest at the rate  
148 calculated pursuant to s. 213.235.

149 Section 2. This act shall take effect July 1, 2019.



The Florida Senate

## Committee Agenda Request

**To:** Senator Joseph Gruters, Chair  
Committee on Commerce and Tourism

**Subject:** Committee Agenda Request

**Date:** March 4, 2019

---

I respectfully request that **Senate Bill # 1098**, relating to Sales Tax Refund for Eligible Job Training Organizations, be placed on the:

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

A handwritten signature in blue ink that reads "Tom Lee".

---

Senator Tom Lee  
Florida Senate, District 20

**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 Commerce and Tourism

---

BILL: SB 1162

INTRODUCER: Senator Gainer

SUBJECT: Northwest Florida Rural Inland Affected Counties Recovery Fund

DATE: March 8, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	<b>Pre-meeting</b>
2.			ATD	
3.			AP	

---

**I. Summary:**

SB 1162 creates the Northwest Florida Rural Inland Affected Counties Recovery Fund (Fund) within the Department of Economic Opportunity (DEO), to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland counties affected by the Deepwater Horizon Oil Spill. The bill designates the following counties as rural inland affected counties: Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, and Washington County.

The bill also:

- Directs future Legislatures to appropriate to the Fund 5 percent of future settlement payments received by the state pursuant to Florida's claims for economic damages caused by the Deepwater Horizon Oil Spill;
- Requires the DEO to establish an application procedure and scoring process used by the DEO to grant awards to organizations or local governments within the rural inland affected counties;
- Lists the eligible projects and programs that may be provided awards by the DEO;
- Establishes criteria for projects and programs that should be given priority by the DEO; and
- Requires the DEO to review and certify applications according to the economic development incentive application process specified in s. 288.061, F.S., and in consultation with Enterprise Florida, Inc., the Florida Tourism Marketing Corporation, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission.

The bill directs future Legislatures to appropriate funds, but contains no current appropriations.

The bill is effective July 1, 2019.

## II. Present Situation:

### Deepwater Horizon Oil Spill

On April 20, 2010, an offshore drilling rig, known as Deepwater Horizon, exploded in the Gulf of Mexico.<sup>1</sup> The explosion claimed the lives of 11 crewmembers<sup>2</sup> and caused nearly five million barrels of crude oil to spill into the Gulf of Mexico.<sup>3</sup> The five states bordering the Gulf of Mexico (Alabama, Florida, Louisiana, Mississippi, and Texas) were quickly determined to have experienced the most devastating economic and environmental effects of the oil spill.<sup>4</sup>

On July 6, 2012, President Obama signed into law the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) in an effort to provide a mechanism for funding restoration of the Gulf Coast region.<sup>5</sup> The RESTORE Act required 80 percent of administrative and civil penalties paid by responsible parties<sup>6</sup> under provisions of the federal Clean Water Act to be deposited into the Gulf Coast Restoration Trust Fund.<sup>7</sup> The RESTORE Act set forth the following framework for allocation of the Trust Fund:

- 35 percent equally divided among the five states;
- 30 percent to the Gulf Coast Ecosystem Restoration Council;
- 30 percent to the Oil Spill Restoration Impact;
- 2.5 percent to the Gulf Coast Ecosystem Restoration Science Observation Monitoring and Technology Program; and
- 2.5 percent to Centers of Excellence.<sup>8</sup>

In addition to penalties imposed under the Clean Water Act, responsible parties were liable for Natural Resource Damage Assessment Penalties under the Oil Pollution Act of 1990 and criminal penalties asserted by the National Fish and Wildlife Foundation.<sup>9</sup> The funds awarded to the Gulf States were determined pursuant to a consent decree, which approved a \$20.8 billion

---

<sup>1</sup> Campbell Robertson, *Gulf Spill Is the Largest of Its Kind, Scientists Say*, The New York Times, Aug. 2, 2010, available at <http://www.nytimes.com/2010/08/03/us/03spill.html> (last visited March 8, 2019).

<sup>2</sup> Bradley Blackburn, *BP Oil Spill: Families Gather to Honor 11 Who Died, Express Frustration with BP, Transocean*, ABC News, May 25, 2010, available at <http://abcnews.go.com/WN/bp-oil-spill-transocean-holds-memorial-11-lost/story?id=10739080> (last visited March 8, 2019).

<sup>3</sup> Robertson, *supra* note 1.

<sup>4</sup> Exec. Order No. 13554, 75 Fed. Reg. 62313, (October 5, 2010), available at <https://obamawhitehouse.archives.gov/the-press-office/2010/10/05/executive-order-13554-gulf-coast-ecosystem-restoration-task-force> (last visited March 8, 2019).

<sup>5</sup> Pub. L. No. 112-141 (113<sup>th</sup> Congress). Codified at 33 U.S.C. 1321.

<sup>6</sup> Transocean Ltd., British Petroleum (BP), and The Halliburton Company were among the parties found to be responsible.

<sup>7</sup> The remaining 20 percent of the administrative and civil penalties are required to be deposited into the federal Oil Spill Liability Trust Fund, which funds removal costs or damages resulting from discharges of oil. *See* 33 U.S.C. 1321.

<sup>8</sup> A table of Projected BP Annual Deposits into the Gulf Coast Restoration Trust Fund is available at [https://www.treasury.gov/services/restore-act/Documents/BP\\_Estimated\\_Deposits\\_Schedule\\_June302016.pdf](https://www.treasury.gov/services/restore-act/Documents/BP_Estimated_Deposits_Schedule_June302016.pdf) (last visited March 8, 2019).

<sup>9</sup> Consent Decree, *In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010* (no. 2179, M.D.L., April 4, 2016), available as document no. 15, at <https://www.justice.gov/enrd/file/838066/download> (last visited March 8, 2019).



settlement of a civil lawsuit filed by the United States and the five Gulf States against the parties responsible for the oil spill.<sup>10</sup>

### ***Economic Loss Claims***

In an agreement separate from the civil lawsuit, BP also agreed to pay a total of \$4.9 billion to the five Gulf States and up to \$1 billion to local government entities for economic damage claims related to the oil spill.<sup>11</sup> Pursuant to the agreement, Florida will receive a total of \$2 billion over an 18-year period.<sup>12</sup> Attorney General Pam Bondi received BP's initial settlement payment of \$400 million in July of 2016, and the funds were placed into the state General Revenue Fund.<sup>13</sup> Subsequent settlement payments are scheduled to be paid annually to the state in the amount of \$106,666,666 from 2019 until 2033.<sup>14</sup>

### **Florida Legislation**

#### ***Triumph Gulf Coast, Inc.***

In 2013, the Legislature created the Gulf Coast Economic Corridor Act (the Act) to provide a long-term source of funding for economic recovery and enhancement efforts in the Gulf Coast region to help businesses, individuals, and local governments recover from the Deepwater Horizon oil spill.<sup>15</sup> The Act created Triumph Gulf Coast, Inc. (Triumph Gulf Coast), a nonprofit corporation, administratively housed under the DEO.<sup>16</sup>

The duties of Triumph Gulf Coast include:

- Responsibly and prudently managing all funds received and ensuring that the use of funds is in accordance with applicable laws, bylaws, and contractual requirements;
- Administering the program set forth by the Act;
- Monitoring, reviewing, and annually evaluating awardees and their projects or programs to determine whether awards should be continued, terminated, reduced, or increased; and
- Operating in a transient manner, by maintaining a website that provides public access to information, notice of meetings, awards, and the status of projects and programs.<sup>17</sup>

In 2017, the Legislature created the Triumph Gulf Coast Trust Fund within the DEO as a depository for a portion of the settlement payments received by the state.<sup>18</sup> During the same legislative session, the Legislature amended the Act to update the criteria for awards and

---

<sup>10</sup> A flowchart of the funds awarded in the approved settlement is available at <http://www.oceanconservancy.org/places/gulf-of-mexico/spill-funds-flowchart-spring.pdf> (last visited March 8, 2019).

<sup>11</sup> Attorney General Pam Bondi, *Deepwater Horizon Oil Spill Settlement Fact Sheet*

[http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/\\$file/BP+Fact+Sheet.pdf](http://myfloridalegal.com/webfiles.nsf/WF/KMAN-9Y2H9C/$file/BP+Fact+Sheet.pdf) (last visited March 8, 2019).

<sup>12</sup> Consent Decree, In re: Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico on April 20, 2010 (no. 2179, M.D.L., April 4, 2016), available as document no. 15435-2.

<sup>13</sup> Court settlement funds negotiated by the state are placed in the General Revenue Fund pursuant to s. 216.216, F.S.

<sup>14</sup> Document no. 15435-2, *supra* note 12.

<sup>15</sup> Section 288.8011, F.S.

<sup>16</sup> Sections 288.8013(1), F.S.

<sup>17</sup> Section 288.8016, F.S.

<sup>18</sup> Chapter 2017-64, F.S.

priorities granted by Triumph Gulf Coast, to address additional operations and requirements of Triumph Gulf Coast, and to provide an appropriation for the settlement payments.<sup>19</sup>

Pursuant to s. 288.8013, F.S., 75 percent of the payments received by the state pursuant to the settlement agreement must be immediately transferred from the General Revenue Fund to the Triumph Gulf Coast Trust Fund.<sup>20</sup> Of the settlement moneys received on or before July 1, 2017, 75 percent (roughly \$300 million), was appropriated to Triumph Gulf Coast for allocation by its board of directors.<sup>21</sup> For settlement payments received by the state after July 1, 2017, 75 percent of the moneys (roughly \$80 million per annual payment) must be deposited into the Triumph Gulf Coast Trust Fund and released to Triumph Gulf Coast no later than 30 days after such funds are transferred to the Triumph Gulf Coast Trust Fund.<sup>22</sup>

To date, the 2019 settlement payment (roughly \$106,666,666) has not yet been received by the state.

### **Economic Development Incentive Application Process**

Section 288.061, F.S., specifies the process by which the Division of Strategic Business Development of the DEO and designated staff of Enterprise Florida, Inc., must review a submitted economic development incentive application to ensure that the application is complete, whether and what type of state and local permits may be necessary for the applicant's project, whether it is possible to waive such permits, and what state incentives and amounts of such incentives may be available to the applicant.

The DEO must recommend to the executive director of the DEO to approve or disapprove an applicant business. If review of the application demonstrates that the application is incomplete, the executive director must notify the applicant business within the first 5 business days after receiving the application.

The DEO must review and evaluate each economic development incentive application for the economic benefits of the proposed award of state incentives proposed for the project. The term "economic benefits" means the direct, indirect, and induced gains in state revenues as a percentage of the state's investment, which includes state grants, tax exemptions, tax refunds, tax credits, and other state incentives. Within 10 business days after the DEO receives the submitted economic development incentive application, the executive director must approve or disapprove the application and issue a letter of certification to the applicant which includes a justification of that decision, unless the business requests an extension of that time.

The contract or agreement with the applicant must specify the total amount of the award, the performance conditions that must be met to obtain the award, the schedule for payment, and sanctions that would apply for failure to meet performance conditions. The DEO may enter into one agreement or contract covering all of the state incentives that are being provided to the

---

<sup>19</sup> See Ch. 2017-63, F.S.

<sup>20</sup> The remaining 25 percent of all payments to the state pursuant to the settlement agreement were not addressed, and as a result, remain in the state's General Revenue Fund, available for appropriation by the Legislature.

<sup>21</sup> Chapter 2017-63, Laws of Fla.

<sup>22</sup> Section 288.8013(2)(a)2., F.S.

applicant. The contract must provide that release of funds is contingent upon sufficient appropriation of funds by the Legislature; the release of funds for the incentive or incentives awarded to the applicant depends upon the statutory requirements of the particular incentive program.

The DEO must validate contractor performance and report such validation in the annual incentives report required of Enterprise Florida, Inc.

After an economic development incentive application is approved, the awardee must provide, in each year that the DEO is required to validate contractor performance, a signed written declaration stating that the awardee has reviewed the information and that the information is true, correct, and complete to the best of the awardee's knowledge and belief.

### III. Effect of Proposed Changes:

#### **Northwest Florida Rural Inland Affected Counties Recovery Fund**

The bill creates s. 288.8055, F.S., to establish the Northwest Florida Rural Inland Affected Counties Recovery Fund (Fund) within the DEO. The Fund is created to facilitate the planning, preparation, and financing of infrastructure projects and workforce programs in rural inland affected counties, which will encourage job creation, capital investment, and the strengthening and diversification of the economies of such counties by promoting tourism, trade, and economic development.

#### ***Definitions***

The bill provides the following definitions:

- “Fund” means the Northwest Florida Rural Inland Affected Counties Recovery Fund;
- “Rural inland affected county” means Calhoun County, Gadsden County, Holmes County, Jackson County, Jefferson County, Liberty County, or Washington County; and
- “Settlement agreement” means the agreement entitled “Settlement Agreement Between the Gulf States and the BP Entities with Respect to Economic and Other Claims Arising From the *Deepwater Horizon* Incident,” which was entered into on October 5, 2015, in the case styled: *In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010*, MDL 2179 in the United States District Court for the Eastern District of Louisiana.

#### ***Settlement Funds***

The bill specifies that 5 percent of all payments to the state received pursuant to the settlement agreement after July 1, 2019, shall be appropriated annually by the Legislature to the Fund. The bill clarifies that the transfer of moneys to the Fund shall occur after the transfer of moneys to the Triumph Gulf Coast Trust Fund, and that the transfer of money to the Fund shall not diminish the amount of money transferred to the Triumph Gulf Coast Trust Fund. Under the bill, future settlement payments received by the state after July 1, 2019, in the amount of \$106,666,666 annually, will be appropriated as follows:

- Approximately \$80 million to Triumph Gulf Coast; and

- If a future Legislature appropriated it, approximately \$5.3 million to the Northwest Florida Rural Inland Affected Counties Recovery Fund.<sup>23</sup>

The bill also provides that, notwithstanding s. 216.301, F.S., moneys appropriated to the Fund are not subject to reversion.

### ***Application for Awards***

Under the bill, the DEO must grant awards to organizations or local governments within the rural inland affected counties for infrastructure projects and workforce programs that meet the priorities of economic recovery, diversification, and enhancement.

The DEO must establish an application procedure for awards and a scoring process for the selection of infrastructure projects and workforce programs that have the potential to generate increased economic activity in the rural inland affected counties. The DEO is required to review and certify applications according to the economic development incentive application process in s. 288.061, F.S., and in consultation with Enterprise Florida, Inc., the Florida Tourism Marketing Corporation, the Department of Environmental Protection, and the Florida Fish and Wildlife Conservation Commission, as appropriate. The application review must include an evaluation of the economic benefit of the infrastructure project or workforce program and its long-term viability. The bill specifies that the DEO shall have final approval of any awards provided.

