

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

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

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

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

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

JUDICIARY
Senator Simmons, Chair
Senator Rodriguez, Vice Chair

MEETING DATE: Monday, March 25, 2019
TIME: 4:00—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

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

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

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

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

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

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

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

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

COMMITTEE MEETING EXPANDED AGENDA

Judiciary

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

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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 Judiciary

BILL: CS/CS/CS/SB 76

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

SUBJECT: Texting While Driving

DATE: March 26, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

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

The bill takes effect July 1, 2019.

II. Present Situation:

Florida Ban on Texting While Driving Law

Section 316.305, F.S., is the “Florida Ban on Texting While Driving Law.” It bans a person from operating a motor vehicle while using a wireless communications device¹ in specified ways. Enforcement is permitted only as a secondary action when an operator of a motor vehicle has been detained for a suspected violation of another provision of ch. 316, F.S., the “Florida Uniform Traffic Control Law,” ch. 320, F.S., relating to motor vehicle licenses, or ch. 322, F.S., relating to driver licenses.

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

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

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

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

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

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

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

⁴ Section 316.305(3)(b), F.S.

⁵ Section 316.305(4)(a), F.S.

⁶ *Id.*

⁷ Section 316.305(4)(b), F.S.

F.S., in calendar year 2018.⁸ Of those, 1,632 were for a first violation of the statute, and 39 were for a second or subsequent violation of the statute.⁹

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

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

Distracted Driving Laws in Other States

Bans on Texting While Driving

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

Bans on the Use of Hand Held Devices While Driving

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

Bans on Distracted Driving

Both the District of Columbia¹⁵ and Ohio¹⁶ have distracted driver laws that encompass more than just the use of personal electronic devices.

Distracted Driving

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

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

⁹ *Id.*

¹⁰ Section 322.27(3)(d)3., F.S.

¹¹ Section 322.27(3)(d)11., F.S.

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

¹³ *Id.*

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

¹⁵ Sections 50-1731.02 and 50.1731.03, Code of the District of Columbia.

¹⁶ Section 4511.051, Ohio Revised Code.

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

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

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

Distraction-Affected Motor Vehicle Crashes

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

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

Traffic Infraction Civil Penalties

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

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

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

¹⁸ *Id.*

¹⁹ Insurance Institute for Highway Safety, Highway Loss Data Institute, available at

<https://www.iihs.org/iihs/topics/t/distracted-driving/topicoverview> (last visited February 26, 2019).

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

²¹ *Id.*

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

²³ After the addition of court costs and service charges, the final amount paid could be up to \$108 for a nonmoving traffic violation and up to \$158 for a moving violation. See The Florida Court Clerks and Comptrollers, *Distribution Schedule* (July 2018), available at https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/public_documents/_2018_distribution_schedule_1.pdf (last visited February 26, 2019).

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

Driver Improvement Schools

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

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

III. Effect of Proposed Changes:

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

²⁴ Section 318.1451(1), F.S.

²⁵ Section 318.1451(2)(a), F.S.

²⁶ Section 318.1451(4), F.S.

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

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

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

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

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

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

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 316.305 of the Florida Statutes.

This bill creates an unnumbered section of the Florida Statutes.

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

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

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

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

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

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

The committee substitute for committee substitute:

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

CS by Infrastructure and Security on February 19, 2019:

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

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

B. Amendments:

None.



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LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

316.305 Wireless communications devices; prohibition.—

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

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

(a) Improve roadway safety for all vehicle operators,



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

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

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

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

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

38 2.a. During the period of October 1, 2019, through December
39 31, 2019, a law enforcement officer may stop motor vehicles to
40 issue verbal or written warnings to persons who are texting



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

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

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

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

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

55 3. Receiving messages that are:

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

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

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

61 d. Radio broadcasts.

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

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

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



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

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

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

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

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



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

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

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

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

123
124 ===== T I T L E A M E N D M E N T =====

125 And the title is amended as follows:

126 Delete everything before the enacting clause
127 and insert:



878202

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



878202

157

date.



524280

LEGISLATIVE ACTION

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

The Committee on Judiciary (Simmons) recommended the following:

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

3
4 Delete everything after the enacting clause
5 and insert:

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

8 316.305 Wireless communications devices; prohibition.—

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

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



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

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

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

21 (d) Authorize law enforcement officers to stop motor
22 vehicles and issue citations as a primary ~~secondary~~ offense to
23 persons who are texting while driving as provided in subsection
24 (3).

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

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



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41 31, 2019, a law enforcement officer may stop motor vehicles to
42 issue verbal or written warnings to persons who are texting
43 while driving for the purposes of informing and educating such
44 persons. This sub-subparagraph shall stand repealed on October
45 1, 2020.

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

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

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

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

57 3. Receiving messages that are:

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

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

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

63 d. Radio broadcasts.

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

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

69 6. Conducting wireless interpersonal communication that



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

72 7. Operating an autonomous vehicle, as defined in s.
73 316.003, in autonomous mode.

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

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

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



99 ~~as provided in chapter 318.~~

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

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

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

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

125
126 ===== T I T L E A M E N D M E N T =====

127 And the title is amended as follows:



128 Delete everything before the enacting clause
129 and insert:

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



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

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

580-02753-19

201976c2

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

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

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

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

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

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

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

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

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

78 ~~(3)(2)~~ It is the intent of the Legislature to:

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

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

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

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

92 ~~(4)(3)~~ (a) 1. A person may not operate a motor vehicle when
 93 driving while distracted ~~while manually typing or entering~~
 94 ~~multiple letters, numbers, symbols, or other characters into a~~
 95 ~~wireless communications device or while sending or reading data~~
 96 ~~on such a device for the purpose of nonvoice interpersonal~~
 97 ~~communication, including, but not limited to, communication~~
 98 ~~methods known as texting, e-mailing, and instant messaging. As~~
 99 ~~used in this section, the term "wireless communications device"~~
 100 ~~means any handheld device used or capable of being used in a~~
 101 ~~handheld manner, that is designed or intended to receive or~~
 102 ~~transmit text or character-based messages, access or store data,~~
 103 ~~or connect to the Internet or any communications service as~~
 104 ~~defined in s. 812.15 and that allows text communications. For~~
 105 the purposes of this paragraph, a motor vehicle that is
 106 stationary is not being operated and is not subject to the
 107 prohibition in this paragraph.

108 2.a. During the period of October 1, 2019, through December
 109 31, 2019, a law enforcement officer may stop motor vehicles to
 110 issue verbal or written warnings to persons who are driving
 111 while distracted for the purposes of informing and educating
 112 such persons. This sub-subparagraph shall stand repealed on
 113 October 1, 2020.

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

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

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

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

183 ~~(6)(5)~~ Notwithstanding s. 318.21, all proceeds collected
 184 pursuant to s. 318.18 for violations of this section must be
 185 remitted to the Department of Revenue for deposit into the
 186 Emergency Medical Services Trust Fund of the Department of
 187 Health Enforcement of this section by state or local law
 188 enforcement agencies must be accomplished only as a secondary
 189 action when an operator of a motor vehicle has been detained for
 190 a suspected violation of another provision of this chapter,
 191 chapter 320, or chapter 322.

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

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

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

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

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



The Florida Senate

Committee Agenda Request

To: Senator Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 22, 2019

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

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

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

Senator Wilton Simpson
Florida Senate, District 10

THE FLORIDA SENATE
APPEARANCE RECORD

March 25, 2019

Meeting Date

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

76

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title _____

Address 311 E. Park Ave.

Phone 850.224.5081

Street

Tallahassee

Florida

32301

Email lhurley@smithbryanandmyers.c

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

03-25-2019

Meeting Date

0076

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Mark Merwitz

Job Title Student

Address 725 NW 13 St
Street

Phone 776-505-7272

Gainesville FL 32601
City State Zip

Email mbmerwitz@gmail.com

Speaking: For Against Information

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

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/19
Meeting Date

76
Bill Number (if applicable)

Topic Driving while Distracted

Amendment Barcode (if applicable)

Name Devon West

Job Title Policy Advisor

Address 115 S. Andrews Ave
Street

Phone 954.789.9293

Ft. Lauderdale FL 33301
City State Zip

Email dewest@broward.org

Speaking: For Against Information

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

Representing Broward County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.25.19

Meeting Date

76

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Dr. Danielle Thomas

Job Title Legislation Chair

Address 17470 Orlando Central Pkwy

Phone 407 825 7604

Street

Orlando FL 32828

City

State

Zip

Email legislation@floridaptac.org

Speaking: For Against Information

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

Representing Florida PTA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

3/25/19

Meeting Date

CS SB 76

Bill Number (if applicable)

Topic TEXTING WHILE DRIVING

Amendment Barcode (if applicable)

Name KEYNA CORY

Job Title LOBBYIST

Address 730 E. PARK AVE

Phone 850 681 1065

Street

TALLAHASSEE

FL

32301

Email keynacory@pacconsultants.com

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing NATIONAL WASTE + RECYCLING ASSN + FL DFT TXN DRV COALITION

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

3/25/19

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

076

Meeting Date

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Katie Petros

Job Title Councilwoman, Village of Key Biscayne

Address 375 Redwood Lane

Phone 305.793.3979

Street

City Key Biscayne State FL Zip 33149

Email kpetros@keybiscayne.fl.gov

Speaking: [X] For [] Against [] Information

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

Representing Village of Key Biscayne

Appearing at request of Chair: [] Yes [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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

SB 76

Bill Number (if applicable)

Topic DRIVING WHILE DISTRACTED

Amendment Barcode (if applicable)

Name WILLIAM SMITH

Job Title PRESIDENT FIAT IPBA CHAPTER

Address 305 S BREVARD ST

Phone 802-733-7322

TALLAHASSEE FL 32301

Email

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: [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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/25/2019

76

Meeting Date

Bill Number (if applicable)

Topic Texting while driving

Amendment Barcode (if applicable)

Name Jim Cordero

Title Director of Governmental Affairs

Address 1007 E. DeSoto Park Drive, Suite 201

Phone 850-222-7300

Street

Tallahassee,

Florida

32301

Email jcordero@acaf.org

City

State

Zip

Speaking: For Against Information

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

Representing

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/20/19
Meeting Date

76
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Deborah Lawson

Job Title _____

Address P.O. Box 12277
Street

Phone 850-570-0033

Talla., FL 32317
City State Zip

Email deborah.e.lawson@outlook.com

Speaking: For Against Information

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

Representing NACM Improved Construction Practices Committee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/2019

76

Meeting Date

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-25-19

Meeting Date

SB# 76

Bill Number (if applicable)

Topic Ban on Wireless Communication Devices Amendment Barcode (if applicable)

Name Debbie Wanninkhof

Job Title

Address 255 W Heather Dr.

Phone 305-992-7470

Key Biscayne FL 33149

Email debbie.wanninkhof@gmail.com

Speaking: [X] For [] Against [] Information

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

Representing The Wanninkhof Family

Appearing at request of Chair: [] Yes [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)

3/25/19
Meeting Date

76
Bill Number (if applicable)

Topic Texting Driver Distraction

Amendment Barcode (if applicable)

Name Mary-Lynn Cullen

Job Title Legislative Liaison

Address 1674 University Pkwy.

Phone 941-928-0278

Street

Sarasota

Fl.

34243

Email aichildrey@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing Advocacy Institute For Children

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

3-25-19

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

Meeting Date

76

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name _____

Job Title _____

Address 815 Voncile Ave

Phone 850 339 8213

Street

Tallahassee FL 32303

City

State

Zip

Email demetriusbranca@gmail.com

Speaking: For Against Information

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

Representing Anthony

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/28/19 Meeting Date

76 Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 101 N. Monroe St Suite 104D Street

Phone 850 681-0411

City State Zip

Email James.MAGILL@BIPFL.com

Speaking: [] For [] Against [] Information

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

Representing FLA PUBLIC TRANSPORTATION ASSOC.

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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-19

Meeting Date

76

Bill Number (if applicable)

Topic Driving while Distracted

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title _____

Address 204 S Monroe St

Phone 850 222 8900

Street

Tallahassee FL 32303

Email SSC@cardenasparsons.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 FL

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)

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

Meeting Date _____

Topic DISTRACTED DRIVING

Amendment Barcode (if applicable) _____

Name LEE MOFFITT

Job Title ATTORNEY

Address 33 PERIMETER RD
Street

Phone 813 760-5712

PALM CITY State _____ Zip _____
City

Email MRSPEAKER@AOL.COM

Speaking: For Against Information

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

Representing AUTONATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE APPEARANCE RECORD

3/25/19

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

76

Meeting Date

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Chief Gary Hester

Job Title Government Affairs

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email ghester@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

76

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

Email JMM2@MIAMIDADE.GOV

City

State

Zip

Speaking: For Against Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/19
Meeting Date

76
Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Nancy Lawther

Job Title President

Address P.O. Box 10309

Phone 305 995-1102

Miami, FL 33101
City State Zip

Email president@mdccpta.net

Speaking: For Against Information

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

Representing Miami Dade County Council PTA / PTSA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/25/2019

Meeting Date

76

Bill Number (if applicable)

Topic Use of Wireless Communications Devices While Driving

Amendment Barcode (if applicable)

Name Carl Mikyska

Job Title Executive Director

Address 605 Suwannee Street - MS 28B

Phone 850-414-4062

Street

Tallahassee

FL

32399

Email carl.mikyska@mpoac.org

City

State

Zip

Speaking: [] For [] Against [] Information

Waive Speaking: [x] 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: [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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

03/25/2019
Meeting Date

76
Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Becky Afonso

Job Title Executive Director

Address 174B State St E

Phone 813-748-1513

Street

Oldsmar

FL

34677

Email becky@floridabicycle.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Bicycle Association, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Distracted Driving

Amendment Barcode (if applicable)

Name Logan McFaddin

Job Title Regional Manager

Address 215 S. Monroe Jr. Suite 720

Phone 850 681 2615

Street

Tallahassee

FL 32301

Email logan.mcfaddin@apci.org

City

State

Zip

Speaking: For Against Information

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

Representing APCIA - American Property Casualty Insurance Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

76

Bill Number (if applicable)

Topic Driving While Distracted

Amendment Barcode (if applicable)

Name Ben Stearns

Job Title Attorney

Address 215 S. Monroe St., Suite 500

Phone (850) 425-3383

Street

Tallahassee

City

FL

State

32301

Zip

Email bstearns@carltonfields.com

Speaking: For Against Information

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

Representing NAMIC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/CS/SB 892

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

SUBJECT: Business Organizations

DATE: March 27, 2019

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

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

- Modify the processes of judicial dissolution of a corporation and appointment of receivers and custodians made in the process thereof;
- Update and modernize laws regarding mergers, share exchanges, and conversions;
- Expand corporate domestication under additional circumstances;
- Clarify appraisal rights provisions; and
- Make conforming changes to mirror the 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.¹ The Corporate Laws Committee of the American Bar Association’s Business Law Section (ABA) promulgates the Model Act, and most recently re-worked the Model Act in its entirety in 2016.² The Florida Business Corporation Act (FBCA)³ was last updated as a whole in 1989, and therefore does not best reflect the modern state of corporate law.⁴

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

III. Effect of Proposed Changes:

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

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

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

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

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

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

⁴ Ch. 89-154, Laws of Fla.

⁵ *See n. 2, supra.*

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

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

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

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

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.¹⁰ The corporation must state both the fact and the effect it will have on the document. This section prohibits specific terms from being made dependent on extrinsic facts, including the identity of a corporation's registered agent and the effective date of a document.

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

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

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

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

⁸ 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.

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

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

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

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

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

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

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

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

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

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

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.

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

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

Incorporation (Sections 16-23)

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

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

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

Sections 17 and 21 amend ss. 607.0202 and 607.0206, F.S., and **section 23** creates s. 607.0208, F.S., to allow articles of incorporation and bylaws to include exclusive forum¹⁴ provisions relating to the resolution of internal corporate claims. However, **section 23** prohibits articles of incorporation or bylaws from including forced arbitration clauses relating to the resolution of an internal corporate claim.

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

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

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

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

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

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

Purposes and Powers (Sections 24-27)

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

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

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

Corporate Names (Sections 28-30)

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

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

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

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

Office and Agent (Sections 31-37)

A corporation transacting business in Florida must designate and maintain a registered agent and registered office that is located in Florida.¹⁶ 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.

¹⁵ Ch. 98-101, § 15, Laws of Fla.

¹⁶ Section 607.0501, F.S.

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

Sections 33 and 34 creates ss. 607.0503 and 607.05031, F.S., to re-designate current law regarding a registered agent's resignation¹⁷ or change of name or address,¹⁸ respectively.

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

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

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

Shares and Distribution (Sections 38-51)

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

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

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

¹⁷ Section 607.0502(2), F.S.

¹⁸ Section 607.0502(3), F.S.

¹⁹ Section 607.0601, F.S.

Section 40 removes requirements in s. 607.0604, F.S., that the board authorize the issuance of a scrip²⁰ only when considered desirable, and that the board's good faith judgment of the fair value of fractions of a share is conclusive.

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

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

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

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

Shareholders (Sections 52-81)

Shareholder Meetings

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

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

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

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

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

Voting Rights

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

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

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

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

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

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

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

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

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

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

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

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

Derivative Actions

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

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

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

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

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

Additionally, **sections 73-79**:

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

Alternatives to Judicial Dissolution

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

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

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

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

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

Directors and Officers (Sections 82-114)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

²⁴ *Id.*

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

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

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

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

Indemnification and Advancement of Expenses

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

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

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

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

²⁷ BLACK'S LAW DICTIONARY, 837 (9th Ed. 2009).

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

Anti-Takeover Laws (Sections 115-116)

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

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 only in corporations with more than 35 shareholders. The effect is to now permit all corporations to take such action without shareholder approval.

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

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

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

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

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

Mergers and Share Exchanges (Sections 131-146)

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

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

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."³¹ 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

³⁰ 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> (last visited Mar. 11, 2019).

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

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

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

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

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

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

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

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

Domestication (Sections 147-151)

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

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

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

Conversions (152-157)

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

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

Sale of Assets (Sections 158-159)

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

Appraisal Rights (Sections 160-173)

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

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

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

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

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

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

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

Dissolution (Sections 174-195)

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

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

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

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

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

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

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

Administrative Dissolution

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

Judicial Dissolution

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

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

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

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

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

Foreign Corporations (Sections 196-216)

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

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

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

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

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

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

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

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

Records and Reports (Sections 217-224)

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

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

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

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

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

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

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

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

Miscellaneous

The bill makes several changes throughout, including:

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

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

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

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

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

VII. Related Issues:

None.

VIII. Statutes Affected:

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

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

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

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

IX. Additional Information:

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

CS/CS by Judiciary on March 25, 2019:

The committee substitute:

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

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

CS by Commerce and Tourism on March 11, 2019:

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

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment

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



855672

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment (with directory amendment)

Between lines 5745 and 5746

insert:

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

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



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

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

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

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

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

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

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



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

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

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

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

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



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69 disinterested directors:

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

73 b. There shall have been:

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

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

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

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

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



855672

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

105

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

107 And the directory clause is amended as follows:

108 Delete line 5532

109 and insert:

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



855524

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment

Delete lines 6544 - 6546
and insert:

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



813292

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/27/2019	.	
	.	
	.	
	.	

The Committee on Judiciary (Passidomo) recommended the following:

Senate Amendment

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

By the Committee on Commerce and Tourism; and Senator Passidomo

577-02886-19

2019892c1

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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."

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

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

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

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

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

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

713 607.0120 Filing requirements.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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813 606.06.

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

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

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

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

- 826 (1) Articles of incorporation: \$35.
827 (2) Application for registered name: \$87.50.
828 (3) Application for renewal of registered name: \$87.50.
829 (4) Corporation's statement of change of registered agent
830 or registered office or both if not included on the annual
831 report: \$35.
832 (5) Designation of and acceptance by registered agent: \$35.
833 (6) Agent's statement of resignation from active
834 corporation: \$87.50.
835 (7) Agent's statement of resignation from an inactive
836 corporation: \$35.
837 (8) Amendment of articles of incorporation: \$35.
838 (9) Restatement of articles of incorporation with amendment
839 of articles: \$35.
840 (10) Articles of merger or share exchange for each party
841 thereto: \$35.

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

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

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

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

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

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

851 (17) Annual report: \$61.25.

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

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

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

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

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

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

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

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

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

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871 before the date of filing.

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

873 is effective:

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

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

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

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

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

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

880 at the time specified in the filing;

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

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

883 1. The specified date; or

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

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

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

887 1. The specified date; or

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

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

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

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

892 1. The specified date; or

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

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

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

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

897 1. The specified date; or

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

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

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

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

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

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

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

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

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

907 ~~date and time of filing.~~

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

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

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

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

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

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

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

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

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

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

918 State may return the document to the person or corporation

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

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

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

922 corrections in accordance with the rules of the department

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

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

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

926 filing date that would have been applied had the original

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

928 the record before correction and were adversely affected

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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

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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.

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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

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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~~

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

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

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

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

1064 607.0128 Certificate of status.—

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

1070 (a) The corporation's name.

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

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

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1074 chapter have been paid.

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

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

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

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

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

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

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

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

1098 (e) Whether the department has:

1099 1. Revoked the foreign corporation's certificate of

1100 authority; or

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

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

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

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

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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

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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.

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

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

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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

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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)-(40) "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)-(41) "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)-(42) "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

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

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

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

1342 (39) "Governor" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1365 (43) "Interest" means:

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

1367 (b) A membership in a nonprofit corporation;

1368 (c) A partnership interest in a general partnership,

1369 including a limited liability partnership;

1370 (d) A partnership interest in a limited partnership,

1371 including a limited liability limited partnership;

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

1373 (f) A share or beneficial interest in a real estate

1374 investment trust;

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

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

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

1381 (44) "Interest holder" means:

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

1383 (b) A member of a nonprofit corporation;

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

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

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

1387 (f) A member of a limited liability company;

1388 (g) A shareholder or beneficial owner of a real estate

1389 investment trust;

1390 (h) A beneficiary or beneficial owner of a statutory trust,

1391 business trust, or common law business trust; or

1392 (i) Another direct holder of an interest.

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1393 (45) "Interest holder liability" means:
 1394 (a) Personal liability for a liability of an entity which
 1395 is imposed on a person:
 1396 1. Solely by reason of the status of the person as an
 1397 interest holder; or
 1398 2. By the organic rules of the entity which make one or
 1399 more specified interest holders or categories of interest
 1400 holders liable in their capacity as interest holders for all or
 1401 specified liabilities of the entity.
 1402 (b) An obligation of an interest holder under the organic
 1403 rules of an entity to contribute to the entity.
 1404
 1405 For purposes of this subsection, except as otherwise provided in
 1406 the articles of incorporation of a domestic corporation or the
 1407 organic law or organic rules of an entity, interest holder
 1408 liability arises under paragraph (a) when the corporation or
 1409 entity, as applicable, incurs the liability.
 1410 (46) "Jurisdiction of formation" means, with respect to an
 1411 entity:
 1412 (a) The jurisdiction under whose organic law the entity is
 1413 formed, incorporated, or created or otherwise comes into being;
 1414 however, for these purposes, if an entity exists under the law
 1415 of a jurisdiction different from the jurisdiction under which
 1416 the entity originally was formed, incorporated, or created or
 1417 otherwise came into being, then the jurisdiction under which the
 1418 entity then exists is treated as the jurisdiction of formation;
 1419 or
 1420 (b) In the case of a limited liability partnership or
 1421 foreign limited liability partnership, the jurisdiction in which

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1422 the partnership's statement of qualification or equivalent
 1423 document is filed.
 1424 (47)-(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.

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1451 (53) "Organic law" means the laws of the jurisdiction in
 1452 which the entity was formed.
 1453 (54) "Organic rules" means the public organic record and
 1454 private organic rules of an entity.
 1455 (55) "Party to a merger" means any domestic or foreign
 1456 entity that will merge under a plan of merger. The term does not
 1457 include a survivor created by the merger.
 1458 (56)-(19) "Person" includes an individual and an entity.
 1459 (57)-(20) "Principal office" means the office (in or out of
 1460 this state) where the principal executive offices of a domestic
 1461 or foreign corporation are located as designated in the articles
 1462 of incorporation or other initial filing until an annual report
 1463 has been filed, and thereafter as designated in the annual
 1464 report.
 1465 (58) "Private organic rules" means the rules, whether or
 1466 not in a record, which govern the internal affairs of an entity,
 1467 are binding on all its interest holders, and are not part of its
 1468 public organic record, if any. If the private organic rules are
 1469 amended or restated, the term means the private organic rules as
 1470 last amended or restated. The term includes:
 1471 (a) The bylaws of a corporation for profit;
 1472 (b) The bylaws of a nonprofit corporation;
 1473 (c) The partnership agreement of a general partnership;
 1474 (d) The partnership agreement of a limited partnership;
 1475 (e) The operating agreement, limited liability company
 1476 agreement, or similar agreement of a limited liability company;
 1477 (f) The bylaws, trust instrument, or similar rules of a
 1478 real estate investment trust; and
 1479 (g) The trust instrument of a statutory trust or similar

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1480 rules of a business trust or common law business trust.
 1481 (59)-(21) "Proceeding" includes a civil suit, a criminal
 1482 action, an administrative action, and an ~~and criminal,~~
 1483 ~~administrative,~~ and investigatory action.
 1484 (60) "Protected agreement" means:
 1485 (a) A record evidencing indebtedness and any related
 1486 agreement in effect on January 1, 2020;
 1487 (b) An agreement that is binding on an entity on January 1,
 1488 2020;
 1489 (c) The organic rules of an entity in effect on January 1,
 1490 2020; or
 1491 (d) An agreement that is binding on any of the governors or
 1492 interest holders of an entity on January 1, 2020.
 1493 (61) "Public organic record" means a record, the filing of
 1494 which by a governmental body is required to form an entity, or
 1495 an amendment to or restatement of such record. Where a public
 1496 organic record has been amended or restated, the term means the
 1497 public organic record as last amended or restated. The term
 1498 includes the following:
 1499 (a) The articles of incorporation of a corporation for
 1500 profit;
 1501 (b) The articles of incorporation of a nonprofit
 1502 corporation;
 1503 (c) The certificate of limited partnership of a limited
 1504 partnership;
 1505 (d) The articles of organization, certificate of
 1506 organization, or certificate of formation of a limited liability
 1507 company;
 1508 (e) The articles of incorporation of a general cooperative

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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.

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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

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1567 eligible entity into which one or more other eligible entities
 1568 are merged.

1569 ~~(74)-(29)~~ "Treasury shares" means shares of a corporation
 1570 that belong to the issuing corporation, which shares are
 1571 authorized and issued shares that are not outstanding, are not
 1572 canceled, and have not been restored to the status of authorized
 1573 but unissued shares.

1574 (75) "Type of entity" means a generic form of entity
 1575 either:

1576 (a) Recognized at common law; or

1577 (b) Formed under an organic law, regardless of whether some
 1578 entities formed under that organic law are subject to provisions
 1579 of that law that create different categories of the form of
 1580 entity.

1581 ~~(76)-(30)~~ "United States" includes district, authority,
 1582 bureau, commission, department, and any other agency of the
 1583 United States.

1584 (77) "Unrestricted voting trust beneficial owner" means,
 1585 with respect to any shareholder rights, a voting trust
 1586 beneficial owner whose entitlement to exercise the shareholder
 1587 right in question is not inconsistent with the voting trust
 1588 agreement.

1589 ~~(78)-(31)~~ "Voting group" means all shares of one or more
 1590 classes or series that under the articles of incorporation or
 1591 this chapter ~~act~~ are entitled to vote and be counted together
 1592 collectively on a matter at a ~~the~~ meeting of shareholders. All
 1593 shares entitled by the articles of incorporation or this chapter
 1594 ~~act~~ to vote generally on the matter are for that purpose a
 1595 single voting group.

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1596 (79) "Voting trust beneficial owner" means an owner of a
 1597 beneficial interest in shares of the corporation held in a
 1598 voting trust established pursuant to s. 607.0730(1).

1599 (80) "Writing" means printing, typewriting, electronic
 1600 communication, or other communication that is reducible to a
 1601 tangible form. The term "written" has the corresponding meaning.

1602 Section 14. Section 607.0141, Florida Statutes, is amended
 1603 to read:

1604 607.0141 Notice.—

1605 (1) (a) Notice under this chapter ~~act~~ must be in writing,
 1606 unless oral notice is:

1607 1. ~~(a)~~ Expressly authorized by the articles of incorporation
 1608 or the bylaws; 7 and

1609 2. ~~(b)~~ Reasonable under the circumstances.

1610 (b) Unless otherwise agreed upon between the sender and the
 1611 recipient, words in a notice or other communication under this
 1612 chapter must be in English.

1613 (c) Notice by electronic transmission is written notice.

1614 (2) A notice or other communication may be given by any
 1615 method of delivery, including voice mail where oral notice is
 1616 allowed, except that electronic transmissions must be in
 1617 accordance with this section ~~Notice may be communicated in~~
 1618 ~~person; by telephone, voice mail (where oral notice is~~
 1619 ~~permitted), or other electronic means; or by mail or other~~
 1620 ~~method of delivery.~~

1621 (3) (a) Written notice by a domestic or foreign corporation
 1622 authorized to transact business in this state to its
 1623 shareholder, if in a comprehensible form, is effective:

1624 1. Upon deposit into the United States mail, if mailed

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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~~

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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

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1683 authorized by subsection (7). Notice or other communication to
 1684 directors by the corporation may be delivered by electronic
 1685 transmission if consented to by the recipient director; however,
 1686 if the articles or bylaws require or authorize electronic
 1687 transmission of notice or other communication to a director by
 1688 the corporation, then no consent by the director recipient is
 1689 required for the corporation to deliver notice or other
 1690 communications to the director by electronic transmission.

1691 (7) A notice or other communication may be in the form of
 1692 an electronic transmission that cannot be directly reproduced in
 1693 paper form by the recipient through an automated process used in
 1694 conventional commercial practice only if:

1695 (a) The electronic transmission is otherwise retrievable in
 1696 perceivable form; and

1697 (b) The sender and the recipient have consented in writing
 1698 to the use of such form of electronic transmission.

1699 (8) Any consent under subsection (7) may be revoked by the
 1700 person who consented by written or electronic notice to the
 1701 person to whom the consent was delivered. Any such consent shall
 1702 be deemed revoked if:

1703 (a) The corporation is unable to deliver two consecutive
 1704 electronic transmissions given by the corporation in accordance
 1705 with such consent; and

1706 (b) Such inability becomes known to the secretary or
 1707 assistant secretary of the corporation or to the transfer agent,
 1708 or other person responsible for the giving of notice or other
 1709 communications; provided, however, that the inadvertent failure
 1710 to treat such inability as a revocation does not invalidate any
 1711 meeting or other action.

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1712 (9) Receipt of an electronic acknowledgment from an
 1713 information processing system described in paragraph (5) (d)
 1714 establishes that an electronic transmission was received, but,
 1715 by itself, does not establish that the content sent corresponds
 1716 to the content received.

1717 (10) An electronic transmission is received under this
 1718 section even if no person is aware of its receipt ~~Oral notice is~~
 1719 effective when communicated ~~if communicated directly to the~~
 1720 person to be notified in a comprehensible manner.

1721 (11) ~~(7)~~ If this act prescribes ~~notice~~ requirements for
 1722 notices or other communications in particular circumstances,
 1723 those requirements govern. If articles of incorporation or
 1724 bylaws prescribe ~~notice~~ requirements for notices or other
 1725 communications not less stringent than the requirements of this
 1726 section or other provisions of this act, those requirements
 1727 govern. The articles of incorporation or bylaws may authorize or
 1728 require delivery of notices of meetings of directors by
 1729 electronic transmission.

1730 (12) In the event that any provisions of this chapter are
 1731 deemed to modify, limit, or supersede the federal Electronic
 1732 Signatures in Global and National Commerce Act, 15 U.S.C. s.
 1733 7001 et seq., the provisions of this chapter shall control to
 1734 the maximum extent permitted by section 102(a)(2) of that
 1735 federal act.

1736 Section 15. Section 607.0143, Florida Statutes, is created
 1737 to read:

1738 607.0143 Qualified director.-

1739 (1) A "qualified director" is a director who, at the time
 1740 action is to be taken under:

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1741 (a) Section 607.0744, does not have a material interest in
 1742 the outcome of the proceeding or a material relationship with a
 1743 person who has such an interest;
 1744 (b) Section 607.0832, is not a director as to whom the
 1745 transaction is a director's conflict of interest transaction, or
 1746 who has a material relationship with another director as to whom
 1747 the transaction is a director's conflict of interest
 1748 transaction; or
 1749 (c) Section 607.0853 or s. 607.0855:
 1750 1. Is not a party to the proceeding;
 1751 2. Is not a director as to whom a transaction is a
 1752 director's conflict of interest transaction, which transaction
 1753 is challenged in the proceeding; and
 1754 3. Does not have a material relationship with a director
 1755 who is disqualified by virtue of not meeting the requirements of
 1756 subparagraph 1. or subparagraph 2.
 1757 (2) For purposes of this section:
 1758 (a) "Material relationship" means a familial, financial,
 1759 professional, employment, or other relationship that would
 1760 reasonably be expected to impair the objectivity of the
 1761 director's judgment when participating in the action to be
 1762 taken.
 1763 (b) "Material interest" means an actual or potential
 1764 benefit or detriment, other than one which would devolve on the
 1765 corporation or the shareholders generally, that would reasonably
 1766 be expected to impair the objectivity of the director's judgment
 1767 when participating in the action to be taken.
 1768 (3) The presence of one or more of the following
 1769 circumstances does not automatically prevent a director from

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1770 being a qualified director:
 1771 (a) Nomination or election of the director to the current
 1772 board by any director who is not a qualified director with
 1773 respect to the matter, or by any person that has a material
 1774 relationship with that director, acting alone or participating
 1775 with others;
 1776 (b) Service as a director of another corporation of which a
 1777 director who is not a qualified director with respect to the
 1778 matter, or any individual who has a material relationship with
 1779 that director, is or was also a director; or
 1780 (c) With respect to action pursuant to s. 607.0744, status
 1781 as a named defendant, as a director against whom action is
 1782 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;

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1799 ~~(d) If any preemptive rights are to be granted to~~
 1800 ~~shareholders, the provision therefor;~~
 1801 ~~(d)(e)~~ The street address of the corporation's initial
 1802 registered office and the name of its initial registered agent
 1803 at that office together with a written acceptance as required in
 1804 s. 607.0501(3); and
 1805 ~~(e)(f)~~ The name and address of each incorporator.
 1806 (2) The articles of incorporation may set forth:
 1807 (a) The names and addresses of the individuals who are to
 1808 serve as the initial directors;
 1809 (b) Provisions not inconsistent with law regarding:
 1810 1. The purpose or purposes for which the corporation is
 1811 organized;
 1812 2. Managing the business and regulating the affairs of the
 1813 corporation;
 1814 3. Defining, limiting, and regulating the powers of the
 1815 corporation and its board of directors and shareholders;
 1816 4. A par value for authorized shares or classes of shares;
 1817 5. The imposition of personal liability on shareholders for
 1818 the debts of the corporation to a specified extent and upon
 1819 specified conditions; and
 1820 6. Exclusive forum provisions to the extent allowed by s.
 1821 607.0208;
 1822 (c) Provisions for granting any preemptive rights to
 1823 shareholders; and
 1824 (d) Any provision that under this chapter ~~act~~ is required
 1825 or permitted to be set forth in the bylaws.
 1826 (3) The articles of incorporation need not set forth any of
 1827 the corporate powers enumerated in this chapter act.

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1828 (4) Provisions of the articles of incorporation may be made
 1829 dependent upon facts objectively ascertainable outside the
 1830 articles of incorporation in accordance with s. 607.0120(11).
 1831 (5) The articles of incorporation may not contain any
 1832 provision that would impose liability on a shareholder for the
 1833 attorney fees or expenses of the corporation or any other party
 1834 in connection with an internal corporate claim, as defined in s.
 1835 607.0208.
 1836 Section 18. Subsection (2) of section 607.0203, Florida
 1837 Statutes, is amended to read:
 1838 607.0203 Incorporation.—
 1839 (2) The ~~department's~~ Department of State's filing of the
 1840 articles of incorporation is conclusive proof that the
 1841 incorporators satisfied all conditions precedent to
 1842 incorporation except in a proceeding by the state to cancel or
 1843 revoke the incorporation or administratively involuntarily
 1844 dissolve the corporation.
 1845 Section 19. Section 607.0204, Florida Statutes, is amended
 1846 to read:
 1847 607.0204 Liability for preincorporation transactions.—All
 1848 persons purporting to act as or on behalf of a corporation,
 1849 knowing having actual knowledge that there was no incorporation
 1850 under this chapter, are jointly and severally liable for all
 1851 liabilities created while so acting ~~except for any liability to~~
 1852 ~~any person who also had actual knowledge that there was no~~
 1853 ~~incorporation.~~
 1854 Section 20. Subsections (1), (2), and (3) of section
 1855 607.0205, Florida Statutes, are amended to read:
 1856 607.0205 Organizational meeting of directors.—

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1857 (1) After incorporation:

1858 (a) If initial directors are named in the articles of
1859 incorporation, the initial directors shall hold an
1860 organizational meeting, at the call of a majority of the
1861 directors, to complete the organization of the corporation by
1862 appointing officers, adopting bylaws, and carrying on any other
1863 business brought before the meeting;

1864 (b) If initial directors are not named in the articles of
1865 incorporation, the incorporators shall hold an organizational
1866 meeting at the call of a majority of the incorporators:

1867 1. To elect directors and complete the organization of the
1868 corporation; or

1869 2. To elect a board of directors who shall complete the
1870 organization of the corporation.

1871 (2) Action required or permitted by this chapter ~~act~~ to be
1872 taken by incorporators or directors at an organizational meeting
1873 may be taken without a meeting if the action taken is evidenced
1874 by one or more written consents describing the action taken and
1875 signed by each incorporator or director.

1876 (3) The directors or incorporators calling the
1877 organizational meeting shall give at least 2 ~~3~~ days' notice
1878 thereof to each director or incorporator so named, stating the
1879 time and place of the meeting.

1880 Section 21. Subsection (2) of section 607.0206, Florida
1881 Statutes, is amended, and subsections (3) through (6) are added
1882 to that section, to read:

1883 607.0206 Bylaws.—

1884 (2) The bylaws of a corporation may contain any provision
1885 that is not inconsistent with law or the articles of

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1886 incorporation, including the provisions described in subsections
1887 (3) and (4) for managing the business and regulating the affairs
1888 of the corporation that is not inconsistent with law or the
1889 articles of incorporation.

1890 (3) The bylaws of a corporation may contain one or both of
1891 the following provisions:

1892 (a) A requirement that if the corporation solicits proxies
1893 or consents with respect to an election of directors, the
1894 corporation include in its proxy statement and any form of its
1895 proxy or consent, to the extent and subject to such procedures
1896 or conditions as are provided in the bylaws, one or more
1897 individuals nominated by a shareholder in addition to
1898 individuals nominated by the board of directors.

1899 (b) A requirement that the corporation reimburse the
1900 expenses incurred by a shareholder in soliciting proxies or
1901 consents in connection with an election of directors, to the
1902 extent and subject to such procedures and conditions as are
1903 provided in the bylaws, provided that no bylaw so adopted shall
1904 apply to elections for which any record date precedes its
1905 adoption.

1906 (4) The bylaws of a corporation may contain exclusive forum
1907 provisions to the extent allowed by s. 607.0208.

1908 (5) Notwithstanding s. 607.1020(1)(b), the shareholders in
1909 amending, repealing, or adopting a bylaw described in subsection
1910 (3) may not limit the authority of the board of directors to
1911 amend or repeal any condition or procedure set forth in, or to
1912 add any procedure or condition to, such a bylaw to provide for a
1913 reasonable, practical, and orderly process.

1914 (6) The bylaws may not contain any provision that would

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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 ~~corporation's~~ directors cannot readily be
 1942 assembled because of some catastrophic event.
 1943 Section 23. Section 607.0208, Florida Statutes, is created

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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,

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1973 officer, or shareholder in such capacity;

1974 (b) Any derivative action or proceeding brought on behalf
1975 of the corporation;

1976 (c) Any action asserting a claim arising pursuant to this
1977 chapter or the articles of incorporation or bylaws; or

1978 (d) Any action asserting a claim governed by the internal
1979 affairs doctrine that is not included in paragraphs (a), (b), or
1980 (c).

1981 Section 24. Section 607.0301, Florida Statutes, is amended
1982 to read:

1983 607.0301 Purposes and application.—

1984 (1) Every corporation incorporated under this chapter has
1985 the purpose of engaging in any lawful business unless a more
1986 limited purpose is set forth in the articles of incorporation.

1987 (2) A corporation engaging in a business that is subject to
1988 regulation under another statute of this state may incorporate
1989 under this chapter only if permitted by, and subject to all
1990 limitations of, the other statute.

1991 (3) Corporations may be organized under this act for any
1992 lawful purpose or purposes, and The provisions of this chapter
1993 act extend to all corporations, whether chartered by special
1994 acts or general laws, except that special statutes for the
1995 regulation and control of types of business and corporations
1996 shall control when in conflict herewith.

1997 Section 25. Section 607.0302, Florida Statutes, is amended
1998 to read:

1999 607.0302 General powers.—Unless its articles of
2000 incorporation provide otherwise, every corporation has perpetual
2001 duration and succession in its corporate name and has the same

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2002 powers as an individual to do all things necessary or convenient
2003 to carry out its business and affairs, including ~~without~~
2004 ~~limitation~~ power:

2005 (1) To sue and be sued, complain, and defend in its
2006 corporate name;

2007 (2) To have a corporate seal, which may be altered at will
2008 and to use it or a facsimile of it, by impressing or affixing it
2009 or in any other manner reproducing it;

2010 (3) To purchase, receive, lease, or otherwise acquire, and
2011 own, hold, improve, use, and otherwise deal with real or
2012 personal property or any legal or equitable interest in property
2013 wherever located;

2014 (4) To sell, convey, mortgage, pledge, create a security
2015 interest in, lease, exchange, and otherwise dispose of all or
2016 any part of its property;

2017 (5) To lend money to, and use its credit to assist, its
2018 officers and employees in accordance with s. 607.0833;

2019 (6) To purchase, receive, subscribe for, or otherwise
2020 acquire; own, hold, vote, use, sell, mortgage, lend, pledge, or
2021 otherwise dispose of; and deal in and with shares or other
2022 interests in, or obligations of, any other entity;

2023 (7) To make contracts and guarantees, incur liabilities,
2024 borrow money, issue its notes, bonds, and other securities and
2025 obligations (which may be convertible into or include the option
2026 to purchase other securities of the corporation), and secure any
2027 of its obligations by mortgage or pledge of any of its property,
2028 franchises, or ~~and~~ income and make contracts of guaranty and
2029 suretyship which are necessary or convenient to the conduct,
2030 promotion, or attainment of the business of a corporation the

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2031 majority of the outstanding shares ~~steek~~ 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 ~~steek~~ of the contracting corporation; or
 2035 a corporation the majority of the outstanding shares ~~steek~~ of
 2036 which is owned, directly or indirectly, by a corporation which
 2037 owns, directly or indirectly, the majority of the outstanding
 2038 shares ~~steek~~ 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;

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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

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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

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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.

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2147 ~~2.(b)~~ A definite or indefinite article.

2148 ~~3.(e)~~ The word "and" and the symbol "&."

2149 ~~4.(d)~~ The singular, plural, or possessive form of a word.

2150 ~~(e) A recognized abbreviation of a root word.~~

2151 ~~5.(f)~~ A punctuation mark or a symbol.

2152 (e) Notwithstanding the foregoing, a corporation may

2153 register under a name that is not otherwise distinguishable on

2154 the records of the department with the written consent of the

2155 other entity if the consent is filed with the department at the

2156 time of registration of such name and if such name is not

2157 identical to the name of the other entity.

2158 ~~(2)(5)~~ As filed with the department ~~of State~~, is for public

2159 notice only and does not alone create any presumption of

2160 ownership beyond that which is created under the common law.

2161 (3) This chapter does not control the use of fictitious

2162 names.

2163 Section 29. Section 607.04021, Florida Statutes, is created

2164 to read:

2165 607.04021 Reserved name.—

2166 (1) A person may reserve the exclusive use of a corporate

2167 name, including an alternate name for a foreign corporation

2168 whose corporate name is not available, by delivering an

2169 application to the department for filing. The application must

2170 set forth the name and address of the applicant and the name

2171 proposed to be reserved. If the department finds that the

2172 corporate name applied for is available, it shall reserve the

2173 name for the exclusive use of the applicant for a nonrenewable

2174 120-day period.

2175 (2) The owner of a reserved corporate name may transfer the

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2176 reservation to another person by delivering to the department a

2177 signed notice of the transfer that states the name and address

2178 of the transferee.

2179 (3) The department may revoke any reservation if, after a

2180 hearing, it finds that the application therefor or any transfer

2181 thereof was not made in good faith.

2182 Section 30. Subsections (1), (2), (5), and (6) of section

2183 607.0403, Florida Statutes, are amended to read:

2184 607.0403 Registered name; application; renewal;

2185 revocation.—

2186 (1) A foreign corporation may register its corporate name,

2187 or its corporate name with the any addition of any word or

2188 abbreviation required by s. 607.1506, if the name is

2189 distinguishable upon the records of the department ~~of State~~ from

2190 the corporate names that are not available under s.

2191 607.0401(1)(d) s. 607.0401(4).

2192 (2) A foreign corporation registers its corporate name, or

2193 its corporate name with any addition allowed ~~required~~ by s.

2194 607.1506, by delivering to the department ~~of State~~ for filing an

2195 application:

2196 (a) Setting forth such name ~~its corporate name, or its~~

2197 ~~corporate name with any addition required by s. 607.1506, the~~

2198 state or country and date of its incorporation, and a brief

2199 description of the nature of the business that is to be

2200 conducted in this state in which it is engaged; and

2201 (b) Accompanied by a certificate of existence, or a

2202 certificate setting forth that such corporation is in good

2203 standing under the laws of the state or country wherein it is

2204 organized (or a document of similar import), from the state or

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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

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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

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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

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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

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2321 ~~registered agent may resign his or her agency appointment by~~
 2322 ~~signing and delivering for filing with the Department of State a~~
 2323 ~~statement of resignation and mailing a copy of such statement to~~
 2324 ~~the corporation at its principal office address shown in its~~
 2325 ~~most recent annual report or, if none, filed in the articles of~~
 2326 ~~incorporation or other most recently filed document. The~~
 2327 ~~statement of resignation shall state that a copy of such~~
 2328 ~~statement has been mailed to the corporation at the address so~~
 2329 ~~stated. The agency is terminated as of the 31st day after the~~
 2330 ~~date on which the statement was filed and unless otherwise~~
 2331 ~~provided in the statement, termination of the agency acts as a~~
 2332 ~~termination of the registered office.~~

2333 ~~(3) If a registered agent changes his or her business name~~
 2334 ~~or business address, he or she may change such name or address~~
 2335 ~~and the address of the registered office of any corporation for~~
 2336 ~~which he or she is the registered agent by:~~

2337 ~~(a) Notifying all such corporations in writing of the~~
 2338 ~~change,~~

2339 ~~(b) Signing (either manually or in facsimile) and~~
 2340 ~~delivering to the Department of State for filing a statement~~
 2341 ~~that substantially complies with the requirements of paragraphs~~
 2342 ~~(1)(a)-(f), setting forth the names of all such corporations~~
 2343 ~~represented by the registered agent, and~~

2344 ~~(c) Reciting that each corporation has been notified of the~~
 2345 ~~change.~~

2346 ~~(4) Changes of the registered office or registered agent~~
 2347 ~~may be made by a change on the corporation's annual report form~~
 2348 ~~filed with the Department of State.~~

2349 ~~(5) The Department of State shall collect a fee pursuant to~~

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2350 ~~s. 15.09(2) for the filings authorized under this section.~~

2351 Section 33. Section 607.0503, Florida Statutes, is created
 2352 to read:

2353 607.0503 Resignation of registered agent.—

2354 (1) A registered agent may resign as agent for a
 2355 corporation by delivering to the department for filing a signed
 2356 statement of resignation containing the name of the corporation.

2357 (2) After delivering the statement of resignation to the
 2358 department for filing, the registered agent must promptly mail a
 2359 copy to the corporation at its current mailing address.

2360 (3) A registered agent is terminated upon the earlier of:

2361 (a) The 31st day after the department files the statement
 2362 of resignation; or

2363 (b) When a statement of change or other record designating
 2364 a new registered agent is filed by the department.

2365 (4) When a statement of resignation takes effect, the
 2366 registered agent ceases to have responsibility for a matter
 2367 thereafter tendered to it as agent for the corporation. The
 2368 resignation does not affect contractual rights that the
 2369 corporation has against the agent or that the agent has against
 2370 the corporation.

2371 (5) A registered agent may resign from a corporation
 2372 regardless of whether the corporation has active status.

2373 Section 34. Section 607.05031, Florida Statutes, is created
 2374 to read:

2375 607.05031 Change of name or address by registered agent.—

2376 (1) If a registered agent changes its name or address, the
 2377 agent may deliver to the department for filing a statement of
 2378 change that provides the following:

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2379 (a) The name of the corporation represented by the
 2380 registered agent.
 2381 (b) The name of the registered agent as currently shown in
 2382 the records of the department for the corporation.
 2383 (c) If the name of the registered agent has changed, its
 2384 new name.
 2385 (d) If the address of the registered agent has changed, the
 2386 new address.
 2387 (e) A statement that the registered agent has given the
 2388 notice required under subsection (2).
 2389 (2) A registered agent shall promptly furnish notice of the
 2390 statement of change and the changes made by the statement filed
 2391 with the department to the represented corporation.
 2392 Section 35. Section 607.05032, Florida Statutes, is created
 2393 to read:
 2394 607.05032 Delivery of notice or other communication.—
 2395 (1) Except as otherwise provided in this chapter,
 2396 permissible means of delivery of a notice or other communication
 2397 includes delivery by hand, the United States Postal Service, a
 2398 commercial delivery service, and electronic transmission, all as
 2399 more particularly described in s. 607.0141.
 2400 (2) Except as provided in subsection (3), delivery to the
 2401 department is effective only when a notice or other
 2402 communication is received by the department.
 2403 (3) If a check is mailed to the department for payment of
 2404 an annual report fee or the annual supplemental fee required
 2405 under s. 607.193 and the check is received by the department,
 2406 the check shall be deemed to have been received by the
 2407 department as of the postmark date appearing on the envelope or

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2408 package transmitting the check.
 2409 Section 36. Section 607.0504, Florida Statutes, is amended
 2410 to read:
 2411 607.0504 Service of process, notice, or demand on a
 2412 corporation.—
 2413 (1) A corporation may be served with process required or
 2414 authorized by law by serving on its registered agent.
 2415 (2) If a corporation ceases to have a registered agent or
 2416 if its registered agent cannot with reasonable diligence be
 2417 served, the process required or permitted by law may instead be
 2418 served on the chair of the board, the president, any vice
 2419 president, the secretary, or the treasurer of the corporation at
 2420 the principal office of the corporation in this state.
 2421 (3) If the process cannot be served on a corporation
 2422 pursuant to subsection (1) or subsection (2), the process may be
 2423 served on the secretary of state as an agent of the corporation.
 2424 (4) Service of process on the secretary of state shall be
 2425 made by delivering to and leaving with the department duplicate
 2426 copies of the process.
 2427 (5) Service is effectuated under subsection (3) on the date
 2428 shown as received by the department.
 2429 (6) The department shall keep a record of each process
 2430 served on the secretary of state pursuant to this subsection and
 2431 record the time of and the action taken regarding the service.
 2432 (7) Any notice or demand on a corporation under this
 2433 chapter may be given or made to the chair of the board, the
 2434 president, any vice president, the secretary, or the treasurer
 2435 of the corporation; to the registered agent of the corporation
 2436 at the registered office of the corporation in this state; or to

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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

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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

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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,

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

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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

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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;

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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

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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:

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- 2669 (a) The name of the corporation;
- 2670 (b) The text of the amendment determining the terms of the
- 2671 class or series of shares;
- 2672 (c) The date the amendment was adopted; and
- 2673 (d) A statement that the amendment was duly adopted by the
- 2674 board of directors.
- 2675 Section 40. Subsections (1), (2), (4), and (5) of section
- 2676 607.0604, Florida Statutes, are amended to read:
- 2677 607.0604 Fractional shares.—
- 2678 (1) A corporation may:
- 2679 (a) Issue fractions of a share or, in lieu of doing so, pay
- 2680 in money the fair value of fractions of a share;
- 2681 (b) Make arrangements, or provide reasonable opportunity,
- 2682 for any person entitled to or holding a fractional interest in a
- 2683 share to sell such fractional interest or to purchase such
- 2684 additional fractional interests as may be necessary to acquire a
- 2685 full share;
- 2686 (c) Issue scrip in registered or bearer form, over the
- 2687 manual or facsimile signature of an officer of the corporation
- 2688 or its agent, entitling the holder to receive a full share upon
- 2689 surrendering enough scrip to equal a full share.
- 2690 (2) The board of directors may authorize the issuance of
- 2691 scrip subject to any condition ~~considered desirable~~, including
- 2692 that:
- 2693 (a) ~~That~~ The scrip will become void if not exchanged for
- 2694 full shares before a specified date; and
- 2695 (b) ~~That~~ The shares for which the scrip is exchangeable may
- 2696 be sold and the proceeds paid to the scripholders.
- 2697 (4) The holder of a fractional share is entitled to

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- 2698 exercise the rights of a shareholder, including the rights ~~right~~
- 2699 to vote, to receive dividends, and to receive distributions upon
- 2700 ~~dissolution~~ participate in the assets of the corporation upon
- 2701 ~~liquidation~~. The holder of scrip is not entitled to any of these
- 2702 rights unless the scrip provides for them.
- 2703 ~~(5) When a corporation is to pay in money the value of~~
- 2704 ~~fractions of a share, the good faith judgment of the board of~~
- 2705 ~~directors as to the fair value shall be conclusive.~~
- 2706 Section 41. Subsections (2) and (5) of section 607.0620,
- 2707 Florida Statutes, are amended, and subsection (6) is added to
- 2708 that section, to read:
- 2709 607.0620 Subscriptions for shares.—
- 2710 (2) A subscription for shares, whether made before or after
- 2711 incorporation, is not enforceable against the subscriber unless
- 2712 in writing and signed by the subscriber.
- 2713 (5) If a subscriber defaults in payment of money or
- 2714 property under a subscription agreement entered into before
- 2715 incorporation, the corporation may collect the amount owed as
- 2716 any other debt. Alternatively, unless the subscription agreement
- 2717 provides otherwise, the corporation may rescind the agreement
- 2718 and may sell the shares if the debt remains unpaid more than 20
- 2719 days after the corporation delivers ~~sends~~ written demand for
- 2720 payment to the subscriber. If the subscription agreement is
- 2721 rescinded and the shares sold, then, notwithstanding the
- 2722 rescission, if mailed, such written demand shall be deemed to be
- 2723 made when deposited in the United States mail in a sealed
- 2724 envelope addressed to the subscriber at his or her last post
- 2725 office address known to the corporation, with first class
- 2726 postage thereon prepaid. the defaulting subscriber or his or her

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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.

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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

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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:

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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

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2843 (c) The number and class of shares and the designation of
2844 the series, if any, the certificate represents.

2845 (3) If the ~~issuing~~ corporation is authorized to issue
2846 different classes of shares or different series of shares within
2847 a class, the designations, relative rights, preferences, and
2848 limitations applicable to each class and the variations in
2849 rights, preferences, and limitations determined for each series
2850 (and the authority of the board of directors to determine
2851 variations for future series) must be summarized on the front or
2852 back of each certificate. Alternatively, each certificate may
2853 state conspicuously on its front or back that the corporation
2854 will furnish the shareholder a full statement of this
2855 information on request and without charge.

2856 Section 47. Section 607.0626, Florida Statutes, is amended
2857 to read:

2858 607.0626 Shares without certificates.—

2859 (1) Unless the articles of incorporation or bylaws provide
2860 otherwise, the board of directors of a corporation may authorize
2861 the issuance ~~issue~~ of some or all of the shares of any or all of
2862 its classes or series without certificates. The authorization
2863 does not affect shares already represented by certificates until
2864 they are surrendered to the corporation.

2865 (2) Within a reasonable time after the issuance ~~issue~~ or
2866 transfer of shares without certificates, the corporation shall
2867 deliver to send the shareholder a written statement of the
2868 information required on certificates by s. 607.0625(2) and (3),
2869 and, if applicable, s. 607.0627.

2870 Section 48. Subsection (4) of section 607.0627, Florida
2871 Statutes, is amended to read:

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2872 607.0627 Restriction on transfer of shares and other
2873 securities.—

2874 (4) A restriction on the transfer or registration of
2875 transfer of shares may:

2876 (a) Obligate the shareholder first to offer the corporation
2877 or other persons (separately, consecutively, or simultaneously)
2878 an opportunity to acquire the restricted shares;

2879 (b) Obligate the corporation or other persons (separately,
2880 consecutively, or simultaneously) to acquire the restricted
2881 shares;

2882 (c) Require the corporation, the holders of any class or
2883 series of its shares, or other persons ~~another person~~ to approve
2884 the transfer of the restricted shares, if the requirement is not
2885 manifestly unreasonable; or

2886 (d) Prohibit the transfer of the restricted shares to
2887 designated persons or classes of persons, if the prohibition is
2888 not manifestly unreasonable.

2889 Section 49. Paragraphs (c), (d), and (e) of subsection (2)
2890 of section 607.0630, Florida Statutes, are amended to read:

2891 607.0630 Shareholders' preemptive rights.—

2892 (2) A statement included in the articles of incorporation
2893 that "the corporation elects to have preemptive rights" (or
2894 words of similar import) means that the following principles
2895 apply except to the extent the articles of incorporation
2896 expressly provide otherwise:

2897 (c) There is no preemptive right with respect to:

2898 1. Shares issued as compensation to directors, officers,
2899 agents, or employees of the corporation, ~~or~~ its subsidiaries, ~~or~~
2900 affiliates;

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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

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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

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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 ~~is~~ 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

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2988 distribution under subsection (3) is measured:

2989 (a) In the case of a distribution by purchase, redemption,
 2990 or other acquisition of the corporation's shares, as of the
 2991 earlier of the date on which:

2992 1. ~~The date~~ Money or other property is transferred or the
 2993 debt to a shareholder is incurred by the corporation, or
 2994 2. ~~The date the~~ shareholder ceases to be a shareholder with
 2995 respect to the acquired shares;

2996 (b) In the case of a ~~any other~~ distribution of
 2997 indebtedness, as of the date on which the indebtedness is
 2998 distributed;

2999 (c) In all other cases, as of the date on which:

3000 1. ~~The date the~~ distribution is authorized if the payment
 3001 occurs within 120 days after that date; ~~the date of~~
 3002 authorization, or

3003 2. ~~The date the~~ payment is made if the payment ~~is~~ occurs
 3004 more than 120 days after the date the distribution is authorized
 3005 of authorization.

3006 (7) A corporation's indebtedness to a shareholder incurred
 3007 by reason of a distribution made in accordance with this section
 3008 is at parity with the corporation's indebtedness to its general,
 3009 unsecured creditors except to the extent provided otherwise
 3010 subordinated by agreement. The obligation to pay such
 3011 indebtedness may be secured by a lien on assets of the
 3012 corporation if not prohibited by a law other than this chapter.

3013 (8) Indebtedness of a corporation, including indebtedness
 3014 issued as a distribution, is not considered a liability for
 3015 purposes of determinations under subsection (3) if the terms of
 3016 the indebtedness ~~its terms~~ provide that payment of principal and

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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

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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~~

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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

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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,~~

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3133 a record of such vote or other action shall be maintained by the
3134 corporation.

3135 Section 54. Section 607.0703, Florida Statutes, is amended
3136 to read:

3137 607.0703 Court-ordered meeting.—

3138 (1) The circuit court in the applicable county may
3139 summarily of the county where a corporation's principal office
3140 is located, if located in this state, or where a corporation's
3141 registered office is located if its principal office is not
3142 located in this state, may, after notice to the corporation,
3143 order a meeting to be held:

3144 (a) On application of any shareholder ~~of the corporation~~
3145 entitled to vote at ~~an~~ an annual meeting if neither an annual
3146 meeting has ~~not~~ been held nor an action by written consent in
3147 lieu thereof has become effective within any 15-month ~~13-month~~
3148 period; or

3149 (b) On application of one or more shareholders a
3150 ~~shareholder~~ who signed a demand for a special meeting valid
3151 under s. 607.0702, if:

3152 1. Notice of the special meeting was not given within 60
3153 days after the first day on which the requisite number of
3154 demands have been ~~date the demand was~~ delivered to the
3155 corporation's secretary; or

3156 2. The special meeting was not held in accordance with the
3157 notice.

3158 (2) The court may fix the time and place of the meeting,
3159 determine the shares entitled to participate in the meeting,
3160 specify a record date or dates for determining shareholders
3161 entitled to notice of and to vote at the meeting, prescribe the

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3162 form and content of the meeting notice, fix the quorum by voting
3163 group required for matters to be considered at the meeting (or
3164 direct that the votes of a voting group represented at the
3165 meeting constitute a quorum of such voting group for action on
3166 those matters), and enter other orders necessary to accomplish
3167 the purpose or purposes of the meeting as may be appropriate.

3168 Section 55. Subsections (1), (3), (4), and (5) of section
3169 607.0704, Florida Statutes, are amended, and subsections (7) and
3170 (8) are added to that section, to read:

3171 607.0704 Action by shareholders without a meeting.—

3172 (1) Unless otherwise provided in the articles of
3173 incorporation or in subsection (8), action required or permitted
3174 by this chapter ~~act~~ to be taken at an annual or special meeting
3175 of shareholders may be taken without a meeting, without prior
3176 notice, and without a vote if the action is taken by the holders
3177 of outstanding shares ~~stock~~ of each voting group entitled to
3178 vote thereon having not less than the minimum number of votes
3179 with respect to each voting group that would be necessary to
3180 authorize or take such action at a meeting at which all voting
3181 groups and shares entitled to vote thereon were present and
3182 voted. In order to be effective the action must be evidenced by
3183 one or more written consents describing the action taken, dated
3184 and signed by approving shareholders having the requisite number
3185 of votes of each voting group entitled to vote thereon, and
3186 delivered to the corporation by delivery to its principal office
3187 in this state, its principal place of business, the corporate
3188 secretary, or another officer or agent of the corporation having
3189 custody of the book in which proceedings of meetings of
3190 shareholders are recorded. No written consent shall be effective

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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

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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

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3249 shareholders entitled to vote at the meeting if the record date
 3250 for determining the shareholders entitled to vote at the meeting
 3251 is different than the record date for determining shareholders
 3252 entitled to notice of the meeting. If the board of directors has
 3253 authorized participation by means of remote communication
 3254 pursuant to s. 607.0709 for any class or series of shares, the
 3255 notice to the holders of such class or series must describe the
 3256 means of remote communication to be used. Unless this chapter
 3257 ~~act~~ or the articles of incorporation require otherwise, the
 3258 corporation is required to give notice only to shareholders
 3259 entitled to vote at the meeting as of the record date for
 3260 determining the shareholders entitled to notice of the meeting.
 3261 Notice shall be given in the manner provided in s. 607.0141, by
 3262 or at the direction of the president, the secretary, or the
 3263 officer or persons calling the meeting. If the notice is mailed
 3264 at least 30 days before the date of the meeting, it may be done
 3265 by a class of United States mail other than first class.
 3266 Notwithstanding s. 607.0141, if mailed, such notice shall be
 3267 deemed to be delivered when deposited in the United States mail
 3268 addressed to the shareholder at her or his address as it appears
 3269 in the record of shareholders of the corporation, maintained in
 3270 accordance with s. 607.1601(4) on the stock transfer books of
 3271 ~~the corporation~~, with postage thereon prepaid.

3272 (2) Unless this chapter ~~act~~ or the articles of
 3273 incorporation require otherwise, notice of an annual meeting of
 3274 shareholders need not include a description of the purpose or
 3275 purposes for which the meeting is called.

3276 (3) Notice of a special meeting of shareholders must
 3277 include a description of the purpose or purposes for which the

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3278 meeting is called.

3279 (4) Unless the bylaws require otherwise, if an annual or
 3280 special ~~shareholders'~~ meeting of shareholders is adjourned to a
 3281 different date, time, or place, or to add or modify the terms of
 3282 participation by remote communication, notice need not be given
 3283 of the new date, time, ~~or~~ place, or terms of participation by
 3284 remote communication if the new date, time, ~~or~~ place, or terms
 3285 of participation by remote communication is announced at the
 3286 meeting before an adjournment is taken, and any business may be
 3287 transacted at the adjourned meeting that might have been
 3288 transacted on the original date of the meeting. If a new record
 3289 date for the adjourned meeting is or must be fixed under s.
 3290 607.0707, however, notice of the adjourned meeting must be given
 3291 under this section to persons who are shareholders as of the new
 3292 record date who are entitled to notice of the meeting.

3293 (5) Notwithstanding the foregoing, whenever notice is
 3294 required to be given to any shareholder under this chapter or
 3295 the articles of incorporation or bylaws of any corporation to
 3296 whom no notice of a shareholders' meeting need be given to a
 3297 shareholder if:

3298 (a) Notice of two consecutive annual meetings, and all
 3299 notices of meetings or the taking of action by written consent
 3300 without a meeting to such person during the period between such
 3301 two consecutive annual meetings; An annual report and proxy
 3302 statements for two consecutive annual meetings of shareholders
 3303 or

3304 (b) All, and at least two checks in payment of dividends or
 3305 interest on securities during a 12-month period,
 3306

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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

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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

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3365 ~~prior action is required by the board of directors pursuant to~~
 3366 ~~this act, the record date for determining shareholders entitled~~
 3367 ~~to take action without a meeting is the date the first signed~~
 3368 ~~written consent is delivered to the corporation under s.~~
 3369 ~~607.0704. If not otherwise fixed, and prior action is required~~
 3370 ~~by the board of directors pursuant to this chapter, the record~~
 3371 ~~date for determining shareholders entitled to take action~~
 3372 ~~without a meeting is at the close of business on the day on~~
 3373 ~~which the board of directors adopts the resolution taking such~~
 3374 ~~prior action.~~

3375 (4) If not otherwise provided by or pursuant to the bylaws,
 3376 or by a court order pursuant to s. 607.0703, the record date for
 3377 determining shareholders entitled to notice of and to vote at an
 3378 annual or special shareholders' meeting is the close of business
 3379 on the day before the first notice is delivered to shareholders.

3380 (6) A determination of shareholders entitled to notice of
 3381 or to vote at a shareholders' meeting is effective for any
 3382 adjournment of the meeting unless the board of directors fixes a
 3383 new record date or dates, which it must do if the meeting is
 3384 adjourned to a date more than 120 days after the date fixed for
 3385 the original meeting.

3386 (7) If a court orders a meeting adjourned to a date more
 3387 than 120 days after the date fixed for the original meeting, it
 3388 may provide that the original record date or dates continues in
 3389 effect or it may fix a new record date or dates.

3390 (8) The record date for a shareholders' meeting fixed by or
 3391 in the manner provided in the bylaws or by the board of
 3392 directors shall be the record date for determining shareholders
 3393 entitled both to notice of and to vote at the shareholders'

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3394 meeting, unless in the case of a record date fixed by the board
 3395 of directors and to the extent not prohibited by the bylaws, the
 3396 board of directors, at the time it fixes the record date for
 3397 shareholders entitled to notice of the meeting, fixes a later
 3398 record date on or before the date of the meeting to determine
 3399 the shareholders entitled to vote at the meeting.

3400 (9) Shares of a corporation's own stock acquired by the
 3401 corporation between the record date for determining shareholders
 3402 entitled to notice of or to vote at a meeting of shareholders
 3403 and the time of the meeting may be voted on at the meeting by
 3404 the holder of record as of the record date and shall be counted
 3405 in determining the total number of outstanding shares entitled
 3406 to be voted at the meeting.

3407 (10) If not otherwise fixed under s. 607.0703, the record
 3408 date for determining shareholders entitled to demand a special
 3409 meeting is the earliest date on which a signed shareholder
 3410 demand is delivered to the corporation. A written demand for a
 3411 special meeting is not effective unless, within 60 days of the
 3412 earliest date on which such a demand delivered to the
 3413 corporation as required by s. 607.0702 was signed, written
 3414 demands signed by shareholders holding at least the percentage
 3415 of votes specified in or fixed in accordance with s.
 3416 607.0702(1)(b) have been delivered to the corporation.

3417 Section 59. Section 607.0709, Florida Statutes, is created
 3418 to read:

3419 607.0709 Remote participation in annual and special
 3420 meetings of shareholders.-

3421 (1) Shareholders of any voting group, other persons
 3422 entitled to vote on behalf of shareholders pursuant to s.

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3423 607.0721, attorneys in fact for shareholders, and holders of
 3424 proxies appointed pursuant to s. 607.0722 may participate in any
 3425 annual or special meeting of shareholders by means of remote
 3426 communication to the extent the board of directors authorizes
 3427 such participation for such voting group. Participation by means
 3428 of remote communication is subject to such guidelines and
 3429 procedures as the board of directors adopts, and must be in
 3430 conformity with subsection (2).

3431 (2) Shareholders, other persons entitled to vote on behalf
 3432 of shareholders pursuant to s. 607.0721, attorneys in fact for
 3433 shareholders, and holders of proxies appointed pursuant to s.
 3434 607.0722 participating in a shareholders' meeting by means of
 3435 remote communication authorized under subsection (1) shall be
 3436 deemed present in person and may vote at such a meeting, whether
 3437 such meeting is to be held at a designated place or solely by
 3438 means of remote communication, if the corporation has
 3439 implemented reasonable measures:

3440 (a) To verify that each person participating remotely as a
 3441 shareholder is a shareholder, is another person entitled to vote
 3442 on behalf of a shareholder pursuant to s. 607.0721, is an
 3443 attorney in fact for a shareholder, or is a holder of a proxy
 3444 appointed pursuant to s. 607.0722; and

3445 (b) To provide such shareholders, such other persons
 3446 entitled to vote on behalf of shareholders pursuant to s.
 3447 607.0721, such attorneys in fact for shareholders, and such
 3448 holders of proxies appointed pursuant to s. 607.0722, a
 3449 reasonable opportunity to participate in the meeting and to vote
 3450 on matters submitted to the shareholders, including an
 3451 opportunity to communicate, and to read or hear the proceedings

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3452 of the meeting, substantially concurrently with such
 3453 proceedings.

3454 (3) If any shareholder, any other person entitled to vote
 3455 on behalf of a shareholder pursuant to s. 607.0721, any attorney
 3456 in fact for a shareholder, or any holder of a proxy appointed
 3457 pursuant to s. 607.0722, votes or takes action at a
 3458 shareholder's meeting by means of remote communication
 3459 authorized under this section, a record of such vote or other
 3460 action shall be maintained by the corporation.

3461 (4) If the board of directors is authorized to determine
 3462 the place of a shareholders' meeting, the board of directors
 3463 may, in its sole discretion, determine that the meeting shall be
 3464 held solely by means of remote communication.

3465 Section 60. Subsections (1), (2), (3), (5), and (7) of
 3466 section 607.0720, Florida Statutes, are amended to read:

3467 607.0720 Shareholders' list for meeting.—

3468 (1) After fixing a record date for a meeting, a corporation
 3469 shall prepare an alphabetical list of the names of all its
 3470 shareholders who are entitled to notice of a shareholders'
 3471 meeting. If the board of directors fixes a different record date
 3472 under s. 607.0707(8) to determine the shareholders entitled to
 3473 vote at the meeting, the corporation must also prepare an
 3474 alphabetical list of the names of all its shareholders who are
 3475 entitled to vote at the meeting. Each list must be arranged by
 3476 voting group, and within each voting group by class or series of
 3477 shares, and show the address of and number of shares held by
 3478 each shareholder. This subsection does not require the
 3479 corporation to include on such list the electronic mail address
 3480 or other electronic contact information of a shareholder,

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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

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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

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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

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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

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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 as
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

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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

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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,

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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

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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~~

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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

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3771 appoint or retain other persons to assist the inspectors in the
 3772 performance of the duties of inspector under subsection (2) and
 3773 may rely on information provided by such persons and other
 3774 persons, including those appointed to count votes, unless the
 3775 inspectors believe reliance is unwarranted.

