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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/08/2024	.	
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The Committee on Rules (Martin) recommended the following:

Senate Amendment (with title amendment)

Delete lines 418 - 649

and insert:

(b) A filing was not previously filed in respect of the defective corporate action,

in lieu of a filing otherwise required under this chapter, the corporation must file articles of validation in accordance with this section, and such articles of validation will serve to amend or be a substitute for any other filing with respect to



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12 such defective corporate action required by this chapter.
13 (2) The articles of validation must specify all of the
14 following:
15 (a) The defective corporate action that is the subject of
16 the articles of validation, including, in the case of any
17 defective corporate action involving the issuance of putative
18 shares, the number and type of putative shares issued and the
19 date or dates upon which such putative shares were purported to
20 have been issued.
21 (b) The date of the defective corporate action.
22 (c) The nature of the failure of authorization in respect
23 of the defective corporate action.
24 (d) A statement that the defective corporate action was
25 ratified in accordance with s. 607.0147, including the date on
26 which the board of directors ratified such defective corporate
27 action and, if applicable, the date on which the shareholders
28 approved the ratification of such defective corporate action.
29 (e)1. If a filing was previously made in respect of the
30 defective corporate action and such filing requires any change
31 to give effect to the ratification of such defective corporate
32 action pursuant to s. 607.0147:
33 a. The name, title, and filing date of the filing
34 previously made and any articles of correction for that filing;
35 b. A statement that a filing containing all of the
36 information required to be included under the applicable
37 provisions of this chapter to give effect to such defective
38 corporate action is attached as an exhibit to the articles of
39 validation; and
40 c. The date and time that such filing is deemed to have



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41 become effective.

42 2. If a filing was not previously made in respect of the
43 defective corporate action and the defective corporate action
44 ratified pursuant to s. 607.0147 would have required a filing
45 under any other provision of this chapter:

46 a. A statement that a filing containing all of the
47 information required to be included under the applicable
48 provisions of this chapter to give effect to such defective
49 corporate action is attached as an exhibit to the articles of
50 validation; and

51 b. The date and time that such filing is deemed to have
52 become effective.

53 Section 8. Section 607.0152, Florida Statutes, is created
54 to read:

55 607.0152 Judicial proceedings regarding validity of
56 corporate actions.—

57 (1) Subject to subsection (4), upon application by the
58 corporation, any successor entity to the corporation, a director
59 of the corporation, any shareholder, beneficial shareholder, or
60 unrestricted voting trust beneficial owner of the corporation,
61 including any such shareholder, beneficial shareholder, or
62 unrestricted voting trust beneficial owner as of the date of the
63 defective corporate action ratified pursuant to s. 607.0147; or
64 any other person claiming to be substantially and adversely
65 affected by a ratification in accordance with s. 607.0147, the
66 circuit court in the applicable county may take any one or more
67 of the following actions:

68 (a) Determine the validity and effectiveness of any
69 corporate action or defective corporate action ratified pursuant



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70 to s. 607.0147.

71 (b) Determine the validity and effectiveness of any
72 ratification of any defective corporate action pursuant to s.
73 607.0147.

74 (c) Determine the validity and effectiveness of any
75 defective corporate action not ratified or not ratified
76 effectively pursuant to s. 607.0147.

77 (d) Determine the validity of any putative shares.

78 (e) Modify or waive any of the procedures specified in s.
79 607.0147 or s. 607.0148 to ratify a defective corporate action.

80 (2) In connection with an action brought under this
81 section, the court may make such findings or issue such orders
82 and take into account any one or more factors or considerations
83 as it deems proper under the circumstances, including, but not
84 limited to, any one or more of the factors, considerations,
85 findings, and orders set forth in subsections (5) and (6).

86 (3) Service of process of the application under subsection
87 (1) on the corporation may be made in any manner provided in
88 chapter 48 for service on a corporation, and no other party need
89 be joined in order for the court to adjudicate the matter. In an
90 action filed by the corporation, the court may require that
91 notice of the action be provided to other persons specified by
92 the court and permit such other persons to intervene in the
93 action.

94 (4) Notwithstanding any other law to the contrary, any
95 action asserting that the ratification of a defective corporate
96 action, and any putative shares issued as a result of such
97 defective corporate action, should not be effective, or should
98 be effective only on certain conditions, must be brought, if at



99 all, within 120 days after the validation effective time.

100 (5) In connection with the resolution of matters under
101 subsection (2), the court may consider any of the following:

102 (a) Whether the defective corporate action was originally
103 approved or effectuated with the belief that the approval or
104 effectuation was in compliance with the provisions of this
105 chapter, the articles of incorporation, or the bylaws of the
106 corporation.