### ***Awards and Priorities***

Awards may be provided for:

- Local match requirements for the Rural Infrastructure Fund in s. 288.0655, F.S.;
- Infrastructure planning, design, construction, expansion, or maintenance projects that meet the priorities of the program;
- Infrastructure feasibility studies, design and engineering activities, or other infrastructure planning and preparation activities necessary to induce the relocation or expansion of specific employment opportunities;
- Grants to support workforce programs that provide participants in the rural inland affected counties with transferable sustainable workforce skills;
- Grants to the Florida Tourism Industry Marketing Corporation created under s. 288.1226, F.S., for the purpose of advertising and promoting tourism and agricultural or agricultural-based products marketed under the “Fresh From Florida” or “From Florida” logos and for promoting infrastructure projects and workforce programs on behalf of the rural inland affected counties; or
- Grants to regionally based economic development organizations representing the rural inland affected counties for the purpose of building the professional capacity of such organizations and providing technical assistance to businesses served by such organizations;

The DEO is required to give priority to projects and programs that:

- Generate the maximum estimated economic benefits, based on tools and models not generally employed by economic input-output analyses, including cost-benefit, return-on-

---

<sup>23</sup> The remaining 20 percent of the settlement payments received after July 1, 2019 (approximately \$21.3 million of each annual settlement payment) will remain in General Revenue Fund, available for appropriation by the Legislature.

investment, or dynamic scoring techniques, to determine how the long-term economic growth potential of the rural inland affected counties may be enhanced by the award;

- Increase household income above the national average in the rural inland affected counties;
- Leverage or further enhance key assets, including K-20 educational institutions, research facilities, and military bases, in the rural inland affected counties;
- Partner with local governments to provide funds, infrastructure, land, or other assistance to the rural inland affected counties;
- Benefit the environment and economy of the rural inland affected counties;
- Provide outcome measures;
- Partner with K-20 educational training institutions or school districts located within the rural inland affected counties;
- Are recommended by the board of county commissioners of the rural inland affected county in which such project or program will be located; or
- Partner with convention and visitor bureaus, tourist development councils, or chambers of commerce located within the rural inland affected counties.

#### **Effective Date**

The bill provides an effective date of 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.

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

A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

The DEO may incur costs associated with developing the application procedure and the granting of awards, as required by the bill.

The bill provides that 5 percent of the BP settlement payments received after July 1, 2019 “shall be appropriated annually” to the fund created in the bill. If the intent is to appropriate the payments without further legislative action in subsequent fiscal years, the language “shall be appropriated annually” should be clarified to read “is appropriated annually.”

If future appropriations are made to the Fund, such appropriations would reduce General Revenue Funds by approximately \$5.3 million annually.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 51-52 of the bill create the Northwest Florida Rural Inland Affected Counties Recovery Fund within the DEO. Art. III, s. 19(f), of the State Constitution requires that every trust fund be created by a three-fifths vote of the membership of each house of the Legislature in a separate bill for the sole purpose of created a trust fund. State trust funds terminate not more than 4 years after their initial creation unless re-created. If the fund is a trust fund, it should be created in a separate bill. If it is not a trust fund, but merely a program that will be funded out of an existing DEO trust fund, then the terminology could be changed to so clarify.

The bill provides that “organizations” are eligible to receive grant funds without defining the term, which would appear to make the program open to private entities.

To avoid confusion over the definition of “fund” provided by the bill, the term “funds” used in lines 58, 63, and 132 could be replaced with the term “moneys.”

The bill requires the DEO to establish an application procedure for awards and a scoring process, including how to model economic benefits, but also requires that the DEO certify applications pursuant to s. 288.061, F.S., which specifies that “economic benefits” are defined in 288.005, F.S., as the direct, indirect, and induced gains in state revenues as a percentage of the state’s investment.

**VIII. Statutes Affected:**

This bill creates section 288.8055 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 Gainer

2-01787A-19

20191162\_\_

1 A bill to be entitled  
2 An act relating to the Northwest Florida Rural Inland  
3 Affected Counties Recovery Fund; creating s. 288.8055,  
4 F.S.; providing legislative intent; providing  
5 definitions; creating the Northwest Florida Rural  
6 Inland Affected Counties Recovery Fund within the  
7 Department of Economic Opportunity; requiring certain  
8 payments to be appropriated annually to the fund;  
9 prohibiting such payments from diminishing funds  
10 transferred to the Triumph Gulf Coast Trust Fund;  
11 requiring the department to grant awards to  
12 organizations and local governments for specified  
13 infrastructure projects and workforce programs;  
14 requiring the department to establish an application  
15 procedure and prioritize projects and programs that  
16 meet certain requirements; requiring the department,  
17 in consultation with specified entities, to review and  
18 certify applications; exempting certain funds from  
19 reversion; providing an effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Section 288.8055, Florida Statutes, is created  
24 to read:

25 288.8055 Northwest Florida Rural Inland Affected Counties  
26 Recovery Fund.—

27 (1) The Legislature recognizes that as a result of the  
28 Deepwater Horizon disaster, the rural inland affected counties  
29 of Northwest Florida continue to face extraordinary challenges



2-01787A-19

20191162\_\_

30 in significantly improving their economies, specifically in  
31 terms of household income, job creation, average wages, and  
32 strong tax bases. The Legislature also recognizes that this area  
33 is designated as a rural area of opportunity by the Governor  
34 pursuant to s. 288.0656. Therefore, the Legislature intends to  
35 provide a long-term source of funding for economic recovery and  
36 enhancement efforts of the rural inland affected counties.

37 (2) As used in this section, the term:

38 (a) "Fund" means the Northwest Florida Rural Inland  
39 Affected Counties Recovery Fund created in this section.

40 (b) "Rural inland affected county" means Calhoun County,  
41 Gadsden County, Holmes County, Jackson County, Jefferson County,  
42 Liberty County, or Washington County.

43 (c) "Settlement agreement" means the agreement entitled  
44 "Settlement Agreement Between the Gulf States and the BP  
45 Entities with Respect to Economic and Other Claims Arising from  
46 the Deepwater Horizon Incident," which was entered into on  
47 October 5, 2015, in the case styled *In re: Oil Spill by the Oil*  
48 *Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20,*  
49 *2010*, MDL 2179 in the United States District Court for the  
50 Eastern District of Louisiana.

51 (3) The Northwest Florida Rural Inland Affected Counties  
52 Recovery Fund is created within the department to facilitate the  
53 planning, preparation, and financing of infrastructure projects  
54 and workforce programs in rural inland affected counties which  
55 will encourage job creation, capital investment, and the  
56 strengthening and diversification of the economies of such  
57 counties by promoting tourism, trade, and economic development.

58 (4) After the transfer of funds to the Triumph Gulf Coast

2-01787A-19

20191162\_\_

59 Trust Fund specified in s. 288.8013, five percent of all  
60 payments to the state received pursuant to the settlement  
61 agreement after July 1, 2019, shall be appropriated annually by  
62 the Legislature to the fund. This subsection shall not diminish  
63 the funds transferred to the Triumph Gulf Coast Trust Fund.

64 (5) The department shall grant awards to organizations or  
65 local governments within the rural inland affected counties for  
66 infrastructure projects and workforce programs that meet the  
67 priorities for economic recovery, diversification, and  
68 enhancement. Awards may be provided for:

69 (a) Local match requirements of s. 288.0655.

70 (b) Infrastructure planning, design, construction,  
71 expansion, or maintenance projects that meet such priorities.

72 (c) Infrastructure feasibility studies, design and  
73 engineering activities, or other infrastructure planning and  
74 preparation activities necessary to induce the relocation or  
75 expansion of specific employment opportunities.

76 (d) Grants to support workforce programs that provide  
77 participants in the rural inland affected counties with  
78 transferable sustainable workforce skills.

79 (e) Grants to the Florida Tourism Industry Marketing  
80 Corporation created under s. 288.1226 for the purpose of  
81 advertising and promoting tourism and agricultural or  
82 agricultural-based products marketed under the "Fresh From  
83 Florida" or "From Florida" logos and for promoting  
84 infrastructure projects and workforce programs on behalf of the  
85 rural inland affected counties.

86 (f) Grants to regionally based economic development  
87 organizations representing the rural inland affected counties

2-01787A-19

20191162\_\_

88 for the purpose of building the professional capacity of such  
89 organizations and providing technical assistance to businesses  
90 served by such organizations.

91 (6) The department shall establish an application procedure  
92 for awards and a scoring process for the selection of  
93 infrastructure projects and workforce programs that have the  
94 potential to generate increased economic activity in the rural  
95 inland affected counties, giving priority to such projects and  
96 programs that:

97 (a) Generate maximum estimated economic benefits, based on  
98 tools and models not generally employed by economic input-output  
99 analyses, including cost-benefit, return-on-investment, or  
100 dynamic scoring techniques, to determine how the long-term  
101 economic growth potential of the rural inland affected counties  
102 may be enhanced by the award.

103 (b) Increase household income above the national average in  
104 the rural inland affected counties.

105 (c) Leverage or further enhance key assets, including K-20  
106 educational institutions, research facilities, and military  
107 bases, in the rural inland affected counties.

108 (d) Partner with local governments to provide funds,  
109 infrastructure, land, or other assistance to the rural inland  
110 affected counties.

111 (e) Benefit the environment and economy of the rural inland  
112 affected counties.

113 (f) Provide outcome measures.

114 (g) Partner with K-20 educational institutions or school  
115 districts located within the rural inland affected counties.

116 (h) Are recommended by the board of county commissioners of

2-01787A-19

20191162\_\_

117 the rural inland affected county in which such project or  
118 program will be located.

119 (i) Partner with convention and visitor bureaus, tourist  
120 development councils, or chambers of commerce located within the  
121 rural inland affected counties.

122 (7) Applications for awards shall be submitted to the  
123 department. The department, in consultation with Enterprise  
124 Florida, Inc., the Florida Tourism Industry Marketing  
125 Corporation, the Department of Environmental Protection, and the  
126 Florida Fish and Wildlife Conservation Commission, as  
127 appropriate, shall review and certify applications pursuant to  
128 s. 288.061. The review shall include an evaluation of the  
129 economic benefit of the infrastructure project or workforce  
130 program and its long-term viability. The department shall have  
131 final approval of any awards provided pursuant to this section.

132 (8) Notwithstanding s. 216.301, funds appropriated for the  
133 purposes of this section are not subject to reversion.

134 Section 2. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Finance and Tax, *Chair*  
Agriculture, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Criminal  
and Civil Justice  
Military and Veterans Affairs and Space

### SENATOR GEORGE B. GAINER

2nd District

February 28, 2019

Re: SB 1162

Dear Chair Gruters,

I am respectfully requesting Senate Bill 1162, related to the Northwest Florida Rural Inland Affected Counties Recovery Fund, be placed on the agenda for the next meeting of the Commerce and Tourism Committee.

I appreciate your consideration of this bill. If there are any questions or concerns, please do not hesitate to call my office at (850) 487-5002.

Thank you,

A handwritten signature in blue ink that reads "George B. Gainer".

Senator George Gainer  
District 2

Cc. Todd McKay, Madeline Reeve, Josh Barnhill, Victoria Brill, GeeDee Kerr

#### REPLY TO:

- 840 West 11th Street, Panama City, Florida 32401 (850) 747-5454
- 302 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5002
- Northwest Florida State College, 100 East College Boulevard, Building 330, Rooms 105 and 112, Niceville, Florida 32578 (850) 747-5454

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

**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 Commerce and Tourism

---

BILL: SB 1112

INTRODUCER: Senator Gruters

SUBJECT: Taxation

DATE: March 8, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McKay	CM	<b>Favorable</b>
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

---

**I. Summary:**

SB 1112 provides for a number of tax reductions and modifications. The bill:

- Exempts specified mobile heavy equipment from ad valorem taxation;
- Reduces the state tax rate on the rental, lease, or license to use commercial real property from 5.7 percent to 4.2 percent;
- Creates a 14-day sales tax holiday for specified disaster preparedness supplies from June 1, 2019, through June 14, 2019;
- Clarifies when remote sales are subject to Florida sales and use taxation;
- Provides for the taxation of sales facilitated through a marketplace provider; and
- Requires a marketplace provider to collect and remit the tax on taxable sales made by marketplace sellers.

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer the sales tax holiday for disaster preparedness supplies.

The bill takes effect July 1, 2019, except for the provisions creating the sales tax holiday and granting emergency rulemaking authority to the Department of Revenue, both of which take effect upon becoming law.

## II. Present Situation:

### Property Taxation in Florida

Local governments, including counties, school districts, and municipalities have the constitutional authority to levy ad valorem taxes. Special districts may also be given this authority by law.<sup>1</sup> Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.<sup>2</sup> However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.<sup>3</sup>

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.<sup>4</sup> The Florida Constitution grants property tax relief in the form of certain valuation differentials,<sup>5</sup> assessment limitations,<sup>6</sup> and exemptions,<sup>7</sup> including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

### *Inventory*

Current law exempts from ad valorem taxation all items of inventory.<sup>8</sup> “Inventory” is defined as chattels consisting of items commonly referred to as goods, wares, and merchandise (as well as inventory) which are held for sale or lease to customers in the ordinary course of business.<sup>9</sup> Supplies and raw materials are considered to be inventory only to the extent that they are acquired for sale or lease to customers in the ordinary course of business or will physically become a part of merchandise intended for sale or lease to customers in the ordinary course of business. Partially finished products which when completed will be held for sale or lease to customers in the ordinary course of business are deemed items of inventory. All livestock is considered inventory.

---

<sup>1</sup> FLA. CONST. art VII, s. 9,

<sup>2</sup> FLA. CONST. art VII, s. 2.

<sup>3</sup> See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

<sup>4</sup> “Exemption” presupposes the existence of a power to tax, while “immunity” implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

<sup>5</sup> FLA. CONST. art VII, s. 4, authorizes valuation differentials, which are based on character or use of property.

<sup>6</sup> FLA. CONST. art VII, s. 4(c), authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index.

<sup>7</sup> FLA. CONST. art VII, s. 3, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>8</sup> s. 196.185, F.S.

<sup>9</sup> s. 192.001(11)(c), F.S.

## Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,<sup>10</sup> transient rentals,<sup>11</sup> rental of commercial real estate,<sup>12</sup> and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.<sup>13</sup> Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>14</sup> Sales tax receipts accounted for 77 percent of the state's General Revenue in Fiscal Year 2017-2018.<sup>15</sup>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."<sup>16</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 1.5 percent.<sup>17</sup>

### *Sales Tax on Commercial Rent*

Since 1969, Florida has imposed a sales tax on the total rent charged for the rental, lease, or license to use commercial real property.<sup>18</sup> Sales tax is due at the rate of 5.7 percent on the total rent paid and county sales surtax can also be levied.<sup>19</sup> If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are several commercial rentals that are not subject to tax, including:

---

<sup>10</sup> Section 212.04, F.S.

<sup>11</sup> Section 212.03, F.S.

<sup>12</sup> Section 212.031, F.S.

<sup>13</sup> See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 162-168 (2018).

<sup>14</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited March 8, 2019).

<sup>15</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, Sources of General Revenue, 16 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 1, 2019).

<sup>16</sup> Section 212.054, F.S.

<sup>17</sup> Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2018 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 8, 2019).

<sup>18</sup> Chapter 1969-222, Laws of Fla.

<sup>19</sup> Section 212.031, F.S., and Rule 12A-1.070, F.A.C.



- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.<sup>20</sup>

### ***Disaster Preparedness***

Previous legislatures have approved sales tax exemptions for specified items in preparation for the Atlantic hurricane season, which typically begins on June 1<sup>st</sup> of each year.<sup>21</sup>

The Florida Division of Emergency Management recommends having a plan and preparing property to prevent damage. Additionally, the Division of Emergency Management recommends having a disaster supply kit with items such as a battery-operated radio, flashlight, batteries, and first-aid kit.<sup>22</sup>

The Federal Emergency Management Agency (FEMA) educates Americans on how to prepare for emergencies through Ready, a public service advertising campaign.<sup>23</sup> In addition to the items listed in the paragraph above, FEMA recommends cell phone chargers, inverters, or solar chargers as items to include in an emergency preparedness supply kit.<sup>24</sup>

### ***Remote Sales Tax Collection and the Wayfair Decision***

A use tax applies and is due on tangible personal property imported or caused to be imported into Florida for use, consumption, distribution, or storage to be used or consumed in Florida, with certain exceptions.<sup>25</sup> If a remote seller does not collect sales tax, the burden to comply voluntarily with the law rests with the in-state buyer.<sup>26</sup>

U.S. Supreme Court holdings on the ability of states to impose their taxation authority on remote sellers have required that businesses be physically present in a state before the state could impose its taxing authority on remote sellers.<sup>27</sup> With increasing amounts of retail sales now transacted

---

<sup>20</sup> See s. 212.031(1)(a)1.-13., F.S.

<sup>21</sup> National Oceanic and Atmospheric Administration, *Frequently Asked Questions*, available at, <http://www.aoml.noaa.gov/hrd/tcfaq/G1.html> (last visited March 8, 2019).

<sup>22</sup> Florida Division of Emergency Management, *Disaster Supply Kit*, available at, <https://floridadisaster.org/planprepare/disaster-supply-kit/> (last visited March 8, 2019).

<sup>23</sup> Federal Emergency Management Agency, *Ready.gov*, available at, <http://www.ready.gov> (last visited March 8, 2019).

<sup>24</sup> Federal Emergency Management Agency, *Build A Kit*, available at, <https://www.ready.gov/build-a-kit> (last visited March 8, 2019).

<sup>25</sup> Section 212.06(8), F.S. See also Florida Department of Revenue, Florida Consumer Information- have you bought or received merchandise from out of state or through the Internet?, available at: <http://floridarevenue.com/taxes/Pages/consumer.aspx> (last visited March 8, 2019).

<sup>26</sup> See Florida Department of Revenue Form DR-15MO, Out-of-State Purchase Return, available at [http://floridarevenue.com/Forms\\_library/current/dr15mo.pdf](http://floridarevenue.com/Forms_library/current/dr15mo.pdf) (last visited March 8, 2019).

<sup>27</sup> NCSL, Remote Sales Tax Collection, 2/21/2019, available at: <http://www.ncsl.org/research/fiscal-policy/e-fairness-legislation-overview.aspx> (last visited March 8, 2019).

through the Internet with remote sellers,<sup>28</sup> this physical presence requirement poses an issue for state tax collection, when remote sellers may not have sufficient contact with a state to be subjected to the taxing state's authority.

However, a recent U.S. Supreme Court decision, *South Dakota v. Wayfair, Inc.*,<sup>29</sup> has altered the requirements for the collection of taxes from remote sellers, specifically the requirement that a seller have a "physical presence" in a state constituting a "substantial nexus" with the taxing state sufficient to allow the taxing state to compel the remote seller to collect and remit sales taxes. The decision upheld a South Dakota state law compelling the collection and remittance of sales taxes by remote sellers that, on an annual basis, deliver more than \$100,000 of goods or series into the state, or engage in 200 or more separate transactions for the delivery of goods or services in the state. The Court overruled previous decisions requiring physical presence in a state as a prerequisite to the collection of sales taxes,<sup>30</sup> and held that the specific tax system that South Dakota enacted appeared designed to prevent discrimination against, or undue burdens upon, interstate commerce.<sup>31</sup>

### ***Taxation of Mail Order Sales***

Section 212.0596, F.S., specifies the requirements for the taxation of out-of-state mail order sales by Florida. A "mail order sale" is a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States or other area under the jurisdiction of the United States, and transports or causes the property to be transported to a person in Florida.

Every dealer as defined in s. 212.06(2)(c), F.S., who makes a mail order sale is subject to the power of this state to levy and collect the tax imposed by this ch. 212, F.S., when:

- The dealer is a corporation doing business under the laws of this state or a person domiciled in, a resident of, or a citizen of, this state;
- The dealer maintains retail establishments or offices in this state;
- The dealer has agents in this state who solicit business or transact business on behalf of the dealer;
- The property was delivered in this state in fulfillment of a sales contract that was entered into in this state when a person in this state accepted an offer by ordering the property;
- The dealer, by purposefully or systematically exploiting the market provided by Florida by any media-assisted, media-facilitated, or media-solicited means, creates nexus with Florida;
- Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of Florida's taxing power;

---

<sup>28</sup> The U.S. Census Bureau estimates that the amount of U.S. retail e-commerce sales for the third quarter of 2018 was \$130.9 billion, which constituted 9.8 percent of all retail sales in that quarter. U.S. Census Bureau News, Quarterly Retail E-Commerce Sales 3<sup>rd</sup> Quarter 2018, available at: [https://www.census.gov/retail/mrts/www/data/pdf/ec\\_current.pdf](https://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf) (last visited March 8, 2019).

<sup>29</sup> 138 S. Ct. 2080 (2018).

<sup>30</sup> *Id.* at 2084.

<sup>31</sup> *Id.* at 2099.

- The dealer consents, expressly or by implication, to the imposition of the tax imposed by ch. 212, F.S.;
- The dealer is subject to service of process under s. 48.181, F.S.;
- The dealer's mail order sales are subject to the power of Florida to tax sales or to require the dealer to collect use taxes under a statute or statutes of the United States;
- The dealer owns real property or tangible personal property that is physically in this state;
- The dealer is a corporation that is a member of an affiliated group of corporations and whose members are eligible to file a consolidated tax return for federal corporate income tax purposes and any parent or subsidiary corporation in the affiliated group has nexus with this state; or
- The dealer or the dealer's activities have sufficient connection with or relationship to this state or its residents of some type other than those described above to create nexus empowering this state to tax its mail order sales or to require the dealer to collect sales tax or accrue use tax.<sup>32</sup>

This section also imposes a duty on dealers to cooperate in the collection of taxes, requires the department to enforce these provisions in other jurisdictions when the other jurisdiction consents, and specifies that sales tax required under this section to be collected and any amount unreturned to a purchaser that is not tax but was collected from the purchaser under the representation that it was tax constitute funds of the State of Florida from the moment of collection. A dealer who makes a mail order sale in this state is exempt from collecting and remitting any local option surtax on the sale, except under certain circumstances. The Florida Department of Revenue (department) may establish by rule procedures for collecting the use tax from unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the department.

### III. Effect of Proposed Changes:

#### Exemption of Certain Heavy Equipment from Ad Valorem Taxation

**Section 1** amends a definition applicable to the imposition of ad valorem taxes by specifying that "inventory" also means any construction equipment, earthmoving equipment, or industrial equipment that is mobile and rented by a dealer of heavy equipment rental property, including attachments for the equipment or other ancillary equipment or tools. Qualified heavy equipment property is mobile if it is not permanently affixed to real property and is moved among worksites. The bill defines the term "dealer of heavy equipment rental property" as a person or entity principally engaged in the business of short-term rental of property as described under the North American Industrial Classification System.<sup>33</sup> The term "short-term rental" means the rental of a dealer's heavy equipment rental property for a period of less than 1 year, for an undefined period, or under a contract with unlimited terms.

By operation of s. 192.011, F.S., "inventory" is not included in the property that county property appraisers assess for purposes of ad valorem taxation, so the effect of the definition change will be to exempt the defined equipment from ad valorem property taxation.

<sup>32</sup> Section 212.0596(2), F.S.

<sup>33</sup> 2017 NAICS Definition, 532412, Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing

### **Sales Tax on Commercial Rent**

**Section 3** amends s. 212.031, F.S., to reduce the state tax rate on the rental, lease or license to use commercial real property from 5.7 percent to 4.2 percent, beginning January 1, 2019.

### **Sales Tax Holiday for Disaster Preparedness Supplies**

**Section 8** establishes a 14-day period, from June 1 through June 14, 2019, during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. The following items are exempt:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- An item typically sold or advertised as a ground anchor system or tie-down kit selling for \$50 or less;
- A gas or diesel fuel tank selling for \$25 or less;
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A non-electric food storage cooler selling for \$30 or less;
- A portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less;
- Reusable ice selling for \$10 or less;
- Impact-resistant windows, when sold in units of 20 or fewer; and
- Impact-resistant doors, when sold in units of 10 or fewer.

The exemptions for the impact-resistant windows and doors apply to purchases made by an owner of residential real property where such products will be installed.

Sales within public lodging establishments,<sup>34</sup> theme parks or entertainment complexes,<sup>35</sup> or airports<sup>36</sup> are not exempt from taxes under this bill.

The bill authorizes the department to adopt emergency rules in order to implement the sales tax exemption.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the department in Fiscal Year 2018-2019 to administer this sales tax holiday.

### **Taxation of Remote Sales and Marketplace Sales**

**Section 2** amends the definition of “retail sale” in s. 212.02, F.S., which applies to the entirety of ch. 212, F.S., to include a remote sale, and a sale facilitated by a marketplace.

---

<sup>34</sup> Section 509.013(4), F.S.

<sup>35</sup> Section 509.013(9), F.S.

<sup>36</sup> Section 330.27(2), F.S.

**Section 4** amends s. 212.05, F.S., to apply the sales and use tax to remote sales.

**Section 5** amends s. 212.0596, F.S., currently related to the taxation of mail order sales, to provide for the taxation of remote sales of tangible personal property or taxable services ordered by mail, telephone, or the Internet. The bill provides that every person “making a substantial number of remote sales” is a dealer for purposes of the sales and use tax. “Making a substantial number of remote sales” means:

- Conducting 200 or more separate retail sales of tangible personal property or services taxable under ch. 192, F.S., in the previous calendar year to be delivered to a location within Florida; or
- Conducting any number of retail sales of tangible personal property or services taxable under this ch. 192, F.S., in an amount exceeding \$100,000 in the previous calendar year to be delivered to a location within Florida.

The bill also deletes a provision relating to mail order sales from counties imposing a surtax, and deletes a provision granting rulemaking authority to the department for procedures for the collection of tax from unregistered persons.

**Section 6** creates s. 212.05965, F.S., providing for the taxation of marketplace sales.

Every marketplace provider that is physically located in Florida, or that is making or facilitating through a marketplace a substantial number of remote sales, is subject to the sales and use tax requirements imposed on dealers by Ch. 212, F.S., for registration and for the collection and remittance of taxes. A marketplace provider must certify to its marketplace sellers that it will collect and remit the tax imposed on taxable retail sales made through the marketplace.

A marketplace seller may not collect and remit the sales and use tax on a taxable retail sale when the sale is made through the marketplace and the marketplace provider certifies that it will collect and remit the tax. A marketplace seller must exclude sales made through the marketplace from the marketplace seller’s tax return. A marketplace seller physically located in this state, or making a substantial number of remote sales, must register, collect, and remit the sales and use tax on all taxable sales made outside of the marketplace.

A marketplace provider must allow the department to examine and audit its books and records. If the department audits a marketplace provider, the department may not propose a tax assessment on the marketplace seller for the same retail sales unless the marketplace seller provides incorrect or incomplete information to the marketplace provider.

With certain exceptions, the marketplace provider is relieved of liability for the tax for the retail sale, and the marketplace seller or customer is liable for the tax imposed under this chapter if:

- The marketplace provider demonstrates that it made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but the failure to collect and pay the correct amount of tax imposed under this chapter was due to incorrect or incomplete information provided by the marketplace seller to the marketplace provider; or
- The marketplace seller or the customer has already remitted the tax.

Consistent with s. 213.21, F.S., the department may compromise any tax, interest, or penalty assessed on retail sales conducted through a marketplace.

A “marketplace provider” means any person who facilitates through a marketplace a retail sale by a marketplace seller and engages:

- Directly or indirectly, including through one or more members of an affiliated group as defined in s. 1504(a) of the Internal Revenue Code of 1986, in any of the following:
  - Transmitting or otherwise communicating the offer or acceptance between the buyer and seller;
  - Owning or operating the infrastructure, whether electronic or physical, or the technology that brings buyers and sellers together;
  - Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller;
  - Software development or research and development activities related to any of the activities described below, if such activities are directly related to a marketplace operated by the person or by an affiliated group; and
- In any of the following activities with respect to the seller’s products:
  - Providing payment processing services;
  - Providing fulfillment or storage services
  - Listing products for sale;
  - Setting prices;
  - Branding sales as those of the marketplace provider;
  - Taking orders;
  - Advertising or promoting; or
  - Providing customer service or accepting or assisting with returns or exchanges.

**Section 7** amends s. 212.06, F.S., to specify that “dealer” includes a retailer who transacts a remote sale and a marketplace provider.

**Sections 9 and 10** amend ss. 212.12 and 212.18 F.S., respectively, to reflect the terminology change from “mail order” to “remote” sales.

### **Reenactment**

**Section 11** reenacts s. 212.20(4), F.S., in order to incorporate the amendment made by this bill to s. 212.0596, F.S.

### **Emergency Rules**

**Section 12** authorizes the department to adopt emergency rules to implement the bill. The rulemaking grant is authorized upon the act becoming law, and expires July 1, 2020.