3776 (2) The inspectors shall:

3777 (a) Ascertain the number of shares outstanding and the
 3778 voting power of each;

3779 (b) Determine the shares represented at a meeting;

3780 (c) Determine the validity of proxy appointments and
 3781 ballots;

3782 (d) Count the votes; and

3783 (e) Make a written report of the results.

3784 (3) In performing their duties, the inspectors may examine:

3785 (a) The proxy appointment forms and any other information
 3786 provided in accordance with s. 607.0722(2);

3787 (b) Any envelope or related writing submitted with those
 3788 appointment forms;

3789 (c) Any ballots;

3790 (d) Any evidence or other information specified in s.
 3791 607.0724; and

3792 (e) The relevant books and records of the corporation
 3793 relating to its shareholders and their entitlement to vote,
 3794 including any securities position list provided by a depository
 3795 clearing agency.

3796 (4) The inspectors also may consider other information that
 3797 they believe is relevant and reliable for the purpose of
 3798 performing any of the duties assigned to them pursuant to
 3799 subsection (2), including, for the purpose of evaluating

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3800 inconsistent, incomplete, or erroneous information and
 3801 reconciling information submitted on behalf of banks, brokers,
 3802 their nominees, or similar persons that indicates more votes
 3803 being cast than a proxy is authorized by the record shareholder
 3804 to cast or more votes being cast than the record shareholder is
 3805 entitled to cast. If the inspectors consider other information
 3806 allowed by this subsection, they must, in their report under
 3807 subsection (2), specify the information considered by them,
 3808 including the purpose or purposes for which the information was
 3809 considered, the person or persons from whom they obtained the
 3810 information, when the information was obtained, the means by
 3811 which the information was obtained, and the basis for the
 3812 inspectors' belief that such information is relevant and
 3813 reliable.

3814 (5) Determinations of law by the inspectors of election are
 3815 subject to de novo review by a court in a judicial proceeding
 3816 challenging the inspector's activities under this section.

3817 (6) The chair of the meeting shall announce at the meeting
 3818 when the polls close for each matter voted upon. If no
 3819 announcement is made, the polls shall be deemed to have closed
 3820 upon the final adjournment of the meeting. After the polls
 3821 close, no ballots, proxies, or votes, or any revocations or
 3822 changes thereto, may be accepted.

3823 Section 69. Subsection (1) of section 607.0730, Florida
 3824 Statutes, is amended to read:

3825 607.0730 Voting trusts.—

3826 (1) One or more shareholders may create a voting trust,
 3827 conferring on a trustee the right to vote or otherwise act for
 3828 him or her or for them, by signing an agreement setting out the

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3829 provisions of the trust (which may include anything consistent
 3830 with its purpose) and transferring their shares to the trustee.
 3831 When a voting trust agreement is signed, the trustee shall
 3832 prepare a list of the names and addresses of all voting trust
 3833 beneficial owners ~~of beneficial interests in the trust~~, together
 3834 with the number and class of shares each transferred to the
 3835 trust, and deliver copies of the list and agreement to the
 3836 corporation at its ~~corporation's~~ principal office. After filing
 3837 a copy of the list and agreement in the corporation's principal
 3838 office, such copy shall be open to inspection by any shareholder
 3839 of the corporation (subject to the requirements of s.
 3840 607.1602(3)) or by any beneficiary of the trust under the
 3841 agreement during business hours.

3842 Section 70. Section 607.0731, Florida Statutes, is amended
 3843 to read:

3844 607.0731 Voting Shareholders' agreements.—

3845 (1) Two or more shareholders may provide for the manner in
 3846 which they will vote their shares by signing an agreement for
 3847 that purpose. A voting shareholders' agreement created under
 3848 this section is not subject to the provisions of s. 607.0730.

3849 (2) A voting shareholders' agreement created under this
 3850 section is specifically enforceable.

3851 (3) A transferee of shares in a corporation the
 3852 shareholders of which have entered into an agreement authorized
 3853 by subsection (1) shall be bound by such agreement if the
 3854 transferee takes shares subject to such agreement with notice
 3855 thereof. A transferee shall be deemed to have notice of any such
 3856 agreement or any ~~such~~ renewal thereof if the existence of such
 3857 agreement ~~thereof~~ is noted on the face or back of the

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3858 certificate or certificates representing such shares or on the
 3859 information statement for uncertified shares required by s.
 3860 607.0626(2).

3861 Section 71. Subsections (1) through (5) of section
 3862 607.0732, Florida Statutes, are amended, and subsection (8) is
 3863 added to that section, to read:

3864 607.0732 Shareholder agreements.—

3865 (1) An agreement among the shareholders of a corporation
 3866 ~~with 100 or fewer shareholders at the time of the agreement,~~
 3867 that complies with this section, ~~is effective among the~~
 3868 shareholders and the corporation, even though it is inconsistent
 3869 with one or more other provisions of this chapter, if it:

3870 (a) Eliminates the board of directors or limits or
 3871 restricts the discretion or powers of the board of directors;

3872 (b) Governs the authorization or making of distributions
 3873 regardless of whether they are ~~or not~~ in proportion to ownership
 3874 of shares, subject to the limitations in s. 607.06401;

3875 (c) Establishes who shall be directors or officers of the
 3876 corporation, or their terms of office or manner of selection or
 3877 removal;

3878 (d) Governs, in general or in regard to specific matters,
 3879 the exercise or division of voting power by the shareholders and
 3880 directors or among any of them, including use of weighted voting
 3881 rights or director proxies;

3882 (e) Establishes the terms and conditions of any agreement
 3883 for the transfer or use of property or the provision of services
 3884 between the corporation and any shareholder, director, officer,
 3885 or employee of the corporation or among any of them;

3886 (f) Transfers to any shareholder or other person any

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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; ~~or~~

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:

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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

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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

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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

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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

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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

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4061 to read:

4062 607.0746 Proceeds and expenses.—On termination of the
 4063 derivative proceeding the court may:

4064 (1) Order the corporation to pay from the amount recovered
 4065 in the derivative proceeding by the corporation the plaintiff's
 4066 reasonable expenses, including reasonable attorney fees and
 4067 costs, incurred in the derivative proceeding if it finds that,
 4068 in the derivative proceeding, the plaintiff was successful in
 4069 whole or in part; or

4070 (2) Order the plaintiff to pay any of the defendant's
 4071 reasonable expenses, including reasonable attorney fees and
 4072 costs, incurred in defending the proceeding if it finds that the
 4073 proceeding was commenced or maintained without reasonable cause
 4074 or for an improper purpose.

4075 Section 79. Section 607.0747, Florida Statutes, is created
 4076 to read:

4077 607.0747 Applicability to foreign corporations.—In any
 4078 derivative proceeding in the right of a foreign corporation
 4079 brought in the courts of this state, the matters covered by ss.
 4080 607.0741-607.0747 shall be governed by the laws of the
 4081 jurisdiction of incorporation of the foreign corporation except
 4082 for ss. 607.0743, 607.0745, and 607.0746.

4083 Section 80. Section 607.0748, Florida Statutes, is created
 4084 to read:

4085 607.0748 Shareholder action to appoint custodians or
 4086 receivers.—

4087 (1) A circuit court may appoint one or more persons to be
 4088 custodians or receivers of and for a corporation in a proceeding
 4089 by a shareholder where it is established that:

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4090 (a) The directors are deadlocked in the management of the
 4091 corporate affairs, the shareholders are unable to break the
 4092 deadlock, and irreparable injury to the corporation is
 4093 threatened or being suffered; or

4094 (b) The directors or those in control of the corporation
 4095 are acting fraudulently and irreparable injury to the
 4096 corporation is threatened or being suffered.

4097 (2) The court:

4098 (a) May issue injunctions, appoint one or more temporary
 4099 custodians or temporary receivers with all the powers and duties
 4100 the court directs, to take other action to preserve the
 4101 corporate assets wherever located, and to carry on the business
 4102 of the corporation until a full hearing is held;

4103 (b) Shall hold a full hearing, after notifying all parties
 4104 to the proceeding and any interested persons designated by the
 4105 court, before appointing a custodian or receiver; and

4106 (c) Has jurisdiction over the corporation and all of its
 4107 property, wherever located.

4108 (3) The court may appoint a natural person, a domestic
 4109 eligible entity, or a foreign eligible entity authorized to
 4110 transact business in this state as a custodian or receiver and
 4111 may require the custodian or receiver to post bond, with or
 4112 without sureties, in an amount the court directs.

4113 (4) The court shall describe the powers and duties of the
 4114 custodian or receiver in its appointing order, which may be
 4115 amended. Among other powers:

4116 (a) A custodian may exercise all of the powers of the
 4117 corporation, through or in place of its board of directors, to
 4118 the extent necessary to manage the business and affairs of the

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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

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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

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4177 pursuant to s. 607.0732(1), each corporation must have a board
4178 of directors.

4179 (2) All corporate powers shall be exercised by or under the
4180 authority of the board of directors of the corporation, and the
4181 business and affairs of the corporation shall be managed by or
4182 under the direction of, and subject to the oversight of, its
4183 board of directors, subject to any limitation set forth in the
4184 articles of incorporation or in an agreement authorized under s.
4185 607.0732.

4186 Section 83. Section 607.0802, Florida Statutes, is amended
4187 to read:

4188 607.0802 Qualifications of directors.—

4189 (1) Directors must be natural persons who are 18 years of
4190 age or older but need not be residents of this state or
4191 shareholders of the corporation unless the articles of
4192 incorporation or bylaws so require. The articles of
4193 incorporation or bylaws may prescribe additional qualifications
4194 for directors or nominees for directors.

4195 (2) A qualification for nomination for director prescribed
4196 before a person's nomination shall apply to such person at the
4197 time of nomination. A qualification for nomination for director
4198 prescribed after a person's nomination does not apply to such
4199 person with respect to such nomination.

4200 (3) A qualification for director prescribed before a
4201 director has been elected or appointed may apply only at the
4202 time an individual becomes a director or may apply during a
4203 director's term. A qualification prescribed after a director has
4204 been elected or appointed does not apply to that director before
4205 the end of that director's term.

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4206 ~~(4)(2)~~ In the event that the eligibility to serve as a
4207 member of the board of directors of a condominium association,
4208 cooperative association, homeowners' association, or mobile home
4209 owners' association is restricted to membership in such
4210 association and membership is appurtenant to ownership of a
4211 unit, parcel, or mobile home, a grantor of a trust described in
4212 s. 733.707(3), or a qualified beneficiary as defined in s.
4213 736.0103 of a trust which owns a unit, parcel, or mobile home
4214 shall be deemed a member of the association and eligible to
4215 serve as a director of the condominium association, cooperative
4216 association, homeowners' association, or mobile home owners'
4217 association, provided that said beneficiary occupies the unit,
4218 parcel, or mobile home.

4219 Section 84. Subsection (3) of section 607.0803, Florida
4220 Statutes, is amended to read:

4221 607.0803 Number of directors.—

4222 (3) Directors are elected at the first annual shareholders'
4223 meeting and at each annual shareholders' meeting thereafter,
4224 unless elected by written consent in lieu of an annual
4225 shareholders' meeting pursuant to s. 607.0704 or unless their
4226 terms are staggered under s. 607.0806.

4227 Section 85. Section 607.0804, Florida Statutes, is amended
4228 to read:

4229 607.0804 Election of directors by certain voting groups;
4230 special voting rights of certain directors.—The articles of
4231 incorporation may confer upon holders of any voting group the
4232 right to elect one or more directors who shall serve for such
4233 term and have such voting powers as are stated in the articles
4234 of incorporation. The terms of office and voting powers of the

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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

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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,~~

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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

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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

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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

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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, any means of communication by which

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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~~

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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

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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~~

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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.

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4525 (c) Fill vacancies on the board of directors or on any
 4526 board committee.
 4527 (d) Adopt, amend, or repeal bylaws.
 4528 (5) The establishment of, delegation of authority to, or
 4529 action by a committee does not alone constitute compliance by a
 4530 director with the standards of conduct described in s. 607.0830.
 4531 (6) The board of directors may appoint ~~Each committee must~~
 4532 ~~have two or more members who serve at the pleasure of the board~~
 4533 ~~of directors. The board, by resolution adopted in accordance~~
 4534 ~~with subsection (1), may designate one or more directors as~~
 4535 ~~alternate members of any board~~ such committee to fill a vacancy
 4536 on the committee or to replace ~~who may act in the place and~~
 4537 ~~stead of any absent or disqualified member of such committee~~
 4538 during the member's absence or disqualification. If the articles
 4539 of incorporation, the bylaws, or the resolution creating the
 4540 board committee so provide, the member or members present at any
 4541 board committee meeting and not disqualified from voting, by
 4542 unanimous action, may appoint another director to act in place
 4543 of an absent or disqualified member during that member's absence
 4544 or disqualification ~~or members at any meeting of such committee.~~
 4545 ~~(4) Neither the designation of any such committee, the~~
 4546 ~~delegation thereto of authority, nor action by such committee~~
 4547 ~~pursuant to such authority shall alone constitute compliance by~~
 4548 ~~any member of the board of directors not a member of the~~
 4549 ~~committee in question with his or her responsibility to act in~~
 4550 ~~good faith, in a manner he or she reasonably believes to be in~~
 4551 ~~the best interests of the corporation, and with such care as an~~
 4552 ~~ordinarily prudent person in a like position would use under~~
 4553 ~~similar circumstances.~~

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4554 Section 97. Section 607.0826, Florida Statutes, is created
 4555 to read:
 4556 607.0826 Submission of matters for a shareholder vote.—A
 4557 corporation may agree to submit a matter to a vote of its
 4558 shareholders even if, after approving the matter, the board of
 4559 directors determines it no longer recommends the matter.
 4560 Section 98. Section 607.0830, Florida Statutes, is amended
 4561 to read:
 4562 607.0830 General standards for directors.—
 4563 (1) Each member of the board of directors, when discharging
 4564 the duties of a director, including in discharging his or her
 4565 duties as a member of a board committee, must act ~~A director~~
 4566 ~~shall discharge his or her duties as a director, including his~~
 4567 ~~or her duties as a member of a committee:~~
 4568 (a) In good faith; and
 4569 (b) With the care an ordinarily prudent person in a like
 4570 position would exercise under similar circumstances; and
 4571 ~~(c)~~ In a manner he or she reasonably believes to be in the
 4572 best interests of the corporation.
 4573 (2) The members of the board of directors or a board
 4574 committee, when becoming informed in connection with a
 4575 decisionmaking function or devoting attention to an oversight
 4576 function, shall discharge their duties with the care that an
 4577 ordinary prudent person in a like position would reasonably
 4578 believe appropriate under similar circumstances ~~In discharging~~
 4579 ~~his or her duties, a director is entitled to rely on~~
 4580 ~~information, opinions, reports, or statements, including~~
 4581 ~~financial statements and other financial data, if prepared or~~
 4582 ~~presented by:~~

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4583 ~~(a) One or more officers or employees of the corporation~~
 4584 ~~whom the director reasonably believes to be reliable and~~
 4585 ~~competent in the matters presented;~~

4586 ~~(b) Legal counsel, public accountants, or other persons as~~
 4587 ~~to matters the director reasonably believes are within the~~
 4588 ~~persons' professional or expert competence; or~~

4589 ~~(c) A committee of the board of directors of which he or~~
 4590 ~~she is not a member if the director reasonably believes the~~
 4591 ~~committee merits confidence.~~

4592 (3) In discharging board or board committee duties, a
 4593 director who does not have knowledge that makes reliance
 4594 unwarranted is entitled to rely on the performance by any of the
 4595 persons specified in paragraph (5) (a) or paragraph (5) (b) to
 4596 whom the board may have delegated, formally or informally by
 4597 course of conduct, the authority or duty to perform one or more
 4598 of the board's functions that are delegable under applicable
 4599 law.

4600 (4) In discharging board or board committee duties, a
 4601 director who does not have knowledge that makes reliance
 4602 unwarranted is entitled to rely on information, opinions,
 4603 reports, or statements, including financial statements and other
 4604 financial data, prepared or presented by any of the persons
 4605 specified in subsection (5).

4606 (5) A director is entitled to rely, in accordance with
 4607 subsection (3) or subsection (4), on:

4608 (a) One or more officers or employees of the corporation
 4609 whom the director reasonably believes to be reliable and
 4610 competent in the functions performed or the information,
 4611 opinions, reports, or statements provided;

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4612 (b) Legal counsel, public accountants, or other persons
 4613 retained by the corporation or by a committee of the board of
 4614 the corporation as to matters involving skills or expertise the
 4615 director reasonably believes are matters:

4616 1. Within the particular person's professional or expert
 4617 competence; or

4618 2. As to which the particular person merits confidence; or
 4619 (c) A committee of the board of directors of which the
 4620 director is not a member if the director reasonably believes the
 4621 committee merits confidence.

4622 ~~(6)(3)~~ In discharging board or board committee his or her
 4623 duties, a director may consider such factors as the director
 4624 deems relevant, including the long-term prospects and interests
 4625 of the corporation and its shareholders, and the social,
 4626 economic, legal, or other effects of any action on the
 4627 employees, suppliers, customers of the corporation or its
 4628 subsidiaries, the communities and society in which the
 4629 corporation or its subsidiaries operate, and the economy of the
 4630 state and the nation.

4631 ~~(4) A director is not acting in good faith if he or she has~~
 4632 ~~knowledge concerning the matter in question that makes reliance~~
 4633 ~~otherwise permitted by subsection (2) unwarranted.~~

4634 ~~(5) A director is not liable for any action taken as a~~
 4635 ~~director, or any failure to take any action, if he or she~~
 4636 ~~performed the duties of his or her office in compliance with~~
 4637 ~~this section.~~

4638 Section 99. Subsections (1) and (3) of section 607.0831,
 4639 Florida Statutes, are amended to read:

4640 607.0831 Liability of directors.-

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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

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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~~

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4699 ~~interest in the transaction; or~~

4700 ~~(e) The transaction was fair and reasonable to the~~
 4701 ~~corporation at the time it was authorized by the board, a~~
 4702 ~~committee, or the shareholders, notwithstanding that a director~~
 4703 ~~received a personal benefit.~~

4704 Section 100. Section 607.0832, Florida Statutes, is amended
 4705 to read:

4706 607.0832 Director conflicts of interest.—

4707 (1) As used in this section, the following terms and
 4708 definitions apply:

4709 (a) “Director’s conflict of interest transaction” means a
 4710 transaction between a corporation and one or more of its
 4711 directors, or another entity in which one or more of the
 4712 corporation’s directors is directly or indirectly a party to the
 4713 transaction, other than being an indirect party as a result of
 4714 being a shareholder of the corporation, and has a direct or
 4715 indirect material financial interest or other material interest.

4716 (b) “Fair to the corporation” means that the transaction,
 4717 as a whole, is beneficial to the corporation and its
 4718 shareholders, taking into appropriate account whether it is:

4719 1. Fair in terms of the director’s dealings with the
 4720 corporation in connection with that transaction; and

4721 2. Comparable to what might have been obtainable in an
 4722 arm’s length transaction.

4723 (c) “Family member” includes any of the following:

4724 1. The director’s spouse.

4725 2. A child, stepchild, parent, stepparent, grandparent,
 4726 sibling, step sibling, or half sibling of the director or the
 4727 director’s spouse.

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4728 (d) A director is “indirectly” a party to a transaction if
 4729 that director has a material financial interest in or is a
 4730 director, officer, member, manager, or partner of a person,
 4731 other than the corporation, who is a party to the transaction.

4732 (e) A director has an “indirect material financial
 4733 interest” if a family member has a material financial interest
 4734 in the transaction, other than having an indirect interest as a
 4735 shareholder of the corporation, or if the transaction is with an
 4736 entity, other than the corporation, which has a material
 4737 financial interest in the transaction and controls, or is
 4738 controlled by, the director or another person specified in this
 4739 subsection.

4740 (f) “Material financial interest” or “other material
 4741 interest” means a financial or other interest in the transaction
 4742 that would reasonably be expected to impair the objectivity of
 4743 the director’s judgment when participating in the action on the
 4744 authorization of the transaction.

4745 (2) If a director’s conflict of interest transaction is
 4746 fair to the corporation at the time it is authorized, approved,
 4747 effectuated, or ratified:

4748 (a) Such transaction is not void or voidable; and

4749 (b) The fact that the transaction is a director’s conflict
 4750 of interest transaction is not grounds for any equitable relief,
 4751 an award of damages, or other sanctions,

4752 because of that relationship or interest, because such director
 4753 or directors are present at the meeting of the board of
 4754 directors or a committee thereof which authorizes, approves, or
 4755 ratifies such transaction, or because his or her or their votes
 4756

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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

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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

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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~~

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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~~

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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,
 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,

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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

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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

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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:

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4989 607.0842 Resignation and removal of officers.-

4990 (1) An officer may resign at any time by delivering a
 4991 written notice to the corporation. A resignation is effective as
 4992 provided in s. 607.0141(5) when the notice is delivered unless
 4993 the notice provides for a delayed effectiveness, including
 4994 effectiveness determined upon a future event or events specifies
 4995 a later effective date. If effectiveness of a resignation is
 4996 stated to be delayed and the board of directors or appointing
 4997 officer accepts the delay, the made-effective at a later date
 4998 and the corporation accepts the future effective date, its board
 4999 of directors or the appointing officer may fill the pending
 5000 vacancy before the delayed effectiveness effective date if the
 5001 board of directors or appointing officer provides that the
 5002 successor does not take office until the vacancy occurs
 5003 effective date.

5004 (2) An officer may be removed at any time with or without
 5005 cause by:

5006 (a) The board of directors;

5007 (b) The appointing officer, unless the bylaws or the board
 5008 of directors provide otherwise; or

5009 (c) Any other officer, if authorized by the bylaws or the
 5010 board of directors.

5011 (3) For the purposes of this section, the term "appointing
 5012 officer" means the officer, including any successor to that
 5013 officer, who appointed the officer resigning or being removed A
 5014 board of directors may remove any officer at any time with or
 5015 without cause. Any officer or assistant officer, if appointed by
 5016 another officer, may likewise be removed by such officer.

5017 Section 106. Section 607.0850, Florida Statutes, is amended

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5018 to read:

5019 607.0850 Definitions Indemnification of officers,
 5020 directors, employees, and agents.-In ss. 607.0850-607.0859, the
 5021 term:

5022 (1) "Agent" includes a volunteer.

5023 (2) "Corporation" includes, in addition to the resulting
 5024 corporation, any constituent corporation (including any
 5025 constituent of a constituent) absorbed in a merger, so that any
 5026 person who is or was a director or officer of a constituent
 5027 corporation, or is or was serving at the request of a
 5028 constituent corporation as a director or officer, member,
 5029 manager, partner, trustee, employee, or agent of another
 5030 domestic or foreign corporation, limited liability company,
 5031 partnership, joint venture, trust, employee benefit plan, or
 5032 other enterprise or entity, is in the same position under this
 5033 section with respect to the resulting or surviving corporation
 5034 as he or she would have been with respect to such constituent
 5035 corporation if its separate existence had continued.

5036 (3) "Director" or "officer" means an individual who is or
 5037 was a director or officer, respectively, of a corporation or
 5038 who, while a director or officer of the corporation, is or was
 5039 serving at the corporation's request as a director or officer,
 5040 manager, partner, trustee, employee, or agent of another
 5041 domestic or foreign corporation, limited liability company,
 5042 partnership, joint venture, trust, employee benefit plan, or
 5043 another enterprise or entity. A director or officer is
 5044 considered to be serving an employee benefit plan at the
 5045 corporation's request if the individual's duties to the
 5046 corporation or such plan also impose duties on, or otherwise

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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~~

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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~~

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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~~

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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~~

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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~~

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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~~

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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~~

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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

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5279 a party to a proceeding because the individual is or was a
 5280 director or officer against liability incurred in the proceeding
 5281 if:

5282 (a) The director or officer acted in good faith;

5283 (b) The director or officer acted in a manner he or she
 5284 reasonably believed to be in, or not opposed to, the best
 5285 interests of the corporation; and

5286 (c) In the case of any criminal proceeding, the director or
 5287 officer had no reasonable cause to believe his or her conduct
 5288 was unlawful.

5289 (2) The conduct of a director or officer with respect to an
 5290 employee benefit plan for a purpose the director or officer
 5291 reasonably believed to be in the best interests of the
 5292 participants in, and the beneficiaries of, the plan is conduct
 5293 that satisfies the requirement of paragraph (1) (b).

5294 (3) The termination of a proceeding by judgment, order,
 5295 settlement, or conviction, or upon a plea of nolo contendere or
 5296 its equivalent, does not, of itself, create a presumption that
 5297 the director or officer did not meet the relevant standard of
 5298 conduct described in this section.

5299 (4) Unless ordered by a court under s. 607.0854(1) (c), a
 5300 corporation may not indemnify a director or an officer in
 5301 connection with a proceeding by or in the right of the
 5302 corporation except for expenses and amounts paid in settlement
 5303 not exceeding, in the judgment of the board of directors, the
 5304 estimated expense of litigating the proceeding to conclusion,
 5305 actually and reasonably incurred in connection with the defense
 5306 or settlement of such proceeding, including any appeal thereof,
 5307 where such person acted in good faith and in a manner he or she

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5308 reasonably believed to be in, or not opposed to, the best
 5309 interests of the corporation.

5310 Section 108. Section 607.0852, Florida Statutes, is created
 5311 to read:

5312 607.0852 Mandatory indemnification.—A corporation must
 5313 indemnify an individual who is or was a director or officer who
 5314 was wholly successful, on the merits or otherwise, in the
 5315 defense of any proceeding to which the individual was a party
 5316 because he or she is or was a director or officer of the
 5317 corporation against expenses incurred by the individual in
 5318 connection with the proceeding.

5319 Section 109. Section 607.0853, Florida Statutes, is created
 5320 to read:

5321 607.0853 Advance for expenses.—

5322 (1) A corporation may, before final disposition of a
 5323 proceeding, advance funds to pay for or reimburse expenses
 5324 incurred in connection with the proceeding by an individual who
 5325 is a party to the proceeding because that individual is or was a
 5326 director or an officer if the director or officer delivers to
 5327 the corporation a signed written undertaking of the director or
 5328 officer to repay any funds advanced if:

5329 (a) The director or officer is not entitled to mandatory
 5330 indemnification under s. 607.0852; and

5331 (b) It is ultimately determined under s. 607.0854 or s.
 5332 607.0855 that the director or officer has not met the relevant
 5333 standard of conduct described in s. 607.0851 or the director or
 5334 officer is not entitled to indemnification under s. 607.0859.

5335 (2) The undertaking required by paragraph (1) (b) must be an
 5336 unlimited general obligation of the director or officer but need

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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

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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

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5395 indemnification or advance for expenses under paragraph (1) (c),
 5396 it may also order the corporation to pay the director's or
 5397 officer's expenses to obtain court-ordered indemnification or
 5398 advance for expenses.

5399 Section 111. Section 607.0855, Florida Statutes, is created
 5400 to read:

5401 607.0855 Determination and authorization of
 5402 indemnification.—

5403 (1) Unless ordered by a court under s. 607.0854(1) (c), a
 5404 corporation may not indemnify a director or officer under s.
 5405 607.0851 unless authorized for a specific proceeding after a
 5406 determination has been made that indemnification is permissible
 5407 because the director or officer has met the relevant standard of
 5408 conduct set forth in s. 607.0851.

5409 (2) The determination shall be made:

5410 (a) If there are two or more qualified directors, by the
 5411 board of directors by a majority vote of all of the qualified
 5412 directors, a majority of whom shall for such purposes constitute
 5413 a quorum, or by a majority of the members of a committee of two
 5414 or more qualified directors appointed by such a vote; or

5415 (b) By independent special legal counsel:

5416 1. Selected in the manner prescribed by paragraph (a); or
 5417 2. If there are fewer than two qualified directors,
 5418 selected by the board of directors, in which selection directors
 5419 who are not qualified directors may participate; or

5420 (c) By the shareholders, but shares owned by or voted under
 5421 the control of a director or officer who, at the time of the
 5422 determination, is not a qualified director or an officer who is
 5423 a party to the proceeding may not be counted as votes in favor

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5424 of the determination.

5425 (3) Authorization of indemnification shall be made in the
 5426 same manner as the determination that indemnification is
 5427 permissible, except that if the determination of permissibility
 5428 has been made by independent special legal counsel under
 5429 paragraph (2) (b), any authorization of indemnification
 5430 associated with such determination shall be made by either such
 5431 independent special legal counsel or by those who otherwise
 5432 would be entitled to select independent special legal counsel
 5433 under paragraph (2) (b).

5434 Section 112. Section 607.0857, Florida Statutes, is created
 5435 to read:

5436 607.0857 Insurance.—A corporation shall have the power to
 5437 purchase and maintain insurance on behalf of and for the benefit
 5438 of an individual who is or was a director or officer of the
 5439 corporation, or who, while a director or officer of the
 5440 corporation, is or was serving at the corporation's request as a
 5441 director, officer, manager, member, partner, trustee, employee,
 5442 or agent of another domestic or foreign corporation, limited
 5443 liability company, partnership, joint venture, trust, employee
 5444 benefit plan, or other enterprise or entity, against liability
 5445 asserted against or incurred by the individual in that capacity
 5446 or arising from his or her status as a director or officer,
 5447 whether or not the corporation would have power to indemnify or
 5448 advance expenses to the individual against the same liability
 5449 under this chapter.

5450 Section 113. Section 607.0858, Florida Statutes, is created
 5451 to read:

5452 607.0858 Variation by corporate action; application of

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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

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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

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5511 officer under s. 607.0853 or s. 607.0858 if a judgment or other
 5512 final adjudication establishes that his or her actions, or
 5513 omissions to act, were material to the cause of action so
 5514 adjudicated and constitute:

5515 (a) Willful or intentional misconduct or a conscious
 5516 disregard for the best interests of the corporation in a
 5517 proceeding by or in the right of the corporation to procure a
 5518 judgment in its favor or in a proceeding by or in the right of a
 5519 shareholder;

5520 (b) A transaction in which a director or officer derived an
 5521 improper personal benefit;

5522 (c) A violation of the criminal law, unless the director or
 5523 officer had reasonable cause to believe his or her conduct was
 5524 lawful or had no reasonable cause to believe his or her conduct
 5525 was unlawful; or

5526 (d) In the case of a director, a circumstance under which
 5527 the liability provisions of s. 607.0834 are applicable.

5528 (2) A corporation may provide indemnification or advance
 5529 expenses to a director or an officer only as allowed by ss.
 5530 607.0850-607.0859.

5531 Section 115. Paragraphs (b), (d), (f), (h), (j), and (k) of
 5532 subsection (1) and subsections (2), (5), and (6) of section
 5533 607.0901, Florida Statutes, are amended to read:

5534 607.0901 Affiliated transactions.—

5535 (1) For purposes of this section:

5536 (b) "Affiliated transaction," when used in reference to the
 5537 corporation and any interested shareholder, means:

5538 1. Any merger or consolidation of the corporation or any
 5539 subsidiary of the corporation with:

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5540 a. The interested shareholder; or

5541 b. Any other corporation, partnership, limited liability
 5542 company, or other entity, in each case, (whether or not itself
 5543 an interested shareholder,) which is, or after such merger or
 5544 consolidation would be, an affiliate or associate of the
 5545 interested shareholder;

5546 2. Any sale, lease, exchange, mortgage, pledge, transfer,
 5547 or other disposition (in one transaction or a series of
 5548 transactions), except proportionately as a shareholder of such
 5549 corporation, to or with the interested shareholder or any
 5550 affiliate or associate of the interested shareholder, whether as
 5551 part of a dissolution or otherwise, of assets of the corporation
 5552 or any subsidiary of the corporation:

5553 a. Having an aggregate fair market value equal to 10 \$
 5554 percent or more of the aggregate fair market value of all the
 5555 assets, determined on a consolidated basis, of the corporation;

5556 b. Having an aggregate fair market value equal to 10 \$
 5557 percent or more of the aggregate fair market value of all the
 5558 outstanding shares of the corporation; or

5559 c. Representing 10 \$ percent or more of the earning power
 5560 or net income, determined on a consolidated basis, of the
 5561 corporation;

5562 3. The issuance or transfer by the corporation or any
 5563 subsidiary of the corporation (in one transaction or a series of
 5564 transactions) of any shares of the corporation or any subsidiary
 5565 of the corporation which have an aggregate fair market value
 5566 equal to 10 \$ percent or more of the aggregate fair market value
 5567 of all the outstanding shares of the corporation to the
 5568 interested shareholder or any affiliate or associate of the

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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;

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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

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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

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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:

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5685 a. A majority of the disinterested directors; or
 5686 b. If at such time there are no disinterested directors, by
 5687 the board of directors of such corporation in good faith.
 5688 (k) "Interested shareholder" means any person who is the
 5689 beneficial owner of more than 15 ~~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

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5714 corporation may not engage in any affiliated transaction with
 5715 any interested shareholder for a period of 3 years following the
 5716 time that such shareholder became an interested shareholder,
 5717 unless:
 5718 (a) Prior to the time that such shareholder became an
 5719 interested shareholder, the board of directors of the
 5720 corporation approved either the affiliated transaction or the
 5721 transaction which resulted in the shareholder becoming an
 5722 interested shareholder; or
 5723 (b) Upon consummation of the transaction that resulted in
 5724 the shareholder becoming an interested shareholder, the
 5725 interested shareholder owned at least 85 percent of the voting
 5726 shares of the corporation outstanding at the time the
 5727 transaction commenced, excluding for purposes of determining the
 5728 voting shares outstanding, but not the outstanding voting shares
 5729 owned by the interested shareholder, those shares owned by
 5730 persons who are directors and also officers and by employee
 5731 stock plans in which employee participants do not have the right
 5732 to determine confidentially whether shares held subject to the
 5733 plan will be tendered in a tender or exchange offer; or
 5734 (c) At or subsequent to the time that such shareholder
 5735 became an interested shareholder, the affiliated transaction is
 5736 approved by the board of directors and authorized at an annual
 5737 or special meeting of shareholders, and not by written consent,
 5738 by the affirmative vote of at least two-thirds of the
 5739 outstanding voting shares which are not owned by the interested
 5740 shareholder, in addition to any affirmative vote required by any
 5741 other section of this act or by the articles of incorporation,
 5742 an affiliated transaction shall be approved by the affirmative

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5743 ~~vote of the holders of two-thirds of the voting shares other~~
 5744 ~~than the shares beneficially owned by the interested~~
 5745 ~~shareholder.~~

5746 (5) The provisions of this section do not apply:

5747 (a) To any corporation the original articles of
 5748 incorporation of which contain a provision expressly electing
 5749 not to be governed by this section;

5750 (b) To any corporation which adopted an amendment to its
 5751 articles of incorporation prior to July 1, 2018 ~~January 1, 1989~~,
 5752 expressly electing not to be governed by this section, provided
 5753 that such amendment does not apply to any affiliated transaction
 5754 of the corporation with an interested shareholder whose
 5755 determination date is on or prior to the effective date of such
 5756 amendment;

5757 (c) To any corporation which adopts an amendment to its
 5758 articles of incorporation or bylaws, approved by the affirmative
 5759 vote of the holders, other than interested shareholders and
 5760 their affiliates and associates, of a majority of the
 5761 outstanding voting shares of the corporation, excluding the
 5762 voting shares of interested shareholders and their affiliates
 5763 and associates, expressly electing not to be governed by this
 5764 section, provided that such amendment to the articles of
 5765 incorporation or bylaws shall not be effective until 18 months
 5766 after such vote of the corporation's shareholders and shall not
 5767 apply to any affiliated transaction of the corporation with an
 5768 interested shareholder whose determination date is on or prior
 5769 to the effective date of such amendment; or

5770 (d) To any affiliated transaction of the corporation with
 5771 an interested shareholder of the corporation which became an

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5772 interested shareholder inadvertently, if such interested
 5773 shareholder, as soon as practicable, divests itself of a
 5774 sufficient amount of the voting shares of the corporation so
 5775 that it no longer is the beneficial owner, directly or
 5776 indirectly, of 20 ~~10~~ percent or more of the outstanding voting
 5777 shares of the corporation, and would not at any time within the
 5778 3-year ~~5-year~~ period preceding the announcement date with
 5779 respect to such affiliated transaction have been an interested
 5780 shareholder but for such inadvertent acquisition.

5781 (6) Any corporation that elected not to be governed by this
 5782 section, either through a provision in its original articles of
 5783 incorporation or through an amendment to its articles of
 5784 incorporation or bylaws may elect to be bound by the provisions
 5785 of this section by adopting an amendment to its articles of
 5786 incorporation or bylaws that repeals the original article or the
 5787 amendment. In addition to any requirements of this chapter act,
 5788 or the articles of incorporation or bylaws of the corporation,
 5789 any such amendment shall be approved by the affirmative vote of
 5790 the holders of two-thirds of the voting shares other than shares
 5791 beneficially owned by any interested shareholder.

5792 Section 116. Paragraph (d) of subsection (2) of section
 5793 607.0902, Florida Statutes, is amended to read:

5794 607.0902 Control-share acquisitions.—

5795 (2) "CONTROL-SHARE ACQUISITION."—

5796 (d) The acquisition of any shares of an issuing public
 5797 corporation does not constitute a control-share acquisition if
 5798 the acquisition is consummated in any of the following
 5799 circumstances:

5800 1. Before July 2, 1987.

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5801 2. Pursuant to a contract existing before July 2, 1987.
 5802 3. Pursuant to the laws of intestate succession or pursuant
 5803 to a gift or testamentary transfer.
 5804 4. Pursuant to the satisfaction of a pledge or other
 5805 security interest created in good faith and not for the purpose
 5806 of circumventing this section.
 5807 5. Pursuant to a merger or share exchange effected in
 5808 compliance with s. 607.1101, s. 607.1102, s. 607.1103, s.
 5809 607.1104, or s. 607.1105 ~~s. 607.1107~~, if the issuing public
 5810 corporation is a party to the agreement of merger or plan of
 5811 share exchange.
 5812 6. Pursuant to any savings, employee stock ownership, or
 5813 other employee benefit plan of the issuing public corporation or
 5814 any of its subsidiaries or any fiduciary with respect to any
 5815 such plan when acting in such fiduciary capacity.
 5816 7. Pursuant to an acquisition of shares of an issuing
 5817 public corporation if the acquisition has been approved by the
 5818 board of directors of such issuing public corporation before
 5819 acquisition.
 5820 Section 117. Subsection (1) of section 607.1001, Florida
 5821 Statutes, is amended to read:
 5822 607.1001 Authority to amend the articles of incorporation.—
 5823 (1) A corporation may amend its articles of incorporation
 5824 at any time to add or change a provision that is required or
 5825 permitted in the articles of incorporation or to delete a
 5826 provision not required to be contained in the articles of
 5827 incorporation. Whether a provision is required or permitted in
 5828 the articles of incorporation is determined as of the effective
 5829 date of the amendment.

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5830 Section 118. Section 607.1002, Florida Statutes, is amended
 5831 to read:
 5832 607.1002 Amendment by board of directors.—Unless the
 5833 articles of incorporation provide otherwise, a corporation's
 5834 board of directors may adopt one or more amendments to the
 5835 corporation's articles of incorporation without shareholder
 5836 approval action:
 5837 (1) To extend the duration of the corporation if it was
 5838 incorporated at a time when limited duration was required by
 5839 law;
 5840 (2) To delete the names and addresses of the initial
 5841 directors;
 5842 (3) To delete the name and address of the initial
 5843 registered agent or registered office, if a statement of change
 5844 is on file with the department ~~of State~~;
 5845 (4) To delete any other information contained in the
 5846 articles of incorporation that is solely of historical interest;
 5847 (5) To delete the authorization for a class or series of
 5848 shares authorized pursuant to s. 607.0602, if no shares of such
 5849 class or series are issued;
 5850 (6) To change the corporate name by substituting the word
 5851 "corporation," "incorporated," or "company," or the abbreviation
 5852 "corp.," "Inc.," or "Co.," for a similar word or abbreviation in
 5853 the name, or by adding, deleting, or changing a geographical
 5854 attribution for the name;
 5855 (7) To change the par value for a class or series of
 5856 shares;
 5857 (8) To provide that if the corporation acquires its own
 5858 shares, such shares belong to the corporation and constitute

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5859 treasury shares until disposed of or canceled by the
5860 corporation; ~~or~~

5861 (9) To reflect a reduction in authorized shares, as a
5862 result of the operation of s. 607.0631(2), when the corporation
5863 has acquired its own shares and the articles of incorporation
5864 prohibit the reissue of the acquired shares;

5865 (10) To delete a class of shares from the articles of
5866 incorporation, as a result of the operation of s. 607.0631(2),
5867 when there are no remaining shares of the class because the
5868 corporation has acquired all shares of the class and the
5869 articles of incorporation prohibit the reissue of the acquired
5870 shares; or

5871 ~~(11)(9)~~ To make any other change expressly permitted by
5872 this act to be made without shareholder approval ~~action~~.

5873 Section 119. Subsections (4), (6), and (8) of section
5874 607.10025, Florida Statutes, are amended to read:

5875 607.10025 Shares; combination or division.—

5876 (4) If a division or combination is effected by a board
5877 action without shareholder approval and includes an amendment to
5878 the articles of incorporation, there shall be signed ~~executed~~ in
5879 accordance with s. 607.0120 on behalf of the corporation and
5880 filed in the office of the department of State articles of
5881 amendment which shall set forth:

5882 (a) The name of the corporation.

5883 (b) The date of adoption by the board of directors of the
5884 resolution approving the division or combination.

5885 (c) That the amendment to the articles of incorporation
5886 does not adversely affect the rights or preferences of the
5887 holders of outstanding shares of any class or series and does

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5888 not result in the percentage of authorized shares that remain
5889 unissued after the division or combination exceeding the
5890 percentage of authorized shares that were unissued before the
5891 division or combination.

5892 (d) The class or series and number of shares subject to the
5893 division or combination and the number of shares into which the
5894 shares are to be divided or combined.

5895 (e) The amendment of the articles of incorporation made in
5896 connection with the division or combination.

5897 (f) If the division or combination is to become effective
5898 at a time subsequent to the time of filing, the date, which may
5899 not exceed 90 days after the date of filing, when the division
5900 or combination becomes effective.

5901 (6) If a division or combination is effected by action of
5902 the board and of the shareholders, there shall be signed
5903 ~~executed~~ on behalf of the corporation and filed with the
5904 department of State articles of amendment as provided in s.
5905 607.1006 s. 607.1003, which articles shall set forth, in
5906 addition to the information required by s. 607.1006 ~~s. 607.1003~~,
5907 the information required in subsection (4).

5908 ~~(8) This section applies only to corporations with more~~
5909 ~~than 35 shareholders of record.~~

5910 Section 120. Section 607.1003, Florida Statutes, is amended
5911 to read:

5912 607.1003 Amendment by board of directors and shareholders.—
5913 If a corporation has issued shares, an amendment to the articles
5914 of incorporation shall be adopted in the following manner:

5915 (1) The proposed amendment shall first be adopted by the
5916 board of directors. A corporation's board of directors may

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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

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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~~

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5975 ~~must be approved by:~~

5976 ~~(a) A majority of the votes entitled to be cast on the~~
 5977 ~~amendment by any voting group with respect to which the~~
 5978 ~~amendment would create dissenters' rights; and~~

5979 ~~(b) The votes required by ss. 607.0725 and 607.0726 by~~
 5980 ~~every other voting group entitled to vote on the amendment.~~

5981 ~~(7)(6)~~ Unless otherwise provided in the articles of
 5982 incorporation, the shareholders of a corporation having 35 or
 5983 fewer shareholders may amend the articles of incorporation
 5984 without an act of the directors at a meeting for which notice of
 5985 the changes to be made is given. For purposes of this
 5986 subsection, the term "shareholder" means a record shareholder, a
 5987 beneficial shareholder, or an unrestricted voting trust
 5988 beneficial owner.

5989 (8) If as a result of an amendment of the articles of
 5990 incorporation one or more shareholders of a domestic corporation
 5991 would become subject to new interest holder liability, approval
 5992 of the amendment shall require the signing in connection with
 5993 the amendment, by each such shareholder, of a separate written
 5994 consent to become subject to such new interest holder liability,
 5995 unless in the case of a shareholder that already has interest
 5996 holder liability the terms and conditions of the new interest
 5997 holder liability are substantially identical to those of the
 5998 existing interest holder liability (other than changes that
 5999 eliminate or reduce such interest holder liability).

6000 (9) For purposes of subsection (8) and s. 607.1009, the
 6001 term "new interest holder liability" means interest holder
 6002 liability of a person resulting from an amendment of the
 6003 articles of incorporation if the person did not have interest

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6004 holder liability before the amendment becomes effective, or the
 6005 person had interest holder liability before the amendment
 6006 becomes effective, the terms and conditions of which are changed
 6007 when the amendment becomes effective.

6008 Section 121. Section 607.1004, Florida Statutes, is amended
 6009 to read:

6010 607.1004 Voting on amendments by voting groups.—

6011 (1) If the corporation has more than one class of shares
 6012 outstanding, the holders of the outstanding shares of a class
 6013 are entitled to vote as a separate voting group class (if
 6014 shareholder voting is otherwise required by this chapter act)
 6015 upon a proposed amendment to the articles of incorporation, if
 6016 the amendment would:

6017 (a) Effect an exchange or reclassification of all or part
 6018 of the shares of the class into shares of another class.

6019 (b) Effect an exchange or reclassification, or create a
 6020 right of exchange, of all or part of the shares of another class
 6021 into the shares of the class.

6022 (c) Change the designation, rights, preferences, or
 6023 limitations of all or part of the shares of the class.

6024 (d) Change the shares of all or part of the class into a
 6025 different number of shares of the same class.

6026 (e) Create a new class of shares having rights or
 6027 preferences with respect to distributions or to dissolution that
 6028 are prior or superior to the shares of the class.

6029 (f) Increase the rights, preferences, or number of
 6030 authorized shares of any class that, after giving effect to the
 6031 amendment, have rights or preferences with respect to
 6032 distributions or to dissolution that are prior or superior to

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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.

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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

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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

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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~~

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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

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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

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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.-

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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

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6265 directors must meet the same quorum requirement and be adopted
6266 by the same vote required to take action under the quorum and
6267 voting requirement then in effect or proposed to be adopted,
6268 whichever is greater.

6269 Section 130. Section 607.1023, Florida Statutes, is created
6270 to read:

6271 607.1023 Bylaw provisions relating to the election of
6272 directors.-

6273 (1) Unless the articles of incorporation specifically
6274 prohibit the adoption of a bylaw pursuant to this section, alter
6275 the vote specified in s. 607.0728(1), or provide for cumulative
6276 voting, a corporation may elect in its bylaws to be governed in
6277 the election of directors as follows:

6278 (a) Each vote entitled to be cast may be voted for or
6279 against up to the number of candidates that is equal to the
6280 number of directors to be elected, or a shareholder may indicate
6281 an abstention, but without cumulating the votes;

6282 (b) To be elected, a nominee must have received a plurality
6283 of the votes cast by holders of shares entitled to vote in the
6284 election at a meeting at which a quorum is present, provided
6285 that a nominee who is elected but receives more votes against
6286 than for election shall serve as a director for a term that
6287 shall terminate on the date that is the earlier of 90 days from
6288 the date on which the voting results are determined pursuant to
6289 s. 607.0729(2) (e) or the date on which an individual is selected
6290 by the board of directors to fill the office held by such
6291 director, which selection shall be deemed to constitute the
6292 filling of a vacancy by the board to which s. 607.0809 applies.
6293 Subject to paragraph (c), a nominee who is elected but receives

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6294 more votes against than for election shall not serve as a
6295 director beyond the 90-day period referenced above; and

6296 (c) The board of directors may select any qualified
6297 individual to fill the office held by a director who received
6298 more votes against than for election.

6299 (2) Subsection (1) does not apply to an election of
6300 directors by a voting group if:

6301 (a) At the expiration of the time fixed under a provision
6302 requiring advance notification of director candidates; or

6303 (b) Absent such a provision, at a time fixed by the board
6304 of directors which is not more than 14 days before notice is
6305 given of the meeting at which the election is to occur,

6306
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.-

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6323 (1) By complying with this chapter, including adopting a
 6324 plan of merger in accordance with subsection (3) and complying
 6325 with s. 607.1103:

6326 (a) One or more domestic corporations may merge with one or
 6327 more domestic or foreign entities pursuant to a plan of merger,
 6328 resulting in a survivor; and

6329 (b) Any two or more entities, each of which is either a
 6330 domestic eligible entity or a foreign eligible entity, may
 6331 merge, resulting in a survivor that is a domestic corporation
 6332 created in the merger into another corporation if the board of
 6333 directors of each corporation adopts and its shareholders (if
 6334 required by s. 607.1103) approve a plan of merger.

6335 (2) A domestic eligible entity that is not a corporation
 6336 may be a party to a merger with a domestic corporation, or may
 6337 be created as the survivor in a merger in which a domestic
 6338 corporation is a party, but only if the parties to the merger
 6339 comply with the applicable provisions of this chapter and the
 6340 merger is permitted by the organic law of the domestic eligible
 6341 entity that is not a corporation. A foreign eligible entity may
 6342 be a party to a merger with a domestic corporation, or may be
 6343 created as the survivor in a merger in which a domestic
 6344 corporation is a party, but only if the parties to the merger
 6345 comply with the applicable provisions of this chapter and the
 6346 merger is permitted by the organic law of the foreign eligible
 6347 entity.

6348 (3) The plan of merger must ~~shall~~ set forth:

6349 (a) As to each party to the merger, its name, jurisdiction
 6350 of formation, and type of entity;

6351 (b) The survivor's name, jurisdiction of formation, and

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6352 type of entity, and, if the survivor is to be created in the
 6353 merger, a statement to that effect The name of each corporation
 6354 planning to merge and the name of the surviving corporation into
 6355 which each other corporation plans to merge, which is
 6356 hereinafter designated as the surviving corporation;

6357 (c) ~~(b)~~ The terms and conditions of the proposed merger; and
 6358 (d) ~~(c)~~ The manner and basis of converting;

6359 1. The shares of each domestic or foreign corporation and
 6360 the eligible interests of each merging domestic or foreign
 6361 eligible entity into:

6362 a. Shares or other securities.

6363 b. Eligible interests.

6364 c. Obligations.

6365 d. Rights to acquire shares, other securities, or eligible
 6366 interests.

6367 e. Cash.

6368 f. Other property.

6369 g. Any combination of the foregoing; and

6370 2. Rights to acquire shares of each merging domestic or
 6371 foreign corporation and rights to acquire eligible interests of
 6372 each merging domestic or foreign eligible entity into:

6373 a. Shares or other securities.

6374 b. Eligible interests.

6375 c. Obligations.

6376 d. Rights to acquire shares, other securities, or eligible
 6377 interests.

6378 e. Cash.

6379 f. Other property.

6380 g. Any combination of the foregoing;

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6381 (e) The articles of incorporation of any domestic or
 6382 foreign corporation, or the public organic record of any other
 6383 domestic or foreign eligible entity to be created by the merger,
 6384 or if a new domestic or foreign corporation or other eligible
 6385 entity is not to be created by the merger, any amendments to, or
 6386 restatements of, the survivor's articles of incorporation or
 6387 other public organic record;

6388 (f) The effective date and time of the merger, which may be
 6389 on or after the filing date of the articles of merger; and

6390 (g) Any other provisions required by the laws under which
 6391 any party to the merger is organized or by which it is governed,
 6392 or by the articles of incorporation or organic rules of any such
 6393 party corporation into shares, obligations, or other securities
 6394 of the surviving corporation or any other corporation or, in
 6395 whole or in part, into cash or other property and the manner and
 6396 basis of converting rights to acquire shares of each corporation
 6397 into rights to acquire shares, obligations, or other securities
 6398 of the surviving or any other corporation or, in whole or in
 6399 part, into cash or other property.

6400 (4)(3) In addition to the requirements of subsection (3), a
 6401 The plan of merger may contain any other provision that is not
 6402 prohibited by law set forth:

6403 ~~(a) Amendments to, or a restatement of, the articles of~~
 6404 ~~incorporation of the surviving corporation;~~

6405 ~~(b) The effective date of the merger, which may be on or~~
 6406 ~~after the date of filing the certificate; and~~

6407 ~~(c) Other provisions relating to the merger.~~

6408 (5) Terms of a plan of merger may be made dependent on
 6409 facts objectively ascertainable outside the plan in accordance

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6410 with s. 607.0120(11).

6411 (6) A plan of merger may be amended only with the consent
 6412 of each party to the merger, except as provided in the plan. A
 6413 domestic party to a merger may approve an amendment to a plan:

6414 (a) In the same manner as the plan was approved, if the
 6415 plan does not provide for the manner in which it may be amended;
 6416 or

6417 (b) In the manner provided in the plan, except that
 6418 shareholders, members, or interest holders that were entitled to
 6419 vote on or consent to the approval of the plan are entitled to
 6420 vote on or consent to any amendment to the plan that will
 6421 change:

6422 1. The amount or kind of shares or other securities,
 6423 eligible interests, obligations, rights to acquire shares, other
 6424 securities, or eligible interests, cash, other property, or any
 6425 combination of the foregoing, to be received under the plan by
 6426 the shareholders, holders of rights to acquire shares, other
 6427 securities, or eligible interests, members, or interest holders
 6428 of any party to the merger;

6429 2. The articles of incorporation of any domestic
 6430 corporation, or the organic rules of any other type of entity,
 6431 that will be the survivor of the merger, except for changes
 6432 permitted by s. 607.1002 or by comparable provisions of the
 6433 organic law of any other type of entity; or

6434 3. Any of the other terms or conditions of the plan if the
 6435 change would adversely affect such shareholders, members, or
 6436 interest holders in any material respect.

6437 (7) The redomestication of a foreign insurer to this state
 6438 under s. 628.520 shall be deemed a merger of a foreign

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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

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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

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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

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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

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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~~

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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

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6613 created pursuant to the merger, the notice must include or be
 6614 accompanied by a copy of the articles of incorporation and
 6615 bylaws or the organic rules of the new eligible entity.
 6616 Furthermore, if applicable, the notice shall contain a clear and
 6617 concise statement that, if the plan of merger or share exchange
 6618 is effected, shareholders dissenting therefrom may be entitled,
 6619 if they comply with the provisions of this chapter act regarding
 6620 appraisal rights, to be paid the fair value of their shares, and
 6621 shall be accompanied by a copy of ss. 607.1301-607.1340 ~~ss-~~
 6622 ~~607.1301-607.1333.~~

6623 (5) Unless this chapter act, the articles of incorporation,
 6624 or the board of directors (acting pursuant to subsection (3))
 6625 requires a greater vote or a greater quorum in the respective
 6626 case, approval of vote by classes, the plan of merger or the
 6627 plan of share exchange shall require the approval of the
 6628 shareholders at a meeting at which a quorum exists by a majority
 6629 of the votes entitled to be cast on the plan, and, if any class
 6630 or series of shares is entitled to vote as a separate group on
 6631 the plan of merger or the plan of share exchange, the approval
 6632 of each such separate voting group at a meeting at which a
 6633 quorum of the voting group is present by a majority of the votes
 6634 entitled to be cast on the merger or share exchange by that
 6635 voting group to be authorized shall be approved by each class
 6636 entitled to vote on the plan by a majority of all the votes
 6637 entitled to be cast on the plan by that class.

6638 (6) (a) Subject to subsection (7), voting by a class or
 6639 series as a separate voting group is required:

6640 1. ~~(a)~~ By each class or series of shares of the corporation
 6641 that would be entitled to vote as a separate group on any

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6642 provision in the plan which, if such provision had been ~~on a~~
 6643 plan of merger if the plan contains a provision which, if
 6644 contained in a proposed amendment to the articles of
 6645 incorporation of a surviving corporation, would have entitled,
 6646 ~~would entitle~~ the class or series to vote as a separate voting
 6647 group on the proposed amendment under s. 607.1004; or

6648 2. If the plan contains a provision that would allow the
 6649 plan to be amended to include the type of amendment to the
 6650 articles of incorporation referenced in subparagraph 1., by each
 6651 class or series of shares of the corporation that would have
 6652 been entitled to vote as a separate group on any such amendment
 6653 to the articles of incorporation; or

6654 3. By each class or series of shares of the corporation
 6655 that is to be converted under the plan of merger into shares,
 6656 other securities, eligible interests, obligations, rights to
 6657 acquire shares, other securities, or eligible interests, cash,
 6658 property, or any combination of the foregoing; or

6659 4. If the plan contains a provision that would allow the
 6660 plan to be amended to convert other classes or series of shares
 6661 of the corporation, by each class or series of shares of the
 6662 corporation that would have been entitled to vote as a separate
 6663 group if the plan were to be so amended.

6664 (b) Subject to subsection (7), voting by a class or series
 6665 as a separate voting group is required on a plan of share
 6666 exchange:

6667 1. By each class or series that is to be exchanged in the
 6668 exchange, with each class or series constituting a separate
 6669 voting group; or

6670 2. If the plan contains a provision that would allow the

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6671 plan to be amended to include the type of amendment to the
 6672 articles of incorporation referenced in subparagraph (a)1., by
 6673 each class or series of shares of the corporation that would
 6674 have been entitled to vote as a separate group on any such
 6675 amendment to the articles of incorporation.

6676 (c) Subject to subsection (7), voting by a class or series
 6677 as a separate voting group is required on a plan of merger or a
 6678 plan of share exchange if the group is entitled under the
 6679 articles of incorporation to vote as a voting group to approve
 6680 the plan of merger or the plan of share exchange, respectively.

6681 (7) The articles of incorporation may expressly limit or
 6682 eliminate the separate voting rights provided in subparagraphs
 6683 (6) (a)3. or 4. or subparagraph (6) (b)1. as to any class or
 6684 series of shares, except when the plan of merger or the plan for
 6685 share exchange:

6686 (a) Includes what is or would be, in effect, an amendment
 6687 subject to any one or more of subparagraphs (6) (a)1. and 2. and
 6688 subparagraph (6) (b)2.; and

6689 (b) Will not affect a substantive business combination if
 6690 the shares of such class or series of shares are to be converted
 6691 or exchanged under such plan or if the plan contains any
 6692 provisions which, if contained in a proposed amendment to
 6693 articles of incorporation, would entitle the class or series to
 6694 vote as a separate voting group on the proposed amendment under
 6695 s. 607.1004.

6696 (8)(7) Unless the corporation's articles of incorporation
 6697 provide otherwise, approval by the corporation's shareholders of
 6698 Notwithstanding the requirements of this section, unless
 6699 required by its articles of incorporation, action by the

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6700 ~~shareholders of the surviving corporation on a plan of merger is~~
 6701 ~~not required if:~~

6702 (a) The corporation will survive the merger;

6703 ~~(b)(a)~~ The articles of incorporation of the surviving
 6704 corporation will not differ (except for amendments enumerated in
 6705 s. 607.1002) from its articles of incorporation before the
 6706 merger; and

6707 ~~(c)(b)~~ Each shareholder of the surviving corporation whose
 6708 shares were outstanding immediately prior to the effective date
 6709 of the merger will hold the same number of shares, with
 6710 identical designations, preferences, rights, and limitations,
 6711 and relative rights, immediately after the effective date of the
 6712 merger.

6713 ~~(8) Any plan of merger or share exchange may authorize the~~
 6714 ~~board of directors of each corporation party to the merger or~~
 6715 ~~share exchange to amend the plan at any time prior to the filing~~
 6716 ~~of the articles of merger or share exchange. An amendment made~~
 6717 ~~subsequent to the approval of the plan by the shareholders of~~
 6718 ~~any corporation party to the merger or share exchange may not:~~

6719 ~~(a) Change the amount or kind of shares, securities, cash,~~
 6720 ~~property, or rights to be received in exchange for or on~~
 6721 ~~conversion of any or all of the shares of any class or series of~~
 6722 ~~such corporation;~~

6723 ~~(b) Change any other terms and conditions of the plan if~~
 6724 ~~such change would materially and adversely affect such~~
 6725 ~~corporation or the holders of the shares of any class or series~~
 6726 ~~of such corporation; or~~

6727 ~~(c) Except as specified in s. 607.1002 or without the vote~~
 6728 ~~of shareholders entitled to vote on the matter, change any term~~

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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 ~~If articles of merger or share exchange already have been filed~~
 6733 ~~with the Department of State, amended articles of merger or~~
 6734 ~~share exchange shall be filed with the Department of State prior~~
 6735 ~~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

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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);

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6787 (b) Another party to the merger, the acquiring eligible
 6788 entity in the share exchange, or a parent of another party to
 6789 the merger or the parent of the acquiring eligible entity in the
 6790 share exchange, makes an offer to purchase, on the terms
 6791 provided in the plan of merger or the plan of share exchange,
 6792 any and all of the outstanding shares of the corporation that,
 6793 absent this section, would be entitled to vote on the plan of
 6794 merger or the plan of share exchange, except that the offer may
 6795 exclude shares of the corporation that are owned at the
 6796 commencement of the offer by the corporation, the offeror, or
 6797 any parent of the offeror, or by any wholly owned subsidiary of
 6798 any of the foregoing;

6799 (c) The offer discloses that the plan of merger or the plan
 6800 of share exchange provides that the merger or share exchange
 6801 will be effected as soon as practicable following the
 6802 satisfaction of the requirement in paragraph (f) and that the
 6803 shares of the corporation that are not tendered in response to
 6804 the offer will be treated pursuant to paragraph (h);

6805 (d) The offer remains open for at least 10 days;

6806 (e) The offeror purchases all shares properly tendered in
 6807 response to the offer and not properly withdrawn;

6808 (f) The shares listed below are collectively entitled to
 6809 cast at least the minimum number of votes on the merger or share
 6810 exchange that, absent this section, would be required by this
 6811 chapter and by the articles of incorporation for the approval of
 6812 the merger or share exchange by the shareholders and by each
 6813 other voting group entitled to vote on the merger or share
 6814 exchange at a meeting at which all shares entitled to vote on
 6815 the approval were present and voted;

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6816 1. Shares purchased by the offeror in accordance with the
 6817 offer;

6818 2. Shares otherwise owned by the offeror or by any parent
 6819 of the offeror or any wholly owned subsidiary of any of the
 6820 foregoing; and

6821 3. Shares subject to an agreement that they are to be
 6822 transferred, contributed, or delivered to the offeror, any
 6823 parent of the offeror, or any wholly owned subsidiary of any of
 6824 the foregoing in exchange for shares or eligible interests in
 6825 such offeror, parent, or subsidiary;

6826 (g) The offeror or a wholly owned subsidiary of the offeror
 6827 merges with or into, or effects a share exchange in which it
 6828 acquires shares of, the corporation; and

6829 (h) Each outstanding share of each class or series of
 6830 shares of the corporation that the offeror is offering to
 6831 purchase in accordance with the offer, and that is not purchased
 6832 in accordance with the offer, is to be converted in the merger
 6833 into, or into the right to receive, or is to be exchanged in the
 6834 share exchange for, or for the right to receive, the same amount
 6835 and kind of securities, eligible interests, obligations, rights,
 6836 cash, or other property to be paid or exchanged in accordance
 6837 with the offer for each share of that class or series of shares
 6838 that is tendered in response to the offer, except that shares of
 6839 the corporation that are owned by the corporation or that are
 6840 described in subparagraphs (f)2. or 3. need not be converted
 6841 into or exchanged for the consideration described in this
 6842 paragraph.

6843 (2) As used in this section, the term:

6844 (a) "Offer" means the offer referred to in paragraph

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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; and6856 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

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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; or6882 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

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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

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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

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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,

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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

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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,

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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

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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

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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

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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~~

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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)(c)~~ 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

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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

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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 are entitled only to the rights provided to them by the terms of
 7243 the share exchange, or to any as provided in the plan of
 7244 exchange, and the former holders of the shares are entitled only
 7245 to the exchange rights provided in the articles of share
 7246 exchange or to their rights they may have under s. 607.1302 or
 7247 the organic law governing the acquired eligible entity.
 7248 (3) Except as otherwise provided in the articles of
 7249 incorporation of a domestic corporation or the organic law
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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

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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

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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

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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~~

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7367 a share exchange is permitted by law of the state or country
 7368 under the law of which the acquiring corporation is
 7369 incorporated;

7370 ~~(c) The foreign corporation complies with s. 607.1105 if it~~
 7371 ~~is the surviving corporation of the merger or acquiring~~
 7372 ~~corporation of the share exchange; and~~

7373 ~~(d) Each domestic corporation complies with the applicable~~
 7374 ~~provisions of ss. 607.1101-607.1104 and, if it is the surviving~~
 7375 ~~corporation of the merger or acquiring corporation of the share~~
 7376 ~~exchange, with s. 607.1105.~~

7377 ~~(2) Upon the merger becoming effective, the surviving~~
 7378 ~~foreign corporation of a merger, and the acquiring foreign~~
 7379 ~~corporation in a share exchange, is deemed:~~

7380 ~~(a) To appoint the Secretary of State as its agent for~~
 7381 ~~service of process in a proceeding to enforce any obligation or~~
 7382 ~~the rights of dissenting shareholders of each domestic~~
 7383 ~~corporation party to the merger or share exchange; and~~

7384 ~~(b) To agree that it will promptly pay to the dissenting~~
 7385 ~~shareholders of each domestic corporation party to the merger or~~
 7386 ~~share exchange the amount, if any, to which they are entitled~~
 7387 ~~under s. 607.1302.~~

7388 ~~(3) This section does not limit the power of a foreign~~
 7389 ~~corporation to acquire all or part of the shares of one or more~~
 7390 ~~classes or series of a domestic corporation through a voluntary~~
 7391 ~~exchange or otherwise.~~

7392 ~~(4) The effect of such merger shall be the same as in the~~
 7393 ~~case of the merger of domestic corporations if the surviving~~
 7394 ~~corporation is to be governed by the laws of this state. If the~~
 7395 ~~surviving corporation is to be governed by the laws of any state~~

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7396 other than this state, the effect of such merger shall be the
 7397 same as in the case of the merger of domestic corporations
 7398 except insofar as the laws of such other state provide
 7399 otherwise.

7400 ~~(5) The redomestication of a foreign insurer to this state~~
 7401 ~~under s. 628.520 shall be deemed a merger of a foreign~~
 7402 ~~corporation and a domestic corporation, and the surviving~~
 7403 ~~corporation shall be deemed to be a domestic corporation~~
 7404 ~~incorporated under the laws of this state. The redomestication~~
 7405 ~~of a Florida corporation to a foreign jurisdiction under s.~~
 7406 ~~628.525 shall be deemed a merger of a domestic corporation and a~~
 7407 ~~foreign corporation, and the surviving corporation shall be~~
 7408 ~~deemed to be a foreign corporation.~~

7409 Section 140. Section 607.1108, Florida Statutes, is
 7410 repealed.

7411 Section 141. Section 607.1109, Florida Statutes, is
 7412 repealed.

7413 Section 142. Section 607.11101, Florida Statutes, is
 7414 repealed.

7415 Section 143. Section 607.1112, Florida Statutes, is
 7416 repealed.

7417 Section 144. Section 607.1113, Florida Statutes, is
 7418 repealed.

7419 Section 145. Section 607.1114, Florida Statutes, is
 7420 repealed.

7421 Section 146. Section 607.1115, Florida Statutes, is
 7422 repealed.

7423 Section 147. Section 607.11920, Florida Statutes, is
 7424 created to read:

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7425 607.11920 Domestication.-

7426 (1) By complying with this section and ss. 607.11921-
 7427 607.11924, as applicable, a foreign corporation may become a
 7428 domestic corporation if the domestication is permitted by the
 7429 organic law of the foreign corporation.

7430 (2) By complying with this section and ss. 607.11921-
 7431 607.11924, as applicable, a domestic corporation may become a
 7432 foreign corporation pursuant to a plan of domestication if the
 7433 domestication is permitted by the organic law of the foreign
 7434 corporation.

7435 (3) In a domestication under subsection (2), the
 7436 domesticating eligible entity must enter into a plan of
 7437 domestication. The plan of domestication must include:

7438 (a) The name of the domesticating corporation;

7439 (b) The name and jurisdiction of formation of the
 7440 domesticated corporation;

7441 (c) The manner and basis of reclassifying the shares of the
 7442 domesticating corporation into shares or other securities,
 7443 obligations, rights to acquire shares or other securities, cash,
 7444 other property, or any combination of the foregoing;

7445 (d) The proposed organic rules of the domesticated
 7446 corporation which must be in writing; and

7447 (e) The other terms and conditions of the domestication.

7448 (4) In addition to the requirements of subsection (3), a
 7449 plan of domestication may contain any other provision not
 7450 prohibited by law.

7451 (5) The terms of a plan of domestication may be made
 7452 dependent upon facts objectively ascertainable outside the plan
 7453 in accordance with s. 607.0120(11).

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7454 (6) If a protected agreement of a domesticating corporation
 7455 in effect immediately before the domestication becomes effective
 7456 contains a provision applying to a merger of the corporation and
 7457 the agreement does not refer to a domestication of the
 7458 corporation, the provision applies to a domestication of the
 7459 corporation as if the domestication were a merger until such
 7460 time as the provision is first amended after January 1, 2020.

7461 Section 148. Section 607.11921, Florida Statutes, is
 7462 created to read:

7463 607.11921 Action on a plan of domestication.-In the case of
 7464 a domestication of a domestic corporation into a foreign
 7465 jurisdiction, the plan of domestication shall be adopted in the
 7466 following manner:

7467 (1) The plan of domestication must first be adopted by the
 7468 board of directors of such domestic corporation.

7469 (2) (a) The plan of domestication must then be approved by
 7470 the shareholders of such domestic corporation.

7471 (b) In submitting the plan of domestication to the
 7472 shareholders for approval, the board of directors shall
 7473 recommend that the shareholders approve the plan, unless:

7474 1. The board of directors makes a determination that
 7475 because of conflicts of interest or other special circumstances
 7476 it should not make such a recommendation; or

7477 2. Section 607.0826 applies.

7478 (c) If either subparagraph (b)1. or subparagraph (b)2.
 7479 applies, the board shall inform the shareholders of the basis
 7480 for its so proceeding without such recommendation.

7481 (3) The board of directors may set conditions for approval
 7482 of the plan of domestication by the shareholders or the

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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

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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.

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7541 (2) Articles of domestication must set forth:
 7542 (a) The name of the domesticating corporation and its
 7543 jurisdiction of formation;
 7544 (b) The name and jurisdiction of formation of the
 7545 domesticated corporation; and
 7546 (c)1. If the domesticating corporation is a domestic
 7547 corporation, a statement that the plan of domestication was
 7548 approved in accordance with this chapter; or
 7549 2. If the domesticating corporation is a foreign
 7550 corporation, a statement that the domestication was approved in
 7551 accordance with its organic law.
 7552 (3) If the domesticated corporation is to be a domestic
 7553 corporation, articles of incorporation of the domesticated
 7554 corporation that satisfy the requirements of s. 607.0202 must be
 7555 attached to the articles of domestication. Provisions that would
 7556 not be required to be included in restated articles of
 7557 incorporation may be omitted from the articles of incorporation
 7558 attached to the articles of domestication.
 7559 (4) The articles of domestication shall be delivered to the
 7560 department for filing and shall take effect at the effective
 7561 date determined in accordance with s. 607.0123.
 7562 (5) (a) If the domesticated corporation is a domestic
 7563 corporation, the domestication becomes effective when the
 7564 articles of domestication are effective.
 7565 (b) If the domesticated corporation is a foreign
 7566 corporation, the domestication becomes effective on the later of
 7567 the date and time provided by the organic law of the
 7568 domesticated corporation or when the articles of domestication
 7569 are effective.

