

This modification to Chapter 607 of the Florida Statutes (the Florida Business Corporation Act), and to various sections of other Florida entity statutes to harmonize them with the changes to Chapter 607 made in this modification, was developed by the Chapter 607 Drafting Subcommittee of the Corporations, Securities and Financial Services Committee of The Florida Bar Business Law Section. An earlier version of this modification was presented to the Florida legislature for its consideration during the 2019 session, and, with certain changes, was adopted by the Florida legislature in April 2019. This modification was signed into law by Governor DeSantis on June 07, 2019 and will become effective on January 1, 2020.

**MODIFICATIONS TO CHAPTER 607
OF THE FLORIDA STATUTES
AND TO CERTAIN SECTIONS OF
OTHER FLORIDA ENTITY
STATUTES**

*Expanded to include all sections of Chapter 607
(even if not modified) and with commentary*

Dated June 26, 2019

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FOREWORD

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. The modifications to Chapter 607 (the "Florida Business Corporation Act" or "FBCA") and to certain other Florida entity statutes that became the statute adopted by the Florida legislature during the 2019 legislative session is the Section's latest effort to update and modernize an important entity statute used by many Floridian's in their business activities.

When it comes to for-profit corporations, 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, the FBCA has been overhauled only once (in 1989), and has 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 was deemed necessary and appropriate to consider comprehensively amending Florida's corporate statute so that Florida keeps pace with modern statutory developments relating to corporations.

It is especially important in Florida because of the large number of entities organized here. At the end of 2018, Florida had almost 780,000 corporations and almost 1.3 million limited liability companies in existence - probably more than any other state – growing at the rate of slightly more than 100,000 new corporations and almost 300,000 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.

The proposal to modify Chapter 607 was developed over almost a five-year period by a drafting subcommittee (the "Drafting Subcommittee") organized under the auspices of the Corporations, Securities and Financial Services Committee of the Section. The proposal was adopted by the Section's executive council in September 2018, was presented to the Florida legislature for its consideration in the fall of 2018, and was considered by the Florida legislature during the 2019 legislative session. The final bill as adopted (CS/CS/HB 1009), which largely follows the proposal developed by the Drafting Subcommittee, unanimously passed the Florida House of Representatives on April 25, 2019 and the Florida Senate on April 30, 2019. It was signed into law by Governor DeSantis on June 07, 2019 and will become effective on January 1, 2020.

The modifications to Chapter 607 as adopted follow, for the most part, the 2016 version of the Model Act, yet deviate 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 Drafting Subcommittee

In 2014, the Drafting Subcommittee was organized 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 the FBCA 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 the formation and use of Florida corporations where appropriate.

A list of the members of the Drafting Subcommittee who participated in this project is [Appendix A](#) to this Foreword. The Drafting Subcommittee also had the benefit during its activities of significant input from representatives of the Division of Corporations of the Florida Department of State (who are also listed on [Appendix A](#)), and we believe that the strong working relationship between the Department of State and the Section continues to facilitate better results for those using business entities in Florida. Finally, we would acknowledge the assistance that the Drafting Subcommittee received from members of the Corporate Laws Committee of the ABA Business Law Section while the Drafting Subcommittee was going through the process of developing the proposal.

Many thanks...

First and foremost, the co-chairs of the Drafting Subcommittee would like to thank the members of the Drafting Subcommittee for their hard work. The Drafting Subcommittee met approximately 100 times over the almost five-year period that it took to develop the proposed modifications to Chapter 607 and to certain other Florida entity statutes for presentation to the legislature. Without the diligent work of the members of the Drafting Subcommittee, the proposal to modify Chapter 607 would not have happened. The co-chairs would additionally like to thank the law firms of the Drafting Subcommittee members who participated in this project. While this project took Drafting Subcommittee members away from their efforts on behalf of firm clients, the foresight of the law firms in understanding that the time invested in this project was for the collective good of our state is to be saluted. Finally, the co-chairs want to thank their respective families and the families of each of the Drafting Subcommittee members for their unsung efforts with respect to this project. The co-chairs recognize that finding a way to balance the desire to be with our families with our commitment to our profession is sometimes difficult. The simple reality of what it means to spend hundreds of hours on a Bar related project imposes real burdens on many of our Drafting Subcommittee members, and thereby on their families. On the off chance that one of the co-chairs loved ones or the loved one of any of the members of the Drafting Subcommittee reads this Foreword, we hope you will know that we are appreciative of your sacrifice.

Additionally, we want to thank several individuals who helped bridge the gap between the Drafting Subcommittee's tireless work to develop the proposal and those who helped move the proposal through the legislature. First, we want to thank our sponsors, Senator Kathleen Passidomo and Representative Cord Byrd for their willingness to take on the sponsorship of this 500+ page bill and for their efforts in bringing this bill over the finish line. We would also like to thank the staff of the numerous legislative committees that considered the proposal, many of whom had to analyze the proposal in a short period of time, and the bill drafting team that worked with us and the legislators to translate the proposal into language that follows the legislature's bill drafting rules. Finally, we would like to thank the Section's lobbyists, Aimee Diaz-Lyon and Douglas Bell, without whose efforts this proposal would not have been adopted.

Philip B. Schwartz, Co-chair
Gary I. Teblum, Co-chair
June 26, 2019

APPENDIX A

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⁺ The proposed modification to Chapter 607 that was presented to the legislature represented the consensus of the members of the Drafting Subcommittee participating in the process. It does not necessarily reflect the views of the individual members of the Drafting Subcommittee or their respective law firms, nor does it mean that each member of the Drafting Subcommittee agreed with all of the positions taken in the proposed modification.

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**CHANGES TO THE FLORIDA BUSINESS CORPORATION ACT
AND TO CERTAIN OTHER FLORIDA ENTITY STATUTES¹**

INDEX

	<u>Page</u>
<u>ARTICLE 1 – General Provisions</u>	
<u>607.0101</u>	Short title; applicability..... 1
<u>607.0102</u>	Reservation of power to amend or repeal..... 3
<u>607.0120</u>	Filing requirements; extrinsic facts 5
<u>607.0121</u>	Forms..... 9
<u>607.0122</u>	Fees for filing documents and issuing certificates..... 11
<u>607.0123</u>	Effective time and date of document..... 14
<u>607.0124</u>	Correcting filed document; withdrawal of filed record before effectiveness. 17
<u>607.0125</u>	Filing duties of department..... 20
<u>607.0126</u>	Appeal from department’s refusal to file document..... 22
<u>607.0127</u>	Certificates to be received in evidence and evidentiary effect of certified copy of filed document..... 24
<u>607.0128</u>	Certificate of status..... 26
<u>607.0130</u>	Powers of department..... 30
<u>607.01401</u>	Definitions..... 32
<u>607.0141</u>	Notice..... 45
<u>607.0143</u>	Qualified director..... 50
 <u>Article 2 – Incorporation</u>	
<u>607.0201</u>	Incorporators..... 55
<u>607.0202</u>	Articles of incorporation; content..... 57
<u>607.0203</u>	Incorporation..... 60
<u>607.0204</u>	Liability for preincorporation transactions..... 62
<u>607.0205</u>	Organizational meeting of directors..... 64
<u>607.0206</u>	Bylaws..... 66
<u>607.0207</u>	Emergency bylaws..... 68
<u>607.0208</u>	Forum selection provisions..... 70

¹ The proposal to modify Chapter 607 of the Florida Statutes and to make changes to other Florida entity statutes to harmonize them with the changes made in the FBCA was presented to the Florida legislature by The Florida Bar Business Law Section for consideration during the 2019 legislative session. The modification was adopted by the Florida Legislature on April 30, 2019 (CS/CS/HB 1009) and was signed into law by Governor DeSantis on June 7, 2019. The modification has been designated Chapter 2019-90 of the laws of Florida.

	<u>Page</u>
<u>Article 3 – Purposes and Powers</u>	
<u>607.0301</u>	Purposes and application..... 72
<u>607.0302</u>	General powers..... 74
<u>607.0303</u>	Emergency powers..... 77
<u>607.0304</u>	Lack of power to act..... 79
 <u>Article 4 – Corporate Names</u>	
<u>607.0401</u>	Corporate name..... 81
<u>607.04021</u>	Reserved Name..... 84
<u>607.0403</u>	Registered name; application; renewal; revocation..... 86
 <u>Article 5 – Office and Agent</u>	
<u>607.0501</u>	Registered office and registered agent..... 88
<u>607.0502</u>	Change of registered office or registered agent..... 91
<u>607.0503</u>	Resignation of registered agent..... 94
<u>607.05031</u>	Change of name or address by registered agent..... 96
<u>607.05032</u>	Delivery of notice or other communication..... 98
<u>607.0504</u>	Service of process, notice, or demand on a corporation..... 100
<u>607.0505</u>	Registered agent; duties..... 102
 <u>Article 6 –Shares and Distributions</u>	
<u>607.0601</u>	Authorized shares..... 110
<u>607.0602</u>	Terms of class or series determined by board of directors..... 113
<u>607.0603</u>	Issued and outstanding shares..... 115
<u>607.0604</u>	Fractional shares..... 117
<u>607.0620</u>	Subscriptions for shares..... 119
<u>607.0621</u>	Issuance of shares..... 121
<u>607.0622</u>	Liability for shares issued before payment..... 123
<u>607.0623</u>	Share dividends..... 125
<u>607.0624</u>	Share rights, options, warrants and awards..... 127
<u>607.0625</u>	Form and content of certificates..... 130
<u>607.0626</u>	Shares without certificates..... 132
<u>607.0627</u>	Restriction on transfer of shares and other securities..... 134
<u>607.0628</u>	Expenses of issue..... 136
<u>607.0630</u>	Shareholders’ preemptive rights..... 138

	<u>Page</u>
<u>607.0631</u>	Corporation’s acquisition of its own shares..... 141
<u>607.06401</u>	Distributions to shareholders..... 143
 <u>Article 7 – Shareholders</u> 	
<u>607.0701</u>	Annual meeting..... 146
<u>607.0702</u>	Special meeting..... 149
<u>607.0703</u>	Court-ordered meeting..... 152
<u>607.0704</u>	Action by shareholders without a meeting..... 154
<u>607.0705</u>	Notice of meeting..... 157
<u>607.0706</u>	Waiver of notice..... 160
<u>607.0707</u>	Record date..... 162
<u>607.0709</u>	Remote participation in annual and special meetings of shareholders..... 166
<u>607.0720</u>	Shareholders’ list for meeting..... 168
<u>607.0721</u>	Voting entitlement of shares..... 171
<u>607.0722</u>	Proxies..... 174
<u>607.0723</u>	Shares held by intermediaries and nominees..... 177
<u>607.0724</u>	Acceptance of votes and other instruments..... 179
<u>607.0725</u>	Quorum and voting requirements for voting groups..... 182
<u>607.0726</u>	Action by single and multiple voting groups..... 184
<u>607.0728</u>	Voting for directors; cumulative voting..... 186
<u>607.0729</u>	Voting procedures; inspectors of election..... 188
<u>607.0730</u>	Voting trusts..... 191
<u>607.0731</u>	Voting agreements..... 193
<u>607.0732</u>	Shareholder agreements..... 195
<u>607.0741</u>	Standing..... 203
<u>607.0742</u>	Complaint; demand and excuse..... 205
<u>607.0743</u>	Stay of proceedings..... 208
<u>607.0744</u>	Dismissal..... 210
<u>607.0745</u>	Discontinuance or settlement, notice..... 212
<u>607.0746</u>	Proceeds and expenses..... 214
<u>607.0747</u>	Applicability to foreign corporations..... 216
<u>607.0748</u>	Shareholder action to appoint custodians or receivers..... 218
<u>607.0749</u>	Provisional director..... 221
<u>607.0750</u>	Direct action by shareholder..... 224

Article 8 – Directors and Officers

<u>607.0801</u>	Requirement for and duties of board of directors.....	226
<u>607.0802</u>	Qualifications of directors.....	228
<u>607.0803</u>	Number of directors.....	230
<u>607.0804</u>	Election of directors by certain voting groups; special voting rights of certain directors.....	232
<u>607.0805</u>	Terms of directors generally.....	234
<u>607.0806</u>	Staggered terms for directors.....	236
<u>607.0807</u>	Resignation of directors.....	238
<u>607.0808</u>	Removal of directors by shareholders.....	240
<u>607.08081</u>	Removal of directors by judicial proceedings.....	242
<u>607.0809</u>	Vacancy on board.....	244
<u>607.08101</u>	Compensation of directors.....	246
<u>607.0820</u>	Meetings.....	248
<u>607.0821</u>	Action by directors without a meeting.....	250
<u>607.0822</u>	Notice of meetings.....	252
<u>607.0823</u>	Waiver of notice.....	254
<u>607.0824</u>	Quorum and voting.....	256
<u>607.0825</u>	Committees.....	258
<u>607.0826</u>	Submission of matters for a shareholder vote.....	262
<u>607.0830</u>	General standards for directors.....	264
<u>607.0831</u>	Liability of directors.....	267
<u>607.0832</u>	Director conflicts of interest.....	271
<u>607.0833</u>	Loans to officers, directors, and employees; guaranty of obligations.....	278
<u>607.0834</u>	Director's liability for unlawful distributions.....	280
<u>607.08401</u>	Required officers.....	282
<u>607.0841</u>	Duties of officers.....	284
<u>607.08411</u>	General standards for officers.....	286
<u>607.0842</u>	Resignation and removal of officers.....	290
<u>607.0843</u>	Contract rights of officers.....	292
<u>607.0850</u>	Definitions.....	294
<u>607.0851</u>	Permissible indemnification.....	300
<u>607.0852</u>	Mandatory indemnification.....	302
<u>607.0853</u>	Advance for expenses.....	305

	<u>Page</u>
<u>607.0854</u>	Court-ordered indemnification and advance for expenses..... 307
<u>607.0855</u>	Determination and authorization for indemnification..... 309
<u>607.0857</u>	Insurance..... 312
<u>607.0858</u>	Variation by corporate action; application of subchapter..... 314
<u>607.0859</u>	Overriding restrictions on indemnification..... 316
 <u>Article 9 – Affiliated transactions and control-share acquisitions</u>	
<u>607.0901</u>	Affiliated transactions..... 318
<u>607.0902</u>	Control-share acquisitions..... 329
 <u>Article 10 – Amendment of Articles of Incorporation and Bylaws</u>	
<u>607.1001</u>	Authority to amend the articles of incorporation..... 337
<u>607.1002</u>	Amendment by board of directors..... 339
<u>607.10025</u>	Shares; combination or division..... 341
<u>607.1003</u>	Amendment by board of directors and shareholders..... 344
<u>607.1004</u>	Voting on amendments by voting groups..... 347
<u>607.1005</u>	Amendment before issuance of shares..... 350
<u>607.1006</u>	Articles of amendment..... 352
<u>607.1007</u>	Restated articles of incorporation..... 354
<u>607.1008</u>	Amendment pursuant to reorganization..... 357
<u>607.1009</u>	Effect of amendment..... 359
<u>607.1020</u>	Amendment of bylaws by board of directors or shareholders..... 361
<u>607.1021</u>	Bylaw increasing quorum or voting requirements for shareholders..... 363
<u>607.1022</u>	Bylaw increasing quorum or voting requirements for directors..... 365
<u>607.1023</u>	Bylaw provisions relating to the election of directors..... 367
 <u>Article 11 – Part A – Mergers and Share Exchanges</u>	
<u>607.1101</u>	Merger..... 370
<u>607.1102</u>	Share exchange..... 375
<u>607.1103</u>	Action on a plan of merger or share exchange..... 379
<u>607.10035</u>	Shareholder approval of a merger or share exchange in connection with a tender offer..... 386
<u>607.1104</u>	Merger between parent and subsidiary or between subsidiaries..... 390
<u>607.11045</u>	Holding company formation by merger by certain corporations..... 393
<u>607.1105</u>	Articles of merger or share exchange..... 397

	<u>Page</u>
<u>607.1106</u>	Effect of merger or share exchange..... 401
<u>607.1107</u>	Abandonment of a merger or share exchange..... 406
 <u>Article 11 – Part B – Domestication</u>	
<u>607.11920</u>	Domestication..... 420
<u>607.11921</u>	Action on a plan of domestication..... 422
<u>607.11922</u>	Articles of domestication; effectiveness..... 425
<u>607.11923</u>	Amendment of a plan of domestication; abandonment..... 428
<u>607.11924</u>	Effect of domestication..... 431
 <u>Article 11 – Part C – Conversions</u>	
<u>607.11930</u>	Conversion..... 435
<u>607.11931</u>	Plan of conversion..... 438
<u>607.11932</u>	Action on a plan of conversion..... 441
<u>607.11933</u>	Articles of conversion; effectiveness..... 444
<u>607.11934</u>	Amendment of plan of conversion; abandonment..... 449
<u>607.11935</u>	Effect of conversion..... 452
 <u>Article 12 – Sales of Assets</u>	
<u>607.1201</u>	Disposition of assets not requiring shareholder approval..... 456
<u>607.1202</u>	Shareholder approval of certain dispositions..... 458
 <u>Article 13 – Appraisal rights</u>	
<u>607.1301</u>	Appraisal rights; definitions..... 463
<u>607.1302</u>	Right of shareholders to appraisal..... 467
<u>607.1303</u>	Assertion of rights by nominees and beneficial owners..... 474
<u>607.1320</u>	Notice of appraisal rights..... 476
<u>607.1321</u>	Notice of intent to demand payment..... 479
<u>607.1322</u>	Appraisal notice and form..... 481
<u>607.1323</u>	Perfection of rights; right to withdraw..... 484
<u>607.1324</u>	Shareholder’s acceptance of corporation’s offer..... 486
<u>607.1326</u>	Procedure if shareholder is dissatisfied with offer..... 489
<u>607.1330</u>	Court action..... 491
<u>607.1331</u>	Court costs and counsel fees..... 494
<u>607.1332</u>	Disposition of acquired shares..... 496

	<u>Page</u>
<u>607.1333</u>	Limitation on corporate payment..... 498
<u>607.1340</u>	Other remedies limited..... 500

Article 14 – Dissolution

<u>607.1401</u>	Dissolution by incorporators or directors..... 502
<u>607.1402</u>	Dissolution by board of directors and shareholders; dissolution by written consent of shareholders..... 504
<u>607.1403</u>	Articles of dissolution..... 506
<u>607.1404</u>	Revocation of dissolution..... 508
<u>607.1405</u>	Effect of dissolution..... 510
<u>607.1406</u>	Known claims against dissolved corporation..... 513
<u>607.1407</u>	Other claims against dissolved corporation..... 520
<u>607.1408</u>	Claims against dissolved corporations; enforcement..... 525
<u>607.1409</u>	Court proceedings..... 527
<u>607.1410</u>	Director duties..... 529
<u>607.1420</u>	Administrative dissolution..... 531
<u>607.1422</u>	Reinstatement following administrative dissolution..... 536
<u>607.1423</u>	Judicial review of denial of reinstatement..... 539
<u>607.1430</u>	Grounds for judicial dissolution..... 541
<u>607.1431</u>	Procedure for judicial dissolution..... 545
<u>607.1432</u>	Receivership or custodianship..... 547
<u>607.1433</u>	Judgment of dissolution..... 550
<u>607.1434</u>	Alternative remedies to judicial dissolution..... 552
<u>607.1435</u>	Provisional director..... 554
<u>607.1436</u>	Election to purchase instead of dissolution..... 556
<u>607.14401</u>	Deposit with Department of Financial Services..... 559

Article 15 – Foreign Corporations

<u>607.1501</u>	Authority of foreign corporation to transact business required; activities not constituting transacting business..... 561
<u>607.15015</u>	Governing law..... 564
<u>607.1502</u>	Effect of failure to have a certificate of authority..... 566
<u>607.1503</u>	Application for certificate of authority..... 569
<u>607.1504</u>	Amended certificate of authority..... 571
<u>607.1505</u>	Effect of a certificate of authority..... 574

	<u>Page</u>
<u>607.1506</u>	Corporate name of foreign corporation..... 576
<u>607.1507</u>	Registered office and registered agent of foreign corporation..... 579
<u>607.1508</u>	Change of registered office and registered agent of foreign corporation..... 582
<u>607.1509</u>	Resignation of registered agent of foreign corporation..... 584
<u>607.15091</u>	Change of name or address by registered agent..... 586
<u>607.15092</u>	Delivery of notice or other communication..... 588
<u>607.15101</u>	Service of process, notice, or demand on a foreign corporation..... 590
<u>607.1520</u>	Withdrawal and cancellation of certificate of authority for foreign corporation..... 593
<u>607.1521</u>	Withdrawal deemed on conversion to domestic filing entity..... 596
<u>607.1522</u>	Withdrawal on dissolution, merger, or conversion of certain nonfiling entities..... 598
<u>607.1523</u>	Action by Department of Legal Affairs..... 600
<u>607.1530</u>	Revocation of certificate of authority to transact business..... 602
<u>607.15315</u>	Reinstatement following revocation of certificate of authority..... 607
<u>607.1532</u>	Judicial review of denial of reinstatement..... 610
 <u>Article 16 – Records and Reports</u>	
<u>607.1601</u>	Corporate records..... 612
<u>607.1602</u>	Inspection of records by shareholders..... 615
<u>607.1603</u>	Scope of inspection right..... 619
<u>607.1604</u>	Court-ordered inspection..... 621
<u>607.1605</u>	Inspection rights of directors..... 623
<u>607.1620</u>	Financial statements for shareholders..... 625
<u>607.1622</u>	Annual report for department..... 631
 <u>Articles 17, 18 and 19 – Transition and Miscellaneous Provisions</u>	
<u>607.1701</u>	Application to existing domestic corporation..... 635
<u>607.1702</u>	Application to qualified foreign corporations..... 637
<u>607.1711</u>	Application to foreign and interstate commerce..... 639
<u>607.1805</u>	Procedures for conversion to professional service corporation..... 644
<u>607.1904</u>	Estoppel..... 646
<u>607.1907</u>	Savings provision..... 648
<u>607.1908</u>	Severability clause..... 650
<u>607.193</u>	Supplemental corporate fee..... 652

Harmonization provisions to other Florida entity statutes based on changes to the Florida Business Corporation Act

Changes to Chapter 605 (Florida Revised Limited Liability Company Act).....	654
Changes to Chapter 607 (Social Purpose Corporations).....	731
Changes to Chapter 607 (Benefit Corporations).....	733
Changes to Chapter 617 (Florida Not For Profit Corporation Act).....	735
Changes to Chapter 621 (Professional Service Corporations).....	741
Changes to Chapter 620 (Florida Revised Uniform Limited Partnership Act).....	743
Changes to Section 865.09 (Fictitious name registration).....	748
Sections added to the bill during the bill drafting process primarily to make cross reference corrections.....	750

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1
2
3
4
5
6
7
8
9

ARTICLE 1

GENERAL PROVISIONS

607.0101 Short title; applicability.

- (1) This chapter may be cited as the "Florida Business Corporation Act."
- (2) Part I of this chapter contains provisions of general applicability to corporations.
- (3) Part II of this chapter applies to social purpose corporations.
- (4) Part III of this chapter applies to benefit corporations.

10 **Commentary to Section 607.0101:**

11 This proposal is the work of the Chapter 607 Drafting Subcommittee (the "Subcommittee") of the
12 Corporations, Securities and Financial Services Committee of the Business Law Section of The
13 Florida Bar.

14 Florida's corporate statute (Part I of the Florida Business Corporation Act (the "FBCA")) is
15 modeled on the Revised Model Business Corporation Act (the "Model Act"). The Model Act is
16 promulgated by the Corporate Laws Committee (the "Corporate Laws Committee") of the
17 Business Law Section of the American Bar Association. In preparing this proposal, the
18 Subcommittee initially considered the version of the Model Act published through the 2013
19 Supplement. It also reviewed and considered changes to the Model Act made in the 2016 version
20 of the Model Act.

21 In the many years since Chapter 607 was comprehensively revised, the Florida legislature has
22 passed Part II applying to social corporations and Part III applying to benefit corporations. The
23 changes clarify that when reference is made to this chapter, the reference intends to include
24 corporations organized under Parts II and III, as well as corporations organized under Part I.

25 While many jurisdictions have recently overhauled their corporate acts, none appear to have
26 inserted the word "Revised" or any of its variations into the title of their act. From this perspective,
27 although inconsistent with the approach taken with respect to naming the most recent overhauls of
28 FRUPA, FRULPA and FRLICA, this revision follows the naming approach taken in the Model
29 Act by the Corporate Laws Committee.

30 In various places, this proposal contains references to and/or excerpts from the commentary in
31 "*Florida Business Laws Annotated*", a treatise on Florida business laws authored by Stuart R. Cohn
32 and Stuart D Ames, two well-known Florida corporate lawyers (the "Ames and Cohn Treatise").

33 This proposal uses the term "chapter" to refer to Chapter 607, Parts I, II and III, and eliminates the
34 use of the term "act." It also uses defined terms in lower case consistent with FRLICA.

35

**FINAL STATUTE AS ADOPTED
(With Commentary)**

36 607.0102 Reservation of power to amend or repeal.

37 The Legislature has power to amend or repeal all or part of this ~~act~~chapter at any time, and
38 all domestic and foreign corporations subject to this ~~act~~ chapter shall be governed by the
39 amendment or repeal.

40

41 **Commentary to Section 607.0102:**

42 No material changes have been made to this section. Florida follows the Model Act almost
43 identically, the only difference being in the last part of the sentence, which is non-substantive (The
44 Model Act states that "all domestic and foreign corporations subject to this act are governed by the
45 amendment or repeal").

46

**FINAL STATUTE AS ADOPTED
(With Commentary)**

47 607.0120 Filing requirements; extrinsic facts.

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

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

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

54 (4) The document must be typewritten or printed, or, if electronically transmitted, the
55 document must be in a format that can be retrieved or reproduced in typewritten or printed form,
56 and must be legible.

57 (5) The document must be in the English language. A corporate name need not be in English
58 if written in English letters or Arabic or Roman numerals, and the certificate of status required of
59 foreign corporations need not be in English if accompanied by a reasonably authenticated English
60 translation.

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

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

64 (b) If directors or officers have not been selected or the corporation has not been formed,
65 by an incorporator; or

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

68 (7) The person executing the document shall sign it and state beneath or opposite his or her
69 signature his or her name and the capacity in which he or she signs. The document may, but need
70 not, contain the corporate seal, an attestation, an acknowledgment, or a verification.

71 (8) If the department ~~of State~~ has prescribed a mandatory form for the document under s.
72 607.0121(1), the document must be in or on the prescribed form.

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

**FINAL STATUTE AS ADOPTED
(With Commentary)**

78 (10) When the document is delivered to the department of State for filing, the correct filing
79 fee, and any other tax, license fee, or penalty required to be paid by this act or other law to be paid
80 at the time of delivery for filing shall be paid or provision for payment made in a manner permitted
81 by the department of State.

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

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

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

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

90 a. Statistical or market indices;

91 b. Market prices of any security or group of securities;

92 c. Interest rates;

93 d. Currency exchange rates; and

94 e. Similar economic or financial data;

95 2. A determination or action by any person or body, including the corporation or
96 any other party to a plan or filed document; or

97 3. The terms of, or actions taken under, an agreement to which the corporation is a
98 party, or any other agreement or document.

99 (c) The following provisions of a plan or filed document may not be made dependent on
100 facts outside the plan or filed document:

101 1. The name and address of any person required in a filed document;

102 2. The registered office of any entity required in a filed document;

103 3. The registered agent of any entity required in a filed document;

104 4. The number of authorized shares and designation of each class or series of
105 shares;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 106 5. The effective date of a filed document; and
- 107 6. Any required statement in a filed document of the date on which the underlying
108 transaction was approved or the manner in which that approval was given.

109 (d) If a provision of a filed document is made dependent on a fact ascertainable outside
110 of the filed document, and that fact is neither ascertainable by reference to a source described
111 in subparagraph (b)1. or a document that is a matter of public record, and the affected
112 shareholders have not received notice of the fact from the corporation, then the corporation
113 must file with the department articles of amendment to the filed document setting forth the
114 fact promptly after the time when the fact referred to is first ascertainable or thereafter
115 changes. Articles of amendment under this paragraph are deemed to be authorized by the
116 authorization of the original filed document to which they relate and may be filed by the
117 corporation without further action by the board of directors or the shareholders.

118 (e) As used in this subsection, the term "filed document" means a document filed with
119 the department pursuant to this chapter, except for a document filed pursuant to ss. 607.1501-
120 607.1532; and the term "plan" means a plan of merger, a plan of share exchange, a plan of
121 conversion, or a plan of domestication.

122

123 **Commentary to Section 607.0120:**

124 Section 607.0120 substantially follows the 1989 version of the Model Act except as otherwise
125 noted above.

126 The words "and must be legible" in subsection (4) were added to the FBCA in 1993. They are not
127 in the corollary Model Act provision. Since these words have been in the FBCA for more than 20
128 years, they have been retained.

129 The Model Act authorizes the "chairman of the board of directors" to sign a document; not any
130 officer. The wording "signed by a director was added in 2003 (prior to 2003, this provision in the
131 FBCA read "by the chair or any vice chair of the board of directors"). The 2003 changes were
132 made (according to the report of the Corporations, Securities and Financial Services Committee
133 when it made the proposal) at the request of the Department to minimize the burden on the
134 Department to interpret the statute and to liberalize the execution provisions to allow more
135 flexibility as to who can sign. The existing wording is retained in the statute.

136 New subsection (11) is derived from the Model Act. It permits any of the terms of a filed document
137 or a plan to be made dependent on facts outside the document or plan, except to the extent provided
138 in subsection (11)(c). The fact on which the filed document or plan is to be dependent need not
139 be within the control of the corporation, but must be objectively ascertainable and the filed
140 document or plan must state the manner in which the facts will operate. Subsection (11)(d)
141 establishes a procedure that assists shareholders in determining what facts are the underlying facts
142 on which a filed document or plan is dependent.

143

**FINAL STATUTE AS ADOPTED
(With Commentary)**

144 607.0121 Forms.

145 (1) The department ~~of State~~ may prescribe and furnish on request forms for:

146 (a) An application for certificate of status,

147 (b) A foreign corporation's application for certificate of authority to transact
148 business in the state,

149 (c) A foreign corporation's notice of withdrawal of application ~~for~~ certificate of
150 authority withdrawal, and

151 (d) The annual report, for which the department may prescribe the use of the uniform
152 business report, pursuant to s. 606.06.

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

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

156

157 **Commentary to Section 607.0121:**

158 Clean up changes have been made. Except for a few non-substantive language differences, and the
159 non-Model Act cross reference to s. 606.06 that is referred to below, this statute mirrors the Model
160 Act. Florida is one of thirteen jurisdictions to have adopted subsection (1) without substantive
161 change, and the vast majority of American jurisdictions have adopted subsection (2) without
162 substantive change.

163 The cross reference to s. 606.06 that is contained in subsection (1)(d) was added to the statute in
164 1999. It deals with the uniform annual report provision that is part of and intended to facilitate the
165 creation of a master business index under the Florida Business Coordination Act (Chapter 606).
166 Chapter 606 is intended to establish a master business index within the DOS and to facilitate a
167 reporting mechanism that consolidates and coordinates business entity licensing and reporting
168 requirements wherever possible. A similar provision is included in s. 605.0212(7) of FRLCA.

169

**FINAL STATUTE AS ADOPTED
(With Commentary)**

170 607.0122 Fees for filing documents and issuing certificates.

171 The department of State shall collect the following fees when the documents described in
172 this section are delivered to the department for filing:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

191 (17) Annual report: \$61.25.

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

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

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

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 195 (21) Certified copy of document: \$52.50.
- 196 (22) Serving as agent for substitute service of process: \$87.50.
- 197 (23) Supplemental corporate fee: \$88.75.
- 198 (24) Any other document required or permitted to be filed by this chapter ~~act~~: \$35.
- 199

**FINAL STATUTE AS ADOPTED
(With Commentary)**

200 **Commentary to Section 607.0122:**

201 No substantive changes have been made to the existing statute. Fees for new filings authorized by
202 the FBCA as proposed but not expressly added to this list will fall within subsection (24).

203

204 607.0123 Effective time and date of document.

205 Except as otherwise provided in s. 607.0124(5) and subject to s. 607.0124(4), any
206 document delivered to the department for filing under this chapter may specify an effective time
207 and a delayed effective date. In the case of initial articles of incorporation, a prior effective date
208 may be specified in the articles of incorporation if such date is within 5 business days before the
209 date of filing.

210 (1) Subject to s. 607.0124, a document accepted for filing is effective:

211 (a) If the filing does not specify an effective time and does not specify a prior or a
212 delayed effective date, on the date and at the time the filing is accepted, as evidenced by the
213 department's endorsement of the date and time on the filing;

214 (b) If the filing specifies an effective time, but not a prior or delayed effective date,
215 on the date the filing is filed at the time specified in the filing;

216 (c) If the filing specifies a delayed effective date, but not an effective time, at 12:01
217 a.m. on the earlier of:

218 1. The specified date; or

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

220 (d) If the filing specifies a delayed effective date and an effective time, at the
221 specified time on the earlier of:

222 1. The specified date; or

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

224 (e) If the filing is of initial articles of incorporation and specifies an effective date
225 before the date of the filing, but no effective time, at 12:01 a.m. on the later of:

226 1. The specified date; or

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

228 (f) If the filing is of initial articles of incorporation and specifies an effective time
229 and a date before the date of the filing, at the specified time on the later of:

230 1. The specified date; or

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

**FINAL STATUTE AS ADOPTED
(With Commentary)**

232 (2) If a filed document does not specify the time zone or place at which a date or time,
233 or both, is to be determined, the date or time or both at which it becomes effective shall be those
234 prevailing at the place of filing in this state.

235 ~~(1) Except as provided in subsections (2) and (4) and in s. 607.0124(3), a document~~
236 ~~accepted for filing is effective (a) on the date and at the time of filing, as evidenced by such means~~
237 ~~as the department of State may use for the purpose of recording the date and time of filing; or (b)~~
238 ~~on the date and at the time specified in the document as its effective time on the date it is filed.~~

239 ~~(2) A document may specify a delayed effective date and, if desired, a time on that date, and~~
240 ~~if it does the document shall become effective on the date and at the time, if any, specified. If a~~
241 ~~delayed effective date is specified without specifying a time on that date, the document shall~~
242 ~~become effective at the start of business on that date. Unless otherwise permitted by this chapter~~
243 ~~act, a delayed effective date for a document may not be later than the 90th day after the date on~~
244 ~~which it is filed.~~

245 (3) If a document is determined by the department of State to be incomplete and
246 inappropriate for filing, the department of State may return the document to the person or
247 corporation filing it, together with a brief written explanation of the reason for the refusal to file,
248 in accordance with s. 607.0125(3). If the applicant returns the document with corrections in
249 accordance with the rules of the department within 60 days after it was mailed to the applicant by
250 the department and if at the time of return the applicant so requests in writing, the filing date of
251 the document will be the filing date that would have been applied had the original document not
252 been deficient, except as to persons who relied on the record before correction and were adversely
253 affected thereby.

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

255

256 **Commentary to Section 607.0123:**

257 The changes harmonize this provision with s. 605.0207 of FRLCA and are consistent with the
258 changes to the corollary provision in the Model Act.

259 While subsection (3) dealing with defective or incomplete filings, is not derived from the Model
260 Act, it has been in the FBCA in substantially this form since 1989 and is retained.

261

**FINAL STATUTE AS ADOPTED
(With Commentary)**

262 607.0124 Correcting filed document; withdrawal of filed record before effectiveness.