### **Severability**

**Section 13** provides that if any provision of the bill is found to be invalid, that invalidity does not affect the ability of the other provisions of the bill to go into effect. If that provision is severed, the other provisions of the bill can be given effect.

### Effective date

**Section 14** provides an effective date of July 1, 2019, except for the authority creating the sales tax holiday for disaster preparedness supplies in section 8 of the bill, and the emergency rulemaking authority in section 12 of the bill, which both take effect upon becoming law.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

Article VII, Section 18 of the State Constitution governs laws that require counties and municipalities to spend funds or that limit their ability to raise revenue or receive state tax revenues.

Subsection (b) of s. 18, Art. VII, of the State Constitution, provides, that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>37</sup> which for Fiscal Year 2018-2019, is \$2.08 million or less.<sup>38</sup>

The Revenue Estimating Conference (REC) has not yet estimated the fiscal impact of the bill. If the REC determines the bill does not have an insignificant impact, the bill may require a two-thirds vote of the membership.

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

None.

### C. Trust Funds Restrictions:

None.

### D. State Tax or Fee Increases:

None.

<sup>37</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 8, 2019).

<sup>38</sup> Based on the Demographic Estimating Conference's population adopted on February 6, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 8, 2019).

**E. Other Constitutional Issues:**

Some of the changes made to s. 212.0596, F.S., by section 5 of the bill mirror some, but not all, of the provisions in South Dakota's remote seller taxation statute that the U.S. Supreme Court upheld in the *Wayfair* decision. The holding identified three components<sup>39</sup> of the South Dakota statute in finding that it did not discriminate against or unduly burden interstate commerce: safe harbor to those who transact only limited business, no retroactive application of the sales tax, and South Dakota's adoption of the Streamlined Sales and Use Tax Agreement.<sup>40</sup>

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The provisions in the bill related to the taxation of remote sales and marketplace sales may generate increased tax revenue, but the REC has not yet estimated the fiscal impact of the bill.

**B. Private Sector Impact:**

More remote sellers may be subject to Florida's sales and use tax pursuant to the provisions relating to remote sales and marketplace sales.

**C. Government Sector Impact:**

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the department in Fiscal Year 2018-2019 to administer the sales tax holiday for disaster preparedness supplies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 192.001, 212.02, 212.031, 212.05, 212.0596, 212.05965, 212.06, 212.12, 212.18, and 212.20.

This bill creates section 212.05965 of the Florida Statutes.

---

<sup>39</sup> *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2099 (2018).

<sup>40</sup> Florida is not one of the 24 that states have adopted the measures in the Streamlined Sales and Use Tax Agreement, the purpose of which is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance. Streamlined Sales Tax Governing Board, State Information, *available at*: <https://www.streamlinedsalestax.org/Shared-Pages/State-Detail> (last visited March 8, 2019).



**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 Gruters

23-00759B-19

20191112\_\_

1                                   A bill to be entitled  
2       An act relating to taxation; amending s. 192.001,  
3       F.S.; revising the definition of the term "inventory,"  
4       for purposes of ad valorem taxation, to include  
5       certain rented construction, earthmoving, or  
6       industrial equipment; defining the terms "dealer of  
7       heavy equipment rental property" and "short-term  
8       rental"; amending s. 212.02, F.S.; revising the  
9       definition of the term "retail sale"; amending s.  
10      212.031, F.S.; reducing the rate of the tax on rental  
11      or licensee fees for the use of real property;  
12      amending s. 212.05, F.S.; conforming a provision to  
13      changes made by the act; amending s. 212.0596, F.S.;  
14      replacing the term "mail order sales" with the term  
15      "remote sales"; defining the terms "remote sales" and  
16      "making a substantial number of remote sales";  
17      revising applicability and construction; deleting an  
18      exemption for certain dealers from collecting and  
19      remitting local option surtaxes; deleting a provision  
20      authorizing the department to establish certain  
21      procedures by rule; creating s. 212.05965, F.S.;  
22      defining terms; providing that certain marketplace  
23      providers are subject to dealer requirements for the  
24      registration, collection, and remittance of sales  
25      taxes; requiring such marketplace providers to certify  
26      to their marketplace sellers that they will collect  
27      and remit sales taxes on certain sales; providing that  
28      the certification may be included in an agreement  
29      between the marketplace provider and the marketplace

23-00759B-19

20191112\_\_

30 seller; prohibiting marketplace sellers from  
31 collecting and remitting sales taxes under certain  
32 circumstances; requiring such marketplace sellers to  
33 exclude certain sales from their tax returns;  
34 requiring certain marketplace sellers to register,  
35 collect, and remit sales taxes on all taxable retail  
36 sales made outside of the marketplace; requiring  
37 certain marketplace sellers to remit sales taxes on  
38 all taxable sales made outside of the marketplace;  
39 requiring marketplace providers to allow the  
40 department to examine books and records; prohibiting  
41 the department from proposing certain tax assessments  
42 under certain circumstances; providing that a  
43 marketplace seller, and not the marketplace provider,  
44 is liable for sales taxes under certain circumstances;  
45 authorizing a marketplace provider to recover paid  
46 taxes, interest, and penalties from the marketplace  
47 seller under certain circumstances; authorizing the  
48 department to compromise certain taxes, interest, or  
49 penalties; providing applicability and construction;  
50 amending s. 212.06, F.S.; revising the definition of  
51 the term "dealer"; conforming provisions to changes  
52 made by the act; providing sales tax exemptions on the  
53 sale of specified disaster preparedness supplies  
54 during a specified timeframe; providing applicability  
55 for certain exemptions; authorizing the department to  
56 adopt emergency rules; specifying locations where the  
57 exemptions do not apply; providing an appropriation;  
58 amending ss. 212.12 and 212.18, F.S.; conforming

23-00759B-19

20191112\_\_

59 provisions to changes made by the act; reenacting s.  
60 212.20(4), F.S., relating to refunds of taxes  
61 adjudicated unconstitutionally collected, to  
62 incorporate the amendment made to s. 212.0596, F.S.,  
63 in a reference thereto; authorizing the department to  
64 adopt emergency rules; providing for expiration of the  
65 authorization; providing for severability; providing  
66 effective dates.

67

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

69

70 Section 1. Paragraph (c) of subsection (11) of section  
71 192.001, Florida Statutes, is amended to read:

72 192.001 Definitions.—All definitions set out in chapters 1  
73 and 200 that are applicable to this chapter are included herein.  
74 In addition, the following definitions shall apply in the  
75 imposition of ad valorem taxes:

76 (11) "Personal property," for the purposes of ad valorem  
77 taxation, shall be divided into four categories as follows:

78 (c)1. "Inventory" means only those chattels consisting of  
79 items commonly referred to as goods, wares, and merchandise (as  
80 well as inventory) which are held for sale or lease to customers  
81 in the ordinary course of business. Supplies and raw materials  
82 shall be considered to be inventory only to the extent that they  
83 are acquired for sale or lease to customers in the ordinary  
84 course of business or will physically become a part of  
85 merchandise intended for sale or lease to customers in the  
86 ordinary course of business. Partially finished products which  
87 when completed will be held for sale or lease to customers in

23-00759B-19

20191112\_\_

88 the ordinary course of business shall be deemed items of  
89 inventory. All livestock shall be considered inventory. Items of  
90 inventory held for lease to customers in the ordinary course of  
91 business, rather than for sale, shall be deemed inventory only  
92 prior to the initial lease of such items. For the purposes of  
93 this section, fuels used in the production of electricity shall  
94 be considered inventory.

95 2. "Inventory" also means construction and agricultural  
96 equipment weighing 1,000 pounds or more that is returned to a  
97 dealership under a rent-to-purchase option and held for sale to  
98 customers in the ordinary course of business. This subparagraph  
99 may not be considered in determining whether property that is  
100 not construction and agricultural equipment weighing 1,000  
101 pounds or more that is returned under a rent-to-purchase option  
102 is inventory under subparagraph 1.

103 3. "Inventory" also means any construction equipment,  
104 earthmoving equipment, or industrial equipment that is mobile  
105 and rented by a dealer of heavy equipment rental property,  
106 including attachments for the equipment or other ancillary  
107 equipment or tools. Qualified heavy equipment property is mobile  
108 if it is not permanently affixed to real property and is moved  
109 among worksites. For the purposes of this chapter and chapter  
110 196, the term "dealer of heavy equipment rental property" means  
111 a person or entity principally engaged in the business of short-  
112 term rental of property as described under North American  
113 Industrial Classification System code 532412, as published by  
114 the Office of Management and Budget, Executive Office of the  
115 President. As used in this subparagraph, the term "short-term  
116 rental" means the rental of a dealer's heavy equipment rental

23-00759B-19

20191112\_\_

117 property for a period of less than 1 year, for an undefined  
118 period, or under a contract with unlimited terms.

119 Section 2. Paragraph (e) of subsection (14) of section  
120 212.02, Florida Statutes, is amended, and paragraph (f) is added  
121 to that subsection, to read:

122 212.02 Definitions.—The following terms and phrases when  
123 used in this chapter have the meanings ascribed to them in this  
124 section, except where the context clearly indicates a different  
125 meaning:

126 (14)

127 (e) The term "retail sale" includes a remote ~~mail order~~  
128 sale, as defined in s. 212.0596(1).

129 (f) The term "retail sale" includes a sale facilitated  
130 through a marketplace, as defined in s. 212.05965(1).

131 Section 3. Paragraphs (c) and (d) of subsection (1) of  
132 section 212.031, Florida Statutes, are amended to read:

133 212.031 Tax on rental or license fee for use of real  
134 property.—

135 (1)

136 (c) For the exercise of such privilege, a tax is levied at  
137 the rate of 4.2 ~~5.7~~ percent of and on the total rent or license  
138 fee charged for such real property by the person charging or  
139 collecting the rental or license fee. The total rent or license  
140 fee charged for such real property shall include payments for  
141 the granting of a privilege to use or occupy real property for  
142 any purpose and shall include base rent, percentage rents, or  
143 similar charges. Such charges shall be included in the total  
144 rent or license fee subject to tax under this section whether or  
145 not they can be attributed to the ability of the lessor's or

23-00759B-19

20191112\_\_

146 licensor's property as used or operated to attract customers.  
147 Payments for intrinsically valuable personal property such as  
148 franchises, trademarks, service marks, logos, or patents are not  
149 subject to tax under this section. In the case of a contractual  
150 arrangement that provides for both payments taxable as total  
151 rent or license fee and payments not subject to tax, the tax  
152 shall be based on a reasonable allocation of such payments and  
153 shall not apply to that portion which is for the nontaxable  
154 payments.

155 (d) When the rental or license fee of any such real  
156 property is paid by way of property, goods, wares, merchandise,  
157 services, or other thing of value, the tax shall be at the rate  
158 of 4.2 ~~5.7~~ percent of the value of the property, goods, wares,  
159 merchandise, services, or other thing of value.

160 Section 4. Section 212.05, Florida Statutes, is amended to  
161 read:

162 212.05 Sales, storage, use tax.—It is hereby declared to be  
163 the legislative intent that every person is exercising a taxable  
164 privilege who engages in the business of selling tangible  
165 personal property at retail in this state, including the  
166 business of making remote ~~mail-order~~ sales;;~~or~~ who rents or  
167 furnishes any of the things or services taxable under this  
168 chapter;;~~or~~ who stores for use or consumption in this state any  
169 item or article of tangible personal property as defined herein  
170 and who leases or rents such property within the state.

171 (1) For the exercise of such privilege, a tax is levied on  
172 each taxable transaction or incident, which tax is due and  
173 payable as follows:

174 (a)1.a. At the rate of 6 percent of the sales price of each

23-00759B-19

20191112\_\_

175 item or article of tangible personal property when sold at  
176 retail in this state, computed on each taxable sale for the  
177 purpose of remitting the amount of tax due the state, and  
178 including each and every retail sale.

179       b. Each occasional or isolated sale of an aircraft, boat,  
180 mobile home, or motor vehicle of a class or type which is  
181 required to be registered, licensed, titled, or documented in  
182 this state or by the United States Government shall be subject  
183 to tax at the rate provided in this paragraph. The department  
184 shall by rule adopt any nationally recognized publication for  
185 valuation of used motor vehicles as the reference price list for  
186 any used motor vehicle which is required to be licensed pursuant  
187 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any  
188 party to an occasional or isolated sale of such a vehicle  
189 reports to the tax collector a sales price which is less than 80  
190 percent of the average loan price for the specified model and  
191 year of such vehicle as listed in the most recent reference  
192 price list, the tax levied under this paragraph shall be  
193 computed by the department on such average loan price unless the  
194 parties to the sale have provided to the tax collector an  
195 affidavit signed by each party, or other substantial proof,  
196 stating the actual sales price. Any party to such sale who  
197 reports a sales price less than the actual sales price is guilty  
198 of a misdemeanor of the first degree, punishable as provided in  
199 s. 775.082 or s. 775.083. The department shall collect or  
200 attempt to collect from such party any delinquent sales taxes.  
201 In addition, such party shall pay any tax due and any penalty  
202 and interest assessed plus a penalty equal to twice the amount  
203 of the additional tax owed. Notwithstanding any other provision



23-00759B-19

20191112\_\_

204 of law, the Department of Revenue may waive or compromise any  
205 penalty imposed pursuant to this subparagraph.

206 2. This paragraph does not apply to the sale of a boat or  
207 aircraft by or through a registered dealer under this chapter to  
208 a purchaser who, at the time of taking delivery, is a  
209 nonresident of this state, does not make his or her permanent  
210 place of abode in this state, and is not engaged in carrying on  
211 in this state any employment, trade, business, or profession in  
212 which the boat or aircraft will be used in this state, or is a  
213 corporation none of the officers or directors of which is a  
214 resident of, or makes his or her permanent place of abode in,  
215 this state, or is a noncorporate entity that has no individual  
216 vested with authority to participate in the management,  
217 direction, or control of the entity's affairs who is a resident  
218 of, or makes his or her permanent abode in, this state. For  
219 purposes of this exemption, either a registered dealer acting on  
220 his or her own behalf as seller, a registered dealer acting as  
221 broker on behalf of a seller, or a registered dealer acting as  
222 broker on behalf of the purchaser may be deemed to be the  
223 selling dealer. This exemption shall not be allowed unless:

224 a. The purchaser removes a qualifying boat, as described in  
225 sub-subparagraph f., from the state within 90 days after the  
226 date of purchase or extension, or the purchaser removes a  
227 nonqualifying boat or an aircraft from this state within 10 days  
228 after the date of purchase or, when the boat or aircraft is  
229 repaired or altered, within 20 days after completion of the  
230 repairs or alterations; or if the aircraft will be registered in  
231 a foreign jurisdiction and:

232 (I) Application for the aircraft's registration is properly

23-00759B-19

20191112\_\_

233 filed with a civil airworthiness authority of a foreign  
234 jurisdiction within 10 days after the date of purchase;

235 (II) The purchaser removes the aircraft from the state to a  
236 foreign jurisdiction within 10 days after the date the aircraft  
237 is registered by the applicable foreign airworthiness authority;  
238 and

239 (III) The aircraft is operated in the state solely to  
240 remove it from the state to a foreign jurisdiction.