107 (b) Whether the corporation and board of directors have
108 treated the defective corporate action as a valid act or
109 transaction and whether any person has acted in reliance on the
110 public record that such defective corporate action was valid.

111 (c) Whether any person will be or was harmed by the
112 ratification or validation of the defective corporate action,
113 excluding any harm that would have resulted if the defective
114 corporate action had been valid when approved or effectuated.

115 (d) Whether any person will be harmed by the failure to
116 ratify or validate the defective corporate action.

117 (e) Whether the defective corporate action was a conflict
118 of interest transaction.

119 (f) Any other factors or considerations the court deems
120 just and equitable.

121 (6) In connection with an action under this section, the
122 court may do any one or more of the following:

123 (a) Declare that a ratification in accordance with and
124 pursuant to s. 607.0147 is not effective or shall only be
125 effective at a time or upon conditions established by the court.

126 (b) Validate and declare effective any defective corporate
127 action or putative shares and impose conditions upon such



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128 validation.

129 (c) Require measures to remedy or avoid harm to any person
130 substantially and adversely affected by a ratification in
131 accordance with and pursuant to s. 607.0147 or by any order of
132 the court pursuant to this section, excluding any harm that
133 would have resulted if the defective corporate action had been
134 valid when approved or effectuated.

135 (d) Order the department to accept an instrument for filing
136 with an effective time specified by the court, which effective
137 time may be before or after the date and time of such order,
138 provided that the filing date of such instrument shall be
139 determined in accordance with s. 607.0123.

140 (e) Approve a stock ledger for the corporation that
141 includes any shares ratified or validated in accordance with
142 this section or s. 607.0147.

143 (f) Declare that the putative shares are valid shares or
144 require a corporation to issue and deliver valid shares in place
145 of any putative shares.

146 (g) Order that a meeting of holders of valid shares or
147 putative shares be held and exercise such powers as it deems
148 appropriate with respect to such a meeting.

149 (h) Declare that a defective corporate action validated by
150 the court shall be effective as of the date and time of the
151 defective corporate action or at such other date and time as
152 determined by the court.

153 (i) Declare that putative shares validated by the court
154 shall be deemed to be identical valid shares or fractions of
155 valid shares as of the date and time originally issued or
156 purportedly issued or at such other date and time as determined



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157 by the court.

158 (j) Require payment by the corporation of reasonable
159 expenses, including attorney fees and costs, that the court
160 finds just and equitable under the circumstances.

161 (k) Issue other orders as it deems necessary and proper
162 under the circumstances.

163 Section 9. Subsection (2) of section 605.0115, Florida
164 Statutes, is amended, and subsection (6) is added to that
165 section, to read:

166 605.0115 Resignation of registered agent.—

167 (2) After delivering the statement of resignation to the
168 department for filing, the registered agent must promptly mail a
169 copy to the limited liability company's or foreign limited
170 liability company's current mailing address; provided, however,
171 that if a composite statement of resignation is being filed
172 pursuant to subsection (6), the registered agent must promptly
173 mail a copy of either the composite statement of resignation or
174 a separate notice of resignation for each respective limited
175 liability company, in each case using the respective mailing
176 address of the respective limited liability company that then
177 appears in the records of the department.

178 (6) (a) If a registered agent is resigning as registered
179 agent from more than one limited liability company that each has
180 been dissolved, either voluntarily, administratively, or by
181 court action, for a continuous period of 10 years or longer, the
182 registered agent may elect to file the statement of resignation
183 separately for each such limited liability company or may elect
184 to file a single composite statement of resignation covering two
185 or more limited liability companies. Any such composite



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186 statement of resignation must set forth, for each such limited
187 liability company covered by the statement of resignation, the
188 name of the respective limited liability and the date
189 dissolution became effective for the respective limited
190 liability company.

191 (b) This subsection is applicable only to resignations from
192 limited liability companies as defined in this chapter.

193 Section 10. Subsection (2) of section 607.0503, Florida
194 Statutes, is amended, and subsection (6) is added to that
195 section, to read:

196 607.0503 Resignation of registered agent.—

197 (2) After delivering the statement of resignation to the
198 department for filing, the registered agent must promptly mail a
199 copy to the corporation at its current mailing address;
200 provided, however, that if a composite statement of resignation
201 is being filed pursuant to subsection (6), the registered agent
202 must promptly mail a copy of either the composite statement of
203 resignation or a separate notice of resignation for each
204 respective corporation, in each case using the respective
205 mailing address of the respective corporation that then appears
206 in the records of the department.