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

265 (a) The document contains an inaccuracy;

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

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

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

270 (2) A document is corrected:

271 (a) By preparing articles of correction that:

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

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

275 3. Correct the inaccuracy or defect; and

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

278 (3) Articles of correction are effective on the effective date of the document they correct
279 except as to persons relying on the uncorrected document and adversely affected by the correction.
280 As to those persons, articles of correction are effective when filed.

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

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

285 (a) A withdrawal statement must:

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

288 2. Identify the filing to be withdrawn; and

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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

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

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

296

297 **Commentary to Section 607.0124:**

298 With few exceptions, this section mirrors the Model Act.

299 The language contained in the existing statute in subsection (1) providing that a document can only
300 be corrected within 30 days of filing has been removed from the statute, thus allowing a correction
301 at any time. The Model Act does not provide a limited timeframe for correcting the record.
302 Similarly, section 605.0209 in FRLCA (correcting filed record) does not provide a limited
303 timeframe for correcting a record with the DOS.

304 The change in subsection (1)(c) conforms this section with the wording on the same topic in s.
305 605.0209 of FRLCA.

306 The addition of subsection (4) conforms this section with the wording on the same topic in s.
307 605.0209(3)(a) of FRLCA.

308 New subsection (5) has been added to allow corporations to withdraw a filing before it becomes
309 effective. It is modeled after s. 605.0208 of FRLCA and is consistent with the Department's
310 current position on this issue.

311 New subsection (6) renumbers old subsection (4).

312

313 607.0125 Filing duties of the department of State.

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

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

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

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

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

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

335 (c) Create a presumption that the document does or does not conform to the
336 requirements of this chapter or that the ~~is valid or invalid or that~~ information contained in the
337 document is correct or incorrect.

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

342

343 **Commentary to Section 607.0125:**

344 The Florida statute follows the Model Act, with some differences. Changes were made to conform
345 this section with the language contained in s. 605.0210(1) of FRLCA.

346 Subsection (3) has been modified to conform the language of this statute to s. 605.0210(3) of
347 FRLCA. The Florida statute allows 15 days for the return of a refused filing, while the Model
348 Act allows 5 days. The existing Florida time period is retained.

349 Subsection (5) is unique to Florida and is also contained in FRLCA. This provision was adopted
350 in 1989 at the request of the Department. However, according to the Ames and Cohn Treatise, the
351 Department has not adopted any such rules that remain in effect.

352

**FINAL STATUTE AS ADOPTED
(With Commentary)**

353 607.0126 Appeal from department's of State's refusal to file document.

354 If the department of State refuses to file a document delivered to its office for filing, ~~within~~
355 ~~30 days after return of the document by the department by mail, as evidenced by the postmark, the~~
356 ~~domestic or foreign corporation~~ the person who submitted the document for filing may:

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

358 (2) ~~Appeal the refusal to petition the Circuit Court of the county of Leon County where the~~
359 ~~corporation's principal office (or, if none in this state, its registered office) is or will be located to~~
360 compel filing of the document. The document and the explanation from the department of the
361 refusal to file must be attached to the petition. The court may decide the matter in a summary
362 proceeding. The appeal is commenced by petitioning the court to compel filing the document and
363 by attaching to the petition the document and the Department of State's explanation of its refusal
364 to file. The matter shall promptly be tried de novo by the court without a jury. and the court may
365 summarily order the department of State to file the document or take other action the court
366 considers appropriate. The court's final decision may be appealed as in other civil proceedings.

367

368 **Commentary to Section 607.0126:**

369 This section harmonizes the FBCA with s. 605.0210(7) of FRLUCA on the same topic.

370 The 30-day statute of limitations contained in the current statute and the Model Act has been
371 eliminated. This statute of limitations provision is not contained in s. 605.0210(7) of FRLUCA and
372 has not been historically followed or enforced by the Department.

373

FINAL STATUTE AS ADOPTED
(With Commentary)

374 607.0127 Certificates to be received in evidence; evidentiary effect of **certified** copy of
375 filed document.

376 All certificates issued by the department pursuant to this chapter must be taken and received
377 in all courts, public offices and official bodies as prima facie evidence of the facts stated. A
378 certificate from the department of State delivered with a copy of a document filed by the
379 department, of State bearing the signature of the secretary of state, which may be in facsimile, and
380 the seal of the state, is conclusive evidence that the original document is on file with the
381 department.

382

383 **Commentary to Section 607.0127:**

384 This section has been revised to harmonize with s. 605.0215 of FRLLCA on the same topic.
385 Further, language from s. 617.0127 to the effect that a document filed with the Department
386 attaching a copy of a document and "bearing the signature of the secretary of state, which may be
387 in facsimile," has been added. This language was previously in Chapter 607 and has been added
388 back to the statute for clarity at the request of the Department.

389

**FINAL STATUTE AS ADOPTED
(With Commentary)**

390 607.0128 Certificate of status.

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

395 (a) The corporation's name.

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

398 (c) Whether all fees due to the department under this chapter have been paid.

399
400 (d) Whether the corporation's most recent annual report required under s. 607.1622
401 has been filed by the department.

402
403 (e) Whether the department has administratively dissolved the corporation or received
404 a record notifying the department that the corporation has been dissolved by judicial action
405 pursuant to s. 607.1433.

406
407 (f) Whether the department has filed articles of dissolution for the corporation.

408
409 (2) The department, upon request and payment of the requisite fee, shall furnish a certificate
410 of status for a foreign corporation if the records filed show that the department has filed a certificate
411 of authority. A certificate of status for a foreign corporation must state the following:

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

414
415 (b) That the foreign corporation is authorized to transact business in this state.

416
417 (c) Whether all fees and penalties due to the department under this chapter or other
418 law have been paid.

419
420 (d) Whether the foreign corporation's most recent annual report required under s.
421 607.1622 has been filed by the department.

422
423 (e) Whether the department has:

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

425 2. Filed a notice of withdrawal of certificate of authority.
426
427
428

**FINAL STATUTE AS ADOPTED
(With Commentary)**

429 ~~(1) Anyone may apply to the department of State to furnish a certificate of status for a~~
430 ~~domestic corporation or a certificate of authorization for a foreign corporation.~~

431 ~~(2) A certificate of status or authorization sets forth:~~

432 ~~(a) The domestic corporation's corporate name or the foreign corporation's corporate~~
433 ~~name used in this state;~~

434
435 ~~(b) 1. That the domestic corporation is duly incorporated under the law of this state~~
436 ~~and the date of its incorporation, or~~

437
438 ~~2. That the foreign corporation is authorized to transact business in this state;~~

439
440 ~~(c) That all fees and penalties owed to the department have been paid, if:~~

441
442 ~~1. Payment is reflected in the records of the department, and~~

443 ~~2. Nonpayment affects the existence or authorization of the domestic or foreign~~
444 ~~corporation;~~

445 ~~(d) That its most recent annual report required by s. 607.1622 has been — delivered to~~
446 ~~the department; and~~

447 ~~(e) That articles of dissolution have not been filed.~~

448 (3) Subject to any qualification stated in the certificate, a certificate of status ~~or authorization~~
449 issued by the department ~~is may be relied upon as~~ conclusive evidence that the domestic ~~or foreign~~
450 corporation is in existence and is of active status in this state or that the foreign corporation is
451 authorized to transact business in this state and is of active status in this state.

452

453 **Commentary to Section 607.0128:**

454 This section of the FBCA harmonizes the language on this topic with s. 605.0211 of FRLLCA on
455 the same topic.

456 The statute does not include subsection (2) of the corollary Model Act provision. In subsection
457 (2)(b)(1), the Model Act provides that the certificate of status will provide information as to
458 whether the corporation's existence is less than perpetual. The Model Act also adds an additional
459 subsection under (2) that allows "other facts of record in the office of the Secretary of State that
460 may be requested by the applicant". This does not seem necessary in Florida and would place an
461 undue burden on the Department.

462

463 Model Act s. 1.29 Penalty for Signing False Document.

464 This section, which provides for sanctions for signing a false document, was part of the FBCA as
465 adopted in 1989 (consistent with the predecessor Florida corporate statute). However, this section
466 was removed from the FBCA in 2005, effective January 1, 2006. The Subcommittee believes that
467 this section was removed from the FBCA in favor of the general statute that covers the same topic
468 (s. 817.155, FS).

469 Florida is one of only eleven jurisdictions (Arizona, District of Columbia, Louisiana, Minnesota,
470 Nevada, New Jersey, New Mexico, New York, North Carolina, and Pennsylvania) that do not have
471 a comparable section to Model Act Section 1.29 in their corporate statute.

472

FINAL STATUTE AS ADOPTED
(With Commentary)

473 607.0130 Powers of department of State.

474 (1) ~~The department of State may propound to any corporation subject to the provisions~~
475 ~~of this act, and to any officer or director thereof, such interrogatories as may be reasonably~~
476 ~~necessary and proper to enable it to ascertain whether the corporation has complied with all~~
477 ~~applicable provisions of this act. Such interrogatories must be answered within 30 days after~~
478 ~~mailing or within such additional time as fixed by the department. Answers to interrogatories must~~
479 ~~be full and complete, in writing, and under oath. Interrogatories directed to an individual must be~~
480 ~~answered by the individual, and interrogatories directed to a corporation must be answered by the~~
481 ~~president, vice president, secretary, or assistant secretary.~~

482 (2) ~~The department of State is not required to file any document:~~

483 (a) ~~To which interrogatories, as propounded pursuant to subsection (1), relate, until~~
484 ~~the interrogatories are answered in full;~~

485 (b) ~~When interrogatories or other relevant evidence discloses that such document is not~~
486 ~~in conformity with the provisions of this Act; or~~

487 (c) ~~When the department has determined that the parties to such document have~~
488 ~~not paid all fees, taxes, and penalties due and owing this state.~~

489 (3) ~~The department of State may, based upon its findings hereunder or as provided in s.~~
490 ~~213.053(15), bring an action in circuit court to collect any penalties, fees, or taxes determined to~~
491 ~~be due and owing the state and to compel any filing, qualification, or registration required by law.~~
492 ~~In connection with such proceeding the department may, without prior approval by the court, file~~
493 ~~a lis pendens against any property owned by the corporation and may further certify any findings~~
494 ~~to the Department of Legal Affairs for the initiation of any action permitted pursuant to s. 607.0505~~
495 ~~which the Department of Legal Affairs may deem appropriate.~~

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

500

501 **Commentary to Section 607.0130:**

502 This section substantially harmonizes the FBCA with s. 605.0214 of FRLCA on the same topic.

503

**FINAL STATUTE AS ADOPTED
(With Commentary)**

504 607.01401 Definitions.

505 As used in this chapter ~~act~~, unless the context otherwise requires, the term:

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

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

511 (3) "Applicable county" means: the county in this state in which the corporation's principal
512 office is located or was located when an action is or was commenced; if the corporation has, and
513 at the time of such action had, no principal office in this state, then in the county in which the
514 corporation has, or at the time of such action had, an office in this state; or if the corporation does
515 not have an office in this state, then in the county in which the corporation's registered office is or
516 was last located.

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

521 (5) "Authorized entity" means:

522 (a) A corporation for profit;

523 (b) A limited liability company;

524 (c) A limited liability partnership; or

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

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

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

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

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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

536 (10) "Conversion" means a transaction pursuant to ss. 607.11930-607.11935.

537 (11) "Converted eligible entity" means the converting eligible entity as it continues in
538 existence after a conversion.

539 (12) "Converting eligible entity" means the domestic corporation that approves a plan of
540 conversion pursuant to s. 607.11932, or a foreign eligible entity that approves a conversion
541 pursuant to the organic law of the foreign eligible entity.

542 (~~513~~) "Corporation" or "domestic corporation" means a corporation for profit, which is not
543 a foreign corporation, incorporated under ~~or subject to the provisions of this act~~ chapter.

544 (~~614~~) "Day" means a calendar day.

545 (~~715~~) "Deliver" or "delivery" means any method of delivery used in conventional
546 commercial practice, including delivery by hand, mail, commercial delivery, and, if authorized in
547 accordance with s. 607.0141, electronic transmission.

548 (16) "Department" means the Florida Department of State.

549 (17) "Derivative proceeding" means a civil suit in the right of a domestic corporation or,
550 to the extent provided in s. 607.0747, in the right of a foreign corporation.

551 (~~818~~) "Distribution" means a direct or indirect transfer of money or other property (except
552 its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its
553 shareholders in respect of any of its shares. A distribution may be in the form of: a declaration or
554 payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of
555 indebtedness; a distribution in liquidation; or otherwise.

556 (19) "Document" means:

557 (a) Any tangible medium on which information is inscribed, and includes any writing
558 or written instrument; or

559 (b) An electronic record.

560 (20) "Domestic" means, with respect to an entity, an entity governed as to its internal affairs
561 by the laws of this state.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

562 (21) "Domesticated corporation" means the domesticating corporation as it continues in
563 existence after a domestication.

564 (22) "Domesticating corporation" means the domestic corporation that approves a plan of
565 domestication pursuant to s. 607.11921, or the foreign corporation that approves a domestication
566 pursuant to the organic law of the foreign corporation.

567 (23) "Domestication" means a transaction pursuant to ss. 607.11920-607.11924.

568 (24) "Effective date" means, when referring to a document accepted for filing by the
569 department, the date and time determined in accordance with s. 607.0123.

570 (25) "Electronic" means relating to technology having electrical, digital, magnetic,
571 wireless, optical, electromagnetic, or similar capabilities.

572 (26) "Electronic record" means information that is stored in an electronic or other medium
573 and is retrievable in paper form through an automated process used in conventional commercial
574 practice, unless otherwise authorized in accordance with s. 607.0141.

575 ~~(27)~~ "Electronic transmission" or "electronically transmitted" means any form or process
576 of communication not directly involving the physical transfer of paper or another tangible medium,
577 which:

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

580 (b) Is retrievable in paper form by the recipient through an automated process used
581 in conventional commercial practice, unless otherwise authorized in accordance with s.
582 607.0141.

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

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

587 1. A domestic corporation;

588 2. A foreign corporation;

589 3. A non-profit corporation;

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

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

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 592 6. A limited liability company;
593 7. A real estate investment trust; or
594 8. Any other foreign or domestic entity that is organized under an organic law.

595 (b) The term does not include:

- 596 1. An individual;
597 2. A trust with a predominantly donative purpose or a charitable trust;
598 3. An association or relationship that is not a partnership solely by reason of
599 s. 620.8202(2) or a similar provision of the law of another jurisdiction;
600 4. A decedent's estate; or
601 5. A government or a governmental subdivision, agency or instrumentality.

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

603 ~~(4030)~~ "Employee" includes an officer but not a director. A director may accept duties that
604 make him or her also an employee.

605 ~~(4431)~~ "Entity" includes corporation and foreign corporation; unincorporated association;
606 business trust, estate, limited liability company, partnership, trust, and two or more persons having
607 a joint or common economic interest; and state, United States, and foreign governments.

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

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

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

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

617 ~~(4236)~~ "Foreign corporation" means an entity a corporation for profit incorporated or
618 organized under laws other than the laws of this state which would be a corporation for profit if
619 incorporated under the laws of this state.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

620 (37) "Foreign nonprofit corporation" means an entity incorporated or organized under laws
621 other than the laws of this state which would be a nonprofit corporation if incorporated under the
622 law of this state.

623 ~~(1338)~~ "Governmental subdivision" includes authority, county, district, and municipality.

624 (39) "Governor" means:

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

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

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

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

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

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

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

632 (h) Any other person under whose authority the powers of an entity are exercised and
633 under whose direction the activities and affairs of the entity are managed pursuant to the
634 organic law and organic rules of the entity.

635 ~~(1440)~~ "Includes" "or including" denotes a partial definition or a non-exclusive list.

636 ~~(1541)~~ "Individual" includes the estate of an incompetent or deceased individual.

637 ~~(1642)~~ "Insolvent" means either:

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

640 (b) The value of the corporation's total assets are less than the sum of its total
641 liabilities, at fair valuation.

642 (43) "Interest" means:

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

644 (b) A membership in a nonprofit corporation;

645 (c) A partnership interest in a general partnership, including a limited liability
646 partnership;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

647 (d) A partnership interest in a limited partnership, including a limited liability limited
648 partnership;

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

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

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

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

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

655 (44) "Interest holder" means:

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

657 (b) A member of a nonprofit corporation;

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

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

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

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

662 (g) A shareholder or beneficial owner of a real estate investment trust;

663 (h) A beneficiary or beneficial owner of a statutory trust, business trust, or common
664 law business trust; or

665 (i) Another direct holder of an interest.

666 (45) "Interest holder liability" means:

667 (a) Personal liability for a liability of an entity which is imposed on a person:

668 1. Solely by reason of the status of the person as an interest holder; or

669 2. By the organic rules of the entity which make one or more specified interest
670 holders or categories of interest holders liable in their capacity as interest holders for all
671 or specified liabilities of the entity.

672 (b) An obligation of an interest holder under the organic rules of an entity to contribute
673 to the entity.

674

**FINAL STATUTE AS ADOPTED
(With Commentary)**

675 For purposes of this subsection, except as otherwise provided in the articles of incorporation
676 of a domestic corporation or the organic law or organic rules of an entity, interest holder
677 liability arises under paragraph (a) when the corporation or entity, as applicable, incurs the
678 liability.

679
680 (46) "Jurisdiction of formation" means, with respect to an entity:

681
682 (a) The jurisdiction under whose organic law the entity is formed, incorporated, or created
683 or otherwise comes into being; however, for these purposes, if an entity exists under the law
684 of a jurisdiction different from the jurisdiction under which the entity originally was formed,
685 incorporated, or created or otherwise came into being, then the jurisdiction under which the
686 entity then exists is treated as the jurisdiction of formation; or

687
688 (b) In the case of a limited liability partnership or foreign limited liability partnership, the
689 jurisdiction in which the partnership's statement of qualification or equivalent document is
690 filed.

691
692 ~~(1747)~~ "Mail" means the United States mail, facsimile transmissions, and private mail
693 carriers handling nationwide mail services.

694 ~~(1848)~~ "Means" denotes an exhaustive definition.

695 (49) "Membership" means the rights of a member in a domestic or foreign nonprofit
696 corporation.

697 (50) "Merger" means a transaction pursuant to s. 607.1101.

698 (51) "New interest holder liability," in the context of a merger or share exchange, means
699 interest holder liability of a person, resulting from a merger or share exchange that is:

700 (a) In respect of an eligible entity which is different from the eligible entity and not the
701 same eligible entity in which the person held shares or eligible interests, immediately before
702 the merger or share exchange became effective; or

703 (b) In respect of the same eligible entity as the one in which the person held shares or
704 eligible interests, immediately before the merger or share exchange became effective if:

705 1. The person did not have interest holder liability immediately before the merger
706 or share exchange became effective, or

707 2. The person had interest holder liability immediately before the merger or share
708 exchange became effective, the terms and conditions of which were changed when the
709 merger or share exchange became effective.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

710 (52) "Nonprofit corporation" or "domestic nonprofit corporation" means a corporation
711 incorporated under the laws of this state and subject to the provisions of chapter 617.

712 (53) "Organic law" means the laws of the jurisdiction in which the entity was formed.

713 (54) "Organic rules" means the public organic record and private organic rules of an entity.

714 (55) "Party to a merger" means any domestic or foreign entity that will merge under a plan of
715 merger. The term does not include a survivor created by the merger.

716
717 ~~(1956)~~ "Person" includes an individual and an entity.

718 ~~(2057)~~ "Principal office" means the office (in or out of this state) where the principal
719 executive offices of a domestic or foreign corporation are located as designated in the articles of
720 incorporation or other initial filing until an annual report has been filed, and thereafter as
721 designated in the annual report.

722 (58) "Private organic rules" means the rules, whether or not in a record, which govern the
723 internal affairs of an entity, are binding on all its interest holders, and are not part of its public
724 organic record, if any. If the private organic rules are amended or restated, the term means the
725 private organic rules as last amended or restated. The term includes:

726

727 (a) The bylaws of a corporation for profit;

728

729 (b) The bylaws of a nonprofit corporation;

730

731 (c) The partnership agreement of a general partnership;

732

733 (d) The partnership agreement of a limited partnership;

734

735 (e) The operating agreement, limited liability company agreement, or similar agreement
736 of a limited liability company;

737

738 (f) The bylaws, trust instrument, or similar rules of a real estate investment trust; and

739

740 (g) The trust instrument of a statutory trust or similar rules of a business trust or common
741 law business trust.

742

743 ~~(2159)~~ "Proceeding" includes a civil suit, a criminal action, an administrative action, and an
744 investigatory action.

745

746 (60) "Protected agreement" means:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

747
748 (a) A record evidencing indebtedness and any related agreement in effect on January 1,
749 2020;

750
751 (b) An agreement that is binding on an entity on January 1, 2020;

752
753 (c) The organic rules of an entity in effect on January 1, 2020; or

754
755 (d) An agreement that is binding on any of the governors or interest holders of an entity
756 on January 1, 2020.

757
758 (61) "Public organic record" means a record, the filing of which by a governmental body is
759 required to form an entity, and an amendment to or restatement of such record. Where a public
760 organic record has been amended or restated, the term means the public organic record as last
761 amended or restated. The term includes the following:

762
763 (a) The articles of incorporation of a corporation for profit;

764
765 (b) The articles of incorporation of a nonprofit corporation;

766
767 (c) The certificate of limited partnership of a limited partnership;

768
769 (d) The articles of organization, certificate of organization, or certificate of formation of
770 a limited liability company;

771
772 (e) The articles of incorporation of a general cooperative association or a limited
773 cooperative association;

774
775 (f) The certificate of trust of a statutory trust or similar record of a business trust; or

776
777 (g) The articles of incorporation of a real estate investment trust.

778
779 (62) "Record," if used as a noun, means information that is inscribed on a tangible
780 medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

781 ~~(2263)~~ "Record date" means the date fixed for determining on which a corporation
782 determines the identity of the corporation's its shareholders and their share holdings for purposes
783 of this act chapter. Unless another time is specified when the record date is fixed, the The
784 determination shall be made as of the close of the business at the principal office of the corporation
785 on the date so on the record date unless another time is fixed.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

786 (64) "Record shareholder" means:

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

788 (b) The person identified as a beneficial owner of shares in the beneficial ownership
789 certificate pursuant to s. 607.0723 on file with the corporation to the extent of the rights
790 granted by such certificate.

791 ~~(2365)~~ "Secretary" means the corporate officer to whom the board of directors has delegated
792 responsibility under s. 607.08401 to maintain ~~for custody of~~ the minutes of the meetings of the
793 board of directors and of the shareholders and for authenticating records of the corporation.

794 (66) "Secretary of State" means the Secretary of State of the State of Florida.

795 ~~(2467)~~ "Shareholder" ~~or "stockholder"~~ means a record shareholder ~~one who is a holder of~~
796 ~~record of shares in a corporation or the beneficial owner of shares to the extent of the rights granted~~
797 ~~by a nominee certificate on file with a corporation.~~

798 ~~(2568)~~ "Shares" means the units into which the proprietary interests in a corporation are
799 divided.

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

801 ~~(2670)~~ "Sign" or "signature" means, with present intent to authenticate or adopt a document:

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

804 (b) To attach or to logically associate with an electronic transmission an electronic sound,
805 symbol, or process, and includes an electronic signature in an electronic transmission ~~any~~
806 ~~symbol, manual, facsimile, conformed, or electronic signature adopted by a person with the~~
807 ~~intent to authenticate a document.~~

808 ~~(2771)~~ "State," when referring to a part of the United States, includes a state and
809 commonwealth (and their agencies and governmental subdivisions) and a territory and insular
810 possession (and their agencies and governmental subdivisions) of the United States.

811 ~~(2872)~~ "Subscriber" means a person who subscribes for shares in a corporation, whether
812 before or after incorporation.

813 (73) "Survivor," in a merger, means the domestic or foreign eligible entity into which one or
814 more other eligible entities are merged.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

815 ~~(2974)~~ "Treasury shares" means shares of a corporation that belong to the issuing
816 corporation, which shares are authorized and issued shares that are not outstanding, are not
817 canceled, and have not been restored to the status of authorized but unissued shares.

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

819 (a) Recognized at common law; or

820 (b) Formed under an organic law, regardless of whether some entities formed under that
821 organic law are subject to provisions of that law that create different categories of the form of
822 entity.

823 ~~(3076)~~ "United States" includes district, authority, bureau, commission, department, and any
824 other agency of the United States.

825 (77) "Unrestricted voting trust beneficial owner" means, with respect to any shareholder
826 rights, a voting trust beneficial owner whose entitlement to exercise the shareholder right in
827 question is not inconsistent with the voting trust agreement.

828 ~~(3178)~~ "Voting group" means all shares of one or more classes or series that under the
829 articles of incorporation or this ~~act~~ chapter are entitled to vote and be counted together collectively
830 on a matter at ~~a~~ the meeting of shareholders. All shares entitled by the articles of incorporation or
831 this ~~act~~ chapter to vote generally on the matter are for that purpose a single voting group.

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

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

837

838 **Commentary to Section 607.01401:**

839 The changes above reflect numerous changes that have been made in the Model Act since the last
840 revisions to this section in Florida.

841 The definitions in subsections (19), (25), (26) and (62) were added and the definitions in
842 subsections (15), (19), and (70) [new subsection numbering] relate to 2010 changes to the Model
843 Act to facilitate electronic transmission and e-signatures. Corresponding changes have been made
844 to Section 607.0120 and 607.0141.

845 The definition of "expenses" in subsection (32) adds a global definition of "expenses" for purposes
846 of the provisions in Articles 7, 8, 13, 14, and 16.

847 The definition of eligible entity (s. 607.01401(28)) is derived from the definition of entity in s.
848 605.0102(23) of FRLUCA. The definition of eligible entity also excludes certain categories of
849 persons and entities, based on what is in the corollary section of FRLUCA. For reference, s.
850 620.8202(3) deals with sharing of profits from a business where the profits are received in payment
851 (i) of a debt by installments or otherwise, (ii) for services as an independent contractor or of wages
852 or other compensation to an employee, (iii) of rent, (iv) of an annuity or other retirement benefit
853 to a beneficiary, representative, or designee of a deceased or retired partner, (v) of interest or other
854 charges on a loan, even if the amount of payment varies with the profits of the business, or (vi) for
855 the sale of the goodwill of a business or other property by installments or otherwise.

856 The Model Act and the existing statute include governmental entities as entities. Section
857 605.0102(23) of FRLUCA considers them non-entities. This statute follows the definition in
858 FRLUCA and excludes governmental entities from the definition of eligible entity.

859 The definition of "applicable county" (s. 607.01401(3)) has been added to make clear where
860 actions can be brought by a corporation or against a corporation under certain circumstances.

861 The definition of "insolvent" in subsection (42) has been modified to add a balance sheet test to
862 the definition. This makes the definition consistent with s. 607.06401 and s. 736.103 (Florida's
863 fraudulent transfer law).

864 A definition of "authorized entity" has been added to clarify that types of entities that may act as
865 the registered agent for a Florida corporation or for a foreign corporation authorized to transact
866 business in Florida.

867 The following definitions are derived from FRLUCA:

- 868 • The term "governor" is derived from s. 605.0102(28).
- 869 • The term "interest" is derived from s. 605.0102(29).
- 870 • The term "interest holder" is derived from s. 605.0102(32)

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 871 • The term "interest holder liability" is derived from s. 605.0102(32).
- 872 • The term "jurisdiction of formation" is derived from s. 605.0102(34).
- 873 • The term "organic law" is derived from s. 605.0102(46).
- 874 • The term "organic rules" is derived from s. 605.0102(47).
- 875 • The term "private organic rules" is derived from s. 605.0102(55).
- 876 • The term "protected agreement" is derived from s. 605.0102(57).
- 877 • The term "public organic record" is derived from 605.0102(58).
- 878 • The term "type of entity" is derived from s. 605.0102(68).

879 The following definitions are derived from s. 11.01 of the Model Act: (i) subsection (1) –
880 acquired eligible entity; subsection (2) – acquiring eligible entity; (iii) subsection (51) – new
881 interest holder liability; (iv) subsection (55) – party to a merger; and (iv) subsection (73) –
882 survivor.

883 The following definitions are derived from s. 9.01 of the Model Act: (i) subsection (10) –
884 conversion; (ii) subsection (11) – converted eligible entity; (iii) subsection (12) – converting
885 eligible entity; (iv) subsection (20) – domestic; (v) subsection (21) – domesticated corporation;
886 (vi) subsection (22) – domesticating corporation; and (vii) subsection (23) – domestication.

887

**FINAL STATUTE AS ADOPTED
(With Commentary)**

888 607.0141 ~~Notices and other communications.~~

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

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

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

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

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

895 (2) A notice or other communication may be given by any method of delivery, including
896 voice mail where oral notice is allowed, except that electronic transmissions must be in accordance
897 with this section ~~Notice may be communicated in person; by telephone, voice mail (where oral~~
898 ~~notice is permitted), or other electronic means; or by mail or other method of delivery.~~

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

901 1. Upon deposit into the United States mail, if mailed postpaid and correctly
902 addressed to the shareholder's address shown in the corporation's current record of
903 shareholders; or

904 2. When electronically transmitted to the shareholder in a manner authorized
905 by the shareholder.

906 (b) Unless otherwise provided in the articles of incorporation or bylaws, and
907 without limiting the manner by which notice otherwise may be given effectively to
908 shareholders, any notice to shareholders given by the corporation under any provision of
909 this chapter, the articles of incorporation, or the bylaws shall be effective if given by a
910 single written notice to shareholders who share an address if consented to by the
911 shareholders at that address to whom such notice is given. Any such consent shall be
912 revocable by a shareholder by written notice to the corporation, and if a written notice of
913 revocation is delivered to the corporation, the corporation must begin providing
914 individual notices, reports and other statements to the revoking shareholder no later than
915 30 days after delivery of the written notice of revocation.

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

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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

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

923 (a) To its registered agent at the corporation's ~~its~~ registered office; or

924 (b) To the corporation or the corporation's ~~its~~ secretary at the corporation's ~~its~~
925 principal office or electronic mail address as authorized and shown in its most recent
926 annual report or, in the case of a corporation that has not yet delivered an annual report,
927 in a domestic corporation's articles of incorporation or in a foreign corporation's
928 application for certificate of authority.

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

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

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

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

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

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

943 ~~(6) Oral notice is effective when communicated if communicated directly to the person to~~
944 ~~be notified in a comprehensible manner. Except with respect to notice to directors by the~~
945 ~~corporation, notice or other communications may be delivered by electronic transmission if~~
946 ~~consented to by the recipient or if authorized by subsection (7). Notice or other communication to~~
947 ~~directors by the corporation may be delivered by electronic transmission if consented to by the~~
948 ~~recipient director; however, if the articles or bylaws require or authorize electronic transmission~~
949 ~~of notice or other communication to a director by the corporation, then no consent by the director~~
950 ~~recipient shall be required for the corporation to deliver notice or other communications to the~~
951 ~~director by electronic transmission.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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

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

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

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

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

963 (b) Such inability becomes known to the secretary or assistant secretary of the
964 corporation or to the transfer agent, or other person responsible for the giving of notice or
965 other communications; provided, however, that the inadvertent failure to treat such inability
966 as a revocation shall not invalidate any meeting or other action.

967 (9) Receipt of an electronic acknowledgement from an information processing system
968 described in paragraph (5)(d) establishes that an electronic transmission was received, but, by
969 itself, does not establish that the content sent corresponds to the content received.

970 (10) An electronic transmission is received under this section even if no person is aware of its
971 receipt.

972 ~~(7)~~ (11) If this act prescribes requirements for notices ~~notice requirements~~ or other
973 communications for in particular circumstances, those requirements govern. If articles of
974 incorporation or bylaws prescribe requirements for notices or other communications not less
975 stringent than the requirements of this section or other provisions of this act, those requirements
976 govern. The articles of incorporation or bylaws may authorize or require delivery of notices of
977 meetings of directors by electronic transmission.

978 (12) In the event that any provisions of this chapter are deemed to modify, limit, or
979 supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001
980 et seq., the provisions of this chapter shall control to the maximum extent permitted by section
981 102(a)(2) of that federal act.

982

983 **Commentary to Section 607.0141:**

984 This adopts most of the changes made in the notice requirements in s. 1.41 of the Model Act,
985 although it moves the subsections around in a fashion consistent with the proposal by the
986 committee that reviewed Article 1 in 2011. These changes to the Model Act were initially
987 published in 2009 and were formally adopted in 2010. The Committee on Corporate Laws of the
988 ABA Section of Business Law stated that these changes were made to incorporate terms from the
989 Uniform Electronic Transmissions Act and the Electronic Signatures in Global and National
990 Commerce Act (or the E-Sign act) into the Model Act. With the heavy growth of electronic
991 transmission (and a corresponding decline in mailed correspondence), a corresponding
992 modernization of the Florida Act is believed necessary.

993 The language in s. 1.41(b) of the Model Act, which allows notice to be given by means of a broad
994 non-exclusionary distribution to the public if the methods of delivery approved in this section are
995 impracticable, has not been adopted.

996 Subsection (6) adds a clarification that if the articles or bylaws provide for notice or other
997 communications to directors by electronic transmission, then no consent of the recipient director
998 shall be required for the corporation to provide notice or other communication to the recipient
999 director by electronic transmission.

1000 The Model Act provision dealing with the topic of householding provisions is s. 1.44.
1001 Householding provisions were added to subsection (3) of this section of the FBCA in 2003. Since
1002 the language in the current version of the FBCA is similar to the language in s. 1.44 of the Model
1003 Act, this statute continues to include the householding provisions in s. 607.0141(3). The statute
1004 includes a modification from the current version of s. 1.44 of the Model Act providing that if a
1005 shareholder revokes its consent to householding, the corporation must begin sending notices to the
1006 revoking shareholder not later than 30 days after delivery of the revocation notice.

1007 Subsection (12) mirrors s. 1.41(i) of the Model Act. It implements E-Sign section 7002(a)(2),
1008 which exempts from the federal preemption provisions of E-Sign certain state laws that modify,
1009 limit or supersede E-Sign, and that also make specific reference to E-Sign.

1010

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1011 Model Act s. 1.42 Number of Shareholders.

1012 Section 1.42 of the Model Act (Number of shareholders) has not been added to the FBCA.

1013 Commentary on the 1989 proposal stated that this section of the Model Act was not proposed

1014 because the subject matter was treated elsewhere in the FBCA.

1015

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1016 607.0143 Qualified director.

1017 (1) A "qualified director" is a director who, at the time action is to be taken under:

1018 (a) Section 607.0744, does not have a material interest in the outcome of the proceeding,
1019 or a material relationship with a person who has such an interest.

1020 (b) Section 607.0832, is not a director as to whom the transaction is a director's conflict
1021 of interest transaction, or who has a material relationship with another director as to whom the
1022 transaction is a director's conflict of interest transaction; or

1023 (c) Section 607.0853 or s. 607.0855:

1024 1. Is not a party to the proceeding;

1025 2. Is not a director as to whom a transaction is a director's conflict of interest
1026 transaction, which transaction is challenged in the proceeding; and

1027 3. Does not have a material relationship with a director who is disqualified by
1028 virtue of not meeting the requirements of subparagraph 1. or subparagraph 2.

1029 (2) For purposes of this section:

1030 (a) "Material relationship" means a familial, financial, professional, employment, or
1031 other relationship that would reasonably be expected to impair the objectivity of the director's
1032 judgment when participating in the action to be taken.