241  
242 For purposes of this sub-subparagraph, the term "foreign  
243 jurisdiction" means any jurisdiction outside of the United  
244 States or any of its territories;

245 b. The purchaser, within 30 days from the date of  
246 departure, provides the department with written proof that the  
247 purchaser licensed, registered, titled, or documented the boat  
248 or aircraft outside the state. If such written proof is  
249 unavailable, within 30 days the purchaser shall provide proof  
250 that the purchaser applied for such license, title,  
251 registration, or documentation. The purchaser shall forward to  
252 the department proof of title, license, registration, or  
253 documentation upon receipt;

254 c. The purchaser, within 10 days of removing the boat or  
255 aircraft from Florida, furnishes the department with proof of  
256 removal in the form of receipts for fuel, dockage, slippage,  
257 tie-down, or hangaring from outside of Florida. The information  
258 so provided must clearly and specifically identify the boat or  
259 aircraft;

260 d. The selling dealer, within 5 days of the date of sale,  
261 provides to the department a copy of the sales invoice, closing

23-00759B-19

20191112\_\_

262 statement, bills of sale, and the original affidavit signed by  
263 the purchaser attesting that he or she has read the provisions  
264 of this section;

265 e. The seller makes a copy of the affidavit a part of his  
266 or her record for as long as required by s. 213.35; and

267 f. Unless the nonresident purchaser of a boat of 5 net tons  
268 of admeasurement or larger intends to remove the boat from this  
269 state within 10 days after the date of purchase or when the boat  
270 is repaired or altered, within 20 days after completion of the  
271 repairs or alterations, the nonresident purchaser applies to the  
272 selling dealer for a decal which authorizes 90 days after the  
273 date of purchase for removal of the boat. The nonresident  
274 purchaser of a qualifying boat may apply to the selling dealer  
275 within 60 days after the date of purchase for an extension decal  
276 that authorizes the boat to remain in this state for an  
277 additional 90 days, but not more than a total of 180 days,  
278 before the nonresident purchaser is required to pay the tax  
279 imposed by this chapter. The department is authorized to issue  
280 decals in advance to dealers. The number of decals issued in  
281 advance to a dealer shall be consistent with the volume of the  
282 dealer's past sales of boats which qualify under this sub-  
283 subparagraph. The selling dealer or his or her agent shall mark  
284 and affix the decals to qualifying boats in the manner  
285 prescribed by the department, before delivery of the boat.

286 (I) The department is hereby authorized to charge dealers a  
287 fee sufficient to recover the costs of decals issued, except the  
288 extension decal shall cost \$425.

289 (II) The proceeds from the sale of decals will be deposited  
290 into the administrative trust fund.

23-00759B-19

20191112\_\_

291 (III) Decals shall display information to identify the boat  
292 as a qualifying boat under this sub-subparagraph, including, but  
293 not limited to, the decal's date of expiration.

294 (IV) The department is authorized to require dealers who  
295 purchase decals to file reports with the department and may  
296 prescribe all necessary records by rule. All such records are  
297 subject to inspection by the department.

298 (V) Any dealer or his or her agent who issues a decal  
299 falsely, fails to affix a decal, mismarks the expiration date of  
300 a decal, or fails to properly account for decals will be  
301 considered prima facie to have committed a fraudulent act to  
302 evade the tax and will be liable for payment of the tax plus a  
303 mandatory penalty of 200 percent of the tax, and shall be liable  
304 for fine and punishment as provided by law for a conviction of a  
305 misdemeanor of the first degree, as provided in s. 775.082 or s.  
306 775.083.

307 (VI) Any nonresident purchaser of a boat who removes a  
308 decal before permanently removing the boat from the state, or  
309 defaces, changes, modifies, or alters a decal in a manner  
310 affecting its expiration date before its expiration, or who  
311 causes or allows the same to be done by another, will be  
312 considered prima facie to have committed a fraudulent act to  
313 evade the tax and will be liable for payment of the tax plus a  
314 mandatory penalty of 200 percent of the tax, and shall be liable  
315 for fine and punishment as provided by law for a conviction of a  
316 misdemeanor of the first degree, as provided in s. 775.082 or s.  
317 775.083.

318 (VII) The department is authorized to adopt rules necessary  
319 to administer and enforce this subparagraph and to publish the

23-00759B-19

20191112\_\_

320 necessary forms and instructions.

321 (VIII) The department is hereby authorized to adopt  
322 emergency rules pursuant to s. 120.54(4) to administer and  
323 enforce the provisions of this subparagraph.

324

325 If the purchaser fails to remove the qualifying boat from this  
326 state within the maximum 180 days after purchase or a  
327 nonqualifying boat or an aircraft from this state within 10 days  
328 after purchase or, when the boat or aircraft is repaired or  
329 altered, within 20 days after completion of such repairs or  
330 alterations, or permits the boat or aircraft to return to this  
331 state within 6 months from the date of departure, except as  
332 provided in s. 212.08(7)(fff), or if the purchaser fails to  
333 furnish the department with any of the documentation required by  
334 this subparagraph within the prescribed time period, the  
335 purchaser shall be liable for use tax on the cost price of the  
336 boat or aircraft and, in addition thereto, payment of a penalty  
337 to the Department of Revenue equal to the tax payable. This  
338 penalty shall be in lieu of the penalty imposed by s. 212.12(2).  
339 The maximum 180-day period following the sale of a qualifying  
340 boat tax-exempt to a nonresident may not be tolled for any  
341 reason.

342 (b) At the rate of 6 percent of the cost price of each item  
343 or article of tangible personal property when the same is not  
344 sold but is used, consumed, distributed, or stored for use or  
345 consumption in this state; however, for tangible property  
346 originally purchased exempt from tax for use exclusively for  
347 lease and which is converted to the owner's own use, tax may be  
348 paid on the fair market value of the property at the time of

23-00759B-19

20191112\_\_

349 conversion. If the fair market value of the property cannot be  
350 determined, use tax at the time of conversion shall be based on  
351 the owner's acquisition cost. Under no circumstances may the  
352 aggregate amount of sales tax from leasing the property and use  
353 tax due at the time of conversion be less than the total sales  
354 tax that would have been due on the original acquisition cost  
355 paid by the owner.

356 (c) At the rate of 6 percent of the gross proceeds derived  
357 from the lease or rental of tangible personal property, as  
358 defined herein; however, the following special provisions apply  
359 to the lease or rental of motor vehicles:

360 1. When a motor vehicle is leased or rented for a period of  
361 less than 12 months:

362 a. If the motor vehicle is rented in Florida, the entire  
363 amount of such rental is taxable, even if the vehicle is dropped  
364 off in another state.

365 b. If the motor vehicle is rented in another state and  
366 dropped off in Florida, the rental is exempt from Florida tax.

367 2. Except as provided in subparagraph 3., for the lease or  
368 rental of a motor vehicle for a period of not less than 12  
369 months, sales tax is due on the lease or rental payments if the  
370 vehicle is registered in this state; provided, however, that no  
371 tax shall be due if the taxpayer documents use of the motor  
372 vehicle outside this state and tax is being paid on the lease or  
373 rental payments in another state.

374 3. The tax imposed by this chapter does not apply to the  
375 lease or rental of a commercial motor vehicle as defined in s.  
376 316.003(13)(a) to one lessee or rentee for a period of not less  
377 than 12 months when tax was paid on the purchase price of such

23-00759B-19

20191112\_\_

378 vehicle by the lessor. To the extent tax was paid with respect  
379 to the purchase of such vehicle in another state, territory of  
380 the United States, or the District of Columbia, the Florida tax  
381 payable shall be reduced in accordance with the provisions of s.  
382 212.06(7). This subparagraph shall only be available when the  
383 lease or rental of such property is an established business or  
384 part of an established business or the same is incidental or  
385 germane to such business.

386 (d) At the rate of 6 percent of the lease or rental price  
387 paid by a lessee or rentee, or contracted or agreed to be paid  
388 by a lessee or rentee, to the owner of the tangible personal  
389 property.

390 (e)1. At the rate of 6 percent on charges for:

391 a. Prepaid calling arrangements. The tax on charges for  
392 prepaid calling arrangements shall be collected at the time of  
393 sale and remitted by the selling dealer.

394 (I) "Prepaid calling arrangement" has the same meaning as  
395 provided in s. 202.11.

396 (II) If the sale or recharge of the prepaid calling  
397 arrangement does not take place at the dealer's place of  
398 business, it shall be deemed to have taken place at the  
399 customer's shipping address or, if no item is shipped, at the  
400 customer's address or the location associated with the  
401 customer's mobile telephone number.

402 (III) The sale or recharge of a prepaid calling arrangement  
403 shall be treated as a sale of tangible personal property for  
404 purposes of this chapter, regardless of whether a tangible item  
405 evidencing such arrangement is furnished to the purchaser, and  
406 such sale within this state subjects the selling dealer to the

23-00759B-19

20191112\_\_

407 jurisdiction of this state for purposes of this subsection.

408 (IV) No additional tax under this chapter or chapter 202 is  
409 due or payable if a purchaser of a prepaid calling arrangement  
410 who has paid tax under this chapter on the sale or recharge of  
411 such arrangement applies one or more units of the prepaid  
412 calling arrangement to obtain communications services as  
413 described in s. 202.11(9)(b)3., other services that are not  
414 communications services, or products.

415 b. The installation of telecommunication and telegraphic  
416 equipment.

417 c. Electrical power or energy, except that the tax rate for  
418 charges for electrical power or energy is 4.35 percent. Charges  
419 for electrical power and energy do not include taxes imposed  
420 under ss. 166.231 and 203.01(1)(a)3.

421 2. Section 212.17(3), regarding credit for tax paid on  
422 charges subsequently found to be worthless, is equally  
423 applicable to any tax paid under this section on charges for  
424 prepaid calling arrangements, telecommunication or telegraph  
425 services, or electric power subsequently found to be  
426 uncollectible. As used in this paragraph, the term "charges"  
427 does not include any excise or similar tax levied by the Federal  
428 Government, a political subdivision of this state, or a  
429 municipality upon the purchase, sale, or recharge of prepaid  
430 calling arrangements or upon the purchase or sale of  
431 telecommunication, television system program, or telegraph  
432 service or electric power, which tax is collected by the seller  
433 from the purchaser.

434 (f) At the rate of 6 percent on the sale, rental, use,  
435 consumption, or storage for use in this state of machines and



23-00759B-19

20191112\_\_

436 equipment, and parts and accessories therefor, used in  
437 manufacturing, processing, compounding, producing, mining, or  
438 quarrying personal property for sale or to be used in furnishing  
439 communications, transportation, or public utility services.

440 (g)1. At the rate of 6 percent on the retail price of  
441 newspapers and magazines sold or used in Florida.

442 2. Notwithstanding other provisions of this chapter,  
443 inserts of printed materials which are distributed with a  
444 newspaper or magazine are a component part of the newspaper or  
445 magazine, and neither the sale nor use of such inserts is  
446 subject to tax when:

447 a. Printed by a newspaper or magazine publisher or  
448 commercial printer and distributed as a component part of a  
449 newspaper or magazine, which means that the items after being  
450 printed are delivered directly to a newspaper or magazine  
451 publisher by the printer for inclusion in editions of the  
452 distributed newspaper or magazine;

453 b. Such publications are labeled as part of the designated  
454 newspaper or magazine publication into which they are to be  
455 inserted; and

456 c. The purchaser of the insert presents a resale  
457 certificate to the vendor stating that the inserts are to be  
458 distributed as a component part of a newspaper or magazine.

459 (h)1. A tax is imposed at the rate of 4 percent on the  
460 charges for the use of coin-operated amusement machines. The tax  
461 shall be calculated by dividing the gross receipts from such  
462 charges for the applicable reporting period by a divisor,  
463 determined as provided in this subparagraph, to compute gross  
464 taxable sales, and then subtracting gross taxable sales from

23-00759B-19

20191112\_\_

465 gross receipts to arrive at the amount of tax due. For counties  
466 that do not impose a discretionary sales surtax, the divisor is  
467 equal to 1.04; for counties that impose a 0.5 percent  
468 discretionary sales surtax, the divisor is equal to 1.045; for  
469 counties that impose a 1 percent discretionary sales surtax, the  
470 divisor is equal to 1.050; and for counties that impose a 2  
471 percent sales surtax, the divisor is equal to 1.060. If a county  
472 imposes a discretionary sales surtax that is not listed in this  
473 subparagraph, the department shall make the applicable divisor  
474 available in an electronic format or otherwise. Additional  
475 divisors shall bear the same mathematical relationship to the  
476 next higher and next lower divisors as the new surtax rate bears  
477 to the next higher and next lower surtax rates for which  
478 divisors have been established. When a machine is activated by a  
479 slug, token, coupon, or any similar device which has been  
480 purchased, the tax is on the price paid by the user of the  
481 device for such device.

482 2. As used in this paragraph, the term "operator" means any  
483 person who possesses a coin-operated amusement machine for the  
484 purpose of generating sales through that machine and who is  
485 responsible for removing the receipts from the machine.

486 a. If the owner of the machine is also the operator of it,  
487 he or she shall be liable for payment of the tax without any  
488 deduction for rent or a license fee paid to a location owner for  
489 the use of any real property on which the machine is located.

490 b. If the owner or lessee of the machine is also its  
491 operator, he or she shall be liable for payment of the tax on  
492 the purchase or lease of the machine, as well as the tax on  
493 sales generated through the machine.

23-00759B-19

20191112\_\_

494 c. If the proprietor of the business where the machine is  
495 located does not own the machine, he or she shall be deemed to  
496 be the lessee and operator of the machine and is responsible for  
497 the payment of the tax on sales, unless such responsibility is  
498 otherwise provided for in a written agreement between him or her  
499 and the machine owner.