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7570 (6) If the domesticating corporation is a foreign
 7571 corporation that is qualified to transact business in this state
 7572 under ss. 607.1501-607.1532, its certificate of authority is
 7573 automatically canceled when the domestication becomes effective.
 7574 (7) A copy of the articles of domestication, certified by
 7575 the department, may be filed in the official records of any
 7576 county in this state in which the domesticating eligible entity
 7577 holds an interest in real property.
 7578 Section 150. Section 607.11923, Florida Statutes, is
 7579 created to read:
 7580 607.11923 Amendment of a plan of domestication;
 7581 abandonment.—
 7582 (1) A plan of domestication of a domestic corporation
 7583 adopted under s. 607.11920(3) may be amended:
 7584 (a) In the same manner as the plan of domestication was
 7585 approved, if the plan does not provide for the manner in which
 7586 it may be amended; or
 7587 (b) In the manner provided in the plan of domestication,
 7588 except that a shareholder that was entitled to vote on or
 7589 consent to approval of the plan is entitled to vote on or
 7590 consent to any amendment of the plan that will change:
 7591 1. The amount or kind of shares or other securities,
 7592 obligations, rights to acquire shares, other securities, or
 7593 eligible interests, cash, other property, or any combination of
 7594 the foregoing, to be received by any of the shareholders or
 7595 holders of rights to acquire shares, other securities, or
 7596 eligible interests of the domesticating corporation under the
 7597 plan;
 7598 2. The organic rules of the domesticated corporation that

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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

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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:

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7657 1. Incorporated under and subject to the organic law of the
 7658 domesticated corporation;
 7659 2. The same corporation, without interruption, as the
 7660 domesticating corporation; and
 7661 3. Deemed to have been incorporated or formed on the date
 7662 the domesticating corporation was originally incorporated.
 7663 (2) In addition, when a domestication of a domestic
 7664 corporation into a foreign jurisdiction becomes effective, the
 7665 domesticated corporation is deemed to:
 7666 (a) Appoint the secretary of state as its agent for service
 7667 of process in a proceeding to enforce the rights of shareholders
 7668 who exercise appraisal rights in connection with the
 7669 domestication; and
 7670 (b) Agree that it will promptly pay any amount that the
 7671 shareholders are entitled to under ss. 607.1301-607.1340.
 7672 (3) Except as otherwise provided in the organic law or
 7673 organic rules of a domesticating foreign corporation, the
 7674 interest holder liability of a shareholder or equity holder in a
 7675 foreign corporation that is domesticated into this state who had
 7676 interest holder liability in respect of such domesticating
 7677 corporation before the domestication becomes effective shall be
 7678 as follows:
 7679 (a) The domestication does not discharge that prior
 7680 interest holder liability with respect to any interest holder
 7681 liabilities that arose before the domestication becomes
 7682 effective.
 7683 (b) The provisions of the organic law of the domesticating
 7684 corporation shall continue to apply to the collection or
 7685 discharge of any interest holder liabilities preserved by

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7686 paragraph (a), as if the domestication had not occurred.
 7687 (c) The shareholder or equity holder shall have such rights
 7688 of contribution from other persons as are provided by the
 7689 organic law of the domesticating corporation with respect to any
 7690 interest holder liabilities preserved by paragraph (a), as if
 7691 the domestication had not occurred.
 7692 (d) The shareholder or equity holder may not, by reason of
 7693 such prior interest holder liability, have interest holder
 7694 liability with respect to any interest holder liabilities that
 7695 are incurred after the domestication becomes effective.
 7696 (4) A shareholder or equity holder who becomes subject to
 7697 interest holder liability in respect of the domesticated
 7698 corporation as a result of the domestication shall have such
 7699 interest holder liability only in respect of interest holder
 7700 liabilities that arise after the domestication becomes
 7701 effective.
 7702 (5) A domestication does not constitute or cause the
 7703 dissolution of the domesticating corporation.
 7704 (6) Property held for charitable purposes under the laws of
 7705 this state by a domestic or foreign corporation immediately
 7706 before a domestication becomes effective may not, as a result of
 7707 the transaction, be diverted from the objects for which it was
 7708 donated, granted, devised, or otherwise transferred except and
 7709 to the extent permitted by or pursuant to the laws of this state
 7710 addressing cy pres or dealing with nondiversion of charitable
 7711 assets.
 7712 (7) A bequest, devise, gift, grant, or promise contained in
 7713 a will or other instrument of donation, subscription, or
 7714 conveyance which is made to the domesticating corporation and

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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

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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

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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.

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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

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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:

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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.

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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.-

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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

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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

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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.

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8005 (2) When a conversion of a domestic corporation to a
 8006 domestic or foreign eligible entity other than a domestic
 8007 corporation becomes effective, the converted eligible entity is
 8008 deemed to:

8009 (a) Appoint the secretary of state as its agent for service
 8010 of process in a proceeding to enforce the rights of shareholders
 8011 who exercise appraisal rights in connection with the conversion;
 8012 and

8013 (b) Agree that it will promptly pay any amount that
 8014 shareholders are entitled to under ss. 607.1301-607.1340.

8015 (3) Except as otherwise provided in the articles of
 8016 incorporation of a domestic corporation or the organic law or
 8017 organic rules of a domestic or foreign eligible entity other
 8018 than a domestic corporation, a shareholder or eligible interest
 8019 holder who becomes subject to interest holder liability in
 8020 respect of a domestic corporation or domestic or foreign
 8021 eligible entity other than a domestic eligible entity as a
 8022 result of the conversion shall have such interest holder
 8023 liability only in respect of interest holder liabilities that
 8024 arise after the conversion becomes effective.

8025 (4) Except as otherwise provided in the organic law or the
 8026 organic rules of the domestic or foreign eligible entity, the
 8027 interest holder liability of an interest holder in a converting
 8028 eligible entity that converts to a domestic corporation who had
 8029 interest holder liability in respect of such converting eligible
 8030 entity before the conversion becomes effective shall be as
 8031 follows:

8032 (a) The conversion does not discharge that prior interest
 8033 holder liability with respect to any interest holder liabilities

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8034 that arose before the conversion became effective.

8035 (b) The provisions of the organic law of the eligible
 8036 entity shall continue to apply to the collection or discharge of
 8037 any interest holder liabilities preserved by paragraph (a), as
 8038 if the conversion had not occurred.

8039 (c) The eligible interest holder shall have such rights of
 8040 contribution from other persons as are provided by the organic
 8041 law of the eligible entity with respect to any interest holder
 8042 liabilities preserved by paragraph (a), as if the conversion had
 8043 not occurred.

8044 (d) The eligible interest holder may not, by reason of such
 8045 prior interest holder liability, have interest holder liability
 8046 with respect to any interest holder liabilities that arise after
 8047 the conversion becomes effective.

8048 (5) A conversion does not require the converting eligible
 8049 entity to wind up its affairs and does not constitute or cause
 8050 the dissolution or termination of the entity.

8051 (6) Property held for charitable purposes under the laws of
 8052 this state by a domestic or foreign eligible entity immediately
 8053 before a conversion becomes effective may not, as a result of
 8054 the transaction, be diverted from the objects for which it was
 8055 donated, granted, devised, or otherwise transferred except and
 8056 to the extent permitted by or pursuant to the laws of this state
 8057 addressing cy pres or dealing with nondiversion of charitable
 8058 assets.

8059 (7) A bequest, devise, gift, grant, or promise contained in
 8060 a will or other instrument of donation, subscription, or
 8061 conveyance which is made to the converting eligible entity and
 8062 which takes effect or remains payable after the conversion

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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.~~

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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.

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8121 applies, the board of directors shall inform the shareholders of
 8122 the basis for its so proceeding without such recommendation and
 8123 communicates the basis for its determination to the shareholders
 8124 of record with the submission of the proposed transaction; and

8125 ~~(b) The shareholders entitled to vote must approve the~~
 8126 ~~transaction as provided in subsection (5).~~

8127 (3) The board of directors may set conditions for approval
 8128 of the disposition or the effectiveness of the disposition
 8129 ~~condition its submission of the proposed transaction on any~~
 8130 ~~basis.~~

8131 (4) If the disposition is required to be approved by the
 8132 shareholders under subsection (1) and if the approval is to be
 8133 given at the meeting, the corporation shall notify each
 8134 shareholder of record, regardless of whether or not entitled to
 8135 vote, of the proposed shareholders' meeting of shareholders at
 8136 which the disposition is to be submitted for approval in
 8137 accordance with s. 607.0705. The notice must shall also state
 8138 that the purpose, or one of the purposes, of the meeting is to
 8139 consider the disposition and shall contain a description of the
 8140 disposition and the consideration to be received by the
 8141 corporation sale, lease, exchange, or other disposition of all,
 8142 or substantially all, the property of the corporation,
 8143 regardless of whether or not the meeting is an annual or a
 8144 special meeting, and shall contain or be accompanied by a
 8145 description of the transaction. Furthermore, the notice shall
 8146 contain a clear and concise statement that, if the transaction
 8147 is effected, shareholders dissenting therefrom are or may be
 8148 entitled, if they comply with the provisions of this act
 8149 regarding appraisal rights, to be paid the fair value of their

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8150 shares and such notice ~~must shall~~ be accompanied by a copy of
 8151 ~~ss. 607.1301-607.1340 ss. 607.1301-607.1333.~~

8152 (5) Unless this ~~chapter act~~, the articles of incorporation,
 8153 or the board of directors (acting pursuant to subsection (4)
 8154 ~~(3)~~ requires a greater vote or a greater quorum vote by voting
 8155 groups, the approval of the disposition shall require the
 8156 approval of the shareholders at a meeting at which a quorum
 8157 exists consisting of transaction to be authorized shall be
 8158 approved by a majority of all the votes entitled to be cast on
 8159 the disposition transaction.

8160 (6) After a disposition has been approved by the
 8161 shareholders under this chapter, and at any time before the
 8162 disposition has been consummated, it may be abandoned by the
 8163 corporation without action by the shareholders, subject to any
 8164 contractual rights of other parties to the disposition Any plan
 8165 or agreement providing for a sale, lease, exchange, or other
 8166 disposition of property, or any resolution of the board of
 8167 directors or shareholders approving such transaction, may
 8168 authorize the board of directors of the corporation to amend the
 8169 terms thereof at any time prior to the consummation of such
 8170 transaction. An amendment made subsequent to the approval of the
 8171 transaction by the shareholders of the corporation may not:

8172 ~~(a) Change the amount or kind of shares, securities, cash,~~
 8173 ~~property, or rights to be received in exchange for the~~
 8174 ~~corporation's property; or~~

8175 ~~(b) Change any other terms and conditions of the~~
 8176 ~~transaction if such change would materially and adversely affect~~
 8177 ~~the shareholders or the corporation.~~

8178 ~~(7) Unless a plan or agreement providing for a sale, lease,~~

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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

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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,~~

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8237 Without discounting for lack of marketability or minority
8238 status.

8239 ~~(5) "Interest" means interest from the effective date of~~
8240 ~~the corporate action until the date of payment, at the rate of~~
8241 ~~interest on judgments in this state on the effective date of the~~
8242 ~~corporate action.~~

8243 (6) "Interested transaction" means a corporate action
8244 described in s. 607.1302(1), other than a merger pursuant to s.
8245 607.1104, involving an interested person in which any of the
8246 shares or assets of the corporation are being acquired or
8247 converted. As used in this definition:

8248 (a) "Interested person" means a person, or an affiliate of
8249 a person, who at any time during the 1-year period immediately
8250 preceding approval by the board of directors of the corporate
8251 action:

8252 1. Was the beneficial owner of 20 percent or more of the
8253 voting power of the corporation, other than as owner of excluded
8254 shares;

8255 2. Had the power, contractually or otherwise, other than as
8256 owner of excluded shares, to cause the appointment or election
8257 of 25 percent or more of the directors to the board of directors
8258 of the corporation; or

8259 3. Was a senior executive or director of the corporation or
8260 a senior executive of any affiliate of the corporation, and will
8261 receive, as a result of the corporate action, a financial
8262 benefit not generally available to other shareholders as such,
8263 other than:

8264 a. Employment, consulting, retirement, or similar benefits
8265 established separately and not as part of or in contemplation of

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8266 the corporate action;

8267 b. Employment, consulting, retirement, or similar benefits
8268 established in contemplation of, or as part of, the corporate
8269 action that are not more favorable than those existing before
8270 the corporate action or, if more favorable, that have been
8271 approved on behalf of the corporation in the same manner as is
8272 provided in s. 607.0832; or

8273 c. In the case of a director of the corporation who, in the
8274 corporate action, will become a director or governor of the
8275 acquirer or any of its affiliates in the corporate action,
8276 rights and benefits as a director or governor that are provided
8277 on the same basis as those afforded by the acquirer generally to
8278 other directors or governors of such entity or such affiliate.

8279 (b) "Beneficial owner" means any person who, directly or
8280 indirectly, through any contract, arrangement, or understanding,
8281 other than a revocable proxy, has or shares the power to vote,
8282 or to direct the voting of, shares; except that a member of a
8283 national securities exchange is not deemed to be a beneficial
8284 owner of securities held directly or indirectly by it on behalf
8285 of another person if the member is precluded by the rules of the
8286 exchange from voting without instruction on contested matters or
8287 matters that may affect substantially the rights or privileges
8288 of the holders of the securities to be voted. When two or more
8289 persons agree to act together for the purpose of voting their
8290 shares of the corporation, each member of the group formed
8291 thereby is deemed to have acquired beneficial ownership, as of
8292 the date of the agreement, of all shares having voting power of
8293 the corporation beneficially owned by any member of the group.

8294 (c) "Excluded shares" means shares acquired pursuant to an

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8295 offer for all shares having voting power if the offer was made
 8296 within 1 year before the corporate action for consideration of
 8297 the same kind and of a value equal to or less than that paid in
 8298 connection with the corporate action.

8299 ~~(7)(6)~~ "Preferred shares" means a class or series of shares
 8300 the holders of which have preference over any other class or
 8301 series of shares with respect to distributions.

8302 ~~(7) "Record shareholder" means the person in whose name~~
 8303 ~~shares are registered in the records of the corporation or the~~
 8304 ~~beneficial owner of shares to the extent of the rights granted~~
 8305 ~~by a nominee certificate on file with the corporation.~~

8306 (8) "Senior executive" means the chief executive officer,
 8307 chief operating officer, chief financial officer, or any
 8308 individual anyone in charge of a principal business unit or
 8309 function.

8310 (9) Notwithstanding s. 607.01401(67), "shareholder" means
 8311 both a record shareholder, and a beneficial shareholder, and a
 8312 voting trust beneficial owner.

8313 Section 161. Section 607.1302, Florida Statutes, is amended
 8314 to read:

8315 607.1302 Right of shareholders to appraisal.—

8316 (1) A shareholder of a domestic corporation is entitled to
 8317 appraisal rights, and to obtain payment of the fair value of
 8318 that shareholder's shares, in the event of any of the following
 8319 corporate actions:

8320 (a) Consummation of a domestication or a conversion of such
 8321 corporation pursuant to s. 607.11921 or s. 607.11932, as
 8322 applicable, s. 607.1112 if shareholder approval is required for
 8323 the domestication or the conversion; and the shareholder is

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8324 ~~entitled to vote on the conversion under ss. 607.1103 and~~
 8325 ~~607.1112(6), or the~~

8326 (b) Consummation of a merger to which such corporation is a
 8327 party:

8328 1. If shareholder approval is required for the merger under
 8329 s. 607.1103 or would be required but for s. 607.11035, except
 8330 that appraisal rights may not be available to any shareholder of
 8331 the corporation with respect to shares of any class or series
 8332 that remains outstanding after consummation of the merger where
 8333 the terms of such class or series have not been materially
 8334 altered; and the shareholder is entitled to vote on the merger
 8335 or

8336 2. If such corporation is a subsidiary and the merger is
 8337 governed by s. 607.1104;

8338 (c)(b) Consummation of a share exchange to which the
 8339 corporation is a party as the corporation whose shares will be
 8340 acquired if the shareholder is entitled to vote on the exchange,
 8341 except that appraisal rights are not available to any
 8342 shareholder of the corporation with respect to any class or
 8343 series of shares of the corporation that is not acquired in the
 8344 share exchange exchanged;

8345 (d)(e) Consummation of a disposition of assets pursuant to
 8346 s. 607.1202 if the shareholder is entitled to vote on the
 8347 disposition, including a sale in dissolution, except that
 8348 appraisal rights shall not be available to any shareholder of
 8349 the corporation with respect to shares or any class or series
 8350 if:

8351 1. Under the terms of the corporate action approved by the
 8352 shareholders there is to be distributed to shareholders in cash

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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 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

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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

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8411 been cumulative;

8412 6. Reducing the stated dividend preference of any of the
8413 shareholder's preferred shares; or

8414 7. Reducing any stated preferential amount payable on any
8415 of the shareholder's preferred shares upon voluntary or
8416 involuntary liquidation;

8417 ~~(j)(g)~~ An amendment of the articles of incorporation of a
8418 social purpose corporation to which s. 607.504 or s. 607.505
8419 applies;

8420 ~~(k)(h)~~ An amendment of the articles of incorporation of a
8421 benefit corporation to which s. 607.604 or s. 607.605 applies;

8422 ~~(l)(i)~~ A merger, domestication, conversion, or share
8423 exchange of a social purpose corporation to which s. 607.504
8424 applies; or

8425 ~~(m)(j)~~ A merger, domestication, conversion, or share
8426 exchange of a benefit corporation to which s. 607.604 applies.

8427 (2) Notwithstanding subsection (1), the availability of
8428 appraisal rights under paragraphs (1)(a), (b), (c), ~~and (d)~~, and
8429 ~~(e)~~ shall be limited in accordance with the following
8430 provisions:

8431 (a) Appraisal rights shall not be available for the holders
8432 of shares of any class or series of shares which is:

8433 1. A covered security under s. 18(b)(1)(A) or (B) of the
8434 Securities Act of 1933 Listed on the New York Stock Exchange or
8435 the American Stock Exchange or designated as a national market
8436 system security on an interdealer quotation system by the
8437 National Association of Securities Dealers, Inc.; or

8438 2. Not a covered security, but traded in an organized
8439 market and Not so listed or designated, but has at least 2,000

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8440 shareholders and the outstanding shares of such class or series
8441 have a market value of at least \$20 \$10 million, exclusive of
8442 the value of outstanding such shares held by the corporation's
8443 ~~its~~ subsidiaries, by the corporation's senior executives, by the
8444 corporation's directors, and by the corporation's beneficial
8445 shareholders and voting trust beneficial owners ~~shareholders~~
8446 owning more than 10 percent of the outstanding such shares; or
8447 3. Issued by an open end management investment company
8448 registered with the Securities and Exchange Commission under the
8449 Investment Company Act of 1940 and which may be redeemed at the
8450 option of the holder at net asset value.

8451 (b) The applicability of paragraph (a) shall be determined
8452 as of:

8453 1. The record date fixed to determine the shareholders
8454 entitled to receive notice of, ~~and to vote at~~, the meeting of
8455 shareholders to act upon the corporate action requiring
8456 appraisal rights, or, in the case of an offer made pursuant to
8457 s. 607.11035, the date of such offer; or

8458 2. If there will be no meeting of shareholders and no offer
8459 is made pursuant to s. 607.11035, the close of business on the
8460 day before the consummation of the corporate action or the
8461 effective date of the amendment of the articles, as applicable
8462 on which the board of directors adopts the resolution
8463 recommending such corporate action.

8464 (c) Paragraph (a) ~~is not~~ ~~shall not be~~ applicable and
8465 appraisal rights shall be available pursuant to subsection (1)
8466 for the holders of any class or series of shares where the
8467 corporate action is an interested transaction who are required
8468 by the terms of the corporate action requiring appraisal rights

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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

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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 (e) 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

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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

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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

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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

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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

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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.

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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. 607.1324~~. In the
8700 case of a merger under s. 607.1104, the parent must deliver a

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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

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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

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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

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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

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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

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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

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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

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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

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8933 make no recommendation; or

8934 2. Section 607.0826 applies.

8935 (c) If either subparagraph (b)1. or subparagraph (b)2.
8936 applies, the board must inform the shareholders of the basis for
8937 its so proceeding without such recommendation and communicates
8938 the basis for its determination to the shareholders; and

8939 ~~(b) The shareholders entitled to vote must approve the~~
8940 ~~proposal to dissolve as provided in subsection (5).~~

8941 (3) The board of directors may set conditions for the
8942 approval condition its submission of the proposal for
8943 dissolution by shareholders or for the effectiveness of the
8944 dissolution on any basis.

8945 (4) If the approval of the shareholders is to be given at a
8946 meeting, the corporation shall notify, in accordance with s.
8947 607.0705, each shareholder of record, regardless of whether ~~or~~
8948 not entitled to vote, of the meeting of shareholders at which
8949 the dissolution is to be submitted for approval ~~proposed~~
8950 ~~shareholders' meeting in accordance with s. 607.0705.~~ The notice
8951 must also state that the purpose, or one of the purposes, of the
8952 meeting is to consider dissolving the corporation.

8953 (5) Unless the articles of incorporation or the board of
8954 directors (acting pursuant to subsection (3)) require a greater
8955 vote or a vote by voting groups, the proposal to dissolve to be
8956 adopted must be approved by a majority of all the votes entitled
8957 to be cast on the proposal to dissolve that proposal.

8958 Section 176. Section 607.1403, Florida Statutes, is amended
8959 to read:

8960 607.1403 Articles of dissolution.—

8961 (1) At any time after dissolution is authorized, the

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8962 corporation may dissolve by delivering to the department ~~of~~
8963 ~~State~~ for filing articles of dissolution which must ~~shall~~ be
8964 signed ~~executed~~ in accordance with s. 607.0120 and which must
8965 ~~shall~~ set forth:

8966 (a) The name of the corporation;

8967 (b) The date dissolution was authorized;

8968 (c) If dissolution was approved by the shareholders, a
8969 statement that the proposal to dissolve was duly approved by the
8970 shareholders in the manner required by this chapter and by the
8971 articles of incorporation number cast for dissolution by the
8972 shareholders was sufficient for approval.

8973 ~~(d) If dissolution was approved by the shareholders and if~~
8974 ~~voting by voting groups was required, a statement that the~~
8975 ~~number cast for dissolution by the shareholders was sufficient~~
8976 ~~for approval must be separately provided for each voting group~~
8977 ~~entitled to vote separately on the plan to dissolve.~~

8978 (2) The articles of dissolution shall take effect at the
8979 effective date determined pursuant to s. 607.0123. A corporation
8980 is dissolved upon the effective date of its articles of
8981 dissolution.

8982 (3) For purposes of ss. 607.1401-607.1410, "dissolved
8983 corporation" means a corporation whose articles of dissolution
8984 have become effective and includes a successor entity. Further,
8985 for the purposes of this subsection, the term "successor entity"
8986 includes a trust, receivership, or other legal entity governed
8987 by the laws of this state to which the remaining assets and
8988 liabilities of a dissolved corporation are transferred and which
8989 exists solely for the purposes of prosecuting and defending
8990 suits by or against the dissolved corporation, thereby enabling

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8991 the dissolved corporation to settle and close the business of
 8992 the dissolved corporation, to dispose of and convey the property
 8993 of the dissolved corporation, to discharge the liabilities of
 8994 the dissolved corporation, and to distribute to the dissolved
 8995 corporation's shareholders any remaining assets, but not for the
 8996 purpose of continuing the activities and affairs for which the
 8997 dissolved corporation was organized.

8998 Section 177. Subsection (3) of section 607.1404, Florida
 8999 Statutes, is amended to read:

9000 607.1404 Revocation of dissolution.—

9001 (3) After the revocation of dissolution is authorized, the
 9002 corporation may revoke the dissolution by delivering to the
 9003 department, within the 120-day period following the effective
 9004 date of the articles of dissolution, of State for filing
 9005 articles of revocation of dissolution, together with a copy of
 9006 its articles of dissolution, that set forth:

9007 (a) The name of the corporation;

9008 (b) The effective date of the dissolution that was revoked;

9009 (c) The date that the revocation of dissolution was
 9010 authorized;

9011 (d) If the corporation's board of directors or
 9012 incorporators revoked the dissolution, a statement to that
 9013 effect;

9014 (e) If the corporation's board of directors revoked a
 9015 dissolution authorized by the shareholders, a statement that
 9016 revocation was permitted by action by the board of directors
 9017 alone pursuant to that authorization; and

9018 (f) If shareholder action was required to revoke the
 9019 dissolution, a statement that the revocation was authorized by

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9020 the shareholders in the manner required by this chapter and by
 9021 the articles of incorporation ~~the information required by s.~~
 9022 ~~607.1403(1)(c) or (d).~~

9023 Section 178. Section 607.1405, Florida Statutes, is amended
 9024 to read:

9025 607.1405 Effect of dissolution.—

9026 (1) A ~~dissolved~~ corporation that has dissolved continues
 9027 its corporate existence but the dissolved corporation may not
 9028 carry on any business except that appropriate to wind up and
 9029 liquidate its business and affairs, including:

9030 (a) Collecting its assets;

9031 (b) Disposing of its properties that will not be
 9032 distributed in kind to its shareholders;

9033 (c) Discharging or making provision for discharging its
 9034 liabilities;

9035 (d) Making distributions of its remaining assets
 9036 ~~Distributing its remaining property~~ among its shareholders
 9037 according to their interests; and

9038 (e) Doing every other act necessary to wind up and
 9039 liquidate its business and affairs.

9040 (2) Dissolution of a corporation does not:

9041 (a) Transfer title to the corporation's property;

9042 (b) Prevent transfer of its shares or securities, ~~although~~
 9043 ~~the authorization to dissolve may provide for closing the~~
 9044 ~~corporation's share transfer records;~~

9045 (c) Subject its directors or officers to standards of
 9046 conduct different from those prescribed in ss. 607.0801-607.0859
 9047 ~~ss. 607.0801-607.0850 except as provided in s. 607.1421(4);~~

9048 (d) Change quorum or voting requirements for its board of

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9049 directors or shareholders; change provisions for selection,
 9050 resignation, or removal of its directors or officers or both; or
 9051 change provisions for amending its bylaws;

9052 (e) Prevent commencement of a proceeding by or against the
 9053 corporation in its corporate name;

9054 (f) Abate or suspend a proceeding pending by or against the
 9055 corporation on the effective date of dissolution; or

9056 (g) Terminate the authority of the registered agent of the
 9057 corporation.

9058 (3) A distribution in liquidation under this section may
 9059 only be made by a dissolved corporation. For purposes of
 9060 determining the shareholders entitled to receive a distribution
 9061 in liquidation, the board of directors may fix a record date for
 9062 determining shareholders entitled to a distribution in
 9063 liquidation, which date may not be retroactive. If the board of
 9064 directors does not fix a record date for determining
 9065 shareholders entitled to a distribution in liquidation, the
 9066 record date is the date the board of directors authorizes the
 9067 distribution in liquidation.

9068 (4) The directors, officers, and agents of a corporation
 9069 dissolved pursuant to s. 607.1403 shall not incur any personal
 9070 liability thereby by reason of their status as directors,
 9071 officers, and agents of a dissolved corporation, as
 9072 distinguished from a corporation which is not dissolved.

9073 (5)(4) The name of a dissolved corporation is not ~~shall not~~
 9074 ~~be~~ available for assumption or use by another eligible entity
 9075 until 1 year ~~corporation until 120 days~~ after the effective date
 9076 of dissolution unless the dissolved corporation provides the
 9077 department of State with a record ~~an affidavit~~, signed as

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9078 ~~required by executed pursuant to~~ s. 607.0120, permitting the
 9079 immediate assumption or use of the name by another eligible
 9080 entity corporation.

9081 ~~(6)(5)~~ For purposes of this section, the circuit court may
 9082 appoint a trustee, custodian, or receiver for any property owned
 9083 or acquired by the corporation who may engage in any act
 9084 permitted under subsection (1) if any director or officer of the
 9085 dissolved corporation is unwilling or unable to serve or cannot
 9086 be located.

9087 Section 179. Section 607.1406, Florida Statutes, is amended
 9088 to read:

9089 607.1406 Known claims against dissolved corporation.—

9090 (1) A dissolved corporation may dispose of the known claims
 9091 against it by giving written notice that satisfies the
 9092 requirements of subsection (2) to its known claimants at any
 9093 time after the effective date of the dissolution, but no later
 9094 than the date that is 270 days before the date which is 3 years
 9095 after the effective date of the dissolution.

9096 (2) The written notice must:

9097 (a) State the name of the corporation that is the subject
 9098 of the dissolution;

9099 (b) State that the corporation is the subject of a
 9100 dissolution and the effective date of the dissolution;

9101 (c) Specify the information that must be included in a
 9102 claim;

9103 (d) State that a claim must be in writing and provide a
 9104 mailing address where a claim may be sent;

9105 (e) State the deadline, which may not be fewer than 120
 9106 days after the date the written notice is received by the

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9107 claimant, by which the dissolved corporation must receive the
 9108 claim;

9109 (f) State that the claim will be barred if not received by
 9110 the deadline;

9111 (g) State that the dissolved corporation may make
 9112 distributions thereafter to other claimants and to the dissolved
 9113 corporation's shareholders or persons interested without further
 9114 notice; and

9115 (h) Be accompanied by a copy of ss. 607.1405-607.1410.

9116 (3) A dissolved corporation may reject, in whole or in
 9117 part, a claim submitted by a claimant and received prior to the
 9118 deadline specified in the written notice given pursuant to
 9119 subsections (1) and (2) by mailing notice of the rejection to
 9120 the claimant on or before the date that is the earlier of 90
 9121 days after the dissolved corporation receives the claim or the
 9122 date that is 150 days before the date which is 3 years after the
 9123 effective date of the dissolution. A rejection notice sent by
 9124 the dissolved corporation pursuant to this subsection must state
 9125 that the claim will be barred unless the claimant, not later
 9126 than 120 days after the claimant receives the rejection notice,
 9127 commences an action in the circuit court in the applicable
 9128 county against the dissolved corporation to enforce the claim.

9129 (4) A claim against the dissolved corporation is barred:

9130 (a) If a claimant who was given written notice pursuant to
 9131 subsections (1) and (2) does not deliver the claim to the
 9132 dissolved corporation by the specified deadline; or

9133 (b) If the claim was timely received by the dissolved
 9134 corporation but was timely rejected by the dissolved corporation
 9135 under subsection (3) and the claimant does not commence the

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9136 required action in the applicable county within 120 days after
 9137 the claimant receives the rejection notice.

9138 (5) (a) For purposes of this section, "known claims" means
 9139 any claim or liability that, as of the date of the giving of the
 9140 written notice contemplated by subsections (1) and (2):

9141 1. Has matured sufficiently on or prior to the effective
 9142 date of the dissolution to be legally capable of assertion
 9143 against the dissolved corporation; or

9144 2. Is unmatured as of the effective date of the dissolution
 9145 but will mature in the future solely based on the passage of
 9146 time.

9147 (b) The term "known claims" does not include a claim based
 9148 on an event occurring after the effective date of the
 9149 dissolution or a claim that is a contingent claim.

9150 (6) The giving of any notice pursuant to this section does
 9151 not revive any claim then barred or constitute acknowledgment by
 9152 the dissolved corporation that any person to whom such notice is
 9153 sent is a proper claimant and does not operate as a waiver of
 9154 any defense or counterclaim in respect of any claim asserted by
 9155 any person to whom such notice is sent.

9156 ~~(1) A dissolved corporation or successor entity, as defined~~
 9157 ~~in subsection (15), may dispose of the known claims against it~~
 9158 ~~by following the procedures described in subsections (2), (3),~~
 9159 ~~and (4).~~

9160 ~~(2) The dissolved corporation or successor entity shall~~
 9161 ~~deliver to each of its known claimants written notice of the~~
 9162 ~~dissolution at any time after its effective date. The written~~
 9163 ~~notice shall:~~

9164 ~~(a) Provide a reasonable description of the claim that the~~

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9165 claimant may be entitled to assert;

9166 ~~(b) State whether the claim is admitted or not admitted, in~~
 9167 ~~whole or in part, and, if admitted:~~

9168 ~~1. The amount that is admitted, which may be as of a given~~
 9169 ~~date; and~~

9170 ~~2. Any interest obligation if fixed by an instrument of~~
 9171 ~~indebtedness;~~

9172 ~~(c) Provide a mailing address where a claim may be sent;~~

9173 ~~(d) State the deadline, which may not be fewer than 120~~
 9174 ~~days after the effective date of the written notice, by which~~
 9175 ~~confirmation of the claim must be delivered to the dissolved~~
 9176 ~~corporation or successor entity; and~~

9177 ~~(e) State that the corporation or successor entity may make~~
 9178 ~~distributions thereafter to other claimants and the~~
 9179 ~~corporation's shareholders or persons interested as having been~~
 9180 ~~such without further notice.~~

9181 ~~(3) A dissolved corporation or successor entity may reject,~~
 9182 ~~in whole or in part, any claim made by a claimant pursuant to~~
 9183 ~~this subsection by mailing notice of such rejection to the~~
 9184 ~~claimant within 90 days after receipt of such claim and, in all~~
 9185 ~~events, at least 150 days before expiration of 3 years following~~
 9186 ~~the effective date of dissolution. A notice sent by the~~
 9187 ~~dissolved corporation or successor entity pursuant to this~~
 9188 ~~subsection shall be accompanied by a copy of this section.~~

9189 ~~(4) A dissolved corporation or successor entity electing to~~
 9190 ~~follow the procedures described in subsections (2) and (3) shall~~
 9191 ~~also give notice of the dissolution of the corporation to~~
 9192 ~~persons with known claims, that are contingent upon the~~
 9193 ~~occurrence or nonoccurrence of future events or otherwise~~

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9194 ~~conditional or unmatured, and request that such persons present~~
 9195 ~~such claims in accordance with the terms of such notice. Such~~
 9196 ~~notice shall be in substantially the same form, and sent in the~~
 9197 ~~same manner, as described in subsection (2).~~

9198 ~~(5) A dissolved corporation or successor entity shall offer~~
 9199 ~~any claimant whose known claim is contingent, conditional, or~~
 9200 ~~unmatured such security as the corporation or such entity~~
 9201 ~~determines is sufficient to provide compensation to the claimant~~
 9202 ~~if the claim matures. The dissolved corporation or successor~~
 9203 ~~entity shall deliver such offer to the claimant within 90 days~~
 9204 ~~after receipt of such claim and, in all events, at least 150~~
 9205 ~~days before expiration of 3 years following the effective date~~
 9206 ~~of dissolution. If the claimant offered such security does not~~
 9207 ~~deliver in writing to the dissolved corporation or successor~~
 9208 ~~entity a notice rejecting the offer within 120 days after~~
 9209 ~~receipt of such offer for security, the claimant is deemed to~~
 9210 ~~have accepted such security as the sole source from which to~~
 9211 ~~satisfy his or her claim against the corporation.~~

9212 ~~(6) A dissolved corporation or successor entity which has~~
 9213 ~~given notice in accordance with subsections (2) and (4) shall~~
 9214 ~~petition the circuit court in the county where the corporation's~~
 9215 ~~principal office is located or was located at the effective date~~
 9216 ~~of dissolution to determine the amount and form of security that~~
 9217 ~~will be sufficient to provide compensation to any claimant who~~
 9218 ~~has rejected the offer for security made pursuant to subsection~~
 9219 ~~(5).~~

9220 ~~(7) A dissolved corporation or successor entity which has~~
 9221 ~~given notice in accordance with subsection (2) shall petition~~
 9222 ~~the circuit court in the county where the corporation's~~

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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~~

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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~~

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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~~

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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.—

9318 (1) A dissolved corporation ~~or successor entity, as defined~~
9319 ~~in s. 607.1406(15), may choose to execute one of the following~~
9320 ~~procedures to resolve any claims other than known payment of~~
9321 ~~unknown claims:—~~

9322 (a)(1) A dissolved corporation ~~or successor entity~~ may file
9323 notice of its dissolution with the department ~~of State~~ on the
9324 form prescribed by the department ~~of State~~ and request that
9325 persons with claims against the corporation which are not known
9326 to the dissolved corporation or successor entity present them in
9327 accordance with the notice. The notice ~~must~~ shall:

9328 1.(a) State the name of the corporation that is the subject
9329 of the and the date of dissolution;

9330 2.(b) State that the corporation is the subject of a
9331 dissolution and the effective date of the dissolution Describe
9332 the information that must be included in a claim and provide a
9333 mailing address to which the claim may be sent; and

9334 3. Specify the information that must be included in a
9335 claim;

9336 4. State that a claim must be in writing and provide a
9337 mailing address where a claim may be sent; and

9338 5.(e) State that a claim against the corporation under this

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9339 subsection will be barred unless a proceeding to enforce the
9340 claim is commenced within 4 years after the filing of the
9341 notice.

9342 ~~(b)(2)~~ A dissolved corporation ~~or successor entity~~ may,
9343 within 10 days after filing articles of dissolution with the
9344 department ~~of State~~, publish a "Notice of Corporate
9345 Dissolution." The notice shall appear once a week for 2
9346 consecutive weeks in a newspaper of general circulation in a
9347 county in the state in which the corporation has its principal
9348 office, if any, or, if none, in a county in the state in which
9349 the corporation owns real or personal property. Such newspaper
9350 shall meet the requirements as are prescribed by law for such
9351 purposes. The notice ~~must~~ shall:

9352 1. State the name of the corporation that is the subject of
9353 the dissolution;

9354 2. State that the corporation is the subject of a
9355 dissolution and the effective date of the dissolution;

9356 3. Specify the information that must be included in the
9357 claim;

9358 4. State that a claim must be in writing and provide a
9359 mailing address where a claim may be sent; and

9360 5. State that a claim against the corporation under this
9361 subsection will be barred unless a proceeding to enforce the
9362 claim is commenced within 4 years after the date of the second
9363 consecutive weekly publication of the notice authorized by this
9364 section.

9365 ~~(a) State the name of the corporation and the date of~~
9366 ~~dissolution;~~

9367 ~~(b) Describe the information that must be included in a~~

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9368 ~~claim and provide a mailing address to which the claim may be~~
9369 ~~sent; and~~

9370 ~~(c) State that a claim against the corporation under this~~
9371 ~~subsection will be barred unless a proceeding to enforce the~~
9372 ~~claim is commenced within 4 years after the date of the second~~
9373 ~~consecutive weekly publication of the notice authorized by this~~
9374 ~~section.~~

9375 (2)(3) If the dissolved corporation ~~or successor entity~~
9376 complies with paragraph (1)(a) or paragraph (1)(b) subsection
9377 (1) or subsection (2), unless sooner barred by another statute
9378 limiting actions, the claim of each of the following claimants
9379 with known or other claims is barred unless the claimant
9380 commences a proceeding to enforce the claim against the
9381 dissolved corporation within 4 years after the date of filing
9382 the notice with the department ~~of State~~ or the date of the
9383 second consecutive weekly publication, as applicable:

9384 (a) A claimant who did not receive written notice under s.
9385 607.1406 s. 607.1406(9), or whose claim was not provided for
9386 under s. 607.1406(10), whether such claim is based on an event
9387 occurring before or after the effective date of dissolution.

9388 (b) A claimant whose claim was timely sent to the dissolved
9389 corporation but on which no action was taken by the dissolved
9390 corporation.

9391 (c) A claimant whose claim is not a known claim under s.
9392 607.1406(5)

9393 ~~(4) A claim may be entered under this section:~~

9394 ~~(a) Against the dissolved corporation, to the extent of its~~
9395 ~~undistributed assets; or~~

9396 ~~(b) If the assets have been distributed in liquidation,~~

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 9397 ~~against a shareholder of the dissolved corporation to the extent~~
 9398 ~~of such shareholder's pro rata share of the claim or the~~
 9399 ~~corporate assets distributed to such shareholder in liquidation,~~
 9400 ~~whichever is less, provided that the aggregate liability of any~~
 9401 ~~shareholder of a dissolved corporation arising under this~~
 9402 ~~section, s. 607.1406, or otherwise may not exceed the amount~~
 9403 ~~distributed to the shareholder in dissolution.~~

9404 (3) Nothing in this section shall preclude or relieve the
 9405 corporation from its notification to claimants otherwise set
 9406 forth in this chapter.

9407 Section 181. Section 607.1408, Florida Statutes, is created
 9408 to read:

9409 607.1408 Claims against dissolved corporations;
 9410 enforcement.—A claim that is not barred by s. 607.1406(4), by s.
 9411 607.1407(2), or by another statute limiting actions may be
 9412 enforced:

9413 (1) Against the dissolved corporation, to the extent of its
 9414 undistributed assets; or

9415 (2) Except as provided in s. 607.1409(4), if the assets
 9416 have been distributed in liquidation, against a shareholder of
 9417 the dissolved corporation to the extent of the shareholder's pro
 9418 rata share of the claim or the corporate assets distributed to
 9419 the shareholder in liquidation, whichever is less, provided that
 9420 the aggregate liability of any shareholder of a dissolved
 9421 corporation arising under s. 607.1406, under s. 607.1407, or
 9422 otherwise may not exceed the total amount of assets distributed
 9423 to the shareholder in dissolution.

9424 Section 182. Section 607.1409, Florida Statutes, is created
 9425 to read:

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 9426 607.1409 Court proceedings.—

9427 (1) A dissolved corporation that has filed a notice under
 9428 s. 607.1407(1) (a) or published a notice under s. 607.1407(1) (b)
 9429 may file an application with the circuit court in the applicable
 9430 county for a determination of the amount and form of security to
 9431 be provided for payment of claims that are contingent or have
 9432 not been made known to the dissolved corporation or that are
 9433 based on an event occurring after the effective date of
 9434 dissolution but that, based on the facts known to the dissolved
 9435 corporation, are reasonably estimated to arise after the
 9436 effective date of dissolution. Provision need not be made for
 9437 any claim that is or is reasonably anticipated to be barred
 9438 under s. 607.1407(2).

9439 (2) Within 10 days after the filing of the application
 9440 under subsection (1), notice of the proceeding shall be given by
 9441 the dissolved corporation to each claimant holding a contingent
 9442 claim whose identity and contingent claim is known to the
 9443 dissolved corporation. Such notice shall be accompanied by a
 9444 copy of ss. 607.1405-607.1410.

9445 (3) In any proceeding under this section, the court may
 9446 appoint a guardian ad litem to represent all claimants whose
 9447 identities are unknown. The reasonable fees and expenses of such
 9448 guardian, including all reasonable expert witness fees, shall be
 9449 paid by the dissolved corporation.

9450 (4) Provision by the dissolved corporation for security in
 9451 the amount and the form ordered by the court under subsection
 9452 (1) shall satisfy the dissolved corporation's obligations with
 9453 respect to claims that are contingent, have not been made known
 9454 to the dissolved corporation or are based on an event occurring

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9455 after the effective date of dissolution, and such claims may not
 9456 be enforced against a shareholder who received assets in
 9457 liquidation.

9458 Section 183. Section 607.1410, Florida Statutes, is created
 9459 to read:

9460 607.1410 Director duties.-

9461 (1) Directors shall cause the dissolved corporation to
 9462 discharge or make reasonable provision for the payment of claims
 9463 and make distributions in liquidation of assets to shareholders
 9464 after payment or provision for claims.

9465 (2) Directors of a dissolved corporation that has disposed
 9466 of claims under s. 607.1406, s. 607.1407, or s. 607.1409 are not
 9467 liable to any claimant or shareholder for a breach of subsection
 9468 (1) with respect to claims against the dissolved corporation
 9469 that are barred or satisfied in accordance with s. 607.1406, s.
 9470 607.1407, or s. 607.1409.

9471 Section 184. Section 607.1420, Florida Statutes, is amended
 9472 to read:

9473 607.1420 Grounds for Administrative dissolution.-

9474 (1) The department ~~may~~ of State ~~may commence a proceeding~~
 9475 under s. 607.1421 to administratively dissolve a corporation
 9476 administratively if the corporation does not:

9477 (a) Deliver its annual report to the department ~~The~~
 9478 corporation has failed to file its annual report and pay the
 9479 annual report filing fee by 5 p.m. Eastern Time on the third
 9480 Friday in September of each year;

9481 (b) Pay a fee or penalty due to the department under this
 9482 chapter;

9483 (c) Appoint and maintain a registered agent and registered

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9484 office as required by s. 607.0501 ~~The corporation is without a~~
 9485 ~~registered agent or registered office in this state for 30 days~~
 9486 ~~or more;~~

9487 (d) ~~(e)~~ Deliver for filing a statement of change under s.
 9488 607.0502 within 30 days after a change has occurred in the name
 9489 or address of the agent unless, within 30 days after the change
 9490 occurred:

9491 1. The agent filed a statement of change pursuant to s.
 9492 607.05031; or

9493 2. The change was made in accordance with s. 607.0502(4)
 9494 ~~The corporation does not notify the Department of State within~~
 9495 ~~30 days that its registered agent or registered office has been~~
 9496 ~~changed, that its registered agent has resigned, or that its~~
 9497 ~~registered office has been discontinued;~~

9498 (e) ~~(d)~~ The corporation has failed to answer truthfully and
 9499 fully, within the time prescribed by this chapter ~~act~~,
 9500 interrogatories propounded by the department ~~of State~~; or
 9501 (f) ~~(e)~~ The corporation's period of duration stated in its
 9502 articles of incorporation expires ~~has expired~~.

9503 (2) Administrative dissolution of a corporation for failure
 9504 to file an annual report must occur on the fourth Friday in
 9505 September of each year. The department shall issue a notice in a
 9506 record of administrative dissolution to the corporation
 9507 dissolved for failure to file an annual report. Issuance of the
 9508 notice may be by electronic transmission to a corporation that
 9509 has provided the department with an e-mail address.

9510 (3) If the department determines that one or more grounds
 9511 exist for administratively dissolving a corporation under
 9512 paragraph (1) (b), paragraph (1) (c), or paragraph (1) (d), the

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9513 department shall serve notice in a record to the corporation of
 9514 its intent to administratively dissolve the corporation.
 9515 Issuance of the notice may be by electronic transmission to a
 9516 corporation that has provided the department with an e-mail
 9517 address.

9518 (4) If, within 60 days after sending the notice of intent
 9519 to administratively dissolve pursuant to subsection (3), a
 9520 corporation does not correct each ground for dissolution under
 9521 paragraph (1) (b), paragraph (1) (c), or paragraph (1) (d) or
 9522 demonstrate to the reasonable satisfaction of the department
 9523 that each ground determined by the department does not exist,
 9524 the department shall dissolve the corporation administratively
 9525 and issue to the corporation a notice in a record of
 9526 administrative dissolution that states the grounds for
 9527 dissolution. Issuance of the notice of administrative
 9528 dissolution may be by electronic transmission to a corporation
 9529 that has provided the department with an e-mail address.

9530 (5) A corporation that has been administratively dissolved
 9531 continues in existence but may only carry on activities
 9532 necessary to wind up its activities and affairs, liquidate and
 9533 distribute its assets, and notify claimants under ss. 607.1405,
 9534 607.1406, and 607.1407.

9535 (6) The administrative dissolution of a corporation does
 9536 not terminate the authority of its registered agent for service
 9537 of process. The foregoing enumeration in subsection (1) of
 9538 grounds for administrative dissolution shall not exclude actions
 9539 or special proceedings by the Department of Legal Affairs or any
 9540 state officials for the annulment or dissolution of a
 9541 corporation for other causes as provided in any other statute of

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9542 ~~this state.~~

9543 Section 185. Section 607.1421, Florida Statutes, is
 9544 repealed.

9545 Section 186. Section 607.1422, Florida Statutes, is amended
 9546 to read:

9547 607.1422 Reinstatement following administrative
 9548 dissolution.—

9549 (1) A corporation that is administratively dissolved under
 9550 s. 607.1420 or that was dissolved under s. 607.1421 before
 9551 January 1, 2020, ~~s. 607.1421~~ may apply to the department of
 9552 State for reinstatement at any time after the effective date of
 9553 dissolution. The corporation must submit all fees and penalties
 9554 then owed by the corporation at the rates provided by laws at
 9555 the time the corporation applies for reinstatement, together
 9556 with an application for reinstatement prescribed and furnished
 9557 by the department, ~~which is a reinstatement form prescribed and~~
 9558 ~~furnished by the Department of State or a current uniform~~
 9559 ~~business report~~ signed by both the registered agent and an
 9560 officer or director of the corporation and states:

9561 (a) The name of the corporation;

9562 (b) The street address of the corporations' principal
 9563 office and mailing address;

9564 (c) The date of the corporation's organization;

9565 (d) The corporation's federal employer identification
 9566 number or, if none, whether one has been applied for;

9567 (e) The name, title or capacity, and address of at least
 9568 one officer or director of the corporation; and

9569 (f) Additional information that is necessary or appropriate
 9570 to enable the department to carry out this chapter.

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9571 (2) In lieu of the requirement to file an application for
 9572 reinstatement as described in subsection (1), an
 9573 administratively dissolved corporation may submit all fees and
 9574 penalties owed by the corporation at the rates provided by law
 9575 at the time the corporation applies for reinstatement, together
 9576 with a current annual report, signed by both the registered
 9577 agent and an officer or director of the corporation, which
 9578 contains the information described in subsection (1).

9579 (3) If the department determines that an application for
 9580 reinstatement contains the information required under subsection
 9581 (1) or subsection (2) and that the information is correct, upon
 9582 payment of all required fees and penalties, the department shall
 9583 reinstate the corporation.

9584 (4) When reinstatement under this section becomes
 9585 effective:

9586 (a) The reinstatement relates back to and takes effect as
 9587 of the effective date of the administrative dissolution.

9588 (b) The corporation may operate as if the administrative
 9589 dissolution had never occurred.

9590 (c) The rights of a person arising out of an act or
 9591 omission in reliance on the dissolution before the person knew
 9592 or had notice of the reinstatement are not affected and all fees
 9593 then owed by the corporation, computed at the rate provided by
 9594 law at the time the corporation applies for reinstatement.

9595 ~~(2) If the Department of State determines that the~~
 9596 ~~application contains the information required by subsection (1)~~
 9597 ~~and that the information is correct, it shall reinstate the~~
 9598 ~~corporation.~~

9599 ~~(3) When the reinstatement is effective, it relates back to~~

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9600 ~~and takes effect as of the effective date of the administrative~~
 9601 ~~dissolution and the corporation resumes carrying on its business~~
 9602 ~~as if the administrative dissolution had never occurred.~~

9603 (5)(4) The name of the dissolved corporation is not shall
 9604 ~~not be~~ available for assumption or use by another eligible
 9605 entity corporation until 1 year after the effective date of
 9606 dissolution unless the dissolved corporation provides the
 9607 department ~~of State~~ with a record signed as required by an
 9608 ~~affidavit executed as required by~~ s. 607.0120 permitting the
 9609 immediate assumption or use of the name by another eligible
 9610 entity corporation.

9611 (6)(5) If the name of the dissolved corporation has been
 9612 lawfully assumed in this state by another business entity, the
 9613 department corporation, the Department of State shall require
 9614 the dissolved corporation to amend its articles of incorporation
 9615 to change its name before accepting its application for
 9616 reinstatement.

9617 Section 187. Section 607.1423, Florida Statutes, is amended
 9618 to read:

9619 607.1423 Judicial review of Appeal from denial of
 9620 reinstatement.—

9621 (1) If the department ~~of State~~ denies a corporation's
 9622 application for reinstatement after following administrative
 9623 dissolution, ~~the department~~ it shall serve the corporation under
 9624 either s. 607.0504(1) or s. 607.0504(2) with a written notice
 9625 that explains the reason or reasons for denial.

9626 (2) Within 30 days after service of a notice of denial of
 9627 reinstatement, a corporation may appeal the denial by
 9628 petitioning the Circuit Court of Leon County to set aside the

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9629 dissolution. The petition must be served on the department and
 9630 contain a copy of the department's notice of administrative
 9631 ~~After exhaustion of administrative remedies, the corporation may~~
 9632 ~~appeal the denial of reinstatement to the appropriate court as~~
 9633 ~~provided in s. 120.68 within 30 days after service of the notice~~
 9634 ~~of denial is perfected. The corporation appeals by petitioning~~
 9635 ~~the court to set aside the dissolution and attaching to the~~
 9636 ~~petition copies of the Department of State's certificate of~~
 9637 dissolution, the corporation's application for reinstatement,
 9638 and the department's notice of denial.

9639 (3) The court may ~~summarily~~ order the department of State
 9640 to reinstate the dissolved corporation or ~~may~~ take other action
 9641 the court considers appropriate.

9642 (4) The court's final decision may be appealed as in other
 9643 civil proceedings.

9644 Section 188. Section 607.1430, Florida Statutes, is amended
 9645 to read:

9646 607.1430 Grounds for judicial dissolution.—

9647 (1) A circuit court may dissolve a corporation or order
 9648 such other remedy as provided in s. 607.1434:

9649 ~~(1)~~(a) In a proceeding by the Department of Legal Affairs
 9650 to dissolve a corporation if it is established that:

9651 1. The corporation obtained its articles of incorporation
 9652 through fraud; or

9653 2. The corporation has continued to exceed or abuse the
 9654 authority conferred upon it by law.

9655 ~~(b)~~ The enumeration in subparagraphs 1. and 2. ~~paragraph (a)~~ of
 9656 grounds for involuntary dissolution does not exclude actions or
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9658 special proceedings by the Department of Legal Affairs or any
 9659 state official for the annulment or dissolution of a corporation
 9660 for other causes as provided in any other statute of this state;

9661 (b)(2) In a proceeding by a shareholder to dissolve a
 9662 corporation if it is established that:

9663 1.(a) The directors are deadlocked in the management of the
 9664 corporate affairs, the shareholders are unable to break the
 9665 deadlock, and;

9666 a. Irreparable injury to the corporation is threatened or
 9667 being suffered;

9668 b. The business and affairs of the corporation can no
 9669 longer be conducted to the advantage of the shareholders
 9670 generally because of the deadlock; or

9671 c. Both; or

9672 2.(b) The shareholders are deadlocked in voting power and
 9673 have failed to elect successors to directors whose terms have
 9674 expired or would have expired upon qualification of their
 9675 successors;

9676 ~~(3)~~ In a proceeding by a shareholder or group of
 9677 shareholders in a corporation having 35 or fewer shareholders if
 9678 it is established that:

9679 3.(a) The corporate assets are being misapplied or wasted,
 9680 causing material injury to the corporation; or

9681 4.(b) The directors or those in control of the corporation
 9682 have acted, are acting, or will ~~are reasonably expected to~~ act
 9683 in a manner that is illegal, oppressive, or fraudulent;

9684 (c)(4) In a proceeding by a creditor if it is established
 9685 that:

9686 1.(a) The creditor's claim has been reduced to judgment,

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9687 the execution on the judgment returned unsatisfied, and the
9688 corporation is insolvent; or

9689 ~~2.(b)~~ The corporation has admitted in writing that the
9690 creditor's claim is due and owing and the corporation is
9691 insolvent; ~~or~~

9692 ~~(d)(5)~~ In a proceeding by the corporation to have its
9693 voluntary dissolution continued under court supervision; or

9694 (e) In a proceeding by a shareholder if the corporation has
9695 abandoned its business and has failed within a reasonable period
9696 of time to liquidate and distribute its assets and dissolve.

9697 (2) Paragraph (1)(b) does not apply in the case of a
9698 corporation that, on the date of the filing of the proceeding,
9699 has shares that are:

9700 (a) A covered security under s. 18(b)(1)(A) or (B) of the
9701 Securities Act of 1933; or

9702 (b) Not a covered security, but are held by at least 300
9703 shareholders and the shares outstanding have a market value of
9704 at least \$20 million, exclusive of the value of outstanding
9705 shares of the corporation held by the corporation's
9706 subsidiaries, by the corporation's senior executives, by the
9707 corporation's directors, and by the corporation's beneficial
9708 shareholders and voting trust beneficial owners owning more than
9709 10 percent of the outstanding shares of the corporation.

9710 (3) A proceeding by a shareholder under subparagraph
9711 (1)(b)4. asserting that the directors or those in control of the
9712 corporation have acted, are acting, or will act in a manner that
9713 is oppressive may only be brought by a shareholder who at the
9714 time that such proceeding is commenced under subparagraph
9715 (1)(b)4. owns at least 10 percent of the outstanding shares of

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9716 the corporation.

9717 (4)(a) In the event of a deadlock situation that satisfies
9718 subparagraph (1)(b)1. or subparagraph (1)(b)2., if the
9719 shareholders are subject to a shareholder agreement that
9720 complies with s. 607.0732 and contains a deadlock sale
9721 provision, then such deadlock sale provision shall apply to the
9722 resolution of such deadlock in lieu of the court entering an
9723 order of judicial dissolution or an order directing the purchase
9724 of petitioner's shares under s. 607.1436, so long as the
9725 provisions of such deadlock sale provision are initiated and
9726 effectuated within the time periods specified for the
9727 corporation to act under s. 607.1436 and in accordance with the
9728 terms of such deadlock sale provision.

9729 (b) As used in this section, the term "deadlock sale
9730 provision" means a provision in a shareholder agreement that
9731 complies with s. 607.0732, which is or may be applicable in the
9732 event of a deadlock among the directors or shareholders of the
9733 corporation, which neither the directors nor the shareholders,
9734 as applicable, of the corporation are able to break; and which
9735 provides for a deadlock breaking mechanism, including, but not
9736 limited to:

9737 1. A redemption or a purchase and sale of shares or other
9738 equity securities;

9739 2. A governance change;

9740 3. A sale of the corporation or all or substantially all of
9741 the assets of the corporation; or

9742 4. A similar provision that, if initiated and effectuated,
9743 breaks the deadlock by causing the transfer of the shares or
9744 other equity securities, a governance change, or a sale of the

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9745 corporation or all or substantially all of the corporation's
 9746 assets.

9747 (5) (a) In the event of oppressive action that satisfies
 9748 subparagraph (1) (b)4., if the shareholders are subject to a
 9749 shareholder agreement that complies with s. 607.0732 and
 9750 contains an oppressive action sale provision, then such
 9751 oppressive action sale provision shall address such shareholder
 9752 asserted oppressive action in lieu of the court entering an
 9753 order of judicial dissolution or an order directing the purchase
 9754 of petitioner's shares under s. 607.1436, so long as the
 9755 provisions of such oppressive action sale provision are
 9756 initiated and effectuated within the time periods specified for
 9757 the corporation to act under s. 607.1436 and in accordance with
 9758 the terms of such oppressive action sale provision.

9759 (b) For purposes of this section, the term "oppressive
 9760 action sale provision" means a provision in a shareholder
 9761 agreement that complies with s. 607.0732, which is or may be
 9762 applicable in the event of a shareholder's assertion of the
 9763 occurrence or existence of oppressive action; which neither the
 9764 directors nor the shareholders, as applicable, of the
 9765 corporation are able to address; and which provides for a
 9766 mechanism for addressing the occurrence or existence of such
 9767 shareholder asserted oppressive action including, but not
 9768 limited to:

- 9769 1. A redemption or purchase and sale of shares or other
 9770 equity securities;
- 9771 2. The sale of the corporation or of all or substantially
 9772 all of the assets of the corporation; or
- 9773 3. A similar provision that, if initiated and effectuated,

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9774 causes the transfer of shares or other equity securities to be
 9775 redeemed or purchased and sold or the sale of the corporation or
 9776 of all or substantially all of the corporation's assets.

9777 (6) A deadlock sale provision or an oppressive action sale
 9778 provision in a shareholder agreement which complies with s.
 9779 607.0732 which is not initiated and effectuated before the court
 9780 enters an order of judicial dissolution under subparagraph
 9781 (1) (b)1., subparagraph (1) (b)2., or subparagraph (1) (b)4., as
 9782 the case may be, or an order directing the purchase of
 9783 petitioner's interest under s. 607.1436, does not adversely
 9784 affect the rights of shareholders to seek judicial dissolution
 9785 under subparagraph (1) (b)1., subparagraph (1) (b)2., or
 9786 subparagraph (1) (b)4., as the case may be, or the rights of the
 9787 corporation or one or more shareholders to purchase the
 9788 petitioner's interest under s. 607.1436. The filing of an action
 9789 for judicial dissolution on the grounds described in
 9790 subparagraph (1) (b)1., subparagraph (1) (b)2., or subparagraph
 9791 (1) (b)4., as the case may be, or an election to purchase the
 9792 petitioner's interest under s. 607.1436, does not adversely
 9793 affect the right of a shareholder to initiate an available
 9794 deadlock sale provision or an oppressive action sale provision
 9795 under the shareholder agreement that complies with s. 607.0732
 9796 or to enforce a shareholder-initiated or an automatically-
 9797 initiated deadlock sale provision or oppressive action sale
 9798 provision if the deadlock sale provision or the oppressive sale
 9799 provision, as the case may be, is initiated and effectuated
 9800 before the court enters an order of judicial dissolution under
 9801 subparagraph (1) (b)1., subparagraph (1) (b)2., or subparagraph
 9802 (1) (b)4., as the case may be, or an order directing the purchase

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9803 of petitioner's interest under s. 607.1436.

9804 (7) For purposes of subsections (1), (2), and (3), the term
 9805 "shareholder" means a record shareholder, a beneficial
 9806 shareholder, or an unrestricted voting trust beneficial owner.

9807 Section 189. Subsections (1), (3), and (4) of section
 9808 607.1431, Florida Statutes, are amended to read:

9809 607.1431 Procedure for judicial dissolution.—

9810 (1) Venue for a proceeding brought under s. 607.1430 lies
 9811 in the circuit court in the applicable county of the county
 9812 ~~where the corporation's principal office is or was last located,~~
 9813 ~~as shown by the records of the Department of State, or, if none~~
 9814 ~~in this state, where its registered office is or was last~~
 9815 ~~located.~~

9816 (3) A court in a proceeding brought under s. 607.1430 ~~to~~
 9817 ~~dissolve a corporation~~ may issue injunctions, appoint a receiver
 9818 or custodian during the proceeding pendente lite with all powers
 9819 and duties the court directs, take other action required to
 9820 preserve the corporate assets wherever located, and carry on the
 9821 business of the corporation until a full hearing can be held.

9822 (4) Within 30 days of the commencement of a proceeding
 9823 under s. 607.1430(1)(b), the corporation shall deliver to all
 9824 shareholders, other than the petitioner, a notice stating that
 9825 the shareholders are entitled to avoid the dissolution of the
 9826 corporation by electing to purchase the petitioner's shares
 9827 under s. 607.1436 and accompanied by a copy of s. 607.1436.

9828 (5) If the court determines that any party has commenced,
 9829 continued, or participated in a proceeding ~~an action~~ under s.
 9830 607.1430 and has acted arbitrarily, frivolously, vexatiously, or
 9831 not in good faith, the court may, in its discretion, award

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9832 attorney ~~attorney's~~ fees and other reasonable expenses to the
 9833 other parties to the action who have been affected adversely by
 9834 such actions.

9835 Section 190. Subsections (1) and (2), paragraph (a) of
 9836 subsection (3), and subsections (4) and (5) of section 607.1432,
 9837 Florida Statutes, are amended to read:

9838 607.1432 Receivership or custodianship.—

9839 (1) A court in a judicial proceeding brought under s.
 9840 607.1430 ~~to dissolve a corporation~~ may appoint one or more
 9841 receivers to wind up and liquidate, or one or more custodians to
 9842 manage, the business and affairs of the corporation. The court
 9843 shall hold a hearing, after notifying all parties to the
 9844 proceeding and any interested persons designated by the court,
 9845 before appointing a receiver or custodian. The court appointing
 9846 a receiver or custodian has exclusive jurisdiction over the
 9847 corporation and all of its property wherever located.

9848 (2) The court may appoint a natural person or an eligible
 9849 entity ~~a corporation~~ authorized to act as a receiver or
 9850 custodian. The eligible entity ~~corporation~~ may be a domestic
 9851 eligible entity ~~corporation~~ or a foreign eligible entity
 9852 ~~corporation~~ authorized to transact business in this state. The
 9853 court may require the receiver or custodian to post bond, with
 9854 or without sureties, in an amount the court directs.

9855 (3) The court shall describe the powers and duties of the
 9856 receiver or custodian in its appointing order, which may be
 9857 amended from time to time. Among other powers:

9858 (a) The receiver:

9859 1. May dispose of all or any part of the assets of the
 9860 corporation wherever located, at a public or private sale, if

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9861 authorized by the court; and

9862 2. May sue and defend in his, her, or its ~~or her~~ own name
9863 as receiver of the corporation in all courts of this state.

9864 (4) The court during a receivership may redesignate the
9865 receiver a custodian, and during a custodianship may redesignate
9866 the custodian a receiver, if doing so is determined by the court
9867 to be in the best interests of the corporation and its
9868 shareholders and creditors.

9869 (5) The court from time to time during the receivership or
9870 custodianship may order compensation paid and expense
9871 disbursements or reimbursements made to the receiver or
9872 custodian and his, her, or its ~~or her~~ counsel from the assets of
9873 the corporation or proceeds from the sale of the assets.

9874 Section 191. Section 607.1433, Florida Statutes, is amended
9875 to read:

9876 607.1433 Judgment of dissolution.—

9877 (1) If after a hearing in a proceeding under s. 607.1430
9878 the court determines that one or more grounds for judicial
9879 dissolution described in s. 607.1430 exist, it may enter a
9880 judgment dissolving the corporation and specifying the effective
9881 date of the dissolution, and the clerk of the court shall
9882 deliver a certified copy of the judgment to the department of
9883 ~~State~~, which shall file it.

9884 (2) After entering the judgment of dissolution, the court
9885 shall direct the winding up and liquidation of the corporation's
9886 business and affairs in accordance with s. 607.1405 and the
9887 notification of claimants in accordance with ss. 607.1406 and
9888 607.1407 ~~s. 607.1406~~, subject to the provisions of subsection

9889 (3).

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9890 (3) In a proceeding for judicial dissolution, the court may
9891 require all creditors of the corporation to file with the clerk
9892 of the court or with the receiver, in such form as the court may
9893 prescribe, proofs under oath of their respective claims. If the
9894 court requires the filing of claims, it shall fix a date, which
9895 shall be not less than 4 months from the date of the order, as
9896 the last day for filing of claims. The court shall prescribe the
9897 method by which such notice of the deadline for filing claims
9898 shall be given to creditors and claimants. Prior to the date so
9899 fixed, the court may extend the time for the filing of claims by
9900 court order. Creditors and claimants failing to file proofs of
9901 claim on or before the date so fixed shall be barred ~~may be~~
9902 ~~barred, by order of court,~~ from participating in the
9903 distribution of the assets of the corporation. Nothing in this
9904 section affects the enforceability of any recorded mortgage or
9905 lien or the perfected security interest or rights of a person in
9906 possession of real or personal property.

9907 Section 192. Section 607.1434, Florida Statutes, is amended
9908 to read:

9909 607.1434 Alternative remedies to judicial dissolution.—

9910 (1) In a proceeding under an action for dissolution
9911 ~~pursuant to~~ s. 607.1430, the court may, as an alternative to
9912 directing the dissolution of the corporation and upon a showing
9913 of sufficient merit to warrant such remedy:

9914 (a)(1) Appoint a receiver or custodian during the
9915 proceeding pendente lite as provided in s. 607.1432;

9916 (b)(2) Appoint a provisional director as provided in s.
9917 607.1435;

9918 (c)(3) Order a purchase of the petitioning complaining

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9919 shareholder's shares pursuant to s. 607.1436; or
 9920 ~~(d) (4) Upon proof of good cause,~~ Make any order or grant
 9921 any equitable relief other than dissolution or liquidation as in
 9922 its discretion it may deem appropriate.

9923 (2) Alternative remedies, such as the appointment of a
 9924 receiver or custodian, may also be ordered in the discretion of
 9925 the court, upon a showing of sufficient merit to warrant such
 9926 remedy, in advance of directing the dissolution of the
 9927 corporation or, after a judgment of dissolution is entered, to
 9928 assist in facilitating the winding up of the corporation.

9929 Section 193. Subsections (1) and (3) of section 607.1435,
 9930 Florida Statutes, are amended to read:

9931 607.1435 Provisional director.—

9932 (1) In a proceeding under s. 607.1430, a provisional
 9933 director may be appointed in the discretion of the court if it
 9934 appears that such action by the court will remedy the grounds
 9935 alleged by the complaining shareholder to support the
 9936 jurisdiction of the court under s. 607.1430. A provisional
 9937 director may be appointed notwithstanding the absence of a
 9938 vacancy on the board of directors, and such director shall have
 9939 all the rights and powers of a duly elected director, including
 9940 the right to notice of and to vote at meetings of directors,
 9941 until such time as the provisional director is removed by order
 9942 of the court or, unless otherwise ordered by a court, removed by
 9943 a vote of the shareholders sufficient either to elect a majority
 9944 of the board of directors or, if greater than majority voting is
 9945 required by the articles of incorporation or the bylaws, to
 9946 elect the requisite number of directors needed to take action. A
 9947 provisional director shall be an impartial person who is neither

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9948 a shareholder nor a creditor of the corporation or of any
 9949 subsidiary or affiliate of the corporation, and whose further
 9950 qualifications, if any, may be determined by the court.

9951 (3) In any proceeding under which a provisional director is
 9952 appointed pursuant to this section, the court shall allow
 9953 reasonable compensation to the provisional director for services
 9954 rendered and reimbursement or direct payment of reasonable costs
 9955 and expenses, which amounts shall be paid by the corporation.

9956 Section 194. Section 607.1436, Florida Statutes, is amended
 9957 to read:

9958 607.1436 Election to purchase instead of dissolution.—

9959 (1) In a proceeding under s. 607.1430(1)(b) ~~s. 607.1430(2)~~
 9960 ~~or (3) to dissolve a corporation,~~ the corporation may elect or,
 9961 if it fails to elect, one or more shareholders may elect to
 9962 purchase all shares owned by the petitioning shareholder at the
 9963 fair value of the shares. An election pursuant to this section
 9964 shall be irrevocable unless the court determines that it is
 9965 equitable to set aside or modify the election.

9966 (2) An election to purchase pursuant to this section may be
 9967 filed with the court at any time within 90 days after the filing
 9968 of the petition under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3)~~ or
 9969 at such later time as the court in its discretion may allow. If
 9970 the election to purchase is filed by one or more shareholders,
 9971 the corporation shall, within 10 days thereafter, give written
 9972 notice to all shareholders, other than the petitioner. The
 9973 notice must state the name and number of shares owned by the
 9974 petitioner and the name and number of shares owned by each
 9975 electing shareholder and must advise the recipients of their
 9976 right to join in the election to purchase shares in accordance

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9977 with this section. Shareholders who wish to participate must
 9978 file notice of their intention to join in the purchase no later
 9979 than 30 days after the effective date of the notice to them. All
 9980 shareholders who have filed an election or notice of their
 9981 intention to participate in the election to purchase thereby
 9982 become parties to the proceeding and shall participate in the
 9983 purchase in proportion to their ownership of shares as of the
 9984 date the first election was filed, unless they otherwise agree
 9985 or the court otherwise directs. After an election has been filed
 9986 by the corporation or one or more shareholders, the proceeding
 9987 under s. 607.1430(1)(b) ~~s. 607.1430(2) or (3)~~ may not be
 9988 discontinued or settled, nor may the petitioning shareholder
 9989 sell or otherwise dispose of his or her shares, unless the court
 9990 determines that it would be equitable to the corporation and the
 9991 shareholders, other than the petitioner, to permit such
 9992 discontinuance, settlement, sale, or other disposition.

9993 (3) If, within 60 days after the filing of the first
 9994 election, the parties reach agreement as to the fair value and
 9995 terms of the purchase of the petitioner's shares, the court
 9996 shall enter an order directing the purchase of the petitioner's
 9997 shares upon the terms and conditions agreed to by the parties.

9998 (4) If the parties are unable to reach an agreement as
 9999 provided for in subsection (3), the court, upon application of
 10000 any party, may stay the proceeding to dissolve under s.
 10001 607.1430(1)(b) and shall, whether or not the proceeding is
 10002 stayed, shall stay the s. 607.1430 proceedings and determine the
 10003 fair value of the petitioner's shares as of the day before the
 10004 date on which the petition under s. 607.1430 was filed or as of
 10005 such other date as the court deems appropriate under the

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10006 circumstances.