1033 (b) "Material interest" means an actual or potential benefit or detriment, other than one
1034 which would devolve on the corporation or the shareholders generally, that would reasonably
1035 be expected to impair the objectivity of the director's judgment when participating in the
1036 action to be taken.

1037 (3) The presence of one or more of the following circumstances does not automatically
1038 prevent a director from being a qualified director:

1039 (a) Nomination or election of the director to the current board by any director who is not
1040 a qualified director with respect to the matter, or by any person that has a material relationship
1041 with that director, acting alone or participating with others;

1042 (b) Service as a director of another corporation of which a director who is not a qualified
1043 director with respect to the matter, or any individual who has a material relationship with that
1044 director, is or was also a director; or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1045 (c) With respect to action to be taken under s. 607.0744, status as a named defendant, as
1046 a director against whom action is demanded, or as a director who approved the conduct being
1047 challenged.

1048

1049 **Commentary to Section 607.0143:**

1050 This section is based on the definition contained in s. 1.43 of the Model Act. The term "qualified
1051 director" is used in the derivative action provisions of Article 7, and the director conflict of interest
1052 and indemnification provisions contained in Article 8.

1053 This definition is used in these statutes to make clear that only truly independent directors are
1054 making the decisions called for under those statutes.

1055

1056 Model Act s. 1.44 Householding.

1057

1058 Householding was added to the FBCA (in s. 607.0141(3)) in 2003. Section 607.0141(3) uses

1059 language very similar to the Model Act provision on this topic.

1060

1061 Subchapter E (Model Act ss. 1.45 – 1.52).

1062
1063 Subchapter E of the Model Act covers the topic of ratification of defective corporate acts. These
1064 provisions provide non-exclusive mechanisms to ratify defective corporate acts, which are
1065 corporate actions purportedly taken that were, at the respective times the actions were taken, within
1066 the power of the corporation, but were void or voidable due to a failure of authorization or
1067 constituted an overissue (a purported issuance of shares in excess of the number of shares of a
1068 class or series that the corporation has the power to issue at the time of such issuance or shares of
1069 any class or series that were not then authorized for issuance under the articles of incorporation).
1070 These Model Act provisions were published in 2017 in *The Business Lawyer* and, to the knowledge
1071 of the Subcommittee, these provisions have not yet been adopted into the corporate statute of any
1072 other state. The corollary provisions of the Delaware General Corporation Law (the "DGCL"),
1073 which are contained in ss. 204 and 205 of the DGCL, have been in place for several years, but
1074 continue to be the subject of debate and proposed modification in Delaware as the mechanics of
1075 using these provisions are tested.

1076 While the Subcommittee believes that this topic should be considered for addition in the FBCA at
1077 a future time, a decision has been made to defer consideration of these provisions to allow the law
1078 on this topic (both in Delaware and in other Model Act states) to further develop before provisions
1079 addressing this topic are considered for adoption in the FBCA. Any provisions addressing this
1080 topic will be considered at some future time as a legislative initiative separate from this proposal.

1081

1082

ARTICLE 2

1083

INCORPORATION

1084

1085 607.0201 Incorporators.

1086 One or more persons may act as the incorporator or incorporators of a corporation by
1087 delivering articles of incorporation to the department of State for filing.

1088

1089 **Commentary to Section 607.0201:**

1090 No substantive changes have been made.

1091

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 1092 607.0202 Articles of incorporation; content.
- 1093 (1) The articles of incorporation must set forth:
- 1094 (a) A corporate name for the corporation that satisfies the requirements of s.
1095 607.0401;
- 1096 (b) The street address of the initial principal office and, if different, the mailing
1097 address of the corporation;
- 1098 (c) The number of shares the corporation is authorized to issue;
- 1099 (d) ~~If any preemptive rights are to be granted to shareholders, the provision therefor;~~
- 1100 ~~(e) The street address of the corporation's initial registered office and the name of~~
1101 ~~its initial registered agent at that office together with a written acceptance as required in~~
1102 ~~s. 607.0501(3); and~~
- 1103 (e) The name and address of each incorporator.
- 1104 (2) The articles of incorporation may set forth:
- 1105 (a) The names and addresses of the individuals who are to serve as the initial
1106 directors;
- 1107 (b) Provisions not inconsistent with law regarding:
- 1108 1. The purpose or purposes for which the corporation is organized;
- 1109 2. Managing the business and regulating the affairs of the corporation;
- 1110 3. Defining, limiting, and regulating the powers of the corporation and its
1111 board of directors and shareholders;
- 1112 4. A par value for authorized shares or classes of shares;
- 1113 5. The imposition of personal liability on shareholders for the debts of the
1114 corporation to a specified extent and upon specified conditions; and
- 1115 6. Exclusive forum provisions to the extent allowed by s. 607.0208;
- 1116 (c) Provisions for granting any preemptive rights to shareholders; and
- 1117 (d) Any provision that under this chapter ~~act~~ is required or permitted to be set forth
1118 in the bylaws.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1119 (3) The articles of incorporation need not set forth any of the corporate powers enumerated
1120 in this chapter ~~aet.~~

1121 (4) Provisions of the articles of incorporation may be made dependent upon facts objectively
1122 ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

1123 (5) The articles of incorporation may not contain any provision that would impose liability
1124 on a shareholder for the attorney fees or expenses of the corporation or any other party in
1125 connection with an internal corporate claim, as defined in s. 607.0208.

1126

1127 **Commentary to Section 607.0202:**

1128 Cleanup changes have been made to subsections (1) and (2). New subsection (2)(b)6. expressly
1129 authorizes articles of incorporation that allow exclusive forum provisions to the extent permitted by
1130 s. 607.0208. Although the Subcommittee believes that this provision would already be permissible
1131 under the catch-all language in subsection (2)(d), a cross reference was added to confirm that such
1132 provisions are permissible under this section.

1133 New subsection (4) makes clear that articles of incorporation may be made dependent upon facts
1134 objectively ascertainable outside the articles of incorporation in accordance with s. 607.0120(11).

1135 New subsection (5) prohibits the inclusion in articles of incorporation of provisions that purport to
1136 impose liability upon a shareholder for the attorney fees or expenses of the corporation or any
1137 other party in connection with an internal corporate claim, as defined in new section 607.0208(4).
1138 A similar provision has been added as new subsection (5) in s. 607.0206. As a policy matter, the
1139 Subcommittee does not believe that a fee shifting provision ought to be based on simple majority
1140 decisions placed in articles or bylaws. However, the Subcommittee believes that such a provision
1141 may be adopted by unanimous shareholder approval in conformity with the requirements of s.
1142 607.0732.

1143 Further, the DGCL was recently amended to add similar provisions.

1144

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1145 607.0203 Incorporation.

1146 (1) Unless a delayed effective date is specified, the corporate existence begins when the
1147 articles of incorporation are filed or on a date specified in the articles of incorporation, if such date
1148 is within 5 business days prior to the date of filing.

1149 (2) The ~~department's~~ of State's filing of the articles of incorporation is conclusive proof that
1150 the incorporators satisfied all conditions precedent to incorporation except in a proceeding by the
1151 state to cancel or revoke the incorporation or ~~involuntarily~~ administratively dissolve the
1152 corporation.

1153

1154 **Commentary to Section 607.0203:**

1155 No substantive changes have been made.

1156

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1157 607.0204 Liability for preincorporation transactions.

1158 All persons purporting to act as or on behalf of a corporation, ~~having actual knowledge~~
1159 knowing that there was no incorporation under this chapter, are jointly and severally liable for all
1160 liabilities created while so acting ~~except for any liability to any person who also had actual~~
1161 ~~knowledge that there was no incorporation.~~

1162

1163 **Commentary to Section 607.0204:**

1164 Revisions are based on language changes in the current version of s. 2.04 of the Model Act. These
1165 changes are arguably substantive. The first change, dropping "actual knowledge" could lead to a
1166 "should have known" judicial finding for "knowing." However, making this change makes the
1167 FBCA consistent in other places where knowledge is considered (such as s. 607.0834 dealing with
1168 director liability for unlawful distributions). Further, unlike the current statute, it is now possible
1169 under the new provision (again, following the Model Act), that the parties can enter into a valid
1170 contract intended to eventually bind the corporation if adopted even if both sides know the
1171 corporation has not yet been formed.

1172

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1173 607.0205 Organizational meeting of directors.

1174 (1) After incorporation:

1175 (a) If initial directors are named in the articles of incorporation, the initial directors shall
1176 hold an organizational meeting, at the call of a majority of the directors, to complete the
1177 organization of the corporation by appointing officers, adopting bylaws, and carrying on any
1178 other business brought before the meeting;

1179 (b) If initial directors are not named in the articles of incorporation, the incorporators
1180 shall hold an organizational meeting at the call of a majority of the incorporators:

1181 1. To elect directors and complete the organization of the corporation; or

1182 2. To elect a board of directors who shall complete the organization of the
1183 corporation.

1184 (2) Action required or permitted by this ~~chapter~~ act to be taken by incorporators or directors
1185 at an organizational meeting may be taken without a meeting if the action taken is evidenced by
1186 one or more written consents describing the action taken and signed by each incorporator or
1187 director.

1188 (3) The directors or incorporators calling the organizational meeting shall give at least ~~3~~ 2
1189 days' notice thereof to each director or incorporator so named, stating the time and place of the
1190 meeting.

1191 (4) An organizational meeting may be held in or out of this state.

1192

1193 **Commentary to Section 607.0205:**

1194 Subsection (3) is changed to specify 2 days' notice rather than 3 days' notice, to be consistent with
1195 s. 607.0822(2) of the FBCA and s. 108 of the DGCL.

1196

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1197 607.0206 Bylaws.

1198 (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the
1199 corporation unless that power is reserved to the shareholders by the articles of incorporation.

1200 (2) The bylaws of a corporation may contain any provision ~~for managing the business and~~
1201 ~~regulating the affairs of the corporation that is not inconsistent with law or the articles of~~
1202 incorporation, including the provisions described in subsections (3) and (4).

1203 (3) The bylaws of a corporation may contain one or both of the following provisions:

1204 (a) A requirement that if the corporation solicits proxies or consents with respect to an
1205 election of directors, the corporation include in its proxy statement and any form of its proxy
1206 or consent, to the extent and subject to such procedures or conditions as are provided in the
1207 bylaws, one or more individuals nominated by a shareholder in addition to individuals
1208 nominated by the board of directors.

1209 (b) A requirement that the corporation reimburse the expenses incurred by a shareholder in
1210 soliciting proxies or consents in connection with an election of directors, to the extent and subject
1211 to such procedures and conditions as are provided in the bylaws, provided that no bylaw so
1212 adopted shall apply to elections for which any record date precedes its adoption.

1213 (4) The bylaws of a corporation may contain exclusive forum provisions to the extent allowed
1214 by s. 607.0208.

1215 (5) Notwithstanding s. 607.1020(1)(b), the shareholders in amending, repealing, or adopting
1216 a bylaw described in subsection (3) may not limit the authority of the board of directors to amend
1217 or repeal any condition or procedure set forth in, or to add any procedure or condition to, such a
1218 bylaw to provide for a reasonable, practical, and orderly process.

1219 (6) The bylaws may not contain any provision that would impose liability on a shareholder
1220 for the attorney fees or expenses of the corporation or any other party in connection with an internal
1221 corporate claim, as defined in s. 607.0208.

1222

1223 **Commentary to Section 607.0206:**

1224 The change to subsection (2) is to bring Chapter 607 into line with the Model Act. The Committee
1225 believes that the existing language in subsection (2) is intended to mean the same as the current
1226 language in the Model Act, allowing broad latitude as to what type of provisions can be contained
1227 in a corporation's bylaws. This includes, for example, the ability to include an exclusive forum
1228 bylaw provision. The change is designed to bring the language in the Florida statute into line with
1229 the Model Act and thus avoid any potential of claim that the words "for managing the business
1230 and regulating the affairs of the corporation" were intended to be limiting. For completeness, a
1231 cross reference to subsections (3) and (4) has been added to this subsection.

1232 New subsection (3) expressly authorizes bylaws that require the corporation to include individuals
1233 nominated by shareholders for election as directors in its proxy statement and proxy cards (or
1234 consents) and that require the reimbursement by the corporation of expenses incurred by a
1235 shareholder in soliciting proxies (or consents) in an election of directors, in each case subject to such
1236 procedures or conditions as may be provided in the bylaws. Although the Subcommittee believes
1237 that this provision would already be permissible under subsection (2), because this provision is
1238 expressly in the DGCL and in the Model Act, the decision was made to add these confirming
1239 subsections to the FBCA.

1240 For completeness, new subsection (4) has been added to cross reference s. 607.0208 into this
1241 provision, which expressly authorizes bylaws that allow exclusive forum provisions to the extent
1242 permitted by that section.

1243 New subsection (6) prohibits the inclusion in bylaws of any provision that purports to impose
1244 liability upon a shareholder for the attorney fees or expenses of the corporation or any other party
1245 in connection with an internal corporate claim, as defined in new section 607.0208(4). A similar
1246 provision has been added as new subsection (5) in s. 607.0202.

1247

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1248 607.0207 Emergency bylaws.

1249 (1) Unless the articles of incorporation provide otherwise, the board of directors ~~of a~~
1250 ~~corporation~~ may adopt bylaws to be effective only in an emergency defined in subsection (5). The
1251 emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all
1252 provisions necessary for managing the corporation during an emergency, including:

1253 (a) Procedures for calling a meeting of the board of directors;

1254 (b) Quorum requirements for the meeting; and

1255 (c) Designation of additional or substitute directors.

1256 (2) The board of directors, either before or during any such emergency, may provide, and
1257 from time to time modify, lines of succession in the event that during such emergency any or all
1258 officers or agents of the corporation are for any reason rendered incapable of discharging their
1259 duties.

1260 (3) All provisions of the regular bylaws not inconsistent with the emergency bylaws remain
1261 effective during the emergency. The emergency bylaws are not effective after the emergency ends.

1262 (4) Corporate action taken in good faith in accordance with the emergency bylaws:

1263 (a) Binds the corporation; and

1264 (b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or
1265 agent of the corporation.

1266 (5) An emergency exists for purposes of this section if a quorum of the ~~corporation's~~ board
1267 of directors cannot readily be assembled because of some catastrophic event.

1268

1269 **Commentary to Section 607.0207:**

1270 No substantive changes have been made.

1271

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1272 607.0208 Forum selection provisions.

1273 (1) The articles of incorporation or the bylaws may require that any or all internal corporate
1274 claims be brought exclusively in any specified court or courts of this state and, if so specified, in
1275 any additional courts in this state or in any other jurisdictions with which the corporation has a
1276 reasonable relationship.

1277 (2) A provision of the articles of incorporation or bylaws adopted under subsection (1) does
1278 not have the effect of conferring jurisdiction on any court or over any person or claim, and does
1279 not apply if none of the courts specified by such provision has the requisite personal and subject
1280 matter jurisdiction. If the court or courts in this state specified in a provision adopted under
1281 subsection (1) do not have the requisite personal and subject matter jurisdiction and another court
1282 in this state does have such jurisdiction, then the internal corporate claim may be brought in such
1283 other court, notwithstanding that such other court is not specified in such provision, or in any other
1284 court outside the state specified in such provision that has the requisite jurisdiction.

1285 (3) No provision of the articles of incorporation or the bylaws may prohibit bringing an
1286 internal corporate claim in all courts in this state or require such claims to be determined by
1287 arbitration.

1288 (4) For purposes of this section, "Internal corporate claim" means:

1289 (a) Any claim that is based upon a violation of a duty under the laws of this state by a
1290 current or former director, officer, or shareholder in such capacity;

1291 (b) Any derivative action or proceeding brought on behalf of the corporation;

1292 (c) Any action asserting a claim arising pursuant to this chapter or the articles of
1293 incorporation or bylaws; or

1294 (d) Any action asserting a claim governed by the internal affairs doctrine that is not
1295 included in paragraphs (a), (b) or (c).

1296

1297 **Commentary to Section 607.0208:**

1298 New s. 607.0208 largely follows s. 2.08 of the Model Act. It authorizes a provision in either the
1299 articles of incorporation or the bylaws creating exclusive jurisdiction for internal corporate
1300 claims. Under section 607.0208(1), the provision to be valid must include all of the courts of this
1301 state or any specified court or courts of this state. The provision may also, but is not required to,
1302 include additional courts within this state (including federal courts) or in one or more additional
1303 jurisdictions with a reasonable relationship to the corporation.

1304 Although the Subcommittee believes that this type of provision is already permissible under existing
1305 s. 607.0206, because this provision is expressly set forth in the DGCL and in the Model Act, the
1306 decision was made to add this confirming section to the FBCA for clarity.

1307

1308 ARTICLE 3

1309 PURPOSES AND POWERS

1310

1311 607.0301 Purposes and application.

1312 (1) Every corporation incorporated under this chapter has the purpose of engaging in any
1313 lawful business unless a more limited purpose is set forth in the articles of incorporation.

1314 (2) A corporation engaging in a business that is subject to regulation under another statute of
1315 this state may incorporate under this chapter only if permitted by, and subject to all limitations of,
1316 the other statute.

1317 ~~(3) Corporations may be organized under this act for any lawful purpose or purposes, and~~
1318 The provisions of this chapter ~~act~~ extend to all corporations, whether chartered by special acts or
1319 general laws, except that special statutes for the regulation and control of types of business and
1320 corporations shall control when in conflict herewith.

1321

1322 **Commentary to Section 607.0301:**

1323 Although Florida's existing statute was very similar to the Model Act, it used different wording.
1324 Because the wording of the Model Act seemed clearer and more organized than the existing Florida
1325 statute, the existing language was replaced by the Model Act language in subsections (1) and (2).
1326 However, because the existing statute included language to the effect that Chapter 607 applied to
1327 corporations chartered by both special acts and general law, a decision was made to retain such
1328 language as subsection (3) to avoid any implication that such was not the case, even though there
1329 is possibly some overlap of coverage between subsections (2) and (3).

1330

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1331 607.0302 General powers.

1332 Unless its articles of incorporation provide otherwise, every corporation has perpetual
1333 duration and succession in its corporate name and has the same powers as an individual to do all
1334 things necessary or convenient to carry out its business and affairs, including ~~without limitation~~
1335 power:

1336 (1) To sue and be sued, complain, and defend in its corporate name;

1337 (2) To have a corporate seal, which may be altered at will and to use it or a facsimile of it,
1338 by impressing or affixing it or in any other manner reproducing it;

1339 (3) To purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and
1340 otherwise deal with real or personal property or any legal or equitable interest in property wherever
1341 located;

1342 (4) To sell, convey, mortgage, pledge, create a security interest in, lease, exchange, and
1343 otherwise dispose of all or any part of its property;

1344 (5) To lend money to, and use its credit to assist, its officers and employees in accordance
1345 with s. 607.0833;

1346 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold, vote, use, sell,
1347 mortgage, lend, pledge, or otherwise dispose of; and deal in and with shares or other interests in,
1348 or obligations of, any other entity;

1349 (7) To make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds,
1350 and other securities and obligations (which may be convertible into or include the option to
1351 purchase other securities of the corporation), and secure any of its obligations by mortgage or
1352 pledge of any of its property, franchises, ~~and~~ or income and make contracts of guaranty and
1353 suretyship which are necessary or convenient to the conduct, promotion, or attainment of the
1354 business of a corporation the majority of the outstanding shares ~~stock~~ of which is owned, directly
1355 or indirectly, by the contracting corporation; a corporation which owns, directly or indirectly, a
1356 majority of the outstanding shares ~~stock~~ of the contracting corporation; or a corporation the
1357 majority of the outstanding shares ~~stock~~ of which is owned, directly or indirectly, by a corporation
1358 which owns, directly or indirectly, the majority of the outstanding shares ~~stock~~ of the contracting
1359 corporation, which contracts of guaranty and suretyship shall be deemed to be necessary or
1360 convenient to the conduct, promotion, or attainment of the business of the contracting corporation,
1361 and make other contracts of guaranty and suretyship which are necessary or convenient to the
1362 conduct, promotion, or attainment of the business of the contracting corporation;

1363 (8) To lend money, invest and reinvest its funds, and receive and hold real and personal
1364 property as security for repayment;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1365 (9) To conduct its business, locate offices, and exercise the powers granted by this chapter
1366 ~~act~~ within or without this state;

1367 (10) To elect directors and appoint officers, employees, and agents of the corporation and
1368 define their duties, fix their compensation, and lend them money and credit;

1369 (11) To make and amend bylaws, not inconsistent with its articles of incorporation or with
1370 the laws of this state, for managing the business and regulating the affairs of the corporation;

1371 (12) To make donations for the public welfare or for charitable, scientific, or educational
1372 purposes;

1373 (13) To transact any lawful business that will aid governmental policy;

1374 (14) To make payments or donations or do any other act not inconsistent with law that
1375 furthers the business and affairs of the corporation;

1376 (15) To pay pensions and establish pension plans, pension trusts, profit-sharing plans, share
1377 bonus plans, share option plans, and benefit or incentive plans for any or all of its current or former
1378 directors, officers, employees, and agents and for any or all of the current or former directors,
1379 officers, employees, and agents of its subsidiaries;

1380 (16) To provide insurance for its benefit on the life of any of its directors, officers, or
1381 employees, or on the life of any shareholder for the purpose of acquiring at his or her death shares
1382 of its stock owned by the shareholder or by the spouse or children of the shareholder; and

1383 (17) To be a promoter, incorporator, partner, member, associate, or manager of any
1384 corporation, partnership, joint venture, trust, or other entity.

1385

1386 **Commentary to Section 607.0302:**

1387 The FBCA and Model Act provisions are identical in most respects, but with certain additional
1388 items in Florida, many of which were based on pre-1989 Florida law and Delaware law. Those
1389 distinctions, principally in subsections (4), (5), (7), (15) and (16), were retained. Minor changes
1390 are also made to subsections (3) and (7) to match the language in the corollary sections of the
1391 Model Act, but without any intent to change the intended meaning.

1392

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1393 607.0303 Emergency powers.

1394 (1) In anticipation of or during any emergency defined in subsection (5), the board of
1395 directors of a corporation may:

1396 (a) Modify lines of succession to accommodate the incapacity of any director,
1397 officer, employee, or agent; and

1398 (b) Relocate the principal office or designate alternative principal offices or
1399 regional offices or authorize the officers to do so.

1400 (2) During an emergency defined in subsection (5), unless emergency bylaws provide
1401 otherwise:

1402 (a) Notice of a meeting of the board of directors need be given only to those directors
1403 whom it is practicable to reach and may be given in any practicable manner, including by
1404 publication and radio;

1405 (b) One or more officers of the corporation present at a meeting of the board of
1406 directors may be deemed to be directors for the meeting, in order of rank and within the
1407 same rank in order of seniority, as necessary to achieve a quorum; and

1408 (c) The director or directors in attendance at a meeting, or any greater number affixed
1409 by the emergency bylaws, constitute a quorum.

1410 (3) Corporate action taken in good faith during an emergency under this section to further
1411 the ordinary business affairs of the corporation:

1412 (a) Binds the corporation; and

1413 (b) May not be used to impose liability on a ~~corporate~~ director, officer, employee, or
1414 agent of the corporation.

1415 (4) No officer, director, or employee acting in accordance with any emergency bylaws shall
1416 be liable except for willful or intentional misconduct.

1417 (5) An emergency exists for purposes of this section if a quorum of the ~~corporation's~~ board
1418 of directors cannot readily be assembled because of some catastrophic event.

1419 (6) To the extent not inconsistent with any emergency bylaws so adopted, the bylaws of the
1420 corporation shall remain in effect during any emergency, and upon termination of the emergency,
1421 the emergency bylaws will cease to be operative.

1422

1423 **Commentary to Section 607.0303:**

1424 Florida follows the Model Act for the most part, with certain differences in subsections (2)(c), (4)
1425 and (6).

1426

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1427 607.0304 **Lack of power to act** ~~Ultra vires.~~

1428 (1) Except as provided in subsection (2), the validity of corporate action, including, but
1429 not limited to, any conveyance, transfer, or encumbrance of real or personal property to or by a
1430 corporation, may not be challenged on the ground that the corporation lacks or lacked power to
1431 act.

1432 (2) A corporation's power to act may be challenged:

1433 (a) In a proceeding by a shareholder against the corporation to enjoin the act;

1434 (b) In a proceeding by the corporation, directly, derivatively, or through a receiver,
1435 trustee, or other legal representative, or through shareholders in a representative suit, against
1436 an incumbent or former director, officer, employee, or agent of the corporation; or

1437 (c) In a proceeding by the ~~Attorney General~~ Department of Legal Affairs pursuant to s.
1438 607.1403 or ~~as provided in this act, to dissolve the corporation or in a proceeding by the~~
1439 ~~Attorney General~~ to enjoin the corporation from the transaction of unauthorized business.

1440 (3) In a shareholder's proceeding under paragraph (2)(a) to enjoin an unauthorized corporate
1441 act, the court may enjoin or set aside the act, if equitable and if all affected persons are parties to
1442 the proceeding, and may award damages for loss (other than anticipated profits) suffered by the
1443 corporation or another party because of enjoining the unauthorized act.

1444

1445 **Commentary to Section 607.0304:**

1446 Except for minor differences, the FBCA mirrors the Model Act.

1447 The change in the title is not intended to be a change in the law or to change the meaning of this
1448 section. The change is merely to align the title with the title now used in the corollary Model Act
1449 provision.

1450 Subsection (2)(b) has been amended to correct what appears to be an inadvertent omission of the
1451 word "director."

1452 Subsection (2)(c) is amended (i) to reference the proper governmental agency (i.e., the Department
1453 of Legal Affairs, as opposed to the Attorney General) with power to bring the referenced actions,
1454 thus coordinating with the terminology in Section 607.1430, (ii) consistent with the language in
1455 the Model Act, to cross reference to the judicial dissolution provisions of Section 607.1430, and,
1456 (iii) to retain the right and power of the Department of Legal Affairs to pursue injunctive action so
1457 as to enjoin the corporation from the transaction of unauthorized business.

1458

1459 ARTICLE 4

1460 CORPORATE NAMES

1461
1462
1463
1464 607.0401 Corporate name.

1465 (1) A corporate name:

1466 (1a) Must contain the word "corporation," "company," or "incorporated" or the
1467 abbreviation "Corp.," or "Inc.," or "Co.," or the designation "Corp," or "Inc," or "Co.," as will
1468 clearly indicate that it is a corporation instead of a natural person, partnership, or other eligible
1469 ~~business~~ entity.

1470 (2b) May not contain language stating or implying that the corporation is organized for
1471 a purpose other than that permitted in this chapter ~~act~~ and its articles of incorporation.

1472 (3c) May not contain language stating or implying that the corporation is connected
1473 with a state or federal government agency or a corporation or other entity chartered under the
1474 laws of the United States.

1475 (4d) Must be distinguishable from the names of all other entities or filings that are on
1476 file with the department ~~Division of Corporations~~, except fictitious name registrations
1477 pursuant to s. 865.09, general partnership registrations pursuant to s. 620.8105, and limited
1478 liability partnership statements pursuant to s. 620.9001 which are organized, registered, or
1479 reserved under the laws of this state. A name that is different from the name of another entity
1480 or filing due to any of the following is not considered distinguishable:

1481 (a)1. A suffix.

1482 (b)2. A definite or indefinite article.

1483 (c)3. The word "and" and the symbol "&."

1484 (d)4. The singular, plural, or possessive form of a word.

1485 (e) ~~A recognized abbreviation of a root word.~~

1486 (f)5. A punctuation mark or a symbol.

1487 (2) Notwithstanding the foregoing, a corporation may register under a name that is not
1488 otherwise distinguishable on the records of the department with the written consent of the
1489 other entity if the consent is filed with the department at the time of registration of such name
1490 and if such name is not identical to the name of the other entity.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1491 ~~(35)~~ A corporate name as filed with the department of State, is for public notice only and does
1492 not alone create any presumption of ownership beyond that which is created under the common
1493 law.

1494 (4) This chapter does not control the use of fictitious names.

1495

1496 **Commentary to Section 607.0401:**

1497 A new paragraph is added as subsection (2). It permits, under certain circumstances, the use of
1498 names that are otherwise prohibited if appropriate consent in writing from the other entity is
1499 obtained and provided to the Department of State and the name is not identical. The new paragraph
1500 mirrors the corollary language contained in s. 605.0112(1)(b) of FRLLCA, but corrects an errant
1501 use of the word "owner."

1502 Subsection (1)(e), consistent with s. 607.1506(5) with respect to foreign corporations, allows a
1503 name otherwise unavailable to be used by consent. The section also provides that the department
1504 shall deny such a request if the name of the entity requested with consent is identical to the name
1505 of the other entity.

1506

FINAL STATUTE AS ADOPTED
(With Commentary)

1507 607.04021 Reserved name.

1508 (1) A person may reserve the exclusive use of a corporate name, including an alternate name
1509 for a foreign corporation whose corporate name is not available, by delivering an application to
1510 the department for filing. The application must set forth the name and address of the applicant and
1511 the name proposed to be reserved. If the department finds that the corporate name applied for is
1512 available, it shall reserve the name for the exclusive use of the applicant for a nonrenewable 120-
1513 day period.

1514 (2) The owner of a reserved corporate name may transfer the reservation to another person
1515 by delivering to the department a signed notice of the transfer that states the name and address of
1516 the transferee.

1517 (3) The department may revoke any reservation if, after a hearing, it finds that the application
1518 therefor or any transfer thereof was not made in good faith.

1519

1520 **Commentary to Section 607.04021:**

1521 Section 607.04021, which addresses the reservation of a corporate name, is newly adopted and is
1522 modeled after s. 4.02 of the Model Act. The Florida parallel statute was removed from the FBCA
1523 in 1998 (according to available commentary, because of then budgetary concerns affecting the
1524 Department of State). Florida is one of only three jurisdictions (along with Delaware and Puerto
1525 Rico) that does not allow for name reservations.

1526 Unlike the Model Act, but consistent with most jurisdictions that allow for name reservations, new
1527 s. 607.04021 includes in subsection (2) an express authorization for transfers of a reserved name.

1528

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1529 607.0403 Registered name; application; renewal; revocation.

1530 (1) A foreign corporation may register its corporate name, or its corporate name with the
1531 ~~any~~ addition of any word or abbreviation required by s. 607.1506, if the name is distinguishable
1532 upon the records of the department of State from the corporate names that are not available under
1533 s. 607.0401(1)(d).

1534 (2) A foreign corporation registers its corporate name, or its corporate name with any
1535 addition allowed ~~required~~ by s. 607.1506, by delivering to the department of State for filing an
1536 application:

1537 (a) Setting forth such name ~~its corporate name, or its corporate name with any addition~~
1538 ~~required by s. 607.1506~~, the state or country and date of its incorporation, and a brief
1539 description of the nature of the business that is to be conducted in this state ~~in which it is~~
1540 ~~engaged~~; and

1541 (b) Accompanied by a certificate of existence, or a certificate setting forth that such
1542 corporation is in good standing under the laws of the state or country wherein it is organized
1543 (or a document of similar import), from the state or country of incorporation.

1544 (3) The name is registered for the applicant's exclusive use upon the effective date of the
1545 application and shall be effective until the close of the calendar year in which the application for
1546 registration is filed.

1547 (4) A foreign corporation the registration of which is effective may renew it from year to
1548 year by annually filing a renewal application which complies with the requirements of subsection
1549 (2) between October 1 and December 31 of the preceding year. The renewal application when filed
1550 renews the registration for the following calendar year.

1551 (5) A foreign corporation the registration of which is effective may thereafter qualify as a
1552 foreign corporation under the registered name or consent in writing to the use of that name by a
1553 corporation thereafter incorporated under this chapter ~~act~~ or by another foreign corporation
1554 thereafter authorized to transact business in this state. The registration terminates when the
1555 domestic corporation is incorporated or the foreign corporation qualifies or consents to the
1556 qualification of another foreign corporation under the registered name.

1557 (6) The department of State may revoke any registration if, after a hearing, it finds that the
1558 application therefor or any renewal thereof was not made in good faith.

1559

1560 **Commentary to Section 607.0403:**

1561 No substantive changes have been made.

1562

1563 ARTICLE 5

1564 OFFICE AND AGENT

1565
1566 607.0501 Registered office and registered agent.

1567 (1) Each corporation shall ~~designate~~ have and continuously maintain in this state:

1568 (a) A registered office which may be the same as its place of business in this state; and

1569 (b) A registered agent, which ~~who~~ may must be either:

1570 1. An individual who resides in this state whose business address ~~office~~ is identical
1571 to the address of the ~~with such~~ registered office;

1572 2. Another domestic entity that is an authorized entity and whose business address
1573 is identical to the address of the registered office; or

1574 3. A foreign entity authorized to transact business in this state which is an
1575 authorized entity and whose business address is identical to the address of the registered
1576 office. Another corporation or not for profit corporation as defined in chapter 617,
1577 authorized to transact business or conduct its affairs in this state, having a business office
1578 identical with the registered office; or

1579 3. ~~A foreign corporation or not for profit foreign corporation authorized pursuant~~
1580 ~~to this chapter or chapter 617 to transact business or conduct its affairs in this state, having~~
1581 ~~a business office identical with the registered office.~~

1582 (2) This section does not apply to corporations which are required by law to designate the
1583 Chief Financial Officer as their attorney for the service of process, associations subject to the
1584 provisions of chapter 665, and banks and trust companies subject to the provisions of the financial
1585 institutions codes.

1586 (3) Each initial A-registered agent, and each appointed pursuant to this section or a successor
1587 registered agent that is appointed, pursuant to s. 607.0502 on whom process may be served shall
1588 each file a statement in writing with the department of State, in the such form and manner as shall
1589 be prescribed by the department, accepting the appointment as a registered agent while
1590 simultaneously with his or her being designated as the registered agent. The Such statement of
1591 acceptance must provide shall state that the registered agent is familiar with, and accepts, the
1592 obligations of that position.

1593 (4) The duties of a registered agent are:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1594 (a) To forward to the corporation at the address most recently supplied to the registered
1595 agent by the corporation, a process, notice or demand pertaining to the corporation which is
1596 served on or received by the registered agent; and

1597 (b) If the registered agent resigns, to provide the notice required under s. 607.0503 to the
1598 corporation at the address most recently supplied to the registered agent by the corporation.

1599 (5) ~~The department of State~~ shall maintain an accurate record of the registered agents and
1600 registered offices for ~~the~~ service of process and shall promptly furnish ~~any~~ information disclosed
1601 thereby ~~promptly~~ upon request and payment of the required fee.

1602 (56) ~~A corporation may not prosecute or maintain any action in a court in this state until the~~
1603 ~~corporation complies with this section, pays to the department any amounts required under this~~
1604 ~~chapter, and, to the extent ordered by a court of competent jurisdiction, with the provisions of this~~
1605 ~~section or s. 607.1507, as applicable, and pays to the department of State a penalty of \$5 for each~~
1606 ~~day it has failed to so comply or \$500, whichever is less.~~

1607 (7) A court may stay a proceeding commenced by a corporation until the corporation
1608 complies with this section.

1609

1610 **Commentary to Section 607.0501:**

1611 The Florida statute contains the same elements as, but is significantly more expansive than the
1612 Model Act. The revisions to the statute are based on s. 605.0113 of FRLCA covering this same
1613 topic. Sections (2) through (6) of the Florida statute do not appear in the Model Act.