500 3.a. An operator of a coin-operated amusement machine may  
501 not operate or cause to be operated in this state any such  
502 machine until the operator has registered with the department  
503 and has conspicuously displayed an identifying certificate  
504 issued by the department. The identifying certificate shall be  
505 issued by the department upon application from the operator. The  
506 identifying certificate shall include a unique number, and the  
507 certificate shall be permanently marked with the operator's  
508 name, the operator's sales tax number, and the maximum number of  
509 machines to be operated under the certificate. An identifying  
510 certificate shall not be transferred from one operator to  
511 another. The identifying certificate must be conspicuously  
512 displayed on the premises where the coin-operated amusement  
513 machines are being operated.

514 b. The operator of the machine must obtain an identifying  
515 certificate before the machine is first operated in the state  
516 and by July 1 of each year thereafter. The annual fee for each  
517 certificate shall be based on the number of machines identified  
518 on the application times \$30 and is due and payable upon  
519 application for the identifying device. The application shall  
520 contain the operator's name, sales tax number, business address  
521 where the machines are being operated, and the number of  
522 machines in operation at that place of business by the operator.

23-00759B-19

20191112\_\_

523 No operator may operate more machines than are listed on the  
524 certificate. A new certificate is required if more machines are  
525 being operated at that location than are listed on the  
526 certificate. The fee for the new certificate shall be based on  
527 the number of additional machines identified on the application  
528 form times \$30.

529 c. A penalty of \$250 per machine is imposed on the operator  
530 for failing to properly obtain and display the required  
531 identifying certificate. A penalty of \$250 is imposed on the  
532 lessee of any machine placed in a place of business without a  
533 proper current identifying certificate. Such penalties shall  
534 apply in addition to all other applicable taxes, interest, and  
535 penalties.

536 d. Operators of coin-operated amusement machines must  
537 obtain a separate sales and use tax certificate of registration  
538 for each county in which such machines are located. One sales  
539 and use tax certificate of registration is sufficient for all of  
540 the operator's machines within a single county.

541 4. The provisions of this paragraph do not apply to coin-  
542 operated amusement machines owned and operated by churches or  
543 synagogues.

544 5. In addition to any other penalties imposed by this  
545 chapter, a person who knowingly and willfully violates any  
546 provision of this paragraph commits a misdemeanor of the second  
547 degree, punishable as provided in s. 775.082 or s. 775.083.

548 6. The department may adopt rules necessary to administer  
549 the provisions of this paragraph.

550 (i)1. At the rate of 6 percent on charges for all:

551 a. Detective, burglar protection, and other protection

23-00759B-19

20191112\_\_

552 services (NAICS National Numbers 561611, 561612, 561613, and  
553 561621). Fingerprint services required under s. 790.06 or s.  
554 790.062 are not subject to the tax. Any law enforcement officer,  
555 as defined in s. 943.10, who is performing approved duties as  
556 determined by his or her local law enforcement agency in his or  
557 her capacity as a law enforcement officer, and who is subject to  
558 the direct and immediate command of his or her law enforcement  
559 agency, and in the law enforcement officer's uniform as  
560 authorized by his or her law enforcement agency, is performing  
561 law enforcement and public safety services and is not performing  
562 detective, burglar protection, or other protective services, if  
563 the law enforcement officer is performing his or her approved  
564 duties in a geographical area in which the law enforcement  
565 officer has arrest jurisdiction. Such law enforcement and public  
566 safety services are not subject to tax irrespective of whether  
567 the duty is characterized as "extra duty," "off-duty," or  
568 "secondary employment," and irrespective of whether the officer  
569 is paid directly or through the officer's agency by an outside  
570 source. The term "law enforcement officer" includes full-time or  
571 part-time law enforcement officers, and any auxiliary law  
572 enforcement officer, when such auxiliary law enforcement officer  
573 is working under the direct supervision of a full-time or part-  
574 time law enforcement officer.

575 b. Nonresidential cleaning, excluding cleaning of the  
576 interiors of transportation equipment, and nonresidential  
577 building pest control services (NAICS National Numbers 561710  
578 and 561720).

579 2. As used in this paragraph, "NAICS" means those  
580 classifications contained in the North American Industry

23-00759B-19

20191112\_\_

581 Classification System, as published in 2007 by the Office of  
582 Management and Budget, Executive Office of the President.

583 3. Charges for detective, burglar protection, and other  
584 protection security services performed in this state but used  
585 outside this state are exempt from taxation. Charges for  
586 detective, burglar protection, and other protection security  
587 services performed outside this state and used in this state are  
588 subject to tax.

589 4. If a transaction involves both the sale or use of a  
590 service taxable under this paragraph and the sale or use of a  
591 service or any other item not taxable under this chapter, the  
592 consideration paid must be separately identified and stated with  
593 respect to the taxable and exempt portions of the transaction or  
594 the entire transaction shall be presumed taxable. The burden  
595 shall be on the seller of the service or the purchaser of the  
596 service, whichever applicable, to overcome this presumption by  
597 providing documentary evidence as to which portion of the  
598 transaction is exempt from tax. The department is authorized to  
599 adjust the amount of consideration identified as the taxable and  
600 exempt portions of the transaction; however, a determination  
601 that the taxable and exempt portions are inaccurately stated and  
602 that the adjustment is applicable must be supported by  
603 substantial competent evidence.

604 5. Each seller of services subject to sales tax pursuant to  
605 this paragraph shall maintain a monthly log showing each  
606 transaction for which sales tax was not collected because the  
607 services meet the requirements of subparagraph 3. for out-of-  
608 state use. The log must identify the purchaser's name, location  
609 and mailing address, and federal employer identification number,

23-00759B-19

20191112\_\_

610 if a business, or the social security number, if an individual,  
611 the service sold, the price of the service, the date of sale,  
612 the reason for the exemption, and the sales invoice number. The  
613 monthly log shall be maintained pursuant to the same  
614 requirements and subject to the same penalties imposed for the  
615 keeping of similar records pursuant to this chapter.

616 (j)1. Notwithstanding any other provision of this chapter,  
617 there is hereby levied a tax on the sale, use, consumption, or  
618 storage for use in this state of any coin or currency, whether  
619 in circulation or not, when such coin or currency:

620 a. Is not legal tender;

621 b. If legal tender, is sold, exchanged, or traded at a rate  
622 in excess of its face value; or

623 c. Is sold, exchanged, or traded at a rate based on its  
624 precious metal content.

625 2. Such tax shall be at a rate of 6 percent of the price at  
626 which the coin or currency is sold, exchanged, or traded, except  
627 that, with respect to a coin or currency which is legal tender  
628 of the United States and which is sold, exchanged, or traded,  
629 such tax shall not be levied.

630 3. There are exempt from this tax exchanges of coins or  
631 currency which are in general circulation in, and legal tender  
632 of, one nation for coins or currency which are in general  
633 circulation in, and legal tender of, another nation when  
634 exchanged solely for use as legal tender and at an exchange rate  
635 based on the relative value of each as a medium of exchange.

636 4. With respect to any transaction that involves the sale  
637 of coins or currency taxable under this paragraph in which the  
638 taxable amount represented by the sale of such coins or currency

23-00759B-19

20191112\_\_

639 exceeds \$500, the entire amount represented by the sale of such  
640 coins or currency is exempt from the tax imposed under this  
641 paragraph. The dealer must maintain proper documentation, as  
642 prescribed by rule of the department, to identify that portion  
643 of a transaction which involves the sale of coins or currency  
644 and is exempt under this subparagraph.

645 (k) At the rate of 6 percent of the sales price of each  
646 gallon of diesel fuel not taxed under chapter 206 purchased for  
647 use in a vessel, except dyed diesel fuel that is exempt pursuant  
648 to s. 212.08(4)(a)4.

649 (l) Florists located in this state are liable for sales tax  
650 on sales to retail customers regardless of where or by whom the  
651 items sold are to be delivered. Florists located in this state  
652 are not liable for sales tax on payments received from other  
653 florists for items delivered to customers in this state.

654 (m) Operators of game concessions or other concessionaires  
655 who customarily award tangible personal property as prizes may,  
656 in lieu of paying tax on the cost price of such property, pay  
657 tax on 25 percent of the gross receipts from such concession  
658 activity.

659 (2) The tax shall be collected by the dealer, as defined  
660 herein, and remitted by the dealer to the state at the time and  
661 in the manner as hereinafter provided.

662 (3) The tax so levied is in addition to all other taxes,  
663 whether levied in the form of excise, license, or privilege  
664 taxes, and in addition to all other fees and taxes levied.

665 (4) The tax imposed pursuant to this chapter shall be due  
666 and payable according to the brackets set forth in s. 212.12.

667 (5) Notwithstanding any other provision of this chapter,



23-00759B-19

20191112\_\_

668 the maximum amount of tax imposed under this chapter and  
669 collected on each sale or use of a boat in this state may not  
670 exceed \$18,000 and on each repair of a boat in this state may  
671 not exceed \$60,000.

672 Section 5. Section 212.0596, Florida Statutes, is amended  
673 to read:

674 212.0596 Taxation of remote ~~mail order~~ sales.-

675 (1) For purposes of this chapter, a "remote ~~mail order~~  
676 sale" is a retail sale of tangible personal property or services  
677 taxable under this chapter which is, ~~ordered by mail,~~ telephone,  
678 the Internet, or other means of communication, from a dealer who  
679 receives the order outside of this state ~~in another state of the~~  
680 ~~United States, or in a commonwealth, territory, or other area~~  
681 ~~under the jurisdiction of the United States,~~ and transports the  
682 property, ~~or~~ causes the property to be transported, or provides  
683 the services ~~whether or not by mail,~~ from any jurisdiction ~~of~~  
684 ~~the United States,~~ including this state, to a person in this  
685 state, including the person who ordered the property or  
686 services.

687 (2) Every dealer as defined in s. 212.06(2)(c) who makes a  
688 remote ~~mail order~~ sale is subject to the power of this state to  
689 levy and collect the tax imposed by this chapter when any of the  
690 following applies:

691 (a) The dealer is a corporation doing business under the  
692 laws of this state or is a person domiciled in, a resident of,  
693 or a citizen of, this state.~~.~~

694 (b) The dealer maintains retail establishments or offices  
695 in this state, regardless of whether the remote ~~mail order~~ sales  
696 thus subject to taxation by this state result from or are

23-00759B-19

20191112\_\_

697 related in any other way to the activities of such  
698 establishments or offices.†

699 (c) The dealer has agents in this state who solicit  
700 business or transact business on behalf of the dealer,  
701 regardless of whether the remote ~~mail-order~~ sales thus subject  
702 to taxation by this state result from or are related in any  
703 other way to such solicitation or transaction of business,  
704 except that a printer who mails or delivers for an out-of-state  
705 print purchaser material the printer printed for it is ~~shall~~ not  
706 ~~be~~ deemed to be the print purchaser's agent for purposes of this  
707 paragraph.†

708 (d) The property was delivered in this state in fulfillment  
709 of a sales contract that was entered into in this state, in  
710 accordance with applicable conflict of laws rules, when a person  
711 in this state accepted an offer by ordering the property.†

712 (e) The dealer, by purposefully or systematically  
713 exploiting the market provided by this state by any media-  
714 assisted, media-facilitated, or media-solicited means,  
715 including, but not limited to, direct mail advertising,  
716 unsolicited distribution of catalogs, computer-assisted  
717 shopping, television, radio, or other electronic media, or  
718 magazine or newspaper advertisements or other media, creates  
719 nexus with this state.†

720 (f) Through compact or reciprocity with another  
721 jurisdiction of the United States, that jurisdiction uses its  
722 taxing power and its jurisdiction over the retailer in support  
723 of this state's taxing power.†

724 (g) The dealer consents, expressly or by implication, to  
725 the imposition of the tax imposed under ~~by~~ this chapter.†

23-00759B-19

20191112\_\_

726 (h) The dealer is subject to service of process under s.  
727 48.181.~~7~~

728 (i) The dealer's remote ~~mail-order~~ sales are subject to the  
729 power of this state to tax sales or to require the dealer to  
730 collect use taxes under a statute or statutes of the United  
731 States.~~7~~

732 (j) The dealer owns real property or tangible personal  
733 property that is physically in this state. For purposes of this  
734 paragraph, ~~except that~~ a dealer whose only property, ~~(including~~  
735 ~~property owned by an affiliate,~~) in this state is located at the  
736 premises of a printer with which the vendor has contracted for  
737 printing, and is either a final printed product, ~~or~~ property  
738 that ~~which~~ becomes a part of the final printed product, or  
739 property from which the printed product is produced, is not  
740 deemed to own such property. ~~for purposes of this paragraph;~~

741 (k) The dealer, while not having nexus with this state on  
742 any of the bases described in paragraphs (a)-(j) or paragraph  
743 (l), is a corporation that is a member of an affiliated group of  
744 corporations, as defined in s. 1504(a) of the Internal Revenue  
745 Code, whose members are includable under s. 1504(b) of the  
746 Internal Revenue Code and whose members are eligible to file a  
747 consolidated tax return for federal corporate income tax  
748 purposes and any parent or subsidiary corporation in the  
749 affiliated group has nexus with this state on one or more of the  
750 bases described in paragraphs (a)-(j) or paragraph (l).~~;~~ ~~or~~

751 (l) The dealer or the dealer's activities, have sufficient  
752 ~~connection with or relationship to this state or its residents~~  
753 ~~of some type~~ other than those described in paragraphs (a)-(k),  
754 result in making a substantial number of remote sales under

23-00759B-19

20191112\_\_

755 ~~subsection (3) to create nexus empowering this state to tax its~~  
756 ~~mail order sales or to require the dealer to collect sales tax~~  
757 ~~or accrue use tax.~~

758 (3) (a) Every person dealer engaged in the business of  
759 making a substantial number of remote mail order sales is a  
760 dealer for purposes of this chapter subject to the requirements  
761 of this chapter for cooperation of dealers in collection of  
762 taxes and in administration of this chapter, except that no fee  
763 shall be imposed upon such dealer for carrying out any required  
764 activity.

765 (b) As used in this section, the term "making a substantial  
766 number of remote sales" means:

767 1. Conducting 200 or more separate retail sales of tangible  
768 personal property or services taxable under this chapter in the  
769 previous calendar year to be delivered to a location within this  
770 state; or

771 2. Conducting any number of retail sales of tangible  
772 personal property or services taxable under this chapter in an  
773 amount exceeding \$100,000 in the previous calendar year to be  
774 delivered to a location within this state.

775  
776 For purposes of this paragraph, tangible personal property or  
777 services taxable under this chapter which are delivered to a  
778 location within this state are presumed to be used, consumed,  
779 distributed, or stored to be used or consumed in this state.