10007 (5) Upon determining the fair value of the shares, the
 10008 court shall enter an order directing the purchase upon such
 10009 terms and conditions as the court deems appropriate, which may
 10010 include payment of the purchase price in installments, when
 10011 necessary in the interests of equity, provision for security to
 10012 assure payment of the purchase price and any additional costs,
 10013 fees, and expenses as may have been awarded, and, if the shares
 10014 are to be purchased by shareholders, the allocation of shares
 10015 among such shareholders. In allocating the petitioner's shares
 10016 among holders of different classes of shares, the court shall
 10017 attempt to preserve any ~~the~~ existing distribution of voting
 10018 rights among holders of different classes and series insofar as
 10019 practicable and may direct that holders of any a specific class
 10020 or classes or series shall not participate in the purchase.
 10021 Interest may be allowed at the rate and from the date determined
 10022 by the court to be equitable; however, if the court finds that
 10023 the refusal of the petitioning shareholder to accept an offer of
 10024 payment was arbitrary or otherwise not in good faith, no
 10025 interest shall be allowed. If the court finds that the
 10026 petitioning shareholder had probable grounds for relief under s.
 10027 607.1430(1)(b) ~~s. 607.1430(3)~~, it may award expenses to the
 10028 petitioning shareholder, including reasonable fees and expenses
 10029 of counsel and of any experts employed by petitioner.

10030 (6) ~~The~~ Upon entry of an order under subsection (3) or
 10031 subsection (5) shall be subject to the provisions of subsection
 10032 (8), and the order shall not be entered unless and until the
 10033 award is determined by the court to be permitted under the
 10034 provisions of subsection (8). In determining compliance with s.

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10035 607.06401, the court may rely on an affidavit from the
 10036 corporation as to compliance with that section as of the
 10037 measurement date. Upon entry of an order under subsection (3) or
 10038 subsection (5), the court shall dismiss the petition to dissolve
 10039 the corporation under s. 607.1430(1)(b) ~~s. 607.1430~~ and the
 10040 petitioning shareholder shall no longer have any rights or
 10041 status as a shareholder of the corporation, except the right to
 10042 receive the amounts awarded by the order of the court, which
 10043 shall be enforceable in the same manner as any other judgment.

10044 (7) The purchase ordered pursuant to subsection (5) shall
 10045 be made within 10 days after the date the order becomes final
 10046 ~~unless, before that time, the corporation files with the court a~~
 10047 ~~notice of its intention to adopt articles of dissolution~~
 10048 ~~pursuant to ss. 607.1402 and 607.1403, which articles shall then~~
 10049 ~~be adopted and filed within 50 days thereafter. Upon filing of~~
 10050 ~~such articles of dissolution, the corporation shall be dissolved~~
 10051 ~~in accordance with the provisions of ss. 607.1405 and 607.1406,~~
 10052 ~~and the order entered pursuant to subsection (5) shall no longer~~
 10053 ~~be of any force or effect, except that the court may award the~~
 10054 ~~petitioning shareholder reasonable fees and expenses of counsel~~
 10055 ~~and any experts in accordance with the provisions of subsection~~
 10056 ~~(5) and the petitioner may continue to pursue any claims~~
 10057 ~~previously asserted on behalf of the corporation.~~

10058 (8) Any payment by the corporation pursuant to an order
 10059 under subsection (3) or subsection (5), other than an award of
 10060 fees and expenses pursuant to subsection (5), is subject to the
 10061 provisions of s. 607.06401. Unless otherwise provided in the
 10062 court's order, the effect of the distribution under s. 607.06401
 10063 shall be measured as of the date of the court's order under

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10064 subsection (3) or subsection (5).

10065 Section 195. Section 607.14401, Florida Statutes, is
 10066 amended to read:

10067 607.14401 Deposit with Department of Financial Services.—
 10068 Assets of a dissolved corporation that should be transferred to
 10069 a creditor, claimant, or shareholder of the corporation who
 10070 cannot be found or who is not competent to receive them shall be
 10071 reduced to cash and deposited, within 6 months from the date
 10072 fixed for the payment of the final liquidating distribution,
 10073 with the Department of Financial Services for safekeeping, where
 10074 such assets shall be held as abandoned property. When the
 10075 creditor, claimant, or shareholder furnishes satisfactory proof
 10076 of entitlement to the amount or assets deposited, the Department
 10077 of Financial Services shall pay such person the creditor,
 10078 claimant, or shareholder or his or her representative that
 10079 amount ~~or those assets.~~

10080 Section 196. Section 607.1501, Florida Statutes, is amended
 10081 to read:

10082 607.1501 Authority of foreign corporation to transact
 10083 business required; activities not constituting transacting
 10084 business.—

10085 (1) A foreign corporation may not transact business in this
 10086 state until it obtains a certificate of authority from the
 10087 department of State.

10088 (2) The following activities, among others, do not
 10089 constitute transacting business within the meaning of subsection
 10090 (1):

10091 (a) Maintaining, defending, mediating, arbitrating, or
 10092 settling any proceeding.

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- 10093 (b) Carrying on any activity concerning the internal
 10094 affairs of the foreign corporation, including holding meetings
 10095 of its shareholders or board of directors ~~the board of directors~~
 10096 ~~or shareholders or carrying on other activities concerning~~
 10097 ~~internal corporate affairs.~~
- 10098 (c) Maintaining bank accounts in financial institutions.
- 10099 (d) Maintaining offices ~~officers~~ or agencies for the
 10100 transfer, exchange, and registration of ~~the corporation's own~~
 10101 securities of the foreign corporation or maintaining trustees or
 10102 depositaries with respect to those securities.
- 10103 (e) Selling through independent contractors.
- 10104 (f) Soliciting or obtaining orders, whether by mail or
 10105 through employees, agents, or otherwise, if the orders require
 10106 acceptance outside this state before they become contracts.
- 10107 (g) Creating or acquiring indebtedness, mortgages, or ~~and~~
 10108 security interests in real or personal property.
- 10109 (h) Securing or collecting debts or enforcing mortgages or
 10110 ~~and~~ security interests in property securing the debts, and
 10111 holding, protecting, or maintaining property so acquired.
- 10112 (i) Transacting business in interstate commerce.
- 10113 (j) Conducting an isolated transaction that is completed
 10114 within 30 days and that is not one in the course of repeated
 10115 transactions of a like nature.
- 10116 (k) Owning and controlling a subsidiary corporation
 10117 incorporated in or limited liability company formed in, or
 10118 transacting business within, this state; or voting the shares
 10119 ~~stock~~ of any such subsidiary corporation; or voting the
 10120 membership interests of any such limited liability company,
 10121 which it has lawfully acquired.

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- 10122 (l) Owning a limited partnership interest in a limited
 10123 partnership that is transacting ~~doing~~ business within this
 10124 state, unless ~~the such~~ limited partner manages or controls the
 10125 partnership or exercises the powers and duties of a general
 10126 partner.
- 10127 (m) Owning, protecting, and maintaining, without more, real
 10128 or personal property.
- 10129 (3) The list of activities in subsection (2) is not an
 10130 exhaustive list of activities that do not constitute transacting
 10131 business within the meaning of subsection (1).
- 10132 (4) This section does not apply in determining the contacts
 10133 or activities that may subject a foreign corporation ~~has no~~
 10134 ~~application to the question of whether any foreign corporation~~
 10135 ~~is subject to service of process, taxation, or regulation under~~
 10136 ~~the and suit in this state under any law of this state other~~
 10137 ~~than this chapter.~~
- 10138 Section 197. Section 607.15015, Florida Statutes, is
 10139 created to read:
- 10140 607.15015 Governing law.—
- 10141 (1) The law of the state or other jurisdiction under which
 10142 a foreign corporation exists governs:
- 10143 (a) The organization and internal affairs of the foreign
 10144 corporation; and
- 10145 (b) The interest holder liability of its shareholders.
- 10146 (2) A foreign corporation may not be denied a certificate
 10147 of authority by reason of a difference between the laws of its
 10148 jurisdiction of formation and the laws of this state.
- 10149 (3) A certificate of authority does not authorize a foreign
 10150 corporation to engage in any business or exercise any power that

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10151 a corporation may not engage in or exercise in this state.
 10152 Section 198. Section 607.1502, Florida Statutes, is amended
 10153 to read:
 10154 607.1502 Effect of failure to have a certificate of
 10155 ~~Consequences of transacting business without~~ authority.-
 10156 (1) A foreign corporation transacting business in this
 10157 state or its successors may not prosecute or maintain an action
 10158 or proceeding without a certificate of authority may not
 10159 ~~maintain a proceeding in any court~~ in this state until it has
 10160 obtained ~~obtains~~ a certificate of authority to transact business
 10161 in this state.
 10162 (2) The successor to a foreign corporation that transacted
 10163 business in this state without a certificate of authority and
 10164 the assignee of a cause of action arising out of that business
 10165 may not prosecute or maintain a proceeding based on that cause
 10166 of action in a any court in this state until the foreign
 10167 corporation or its successor has obtained ~~obtains~~ a certificate
 10168 of authority to transact business in this state.
 10169 (3) A court may stay a proceeding commenced by a foreign
 10170 corporation or its successor or assignee until it determines
 10171 whether the foreign corporation or its successor requires a
 10172 certificate of authority. If it so determines, the court may
 10173 further stay the proceeding until the foreign corporation or its
 10174 successor has obtained a ~~obtains the~~ certificate of authority to
 10175 transact business in this state.
 10176 (4) A foreign corporation which transacts business in this
 10177 state without obtaining a certificate of authority is to do so
 10178 ~~shall be~~ liable to this state for the years or parts thereof
 10179 during which it transacted business in this state without

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10180 obtaining a certificate of authority in an amount equal to all
 10181 fees and penalties that ~~taxes which~~ would have been imposed by
 10182 this chapter ~~act~~ upon the foreign ~~such~~ corporation had it duly
 10183 applied for and received a certificate of authority to transact
 10184 business in this state as required under this chapter ~~by this~~
 10185 ~~act~~. In addition to the payments thus prescribed, the foreign
 10186 corporation may, to the extent ordered by a court of competent
 10187 jurisdiction, such corporation shall be liable for a civil
 10188 penalty of not less than \$500 but not ~~ex~~ more than \$1,000 for
 10189 each year or part thereof during which it transacts business in
 10190 this state without a certificate of authority. The department ~~of~~
 10191 ~~State~~ may collect all penalties due under this subsection and
 10192 may bring an action in circuit court to recover all penalties
 10193 and fees due and owing the state.
 10194 (5) ~~Notwithstanding subsections (1) and (2),~~ The failure of
 10195 a foreign corporation to have ~~obtain~~ a certificate of authority
 10196 to transact business in this state does not impair the validity
 10197 of any of its contracts, deeds, mortgages, security interests,
 10198 or corporate acts or prevent the foreign corporation ~~it~~ from
 10199 defending an action or any proceeding in this state.
 10200 (6) A shareholder, officer, or director of a foreign
 10201 corporation is not liable for the debts, obligations, or other
 10202 liabilities of the foreign corporation solely because the
 10203 foreign corporation transacted business in this state without a
 10204 certificate of authority.
 10205 (7) Section 607.15015(1) applies even if a foreign
 10206 corporation fails to have a certificate of authority to transact
 10207 business in this state.
 10208 (8) If a foreign corporation transacts business in this

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10209 state without a certificate of authority or cancels its
 10210 certificate of authority, it appoints the secretary of state as
 10211 its agent for service of process for rights of action arising
 10212 out of the transaction of business in this state.

10213 Section 199. Section 607.1503, Florida Statutes, is amended
 10214 to read:

10215 607.1503 Application for certificate of authority.—

10216 (1) A foreign corporation may apply for a certificate of
 10217 authority to transact business in this state by delivering an
 10218 application to the department ~~of State~~ for filing. Such
 10219 application shall be made on forms prescribed ~~and furnished~~ by
 10220 the department. The application must contain the following
 10221 Department of State and shall set forth:

10222 (a) The name of the foreign corporation and, if the name
 10223 does not comply with s. 607.0401, an alternate name adopted
 10224 pursuant to as long as its name satisfies the requirements of s.
 10225 607.0401, but if its name does not satisfy such requirements, a
 10226 corporate name that otherwise satisfies the requirements of s.
 10227 607.1506.

10228 (b) The name of the foreign corporation's jurisdiction of
 10229 incorporation. jurisdiction under the law of which it is
 10230 incorporated;

10231 (c) Its date of incorporation and period of duration.

10232 (d) The principal office and mailing address of the foreign
 10233 corporation. street address of its principal office;

10234 (e) The name and street address in this state of, and the
 10235 written acceptance by, the foreign corporation's initial
 10236 registered agent in this state. of its registered office in this
 10237 state and the name of its registered agent at that office;

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10238 (f) The names and usual business addresses of its current
 10239 directors and officers.

10240 (g) ~~Such~~ Additional information as may be necessary or
 10241 appropriate in order to enable the department ~~of State~~ to
 10242 determine whether ~~the foreign~~ ~~such~~ corporation is entitled to
 10243 file an application for certificate of authority to transact
 10244 business in this state and to determine and assess the fees ~~and~~
 10245 ~~taxes~~ payable as prescribed in this chapter act.

10246 (2) The foreign corporation shall deliver with a the
 10247 completed application under subsection (1) a certificate of
 10248 existence or a record ~~(or a document of similar import,)~~ duly
 10249 authenticated, not more than 90 days prior to delivery of the
 10250 application to the department ~~of State~~, signed by the Secretary
 10251 of State or other official having custody of the foreign
 10252 corporation's publicly filed records in its jurisdiction of
 10253 incorporation corporate records in the jurisdiction under the
 10254 law of which it is incorporated. A translation of the
 10255 certificate, under oath of the translator, must be attached to a
 10256 certificate which is in a language other than the English
 10257 language.

10258 ~~(3) A foreign corporation shall not be denied authority to~~
 10259 ~~transact business in this state by reason of the fact that the~~
 10260 ~~laws of the jurisdiction under which such corporation is~~
 10261 ~~organized governing its organization and internal affairs differ~~
 10262 ~~from the laws of this state.~~

10263 Section 200. Section 607.1504, Florida Statutes, is amended
 10264 to read:

10265 607.1504 Amended certificate of authority.—

10266 (1) A foreign corporation authorized to transact business

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10267 in this state shall deliver for filing an amendment to its ~~make~~
 10268 ~~application to the Department of State to obtain an amended~~
 10269 ~~certificate of authority to reflect a change in any of the~~
 10270 ~~following if it changes:~~

10271 (a) Its name on the records of the department. ~~corporate~~
 10272 ~~name;~~

10273 (b) ~~The period of its duration; or~~

10274 ~~(c) The jurisdiction of its incorporation.~~

10275 (c) The name and street address in this state of the
 10276 foreign corporation's registered agent in this state, unless the
 10277 change was timely made in accordance with s. 607.0502 or s.
 10278 607.05031.

10279 (2) The amendment must be filed within 90 days after the
 10280 occurrence of a change described in subsection (1), must be
 10281 signed by an officer of the foreign corporation, and must state
 10282 the following ~~Such application shall be made within 90 days~~
 10283 ~~after the occurrence of any change mentioned in subsection (1),~~
 10284 ~~shall be made on forms prescribed by the Department of State,~~
 10285 ~~and shall be executed in accordance with s. 607.0120. The~~
 10286 ~~foreign corporation shall deliver with the completed~~
 10287 ~~application, a certificate, or a document of similar import,~~
 10288 ~~authenticated as of a date not more than 90 days prior to~~
 10289 ~~delivery of the application to the Department of State by the~~
 10290 ~~Secretary of State or other official having custody of corporate~~
 10291 ~~records in the jurisdiction under the laws of which it is~~
 10292 ~~incorporated, evidencing the amendment. A translation of the~~
 10293 ~~certificate, under oath or affirmation of the translator, must~~
 10294 ~~be attached to a certificate that is in a language other than~~
 10295 ~~English. The application shall set forth:~~

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10296 (a) The name of the foreign corporation as it appears on
 10297 the records of the department ~~of State.~~

10298 (b) The jurisdiction of its incorporation.

10299 (c) The date the foreign corporation ~~it~~ was authorized to
 10300 do business in this state.

10301 (d) If the name of the foreign corporation has been
 10302 changed, the name relinquished and its new name, ~~the new name,~~ a
 10303 ~~statement that the change of name has been effected under the~~
 10304 ~~laws of the jurisdiction of its incorporation, and the date the~~
 10305 ~~change was effected.~~

10306 (e) If the amendment changes its period of duration, a
 10307 statement of such change.

10308 (f) If the amendment changes the jurisdiction of
 10309 incorporation of the foreign corporation, a statement of that
 10310 ~~such~~ change.

10311 (3) The requirements of s. 607.1503 for obtaining an
 10312 original certificate of authority apply to obtaining an amended
 10313 certificate under this section unless the official having
 10314 custody of the foreign corporation's publicly filed records in
 10315 its jurisdiction of incorporation did not require an amendment
 10316 to effectuate the change on its records.

10317 (4) Subject to subsection (3), a foreign corporation
 10318 authorized to transact business in this state may make
 10319 application to the department to obtain an amended certificate
 10320 of authority to add, remove, or change the name, title,
 10321 capacity, or address of an officer or director of the foreign
 10322 corporation.

10323 Section 201. Section 607.1505, Florida Statutes, is amended
 10324 to read:

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10325 607.1505 Effect of a certificate of authority.-

10326 (1) Unless the department determines than an application

10327 for a certificate of authority of a foreign corporation

10328 authorizes the foreign corporation to which it is issued to

10329 transact business in this state does not comply with the filing

10330 requirements of this chapter, the department shall, upon payment

10331 of all filing fees, authorize the foreign corporation to

10332 transact business in this state and file the application for

10333 certificate of authority subject, however, to the right of the

10334 Department of State to suspend or revoke the certificate as

10335 provided in this act.

10336 (2) The filing by the department of an application for a

10337 certificate of authority means that the foreign corporation that

10338 filed the application to transact business in this state has

10339 obtained a certificate of authority to transact business in this

10340 state and is authorized to transact business in this state,

10341 subject, however, to the right of the department to suspend or

10342 revoke the certificate of authority as provided in this chapter

10343 A foreign corporation with a valid certificate of authority has

10344 the same but no greater rights and has the same but no greater

10345 privileges as, and except as otherwise provided by this act is

10346 subject to the same duties, restrictions, penalties, and

10347 liabilities now or later imposed on, a domestic corporation of

10348 like character.

10349 ~~(3) This act does not authorize this state to regulate the~~

10350 ~~organization or internal affairs of a foreign corporation~~

10351 ~~authorized to transact business in this state.~~

10352 Section 202. Section 607.1506, Florida Statutes, is amended

10353 to read:

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10354 607.1506 Corporate name of foreign corporation.-

10355 (1) A foreign corporation whose name is unavailable under

10356 or whose name does not otherwise comply with s. 607.0401 shall

10357 use an alternate name the complies with s. 607.0401 is not

10358 entitled to file an application for a certificate of authority

10359 unless the corporate name of such corporation satisfies the

10360 requirements of s. 607.0401. If the corporate name of a foreign

10361 corporation does not satisfy the requirements of s. 607.0401,

10362 the foreign corporation, to obtain or maintain a certificate of

10363 authority to transact business in this state. An alternate name

10364 adopted for use in this state shall be cross-referenced to the

10365 actual name of the foreign corporation in the records of the

10366 department, provided that no cross-reference is required if the

10367 alternate name involves no more than adding the suffix

10368 "corporation," "company," or "incorporated" or the abbreviation

10369 "Corp.," or "Inc.," or "Co." or the designation "Corp.," or

10370 "Inc." or "Co." to the name. If the actual name of the foreign

10371 corporation subsequently becomes available in this state and the

10372 foreign corporation elects to operate in this state under its

10373 actual name, or the foreign corporation chooses to change its

10374 alternate name, a record approving the election or change, as

10375 the case may be, by its directors or shareholders, and signed as

10376 required pursuant to s. 607.0120, shall be delivered to the

10377 department for filing;

10378 ~~(a) May add the word "corporation," "company," or~~

10379 ~~"incorporated" or the abbreviation "Corp.," "Inc.," "Co.," or~~

10380 ~~the designation "Corp.," "Inc.," or "Co.," as will clearly indicate~~

10381 ~~that it is a corporation instead of a natural person,~~

10382 ~~partnership, or other business entity; or~~

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10383 ~~(b) May use an alternate name to transact business in this~~
 10384 ~~state if its real name is unavailable. Any such alternate~~
 10385 ~~corporate name, adopted for use in this state, shall be cross-~~
 10386 ~~referenced to the real corporate name in the records of the~~
 10387 ~~Division of Corporations. If the corporation's real corporate~~
 10388 ~~name becomes available in this state or the corporation chooses~~
 10389 ~~to change its alternate name, a copy of the resolution of its~~
 10390 ~~board of directors changing or withdrawing the alternate name,~~
 10391 ~~executed as required by s. 607.0120, shall be delivered for~~
 10392 ~~filing.~~

10393 (2) A foreign corporation that adopts an alternate name
 10394 under subsection (1) and obtains a certificate of authority with
 10395 the alternate name need not comply with s. 865.09 with respect
 10396 to the alternate name. The corporate name (including the
 10397 alternate name) of a foreign corporation must be distinguishable
 10398 upon the records of the Division of Corporations from:

10399 ~~(a) Any corporate name of a corporation incorporated or~~
 10400 ~~authorized to transact business in this state;~~

10401 ~~(b) The alternate name of another foreign corporation~~
 10402 ~~authorized to transact business in this state;~~

10403 ~~(c) The corporate name of a not-for-profit corporation~~
 10404 ~~incorporated or authorized to transact business in this state;~~
 10405 ~~and~~

10406 ~~(d) The names of all other entities or filings, except~~
 10407 ~~fictitious name registrations pursuant to s. 865.09, organized~~
 10408 ~~or registered under the laws of this state that are on file with~~
 10409 ~~the Division of Corporations.~~

10410 (3) So long as a foreign corporation maintains a
 10411 certificate of authority with an alternate name, a foreign

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10412 corporation shall transact business in this state under the
 10413 alternate name unless the corporation is authorized under s.
 10414 865.09 to transact business in this state under another name.

10415 ~~(4)(3)~~ If a foreign corporation authorized to transact
 10416 business in this state changes its corporate name to one that
 10417 does not ~~comply with~~ satisfy the requirements of s. 607.0401, it
 10418 may not ~~thereafter~~ transact business in this state ~~under the~~
 10419 ~~changed name~~ until it complies with subsection (1) ~~adopts a name~~
 10420 ~~satisfying the requirements of s. 607.0401~~ and obtains an
 10421 amended certificate of authority under s. 607.1504.

10422 (5) Notwithstanding the foregoing, a foreign corporation
 10423 may register under a name that is not otherwise distinguishable
 10424 on the records of the department with the written consent of the
 10425 other entity if the consent is filed with the department at the
 10426 time of registration of such name and if such name is not
 10427 identical to the name of the other entity.

10428 Section 203. Section 607.1507, Florida Statutes, is amended
 10429 to read:

10430 607.1507 Registered office and registered agent of foreign
 10431 corporation.—

10432 (1) Each foreign corporation authorized to transact
 10433 business in this state shall designate and must continuously
 10434 maintain in this state:

10435 (a) A registered office, which may be the same as that may
 10436 be the same as any of its ~~place~~ places of business in this
 10437 state; and

10438 (b) A registered agent, which must ~~who may~~ be:

10439 1. An individual who resides in this state and whose
 10440 business address is identical to the address of ~~office is~~

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10441 ~~identical with~~ the registered office;

10442 2. A domestic entity that is an authorized entity and whose
10443 business address is identical to the address of the registered
10444 office; or

10445 3. Another foreign entity authorized to transact business
10446 in this state which is an authorized entity and whose business
10447 address is identical to the address of ~~corporation or not-for-~~
10448 ~~profit corporation as defined in chapter 617, the business~~
10449 ~~office of which is identical with the registered office; or~~

10450 3. ~~Another foreign corporation or foreign not-for-profit~~
10451 ~~corporation authorized pursuant to this chapter or chapter 617,~~
10452 ~~to transact business or conduct its affairs in this state the~~
10453 ~~business office of which is identical with the registered~~
10454 ~~office.~~

10455 (2) This section does not apply to corporations that are
10456 required by law to designate the Chief Financial Officer as
10457 their attorney for service of process, associations subject to
10458 the provisions of chapter 665, and banks and trust companies
10459 subject to the financial institutions codes.

10460 (3) Each initial registered agent, and each successor
10461 registered agent that is appointed, shall ~~A registered agent~~
10462 ~~appointed pursuant to this section or a successor registered~~
10463 ~~agent appointed pursuant to s. 607.1508 on whom process may be~~
10464 ~~served shall each~~ file a statement in writing with the
10465 department, in the form and manner ~~Department of State, in such~~
10466 ~~form and manner as shall be~~ prescribed by the department,
10467 accepting the appointment as a registered agent while
10468 ~~simultaneously with his or her~~ being designated as the
10469 registered agent. The ~~Such~~ statement of acceptance must provide

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10470 ~~shall state~~ that the registered agent is familiar with, and
10471 accepts, the obligations of that position.

10472 (4) The duties of a registered agent are as follows:

10473 (a) To forward to the foreign corporation at the address
10474 most recently supplied to the registered agent by the foreign
10475 corporation, a process, notice, or demand pertaining to the
10476 foreign corporation which is served on or received by the
10477 registered agent; and

10478 (b) If the registered agent resigns, to provide the notice
10479 required under s. 607.1509 to the foreign corporation at the
10480 address most recently supplied to the registered agent by the
10481 foreign corporation.

10482 (5) The department shall maintain an accurate record of the
10483 registered agents and registered offices for service of process
10484 and shall promptly furnish any information disclosed thereby
10485 upon request and payment of the required fee.

10486 (6) A foreign corporation may not prosecute or maintain any
10487 action in a court in this state until the foreign corporation
10488 complies with the provisions of this section, pays to the
10489 department the amounts required by this chapter, and, to the
10490 extent ordered by a court of competent jurisdiction, pays to the
10491 department a penalty of \$5 for each day it has failed to so
10492 comply or \$500, whichever is less.

10493 (7) A court may stay a proceeding commenced by a foreign
10494 corporation until the corporation complies with this section.

10495 Section 204. Section 607.1508, Florida Statutes, is amended
10496 to read:

10497 607.1508 Change of registered office and registered agent
10498 of foreign corporation.—

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10499 (1) In order to change its registered agent or registered
 10500 office address, a foreign corporation authorized to transact
 10501 business in this state may deliver to the department ~~change its~~
 10502 ~~registered office or registered agent by delivering to the~~
 10503 ~~Department of State~~ for filing a statement of change containing
 10504 the following that sets forth:

10505 (a) The name of the foreign corporation. ~~Its name;~~
 10506 (b) The name ~~street address~~ of its current registered
 10507 office.~~;~~
 10508 (c) If the current registered agent is to be changed, the
 10509 name of the new registered agent.
 10510 (d) The street address of its current registered office for
 10511 its current registered agent.
 10512 (e) If the street address of the current registered office
 10513 is to be changed, the new street address of the registered
 10514 office
 10515 ~~(e) If the current registered office is to be changed, the~~
 10516 ~~street address of its new registered office;~~
 10517 ~~(d) The name of its current registered agent;~~
 10518 ~~(e) If the current registered agent is to be changed, the~~
 10519 ~~name of its new registered agent and the new agent's written~~
 10520 ~~consent (either on the statement or attached to it) to the~~
 10521 ~~appointment;~~
 10522 ~~(f) That, after the change or changes are made, the street~~
 10523 ~~address of its registered office and the business office of its~~
 10524 ~~registered agent will be identical; and~~
 10525 ~~(g) That such change was authorized by resolution duly~~
 10526 ~~adopted by its board of directors or by an officer of the~~
 10527 ~~corporation so authorized by the board of directors.~~

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10528 (2) If the registered agent is changed, the written
 10529 acceptance of the successor registered agent described in s.
 10530 607.1507(3) must also be included in or attached to the
 10531 statement of change.
 10532 (3) A statement of change is effective when filed by the
 10533 department.
 10534 (4) The changes described in this section may also be made
 10535 on the foreign corporation's annual report or in an application
 10536 for reinstatement filed with the department under s. 607.1622 ~~if~~
 10537 ~~a registered agent changes the street address of her or his~~
 10538 ~~business office, she or he may change the street address of the~~
 10539 ~~registered office of any foreign corporation for which she or he~~
 10540 ~~is the registered agent by notifying the corporation in writing~~
 10541 ~~of the change and signing (either manually or in facsimile) and~~
 10542 ~~delivering to the Department of State for filing a statement of~~
 10543 ~~change that complies with the requirements of paragraphs (1)(a)-~~
 10544 ~~(f) and recites that the corporation has been notified of the~~
 10545 ~~change.~~
 10546 Section 205. Section 607.1509, Florida Statutes, is amended
 10547 to read:
 10548 607.1509 Resignation of registered agent of foreign
 10549 corporation.-
 10550 (1) A registered agent may resign as agent for a foreign
 10551 corporation by delivering to the department for filing a signed
 10552 statement of resignation containing the name of the foreign
 10553 corporation ~~The registered agent of a foreign corporation may~~
 10554 ~~resign his or her agency appointment by signing and delivering~~
 10555 ~~to the Department of State for filing a statement of resignation~~
 10556 ~~and mailing a copy of such statement to the corporation at the~~

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10557 ~~corporation's principal office address shown in its most recent~~
 10558 ~~annual report or, if none, shown in its application for a~~
 10559 ~~certificate of authority or other most recently filed document.~~
 10560 ~~The statement of resignation must state that a copy of such~~
 10561 ~~statement has been mailed to the corporation at the address so~~
 10562 ~~stated. The statement of resignation may include a statement~~
 10563 ~~that the registered office is also discontinued.~~

10564 (2) After delivering the statement of resignation to the
 10565 department for filing, the registered agent must promptly mail a
 10566 copy to the foreign corporation at its current mailing address
 10567 The agency appointment is terminated as of the 31st day after
 10568 the date on which the statement was filed and, unless otherwise
 10569 provided in the statement, termination of the agency acts as a
 10570 termination of the registered office.

10571 (3) A registered agent is terminated upon the earlier of:

10572 (a) The 31st day after the department files the statement
 10573 of resignation; or

10574 (b) When a statement of change or other record designating
 10575 a new registered agent is filed by the department.

10576 (4) When a statement of resignation takes effect, the
 10577 registered agent ceases to have responsibility for a matter
 10578 thereafter tendered to it as agent for the foreign corporation.
 10579 The resignation does not affect contractual rights that the
 10580 foreign corporation has against the agent or that the agent has
 10581 against the foreign corporation.

10582 (5) A registered agent may resign from a foreign
 10583 corporation regardless of whether the foreign corporation has
 10584 active status.

10585 Section 206. Section 607.15091, Florida Statutes, is

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10586 created to read:

10587 607.15091 Change of name or address by registered agent.-

10588 (1) If a registered agent changes his or her name or
 10589 address, the agent may deliver to the department for filing a
 10590 statement of change containing the following:

10591 (a) The name of the foreign corporation represented by the
 10592 registered agent.

10593 (b) The name of the registered agent as currently shown in
 10594 the records of the department for the corporation.

10595 (c) If the name of the registered agent has changed, its
 10596 new name.

10597 (d) If the address of the registered agent has changed, the
 10598 new address.

10599 (e) A statement that the registered agent has given the
 10600 notice required under subsection (2).

10601 (2) A registered agent shall promptly furnish notice of the
 10602 statement of change and the changes made by the statement filed
 10603 with the department to the represented foreign corporation.

10604 Section 207. Section 607.15092, Florida Statutes, is
 10605 created to read:

10606 607.15092 Delivery of notice or other communication.-

10607 (1) Except as otherwise provided in this chapter,
 10608 permissible means of delivery of a notice or other communication
 10609 includes delivery by hand, the United States Postal Service, a
 10610 commercial delivery service, and electronic transmission, all as
 10611 more particularly described in s. 607.0141.

10612 (2) Except as provided in subsection (3), delivery to the
 10613 department is effective only when a notice or other
 10614 communication is received by the department.

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10615 (3) If a check is mailed to the department for payment of
 10616 an annual report fee or the annual supplemental fee required
 10617 under s. 607.193, the check shall be deemed to have been
 10618 received by the department as of the postmark date appearing on
 10619 the envelope or package transmitting the check if the envelope
 10620 or package is received by the department.

10621 Section 208. Section 607.15101, Florida Statutes, is
 10622 amended to read:

10623 607.15101 Service of process, notice, or demand on a
 10624 foreign corporation.—

10625 (1) A foreign corporation may be served with process
 10626 required or authorized by law by serving on its registered
 10627 agent.

10628 (2) If a foreign corporation ceases to have a registered
 10629 agent or if its registered agent cannot with reasonable
 10630 diligence be served, the process required or permitted by law
 10631 may instead be served on the chair of the board, the president,
 10632 any vice president, the secretary, or the treasurer of the
 10633 foreign corporation at the principal office of the foreign
 10634 corporation in this state.

10635 (3) If the process cannot be served on a foreign
 10636 corporation pursuant to subsection (1) or subsection (2), the
 10637 process may be served on the secretary of state as an agent of
 10638 the foreign corporation.

10639 (4) Service of process on the secretary of state may be
 10640 made by delivering to and leaving with the department duplicate
 10641 copies of the process.

10642 (5) Service is effectuated under subsection (3) on the date
 10643 shown as received by the department.

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10644 (6) The department shall keep a record of each process
 10645 served on the secretary of state pursuant to this section and
 10646 record the time of and the action taken regarding the service.

10647 (7) Any notice or demand on a foreign corporation under
 10648 this chapter may be given or made to the chair of the board, the
 10649 president, any vice president, the secretary, or the treasurer
 10650 of the foreign corporation; to the registered agent of the
 10651 foreign corporation at the registered office of the foreign
 10652 corporation in this state; or to any other address in this state
 10653 that is in fact the principal office of the foreign corporation
 10654 in this state.

10655 (8) This section does not affect the right to serve
 10656 process, give notice, or make a demand in any other manner
 10657 provided by law

10658 ~~(1) The registered agent of a foreign corporation~~
 10659 ~~authorized to transact business in this state is the~~
 10660 ~~corporation's agent for service of process, notice, or demand~~
 10661 ~~required or permitted by law to be served on the foreign~~
 10662 ~~corporation.~~

10663 ~~(2) A foreign corporation may be served by registered or~~
 10664 ~~certified mail, return receipt requested, addressed to the~~
 10665 ~~secretary of the foreign corporation at its principal office~~
 10666 ~~shown in its application for a certificate of authority or in~~
 10667 ~~its most recent annual report if the foreign corporation:~~

10668 ~~(a) Has no registered agent or its registered agent cannot~~
 10669 ~~with reasonable diligence be served;~~

10670 ~~(b) Has withdrawn from transacting business in this state~~
 10671 ~~under s. 607.1520; or~~

10672 ~~(c) Has had its certificate of authority revoked under s.~~

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10673 ~~607.1531.~~

10674 ~~(3) Service is perfected under subsection (2) at the~~

10675 ~~earliest of:~~

10676 ~~(a) The date the foreign corporation receives the mail;~~

10677 ~~(b) The date shown on the return receipt, if signed on~~

10678 ~~behalf of the foreign corporation; or~~

10679 ~~(c) Five days after its deposit in the United States mail,~~

10680 ~~as evidenced by the postmark, if mailed postpaid and correctly~~

10681 ~~addressed.~~

10682 ~~(4) This section does not prescribe the only means, or~~

10683 ~~necessarily the required means, of serving a foreign~~

10684 ~~corporation. Process against any foreign corporation may also be~~

10685 ~~served in accordance with chapter 48 or chapter 49.~~

10686 ~~(5) Any notice to or demand on a foreign corporation made~~

10687 ~~pursuant to this act may be made in accordance with the~~

10688 ~~procedures for notice to or demand on domestic corporations~~

10689 ~~under s. 607.0504.~~

10690 Section 209. Section 607.1520, Florida Statutes, is amended

10691 to read:

10692 607.1520 Withdrawal and cancellation of certificate of

10693 authority for of foreign corporation.-

10694 (1) To cancel its certificate of authority to transact

10695 business in this state, a foreign corporation must deliver to

10696 the department for filing a notice of withdrawal of certificate

10697 of authority. The certificate of authority is canceled when the

10698 notice of withdrawal becomes effective pursuant to s. 607.0123.

10699 The notice of withdrawal of certificate of authority must be

10700 signed by an officer or director and state the following:

10701 (a) The name of the foreign corporation as it appears on

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10702 the records of the department.

10703 (b) The name of the foreign corporation's jurisdiction of

10704 incorporation.

10705 (c) The date the foreign corporation was authorized to

10706 transact business in this state.

10707 (d) That the foreign corporation is withdrawing its

10708 certificate of authority in this state.

10709 (e) That it revokes the authority of its registered agent

10710 to accept service on its behalf and appoints the secretary of

10711 state as its agent for service of process based on a cause of

10712 action arising during the time it was authorized to transact

10713 business in this state.

10714 (f) A mailing address to which the secretary of state may

10715 mail a copy of any process served on the secretary of state

10716 under paragraph (e).

10717 (g) A commitment to notify the department in the future of

10718 any change in its mailing address. A foreign corporation

10719 authorized to transact business in this state may not withdraw

10720 from this state until it obtains a certificate of withdrawal

10721 from the Department of State.

10722 ~~(2) A foreign corporation authorized to transact business~~

10723 ~~in this state may apply for a certificate of withdrawal by~~

10724 ~~delivering an application to the Department of State for filing.~~

10725 ~~The application shall be made on forms prescribed and furnished~~

10726 ~~by the Department of State and shall set forth:~~

10727 ~~(a) The name of the foreign corporation and the~~

10728 ~~jurisdiction under the law of which it is incorporated;~~

10729 ~~(b) That it is not transacting business in this state and~~

10730 ~~that it surrenders its authority to transact business in this~~

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10731 ~~state.~~

10732 ~~(e) That it revokes the authority of its registered agent~~

10733 ~~to accept service on its behalf and appoints the Department of~~

10734 ~~State as its agent for service of process based on a cause of~~

10735 ~~action arising during the time it was authorized to transact~~

10736 ~~business in this state;~~

10737 ~~(d) A mailing address to which the Department of State may~~

10738 ~~mail a copy of any process served on it under paragraph (c); and~~

10739 ~~(e) A commitment to notify the Department of State in the~~

10740 ~~future of any change in its mailing address.~~

10741 (2)(3) After the withdrawal of the foreign corporation is

10742 effective, service of process on the secretary of state

10743 Department of State under this section is service on the foreign

10744 corporation. Upon receipt of the process, the secretary of state

10745 Department of State shall mail a copy of the process to the

10746 foreign corporation at the mailing address set forth under

10747 paragraph (1) (f) subsection (2).

10748 Section 210. Section 607.1521, Florida Statutes, is created

10749 to read:

10750 607.1521 Withdrawal deemed on conversion to domestic filing

10751 entity.—A foreign corporation authorized to transact business in

10752 this state that converts to a domestic corporation or another

10753 domestic eligible entity that is organized, incorporated,

10754 registered, or otherwise formed through the delivery of a record

10755 to the department for filing is deemed to have withdrawn its

10756 certificate of authority on the effective date of the

10757 conversion.

10758 Section 211. Section 607.1522, Florida Statutes, is created

10759 to read:

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10760 607.1522 Withdrawal on dissolution, merger, or conversion

10761 to certain nonfiling entities.—

10762 (1) A foreign corporation that is authorized to transact

10763 business in this state that has dissolved and completed winding

10764 up, has merged into a foreign eligible entity that is not

10765 authorized to transact business in this state, or has converted

10766 to a domestic or foreign eligible entity that is not organized,

10767 incorporated, registered or otherwise formed through the public

10768 filing of a record, shall deliver a notice of withdrawal of

10769 certificate of authority to the department for filing in

10770 accordance with s. 607.1520.

10771 (2) After a withdrawal under this section of a foreign

10772 corporation that has converted to another type of entity is

10773 effective, service of process in any action or proceeding based

10774 on a cause of action arising during the time the foreign

10775 corporation was authorized to transact business in this state

10776 may be made pursuant to s. 607.15101.

10777 Section 212. Section 607.1523, Florida Statutes, is created

10778 to read:

10779 607.1523 Action by Department of Legal Affairs.—The

10780 Department of Legal Affairs may maintain an action to enjoin a

10781 foreign corporation from transacting business in this state in

10782 violation of this chapter.

10783 Section 213. Section 607.1530, Florida Statutes, is amended

10784 to read:

10785 607.1530 ~~Grounds for~~ Revocation of certificate of authority

10786 to transact business.—

10787 (1) A ~~The~~ Department of State may commence a proceeding

10788 under ~~s. 607.1531~~ to revoke the certificate of authority of a

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10789 foreign corporation ~~authorized~~ to transact business in this
 10790 state ~~may be revoked by the department if:~~
 10791 (a)(1) The foreign corporation does not deliver its annual
 10792 report to the department has failed to file its annual report
 10793 ~~with the Department of State by 5 p.m. Eastern Time on the third~~
 10794 ~~Friday in September of each year;-~~
 10795 (b)(2) The foreign corporation does not pay a fee or
 10796 penalty due to the department under this chapter;- ~~within the~~
 10797 ~~time required by this act, any fees, taxes, or penalties imposed~~
 10798 ~~by this act or other law.~~
 10799 (c)(3) The foreign corporation does not appoint and
 10800 maintain a registered agent as required by s. 607.1507; is
 10801 ~~without a registered agent or registered office in this state~~
 10802 ~~for 30 days or more.~~
 10803 (d)(4) The foreign corporation does not deliver for filing
 10804 a statement of a change under s. 607.1508 within 30 days after
 10805 the change in the name or address of the agent has occurred,
 10806 unless, within 30 days after the change occurred, either:
 10807 1. The registered agent files a statement of change under
 10808 s. 607.15091; or
 10809 2. The change was made in accordance with s. 607.1508(4) or
 10810 s. 607.1504(1) (c);
 10811 (e) The foreign corporation has failed to amend its
 10812 certificate of authority to reflect a change in its name on the
 10813 records of the department or its jurisdiction of incorporation;
 10814 (f) The foreign corporation's period of duration stated in
 10815 its articles of incorporation has expired; notify the Department
 10816 ~~of State under s. 607.1508 or s. 607.1509 that its registered~~
 10817 ~~agent has resigned or that its registered office has been~~

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10818 ~~discontinued within 30 days of the resignation or~~
 10819 ~~discontinuance.~~
 10820 (g)(5) An incorporator, director, officer, or agent of the
 10821 foreign corporation signs signed a document that she or he knew
 10822 was false in a any material respect with the intent that the
 10823 document be delivered to the department of State for filing;-
 10824 (h)(6) The department of State receives a duly
 10825 authenticated certificate from the Secretary of State or other
 10826 official having custody of corporate records in the jurisdiction
 10827 under the law of which the foreign corporation is incorporated
 10828 stating that it has been dissolved or is no longer active on the
 10829 official's records; or disappeared as the result of a merger.
 10830 (i)(7) The foreign corporation has failed to answer
 10831 truthfully and fully, within the time prescribed by this chapter
 10832 ~~act, interrogatories propounded by the department of State.~~
 10833 (2) Revocation of a foreign corporation's certificate of
 10834 authority for failure to file an annual report shall occur on
 10835 the fourth Friday in September of each year. The department
 10836 shall issue a notice in a record of the revocation to the
 10837 revoked foreign corporation. Issuance of the notice may be by
 10838 electronic transmission to a foreign corporation that has
 10839 provided the department with an e-mail address.
 10840 (3) If the department determines that one or more grounds
 10841 exist under paragraph (1)(b) for revoking a foreign
 10842 corporation's certificate of authority, the department shall
 10843 issue a notice in a record to the foreign corporation of the
 10844 department's intent to revoke the certificate of authority.
 10845 Issuance of the notice may be by electronic transmission to a
 10846 foreign corporation that has provided the department with an e-

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10847 mail address.

10848 (4) If, within 60 days after the department sends the
 10849 notice of intent to revoke in accordance with subsection (3),
 10850 the foreign corporation does not correct each ground for
 10851 revocation or demonstrate to the reasonable satisfaction of the
 10852 department that each ground determined by the department does
 10853 not exist, the department shall revoke the foreign corporation's
 10854 authority to transact business in this state and issue a notice
 10855 in a record of revocation which states the grounds for
 10856 revocation. Issuance of the notice may be by electronic
 10857 transmission to a foreign corporation that has provided the
 10858 department with an e-mail address.

10859 (5) Revocation of a foreign corporation's certificate of
 10860 authority does not terminate the authority of the registered
 10861 agent of the corporation.

10862 Section 214. Section 607.1531, Florida Statutes, is
 10863 repealed.

10864 Section 215. Section 607.15315, Florida Statutes, is
 10865 amended to read:

10866 607.15315 ~~Revocation; application for~~ Reinstatement
 10867 following revocation of certificate of authority.-

10868 (1) ~~(a)~~ A foreign corporation the certificate of authority
 10869 of which has been revoked pursuant to s. 607.1530 or former s.
 10870 607.1531 may apply to the department ~~of State~~ for reinstatement
 10871 at any time after the effective date of revocation of authority.
 10872 The foreign corporation applying for reinstatement must submit
 10873 all fees and penalties then owed by the foreign corporation at
 10874 rates provided by law at the time the foreign corporation
 10875 applies for reinstatement, together with an application for

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10876 reinstatement prescribed and furnished by the department, which
 10877 is signed by both the registered agent and an officer or
 10878 director of the company and states ~~application must:~~

10879 (a) ~~1. Recite~~ The name under which ~~of~~ the foreign
 10880 corporation is authorized to transact business in this state.
 10881 ~~and the effective date of its revocation of authority;~~

10882 (b) ~~2-~~ The street address of the corporation's principal
 10883 office and mailing address. ~~State that the ground or grounds for~~
 10884 ~~revocation of authority either did not exist or have been~~
 10885 ~~eliminated and that no further grounds currently exist for~~
 10886 ~~revocation of authority;~~

10887 (c) The jurisdiction of the foreign corporation's formation
 10888 and the date on which it became qualified to transact business
 10889 in this state.

10890 (d) The foreign corporation's federal employer
 10891 identification number or, if none, whether one has been applied
 10892 for.

10893 (e) The name, title or capacity, and address of at least
 10894 one officer or director of the corporation.

10895 (f) Additional information that is necessary or appropriate
 10896 to enable the department to carry out this chapter.

10897 (2) In lieu of the requirement to file an application for
 10898 reinstatement as described in subsection (1), a foreign
 10899 corporation whose certificate of authority has been revoked may
 10900 submit all fees and penalties owed by the corporation at the
 10901 rates provided by law at the time the corporation applies for
 10902 reinstatement, together with a current annual report, signed by
 10903 both the registered agent and an officer or director of the
 10904 corporation, which contains the information described in

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10905 subsection (1).

10906 (3) If the department determines that an application for
 10907 reinstatement contains the information required under subsection
 10908 (1) or subsection (2) and that the information is correct, upon
 10909 payment of all required fees and penalties, the department shall
 10910 reinstate the foreign corporation's certificate of authority

10911 ~~3. State that the foreign corporation's name satisfies the~~
 10912 ~~requirements of s. 607.1506; and~~

10913 ~~4. State that all fees owed by the corporation and computed~~
 10914 ~~at the rate provided by law at the time the foreign corporation~~
 10915 ~~applies for reinstatement have been paid; or~~

10916 ~~(b) As an alternative, the foreign corporation may submit a~~
 10917 ~~current annual report, signed by the registered agent and an~~
 10918 ~~officer or director, which substantially complies with the~~
 10919 ~~requirements of paragraph (a).~~

10920 ~~(2) If the Department of State determines that the~~
 10921 ~~application contains the information required by subsection (1)~~
 10922 ~~and that the information is correct, it shall cancel the~~
 10923 ~~certificate of revocation of authority and prepare a certificate~~
 10924 ~~of reinstatement that recites its determination and prepare a~~
 10925 ~~certificate of reinstatement, file the original of the~~
 10926 ~~certificate, and serve a copy on the corporation under s.~~
 10927 ~~607.0504(2).~~

10928 ~~(4)(3) When a reinstatement becomes the reinstatement is~~
 10929 ~~effective, it relates back to and takes effect as of the~~
 10930 ~~effective date of the revocation of authority and the foreign~~
 10931 ~~corporation may operate in this state resumes carrying on its~~
 10932 ~~business as if the revocation of authority had never occurred.~~

10933 (5)(4) The name of the foreign corporation whose the

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10934 certificate of authority of which has been revoked is not
 10935 available for assumption or use by another eligible entity
 10936 ~~corporation~~ until 1 year after the effective date of revocation
 10937 of authority unless the corporation provides the department of
 10938 ~~State with a record signed an affidavit executed~~ as required by
 10939 s. 607.0120 which authorizes ~~permitting~~ the immediate assumption
 10940 or use of the name by another eligible entity corporation.

10941 ~~(6)(5)~~ If the name of the foreign corporation applying for
 10942 reinstatement has been lawfully assumed in this state by another
 10943 eligible entity, the department ~~corporation, the Department of~~
 10944 ~~State shall require the foreign corporation to comply with s.~~
 10945 ~~607.1506 before accepting its application for reinstatement.~~

10946 Section 216. Section 607.1532, Florida Statutes, is amended
 10947 to read:

10948 607.1532 Judicial review of denial of reinstatement Appeal
 10949 ~~from revocation.-~~

10950 (1) If the department denies a foreign corporation's
 10951 application for reinstatement after revocation of its
 10952 certificate of authority, the department shall serve the foreign
 10953 corporation under s. 607.15101 with a written notice that
 10954 explains the reason or reasons for the denial ~~Department of~~
 10955 ~~State revokes the authority of any foreign corporation to~~
 10956 ~~transact business in this state pursuant to the provisions of~~
 10957 ~~this act, such foreign corporation may likewise appeal to the~~
 10958 ~~circuit court of the county where the registered office of such~~
 10959 ~~corporation in this state is situated by filing with the clerk~~
 10960 ~~of such court a petition setting forth a copy of its application~~
 10961 ~~for authority to transact business in this state and a copy of~~
 10962 ~~the certificate of revocation given by the Department of State,~~

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10963 ~~whereupon the matter shall be tried de novo by the court, and~~
 10964 ~~the court shall either sustain the action of the Department of~~
 10965 ~~State or direct the department to take such action as the court~~
 10966 ~~deems proper.~~

10967 (2) Within 30 days after service of a notice of denial of
 10968 reinstatement, a foreign corporation may appeal the denial by
 10969 petitioning the Circuit Court of Leon County to set aside the
 10970 revocation. The petition must be served on the department and
 10971 contain a copy of the department's notice of revocation, the
 10972 foreign corporation's application for reinstatement, and the
 10973 department's notice of denial Appeals from all final orders and
 10974 judgments entered by the circuit court under this section in
 10975 review of any ruling or decision of the Department of State may
 10976 be taken as in other civil actions.

10977 (3) The circuit court may order the department to reinstate
 10978 the certificate of authority of the foreign corporation or take
 10979 other action the court considers appropriate.

10980 (4) The circuit court's final decision may be appealed as
 10981 in other civil proceedings.

10982 Section 217. Section 607.1601, Florida Statutes, is amended
 10983 to read:

10984 607.1601 Corporate records.—

10985 (1) A corporation shall maintain the following records:
 10986 ~~keep as permanent records minutes of all meetings of its~~
 10987 ~~shareholders and board of directors, a record of all actions~~
 10988 ~~taken by the shareholders or board of directors without a~~
 10989 ~~meeting, and a record of all actions taken by a committee of the~~
 10990 ~~board of directors in place of the board of directors on behalf~~
 10991 ~~of the corporation.~~

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10992 ~~(2) A corporation shall maintain accurate accounting~~
 10993 ~~records.~~

10994 ~~(3) A corporation or its agent shall maintain a record of~~
 10995 ~~its shareholders in a form that permits preparation of a list of~~
 10996 ~~the names and addresses of all shareholders in alphabetical~~
 10997 ~~order by class of shares showing the number and series of shares~~
 10998 ~~held by each.~~

10999 ~~(4) A corporation shall maintain its records in written~~
 11000 ~~form or in another form capable of conversion into written form~~
 11001 ~~within a reasonable time.~~

11002 ~~(5) A corporation shall keep a copy of the following~~
 11003 ~~records:~~

11004 ~~(a) Its articles or restated articles of incorporation, as~~
 11005 ~~and all amendments to them currently in effect;~~

11006 (b) Any notices to shareholders referred to in s.
 11007 607.0120(11)(d) specifying facts on which a filed document is
 11008 dependent, if such facts are not included in the articles of
 11009 incorporation or otherwise available as specified in s.
 11010 607.0120(11)(d);

11011 ~~(c)(b) Its bylaws, as or restated bylaws and all amendments~~
 11012 ~~to them currently in effect;~~

11013 ~~(e) Resolutions adopted by its board of directors creating~~
 11014 ~~one or more classes or series of shares and fixing their~~
 11015 ~~relative rights, preferences, and limitations, if shares issued~~
 11016 ~~pursuant to those resolutions are outstanding;~~

11017 ~~(d) The minutes of all shareholders' meetings and records~~
 11018 ~~of all action taken by shareholders without a meeting for the~~
 11019 ~~past 3 years;~~

11020 (d)(e) All written communications within the past 3 years

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11021 to ~~all~~ shareholders generally or to all shareholders of a class
 11022 or series ~~within the past 3 years, including the financial~~
 11023 ~~statements furnished for the past 3 years under s. 607.1620;~~

11024 (e) Minutes of all meetings of, and records of all actions
 11025 taken without a meeting by, its shareholders, its board of
 11026 directors, and any board committees established under s.
 11027 607.0825;

11028 (f) A list of the names and business street addresses of
 11029 its current directors and officers; and

11030 (g) Its most recent annual report delivered to the
 11031 department ~~of State~~ under s. 607.1622.

11032 (2) A corporation shall maintain all annual financial
 11033 statements prepared for the corporation for its last 3 fiscal
 11034 years, or such shorter period of existence, and any audit or
 11035 other reports with respect to such financial statements.

11036 (3) A corporation shall maintain accounting records in a
 11037 form that permits preparation of its financial statements.

11038 (4) A corporation shall maintain a record of its current
 11039 shareholders in alphabetical order by class or series of shares
 11040 showing the address of, and the number and class or series of
 11041 shares held by, each shareholder. This subsection does not
 11042 require the corporation to include the electronic mail address
 11043 or other electronic contact information of a shareholder in such
 11044 record.

11045 (5) A corporation shall maintain the records specified in
 11046 this section in a manner so that they may be available for
 11047 inspection within a reasonable time.

11048 Section 218. Section 607.1602, Florida Statutes, is amended
 11049 to read:

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11050 607.1602 Inspection of records by shareholders.-

11051 (1) A shareholder of a corporation is entitled to inspect
 11052 and copy, during regular business hours at the corporation's
 11053 principal office, any of the records of the corporation
 11054 described in s. 607.1601(1), excluding minutes of meetings of,
 11055 and records of actions taken without a meeting by, the
 11056 corporation's board of directors and any board committees
 11057 established under s. 607.0825, ~~s. 607.1601(5)~~ if the shareholder
 11058 gives the corporation written notice of the shareholder's ~~his or~~
 11059 ~~her~~ demand at least 5 business days before the date on which the
 11060 ~~shareholder~~ ~~he or she~~ wishes to inspect and copy.

11061 (2) A shareholder of a corporation is entitled to inspect
 11062 and copy, during regular business hours at a reasonable location
 11063 specified by the corporation, any of the following records of
 11064 the corporation if the shareholder meets the requirements of
 11065 subsection (3) and gives the corporation written notice of the
 11066 shareholder's ~~his or her~~ demand at least 5 business days before
 11067 the date on which the shareholder ~~he or she~~ wishes to inspect
 11068 and copy:

11069 (a) Excerpts from minutes of any meeting of, or records of
 11070 any actions taken without a meeting by, the corporation's board
 11071 of directors and board committees maintained in accordance with
 11072 s. 607.1601(1), ~~records of any action of a committee of the~~
 11073 ~~board of directors while acting in place of the board of~~
 11074 ~~directors on behalf of the corporation, minutes of any meeting~~
 11075 ~~of the shareholders, and records of action taken by the~~
 11076 ~~shareholders or board of directors without a meeting, to the~~
 11077 ~~extent not subject to inspection under subsection (1);~~

11078 (b) The financial statements of the corporation maintained

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11079 in accordance with s. 607.1601(2);
 11080 ~~(c)(b)~~ Accounting records of the corporation;
 11081 ~~(d)(e)~~ The record of shareholders maintained in accordance
 11082 with s. 607.1601(4); and
 11083 ~~(e)(d)~~ Any other books and records.
 11084 (3) A shareholder may inspect and copy the records
 11085 described in subsection (2) only if:
 11086 (a) The shareholder's demand is made in good faith and for
 11087 a proper purpose;
 11088 (b) The shareholder's demand ~~shareholder~~ describes with
 11089 reasonable particularity the shareholder's his or her ~~his or her~~ purpose
 11090 and the records the shareholder ~~he or she~~ desires to inspect;
 11091 and
 11092 (c) The records are directly connected with the
 11093 shareholder's purpose.
 11094 (4) The corporation may impose reasonable restrictions on
 11095 the disclosure, use, or distribution of, and reasonable
 11096 obligations to maintain the confidentiality of, records
 11097 described in subsection (2) A shareholder of a Florida
 11098 corporation, or a shareholder of a foreign corporation
 11099 authorized to transact business in this state who resides in
 11100 this state, is entitled to inspect and copy, during regular
 11101 business hours at a reasonable location in this state specified
 11102 by the corporation, a copy of the records of the corporation
 11103 described in s. 607.1601(5)(b) and (f), if the shareholder gives
 11104 the corporation written notice of his or her demand at least 15
 11105 business days before the date on which he or she wishes to
 11106 inspect and copy.
 11107 (5) For any meeting of shareholders for which the record

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11108 date for determining shareholders entitled to vote at the
 11109 meeting is different than the record date for notice of the
 11110 meeting, any person who becomes a shareholder subsequent to the
 11111 record date for notice of the meeting and is entitled to vote at
 11112 the meeting is entitled to obtain from the corporation upon
 11113 request the notice and any other information provided by the
 11114 corporation to shareholders in connection with the meeting,
 11115 unless the corporation has made such information generally
 11116 available to shareholders by posting it on its website or by
 11117 other generally recognized means. Failure of a corporation to
 11118 provide such information does not affect the validity of action
 11119 taken at the meeting.
 11120 (6) The right of inspection granted by this section may not
 11121 be abolished or limited by a corporation's articles of
 11122 incorporation or bylaws.
 11123 ~~(7)(5)~~ This section does not affect:
 11124 (a) The right of a shareholder to inspect and copy records
 11125 under s. 607.0720 or, if the shareholder is in litigation with
 11126 the corporation, to the same extent as any other litigant; or
 11127 (b) The power of a court, independently of this chapter
 11128 aet, to compel the production of corporate records for
 11129 examination and to impose reasonable restrictions as provided in
 11130 s. 607.1604(3), provided that, in the case of production of
 11131 records described in subsection (2) at the request of the
 11132 shareholder, the shareholder has met the requirements of
 11133 subsection (3).
 11134 ~~(8)(6)~~ A corporation may deny any demand for inspection
 11135 made pursuant to subsection (2) if the demand was made for an
 11136 improper purpose, or if the demanding shareholder has within 2

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11137 years preceding his or her demand sold or offered for sale any
 11138 list of shareholders of the corporation or any other
 11139 corporation, has aided or abetted any person in procuring any
 11140 list of shareholders for any such purpose, or has improperly
 11141 used any information secured through any prior examination of
 11142 the records of the corporation or any other corporation.

11143 (9)(7) A shareholder may not sell or otherwise distribute
 11144 any information or records inspected under this section, except
 11145 to the extent that such use is for a proper purpose as defined
 11146 in subsection (11) (3). ~~Any person who violates this provision~~
 11147 ~~shall be subject to a civil penalty of \$5,000.~~

11148 (10)(8) For purposes of this section, the term
 11149 "shareholder" means a record shareholder, a beneficial
 11150 shareholder, or an unrestricted voting trust beneficial owner
 11151 includes a beneficial owner whose shares are held in a voting
 11152 trust or by a nominee on his or her behalf.

11153 (11)(9) For purposes of this section, a "proper purpose"
 11154 means a purpose reasonably related to such person's interest as
 11155 a shareholder.

11156 (12) The rights of a shareholder to obtain records under
 11157 subsections (1) and (2) shall also apply to the records of
 11158 subsidiaries of the corporation.

11159 Section 219. Section 607.1603, Florida Statutes, is amended
 11160 to read:

11161 607.1603 Scope of inspection right.—

11162 (1) A shareholder may appoint an agent or attorney to
 11163 exercise the shareholder's inspection and copying rights under
 11164 s. 607.1602 shareholder's agent or attorney has the same
 11165 inspection and copying rights as the shareholder he or she

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11166 ~~represents.~~

11167 (2) The corporation may, if reasonable, satisfy the right
 11168 of a shareholder to copy records under s. 607.1602 by furnishing
 11169 to the shareholder copies made by photocopy or other means
 11170 chosen by the corporation, including furnishing copies through
 11171 an electronic transmission includes, if reasonable, the right to
 11172 ~~receive copies made by photographic, xerographic, or other~~
 11173 ~~means.~~

11174 (3) The corporation may impose a reasonable charge to cover
 11175 the costs of providing copies of any documents to the
 11176 shareholder which may be based on an estimate of such costs,
 11177 covering the costs of labor and material, for copies of any
 11178 documents provided to the shareholder. The charge may not exceed
 11179 the estimated cost of production or reproduction of the records.
 11180 If the records are kept in other than written form, the
 11181 corporation shall convert such records into written form upon
 11182 the request of any person entitled to inspect the same. The
 11183 corporation shall bear the costs of converting any records
 11184 described in s. 607.1601(5). The requesting shareholder shall
 11185 bear the costs, including the cost of compiling the information
 11186 requested, incurred to convert any records described in s.
 11187 607.1602(2).

11188 (4) ~~If requested by a shareholder,~~ The corporation may
 11189 comply at its expense shall comply with a shareholder's demand
 11190 to inspect the records of shareholders under s. 607.1602(2) (d)
 11191 ~~s. 607.1602(2) (e)~~ by providing the shareholder him or her with a
 11192 list of its shareholders that was compiled no earlier than the
 11193 date of the shareholder's demand of the nature described in s.
 11194 607.1601(3). Such a list must be compiled as of the last record

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11195 ~~date for which it has been compiled or as of a subsequent date~~
 11196 ~~if specified by the shareholder.~~

11197 Section 220. Section 607.1604, Florida Statutes, is amended
 11198 to read:

11199 607.1604 Court-ordered inspection.—

11200 (1) If a corporation does not allow a shareholder who
 11201 complies with s. 607.1602(1) ~~or (4)~~ to inspect and copy any
 11202 records required by that subsection to be available for
 11203 inspection, the circuit court in the applicable county ~~where the~~
 11204 ~~corporation's principal office (or, if none in this state, its~~
 11205 ~~registered office) is located~~ may summarily order inspection and
 11206 copying of the records demanded at the corporation's expense
 11207 upon application of the shareholder. If the court orders
 11208 inspection and copying of the records demanded under s.
 11209 607.1601(1), it shall also order the corporation to pay the
 11210 shareholder's expenses, including reasonable attorney fees,
 11211 incurred to obtain the order and enforce its rights under this
 11212 section.

11213 (2) If a corporation does not within a reasonable time
 11214 allow a shareholder who complies with s. 607.1602(2) to inspect
 11215 and copy the records required by that section ~~any other record,~~
 11216 the shareholder who complies with s. 607.1602(3) ~~s. 607.1602(2)~~
 11217 ~~and (3)~~, may apply to the circuit court in the applicable county
 11218 ~~where the corporation's principal office (or, if none in this~~
 11219 ~~state, its registered office) is located~~ for an order to permit
 11220 inspection and copying of the records demanded. The court shall
 11221 dispose of an application under this subsection on an expedited
 11222 basis.

11223 (3) If the court orders inspection and ~~or~~ copying of the

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11224 records demanded under s. 607.1602(2), it may impose reasonable
 11225 restrictions on the disclosure, use, or distribution of, and
 11226 reasonable obligations to maintain the confidentiality of, such
 11227 records, and it shall also order the corporation to pay the
 11228 shareholder's expenses incurred ~~costs~~, including reasonable
 11229 attorney ~~attorney's~~ fees, reasonably incurred to obtain the
 11230 order and enforce its rights under this section unless the
 11231 corporation establishes that the corporation, or the officer,
 11232 director, or agent, as the case may be, proves that it or she or
 11233 he refused inspection in good faith because the corporation it
 11234 or she or he had:

11235 (a) A reasonable basis for doubt about the right of the
 11236 shareholder to inspect or copy the records demanded; or-

11237 (b) ~~(4) Required~~ If the court orders inspection or copying
 11238 of the records demanded, it may impose reasonable restrictions
 11239 on the disclosure, use, or distribution of, and reasonable
 11240 obligations to maintain the confidentiality of, such ~~the~~ records
 11241 demanded to which ~~by~~ the demanding shareholder had been
 11242 unwilling to agree.

11243 Section 221. Section 607.1605, Florida Statutes, is amended
 11244 to read:

11245 607.1605 Inspection rights of ~~records by~~ directors.—

11246 (1) A director of a corporation is entitled to inspect and
 11247 copy the books, records, and documents of the corporation at any
 11248 reasonable time to the extent reasonably related to the
 11249 performance of the director's duties as a director, including
 11250 duties as a member of a board committee, but not for any other
 11251 purpose or in any manner that would violate any duty to the
 11252 corporation.

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11253 (2) The circuit court of the applicable county in which the
 11254 ~~corporation's principal office or, if none in this state, its~~
 11255 ~~registered office is located~~ may order inspection and copying of
 11256 the books, records, and documents at the corporation's expense,
 11257 upon application of a director who has been refused such
 11258 inspection rights, unless the corporation establishes that the
 11259 director is not entitled to such inspection rights. The court
 11260 shall dispose of an application under this subsection on an
 11261 expedited basis.

11262 (3) If an order is issued, the court may include provisions
 11263 protecting the corporation from undue burden or expense and
 11264 prohibiting the director from using information obtained upon
 11265 exercise of the inspection rights in a manner that would violate
 11266 a duty to the corporation, and may also order the corporation to
 11267 reimburse the director for the director's costs, including
 11268 reasonable attorney counsel fees, incurred in connection with
 11269 the application.

11270 Section 222. Section 607.1620, Florida Statutes, is amended
 11271 to read:

11272 607.1620 Financial statements for shareholders.-

11273 (1) Upon the written request of any shareholder, a
 11274 corporation shall deliver or make available to the requesting
 11275 shareholder the corporation's annual financial statements for
 11276 the most recent fiscal year of the corporation ~~Unless modified~~
 11277 ~~by resolution of the shareholders within 120 days of the close~~
 11278 ~~of each fiscal year, a corporation shall furnish its~~
 11279 ~~shareholders annual financial statements which may be~~
 11280 ~~consolidated or combined statements of the corporation and one~~
 11281 ~~or more of its subsidiaries, as appropriate, that include a~~

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11282 ~~balance sheet as of the end of the fiscal year, an income~~
 11283 ~~statement for that year, and a statement of cash flows for that~~
 11284 ~~year. If annual financial statements have been are prepared for~~
 11285 ~~the corporation on the basis of generally accepted accounting~~
 11286 ~~principles for such specified period, the corporation shall~~
 11287 ~~deliver or make available such financial statements to the~~
 11288 ~~requesting shareholder, the annual financial statements must~~
 11289 ~~also be prepared on that basis.~~

11290 ~~(2) If the annual financial statements to be delivered or~~
 11291 ~~made available to the requesting shareholder are audited or~~
 11292 ~~otherwise are reported upon by a public accountant, the report~~
 11293 ~~of the public accountant shall also be delivered or made~~
 11294 ~~available to the requesting shareholder his or her report must~~
 11295 ~~accompany them. If not, the statements must be accompanied by a~~
 11296 ~~statement of the president or the person responsible for the~~
 11297 ~~corporation's accounting records.~~

11298 ~~(a) Stating his or her reasonable belief whether the~~
 11299 ~~statements were prepared on the basis of generally accepted~~
 11300 ~~accounting principles and, if not, describing the basis of~~
 11301 ~~preparation; and~~

11302 ~~(b) Describing any respects in which the statements were~~
 11303 ~~not prepared on a basis of accounting consistent with the~~
 11304 ~~statements prepared for the preceding year.~~

11305 (2)(3) A Any corporation required by subsection (1) to
 11306 deliver or make available furnish annual financial statements to
 11307 a requesting shareholder shall deliver or make available such
 11308 annual financial statements to such shareholder within 5
 11309 business days after the request if the annual financial
 11310 statements have already been prepared and are available, or, if

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11311 ~~the annual financial statements have not been prepared, must~~
 11312 ~~notify the shareholder within 5 business days that the annual~~
 11313 ~~financial statements have not yet been prepared, and must~~
 11314 ~~deliver or make available such annual financial statements to~~
 11315 ~~the its shareholders shall furnish such annual financial~~
 11316 ~~statements to each shareholder within 120 days after the request~~
 11317 ~~close of each fiscal year or within such additional time~~
 11318 ~~thereafter as is reasonably necessary to enable the corporation~~
 11319 ~~to prepare its annual financial statements if, for reasons~~
 11320 ~~beyond the corporation's control, it is unable to prepare its~~
 11321 ~~annual financial statements within the prescribed period.~~
 11322 ~~Thereafter, on written request from a shareholder who was not~~
 11323 ~~furnished the statements, the corporation shall furnish him or~~
 11324 ~~her the latest annual financial statements.~~

11325 (3) If requested by the requesting shareholder in its
 11326 written request under subsection (1), the corporation shall
 11327 promptly notify all other shareholders that the annual financial
 11328 statements that have or are to be delivered or made available to
 11329 the requesting shareholder have been or are being made available
 11330 to the requesting shareholder and will also be delivered or made
 11331 available to any other shareholder who makes its own written
 11332 request to the corporation under subsection (1).

11333 (4) A corporation may fulfill its responsibilities under
 11334 this section by delivering the specified annual financial
 11335 statements, by posting the specified annual financial statements
 11336 on its website, by any other generally recognized means, or in
 11337 any other manner permitted by the applicable rules and
 11338 regulations of the United States Securities and Exchange
 11339 Commission.

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11340 (5) Notwithstanding subsections (1), (2), and (3):
 11341 (a) As a condition to delivering or making available annual
 11342 financial statements to any requesting shareholder, the
 11343 corporation may require the requesting shareholder to agree to
 11344 reasonable restrictions on the confidentiality, use, and
 11345 distribution of such annual financial statements; and
 11346 (b) The corporation may, if it reasonably determines that
 11347 the shareholder's request is not made in good faith or for a
 11348 proper purpose, decline to deliver or make available such annual
 11349 financial statements to that shareholder.

11350 (6) If a corporation does not respond to a shareholder's
 11351 request for annual financial statements pursuant to this section
 11352 in accordance with subsection (3) within the applicable period
 11353 specified in subsection (2):

11354 (a) The requesting shareholder may apply to the circuit
 11355 court in the applicable county for an order requiring delivery
 11356 of or access to the requested annual financial statements. The
 11357 court shall dispose of an application under this subsection on
 11358 an expedited basis.

11359 (b) If the court orders delivery or access to the requested
 11360 annual financial statements, it may impose reasonable
 11361 restrictions on their confidentiality, use, or distribution.

11362 (c) In such proceeding, if the corporation has declined to
 11363 deliver or make available such annual financial statements
 11364 because the shareholder had been unwilling to agree to
 11365 restrictions proposed by the corporation on the confidentiality,
 11366 use, and distribution of such financials statements, the
 11367 corporation shall have the burden of demonstrating that the
 11368 restrictions proposed by the corporation were reasonable.