1614 The scope of the changes to subsection (6), which is modeled after the corresponding LLC
1615 statutory provision, has been modified to clarify that a domestic corporation cannot prosecute or
1616 maintain an action in this state unless it has complied with this section, but may defend an action
1617 in this state. This modification is also proposed to be made to s. 605.0113 for harmonization.
1618 Allowing a corporation to defend an action (even if the corporation is not in compliance with this
1619 provision) is consistent with the corollary Model Act provision and with s. 607.1502 relating to
1620 the consequences of transacting business in this state without authority.

1621 New subsection (6) is modeled after s. 607.1502(3) and allows a court to stay a proceeding
1622 commenced by a corporation until the corporation complies with this section. The change in
1623 subsection (6) relating to payment of a penalty reflects the current position of the Department of
1624 State not to collect this penalty unless required to do so by a court of competent jurisdiction.

1625

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1626 607.0502 Change of registered office or registered agent. ; ~~resignation of registered~~
1627 agent

1628 (1) In order to change its registered agent or registered office address, aA corporation may
1629 deliver to the department for filing change its registered office or its registered agent upon filing
1630 with the Department of State a statement of change containing the following setting forth:

1631 (a) The name of the corporation.

1632 (b) The name of its current registered agent.

1633 (c) If the current registered agent is to be changed, the name of the new registered
1634 agent.

1635 (d) The street address of its current registered office for its current registered agent.

1636 (e) If the street address of the current registered office is to be changed, the new street
1637 address of the registered office in this state.

1638 ~~(b) — The street address of its current registered office;~~

1639 ~~(c) — If the current registered office is to be changed, the street address of the new~~
1640 ~~registered office;~~

1641 ~~(d) — The name of its current registered agent;~~

1642 ~~(e) — If its current registered agent is to be changed, the name of the new — registered~~
1643 ~~agent and the new agent's written consent (either on the statement or attached — to it) to the~~
1644 ~~appointment;~~

1645 ~~(f) — That the street address of its registered office and the street address of the business~~
1646 ~~office of its registered agent, as changed, will be identical;~~

1647 ~~(g) — That such change was authorized by resolution duly adopted by its board of directors~~
1648 ~~or by an officer of the corporation so authorized by the board of directors.~~

1649 (2) — ~~Any registered agent may resign his or her agency appointment by signing and delivering~~
1650 ~~for filing with the Department of State a statement of resignation and mailing a copy of such~~
1651 ~~statement to the corporation at its principal office address shown in its most recent annual report~~
1652 ~~or, if none, filed in the articles of incorporation or other most recently filed document. The~~
1653 ~~statement of resignation shall state that a copy of such statement has been mailed to the corporation~~
1654 ~~at the address so stated. The agency is terminated as of the 31st day after the date on which the~~
1655 ~~statement was filed and unless otherwise provided in the statement, termination of the agency acts~~
1656 ~~as a termination of the registered office.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1657 (2) If the registered agent is changed, the written acceptance of the successor registered agent
1658 described in s. 607.0501(3) must also be included in or attached to the statement of change.

1659
1660 (3) A statement of change is effective when filed by the department.

1661
1662 (4) The changes described in this section may also be made on the corporation's annual report,
1663 in an application for reinstatement filed with the department under s. 607.1622, or in an amendment
1664 to or restatement of a company's articles of incorporation in accordance with s. 607.1006 or s.
1665 607.1007.

1666
1667 ~~(3) If a registered agent changes his or her business name or business address, he or she may~~
1668 ~~change such name or address and the address of the registered office of any corporation for which~~
1669 ~~he or she is the registered agent by:~~

1670 ~~(a) Notifying all such corporations in writing of the change ,~~

1671 ~~(b) Signing (either manually or in facsimile) and delivering to the Department of~~
1672 ~~State for filing a statement that substantially complies with the requirements of paragraphs~~
1673 ~~(1)(a) (f), setting forth the names of all such corporations represented by the registered~~
1674 ~~agent, and~~

1675 ~~(c) Reciting that each corporation has been notified of the change.~~

1676 ~~(4) Changes of the registered office or registered agent may be made by a change on the~~
1677 ~~corporation's annual report form filed with the Department of State.~~

1678 ~~(5) The Department of State shall collect a fee pursuant to s. 15.09(2) for the filings~~
1679 ~~authorized under this section.~~

1680

1681 **Commentary to Section 607.0502:**

1682 The Florida statute and Model Act statutes are very similar, although Florida's statute is more
1683 expansive. The language changes are largely derived from s. 605.0114 of FRLCA.

1684 Old subsection (2) has been replaced with new s. 607.0503 and subsection (3) has been replaced
1685 with new s. 607.05031. Both of these sections track the comparable provisions of FRLCA.

1686 A provision comparable to current subsection (1)(g) was not included in FRLCA and has been
1687 eliminated in this statute, even though it has been in the corporate statute since 1989.

1688

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1689 607.0503 Resignation of registered agent.

1690 (1) A registered agent may resign as agent for a corporation by delivering to the department
1691 for filing a signed statement of resignation containing the name of the corporation.

1692 (2) After delivering the statement of resignation to the department for filing, the registered
1693 agent must promptly mail a copy to the corporation at its current mailing address.

1694 (3) A registered agent is terminated upon the earlier of:

1695 (a) The 31st day after the department files the statement of resignation; or

1696 (b) When a statement of change or other record designating a new registered agent is
1697 filed by the department.

1698 (4) When a statement of resignation takes effect, the registered agent ceases to have
1699 responsibility for a matter thereafter tendered to it as agent for the corporation. The resignation
1700 does not affect contractual rights that the corporation has against the agent or that the agent has
1701 against the corporation.

1702 (5) A registered agent may resign from a corporation regardless of whether the corporation
1703 has active status.

1704

1705 **Commentary to Section 607.0503:**

1706 This section is derived from s. 605.0115 of FRLCA. It replaces s. 607.0502(2). The
1707 corresponding section of the Model Act is s. 5.03.

1708

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 1709 607.05031 Change of name or address by registered agent.
- 1710 (1) If a registered agent changes its name or address, the agent may deliver to the department
- 1711 for filing a statement of change that provides the following:
- 1712 (a) The name of the corporation represented by the registered agent.
- 1713 (b) The name of the registered agent as currently shown in the records of the department
- 1714 for the corporation.
- 1715 (c) If the name of the registered agent has changed, its new name.
- 1716 (d) If the address of the registered agent has changed, the new address.
- 1717 (e) A statement that the registered agent has given the notice required under subsection
- 1718 (2).
- 1719 (2) A registered agent shall promptly furnish notice of the statement of change and the
- 1720 changes made by the statement filed with the department to the represented corporation.
- 1721

1722 **Commentary to Section 607.05031:**

1723 This section is derived from s. 605.0116 of FRLCA. It replaces s. 607.0502(3).

1724

FINAL STATUTE AS ADOPTED
(With Commentary)

1725 607.05032 Delivery of notice or other communication.

1726 (1) Except as otherwise provided in this chapter, permissible means of delivery of a notice
1727 or other communication includes delivery by hand, the United States Postal Service, a commercial
1728 delivery service, and electronic transmission, all as more particularly described in s. 607.0141.

1729 (2) Except as provided in subsection (3), delivery to the department is effective only when
1730 a notice or other communication is received by the department.

1731 (3) If a check is mailed to the department for payment of an annual report fee or the annual
1732 supplemental fee required under s. 607.193 and the check is received by the department, the check
1733 shall be deemed to have been received by the department as of the postmark date appearing on the
1734 envelope or package transmitting the check.

1735

1736 **Commentary to Section 607.05032:**

1737 This section is derived from s. 605.0118 of FRLUCA. It is new to the corporate statute.

1738

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1739 607.0504 Service of process, notice, or demand on a corporation.

1740 (1) A corporation may be served with process required or authorized by law by serving on
1741 its registered agent.

1742 (2) If a corporation ceases to have a registered agent or if its registered agent cannot with
1743 reasonable diligence be served, the process required or permitted by law may instead be served on
1744 the chair of the board, the president, any vice president, the secretary, or the treasurer of the
1745 corporation at the principal office of the corporation in this state.

1746 (3) If the process cannot be served on a corporation pursuant to subsection (1) or subsection
1747 (2), the process may be served on the secretary of state as an agent of the corporation.

1748 (4) Service of process on the secretary of state shall be made by delivering to and leaving
1749 with the department duplicate copies of the process.

1750 (5) Service is effectuated under subsection (3) on the date shown as received by the
1751 department.

1752 (6) The department shall keep a record of each process served on the secretary of state
1753 pursuant to this section and record the time of and the action taken regarding the service.

1754 (7) Any notice or demand on a corporation under this chapter may be given or made to the
1755 chair of the board, the president, any vice president, the secretary, or the treasurer of the
1756 corporation; to the registered agent of the corporation at the registered office of the corporation in
1757 this state; or to any other address in this state that is in fact the principal office of the corporation
1758 in this state.

1759 (8) This section does not affect the right to serve process, give notice, or make a demand in
1760 any other manner provided by law.

1761 ~~(1) Process against any corporation may be served in accordance with chapter 48 or chapter~~
1762 ~~49.~~

1763 ~~(2) Any notice to or demand on a corporation under this act may be made to the chair of the~~
1764 ~~board, the president, any vice president, the secretary, or the treasurer; to the registered agent of~~
1765 ~~the corporation at the registered office of the corporation in this state; or to any other address in~~
1766 ~~this state that is in fact the principal office of the corporation in this state.~~

1767 ~~(3) This section does not prescribe the only means, or necessarily the required means, of~~
1768 ~~serving notice or demand on a corporation.~~

1769

1770 **Commentary to Section 607.0504:**

1771 This section is derived from s. 605.0117 of FRLUCA, which establishes a "waterfall" approach to
1772 proper service on a limited liability company of any process, notice or demand. The provisions of
1773 this section as revised are also consistent with s. 504 of the Model Act.

1774 The one change made was to bifurcate between the statutory provisions relating to service of
1775 process and the provisions dealing with notices or demands on the corporation.

1776 Additionally, the Subcommittee believes that corollary changes should be made to s. 48.081 of the
1777 Florida Statutes dealing generally with service on a corporation so that it is consistent with this
1778 section. The Subcommittee has recommended to the Business Litigation Committee of the Section
1779 that a full review of Chapter 48 be undertaken to clean up and modernize that chapter, and as a
1780 result, the Subcommittee did not include this item in its proposal. In the view of the Subcommittee,
1781 this change should be considered as part of a comprehensive review of Chapter 48, which is
1782 currently in process.

1783

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1784 607.0505 Registered agent; duties.

1785 (1) (a) Each corporation, foreign corporation, or alien business organization that owns real
1786 property located in this state, that owns a mortgage on real property located in this state, or
1787 that transacts business in this state shall have and continuously maintain in this state a
1788 registered office and a registered agent and shall file with the department ~~of State~~ notice of
1789 the registered office and registered agent as provided in ss. 607.0501 and 607.0502. The
1790 appointment of a registered agent in compliance with s. 607.0501 or s. 607.1507 is sufficient
1791 for purposes of this section provided the registered agent so appointed files, in such form and
1792 manner as prescribed by the department ~~of State~~, an acceptance of the obligations provided
1793 for in this section.

1794 (b) Each such corporation, foreign corporation, or alien business organization which
1795 fails to have and continuously maintain a registered office and a registered agent as required
1796 in this section will be liable to this state for \$500 for each year, or part of a year, during which
1797 the corporation, foreign corporation, or alien business organization fails to comply with these
1798 requirements; but such liability will be forgiven in full upon the compliance by the
1799 corporation, foreign corporation, or alien business organization with the requirements of this
1800 subsection, even if such compliance occurs after an action to collect such liability is instituted.
1801 The Department of Legal Affairs may file an action in the circuit court for the judicial circuit
1802 in which the corporation, foreign corporation, or alien business organization is found or
1803 transacts business, or in which real property belonging to the corporation, foreign corporation,
1804 or alien business organization is located, to petition the court for an order directing that a
1805 registered agent be appointed and that a registered office be designated, and to obtain
1806 judgment for the amount owed under this subsection. In connection with such proceeding, the
1807 Department of Legal Affairs may, without prior approval by the court, file a lis pendens
1808 against real property owned by the corporation, foreign corporation, or alien business
1809 organization, which lis pendens shall set forth the legal description of the real property and
1810 shall be filed in the public records of the county where the real property is located. If the lis
1811 pendens is filed in any county other than the county in which the action is pending, the lis
1812 pendens which is filed must be a certified copy of the original lis pendens. The failure to
1813 comply timely or fully with an order directing that a registered agent be appointed and that a
1814 registered office be designated will result in a civil penalty of not more than \$1,000 for each
1815 day of noncompliance. A judgment or an order of payment entered pursuant to this subsection
1816 will become a judgment lien against any real property owned by the corporation, foreign
1817 corporation, or alien business organization when a certified copy of the judgment or order is
1818 recorded as required by s. 55.10. The Department of Legal Affairs will be able to avail itself
1819 of, and is entitled to use, any provision of law or of the Florida Rules of Civil Procedure to
1820 further the collecting or obtaining of payment pursuant to a judgment or order of payment.
1821 The state, through the Attorney General, may bid, at any judicial sale to enforce its judgment
1822 lien, any amount up to the amount of the judgment or lien obtained pursuant to this subsection.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1823 All moneys recovered under this subsection shall be treated as forfeitures under ss. 895.01-
1824 895.09 and used or distributed in accordance with the procedure set forth in s. 895.09. A
1825 corporation, foreign corporation, or alien business organization which fails to have and
1826 continuously maintain a registered office and a registered agent as required in this section may
1827 not defend itself against any action instituted by the Department of Legal Affairs or by any
1828 other agency of this state until the requirements of this subsection have been met.

1829 (2) Each corporation, foreign corporation, or alien business organization that owns real
1830 property located in this state, that owns a mortgage on real property located in this state, or that
1831 transacts business in this state shall, pursuant to subpoena served upon the registered agent of the
1832 corporation, foreign corporation, or alien business organization issued by the Department of Legal
1833 Affairs, produce, through its registered agent or through a designated representative within 30 days
1834 after service of the subpoena, testimony and records reflecting the following:

1835 (a) True copies of documents evidencing the legal existence of the entity, including the
1836 articles of incorporation and any amendments to the articles of incorporation or the legal
1837 equivalent of the articles of incorporation and such amendments.

1838 (b) The names and addresses of each current officer and director of the entity or persons
1839 holding equivalent positions.

1840 (c) The names and addresses of all prior officers and directors of the entity or persons
1841 holding equivalent positions, for a period not to exceed the 5 years previous to the date of
1842 issuance of the subpoena.

1843 (d) The names and addresses of each current shareholder, equivalent equitable owner,
1844 and ultimate equitable owner of the entity, the number of which names is limited to the names
1845 of the 100 shareholders, equivalent equitable owners, and ultimate equitable owners that, in
1846 comparison to all other shareholders, equivalent equitable owners, or ultimate equitable
1847 owners, respectively, own the largest number of shares of stock of the corporation, foreign
1848 corporation, or alien business organization or the largest percentage of an equivalent form of
1849 equitable ownership of the corporation, foreign corporation, or alien business organization.

1850 (e) The names and addresses of all prior shareholders, equivalent equitable owners, and
1851 ultimate equitable owners of the entity for the 12-month period preceding the date of issuance
1852 of the subpoena, the number of which names is limited to the 100 shareholders, equivalent
1853 equitable owners, and ultimate equitable owners that, in comparison to all other shareholders,
1854 equivalent equitable owners, or ultimate equitable owners, respectively, own the largest
1855 number of shares of stock of the corporation, foreign corporation, or alien business
1856 organization or the largest percentage of an equivalent form of equitable ownership of the
1857 corporation, foreign corporation, or alien business organization.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1858 (f) The names and addresses of the person or persons who provided the records and
1859 information to the registered agent or designated representative of the entity.

1860 (g) The requirements of paragraphs (d) and (e) do not apply to:

1861 1. A financial institution;

1862 2. A corporation, foreign corporation, or alien business organization the
1863 securities of which are registered pursuant to s. 12 of the Securities Exchange Act of
1864 1934, 15 U.S.C. ss. 78a-78kk, if such corporation, foreign corporation, or alien
1865 business organization files with the United States Securities and Exchange
1866 Commission the reports required by s. 13 of that act; or

1867 3. A corporation, foreign corporation, or alien business organization, the
1868 securities of which are regularly traded on an established securities market located
1869 in the United States or on an established securities market located outside the United
1870 States, if such non-United States securities market is designated by rule adopted by
1871 the Department of Legal Affairs;

1872 upon a showing by the corporation, foreign corporation, or alien business
1873 organization that the exception in subparagraph 1., subparagraph 2., or subparagraph
1874 3. applies to the corporation, foreign corporation, or alien business organization.
1875 Such exception in subparagraph 1., subparagraph 2., or subparagraph 3. does not,
1876 however, exempt the corporation, foreign corporation, or alien business organization
1877 from the requirements for producing records, information, or testimony otherwise
1878 imposed under this section for any period of time when the requisite conditions for
1879 the exception did not exist.

1880 (3) The time limit for producing records and testimony may be extended for good cause
1881 shown by the corporation, foreign corporation, or alien business organization.

1882 (4) A person, corporation, foreign corporation, or alien business organization designating
1883 an attorney, accountant, or spouse as a registered agent or designated representative shall, with
1884 respect to this state or any agency or subdivision of this state, be deemed to have waived any
1885 privilege that might otherwise attach to communications with respect to the information required
1886 to be produced pursuant to subsection (2), which communications are among such corporation,
1887 foreign corporation, or alien business organization; the registered agent or designated
1888 representative of such corporation, foreign corporation, or alien business organization; and the
1889 beneficial owners of such corporation, foreign corporation, or alien business organization. The
1890 duty to comply with the provisions of this section will not be excused by virtue of any privilege or
1891 provision of law of this state or any other state or country, which privilege or provision authorizes

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1892 or directs that the testimony or records required to be produced under subsection (2) are privileged
1893 or confidential or otherwise may not be disclosed.

1894 (5) If a corporation, foreign corporation, or alien business organization fails without lawful
1895 excuse to comply timely or fully with a subpoena issued pursuant to subsection (2), the Department
1896 of Legal Affairs may file an action in the circuit court for the judicial circuit in which the
1897 corporation, foreign corporation, or alien business organization is found or transacts business or in
1898 which real property belonging to the corporation, foreign corporation, or alien business
1899 organization is located, for an order compelling compliance with the subpoena. The failure without
1900 a lawful excuse to comply timely or fully with an order compelling compliance with the subpoena
1901 will result in a civil penalty of not more than \$1,000 for each day of noncompliance with the order.
1902 In connection with such proceeding, the Department of Legal Affairs ~~department~~ may, without
1903 prior approval by the court, file a lis pendens against real property owned by the corporation,
1904 foreign corporation, or alien business organization, which lis pendens shall set forth the legal
1905 description of the real property and shall be filed in the public records of the county where the real
1906 property is located. If the lis pendens is filed in any county other than the county in which the
1907 action is pending, the lis pendens which is filed must be a certified copy of the original lis pendens.
1908 A judgment or an order of payment entered pursuant to this subsection will become a judgment
1909 lien against any real property owned by the corporation, foreign corporation, or alien business
1910 organization when a certified copy of the judgment or order is recorded as required by s. 55.10.
1911 The Department of Legal Affairs ~~department~~ will be able to avail itself of, and is entitled to use,
1912 any provision of law or of the Florida Rules of Civil Procedure to further the collecting or obtaining
1913 of payment pursuant to a judgment or order of payment. The state, through the Attorney General,
1914 may bid, at any judicial sale to enforce its judgment lien, an amount up to the amount of the
1915 judgment or lien obtained pursuant to this subsection. All moneys recovered under this subsection
1916 shall be treated as forfeitures under ss. 895.01-895.09 and used or distributed in accordance with
1917 the procedure set forth in s. 895.09.

1918 (6) Information provided to, and records and transcriptions of testimony obtained by, the
1919 Department of Legal Affairs pursuant to this section are confidential and exempt from the
1920 provisions of s. 119.07(1) while the investigation is active. For purposes of this section, an
1921 investigation shall be considered "active" while such investigation is being conducted with a
1922 reasonable, good faith belief that it may lead to the filing of an administrative, civil, or criminal
1923 proceeding. An investigation does not cease to be active so long as the Department of Legal Affairs
1924 ~~department~~ is proceeding with reasonable dispatch and there is a good faith belief that action may
1925 be initiated by the Department of Legal Affairs ~~department~~ or other administrative or law
1926 enforcement agency. Except for active criminal intelligence or criminal investigative information,
1927 as defined in s. 119.011, and information which, if disclosed, would reveal a trade secret, as defined
1928 in s. 688.002, or would jeopardize the safety of an individual, all information, records, and
1929 transcriptions become public record when the investigation is completed or ceases to be active.
1930 The Department of Legal Affairs ~~department~~ shall not disclose confidential information, records,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1931 or transcriptions of testimony except pursuant to the authorization by the Attorney General in any
1932 of the following circumstances:

1933 (a) To a law enforcement agency participating in or conducting a civil investigation
1934 under chapter 895, or participating in or conducting a criminal investigation.

1935 (b) In the course of filing, participating in, or conducting a judicial proceeding
1936 instituted pursuant to this section or chapter 895.

1937 (c) In the course of filing, participating in, or conducting a judicial proceeding to
1938 enforce an order or judgment entered pursuant to this section or chapter 895.

1939 (d) In the course of a criminal or civil proceeding.

1940 A person or law enforcement agency which receives any information, record, or transcription of
1941 testimony that has been made confidential by this subsection shall maintain the confidentiality of
1942 such material and shall not disclose such information, record, or transcription of testimony except
1943 as provided for herein. Any person who willfully discloses any information, record, or
1944 transcription of testimony that has been made confidential by this subsection, except as provided
1945 for herein, is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or
1946 s. 775.083. If any information, record, or testimony obtained pursuant to subsection (2) is offered
1947 in evidence in any judicial proceeding, the court may, in its discretion, seal that portion of the
1948 record to further the policies of confidentiality set forth herein.

1949 (7) This section is supplemental and shall not be construed to preclude or limit the scope of
1950 evidence gathering or other permissible discovery pursuant to any other subpoena or discovery
1951 method authorized by law or rule of procedure.

1952 (8) It is unlawful for any person, with respect to any record or testimony produced pursuant
1953 to a subpoena issued by the Department of Legal Affairs under subsection (2), to knowingly and
1954 willfully falsify, conceal, or cover up a material fact by a trick, scheme, or device; make any false,
1955 fictitious, or fraudulent statement or representation; or make or use any false writing or document
1956 knowing the writing or document to contain any false, fictitious, or fraudulent statement or entry.
1957 A person who violates this provision is guilty of a felony of the third degree, punishable as
1958 provided in s. 775.082, s. 775.083, or s. 775.084.

1959 (9) In the absence of a written agreement to the contrary, a registered agent is not liable for
1960 the failure to give notice of the receipt of a subpoena under subsection (2) to the corporation,
1961 foreign corporation, or alien business organization which appointed such registered agent if such
1962 registered agent timely sends written notice of the receipt of such subpoena by first-class mail or
1963 domestic or international air mail, postage fees prepaid, to the last address that has been designated

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1964 in writing to the registered agent by such appointing corporation, foreign corporation, or alien
1965 business organization.

1966 (10) The designation of a registered agent and a registered office as required by subsection
1967 (1) for a corporation, foreign corporation, or alien business organization which owns real property
1968 in this state or a mortgage on real property in this state is solely for the purposes of this ~~act~~ chapter;
1969 and, notwithstanding s. 48.181, s. 607.1502, s. 607.1503, or any other relevant section of the
1970 Florida Statutes, such designation shall not be used in determining whether the corporation, foreign
1971 corporation, or alien business organization is actually doing business in this state.

1972 (11) As used in this section, the term:

1973 (a) "Alien business organization" means:

1974 1. Any corporation, association, partnership, trust, joint stock company, or other
1975 entity organized under any laws other than the laws of the United States, of any United
1976 States territory or possession, or of any state of the United States; or

1977 2. Any corporation, association, partnership, trust, joint stock company, or other
1978 entity or device 10 percent or more of which is owned or controlled, directly or indirectly,
1979 by an entity described in subparagraph 1. or by a foreign natural person.

1980 (b) "Financial institution" means:

1981 1. A bank, banking organization, or savings association, as defined in s. 220.62;

1982 2. An insurance company, trust company, credit union, or industrial savings bank,
1983 any of which is licensed or regulated by an agency of the United States or any state of the
1984 United States; or

1985 3. Any person licensed under part III of chapter 494.

1986 (c) "Mortgage" means a mortgage on real property situated in this state, except a
1987 mortgage owned by a financial institution.

1988 (d) "Real property" means any real property situated in this state or any interest in such
1989 real property.

1990 (e) "Ultimate equitable owner" means a natural person who, directly or indirectly, owns
1991 or controls an ownership interest in a corporation, foreign corporation, or alien business
1992 organization, regardless of whether such natural person owns or controls such ownership
1993 interest through one or other natural persons or one or more proxies, powers of attorney,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

1994 nominees, corporations, associations, partnerships, trusts, joint stock companies, or other
1995 entities or devices, or any combination thereof.

1996 (12) Any alien business organization may withdraw its registered agent designation by
1997 delivering an application for certificate of withdrawal to the department of State for filing. Such
1998 application shall set forth:

1999 (a) The name of the alien business organization and the jurisdiction under the law of
2000 which it is incorporated or organized.

2001 (b) That it is no longer required to maintain a registered agent in this state.

2002

2003 **Commentary to Section 607.0505:**

2004 This section is not included in the Model Act. It is unique to Florida and was adopted in 1984 as
2005 part of the Florida RICO Act. It was intended to provide law enforcement officials with additional
2006 powers to fight organized crime.

2007 This section expands the registered agent and registered office requirements to foreign
2008 corporations and other types of entities that are not required to qualify to do business in Florida
2009 under the FBCA if such foreign corporations or other entities are "alien business organizations" as
2010 defined in subsection 11(a) of the section. Thus, the reach of this section is much broader than the
2011 other provisions of the FBCA insofar as the section attempts to impose registered agent and
2012 registered office requirements on entities that otherwise would not be subject to the FBCA. This
2013 section imposes substantial reporting, notification, waiver of immunity and disclosure
2014 requirements on registered agents of corporations, both domestic and foreign, as well as alien
2015 business organizations, and it includes criminal penalties for non-compliance with its terms.

2016 Because of the broad language in Section 607.0505 of the FBCA, although these provisions are
2017 not contained in Florida's other entity statutes, these provisions are likely to apply to other types
2018 of Florida entities.

2019 Minor changes have been made to reflect the use of the defined term "Department" as reference to
2020 the "Department of State, Division of Corporations" and to reflect when the use of the term
2021 "department" in this section means the "Department of Legal Affairs."

2022 This section contains some elements similar to, but does not seem to be analogous to, the Model
2023 Registered Agent's Act (MRAA), which was first drafted in 2004 by NCCUSL in association with
2024 the ABA and the International Association of Commercial Administrators (IACA). To date,
2025 MRAA has been adopted in twelve jurisdictions: The District of Columbia, Hawaii, Idaho, Maine,
2026 Montana, North Dakota, South Dakota, Utah, Arkansas, Maine, Wyoming, and Nevada.

2027

ARTICLE 6

SHARES AND DISTRIBUTIONS

2028
2029
2030
2031

2032 607.0601 Authorized shares.

2033 (1) The articles of incorporation must set forth any ~~prescribe the~~ classes of shares and
2034 series of shares within a class, and the number of shares of each class and series, that the
2035 corporation is authorized to issue. If more than one class or series of shares is authorized, the
2036 articles of incorporation must prescribe a distinguishing designation for each class or series, and
2037 before ~~prior to~~ the issuance of shares of a class or series, describe the terms, including the
2038 preferences, limitations, and relative rights of that class or series ~~must be described in the articles~~
2039 ~~of incorporation~~. All shares of a class or series must have terms, including preferences, limitations,
2040 and relative rights, identical with those of other shares of the same class or series, except to the
2041 extent otherwise permitted by this section, s. 607.0602 or s. 607.0624.

2042 (2) The articles of incorporation must authorize:

2043 (a) One or more classes or series of shares that together have unlimited voting rights,
2044 and

2045 (b) One or more classes or series of shares (which may be the same class or
2046 series or classes or series as those with voting rights) that together are entitled to receive
2047 the net assets of the corporation upon dissolution.

2048 (3) The articles of incorporation may authorize one or more classes or series of shares
2049 that:

2050 (a) Have special, conditional, or limited voting rights, or no right to vote, except to
2051 the extent otherwise provided ~~prohibited~~ by this chapter ~~aet~~;

2052 (b) Are redeemable or convertible as specified in the articles of incorporation:

2053 1. At the option of the corporation, the shareholder, or another person or upon
2054 the occurrence of a specified ~~designated~~ event;

2055 2. For cash, indebtedness, securities, or other property; or

2056 3. At prices and in an amount specified, or determined, in accordance with a
2057 formula ~~In a designated amount or in an amount determined in accordance with a~~
2058 ~~designated formula or by reference to extrinsic data or events;~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2059 (c) Entitle the holders to distributions calculated in any manner, including dividends
2060 that may be cumulative, noncumulative, or partially cumulative;

2061 (d) Have preference over any other class or series of shares with respect to
2062 distributions, including ~~dividends and~~ distributions upon the dissolution of the corporation.

2063 (4) The description of the designations, preferences, limitations, and relative rights of
2064 share classes or series in subsection (3) is not exhaustive.

2065 (5) Terms of shares may be made dependent on facts ascertainable outside the articles
2066 of incorporation in accordance with s. 607.0120(11).

2067 (~~5~~6) Shares which are entitled to preference in the distribution of dividends or assets shall
2068 not be designated as common shares. Shares which are not entitled to preference in the distribution
2069 of dividends or assets shall be common shares and shall not be designated as preferred shares.

2070

2071 **Commentary to Section 607.0601:**

2072 Clarifying changes are made in subsections (1) and (2) to add the concept of "series" to this section,
2073 consistent with the Model Act language. Since the FBCA already includes the concept of a "series"
2074 of shares, this change is viewed as non-substantive.

2075 The Model Act changes the word "unlimited" to "full" in the corollary Model Act provision to
2076 subsection (2). The commentary to this provision in the Model Act states that "the phrase "full
2077 voting rights" refers to the right to vote on all matters for which voting is required by either the
2078 Act or the corporation's articles of incorporation." The corollary Delaware provision, s. 151(a),
2079 also uses term "full" in this context. Nevertheless, because the Florida provision has been in place
2080 since 1989, has never been misinterpreted, and is believed to be substantively the same, the term
2081 "unlimited" has been retained.

2082 Subsection (3) of the Florida statute has been revised so that it is modeled after the better worded
2083 subsection (c) of the corollary applicable Model Act provision.

2084 Subsection (5) has been added to make clear, following the corollary Model Act section, that the
2085 terms of shares may be made dependent on facts ascertainable outside the articles of incorporation,
2086 so long as it is in accordance with s. 607.0120(11) dealing with this subject. However, the statute
2087 is revised to use the term "ascertainable" instead of the Model Act wording "objectively
2088 ascertainable." The corollary provision in the LLC statute (s. 605.1005), the corollary provision in
2089 RULLCA (s. 1005) and the corollary provision in the DGLC (s.102(d)), do not use the word
2090 "objectively." To harmonize the wording in FRLLCA and the FBCA, the word "ascertainable" is
2091 used in the revised statute, rather than the Model Act language ("objectively ascertainable").
2092 Notwithstanding, since reasonableness is generally required in interpreting a provision of this type,
2093 the words are believed to be substantively identical.

2094 Subsection (e) of Model Act s. 6.01, which provides that terms of shares may be varied among
2095 holders of the same class or series so long as such variations are expressly set forth in the articles
2096 of incorporation, has not been added to the statute. While the FBCA does allow limited variation
2097 in the terms of shares of the same class or series under s. 607.0624 with respect to rights, it
2098 historically has not been the general rule in Florida.

2099

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 2100 607.0602 Terms of class or series determined by board of directors.
- 2101 (1) If the articles of incorporation so provide, the board of directors ~~is authorized may~~
2102 ~~determine, in whole or in part, the preferences, limitations and relative rights (within the limits set~~
2103 ~~forth in s. 607.0601) of, without shareholder approval, to:~~
- 2104 (a) ~~Classify any class of unissued shares before the issuance of any shares of that~~
2105 ~~into one or more classes or into one or more series within a class; or~~
- 2106 (b) Reclassify any unissued shares of any class into one or more classes or into one
2107 or more series within one or more classes ~~one or more series within a class before the~~
2108 ~~issuance of any shares of that series; or~~
- 2109 (c) Reclassify any unissued shares of any series of any class into one or more classes
2110 or into one or more series within a class.
- 2111 (2) If the board of directors acts pursuant to subsection (1), it shall determine the terms,
2112 including the preferences, limitations, and relative rights, to the extent allowed under s. 607.0601,
2113 of:
- 2114 (a) Any class of shares before the issuance of any shares of that class, or
- 2115 (b) Any series within a class before the issuance of any shares of that series.
- 2116 (3) Each class and each series of a class must be given a distinguishing designation.
- 2117 (34) ~~All shares of a series must have preferences, limitations, and relative rights identical~~
2118 ~~with those of other shares of the same series and, except to the extent otherwise provided in the~~
2119 ~~description of the series, of those of other series of the same class.~~
- 2120 (45) ~~Before issuing any shares of a class or series created under this section, the~~
2121 ~~corporation shall must deliver to the department of State for filing articles of amendment, which~~
2122 ~~are effective without shareholder action, that set forth:~~
- 2123 (a) The name of the corporation;
- 2124 (b) The text of the amendment determining the terms of the class or series of shares;
- 2125 (c) The date the amendment was adopted; and
- 2126 (d) A statement that the amendment was duly adopted by the board of directors.
- 2127

2128 **Commentary to Section 607.0602:**

2129 The changes in this section are based on the 2003 changes to the Model Act. Although these
2130 changes are not considered to be substantive changes, the modern language is considered clearer
2131 and easier to understand.

2132 Subsection (5) has been in the FBCA since 1989 and includes substantively similar provisions to
2133 s. 607.1006 dealing generally with amendments to articles of incorporation. While there is some
2134 overlap between these sections, the statute retains this subsection in order that the provisions
2135 dealing with the required amendment to the articles of incorporation are easily found by users of
2136 this statute.

2137

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2138 607.0603 Issued and outstanding shares.

2139 (1) A corporation may issue the number of shares of each class or series authorized by
2140 the articles of incorporation. Shares that are issued are outstanding shares until they are reacquired,
2141 redeemed, converted, or canceled, except as provided in s. 607.0631.

2142 (2) The reacquisition, redemption, or conversion of outstanding shares is subject to the
2143 limitations of subsection (3) and to s. 607.06401.

2144 (3) At all times that shares of the corporation are outstanding, one or more shares that
2145 together have unlimited voting rights and one or more shares that together are entitled to receive
2146 the net assets of the corporation upon dissolution must be outstanding.

2147

2148 **Commentary to Section 607.0603:**

2149 No changes have been made. Except for the reference to section 607.0631 at the end of subsection
2150 (1) dealing with treasury shares (which are not contemplated in the Model Act provision), this
2151 statute is identical to Section 6.03 of the Model Act.

2152

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2153 607.0604 Fractional shares.