780 (4) The department shall, with the consent of another  
781 jurisdiction of the United States whose cooperation is needed,  
782 enforce this chapter in that jurisdiction, either directly or,  
783 at the option of that jurisdiction, through its officers or

23-00759B-19

20191112\_\_

784 employees.

785 (5) The tax required under this section to be collected and  
786 any amount unreturned to a purchaser that is not tax but was  
787 collected from the purchaser under the representation that it  
788 was tax constitute funds of the State of Florida from the moment  
789 of collection.

790 ~~(6) Notwithstanding other provisions of law, a dealer who~~  
791 ~~makes a mail order sale in this state is exempt from collecting~~  
792 ~~and remitting any local option surtax on the sale, unless the~~  
793 ~~dealer is located in a county that imposes a surtax within the~~  
794 ~~meaning of s. 212.054(3) (a), the order is placed through the~~  
795 ~~dealer's location in such county, and the property purchased is~~  
796 ~~delivered into such county or into another county in this state~~  
797 ~~that levies the surtax, in which case the provisions of s.~~  
798 ~~212.054(3) (a) are applicable.~~

799 ~~(7) The department may establish by rule procedures for~~  
800 ~~collecting the use tax from unregistered persons who but for~~  
801 ~~their mail order purchases would not be required to remit sales~~  
802 ~~or use tax directly to the department. The procedures may~~  
803 ~~provide for waiver of registration, provisions for irregular~~  
804 ~~remittance of tax, elimination of the collection allowance, and~~  
805 ~~nonapplication of local option surtaxes.~~

806 Section 6. Section 212.05965, Florida Statutes, is created  
807 to read:

808 212.05965 Taxation of marketplace sales.-

809 (1) As used in this section, the term:

810 (a) "Marketplace" means any physical place or electronic  
811 medium through which tangible personal property or services  
812 taxable under this chapter are offered for sale.

23-00759B-19

20191112\_\_

813 (b) "Marketplace provider" means any person who facilitates  
814 through a marketplace a retail sale by a marketplace seller and  
815 engages:

816 1. Directly or indirectly, including through one or more  
817 members of an affiliated group as defined in s. 1504(a) of the  
818 Internal Revenue Code of 1986, in any of the following:

819 a. Transmitting or otherwise communicating the offer or  
820 acceptance between the buyer and seller.

821 b. Owning or operating the infrastructure, whether  
822 electronic or physical, or the technology that brings buyers and  
823 sellers together.

824 c. Providing a virtual currency that buyers are allowed or  
825 required to use to purchase products from the seller.

826 d. Software development or research and development  
827 activities related to any of the activities described in  
828 subparagraph 2., if such activities are directly related to a  
829 marketplace operated by the person or by an affiliated group;  
830 and

831 2. In any of the following activities with respect to the  
832 seller's products:

833 a. Providing payment processing services.

834 b. Providing fulfillment or storage services.

835 c. Listing products for sale.

836 d. Setting prices.

837 e. Branding sales as those of the marketplace provider.

838 f. Taking orders.

839 g. Advertising or promoting.

840 h. Providing customer service or accepting or assisting  
841 with returns or exchanges.

23-00759B-19

20191112\_\_

842 (c) "Marketplace seller" means a person who has an  
843 agreement with a marketplace provider and makes retail sales of  
844 tangible personal property or services taxable under this  
845 chapter through a marketplace owned, operated, or controlled by  
846 a marketplace provider.

847 (2) Every marketplace provider that is physically located  
848 in this state, or that is making or facilitating through a  
849 marketplace a substantial number of remote sales as defined in  
850 s. 212.0596(3)(b), is subject to the requirements imposed by  
851 this chapter on dealers for registration and for the collection  
852 and remittance of taxes and the administration of this chapter.

853 (3) A marketplace provider shall certify to its marketplace  
854 sellers that it will collect and remit the tax imposed under  
855 this chapter on taxable retail sales made through the  
856 marketplace. Such certification may be included in the agreement  
857 between the marketplace provider and marketplace seller.

858 (4) (a) A marketplace seller may not collect and remit the  
859 tax under this chapter on a taxable retail sale when the sale is  
860 made through the marketplace and the marketplace provider  
861 certifies, as required by subsection (3), that it will collect  
862 and remit such tax. A marketplace seller shall exclude such  
863 sales made through the marketplace from the marketplace seller's  
864 tax return under s. 212.11.

865 (b)1. A marketplace seller physically located in this state  
866 shall register, collect, and remit the tax imposed under this  
867 chapter on all taxable retail sales made outside of the  
868 marketplace.

869 2. A marketplace seller making a substantial number of  
870 remote sales as defined in s. 212.0596(3)(b) shall register,

23-00759B-19

20191112\_\_

871 collect, and remit the tax imposed under this chapter on all  
872 taxable retail sales made outside of the marketplace. Sales made  
873 through the marketplace are not considered for purposes of  
874 determining if the seller has made a substantial number of  
875 remote sales.

876 (5) (a) A marketplace provider shall allow the department to  
877 examine and audit its books and records pursuant to s. 212.13.  
878 If the department audits a marketplace provider, the department  
879 may not propose a tax assessment on the marketplace seller for  
880 the same retail sales unless the marketplace seller provides  
881 incorrect or incomplete information to the marketplace provider  
882 as described in paragraph (b).

883 (b) The marketplace provider is relieved of liability for  
884 the tax for the retail sale, and the marketplace seller or  
885 customer is liable for the tax imposed under this chapter if:

886 1. The marketplace provider demonstrates to the  
887 satisfaction of the department that the marketplace provider  
888 made a reasonable effort to obtain accurate information related  
889 to the retail sales facilitated through the marketplace from the  
890 marketplace seller, but the failure to collect and pay the  
891 correct amount of tax imposed under this chapter was due to  
892 incorrect or incomplete information provided by the marketplace  
893 seller to the marketplace provider; or

894 2. The marketplace seller or the customer has already  
895 remitted the tax imposed under this chapter for a taxable retail  
896 sale.

897

898 This paragraph does not apply to a retail sale for which the  
899 marketplace provider is the seller, if the marketplace provider



23-00759B-19

20191112\_\_

900 and marketplace seller are related parties, or if transactions  
 901 between a marketplace seller and marketplace buyer are not  
 902 conducted at arm's length.

903 (6) For purposes of registration pursuant to s. 212.18, a  
 904 marketplace is deemed a separate place of business.

905 (7) A marketplace provider and marketplace seller may agree  
 906 by contract, or otherwise, that if a marketplace provider pays  
 907 the tax imposed under this chapter on a retail sale facilitated  
 908 through a marketplace for a marketplace seller as a result of an  
 909 audit or otherwise, the marketplace provider has the right to  
 910 recover such tax and any associated interest and penalties from  
 911 the marketplace seller.

912 (8) Consistent with s. 213.21, the department may  
 913 compromise any tax, interest, or penalty assessed on retail  
 914 sales conducted through a marketplace.

915 (9) For purposes of this section, the limitations in ss.  
 916 213.30(3) and 213.756(2) apply.

917 Section 7. Paragraph (c) of subsection (2) and paragraph  
 918 (a) of subsection (5) of section 212.06, Florida Statutes, are  
 919 amended to read:

920 212.06 Sales, storage, use tax; collectible from dealers;  
 921 "dealer" defined; dealers to collect from purchasers;  
 922 legislative intent as to scope of tax.—

923 (2)

924 (c) The term "dealer" is further defined to mean every  
 925 person, as used in this chapter, who sells at retail or who  
 926 offers for sale at retail, or who has in his or her possession  
 927 for sale at retail; or for use, consumption, or distribution; or  
 928 for storage to be used or consumed in this state, tangible

23-00759B-19

20191112\_\_

929 personal property as defined herein, including a retailer who  
930 transacts a remote ~~mail-order~~ sale and a marketplace provider.

931 (5) (a) 1. Except as provided in subparagraph 2., it is not  
932 the intention of this chapter to levy a tax upon tangible  
933 personal property imported, produced, or manufactured in this  
934 state for export, provided that tangible personal property may  
935 not be considered as being imported, produced, or manufactured  
936 for export unless the importer, producer, or manufacturer  
937 delivers the same to a licensed exporter for exporting or to a  
938 common carrier for shipment outside the state or mails the same  
939 by United States mail to a destination outside the state; or, in  
940 the case of aircraft being exported under their own power to a  
941 destination outside the continental limits of the United States,  
942 by submission to the department of a duly signed and validated  
943 United States customs declaration, showing the departure of the  
944 aircraft from the continental United States; and further with  
945 respect to aircraft, the canceled United States registry of said  
946 aircraft; or in the case of parts and equipment installed on  
947 aircraft of foreign registry, by submission to the department of  
948 documentation, the extent of which shall be provided by rule,  
949 showing the departure of the aircraft from the continental  
950 United States; nor is it the intention of this chapter to levy a  
951 tax on any sale which the state is prohibited from taxing under  
952 the Constitution or laws of the United States. Every retail sale  
953 made to a person physically present at the time of sale shall be  
954 presumed to have been delivered in this state.

955 2.a. Notwithstanding subparagraph 1., a tax is levied on  
956 each sale of tangible personal property to be transported to a  
957 cooperating state as defined in sub-subparagraph c., at the rate

23-00759B-19

20191112\_\_

958 specified in sub-subparagraph d. However, a Florida dealer will  
959 be relieved from the requirements of collecting taxes pursuant  
960 to this subparagraph if the Florida dealer obtains from the  
961 purchaser an affidavit setting forth the purchaser's name,  
962 address, state taxpayer identification number, and a statement  
963 that the purchaser is aware of his or her state's use tax laws,  
964 is a registered dealer in Florida or another state, or is  
965 purchasing the tangible personal property for resale or is  
966 otherwise not required to pay the tax on the transaction. The  
967 department may, by rule, provide a form to be used for the  
968 purposes set forth herein.

969 b. For purposes of this subparagraph, "a cooperating state"  
970 is one determined by the executive director of the department to  
971 cooperate satisfactorily with this state in collecting taxes on  
972 remote ~~mail-order~~ sales. No state shall be so determined unless  
973 it meets all the following minimum requirements:

974 (I) It levies and collects taxes on remote ~~mail-order~~ sales  
975 of property transported from that state to persons in this  
976 state, as described in s. 212.0596, upon request of the  
977 department.

978 (II) The tax so collected shall be at the rate specified in  
979 s. 212.05, not including any local option or tourist or  
980 convention development taxes collected pursuant to s. 125.0104  
981 or this chapter.

982 (III) Such state agrees to remit to the department all  
983 taxes so collected no later than 30 days from the last day of  
984 the calendar quarter following their collection.

985 (IV) Such state authorizes the department to audit dealers  
986 within its jurisdiction who make remote ~~mail-order~~ sales that

23-00759B-19

20191112\_\_

987 are the subject of s. 212.0596, or makes arrangements deemed  
988 adequate by the department for auditing them with its own  
989 personnel.

990 (V) Such state agrees to provide to the department records  
991 obtained by it from retailers or dealers in such state showing  
992 delivery of tangible personal property into this state upon  
993 which no sales or use tax has been paid in a manner similar to  
994 that provided in sub-subparagraph g.

995 c. For purposes of this subparagraph, "sales of tangible  
996 personal property to be transported to a cooperating state"  
997 means remote ~~mail-order~~ sales to a person who is in the  
998 cooperating state at the time the order is executed, from a  
999 dealer who receives that order in this state.

1000 d. The tax levied by sub-subparagraph a. shall be at the  
1001 rate at which such a sale would have been taxed pursuant to the  
1002 cooperating state's tax laws if consummated in the cooperating  
1003 state by a dealer and a purchaser, both of whom were physically  
1004 present in that state at the time of the sale.

1005 e. The tax levied by sub-subparagraph a., when collected,  
1006 shall be held in the State Treasury in trust for the benefit of  
1007 the cooperating state and shall be paid to it at a time agreed  
1008 upon between the department, acting for this state, and the  
1009 cooperating state or the department or agency designated by it  
1010 to act for it; however, such payment shall in no event be made  
1011 later than 30 days from the last day of the calendar quarter  
1012 after the tax was collected. Funds held in trust for the benefit  
1013 of a cooperating state shall not be subject to the service  
1014 charges imposed by s. 215.20.

1015 f. The department is authorized to perform such acts and to

23-00759B-19

20191112\_\_

1016 provide such cooperation to a cooperating state with reference  
 1017 to the tax levied by sub-subparagraph a. as is required of the  
 1018 cooperating state by sub-subparagraph b.

1019 g. In furtherance of this act, dealers selling tangible  
 1020 personal property for delivery in another state shall make  
 1021 available to the department, upon request of the department,  
 1022 records of all tangible personal property so sold. Such records  
 1023 shall include a description of the property, the name and  
 1024 address of the purchaser, the name and address of the person to  
 1025 whom the property was sent, the purchase price of the property,  
 1026 information regarding whether sales tax was paid in this state  
 1027 on the purchase price, and such other information as the  
 1028 department may by rule prescribe.

1029 Section 8. Disaster preparedness supplies; sales tax  
 1030 holiday.-

1031 (1) The tax levied under chapter 212, Florida Statutes, may  
 1032 not be collected during the period from June 1, 2019, through  
 1033 June 14, 2019, on the retail sale of:

1034 (a) A portable self-powered light source selling for \$20 or  
 1035 less.

1036 (b) A portable self-powered radio, two-way radio, or  
 1037 weather-band radio selling for \$50 or less.

1038 (c) A tarpaulin or other flexible waterproof sheeting  
 1039 selling for \$50 or less.

1040 (d) An item normally sold as, or generally advertised as, a  
 1041 ground anchor system or tie-down kit and selling for \$50 or  
 1042 less.

1043 (e) A gas or diesel fuel tank selling for \$25 or less.

1044 (f) A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt,

23-00759B-19

20191112\_\_

1045 or 9-volt batteries, excluding automobile and boat batteries,  
1046 selling for \$30 or less.

1047 (g) A nonelectric food storage cooler selling for \$30 or  
1048 less.

1049 (h) A portable generator used to provide light or  
1050 communications or preserve food in the event of a power outage  
1051 and selling for \$750 or less.

1052 (i) Reusable ice selling for \$10 or less.

1053 (j) Impact-resistant windows, when sold in units of 20 or  
1054 fewer.

1055 (k) Impact-resistant doors, when sold in units of 10 or  
1056 fewer.

1057  
1058 The exemptions under paragraphs (j) and (k) apply to purchases  
1059 made by an owner of residential real property where the impact-  
1060 resistant windows or impact-resistant doors will be installed.

1061 (2) The Department of Revenue may, and all conditions are  
1062 deemed met to, adopt emergency rules pursuant to s. 120.54(4),  
1063 Florida Statutes, to implement this section.