207 (6) (a) If a registered agent is resigning as registered
208 agent from more than one corporation that each has been
209 dissolved, either voluntarily, administratively, or by court
210 action, for a continuous period of 10 years or longer, the
211 registered agent may elect to file the statement of resignation
212 separately for each such corporation or may elect to file a
213 single composite statement of resignation covering two or more
214 corporations. Any such composite statement of resignation must



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215 set forth, for each such corporation covered by the statement of
216 resignation, the name of the respective corporation and the date
217 that dissolution became effective for the respective
218 corporation.

219 (b) This subsection is applicable only to resignations by
220 registered agents from domestic corporations.

221 Section 11. Subsection (2) of section 617.0502, Florida
222 Statutes, is amended to read:

223 617.0502 Change of registered office or registered agent;
224 resignation of registered agent.—

225 (2) (a) Any registered agent may resign his or her agency
226 appointment by signing and delivering for filing with the
227 Department of State a statement of resignation and mailing a
228 copy of such statement to the corporation at its mailing address
229 of the respective corporation that then appears in the records
230 of the Department of State; provided, however, that if a
231 composite statement of resignation is being filed pursuant to
232 paragraph (b), the registered agent must promptly mail a copy of
233 either the composite statement of resignation or a separate
234 notice of resignation for each respective corporation, in each
235 case using the respective mailing address of the respective
236 corporation that then appears in the records of the Department
237 of State ~~principal~~

238
239 ===== T I T L E A M E N D M E N T =====

240 And the title is amended as follows:

241 Delete lines 12 - 83

242 and insert:

243 properly ratified; providing for a process whereby



244 putative shares can be validated in the event of an
245 overissue; creating s. 607.0147, F.S.; requiring the
246 board of directors to take certain action to ratify a
247 defective corporate action; authorizing those
248 exercising the powers of the directors to take certain
249 action when certain defective actions are related to
250 the ratification of the initial board of directors;
251 requiring members of the board of directors to seek
252 approval of the shareholders, in connection with
253 ratifying a defective corporate action under certain
254 conditions; authorizing the board of directors to
255 abandon ratification at any time before the validation
256 effective time after action by the board and, if
257 required, approval of the shareholders; creating s.
258 607.0148, F.S.; providing quorum and voting
259 requirements for the ratification of certain defective
260 corporate actions; requiring the board, in connection
261 with a shareholder meeting held to ratify a defective
262 corporate action, to send notice to all identifiable
263 shareholders of a certain meeting date; requiring that
264 the notice state that a purpose of the meeting is to
265 consider ratification of a defective corporate action;
266 requiring the notice sent to be accompanied with
267 certain information; specifying the quorum and voting
268 requirements applicable to ratification of the
269 election of directors; requiring that votes cast
270 within the voting group favoring ratification of the
271 election of a director exceed the votes cast within
272 the voting group opposing such ratification;



273 prohibiting holders of putative shares from voting on
274 ratification of any defective corporate action and
275 providing that they may not be counted for quorum
276 purposes or in certain written consents; requiring
277 approval of certain amendments to the corporation's
278 articles of incorporation under certain circumstances;
279 creating s. 607.0149, F.S.; requiring that notice be
280 given to shareholders of certain corporate action
281 taken by the board of directors; providing that notice
282 is not required for holders of certain shares whose
283 identities or addresses for notice cannot be
284 determined; providing requirements for such notice;
285 providing requirements for such notice for
286 corporations subject to certain federal reporting
287 requirements; creating s. 607.0150, F.S.; specifying
288 the effects of ratification; creating s. 607.0151,
289 F.S.; requiring corporations to file articles of
290 validation under certain circumstances; providing
291 applicability; providing requirements for articles of
292 validation; creating s. 607.0152, F.S.; authorizing
293 certain persons and entities to file certain motions;
294 providing for service of process; requiring that
295 certain actions be filed within a specified timeframe;
296 authorizing the court to consider certain factors in
297 resolving certain issues; authorizing the courts to
298 take certain actions in cases involving defective
299 corporate actions; amending ss. 605.0115, 607.0503,
300 and 617.0502, F.S.; providing that a registered agent
301 may resign from certain limited liability companies or



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302 foreign limited liability companies, certain dissolved
303 corporations, and certain active or dissolved
304 corporations, respectively, by delivering a specified
305 statement of resignation to the Department of State;
306 providing requirements for the statement; providing
307 that a registered agent who is resigning from more
308 than one such corporation or limited liability company
309 may elect to file a statement of resignation for each
310 such company or corporation or a composite statement;
311 providing requirements for composite statements;
312 requiring that a copy of each of the statements of
313 resignation or the composite statement be mailed to
314 the address on file with the department for the
315 company or corporation or companies or corporations,
316 as applicable; amending ss. 605.0213 and