2154 (1) A corporation may:

2155 (a) Issue fractions of a share or, in lieu of doing so, pay in money the fair value of
2156 fractions of a share;

2157 (b) Make arrangements, or provide reasonable opportunity, for any person entitled
2158 to or holding a fractional interest in a share to sell such fractional interest or to purchase
2159 such additional fractional interests as may be necessary to acquire a full share;

2160 (c) Issue scrip in registered or bearer form, over the manual or facsimile signature
2161 of an officer of the corporation or its agent, entitling the holder to receive a full share
2162 upon surrendering enough scrip to equal a full share.

2163 (2) The board of directors may authorize the issuance of scrip subject to any condition
2164 ~~considered desirable~~, including that:

2165 (a) ~~That~~ The scrip will become void if not exchanged for full shares before a
2166 specified date; and

2167 (b) ~~That~~ The shares for which the scrip is exchangeable may be sold and the
2168 proceeds paid to the scripholders.

2169 (3) Each certificate representing scrip must be conspicuously labeled "scrip" and must
2170 contain the information required by s. 607.0625.

2171 (4) The holder of a fractional share is entitled to exercise the rights of a shareholder,
2172 including the rights to vote, to receive dividends, and to receive distributions upon dissolution
2173 ~~participate in the assets of the corporation upon liquidation~~. The holder of scrip is not entitled to
2174 any of these rights unless the scrip provides for them.

2175 (5) ~~When a corporation is to pay in money the value of fractions of a share, the good~~
2176 ~~faith judgment of the board of directors as to the fair value shall be conclusive.~~

2177

2178 **Commentary to Section 607.0604:**

2179 Subsection (1)(b) differs from Section (a)(2) of the Model Act in that the Model Act provision
2180 only allows for the disposition of scrip. The current Florida statute allows for the purchase or sale
2181 of fractional interests. The broader language in the current Florida statute has been retained.

2182 Subsection (1)(c), which requires that scrip be in registered or bearer form "over the manual or
2183 facsimile signature of an officer of the corporation or its agent" is not Model Act language.
2184 However, it has been in the FBCA since 1989 and therefore has been retained.

2185 Subsection (5), which is not in the corollary section of the Model Act, has been eliminated. The
2186 board of directors of a corporation has fiduciary duties with respect to the valuation of fractional
2187 shares, and it is believed that those duties provide sufficient discretion to the board in making this
2188 determination. Further, there is a concern that the term "conclusive" as had been used in this section
2189 could have been deemed to inappropriately eliminate fiduciary duties under these circumstances
2190 or eliminate judicial oversight of this decision. Further, in the context of appraisal rights, no such
2191 conclusive presumption exists. As a result, it was decided to remove the conclusive presumption
2192 from this section of the statute.

2193

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2194 607.0620 Subscriptions for shares.

2195 (1) A subscription for shares entered into before incorporation is irrevocable for 6 months
2196 unless the subscription agreement provides a longer or shorter period or all the subscribers agree
2197 to revocation.

2198 (2) A subscription for shares, whether made before or after incorporation, is not enforceable
2199 against the subscriber unless in writing and signed by the subscriber.

2200 (3) The board of directors may determine the payment terms of subscriptions for shares that
2201 were entered into before incorporation, unless the subscription agreement specifies them. A call
2202 for payment by the board of directors must be uniform as to all shares of the same class or series,
2203 unless the subscription agreement specifies otherwise.

2204 (4) Shares issued pursuant to subscriptions entered into before incorporation are fully paid
2205 and nonassessable when the corporation receives the consideration specified in the subscription
2206 agreement.

2207 (5) If a subscriber defaults in payment of money or property under a subscription agreement
2208 entered into before incorporation, the corporation may collect the amount owed as any other debt.
2209 Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind
2210 the agreement and may sell the shares if the debt remains unpaid more than 20 days after the
2211 corporation ~~delivers~~ ~~sends~~ written demand for payment to the subscriber. ~~If mailed, such written~~
2212 ~~demand shall be deemed to be made when deposited in the United States mail in a sealed envelope~~
2213 ~~addressed to the subscriber at his or her last post office address known to the corporation, with~~
2214 ~~first class postage thereon prepaid. If the subscription agreement is rescinded and the shares sold,~~
2215 ~~then, notwithstanding the rescission,~~ the defaulting subscriber or his or her legal representative
2216 shall be entitled to be paid the excess of the sale proceeds over the sum of the amount due and
2217 unpaid on the subscription and the reasonable expenses incurred in selling the shares, but in no
2218 event shall the defaulting subscriber or his or her legal representative be entitled to be paid an
2219 amount greater than the amount paid by the subscriber on the subscription.

2220 (6) A subscription agreement entered into after incorporation is also subject to s. 607.0621.

2221

2222 **Commentary to Section 607.0620:**

2223 The title to s. 6.20 of the Model Act adds the words "before incorporation" at the end of the title.
2224 However, because subsection (2) and new proposed subsection (6) deal with subscriptions after
2225 incorporation, the title to this section was not changed.

2226 Subsections (1) and (4) of the Florida statute are identical to Subsections (a) and (c) respectively,
2227 of s. 6.20 of the Model Act. Subsection (2) of the Florida statute puts Florida in a minority of states
2228 that require a subscription to be in writing. The Model Act does not require that subscriptions be
2229 in writing to be enforceable. However, when the FBCA was adopted in 1989, the drafters elected
2230 to leave this requirement in subsection (2) based on existing Florida law, and the statute retains
2231 that concept in the FBCA. Notwithstanding, this provision has been clarified to make clear that it
2232 only deals with the requirement that a subscription be in writing to be enforceable against the
2233 subscriber. This is consistent with case law in Florida and is not intended to apply to cases where
2234 a subscriber is seeking to enforce an oral subscription against the corporation.

2235 Subsection (3) of Florida's statute and Subsection (b) of the Model Act are substantially similar.
2236 However, Florida's statute requires that the call for payment by the board of directors "must be
2237 uniform as to all shares of that same class or series", while subsection (b) of the Model Act requires
2238 that the call for payment be uniform so far as practicable. While the "so far as practicable" language
2239 is used in approximately 30 jurisdictions, including the vast majority of Model Act jurisdictions,
2240 when the FBCA was adopted in 1989, the drafters stated that the provision was not included in
2241 order to incorporate the stricter requirement in the existing Florida law that the call be uniform
2242 without modification, with the view that this prevents favoritism or unfair treatment among
2243 subscribers. Therefore, the existing Florida language has been retained.

2244 Subsection (5) of the Florida statute and subsection (d) of the Model Act are similar, in that the
2245 first two sentences of the Florida Act are identical to subsection (d) of the Model Act. The last two
2246 sentences were added in 1989. The sentence dealing with mailing of the demand has been removed
2247 because it is already stated in s. 607.0141. The second sentence, however, dealing with repayment
2248 to the delinquent subscriber of any amounts paid if there are excess sale proceeds over the sum of
2249 the amount due plus expenses (which was intended to prevent the corporation from having a
2250 windfall gain if it is able to resell the shares without loss) and limiting what the defaulting
2251 subscriber can receive to what they paid on their subscription (which was intended to prevent the
2252 defaulting subscriber from having a windfall if the shares are resold at a higher price) has been
2253 retained.

2254 For completeness, new subsection (6) has been added to clarify that post-incorporation
2255 subscriptions are also subject to the requirements of s. 607.0621.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2256 607.0621 Issuance of shares.

2257 (1) The powers granted in this section to the board of directors may be reserved to the
2258 shareholders by the articles of incorporation.

2259 (2) The board of directors may authorize shares to be issued for consideration consisting of
2260 any tangible or intangible property or benefit to the corporation, including cash, promissory notes,
2261 services performed, promises to perform services evidenced by a written contract, or other
2262 securities of the corporation.

2263 (3) Before the corporation issues shares, the board of directors must determine that the
2264 consideration received or to be received for shares to be issued is adequate. That determination by
2265 the board of directors is conclusive insofar as the adequacy of consideration for the issuance of
2266 shares relates to whether the shares are validly issued, fully paid, and nonassessable. When it
2267 cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a
2268 conclusive presumption that such shares are fully paid and nonassessable if the board of directors
2269 makes a good faith determination that there is no substantial evidence that the full consideration
2270 for such shares has not been paid.

2271 (4) When the corporation receives the consideration for which the board of directors
2272 authorized the issuance of shares, the shares issued therefor are fully paid and nonassessable.
2273 Consideration in the form of a promise to pay money or a promise to perform services is received
2274 by the corporation at the time of the making of the promise, unless the agreement specifically
2275 provides otherwise.

2276 (5) The corporation may place in escrow shares issued for a contract for future services or
2277 benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and
2278 may credit distributions in respect of the shares against their purchase price, until the services are
2279 performed, the note is paid, or the benefits received. If the services are not performed, the note is
2280 not paid, or the benefits are not received, the shares escrowed or restricted and the distributions
2281 credited may be canceled in whole or part.

2282

2283 **Commentary to Section 607.0621:**

2284 Subsection (2) retains the existing Florida wording using the words "promises to perform services
2285 evidenced by a written contract" instead of the words "contracts for services to be performed"
2286 contained in s. 6.21(b) of the Model Act. The commentary to the 1989 Act, which proposed the
2287 current statutory language, stated as a rationale that requiring a written contract avoids differing
2288 recollections and can be more protective of the interests of the parties and the other shareholders.

2289 The last sentence of subsection (3), adding a conclusive presumption that shares are fully paid and
2290 nonassessable where the board of directors makes a good faith determination that there is no
2291 substantial evidence that the full consideration for such shares has not been paid, has been retained.
2292 The commentary to the 1989 Act stated that this provision was modeled after a similar provision
2293 contained in the Virginia corporate statute (s. 13.1-643.E.) and that this good faith determination
2294 is important, for example, for opinion letters of counsel, which rely on the board of directors' good
2295 faith determination.

2296 The last sentence of subsection (4) continues to include a provision that is peculiar to the Florida
2297 Statute clarifying that consideration in the form of a promise to pay money or a promise to perform
2298 services is received at the time of the making of the promise, unless the agreement specifically
2299 provides otherwise. The commentary to the 1989 Act states that this language was added to avoid
2300 the concern that the Model Act arguably creates confusion as to when consideration is received
2301 when it is in the form of promises for future payments or services.

2302 A non-substantive clarifying change is included in subsection (5).

2303 Subsection (f) of s. 6.21 of the Model Act, which requires shareholder approval of share issuances
2304 of more than 20% of the voting power outstanding immediately before the issuance, has not been
2305 added to the statute.

2306

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2307 607.0622 Liability for shares issued before payment.

2308 (1) A holder of, or subscriber to, shares of a corporation shall be under no obligation to the
2309 corporation or its creditors with respect to such shares other than the obligation to pay to the
2310 corporation the full consideration for which such shares were issued or to be issued. Such an
2311 obligation may be enforced by the corporation and its successors or assigns; by a shareholder suing
2312 derivatively on behalf of the corporation; by a receiver, liquidator, or trustee in bankruptcy of the
2313 corporation; or by another person having the legal right to marshal the assets of such corporation.

2314 (2) Any person becoming an assignee or transferee of shares, or of a subscription for shares,
2315 in good faith and without knowledge or notice that the full consideration therefor has not been paid
2316 shall not be personally liable to the corporation or its creditors for any unpaid portion of such
2317 consideration, but the assignor or transferor shall continue to be liable therefor.

2318 (3) No pledgee or other holder of shares as collateral security shall be personally liable as a
2319 shareholder, but the pledgor or other person transferring such shares as collateral shall be
2320 considered the holder thereof for purposes of liability under this section.

2321 (4) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of
2322 creditors, receiver, or other fiduciary shall not be personally liable to the corporation as a holder
2323 of, or subscriber to, shares of a corporation, but the estate and funds in her or his hands shall be so
2324 liable.

2325 (5) No liability under this section may be asserted more than 5 years after the earlier of:

2326 (a) The issuance of the shares ~~stock~~, or

2327 (b) The date of the subscription upon which the assessment is sought.

2328

2329 **Commentary to Section 607.0622:**

2330 No changes have been made to this section of the FBCA.

2331 Section 607.0622 of the FBCA does not follow the corollary section of the Model Act. Current s.
2332 607.0622 is based on the pre-1989 Florida statute, which appears to have been based on earlier
2333 versions of the Model Act. The 1989 committee determined to include subsections (2), (3) and (4)
2334 in the corporate statute so that they were part of the corporate statute, despite, as pointed out in the
2335 Model Act commentary, these provisions are otherwise covered in Article 8 of the UCC.

2336 The 1989 committee, with respect to subsection (b) of s. 6.22 of the Model Act, decided not to
2337 adopt the provision because of a belief that it is unnecessary to confirm the limited liability
2338 concept. They were also concerned whether the "own acts or conduct" language was troublesome
2339 in its ambiguity.

2340 Subsection (5) was added to the FBCA in 1989 and is retained in the statute. It provides a five year
2341 statute of limitations for claims under this statute and is generally patterned after s. 162(e) of the
2342 DGCL.

2343

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2344 607.0623 Share dividends.

2345 (1) Unless the articles of incorporation provide otherwise, shares may be issued pro rata and
2346 without consideration to the corporation's shareholders or to the shareholders of one or more
2347 classes or series or shares. An issuance of shares under this subsection is a share dividend.

2348 (2) Shares of one class or series may not be issued as a share dividend in respect of shares of
2349 another class or series unless:

2350 (a) The articles of incorporation so authorize,

2351 (b) A majority of the votes entitled to be cast by the class or series to be issued
2352 approves the issue, or

2353 (c) There are no outstanding shares of the class or series to be issued.

2354 (3) The board of directors may fix the record date for determining shareholders entitled to a
2355 share dividend, but the date may not be retroactive. If the board of directors does not fix the record
2356 date for determining shareholders entitled to a share dividend, the record date ~~it~~ is the date the
2357 board of directors authorizes the share dividend.

2358

2359 **Commentary to Section 607.0623:**

2360 Non-substantive cleanup changes have been made to this section based on recent clean-up changes
2361 made to s. 6.23 of the Model Act.

2362

FINAL STATUTE AS ADOPTED
(With Commentary)

2363 607.0624 Share rights, options, warrants and awards.

2364 (1) Unless the articles of incorporation provide otherwise, a corporation may issue rights,
2365 options, or warrants for the purchase of shares of the corporation of any class or series, whether
2366 authorized but unissued shares of the corporation, treasury shares, or shares of the corporation to
2367 be purchased or acquired by the corporation. The board of directors shall determine the terms and
2368 conditions upon which the rights, options, or warrants are issued, including the consideration for
2369 which the shares are to be issued. The authorization by the board of directors for the corporation
2370 to issue such rights, options, or warrants constitutes authorization for the issuance of the shares for
2371 which the rights, options, or warrants are exercisable ~~their form and content, and the consideration~~
2372 ~~for which the shares are to be issued.~~

2373 (2) The terms and conditions of such stock rights, and options, or warrants, including those
2374 outstanding on January 1, 2020, which are created and issued by a corporation formed under this
2375 chapter, or its successor, and which entitle the holders thereof to purchase from the corporation
2376 shares of any class or series, whether authorized but unissued shares, treasury shares, or shares to
2377 be purchased or acquired by the corporation, may include, without limitation, restrictions or
2378 conditions that:

2379 (a) Preclude or limit the exercise, transfer or receipt or holding of such rights, options or
2380 warrants by any person or persons, including any person or persons owning or offering to
2381 acquire a specified number or percentage of the outstanding common shares or other securities
2382 of the corporation, owning or offering to acquire a specified number or percentage of the
2383 outstanding shares of the corporation or by any transferee or transferees of any such person or
2384 persons; or

2385 (b) Invalidate or void such rights, options or warrants held by any such person or persons
2386 or any such transferee or transferees.

2387 (3) The board of directors may authorize a board committee or the board of directors may
2388 authorize one or more officers, or a board committee so authorized by the board of directors may
2389 authorize one or more officers, to:

2390 (a) Designate the recipients of rights, options, warrants, or other equity compensation
2391 awards that involve the issuance of shares; and

2392 (b) Determine, within an amount and subject to any other limitations established by the
2393 board of directors, a board committee, and, if applicable, the shareholders, the number of such
2394 rights, options, warrants, or other equity compensation awards and the terms and conditions
2395 of such rights, options, warrants or awards to be received by the recipients, provided that an
2396 officer may not use such authority to designate himself or herself or any other persons as the

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2397 board of directors or a committee of the board may specify as a recipient of such rights,
2398 options, warrants or other equity compensation awards.

2399 (4) For purposes of this section, the term "shares" includes a security convertible into or
2400 carrying a right to subscribe for or acquire shares.

2401

2402 **Commentary to Section 607.0624:**

2403 Subsection (1) has been modernized based on the language contained in s. 6.24(a) of the 2016
2404 version of the Model Act.

2405 Subsection (2) allows the creation of rights required for adoption of a shareholders' rights plan
2406 (a/k/a a "poison pill"). The revised language adopts the more concise language in s. 6.24(b) of the
2407 2016 version of the Model Act. However, it does not change nor is it intended to change the
2408 substance of the provision.

2409 New subsection (3) follows the wording in s. 6.24(c) of the 2016 version of the Model Act. This
2410 language includes language similar to s. 157 of the DGCL and clarifies that not only the board of
2411 directors, but also committees of the board charged with dealing with these matters (such as a
2412 compensation committee under a stock incentive plan adopted by the board of directors and/or the
2413 shareholders), may be authorized by the board to make these equity compensation decisions.
2414 Unlike s. 607.0825, which requires limits to be specified for an authorization, the authorization
2415 under this new subsection, although limited to equity compensation, may be absolute rather than
2416 within specified limits. Nevertheless, as a matter of good corporate governance, boards choosing
2417 to delegate authorization under this new subsection would be well advised to specify limits in
2418 making any such delegation.

2419 Further, new subsection (3) allows delegations of authority to "officers" without imposing an
2420 obligation to set forth specified limits. In contrast, s. 607.0825, which relates to the right of the
2421 board of directors or a board committee to delegate authority to finalize the sale price of shares to
2422 be sold by the corporation, covers more than just equity compensation; but, in the realm of equity
2423 compensation, this new subsection is broader than s. 607.0825 in two key respects: (i) the new
2424 subsection authorizes delegation to "officers" rather than to just "senior executive officers" and
2425 (ii) the new subsection does not require limits to be specified in the delegation of authority to
2426 officers. Section 607.0825 is intended to operate independently of this new subsection and is not
2427 intended in any way to limit the equity compensation delegation authorized by this new subsection.
2428 Thus, for equity compensation, this new subsection makes clear that authorization to designate
2429 recipients of equity compensation can be delegated to a broader category of officers than would
2430 fall within the term "senior executive" officers in s. 607.0825 and that no limits need be specified
2431 in any such delegation.

2432

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2433 607.0625 Form and content of certificates.

2434 (1) Shares may but need not be represented by certificates. Unless this ~~chapter~~ or another
2435 statute expressly provides otherwise, the rights and obligations of shareholders are identical,
2436 regardless of whether ~~or not~~ their shares are represented by certificates.

2437 (2) At a minimum, each share certificate must state on its face:

2438 (a) The name of the ~~issuing~~ corporation and that the corporation is organized under the
2439 laws of this state;

2440 (b) The name of the person to whom issued; and

2441 (c) The number and class of shares and the designation of the series, if any, the
2442 certificate represents.

2443 (3) If the ~~issuing~~ corporation is authorized to issue different classes of shares or different
2444 series of shares within a class, the designations, relative rights, preferences, and limitations
2445 applicable to each class and the variations in rights, preferences, and limitations determined for
2446 each series (and the authority of the board of directors to determine variations for future series)
2447 must be summarized on the front or back of each certificate. Alternatively, each certificate may
2448 state conspicuously on its front or back that the corporation will furnish the shareholder a full
2449 statement of this information on request and without charge.

2450 (4) Each share certificate:

2451 (a) Must be signed (either manually or in facsimile) by an officer or officers
2452 designated in the bylaws or designated by the board of directors, and

2453 (b) May bear the corporate seal or its facsimile.

2454 (5) If the person who signed (either manually or in facsimile) a share certificate no longer
2455 holds office when the certificate is issued, the certificate is nevertheless valid.

2456 (6) Nothing in this section may be construed to invalidate any share certificate validly issued
2457 and outstanding under the general corporation law on July 1, 1990.

2458

2459 **Commentary to Section 607.0625:**

2460 The existing language in subsection (3) requiring a full statement of this information to be provided
2461 upon request (which language has been used in the FBCA since 1990) has been retained even
2462 though it is not in the corollary section of the Model Act (which simply uses the words "this
2463 information". Further, the language in s. 6.25(c) of the Model Act requiring this request to be in
2464 writing has not been adopted. This "writing" requirement was expressly considered and not
2465 adopted by the 1989 committee.

2466 Subsection (4)(a) continues to require the signature of one or more officers. The language used in
2467 s. 6.25(d) of the Model Act, which requires the signature of two officers on a share certificate, was
2468 expressly considered and not adopted by the 1989 committee.

2469 Section 607.0625(1) permits uncertificated shares. Uncertificated shares must comply with s.
2470 607.0626. Further, the issuance, transfer and registration of both certificated and uncertificated
2471 shares is subject to the detailed provisions of Article 8 of the Uniform Commercial Code (Chapter
2472 678).

2473

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2474 607.0626 Shares without certificates.

2475 (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
2476 of a corporation may authorize the issuance ~~issue~~ of some or all of the shares of any or all of its
2477 classes or series without certificates. The authorization does not affect shares already represented
2478 by certificates until they are surrendered to the corporation.

2479 (2) Within a reasonable time after the issuance ~~issue~~ or transfer of shares without certificates,
2480 the corporation shall deliver to ~~send~~ the shareholder a written statement of the information required
2481 on certificates by s. 607.0625(2) and (3), and, if applicable, s. 607.0627.

2482

2483 **Commentary to Section 607.0626:**

2484 No substantive changes have been made to this section.

2485

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2486 607.0627 Restriction on transfer of shares and other securities.

2487 (1) The articles of incorporation, the bylaws, an agreement among shareholders, or an
2488 agreement between shareholders and the corporation may impose restrictions on the transfer or
2489 registration of transfer of shares of the corporation. A restriction does not affect shares issued
2490 before the restriction was adopted unless the holders of such shares are parties to the restriction
2491 agreement or voted in favor of the restriction.

2492 (2) A restriction on the transfer or registration of transfer of shares is valid and enforceable
2493 against the holder or a transferee of the holder if the restriction is authorized by this section and its
2494 existence is noted conspicuously on the front or back of the certificate or is contained in the
2495 information statement required by s. 607.0626(2). Unless so noted, a restriction is not enforceable
2496 against a person without knowledge of the restriction.

2497 (3) A restriction on the transfer or registration of transfer of shares is authorized:

2498 (a) To maintain the corporation's status when it is dependent on the number or
2499 identity of its shareholders;

2500 (b) To preserve exemptions under federal or state securities law; or

2501 (c) For any other reasonable purpose.

2502 (4) A restriction on the transfer or registration of transfer of shares may:

2503 (a) Obligate the shareholder first to offer the corporation or other persons (separately,
2504 consecutively, or simultaneously) an opportunity to acquire the restricted shares;

2505 (b) Obligate the corporation or other persons (separately, consecutively, or
2506 simultaneously) to acquire the restricted shares;

2507 (c) Require the corporation, the holders of any class or series of its shares, or other
2508 persons ~~another person~~ to approve the transfer of the restricted shares, if the requirement is
2509 not manifestly unreasonable; or

2510 (d) Prohibit the transfer of the restricted shares to designated persons or classes of
2511 persons, if the prohibition is not manifestly unreasonable.

2512 (5) For purposes of this section, "shares" includes a security convertible into or carrying a
2513 right to subscribe for or acquire shares.

2514

2515 **Commentary to Section 607.0627:**

2516 The Florida statute and Model Act statute are virtually identical and no substantive changes have
2517 been made to this section of the FBCA. The Model Act provision is generally based on s. 202 of
2518 the DGCL, although s. 202 of the DGCL arguably expands the flexibility to include restraints on
2519 alienation with respect to shares beyond the current statute and corollary FBCA section.

2520 Share transfer restrictions are used by corporations for a variety of purposes. Subsection (3)
2521 enumerates certain purposes for which share transfer restrictions may be imposed, but does not
2522 limit the purposes, given that subsection (3) permits restrictions "for any other reasonable
2523 purpose." Examples of the "corporation's status" referred to in subsection (3)(a) include the
2524 subchapter S election under the Internal Revenue Code, and entitlement to a program or eligibility
2525 for a privilege administered by governmental agencies or national securities exchanges.

2526 Examples of the uses of share transfer restrictions include: (i) a corporation with few shareholders
2527 may impose share transfer restrictions to ensure that shareholders do not transfer their shares to a
2528 person not acceptable to the corporation or other shareholders; (ii) a corporation with few
2529 shareholders may impose share transfer restrictions to establish the value of the shares of deceased
2530 shareholders; (iii) a professional corporation may impose share transfer restrictions to ensure that
2531 its treatment of departing, retiring or deceased shareholders is consistent with rules applicable to
2532 the profession in question; (iv) a corporation may impose share transfer restrictions to ensure that
2533 its election of subchapter S treatment under the Internal Revenue Code, or its election to be treated
2534 as a real estate investment trust will not be unexpectedly terminated; (v) a corporation issuing
2535 securities pursuant to an exemption from federal or state securities registration may impose share
2536 transfer restrictions to ensure that subsequent transfers of shares will not result in the loss of the
2537 exemption being relied upon; and (vi) a corporation may impose restrictions to protect a valuable
2538 corporate asset that may be impacted by share transfers (such as a net operating loss).

2539 Subsection (4) describes the types of restrictions that may be imposed. The types of restrictions
2540 referred to in subsections (4)(a) (rights of first offer) and (b) (buy-sell agreements) are imposed as
2541 a matter of contractual negotiation and do not prohibit the outright transfer of shares. Rather, they
2542 designate to whom shares or other securities must be offered at a price established in the agreement
2543 or by a formula or method agreed to in advance. By contrast, the restrictions described in
2544 subsections (4)(c) and (d) may permanently limit the market for shares by disqualifying all or some
2545 potential purchasers. However, the restrictions imposed by these two provisions must not be
2546 "manifestly unreasonable."

2547

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2548 607.0628 Expenses of issue.

2549 A corporation may pay the expenses of selling or underwriting its shares, and of organizing
2550 or reorganizing the corporation, from the consideration received for shares.

2551

2552 **Commentary to Section 607.0628:**

2553 This section contains a general authorization to the corporation to pay its expenses of formation
2554 and raising capital out of its original capitalization and is included in the FBCA and in a large
2555 number of state corporation statutes. While this section has recently been eliminated in the 2016
2556 version of the Model Act, it is retained in the FBCA to make clear that a corporation may pay its
2557 expenses of formation and raising capital out of its original capitalization.

2558

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2559 607.0630 Shareholders' preemptive rights.

2560 (1) The shareholders of a corporation do not have a preemptive right to acquire the
2561 corporation's unissued shares or the corporation's treasury shares, except in each case to the extent
2562 the articles of incorporation so provide.

2563 (2) A statement included in the articles of incorporation that "the corporation elects to have
2564 preemptive rights" (or words of similar import) means that the following principles apply except
2565 to the extent the articles of incorporation expressly provide otherwise:

2566 (a) The shareholders of the corporation have a preemptive right, granted on uniform
2567 terms and conditions prescribed by the board of directors to provide a fair and reasonable
2568 opportunity to exercise the right, to acquire proportional amounts of the corporation's
2569 unissued shares and treasury shares upon the decision of the board of directors to issue them.

2570 (b) A shareholder may waive his or her preemptive right. A waiver evidenced by a
2571 writing is irrevocable even though it is not supported by consideration.

2572 (c) There is no preemptive right with respect to:

2573 1. Shares issued as compensation to directors, officers, agents, or employees of the
2574 corporation, ~~or~~ its subsidiaries, or affiliates;

2575 2. Shares issued to satisfy conversion or option rights created to provide
2576 compensation to directors, officers, agents, or employees of the corporation, ~~or~~ its
2577 subsidiaries, or affiliates;

2578 3. Shares authorized in the articles of incorporation that are issued within 6 months
2579 from the effective date of incorporation;

2580 4. Shares issued pursuant to a plan of reorganization approved by a court of
2581 competent jurisdiction pursuant to a law of this state or of the United States; or

2582 5. Shares issued for consideration other than money.

2583 (d) Holders of shares of any class or series without general voting rights but with
2584 preferential rights to distributions to receive the ~~or~~ net assets upon dissolution ~~and liquidation~~
2585 have no preemptive rights with respect to shares of any class or series.

2586 (e) Holders of shares of any class or series with general voting rights but without
2587 preferential rights to distributions ~~or net assets~~ upon dissolution ~~or liquidation~~ have no
2588 preemptive rights with respect to shares of any class or series with preferential rights to receive
2589 the net assets of the corporation upon dissolution ~~distributions or assets~~ unless the shares with

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2590 preferential rights are convertible into or carry a right to subscribe for or acquire the shares
2591 without preferential rights.

2592 (f) Shares subject to preemptive rights that are not acquired by shareholders may be
2593 issued to any person for a period of 1 year after being offered to shareholders at a consideration
2594 set by the board of directors that is not lower than the consideration set for the exercise of
2595 preemptive rights. An offer at a lower consideration or after the expiration of 1 year is subject
2596 to the shareholders' preemptive rights.

2597 (3) For purposes of this section, "shares" includes a security convertible into or carrying a
2598 right to subscribe for or acquire shares.

2599 (4) In the case of any corporation in existence prior to January 1, 1976, shareholders of such
2600 corporation shall continue to have the preemptive rights in such corporation which they had
2601 immediately prior to that date, unless and until the articles of incorporation are amended to alter
2602 or terminate shareholders' preemptive rights.

2603

2604 **Commentary to Section 607.0630:**

2605 The Model Act, along with the corporate statutes in many jurisdictions (including Florida), contain
2606 "opt in" provisions with respect to preemptive rights under which a corporation's shareholders do
2607 not have statutory preemptive rights unless expressly granted in the articles of incorporation.

2608 For the most part, with minor language differences, the Florida statute is identical to the Model
2609 Act. There are two substantive differences between the statutes. The first, found in s.
2610 607.0630(2)(c)(4), exempts from preemptive rights shares that are issued pursuant to a court-
2611 approved reorganization. The second is a grandfather clause, retaining "opt out" preemptive rights
2612 for corporations in existence prior to January 1, 1976.

2613 Clarifying changes were made to subsections (2)(d) and (2)(e) in 2003 to make the language used
2614 (net assets upon dissolution) consistent with the corollary language used for the same purpose in
2615 s. 607.0601(2)(b) and s. 607.0603(3). However, further clean-up changes have been made to
2616 subsections 2(d) and 2(e) to make the language consistent among these three statutory provisions.

2617

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2618 607.0631 Corporation's acquisition of its own shares.

2619 (1) A corporation may acquire its own shares, and, unless otherwise provided in the articles
2620 of incorporation or except as provided in subsection (4) or subsection (5), shares so acquired
2621 constitute authorized but unissued shares of the same class but undesignated as to series.

2622 (2) If the articles of incorporation prohibit the reissue of acquired shares, the number of
2623 authorized shares is reduced by the number of shares acquired, effective upon amendment of the
2624 articles of incorporation.

2625 (3) Articles of amendment to effectuate a reduction in the authorized shares by the number
2626 of shares acquired by the corporation, may be adopted by the board of directors without
2627 shareholder action, shall be delivered to the department of State for filing, and shall set forth:

2628 (a) The name of the corporation;

2629 (b) The reduction in the number of authorized shares, itemized by class and series; and

2630 (c) The total number of authorized shares, itemized by class and series, remaining after
2631 reduction of the shares.

2632 (4) Shares of a corporation in existence on June 30, 1990, which are treasury shares under s.
2633 607.004(18), Florida Statutes (1987), shall be issued, but not outstanding, until canceled or
2634 disposed of by the corporation.

2635 (5) A corporation that has shares of any class or series which are ~~either~~ registered on a
2636 national securities exchange ~~or designated as a national market system security on an interdealer~~
2637 ~~quotation system by the National Association of Securities Dealers, Inc.,~~ may acquire such shares
2638 and designate, either in the bylaws or in the resolutions of its board, that shares so acquired by the
2639 corporation shall constitute treasury shares.

2640 (6) Shares that a corporation acquires in a fiduciary capacity for the benefit of any person
2641 other than the corporation directly or indirectly through an entity controlled by the corporation
2642 shall not be deemed to have been acquired by the corporation for purposes of this section.

2643

2644 **Commentary to Section 607.0631:**

2645 Florida takes a more expansive view of a corporation's re-acquisition of its own shares than the
2646 Model Act. The Model Act states only that a corporation may acquire its own shares and that the
2647 shares so acquired constitute authorized but unissued shares (similar to subsection (1) above,
2648 though Florida adds that (i) a corporation may provide otherwise in its articles of incorporation
2649 (which includes the ability to expressly provide in the articles of incorporation that shares acquired
2650 by the corporation shall become treasury shares rather than authorized but unissued shares), and
2651 (ii) adds the exemptions found in subsections (4) and (5) above) and that if the articles of
2652 incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced
2653 by the number of shares acquired (identical to subsection (2) above).

2654 Subsection (3) is identical to the corollary section contained in an earlier version of the Model Act.
2655 This section was removed from the Model Act in 1999, because it was believed that the required
2656 amendment to the articles was adequately covered in Article 10. However, because the language
2657 has been in the FBCA since 1989 and addresses the required amendment in the same section as
2658 the language addressing the reasons for the proposed amendment, this language has been retained.
2659 This is similar to the position taken in s. 607.0602(5).

2660 The grandfathering provision contained in subsection (4) for treasury shares outstanding prior to
2661 1990 (when the FBCA became effective) has been retained.

2662 Subsection (5), added to the FBCA in 1999, deals with the ability of a Florida corporation to
2663 designate shares reacquired by listed companies or companies whose shares are traded on the
2664 Nasdaq as treasury shares. Since Nasdaq listed companies are now "listed on a national securities
2665 exchange," the statutory language dealing with companies traded on the Nasdaq has been
2666 eliminated.

2667 New subsection (6), with respect to shares acquired by a corporation in a fiduciary capacity, is
2668 derived from a proposed change to s. 6.31 of the Model Act that is currently being considered by
2669 the Corporate Laws Committee. The change adds language consistent with the language contained
2670 in s. 607.0721(3).

2671

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2672 607.06401 Distributions to shareholders.

2673 (1) A board of directors may authorize and the corporation may make distributions to its
2674 shareholders subject to restriction by the articles of incorporation and the limitations in subsection
2675 (3).

2676 (2) ~~The~~ ~~If the~~ board of directors may ~~does not~~ fix the record date for determining shareholders
2677 entitled to a distribution, which date may not be retroactive (~~other than one involving a purchase,~~
2678 ~~redemption, or other acquisition of the corporation's shares~~). If the, ~~it is the date the~~ board of
2679 directors does not fix a record date for determining shareholders entitled to a distribution (other
2680 than one involving a purchase, redemption, or other acquisition of the corporation's shares), the
2681 record date is the date the board of directors authorizes the distribution.

2682 (3) No distribution may be made if, after giving it effect:

2683 (a) The corporation would not be able to pay its debts as they become due in the usual
2684 course of the corporation's activities and affairs ~~business~~; or

2685 (b) The corporation's total assets would be less than the sum of its total liabilities plus
2686 (unless the articles of incorporation permit otherwise) the amount that would be needed, if the
2687 corporation were to be dissolved and wound up at the time of the distribution, to satisfy the
2688 preferential rights upon dissolution and winding up of shareholders whose preferential rights
2689 are superior to those receiving the distribution.