1064 (3) The tax exemptions provided in this section do not  
1065 apply to sales within a theme park or an entertainment complex  
1066 as defined in s. 509.013(9), Florida Statutes, within a public  
1067 lodging establishment as defined in s. 509.013(4), Florida  
1068 Statutes, or within an airport as defined in s. 330.27(2),  
1069 Florida Statutes.

1070 (4) For the 2018-2019 fiscal year, the sum of \$70,072 in  
1071 nonrecurring funds is appropriated from the General Revenue Fund  
1072 to the Department of Revenue for the purpose of implementing  
1073 this section.

23-00759B-19

20191112\_\_

1074       (5) This section shall take effect upon this act becoming a  
1075 law.

1076       Section 9. Paragraph (a) of subsection (1) and paragraph  
1077 (a) of subsection (5) of section 212.12, Florida Statutes, are  
1078 amended to read:

1079       212.12 Dealer's credit for collecting tax; penalties for  
1080 noncompliance; powers of Department of Revenue in dealing with  
1081 delinquents; brackets applicable to taxable transactions;  
1082 records required.—

1083       (1) (a) 1. Notwithstanding any other law and for the purpose  
1084 of compensating persons granting licenses for and the lessors of  
1085 real and personal property taxed hereunder, for the purpose of  
1086 compensating dealers in tangible personal property, for the  
1087 purpose of compensating dealers providing communication services  
1088 and taxable services, for the purpose of compensating owners of  
1089 places where admissions are collected, and for the purpose of  
1090 compensating remitters of any taxes or fees reported on the same  
1091 documents utilized for the sales and use tax, as compensation  
1092 for the keeping of prescribed records, filing timely tax  
1093 returns, and the proper accounting and remitting of taxes by  
1094 them, such seller, person, lessor, dealer, owner, and remitter  
1095 (except dealers who make remote ~~mail-order~~ sales) who files the  
1096 return required pursuant to s. 212.11 only by electronic means  
1097 and who pays the amount due on such return only by electronic  
1098 means shall be allowed 2.5 percent of the amount of the tax due,  
1099 accounted for, and remitted to the department in the form of a  
1100 deduction. However, if the amount of the tax due and remitted to  
1101 the department by electronic means for the reporting period  
1102 exceeds \$1,200, an allowance is not allowed for all amounts in

23-00759B-19

20191112\_\_

1103 excess of \$1,200. For purposes of this subparagraph, the term  
1104 "electronic means" has the same meaning as provided in s.  
1105 213.755(2)(c).

1106 2. The executive director of the department is authorized  
1107 to negotiate a collection allowance, pursuant to rules  
1108 promulgated by the department, with a dealer who makes remote  
1109 ~~mail-order~~ sales. The rules of the department shall provide  
1110 guidelines for establishing the collection allowance based upon  
1111 the dealer's estimated costs of collecting the tax, the volume  
1112 and value of the dealer's remote ~~mail-order~~ sales to purchasers  
1113 in this state, and the administrative and legal costs and  
1114 likelihood of achieving collection of the tax absent the  
1115 cooperation of the dealer. However, in no event shall the  
1116 collection allowance negotiated by the executive director exceed  
1117 10 percent of the tax remitted for a reporting period.

1118 (5)(a) The department is authorized to audit or inspect the  
1119 records and accounts of dealers defined herein, including audits  
1120 or inspections of dealers who make remote ~~mail-order~~ sales to  
1121 the extent permitted by another state, and to correct by credit  
1122 any overpayment of tax, and, in the event of a deficiency, an  
1123 assessment shall be made and collected. No administrative  
1124 finding of fact is necessary prior to the assessment of any tax  
1125 deficiency.

1126 Section 10. Paragraph (f) of subsection (3) of section  
1127 212.18, Florida Statutes, is amended to read:

1128 212.18 Administration of law; registration of dealers;  
1129 rules.—

1130 (3)

1131 (f) As used in this paragraph, the term "exhibitor" means a



23-00759B-19

20191112\_\_

1132 person who enters into an agreement authorizing the display of  
 1133 tangible personal property or services at a convention or a  
 1134 trade show. The following provisions apply to the registration  
 1135 of exhibitors as dealers under this chapter:

1136 1. An exhibitor whose agreement prohibits the sale of  
 1137 tangible personal property or services subject to the tax  
 1138 imposed in this chapter is not required to register as a dealer.

1139 2. An exhibitor whose agreement provides for the sale at  
 1140 wholesale only of tangible personal property or services subject  
 1141 to the tax imposed by this chapter must obtain a resale  
 1142 certificate from the purchasing dealer but is not required to  
 1143 register as a dealer.

1144 3. An exhibitor whose agreement authorizes the retail sale  
 1145 of tangible personal property or services subject to the tax  
 1146 imposed by this chapter must register as a dealer and collect  
 1147 the tax on such sales.

1148 4. An exhibitor who makes a remote ~~mail order~~ sale pursuant  
 1149 to s. 212.0596 must register as a dealer.

1150  
 1151 A person who conducts a convention or a trade show must make his  
 1152 or her exhibitor's agreements available to the department for  
 1153 inspection and copying.

1154 Section 11. For the purpose of incorporating the amendment  
 1155 made by this act to section 212.0596, Florida Statutes, in a  
 1156 reference thereto, subsection (4) of section 212.20, Florida  
 1157 Statutes, is reenacted to read:

1158 212.20 Funds collected, disposition; additional powers of  
 1159 department; operational expense; refund of taxes adjudicated  
 1160 unconstitutionally collected.—

23-00759B-19

20191112\_\_

1161 (4) When there has been a final adjudication that any tax  
1162 pursuant to s. 212.0596 was levied, collected, or both, contrary  
1163 to the Constitution of the United States or the State  
1164 Constitution, the department shall, in accordance with rules,  
1165 determine, based upon claims for refund and other evidence and  
1166 information, who paid such tax or taxes, and refund to each such  
1167 person the amount of tax paid. For purposes of this subsection,  
1168 a "final adjudication" is a decision of a court of competent  
1169 jurisdiction from which no appeal can be taken or from which the  
1170 official or officials of this state with authority to make such  
1171 decisions has or have decided not to appeal.

1172 Section 12. (1) The Department of Revenue is authorized,  
1173 and all conditions are deemed met, to adopt emergency rules  
1174 pursuant to s. 120.54(4), Florida Statutes, for the purpose of  
1175 administering this act.

1176 (2) Notwithstanding any other law, emergency rules adopted  
1177 pursuant to subsection (1) are effective for 6 months after  
1178 adoption and may be renewed during the pendency of procedures to  
1179 adopt permanent rules addressing the subject of the emergency  
1180 rules.

1181 (3) This section shall take effect upon this act becoming a  
1182 law and expires July 1, 2020.

1183 Section 13. If any provision of this act or its application  
1184 to any person or circumstance is held invalid, the invalidity  
1185 does not affect other provisions or applications of the act  
1186 which can be given effect without the invalid provision or  
1187 application, and to this end the provisions of this act are  
1188 severable.

1189 Section 14. Except as otherwise expressly provided in this

23-00759B-19

20191112\_\_

1190 act and except for this section, which shall take effect upon  
1191 this act becoming a law, this act shall take effect July 1,  
1192 2019.

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

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

3/10/19

Meeting Date

1112

Bill Number (if applicable)

Topic Taxation

Amendment Barcode (if applicable)

Name Scott Jenkins

Job Title Lobbyist

Address 113 E. College Ave Ste 200

Phone 950-661-0929


Tallahassee FL 32301

City State Zip

Email scott@wilsonmyrd.com

Speaking:  For  Against  Information

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

Representing  PGT Innovations

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)

3/11/19

Meeting Date

1112

Bill Number (if applicable)

Topic Taxation

Amendment Barcode (if applicable)

Name Andy Gonzalez

Job Title Public Policy Representative

Address 200 S. Monroe St

Phone 850-224-1060

Street

Tallahassee, FL 38301

City

State

Zip

Email andyg@floridarealtors.org

Speaking:  For  Against  Information

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

Representing Florida Realtors

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

3/11/19

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

SB 1112

Meeting Date

Bill Number (if applicable)

Topic TAXATION

Amendment Barcode (if applicable)

Name FRENCH BROWN

Job Title Lobbyist

Address 215 S. MONROE ST. Suite 915

Phone 850 455 0992

Street

Tallahassee FL 32301

City

State

Zip

Email fbrown@gmail.com

Speaking: [X] For [ ] Against [ ] Information

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

Representing FLORIDA RETAIL FEDERATION AND FLORIDA CHAMBER OF COMMERCE

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] 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 11, 2019

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

SB 1112

*Meeting Date*

*Bill Number (if applicable)*

Topic SB 1112 - Taxation

*Amendment Barcode (if applicable)*

Name Jeff Johnston

Job Title Lobbyist

Address 19401 Shumard Oak Drive

Phone (813) 527-0172

*Street*

Land O'Lakes

FL

34638

Email jeff@corcoranfirm.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Wal-Mart

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)

3-11-19  
*Meeting Date*

SB 1112  
*Bill Number (if applicable)*

Topic SB 1112 Taxation

*Amendment Barcode (if applicable)*

Name Jason Unger

Job Title attorney

Address 301 S. Bronough Street, Ste. 600

Phone 850-577-9090

*Street*

Tallahassee

FL

32301

Email jason.unger@gray-robinson.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Target Corp

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)

3/11/19  
Meeting Date

SB 112  
Bill Number (if applicable)

Topic Taxation

Amendment Barcode (if applicable)

Name CASHION DIRECT

Job Title DIRECTOR - STATE + LOCAL GOVERNMENT RELATIONS

Address 555 12th St NW - Suite 660  
Street

Phone (843) 990-3762

Washington, DC 20004  
City State Zip

Email cdrolot@icsc.org

Speaking:  For  Against  Information

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

Representing International Council of Shopping Centers (ICSC)

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)

3/11/19

Meeting Date

1112

Bill Number (if applicable)

Topic Taxation

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Street

Phone 224-7173

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Associated Industries of Florida

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**

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

3-11-2019

*Meeting Date*

1112

*Bill Number (if applicable)*Topic Taxation*Amendment Barcode (if applicable)*Name Kurt WennerJob Title Vice PresidentAddress 106 N. BronoughPhone 850-222-5052*Street*TallahasseeFL32301Email kwenner@floridataxwatch.org*City**State**Zip*Speaking:  For  Against  InformationWaive Speaking:  In Support  Against  
*(The Chair will read this information into the record.)*Representing Florida TaxWatchAppearing 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)

3/11/19

Meeting Date

S 1112

Bill Number (if applicable)

Topic TAXATION

Amendment Barcode (if applicable)

Name NANCY STEPHENS

Job Title

Address 1625 SUMMIT LAKE DR

Phone 850 402 2954

Street

TALLAHASSEE

FL

32317

Email nancy@mafmfg.com

City

State

Zip

Speaking: [X] For [ ] Against [ ] Information

Waive Speaking: [X] In Support [ ] Against

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

Representing MANUFACTURERS ASSOCIATION OF FLORIDA

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] 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**

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

SB 1112

Bill Number (if applicable)

Meeting Date

Topic TAXATION

Amendment Barcode (if applicable)

Name JENNIFER BUREN

Job Title

Address P.O. BOX 301  
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 PRIST BUY

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.

# CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Committee on Commerce and Tourism

Judge:

Started: 3/11/2019 1:31:08 PM

Ends: 3/11/2019 1:48:37 PM

Length: 00:17:30

1:31:07 PM Meeting Called to Order  
1:31:09 PM Roll Call  
1:31:11 PM Quorum is Present  
1:31:12 PM SB 1162 is Temporarily Postponed  
1:31:29 PM Tab 1 SB 892  
1:31:35 PM Senator Passidomo Explains SB 892  
1:34:56 PM Senator Stewart Explains Amendment Barcode 287142  
1:36:25 PM No Questions on Amendment  
1:36:29 PM Wayne Malaney Representing American Lawyer Media Waives in Support of the Amendment  
1:36:43 PM Ron Book Representing Gannett Newspaper Waives in Support of the Amendment  
1:36:53 PM Senator Stewart Waives Close on Amendment Barcode 287142  
1:37:03 PM Amendment is Adopted  
1:37:07 PM Back on Bill as Amended  
1:37:09 PM No Questions on the Bill  
1:37:16 PM Philip Schwartz Representing Akerman LLP Waives in Support of SB 892  
1:37:28 PM No Debate on SB 892  
1:37:32 PM Senator Passidomo Waives Close on SB 892  
1:37:36 PM Roll Call on SB 892  
1:37:39 PM SB 892 is Reported Favorably  
1:37:50 PM Tab 2 SB 1098  
1:38:04 PM Senator Lee explains SB 1098  
1:38:10 PM No Questions on SB 1098  
1:39:07 PM No Debate on SB 1098  
1:39:12 PM Senator Lee Waives Close on SB 1098  
1:39:14 PM Roll Call on SB 1098  
1:39:16 PM SB 1098 is Reported Favorably  
1:39:28 PM Tab 4 SB 1112 and Senator Torres Acting as Chair  
1:39:43 PM Senator Gruters Explains SB 1112  
1:40:01 PM No Questions on SB 1112  
1:41:00 PM Scott Jenkins Representing PGT Innovations Waives in Support of SB 1112  
1:41:11 PM Andy Gonzalez Representing Florida Realtors Waives in Support of SB 1112  
1:41:17 PM French Brown Representing FI Retail Federation and Florida Chamber of Commerce Speaks in Support of SB 1112  
1:41:37 PM Jeff Johnston Representing Wal-Mart Waives in Support of SB 1112  
1:42:36 PM Jason Unger Representing Target Corp Waives in Support of SB 1112  
1:42:42 PM Cashion Drolet Representing International Council of Shopping Centers Speaks in Support of SB 1112  
1:43:05 PM Brewster Bevis Representing Associated Industries of Florida Waives in Support of SB 1112  
1:44:04 PM Kurt Wenner Representing Florida TaxWatch Speaks in Support of SB 1112  
1:45:20 PM Nancy Stephens Representing Manufacturers Association of Florida Waives in Support of SB 1112.  
1:46:19 PM Jennifer Queen Representing Best Buy Waives in Support of SB 1112  
1:46:40 PM No Debate on SB 1112  
1:46:49 PM Senator Gruters Closes on SB 1112  
1:46:55 PM Roll Call on SB 1112  
1:47:55 PM SB 1112 is Reported Favorably  
1:48:04 PM Chair Gruters Resumes as Chair  
1:48:25 PM Senator Wright Moves to Adjourn  
1:48:28 PM Meeting Adjourned