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11369 (d) In such proceeding, if the corporation has declined to
 11370 deliver or make available such annual financial statements
 11371 pursuant to s. 607.1620(5) (b), the corporation shall have the
 11372 burden of demonstrating that it had reasonably determined that
 11373 the shareholder's request was not made in good faith or for a
 11374 proper purpose.

11375 (7) If the court orders delivery or access to the requested
 11376 annual financial statements it shall order the corporation to
 11377 pay the shareholder's expenses, including reasonable attorney
 11378 fees, incurred to obtain such order unless the corporation
 11379 establishes that it had refused delivery or access to the
 11380 requested annual financial statements because the shareholder
 11381 had refused to agree to reasonable restrictions on the
 11382 confidentiality, use, or distribution of the annual financial
 11383 statements or that the corporation had reasonably determined
 11384 that the shareholder's request was not made in good faith or for
 11385 a proper purpose

11386 ~~(4) If a corporation does not comply with the shareholder's~~
 11387 ~~request for annual financial statements pursuant to this section~~
 11388 ~~within 30 days of delivery of such request to the corporation,~~
 11389 ~~the circuit court in the county where the corporation's~~
 11390 ~~principal office (or, if none in this state, its registered~~
 11391 ~~office) is located may, upon application of the shareholder,~~
 11392 ~~summarily order the corporation to furnish such financial~~
 11393 ~~statements. If the court orders the corporation to furnish the~~
 11394 ~~shareholder with the financial statements demanded, it shall~~
 11395 ~~also order the corporation to pay the shareholder's costs,~~
 11396 ~~including reasonable attorney's fees, reasonably incurred to~~
 11397 ~~obtain the order and otherwise enforce its rights under this~~

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11398 ~~section.~~

11399 ~~(5) The requirement to furnish annual financial statements~~
 11400 ~~as described in this section shall be satisfied by sending such~~
 11401 ~~annual financial statements by mail or electronic transmission.~~
 11402 ~~If a corporation has an outstanding class of securities~~
 11403 ~~registered under s. 12 of the Securities Exchange Act of 1934,~~
 11404 ~~as amended, the requirement to furnish annual financial~~
 11405 ~~statements may be satisfied by complying with 17 C.F.R. s.~~
 11406 ~~240.14a-16, as amended, with respect to the obligation of a~~
 11407 ~~corporation to furnish an annual financial report to~~
 11408 ~~shareholders pursuant to 17 C.F.R. s. 240.14a-3(b), as amended.~~

11409 Section 223. Section 607.1621, Florida Statutes, is
 11410 repealed.

11411 Section 224. Section 607.1622, Florida Statutes, is amended
 11412 to read:

11413 607.1622 Annual report for department of State.—

11414 (1) Each domestic corporation and each foreign corporation
 11415 authorized to transact business in this state shall deliver to
 11416 the department for filing an annual report that states the
 11417 following of State for filing a sworn annual report on such
 11418 forms as the Department of State prescribes that sets forth:

11419 (a) The name of the corporation or, if a foreign
 11420 corporation, the name under which the foreign corporation is
 11421 authorized to transact business in this state and the state or
 11422 country under the law of which it is incorporated;

11423 (b) The date of its incorporation and ~~or~~, if a foreign
 11424 corporation, the jurisdiction of its incorporation and the date
 11425 on which it became qualified to transact ~~date on which it was~~
 11426 admitted to do business in this state;

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11427 (c) The street address of its principal office and the
 11428 mailing address of the corporation;
 11429 (d) The corporation's federal employer identification
 11430 number, if any, or, if none, whether one has been applied for;
 11431 (e) The names and business street addresses of its
 11432 directors and principal officers; and
 11433 ~~(f) The street address of its registered office and the~~
 11434 ~~name of its registered agent at that office in this state;~~
 11435 ~~(g) Language permitting a voluntary contribution of \$5 per~~
 11436 ~~taxpayer, which contribution shall be transferred into the~~
 11437 ~~Election Campaign Financing Trust Fund. A statement providing an~~
 11438 ~~explanation of the purpose of the trust fund shall also be~~
 11439 ~~included; and~~
 11440 (f)(h) Any additional information that is such additional
 11441 information as may be necessary or appropriate to enable the
 11442 department of State to carry out the provisions of this chapter
 11443 act.
 11444 (2) If an annual report contains the name and address of a
 11445 registered agent which differs from the information shown in the
 11446 records of the department immediately before the annual report
 11447 becomes effective, the differing information in the annual
 11448 report is considered a statement of change under s. 607.0502
 11449 ~~Proof to the satisfaction of the Department of State that on or~~
 11450 ~~before May 1 such report was deposited in the United States mail~~
 11451 ~~in a sealed envelope, properly addressed with postage prepaid,~~
 11452 ~~shall be deemed compliance with this requirement.~~
 11453 (3) If an annual report does not contain the information
 11454 required in ~~by~~ this section, the department ~~of State~~ shall
 11455 promptly notify the reporting domestic corporation or foreign

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11456 corporation ~~in writing and return the report to it for~~
 11457 ~~correction~~. If the report is corrected to contain the
 11458 information required in subsection (1) by this section and
 11459 delivered to the department ~~of State~~ within 30 days after the
 11460 effective date of the notice, it will be considered timely
 11461 delivered ~~is deemed to be timely filed~~.
 11462 ~~(4) Each report shall be executed by the corporation by an~~
 11463 ~~officer or director or, if the corporation is in the hands of a~~
 11464 ~~receiver or trustee, shall be executed on behalf of the~~
 11465 ~~corporation by such receiver or trustee, and the signing thereof~~
 11466 ~~shall have the same legal effect as if made under oath, without~~
 11467 ~~the necessity of appending such oath thereto.~~
 11468 (4)(5) The first annual report must be delivered to the
 11469 department of State between January 1 and May 1 of the year
 11470 following the calendar year in which a domestic corporation's
 11471 articles of incorporation became effective ~~corporation was~~
 11472 ~~incorporated~~ or a foreign corporation obtained its certificate
 11473 of authority was authorized to transact business in this state.
 11474 Subsequent annual reports must be delivered to the department ~~of~~
 11475 ~~State~~ between January 1 and May 1 of each calendar year
 11476 thereafter. If one or more forms of annual report are submitted
 11477 for a calendar year, the department shall file each of them and
 11478 make the information contained in them part of the official
 11479 record. The first form of annual report filed in a calendar year
 11480 shall be considered the annual report for the calendar year, and
 11481 each report filed after that one in the same calendar year shall
 11482 be treated as an amended report for that calendar year the
 11483 subsequent calendar years.
 11484 (5)(6) Information in the annual report must be current as

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11485 of the date the annual report is delivered to the department for
 11486 filing executed on behalf of the corporation.

11487 ~~(7) If an additional updated report is received, the~~
 11488 ~~department shall file the document and make the information~~
 11489 ~~contained therein part of the official record.~~

11490 ~~(6)(8) A domestic corporation or foreign corporation that~~
 11491 ~~fails Any corporation failing to file an annual report that~~
 11492 ~~which complies with the requirements of this section may not~~
 11493 ~~prosecute or maintain shall not be permitted to maintain or~~
 11494 ~~defend any action in any court of this state until the such~~
 11495 ~~report is filed and all fees and penalties taxes due under this~~
 11496 ~~chapter act are paid, and shall be subject to dissolution or~~
 11497 ~~cancellation of its certificate of authority to transact de~~
 11498 ~~business as provided in this chapter act.~~

11499 (7)(9) The department shall prescribe the forms, which may
 11500 be in an electronic format, on which to make the annual report
 11501 called for in this section and may substitute the uniform
 11502 business report, pursuant to s. 606.06, as a means of satisfying
 11503 the requirement of this chapter part.

11504 (8) As a condition of a merger under s. 607.1101, each
 11505 party to a merger which exists under the laws of this state, and
 11506 each party to the merger which exists under the laws of another
 11507 jurisdiction and has a certificate of authority to transact
 11508 business or conduct its affairs in this state, must be active
 11509 and current in filing its annual reports in the records of the
 11510 department through December 31 of the calendar year in which the
 11511 articles of merger are submitted to the department for filing.

11512 (9) As a condition of a conversion of an entity to a
 11513 corporation under s. 607.11930, the entity, if it exists under

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11514 the laws of this state or if it exists under the laws of another
 11515 jurisdiction and has a certificate of authority to transact
 11516 business or conduct its affairs in this state, must be active
 11517 and current in filing its annual reports in the records of the
 11518 department through December 31 of the calendar year in which the
 11519 articles of conversion are submitted to the department for
 11520 filing.

11521 (10) As a condition of a conversion of a domestic
 11522 corporation to another type of entity under s. 607.11930, the
 11523 domestic corporation converting to the other type of entity must
 11524 be active and current in filing its annual reports in the
 11525 records of the department through December 31 of the calendar
 11526 year in which the articles of conversion are submitted to the
 11527 department for filing.

11528 (11) As a condition of a share exchange between a
 11529 corporation and another entity under s. 607.1102, the
 11530 corporation, and each other entity that is a party to the share
 11531 exchange which exists under the laws of this state, and each
 11532 party to the share exchange which exists under the laws of
 11533 another jurisdiction and has a certificate of authority to
 11534 transact business or conduct its affairs in this state, must be
 11535 active and current in filing its annual reports in the records
 11536 of the department through December 31 of the calendar year in
 11537 which the articles of share exchange are submitted to the
 11538 department for filing.

11539 (12) As a condition of domestication of a domestic
 11540 corporation into a foreign jurisdiction under s. 607.11920, the
 11541 domestic corporation domesticating into a foreign jurisdiction
 11542 must be active and current in filing its annual reports in the

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11543 records of the department through December 31 of the calendar
 11544 year in which the articles of domestication are submitted to the
 11545 department for filing.

11546 Section 225. Section 607.1701, Florida Statutes, is amended
 11547 to read:

11548 607.1701 Application to existing domestic corporation.—This
 11549 chapter act applies to all domestic corporations in existence on
 11550 January 1, 2020 ~~July 1, 1990~~, that were incorporated under any
 11551 general statute of this state providing for incorporation of
 11552 corporations for profit if power to amend or repeal the statute
 11553 under which the corporation was incorporated was reserved.

11554 Section 226. Section 607.1702, Florida Statutes, is amended
 11555 to read:

11556 607.1702 Application to qualified foreign corporations.—A
 11557 foreign corporation authorized to transact business in this
 11558 state on January 1, 2020 ~~July 1, 1990~~, is subject to this
 11559 chapter, is deemed to be authorized to transact business in this
 11560 state, and act but is not required to obtain a new certificate
 11561 of authority to transact business under this chapter act.

11562 Section 227. Section 607.1711, Florida Statutes, is amended
 11563 to read:

11564 607.1711 Application to foreign and interstate commerce.—
 11565 The provisions of this chapter act apply to commerce with
 11566 foreign nations and among the several states only insofar as the
 11567 same may be permitted under the Constitution and laws of the
 11568 United States.

11569 Section 228. Section 607.1801, Florida Statutes, is
 11570 repealed.

11571 Section 229. Section 607.1907, Florida Statutes, is amended

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11572 to read:

11573 607.1907 Saving provision ~~Effect of repeal of prior acts.—~~

11574 (1) Except as to procedural provisions, this act does not
 11575 affect a pending action or proceeding or a right accrued before
 11576 January 1, 2020, and a pending civil action or proceeding may be
 11577 completed, and a right accrued may be enforced, as if this act
 11578 had not become effective provided in subsection (2), the repeal
 11579 of a statute by this act does not affect:

11580 ~~(a) The operation of the statute or any action taken under~~
 11581 ~~it before its repeal, including, without limiting the generality~~
 11582 ~~of the foregoing, the continuing validity of any provision of~~
 11583 ~~the articles of incorporation or bylaws of a corporation~~
 11584 ~~authorized by the statute at the time of its adoption;~~

11585 ~~(b) Any ratification, right, remedy, privilege, obligation,~~
 11586 ~~or liability acquired, accrued, or incurred under the statute~~
 11587 ~~before its repeal;~~

11588 ~~(c) Any violation of the statute, or any penalty,~~
 11589 ~~forfeiture, or punishment incurred because of the violation,~~
 11590 ~~before its repeal;~~

11591 ~~(d) Any proceeding, merger, consolidation, sale of assets,~~
 11592 ~~reorganization, or dissolution commenced under the statute~~
 11593 ~~before its repeal, and the proceeding, merger, consolidation,~~
 11594 ~~sale of assets, reorganization, or dissolution may be completed~~
 11595 ~~in accordance with the statute as if it had not been repealed.~~

11596 (2) If a penalty or punishment ~~imposed~~ for violation of a
 11597 statute or rule ~~repealed by this act~~ is reduced by this act, the
 11598 penalty or punishment, if not already imposed, shall be imposed
 11599 in accordance with this act.

11600 Section 230. Section 607.1908, Florida Statutes, is created

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11601 to read:

11602 607.1908 Severability clause.—If any provision of this
 11603 chapter or its application to any person or circumstance is held
 11604 invalid, the invalidity does not affect other provisions or
 11605 applications of this chapter which can be given effect without
 11606 the invalid provision or application, and to this end the
 11607 provisions of this chapter are severable.

11608 Section 231. Subsections (2) and (3) of section 607.504,
 11609 Florida Statutes, are amended to read:

11610 607.504 Election of social purpose corporation status.—

11611 (2) A plan of merger, domestication, conversion, or share
 11612 exchange must be adopted by the minimum status vote if an entity
 11613 that is not a social purpose corporation is a party to the
 11614 merger, domestication, or conversion or if the exchanging entity
 11615 in a share exchange and the surviving, new, or resulting entity
 11616 is, or will be, a social purpose corporation.

11617 (3) If an entity elects to become a social purpose
 11618 corporation by amendment of the articles of incorporation or by
 11619 a merger, conversion, or share exchange, the shareholders of the
 11620 entity are entitled to appraisal rights under and pursuant to
 11621 ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~.

11622 Section 232. Subsections (2) and (3) of section 607.604,
 11623 Florida Statutes, are amended to read:

11624 607.604 Election of benefit corporation status.—

11625 (2) A plan of merger, domestication, conversion, or share
 11626 exchange must be adopted by the minimum status vote if an entity
 11627 that is not a benefit corporation is a party to a merger,
 11628 domestication, or conversion or if the exchanging entity in a
 11629 share exchange and the surviving, new, or resulting entity is,

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11630 or will be, a benefit corporation.

11631 (3) If an entity elects to become a benefit corporation by
 11632 amendment of the articles of incorporation or by a merger,
 11633 domestication, conversion, or share exchange, the shareholders
 11634 of the entity are entitled to appraisal rights under and
 11635 pursuant to ss. 607.1301-607.1340 ~~ss. 607.1301-607.1333~~.

11636 Section 233. Paragraph (b) of subsection (23) and
 11637 subsections (55) and (58) of section 605.0102, Florida Statutes,
 11638 are amended to read:

11639 605.0102 Definitions.—As used in this chapter, the term:
 11640 (23)

11641 (b) "Entity" does not include:

11642 1. An individual;

11643 2. A trust with a predominantly donative purpose or a
 11644 charitable trust;

11645 3. An association or relationship that is not a partnership
 11646 solely by reason of s. 620.8202(2) ~~s. 620.8202(3)~~ or a similar
 11647 provision of the law of another jurisdiction;

11648 4. A decedent's estate; or

11649 5. A government or a governmental subdivision, agency, or
 11650 instrumentality.

11651 (55) "Private organic rules" means the rules, whether or
 11652 not in a record, which govern the internal affairs of an entity,
 11653 are binding on all its interest holders, and are not part of its
 11654 public organic record, if any. Where private organic rules have
 11655 been amended or restated, the term means the private organic
 11656 rules as last amended or restated. The term includes:

11657 (a) The bylaws of a business corporation.

11658 (b) The bylaws of a nonprofit corporation.

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- 11659 (c) The partnership agreement of a general partnership.
 11660 (d) The partnership agreement of a limited partnership.
 11661 (e) The operating agreement, limited liability company
 11662 agreement, or similar agreement of a limited liability company.
 11663 (f) The bylaws, trust instrument, or similar rules of a
 11664 real estate investment trust.
 11665 (g) The trust instrument of a statutory trust or similar
 11666 rules of a business trust or common law business trust.
 11667 (58) "Public organic record" means a record, the filing of
 11668 which by a governmental body is required to form an entity, and
 11669 an amendment to or restatement of that record. Where a public
 11670 organic record has been amended or restated, the term means the
 11671 public organic record as last amended or restated. The term
 11672 includes the following:
 11673 (a) The articles of incorporation of a business
 11674 corporation.
 11675 (b) The articles of incorporation of a nonprofit
 11676 corporation.
 11677 (c) The certificate of limited partnership of a limited
 11678 partnership.
 11679 (d) The articles of organization of a limited liability
 11680 company.
 11681 (e) The articles of incorporation of a general cooperative
 11682 association or a limited cooperative association.
 11683 (f) The certificate of trust of a statutory trust or
 11684 similar record of a business trust.
 11685 (g) The articles of incorporation of a real estate
 11686 investment trust.
 11687 Section 234. Paragraph (i) of subsection (3) of section

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- 11688 605.0105, Florida Statutes, is amended to read:
 11689 605.0105 Operating agreement; scope, function, and
 11690 limitations.-
 11691 (3) An operating agreement may not do any of the following:
 11692 (i) Vary the grounds for dissolution specified in s.
 11693 605.0702. Neither a deadlock resolution mechanism nor an
 11694 oppressive action sale varies the grounds for dissolution for
 11695 the purposes of this paragraph.
 11696 Section 235. Paragraphs (a) and (b) of subsection (1) of
 11697 section 605.0112, Florida Statutes, are amended, and subsection
 11698 (6) is added to that section, to read:
 11699 605.0112 Name.-
 11700 (1) The name of a limited liability company:
 11701 (a) Must contain the words "limited liability company" or
 11702 the abbreviation "L.L.C." or "LLC-" as will clearly indicate
 11703 that it is a limited liability company instead of a natural
 11704 person, partnership, corporation, or other business entity.
 11705 (b) Must be distinguishable in the records of the ~~Division~~
 11706 ~~of Corporations of the~~ department from the names of all other
 11707 entities or filings that are on file with the department
 11708 ~~division~~, except fictitious name registrations pursuant to s.
 11709 865.09, general partnership registrations pursuant to s.
 11710 620.8105, and limited liability partnership statements pursuant
 11711 to s. 620.9001 which are organized, registered, or reserved
 11712 under the laws of this state; however, a limited liability
 11713 company may register under a name that is not otherwise
 11714 distinguishable on the records of the department division with
 11715 the written consent of the ~~other owner~~ entity if the consent is
 11716 filed with the department division at the time of registration

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11717 of such name and if such name is not identical to the name of
 11718 the other entity. A name that is different from the name of
 11719 another entity or filing due to any of the following is not
 11720 considered distinguishable:

- 11721 1. A suffix.
- 11722 2. A definite or indefinite article.
- 11723 3. The word "and" and the symbol "&."
- 11724 4. The singular, plural, or possessive form of a word.
- 11725 5. ~~A recognized abbreviation of a root word.~~
- 11726 ~~6.~~ A punctuation mark or a symbol.
- 11727 (6) A limited liability company in existence before January
 11728 1, 2020, that has a name that does not clearly indicate that it
 11729 is a limited liability company instead of a natural person,
 11730 partnership, corporation, or other business entity may continue
 11731 using such name until the limited liability company dissolves or
 11732 amends its name in the records of the department.

11733 Section 236. Section 605.01125, Florida Statutes, is
 11734 created to read:

11735 605.01125 Reserved name.-

- 11736 (1) A person may reserve the exclusive use of the name of a
 11737 limited liability company, including an alternate name for a
 11738 foreign limited liability company whose name is not available,
 11739 by delivering an application to the department for filing. The
 11740 application must set forth the name and address of the applicant
 11741 and the name proposed to be reserved. If the department finds
 11742 that the name of the limited liability company applied for is
 11743 available, it must reserve the name for the applicant's
 11744 exclusive use for a nonrenewable 120-day period.

- 11745 (2) The owner of a reserved name of a limited liability

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11746 company may transfer the reservation to another person by
 11747 delivering to the department a signed notice of the transfer
 11748 that states the name and address of the transferee.

11749 (3) The department may revoke any reservation if, after a
 11750 hearing, it finds that the application therefor or any transfer
 11751 thereof was not made in good faith.

11752 Section 237. Subsections (1) and (5) of section 605.0113,
 11753 Florida Statutes, are amended, and subsection (6) is added to
 11754 that section, to read:

11755 605.0113 Registered agent.-

11756 (1) Each limited liability company and each foreign limited
 11757 liability company that has a certificate of authority under s.
 11758 605.0902 shall designate and continuously maintain in this
 11759 state:

11760 (a) A registered office, which may be the same as its place
 11761 of business in this state; and

11762 (b) A registered agent, who must be:

- 11763 1. An individual who resides in this state and whose
 11764 business address is identical to the address of the registered
 11765 office; ~~or~~
- 11766 2. Another domestic entity that is an authorized entity and
 11767 whose business address is identical to the address of the
 11768 registered office; or

11769 3. A foreign entity authorized to transact business in this
 11770 state that is an authorized entity and ~~A foreign or domestic~~
 11771 entity authorized to transact business in this state whose
 11772 business address is identical to the address of the registered
 11773 office.

11774 (5) A limited liability company and each foreign limited

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11775 liability company that has a certificate of authority under s.
 11776 605.0902 may not prosecute ~~or maintain, maintain, or defend~~ an
 11777 action in a court in this state until the limited liability
 11778 company complies with this section, pays to the department any
 11779 amounts required under this chapter, and, to the extent ordered
 11780 by a court of competent jurisdiction, and pays to the department
 11781 a penalty of \$5 for each day it has failed to comply or \$500,
 11782 whichever is less, and pays any other amounts required under
 11783 this chapter.

11784 (6) For the purposes of this section, "authorized entity"
 11785 means:

11786 (a) A corporation for profit.

11787 (b) A limited liability company.

11788 (c) A limited liability partnership.

11789 (d) A limited partnership, including a limited liability
 11790 limited partnership.

11791 Section 238. Paragraphs (c), (d), and (e) of subsection (1)
 11792 of section 605.0114, Florida Statutes, are amended to read:

11793 605.0114 Change of registered agent or registered office.—

11794 (1) In order to change its registered agent or registered
 11795 office address, a limited liability company or a foreign limited
 11796 liability company may deliver to the department for filing a
 11797 statement of change containing the following:

11798 (c) If the current registered agent is to be changed, the
 11799 name of the new registered agent.

11800 (d) The street address of its current registered office for
 11801 its current registered agent.

11802 (e) If the street address of the current registered office
 11803 is to be changed, the new street address of the registered

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11804 office in this state.

11805 Section 239. Subsection (2) of section 605.0115, Florida
 11806 Statutes, is amended to read:

11807 605.0115 Resignation of registered agent.—

11808 (2) After delivering the statement of resignation ~~to with~~
 11809 the department for filing, the registered agent must promptly
 11810 ~~shall~~ mail a copy to the limited liability company's or foreign
 11811 limited liability company's current mailing address.

11812 Section 240. Paragraphs (b) through (e) of subsection (1)
 11813 of section 605.0116, Florida Statutes, are amended to read:

11814 605.0116 Change of name or address by registered agent.—

11815 (1) If a registered agent changes his or her name or
 11816 address, the agent may deliver to the department for filing a
 11817 statement of change that provides the following:

11818 (b) The name of the registered agent as currently shown in
 11819 the records of the department for the limited liability company
 11820 or foreign limited liability company.

11821 (c) If the name of the registered agent has changed, its
 11822 new name.

11823 (d) If the address of the registered agent has changed, the
 11824 new address.

11825 (e) A statement that the registered agent has given the
 11826 notice required under subsection (2).

11827 Section 241. Present subsection (7) of section 605.0117,
 11828 Florida Statutes, is redesignated as subsection (8), subsections
 11829 (1), (2), (3), (4), and (6) of that section are amended, and a
 11830 new subsection (7) is added to that section, to read:

11831 605.0117 Service of process, notice, or demand.—

11832 (1) A limited liability company or registered foreign

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11833 limited liability company may be served with process, ~~notice, or~~
 11834 ~~a demand~~ required or authorized by law by serving on its
 11835 registered agent.

11836 (2) If a limited liability company or registered foreign
 11837 limited liability company ceases to have a registered agent or
 11838 if its registered agent cannot with reasonable diligence be
 11839 served, the process, ~~notice, or demand~~ required or permitted by
 11840 law may instead be served:

11841 (a) On a member of a member-managed limited liability
 11842 company or registered foreign limited liability company; or

11843 (b) On a manager of a manager-managed limited liability
 11844 company or registered foreign limited liability company.

11845 (3) If the process, ~~notice, or demand~~ cannot be served on a
 11846 limited liability company or registered foreign limited
 11847 liability company pursuant to subsection (1) or subsection (2),
 11848 the process, ~~notice, or demand~~ may be served on the secretary of
 11849 state department as an agent of the company.

11850 (4) Service of process on the secretary of state with
 11851 ~~process, notice, or a demand on the department~~ may be made by
 11852 delivering to and leaving with the department duplicate copies
 11853 of the process, ~~notice, or demand~~.

11854 (6) The department shall keep a record of each process,
 11855 ~~notice, and demand~~ served pursuant to this section and record
 11856 the time of and the action taken regarding the service.

11857 (7) Any notice or demand on a limited liability company or
 11858 registered foreign limited liability company under this chapter
 11859 may be given or made to any member of a member-managed limited
 11860 liability company or registered foreign limited liability
 11861 company or to any manager of a manager-managed limited liability

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11862 company or registered foreign limited liability company; to the
 11863 registered agent of the limited liability company or registered
 11864 foreign limited liability company at the registered office of
 11865 the limited liability company or registered foreign limited
 11866 liability company in this state; or to any other address in this
 11867 state that is in fact the principal office of the limited
 11868 liability company or registered foreign limited liability
 11869 company in this state.

11870 Section 242. Subsection (3) of section 605.0118, Florida
 11871 Statutes, is amended to read:

11872 605.0118 Delivery of record.—

11873 (3) If a check is mailed to the department for payment of
 11874 an annual report fee or the annual supplemental fee required
 11875 under s. 607.193, the check shall be deemed to have been
 11876 received by the department as of the postmark date appearing on
 11877 the envelope or package transmitting the check if the envelope
 11878 or package is received by the department.

11879 Section 243. Section 605.0207, Florida Statutes, is amended
 11880 to read:

11881 605.0207 Effective date and time.—Except as otherwise
 11882 provided in s. 605.0208, and subject to s. 605.0209(3), any
 11883 document delivered to the department for filing under this
 11884 chapter may specify an effective time and a delayed effective
 11885 date. In the case of initial articles of organization, a prior
 11886 effective date may be specified in the articles of organization
 11887 if such date is within 5 business days before the date of
 11888 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and
 11889 605.0209, a record filed by the department is effective:

11890 (1) If the record filed does not specify an effective time

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11891 and does not specify a prior or a delayed effective date, on the
 11892 date and at the time the record is accepted filed as evidenced
 11893 by the department's endorsement of the date and time on the
 11894 filing record.

11895 (2) If the record filed specifies an effective time, but
 11896 not a prior or delayed effective date, on the date the record is
 11897 filed at the time specified in the filing record.

11898 (3) If the record filed specifies a delayed effective date,
 11899 but not an effective time, at 12:01 a.m. on the earlier of:

11900 (a) The specified date; or

11901 (b) The 90th day after the record is filed.

11902 (4) If the record filed specifies a delayed effective date
 11903 and an effective time, at the specified time on or the earlier
 11904 of:

11905 (a) The specified date; or

11906 (b) The 90th day after the record is filed.

11907 (5) (4) If the record filed is the initial articles of
 11908 organization and specifies an effective a date before the
 11909 effective date of the filing, but no effective time, at 12:01
 11910 a.m. on the later of:

11911 (a) The specified date; or

11912 (b) The 5th business day before the record is filed.

11913 (6) (5) If the record filed is the initial articles of
 11914 organization and specifies an effective time and an effective a
 11915 delayed effective date, at the specified time on the earlier of:

11916 ~~(a) The specified date; or~~

11917 ~~(b) The 90th day after the record is filed.~~

11918 ~~(6) If the record specifies an effective time and a prior~~
 11919 ~~effective date before the date of the filing, at the specified~~

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11920 time on the later of:

11921 (a) The specified date; or

11922 (b) The 5th business day before the record is filed.

11923 (7) If a filed document does not specify the time zone or
 11924 place at which the date or time, or both, is to be determined,
 11925 the date or time, or both, at which it becomes effective shall
 11926 be those prevailing at the place of filing in this state.

11927 Section 244. Subsection (3) of section 605.0209, Florida
 11928 Statutes, is amended to read:

11929 605.0209 Correcting filed record.—

11930 (3) A statement of correction:

11931 (a) May not state a delayed effective date;

11932 (b) Must be signed by the person correcting the filed
 11933 record;

11934 (c) Must identify the filed record to be corrected,
 11935 including such record's filing date, or attach a copy of the
 11936 record to the statement of correction;

11937 (d) Must specify the inaccuracy or defect to be corrected;
 11938 and

11939 (e) Must correct the inaccuracy or defect.

11940 Section 245. Subsection (7) of section 605.0210, Florida
 11941 Statutes, is amended to read:

11942 605.0210 Duty of department to file; review of refusal to
 11943 file; transmission of information by department.—

11944 (7) If the department refuses to file a record delivered to
 11945 its office for filing, the person who submitted the record for
 11946 filing may petition the Circuit Court of Leon County to compel
 11947 filing of the record. The record and the explanation from ~~of~~ the
 11948 department of the refusal to file must be attached to the

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11949 petition. The court may decide the matter in a summary
 11950 proceeding and the court may summarily order the department to
 11951 file the record or take other action the court considers
 11952 appropriate. The court's final decision may be appealed as in
 11953 other civil proceedings.

11954 Section 246. Paragraph (a) of subsection (2) and subsection
 11955 (3) of section 605.0211, Florida Statutes, are amended to read:
 11956 605.0211 Certificate of status.—

11957 (2) The department, upon request and payment of the
 11958 requisite fee, shall furnish a certificate of status for a
 11959 foreign limited liability company if the records filed show that
 11960 the department has filed a certificate of authority. A
 11961 certificate of status for a foreign limited liability company
 11962 must state the following:

11963 (a) The foreign limited liability company's name and any a
 11964 current alternate name adopted under s. 605.0906(1) for use in
 11965 this state.

11966 (3) Subject to any qualification stated in the certificate
 11967 of status, a certificate of status issued by the department is
 11968 conclusive evidence that the domestic limited liability company
 11969 is in existence and is of active status in this state or the
 11970 foreign limited liability company is authorized to transact
 11971 business in this state and is of active status in this state.

11972 Section 247. Section 605.0215, Florida Statutes, is amended
 11973 to read:

11974 605.0215 Certificates to be received in evidence and
 11975 evidentiary effect of copy of filed document.—All certificates
 11976 issued by the department in accordance with this chapter shall
 11977 be taken and received in all courts, public offices, and

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11978 official bodies as prima facie evidence of the facts stated. A
 11979 certificate from the department delivered with a copy of a
 11980 document filed by the department bearing the signature of the
 11981 secretary of state, which may be in facsimile, and the seal of
 11982 this state is conclusive evidence that the original document is
 11983 on file with the department.

11984 Section 248. Subsections (1) through (4) of section
 11985 605.04092, Florida Statutes, are amended to read:

11986 605.04092 Conflict of interest transactions.—

11987 (1) As used in this section, the following terms and
 11988 definitions apply:

11989 (a) A member or manager is "indirectly" a party to a
 11990 transaction if that member or manager has a material financial
 11991 interest in or is a director, officer, member, manager, or
 11992 partner of a person, other than the limited liability company,
 11993 who is a party to the transaction.

11994 (b) A member or manager has an "indirect material financial
 11995 interest" if a ~~spouse or other~~ family member has a material
 11996 financial interest in the transaction, other than having an
 11997 indirect interest as a member or manager of the limited
 11998 liability company, or if the transaction is with an entity,
 11999 other than the limited liability company, which has a material
 12000 financial interest in the transaction and controls, or is
 12001 controlled by, the member or manager or another person specified
 12002 in this subsection.

12003 (c) "Fair to the limited liability company" means that the
 12004 transaction, as a whole, is beneficial to the limited liability
 12005 company and its members, taking into appropriate account whether
 12006 it is:

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12007 1. Fair in terms of the member's or manager's dealings with
12008 the limited liability company in connection with that
12009 transaction; and

12010 2. Comparable to what might have been obtainable in an
12011 arm's length transaction.

12012 (d) "Family member" includes any of the following:

12013 1. The member's or manager's spouse.

12014 2. A child, stepchild, parent, stepparent, grandparent,
12015 sibling, step sibling, or half sibling of the member or manager
12016 or the member's or manager's spouse.

12017 (e) "Manager's conflict of interest transaction" means a
12018 transaction between a limited liability company and one or more
12019 of its managers, or another entity in which one or more of the
12020 limited liability company's managers is directly or indirectly a
12021 party to the transaction, other than being an indirect party as
12022 a result of being a member of the limited liability company, and
12023 has a direct or indirect material financial interest or other
12024 material interest.

12025 (f) "Material financial interest" or "other material
12026 interest" means a financial or other interest in the transaction
12027 that would reasonably be expected to impair the objectivity of
12028 the judgment of the member or manager when participating in the
12029 action on the authorization of the transaction.

12030 (g) "Member's conflict of interest transaction" means a
12031 transaction between a limited liability company and one or more
12032 of its members, or another entity in which one or more of the
12033 limited liability company's members is directly or indirectly a
12034 party to the transaction, other than being an indirect party as
12035 a result of being a member of the limited liability company, and

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12036 has a direct or indirect material financial interest or other
12037 material interest.

12038 (2) If the requirements of this section have been
12039 satisfied, a member's conflict of interest transaction or a
12040 manager's conflict of interest transaction between a limited
12041 liability company and one or more of its members or managers, or
12042 another entity in which one or more of the limited liability
12043 company's members or managers have a financial or other
12044 interest, is not void or voidable because of that relationship
12045 or interest; because the members or managers are present at the
12046 meeting of the members or managers at which the transaction was
12047 authorized, approved, effectuated, or ratified; or because the
12048 votes of the members or managers are counted for such purpose.

12049 (3) If a member's conflict of interest transaction or a
12050 manager's conflict of interest transaction is fair to the
12051 limited liability company at the time it is authorized,
12052 approved, effectuated, or ratified, the fact that a member or
12053 manager of the limited liability company is directly or
12054 indirectly a party to the transaction, other than being an
12055 indirect party as a result of being a member or manager of the
12056 limited liability company, or has a direct or indirect material
12057 financial interest or other interest in the transaction, other
12058 than having an indirect interest as a result of being a member
12059 or manager of the limited liability company, is not grounds for
12060 equitable relief and does not give rise to an award of damages
12061 or other sanctions.

12062 (4) (a) In a proceeding challenging the validity of a
12063 member's conflict of interest transaction or a manager's
12064 conflict of interest transaction or in a proceeding seeking

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12065 equitable relief, award of damages, or other sanctions with
 12066 respect to a member's conflict of interest transaction or a
 12067 manager's conflict of interest transaction, described in
 12068 ~~subsection (3)~~, the person challenging the validity or seeking
 12069 equitable relief, award of damages, or other sanctions has the
 12070 burden of proving the lack of fairness of the transaction if:
 12071 1. In a manager-managed limited liability company, the
 12072 material facts of the transaction and the member's or manager's
 12073 interest in the transaction were disclosed or known to the
 12074 managers or a committee of managers who voted upon the
 12075 transaction and the transaction was authorized, approved, or
 12076 ratified by a majority of the disinterested managers even if the
 12077 disinterested managers constitute less than a quorum; however,
 12078 the transaction cannot be authorized, approved, or ratified
 12079 under this subsection solely by a single manager; and
 12080 2. In a member-managed limited liability company, or a
 12081 manager-managed limited liability company in which the managers
 12082 have failed to or cannot act under subparagraph 1., the material
 12083 facts of the transaction and the member's or manager's interest
 12084 in the transaction were disclosed or known to the members who
 12085 voted upon such transaction and the transaction was authorized,
 12086 approved, or ratified by a majority-in-interest of the
 12087 disinterested members even if the disinterested members
 12088 constitute less than a quorum; however, the transaction cannot
 12089 be authorized, approved, or ratified under this subsection
 12090 solely by a single member; or
 12091 (b) If neither of the conditions provided in paragraph (a)
 12092 has been satisfied, the person defending or asserting the
 12093 validity of a member's conflict of interest transaction or a

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12094 manager's conflict of interest transaction described in
 12095 ~~subsection (3)~~ has the burden of proving its fairness in a
 12096 proceeding challenging the validity of the transaction.
 12097 Section 249. Paragraph (c) of subsection (3) of section
 12098 605.0410, Florida Statutes, is amended to read:
 12099 605.0410 Records to be kept; rights of member, manager, and
 12100 person dissociated to information.—
 12101 (3) In a manager-managed limited liability company, the
 12102 following rules apply:
 12103 (c) Within 10 days after receiving a demand pursuant to
 12104 subparagraph (b)2. ~~(2)(b)2.~~, the company shall, in a record,
 12105 inform the member who made the demand of:
 12106 1. The information that the company will provide in
 12107 response to the demand and when and where the company will
 12108 provide the information; and
 12109 2. The company's reasons for declining, if the company
 12110 declines to provide any demanded information.
 12111 Section 250. Paragraph (b) of subsection (1) and subsection
 12112 (2) of section 605.0702, Florida Statutes, are amended, and
 12113 subsections (3), (4), and (5) are added to that section, to
 12114 read:
 12115 605.0702 Grounds for judicial dissolution.—
 12116 (1) A circuit court may dissolve a limited liability
 12117 company:
 12118 (b) In a proceeding by a manager or member to dissolve the
 12119 limited liability company if it is established that:
 12120 1. The conduct of all or substantially all of the company's
 12121 activities and affairs is unlawful;
 12122 2. It is not reasonably practicable to carry on the

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12123 company's activities and affairs in conformity with the articles
12124 of organization and the operating agreement;

12125 3. The managers or members in control of the company have
12126 acted, are acting, or will ~~are reasonably expected to~~ act in a
12127 manner that is illegal, oppressive, or fraudulent;

12128 4. The limited liability company's assets are being
12129 misappropriated or wasted, causing injury to the limited
12130 liability company, or in a proceeding by a member, causing
12131 injury to one or more of its members; or

12132 5. The managers or the members of the limited liability
12133 company are deadlocked in the management of the limited
12134 liability company's activities and affairs, the members are
12135 unable to break the deadlock, and irreparable injury to the
12136 limited liability company is threatened or being suffered.

12137 (2) (a) If the managers or the members of the limited
12138 liability company are deadlocked in the management of the
12139 limited liability company's activities and affairs, the members
12140 are unable to break the deadlock, and irreparable injury to the
12141 limited liability company is threatened or being suffered, if
12142 the operating agreement contains a deadlock sale provision that
12143 has been initiated before the time that the court determines
12144 that the grounds for judicial dissolution exist under
12145 subparagraph (1) (b) 5., then such deadlock sale provision applies
12146 to the resolution of such deadlock instead of the court entering
12147 an order of judicial dissolution or an order directing the
12148 purchase of petitioner's interest under s. 605.0706, so long as
12149 the provisions of such deadlock sale provision are thereafter
12150 initiated and effectuated in accordance with the terms of such
12151 deadlock sale provision or otherwise pursuant to an agreement of

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12152 the members of the company.

12153 (b) As used in this section, the term "deadlock sale
12154 provision" means a provision in an operating agreement which is
12155 or may be applicable in the event of a deadlock among the
12156 managers or the members of the limited liability company which
12157 the members of the company are unable to break and which
12158 provides for a deadlock breaking mechanism, including, but not
12159 limited to:

12160 1. A redemption or a purchase and sale of interests; ~~or~~

12161 2. A governance change, among or between members;

12162 3. The sale of the company or all or substantially all of
12163 the assets of the company; or

12164 4. A similar provision that, if initiated and effectuated,
12165 breaks the deadlock by causing the transfer of interests, a
12166 governance change, or the sale of all or substantially all of
12167 the company's assets. ~~A deadlock sale provision in an operating
12168 agreement which is not initiated and effectuated before the
12169 court enters an order of judicial dissolution under subparagraph
12170 (1) (b) 5. or an order directing the purchase of petitioner's
12171 interest under s. 605.0706 does not adversely affect the rights
12172 of members and managers to seek judicial dissolution under
12173 subparagraph (1) (b) 5. or the rights of the company or one or
12174 more members to purchase the petitioner's interest under s.
12175 605.0706. The filing of an action for judicial dissolution on
12176 the grounds described in subparagraph (1) (b) 5. or an election to
12177 purchase the petitioner's interest under s. 605.0706 does not
12178 adversely affect the right of a member to initiate an available
12179 deadlock sale provision under the operating agreement or to
12180 enforce a member-initiated or an automatically-initiated~~

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12181 ~~deadlock sale provision if the deadlock sale provision is~~
 12182 ~~initiated and effectuated before the court enters an order of~~
 12183 ~~judicial dissolution under subparagraph (1)(b)5. or an order~~
 12184 ~~directing the purchase of petitioner's interest under s.~~
 12185 ~~605.0706.~~

12186 (3) A proceeding by a member under subparagraph (1)(b)3.
 12187 asserting that the members or managers in control of the limited
 12188 liability company have acted, are acting, or will act in a
 12189 manner that is oppressive may only be brought by a member who,
 12190 at the time that such proceeding is commenced, owns at least 10
 12191 percent of the outstanding membership interests of the limited
 12192 liability company.

12193 (4) (a) In the event of oppressive action that satisfies
 12194 subparagraph (1)(b)3., if the members are subject to an
 12195 operating agreement that contains an oppressive action sale
 12196 provision, then such oppressive action sale provision shall
 12197 address such member asserted oppressive action in lieu of the
 12198 court entering an order of judicial dissolution or an order
 12199 directing the purchase of petitioner's interest under s.
 12200 605.0706, so long as the provisions of such oppressive action
 12201 sale provision are initiated and effectuated within the time
 12202 periods specified for the company to act under s. 605.0706 and
 12203 in accordance with the terms of such oppressive action sale
 12204 provision.

12205 (b) For the purposes of this section, the term "oppressive
 12206 action sale provision" means a provision in an operating
 12207 agreement that is or may be applicable in the event of a
 12208 member's assertion of the occurrence or existence of oppressive
 12209 action which neither the members nor the managers, as

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12210 applicable, of the company are able to address and which
 12211 provides for a mechanism for addressing the occurrence or
 12212 existence of such member asserted oppressive action including,
 12213 but not limited to:

12214 1. A redemption or purchase and sale of interests;
 12215 2. The sale of the company or of all or substantially all
 12216 of the assets of the company; or
 12217 3. A similar provision that, if initiated and effectuated,
 12218 causes the transfer of interests to be redeemed or purchased and
 12219 sold or the sale of the company or of all or substantially all
 12220 of the company's assets.

12221 (5) A deadlock sale provision or an oppressive action sale
 12222 provision in an operating agreement which is not initiated and
 12223 effectuated before the court enters an order of judicial
 12224 dissolution under subparagraph (1)(b)3. or subparagraph
 12225 (1)(b)5., as the case may be, or an order directing the purchase
 12226 of petitioner's interest under s. 605.0706, does not adversely
 12227 affect the rights of members and managers to seek judicial
 12228 dissolution under subparagraph (1)(b)3. or subparagraph
 12229 (1)(b)5., as the case may be, or the rights of the company or
 12230 one or more members to purchase the petitioner's interest under
 12231 s. 605.0706. The filing of an action for judicial dissolution on
 12232 the grounds described in subparagraph (1)(b)3. or subparagraph
 12233 (1)(b)5., as the case may be, or an election to purchase the
 12234 petitioner's interest under s. 605.0706, does not adversely
 12235 affect the right of a member to initiate an available deadlock
 12236 sale provision or an oppressive action sale provision under the
 12237 operating agreement or to enforce a member-initiated or an
 12238 automatically-initiated deadlock sale provision or oppressive

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12239 action sale provision if the deadlock sale provision or the
 12240 oppressive sale provision, as the case may be, is initiated and
 12241 effectuated before the court enters an order of judicial
 12242 dissolution under subparagraph (1)(b)3. or subparagraph
 12243 (1)(b)5., as the case may be, or an order directing the purchase
 12244 of petitioner's interest under s. 605.0706.

12245 Section 251. Subsections (1), (2), (4), (5), (6), (7), and
 12246 (8) of section 605.0706, Florida Statutes, are amended to read:

12247 605.0706 Election to purchase instead of dissolution.—

12248 (1) In a proceeding initiated by a member of a limited
 12249 liability company under s. 605.0702(1)(b) ~~to dissolve the~~
 12250 ~~company~~, the company may elect, or, if it fails to elect, one or
 12251 more other members may elect, to purchase the entire interest of
 12252 the petitioner in the company at the fair value of the interest.
 12253 An election pursuant to this section is irrevocable unless the
 12254 court determines that it is equitable to set aside or modify the
 12255 election.

12256 (2) An election to purchase pursuant to this section may be
 12257 filed with the court within 90 days after the filing of the
 12258 petition by the petitioning member under s. 605.0702(1)(b) ~~or~~
 12259 ~~(2)~~ or at such later time as the court may allow. If the
 12260 election to purchase is filed, the company shall within 10 days
 12261 thereafter give written notice to all members, other than the
 12262 petitioning member. The notice must describe the interest in the
 12263 company owned by each petitioning member and must advise the
 12264 recipients of their right to join in the election to purchase
 12265 the petitioning member's interest in accordance with this
 12266 section. Members who wish to participate must file notice of
 12267 their intention to join in the purchase within 30 days after the

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12268 effective date of the notice. A member who has filed an election
 12269 or notice of the intent to participate in the election to
 12270 purchase thereby becomes a party to the proceeding and shall
 12271 participate in the purchase in proportion to the ownership
 12272 interest as of the date the first election was filed unless the
 12273 members otherwise agree or the court otherwise directs. After an
 12274 election to purchase has been filed by the limited liability
 12275 company or one or more members, the proceeding under s.
 12276 605.0702(1)(b) ~~or (2)~~ may not be discontinued or settled, and
 12277 the petitioning member may not sell or otherwise dispose of the
 12278 interest of the petitioner in the company unless the court
 12279 determines that it would be equitable to the company and the
 12280 members, other than the petitioner, to authorize such
 12281 discontinuance, settlement, sale, or other disposition or the
 12282 sale is pursuant to a deadlock sale provision described in s.
 12283 605.0702(1)(b).

12284 (4) If the parties are unable to reach an agreement as
 12285 provided for in subsection (3), the court, upon application of a
 12286 party, ~~may shall~~ stay the proceedings to dissolve under s.
 12287 605.0702(1)(b) and shall, whether or not the proceeding is
 12288 stayed, determine the fair value of the petitioner's interest as
 12289 of the day before the date on which the petition was filed or as
 12290 of such other date as the court deems appropriate under the
 12291 circumstances.

12292 (5) Upon determining the fair value of the petitioner's
 12293 interest in the company, unless the petitioner's interest has
 12294 been acquired pursuant to a deadlock sale provision before the
 12295 order, the court shall enter an order directing the purchase
 12296 upon such terms and conditions as the court deems appropriate,

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12297 which may include: payment of the purchase price in
 12298 installments, when necessary in the interests of equity; a
 12299 provision for security to ensure payment of the purchase price
 12300 and additional costs, fees, and expenses as may have been
 12301 awarded; and, if the interest is to be purchased by members, the
 12302 allocation of the interest among those members. In allocating
 12303 the petitioner's interest among holders of different classes or
 12304 series of interests in the company, the court shall attempt to
 12305 preserve any the existing distribution of voting rights among
 12306 holders of different classes or series insofar as practicable
 12307 and may direct that holders of any a specific class or classes
 12308 or series may not participate in the purchase. Interest may be
 12309 allowed at the rate and from the date determined by the court to
 12310 be equitable; however, if the court finds that the refusal of
 12311 the petitioning member to accept an offer of payment was
 12312 arbitrary or otherwise not in good faith, payment of interest is
 12313 not allowed. If the court finds that the petitioning member had
 12314 probable grounds for relief under s. 605.0702(1)(b) ~~or~~
 12315 605.0702(1)(b)3. or 4., it may award expenses to the petitioning
 12316 member, including reasonable fees and expenses of counsel and of
 12317 experts employed by petitioner.

12318 (6) ~~The Upon~~ entry of an order under subsection (3) or
 12319 subsection (5) shall be subject to subsection (8), and the order
 12320 may not be entered unless the award is determined by the court
 12321 to be allowed under subsection (8). In determining compliance
 12322 with s. 605.0405, the court may rely on an affidavit from the
 12323 limited liability company as to compliance with that section as
 12324 of the measurement date. Upon entry of an order under subsection
 12325 (3) or subsection (5), the court shall dismiss the petition to

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12326 dissolve the limited liability company under s. 605.0702(1)(b),
 12327 and the petitioning member shall no longer have rights or status
 12328 as a member of the limited liability company except the right to
 12329 receive the amounts awarded by the order of the court, which
 12330 shall be enforceable in the same manner as any other judgment.

12331 (7) The purchase ordered pursuant to subsection (5) shall
 12332 ~~must~~ be made within 10 days after the date the order becomes
 12333 final ~~unless, before that time, the limited liability company~~
 12334 ~~files with the court a notice of its intention to dissolve~~
 12335 ~~pursuant to s. 605.0701(2), in which case articles of~~
 12336 ~~dissolution for the company must be filed within 50 days~~
 12337 ~~thereafter. Upon filing of such articles of dissolution, the~~
 12338 ~~limited liability company shall be wound up in accordance with~~
 12339 ~~ss. 605.0709-605.0713, and the order entered pursuant to~~
 12340 ~~subsection (5) shall no longer be of force or effect except that~~
 12341 ~~the court may award the petitioning member reasonable fees and~~
 12342 ~~expenses of counsel and experts in accordance with subsection~~
 12343 ~~(5), and the petitioner may continue to pursue any claims~~
 12344 ~~previously asserted on behalf of the limited liability company.~~

12345 (8) Any award ~~A payment by the limited liability company~~
 12346 pursuant to an order under subsection (3) or subsection (5),
 12347 other than an award of fees and expenses pursuant to subsection
 12348 (5), is subject to s. 605.0405. Unless otherwise provided in the
 12349 court's order, the effect of a distribution under s. 605.0405
 12350 shall be measured as of the date of the court's order under
 12351 subsection (3) or subsection (5).

12352 Section 252. Subsection (5) of section 605.0715, Florida
 12353 Statutes, is amended, and subsection (6) is added to that
 12354 section, to read:

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12355 605.0715 Reinstatement.—

12356 (5) The name of the dissolved limited liability company is
12357 not available for assumption or use by another business entity
12358 until 1 year after the effective date of dissolution unless the
12359 dissolved limited liability company provides the department with
12360 a record executed as required pursuant to s. 605.0203 permitting
12361 the immediate assumption or use of the name by another business
12362 entity limited liability company.

12363 (6) If the name of the dissolved limited liability company
12364 has been lawfully assumed in this state by another business
12365 entity, the department shall require the dissolved limited
12366 liability company to amend its articles of incorporation to
12367 change its name before accepting the application for
12368 reinstatement.

12369 Section 253. Subsections (2) and (3) of section 605.0716,
12370 Florida Statutes, are amended, and subsection (4) is added to
12371 that section, to read:

12372 605.0716 Judicial review of denial of reinstatement.—

12373 (2) Within 30 days after service of a notice of denial of
12374 reinstatement, a limited liability company may appeal the denial
12375 by petitioning the Circuit Court of Leon County in the
12376 applicable county, as defined in s. 605.0711(15), to set aside
12377 the dissolution. The petition must be served on the department
12378 and contain a copy of the department's notice of administrative
12379 dissolution, the company's application for reinstatement, and
12380 the department's notice of denial.

12381 (3) The circuit court may order the department to reinstate
12382 a dissolved limited liability company or take other action the
12383 court considers appropriate.

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12384 (4) The circuit court's final decision may be appealed as
12385 in other civil proceedings.

12386 Section 254. Section 605.0803, Florida Statutes, is amended
12387 to read:

12388 605.0803 Proper plaintiff.—A derivative action to enforce a
12389 right of a limited liability company may be commenced ~~maintained~~
12390 only by a person who is a member at the time the action is
12391 commenced and:

12392 (1) Was a member when the conduct giving rise to the action
12393 occurred; or

12394 (2) Whose status as a member devolved on the person by
12395 operation of law or pursuant to the terms of the operating
12396 agreement from a person who was a member when at the time of the
12397 conduct giving rise to the action occurred.

12398 Section 255. Subsection (2) of section 605.0903, Florida
12399 Statutes, is amended to read:

12400 605.0903 Effect of a certificate of authority.—

12401 (2) The filing by the department of an application for a
12402 certificate of authority means ~~authorizes~~ the foreign limited
12403 liability company that filed ~~files~~ the application to transact
12404 business in this state has obtained a certificate of authority
12405 to transact business in this state and is authorized to transact
12406 business in this state, subject, however, to the right of the
12407 department to suspend or revoke the certificate of authority as
12408 provided in this chapter.

12409 Section 256. Subsections (3) and (4) of section 605.0904,
12410 Florida Statutes, are amended to read:

12411 605.0904 Effect of failure to have certificate of
12412 authority.—

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12413 (3) A court may stay a proceeding commenced by a foreign
 12414 limited liability company or its successor or assignee until it
 12415 determines whether the foreign limited liability company or its
 12416 successor requires a certificate of authority. If it so
 12417 determines, the court may further stay the proceeding until the
 12418 foreign limited liability company or its successor has obtained
 12419 ~~a obtains the~~ certificate of authority to transact business in
 12420 this state.

12421 (4) The failure of a foreign limited liability company to
 12422 have a certificate of authority to transact business in this
 12423 state does not impair the validity of any contract, deed,
 12424 mortgage, security interest, a contract or act of the foreign
 12425 limited liability company or prevent the foreign limited
 12426 liability company from defending an action or proceeding in this
 12427 state.

12428 Section 257. Subsections (1) and (4) of section 605.0906,
 12429 Florida Statutes, are amended to read:

12430 605.0906 Noncomplying name of foreign limited liability
 12431 company.—

12432 (1) A foreign limited liability company whose name is
 12433 unavailable under or whose name does not otherwise comply with
 12434 s. 605.0112 shall may use an alternate name that complies with
 12435 s. 605.0112 to transact business in this state. An alternate
 12436 name adopted for use in this state shall be cross-referenced to
 12437 the actual name of the foreign limited liability company in the
 12438 records of the department. If the actual name of the foreign
 12439 limited liability company subsequently becomes available in this
 12440 state or the foreign limited liability company chooses to change
 12441 its alternate name, a copy of the record approving the change by

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12442 its members, managers, or other persons having the authority to
 12443 do so, and executed as required pursuant to s. 605.0203, shall
 12444 be delivered to the department for filing.

12445 (4) If a foreign limited liability company authorized to
 12446 transact business in this state changes its name to one that
 12447 does not comply with s. 605.0112, it may not thereafter transact
 12448 business in this state until it complies with subsection (1) and
 12449 obtains an amended certificate of authority pursuant to s.
 12450 605.0907.

12451 Section 258. Paragraph (d) of subsection (1) and
 12452 subsections (2) and (4) of section 605.0907, Florida Statutes,
 12453 are amended to read:

12454 605.0907 Amendment to certificate of authority.—

12455 (1) A foreign limited liability company authorized to
 12456 transact business in this state shall deliver for filing an
 12457 amendment to its certificate of authority to reflect the change
 12458 of any of the following:

12459 ~~(d) Any person identified in accordance with s.~~
 12460 ~~605.0902(1)(c), or a change in the title or capacity or address~~
 12461 ~~of that person.~~

12462 (2) The amendment must be filed within 90 ~~30~~ days after the
 12463 occurrence of a change described in subsection (1), must be
 12464 signed by an authorized representative of the foreign limited
 12465 liability company, and must state the following:

12466 (a) The name of the foreign limited liability company as it
 12467 appears on the records of the department.

12468 (b) Its jurisdiction of formation.

12469 (c) The date the foreign limited liability company was
 12470 authorized to transact business in this state.

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12471 (d) If the name of the foreign limited liability company
 12472 has been changed, the name relinquished and its new name.
 12473 (e) If the amendment changes the jurisdiction of formation
 12474 of the foreign limited liability company, a statement of that
 12475 change.
 12476 (4) The requirements of s. 605.0902 ~~s. 605.0902(2)~~ for
 12477 obtaining an original certificate of authority apply to
 12478 obtaining an amended certificate under this section unless the
 12479 ~~Secretary of State or other~~ official having custody of the
 12480 foreign limited liability company's publicly filed records in
 12481 its jurisdiction of formation did not require an amendment to
 12482 effectuate the change on its records.
 12483 Section 259. Subsection (1) of section 605.0908, Florida
 12484 Statutes, is amended to read:
 12485 605.0908 Revocation of certificate of authority.—
 12486 (1) A certificate of authority of a foreign limited
 12487 liability company to transact business in this state may be
 12488 revoked by the department if:
 12489 (a) The foreign limited liability company does not deliver
 12490 its annual report to the department by 5 p.m. Eastern Time on
 12491 the third Friday in September of each year;
 12492 (b) The foreign limited liability company does not pay a
 12493 fee or penalty due to the department under this chapter;
 12494 (c) The foreign limited liability company does not appoint
 12495 and maintain a registered agent as required under s. 605.0113;
 12496 (d) The foreign limited liability company does not deliver
 12497 for filing a statement of a change under s. 605.0114 within 30
 12498 days after a change in the name or address of the agent has
 12499 occurred ~~in the name or address of the agent~~, unless, within 30

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12500 days after the change occurred, either:
 12501 1. The registered agent files a statement of change under
 12502 s. 605.0116; or
 12503 2. The change was made in accordance with s. 605.0114(4).
 12504 ~~or s. 605.0907(1)(d).~~
 12505 (e) The foreign limited liability company has failed to
 12506 amend its certificate of authority to reflect a change in its
 12507 name on the records of the department or its jurisdiction of
 12508 formation;
 12509 (f) The department receives a duly authenticated
 12510 certificate from the official having custody of records in the
 12511 company's jurisdiction of formation stating that it has been
 12512 dissolved or is no longer active on the official's records;
 12513 (g) The foreign limited liability company's period of
 12514 duration has expired;
 12515 (h) A member, manager, or agent of the foreign limited
 12516 liability company signs a document that the member, manager, or
 12517 agent knew was false in a material respect with the intent that
 12518 the document be delivered to the department for filing;
 12519 (i) The foreign limited liability company has failed to
 12520 answer truthfully and fully, within the time prescribed in s.
 12521 605.1104, interrogatories propounded by the department.
 12522 Section 260. Section 605.09091, Florida Statutes, is
 12523 created to read:
 12524 605.09091 Judicial review of denial of reinstatement.—
 12525 (1) If the department denies a foreign limited liability
 12526 company's application for reinstatement after revocation of its
 12527 certificate of authority, the department shall serve the foreign
 12528 limited liability company, pursuant to s. 605.0117(7), with a

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12529 written notice that explains the reason or reasons for the
12530 denial.

12531 (2) Within 30 days after service of a notice of denial of
12532 reinstatement, a foreign limited liability company may appeal
12533 the denial by petitioning the Circuit Court of Leon County to
12534 set aside the revocation. The petition must be served on the
12535 department and must contain a copy of the department's notice of
12536 revocation, the foreign limited liability company's application
12537 for reinstatement, and the department's notice of denial.

12538 (3) The circuit court may order the department to reinstate
12539 the certificate of authority of the foreign limited liability
12540 company or take other action the court considers appropriate.

12541 (4) The circuit court's final decision may be appealed as
12542 in other civil proceedings.

12543 Section 261. Section 605.0910, Florida Statutes, is amended
12544 to read:

12545 605.0910 Withdrawal and cancellation of certificate of
12546 authority.—

12547 (1) To cancel its certificate of authority to transact
12548 business in this state, a foreign limited liability company must
12549 deliver to the department for filing a notice of withdrawal of
12550 certificate of authority. The certificate of authority is
12551 canceled when the notice becomes effective pursuant to s.
12552 605.0207. The notice of withdrawal of certificate of authority
12553 must be signed by an authorized representative and state the
12554 following:

12555 (a) ~~(1)~~ The name of the foreign limited liability company as
12556 it appears on the records of the department.

12557 (b) ~~(2)~~ The name of the foreign limited liability company's

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12558 jurisdiction of formation.

12559 (c) ~~(3)~~ The date the foreign limited liability company was
12560 authorized to transact business in this state.

12561 (d) ~~(4)~~ That the foreign limited liability company is
12562 withdrawing its certificate of authority in this state.

12563 (e) That the foreign limited liability company revokes the
12564 authority of its registered agent to accept service on its
12565 behalf and appoints the secretary of state as its agent for
12566 service of process based on a cause of action arising during the
12567 time the foreign limited liability company was authorized to
12568 transact business in this state.

12569 (f) A mailing address to which the department may mail a
12570 copy of any process served on the secretary of state under
12571 paragraph (e).

12572 (g) A commitment to notify the department in the future of
12573 any change in its mailing address.

12574 (2) After the withdrawal of the foreign limited liability
12575 company is effective, service of process on the secretary of
12576 state under this section is service on the foreign limited
12577 liability company. Upon receipt of the process, the department
12578 shall mail a copy of the process to the foreign limited
12579 liability company at the mailing address set forth under
12580 paragraph (1) (f).

12581 Section 262. Section 605.0911, Florida Statutes, is amended
12582 to read:

12583 605.0911 Withdrawal deemed on conversion to domestic filing
12584 entity.—A registered foreign limited liability company
12585 authorized to transact business in this state that converts to a
12586 domestic limited liability company or to another domestic entity

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12587 that is organized, incorporated, registered or otherwise formed
12588 through the delivery of a record to the department for filing is
12589 deemed to have withdrawn its certificate of authority on the
12590 effective date of the conversion.

12591 Section 263. Section 605.0912, Florida Statutes, is amended
12592 to read:

12593 605.0912 Withdrawal on dissolution, merger, or conversion
12594 to nonfiling entity.—

12595 (1) A registered foreign limited liability company that has
12596 dissolved and completed winding up, has merged into a foreign
12597 entity that is not authorized to transact business ~~registered~~ in
12598 this state, or has converted to a domestic or foreign entity
12599 that is not organized, incorporated, registered or otherwise
12600 formed through the public filing of a record, shall deliver a
12601 notice of withdrawal of certificate of authority to the
12602 department for filing in accordance with s. 605.0910.

12603 (2) After a withdrawal under this section of a foreign
12604 limited liability company entity that has converted to another
12605 type of entity is effective, service of process in any action or
12606 proceeding based on a cause of action arising during the time
12607 the foreign limited liability company was authorized to transact
12608 ~~registered to do~~ business in this state may be made pursuant to
12609 s. 605.0117.

12610 Section 264. Subsection (6) of section 605.1025, Florida
12611 Statutes, is amended to read:

12612 605.1025 Articles of merger.—

12613 (6) A limited liability company is not required to deliver
12614 articles of merger for filing pursuant to subsection (1) if the
12615 limited liability company is named as a merging entity or

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12616 surviving entity in articles of merger or a certificate of
12617 merger filed for the same merger in accordance with s. 607.1105
12618 ~~s. 607.1109~~, s. 617.1108, s. 620.2108(3), or s. 620.8918(3), and
12619 if such articles of merger or certificate of merger
12620 substantially comply with the requirements of this section. In
12621 such a case, the other articles of merger or certificate of
12622 merger may also be used for purposes of subsection (5).

12623 Section 265. Subsection (5) of section 605.1035, Florida
12624 Statutes, is amended to read:

12625 605.1035 Articles of interest exchange.—

12626 (5) A limited liability company is not required to deliver
12627 articles of interest exchange for filing pursuant to subsection
12628 (1) if the domestic limited liability company is named as an
12629 acquiring entity or as an acquiring entity in the articles of
12630 share exchange filed for the same interest exchange in
12631 accordance with s. 607.1105 ~~s. 607.1105(1)~~ and if such articles
12632 of share exchange substantially comply with the requirements of
12633 this section.

12634 Section 266. Subsection (5) of section 605.1061, Florida
12635 Statutes, is amended to read:

12636 605.1061 Appraisal rights; definitions.—The following
12637 definitions apply to this section and to ss. 605.1006 and
12638 605.1062-605.1072:

12639 (5) "Fair value" means the value of the member's membership
12640 interest determined:

12641 (a) Immediately before the effectiveness ~~effectuation~~ of
12642 the appraisal event to which the member objects;

12643 (b) Using customary and current valuation concepts and
12644 techniques generally employed for similar businesses in the

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12645 context of the transaction requiring appraisal, excluding any
 12646 appreciation or depreciation in anticipation of the transaction
 12647 to which the member objects, unless exclusion would be
 12648 inequitable to the limited liability company and its remaining
 12649 members; and

12650 (c) Without discounting for lack of marketability or
 12651 minority status.

12652 Section 267. Subsection (3) of section 605.1063, Florida
 12653 Statutes, is amended to read:

12654 605.1063 Notice of appraisal rights.—

12655 (3) If the appraisal event is to be approved by written
 12656 consent of the members pursuant to s. 60.04073 ~~other than by a~~
 12657 ~~members' meeting:~~

12658 (a) Written notice that appraisal rights are, are not, or
 12659 may be available must be sent to each member from whom a consent
 12660 is solicited at the time consent of such member is first
 12661 solicited, and if the limited liability company has concluded
 12662 that appraisal rights are or may be available, a copy of ss.
 12663 605.1006 and 605.1061-605.1072 must accompany such written
 12664 notice; or

12665 (b) Written notice that appraisal rights are, are not, or
 12666 may be available must be delivered, at least 10 days before the
 12667 appraisal event becomes effective, to all nonconsenting and
 12668 nonvoting members, and, if the limited liability company has
 12669 concluded that appraisal rights are or may be available, a copy
 12670 of ss. 605.1006 and 605.1061-605.1072 must accompany such
 12671 written notice.

12672 Section 268. Section 605.1072, Florida Statutes, is amended
 12673 to read:

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12674 605.1072 Other remedies limited.—

12675 (1) A member entitled to appraisal rights under this
 12676 chapter may not challenge a ~~The legality of a proposed or~~
 12677 completed appraisal event for which appraisal rights are
 12678 available unless such completed appraisal event was either: may
 12679 ~~not be contested, and the appraisal event may not be enjoined,~~
 12680 ~~set aside, or rescinded, in a legal or equitable proceeding by a~~
 12681 ~~member after the members have approved the appraisal event.~~

12682 ~~(2) Subsection (1) does not apply to an appraisal event~~
 12683 ~~that:~~

12684 (a) ~~Was~~ Not authorized and approved in accordance with the
 12685 applicable provisions of this chapter, the organic rules of the
 12686 limited liability company, or the resolutions of the members
 12687 authorizing the appraisal event. ~~or~~

12688 (b) ~~Was~~ Procured as a result of fraud, a material
 12689 misrepresentation, or an omission of a material fact that is
 12690 necessary to make statements made, in light of the circumstances
 12691 in which they were made, not misleading.

12692 (2) Nothing in this section operates to override or
 12693 supersede s. 605.04092.

12694 Section 269. Subsection (16) of section 617.0302, Florida
 12695 Statutes, is amended to read:

12696 617.0302 Corporate powers.—Every corporation not for profit
 12697 organized under this chapter, unless otherwise provided in its
 12698 articles of incorporation or bylaws, shall have power to:

12699 (16) Merge with other corporations or other eligible
 12700 ~~business~~ entities identified in s. 607.1101 ~~s. 607.1108(1)~~, both
 12701 for profit and not for profit, domestic and foreign, if the
 12702 surviving corporation or other surviving eligible business

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12703 entity is a corporation not for profit or other eligible
 12704 ~~business~~ entity that has been organized as a not-for-profit
 12705 entity under a governing statute or other applicable law that
 12706 permits such a merger.

12707 Section 270. Subsections (1) and (5) of section 617.0501,
 12708 Florida Statutes, are amended, and subsection (6) is added to
 12709 that section, to read:

12710 617.0501 Registered office and registered agent.—

12711 (1) Each corporation shall have and continuously maintain
 12712 in this state:

12713 (a) A registered office which may be the same as its
 12714 principal office; and

12715 (b) A registered agent, who may be either:

12716 1. An individual who resides in this state whose business
 12717 office is identical with such registered office; or

12718 2. Another domestic entity that is an authorized entity
 12719 whose business address is identical to the address of the
 12720 registered office, or a foreign entity authorized to transact
 12721 business in this state that is an authorized entity and whose
 12722 business address is identical to the address of ~~A corporation~~
 12723 ~~for profit or not for profit, authorized to transact business or~~
 12724 ~~conduct its affairs in this state, having a business office~~
 12725 ~~identical with the registered office.~~

12726 (5) A corporation may not prosecute or maintain any action
 12727 in a court in this state until the corporation complies with
 12728 this section or s. 617.1508, as applicable, ~~and~~ pays to the
 12729 Department of State any amounts required under this chapter,
 12730 and, to the extent ordered by a court of competent jurisdiction,
 12731 pays to the Department of State a penalty of \$5 for each day it

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12732 has failed to so comply or \$500, whichever is less.

12733 (6) For the purposes of this section, the term "authorized
 12734 entity" means:

12735 (a) A corporation for profit;

12736 (b) A limited liability company;

12737 (c) A limited liability partnership; or

12738 (d) A limited partnership, including a limited liability
 12739 limited partnership.

12740 Section 271. Section 617.05015, Florida Statutes, is
 12741 created to read:

12742 617.05015 Reserved name.—

12743 (1) A person may reserve the exclusive use of the name of a
 12744 corporation, including an alternate name for a foreign
 12745 corporation whose name is not available, by delivering an
 12746 application to the department for filing. The application must
 12747 set forth the name and address of the applicant and the name
 12748 proposed to be reserved. If the department finds that the name
 12749 of the corporation applied for is available, it shall reserve
 12750 the name for the applicant's exclusive use for a nonrenewable
 12751 120-day period.

12752 (2) The owner of a reserved name of a corporation may
 12753 transfer the reservation to another person by delivering to the
 12754 department a signed notice of the transfer that states the name
 12755 and address of the transferee.

12756 (3) The department may revoke any reservation if, after a
 12757 hearing, it finds that the application therefor or any transfer
 12758 thereof was not made in good faith.

12759 Section 272. Section 617.0831, Florida Statutes, is amended
 12760 to read:

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12761 617.0831 Indemnification and liability of officers,
 12762 directors, employees, and agents.—Except as provided in s.
 12763 617.0834, s. 607.0831 and ss. 607.0850-607.0859 ~~ss. 607.0831 and~~
 12764 ~~607.0850~~ apply to a corporation organized under this act and a
 12765 rural electric cooperative organized under chapter 425. Any
 12766 reference to “directors” in those sections includes the
 12767 directors, managers, or trustees of a corporation organized
 12768 under this act or of a rural electric cooperative organized
 12769 under chapter 425. However, the term “director” as used in s.
 12770 607.0831 and ss. 607.0850-607.0859 ~~ss. 607.0831 and 607.0850~~
 12771 does not include a director appointed by the developer to the
 12772 board of directors of a condominium association under chapter
 12773 718, a cooperative association under chapter 719, a homeowners’
 12774 association defined in s. 720.301, or a timeshare managing
 12775 entity under chapter 721. Any reference to “shareholders” in
 12776 those sections includes members of a corporation organized under
 12777 this act and members of a rural electric cooperative organized
 12778 under chapter 425.