2690 (4) The board of directors may base a determination that a distribution is not prohibited under
2691 subsection (3) on:

2692 (a) ~~either on~~ Financial statements prepared on the basis of accounting practices and
2693 principles that are reasonable under ~~in~~ the circumstances; or

2694 (b) ~~on~~ A fair valuation or other method that is reasonable under ~~in~~ the circumstances. In
2695 the case of any distribution based upon such a valuation, each such distribution shall be
2696 identified as a distribution based upon a current valuation of assets, and the amount per share
2697 paid on the basis of such valuation shall be disclosed to the shareholders concurrent with their
2698 receipt of the distribution.

2699 (5) If the articles of incorporation of a corporation engaged in the business of exploiting
2700 natural resources or other wasting assets so provide, distributions may be paid in cash out of
2701 depletion or similar reserves; and each such distribution shall be identified as a distribution based
2702 upon such reserves, and the amount per share paid on the basis of such reserves shall be disclosed
2703 to the shareholders concurrent with their receipt of the distribution.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2704 (6) Except as provided in subsection (8), the effect of a distribution under subsection (3) is
2705 measured:

2706 (a) In the case of a distribution by purchase, redemption, or other acquisition of the
2707 corporation's shares, as of the earlier of the date on which:

2708 1. ~~The date~~ Money or other property is transferred or the debt to a shareholder is
2709 incurred by the corporation, or

2710 2. ~~The date the~~ shareholder ceases to be a shareholder with respect to the acquired
2711 shares;

2712 (b) In the case of a ~~any other~~ distribution of indebtedness, as of the date on which the
2713 indebtedness is distributed;

2714 (c) In all other cases, as of the date on which:

2715 1. ~~The date the~~ distribution is authorized if the payment occurs within 120 days
2716 after that the date of authorization, or

2717 2. ~~The date the~~ payment is made if the payment ~~is~~ occurs more than 120 days after
2718 the date the distribution is authorized ~~date of authorization~~.

2719 (7) A corporation's indebtedness to a shareholder incurred by reason of a distribution made
2720 in accordance with this section is at parity with the corporation's indebtedness to its general,
2721 unsecured creditors except to the extent provided otherwise ~~subordinated~~ by agreement. The
2722 obligation to pay such indebtedness may be secured by a lien on assets of the corporation if not
2723 prohibited under a law other than this chapter.

2724 (8) Indebtedness of a corporation, including indebtedness issued as a distribution, is not
2725 considered a liability for purposes of determinations under subsection (3) if the terms of the
2726 indebtedness ~~its terms~~ provide that payment of principal and interest is ~~are~~ made only if and to the
2727 extent that ~~payment of~~ a distribution to shareholders could then be made under this section. If such
2728 ~~the~~ indebtedness is issued as a distribution, and by its terms provides that the payments of each
2729 ~~payment of~~ principal or interest are made only to the extent a ~~is treated as a~~ distribution could be
2730 made under this section, then each payment of principal and interest of that indebtedness is treated
2731 as a distribution, the effect of which is measured on the date the payment is actually made.

2732 (9) This section shall not apply to distributions in liquidation under ss. 607.1401-607.14401.

2733

2734 **Commentary to Section 607.06401:**

2735 The cleanup changes in subsection (2) are based on language changes in the 2016 version of the
2736 Model Act and are non-substantive.

2737 The changes in subsection (3) are consistent with the language in s. 605.0405(1)(a) and are
2738 intended to harmonize the language in the FBCA and FRLCA on this provision.

2739 Subsection (4) has been modified to harmonize this section with the language contained in s.
2740 605.0405(2). This section also retains existing Florida language not found in the Model Act
2741 clarifying disclosure rules to shareholders where directors rely on statements of accountants to
2742 determine whether a corporation is authorized to make a distribution under this section. The 1989
2743 commentary to the FBCA provided that this language requires disclosure to shareholders of the
2744 fact that the dividend payment or other distribution is based on valuation in excess of standard
2745 accounting techniques. It also provides that this "[D]isclosure is appropriate to prevent
2746 shareholders from being misled about the reason or basis for their dividends."

2747 Subsection (5) retains existing Florida language not found in the Model Act, and relates to special
2748 situations involving distributions in corporations relying on the depletion of natural resources. This
2749 language was added to the FBCA in 1989 based on the then existing Florida statute. The 1989
2750 commentary provides that "[I]t is possible to read the "fair valuation or other method" language of
2751 s. 6.40(d) as broad enough to permit distributions out of depletion reserves." Rather than leave that
2752 question open, it is appropriate to adopt the clear provision in the Florida code."

2753 The changes in subsection (6) are intended to harmonize the language in the FBCA and FRLCA
2754 and are derived from the language contained in s. 605.0405(3).

2755 The language in subsection (7) has been modified to make clear that a corporation is not precluded
2756 from securing/collateralizing indebtedness which is owed to a shareholder and incurred by reason
2757 of a distribution, so long as it does not violate a law other than Chapter 607.

2758 The changes in subsection (8) are intended to harmonize the language in the FBCA and FRLCA
2759 and are derived from the language contained in s. 605.0405(5).

2760

2761 ARTICLE 7

2762 SHAREHOLDERS

2763
2764 607.0701 Annual meeting.

2765 (1) Unless directors are elected by written consent in lieu of an annual meeting pursuant to
2766 s. 607.0704, a corporation shall hold a meeting of shareholders annually, for the election of
2767 directors and for the transaction of any proper business, at a time stated in or fixed in accordance
2768 with the bylaws.

2769 (2) Annual ~~shareholders'~~ meetings of shareholders may be held in or out of this state at a
2770 place stated in or fixed in accordance with the bylaws or, when not inconsistent with the bylaws,
2771 stated in the notice of the annual meeting. If no place is stated in or fixed in accordance with the
2772 bylaws, or stated in the notice of the annual meeting, annual meetings shall be held at the
2773 corporation's principal office.

2774 (3) The failure to hold the annual meeting at the time stated in or fixed in accordance with a
2775 corporation's bylaws or pursuant to this chapter ~~act~~ does not affect the validity of any corporate
2776 action and shall not work a forfeiture of or dissolution of the corporation.

2777 (4) Participation of shareholders and proxy holders at an annual meeting of shareholders by
2778 remote communication shall be governed by and subject to the provisions of s. 607.0709. ~~If~~
2779 ~~authorized by the board of directors, and subject to such guidelines and procedures as the board of~~
2780 ~~directors may adopt, shareholders and proxy holders not physically present at an annual meeting~~
2781 ~~of shareholders may, by means of remote communication:~~

2782 ~~(a) Participate in an annual meeting of shareholders.~~

2783 ~~(b) Be deemed present in person and vote at an annual meeting of shareholders, whether~~
2784 ~~such meeting is to be held at a designated place or solely by means of remote communication,~~
2785 ~~provided that:~~

2786 ~~1. The corporation shall implement reasonable measures to verify that each person~~
2787 ~~deemed present and permitted to vote at the annual meeting by means of remote~~
2788 ~~communication is a shareholder or proxy holder;~~

2789 ~~2. The corporation shall implement reasonable measures to provide such~~
2790 ~~shareholders or proxy holders a reasonable opportunity to participate in the annual~~
2791 ~~meeting and to vote on matters submitted to the shareholders, including, without~~
2792 ~~limitation, an opportunity to communicate and to read or hear the proceedings of the~~
2793 ~~annual meeting substantially concurrently with such proceedings; and~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2794 3. ~~If any shareholder or proxy holder votes or takes other action at the annual~~
2795 ~~meeting by means of remote communication, a record of such vote or other action shall~~
2796 ~~be maintained by the corporation.~~

2797

2798 **Commentary to Section 607.0701:**

2799 Although this language does not appear in the Model Act, the words "and shall not work a
2800 forfeiture of or dissolution of the corporation" were left in subsection (3). There was a belief that,
2801 even if the language were to be removed, the law would still be the same. However, a concern was
2802 expressed that removing this language might be misinterpreted as a change in the law. As a result,
2803 the language was retained in the statute.

2804 Subsection (4) was removed in favor of adding new s. 607.0709, which includes all provisions
2805 regarding participation in meetings of shareholders by remote communications.

2806

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2807 607.0702 Special meeting.

2808 (1) A corporation shall hold a special meeting of shareholders:

2809 (a) On call of its board of directors or the person or persons authorized to do so by the
2810 articles of incorporation or bylaws; or

2811 (b) If shareholders holding ~~the holders of~~ not less than 10 percent, unless a greater
2812 percentage not to exceed 50 percent is required by the articles of incorporation, of all the votes
2813 entitled to be cast on any issue proposed to be considered at the proposed special meeting
2814 sign, date, and deliver to the corporation's secretary one or more written demands for the
2815 meeting describing the purpose or purposes for which it is to be held. Unless otherwise
2816 provided in the articles of incorporation, a written demand for a special meeting may be
2817 revoked by a writing to that effect received by the corporation prior to the receipt by the
2818 corporation of demands sufficient in number to require the holding of a special meeting.

2819 (2) Special meetings of shareholders ~~shareholders' meetings~~ may be held in or out of the state
2820 at a place stated in or fixed in accordance with the bylaws or, when not inconsistent with the
2821 bylaws, in the notice of the special meeting. If no place is stated in or fixed in accordance with the
2822 bylaws or in the notice of the special meeting, special meetings shall be held at the corporation's
2823 principal office.

2824 (3) Only business within the purpose or purposes described in the special meeting notice
2825 required by s. 607.0705 may be conducted at a special meeting of shareholders' ~~meeting~~.

2826 (4) Participation of shareholders and proxy holders at a special meeting of shareholders by
2827 remote communication shall be governed by and subject to the provisions of s. 607.0709. If
2828 authorized by the board of directors, and subject to such guidelines and procedures as the board of
2829 directors may adopt, shareholders and proxy holders not physically present at a special meeting of
2830 shareholders may, by means of remote communication:

2831 (a) ~~Participate in a special meeting of shareholders.~~

2832 (b) ~~Be deemed present in person and vote at a special meeting of shareholders, whether~~
2833 ~~such meeting is to be held at a designated place or solely by means of remote communication,~~
2834 ~~provided that:~~

2835 1. ~~The corporation shall implement reasonable measures to verify that each person~~
2836 ~~deemed present and permitted to vote at the special meeting by means of remote~~
2837 ~~communication is a shareholder or proxy holder;~~

2838 2. ~~The corporation shall implement reasonable measures to provide such~~
2839 ~~shareholders or proxy holders a reasonable opportunity to participate in the special~~
2840 ~~meeting and to vote on matters submitted to the shareholders, including, without~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2841 ~~limitation, an opportunity to communicate and to read or hear the proceedings of the~~
2842 ~~special meeting substantially concurrently with such proceedings; and~~

2843 ~~3. If any shareholder or proxy holder votes or takes other action at the special~~
2844 ~~meeting by means of remote communication, a record of such vote or other action shall~~
2845 ~~be maintained by the corporation.~~

2846

2847 **Commentary to Section 607.0702:**

2848 Clarifying changes in subsection (1)(b), which are derived from the Model Act, are considered
2849 non-substantive.

2850 Subsection (4) was removed in favor of adding new s. 607.0709, which includes all provisions
2851 regarding participation in a meeting of shareholders by remote communications.

2852

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2853 607.0703 Court-ordered meeting.

2854 (1) The circuit court ~~in the applicable of the county where a corporation's principal office is~~
2855 ~~located, if located in this state, or where a corporation's registered office is located if its principal~~
2856 ~~office is not located in this state, may, after notice to the corporation, summarily order a meeting~~
2857 ~~to be held:~~

2858 (a) On application of any shareholder ~~of the corporation~~ entitled to vote ~~in~~ at an annual
2859 meeting if neither an annual meeting has not been held nor action by written consent in lieu
2860 thereof has become effective within any 13-15-month period; or

2861 (b) On application of one or more shareholders ~~a shareholder~~ who signed a demand for
2862 a special meeting valid under s. 607.0702, if:

2863 1. Notice of the special meeting was not given within 60 days after the first day on
2864 which the requisite number of demands have been ~~date the demand was delivered to the~~
2865 ~~corporation's secretary; or~~

2866 2. The special meeting was not held in accordance with the notice.

2867 (2) The court may fix the time and place of the meeting, determine the shares entitled to
2868 participate in the meeting, specify a record date or dates for determining shareholders entitled to
2869 notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the
2870 quorum by voting group required for matters to be considered at the meeting (or direct that the
2871 votes of a voting group represented at the meeting constitute a quorum of such voting group for
2872 action on those matters), and enter other orders as may be appropriate necessary to accomplish the
2873 purpose or purposes of the meeting.

2874

2875 **Commentary to Section 607.0703:**

2876 The words "after notice to the corporation" is not in the Model Act and has been deleted in
2877 subsection (1). This change is not considered substantive, since the company will have to be
2878 notified of the action through the service of process in the lawsuit. Further, this change is not
2879 intended to authorize or allow an ex parte action.

2880 The word "summarily" has been added to the language at the end of subsection (1) regarding the
2881 Court's power to order a meeting. This language matches the language in s. 7.03(a) of the Model
2882 Act and corresponds with other existing similar references throughout Chapter 607 and in the
2883 Delaware corporate statute. The use of the word "summarily" is intended to urge courts to act
2884 quickly on this type of request, possibly through, within the applicable power and discretion of the
2885 court, expedited briefing and a quick decision.

2886 The words "of the corporation" were removed from (1)(a). This is not intended to be a substantive
2887 change, since the definition of "shareholder" in s. 607.0141(65) states that a shareholder is a holder
2888 of shares in the corporation.

2889 The time frame in subsection (1)(a) was changed from 13 months to 15 months so that it is
2890 consistent with s. 7.03(a)(1) of the Model Act. The 60 day provision in s. 607.0703(1)(b) was not
2891 changed, despite the shorter 30 day period contained in s. 7.03(a)(2) of the Model Act. This longer
2892 period was an intentional deviation from the Model Act adopted in 1989 and was intended to give
2893 public companies more time to comply with applicable Exchange Act requirements if a demand
2894 for a meeting has been received.

2895 Section 607.0703(1)(a) was amended to make clear that a court may not order an annual meeting
2896 if shareholders have acted by written consent to elect directors, in accordance with s. 607.0701(1),
2897 within the 15-month period.

2898 The words "or dates" was added to subsection (2) to recognize the ability of a corporation, at its
2899 option, to establish bi-furcated record dates. In addition, the broader Model Act language in s.
2900 7.03(b) replaces the language in current subsection (2). Further, language was added to make clear
2901 that courts have the authority to establish quorum requirements for separate voting groups.

2902 For clarity, this section is not intended to be overruled by an exclusive forum bylaws provision
2903 that selects a forum different from the circuit court identified in this section (the circuit court in
2904 the applicable county). Such circuit court continues to have jurisdiction for the matters described
2905 in this section, notwithstanding any validly adopted exclusive forum bylaw provision.

2906

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2907 607.0704 Action by shareholders without a meeting.

2908 (1) Unless otherwise provided in the articles of incorporation or in subsection (8), action
2909 required or permitted by this chapter aet to be taken at an annual or special meeting of shareholders
2910 may be taken without a meeting, without prior notice, and without a vote if the action is taken by
2911 the holders of outstanding shares stœek of each voting group entitled to vote thereon having not
2912 less than the minimum number of votes with respect to each voting group that would be necessary
2913 to authorize or take such action at a meeting at which all voting groups and shares entitled to vote
2914 thereon were present and voted. In order to be effective the action must be evidenced by one or
2915 more written consents describing the action taken, dated and signed by approving shareholders
2916 having the requisite number of votes of each voting group entitled to vote thereon, and delivered
2917 to the corporation by delivery to its principal office in this state, its principal place of business, the
2918 corporate secretary, or another officer or agent of the corporation having custody of the book in
2919 which proceedings of meetings of shareholders are recorded. No written consent shall be effective
2920 to take the corporate action referred to therein unless, within 60 days of the date of the earliest
2921 dated consent delivered in the manner required by this section, written consents signed by
2922 shareholders owning a sufficient number of shares ~~the number of shareholders~~ required to
2923 authorize or take the action have been ~~are~~ delivered to the corporation by delivery as set forth in
2924 this section.

2925 (2) Any written consent may be revoked prior to the date that the corporation receives the
2926 required number of consents to authorize the proposed action. No revocation is effective unless in
2927 writing and until received by the corporation at its principal office or received by the corporate
2928 secretary or other officer or agent of the corporation having custody of the book in which
2929 proceedings of meetings of shareholders are recorded.

2930 (3) Within 10 days after either written consents sufficient to authorize or take the action have
2931 been delivered to the corporation, or such later date that tabulation of consents is completed
2932 pursuant to an authorization under subsection (4) ~~obtaining such authorization by written consent~~,
2933 notice must be given to those shareholders who have not consented in writing or who are not
2934 entitled to vote on the action. The notice shall fairly summarize the material features of the
2935 authorized action and, if the action be such for which appraisal dissenters' rights are provided
2936 under this chapter aet, the notice shall contain a clear statement of the right of shareholders entitled
2937 to assert appraisal rights under this chapter with respect to the action ~~dissenting therefrom~~ to be
2938 paid the fair value of their shares upon compliance with further provisions of this chapter aet
2939 regarding the rights of ~~dissenting~~ shareholders entitled to assert appraisal rights under this chapter
2940 with respect to the action.

2941 (4) A consent signed under this section has the effect of a meeting vote and may be described
2942 as such in any document. Unless the articles of incorporation, bylaws, or a resolution of the board
2943 of directors provides for a reasonable delay to permit tabulation of written consents, the action
2944 taken by written consent shall be effective when written consents signed by shareholders owning

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2945 a sufficient number of shares required to authorize or take the action have been delivered to the
2946 corporation.

2947 (5) In the event that the action to which the shareholders consent is such as would have
2948 required the filing of a certificate under any other section of this ~~chapter~~ act if such action had been
2949 voted on by shareholders at a meeting thereof, the certificate filed under such other section shall
2950 state that written consent has been given in accordance with the provisions of this section.

2951 (6) Whenever action is taken pursuant to this section, the written consent of the shareholders
2952 consenting thereto or the written reports of inspectors appointed to tabulate such consents shall be
2953 filed with the minutes of proceedings of shareholders.

2954 (7) The notice requirements in subsection (3) do not delay the effectiveness of actions taken
2955 by written consent, and a failure to comply with such notice requirement does not invalidate actions
2956 taken by written consent. This subsection may not be deemed to limit judicial power to fashion
2957 any appropriate remedy in favor of a shareholder adversely affected by a failure to give such notice
2958 within the required time period.

2959 (8) If a corporation's articles of incorporation authorize shareholders to cumulate their votes
2960 when electing directors pursuant to s. 607.0728, directors may not be elected by written consent
2961 of the shareholders unless the consent is unanimous.

2962

2963 **Commentary to Section 607.0704:**

2964 Subsection (4) has been modified, following s. 7.04(d) of the Model Act, addressing an ability to
2965 delay effectiveness of a written consent for a reasonable period of time to permit tabulation of the
2966 written consents received. A parallel change has also been made in subsection (3) requiring notice
2967 of an action taken by written consent to non-consenting shareholders within ten days after
2968 authorization of the action. No specific outside time limit on the time to tabulate written consents
2969 has been added. However, this provision is not intended to allow a corporation to inappropriately
2970 delay effecting an action taken by the corporation's shareholders by written consent.

2971 The language in Model Act s. 7.04(g) was added as new s. 607.0704(7) (expressing that the failure
2972 to give the required notice does not delay the effectiveness of the action taken or invalidate the
2973 action taken, subject to the right of a court to fashion an appropriate remedy for failure to give
2974 such notice). It is believed that this new language merely codifies the existing state of court
2975 decisions relative to this issue.

2976 New subsection (8) clarifies that if a corporation's articles of incorporation authorize shareholders
2977 to cumulate their votes when electing directors pursuant to s. 607.0728, directors may only be
2978 elected by written consent of the shareholders if the consent is unanimous.

2979

**FINAL STATUTE AS ADOPTED
(With Commentary)**

2980 607.0705 Notice of meeting.

2981 (1) A corporation shall notify shareholders of the date, time, and place of each annual and
2982 special shareholders' meeting no fewer than 10 or more than 60 days before the meeting date. The
2983 notice must include the record date for determining the shareholders entitled to vote at the meeting
2984 if the record date for determining the shareholders entitled to vote at the meeting is different than
2985 the record date for determining shareholders entitled to notice of the meeting. If the board of
2986 directors has authorized participation by means of remote communication pursuant to s. 607.0709
2987 for any class or series of shares, the notice to the holders of such class or series must describe the
2988 means of remote communication to be used. Unless this chapter ~~act~~ or the articles of incorporation
2989 require otherwise, the corporation is required to give notice only to shareholders entitled to vote at
2990 the meeting as of the record date for determining the shareholders entitled to notice of the meeting.
2991 Notice shall be given in the manner provided in s. 607.0141, by or at the direction of the president,
2992 the secretary, or the officer or persons calling the meeting. If the notice is mailed at least 30 days
2993 before the date of the meeting, it may be done by a class of United States mail other than first class.
2994 Notwithstanding s. 607.0141, if mailed, such notice shall be deemed to be delivered when
2995 deposited in the United States mail addressed to the shareholder at her or his address as it appears
2996 in the record of shareholders of the corporation, maintained in accordance with s. 607.1601(4) ~~on~~
2997 the stock transfer books of the corporation, with postage thereon prepaid.

2998 (2) Unless this chapter ~~act~~ or the articles of incorporation require otherwise, notice of an
2999 annual meeting of shareholders need not include a description of the purpose or purposes for which
3000 the meeting is called.

3001 (3) Notice of a special meeting of shareholders must include a description of the purpose or
3002 purposes for which the meeting is called.

3003 (4) Unless the bylaws require otherwise, if an annual or special ~~shareholders'~~ meeting of
3004 shareholders is adjourned to a different date, time, or place, or to add or modify the terms of
3005 participation by remote communication if the ~~notice need not be given~~ of new date, time, ~~or~~ place
3006 or terms of participation by remote communication if the new date, time, ~~or~~ place, or terms of
3007 participation by remote communication is announced at the meeting before an adjournment is
3008 taken, and any business may be transacted at the adjourned meeting that might have been
3009 transacted on the original date of the meeting. If a new record date for the adjourned meeting is or
3010 must be fixed under s. 607.0707, however, notice of the adjourned meeting must be given under
3011 this section to persons who are shareholders as of the new record date who are entitled to notice
3012 of the meeting.

3013 (5) Notwithstanding the foregoing, whenever notice is required to be given to any
3014 shareholder under any provision of this chapter or the articles of incorporation or bylaws of any
3015 corporation to whom no notice of a shareholders' meeting need be given to a shareholder if:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3016 (a) Notice of two consecutive annual meetings, and all notices of meetings or the taking
3017 of action by written consent without a meeting to such person during the period between such
3018 two consecutive annual meetings; An annual report and proxy statements for two consecutive
3019 annual meetings of shareholders or

3020 (b) All, and at least two checks in payment of dividends or interest on securities during
3021 a 12-month period,

3022 have been sent by first-class United States mail, addressed to the shareholder at ~~her or his~~ such
3023 person's address as it appears in the record of shareholders on the share transfer books of the
3024 corporation, maintained in accordance with s. 607.1601(4), and returned undeliverable, then the
3025 giving of such notice to such person shall not be required. Any action or meeting which is taken
3026 or held without notice to such person has the same force and effect as if such notice has been duly
3027 given. The obligation of the corporation to give notice of a shareholders' meeting to any such
3028 shareholder shall be reinstated once the corporation has received a new address for such
3029 shareholder for entry on its share transfer books. If any such person delivers to the corporation a
3030 written notice setting forth such person's then current address, the requirement that a notice be
3031 given to such person with respect to future notices shall be reinstated.

3032

3033 **Commentary to Section 607.0705:**

3034 Language was added to subsection (1), with a cross reference to s. 607.0709 which now contains
3035 all of the provisions regarding attendance at shareholders' meetings, whether the meeting is an
3036 annual meeting or a special meeting, using remote communications, to the effect that if the board
3037 of directors has agreed to allow participation by remote communication at a shareholders' meeting,
3038 the notice shall be required to describe the means of remote communication to be used.

3039 Language has been added to subsection (4) to address the obligation to communicate the terms of
3040 remote communication for the continuation of an adjourned meeting.

3041 The language in subsection (5), which authorizes the corporation not to have to give notice to
3042 certain missing stockholders under certain circumstances, is modified to follow the language used
3043 in the current version of DGCL s. 230 (upon which this FBCA provision was originally based).

3044

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3045 607.0706 Waiver of notice.

3046 (1) A shareholder may waive any notice required by this ~~chapter act~~, the articles of
3047 incorporation, or bylaws before or after the date and time stated in the notice. The waiver must be
3048 in writing, be signed by the shareholder entitled to the notice, and be delivered to the corporation
3049 for filing by the corporation with inclusion in the minutes or ~~filing with the~~ corporate records.
3050 Neither the business to be transacted at nor the purpose of any regular or special meeting of the
3051 shareholders need be specified in any written waiver of notice unless so required by the articles of
3052 incorporation or the bylaws.

3053 (2) A shareholder's attendance at a meeting:

3054 (a) Waives objection to lack of notice or defective notice of the meeting, unless the
3055 shareholder at the beginning of the meeting objects to holding the meeting or transacting
3056 business at the meeting; or

3057 (b) Waives objection to consideration of a particular matter at the meeting that is not
3058 within the purpose or purposes described in the meeting notice, unless the shareholder objects
3059 to considering the matter when it is presented.

3060

3061 **Commentary to Section 607.0706:**

3062 The language at the end of subsection (1), which confirms that the purpose of the meeting need
3063 not be included in the waiver of notice in order for the waiver of notice to be valid, was retained.
3064 Although not in the Model Act, it derives from s. 229 of the DGCL.

3065

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3066 607.0707 Record date.

3067 (1) The bylaws may fix or provide the manner of fixing the record date or dates for one or
3068 more voting groups ~~in order~~ to determine the shareholders entitled to notice of a shareholders'
3069 meeting, to demand a special meeting, to vote, or to take any other action. If the bylaws do not fix
3070 or provide for fixing such a record date, the board of directors ~~of the corporation~~ may fix the record
3071 date. In no event may a record date fixed by the board of directors be a date preceding the date
3072 upon which the resolution fixing the record date is adopted.

3073 (2) If not otherwise provided by or pursuant to the bylaws, the record date for determining
3074 shareholders entitled to demand a special meeting is the date the first shareholder delivers his or
3075 her demand to the corporation.

3076 (3) The bylaws may fix or provide the manner of fixing the record date for determining
3077 shareholders entitled to take action by the written consent of shareholders. If not otherwise
3078 provided by or pursuant to the bylaws, the board of directors of the corporation may set a record
3079 date for determining shareholders entitled to take action by the written consent of shareholders. In
3080 no event may a record date fixed by the board of directors be a date preceding the date upon which
3081 the resolution fixing the record date is adopted. If the bylaws do not fix or provide for the manner
3082 of fixing such a record date and if no such record date is fixed by the board of directors, the record
3083 date for determining shareholders entitled to take such action shall be ~~If not otherwise provided by~~
3084 ~~or pursuant to the bylaws and no prior action is required by the board of directors pursuant to this~~
3085 ~~act, the record date for determining shareholders entitled to take action without a meeting is the~~
3086 ~~date that the first signed written consent is delivered to the corporation pursuant to~~ under s.
3087 607.0704. If not otherwise fixed, and prior action is required by the board of directors pursuant to
3088 ~~this chapter, the record date for determining shareholders entitled to take action without a meeting~~
3089 ~~is at the close of business on the day on which the board of directors adopts the resolution taking~~
3090 ~~such prior action.~~

3091 (4) If not otherwise provided by or pursuant to the bylaws, or by a court order pursuant to s.
3092 607.0703, the record date for determining shareholders entitled to notice of and to vote at an annual
3093 or special shareholders' meeting is the close of business on the day before the first notice is
3094 delivered to shareholders.

3095 (5) A record date for purposes of this section may not be more than 70 days before the
3096 meeting or action requiring a determination of shareholders.

3097 (6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting
3098 is effective for any adjournment of the meeting unless the board of directors fixes a new record
3099 date or dates, which it must do if the meeting is adjourned to a date more than 120 days after the
3100 date fixed for the original meeting.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3101 (7) If a court orders a meeting adjourned to a date more than 120 days after the date fixed for
3102 the original meeting, it may provide that the original record date or dates continues in effect or it
3103 may fix a new record date or dates.

3104 (8) The record date for a shareholders' meeting fixed by or in the manner provided in the
3105 bylaws or by the board of directors shall be the record date for determining shareholders entitled
3106 both to notice of and to vote at the shareholders' meeting, unless in the case of a record date fixed
3107 by the board of directors and to the extent not prohibited by the bylaws, the board of directors, at
3108 the time it fixes the record date for shareholders entitled to notice of the meeting, fixes a later
3109 record date on or before the date of the meeting to determine the shareholders entitled to vote at
3110 the meeting.

3111 (9) Shares of a corporation's own stock acquired by the corporation between the record date
3112 for determining shareholders entitled to notice of or to vote at a meeting of shareholders and the
3113 time of the meeting may be voted at the meeting by the holder of record as of the record date and
3114 shall be counted in determining the total number of outstanding shares entitled to be voted at the
3115 meeting.

3116 (10) If not otherwise fixed under s. 607.0703, the record date for determining shareholders
3117 entitled to demand a special meeting is the earliest date on which a signed shareholder demand is
3118 delivered to the corporation. A written demand for a special meeting is not effective unless, within
3119 60 days of the earliest date on which such a demand delivered to the corporation as required by s.
3120 607.0702 was signed, written demands signed by shareholders holding at least the percentage of
3121 votes specified in or fixed in accordance with s. 607.0702(1)(b) have been delivered to the
3122 corporation.

3123

3124 **Commentary to Section 607.0707:**

3125 The ability to establish bifurcated record dates has been added to this section (and to corresponding
3126 places in other Article 7 sections) to provide corporations, if the directors so choose, with greater
3127 flexibility to align shareholder ownership and voting by setting a record date for voting closer to
3128 the meeting date. Delaware enacted similar provisions in 2009, and those provisions are contained
3129 in s. 213 of the DGCL. This option to establish bifurcated record dates is likely to be used primary
3130 by public companies. In light of this expectation, the Model Act commentary provides that
3131 although corporate laws provide this flexibility, public corporations will need to consider the SEC's
3132 proxy rules and the practicalities of proxy voting and vote counting mechanisms in using this
3133 flexibility.

3134 The changes to subsection (3) are based (in part) on s. 213(b) of the DGCL, make clear that the
3135 board may set a record date for determining shareholders entitled to take action by written consent
3136 of shareholders, and set a default rule for determining the record date if the board doesn't set a
3137 specific record date. However, the language for the bylaws override for fixing or establishing the
3138 method for fixing such record date contained in this section has been changed to parallel the syntax
3139 appearing in the lead-in to subsection (2). Finally, the last sentence of subsection (1) has also been
3140 added to subsection (3).

3141 The "unless" language contained in new subsection (8), which is based on s. 7.07(e) of the Model
3142 Act, is meant only to refer to bi-furcated record dates.

3143 New subsection (9) has been added to resolve an inconsistency between s. 607.0707(1), which
3144 states that shareholders of record on the record date are to receive notice of and are authorized to
3145 vote at a shareholders' meeting, and s. 607.0631, which provides that shares acquired by a
3146 corporation shall become, when acquired by the corporation, authorized but not issued and
3147 outstanding shares of the corporation (or authorized and issued but not outstanding, treasury shares
3148 under the circumstances set forth in s. 607.0631(5)). Because of these inconsistent positions, a
3149 Florida corporation might be reluctant to reacquire its shares between the record date and a meeting
3150 date because of the uncertainty as to how to deal with voting of those shares given the fact that
3151 under s. 607.0631(1) these shares would not be outstanding on the meeting date, even though they
3152 were issued and outstanding on the record date. This provision is based on a similar provision
3153 contained in Maryland's corporate statute.

3154

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3155 Model Act s. 7.08 Conduct of the Meeting.

3156 Section 7.08 of the Model Act, which creates default rules regarding the conduct of shareholders'
3157 meetings, has not been added to the statute. It is believed that remedies already exist for dealing
3158 with manipulations of the shareholder voting machinery and that adding this section to the FBCA
3159 is therefore unnecessary.

3160 However, the poll closing provision that is contained in s. 7.08 of the Model Act has been added
3161 to s. 607.0729(6).

3162

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3163 607.0709 Remote participation in annual and special meetings of shareholders.

3164 (1) Shareholders of any voting group, other persons entitled to vote on behalf of shareholders
3165 pursuant to s. 607.0721, attorneys in fact for shareholders, and holders of proxies appointed
3166 pursuant to s. 607.0722 may participate in any annual or special meeting of shareholders by means
3167 of remote communication to the extent the board of directors authorizes such participation for such
3168 voting group. Participation by means of remote communication is be subject to such guidelines
3169 and procedures as the board of directors adopts, and must be in conformity with subsection (2).

3170 (2) Shareholders, other persons entitled to vote on behalf of shareholders pursuant to s.
3171 607.0721, attorneys in fact for shareholders, and holders of proxies appointed pursuant to s.
3172 607.0722 participating in a shareholders' meeting by means of remote communication authorized
3173 under subsection (1) shall be deemed present in person and may vote at such a meeting, whether
3174 such meeting is to be held at a designated place or solely by means of remote communication, if
3175 the corporation has implemented reasonable measures:

3176 (a) To verify that each person participating remotely as a shareholder is a shareholder,
3177 is another person entitled to vote on behalf of a shareholder pursuant to s. 607.0721, is an
3178 attorney in fact for a shareholder, or is a holder of a proxy appointed pursuant to s. 607.0722;
3179 and

3180 (b) To provide such shareholders, such other persons entitled to vote on behalf of
3181 shareholders pursuant to s. 607.0721, such attorneys in fact for shareholders, and such holders
3182 of proxies appointed pursuant to s. 607.0722, a reasonable opportunity to participate in the
3183 meeting and to vote on matters submitted to the shareholders, including an opportunity to
3184 communicate, and to read or hear the proceedings of the meeting, substantially concurrently
3185 with such proceedings.

3186 (3) If any shareholder, any other person entitled to vote on behalf of a shareholder pursuant
3187 to s. 607.0721, any attorney in fact for a shareholder, or any holder of a proxy appointed pursuant
3188 to s. 607.0722, votes or takes action at a shareholder's meeting by means of remote communication
3189 authorized under this section, a record of such vote or other action shall be maintained by the
3190 corporation.

3191 (4) If the board of directors is authorized to determine the place of a shareholders' meeting,
3192 the board of directors may, in its sole discretion, determine that the meeting shall be held solely
3193 by means of remote communication.

3194

3195 **Commentary to Section 607.0709:**

3196 New s. 607.0709 replaces the language previously contained in ss. 607.0701 and 607.0702
3197 regarding participation in a shareholders meeting by remote communication. The language is based
3198 on Model Act s. 7.09.

3199 The language in subsection (1) that allows the corporation's board of directors to authorize remote
3200 participation for less than all shareholders (selecting between classes and series that can participate
3201 by remote participation) is based on subsection (1) of the Model Act provision. It is believed that
3202 the Board should have the flexibility to decide which classes or series of shares can participate in
3203 a meeting by remote participation, and that any abuse by the board in inappropriately using this
3204 provision should be able to be addressed by way of remedies available to shareholders for breaches
3205 of fiduciary duties.