12779 Section 273. Section 617.1102, Florida Statutes, is amended
 12780 to read:

12781 617.1102 Limitation on merger.—A corporation not for profit
 12782 organized under this chapter may merge with one or more other
 12783 eligible business entities, as identified in s. 607.1101(1) ~~or~~
 12784 ~~607.1108(1)~~, only if the surviving entity of such merger is a
 12785 corporation not for profit or other eligible business entity
 12786 that has been organized as a not-for-profit entity under a
 12787 governing statute or other applicable law that allows such a
 12788 merger.

12789 Section 274. Section 617.1108, Florida Statutes, is amended

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12790 to read:

12791 617.1108 Merger of domestic corporation and other eligible
 12792 ~~business~~ entities.—

12793 (1) Subject to s. 617.0302(16) and other applicable
 12794 provisions of this chapter, ss. 607.1101, 607.1103, 607.1105,
 12795 607.1106, and 607.1107 ~~ss. 607.1108, 607.1109, and 607.1101~~
 12796 shall apply to a merger involving a corporation not for profit
 12797 organized under this act and one or more other eligible business
 12798 entities identified in s. 607.1108(1).

12799 (2) A domestic corporation not for profit organized under
 12800 this chapter is not required to file articles of merger pursuant
 12801 ~~pur suant~~ to this section if the corporation not for profit is
 12802 named as a party or constituent organization in articles of
 12803 merger or a certificate of merger filed for the same merger in
 12804 accordance with s. 605.1025, s. 607.1105 ~~or 607.1109~~, s.
 12805 620.2108(3), or s. 620.8918(1) and (2). In such a case, the
 12806 other articles of merger or certificate of merger may also be
 12807 used for purposes of subsection (3).

12808 (3) A copy of the articles of merger or certificate of
 12809 merger, certified by the Department of State, may be filed in
 12810 the office of the official who is the recording officer of each
 12811 county in this state in which real property of a party to the
 12812 merger, other than the surviving entity, is situated.

12813 Section 275. Section 617.1507, Florida Statutes, is amended
 12814 to read:

12815 617.1507 Registered office and registered agent of foreign
 12816 corporation.—

12817 (1) Each foreign corporation authorized to conduct its
 12818 affairs in this state must continuously maintain in this state:

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12819 (a) A registered office that may be the same as any of the
 12820 places it conducts its affairs; and
 12821 (b) A registered agent, who may be:
 12822 1. An individual who resides in this state and whose
 12823 business office is identical with the registered office;
 12824 2. Another domestic entity that is an authorized entity
 12825 whose business address is identical to the address of the
 12826 registered office; or
 12827 3. A foreign entity authorized to transact business in this
 12828 state that is an authorized entity and whose business address is
 12829 identical to the address of A domestic corporation for profit or
 12830 not for profit the business office of which is identical with
 12831 the registered office; or
 12832 3. A foreign corporation for profit or not for profit
 12833 authorized to transact business or conduct its affairs in this
 12834 state the business office of which is identical with the
 12835 registered office.
 12836 (2) A registered agent appointed pursuant to this section
 12837 or a successor registered agent appointed pursuant to s.
 12838 617.1508 on whom process may be served shall each file a
 12839 statement in writing with the Department of State, in such form
 12840 and manner as shall be prescribed by the department, accepting
 12841 the appointment as a registered agent simultaneously with his or
 12842 her being designated. Such statement of acceptance shall state
 12843 that the registered agent is familiar with, and accepts, the
 12844 obligations of that position.
 12845 (3) For purposes of this section, "authorized entity"
 12846 means:
 12847 (a) A corporation for profit;

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12848 (b) A limited liability company;
 12849 (c) A limited liability partnership; or
 12850 (d) A limited partnership, including a limited liability
 12851 limited partnership.
 12852 Section 276. Subsections (2), (3), and (4) of section
 12853 620.1108, Florida Statutes, are amended, and subsection (6) is
 12854 added to that section, to read:
 12855 620.1108 Name.—
 12856 (2) The name of a limited partnership that is not a limited
 12857 liability limited partnership must contain the phrase "limited
 12858 partnership" or "limited" or the abbreviation "L.P." or "Ltd."
 12859 or the designation "LP," and may not contain the phrase "limited
 12860 liability limited partnership" or the abbreviation "L.L.L.P." or
 12861 the designation "LLLP," as will clearly indicate that it is a
 12862 limited partnership instead of a natural person, corporation,
 12863 limited liability company, or other business entity.
 12864 (3) The name of a limited liability limited partnership
 12865 must contain the phrase "limited liability limited partnership"
 12866 or the abbreviation "L.L.L.P." or designation "LLLP," as will
 12867 clearly indicate that it is a limited liability limited
 12868 partnership instead of a natural person or other business
 12869 entity, except that a limited liability limited partnership
 12870 organized prior to January 1, 2006, that was the effective date
 12871 of this act that is using an abbreviation or designation
 12872 permitted under prior law shall be entitled to continue using
 12873 such abbreviation or designation until its dissolution.
 12874 (4) The name of a limited partnership must be
 12875 distinguishable in the records of the Department of State from
 12876 the names of all other entities or filings that are on file with

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12877 the Department of State, except fictitious name registrations
 12878 pursuant to s. 865.09, general partnership registrations
 12879 pursuant to s. 620.8105, and limited liability partnership
 12880 statements pursuant to s. 620.9001 which are organized,
 12881 registered, or reserved under the laws of this state; however, a
 12882 limited partnership or a limited liability limited partnership
 12883 may register under a name that is not otherwise distinguishable
 12884 on the records of the Department of State with the written
 12885 consent of the other entity if the consent is filed with the
 12886 Department of State at the time of registration of such name and
 12887 if such name is not identical to the name of the other entity. A
 12888 name that is different from the name of another entity or filing
 12889 due to any of the following is not considered distinguishable:
 12890 (a) A suffix.
 12891 (b) A definite or indefinite article.
 12892 (c) The word "and" and the symbol "&."
 12893 (d) The singular, plural, or possessive form of a word.
 12894 (e) ~~A recognized abbreviation of a root word.~~
 12895 ~~(f) A punctuation mark or a symbol.~~
 12896 (6) A limited partnership or a limited liability limited
 12897 partnership in existence before January 1, 2020, that has a name
 12898 that does not clearly indicate that it is a limited partnership
 12899 or a limited liability limited partnership instead of a natural
 12900 person, corporation, limited liability company, or other
 12901 business entity may continue using its name until it dissolves
 12902 or amends its name in the records of the Department of State.
 12903 Section 277. Section 620.11085, Florida Statutes, is
 12904 created to read:
 12905 620.11085 Reserved name.-

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12906 (1) A person may reserve the exclusive use of the name of a
 12907 limited partnership, including an alternate name for a foreign
 12908 limited partnership whose name is not available, by delivering
 12909 an application to the Department of State for filing. The
 12910 application must set forth the name and address of the applicant
 12911 and the name proposed to be reserved. If the department finds
 12912 that the name of the limited partnership applied for is
 12913 available, it must reserve the name for the applicant's
 12914 exclusive use for a nonrenewable 120-day period.
 12915 (2) The owner of a reserved name of a limited partnership
 12916 may transfer the reservation to another person by delivering to
 12917 the Department of State a signed notice of the transfer that
 12918 states the name and address of the transferee.
 12919 (3) The Department of State may revoke any reservation if,
 12920 after a hearing, it finds that the application therefor or any
 12921 transfer thereof was not made in good faith.
 12922 Section 278. Paragraph (c) of subsection (1) of section
 12923 620.2104, Florida Statutes, is amended to read:
 12924 620.2104 Filings required for conversion; effective date.-
 12925 (1) After a plan of conversion is approved:
 12926 (c) A converting limited partnership is not required to
 12927 file a certificate of conversion pursuant to paragraph (a) if
 12928 the converting limited partnership files articles of conversion
 12929 or a certificate of conversion that substantially complies with
 12930 the requirements of this section pursuant to s. 605.1045, s.
 12931 607.1105 ~~s. 607.1115~~, or s. 620.8914(1)(b) and contains the
 12932 signatures required by this chapter. In such a case, the other
 12933 certificate of conversion may also be used for purposes of s.
 12934 620.2105(4).

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12935 Section 279. Subsection (3) of section 620.2108, Florida
 12936 Statutes, is amended to read:
 12937 620.2108 Filings required for merger; effective date.—
 12938 (3) Each constituent limited partnership shall deliver the
 12939 certificate of merger for filing in the Department of State
 12940 unless the constituent limited partnership is named as a party
 12941 or constituent organization in articles of merger or a
 12942 certificate of merger filed for the same merger in accordance
 12943 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s.
 12944 620.8918(1) and (2) and such articles of merger or certificate
 12945 of merger substantially complies with the requirements of this
 12946 section. In such a case, the other articles of merger or
 12947 certificate of merger may also be used for purposes of s.
 12948 620.2109(3).
 12949 Section 280. Subsection (3) of section 620.8918, Florida
 12950 Statutes, is amended to read:
 12951 620.8918 Filings required for merger; effective date.—
 12952 (3) Each domestic constituent partnership shall deliver the
 12953 certificate of merger for filing with the Department of State,
 12954 unless the domestic constituent partnership is named as a party
 12955 or constituent organization in articles of merger or a
 12956 certificate of merger filed for the same merger in accordance
 12957 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s.
 12958 620.2108(3). The articles of merger or certificate of merger
 12959 must substantially comply with the requirements of this section.
 12960 In such a case, the other articles of merger or certificate of
 12961 merger may also be used for purposes of s. 620.8919(3). Each
 12962 domestic constituent partnership in the merger shall also file a
 12963 registration statement in accordance with s. 620.8105(1) if it

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12964 does not have a currently effective registration statement filed
 12965 with the Department of State.
 12966 Section 281. Paragraph (b) of subsection (2) and subsection
 12967 (4) of section 621.12, Florida Statutes, are amended to read:
 12968 621.12 Identification with individual shareholders or
 12969 individual members.—
 12970 (2) The name shall also contain:
 12971 (b)1. In the case of a professional corporation, the words
 12972 "professional association," or the abbreviation "P.A." or the
 12973 designation "PA"; or
 12974 2. In the case of a professional limited liability company
 12975 formed before January 1, 2014, the words "professional limited
 12976 company" or "professional limited liability company," the
 12977 abbreviation "P.L." or "P.L.L.C." or the designation "PL" or
 12978 "PLLC," in lieu of the words "limited company" or "limited
 12979 liability company," or the abbreviation "L.C." or "L.L.C." or
 12980 the designation "LC" or "LLC" as otherwise required under s.
 12981 605.0112 or former s. 608.406.
 12982 3. In the case of a professional limited liability company
 12983 formed on or after January 1, 2014, the words "professional
 12984 limited liability company," the abbreviation "P.L.L.C." or the
 12985 designation "PLLC," in lieu of the words "limited liability
 12986 company," or the abbreviation "L.L.C." or the designation "LLC"
 12987 as otherwise required under s. 605.0112.
 12988 (4) It shall be permissible, however, for the corporation
 12989 or limited liability company to render professional services and
 12990 to exercise its authorized powers under a name which is
 12991 identical to its name or contains any one or more of the last
 12992 names of any shareholder or member included in such name except

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12993 that the word "chartered," the words "professional association,"
 12994 "professional limited company," or "professional limited
 12995 liability company," the abbreviations "P.A.," "P.L.," or
 12996 "P.L.L.C.," or the designation "PA," "PL," or "PLLC" may be
 12997 omitted, provided that the corporation or limited liability
 12998 company has first registered the name to be so used in the
 12999 manner required for the registration of fictitious names.

13000 Section 282. Paragraph (e) of subsection (14) of section
 13001 865.09, Florida Statutes, is amended to read:

13002 865.09 Fictitious name registration.—

13003 (14) PROHIBITION.—A fictitious name registered as provided
 13004 in this section may not contain the following words,
 13005 abbreviations, or designations:

13006 (e) "Professional association," "PA," "P.A.," or
 13007 "chartered," unless the person or business for which the name is
 13008 registered is organized as a professional corporation pursuant
 13009 to chapter 621, or is organized as a professional corporation
 13010 pursuant to a similar law of another jurisdiction and has
 13011 obtained a certificate of authority to transact business in this
 13012 state pursuant to chapter 607.

13013 Section 283. Subsection (1) of section 662.150, Florida
 13014 Statutes, is amended to read:

13015 662.150 Domestication of a foreign family trust company.—

13016 (1) A foreign family trust company lawfully organized and
 13017 currently in good standing with the state regulatory agency in
 13018 the jurisdiction where it is organized may become domesticated
 13019 in this state by:

13020 (a) Filing with the Department of State articles a
 13021 ~~certificate~~ of domestication and articles of incorporation in

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13022 accordance with and subject to s. 607.11922 ~~s. 607.1801~~ or by
 13023 filing articles of conversion in accordance with s. 605.1045 or
 13024 s. 607.11933; and

13025 (b) Filing an application for a license to begin operations
 13026 as a licensed family trust company in accordance with s.
 13027 662.121, which must first be approved by the office, or by
 13028 filing the prescribed form with the office to register as a
 13029 family trust company to begin operations in accordance with s.
 13030 662.122.

13031 Section 284. Subsection (1) of section 331.355, Florida
 13032 Statutes, is amended to read:

13033 331.355 Use of name; ownership rights to intellectual
 13034 property.—

13035 (1) (a) The corporate name of a corporation incorporated or
 13036 authorized to transact business in this state, or the name of
 13037 any person or business entity transacting business in this
 13038 state, may not use the words "Space Florida," "Florida Space
 13039 Authority," "Florida Aerospace Finance Corporation," "Florida
 13040 Space Research Institute," "spaceport Florida," or "Florida
 13041 spaceport" in its name unless the Space Florida board of
 13042 directors gives written approval for such use.

13043 (b) The Department of State may dissolve, pursuant to s.
 13044 607.1420 ~~s. 607.1421~~, any corporation that violates paragraph
 13045 (a).

13046 Section 285. Paragraph (a) of subsection (4) of section
 13047 339.12, Florida Statutes, is amended to read:

13048 339.12 Aid and contributions by governmental entities for
 13049 department projects; federal aid.—

13050 (4) (a) Prior to accepting the contribution of road bond

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13051 proceeds, time warrants, or cash for which reimbursement is
 13052 sought, the department shall enter into agreements with the
 13053 governing body of the governmental entity for the project or
 13054 project phases in accordance with specifications agreed upon
 13055 between the department and the governing body of the
 13056 governmental entity. The department in no instance is to receive
 13057 from such governmental entity an amount in excess of the actual
 13058 cost of the project or project phase. By specific provision in
 13059 the written agreement between the department and the governing
 13060 body of the governmental entity, the department may agree to
 13061 reimburse the governmental entity for the actual amount of the
 13062 bond proceeds, time warrants, or cash used on a highway project
 13063 or project phases that are not revenue producing and are
 13064 contained in the department's adopted work program, or any
 13065 public transportation project contained in the adopted work
 13066 program. Subject to appropriation of funds by the Legislature,
 13067 the department may commit state funds for reimbursement of such
 13068 projects or project phases. Reimbursement to the governmental
 13069 entity for such a project or project phase must be made from
 13070 funds appropriated by the Legislature, and reimbursement for the
 13071 cost of the project or project phase is to begin in the year the
 13072 project or project phase is scheduled in the work program as of
 13073 the date of the agreement. Funds advanced pursuant to this
 13074 section, which were originally designated for transportation
 13075 purposes and so reimbursed to a county or municipality, shall be
 13076 used by the county or municipality for any transportation
 13077 expenditure authorized under s. 336.025(7). Also, cities and
 13078 counties may receive funds from persons, and reimburse those
 13079 persons, for the purposes of this section. Such persons may

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13080 include, but are not limited to, those persons defined in s.
 13081 607.01401(56) ~~s. 607.01401(19)~~.
 13082 Section 286. Section 628.530, Florida Statutes, is amended
 13083 to read:
 13084 628.530 Effects of redomestication.—The certificate of
 13085 authority, agents appointments and licenses, rates, and other
 13086 items which the office or department allows, in its discretion,
 13087 which are in existence at the time any insurer licensed to
 13088 transact the business of insurance in this state transfers its
 13089 corporate domicile to this or any other state by merger,
 13090 consolidation, merger pursuant to s. 607.1101(7) ~~s. 607.1107(5)~~,
 13091 or any other lawful method shall continue in full force and
 13092 effect upon such transfer if such insurer remains duly qualified
 13093 to transact the business of insurance in this state. All
 13094 outstanding policies of any transferring insurer shall remain in
 13095 full force and effect and need not be endorsed as to the new
 13096 name of the company or its new location unless so ordered by the
 13097 office. Every transferring insurer shall file new policy forms
 13098 with the office on or before the effective date of the transfer,
 13099 but may use existing policy forms with appropriate endorsements
 13100 if allowed by, and under such conditions as are approved by, the
 13101 office. However, every such transferring insurer shall notify
 13102 the office of the details of the proposed transfer and shall
 13103 file promptly any resulting amendments to corporate documents
 13104 filed or required to be filed with the office.
 13105 Section 287. Section 631.0515, Florida Statutes, is amended
 13106 to read:
 13107 631.0515 Appointment of receiver; insurance holding
 13108 company.—A delinquency proceeding pursuant to this chapter

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13109 constitutes the sole and exclusive method of dissolving,
 13110 liquidating, rehabilitating, reorganizing, conserving, or
 13111 appointing a receiver of a Florida corporation which is not
 13112 insolvent as defined by s. 607.01401 ~~s. 607.01401(16)~~; which
 13113 through its shareholders, board of directors, or governing body
 13114 is deadlocked in the management of its affairs; and which
 13115 directly or indirectly owns all of the stock of a Florida
 13116 domestic insurer. The department may petition for an order
 13117 directing it to rehabilitate such corporation if the interests
 13118 of policyholders or the public will be harmed as a result of the
 13119 deadlock. The department shall use due diligence to resolve the
 13120 deadlock. Whether or not the department petitions for an order,
 13121 the circuit court shall not have jurisdiction pursuant to s.
 13122 607.271, s. 607.274, or s. 607.277 to dissolve, liquidate, or
 13123 appoint receivers with respect to, a Florida corporation which
 13124 directly or indirectly owns all of the stock of a Florida
 13125 domestic insurer and which is not insolvent as defined by s.
 13126 607.01401 ~~s. 607.01401(16)~~. However, a managing general agent or
 13127 holding company with a controlling interest in a domestic
 13128 insurer in this state is subject to jurisdiction of the court
 13129 under the provisions of s. 631.025.

13130 Section 288. Subsection (5) of section 658.44, Florida
 13131 Statutes, is amended to read:

13132 658.44 Approval by stockholders; rights of dissenters;
 13133 preemptive rights.-

13134 (5) The fair value, as defined in s. 607.1301(5) ~~s.-~~
 13135 ~~607.1301(4)~~, of dissenting shares of each constituent state bank
 13136 or state trust company, the owners of which have not accepted an
 13137 offer for such shares made pursuant to subsection (3), shall be

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13138 determined pursuant to ss. 607.1326-607.1331 except as the
 13139 procedures for notice and demand are otherwise provided in this
 13140 section as of the effective date of the merger.

13141 Section 289. Section 663.03, Florida Statutes, is amended
 13142 to read:

13143 663.03 Applicability of the Florida Business Corporation
 13144 Act.—Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the
 13145 provisions of part I of chapter 607 not in conflict with the
 13146 financial institutions codes which relate to foreign
 13147 corporations apply to all international banking corporations and
 13148 their offices doing business in this state.

13149 Section 290. Section 663.403, Florida Statutes, is amended
 13150 to read:

13151 663.403 Applicability of the Florida Business Corporation
 13152 Act.—Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the
 13153 provisions of part I of chapter 607 which are not in conflict
 13154 with the financial institutions codes and which relate to
 13155 foreign corporations apply to all international trust entities
 13156 and their offices doing business in this state.

13157 Section 291. Section 694.16, Florida Statutes, is amended
 13158 to read:

13159 694.16 Conveyances by merger or conversion of business
 13160 entities.—As to any merger or conversion of business entities
 13161 prior to June 15, 2000, the title to all real estate, or any
 13162 interest therein, owned by a business entity that was a party to
 13163 a merger or a conversion is vested in the surviving entity
 13164 without reversion or impairment, notwithstanding the requirement
 13165 of a deed which was previously required by former s. 607.11101,
 13166 former s. 608.4383, former s. 620.204, former s. 620.8904, or

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13167 former s. 620.8906.

13168 Section 292. This act shall take effect on January 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 11, 2019

I respectfully request that **Senate Bill # 892**, relating to Business Organizations, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo".

Senator Kathleen Passidomo
Florida Senate, District 28

Proposed Modifications to Chapter 607 (Florida Business Corporation Act)

January 24, 2019

The Florida Bar Business Law Section ("Section") has a long history of proposing entity statutes for our state. The Section comprehensively updated and modernized Florida's corporate statute in the late 1980s, updated Florida's partnership statute in the mid 1990s, updated Florida's limited partnership statute in the early 2000s, and updated Florida's LLC statute in the late 1990s and, in a far more comprehensive fashion, in 2013, and the Section is now – once again – proposing to update and modernize Florida's corporate statute.

When it comes to for-profit corporations in Florida, Florida generally follows the revised Model Business Corporation Act (the "Model Act"), which is promulgated by the Corporate Laws Committee of the ABA Business Law Section. Although the Model Act has changed extensively over the past thirty-five years, Chapter 607 of the Florida Statutes, which is known as the Florida Business Corporation Act ("FBCA"), has been overhauled only once (in 1989), and otherwise has endured patchwork amendments, with more significant changes in 1996 and 2003. Recently, in 2016, the Model Act itself was updated and modernized in its entirety. For all of these reasons, it has been deemed a necessity to consider comprehensively amending Florida's corporate statute so that Florida keeps pace with modern statutory developments relating to corporations.

There are a large number of entities organized in Florida. At the beginning of 2018, Florida had 760,000 corporations and almost 1.2 million limited liability companies in existence - probably more than any other state – growing at the rate of about 100,000 new corporations and more than 250,000 new LLCs per year (while the net growth is smaller, because many corporations and LLCs are dissolved each year, it is still significant growth under any circumstances). Because so many of the users of Florida's entity statutes are private companies, Florida's entity laws have tended to be as proscriptive as possible to offer clarity in our law for users that range from non-lawyers, to lawyers who are not necessary experts in entity matters, and to judges, all of whom are able to benefit from the proscriptive guidance in our State's entity statutes.

In 2014, a drafting task force (the "Drafting Subcommittee") was organized under the auspices of the Corporations, Securities and Financial Services Committee of the Section to make recommendations as to proposed changes to the FBCA. The Drafting Subcommittee's mission statement was to comprehensively study Florida's business corporation statute and to propose a more cohesive revision and set of amendments with the purpose of (i) bringing Florida's business corporation statute in line with the revisions to the Model Act and the trends affecting the use of corporations by businesses today, (ii) maintaining Florida's competitiveness with other jurisdictions, (iii) seeking to fix issues presented by the existing statute that have been experienced by practitioners in practice and in litigating disputes concerning the operations of Florida corporations, and (iv) continuing to encourage formation and use of Florida corporations, where appropriate.

The proposal includes changes to Chapter 607 of the Florida Statutes, harmonizing changes to other Florida entity statutes to make them consistent with revised Chapter 607, and necessary

corrections to cross references appearing in other Chapter 607 sections and in other Florida Statutes.

The proposal follows, for the most part, the 2016 version of the Model Act, yet deviates in a number of respects by:

- (i) retaining certain non-Model Act provisions already contained in existing Chapter 607;
- (ii) borrowing language from the Delaware General Corporation Law; and
- (iii) borrowing parallel language and approaches from Chapter 605 (the Florida Revised Limited Liability Company Act) for purposes of harmonizing the two statutes on issues where harmonization is considered appropriate.

The proposal contemplates that if it is passed by the Florida legislature during the 2019 legislative session, it will become effective for all Florida corporations as of January 1, 2020.

If you have any questions about the proposal, please feel free to contact the co-chairs of the Drafting Subcommittee, Philip B. Schwartz (philip.schwartz@akerman.com) and Gary I. Teblum (gteblum@trenam.com).

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-19

Meeting Date

892

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Stephen Shiver

Job Title 204 S Monroe St

Address Tallahassee FL 32301

Phone 850 251 0844

City

State

Zip

Email SS@cardinaspartners.com

Speaking: For Against Information

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

Representing TAX Section of the FL BAR

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

892

Bill Number (if applicable)

Topic Business Organizations

Amendment Barcode (if applicable)

Name Philip Schwartz

Job Title

Address 350 East Las Olas Blvd. 16th FL

Phone 954 468 2455

Street FT. Lauderdale FL 33331

Email Philip.Schwartz@akem.com

Speaking: [X] For [] Against [] Information

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

Representing Business Law Section, FL Bar

Appearing at request of Chair: [] Yes [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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1136

INTRODUCER: Senators Harrell and Perry

SUBJECT: Cyberharassment

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Jones</u>	<u>CJ</u>	Favorable
2.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 1136 amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person which contains or conveys the personal identification information of the depicted person *to an Internet website* without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill expands the definition to prohibit dissemination *via electronic means to another person*, in addition to publishing an image on an Internet website in the manner described.

The bill also amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexually explicit images of another person via electronic means in the manner described, makes conforming changes to the definition of the term “sexually cyberharass,” and defines “personal identification information.”

The Department of Corrections estimates that this bill will have an indeterminate fiscal impact. See Section V. Fiscal Impact Statement.

The bill is effective July 1, 2019.

II. Present Situation:

Section 784.049, F.S., prohibits and punishes sexual cyberharassment. The term “sexually cyberharass” means to publish a sexually explicit image¹ of a person that contains or conveys the personal identification information² of the depicted person to an Internet website without the

¹ “Sexually explicit image” means any image depicting nudity or depicting any person engaging in sexual conduct. Section 784.049(2)(d), F.S.

² Section 784.049(2)(b), F.S., defines “personal identification information” by reference to the definition of that term in s. 817.568, F.S. Section 817.568(1)(f), F.S., defines “personal identification information” as any name or number that may be

depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.³

A person who willfully and maliciously sexually cyberharasses another person generally commits a first degree misdemeanor.⁴ However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony.⁵

Further, an aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief in order to prevent or remedy a violation of this section, including:

- Injunctive relief;
- Monetary damages to include \$5,000 or actual damages incurred as a result of a violation of this section, whichever is greater; and
- Reasonable attorney fees and costs.⁶

The criminal and civil penalties of this section do not apply to:

- A provider of an interactive computer service as defined in 47 U.S.C. s. 230(f), information service as defined in 47 U.S.C. s. 153, or communications service as defined in s. 202.11, F.S., that provides the transmission, storage, or caching of electronic communications or messages of others; other related telecommunications or commercial mobile radio service; or content provided by another person; or
- A law enforcement officer, as defined in s. 943.10, F.S., or any local, state, federal, or military law enforcement agency, that publishes a sexually explicit image in connection with the performance of his or her duties as a law enforcement officer, or law enforcement agency.⁷

III. Effect of Proposed Changes:

The bill amends s. 784.049, F.S., which prohibits and punishes sexual cyberharassment. Currently, this section prohibits willfully and maliciously publishing a sexually explicit image of another person which contains or conveys the personal identification information of the depicted person to an Internet website without the depicted person's consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person. The bill provides that sexual cyberharassment also includes the willful and malicious dissemination of such images via electronic means in the manner described.

used, alone or in conjunction with any other information, to identify a specific person, and includes an extensive list of specific information such as name, postal or electronic mail address, telephone number, social security number, date of birth, driver license or identification number, bank account number, and credit or debit card number.

³ Section 784.049(2)(c), F.S.

⁴ Section 784.049(3)(a), F.S.

⁵ Section 784.049(3)(b), F.S.

⁶ Section 784.049(5), F.S.

⁷ Section 784.049(6), F.S.

A sexual cyberharassment violation is generally a first degree misdemeanor, which is punishable by up to one year in county jail and a fine of up to \$1,000.⁸ However, a person who has one prior conviction for sexual cyberharassment and who commits a second or subsequent sexual cyberharassment commits a third degree felony, which is punishable by up to five years in state prison and a fine of up to \$5,000.⁹

An aggrieved person may initiate a civil action against a person who violates s. 784.049, F.S., to obtain all appropriate relief.¹⁰

The bill amends current legislative findings in s. 784.049, F.S., to indicate that sexual cyberharassment includes dissemination of such sexual images of another person via electronic means in the manner described.

The bill amends the definition of “sexually cyberharass.” As amended, “sexually cyberharass” means to publish on an Internet website or to disseminate via electronic means to another person a sexually explicit image of a person that contains or conveys the personal identification information of the depicted person without the depicted person’s consent, for no legitimate purpose, with the intent of causing substantial emotional distress to the depicted person.

Currently, “personal identification information” is defined by reference to a definition of that term in s. 817.568, F.S. The bill defines “personal identification information” as any information that identifies an individual, including, but not limited to, a name, a postal or an e-mail address, a telephone number, a social security number, a date of birth, or any unique physical representation.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁸ Sections 775.082 and 775.083, F.S.

⁹ Sections 775.082 and 775.083, F.S.

¹⁰ See “Present Situation” section of this analysis for a detailed description of some of the available relief.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections' legislative analysis states that the Department, in the last 3 years, has recorded two probation admissions and no prison admissions related to this offense. The Department estimates that this crime will increase the number of violations, but the number is not known, therefore, the impact of the bill is indeterminate.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 784.049 of the Florida Statutes.

This bill reenacts the following sections of the Florida Statutes: 901.15, 901.41, and 933.18.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹¹ Department of Corrections, *2019 Agency Legislative Bill Analysis* (March 11, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=28443>.

By Senator Harrell

25-01198-19

20191136__

1 A bill to be entitled
 2 An act relating to cyberharassment; amending s.
 3 784.049, F.S.; revising legislative intent; redefining
 4 the terms "personal identifying information" and
 5 "sexually cyberharass"; providing criminal penalties;
 6 reenacting ss. 901.15(16), 901.41(5), and 933.18(11),
 7 F.S., relating to lawful arrests by officers without a
 8 warrant, prearrest diversion programs, and when a
 9 warrant may be issued for the search of a private
 10 dwelling, respectively, to incorporate the amendment
 11 made to s. 784.049, F.S., in references thereto;
 12 providing an effective date.

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

15 Section 1. Section 784.049, Florida Statutes, is amended to
 16 read:
 17

18 784.049 Sexual cyberharassment.—

19 (1) The Legislature finds that:

20 (a) A person depicted in a sexually explicit image taken
 21 with the person's consent has a reasonable expectation that the
 22 image will remain private.

23 (b) It is becoming a common practice for persons to publish
 24 a sexually explicit image of another to Internet websites or to
 25 disseminate such sexually explicit image of another by
 26 electronic means without the depicted person's consent, for no
 27 legitimate purpose, with the intent of causing substantial
 28 emotional distress to the depicted person.

29 (c) When such images are published on Internet websites or

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30 disseminated via electronic means, they are able to be viewed
 31 indefinitely by persons worldwide and are able to be easily
 32 reproduced and shared.

33 (d) The publication of such images on Internet websites or
 34 the dissemination of such images via electronic means creates a
 35 permanent record of the depicted person's private nudity or
 36 private sexually explicit conduct.

37 (e) The existence of such images on Internet websites or
 38 the dissemination of such images without the consent of all
 39 parties depicted causes those depicted ~~in such images~~
 40 significant psychological harm.

41 (f) Safeguarding the psychological well-being of persons
 42 depicted in such images is compelling.

43 (2) As used in this section, the term:

44 (a) "Image" includes, but is not limited to, any
 45 photograph, picture, motion picture, film, video, or
 46 representation.

47 (b) "Personal identification information" means any
 48 information that identifies an individual, including, but not
 49 limited to, a name, a postal or an e-mail address, a telephone
 50 number, a social security number, a date of birth, or any unique
 51 physical representation ~~has the same meaning as provided in s.~~
 52 ~~817.568.~~

53 (c) "Sexually cyberharass" means to publish on an Internet
 54 website or to disseminate via electronic means to another person
 55 a sexually explicit image of a person that contains or conveys
 56 the personal identification information of the depicted person
 57 ~~to an Internet website~~ without the depicted person's consent,
 58 for no legitimate purpose, with the intent of causing

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59 substantial emotional distress to the depicted person.

60 (d) "Sexually explicit image" means any image depicting
61 nudity, as defined in s. 847.001, or depicting a person engaging
62 in sexual conduct, as defined in s. 847.001.

63 (3) (a) Except as provided in paragraph (b), a person who
64 willfully and maliciously sexually cyberharasses another person
65 commits a misdemeanor of the first degree, punishable as
66 provided in s. 775.082 or s. 775.083.

67 (b) A person who has one prior conviction for sexual
68 cyberharassment and who commits a second or subsequent sexual
69 cyberharassment commits a felony of the third degree, punishable
70 as provided in s. 775.082, s. 775.083, or s. 775.084.

71 (4) (a) A law enforcement officer may arrest, without a
72 warrant, any person that he or she has probable cause to believe
73 has violated this section.

74 (b) Upon proper affidavits being made, a search warrant may
75 be issued to further investigate violations of this section,
76 including warrants issued to search a private dwelling.

77 (5) An aggrieved person may initiate a civil action against
78 a person who violates this section to obtain all appropriate
79 relief in order to prevent or remedy a violation of this
80 section, including the following:

81 (a) Injunctive relief.

82 (b) Monetary damages to include \$5,000 or actual damages
83 incurred as a result of a violation of this section, whichever
84 is greater.

85 (c) Reasonable attorney fees and costs.

86 (6) The criminal and civil penalties of this section do not
87 apply to:

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88 (a) A provider of an interactive computer service as
89 defined in 47 U.S.C. s. 230(f), information service as defined
90 in 47 U.S.C. s. 153, or communications service as defined in s.
91 202.11, that provides the transmission, storage, or caching of
92 electronic communications or messages of others; other related
93 telecommunications or commercial mobile radio service; or
94 content provided by another person; or

95 (b) A law enforcement officer, as defined in s. 943.10, or
96 any local, state, federal, or military law enforcement agency,
97 that publishes a sexually explicit image in connection with the
98 performance of his or her duties as a law enforcement officer,
99 or law enforcement agency.

100 (7) A violation of this section is committed within this
101 state if any conduct that is an element of the offense, or any
102 harm to the depicted person resulting from the offense, occurs
103 within this state.

104 Section 2. For the purpose of incorporating the amendment
105 made by this act to section 784.049, Florida Statutes, in a
106 reference thereto, subsection (16) of section 901.15, Florida
107 Statutes, is reenacted to read:

108 901.15 When arrest by officer without warrant is lawful.—A
109 law enforcement officer may arrest a person without a warrant
110 when:

111 (16) There is probable cause to believe that the person has
112 committed a criminal act of sexual cyberharassment as described
113 in s. 784.049.

114 Section 3. For the purpose of incorporating the amendment
115 made by this act to section 784.049, Florida Statutes, in a
116 reference thereto, subsection (5) of section 901.41, Florida

25-01198-19

20191136__

117 Statutes, is reenacted to read:

118 901.41 Prearrest diversion programs.—

119 (5) ELIGIBILITY.—A violent misdemeanor, a misdemeanor crime
120 of domestic violence, as defined in s. 741.28, or a misdemeanor
121 under s. 741.29, s. 741.31, s. 784.046, s. 784.047, s. 784.048,
122 s. 784.0487, or s. 784.049 does not qualify for a civil citation
123 or prearrest diversion program.

124 Section 4. For the purpose of incorporating the amendment
125 made by this act to section 784.049, Florida Statutes, in a
126 reference thereto, subsection (11) of section 933.18, Florida
127 Statutes, is reenacted to read:

128 933.18 When warrant may be issued for search of private
129 dwelling.—No search warrant shall issue under this chapter or
130 under any other law of this state to search any private dwelling
131 occupied as such unless:

132 (11) An instrumentality or means by which sexual
133 cyberharassment has been committed in violation of s. 784.049,
134 or evidence relevant to proving that sexual cyberharassment has
135 been committed in violation of s. 784.049, is contained therein.

136

137 If, during a search pursuant to a warrant issued under this
138 section, a child is discovered and appears to be in imminent
139 danger, the law enforcement officer conducting such search may
140 remove the child from the private dwelling and take the child
141 into protective custody pursuant to chapter 39. The term
142 "private dwelling" shall be construed to include the room or
143 rooms used and occupied, not transiently but solely as a
144 residence, in an apartment house, hotel, boardinghouse, or
145 lodginghouse. No warrant shall be issued for the search of any

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146 private dwelling under any of the conditions hereinabove
147 mentioned except on sworn proof by affidavit of some creditable
148 witness that he or she has reason to believe that one of said
149 conditions exists, which affidavit shall set forth the facts on
150 which such reason for belief is based.

151 Section 5. This act shall take effect July 1, 2019.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Health Policy, *Chair*
Appropriations Subcommittee on Health
and Human Services, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Children, Families, and Elder Affairs
Military and Veterans Affairs and Space

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR GAYLE HARRELL
25th District

March 13, 2019

Senator David Simmons
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399

Chair Simmons,

I respectfully request that **SB 1136 – Cyberharassment** be placed on the next available agenda for the Judiciary Committee Meeting. **SB 1136** passed its last Committee.

Should you have any questions or concerns, please feel free to contact my office. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Gayle".

Senator Gayle Harrell
Senate District 25

Cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- 215 SW Federal Highway, Suite 203, Stuart, Florida 34994 (772) 221-4019
- 310 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5025

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE APPEARANCE RECORD

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

3.25.19

1136

Meeting Date

Bill Number (if applicable)

Topic Cyberharrassment

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 762

INTRODUCER: Judiciary Committee and Senator Gruters

SUBJECT: Duties and Obligations of Sheriffs (formerly Trial Court Security)

DATE: March 26, 2019 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Fav/CS
2.			IS	
3.			ACJ	
4.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 762 addresses the decision-making authority and responsibilities of two constitutional officers, the chief judge of a circuit court and the county sheriff, in providing courthouse security. The bill clarifies the decision-making authority for courthouse security, providing that:

- The sheriff, county commissioners, and chief judge of the circuit must develop a comprehensive plan for courthouse security.
- The sheriff retains operational control in accord with the comprehensive security plan.
- The chief judge retains decision-making authority to carry out his or her administrative functions concerning the protection of due process rights and the scheduling and conduct of trials and other judicial proceedings in accord with the comprehensive plan.

Because the sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities, the chief judge has authority to direct these officers to ensure the proper conduct of trials and judicial proceedings. However, the sheriff retains operational control as to how security is provided. For example, the chief judge may request two bailiffs in a courtroom for high profile cases, but the sheriff will designate the two deputies who will serve as bailiffs.

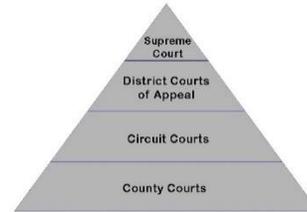
The bill is effective July 1, 2019.

II. Present Situation:

Florida's Court System

The Florida Constitution vests all judicial power in:

- The supreme court;
- The district courts of appeal;
- The circuit courts; and
- The county courts.¹



The Constitution provides that “[n]o other courts may be established by the state, any political subdivision or any municipality.”²

Court System Administration

The Constitution vests the Florida Supreme Court with broad authority to administer the state courts system and establish court rules of procedure.³ The chief justice of the Florida Supreme Court is constitutionally designated as the “chief administrative officer of the judicial system.”⁴ The Constitution also directs that a chief judge be chosen for each district court of appeal and each circuit court.⁵

Chief Judge of the Circuit Court

The chief judge of the circuit court has administrative supervision responsibility for, not only the circuit court, but also the county courts within his or her circuit.⁶ Currently, there are 20 judicial circuits and 67 county courts, one in each of Florida’s 67 counties⁷ as constitutionally required.⁸

The following maps illustrate the territorial jurisdictions of the circuit and county courts. Note, some circuits contain multiple counties, particularly in North Florida; whereas, some circuits contain only one county, particularly in the larger metropolitan areas in Central and South Florida.⁹

¹ FLA. CONST. art. V., s. 1.

² *Id.* (although the Constitution permits the Legislature to establish quasi-judicial, administrative courts and a civil traffic infraction hearing officer system).

³ FLA. CONST. art. V, s. 2(a).

⁴ FLA. CONST. art. V, s. 2(b).

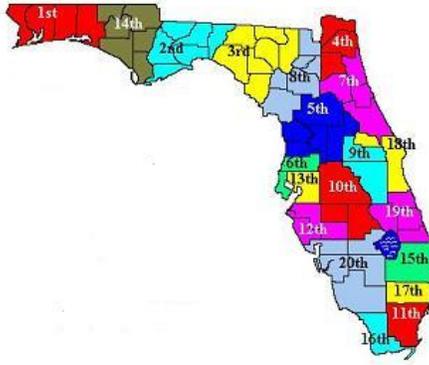
⁵ FLA. CONST. art. V, s. 2(c), (d).

⁶ FLA. CONST. art. V, s. 2(d). Additionally, the chief judge is constitutionally chosen “as provided by supreme court rule.” *Id.*

⁷ Florida Courts, *Court System Organization & Structure*, <http://www.flcourts.org/florida-courts/> (last visited Jan. 29, 2019).

⁸ FLA. CONST. art. V, s. 6(a) (“There shall be a county court in each county.”).

⁹ Ron DeSantis, 46th Governor of Florida, Judicial and Judicial Nominating Commission Information, *The Florida Court System*, <https://www.flgov.com/judicial-and-judicial-nominating-commission-information/> (last visited Jan. 29, 2019).



Twenty Judicial Circuits



Sixty-Seven Counties

The chief judge exercises “administrative supervision over all the trial courts within the judicial circuit and over the judges and other officers of such courts.”¹⁰ In exercising his or her responsibility, the chief judge has the power to:

- Assign judges to court divisions and determine the length of the assignment.
- Regulate the use of courtrooms.
- Supervise dockets and calendars.
- Require attendance of all other officers of the court.
- Do everything necessary to promote the prompt and efficient administration of justice in the courts.
- Delegate to the trial court administrator, by administrative order, the authority to bind the circuit in contract.
- Manage, operate, and oversee the jury system.
- Report data to the Chief Justice of the Supreme Court concerning the circuit’s caseload, status of dockets, disposition of cases, and other relevant information.
- Consult with the clerk of court to determine the priority of services provided by the clerk to the trial courts.¹¹

County Responsibilities for Funding Court-Related Functions

Under Article V, s. 14 of the Florida Constitution, the state is responsible for most of the costs of the state courts system. However, the Constitution requires counties to:

[F]und the cost of communications services, existing radio systems, existing multi-agency criminal justice information systems, and the cost of construction or lease, maintenance, utilities, and *security of facilities for the trial courts, public defenders’ offices, state attorneys’ offices, and the offices of the clerks of the circuit and county courts performing court-related functions.*¹²

¹⁰ Section 43.26, F.S.

¹¹ *Id.*

¹² Emphasis added.

The constitutional responsibility for counties to fund court-related functions is implemented in s. 29.008, F.S., which also defines many of the key terms from the constitutional provision above. Among these terms, s. 29.008(1)(a), F.S. defines “facility” as follows:

“Facility” means reasonable and necessary buildings and office space and appurtenant equipment and furnishings, structures, real estate, easements, and related interests in real estate, including, but not limited to, those for the purpose of housing legal materials for use by the general public and personnel, equipment, or functions of the circuit or county courts, public defenders’ offices, state attorneys’ offices, and court-related functions of the office of the clerks of the circuit and county courts and all storage. The term “facility” includes all wiring necessary for court reporting services. The term also includes access to parking for such facilities in connection with such court-related functions that may be available free or from a private provider or a local government for a fee. . . .

1. As of July 1, 2005, equipment and furnishings shall be limited to that appropriate and customary for courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, public defenders, guardians ad litem, and criminal conflict and civil regional counsel. Court reporting equipment in these areas or facilities is not a responsibility of the county.

2. Equipment and furnishings under this paragraph in existence and owned by counties on July 1, 2005, except for that in the possession of the clerks, for areas other than courtrooms, hearing rooms, jury facilities, and other public areas in courthouses and any other facility occupied by the courts, state attorneys, and public defenders, shall be transferred to the state at no charge. This provision does not apply to any communications services as defined in paragraph (f).

Additionally, s. 29.008(1)(e), F.S. defines “security” as follows:

“Security” includes but is not limited to, all reasonable and necessary costs of services of *law enforcement officers or licensed security guards* and all electronic, cellular, or digital monitoring and screening devices necessary to ensure the safety and security of all persons visiting or working in a facility; to provide for security of the facility, including protection of property owned by the county or the state; and for security of prisoners brought to any facility. This includes bailiffs while providing courtroom and other security for each judge and other quasi-judicial officers.¹³

Sheriffs

Sheriffs are constitutional county officers.¹⁴ As a constitutional officer, a sheriff exercises independent authority and discretion in carrying out his or her various duties and in appointing and disciplining deputies.¹⁵ The sheriff’s duties include, among other things, conserving the

¹³ Emphasis added.

¹⁴ FLA. CONST. art. VIII, s. (d).

¹⁵ See generally *Demings v. Orange County Citizens Review Bd.*, 15 So. 3d 604, 610–11 (Fla. 5th DCA 2009).

county peace by suppressing riots and making arrests as necessary; and executing process on behalf of the Florida Supreme Court, circuit courts, county courts, and board of county commissioners in the sheriff's county.¹⁶

Sheriffs' Courtroom Duties

The sheriff is “the executive officer of the circuit court of the county.”¹⁷ As such, the sheriff or and his or her deputies execute all service of court process in both civil and criminal matters and attend all sessions of court.¹⁸ In attending all sessions of court, the sheriff or his or her deputies serve as bailiffs and take charge of the jury, carry out service of process, keep order, and so forth. However, it is the sheriff, not the chief judge, who appoints any deputy to serve as a bailiff in a courtroom.¹⁹

Beyond the Courtroom: Security in other Court Facilities

Although sheriffs and their deputies are required to serve as bailiffs in the courtrooms around the state, unless contracted to do so with the county government, the sheriffs are not constitutionally or statutorily required to take responsibility for the security of all court facilities. Rather, county governments are responsible to provide for and fund security for court facilities and, as set out in s. 29.008(1)(e), F.S., *supra*, security may be provided by “law enforcement officers” such as municipal police officers,²⁰ or “licensed security guards.”

Tensions Between Sheriffs and Chief Circuit Court Judges

Tensions between sheriffs and chief circuit court judges often arise when determining the scope of each constitutional officers' authority in how courtroom and other court facility security is to be provided.²¹ A recent appellate court opinion relied on the definitions of “facility” and “security” in s. 29.008, F.S., *supra*, as the basis for permitting an administrative order of the chief judge to stand which ordered the sheriff to secure a building used by the court.²² The particular building at issue did not include courtrooms. The sheriff objected to the amount of control the chief judge exerted over the sheriff because the order required the sheriff to *exclusively* provide security to the facility in question. Additionally, the sheriff objected to the potential funding issues caused by the security requirements in the chief judge's order.²³

¹⁶ See generally s. 30.15, F.S.

¹⁷ Section 26.49, F.S. See also s. 34.07, F.S. (sheriff is executive officer of county courts).

¹⁸ Section. 30.15(1)(a)-(c), F.S.

¹⁹ *State ex rel. Wainwright v. Booth*, 291 So. 2d 74, 76–77 (Fla. 2d DCA 1974), writ discharged sub nom. *Booth v. Wainwright*, 300 So. 2d 257 (Fla. 1974).

²⁰ Section 943.10(1), F.S. (“Law enforcement officer means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state”).

²¹ See, e.g., *State ex rel. Wainwright v. Booth*, 291 So. 2d 74, 76–77 (Fla. 2d DCA 1974), writ discharged sub nom. *Booth v. Wainwright*, 300 So. 2d 257 (Fla. 1974) (challenging the validity of a chief judge's order requiring Department of Corrections to provide supplemental security to sheriff during a murder trial).

²² *Knight v. Chief Judge of Florida's Twelfth Judicial Circuit*, 235 So. 3d 996, 999 (Fla. 2d DCA 2017) (denying the sheriff's writ for petition of certiorari for failure to meet the burden of showing the chief judge had exceeded his authority by issuing an administrative order directing the sheriff to provide security in portions of the court facilities where no court proceedings are held).

²³ *Id.* at 997-1000.

III. Effect of Proposed Changes:

CS/SB 762 addresses the decision-making authority and responsibilities of the chief judge and the county sheriff in providing courthouse security. The bill clarifies the decision-making authority for courthouse security, providing that:

- The sheriff, county commissioners, and chief judge of the circuit must develop a comprehensive plan for courthouse security.
- The sheriff retains operational control in accord with the comprehensive security plan.
- The chief judge retains decision-making authority to carry out his or her administrative functions concerning the protection of due process rights and the scheduling and conduct of trials and other judicial proceedings in accord with the comprehensive plan.

Because the sheriffs and their deputies, employees, and contractors are officers of the court when providing security for trial court facilities, the chief judge has authority to direct these officers to ensure the proper conduct of trials and judicial proceedings. However, the sheriff retains operational control as to how security is provided. For example, the chief judge may request two bailiffs in a courtroom for high profile cases, but the sheriff will designate the two deputies who will serve as bailiffs.

The bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 30.15 of the Florida Statutes.

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

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

CS by Judiciary on March 25, 2019:

The Committee Substitute:

- Replaces the requirement that sheriffs and chief judges coordinate on trial court security with the requirement that sheriffs coordinate with both the county commissioners and the chief judges to develop a comprehensive plan for trial court security.
- Clarifies that sheriffs retain operational authority under the comprehensive plan.
- Clarifies that chief judges retain decision-making authority under the comprehensive plan.
- Removes statutory construction provision.
- Amends the title, changing it to duties and obligations of sheriffs.

B. Amendments:

None.



856104

LEGISLATIVE ACTION

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

The Committee on Judiciary (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (4) is added to section 30.15,
Florida Statutes, to read:

30.15 Powers, duties, and obligations.—

(4) (a) In accordance with each county's obligation under s. 14, Art. V of the State Constitution and s. 29.008 to fund security for trial court facilities, the sheriff of each county shall coordinate with the board of county commissioners of that



856104

12 county and the chief judge of the circuit in which that county
13 is located on the development of a comprehensive plan for the
14 provision of security for trial court facilities. Each sheriff
15 shall retain authority over the implementation and provision of
16 law enforcement services associated with the plan. The chief
17 judge of the circuit shall retain decision-making authority to
18 ensure the protection of due process rights, including, but not
19 limited to, the scheduling and conduct of trial and other
20 judicial proceedings as part of his or her responsibility for
21 the administrative supervision of trial courts under s. 43.26.

22 (b) Sheriffs and their deputies, employees, and contractors
23 are officers of the court when providing security for trial
24 court facilities under this subsection.

25 Section 2. This act shall take effect July 1, 2019.

26
27 ===== T I T L E A M E N D M E N T =====

28 And the title is amended as follows:

29 Delete everything before the enacting clause
30 and insert:

31 A bill to be entitled
32 An act relating to security in trial court facilities;
33 amending s. 30.15, F.S.; requiring each sheriff to
34 coordinate with certain boards of county commissioners
35 and chief judges to develop a comprehensive plan for
36 security of trial court facilities; specifying that
37 sheriffs and chief judges retain certain authorities;
38 specifying that sheriffs and their deputies,
39 employees, and contractors are officers of the court
40 under specified circumstances; providing an effective



856104

41

date.



918110

LEGISLATIVE ACTION

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

The Committee on Judiciary (Rodriguez) recommended the following:

- 1 **Senate Amendment to Amendment (856104)**
- 2
- 3 In title, delete line 32
- 4 and insert:
- 5 An act relating to duties and obligations of sheriffs;



906684

LEGISLATIVE ACTION

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

The Committee on Judiciary (Rodriguez) recommended the following:

Senate Amendment

In title, delete line 2
and insert:
An act relating to duties and obligations of sheriffs;
amending s.

By Senator Gruters

23-00574-19

2019762__

1 A bill to be entitled
 2 An act relating to trial court security; amending s.
 3 30.15, F.S.; requiring sheriffs to provide security
 4 for trial court facilities; requiring sheriffs to
 5 coordinate with the chief judge on security matters
 6 for trial court facilities and to retain operational
 7 control over how they provide security for such
 8 facilities; specifying that the chief judge retains
 9 certain decision-making authority; specifying that
 10 sheriffs and their deputies, employees, and
 11 contractors are officers of the court when providing
 12 security for trial court facilities; providing
 13 construction; providing an effective date.
 14

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

16
 17 Section 1. Subsection (4) is added to section 30.15,
 18 Florida Statutes, to read:

19 30.15 Powers, duties, and obligations.—

20 (4) (a) Sheriffs, in their respective counties, shall
 21 provide security for trial court facilities. Sheriffs shall
 22 coordinate with the chief judge of the judicial circuit in which
 23 their county is located on all security matters for such
 24 facilities, but shall retain operational control over the manner
 25 in which security is provided. The chief judge of the judicial
 26 circuit shall retain decision-making authority to ensure the
 27 protection of due process rights, including, but not limited to,
 28 the scheduling and conduct of trials and other judicial
 29 proceedings, as part of his or her responsibility for the

Page 1 of 2

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

23-00574-19

2019762__

30 administrative supervision of the trial courts under s. 43.26.
 31 (b) Sheriffs and their deputies, employees, and contractors
 32 are officers of the court when providing security for trial
 33 court facilities under this subsection.
 34 (c) This subsection may not be construed to affect or erode
 35 the authority of counties under s. 14, Art. V of the State
 36 Constitution or s. 29.008 to otherwise fund security of
 37 facilities as the term "security" is defined in s. 29.008(1)(e).
 38 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS

23rd District

February 20th, 2019

The Honorable David Simmons, Chair
Judiciary Committee
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that Senate Bill 762, Trial Court Security, be placed on the agenda of the next Judiciary Committee meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,



Joe Gruters

cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/19
Meeting Date

762
Bill Number (if applicable)

856104
Amendment Barcode (if applicable)

Topic Trial Court Security

Name Lisa Kiel

Job Title State Courts Administrator

Address 500 S. Duval St.
Street

Phone 850-922-5081

Tallahassee FL 32399
City State Zip

Email _____

Speaking: For Against Information

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

Representing State Courts System

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/2019

762

Meeting Date

Bill Number (if applicable)

856104

Topic Court Security

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

Phone 850-877-2165

Street

Tallahassee

FL

32308

Email mdunagan@flsheriffs.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 25, 2019

Meeting Date

762

Bill Number (if applicable)

Topic Trial Court Security

Amendment Barcode (if applicable)

Name Lisa Hurley

Job Title _____

Address 311 E. Park Ave.

Phone 850.224.5081

Street

Tallahassee

Florida

32301

City

State

Zip

Email lhurley@smithbryanandmyers.co

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3.25.19

762

Meeting Date

Bill Number (if applicable)

Topic Trial Court Security

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1188

INTRODUCER: Senator Gruters

SUBJECT: Courts

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			CF	
3.			RC	

I. Summary:

SB 1188 assists public guardians as they seek to meet the needs of their incapacitated wards.

The bill clarifies that public guardians are exempted from paying any court-related fees or charges normally assessed by clerks for accessing public records. The bill also requires courts to waive court costs and filing fees in proceedings involving the appointment of a public guardian or the estate of a public guardian's ward. Currently, courts have the discretion to waive those costs and fees.

Finally, the bill allows additional medical personnel, physician assistants and advance practice registered nurses, to conduct the required annual medical exam of a ward and prepare a report of the exam for the court. Currently, only physicians are allowed to conduct the exams and prepare the reports.

II. Present Situation:

Public Guardians

A public guardian is appointed to provide guardianship services to an incapacitated person if there is no family member, friend, or other person willing and qualified to serve.¹ Public guardians generally and primarily serve incapacitated people who have limited financial means.^{2,3}

¹ Section 744.2007(1), F.S.

² Section 744.2007(3), F.S.

³ The Executive Director of the Office of Public and Professional Guardians, after consulting the chief judge and other circuit judges and appropriate people, may establish an office of public guardian within a county or judicial circuit and provide a list of people best qualified to serve as public guardian. Section 744.2006, F.S.

Circuit Court Clerks' Duty to Provide Access to Public Records and Waive Fees

The clerks of the circuit courts are required by s. 28.345(1), F.S., to provide public guardians and other entities access to public records, upon request, and without charge.⁴ Additionally, s. 28.345(2), F.S., exempts a public guardian, when acting in an official capacity, from all court-related fees and charges normally assessed by the clerks.⁵ While these two provisions make clear that a public guardian is entitled to free access to public records and that no fees or charges will be assessed against them for those records, the peculiar wording of s. 28.345(3), F.S., has created confusion among some clerks in the state.

Section 28.345(3), F.S. states that the exemptions from fees or charges “apply only to state agencies and state entities and the party represented by the agency or entity.” Several circuit court clerks have determined that public guardians are not state agencies or state entities, and are therefore required to pay the fees or charges for the public records they request. Other circuits read the statute differently and do not charge fees to the public guardians.

Court Discretion to Waive Costs and Filing Fees for Matters Involving Public Guardians

Florida's extensive guardianship laws are contained in ch. 744, F.S. The provisions dealing with the costs of public guardians provide that all costs of administration, including filing fees, shall be paid from the office of the public guardian and no costs of administration, including filing fees, shall be recovered from the assets or income of a ward.⁶ An additional statute provides that a court *may* waive any court costs or filing fees in any proceeding for appointment of a public guardian or in any proceeding involving the estate of a ward for whom a public guardian has been appointed.⁷ The court's ability to waive fees is permissive and not mandatory, such that the decision to impose or waive fees rests with the discretion of the court.

Annual Guardianship Plan and Physician's Report

Each guardian of the person must file with the court an annual guardianship plan that updates information about the ward's condition, including the ward's current needs and how those needs will be met in the coming year. The plan for an adult ward, if applicable, must include certain information concerning medical and mental health conditions as well as treatment and rehabilitation needs of the ward including:

- A resume of any professional medical treatment received during the preceding year.
- A report by a physician who examined the ward at least 90 days before the beginning of the reporting period and which contains an evaluation of the ward's condition and current capacity.
- The plan for providing medical, mental health, and rehabilitative services for the coming year.

⁴ Those additional entities include the state attorney, public defender, guardian ad litem, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf Section 28.345(1), F.S.

⁵ Court-related fees and charges are also waived for judges and court staff acting on their behalf as well as state agencies. Section 28.345(2), F.S.

⁶ Section 744.2008(1), F.S.

⁷ Section 744.2008(2), F.S.

Proponents of this bill assert that at least 95 percent of the public guardians' wards live in nursing homes where physicians seldom visit. However, because the statute specifically requires a physician's report, courts will not accept the signature of a physician's assistant or an advanced practice registered nurse even though these professionals appear to be authorized to conduct these examinations within the scope of their practices.

III. Effect of Proposed Changes:

Clarifying Language for Court-related Fees and Charges

The bill adds language to s. 28.345(3), F.S., to clarify that public guardians are exempted from the clerks' assessment of fees and charges. This is accomplished by stating that the "entities listed in subsections (1) and (2)," the provisions where public guardians are specifically named, are exempted from fees or charges. This should resolve any ambiguity as to whether the public guardians are exempt from the fees and charges normally assessed by the clerks of courts.

Court's Discretion to Waive Court Costs and Filing Fees

Section 744.2008(2), F.S., is amended to mandate that a court "shall" waive any court costs or filing fees in proceedings for the appointment of a public guardian or in a proceeding involving the estate of a ward for whom a public guardian has been appointed. Accordingly, courts will be prohibited from imposing court costs or filing fees under those circumstances.

Annual Guardianship Plan and Physician's Report

The annual guardianship plan detailing a ward's needs and how those needs will be met is amended to permit a physician assistant or an advanced practice registered nurse to examine the ward and complete the report. The physician assistant must be acting pursuant to s. 458.347(4)(d), F.S., or s. 459.022(4)(d), F.S., under the supervision of a licensed physician, pursuant to a written protocol, and limited to the supervising physician's practice in connection with a county health department. The advanced practice registered nurse must operate within an established protocol and on site where the advanced practice registered nurse practices.⁸

By increasing the scope of who may examine the ward and determine his or her level of capacity for the annual report, the public guardian will be better able to meet the ward's needs and comply with the requirements of the guardianship statutes.

The bill takes effect July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁸ The advanced practice registered nurse may prescribe, dispense, or administer certain drugs, initiate appropriate therapies, perform additional functions as permitted by rule, order diagnostic tests and therapies, and order medications for administration to a patient in certain facilities. Section 464.012 (3), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill will likely result in the loss of revenues to clerks and to courts to the extent that the bill waives fees and costs applied to public guardians. However, the bill may likely result in reduced costs for the annual medical exams for wards.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 28.345, 744.2008, and 744.3675.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Gruters

23-00616A-19

20191188__

A bill to be entitled

An act relating to courts; amending s. 28.345, F.S.; specifying that certain exemptions from court-related fees and charges apply to certain entities; amending s. 744.2008, F.S.; requiring the court to waive any court costs or filing fees for certain proceedings involving public guardians; amending s. 744.3675, F.S.; providing that a certain examination report related to annual guardianship plans may be prepared by a physician assistant or an advanced practice registered nurse; providing an effective date.

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

Section 1. Section 28.345, Florida Statutes, is amended to read:

28.345 State access to records; exemption from court-related fees and charges.—

(1) Notwithstanding any other provision of law, the clerk of the circuit court shall, upon request, provide access to public records without charge to the state attorney, public defender, guardian ad litem, public guardian, attorney ad litem, criminal conflict and civil regional counsel, and private court-appointed counsel paid by the state, and to authorized staff acting on their behalf. The clerk of court may provide the requested public record in an electronic format in lieu of a paper format if the requesting entity is capable of accessing such public record electronically.

(2) Notwithstanding any other provision of this chapter or

Page 1 of 3

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

23-00616A-19

20191188__

law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, criminal conflict and civil regional counsel, public defenders, and state agencies, while acting in their official capacity, are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

(3) The exemptions from fees or charges provided in this section apply only to entities listed in subsections (1) and (2), state agencies and state entities, and the party represented by the agency or entity.

Section 2. Subsection (2) of section 744.2008, Florida Statutes, is amended to read:

744.2008 Costs of public guardian.—

(2) In any proceeding for appointment of a public guardian, or in any proceeding involving the estate of a ward for whom a public guardian has been appointed guardian, the court shall ~~may~~ waive any court costs or filing fees.

Section 3. Paragraph (b) of subsection (1) of section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.—Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the ward,

Page 2 of 3

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

23-00616A-19

20191188__

59 including:

60 1. A resume of any professional medical treatment given to
61 the ward during the preceding year.

62 2. The report of a physician, a physician assistant acting
63 pursuant to s. 458.347(4)(d) or s. 459.022(4)(d), or an advanced
64 practice registered nurse acting pursuant to s. 464.012(3), who
65 examined the ward no more than 90 days before the beginning of
66 the applicable reporting period. The report must contain an
67 evaluation of the ward's condition and a statement of the
68 current level of capacity of the ward.

69 3. The plan for providing medical, mental health, and
70 rehabilitative services in the coming year.

71 Section 4. This act shall take effect July 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Commerce and Tourism, *Chair*
Finance and Tax, *Vice Chair*
Appropriations Subcommittee on Criminal
and Civil Justice
Banking and Insurance

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR JOE GRUTERS
23rd District

March 18, 2019

The Honorable David Simmons, Chair
Judiciary Committee
420 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I am writing to request that Senate Bill 1188, Courts be placed on the agenda of the next Judiciary meeting.

Should you have any questions regarding this bill, please do not hesitate to reach out to me. Thank you for your time and consideration.

Warm regards,

A handwritten signature in black ink that reads "Joe Gruters".

Joe Gruters

cc: Tom Cibula, Staff Director
Joyce Butler, Committee Administrative Assistant

REPLY TO:

- 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

WAIVE IN SUPPORT
THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1188
Bill Number (if applicable)

Topic SB 1188

Amendment Barcode (if applicable)

Name Alison Carvajal

Job Title Lobbyist

Address 120 S Monroe St

Phone _____

Street

TVA
City

FL
State

32301
Zip

Email _____

Speaking: For Against Information

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

Representing Florida Nurse Practitioner Network

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25

Meeting Date

1188

Bill Number (if applicable)

Topic SB 1188

Amendment Barcode (if applicable)

Name BRYAN CHERRY

Job Title Lobbyist

Address 301 S. Monroe STE 303

Phone (850) 544-5673

Street

Tallahassee

State

FL

Zip

32301

Email bryan@pinpointresults.com

City

Speaking: For Against Information

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

Representing FL. Public Guardian Coalition

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1238

INTRODUCER: Senator Mayfield

SUBJECT: Safety of Religious Institutions

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1238 enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution. The bill also enables a private or religious school to designate a person to carry a firearm on the school's property. If a school exercises this option, its governing board or body must create policies and procedures that the designees must meet.

Under current law, a person who has a concealed firearm license is authorized to carry a concealed handgun on the typical property of a religious institution, such as a church property that is not also home to a school. However, a license does not authorize a person to possess a firearm on the property of a school, whether public or private, from preschool through college.

II. Present Situation:

Overview

A person who holds a concealed firearm license may carry a concealed firearm on the property of a religious institution unless the property is also home to a school. This right is subject to a religious institution's authority to prohibit the carrying of firearms on its property.

The law broadly prohibits a person, including a licenseholder, from carrying a firearm on public or private school property, from preschool through the postsecondary level.

Lawful Concealed Carry of Firearms

Although the law generally prohibits a person from carrying a firearm on his or her person, this prohibition is subject to several exceptions. Of these exceptions, perhaps the most well-known and broadly applicable is the concealed firearm license.^{1, 2}

The license authorizes a person to carry a concealed handgun “throughout the state.” However, the license does not authorize a person to carry a firearm into any of a list of places, including “school facilities and administration buildings” and “college or university facilities.” This list of places that are off-limits even for licensed carry does *not* include the property of a religious institution. So, a licensee generally may carry a concealed handgun when he or she goes to meet with his or her congregation, but not if they are meeting at a school facility or building, a college or university facility, or any other place at which licensed carry is illegal.³

To obtain a concealed firearm license, a person must submit an application to the Department of Agriculture and Consumer Services, and the Department must grant the license to each applicant who:⁴

- Is a resident of the United States and a citizen of the United States or a permanent resident alien of the United States, as determined by the United States Bureau of Citizenship and Immigration Services, or is a consular security official of a foreign government that maintains diplomatic relations and treaties of commerce, friendship, and navigation with the United States and is certified as such by the foreign government and by the appropriate embassy in this country;
- Is 21 years of age or older;
- Does not suffer from a physical infirmity that prevents the safe handling of a weapon or firearm;
- Is not ineligible to possess a firearm by virtue of having been convicted of a felony;
- Has not been committed for the abuse of a controlled substance;
- Has not been found guilty of a crime relating to controlled substances within a 3-year period immediately preceding the date on which the application is submitted;
- Does not chronically and habitually use alcoholic beverages or other substances to the extent that his or her normal faculties are impaired;
- Desires a legal means to carry a concealed weapon or firearm for lawful self-defense;
- Demonstrates competency in the use of a firearm;⁵

¹ As of December 31, 2018, 1,941,180 Floridians held a standard concealed firearm license. Fla. Dept. of Ag., *Number of Licensees by Type*, http://www.freshfromflorida.com/content/download/7471/118627/Number_of_Licensees_By_Type.pdf.

² Additional exceptions to the prohibition against carrying a concealed firearm or openly carrying a firearm are created by s. 790.25(3), F.S. This statute authorizes an unlicensed individual to openly possess a firearm or to carry a concealed firearm in any of the manners described in the statute. The statute, for example, authorizes law enforcement officers to carry firearms while on duty. Additionally, the statute authorizes a person to carry a firearm while engaged in hunting, fishing, or camping or while traveling to and from these activities. A person may also possess a firearm at his or her home or place of business or in any of the other circumstances set forth in statute.

³ As used in the licensing statute, the terms referring to schools, colleges, and universities are not defined. As such, the statute makes no distinction between public and private schools.

⁴ Section 790.06(2), F.S. However, the Department must *deny* a license to an applicant who meets any criterion set forth in s. 790.06(3), F.S., which also sets forth criteria for the mandatory revocation of a license.

⁵ See s. 790.06(2)(h), F.S., for the list of courses and other means of demonstrating competency, and for the required documentation that one must present to the state relative to this provision.

- Has not been, or is deemed not to have been, adjudicated an incapacitated person in a guardianship proceeding;
- Has not been, or is deemed not to have been, committed to a mental institution;
- Has not had adjudication of guilt withheld or imposition of sentence suspended on any felony, or any misdemeanor crime of domestic violence, unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled, or expunction has occurred;
- Has not been issued an injunction that is currently in force and effect which restrains the applicant from committing acts of domestic violence or acts of repeat violence; and
- Is not prohibited from purchasing or possessing a firearm by any other provision of Florida or federal law.

While the licensing statute states that the concealed carry license “*does not authorize*” carrying into any school building or facility, another statute broadly *prohibits* the possession of a firearm on any public or private school property regardless of whether a person has a license.

Prohibited Possession of a Firearm on School Property

Section 790.115, F.S., broadly prohibits a person from possessing a firearm on the property of any “school,” meaning any preschool through postsecondary school, whether public or private.⁶ As such, property covered by the ban appears to include property shared by a religious institution and a school, and may even include the property of a church that hosts a voluntary prekindergarten (VPK) program.

There are three exceptions to the general ban on possessing a firearm on school property. The first allows a person to possess a firearm “as authorized in support of school-sanctioned activities.” The second exception allows a person to carry a firearm in a case to a firearms training program or to a firearms training range at a career center. The third exception generally allows a person to store a firearm inside a parked car.⁷

The penalty for violating the ban on firearms on school property varies depending on whether the violator has a concealed firearm license.⁸

Federal Law

The federal Gun-Free School Zones Act prohibits the possession of a firearm that has moved in or otherwise affects interstate or foreign commerce at a place an individual knows, or has reasonable cause to believe, is a school or is within 1,000 feet of a school.⁹ However, this

⁶ It also means any career center. Section 790.115(2)(a), F.S.

⁷ Section 790.115(2)(a), F.S. Also, the ban does not apply to law enforcement officers. Section 790.115(3), F.S.

⁸ A non-licensee who willfully and knowingly possesses a firearm or other weapon commits a third degree felony, punishable by up to 5 years in prison and a fine not to exceed \$5,000. *See* ss. 790.115(b)-(c), 775.082(9)(a)3.d. and 775.083(1)(c), F.S. However, licensees who commit this crime are guilty of a lesser crime, a second degree misdemeanor, punishable by up to 60 days in jail and a fine not to exceed \$500. *See*, ss. 790.115(2)(e), 790.06(12)(d), 775.082(4)(b), and 775.083(1)(e), F.S.

⁹ 18 U.S.C. § 922(q)(2)(A).

prohibition does not apply to a person who is licensed by his or her state to carry a concealed handgun.¹⁰

Another federal law, the Gun-Free Schools Act, is more-narrowly focused on prohibiting *students* from possessing firearms at or near schools. This prohibition is also subject to exceptions.¹¹ The act expressly states that it does not apply to a firearm “that is lawfully stored inside a locked vehicle on school property, or if it is for activities approved and authorized by the local educational agency and the local educational agency adopts appropriate safeguards to ensure student safety.”¹²

Right to Exclude Anyone Possessing a Firearm

A religious institution is free to prohibit firearm possession on its property, regardless of whether the property also contains a school. The Florida Constitution declares that every person has the right to “acquire, possess, and protect property.”¹³ The right to exclude others is “one of the most essential sticks in the bundle of rights that are commonly characterized as property.”¹⁴

A person who enters the property of another without authorization commits the crime of trespass to property. The elements of trespass are set forth in s. 810.08(1), F.S., which states:

Whoever, without being authorized, licensed, or invited, willfully enters or remains in any structure or conveyance, or, having been authorized, licensed, or invited, is warned by the owner or lessee of the premises, or by a person authorized by the owner or lessee, to depart and refuses to do so, commits the offense of trespass in a structure or conveyance.

Trespassing with a firearm is a third degree felony,¹⁵ punishable by up to 5 years in prison,¹⁶ 5 years of probation, and a fine not to exceed \$5,000.¹⁷

III. Effect of Proposed Changes:

The bill enables a church, synagogue, or other religious institution to authorize a person who has a license to carry a concealed firearm to carry a firearm on property owned, rented, or otherwise lawfully used by the religious institution. The bill also enables a private or religious school to designate a person to carry a firearm on the school’s property. If a school exercises this option, its governing board or body must create policies and procedures the designees must meet.

The bill is effective July 1, 2019.

¹⁰ See 18 U.S.C. § 922(q)(2)(B)(ii).

¹¹ See 20 U.S.C. § 7961.

¹² 20 U.S.C. § 7961(g).

¹³ FLA. CONST. art. I, s. 2.

¹⁴ *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 831 (1987) (quoting *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982)).

¹⁵ Section 810.08(2)(c), F.S.

¹⁶ Section 775.082(3)(e), F.S.

¹⁷ Section 775.083(1)(c), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 790.06 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Mayfield

17-01433A-19

20191238__

1 A bill to be entitled
 2 An act relating to the safety of religious
 3 institutions; amending s. 790.06, F.S.; authorizing a
 4 church, a synagogue, or other religious institution to
 5 allow a concealed weapons or concealed firearms
 6 licensee to carry a firearm on the property of that
 7 church, synagogue, or other religious institution for
 8 certain purposes; authorizing a private school or a
 9 religious school to designate a person to carry a
 10 firearm on that school's property; requiring the
 11 governing board or body of such school to create
 12 certain policies and procedures if it designates such
 13 person; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Subsection (12) of section 790.06, Florida
 18 Statutes, is amended to read:
 19 790.06 License to carry concealed weapon or firearm.—
 20 (12) (a) A license issued under this section does not
 21 authorize any person to openly carry a handgun or carry a
 22 concealed weapon or firearm into:
 23 1. Any place of nuisance as defined in s. 823.05;
 24 2. Any police, sheriff, or highway patrol station;
 25 3. Any detention facility, prison, or jail;
 26 4. Any courthouse;
 27 5. Any courtroom, except that nothing in this section would
 28 preclude a judge from carrying a concealed weapon or determining
 29 who will carry a concealed weapon in his or her courtroom;

Page 1 of 3

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

17-01433A-19

20191238__

30 6. Any polling place;
 31 7. Any meeting of the governing body of a county, public
 32 school district, municipality, or special district;
 33 8. Any meeting of the Legislature or a committee thereof;
 34 9. Any school, college, or professional athletic event not
 35 related to firearms;
 36 10. Any elementary or secondary school facility or
 37 administration building;
 38 11. Any career center;
 39 12. Any portion of an establishment licensed to dispense
 40 alcoholic beverages for consumption on the premises, which
 41 portion of the establishment is primarily devoted to such
 42 purpose;
 43 13. Any college or university facility unless the licensee
 44 is a registered student, employee, or faculty member of such
 45 college or university and the weapon is a stun gun or nonlethal
 46 electric weapon or device designed solely for defensive purposes
 47 and the weapon does not fire a dart or projectile;
 48 14. The inside of the passenger terminal and sterile area
 49 of any airport, provided that no person shall be prohibited from
 50 carrying any legal firearm into the terminal, which firearm is
 51 encased for shipment for purposes of checking such firearm as
 52 baggage to be lawfully transported on any aircraft; or
 53 15. Any place where the carrying of firearms is prohibited
 54 by federal law.
 55 (b) A person licensed under this section may ~~shall~~ not be
 56 prohibited from carrying or storing a firearm in a vehicle for
 57 lawful purposes.
 58 (c) Notwithstanding any other law, for the purposes of

Page 2 of 3

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

17-01433A-19

20191238__

59 safety, security, personal protection, or other lawful purposes:

60 1. A church, a synagogue, or any other religious
61 institution may authorize a person licensed under this section
62 to carry a firearm on property owned, rented, leased, borrowed,
63 or otherwise lawfully used by the church, synagogue, or other
64 religious institution.

65 2. A private school or a religious school may designate a
66 person to carry a firearm on the property of that school. If a
67 private school or a religious school chooses to designate a
68 person, the governing board or body of that school must create
69 policies and procedures the designee must meet.

70 (d)(e) This section does not modify the terms or conditions
71 of s. 790.251(7).

72 (e)(d) Any person who knowingly and willfully violates any
73 provision of this subsection commits a misdemeanor of the second
74 degree, punishable as provided in s. 775.082 or s. 775.083.

75 Section 2. This act shall take effect July 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Agriculture,
Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy

SENATOR DEBBIE MAYFIELD
17th District

March 5, 2019

The Honorable David Simmons
Chair, Judiciary
406 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 1238

Dear Chair Simmons,

I am respectfully requesting Senate Bill 1238, a bill relating to Safety of Religious Institutions, be placed on the agenda for your Judiciary Committee.

I appreciate your consideration of this bill and I look forward to working with you and the Judiciary Committee. If there are any questions or concerns, please do not hesitate to call my office at 850-487-5017.

Thank you,

A handwritten signature in cursive script, appearing to read "Debbie Mayfield".

Debbie Mayfield
State Senator, District 17

Cc: Tom Cibula, Joyce Butler, Valerie Clarke, Carolyn Grzan, Diane Suddes

REPLY TO:

- 900 East Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025 FAX: (888) 263-3815
- 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- 322 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/2019

SB-1238

Meeting Date

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Sheriff Wayne Ivey, Brevard County

Job Title Sheriff

Address 7005 Park Ave.

Phone (321)427-7231

Street

Titusville

FL

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing The Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/2019

SB-1238

Meeting Date

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Marion P. Hammer

Job Title _____

Address PO Box 1387

Phone 850-222-9518

Street

Tallahassee

FL

32302

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing National Rifle Association & Unified Sportsmen of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-19
Meeting Date

501238
Bill Number (if applicable)

Topic Guns Religious Institutions

Amendment Barcode (if applicable)

Name Liza Buckley

Job Title _____

Address 911 Blackwood Ave
Street

Phone 850-523-0187

Tallahassee, FL 32303
City State Zip

Email lizambuck@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

1238
Bill Number (if applicable)

Topic Guns-Religious Institutions

Amendment Barcode (if applicable)

Name Jamie Ito

Job Title Attorney

Address 411 Wilson Ave

Phone 850 284 9517

Tallahassee FL
City State

32303
Zip

Email jamie.ito@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

1238

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Beth Dumond

Job Title Volunteer, Moms Demand Action

Address 6316 Mallard Trace Dr

Phone (850) 284-4057

Street

Tallahassee FL 32312

Email edumondb1@gmail.com

City

State

Zip

Speaking: [] For [x] Against [] Information

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

Representing Moms Demand Action

Appearing at request of Chair: [] Yes [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.

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-25-19

Meeting Date

1238

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Susan Smith

Job Title _____

Address 16111 Vanderbilt Dr

Phone 813-926-2768

Street

Odessa FL 33556

Email stsmith222@aol.com

City

State

Zip

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

APPEARANCE RECORD

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

1238

Meeting Date _____

Bill Number (if applicable) _____

Topic Safety of Religious Institutions

Amendment Barcode (if applicable) _____

Name Spike Gram

Job Title Concerned Citizen

Address 1808 Chawkerbin Lane

Phone _____

Street

Tallahassee FL 32301

Email spikester32309@gmail

City

State

Zip

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

3/25/19

Meeting Date

1238

Bill Number (if applicable)

Topic Safety of Religious Institutions

Amendment Barcode (if applicable)

Name Angie GARD

Job Title V.P. Education

Address Street

Phone

City

State

Zip

Email

Speaking: [] For [X] Against [] Information

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

Representing Florida PTA

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [] Yes [] No

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

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)

MARCH 25, 2019
Meeting Date

SB1238
Bill Number (if applicable)

Topic safety of Religious Institutions

Amendment Barcode (if applicable)

Name Douglas A. Hahn

Job Title citizen

Address 2076 West Forest Drive

Phone 636-233-1772

Tallahassee FL 32307-5113
City State Zip

Email doughahn63301@aol.com

Speaking: For Against Information

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

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1656

INTRODUCER: Senator Lee

SUBJECT: Amendment of Criminal Statutes

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stallard	Cibula	JU	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1656 creates a savings statute for criminal laws which provides that, unless expressly intended by the Legislature, an amendment, reenactment, or revision of a criminal statute does not affect or abate:

- The prior operation of the statute or any prosecution or enforcement under the statute;
- A violation of the statute based on any act or omission occurring prior to the effective date of the act; or
- A prior penalty, forfeiture, or punishment incurred or imposed under the statute.

In other words, the bill recognizes that the Legislature has the authority to amend criminal statutes in a way that retroactively effects the prosecution or enforcement of a criminal statute or that reduces penalties for prior violations of a statute. However, the bill provides that if the Legislature exercises this authority, it must expressly state its intent to apply an amendment retroactively.

II. Present Situation:

With the voter's approval of Amendment 11 on the 2018 general election ballot, Florida's constitutional savings clause in Article X, section 9 of the State Constitution was changed as follows:

SECTION 9. Repeal of criminal statutes.—~~Repeal or amendment~~ of a criminal statute shall not affect prosecution ~~or punishment~~ for any crime ~~previously~~ committed before such repeal.

Accordingly, the constitutional savings clause no longer prohibits statutory amendments that:

- Reduce a punishment for a crime committed before the amendment;
- Affect a prosecution for a crime committed before the amendment; or

- Repeal a punishment for a crime committed before the repeal.

Abatement

The constitutional savings clause first appeared in a Florida Constitution in 1885. Court opinions interpreting the savings clause explain that its purpose was to prevent the repeal or amendment of a criminal statute from automatically nullifying its effect on pending cases.¹ This automatic nullification is sometimes referred to as “abatement.”² Accordingly, a savings clause prevents abatement, thus “saving” pending cases from the automatic nullification of a repealed or amended law.³

The savings clause appears to have been added to the Constitution to overrule an 1882 opinion by the Florida Supreme Court. In this opinion, the Court nullified a conviction for assault with intent to murder because the assault statute was repealed after the defendant committed the crime but before the prosecution occurred.⁴ The fact that the assault statute had been replaced by a similar law made no difference.⁵

Remaining Restrictions on Retroactive Application of Amendments to Criminal Statutes

Though Article X, section 9 of the Florida Constitution no longer prohibits retroactive application of amendments to criminal statutes, several other restrictions on the retroactive application of these amendments remain in place.

Ex post facto laws are prohibited

Both the Florida Constitution and the United States Constitution prohibit the passage of an ex post facto law.⁶ An ex post facto law would include a law that imposes a new or increased punishment on an act that occurred before the law took effect.⁷

¹ See *State v. Watts*, 558 So. 2d 994, 999 (Fla. 1990) (discussing *Higginbotham v. State*, 19 Fla. 557, 559 (Fla. 1882)).

² See generally, *Holiday v. United States*, 683 A.2d 61, 66 (D.C. Cir. 1996).

³ See *State v. Reininger*, 254 So. 3d 996, 999 (Fla. 4th DCA 2018)

⁴ *State v. Watts*, 558 So. 2d 994, 999 (Fla. 1990).

⁵ See *Higginbotham v. State*, 19 Fla. 557, 559 (Fla. 1882) (“It has been well settled by repeated decisions that if the law which created the offence is repealed, after the repealing law takes effect no further proceeding can be taken under the law so repealed, and this principle is held to apply to the proceedings in the appellate court upon appeal as well as to the court having original cognizance of the offence, and as well when the repeal took effect after the removal of the cause to the appellate court as before.” (citing *Wall v. State*, 18 Texas 682 (1857)).

⁶ See FLA. CONST. art. I, s. 10; U.S. CONST. art. 1, s. 9, cl. 3.

⁷ The Florida Supreme Court recently reiterated the 200-year-old categories of ex post facto laws as articulated by the United States Supreme Court:

1st. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal; and punishes such action. 2d. Every law that aggravates a crime, or makes it greater than it was, when committed. 3d. Every law that changes the punishment, and inflicts a greater punishment, than the law annexed to the crime, when committed. 4th. Every law that alters the legal rules of evidence, and receives less, or different, testimony, than the law required at the time of the commission of the offense, in order to convict the offender.

Shenfeld v. State 44 So. 3d 96, 100 (Fla. 2010) (citing *Calder v. Bull*, 3 U.S. 386, 390-91 (1798)).

General Restrictions on Retroactive Application of Statutory Changes

As the Florida Supreme Court has repeatedly stated,

The general rule is that a substantive statute will not operate retrospectively absent clear legislative intent to the contrary, but that a procedural or remedial statute is to operate retrospectively.⁸

But even when the Legislature has expressly intended a statutory change to apply retroactively, the courts have disallowed it if it impairs vested rights, creates new obligations, or imposes new penalties.⁹

Definition of Terms used in the Amended Savings Clause

The full meaning and effect of the changes to the constitutional savings clause is dependent on the meaning of its key terms. The term “criminal statute” is not defined in the Florida Constitution or in the statutes. However, in the context of the savings clause the Florida Supreme Court has long defined the term “criminal statute” as

an act of the Legislature as an organized body, defining crime, treating of its nature, or providing for its punishment. It is sufficiently broad and comprehensive as to include within its scope and meaning all those acts of the Legislature as an organized body which deal in any way with crime or its punishment.¹⁰

“Amendment” and “Repeal”

Additionally, the terms “amendment” and “repeal” are not defined in the Florida Constitution or the statutes. Thus, the meaning of these terms is at least somewhat dependent on how they have been defined or described in case law. There, the courts have not always indicated that these words refer to mutually exclusive concepts. In fact, in some cases, the courts seem to use the words as functional equivalents—e.g., an “amendment” that “repealed” a statutory provision.¹¹ However, the courts do not *always* describe an amendment as a repeal, or as causing a repeal.¹²

⁸ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citing *Arrow Air, Inc. v. Walsh*, 645 So.2d 422 (Fla.1994); *Alamo Rent–A–Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla.1994); *City of Lakeland v. Catinella*, 129 So.2d 133 (Fla.1961)); see generally, *Smiley v. State*, 966 So. 2d 330 (Fla. 2007) (indicating that these principles apply in the context of criminal law as well as civil law.).

⁹ *State Farm Mut. Auto. Ins. Co. v. Laforet*, 658 So. 2d 55, 61 (Fla. 1995) (citing *Alamo Rent–A–Car, Inc. v. Mancusi*, 632 So.2d 1352 (Fla.1994); *State v. Lavazzoli*, 434 So.2d 321 (Fla.1983); *Seaboard Sys. R.R. v. Clemente*, 467 So.2d 348 (Fla. 3d DCA 1985).

¹⁰ *Washington v. Dowling*, 109 So. 588, 591 (Fla. 1926); see also, *Smiley v. State*, 966 So. 2d 330, 337 (Fla. 2007) (reaffirming the definition set forth in *Washington v. Dowling*).

¹¹ See, e.g., *L. Ross, Inc., v. R.W. Roberts Const. Co., Inc.*, 466 So. 2d 1096 (Fla. 5th DCA 1985) (stating, for example, “the legislative **amendment** of section 627.756, Florida Statutes (1983), which **repealed** the twelve and a half percent limitation on the amount of attorney’s fees recoverable from sureties under section 627.428, increased the substantive statutory obligation of the surety to pay attorney’s fees.” (Emphasis added)); *State v. Richardson*, 915 So. 2d 86 (Fla. 2005) (stating the Legislature had “effectively repealed” a provision when it substantially “amended” a statute and did not include the provision in the amended version.).

¹² See e.g., *Macchione v. State*, 123 So. 3d 114 (Fla. 2013) (describing various amendments to s. 836.10, F.S., including the deletion of language, without describing any of the changes as a repeal).

III. Effect of Proposed Changes:

SB 1656 creates a savings statute for criminal laws which provides that, unless expressly intended by the Legislature, an amendment, reenactment, or revision of a criminal statute does not affect or abate:

- The prior operation of the statute or any prosecution or enforcement under the statute;
- A violation of the statute based on any act or omission occurring prior to the effective date of the act; or
- A prior penalty, forfeiture, or punishment incurred or imposed under the statute.

However, the bill provides that, if the Legislature intends to retroactively apply a reenactment, revision, or amendment of a criminal statute, it may do so by expressly stating its intent in the legislation. However, an amendment, revision, or reenactment of a criminal statute which has the effect of repealing it would likely exceed the Legislature's authority under the constitutional savings clause if the amendment, revision, or repeal affects prosecution for any crime committed before the amendment took effect.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 775.022 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Lee

20-01376B-19

20191656__

1 A bill to be entitled
 2 An act relating to amendment of criminal statutes;
 3 creating s. 775.022, F.S.; defining the term "criminal
 4 statute"; providing that an act of the Legislature
 5 which reenacts, revises, or amends a criminal statute
 6 may not be considered a repeal under a specified
 7 provision of the State Constitution; specifying that
 8 the reenactment, revision, or amendment of an existing
 9 criminal statute only operates prospectively unless
 10 expressly provided otherwise in such an act; providing
 11 an effective date.
 12

13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Section 775.022, Florida Statutes, is created to
 16 read:

17 775.022 Effect of reenactment, revision, or amendment of
 18 criminal statutes.-

19 (1) As used in this section, the term "criminal statute"
 20 means chapters 775-896 and any other law of this state which
 21 prohibits an act or omission and provides a criminal penalty,
 22 regardless of the degree of the offense.

23 (2) Any act of the Legislature reenacting, revising, or
 24 amending a criminal statute may not be considered a repeal of
 25 such statute for purposes of s. 9, Art. X of the State
 26 Constitution.

27 (3) Except as expressly provided in an act of the
 28 Legislature, the reenactment, revision, or amendment by law of
 29 an existing criminal statute operates prospectively and does not

Page 1 of 2

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

20-01376B-19

20191656__

30 affect or abate any of the following:

31 (a) The prior operation of the statute or any prosecution
 32 or enforcement thereunder.

33 (b) Any violation of the statute based on any act or
 34 omission occurring prior to the effective date of the act.

35 (c) Any prior penalty, prior forfeiture, or prior
 36 punishment incurred or imposed under the statute.

37 Section 2. This act shall take effect upon becoming a law.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 8, 2019

I respectfully request that **Senate Bill #1656**, relating to Amendment of Criminal Statutes, be placed on the:

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

A handwritten signature in black ink that reads "Tom Lee".

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE APPEARANCE RECORD

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

3.25.19

1656

Meeting Date

Bill Number (if applicable)

Topic Amendment of Criminal Statutes

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

SB 11056

Bill Number (if applicable)

Topic Retroactivity

Amendment Barcode (if applicable)

Name LAurette Philipsen

Job Title _____

Address 7240 Westwind Dr

Street

Phone 727-484-0237

Port Richey FL 34668

City

State

Zip

Email Disneygramma006 @ AOL.com

Speaking: For Against Information

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

Representing myself & Florida Cares

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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APPEARANCE RECORD

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MARCH 25, 2019
Meeting Date

SB 1656
Bill Number (if applicable)

Topic RETROACTIVITY

Amendment Barcode (if applicable)

Name PAUL XUORSHI

Job Title _____

Address 4765 ARROWOOD
Street

Phone 407-443-1459

ORLANDO FL 32812
City State Zip

Email XUORSHI@GMAIL.COM

Speaking: For Against Information

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

Representing FLORIDA CAREER CHARITY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/2019

1656

Meeting Date

Bill Number (if applicable)

Topic Amendment of Criminal Statutes

Amendment Barcode (if applicable)

Name Matt Dunagan

Job Title Deputy Director

Address 2617 Mahan Drive

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Street

Tallahassee

FL

32308

City

State

Zip

Email mdunagan@flsheriffs.org

Speaking: For Against Information

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-25-19

Meeting Date

1656

Bill Number (if applicable)

Topic CRIMINAL STATUTES

Amendment Barcode (if applicable)

Name Bill CERVONE

Job Title STATE ATTORNEY - 8 CIR

Address 120 W UNIVERSITY AVE
Street

Phone 552-374-3686

Gainesville FL 32601
City State Zip

Email cervone10@sos.fl.gov

Speaking: For Against Information

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

Representing Florida Executing Attorneys Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/25/19
Meeting Date

1656
Bill Number (if applicable)

Topic Amendment of Criminal Statutes

Amendment Barcode (if applicable)

Name Pamela Burch Fort

Job Title _____

Address 104 S. Monroe Street
Street
Tallahassee FL 32301
City State Zip

Phone 850-425-1344

Email TegLobby@aol.com

Speaking: For Against Information

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

Representing ACLU of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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3/25/19

1656

Meeting Date

Bill Number (if applicable)

Topic Amendment of Criminal Statutes

Amendment Barcode (if applicable)

Name Chief Gary Hester

Job Title Government Affairs

Address 2636 Mitcham Drive

Phone 850-219-3631

Street

Tallahassee

FL

32308

Email ghester@fpca.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 Florida Police Chiefs Association

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.

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

SB 1056

Bill Number (if applicable)

Topic Amendment to Criminal Statutes

Amendment Barcode (if applicable)

Name Richard Martin

Job Title General Counsel, Attorney General

Address PL-01 The Capitol

Phone 850-245-0187

Street

Tallahassee

FL

32399

City

State

Zip

Email richard.martin@nyttomaha.legat.com

Speaking: [] For [] Against [] Information

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

Representing Attorney General

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [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.

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THE FLORIDA SENATE
APPEARANCE RECORD

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

9/25/19
Meeting Date

1656
Bill Number (if applicable)

Topic Retrospectivity of The Bill

Amendment Barcode (if applicable)

Name Dubin Saldana

Job Title Youth Crime Prevention Coach

Address 5838 Tomoka Dr.
Street

Phone 305-619-3080

Orlando FL 32839
City State Zip

Email RuCamp@outlook.com

Speaking: For Against Information

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

Representing Independent

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1694

INTRODUCER: Senator Flores

SUBJECT: Takings Claims Within Areas of Critical State Concern

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			CA	
3.			AP	

I. Summary:

SB 1694 provides that the state and the local government located in an area of critical state concern must share equally in judgments if they both are defendants in property rights-related litigation and if:

- The court has found liability against both the state and local government;
- The regulation restricting development or use, which was the basis of the judgment, was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation adopted by the local government restricting development or use, which was the basis of the judgment, was necessary to comply with the guiding principles for the area or other obligations for the area.

II. Present Situation:

The adoption of development regulations can impose significant burdens on a property owner's rights. These regulations can be especially significant in areas designated as areas of critical state concern.

Areas of Critical State Concern

Areas of critical state concern are designated by the Administration Commission, which is composed of the Governor and Cabinet, following a process set forth in statute.¹ Areas that qualify for designation include only:

An area containing, or having a significant impact upon, environmental or natural resources of regional or statewide importance, including, but not limited to, state

¹ Section 380.05, F.S.

or federal parks, forests, wildlife refuges, wilderness areas, aquatic preserves, major rivers and estuaries, state environmentally endangered lands, Outstanding Florida Waters, and aquifer recharge areas, the uncontrolled private or public development of which would cause substantial deterioration of such resources.²

Once designated, the area's land planning regulations must comply with the principles guiding development specified by the Administration Commission which must be approved by the Department of Economic Opportunity.³

Several areas have been designated as an area of critical state concern or have had their designations ratified by statute. These areas include the Big Cypress Area,⁴ the Green Swamp Area,⁵ the Apalachicola Bay Area,⁶ and the Florida Keys Area.⁷

With respect to the Florida Keys Area, land planning regulations that are subject to approval by the state must be consistent with the principles of protecting many different natural resources and making affordable housing available.⁸ Additionally, these regulations must be consistent with "maintaining a hurricane evacuation clearance time for permanent residents of no more than 24 hours."⁹

A specific regulation that may form the basis of property rights-related litigation in the Florida Keys Area is the Monroe County Rate of Growth Ordinance.¹⁰ Under this ordinance, Monroe County permits for new residential development are subject to an annual cap of 197 units plus unused allocations from previous years. Additionally, at least 71 but not more than 126 of the 197 permits must be allocated to affordable housing.

According to representatives from Monroe County, the total number of development permits that may be issued in the future is also capped in order to allow for sufficient hurricane evacuation clearance time. As a result, the number of undeveloped lots for which owners may seek development permits exceeds the total number of permits that will ultimately be available. This is expected to provide the impetus for additional property-rights related litigation when the available permits are exhausted in 2023.

Informal Agreement for Shared Defense and Liability with the State

Because the state and the local government in an area designated as an area of critical state concern are involved in the applicable land planning regulations, both the state and the area can be defendants in property-rights based litigation or litigation involving inverse condemnation or takings claims.

² Section 380.05(2), F.S.

³ Section 380.05(6), F.S.

⁴ Section 380.055, F.S.

⁵ Section 380.0551, F.S.

⁶ Section 380.0555, F.S.

⁷ Section 380.0552, F.S.

⁸ Section 380.0552(1)(d).

⁹ Section 380.0552(9)(a)2., F.S.

¹⁰ Rule 28-20.140(2), F.A.C.

With respect to Monroe County and the Florida Keys Area, the state and Monroe County have been operating under an informal agreement for 14 years to defend against property-rights related litigation and share equally in judgments awarded against them.¹¹ Judgments in property-rights related litigation arising out of the state-approved Monroe County land development regulations are starting to be entered. And in a judgment provided as an example by Monroe County, the judgment was entered against the county and the state, jointly and severally.^{12,13}

Eminent Domain and Inverse Condemnation

In an eminent domain action the government, as the plaintiff, asserts its power to take private property for a public use. In compliance with the United States Constitution, the government must compensate the land owner for the loss.¹⁴ The Florida Constitution similarly states that no private property may be taken except for a public purpose and each owner must be fully compensated.¹⁵ In an inverse condemnation action, however, the government has “taken” private property without the owner’s consent, either through its activities or conduct, and without adequate compensation. Because the government has not adequately compensated the property owner, the property owner is the plaintiff who sues to recover the value of property that has been taken.¹⁶

There are several forms of takings, one being by regulatory action. In those instances, the trial judge is the trier of all legal and factual issues, except for the issue of what constitutes just compensation for damages.¹⁷ Damages are determined by a jury. For a landowner to be fully compensated, prejudgment interest reaching back to the date of the taking must be permitted.¹⁸ Attorney fees and costs are also recoverable at the trial level and on appeal.¹⁹

Relief from Burdens on Real Property Rights, Chapter 70, F.S.

The Legislature enacted the “Bert J. Harris, Jr., Private Property Rights Act” in 1995. The Legislature recognized that some laws, regulations, and ordinances of the state and its entities could inordinately burden, restrict, or limit private property rights without amounting to a taking

¹¹ Correspondence from Jonathan A. Glogau explaining the Monroe County land development regulations and the informal agreement with the state dated March 6, 2019. (On file with the Committee on Judiciary).

¹² *Thomas and Collins v. Monroe County*, Case No. 04-CA-379-M (Fla. 16th Cir. Ct. Feb. 15, 2017)

¹³ The Legislature acknowledged in s.7, ch. 2006-223, Laws of Fla., that the state may have some liability for inverse condemnation actions in the Florida Keys Area due to the state’s role in adopting land use regulations for the area as follows:

If the designation of the Florida Keys Area as an area of critical state concern is removed, the state shall be liable in any inverse condemnation action initiated as a result of Monroe County land use regulations applicable to the Florida Keys Area as described in chapter 28-29, Florida Administrative Code, and adopted pursuant to instructions from the Administration Commission or pursuant to administrative rule of the Administration Commission, to the same extent that the state was liable on the date the Administration Commission determined that substantial progress had been made toward accomplishing the tasks of the work program as defined in s. 380.0552(4)(c), Florida Statutes.

¹⁴ The Fifth Amendment to the United States Constitution provides “. . . nor shall private property be taken for public use without just compensation.”

¹⁵ FLA. CONST. art. X, s. 6.

¹⁶ 21 FLA. JUR 2d Eminent Domain, s. 227.

¹⁷ *Id.*, at s. 240.

¹⁸ 21 FLA. JUR 2d Eminent Domain at s. 241.

¹⁹ *Id.*, at s. 242.

under either the State Constitution or the United States Constitution.²⁰ The act provides a process whereby private landowners may seek relief and recover damages when their property is inordinately burdened by the actions of a government.²¹

III. Effect of Proposed Changes:

The bill provides that the state and the local government located in an area of critical state concern must share equally in any award of compensation, costs, attorney fees, and prejudgment interest if:

- The court has determined that both the state and the local government are liable;
- The regulation that restricts development or use of the property was mandated or approved by the state land planning agency or the Administration Commission; or
- The regulation that restricts development or use of the property adopted by the local government was necessary for the local government to comply with the principles for guiding development established for the area or other obligations of the area under the area of critical state concern designation.

These proceedings must be brought pursuant to the Bert J. Harris, Jr. Private Property Rights Protection Act of ch. 70, F.S., a claim for inverse condemnation, or any other property-rights related action when the state is named as a codefendant or a third-party defendant by a local government in an area of critical state concern. A third-party defendant is “brought into a lawsuit by the original defendant”²² who alleges that the third-party defendant is at fault, or at least partially at fault, for the actions giving rise to the plaintiff’s lawsuit.

The court must enter separate judgments for the apportioned amount against the state and local government, notwithstanding other provisions of law.²³

A governmental entity named as a judgment debtor²⁴ is only liable for postjudgment interest²⁵ on the judgment entered against it. The governmental entity is not liable for postjudgment interest on the judgment entered against the other governmental entity. However, the bill does not prohibit a court from awarding a separate judgment for attorney fees and costs made under these provisions.

The bill takes effect July 1, 2019.

²⁰ Section 70.001, F.S.

²¹ Amber L. Ketterer and Rafael E. Suarez-Rivas, *The Bert J. Harris, Jr., Private Property Rights Protection Act: An Overview, Recent Developments, and What the Future May Hold*, THE FLORIDA BAR JOURNAL, (Sept./Oct. 2015), <https://www.floridabar.org/the-florida-bar-journal/the-bert-j-harris-jr-private-property-rights-protection-act-an-overview-recent-developments-and-what-the-future-may-hold/>.

²² BLACK’S LAW DICTIONARY (10th ed. 2014).

²³ The bill cites specifically to s. 11.066, F.S., and s. 7, chapter 2006-223. Section 11.066, F.S., provides that the presumption that the state, when exercising its inherent police power, is presumed to be acting to prevent a public harm, but that presumption may be rebutted in a suit seeking monetary damages from the state or a state agency only by clear and convincing evidence to the contrary. Section 7, chapter 2006-223 is discussed above in footnote 13.

²⁴ A judgment debtor is someone “against whom a money judgment has been entered but not yet satisfied.” BLACK’S LAW DICTIONARY (10th ed. 2014).

²⁵ Postjudgment interest is the amount of interest that a creditor is allowed to collect from a debtor after a judgment is rendered until the date it is paid by the debtor. TheLaw.com Dictionary <https://dictionary.thelaw.com/postjudgment-interest/>.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No agency analyses have been provided that estimate the fiscal impact of this bill. However, the bill will provide the affected state and local governments with some certainty on their liability in property-rights related litigation in areas of critical state concern.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 380.0501 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Flores

39-01050A-19

20191694__

1 A bill to be entitled
 2 An act relating to takings claims within areas of
 3 critical state concern; creating s. 380.0501, F.S.;
 4 providing for the apportionment of awards of damages
 5 for takings claims within areas of critical state
 6 concern; providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Section 380.0501, Florida Statutes, is created
 11 to read:
 12 380.0501 Apportionment of awards of damages for takings
 13 claims within an area of critical state concern.-
 14 (1) In any proceeding brought pursuant to chapter 70, any
 15 claim for inverse condemnation, or any other property-rights
 16 related action for compensation in which the state is named as a
 17 codefendant with a local government located in an area of
 18 critical state concern or named as a third-party defendant by a
 19 local government located in an area of critical state concern,
 20 the court shall require the state and the local government to
 21 equally pay any award of compensation, costs, attorney fees, and
 22 prejudgment interest to the property owner if:
 23 (a) The court has found liability against both the state
 24 and the local government;
 25 (b) The regulation restricting development or use of the
 26 property was mandated or approved by the state land planning
 27 agency or the Administration Commission under s. 380.05; or
 28 (c) The regulation restricting development or use of the
 29 property adopted by the local government was necessary for the

Page 1 of 2

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

39-01050A-19

20191694__

30 local government to comply with the principles for guiding
 31 development established for the area or other obligations under
 32 the area of critical state concern designation.
 33 (2) Notwithstanding s. 11.066 or s. 7, chapter 2006-223,
 34 Laws of Florida, the court shall enter separate judgments for
 35 the apportioned amount against the state and local government.
 36 (3) A governmental entity named as a judgment debtor in a
 37 judgment entered under this section is only liable for
 38 postjudgment interest on the judgment entered against it and is
 39 not liable for postjudgment interest on the judgment entered
 40 against the other governmental entity. This section does not
 41 prohibit a court from awarding a separate judgment for attorney
 42 fees and costs pursuant to the limitations set forth in this
 43 section.
 44 Section 2. This act shall take effect July 1, 2019.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 12, 2019

I respectfully request that **Senate Bill #1694**, relating to Takings Claims Within Areas of Critical State Concern, be placed on the:

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

Anitere Flores

Senator Anitere Flores
Florida Senate, District 39

March 6, 2019

William Chorba
General Counsel
Department of Economic Opportunity
107 East Madison Street
Caldwell Building
Tallahassee, Florida 32399-4120

Re: Monroe County and State Litigation Partnership

Dear Mr. Chorba:

I am a recently retired attorney having served in the Office of the Attorney General for over 30 years. My title was Special Counsel, Chief of Complex Litigation for many of those years. One of my many responsibilities was representation of the Department of Community Affairs and then Department of Economic Opportunity in a series of inverse condemnation cases filed against Monroe County and the State beginning in 2004.

After the adoption of the Monroe County 2010 Comprehensive Plan, several groups of landowners filed lawsuits claiming that the adoption of the Plan and the Rate of Growth Ordinance (ROGO) used to implement the Plan denied them all reasonable use of their properties resulting in the government taking those properties. Those suits sought full compensation under the provisions of the Florida Constitution. Initially, those suits were filed against Monroe County. Monroe County was designated under ch. 380, Fla. Stat. as an Area of Critical State Concern. Because of that designation, the Department is responsible for reviewing and approving amendments to the County's comprehensive plans and land development regulations to ensure they are consistent with the state statutory principles that must guide development in the Florida Keys. In addition, the Administration Commission, comprised of the Governor and Cabinet, has authority to adopt and insert provisions into the Monroe County plan.

ROGO is a point-based system used to allocate the limited number of building permits that the State allows Monroe County to issue each year based on

infrastructure and environmental factors. A property owner's ROGO allocation application is scored and the applications with the highest scores are allocated permits for the current year. This limit on permits was enacted to ensure proper evacuation times in the event of a catastrophic hurricane hitting the Keys. Because this is an issue of state concern, the State Administration Commission required the adoption of ROGO.

Because ROGO and other state-mandated regulations were the basis of the inverse condemnation claims, Monroe County brought the State into the early cases as a third-party defendant (the State was then named as a direct defendant by property owners in several cases). When it became apparent that the State was going to be involved in defending these cases, a meeting was convened which included the undersigned, the Secretary and General Counsel of the DCA, a representative of the County Commission, the County Attorney and the County's outside counsel. During that meeting it was agreed by all that the most efficient way to defend these cases was for the County and the State to work together as partners. It was also agreed that if a judgment was ever entered in a landowner's favor, the State and County would each shoulder half the payment. From the State's position, this compromise made sense because, any judgment being joint and several, the State would have had to defend either a contribution/subrogation claim by Monroe County or an attempt by the landowner to seek satisfaction of the entire judgment. The prospect of a favorable outcome (i.e. better than 50/50) against Monroe County in Monroe County seemed slim at the time.

After this meeting, the undersigned and representatives of the DCA met with Gov. Jeb Bush. At that meeting, the situation outlined above was presented to the Governor. After a long discussion, the Governor agreed that a partnership between the County and the State was both an effective way to marshal our defenses and, because the limitations causing the alleged takings were either mandated by or adopted by the state, an equitable division of responsibility.

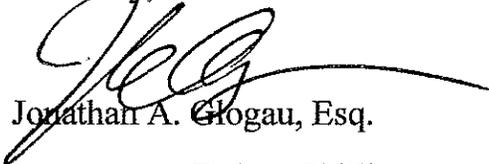
Based on those agreements, the County and State worked diligently as equal partners for over 14 years. This partnership proved successful at both the trial and appellate levels. In *Emmert*, for example, the County and State prevailed against vested rights and inverse condemnation claims relating to red-flag wetland regulations that were compelled by the State. In *Collins*, the County and State prevailed against ROGO-related inverse condemnation claims of nine out of ten plaintiffs (an appeal remains pending on the judgment of liability in favor of

Donald Davis, the tenth Plaintiff). In *Galleon Bay*, the County and State prevailed at the trial level, but the Third District reversed and mandated a finding of a taking. In the subsequent jury trial on compensation, the County and State effectively collaborated to obtain a jury verdict for \$285,000 (almost exactly our appraisal) in the face of a \$3 million claim by the Plaintiff. My understanding is that the Third District affirmed that verdict last month.

It is my belief that the success of the governments in defending these cases forestalled the filing of taking cases on many of the thousands of remaining vacant privately-held lots in Monroe County saving the County and State an incalculable amount of money. By any measure, the agreement between the County and the State has been a great success and, although this agreement has never been reduced to writing, I believe it should continue to be honored.

As I mentioned at the beginning, I am recently retired and living in Tallahassee. I would be happy to speak with representatives of the State or attend a meeting to discuss this matter.

Sincerely,



Jonathan A. Glogau, Esq.

cc: Robert Shillinger
Monroe County Florida

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/25/2019
Meeting Date

SB 1694
Bill Number (if applicable)

Topic Takings Claims Within Areas of Critical State Concern

Amendment Barcode (if applicable)

Name David Migut

Job Title City Attorney - City of Marathon

Address 9805 Overseas Highway

Phone (305) 289-4130

Marathon FL 33050
City State Zip

Email migutd@ci.marathon.fl.us

Speaking: For Against Information

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

Representing City of Marathon

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19

Meeting Date

1694

Bill Number (if applicable)

Topic Takings Cases in the Keys

Amendment Barcode (if applicable)

Name Bob Shillinger

Job Title Monroe County Attorney

Address 1111 12th Street, Suite 408

Phone 305-292-3470

City Key West State FL Zip 33040

Email shillinger-bob@monroecounty-fl.gov

Speaking: [X] For [] Against [] Information

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

Representing Monroe County

Appearing at request of Chair: [] Yes [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)

3-25-19

Meeting Date

1694

Bill Number (if applicable)

Topic Talk Kings Cases in the keys

Amendment Barcode (if applicable)

Name Michelle Coldiron

Job Title County Commissioner

Address 1111 2th St.

Phone 305 360-7668

City Key west State FL Zip 33040

Email Coldiron-Michelle@monroeCountyFL.gov

Speaking: [] For [] Against [] Information

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

Representing Monroe County

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1742

INTRODUCER: Senator Gainer

SUBJECT: Correctional Facility Employees

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Pre-meeting
2.			ACJ	
3.			AP	

I. Summary:

SB 1742 addresses the problem of employees introducing, possessing, and transmitting contraband, such as cell phones or other communication devices, at correctional institutions. The bill increases the offense of introducing cell phones or other communication devices from a third degree felony to a second degree felony and enhances the offense level one level above the ranking specified in the offense severity ranking chart. The bill also adds the offense of introducing any type of contraband by an employee of a correctional institution to the offenses for which a person may be required to forfeit his or her retirement benefits.

II. Present Situation:

Introduction or Possession of Contraband in a Correctional Institution

Section 944.47, F.S., prohibits introducing contraband into a state correctional institution, transmitting contraband to an inmate outside the grounds of a state correctional institution, and possessing contraband on the grounds of a state correctional institution.¹ The statute provides that, except through regular channels as authorized by the officer in charge, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom, any enumerated articles declared to be contraband.

A person commits a third degree felony if the contraband is:

- Any written or recorded communication;
- Currency;
- Food or clothing; or

¹ A state correctional institution means “any prison, road camp, prison industry, prison forestry camp, or any prison camp or prison farm or other correctional facility, temporary or permanent, in which prisoners are housed, worked, or maintained, under the custody and jurisdiction of the department.” Section 944.02(8), F.S.

- A cell phone, or other portable communication device such as a pager, laptop, or similar device, intentionally and unlawfully introduced without prior authorization from the officer in charge.

A person commits a second degree felony if the contraband involves:

- An intoxicating beverage;
- A controlled substance as defined in s. 893.02(4), F.S., or similar drug; or
- A firearm, weapon, or explosive substance.

Criminal Punishment Code – Offense Severity Ranking Chart

The Criminal Punishment Code² is Florida’s primary sentencing policy. It applies to all felonies, except capital felonies, committed on or after October 1, 1998. Noncapital felonies sentenced under the Code receive an offense severity level ranking from least severe, Level 1 to the most severe, Level 10.³ Points are assigned and accrue based upon the severity level ranking assigned to the primary offense, additional offenses, and prior offenses. Sentence points escalate as the severity level escalates. Points may also be added or multiplied for other factors such as victim injury or the commission of certain offenses like a drug trafficking offense.⁴ The state attorney’s office prepares the scoresheet and presents it to defense counsel for review. The sentencing judge must review the scoresheet for accuracy before signing it.⁵

Forfeiture of Retirement Benefits for Committing Specified Offenses

Florida Constitution

The Florida Constitution authorizes the forfeiture of retirement or pension benefits for a public officer or employee who is convicted of a felony. Article II, section 8(d) of the Florida Constitution states that

Any public officer or employee who is convicted of a felony involving a breach of public trust shall be subject to forfeiture of rights and privileges under a public retirement system or pension plan in such manner as may be provided by law.

Florida Statutes

The Legislature implemented the constitutional provisions in 1984 by enacting s. 112.3173, F.S., which has often been revised. Section 112.3173(3), F.S., dealing with the forfeiture of retirement benefits, currently states that any public officer or employee who is convicted of a specified offense that was committed before retirement, or who was terminated because of his or her admitted commission, aid, or abetment of one of the specified offenses

² Sections 921.002-921.0027, F.S. The Code is effective for offenses committed on or after October 1, 1998.

³ Offenses are either ranked in the offense severity level ranking chart in s. 921.0022, F.S., or are ranked by default based on a ranking assigned to the felony degree of the offense as provided in s. 921.0023, F.S.

⁴ Florida Senate Bill Analysis and Fiscal Impact Statement, *Committee Substitute/Senate Bill 1030*, 2 (March 18, 2019), <http://www.flsenate.gov/Session/Bill/2019/1030/Analyses/2019s01030.cj.PDF>.

⁵ Florida Department of Corrections and Office of the State Courts Administrator, *Florida Criminal Punishment Code, Scoresheet Preparation Manual*, 5 (2018), http://www.dc.state.fl.us/pub/sen_cpcm/cpc_manual.pdf.

Shall forfeit all rights and benefits under any public retirement system of which he or she is a member, except for the return of his or her accumulated contributions as of the date of termination.

Specified Offenses

The specified offenses are:

- Embezzlement of public funds;
- Theft by a public officer or employee from his or her employer;
- Bribery in connection with the employment of a public officer or employee;
- Bribery, unlawful compensation, corruption, official misconduct, disclosure or use of confidential criminal or justice information, and bid tampering as defined in ch. 838, F.S.;
- An impeachable offense;⁶
- A felony offense by a public officer or employee who uses or attempts to use his or her position to obtain a profit, gain, or other advantage; or
- A felony lewd and lascivious offense against a victim younger than 16 years of age or a felony sexual battery against a victim younger than age 18 through the use or attempted use of power or position of the public office or employment position.⁷

III. Effect of Proposed Changes:

Penalties for Introducing Contraband

SB 1742 increases the penalty for introducing, transmitting or attempting to transmit, or possessing a cell phone or other portable communication device intentionally and unlawfully inside the secure perimeter of any state correctional institution without prior authorization or consent from the officer in charge. The term “portable communication device” is defined to cover a variety of communication devices that exist or new technology that is developed for similar purposes. The penalty is increased from a third degree felony to a second degree felony. A third degree felony is punishable by a fine of \$5,000 and imprisonment not to exceed 5 years.⁸ A second degree felony is punishable by a fine of \$10,000 and imprisonment not to exceed 15 years.⁹

Offenses Committed by Employees

The bill enhances the penalty for introducing any type of contraband when the offense is committed by an employee who uses his or her position to introduce the contraband into a state correctional institution. The bill increases the offense one level above the ranking specified in the offense severity ranking chart. “Employee” means an employee of the Department of Corrections or a private vendor under contract with the Department of Corrections or the Department of Management Services, and includes persons such as contractors, volunteers, or

⁶ The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal, judges of circuit courts, and judges of county courts are liable to impeachment for committing a misdemeanor in office. FLA. CONST. art. III, s. 17. Public officers are subject to impeachment for violating the Code of Ethics for Public Officers and Employees as well as the ethics provisions in the State Constitution. Section 112.317(1)(a)1., F.S.

⁷ Section 112.3173(2)(e), F.S.

⁸ Sections 775.083 and 775.082, F.S.

⁹ *Id.*

law enforcement officers who are within a state correctional facility to perform a professional service.¹⁰

Forfeiture of Retirement Benefits

Finally, the bill includes introducing contraband by an employee at a correctional institution to the list of offenses that may result in the forfeiture of retirement benefits. Adding this provision to the statutes provides a more explicit forfeiture process than is expressed under current law.

The bill takes effect October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Corrections states that, because it is unknown how many cases could be prosecuted under this bill or what the sentence length might be, the impact on the

¹⁰ Section 944.115(2)(b), F.S.

prison system is indeterminate at this time.¹¹ The Criminal Justice Impact Conference adopted estimate is that the bill will have a positive insignificant impact, which is an increase of 10 or fewer prison beds.¹²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.3173 and 944.47.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹¹ Department of Corrections, *House Bill 41 Agency Legislative Bill Analysis* (Feb. 15, 2019), <http://abar.laspbs.state.fl.us/ABAR/Attachment.aspx?ID=27862>.

¹² Criminal Justice Impact Conference, *Narrative Analyses of Adopted Impacts, CS/HB 41* (Updated through Feb. 27, 2019), <http://edr.state.fl.us/Content/conferences/criminaljusticeimpact/CSHB41.pdf>.

By Senator Gainer

2-01319A-19

20191742__

1 A bill to be entitled
 2 An act relating to correctional facility employees;
 3 amending s. 112.3173, F.S.; providing for forfeiture
 4 of retirement benefits of correctional facility
 5 employees who commit certain violations; amending s.
 6 944.47, F.S.; providing enhanced penalties for
 7 offenses involving introduction of contraband in
 8 correctional facilities when committed by correctional
 9 facility employees; providing an effective date.

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

11
 12 Section 1. Paragraph (e) of subsection (2) of section
 13 112.3173, Florida Statutes, is amended to read:
 14 112.3173 Felonies involving breach of public trust and
 15 other specified offenses by public officers and employees;
 16 forfeiture of retirement benefits.—
 17 (2) DEFINITIONS.—As used in this section, unless the
 18 context otherwise requires, the term:
 19 (e) "Specified offense" means:
 20 1. The committing, aiding, or abetting of an embezzlement
 21 of public funds;
 22 2. The committing, aiding, or abetting of any theft by a
 23 public officer or employee from his or her employer;
 24 3. Bribery in connection with the employment of a public
 25 officer or employee;
 26 4. Any felony specified in chapter 838, except ss. 838.15
 27 and 838.16;
 28 5. The committing of an impeachable offense;
 29

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2-01319A-19

20191742__

30 6. The committing of any felony by a public officer or
 31 employee who, willfully and with intent to defraud the public or
 32 the public agency for which the public officer or employee acts
 33 or in which he or she is employed of the right to receive the
 34 faithful performance of his or her duty as a public officer or
 35 employee, realizes or obtains, or attempts to realize or obtain,
 36 a profit, gain, or advantage for himself or herself or for some
 37 other person through the use or attempted use of the power,
 38 rights, privileges, duties, or position of his or her public
 39 office or employment position; ~~or~~

40 7. The committing on or after October 1, 2008, of any
 41 felony defined in s. 800.04 against a victim younger than 16
 42 years of age, or any felony defined in chapter 794 against a
 43 victim younger than 18 years of age, by a public officer or
 44 employee through the use or attempted use of power, rights,
 45 privileges, duties, or position of his or her public office or
 46 employment position; or

47 8. The committing on or after October 1, 2019, of any
 48 violation described in s. 944.47(2)(b).

49 Section 2. Section 944.47, Florida Statutes, is amended to
 50 read:
 51 944.47 Introduction, removal, or possession of contraband
 52 ~~certain articles unlawful; penalty.—~~

53 (1)(a) Except through regular channels as authorized by the
 54 officer in charge of the correctional institution, it is
 55 unlawful to introduce into or upon the grounds of any state
 56 correctional institution, or to take or attempt to take or send
 57 or attempt to send therefrom, any of the following articles
 58 which are hereby declared to be contraband for the purposes of

Page 2 of 5

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2-01319A-19

20191742__

59 this section, ~~to wit:~~

60 1. Any written or recorded communication or any currency or
61 coin given or transmitted, or intended to be given or
62 transmitted, to any inmate of any state correctional
63 institution.

64 2. Any article of food or clothing given or transmitted, or
65 intended to be given or transmitted, to any inmate of any state
66 correctional institution.

67 3. Any intoxicating beverage or beverage which causes or
68 may cause an intoxicating effect.

69 4. Any controlled substance as defined in s. 893.02(4) or
70 any prescription or nonprescription drug having a hypnotic,
71 stimulating, or depressing effect.

72 5. Any firearm or weapon of any kind or any explosive
73 substance.

74 6. Any cellular telephone or other portable communication
75 device intentionally and unlawfully introduced inside the secure
76 perimeter of any state correctional institution without prior
77 authorization or consent from the officer in charge of such
78 correctional institution. As used in this subparagraph, the term
79 "portable communication device" means any device carried, worn,
80 or stored which is designed or intended to receive or transmit
81 verbal or written messages, access or store data, or connect
82 electronically to the Internet or any other electronic device
83 and which allows communications in any form. Such devices
84 include, but are not limited to, portable two-way pagers, hand-
85 held radios, cellular telephones, Blackberry-type devices,
86 personal digital assistants or PDA's, laptop computers, or any
87 components of these devices which are intended to be used to

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2-01319A-19

20191742__

88 assemble such devices. The term also includes any new technology
89 that is developed for similar purposes. Excluded from this
90 definition is any device having communication capabilities which
91 has been approved or issued by the department for investigative
92 or institutional security purposes or for conducting other state
93 business.

94 (b) It is unlawful to transmit or attempt to transmit to,
95 or cause or attempt to cause to be transmitted to or received
96 by, any inmate of any state correctional institution any article
97 or thing declared by this subsection to be contraband, at any
98 place which is outside the grounds of such institution, except
99 through regular channels as authorized by the officer in charge
100 of such correctional institution.

101 (c) It is unlawful for any inmate of any state correctional
102 institution or any person while upon the grounds of any state
103 correctional institution to be in actual or constructive
104 possession of any article or thing declared by this section to
105 be contraband, except as authorized by the officer in charge of
106 such correctional institution.

107 (2) (a) A person who violates ~~any provision of~~ this section
108 as it pertains to an article of contraband described in
109 subparagraph (1) (a)1. or subparagraph (1) (a)2. ~~or subparagraph~~
110 ~~(1) (a)6.~~ commits a felony of the third degree, punishable as
111 provided in s. 775.082, s. 775.083, or s. 775.084. Otherwise ~~in~~
112 ~~all other cases,~~ a violation of ~~a provision of~~ this section is
113 ~~constitutes~~ a felony of the second degree, punishable as
114 provided in s. 775.082, s. 775.083, or s. 775.084.

115 (b) A violation of this section by an employee, as defined
116 in s. 944.115(2) (b), who uses or attempts to use the powers,

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20191742__

117 rights, privileges, duties, or position of his or her employment
118 in the commission of the violation is ranked one level above the
119 ranking specified in s. 921.0022 or s. 921.0023 for the offense
120 committed.

121 Section 3. This act shall take effect October 1, 2019.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1200

INTRODUCER: Judiciary Committee and Senator Stargel

SUBJECT: Construction Bonds

DATE: March 26, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Cibula	JU	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1200 increases the amount of information that a subcontractor must provide to a contractor through a Notice of Nonpayment before the subcontractor may initiate a lawsuit for payment from the contractor's payment bond. These notices must further be declared to be true to the best of the subcontractor's knowledge and belief.

Finally, the bill adds contractors to the list of individuals or entities who are entitled to the benefits of a one-way attorney fee statute for prevailing in litigation against a surety that issues a payment or performance bond for a construction project.

II. Present Situation:

In a construction project, the owner of the property to be improved has an interest in ensuring that the contractor performs the construction work in the time and manner described in the construction contract. Contractors and subcontractors have an interest in receiving payment for their work. Mechanisms that address these interests of property owners and subcontractors are set forth in the construction lien laws in part I of chapter 713, F.S., for private construction contracts and in s. 255.05, F.S., for public construction contracts.

These mechanisms are especially important where many subcontractors who are not in privity with the owner perform work on a construction project. A subcontractor not in privity with the owner has a contract with the contractor or another subcontractor, but no direct contractual

relationship with the owner. As a result, a subcontractor's identity, work, and charges for services might be unknown to the owner or contractor unless he or she complies with the notice requirements of the lien laws.

Payment Bonds

Under the construction lien laws, a subcontractor may record a lien against the property improved as a means of securing payment of any amounts owed by the owner of the property. However, if the contractor provides a payment bond to secure the payment of subcontractors, the subcontractors must make claims against the bond instead of enforcing liens against the improved property.¹

A payment bond is generally required for public construction contracts and is an option for private construction contracts. These bonds are conditioned on the contractor promptly paying all subcontractors including sub-subcontractors, laborers, and material suppliers who furnish labor, services, or materials under the contractor's contract.

Notices of Commencement

Payment bonds must be recorded in the official records with the clerk of court along with the Notice of Commencement for the construction project. These documents serve a purpose of informing subcontractors of the identity of the contractor responsible for the construction project and the identity of the surety that issued the payment bond.

Notices to Contractor

A Notice to Contractor serves a purpose of informing a contractor of the identity of a subcontractor who is not in privity with the contractor. Providing a Notice to Contractor is the first step that a subcontractor must take to preserve rights to make a claim against a payment bond to make its identity and work known to the contractor.

A Notice to Contractor must include a general description of the materials or services that the subcontractor has furnished or will furnish for the construction project and the subcontractor's name and address and a statement that the subcontractor intends to look to the payment bond to secure payment.² The notice may be served before the subcontractor begins or within 45 days after beginning to furnish labor, materials, or supplies.

Notices of Nonpayment

As a next step to preserve rights to make a claim against a payment bond, the subcontractor must serve a Notice of Nonpayment on the contractor and the surety.³ With respect to public construction contracts, a subcontractor must serve the notice no earlier than 45 days after the first furnishing of labor, services, or materials.⁴ With respect to private contracts, a subcontractor is not required to wait any period of time or wait until a payment is delinquent before serving a

¹ Sections 255.05(1)(c), F.S.; s. 713.23(1)(a), F.S.

² Section 255.05(2)(a)2., F.S.; s. 713.23(1)(c), F.S.

³ Section 255.05(2)(a)2., F.S.; s. 713.23(1)(d), F.S.

⁴ Section 255.05(2)(a)2., F.S.

notice of nonpayment, but the notice must be served no later than 90 days after the final furnishing of labor, services, or materials.⁵

The statute relating to payment bonds for private contracts requires a subcontractor to include in a Notice of Nonpayment a description of the labor, services, and materials furnished and the amounts due and unpaid by the contractor.⁶ However, the statute relating to payment bonds for public construction projects does not identify any specific information that must be included in a Notice of Nonpayment.

Enforcing and Contesting a Claim Against a Payment Bond

After serving the Notice of Nonpayment, a subcontractor generally must initiate a lawsuit to enforce a claim against a payment bond within 1 year after the final furnishing of labor, materials, or supplies.⁷ However, the contractor may shorten that time period by serving the subcontractor with a Notice of Contest of Claim Against Payment Bond. Once served, the subcontractor must initiate a legal action to enforce the claim against the bond within 60 days.⁸

Accountings Under Oath

A contractor who has furnished a payment bond may demand that a subcontractor filing a Notice to Contractor provide a written accounting made under oath. These accountings require a subcontractor to supply more detailed information about its work and charges than it must supply in a Notice to Contractor or a Notice of Nonpayment. Specifically, this accounting must show the

nature of the labor or services performed and to be performed, if any, the materials furnished, the materials to be furnished, if known, the amount paid on account to date, the amount due, and the amount to become due, if known, as of the date of the statement by the [subcontractor].⁹

As a consequence of providing a false accounting or failing to timely provide the accounting, a subcontractor loses the right to make a claim against the payment bond.¹⁰

Effects of Errors or Omissions in Required Lien Law Notices

The construction lien laws generally do not authorize a penalty or sanction for the negligent inclusion or omission of information in the various notices required to perfect liens which have not prejudiced the owner of an improved property or a contractor.

However, the lien laws describe a fraudulent lien as a lien in which a subcontractor willfully exaggerates the amount of the lien or in which the subcontractor willfully includes a claim for

⁵ Section 713.23(1)(d), F.S.

⁶ Section 713.23(1)(d), F.S.

⁷ Section 255.05(10), F.S.; s. 713.23(1)(e), F.S.

⁸ Section 255.05(2)(a)1., F.S.; s. 713.23(1)(e), F.S.

⁹ Section 713.16(4), F.S. Except for differences in punctuation, provisions of s. 255.05(8), F.S., which relate to bonds for public construction projects, are identical.

¹⁰ Section 713.16(4), F.S.; s. 255.05(8), F.S.

work not performed upon or materials not furnished.¹¹ A fraudulent lien also includes a lien in which “the lienor has compiled his or her claim with such willful and gross negligence as to amount to a willful exaggeration.”¹² A person who willfully files a fraudulent lien commits a third degree felony.¹³ The statute defining and prohibiting fraudulent liens, however, does not appear to apply to similar fraudulent claims against a payment bond.

Attorney Fees in Suits Against a Surety

Section 627.428, F.S., is a one-way attorney fee statute that requires a court to award attorney fees and costs to an insured or beneficiary who prevails in a lawsuit against an insurer. This statute applies to “owners, subcontractors, laborers, and materialmen” who are deemed to be insureds or beneficiaries in suits against a surety under a performance bond for a construction contract.¹⁴ Absent from the list of individuals entitled to the benefits of the one-way attorney fee statute are contractors. A contractor, however, may have an interest in the completion or performance of a construction contract similar to that of an owner if the contractor requires a subcontractor to secure a performance bond.

III. Effect of Proposed Changes:

Notices of Nonpayment (Sections 1 & 4)

Requirements for Additional Details

This bill requires subcontractors who are not in privity, meaning those who do not have a contractual relationship, with a contractor to provide additional details and supporting documentation for the work and services they have provided as a prerequisite to filing a claim against a payment bond.

Specifically, when providing a contractor and surety with a notice of nonpayment, which is the final step before enforcing a claim against a bond, the notice must state the:

- Nature of the labor or services performed;
- Nature of the labor or services to be performed, if known;
- Materials furnished; the materials to be furnished, if known;
- Amount paid on account to date; the amount due; and
- Amount to become due, if known.

Form Notices of Nonpayment

The construction lien laws in chapter 713, F.S., supply a form that subcontractors not in privity with a contractor must use for a notice of nonpayment. However, s. 255.05, F.S., which authorizes notices of nonpayment as a prerequisite to claims against a payment bond for a public construction contract, does not contain a form for the notice. The bill supplies a form consistent with the revised requirements for the notice of nonpayment for public construction contracts and similarly revises the existing form for the notices in chapter 713, F.S.

¹¹ Section 713.31(2)(a), F.S.

¹² *Id.*

¹³ Section 713.31(3), F.S.

¹⁴ Section 627.756(1), F.S.

Additionally, notices of nonpayment must be made under oath and contain this declaration: “I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.”¹⁵

Fraudulent Notices of Nonpayment

The bill provides that the service of a fraudulent notice of nonpayment is a complete defense to the claimant’s claim against a bond. The bill defines a fraudulent notice of nonpayment in connection with a payment bond in a manner similar to how a fraudulent lien is described in the construction lien laws in chapter 713, F.S.¹⁶

As provided in the bill, a notice of nonpayment is fraudulent if a subcontractor willfully exaggerates the amount due, willfully includes a claim for work not performed or materials not furnished for the subject improvement, or prepares the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a notice is not fraudulent because of minor mistakes or errors or a good faith dispute as to the amount due. Moreover, the bill provides that the negligent inclusion or omission of information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim.

Suits Against Sureties (Section 2)

The bill provides that contractors, like owners, subcontractors, laborers, and materialmen under existing law, are entitled to the benefit of the one-way attorney fee statute, s. 627.428, F.S., if they prevail in a lawsuit against a surety under a payment or performance bond.

Effective Date and Application (Sections 5&6)

The bill takes effect on October 1, 2019, and the changes relating to suits by a contractor against a surety will apply to payment or performance bonds issued after the effective date of the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

¹⁵ A person who is convicted of a third degree felony may be imprisoned for up to 5 years and fined up to \$5,000.

¹⁶ For the specific language describing a fraudulent lien, see s. 713.31(2)(a), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill, by requiring subcontractors to supply additional details to support a potential claim against a payment bond, may help contractors avoid overpayments to subcontractors. On the other hand, the requirement for more specific information relating to a subcontractor's work and charges will create additional paperwork burdens.

The provision of this bill that gives contractors the benefit of a one-way attorney fee statute in litigation against a surety under a payment or performance bond will help contractors vindicate their rights, but it may encourage additional litigation and result in additional costs to sureties.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 255.05, 627.756, 627.428, and 713.23.

This bill reenacts section 627.428 of the Florida Statutes.

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

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

CS by Judiciary on March 25, 2019:

The committee substitute differs from the underlying bill in that it:

- Replaces requirements that notices of nonpayment be verified to be true under penalty of perjury with a requirement that the notices be made under oath and declared to be true to the best of a subcontractor's knowledge and belief.
- Does not include requirements that supporting documentation be attached to a notice of nonpayment.
- Does not include provisions entitling the prevailing party to attorney fees in litigation regarding a claim against a payment bond.
- Does not include changes to the statute governing conditional payment bonds.

B. Amendments:

None.



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LEGISLATIVE ACTION

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

The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (a) of subsection (2) of section
255.05, Florida Statutes, is amended to read:

255.05 Bond of contractor constructing public buildings;
form; action by claimants.-

(2) (a) 1. If a claimant is no longer furnishing labor,
services, or materials on a project, a contractor or the
contractor's agent or attorney may elect to shorten the time



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12 within which an action to enforce any claim against a payment
13 bond must be commenced by recording in the clerk's office a
14 notice in substantially the following form:

15
16 NOTICE OF CONTEST OF CLAIM
17 AGAINST PAYMENT BOND
18

19 To: ...(Name and address of claimant)...

20
21 You are notified that the undersigned contests your notice
22 of nonpayment, dated,, and served on the
23 undersigned on,, and that the time within
24 which you may file suit to enforce your claim is limited to 60
25 days after the date of service of this notice.

26
27 DATED on,

28
29 Signed: ...(Contractor or Attorney)...

30
31 The claim of a claimant upon whom such notice is served and who
32 fails to institute a suit to enforce his or her claim against
33 the payment bond within 60 days after service of such notice is
34 ~~shall be~~ extinguished automatically. The contractor or the
35 contractor's attorney shall serve a copy of the notice of
36 contest to the claimant at the address shown in the notice of
37 nonpayment or most recent amendment thereto and shall certify to
38 such service on the face of the notice and record the notice.

39 2. A claimant, except a laborer, who is not in privity with
40 the contractor shall, before commencing or not later than 45



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41 days after commencing to furnish labor, services, or materials
42 for the prosecution of the work, serve ~~furnish~~ the contractor
43 with a written notice that he or she intends to look to the bond
44 for protection. A claimant who is not in privity with the
45 contractor and who has not received payment for furnishing his
46 or her labor, services, or materials shall serve a written
47 notice of nonpayment on ~~deliver to~~ the contractor and on ~~to~~ the
48 surety ~~written notice of the performance of the labor or~~
49 ~~delivery of the materials or supplies and of the nonpayment.~~ The
50 notice of nonpayment shall be under oath and served during the
51 progress of the work or thereafter but may not be served earlier
52 than 45 days after the first furnishing of labor, services, or
53 materials by the claimant or later than 90 days after the final
54 furnishing of the labor, services, or materials by the claimant
55 or, with respect to rental equipment, ~~not~~ later than 90 days
56 after the date that the rental equipment was last on the job
57 site available for use. The notice of nonpayment must state the
58 nature of the labor or services performed; the nature of the
59 labor or services to be performed, if known; the materials
60 furnished; the materials to be furnished, if known; the amount
61 paid on account to date; the amount due; and the amount to
62 become due, if known. All such information given must be current
63 as of the stated date of the notice. Any notice of nonpayment
64 served by a claimant who is not in privity with the contractor
65 which includes sums for retainage must specify the portion of
66 the amount claimed for retainage. An action for the labor,
67 services, or materials, ~~or supplies~~ may not be instituted
68 against the contractor or the surety unless the notice to the
69 contractor and notice of nonpayment have been served, if



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70 required by this section. Notices required or permitted under
71 this section must ~~shall~~ be served in accordance with s. 713.18.
72 A claimant may not waive in advance his or her right to bring an
73 action under the bond against the surety. In any action brought
74 to enforce a claim against a payment bond under this section,
75 the prevailing party is entitled to recover a reasonable fee for
76 the services of his or her attorney for trial and appeal or for
77 arbitration, in an amount to be determined by the court, which
78 fee must be taxed as part of the prevailing party's costs, as
79 allowed in equitable actions. The time periods for service of a
80 notice of nonpayment or for bringing an action against a
81 contractor or a surety shall be measured from the last day of
82 furnishing labor, services, or materials by the claimant and may
83 not be measured by other standards, such as the issuance of a
84 certificate of occupancy or the issuance of a certificate of
85 substantial completion. The negligent inclusion or omission of
86 any information in the notice of nonpayment that has not
87 prejudiced the contractor or surety does not constitute a
88 default that operates to defeat an otherwise valid bond claim. A
89 claimant who serves a fraudulent notice of nonpayment forfeits
90 his or her rights under the bond. A notice of nonpayment is
91 fraudulent if the claimant has willfully exaggerated the amount
92 due, willfully included a claim for work not performed or
93 materials not furnished for the subject improvement, or prepared
94 the notice with such willful and gross negligence as to amount
95 to a willful exaggeration. However, a minor mistake or error in
96 a notice of nonpayment, or a good faith dispute as to the amount
97 due, does not constitute a willful exaggeration that operates to
98 defeat an otherwise valid claim against the bond. The service of



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99 a fraudulent notice of nonpayment is a complete defense to the
100 claimant's claim against the bond. The notice of nonpayment
101 under this subparagraph must be in substantially the following
102 form:

103
104 NOTICE OF NONPAYMENT

105
106 To: ...(name of contractor and address)...

107 ...(name of surety and address)...

108 The undersigned claimant notifies you that:

109 1. Claimant has furnished ...(describe labor, services, or
110 materials)... for the improvement of the real property
111 identified as ...(property description).... The corresponding
112 amount now due and unpaid is \$

113 2. Claimant has been paid on account to date the amount of
114 \$ for previously furnishing ...(describe labor, service, or
115 materials)... for this improvement.

116 3. Claimant expects to furnish ...(describe labor, service,
117 or materials)... for this improvement in the future (if known),
118 and the corresponding amount expected to become due is \$
119 (if known).

120
121 I declare that I have read the foregoing Notice of Nonpayment
122 and that the facts stated in it are true to the best of my
123 knowledge and belief.

124
125 DATED on,

126
127 ...(signature and address of claimant)...



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STATE OF FLORIDA

COUNTY OF

The foregoing instrument was sworn to (or affirmed) and
subscribed before me this day of, ...(year)..., by
...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary
Public)...

Personally Known OR Produced Identification

Type of Identification Produced.....

Section 2. Subsection (1) of section 627.756, Florida
Statutes, is amended to read:

627.756 Bonds for construction contracts; attorney fees in
case of suit.—

(1) Section 627.428 applies to suits brought by owners,
contractors, subcontractors, laborers, and materialmen against a
surety insurer under payment or performance bonds written by the
insurer under the laws of this state to indemnify against
pecuniary loss by breach of a building or construction contract.
Owners, contractors, subcontractors, laborers, and materialmen
shall be deemed to be insureds or beneficiaries for the purposes
of this section.

Section 3. For the purpose of incorporating the amendment
made by this act to section 627.756, Florida Statutes, in a
reference thereto, section 627.428, Florida Statutes, is



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157 reenacted to read:

158 627.428 Attorney's fee.—

159 (1) Upon the rendition of a judgment or decree by any of
160 the courts of this state against an insurer and in favor of any
161 named or omnibus insured or the named beneficiary under a policy
162 or contract executed by the insurer, the trial court or, in the
163 event of an appeal in which the insured or beneficiary prevails,
164 the appellate court shall adjudge or decree against the insurer
165 and in favor of the insured or beneficiary a reasonable sum as
166 fees or compensation for the insured's or beneficiary's attorney
167 prosecuting the suit in which the recovery is had.

168 (2) As to suits based on claims arising under life
169 insurance policies or annuity contracts, no such attorney's fee
170 shall be allowed if such suit was commenced prior to expiration
171 of 60 days after proof of the claim was duly filed with the
172 insurer.

173 (3) When so awarded, compensation or fees of the attorney
174 shall be included in the judgment or decree rendered in the
175 case.

176 Section 4. Paragraph (d) of subsection (1) of section
177 713.23, Florida Statutes, is amended to read:

178 713.23 Payment bond.—

179 (1)

180 (d) In addition, a lienor who has not received payment for
181 furnishing his or her labor, services, or materials must ~~is~~
182 ~~required~~, as a condition precedent to recovery under the bond,
183 ~~to~~ serve a written notice of nonpayment to the contractor and
184 the surety. The notice must be under oath and served during the
185 progress of the work or thereafter, but may not be served ~~not~~



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186 later than 90 days after the final furnishing of labor,
187 services, or materials by the lienor, or, with respect to rental
188 equipment, later than 90 days after the date the rental
189 equipment was on the job site and available for use. The notice
190 of nonpayment must state the nature of the labor or services
191 performed; the nature of the labor or services to be performed,
192 if known; the materials furnished; the materials to be
193 furnished, if known; the amount paid on account to date; the
194 amount due; and the amount to become due, if known. All such
195 information given must be current as of the stated date of the
196 notice. A notice of nonpayment that includes sums for retainage
197 must specify the portion of the amount claimed for retainage.
198 The required. ~~A written~~ notice satisfies this condition
199 precedent with respect to the payment described in the notice of
200 nonpayment, including unpaid finance charges due under the
201 lienor's contract, and with respect to any other payments which
202 become due to the lienor after the date of the notice of
203 nonpayment. The time period for serving a ~~written~~ notice of
204 nonpayment shall be measured from the last day of furnishing
205 labor, services, or materials by the lienor and may ~~shall~~ not be
206 measured by other standards, such as the issuance of a
207 certificate of occupancy or the issuance of a certificate of
208 substantial completion. The failure of a lienor to receive
209 retainage sums not in excess of 10 percent of the value of
210 labor, services, or materials furnished by the lienor is not
211 considered a nonpayment requiring the service of the notice
212 provided under this paragraph. If the payment bond is not
213 recorded before commencement of construction, the time period
214 for the lienor to serve a notice of nonpayment may at the option



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215 of the lienor be calculated from the date specified in this
216 section or the date the lienor is served a copy of the bond.
217 However, the limitation period for commencement of an action on
218 the payment bond as established in paragraph (e) may not be
219 expanded. The negligent inclusion or omission of any information
220 in the notice of nonpayment that has not prejudiced the
221 contractor or surety does not constitute a default that operates
222 to defeat an otherwise valid bond claim. A lienor who serves a
223 fraudulent notice of nonpayment forfeits his or her rights under
224 the bond. A notice of nonpayment is fraudulent if the lienor has
225 willfully exaggerated the amount due, willfully included a claim
226 for work not performed or materials not furnished for the
227 subject improvement, or prepared the notice with such willful
228 and gross negligence as to amount to a willful exaggeration.
229 However, a minor mistake or error in a notice of nonpayment, or
230 a good faith dispute as to the amount due, does not constitute a
231 willful exaggeration that operates to defeat an otherwise valid
232 claim against the bond. The service of a fraudulent notice of
233 nonpayment is a complete defense to the lienor's claim against
234 the bond. The notice under this paragraph must ~~may~~ be in
235 substantially the following form:

236
237 NOTICE OF NONPAYMENT
238

239 To ...(name of contractor and address)...

240 ...(name of surety and address)...