3206 The term "voting groups" has been substituted for "classes and series" in subsection (1).

3207 New subsection (4) has been added to make clear that if the board of directors is authorized to
3208 determine the place of a shareholders' meeting, the board of directors may, in its sole discretion,
3209 determine that the meeting shall be held solely by means of remote communication. This provision
3210 is not in the Model Act, but is intended to allow meetings without a place. The Subcommittee
3211 believes that if this provision is utilized, it supersedes the requirement that a place for the meeting
3212 be designated and noticed under ss. 607.0701, 607.0702 and 607.0705.

3213

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3214 607.0720 Shareholders' list for meeting.

3215 (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of
3216 the names of all its shareholders who are entitled to notice of a shareholders' meeting, ~~arranged by~~
3217 ~~voting group with the address of, and the number and class and series, if any, of shares held by,~~
3218 ~~each.~~ If the board of directors fixes a different record date under s. 607.0707(8) to determine the
3219 shareholders entitled to vote at the meeting, the corporation must also prepare an alphabetical list
3220 of the names of all its shareholders who are entitled to vote at the meeting. Each list must be
3221 arranged by voting group, and within each voting group by class or series of shares, and show the
3222 address of and number of shares held by each shareholder. This subsection does not require the
3223 corporation to include on such list the electronic mail address or other electronic contact
3224 information of a shareholder.

3225 (2) The shareholders' list for notice must be available for inspection by any shareholder for
3226 a period of 10 days prior to the meeting or such shorter time as exists between the record date and
3227 the meeting and continuing through the meeting at the corporation's principal office, at a place
3228 identified in the meeting notice in the city where the meeting will be held, or at the office of the
3229 corporation's transfer agent or registrar. Any separate shareholders' list for voting, if different,
3230 must be similarly available for inspection promptly after the record date for voting. A shareholder
3231 or the shareholder's agent or attorney is entitled on written demand to inspect and, the list (subject
3232 to the requirements of s. 607.1602(3)), copy a list during regular business hours and at his or her
3233 expense, during the period it is available for inspection.

3234 (3) The corporation shall make the ~~shareholders' list~~ of shareholders entitled to vote available
3235 at the meeting, and any shareholder or the shareholder's agent or attorney is entitled to inspect the
3236 list at any time during the meeting or any adjournment.

3237 (4) The shareholders' list is prima facie evidence of the identity of shareholders entitled to
3238 examine the shareholders' list or to vote at a meeting of shareholders.

3239 (5) If the requirements of this section have not been substantially complied with or if the
3240 corporation refuses to allow a shareholder or the shareholder's agent or attorney to inspect ~~a the~~
3241 ~~shareholders' list, or copy a list pursuant to subsection (2),~~ before or at the meeting, the meeting
3242 shall be adjourned until such requirements are complied with on the demand of any shareholder in
3243 person or by proxy who failed to get such access, or, if not adjourned upon such demand and such
3244 requirements are not complied with, the circuit court in the applicable of the county where a
3245 ~~corporation's principal office (or, if none in this state, its registered office) is located,~~ on
3246 application of the shareholder, may summarily order the inspection or copying at the corporation's
3247 expense and may postpone the meeting for which the list was prepared until the inspection or
3248 copying is complete.

3249 (6) Refusal or failure to comply with the requirements of this section shall not affect the
3250 validity of any action taken at such meeting.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3251 (7) A shareholder may not sell or otherwise distribute any information or records inspected
3252 under this section, except to the extent that such use is for a proper purpose as defined in s.
3253 607.1602(3). ~~Any person who violates this provision shall be subject to a civil penalty of \$5,000.~~

3254

3255 **Commentary to Section 607.0720:**

3256 Subsection (1) was modified to make it clear that the corporation need not include electronic mail
3257 addresses in its shareholder list.

3258 Subsection (2) was modified to make clear that shareholders have an absolute right to inspect the
3259 corporation's shareholders' list in connection with a meeting of shareholders, but that the right to
3260 obtain a copy of the shareholders' list is subject to the requirements of s. 607.1602 (requiring a
3261 demand made in good faith and with a proper purpose).

3262 Language was added to subsection (2) to correspond with the addition of the possibility of a bi-
3263 furcated record date. Such additional new language deals with the requirement to have a separate
3264 list of those entitled to vote in those cases where a bi-furcated record date has been established.

3265 Subsection (4), which subsection sets forth that the shareholder' list is prima facie evidence as to
3266 the identity of shareholders entitled to examine the list or to vote at the meeting, was retained, even
3267 though this subsection is not in the corresponding section of the Model Act.

3268 While not in the Model Act, the language in subsection (7), which has been in the Florida statute
3269 since 1994, was retained. However, the second sentence in subsection (7), which provides that any
3270 person who violates this provision shall be subject to a civil penalty of \$5,000, was removed. By
3271 removing this sentence, the penalty for improperly selling a shareholders' list is left to the courts
3272 to determine (which may be more than or less than the amount previously stated in the statute).

3273

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3274 607.0721 Voting entitlement of shares.

3275 (1) Except as provided in subsections (2), (3), and (4) or unless the articles of incorporation
3276 or this chapter ~~act~~ provides otherwise, each outstanding share, regardless of class or series, is
3277 entitled to one vote on each matter submitted to a vote at a meeting of shareholders. Only shares
3278 are entitled to vote. If the articles of incorporation provide for more or less than one vote for any
3279 share on any matter, every reference in this chapter ~~act~~ to a majority or other proportion of shares
3280 shall refer to such a majority or other proportion of votes entitled to be cast.

3281 (2) ~~The Shares of a corporation are not entitled to vote if they are owned by or otherwise~~
3282 belong to the corporation directly, or indirectly through an entity of which a majority of the voting
3283 power is held directly or indirectly by the corporation or which is otherwise controlled by the
3284 ~~domestic or foreign, and the first corporation owns, directly or indirectly, a majority of the shares~~
3285 entitled to vote for directors of the second corporation.

3286 (3) Shares held by the corporation in a fiduciary capacity for the benefit of any person are
3287 entitled to vote unless they are held for the benefit of, or otherwise belong to, the corporation
3288 directly, or indirectly through an entity of which a majority of the voting power is held directly or
3289 indirectly by the corporation or which is otherwise controlled by the corporation ~~Subsection (2)~~
3290 ~~does not limit the power of a corporation to vote any shares, including its own shares, held by it in~~
3291 ~~a fiduciary capacity. For purposes of this subsection, "voting power" means the current power to~~
3292 vote in the election of directors of a corporation or to elect, select, or appoint those persons who
3293 will govern another entity.

3294 (4) Redeemable shares are not entitled to vote on any matter, and shall not be deemed to be
3295 outstanding, after delivery of a written notice of redemption is effective ~~mailed to the holders~~
3296 ~~thereof~~ and a sum sufficient to redeem such shares has been deposited with a bank, trust company,
3297 or other financial institution upon an irrevocable obligation to pay the holders the redemption price
3298 upon surrender of the shares.

3299 (5) Shares standing in the name of another corporation, domestic or foreign, may be voted
3300 by such officer, agent, or proxy as the bylaws of the corporate shareholder may prescribe or, in the
3301 absence of any applicable provision, by such person as the board of directors of the corporate
3302 shareholder may designate. In the absence of any such designation or in case of conflicting
3303 designation by the corporate shareholder, the chair of the board, the president, any vice president,
3304 the secretary, and the treasurer of the corporate shareholder, in that order, shall be presumed to be
3305 fully authorized to vote such shares.

3306 (6) Shares held by an administrator, executor, guardian, personal representative, or
3307 conservator may be voted by him or her, either in person or by proxy, without a transfer of such
3308 shares into his or her name. Shares standing in the name of a trustee may be voted by him or her,
3309 either in person or by proxy, but no trustee shall be entitled to vote shares held by him or her
3310 without a transfer of such shares into his or her name or the name of his or her nominee.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3311 (7) Shares held by or under the control of a receiver, a trustee in bankruptcy proceedings, or
3312 an assignee for the benefit of creditors may be voted by him or her without the transfer thereof into
3313 his or her name.

3314 (8) If a share or shares stand of record in the names of two or more persons, whether
3315 fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or
3316 otherwise, or if two or more persons have the same fiduciary relationship respecting the same
3317 shares, unless the secretary of the corporation is given notice to the contrary and is furnished with
3318 a copy of the instrument or order appointing them or creating the relationship wherein it is so
3319 provided, then acts with respect to voting have the following effect:

3320 (a) If only one votes, in person or by proxy, his or her act binds all;

3321 (b) If more than one vote, in person or by proxy, the act of the majority so voting binds
3322 all;

3323 (c) If more than one vote, in person or by proxy, but the vote is evenly split on any
3324 particular matter, each faction is entitled to vote the share or shares in question proportionally;

3325 (d) If the instrument or order so filed shows that any such tenancy is held in unequal
3326 interest, a majority or a vote evenly split for purposes of this subsection shall be a majority or
3327 a vote evenly split in interest;

3328 (e) The principles of this subsection shall apply, insofar as possible, to execution of
3329 proxies, waivers, consents, or objections and for the purpose of ascertaining the presence of a
3330 quorum.

3331 (9) Subject to s. 607.0723, nothing herein contained shall prevent trustees or other fiduciaries
3332 holding shares registered in the name of a nominee from causing such shares to be voted by such
3333 nominee as the trustee or other fiduciary may direct. Such nominee may vote shares as directed by
3334 a trustee or other fiduciary without the necessity of transferring the shares to the name of the trustee
3335 or other fiduciary.

3336

3337 **Commentary to Section 607.0721:**

3338 Clarifying changes were made in subsections (1) – (4) based on changes made in the 2016 version
3339 of the Model Act, none of which are considered substantive. Subsections (5) – (9) are not in the
3340 Model Act, but have been in the FBCA since 1989 and are retained.

3341

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3342 607.0722 Proxies.

3343 (1) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s.
3344 607.0721, or attorney in fact for a shareholder may vote the shareholder's shares in person or by
3345 proxy.

3346 (2) (a) A shareholder, other person entitled to vote on behalf of a shareholder pursuant to s.
3347 607.0721, or attorney in fact for a shareholder may appoint a proxy to vote or otherwise act
3348 for the shareholder by signing an appointment form or by electronic transmission. Any type
3349 of electronic transmission appearing to have been, or containing or accompanied by such
3350 information or obtained under such procedures to reasonably ensure that the electronic
3351 transmission was, transmitted by such person is a sufficient appointment, subject to the
3352 verification requested by the corporation under s. 607.0724.

3353 (b) Without limiting the manner in which a shareholder, other person entitled to vote on
3354 behalf of a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder may
3355 appoint a proxy to vote or otherwise act for the shareholder pursuant to paragraph (a), a
3356 shareholder, other person entitled to vote on behalf of a shareholder pursuant to s. 607.0721,
3357 or attorney in fact for a shareholder may make such an appointment by:

3358 1. Signing an appointment form, with the signature affixed, by any reasonable
3359 means including, but not limited to, facsimile or electronic signature.

3360 2. Transmitting or authorizing the transmission of an electronic transmission to the
3361 person who will be appointed as the proxy or to a proxy solicitation firm, proxy support
3362 service organization, registrar, or agent authorized by the person who will be designated
3363 as the proxy to receive such transmission. However, any electronic transmission must set
3364 forth or be submitted with information from which it can be determined that the electronic
3365 transmission was authorized by the shareholder, other person entitled to vote on behalf of
3366 a shareholder pursuant to s. 607.0721, or attorney in fact for a shareholder. If it is
3367 determined that the electronic transmission is valid, the inspectors of election or, if there
3368 are no inspectors, such other persons making that determination shall specify the
3369 information upon which they relied.

3370 (3) An appointment of a proxy is effective when a signed appointment form or an electronic
3371 transmission of the appointment is received by the inspector of election or by the secretary or other
3372 officer or agent authorized to count tabulate votes. An appointment is valid for the term up to 11
3373 months unless a longer period is expressly provided in the appointment form and, if no term is
3374 provided, is valid for 11 months unless the appointment is irrevocable under subsection (5).

3375 (4) The death or incapacity of the shareholder appointing a proxy does not affect the right of
3376 the corporation to accept the proxy's authority unless notice of the death or incapacity is received

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3377 by the secretary or other officer or agent authorized to tabulate votes before the proxy exercises
3378 his or her authority under the appointment.

3379 (5) An appointment of a proxy is revocable by the shareholder unless the appointment form
3380 or electronic transmission conspicuously states that it is irrevocable and the appointment is coupled
3381 with an interest. Appointments coupled with an interest include the appointment of:

3382 (a) A pledgee;

3383 (b) A person who purchased or agreed to purchase the shares;

3384 (c) A creditor of the corporation who extended credit to the corporation under terms
3385 requiring the appointment;

3386 (d) An employee of the corporation whose employment contract requires the
3387 appointment; or

3388 (e) A party to a voting agreement created under s. 607.0731.

3389 (6) An appointment made irrevocable under subsection (5) becomes revocable when the
3390 interest with which it is coupled is extinguished.

3391 (7) Unless the appointment otherwise provides, an appointment made irrevocable under
3392 subsection (5) continues in effect after a transfer of the shares and a transferee takes subject to the
3393 appointment, except that a transferee for value of shares subject to an irrevocable appointment may
3394 revoke the appointment if the transferee did not know of its existence when the transferee ~~he or~~
3395 ~~she~~ acquired the shares and the existence of the irrevocable appointment was not noted
3396 conspicuously on the certificate representing the shares or on the information statement for shares
3397 without certificates.

3398 (8) Subject to s. 607.0724 and to any express limitation on the proxy's authority appearing
3399 on the face of the appointment form or in the electronic transmission, a corporation is entitled to
3400 accept the proxy's vote or other action as that of the shareholder making the appointment.

3401 (9) If an appointment form expressly provides, any proxy holder may appoint, in writing, a
3402 substitute to act in his or her place.

3403 (10) Any copy, facsimile transmission, or other reliable reproduction of the writing or
3404 electronic transmission created under subsection (2) may be substituted or used in lieu of the
3405 original writing or electronic transmission for any purpose for which the original writing or
3406 electronic transmission could be used if the copy, facsimile transmission, or other reproduction is
3407 a complete reproduction of the entire original writing or electronic transmission.

3408 (11) A corporation may adopt bylaws authorizing additional means or procedures for
3409 shareholders to use in exercising rights granted by this section.

3410 **Commentary to Section 607.0722:**

3411 Changes to subsection (3) follow the recently adopted changes to s. 7.22(c) of the Model Act. The
3412 new language clarifies that a proxy is valid for the period specified in the appointment form (which
3413 can be less than 11 months, 11 months or more than 11 months), and that if no term is specified,
3414 the term would be defaulted to 11 months unless such appointment is irrevocable under (5)
3415 (because it is coupled with an interest).

3416 The language added to subsection (7) follows recently adopted changes to s. 7.22 of the Model
3417 Act. This language makes clear that unless the appointment otherwise provides, an appointment
3418 made irrevocable under subsection (5) continues in effect after a transfer of the shares and a
3419 transferee takes subject to the appointment, except if such transferee is a transferee for value who
3420 did not know (or have reason to know from a notation on the certificate or in a related information
3421 statement) that there was an irrevocable appointment associated with such shares. This clarifying
3422 change is not believed to be substantive.

3423

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3424 607.0723 Shares held by intermediaries and nominees.

3425 (1) A corporation's board of directors may establish a procedure ~~under~~by which a person on
3426 whose behalf the beneficial owner of shares that are registered in the name of an intermediary or
3427 a nominee may elect to be treated ~~is recognized~~ by the corporation as the record shareholder by
3428 filing with the corporation a beneficial ownership certificate. ~~The extent of this recognition may~~
3429 ~~be determined in the procedure~~ terms, conditions, and limitations of such treatment shall be
3430 specified in the procedure. To the extent such person is treated under such procedure as having
3431 rights or privileges that the record shareholder otherwise would have, the record shareholder may
3432 not have those rights or privileges.

3433 (2) The procedure ~~must specify~~may set forth:

3434 (a) The types of intermediaries or nominees to which it applies;

3435 (b) The rights or privileges that the corporation recognizes in a person with respect to
3436 whom a beneficial owner ownership certificate is filed;

3437 (c) The manner in which the procedure is selected ~~by the nominee,~~ which shall include
3438 that the beneficial ownership certificate be signed or assented to by or on behalf of the record
3439 shareholder and the person or persons on whose behalf the shares are held;

3440 (d) The information that must be provided when the procedure is selected;

3441 (e) The period for which selection of the procedure is effective; ~~and~~

3442 (f) Requirements for notice to the corporation with respect to the arrangement; and

3443 (g) The form and contents of the beneficial ownership certificate.

3444 (3)(f) The procedure may specify any other aspects of the rights and duties created by the
3445 filing of a beneficial ownership certificate.

3446

3447 **Commentary to Section 607.0723:**

3448 The changes follow the recently adopted changes to s. 7.23 of the Model Act. The new language
3449 modernizes this provision of the FBCA to better deal with issues of beneficial ownership of shares.

3450

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3451 607.0724 ~~Corporation's~~ Acceptance of votes and other instruments.

3452 (1) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy
3453 appointment corresponds to the name of a shareholder, the corporation if acting in good faith is
3454 entitled to accept the vote, ballot, consent, waiver, shareholder demand, or proxy appointment and
3455 give it effect as the act of the shareholder.

3456 (2) If the name signed on a vote, ballot, consent, waiver, shareholder demand, or proxy
3457 appointment does not correspond to the name of its shareholder, the corporation if acting in good
3458 faith is nevertheless entitled to accept the vote, ballot, consent, waiver, shareholder demand, or
3459 proxy appointment and give it effect as the act of the shareholder if:

3460 (a) The shareholder is an entity and the name signed purports to be that of an officer or
3461 agent of the entity;

3462 (b) The name signed purports to be that of an administrator, executor, guardian, personal
3463 representative, or conservator representing the shareholder and, if the corporation requests,
3464 evidence of fiduciary status acceptable to the corporation has been presented with respect to
3465 the vote, ballot, consent, waiver, shareholder demand, or proxy appointment;

3466 (c) The name signed purports to be that of a receiver, trustee in bankruptcy, or assignee
3467 for the benefit of creditors of the shareholder and, if the corporation requests, evidence of this
3468 status acceptable to the corporation has been presented with respect to the vote, ballot, consent,
3469 waiver, shareholder demand, or proxy appointment;

3470 (d) The name signed purports to be that of a pledgee, beneficial owner, or attorney in
3471 fact of the shareholder and, if the corporation requests, evidence acceptable to the corporation
3472 of the signatory's authority to sign for the shareholder has been presented with respect to the
3473 vote, ballot, consent, waiver, shareholder demand, or proxy appointment; or

3474 (e) Two or more persons are the shareholder as cotenants or fiduciaries and the name
3475 signed purports to be the name of at least one of the co-owners and the person signing appears
3476 to be acting on behalf of all the co-owners.

3477 (3) The corporation is entitled to reject a vote, ballot, consent, waiver, shareholder demand,
3478 or proxy appointment if the ~~secretary or other officer or agent~~ person authorized to accept or reject
3479 such instrument ~~tabulate votes~~, acting in good faith, has reasonable basis for doubt about the
3480 validity of the signature on it or about the signatory's authority to sign for the shareholder.

3481 (4) ~~The corporation and its officer or agent who~~ Neither the corporation or any person
3482 authorized by it, nor an inspector of election under s. 607.0729, that accepts or rejects a vote, ballot,
3483 consent, waiver, shareholder demand, or proxy appointment in good faith and in accordance with
3484 the standards of this section ~~are not~~ is liable in damages to the shareholder for the consequences
3485 of the acceptance or rejection.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3486 (5) Corporate action based on the acceptance or rejection of a vote, ballot, consent, waiver,
3487 shareholder demand, or proxy appointment under this section is valid unless a court of competent
3488 jurisdiction determines otherwise.

3489 (6) If an inspector of election has been appointed under s. 607.0729, the inspector of election
3490 may request information and make determinations under subsections (1), (2), and (3). Any
3491 determination made by the inspector of election under those subsections is controlling.

3492

3493 **Commentary to Section 607.0724:**

3494 Clarifying changes have been made following recent changes to s. 7.24 of the Model Act, including
3495 references to "ballot" and "shareholder demand" and language designed to coordinate with the
3496 inspector of election provisions in s. 607.0729.

3497

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3498 607.0725 Quorum and voting requirements for voting groups.

3499 (1) Shares entitled to vote as a separate voting group may take action on a matter at a meeting
3500 only if a quorum of those shares exists with respect to that matter. Unless the articles of
3501 incorporation or this chapter ~~act~~ provides otherwise, a majority of the votes entitled to be cast on
3502 the matter by the voting group constitutes a quorum of that voting group for action on that matter.

3503 (2) Once a share is represented for any purpose at a meeting, it is deemed present for quorum
3504 purposes for the remainder of the meeting and for any adjournment of that meeting unless a new
3505 record date is or must be fixed ~~set~~ for that adjourned meeting.

3506 (3) If a quorum exists, action on a matter (other than the election of directors) by a voting
3507 group is approved if the votes cast within the voting group favoring the action exceed the votes
3508 cast opposing the action, unless the articles of incorporation or this chapter ~~act~~ requires a greater
3509 number of affirmative votes.

3510 (4) The holders of a majority of the shares represented, and who would be entitled to vote at
3511 a meeting if a quorum were present, where a quorum is not present, may adjourn such meeting
3512 from time to time.

3513 (5) The articles of incorporation may provide for a greater voting requirement or a greater or
3514 lesser quorum requirement for shareholders, or voting groups of shareholders, than is provided by
3515 this chapter ~~act~~, but in no event shall a quorum consist of less than one-third of the shares entitled
3516 to vote.

3517 (6) An amendment to the articles of incorporation that adds, changes, or deletes a greater or
3518 lesser quorum or voting requirement shall meet the same quorum requirement and be adopted by
3519 the same vote and voting groups required to take action under the quorum and voting requirements
3520 then in effect or proposed to be adopted, whichever is greater.

3521 (7) The election of directors is governed by s. 607.0728.

3522 (8) Whenever a provision of this chapter provides for voting of classes or series as separate
3523 voting groups, the rules provided in s. 607.1004 for amendments of articles of incorporation apply
3524 to that provision.

3525

3526 **Commentary to Section 607.0725:**

3527 The language in subsection (4), dealing with the ability of the holders of a majority of the shares
3528 in attendance at a meeting for which a quorum is not present to adjourn the meeting (which has
3529 been in the statute since 1989 but is not in the Model Act) has been retained.

3530 Subsections (5) and (6) are derived from s. 7.27 of the Model Act.

3531 Practitioners are reminded that the best way to avoid the possibility that a separate vote of each
3532 voting group will be required under particular circumstances is to expressly and clearly state in the
3533 corporation's articles of incorporation that all shares will vote together as a single voting group on
3534 such matters.

3535

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3536 607.0726 Action by single and multiple voting groups.

3537 (1) If the articles of incorporation or this chapter ~~act~~ provides for voting by a single voting
3538 group on a matter, action on that matter is taken when voted upon by that voting group as provided
3539 in s. 607.0725.

3540 (2) If the articles of incorporation or this chapter ~~act~~ provides for voting by two or more
3541 voting groups on a matter, action on that matter is taken only when voted upon by each of those
3542 voting groups counted separately as provided in s. 607.0725. Action may be taken by different ~~one~~
3543 voting groups on a matter ~~even though no action is taken by another voting group entitled to vote~~
3544 ~~on the matter~~ at different times.

3545

3546 **Commentary to Section 607.0726:**

3547 Clarifying changes based on the most recent versions of the corollary section of the Model Act
3548 have been made. None of these changes are considered substantive.

3549

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3550 607.0728 Voting for directors; cumulative voting.

3551 (1) Unless otherwise provided in the articles of incorporation, or in a bylaw that fixes a
3552 greater voting requirement for the election of directors and that is adopted by the board of directors
3553 or shareholders of a corporation having shares registered pursuant to s. 12 of the Securities
3554 Exchange Act of 1934 ~~listed on a national securities exchange~~ at the time of adoption, directors
3555 are elected by a plurality of the votes cast by the shares entitled to vote in the election at a meeting
3556 at which a quorum is present. A bylaw provision or amendment adopted by shareholders which
3557 specifies the votes necessary for the election of directors may not be further amended or repealed
3558 by the board of directors.

3559 (2) Each shareholder who is entitled to vote at an election of directors has the right to vote
3560 the number of shares owned by him or her for as many persons as there are directors to be elected
3561 and for whose election the shareholder has a right to vote. Shareholders do not have a right to
3562 cumulate their votes for directors unless the articles of incorporation so provide.

3563 (3) A statement included in the articles of incorporation that "all or a designated voting group
3564 of shareholders are entitled to cumulate their votes for directors," or words of similar import, means
3565 that the shareholders designated are entitled to multiply the number of votes they are entitled to
3566 cast by the number of directors for whom they are entitled to vote and cast the product for a single
3567 candidate or distribute the product among two or more candidates.

3568

3569 **Commentary to Section 607.0728:**

3570 Subsection (1), which was added to the Florida statute in 2009, allows directors of a public
3571 company to amend the corporation's bylaws to fix a greater voting requirement for the election of
3572 directors without requiring action by the shareholders. The definition of public company used in
3573 this section has been modified to provide that the board of directors of any company with a class
3574 of shares registered pursuant to section 12 of the Securities Exchange Act of 1934 (whether or not
3575 on a national securities exchange) may adopt a majority voting standard.

3576 The language in the first sentence of subsection (2) is not included in Model Act s. 7.28(b).
3577 However, this language is believed to be the general rule with respect to shares entitled to vote for
3578 the election of directors, and therefore the language has been retained.

3579 The language in s. 7.28(d) of the Model Act dealing with the rules for cumulative voting was
3580 determined not to be necessary and thus has not been included.

3581 Concern was expressed that the language allowing the board of directors of a public company to
3582 adopt a majority voting standard could be viewed as in conflict with the language in s. 607.1021
3583 (although it was agreed that the drafters of the 2009 change did not intend for Section 607.1021 to
3584 override the authority granted to directors to act alone to fix the greater voting requirement). The
3585 subcommittee considered whether to add a cross reference to s. 607.1021 so as to eliminate any
3586 potential for conflict. However, it was concluded that the cross reference was unnecessary.

3587

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3588 607.0729 Voting procedures; inspectors of election.

3589 (1) A corporation that has a class of shares registered pursuant to s. 12 of the Securities
3590 Exchange Act of 1934 shall, and any other corporation may, appoint one or more inspectors to act
3591 at a meeting of shareholders in connection with determining voting results. Each inspector will
3592 faithfully execute the duties of inspector with strict impartiality and according to the best of the
3593 inspector's ability. An inspector may be an officer or employee of the corporation. The inspectors
3594 may appoint or retain other persons to assist the inspectors in the performance of the duties of
3595 inspector under subsection (2), and may rely on information provided by such persons and other
3596 persons, including those appointed to count votes, unless the inspectors believe reliance is
3597 unwarranted.

3598 (2) The inspectors shall:

3599 (a) Ascertain the number of shares outstanding and the voting power of each;

3600 (b) Determine the shares represented at a meeting;

3601 (c) Determine the validity of proxy appointments and ballots;

3602 (d) Count the votes; and

3603 (e) Make a written report of the results.

3604 (3) In performing their duties, the inspectors may examine:

3605 (a) The proxy appointment forms and any other information provided in accordance with
3606 s. 607.0722(2);

3607 (b) Any envelope or related writing submitted with those appointment forms;

3608 (c) Any ballots;

3609 (d) Any evidence or other information specified in s. 607.0724; and

3610 (e) The relevant books and records of the corporation relating to its shareholders and
3611 their entitlement to vote, including any securities position list provided by a depository
3612 clearing agency.

3613 (4) The inspectors also may consider other information that they believe is relevant and
3614 reliable for the purpose of performing any of the duties assigned to them pursuant to subsection
3615 (2), including, for the purpose of evaluating inconsistent, incomplete, or erroneous information
3616 and reconciling information submitted on behalf of banks, brokers, their nominees, or similar
3617 persons that indicates more votes being cast than a proxy is authorized by the record shareholder
3618 to cast or more votes being cast than the record shareholder is entitled to cast. If the inspectors
3619 consider other information allowed by this subsection, they must, in their report under subsection

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3620 (2), specify the information considered by them, including the purpose or purposes for which the
3621 information was considered, the person or persons from whom they obtained the information,
3622 when the information was obtained, the means by which the information was obtained, and the
3623 basis for the inspectors' belief that such information is relevant and reliable.

3624 (5) Determinations of law by the inspectors of election are subject to de novo review by a
3625 court in a judicial proceeding challenging the inspector's activities under this section.

3626 (6) The chair of the meeting shall announce at the meeting when the polls close for each
3627 matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon
3628 the final adjournment of the meeting. After the polls close, no ballots, proxies, or votes, or any
3629 revocations or changes thereto, may be accepted.

3630

3631 **Commentary to Section 607.0729:**

3632 This new section of the FBCA adopts the current version of s. 7.29 of the Model Act dealing with
3633 inspectors of election. Section 7.29(a) of the Model Act applies this provision to all companies
3634 with a class of shares registered pursuant to section 12 of the Securities Exchange Act of 1934 and
3635 to "any other corporation" that appoints an inspector to act at a meeting of directors (compared to
3636 s. 231 of the DGCL, which, in covering this subject, only applies this provision to public
3637 companies). This statute follows the approach taken on this issue in the Model Act. However, the
3638 provision has been changed to a requirement to faithfully execute the duties of an inspector with
3639 strict impartiality rather than a provision that requires an inspector to "certify in writing" that they
3640 will faithfully execute the duties of inspector with strict impartiality. While best practices might
3641 be to arrange for a certification in writing, requiring a written certification was viewed as a
3642 potential trap for companies that may not get it technically right, even though their inspectors
3643 appropriately execute their duties.

3644 Subsection (5) is believed to reflect the current law on this topic.

3645 New subsection (6) laying out the impact of the closing of the polls at a shareholders meeting, has
3646 been added. The language is derived from s. 7.08(d) of the Model Act and is consistent with a
3647 similar provision in s. 231 of the DGCL.

3648

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3649 607.0730 Voting trusts.

3650

3651 (1) One or more shareholders may create a voting trust, conferring on a trustee the right to
3652 vote or otherwise act for him or her or for them, by signing an agreement setting out the provisions
3653 of the trust (which may include anything consistent with its purpose) and transferring their shares
3654 to the trustee. When a voting trust agreement is signed, the trustee shall prepare a list of the names
3655 and addresses of all voting trust beneficial owners ~~of beneficial interests in the trust~~, together with
3656 the number and class of shares each transferred to the trust, and deliver copies of the list and
3657 agreement to the corporation²s at its principal office. After filing a copy of the list and agreement
3658 in the corporation's principal office, such copy shall be open to inspection by any shareholder of
3659 the corporation (subject to the requirements of s. 607.1602(3)) or by any beneficiary of the trust
3660 under the agreement during business hours.

3661 (2) A voting trust becomes effective on the date the first shares subject to the trust are
3662 registered in the trustee's name.

3663

3664 **Commentary to Section 607.0730:**

3665 Subsection (1) was modified to include clean-up language from s. 7.30 of the Model Act ("shall
3666 prepare a list of the names and addresses of all voting trust beneficial owners"). This change uses
3667 the new definition of "voting trust beneficial owner" contained in s. 607.01401(78).

3668 Although not in the corollary section of the Model Act, the language in the last sentence of
3669 subsection (1), dealing with the requirement that a copy of the trust needs to be made available to
3670 beneficial holders of an interest in the trust and, subject to the requirements of Section 607.0602(3),
3671 to shareholders of the company, has been retained.

3672 The language in the first sentence of section (c) of Model Act Section 7.30, which provides that
3673 the duration of a voting trust shall be as set forth in the voting trust agreement, has not been added.
3674 The question of whether a voting trust without an expiration date can continue indefinitely is left
3675 to the courts to decide.

3676 Since Florida law has not included a ten-year limitation on the duration of a voting trust since this
3677 statute was modified back in 1998, the transition language contained in s. 7.30(c) of the Model Act
3678 has not been added to this section of the FBCA.

3679

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3680 607.0731 ~~Shareholders'~~ Shareholders' Voting agreements.

3681 (1) Two or more shareholders may provide for the manner in which they will vote their shares
3682 by signing an agreement for that purpose. A ~~shareholders'~~ voting agreement created under this
3683 section is not subject to the provisions of s. 607.0730.

3684 (2) A ~~shareholders'~~ voting agreement created under this section is specifically enforceable.

3685 (3) A transferee of shares in a corporation the shareholders of which have entered into an
3686 agreement authorized by subsection (1) shall be bound by such agreement if the transferee takes
3687 shares subject to such agreement with notice thereof. A transferee shall be deemed to have notice
3688 of any such agreement or any ~~such~~-renewal thereof if the existence of such agreement ~~thereof~~ is
3689 noted on the face or back of the certificate or certificates representing such shares or on the
3690 information statement for uncertificated shares required by s. 607.0626(2).

3691

3692 **Commentary to Section 607.0731:**

3693 The name of this section has been changed to "Voting Agreements," since this section only deals
3694 with voting agreements and the current heading ("Shareholders' Agreements") is misleading and
3695 creates confusion with s. 607.0732. A corresponding change has been made to the language in
3696 subsections (1) and (2) to change the words "shareholders' agreement" in each subsection to
3697 "voting agreements."

3698 The language in subsection (3), dealing with the issue of whether transferees take their shares
3699 subject to a voting agreement, has been retained, even though this language is not in the
3700 corresponding section of the Model Act. There is a concern that taking this subsection out could
3701 possibly be misconstrued by judges as a change in the law, when confronted with addressing
3702 whether a holder in due course who is not aware of a voting agreement should take free of the
3703 agreement. However, the language has been modernized.

3704 Users of the statute are reminded that as a matter of good practice, legends with respect to voting
3705 agreements placed on stock certificates should be carefully worded so that the legend not only
3706 covers the particular agreement, but also all extensions, amendments or renewals of such
3707 agreement.

3708

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3709 607.0732 Shareholder agreements.

3710 (1) An agreement among the shareholders of a corporation ~~with 100 or fewer shareholders at~~
3711 ~~the time of the agreement,~~ that complies with this section, is effective among the shareholders and
3712 the corporation, even though it is inconsistent with one or more other provisions of this chapter, if
3713 it:

3714 (a) Eliminates the board of directors or limits or restricts the discretion or powers of the
3715 board of directors;

3716 (b) Governs the authorization or making of distributions regardless of whether ~~or not~~
3717 they are in proportion to ownership of shares, subject to the limitations in s. 607.06401;

3718 (c) Establishes who shall be directors or officers of the corporation, or their terms of
3719 office or manner of selection or removal;

3720 (d) Governs, in general or in regard to specific matters, the exercise or division of voting
3721 power by the shareholders and directors or among any of them, including use of weighted
3722 voting rights or director proxies;

3723 (e) Establishes the terms and conditions of any agreement for the transfer or use of
3724 property or the provision of services between the corporation and any shareholder, director,
3725 officer, or employee of the corporation or among any of them;

3726 (f) Transfers to any shareholder or other person any authority to exercise the corporate
3727 powers or to manage the business and affairs of the corporation, including the resolution of
3728 any issue about which there exists a deadlock among directors or shareholders; ~~or~~

3729 (g) Requires dissolution of the corporation at the request of one or more of the
3730 shareholders or upon the occurrence of a specified event or contingency;

3731 (h) Imposes a liability on a shareholder for the attorney fees or expenses of the
3732 corporation or any other party in connection with an internal corporate claim, as defined in s.
3733 607.0208;

3734 (i) Establishes, including in lieu of judicial dissolution, a mechanism for breaking a
3735 deadlock among the directors or shareholders of the corporation; or

3736 (j~~h~~) Otherwise governs the exercise of the corporate powers or the management of the
3737 business and affairs of the corporation or the relationship between the shareholders, the
3738 directors, ~~and~~ ~~of~~ the corporation, or among any of them, and is not contrary to public policy.
3739 ~~For purposes of this paragraph, agreements contrary to public policy include, but are not~~
3740 ~~limited to, agreements that reduce the duties of care and loyalty to the corporation as required~~
3741 ~~by ss. 607.0830 and 607.0832, exculpate directors from liability that may be imposed under~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3742 s. 607.0831, adversely affect shareholders' rights to bring derivative actions under s.
3743 607.07401, or abrogate appraisal dissenters' rights under ss. 607.1301-607.1320.