241 The undersigned notifies you that:

242 1. The lienor ~~he or she~~ has furnished ...(describe labor,
243 services, or materials)...for the improvement of the real



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244 property identified as ... (property description).... The
245 corresponding amount now due and unpaid is \$.....

246 2. The lienor has been paid on account to date the amount
247 of \$.... for previously furnishing ... (describe labor, services,
248 or materials)... for this improvement.

249 3. The lienor expects to furnish ... (describe labor,
250 service, or materials)... for this improvement in the future (if
251 known), and the corresponding amount expected to become due is
252 \$.... (if known).

253
254 I declare that I have read the foregoing Notice of Nonpayment
255 and that the facts stated in it are true to the best of my
256 knowledge and belief.

257
258 DATED on,

259
260 ... (signature and address of lienor)...

261
262 STATE OF FLORIDA

263 COUNTY OF

264
265 The foregoing instrument was sworn to (or affirmed) and
266 subscribed before me this day of, ... (year)...., by
267 ... (name of signatory)....

268 ... (Signature of Notary Public - State of Florida)...

269 ... (Print, Type, or Stamp Commissioned Name of Notary
270 Public)...

271
272 Personally Known OR Produced Identification



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273 Type of Identification Produced.....

274

275 Section 5. The amendments made by this act to s. 627.756,
276 Florida Statutes, apply only to payment or performance bonds
277 issued on or after October 1, 2019.

278 Section 6. This act shall take effect October 1, 2019.

279

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

281 And the title is amended as follows:

282 Delete everything before the enacting clause
283 and insert:

284 A bill to be entitled
285 An act relating to construction bonds; amending s.
286 255.05, F.S.; requiring a notice of nonpayment to be
287 under oath; requiring the notice to contain certain
288 statements; specifying that certain negligent
289 inclusions or omissions do not constitute a default
290 that operates to default an otherwise valid bond
291 claim; specifying that a claimant who serves a
292 fraudulent notice of nonpayment forfeits his or her
293 rights under a bond; providing that the service of a
294 fraudulent notice of nonpayment is a complete defense
295 to the claimant's claim against the bond; requiring a
296 notice of nonpayment to be in a prescribed form;
297 amending s. 627.756, F.S.; providing that a provision
298 relating to attorney fees applies to certain suits
299 brought by contractors; deeming contractors to be
300 insureds or beneficiaries in relation to bonds for
301 construction contracts; reenacting s. 627.428, F.S.,



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302 relating to attorney fees; amending s. 713.23, F.S.;

303 requiring a lienor to serve a notice of nonpayment

304 under oath to specified entities during a certain

305 period of time; requiring a notice of nonpayment to

306 contain certain statements; specifying that certain

307 negligent inclusions or omissions do not constitute a

308 default that operates to default an otherwise valid

309 bond claim; specifying that a lienor who serves a

310 fraudulent notice of nonpayment forfeits his or her

311 rights under the bond; providing that the service of a

312 fraudulent notice of nonpayment is a complete defense

313 to the lienor's claim against the bond; requiring a

314 notice of nonpayment to be in a prescribed form;

315 providing applicability; providing an effective date.

By Senator Stargel

22-00242A-19

20191200__

1 A bill to be entitled
 2 An act relating to construction bonds; amending s.
 3 255.05, F.S.; requiring a notice of nonpayment to be
 4 verified; requiring the notice to contain certain
 5 statements; requiring a claimant to attach certain
 6 documents to a notice of nonpayment; specifying that a
 7 claimant who serves a fraudulent notice of nonpayment
 8 forfeits his or her rights under a bond; providing
 9 that the service of a fraudulent notice of nonpayment
 10 is a complete defense to the claimant's claim against
 11 the bond and entitles the prevailing party to attorney
 12 fees; requiring a notice of nonpayment to be in a
 13 prescribed form; amending s. 627.756, F.S.; providing
 14 that a provision relating to attorney fees applies to
 15 certain suits brought by contractors; deeming
 16 contractors to be insureds or beneficiaries in
 17 relation to bonds for construction contracts;
 18 reenacting s. 627.428, F.S., relating to attorney
 19 fees; amending s. 713.23, F.S.; requiring a lienor to
 20 serve a verified notice of nonpayment to specified
 21 entities during a certain period of time; requiring a
 22 notice of nonpayment to contain certain statements;
 23 requiring a lienor to attach certain documents to a
 24 notice of nonpayment; specifying that a lienor who
 25 serves a fraudulent notice of nonpayment forfeits his
 26 or her rights under the bond; providing that the
 27 service of a fraudulent notice of nonpayment is a
 28 complete defense to the lienor's claim against the
 29 bond and entitles the prevailing party to attorney

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

22-00242A-19

20191200__

30 fees; requiring a notice of nonpayment to be in a
 31 prescribed form; amending s. 713.245, F.S.; providing
 32 that a contractor may record a notice identifying a
 33 project bond as a conditional payment bond before
 34 project commencement to make the duty of a surety to
 35 pay lienors coextensive with the contractor's duty to
 36 pay; providing that failure to list or record a bond
 37 as a conditional payment bond does not convert such a
 38 bond into a common law bond or a bond furnished under
 39 a specified provision; revising the statement that
 40 must be included on a conditional payment bond;
 41 providing applicability; providing an effective date.
 42
 43 Be It Enacted by the Legislature of the State of Florida:
 44
 45 Section 1. Paragraph (a) of subsection (2) of section
 46 255.05, Florida Statutes, is amended to read:
 47 255.05 Bond of contractor constructing public buildings;
 48 form; action by claimants.—
 49 (2) (a) 1. If a claimant is no longer furnishing labor,
 50 services, or materials on a project, a contractor or the
 51 contractor's agent or attorney may elect to shorten the time
 52 within which an action to enforce any claim against a payment
 53 bond must be commenced by recording in the clerk's office a
 54 notice in substantially the following form:
 55
 56 NOTICE OF CONTEST OF CLAIM
 57 AGAINST PAYMENT BOND
 58

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59 To: ... (Name and address of claimant)...

60
61 You are notified that the undersigned contests your notice
62 of nonpayment, dated,, and served on the
63 undersigned on,, and that the time within
64 which you may file suit to enforce your claim is limited to 60
65 days after the date of service of this notice.

66
67 DATED on,

68
69 Signed: ... (Contractor or Attorney)...

70
71 The claim of a claimant upon whom such notice is served and who
72 fails to institute a suit to enforce his or her claim against
73 the payment bond within 60 days after service of such notice is
74 ~~shall be~~ extinguished automatically. The contractor or the
75 contractor's attorney shall serve a copy of the notice of
76 contest to the claimant at the address shown in the notice of
77 nonpayment or most recent amendment thereto and shall certify to
78 such service on the face of the notice and record the notice.

79 2. A claimant, except a laborer, who is not in privity with
80 the contractor shall, before commencing or not later than 45
81 days after commencing to furnish labor, services, or materials
82 for the prosecution of the work, serve ~~furnish~~ the contractor
83 with a written notice that he or she intends to look to the bond
84 for protection. A claimant who is not in privity with the
85 contractor and who has not received payment for furnishing his
86 or her labor, services, or materials shall serve a written
87 notice of nonpayment on ~~deliver to~~ the contractor and on ~~to~~ the

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88 surety ~~written notice of the performance of the labor or~~
89 ~~delivery of the materials or supplies and of the nonpayment.~~ The
90 notice of nonpayment shall be verified in accordance with s.
91 92.525 and served during the progress of the work or thereafter
92 but may not be served earlier than 45 days after the first
93 furnishing of labor, services, or materials by the claimant or
94 later than 90 days after the final furnishing of the labor,
95 services, or materials by the claimant or, with respect to
96 rental equipment, ~~not~~ later than 90 days after the date that the
97 rental equipment was last on the job site available for use. The
98 notice of nonpayment must state the nature of the labor or
99 services performed; the nature of the labor or services to be
100 performed, if known; the materials furnished; the materials to
101 be furnished, if known; the amount paid on account to date; the
102 amount due; and the amount to become due, if known. All such
103 information given must be current as of the stated date of the
104 notice. Any notice of nonpayment served by a claimant who is not
105 in privity with the contractor which includes sums for retainage
106 must specify the portion of the amount claimed for retainage.
107 The claimant shall also include, as attachments to the notice of
108 nonpayment, copies of the following documents to substantiate
109 the amount claimed as unpaid in the notice, if such documents
110 exist: the claimant's contract or purchase order and any
111 amendments or change orders directed thereto; invoices, pay
112 requests, bills of lading, delivery receipts, or similar
113 documents, as applicable; and a statement of account reflecting
114 all payments requested and received for the labor, services, or
115 materials. An action for the labor, materials, or supplies may
116 not be instituted against the contractor or the surety unless

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117 the notice to the contractor and notice of nonpayment have been
 118 served, if required by this section. Notices required or
 119 permitted under this section ~~must shall~~ be served in accordance
 120 with s. 713.18. A claimant may not waive in advance his or her
 121 right to bring an action under the bond against the surety. In
 122 any action brought to enforce a claim against a payment bond
 123 under this section, the prevailing party is entitled to recover
 124 a reasonable fee for the services of his or her attorney for
 125 trial and appeal or for arbitration, in an amount to be
 126 determined by the court, which fee must be taxed as part of the
 127 prevailing party's costs, as allowed in equitable actions. The
 128 time periods for service of a notice of nonpayment or for
 129 bringing an action against a contractor or a surety shall be
 130 measured from the last day of furnishing labor, services, or
 131 materials by the claimant and may not be measured by other
 132 standards, such as the issuance of a certificate of occupancy or
 133 the issuance of a certificate of substantial completion. A
 134 claimant who serves a fraudulent notice of nonpayment forfeits
 135 his or her rights under the bond. A notice of nonpayment is
 136 fraudulent if the claimant has willfully exaggerated the amount
 137 due, willfully included a claim for work not performed or
 138 materials not furnished for the subject improvement, or prepared
 139 the notice with such willful and gross negligence as to amount
 140 to a willful exaggeration. However, a minor mistake or error in
 141 a notice of nonpayment, or a good faith dispute as to the amount
 142 due, does not constitute a willful exaggeration that operates to
 143 defeat an otherwise valid claim against the bond. The service of
 144 a fraudulent notice of nonpayment is a complete defense to the
 145 claimant's claim against the bond, entitling the prevailing

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146 party to attorney fees under this subparagraph. The notice of
 147 nonpayment under this subparagraph must be in substantially the
 148 following form:
 149
 150 NOTICE OF NONPAYMENT
 151
 152 To: ... (name of contractor and address)...
 153 ... (name of surety and address)...
 154 The undersigned claimant notifies you that:
 155 1. Claimant has furnished ... (describe labor, services, or
 156 materials) ... for the improvement of the real property
 157 identified as ... (property description) ... The corresponding
 158 amount now due and unpaid is \$
 159 2. Claimant has been paid on account to date the amount of
 160 \$ for previously furnishing ... (describe labor, service, or
 161 materials) ... for this improvement.
 162 3. Claimant expects to furnish ... (describe labor, service,
 163 or materials) ... for this improvement in the future (if known),
 164 and the corresponding amount expected to become due is \$...
 165 (if known).
 166
 167 Under penalties of perjury, I declare that I have read the
 168 foregoing Notice of Nonpayment and that the facts stated in it
 169 are true.
 170
 171 DATED on,
 172
 173 ... (signature and address of claimant)...
 174 Section 2. Subsection (1) of section 627.756, Florida

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175 Statutes, is amended to read:

176 627.756 Bonds for construction contracts; attorney fees in
177 case of suit.—

178 (1) Section 627.428 applies to suits brought by owners,
179 contractors, subcontractors, laborers, and materialmen against a
180 surety insurer under payment or performance bonds written by the
181 insurer under the laws of this state to indemnify against
182 pecuniary loss by breach of a building or construction contract.
183 Owners, contractors, subcontractors, laborers, and materialmen
184 shall be deemed to be insureds or beneficiaries for the purposes
185 of this section.

186 Section 3. Section 627.428, Florida Statutes, is reenacted
187 to read:

188 627.428 Attorney's fee.—

189 (1) Upon the rendition of a judgment or decree by any of
190 the courts of this state against an insurer and in favor of any
191 named or omnibus insured or the named beneficiary under a policy
192 or contract executed by the insurer, the trial court or, in the
193 event of an appeal in which the insured or beneficiary prevails,
194 the appellate court shall adjudge or decree against the insurer
195 and in favor of the insured or beneficiary a reasonable sum as
196 fees or compensation for the insured's or beneficiary's attorney
197 prosecuting the suit in which the recovery is had.

198 (2) As to suits based on claims arising under life
199 insurance policies or annuity contracts, no such attorney's fee
200 shall be allowed if such suit was commenced prior to expiration
201 of 60 days after proof of the claim was duly filed with the
202 insurer.

203 (3) When so awarded, compensation or fees of the attorney

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204 shall be included in the judgment or decree rendered in the
205 case.

206 Section 4. Paragraph (d) of subsection (1) of section
207 713.23, Florida Statutes, is amended to read:

208 713.23 Payment bond.—

209 (1)

210 (d) In addition, a lienor who has not received payment for
211 furnishing his or her labor, services, or materials must ~~is~~
212 required, as a condition precedent to recovery under the bond,
213 ~~to~~ serve a written notice of nonpayment to the contractor and
214 the surety. The notice must be verified in accordance with s.
215 92.525 and must be served during the progress of the work or
216 thereafter, but may not be served earlier than 45 days after the
217 first furnishing of labor, services, or materials by the lienor
218 or ~~not~~ later than 90 days after the final furnishing of labor,
219 services, or materials by the lienor, or, with respect to rental
220 equipment, later than 90 days after the date the rental
221 equipment was last on the job site and available for use. The
222 notice of nonpayment must state the nature of the labor or
223 services performed; the nature of the labor or services to be
224 performed, if known; the materials furnished; the materials to
225 be furnished, if known; the amount paid on account to date; the
226 amount due; and the amount to become due, if known. All such
227 information given must be current as of the stated date of the
228 notice. A notice of nonpayment that includes sums for retainage
229 must specify the portion of the amount claimed for retainage.
230 The lienor must also include, as attachments to the notice of
231 nonpayment, copies of the following documents to substantiate
232 the amount claimed as unpaid in the notice, if such documents

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233 exist: the lienor's contract or purchase order and any
 234 amendments or change orders directed thereto; invoices, pay
 235 requests, bills of lading, delivery receipts, or similar
 236 documents, as applicable; and a statement of account reflecting
 237 all payments requested and received for the labor, services, or
 238 materials. The required. A ~~written~~ notice satisfies this
 239 condition precedent with respect to the payment described in the
 240 notice of nonpayment, including unpaid finance charges due under
 241 the lienor's contract, and with respect to any other payments
 242 which become due to the lienor after the date of the notice of
 243 nonpayment. The time period for serving a ~~written~~ notice of
 244 nonpayment shall be measured from the last day of furnishing
 245 labor, services, or materials by the lienor and may ~~shall~~ not be
 246 measured by other standards, such as the issuance of a
 247 certificate of occupancy or the issuance of a certificate of
 248 substantial completion. The failure of a lienor to receive
 249 retainage sums not in excess of 10 percent of the value of
 250 labor, services, or materials furnished by the lienor is not
 251 considered a nonpayment requiring the service of the notice
 252 provided under this paragraph. If the payment bond is not
 253 recorded before commencement of construction, the time period
 254 for the lienor to serve a notice of nonpayment may at the option
 255 of the lienor be calculated from the date specified in this
 256 section or the date the lienor is served a copy of the bond.
 257 However, the limitation period for commencement of an action on
 258 the payment bond as established in paragraph (e) may not be
 259 expanded. A lienor who serves a fraudulent notice of nonpayment
 260 forfeits his or her rights under the bond. A notice of
 261 nonpayment is fraudulent if the lienor has willfully exaggerated

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262 the amount due, willfully included a claim for work not
 263 performed or materials not furnished for the subject
 264 improvement, or prepared the notice with such willful and gross
 265 negligence as to amount to a willful exaggeration. However, a
 266 minor mistake or error in a notice of nonpayment, or a good
 267 faith dispute as to the amount due, does not constitute a
 268 willful exaggeration that operates to defeat an otherwise valid
 269 claim against the bond. The service of a fraudulent notice of
 270 nonpayment is a complete defense to the lienor's claim against
 271 the bond, entitling the prevailing party to attorney fees under
 272 s. 713.29. The notice under this paragraph must ~~may~~ be in
 273 substantially the following form:

NOTICE OF NONPAYMENT

274
 275
 276
 277 To ...(name of contractor and address)...
 278 ...(name of surety and address)...
 279 The undersigned lienor notifies you that:
 280 1. The lienor ~~he or she~~ has furnished ... (describe labor,
 281 services, or materials)... for the improvement of the real
 282 property identified as ... (property description)... The
 283 corresponding amount now due and unpaid is \$....
 284 2. The lienor has been paid on account to date the amount
 285 of \$... for previously furnishing ... (describe labor, services,
 286 or materials)... for this improvement.
 287 3. The lienor expects to furnish ... (describe labor,
 288 service, or materials)... for this improvement in the future (if
 289 known), and the corresponding amount expected to become due is
 290 \$... (if known).

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291
292 Under penalties of perjury, I declare that I have read the
293 foregoing Notice of Nonpayment and that the facts stated in it
294 are true.

295
296 DATED on,

297
298 ... (signature and address of lienor)...

299 Section 5. Subsection (1) of section 713.245, Florida
300 Statutes, is amended to read:

301 713.245 Conditional payment bond.—

302 (1) Notwithstanding any provisions of ss. 713.23 and 713.24
303 to the contrary, if the contractor’s written contractual
304 obligation to pay lienors is expressly conditioned upon and
305 limited to the payments made by the owner to the contractor, the
306 duty of the surety to pay lienors will be coextensive with the
307 duty of the contractor to pay, if the following provisions are
308 complied with:

309 (a) The bond is listed in the notice of commencement for
310 the project as a conditional payment bond and is recorded
311 together with the notice of commencement for the project before
312 prior to commencement of the project, or the contractor records
313 a notice identifying the bond for the project as a conditional
314 payment bond, with the bond attached, before commencement of the
315 project. Failure to comply with this paragraph does not convert
316 a conditional payment bond into a common law bond or into a bond
317 furnished under s. 713.23.

318 (b) The words “conditional payment bond” are contained in
319 the title of the bond at the top of the front page.

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320 (c) The bond contains on the front page, capitalized and in
321 at least 10-point type, the statement: “THIS BOND ONLY COVERS
322 CLAIMS OF SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS, AND
323 LABORERS TO THE EXTENT THE CONTRACTOR HAS BEEN PAID FOR THE
324 LABOR, SERVICES, OR MATERIALS PROVIDED BY SUCH PERSONS. THIS
325 BOND DOES NOT PRECLUDE YOU FROM SERVING A NOTICE TO OWNER OR
326 FILING A CLAIM OF LIEN ON THIS PROJECT.”

327 Section 6. The amendments made by this act to ss. 627.756
328 and 713.245, Florida Statutes, apply only to payment or
329 performance bonds issued on or after October 1, 2019.

330 Section 7. This act shall take effect October 1, 2019.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on
Education, *Chair*
Appropriations
Education
Ethics and Elections
Finance and Tax
Judiciary
Rules

JOINT COMMITTEE:
Joint Select Committee on Collective Bargaining

SENATOR KELLI STARGEL
22nd District

March 8, 2019

The Honorable David Simmons
Senate Committee on Judiciary, Chair
404 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100
(850) 487-5009

Dear Chair Simmons:

I respectfully request that SB 1200, related to *Construction Bonds*, be placed on the Judiciary meeting agenda at your earliest convenience.

Thank you for your consideration, and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 22

Cc: Tom Cibula/Staff Director
Joyce Butler/AA

REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803 (863) 668-3028
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/25/19
Meeting Date

SB 1200
Bill Number (if applicable)

403720
Amendment Barcode (if applicable)

Topic Construction Bonds

Name Bruce Kershner

Job Title

Address 231 West Bay Ave.
Street
Longwood FL 32750
City State Zip

Phone 407 830 1882

Email BKershner

Speaking: For Against Information

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

Representing NACM - Improved Construction Practices Committee

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/25/2019

1200

Meeting Date

Bill Number (if applicable)

Topic Construction Bonds

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909

Phone (850) 205-9000

Street

Tallahassee

FL

32302

Email

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Securities Industry & Financial Markets Association

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1134

INTRODUCER: Criminal Justice Committee and Senator Simmons

SUBJECT: Electronic Monitoring Devices

DATE: March 22, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cox	Jones	CJ	Fav/CS
2.	Stallard	Cibula	JU	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1134 authorizes a prosecution for the crime of tampering with an electronic monitoring device to occur in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

Under s. 843.23, F.S., the crime of “tampering with an electronic monitoring device,” includes not only “tampering” with an EMD, but also the intentional and unauthorized:

- Removal, destruction, alteration, damaging, or circumvention of the operation of an EMD worn or used by that person or another person; or
- Request, authorization, or solicitation of a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD.

However, to violate the statute, the use of the EMD must have been ordered by a court or the Florida Commission on Offender Review.

To the extent the bill results in additional prosecutions of this offense, the bill will likely result in an indeterminate positive bed impact (i.e. an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

II. Present Situation:

Use of Electronic Monitoring in Florida's Criminal Justice System

There are several stages of the criminal justice system in which a court or another authorized entity may order a person to wear an electronic monitoring device (EMD). An EMD is a tamper-resistant device worn on the body that monitors the location of a person at all times of the day. The monitoring agency is notified for various violations of the terms of supervision, such as if the person travels to a location he or she is not authorized to be or if the device is removed. Electronic monitoring systems can be either "passive" or "active" and are typically operated through radio frequency or global positioning system (GPS) monitoring.¹ Some of the instances in which a person may be placed on electronic monitoring include:

- A court order allowing the release from custody to a pretrial release program while the defendant awaits trial.²
- A judge placing an offender on probation³ or community control⁴ in lieu of or in addition to incarceration.⁵
- Supervision by the Florida Commission on Offender Review.⁶

Section 843.23, F.S., "Tampering with an electronic monitoring device," prohibits several acts in addition to "tampering," including the intentional and unauthorized:

- Removal, destruction, alteration, damaging, or circumvention of the operation of an EMD that must be worn or used by that person or another person; or

¹ Office of Juvenile Justice and Delinquency Prevention, *Home Confinement and Electronic Monitoring*, October 2014, available at https://www.ojjdp.gov/mpg/litreviews/Home_Confinement_EM.pdf.

² Office of Program Policy Analysis & Gov't Accountability, *County Pretrial Release Programs: Calendar Year 2017*, Report No. 18-06, at 1, 2, and 8-9, November 2018, available at

<http://www.oppage.state.fl.us/MonitorDocs/Reports/pdf/1806rpt.pdf>; See also s. 907.041, F.S., which provides a presumption in favor of release on nonmonetary conditions for any person who is granted pretrial release unless such person is charged with an enumerated dangerous crime.

³ Section 948.001(8), F.S. Probation is a form of community supervision requiring specified contacts with probation officers and other conditions a court may impose. Standard conditions of probation are enumerated in s. 948.03, F.S., and are not required to be announced on the record, but the court must orally pronounce, as well as provide in writing, any special conditions of probation imposed.

⁴ Section 948.001(3), F.S., defines "community control" as a form of intensive, supervised custody in the community, including surveillance on weekends and holidays, administered by officers with restricted caseloads. Section 948.10(2), F.S., provides that caseloads must be no more than 30 cases per officer.

⁵ Sections 948.01 and 948.11, F.S. The Florida Department of Corrections (FDC) supervises more than 166,000 offenders on active community supervision. This includes offenders released from prison on parole, conditional release, or conditional medical release and offenders placed on court ordered supervision including probation, drug offender probation, sex offender probation, and community control. FDC, *Introduction to Community Corrections*, available at <http://www.dc.state.fl.us/cc/index.html> (last visited March 22, 2019).

⁶ Section 947.1405(7), (8), and (10), F.S.

- Request, authorization, or solicitation of a person to remove, destroy, alter, tamper with, damage, or circumvent the operation of an EMD.

However, for these acts to constitute a violation of this section, the wearing of the EMD must have been ordered by a court or the Florida Commission on Offender Review.⁷

Committing any of these acts is a third degree felony.⁸

Venue

As provided in the State Constitution, a criminal defendant has a right to be prosecuted in the county where the offense was committed.⁹ However, if the county is not known, the Constitution provides that indictment or information may charge venue in two or more counties if the state can prove that the crime was committed in that area.¹⁰ Under these circumstances, “the accused may elect the county in which he or she will be tried.”¹¹

As another exception to the general rule on venue for criminal prosecutions, a court may change the venue to protect a defendant’s due process rights to a fair and impartial jury.^{12, 13}

Application of the general rule that a defendant be tried where the crime was committed can be complicated if the elements of a crime or resulting harm transcend the boundaries of county. Accordingly, several statutes in ch. 910, F.S., address venue for these crimes and circumstances. For example, a person who:

- Aids, abets, or procures the commission of an offense in another county may be tried in either the county where the aiding, etc., occurred or the county where the crime occurred.¹⁴
- Counsels, hires, or procures a felony to be committed may be tried in the same county in which the principal felon might be tried.¹⁵

⁷ Section 843.23(2), F.S.

⁸ A third degree felony is punishable by up to 5 years’ incarceration and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

⁹ FLA. CONST. art. 1, s. 16(a); s. 910.03(1), F.S.

¹⁰ *See Id.*

¹¹ *See* s. 910.03(1), F.S.

¹² *See* s. 910.03(2) and (3), F.S.

¹³ Additionally, a defendant who is outside the county of the crime may plead guilty or nolo contendere and waive his or her right to trial. *See* s. 910.035, F.S.

¹⁴ Section 910.04, F.S.

¹⁵ Section 910.12, F.S.

- Becomes an accessory after the fact¹⁶ to a felony may be tried in the county in which he or she became an accessory or in any county in which the principal in the first-degree¹⁷ might be tried.¹⁸
- Commits any acts constituting one offense in two or more counties may be tried in any county in which any of the acts occurred.¹⁹
- Is in one county and commits an offense in another county may be tried in either county.²⁰
- Commits a homicide may be tried in the county in which:
 - The physical contact that causes death occurs; or
 - The death itself occurs.²¹

III. Effect of Proposed Changes:

CS/SB 1134 authorizes a prosecution for the crime of tampering with an EMD to occur in the jurisdiction:

- Of the court or authority that entered the order for electronic monitoring, regardless of where the device is located as a result of any removal, destruction, tampering, or damage;
- Where the electronic monitoring device was located upon the discovery of its removal, destruction, tampering, or damage; or
- Where the actual removal or destruction of, tampering with, or damage to, the electronic monitoring device occurred.

The bill is effective October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁶ Section 777.03, F.S., provides that an “accessory after the fact” means any person not standing in the relation of husband or wife, parent or grandparent, child or grandchild, brother or sister, by consanguinity or affinity to the offender, who maintains or assists the principal or an accessory before the fact, or gives the offender any other aid, knowing that the offender had committed a specified crime. Provisions of the section address specific degrees or types of offenses.

¹⁷ Section 777.011, F.S., provides that “principal in the first degree” means a person who commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed. A principal in the first degree may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

¹⁸ Section 910.13, F.S.

¹⁹ Section 910.05, F.S.

²⁰ Section 910.06, F.S.

²¹ Section 910.09, F.S.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The bill appears to authorize a prosecutor to choose a venue for an EMD tampering trial which is inconsistent with the constitutional limitations on where a criminal prosecution may occur. Article I, section 16 of the Florida Constitution states that in all criminal prosecutions the accused person has the right to a trial “in the county where the crime was committed,” unless the county is not known. However, even if the county of the crime is not known to the prosecution, it must choose two or more adjacent counties and prove that the crime happened in that area.

The bill permits a prosecutor to try a person accused of tampering with an EMD in any of three places, including “the jurisdiction of the court or authority that entered the order for electronic monitoring,” or the jurisdiction where an EMD is found. However, in a given case, the tampering might not have occurred in either of these places.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill permits the offense of tampering with an EMD to be prosecuted in specified locations. To the extent this provision allows prosecutions of this offense that would otherwise be barred due to lack of jurisdiction, there could be additional persons convicted and sentenced to prison under the bill. However, the bill will likely result in an insignificant positive bed impact (i.e. an increase of 10 or fewer prison beds).²²

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²² The Office of Economic and Demographic Research (EDR) reports that there were 34 offenders sentenced in FY 2017-18 for tampering with an EMD, four of which were sentenced to prison. Further, EDR provides that the mean sentence length of such offenders is equal to 33.8 months. Email from EDR Staff, Re: SB 1134, March 7, 2019 (on file with the Senate Criminal Justice Committee).

VIII. Statutes Affected:

This bill substantially amends section 843.23 of the Florida Statutes.

IX. Additional Information:

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

CS by Criminal Justice on March 11, 2019:

The Committee Substitute changes the effective date to October 1, 2019, and makes technical changes to ensure the language is:

- Consistent throughout with the term “electronic monitoring device.”
- Clear related to the instances of when the offense of tampering with an electronic monitoring device may be prosecuted.

- B. **Amendments:**

None.

By the Committee on Criminal Justice; and Senator Simmons

591-02889-19

20191134c1

1 A bill to be entitled
 2 An act relating to electronic monitoring devices;
 3 amending s. 843.23, F.S.; specifying the jurisdictions
 4 under which certain prohibited acts relating to
 5 electronic monitoring devices may be prosecuted;
 6 providing an effective date.
 7
 8 Be It Enacted by the Legislature of the State of Florida:
 9
 10 Section 1. Section 843.23, Florida Statutes, is amended to
 11 read:
 12 843.23 Tampering with an electronic monitoring device.—
 13 (1) As used in this section, the term "electronic
 14 monitoring device" includes any device that is used to track the
 15 location of a person.
 16 (2) It is unlawful for a person to intentionally and
 17 without authority:
 18 (a) Remove, destroy, alter, tamper with, damage, or
 19 circumvent the operation of an electronic monitoring device that
 20 must be worn or used by that person or another person pursuant
 21 to a court order or pursuant to an order by the Florida
 22 Commission on Offender Review; or
 23 (b) Request, authorize, or solicit a person to remove,
 24 destroy, alter, tamper with, damage, or circumvent the operation
 25 of an electronic monitoring device required to be worn or used
 26 pursuant to a court order or pursuant to an order by the Florida
 27 Commission on Offender Review.
 28 (3) A violation of this section may be prosecuted in:
 29 (a) The jurisdiction of the court or authority that entered

Page 1 of 2

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

591-02889-19

20191134c1

30 the order for electronic monitoring, regardless of where the
 31 device is located as a result of any removal, destruction,
 32 tampering, or damage;
 33 (b) The jurisdiction where the electronic monitoring device
 34 was located upon the discovery of its removal, destruction,
 35 tampering, or damage; or
 36 (c) The jurisdiction where the actual removal or
 37 destruction of, tampering with, or damage to, the electronic
 38 monitoring device occurred.
 39 ~~(4)~~(3) A person who violates this section commits a felony
 40 of the third degree, punishable as provided in s. 775.082, s.
 41 775.083, or s. 775.084.
 42 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator David Simmons, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 12, 2019

I respectfully request that **Senate Bill 1134**, relating to Electronic Monitoring Devices, be placed on the:

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

Thank you,

A handwritten signature in black ink, appearing to read "David Simmons".

Senator David Simmons
Florida Senate, District 9

THE FLORIDA SENATE

APPEARANCE RECORD

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

3.25.19

1134

Meeting Date

Bill Number (if applicable)

Topic Electronic Monitoring Devices

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title President & CEO

Address 2215 Thomasville Road

Phone 850.510.9922

Street

Tallahassee

FL

32308

Email barney@barneybishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

03/25/2019

Meeting Date

1134

Bill Number (if applicable)

Topic Tampering with an Electronic Monitoring Device

Amendment Barcode (if applicable)

Name Lauren Jackson

Job Title Lobbyist

Address 205 S. Adams St.

Street

Phone 931-265-8999

Tallahassee

FL

32301

Email lauren@ericksconsultants.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Seminole County Sheriffs Office

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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: SB 1246

INTRODUCER: Senator Wright

SUBJECT: Construction Defects

DATE: March 15, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tulloch	Cibula	JU	Pre-meeting
2.			IT	
3.			RC	

I. Summary:

SB 1246 overhauls Chapter 558 and makes court-ordered, non-binding arbitration mandatory in all construction defect cases. In overhauling ch. 58, F.S., the bill does the following:

- Amends the Legislature’s findings in s. 558.001, F.S., clarifying that arbitration is not merely an alternative to litigation but is an effective and cost-efficient method of resolving construction defect claims.
- Repeals the pre-suit notice and opportunity to repair requirements set out in ss. 558.003, 558.004, and 558.005, F.S. and removes corresponding definitions in s. 558.002, F.S.
- Creates s. 558.0045, F.S. requiring court-ordered, non-binding arbitration for any action involving a construction defect.

Under the new procedures requiring non-binding arbitration for construction defect claims, although the parties must elect in writing within 30 days whether to be bound by the arbitrator’s determination or to pursue a traditional lawsuit concerning any unresolved claims. In either event, the arbitrator or the jury must make specific written findings in determining the monetary award against a party (contractor, sub-contractor, etc.). These findings must relate to the:

- Nature of the defect;
- Amount awarded against each separate party; and
- Reasons the amount is being awarded against that party (including the amount of the award attributable to each party’s repair or replacement of its own defective work as well as the cost to repair and replace damage cause to the non-defective work of other parties).

The bill also specifies that it should not be construed as precluding the parties from entering settlement agreements on their claims either before or after the arbitration process.

The bill is effective July 1, 2019.

II. Present Situation:

Construction Defect Claims

Florida law defines a construction defect as a deficiency in or arising out of “the design, specifications, surveying, planning, supervision, observation of construction, or construction, repair, alteration, or remodeling of real property.”¹ Construction deficiencies may result from:

- Defective material, products, or components used in the construction or remodeling.
- A code violation giving rise to a cause of action pursuant to s. 553.84, F.S.
- Construction design that fails to meet the applicable professional standards of care at the time of governmental approval.
- Construction or remodeling practices that fail to adhere to accepted trade standards, i.e., poor workmanship.

Alternative Dispute Resolution for Construction Defect Claims: Pre-Suit Notice and Opportunity to Repair

Before a property owner may file a lawsuit asserting a construction defect claim, he or she must first follow the pre-suit notice procedure set out in ch. 558, F.S.² The pre-suit notice procedure is meant to act as an alternative dispute resolution method³ of resolving construction defect claims without resorting to lengthy and expensive traditional litigation.⁴ The procedure gives the party responsible for the defect an opportunity to repair it, offer a monetary settlement, or both.⁵

The pre-suit notice procedures require the following steps. Note, the timelines are longer if the property owner is an “association” representing more than 20 parcels.⁶

*Step 1 - Notice of Claim*⁷

The property owner’s first step is to serve a written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable, and provide a reasonably detailed description and location of the defect and any known damage or loss resulting from the defect. Although a property owner is encouraged to serve the notice of claim within 15 days of the discovery of a defect, a notice of claim must be served at least 60 days before the property owner files legal action, or at least 120 days prior if the property owner is an association.⁸

¹ Section 558.002(5), F.S.

² Section 558.003, F.S. (noting that a lawsuit will be stayed until the claimant has complied with the pre-suit notice procedure).

³ *Altman Contractors, Inc. v. Crum & Forseter Specialty Ins. Co.*, 232 So. 3d 273, 278 (Fla. 2017). See discussion, *infra*.

⁴ Section 558.01, F.S.

⁵ Section 558.04(5), F.S.

⁶ “Association” means a condominium owners’ association, different types of homeowners’ associations, or association operating a property cooperative. See s. 558.002(2), F.S. (“Association” has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075”).

⁷ Section 558.005, F.S. provides statutory “Chapter 558 Notice of Claim” language that may be applicable based on the timeframe of the claim.

⁸ Section 558.004(1), F.S.

Step 2 - Reasonable Inspection

Once the notice of claim is served, the recipient has either 30 days, or 50 days if the property owner is an association, to inspect the property. The purpose of the recipient's inspection is to determine the nature and cause of each alleged construction defect and the extent of any repairs or replacements necessary to remedy each defect.⁹

Step 3 - Settlement Offers

After inspecting the property, the recipient must decide whether it disputes or agrees there is a defect. In either event, the recipient must inform the owner of the property in writing within 45 days of service after the claim, or 75 days if the owner is an association, whether the recipient: (1) disputes the claim and will not make an offer to repair or settle the claim; (2) agrees there is a defect and offers to either (a) repair the defect, (b) settle the claim by the monetary payment, or (c) settle the claim by a combination of monetary payment and repairs; or (3) agrees there is a defect but makes a conditional offer of insurance proceeds as payment or partial payment to be determined by the recipient's insurer within 30 days.¹⁰

In the case of an offer contingent on insurance proceeds, notice to the insurer must occur at the same time the property owner is notified of the settlement offer.¹¹

If the recipient disputes the claim or fails to respond in writing, the property owner may proceed with a traditional lawsuit. However, if the property owner receives a timely settlement offer, the property owner must serve a written notice accepting or rejecting the offer within 45 days. Any court action will be stayed until the property owner complies with this requirement.¹²

Effects of Pre-Suit Procedure on Lawsuits, Arbitration Clauses, and Insurance Policies

The pre-suit notice procedure affects **traditional lawsuits** by tolling the applicable statute of limitations once the notice of claim is served, but provides these periods may be extended by stipulation of the parties.¹³ Otherwise, the pre-suit notice procedure does not bar, limit, or create any rights, causes of action, or defenses in a traditional legal action.¹⁴

Additionally, the failure of a recipient of a notice of claim to respond with an offer a settlement is not construed as an admission of liability and is not admissible in a court proceeding as evidence of an admission against the recipient's interest.¹⁵ Finally, if a party fails to provide information requested by another other party (such as design plans, photographs, etc.) during the

⁹ Section 558.004(2), F.S.

¹⁰ Section 558.004(5), (6), F.S.

¹¹ Section 558.004(5)(e), F.S.

¹² Section 558.004(7), F.S.

¹³ Section 558.004(10), F.S. *See also* s. 95.11 F.S. for applicable statute of limitations provision.

¹⁴ Section 558.004(12), F.S.

¹⁵ Section 558.004(9), F.S. *Compare* Fla. R. Civ. P. 1.110(e) (providing that the defendant's failure in an answer or other responsive pleading to deny the claim and allegations in a complaint filed in a civil lawsuit may be deemed an admission). *See generally* s. 90.408, F.S. ("Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value.").

pre-suit notice period, such failure may result in sanctions for discovery violations if the claim proceeds to trial.¹⁶

Concerning another form of alternative dispute resolution, **arbitration**,¹⁷ the pre-suit notice procedures control over a conflicting “arbitration clause in a contract for the sale, design, construction, or remodeling of real property.”¹⁸

Additionally, the pre-suit notice procedure does not relieve any party from complying with its contractual obligations under a **liability insurance policy** as a condition precedent for coverage.¹⁹ Also, a “notice of claim” for purposes of chapter 558, F.S. “shall not constitute a claim for insurance purposes unless the terms of the policy specify otherwise.”²⁰

The Florida Supreme Court’s Decision in *Altman Contractors v. Crum & Forster Specialty Insurance Company*²¹

The pre-suit notice procedures of chapter 558, F.S., set out above, were recently examined in the case of *Altman Contractors v. Crum & Forster Specialty Insurance Company (Altman)*. In *Altman*, the Florida Supreme Court was asked to review the following question certified by the U.S. Court of Appeals of the Eleventh Circuit:

Is the notice and repair process in chapter 558, F.S., a ‘suit’ within the meaning of the commercial general liability policy issued by C&F to Altman?²²

The question in *Altman* arose after Altman, the general contractor on a commercial condominium project, was served with multiple notices of claim of construction defects by the property owner, a condominium association. Altman was insured by Crum & Foster Specialty Insurance Company (C&F) “through seven consecutive one-year commercial general liability (CGL) insurance policies, all of which were materially the same.”²³ The policy contained the following clause:

We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.²⁴

¹⁶ Section 558.004(15), F.S.

¹⁷ Discussed further, *infra*.

¹⁸ Section 558.004(14).

¹⁹ Section 558.004(13), F.S.

²⁰ *Id.*

²¹ 232 So. 3d 273 (Fla. 2017).

²² *Id.* at 274.

²³ *Id.* at 275.

²⁴ *Id.*

The policy further defined the term “suit” as a “civil proceeding” for damages or injuries covered by the policy. It also provided that the term “suit” included mandatory arbitration proceedings and, with the insurer’s consent, non-mandatory arbitration proceedings; and included “[a]ny other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.”²⁵

Based on the policy language, the majority opinion in *Altman* answered the Eleventh Circuit’s question in the affirmative, holding as follows:

[W]e answer the certified question in the affirmative and hold that the notice and repair process set forth in chapter 558 constitutes a “suit” within the meaning of *the commercial general liability policy issued by C & F to Altman*. Although the chapter 558 process does not constitute a “civil proceeding,” it is included in the policy’s definition of “suit” as an “alternative dispute resolution proceeding” to which the insurer’s consent is required to invoke the insurer’s duty to defend the insured.²⁶

In reaching this holding, the majority first reasoned that the chapter 558 pre-suit notice procedure did not meet the policy’s initial definition of a “suit” as a “civil proceeding.” The majority looked to the common definition of a “civil proceeding,” which is a mandatory process to adjudicate or enforce rights, regulations, laws, and remedies. Because ch. 558, F.S., does not require that a contractor or other recipient of a notice of claim actually participate in the pre-suit notice procedure, the majority reasoned that the pre-suit notice procedure is not a “civil proceeding” for purposes of the policy’s definition.²⁷ However, because the policy’s definition of a “suit” includes “any alternative dispute resolution proceeding,” the majority reasoned that the chapter 558 pre-suit notice procedure met the policy’s definition of a “suit” because it explicitly refers to itself as a method of alternative dispute resolution.²⁸

Both Justice Lewis, in his concurring opinion, and Justice Lawson, in his opinion concurring in part, dissenting part, pointed out that workmanship (construction) defects are not generally covered by the type of policy at issue in *Altman*, a general commercial liability policy.²⁹ General commercial liability policies “provide protection for personal injury or for property damage caused by the completed product, but not for the replacement and repair of that product.”³⁰ Additionally, Justice Lawson pointed out that the pre-suit notice procedures in ch. 558, F.S., does not meet the common definition of a “proceeding” because it does not provide for third-party facilitation of the process, nor does it provide a way to determine damages.³¹ Finally, Justice Lawson pointed out that the language of s. 558.004(13), F.S., stating that a notice of claim does not “constitute a claim for insurances purposes” makes it clear that “insurer participation is not intended.”³² As Justice Lawson explained,

²⁵ *Id.*

²⁶ *Id.* at 279.

²⁷ *Id.* at 278.

²⁸ *Id.* at 278.

²⁹ *Id.* at 279-80, 283.

³⁰ *Id.* at 279 (quoting *LaMarche v. Shelby Mut. Ins. Co.*, 390 So. 2d 325, 326 (Fla. 1980)(citation omitted).

³¹ *Id.* at 284.

³² *Id.*

To me, this reflects the Legislature’s understanding that the singular type of claim for which it was establishing this process—a construction defect claim—does not generally involve insurance. And, in light of this understanding, the Legislature very carefully drafted the statute so as to exclude from the chapter 558 process secondary claims for personal injury or property damage caused by a construction defect (to which insurance would typically apply). Therefore, the majority construes the statute as applying to a type of claim that the plain language of the statute excludes from the chapter 558 process.³³

Implications of the *Altman* Decision

The *Altman* decision has created questions concerning the decision’s impact on the duties of insureds toward insurers in their commercial general liability (CGL) policies. Many of these questions were presented in a recent article in The Florida Bar Journal:

If a Ch. 558 notice of claim is a “suit” for purposes of a CGL policy, is the insured now obligated to notify its insurer each time it receives a Ch. 558 notice of claim? The answer is not clear from the court’s decision, and a wrong guess by an insured could result in a loss of coverage. The court’s opinion, unfortunately, provides no answer.

Assuming an insured provides notice of receipt of a Ch. 558 notice of claim, the immediate impact of the *Altman* decision is to shift the terms of the debate from whether a Ch. 558 notice of claim could *ever* constitute a suit for insurance purposes to a more fact-intensive inquiry. Did the insured provide timely notice to the insurer of the written notice of claim? Did the insurer consent (expressly or by implication) to the insured’s participation in the Ch. 558 process? Did the insured make voluntary payments to resolve the claim for which there is no coverage under the policy? These matters were all contested in the *Altman* case, and are likely to be contested in future cases.³⁴

Arbitration

Arbitration is a form of alternative dispute resolution, permitting the parties to resolve claims and disputes outside the traditional litigation process. When one or more parties submit a dispute to arbitration, the parties’ claims are decided by one or more impartial persons known as arbitrators, who will render a final and potentially binding decision.³⁵

³³ *Id.* at 285.

³⁴ Reese J. Henderson, Jr., *Altman Contractors, Inc. V. Crum & Forster Specialty Insurance Company: Balancing The Interests Surrounding Potential Insurance Coverage For Ch. 558 Notices Of Claim*, FLA. BAR JOURNAL, Vol. 92, No. 9, p. 11, available at <https://www.floridabar.org/the-florida-bar-journal/altman-contractors-inc-v-crum-forster-specialty-insurance-company-balancing-the-interests-surrounding-potential-insurance-coverage-for-ch-558-notices-of-claim/> (last visited March 14, 2019).

³⁵ American Arbitration Association, *Arbitration*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019). See also s. 682.011(2), F.S. (defining “arbitrator”).

The advantage of arbitration for the parties is it is quicker and more economical than traditional litigation.³⁶ Additionally, the arbitrators may have specialized industry knowledge concerning the subject matter of the dispute and, thus, a better understanding of the dispute than a judge or jury.³⁷ The disadvantage, at least to parties to binding arbitration, is that the parties give up substantial safeguards that litigants in court proceedings enjoy, which may include the discovery process where parties obtain information from one another.³⁸

Revised Florida Arbitration Code

In Florida, arbitration proceedings are governed by the Revised Florida Arbitration Code (FAC).³⁹ The FAC prescribes a framework governing the rights and procedures under arbitration agreements made on or after July 1, 2013, and applies to all agreements to arbitration as of July 1, 2016.⁴⁰ Unless interstate commerce is implicated,⁴¹ the FAC governs the arbitration process in its entirety, including, but not limited to the scope and enforceability of arbitration agreements, appointment of arbitrators, arbitration hearing process and procedure, entry and enforcement of arbitration awards, and appeals.⁴²

Federal Arbitration Act

Pre-dispute arbitration agreements involving interstate commerce are governed by the Federal Arbitration Act (FAA).⁴³ The FAA established a federal policy that favors and encourages the use of arbitration to resolve disputes. Due to this federal policy, the use of pre-dispute arbitration agreements has expanded beyond use in commercial contexts between large businesses and those with equal bargaining power to use in noncommercial consumer contracts.⁴⁴

Mandatory Non-binding Arbitration

In Florida, a court may “refer any contested civil action filed in a circuit or county court to non-binding arbitration” by either its own motion or the request of the party.⁴⁵ Non-binding arbitration is conducted in accordance with Florida Rule of Civil Procedure 1.820 and “provides

³⁶ *Id.* See also *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009) (Altenbernd, J., specially concurring) (noting “[a]rbitration was intended to create a speedy and economically efficient dispute resolution process”).

³⁷ American Arbitration Association, *Vetted National Roster of Arbitrators*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019) (noting that arbitration panels are comprised of “distinguished judges as well as leaders in the legal and business communities with industry-specific knowledge and expertise.”).

³⁸ Amanda Perwin, *Mandatory Binding Arbitration: Civil Injustice By Corporate America*, White Paper for the Center for Justice & Democracy, No. 13, p. 3 (August 2005), available at <http://centerjd.org/content/white-paper-mandatory-binding-arbitration-civil-injustice-corporate-america> (last visited March 14, 2019).

³⁹ See ch. 682, F.S. and ch. 2013-232, Laws of Fla., based on the 2000 revision of the 2000 Uniform Arbitration Act. The FAC was originally enacted in 1957, ch. 57-402, Laws of Fla., and is based on the 1955 Uniform Arbitration Act (UAA). It was subsequently amended in 1967. See ch. 67-254, Laws of Fla.

⁴⁰ Section 682.013, F.S.

⁴¹ *O’Keefe Architects, Inc. v. CED Construction Partners, Ltd.*, 944 So. 2d 181, 184 (Fla. 2006).

⁴² See generally ch. 682, F.S.

⁴³ See 9 U.S.C.A. ss. 1-16.

⁴⁴ Shelley McGill, *Consumer Arbitration Clause Enforcement: A Balanced Legislative Response*, 47 AM. BUS. L.J. 361, 366 (Fall 2010).

⁴⁵ *Contractor’s Mgmt. Sys. of NH, Inc. v. Acree Air Conditioning, Inc.*, 799 So. 2d 320, 321 (Fla. 2d DCA 2001); s. 44.103(2), F.S.

the procedural processes of standard arbitration but with an informal hearing on the dispute's merits and without the finality of a binding decision.”⁴⁶

The Legislature has required non-binding mandatory arbitration in other situations. For example, s. 718.1255, F.S. provides for mandatory non-binding arbitration to resolve disputes between a condominium association board and the unit owners pertaining to issues within the scope of the condominium association's authority.

III. Effect of Proposed Changes:

SB 1246 overhauls ch. 558, F.S., and requires court-ordered mandatory arbitration in all construction defect cases.

Amended Provisions

Section 1 amends the Legislature's findings in s. 558.001, F.S., removing less definitive language and clarifying arbitration is not merely an alternative to litigation but an effective and cost-efficient method of resolving construction defect claims.

Section 2 removes three definitions in s. 558.002, F.S.:

- (1) “Association,” which includes, by cross-reference to their statutory definitions, a condominium owners' association, homeowners' associations, and association operating a property cooperative.⁴⁷
- (2) “Completion of building improvement” which means a “certificate of occupancy.”
- (3) “Service” means “delivery by certified mail . . . by hand delivery, or by and courier with written evidence of delivery.”

Although the definition for (1) “association” is deleted by the bill, the definition of a “claimant” remains the same in s. 558.002, F.S., and means “a property owner, including a subsequent purchaser or *association*.”⁴⁸ Otherwise, it appears all three definitions are removed because they correspond to the repealed provisions in sections 4, 5, and 6.

Repealed Provisions

Sections 4, 5, and 6 repeal the current pre-suit notice and opportunity to repair requirements set out in ss. 558.003, 558.004, and 558.005, F.S.

⁴⁶ American Arbitration Association, *Non-binding Arbitration*, available at <https://www.adr.org/Arbitration> (last visited March 14, 2019) (stating further that “Non-binding arbitration can be valuable for less complex business-to-business and business-to-consumer disputes where the parties may be too far apart in their viewpoints to mediate or are in need of an evaluation of their respective positions.”).

⁴⁷ See s. 558.002(2), F.S. (“‘Association’ has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075”).

⁴⁸ Section 558.002(3), F.S. (emphasis added).

New Provisions

Section 3 creates s. 558.0045, F.S. which requires court-ordered, mandatory, non-binding arbitration for any action involving a construction defect, including civil lawsuits and arbitration actions.

Procedurally, the bill provides that mandatory, non-binding arbitrations conducted under this section must be conducted in accord with ch. 682, F.S. The time arbitration must be commenced is (1) once all the proper parties have been joined to the action, but (2) no later than 180 days after the action is brought. However, any party joined to the action after 180 days is still subject to mandatory, non-binding arbitration.

The bill also requires that specific findings be made by the fact-finder, be it the arbitrator or a jury in the event the parties opt not to be bound by the arbitrator's determination and pursue a traditional law suit. The fact-finder must make the following specific findings in determining an award against a party (including a contractor, sub-contractor, supplier, of design professional):

- The nature of the defect;
- The amount awarded against each separate party (contractor, sub-contractor, design professionals, and suppliers); and
- The reasons the amount is being awarded against that party, including:
 - The amount attributable to each party's repair or replacement of its own defective work.
 - The amount attributable to the cost to repair and replace damage cause to the non-defective work of other parties.
 - Any other damages awarded against the party.

Although arbitration is mandatory, it is not binding. Each party must elect in writing to be bound by the arbitration award within 30 days after it is rendered. If a party does not agree to be bound by the arbitration award, that party may proceed with a traditional lawsuit on any unresolved portions of the claim.

However, the parties may still settle any claims during the arbitration process. The bill specifically states that it should not be construed to preclude partial settlements and compromises of claims by the parties either before or after arbitration.

Additionally, the bill states that it does not affect the rights and duties of insureds and insurance carriers under their policies. However, the bill provides that subrogation (the insurance company stepping in to defend its insured in arbitration or a lawsuit) applies only to the scope of work by the policy's named insured.

Section 7 provides that the bill is effective July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The bill will affect insurers who insure contractors, subcontractors, and others under policies containing similarly written provisions to the one in *Altman Contractors* concerning the duty to provide a defense to a lawsuit. Mandatory, non-binding arbitration meets the definition of a “suit” in the policy provision at issue in *Altman Contractors*, and will trigger the insurance company’s duty to defend the insured when an otherwise covered claim of construction defect is raised by a property owner.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 558.001, 558.002.

This bill creates the following sections of the Florida Statutes: 558.0045.

This bill repeals the following sections of the Florida Statutes: 558.003, 558.004, 558.005.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Wright

14-01462A-19

20191246__

A bill to be entitled

An act relating to construction defects; amending s. 558.001, F.S.; revising legislative findings; providing applicability; amending s. 558.002, F.S.; deleting terms; creating s. 558.0045, F.S.; providing applicability; requiring courts to require parties in actions involving construction defects to take part in nonbinding arbitration; providing requirements for the arbitration; requiring an arbitrator to include certain information in his or her award if he or she makes certain findings; authorizing parties to agree to be bound by the arbitration award; authorizing a party that does not agree to be bound by the award to proceed with certain actions; providing construction; requiring a jury verdict and a final judgment to contain specified information in certain proceedings; specifying that claims against certain parties are subject to certain mandatory nonbinding arbitration; providing applicability relating to insureds and insurance carriers; repealing s. 558.003, F.S., relating to action and compliance; repealing s. 558.004, F.S., relating to notice and opportunity to repair; repealing s. 558.005, F.S., relating to contract provisions and applicability; providing an effective date.

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

Section 1. Section 558.001, Florida Statutes, is amended to

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

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read:

558.001 Legislative findings and declaration.—The Legislature finds that it is beneficial to have an effective and cost-efficient ~~alternative~~ method to resolve construction disputes that would reduce ~~the need for~~ litigation as well as protect the rights of property owners. An effective alternative dispute resolution mechanism in ~~certain~~ construction defect matters should involve the claimant and the ~~filing a notice of claim with the~~ contractor, subcontractor, supplier, or design professional that the claimant asserts is responsible for the defect, and should provide the claimant and the contractor, subcontractor, supplier, or design professional, and the insurer of the contractor, subcontractor, supplier, or design professional, with an opportunity to resolve the claim through meaningful arbitration of the claim ~~confidential settlement negotiations~~ without resort to extended litigation. This chapter does not preclude resolution of claims through settlement negotiations ~~further legal process~~.

Section 2. Subsections (2), (4), and (9) of section 558.002, Florida Statutes, are amended to read:

558.002 Definitions.—As used in this chapter, the term:

(2) "Association" ~~has the same meaning as in s. 718.103(2), s. 719.103(2), s. 720.301(9), or s. 723.075.~~

(4) "Completion of a building or improvement" ~~means issuance of a certificate of occupancy, whether temporary or otherwise, that allows for occupancy or use of the entire building or improvement, or an equivalent authorization issued by the governmental body having jurisdiction. In jurisdictions where no certificate of occupancy or equivalent authorization is~~

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59 ~~issued, the term means substantial completion of construction,~~
60 ~~finishing, and equipping of the building or improvement~~
61 ~~according to the plans and specifications.~~

62 ~~(9) "Service" means delivery by certified mail with a~~
63 ~~United States Postal Service record of evidence of delivery or~~
64 ~~attempted delivery to the last known address of the addressee,~~
65 ~~by hand delivery, or by delivery by any courier with written~~
66 ~~evidence of delivery.~~

67 Section 3. Section 558.0045, Florida Statutes, is created
68 to read:

69 558.0045 Construction defect litigation; special
70 requirements.-

71 (1) This section applies to all actions involving
72 construction defects, including civil suits and arbitrations.

73 (2) In any action involving construction defects, the court
74 shall require that the parties take part in nonbinding
75 arbitration. Such arbitration must be conducted in accordance
76 with chapter 682, except as otherwise provided in this section.
77 The mandatory arbitration must take place once all proper
78 parties have been joined in the action, but not later than 180
79 days after the action is brought.

80 (3) If the arbitrator finds in favor of a claimant as to
81 one or more parties on the construction defect claim, the award
82 must include a detailed description of the nature of the defect
83 and of the monetary amount awarded against each separate party,
84 including the monetary amount of the award attributable to each
85 of the following:

86 (a) Repairing or replacing the party's own defective work.

87 (b) Repairing or replacing other nondefective property

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88 damaged by that party's defective work.

89 (c) Other damages being awarded against the party.

90 (4) Any party to the arbitration may agree in writing to be
91 bound by the arbitration award as to claims between the parties.
92 Such election to be bound must be exercised within 30 days after
93 the arbitration award. If a party does not agree to be bound by
94 the arbitration award, such party may proceed with the civil
95 action on the unresolved portions of the claim. This chapter may
96 not be construed to preclude a partial settlement or compromise
97 of the claim as agreed to by the parties before or after the
98 arbitration.

99 (5) With regard to any parties who do not agree to be bound
100 by the arbitration and who proceed to trial in the action, the
101 jury verdict and final judgment must include a detailed
102 description of the nature of the defect and of the monetary
103 amount awarded against each separate party, including the
104 monetary amount of the award attributable to each of the
105 following:

106 (a) Repairing or replacing the party's own defective work.

107 (b) Repairing or replacing other nondefective property
108 damaged by that party's defective work.

109 (c) Other damages being awarded against the party.

110 (6) Any claims against parties joined after the 180-day
111 period set forth in subsection (2) are also subject to mandatory
112 nonbinding arbitration under subsections (2) and (3).

113 (7) This chapter does not affect the rights and duties of
114 insureds and insurance carriers under their policies, but any
115 defense, with or without a reservation of rights, provided by an
116 insurer to a party, including any party asserting additional

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117 insured status, in proceedings subject to this chapter and in
118 any action involving a construction defect applies only to the
119 scope of work of its named insured.

120 Section 4. Section 558.003, Florida Statutes, is repealed.

121 Section 5. Section 558.004, Florida Statutes, is repealed.

122 Section 6. Section 558.005, Florida Statutes, is repealed.

123 Section 7. This act shall take effect July 1, 2019.

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Judiciary Committee

Judge:

Started: 3/25/2019 4:01:56 PM

Ends: 3/25/2019 6:00:00 PM Length: 01:58:05

4:01:55 PM Meeting called to order by Chair Simmons
4:01:58 PM Roll call by Administrative Assistant Joyce Butler
4:02:00 PM Announcement of a quorum is present
4:02:13 PM Chair Simmons announced to silence all electronic devices.
4:02:26 PM Chair Simmons stated SB 1742 TP'd
4:03:49 PM Chair Simmons stated SB 1246 TP'd
4:05:00 PM Chair Simmons asked to turn to TAB 3 SB 1136 Senator Harrell's bill
4:05:19 PM SB 1136 presented by Senator Harrell
4:08:00 PM Chair Simmons asked for speaker cards
4:08:12 PM Barney Bishop III waives in support
4:09:30 PM Chair Simmons asked Senator Harrell to close on SB 1136
4:09:33 PM Senator Harell closes on SB 1136
4:09:36 PM Chair Simmons asked Joyce to call roll on SB 1136
4:09:40 PM Joyce called the roll on SB 1136
4:09:52 PM Chair Simmons stated SB 1136 Reported Favorably
4:10:00 PM Chair Simmons asked to turn to TAB 1 SB 76 Senator Simpson's bill
4:10:16 PM CS/CS/SB 76 presented by Senator Simpson
4:11:00 PM Chair Simmons turned the chair over to Vice-Chair Rodriguez
4:11:02 PM Senator Simmons presented Substitute Amendment Barcode 524280
4:15:19 PM Vice-Chair Rodriguez stated the Amendment is adopted
4:16:24 PM The Delete-all amendment barcode 878202 was replaced by Amendment 524280
4:16:30 PM Vice-Chair Rodriguez turned the chair back over to the Chair Simmons
4:17:39 PM Question by Vice-Chair Rodriguez
4:18:20 PM Response by Senator Simpson
4:18:52 PM Question by Senator Stargel
4:18:58 PM Response by Chair Simmons
4:20:43 PM Speaker Lisa Hurley waives in support
4:20:54 PM Speaker Mark Merwitzer in support
4:23:19 PM Speaker Devon West waives in support
4:23:42 PM Speaker Barney Bishop waives in support
4:23:50 PM Speaker Danielle Thomas in support
4:24:57 PM Speaker Keyna Cory in support
4:25:33 PM Speaker Katie Petros in support
4:26:08 PM Speaker William Smith waives in support
4:27:10 PM Speaker Jim Cordero waives in support
4:27:35 PM Speaker Deborah Lawson waives in support
4:27:47 PM Speaker Matt Dunagan waives in support
4:27:55 PM Speaker Debbie Wanincoff
4:33:09 PM Speaker Mary Lencullen waives in support
4:33:26 PM Speaker Demetrius DeBranca in support
4:37:56 PM Speaker Jim Magill waives in support
4:38:04 PM Speaker Stephen waives in support

4:38:09 PM Speaker Lee Moffitt waives in support
4:38:17 PM Speaker Chief Gary Hester waives in support
4:38:27 PM Speaker Jess McCarty waives in support
4:38:34 PM Speaker Nancy Lawthur waives in support
4:38:47 PM Speaker Carl McCeiska waives in support
4:39:01 PM Speaker Becky Alfonso waives in support
4:39:11 PM Speaker Logan McBaddin waives in support
4:39:22 PM Speaker Ben Stevens waives in support
4:39:48 PM Chair Simmons asked was there any debate
4:39:53 PM Debate by Vice-Chair Rodriguez
4:39:59 PM Senator Simpson closes on CS/CS/CS/SB 76
4:41:37 PM Chair Simmons asked Joyce to call the roll on CS/CS/CS/SB 76
4:41:39 PM Joyce called the roll on CS/CS/CS/SB 76
4:42:00 PM Chair Simmons stated by your vote CS/CS/CS/SB 76 will be Reported Favorably
4:42:16 PM Chair Simmons asked to turn to TAB 2 CS/SB 892 by Senator Passidomo
4:42:35 PM CS/SB 892 presented by Senator Passidomo
4:45:52 PM Amendment Barcode 632722 presented by Senator Passidomo
4:46:18 PM Amendment adopted
4:46:56 PM Amendment Barcode 855672 presented by Senator Passidomo
4:47:27 PM Amendment adopted
4:47:42 PM Amendment Barcode 855524 presented by Senator Passidomo
4:48:00 PM Amendment adopted
4:48:19 PM Amendment Barcode 813292 presented by Senator Passidomo
4:48:38 PM Amendment adopted
4:49:15 PM Speaker Philip Schwartz waives in support
4:49:32 PM Speaker Stephen Shiver waives in support
4:49:40 PM Chair Simmons asked Senator Passidomo to close on CS/CS/SB 892
4:49:58 PM Senator Passidomo closes on CS/CS/SB 892
4:50:00 PM Chair Simmons asked to turn to TAB 8 Senator Flores to present SB 1694
4:50:33 PM Chair Simmons asked Joyce to call the Roll on CS/CS/SB 892
4:50:50 PM Chair Simmons stated by your vote CS/CS/SB 892 Reported Favorably
4:51:35 PM SB 1694 presented by Senator Flores
4:53:25 PM Chair Simmons asked for speaker cards
4:53:31 PM David Migut waives in support
4:53:41 PM Bob Shillinger in support
4:53:57 PM Michelle Coldiron waives in support
4:54:17 PM Chair Simmons asked Senator Flores to close on SB 1694
4:54:59 PM Senator Flores closes on SB 1694
4:55:17 PM Chair Simmons asked Joyce to call the roll on SB 1694
4:55:20 PM Joyce call the Roll on SB 1694
4:56:12 PM Chair Simmons stated SB 1694 Reported Favorably
4:56:18 PM Chair Simmons asked to turn to TAB 5 Senator Gruters to present SB 1188
4:56:23 PM SB 1188 presented by Senator Gruters
4:58:30 PM Chair Simmons asked for speaker cards
4:58:33 PM Barney Bishop III waives in support
4:59:33 PM Corinne Mixon waives in support
4:59:47 PM Allison Carvajal waives in support
5:00:07 PM Bryan Cherry waives in support
5:00:17 PM Chair Simmons asked Joyce to call roll for SB 1188
5:00:26 PM Joyce called roll for SB 1188
5:00:50 PM Chair Simmons stated by your vote SB 1188 Reported Favorably
5:00:55 PM Chair Simmons asked to turn to TAB 4 SB 762 by Senator Gruters

5:01:01 PM SB 762 presented by Senator Gruters
5:01:17 PM Chair Simmons stated there is amendment barcode 856104 by Senator Gruters
5:01:20 PM Amendment Barcode 856104 presented by Senator Gruters
5:02:17 PM Chair Simmons stated any questions, debate, speaker cards
5:02:39 PM Lisa Kiel waives in support
5:03:08 PM Matt Dunaghan waives in support
5:03:46 PM Chair Simmons asked any objection to the amendment the Amendment adopted
5:03:50 PM Chair Simmons asked we have a late-filed amendment barcode 918110 by Vice-Chair Rodriguez
5:04:12 PM Late Filed Amendment Barcode 918110 presented by Senator Rodriguez
5:05:07 PM Question by Senator Baxley
5:05:13 PM Response by Senator Rodriguez
5:05:47 PM Chair Simmons stated without objections the Amendment adopted
5:05:50 PM Chair Simmons asked fir speaker cards on the bill as amended
5:06:53 PM Lisa Hurley waives in support
5:07:15 PM Barney Bishop III waives in support
5:07:30 PM Chair Simmons asked Joyce to call roll for CS/SB 762
5:07:37 PM Joyce call Roll for CS/SB 762
5:07:46 PM Chair Simmons stated by your vote CS/SB 762 Reported Favorably
5:07:50 PM Chair Simmons asked to turn to TAB 10 SB 1200 by Senator Stargel
5:08:43 PM SB 1200 presented by Senator Stargel
5:08:50 PM Chair Simmons stated we have an amendment barcode 603720 by Senator Stargel
5:09:22 PM Amendment Barcode 603720 presented by Senator Stargel
5:10:53 PM Chair Simmons asked for questions, debate, speaker cards
5:11:04 PM Bruce Kershner speaking for information
5:11:55 PM Chair Simmons stated the Amendment adopted
5:12:00 PM Chair Simmons asked for questions, debate, speaker cards of the bill as amended
5:12:11 PM Warren Husband waives in support
5:12:15 PM Chair Simmons asked Joyce to call roll on CS/SB 1200
5:13:03 PM Joyce call Roll on CS/SB 1200
5:13:15 PM Chair stated by your vote CS/SB 1200 Reported Favorably
5:13:25 PM Chair Simmons asked to turn to TAB 6 SB 1238 by Senator Mayfield
5:13:32 PM SB 1238 presented by Senator Mayfield
5:15:20 PM Chair Simmons asked are there any questions
5:15:28 PM Question by Vice-Chair Rodriguez
5:15:37 PM Response by Senator Mayfield
5:15:56 PM Question by Vice-Chair Rodriguez
5:16:09 PM Response by Senator Mayfield
5:17:37 PM Question by Vice-Chair Rodriguez
5:17:43 PM Response by Senator Mayfield
5:18:36 PM Question by Senator Hudson
5:18:41 PM Response by Senator Mayfield
5:18:50 PM Chair Simmons asked for speaker cards
5:19:05 PM Sheriff Wayne Ivey in support
5:20:41 PM Marion Hammer in support
5:22:41 PM Lisa Buckley waives in opposition
5:23:00 PM Jamie Ito waives in opposition
5:23:19 PM Beth Dumond in opposition
5:28:23 PM Susan Smith waives in opposition
5:28:38 PM Spike Grom waives in opposition
5:28:48 PM Angie Gallo in opposition
5:29:56 PM Douglas Hahn waives in opposition

5:30:12 PM Chair Simmons asked are there any debate
5:30:16 PM Debate by Senator Baxley
5:35:35 PM Chair Simmons asked Senator Mayfield to close on SB 1238
5:35:41 PM Senator Mayfield closes on SB 1238
5:35:50 PM Chair Simmons asked Joyce to call roll for SB 1238
5:36:00 PM Joyce call Roll for SB 1238
5:36:56 PM Chair Simmons stated by your vote SB 1238 Reported Favorably
5:37:15 PM Chair Simmons asked to turn to TAB 7 by Senator Lee SB 1656
5:37:35 PM SB 1656 presented by Senator Lee
5:39:00 PM Chair Simmons asked are there any questions
5:40:55 PM Question by Senator Gibson
5:42:41 PM Question by Senator Gibson
5:43:42 PM Response by Senator Lee
5:44:17 PM Chair Simmons asked for speaker cards
5:45:03 PM Barney Bishop III waives in support
5:45:20 PM Speaker Laurette Philipsen in opposition
5:48:51 PM Question by Senator Gibson
5:49:04 PM Response by Speaker Laurette Philipsen
5:49:58 PM Speaker Paul Heroux in opposition
5:53:28 PM Matt Dunagan waives in support
5:53:43 PM Bill Cervone waives in support
5:54:02 PM Pamela Burch Fort waives in opposition
5:54:18 PM Chief Gary Hester waives in support
5:54:32 PM Richard Martin waives in support
5:54:44 PM Speaker Dubin Soldono in opposition
5:55:17 PM Chair Simmons asked for debate
5:55:22 PM Debate by Senator Gibson
5:55:52 PM Debate by Senator Rodriguez
5:56:39 PM Chair Simmons asked Joyce to call roll for SB 1656
5:56:48 PM Joyce call Roll for SB 1656
5:57:10 PM Chair Simmons stated by your vote SB 1656 Reported Favorably
5:57:28 PM Senator Gibson motions to be shown voting affirmative on 1136, no on 76, yes on 892
5:58:10 PM Senator Stargel votes yes on 1136
5:58:17 PM Chair turned the chair over to Vice Chair Rodriguez for TAB 11 by Chair Simmons SB 1134
5:58:26 PM CS/SB 1134 presented by Senator Simmons
5:58:30 PM Vice-Chair Rodriguez ask for questions, debate speaker cards
5:59:05 PM Lauren Jackson waive in support
5:59:15 PM Barney Bishop waives in support
5:59:18 PM Vice-Chair Rodriguez asked Joyce to call roll for SB 1134
5:59:21 PM Joyce call Roll for SB 1134
5:59:27 PM Vice-Chair Rodriguez stated by your vote CS/SB 1134 Reported Favorably
5:59:49 PM Chair Simmons stated no more business before this Committee Senator Stargel move we rise
5:59:50 PM Meeting adjourned