3744 (2) An agreement authorized by this section shall be:

3745 (a) 1. Set forth or referenced in the articles of incorporation or bylaws and
3746 approved by all persons who are shareholders at the time the agreement; or

3747 2. Set forth in a written agreement that is signed by all persons who are
3748 shareholders at the time of the agreement and such written agreement is made known
3749 to the corporation; and-

3750 (b) Subject to termination or amendment only by all persons who are shareholders
3751 at the time of the termination or amendment, unless the agreement provides otherwise
3752 ~~with respect to termination and with respect to amendments that do not change the~~
3753 ~~designation, rights, preferences, or limitations of any of the shares of a class or series.~~

3754 (3) The existence of an agreement authorized by this section shall be noted conspicuously on
3755 the front or back of each certificate for outstanding shares or on the information statement required
3756 with respect to uncertificated shares by s. 607.0626(2). If at the time of the agreement the
3757 corporation has shares outstanding which are represented by certificates, the corporation shall
3758 recall such certificates and issue substitute certificates that comply with this subsection. The failure
3759 to note the existence of the agreement on the certificate or information statement shall not affect
3760 the validity of the agreement or any action taken pursuant to it. Any purchaser of shares who, at
3761 the time of purchase, did not have knowledge of the existence of the agreement shall be entitled to
3762 rescission of the purchase. A purchaser shall be deemed to have knowledge of the existence of the
3763 agreement if its existence is noted on the certificate or information statement for the shares in
3764 compliance with this subsection and, if the shares are not represented by a certificate, the
3765 information statement is delivered to the purchaser at or before ~~prior to~~ the time of the purchase of
3766 the shares. An action to enforce the right of rescission authorized by this subsection must be
3767 commenced within the earlier of 90 days after discovery of the existence of the agreement or 2
3768 years after the time of purchase of the shares.

3769 (4) An agreement authorized by this section shall cease to be effective when shares of the
3770 corporation are registered pursuant to s. 12 of the Securities Exchange Act of 1934 ~~are listed on a~~
3771 ~~national securities exchange or regularly quoted in a market maintained by one or more members~~
3772 ~~of a national or affiliated securities association.~~ If the agreement ceases to be effective for any
3773 reason, the board of directors may, if the agreement is contained or referred to in the corporation's
3774 articles of incorporation or bylaws, adopt an amendment to the articles of incorporation or bylaws,
3775 without shareholder action, to delete the agreement and any references to it.

3776 (5) An agreement authorized by this section that limits or restricts the discretion or powers
3777 of the board of directors shall relieve the directors of, and impose upon the person or persons in

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3778 whom such discretion or powers are vested, liability for acts or omissions imposed by law on
3779 directors to the extent that the discretion or powers of the directors are limited by the agreement.

3780 (6) The existence or performance of an agreement authorized by this section shall not be a
3781 ground for imposing personal liability on any shareholder for the acts or debts of the corporation
3782 even if the agreement or its performance treats the corporation as if it were a partnership or results
3783 in failure to observe the corporate formalities otherwise applicable to the matters governed by the
3784 agreement.

3785 (7) Incorporators or subscribers for shares may act as shareholders with respect to an
3786 agreement authorized by this section if no shares have been issued when the agreement is made.

3787 (8) This section does not limit or invalidate agreements that are otherwise valid or authorized
3788 without regard to this section, including shareholder agreements between or among some or all of
3789 the shareholders or agreements between or among the corporation and one or more shareholders.

3790

3791 **Commentary to Section 607.0732:**

3792 Subsection (1) currently limits the use of this section to corporations that have 100 or fewer
3793 shareholders at the time of the agreement. The comparable Model Act provision does not contain
3794 this limitation. The 100 or fewer shareholder limitation has been removed based on the belief that
3795 the limitation is an artificial limitation on the definition of what is a closely held entity and that, in
3796 an era of providing flexibility for corporations and other entities to agree upon how they will be
3797 governed and operate, this distinction no longer makes sense.

3798 New subsection (1)(i) has been added to make clear that when shareholders have agreed in a
3799 shareholders agreement complying with this section to a deadlock resolution mechanism which
3800 expressly deals with how such conduct will be handled, then such provision will be followed in
3801 lieu of judicial dissolution. This type of provision is more fully described in s. 607.1430(4) of the
3802 FBCA. It is the view of the Subcommittee that this type provision is not contrary to public policy.

3803 Subsection (1)(h) (now (j)) has been modified to remove the examples of provisions that are
3804 contrary to public policy. These examples are not in subsection (a)(8) of the corollary section of
3805 the Model Act. Whether particular provisions of a shareholders' agreement are contrary to public
3806 policy is a decision to be made by the courts.

3807 The addition of the words "or referenced" in subsection (2)(a) is not intended to substantively
3808 change the law, but rather is intended to clarify what has always been understood to be within the
3809 words "set forth," and to parallel the "contained or referred to in" language that appears in
3810 subsection (4).

3811 Although the limits of this subsection of the Model Act are left uncertain, the commentary to the
3812 2016 version of the Model Act provides that provisions of the Act may not be overridden if they
3813 reflect core principles of public policy with respect to corporate affairs. For example, a provision of
3814 a shareholder agreement that purports to eliminate all of the standards of conduct established under
3815 s. 607.0830 applicable to full-functioning directors may be viewed as contrary to public policy and
3816 thus not validated under subsection (1)(h) (now (j)). On the other hand, a provision that modifies,
3817 limits or reduces standards of conduct under certain circumstances may be acceptable.

3818 Further, the validity of some provisions may depend upon the circumstances. For example, a
3819 provision of a shareholder agreement that limits inspection rights under s. 607.1602 or the right to
3820 financial statements under s. 607.1620 might, as a general matter, be valid, but that provision might
3821 not be given effect if it prevented shareholders from obtaining information necessary to determine
3822 whether directors of the corporation have satisfied the applicable standards of conduct under s.
3823 607.0830.

3824 This change is not intended to suggest that one or more of the items that were previously enumerated
3825 in subsection (1)(h) (now (j)) as agreements that are contrary to public policy should no longer be
3826 considered to be contrary to public policy. Rather, as noted above, whether any such agreements are

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3827 contrary to public policy will be determined by the courts based on the particularities of each
3828 agreement and the circumstances, and in some cases these items may be contrary to public policy
3829 and in other circumstances they may not.

3830 Subsection (8) was added to make clear that a shareholder agreement which is not entered into by
3831 all persons who are shareholders at the time the agreement is entered into may still be enforceable
3832 against the shareholders who are parties to such agreement and against the corporation under
3833 certain circumstances. The addition of subsection (8) with respect to shareholder agreements that
3834 do not cover the topics contained in Section 607.0731(1) is not considered a change in the law and
3835 reflects what is considered to be the current state of the common law on this issue. It is added to
3836 eliminate any ambiguity in that regard and to provide express supporting language. This is in
3837 addition to the two sections of the FBCA that expressly permit enforcement of shareholder or other
3838 agreements between or among shareholders that don't comply with s. 607.0732: (i) Sections
3839 607.0731 (Voting Agreements) and (ii) Section 607.0627 (Restriction on Transfer of Shares and
3840 Other Securities).

3841 Practitioners are cautioned that if they want certainty as to whether an agreement covering one or
3842 more of the topics contained in s. 607.0732(1) and changing traditional corporate norms is
3843 enforceable, they should follow the requirements of this section of the FBCA.

3844 A shareholder agreement otherwise validated by s. 607.0732 is not and will generally not be legally
3845 binding on the state, on creditors, or on other third parties (except to the extent that such creditors or
3846 third parties are also shareholders, in which case it may be binding). For example, an agreement that
3847 dispenses with the need to make corporate filings required by the FBCA would be ineffective.
3848 Similarly, an agreement among shareholders that provides that only the president has authority to enter
3849 into contracts for the corporation would not, without more, be binding against third parties – and
3850 ordinary principles of agency, including the concept of apparent authority, would continue to apply.

3851

FINAL STATUTE AS ADOPTED
(With Commentary)

3852 607.07401—Shareholders' derivative actions.

3853 ~~(1) A person may not commence a proceeding in the right of a domestic or foreign~~
3854 ~~corporation unless the person was a shareholder of the corporation when the transaction~~
3855 ~~complained of occurred or unless the person became a shareholder through transfer by operation~~
3856 ~~of law from one who was a shareholder at that time.~~

3857 ~~(2) A complaint in a proceeding brought in the right of a corporation must be verified and~~
3858 ~~allege with particularity the demand made to obtain action by the board of directors and that the~~
3859 ~~demand was refused or ignored by the board of directors for a period of at least 90 days from the~~
3860 ~~first demand unless, prior to the expiration of the 90 days, the person was notified in writing that~~
3861 ~~the corporation rejected the demand, or unless irreparable injury to the corporation would result~~
3862 ~~by waiting for the expiration of the 90-day period. If the corporation commences an investigation~~
3863 ~~of the charges made in the demand or complaint, the court may stay any proceeding until the~~
3864 ~~investigation is completed.~~

3865 ~~(3) The court may dismiss a derivative proceeding if, on motion by the corporation, the court~~
3866 ~~finds that one of the groups specified below has made a determination in good faith after~~
3867 ~~conducting a reasonable investigation upon which its conclusions are based that the maintenance~~
3868 ~~of the derivative suit is not in the best interests of the corporation. The corporation shall have the~~
3869 ~~burden of proving the independence and good faith of the group making the determination and the~~
3870 ~~reasonableness of the investigation. The determination shall be made by:~~

3871 ~~(a) A majority vote of independent directors present at a meeting of the board of~~
3872 ~~directors, if the independent directors constitute a quorum;~~

3873 ~~(b) A majority vote of a committee consisting of two or more independent directors~~
3874 ~~appointed by a majority vote of independent directors present at a meeting of the board of~~
3875 ~~directors, whether or not such independent directors constitute a quorum; or~~

3876 ~~(c) A panel of one or more independent persons appointed by the court upon motion by~~
3877 ~~the corporation.~~

3878 ~~(4) A proceeding commenced under this section may not be discontinued or settled without~~
3879 ~~the court's approval. If the court determines that a proposed discontinuance or settlement will~~
3880 ~~substantially affect the interest of the corporation's shareholders or a class, series, or voting group~~
3881 ~~of shareholders, the court shall direct that notice be given to the shareholders affected. The court~~
3882 ~~may determine which party or parties to the proceeding shall bear the expense of giving the notice.~~

3883 ~~(5) On termination of the proceeding, the court may require the plaintiff to pay any~~
3884 ~~defendant's reasonable expenses, including reasonable attorney's fees, incurred in defending the~~
3885 ~~proceeding if it finds that the proceeding was commenced without reasonable cause.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3886 ~~(6) The court may award reasonable expenses for maintaining the proceeding, including~~
3887 ~~reasonable attorney's fees, to a successful plaintiff or to the person commencing the proceeding~~
3888 ~~who receives any relief, whether by judgment, compromise, or settlement, and require that the~~
3889 ~~person account for the remainder of any proceeds to the corporation; however, this subsection does~~
3890 ~~not apply to any relief rendered for the benefit of injured shareholders only and limited to a~~
3891 ~~recovery of the loss or damage of the injured shareholders.~~

3892 ~~(7) For purposes of this section, "shareholder" includes a beneficial owner whose shares are~~
3893 ~~held in a voting trust or held by a nominee on his or her behalf.~~

3894

3895 **Commentary to Section 607.07401:**

3896 The FBCA currently includes all of the derivative action sections in a single statutory section. On
3897 the other hand, the Model Act breaks this topic into multiple sections (ss. 7.41-7.47). The revisions
3898 follow the approach of the Model Act and thus break the derivative action provisions into multiple
3899 sections in a manner similar to the Model Act.

3900 Florida's corporate statute follows the Model Act and its LLC and partnership statutes follow the
3901 Uniform Acts, and the Model Act and the respective Uniform Acts often differ in procedure and
3902 substance for valid reasons. In many instances in the various Florida entity statutes, these
3903 differences have been respected, in whole or in part; yet in certain other instances where the same
3904 concept is addressed and where deemed appropriate, efforts have been made to harmonize the
3905 approach by using the same language with the same general structure. The process sections of the
3906 derivative action provisions of the FBCA are an example of provisions where efforts have been
3907 made to harmonize the FBCA with the most recent uniform act adopted in Florida (FRLLCA). On
3908 the other hand, there are other sections within the FBCA derivative action provisions where,
3909 because of the different nature of the different types of entities, trying to achieve harmonization of
3910 language and approach could actually end up defeating the intended differences of the respective
3911 entities (for example, in Section 607.0742). In those cases, the language and structure were not
3912 harmonized, even though the subject matter of the provision was comparable. As a general matter,
3913 wherever possible, efforts were made to follow the model on which the FBCA is based (the Model
3914 Act) and not to stray from that model unless there was a compelling reason to do so.

3915

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3916 607.0741 Standing.

3917 (1) A shareholder may not commence a derivative proceeding unless the shareholder is a
3918 shareholder at the time the action is commenced and:

3919 (a) Was a shareholder when the conduct giving rise to the action occurred; or

3920 (b) Whose status as a shareholder devolved on the person through transfer or by
3921 operation of law from one who was a shareholder when the conduct giving rise to the action
3922 occurred.

3923 (2) In ss. 607.0741-607.0747, the term "shareholder" means a record shareholder, a beneficial
3924 shareholder, or an unrestricted voting trust beneficial owner.

3925

3926 **Commentary to Section 607.0741:**

3927 Under s. 607.0741(1), a person may not commence a derivative action proceeding unless the
3928 person was a shareholder of the corporation when the transaction complained of occurred or unless
3929 the person became a shareholder through transfer by operation of law from one who was a
3930 shareholder at that time. Section 7.41 of the Model Act provides that a shareholder may not
3931 commence or maintain a derivative action proceeding unless the shareholder was a shareholder of
3932 the corporation at the time of the act or omission complained of or became a shareholder through
3933 transfer by operation of law from one who was a shareholder at that time. Section 7.41 also adds
3934 a requirement that "the shareholder must fairly and adequately represent the interests of the
3935 corporation in enforcing the rights of the corporation" to maintain a derivative action proceeding.
3936 Section 605.0803 of FRLCA is substantively similar to the current FBCA section regarding who
3937 is a proper plaintiff, except that it adds the requirement that the member must also be a member at
3938 the time the action is commenced.

3939 The revised standing provision does not add any specific language to the effect that a shareholder
3940 must remain a shareholder throughout the derivative action proceeding in order to continue to
3941 proceed with an otherwise properly brought derivative action. Imposing any such condition to
3942 continuing to maintain such an action should be based on the equities in each respective situation
3943 and thus should be left to the courts to decide. Further, the Model Act concept contained in s.
3944 7.41(b) requiring that the shareholder fairly and adequately represent the interests of the
3945 corporation in enforcing the rights of the corporation was not included in the statute out of a
3946 concern that this additional standing requirement is an invitation to litigation that would be costly
3947 and would unduly delay the process, thus operating as an inappropriate hindrance to derivative
3948 actions. Any such determination should be based on the equities in each respective situation and
3949 thus should be left to the courts to decide.

3950 The revised standing provision does not adopt the "maintain" language from s. 7.41 of the Model
3951 Act because the concept is implicit in the current statute and tends to give courts more leeway.

3952 An expanded definition of "shareholder" for purposes of the derivative action provisions of the
3953 FBCA has been added.

3954

**FINAL STATUTE AS ADOPTED
(With Commentary)**

3955 607.0742 Complaint; demand and excuse.

3956 A complaint in a proceeding brought in the right of a corporation must be verified and allege
3957 with particularity:

3958 (1) The demand, if any, made to obtain the action desired by the shareholder from the board
3959 of directors; and

3960 (2) Either:

3961 (a) If such a demand was made, that the demand was refused, rejected, or ignored by
3962 the board of directors prior to the expiration of 90 days from the date the demand was made;
3963 or

3964 (b) If such a demand was made, why irreparable injury to the corporation or
3965 misapplication or waste of corporate assets causing material injury to the corporation would
3966 result by waiting for the expiration of a 90-day period from the date the demand was made; or

3967 (c) The reason or reasons the shareholder did not make the effort to obtain the desired
3968 action from the board of directors or comparable authority.

3969

3970 **Commentary to Section 607.0742:**

3971 Under current s. 607.07401(2), a derivative proceeding cannot be brought unless the complainant
3972 alleges that demand was made to obtain action of the Board of Directors and the demand was
3973 refused or ignored by the Board of Directors for a period of at least 90 days from the first demand,
3974 unless irreparable injury to the corporation would result from waiting the 90 days. The Model Act
3975 continues to include a required universal demand before a derivative action may be brought. On
3976 the other hand, FRLICA, in Section 605.0802(2), contemplates that if making a demand on the
3977 other members (in a member-managed LLC) or on the other managers (in a manager managed
3978 LLC) would be futile or would cause irreparable injury to the company, then such demand shall
3979 not be required in order to maintain a derivative proceeding against the LLC. FRLICA provision
3980 follows RULLCA on this issue. Further, while not in the DGCL, the futility concept, as an
3981 alternative to a demand requirement, has been adopted as a matter of judicial policy by the
3982 Delaware courts, and whether and to what extent Florida courts choose to adopt the applicable
3983 Delaware standards remains to be seen.

3984 In making a decision as to whether to add "demand futility" to the FBCA, consideration was given
3985 to the following items:

- 3986 • the reasons why futility might or might not be an appropriate excuse to demand in the LLC
3987 context and in the corporate context;
3988
- 3989 • the reasons why futility was not adopted in the FBCA when it was originally adopted in
3990 1989 and why it has not been added to the FBCA as the Delaware law on the subject has
3991 continued to develop;
3992
- 3993 • whether because of acknowledged harmonization efforts to rationalize among entity
3994 statutes in Florida, either demand futility should be added to the FBCA or FRLICA should
3995 be modified to remove demand futility; and
3996
- 3997 • while many states have a universal demand requirement in their respective corporate
3998 statutes, a substantial number of states, including Delaware, recognize the concept of
3999 demand futility (in one form or another) as a valid excuse for making demand under certain
4000 circumstances.

4001 The Subcommittee was also aware that, notwithstanding that the existing derivative action statute
4002 has a universal demand requirement, some federal courts sitting in Florida appear to have, in the
4003 past, recognized futility in circumstances where the demand is to be directed to the directors
4004 alleged to be acting inappropriately.

4005 After analyzing all of these factors, the revised demand provision allows a complaining
4006 shareholder to argue that demand would be futile by alleging the reasons for the shareholder not

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4007 making the effort to obtain the action desired. The language used in the statute is largely derived
4008 from existing s. 607.07401(2), but adds the opportunity to allege the reasons for not making the
4009 demand and leaves it to the courts to determine, under such circumstances, whether demand would
4010 be considered futile.

4011 In situations where a demand has been made, similar to the existing FBCA, s. 607.0742(2)(b)
4012 allows a court to shorten the 90-day period if irreparable injury to the corporation would result
4013 from waiting the 90-day period. However, this subsection goes further than existing law in
4014 situations where a demand is made, by adding a similar ability for a court to shorten the 90-day
4015 period following the demand if misapplication or waste of corporate assets causing material injury
4016 to the corporation would result by waiting for the expiration of a 90-day period from the date the
4017 demand was made.

4018 If demand is made, the demand need not set forth the basis for the demand in detail, since the
4019 corporation can contact the shareholder for clarification if there are any questions, but the demand
4020 must set forth facts concerning share ownership and must be sufficiently specific to apprise the
4021 corporation of the action sought to be taken and the grounds for that action so that the demand can
4022 be evaluated.

4023

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4024 607.0743 Stay of proceedings.

4025 If the corporation commences an inquiry into the allegations made in the demand or complaint,
4026 the court may stay any derivative proceeding for such period as the court deems appropriate.

4027

4028 **Commentary to Section 607.0743:**

4029 The language is largely identical to the last sentence of subsection (2) of prior s. 607.07401, with
4030 modifications to recognize that demand need not always be made.

4031

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4032 607.0744 Dismissal.

4033 (1) A derivative proceeding may be dismissed, in whole or in part, by the court on motion by
4034 the corporation if a group specified in subsection (2) or subsection (3) has determined in good
4035 faith, after conducting a reasonable inquiry upon which its conclusions are based, that the
4036 maintenance of the derivative proceeding is not in the best interests of the corporation. In all such
4037 cases, the corporation has the burden of proof regarding the qualifications, good faith, and
4038 reasonable inquiry of the group making the determination.

4039 (2) Unless a panel is appointed pursuant to subsection (3), the determination required in
4040 subsection (1) shall be made by:

4041 (a) A majority of qualified directors present at a meeting of the board of directors if the
4042 qualified directors constitute a quorum; or

4043 (b) A majority vote of a committee consisting of two or more qualified directors
4044 appointed by majority vote of qualified directors present at a meeting of the board of directors,
4045 regardless of whether such qualified directors constitute a quorum.

4046 (3) Upon motion by the corporation, the court may appoint a panel consisting of one or more
4047 disinterested and independent individuals to make a determination required in subsection (1).

4048 (4) This section does not prevent the court from:

4049 (a) Enforcing a person's rights under the corporation's articles of incorporation, bylaws
4050 or this chapter, including the person's rights to information under s. 607.1602; or

4051 (b) Exercising its equitable or other powers, including granting extraordinary relief in
4052 the form of a temporary restraining order or preliminary injunction.

4053

4054 **Commentary to Section 607.0744:**

4055 Section 607.07401(3) currently states that a court may dismiss a derivative proceeding under
4056 certain circumstances. Similarly, s. 605.0804(5) of FRLCA gives the court discretion to dismiss
4057 a derivative action based on the recommendation of a disinterested litigation committee in a
4058 situation where the committee is disinterested and independent and the committee has acted in
4059 good faith, independently and with reasonable care. Both of these provisions are different from
4060 the Model Act, which requires a court to dismiss the derivative action on the recommendation of
4061 a disinterested special litigation committee (s. 7.44 – "A derivative proceeding shall be
4062 dismissed...." under certain enumerated circumstances).

4063 Given the complexities that may exist within derivative actions, and the multiplicity of issues, and
4064 to maintain consistency with the approach taken in both the current FBCA and in the recently-
4065 enacted FRLCA, maintaining court discretion with regard to a motion to dismiss is warranted.
4066 The use of the more discretionary term "may" does not preclude a court from granting a motion
4067 where it finds the report to be well-founded. See, e.g. *Atkins v. Topp Telecom, Inc.*, 874 So. 2d 626
4068 (4th DCA 2004). However, there often may be circumstances where a court should not be bound
4069 to accept or reject in toto the report of a special litigation committee, and Florida cases have not
4070 revealed any problem with the current standard that grants judicial discretion.

4071 Subsections (1), (2) and (3) are largely based on s. 7.44 of the Model Act.

4072 New subsection (4) is adapted from s. 605.0804(1) of FRLCA.

4073 Although the "group" referred to in this section as making the determination as to whether the
4074 maintenance of the derivative proceeding is in the best interests of the corporation is not referred
4075 to herein as a "special litigation committee," it is recognized that some practitioners and some
4076 courts may well use that nomenclature to define or identify the group making the determination.
4077 In all respects, any such use of the term "special litigation committee" to refer to the group making
4078 the determination does not change the application or meaning of this provision.

4079

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4080 607.0745 Discontinuance or settlement; notice.

4081 (1) A derivative action on behalf of a corporation may not be discontinued or settled without
4082 the court's approval.

4083 (2) If the court determines that a proposed discontinuance or settlement will substantially
4084 affect the interest of the corporation's shareholders or a class, series, or voting group of
4085 shareholders, the court shall direct that notice be given to the shareholders affected. The court
4086 may determine which party or parties to the derivative action shall bear the expense of giving the
4087 notice.

4088

4089 **Commentary to Section 607.0745:**

4090 This provision is substantially the same as s. 607.07401(4). The language is modeled on the
4091 language in s. 605.0806 of FRLCA and, except as noted below, is substantively similar to s. 7.45
4092 of the Model Act.

4093 The language in the last sentence of subsection (2) which allows the court to determine which
4094 party or parties to the derivative action shall bear the expense of giving the notice is not in the
4095 corresponding Model Act provision, but is in the current Florida statute, and has been carried
4096 forward.

4097

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4098 607.0746 Proceeds and expenses.

4099 On termination of the derivative proceeding the court may:

4100 (1) Order the corporation to pay from the amount recovered in the derivative proceeding by
4101 the corporation the plaintiff's reasonable expenses, including reasonable attorney fees and costs,
4102 incurred in the derivative proceeding if it finds that, in the derivative proceeding, the plaintiff was
4103 successful in whole or in part; or

4104 (2) Order the plaintiff to pay any of the defendant's reasonable expenses, including
4105 reasonable attorney fees and costs, incurred in defending the proceeding if it finds that the
4106 proceeding was commenced or maintained without reasonable cause or for an improper purpose.

4107

4108 **Commentary to Section 607.0746:**

4109 The current Florida derivative action statute on this subject includes the following language:

4110 (6) The court may award reasonable expenses for maintaining the proceeding, including
4111 reasonable attorney's fees, to a successful plaintiff or to the person commencing the
4112 proceeding who receives any relief, whether by judgment, compromise, or settlement, and
4113 require that the person account for the remainder of any proceeds to the corporation; however,
4114 this subsection does not apply to any relief rendered for the benefit of injured shareholders
4115 only and limited to a recovery of the loss or damage of the injured shareholders.

4116 The substance of s. 607.0746 as drafted is, for the most part, similar to the existing statute, but is
4117 different than Model Act s. 7.46 (which states that any payment to plaintiff requires a "substantial
4118 benefit" to the corporation). "Substantial" is an ambiguous term and could well lead to extensive
4119 argumentation. Settlements of derivative actions often deal principally with procedural matters,
4120 and may involve only a small amount of monetary recovery and non-monetary elements.
4121 Defendants may argue that the term "substantial" precludes a plaintiff from recovering expenses
4122 in many instances. As a result, such arguments should be avoided and, instead, judicial discretion
4123 should be allowed.

4124 While not covered in the current statute, the language in Model Act s. 7.46(2) allowing the
4125 plaintiffs to pay the defendant's fees if the action was filed without reasonable cause or for an
4126 improper purpose has been added.

4127 Subsection (3) of s. 7.46 of the Model Act has not been added to the FBCA. The Model Act
4128 language, which addresses other abuses in the conduct of derivative litigation, is believed
4129 unnecessary, since these types of abuses are believed to be already addressed under applicable
4130 rules of civil procedure and other Florida statutory provisions.

4131

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4132 607.0747 Applicability to foreign corporations.

4133 In any derivative proceeding in the right of a foreign corporation brought in the courts of this
4134 state, the matters covered by ss. 607.0741-607.0747 shall be governed by the laws of the
4135 jurisdiction of incorporation of the foreign corporation except for ss. 607.0743, 607.0745 and
4136 607.0746.

4137

4138 **Commentary to Section 607.0747:**

4139 There is currently no analogous provision in the FBCA. The section carve outs relate to judicial
4140 discretionary decisions that are appropriately governed by Florida local standards and do not
4141 implicate the internal affairs doctrine.

4142

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4143 607.0748 Shareholder action to appoint custodians or receivers.

4144 (1) A circuit court may appoint one or more persons to be custodians or receivers of and for
4145 a corporation in a proceeding by a shareholder where it is established that:

4146 (a) The directors are deadlocked in the management of the corporate affairs, the
4147 shareholders are unable to break the deadlock, and irreparable injury to the corporation is
4148 threatened or being suffered; or

4149 (b) The directors or those in control of the corporation are acting fraudulently and
4150 irreparable injury to the corporation is threatened or being suffered.

4151 (2) The court:

4152 (a) May issue injunctions, appoint one or more temporary custodians or temporary
4153 receivers with all the powers and duties the court directs, take other action to preserve the
4154 corporate assets wherever located, and carry on the business of the corporation until a full
4155 hearing is held;

4156 (b) Shall hold a full hearing, after notifying all parties to the proceeding and any
4157 interested persons designated by the court, before appointing a custodian or receiver; and

4158 (c) Has jurisdiction over the corporation and all of its property, wherever located.

4159 (3) The court may appoint a natural person, a domestic eligible entity, or a foreign eligible
4160 entity authorized to transact business in this state as a custodian or receiver and may require the
4161 custodian or receiver to post bond, with or without sureties, in an amount the court directs.

4162 (4) The court shall describe the powers and duties of the custodian or receiver in its appointing
4163 order, which may be amended. Among other powers:

4164 (a) A custodian may exercise all of the powers of the corporation, through or in place of
4165 its board of directors, to the extent necessary to manage the business and affairs of the
4166 corporation; and

4167 (b) A receiver may dispose of all or any part of the assets of the corporation, wherever
4168 located, at a public or private sale, if authorized by the court, and may sue and defend in the
4169 receiver's own name as receiver in all courts of this state.

4170 (5) During a custodianship, the court may redesignate the custodian a receiver, and during a
4171 receivership, the court may redesignate the receiver a custodian, in each case if doing so is in the
4172 best interests of the corporation.

4173

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4174 (6) The court from time to time during the custodianship or receivership may order
4175 compensation paid and expense disbursements or reimbursements made to any custodian or
4176 receiver from the assets of the corporation or proceeds from the sale of its assets.

4177

4178 **Commentary to Section 607.0748:**

4179 Section 607.0748 is based on Section 7.48 of the Model Act. Section 607.0748 provides a basis
4180 for shareholders of any corporation to obtain the appointment of a receiver or custodian in two
4181 situations arising outside the context of seeking a judicial dissolution: (i) when directors are
4182 deadlocked in the management of the corporate affairs, the shareholders are unable to break the
4183 deadlock and irreparable injury to the corporation is threatened or is being suffered, or (ii) when
4184 the directors or those in control of the corporation are acting fraudulently and irreparable injury to
4185 the corporation is threatened or being suffered.

4186 This section is also designed to provide guidance to the courts relative to the latitude of the court's
4187 authority to make such appointments in these situations. Without this section, the express statutory
4188 power and authority to appoint a receiver or custodian is only available ancillary to an action for
4189 judicial dissolution (although Florida courts, through common law equitable powers, may be able
4190 to fashion, and have from time to time fashioned, such a remedy under current law).

4191 Section 607.0748 is in addition to other shareholder remedies provided by this Chapter or
4192 otherwise available under principles of law or equity, including common law principles relating to
4193 the appointment of custodians and receivers, and could, but only for example, be relied upon by a
4194 shareholder of a nonpublic corporation in lieu of involuntary dissolution under s. 607.1430(1)(b).

4195 The Model Act provision upon which this statute is based is itself based on Section 226 of the
4196 DGCL.

4197

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4198 607.0749 Provisional director.

4199 (1) In a proceeding by a shareholder, a provisional director may be appointed in the
4200 discretion of the court if it appears that such action by the court will remedy a situation in which
4201 the directors are deadlocked in the management of the corporate affairs and the shareholders are
4202 unable to break the deadlock. A provisional director may be appointed notwithstanding the absence
4203 of a vacancy on the board of directors, and such director shall have all the rights and powers of a
4204 duly elected director, including the right to notice of and to vote at meetings of directors, until such
4205 time as the provisional director is removed by order of the court or, unless otherwise ordered by a
4206 court, removed by a vote of the shareholders sufficient either to elect a majority of the board of
4207 directors or, if greater than majority voting is required by the articles of incorporation or the
4208 bylaws, to elect the requisite number of directors needed to take action. A provisional director shall
4209 be an impartial person who is neither a shareholder nor a creditor of the corporation or of any
4210 subsidiary or affiliate of the corporation, and whose further qualifications, if any, may be
4211 determined by the court.

4212 (2) A provisional director shall report from time to time to the court concerning the matter
4213 complained of, or the status of the deadlock, if any, and of the status of the corporation's business,
4214 as the court shall direct. No provisional director shall be liable for any action taken or decision
4215 made, except as directors may be liable under s. 607.0831. In addition, the provisional director
4216 shall submit to the court, if so directed, recommendations as to the appropriate disposition of the
4217 action. Whenever a provisional director is appointed, any officer or director of the corporation
4218 may, from time to time, petition the court for instructions clarifying the duties and responsibilities
4219 of such officer or director.

4220 (3) In any proceeding under this section, the court shall allow reasonable compensation to
4221 the provisional director for services rendered and reimbursement or direct payment of reasonable
4222 costs and expenses, which amounts shall be paid by the corporation.

4223

4224 **Commentary to Section 607.0749:**

4225 Section 607.0749 is new and is not a Model Act provision. This section is a corollary to s. 607.1435
4226 of the FBCA dealing with the appointment of a provisional director outside the context of seeking
4227 a judicial dissolution when the directors are deadlocked in the management of the corporate affairs
4228 and the shareholders are unable to break the deadlock. Without this section, the express statutory
4229 power and authority to appoint a provisional director is only available ancillary to an action for
4230 judicial dissolution (although Florida courts, through common law equitable powers, may be able
4231 to fashion, and have from time to time fashioned, such a remedy under current law).

4232

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4233 Section 7.49 of the Model Act – Judicial determination of corporate offices and review of
4234 elections and shareholder votes

4235

4236 Section 7.49 of the Model Act establishes procedures for judicial resolution of disputes with respect
4237 to the identity of the corporation's directors or officers, the identity of the members of any committee
4238 of its board of directors, the validity of nominations for director or the results or validity of
4239 shareholder votes. It confers subject matter jurisdiction on the specified court to resolve these
4240 disputes. That jurisdiction may be exercised either in a new proceeding or by an application made in
4241 an already pending proceeding. Model Act s. 7.49 also requires an expedited review of disputes to
4242 prevent them from immobilizing the corporation. There is currently no comparable provision in the
4243 FBCA.

4244 The Subcommittee believes that Florida courts in equity have always had the power to deal with
4245 (and have dealt with) election disputes of the type covered by this section. As a result, the decision
4246 was made not to include this Model Act section in the FBCA.

4247

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4248 607.0750 Direct action by shareholder.

4249 (1) Subject to subsection (2), a shareholder may maintain a direct action against another
4250 shareholder, officer, director, or the company, to enforce the shareholder's rights and otherwise
4251 protect the shareholder's interests, including rights and interests under the articles of incorporation,
4252 the bylaws or this chapter or arising independently of the shareholder relationship.

4253 (2) A shareholder maintaining a direct action under this section must plead and prove either:

4254 (a) An actual or threatened injury that is not solely the result of an injury suffered or
4255 threatened to be suffered by the corporation; or

4256 (b) An actual or threatened injury resulting from a violation of a separate statutory or
4257 contractual duty owed by the alleged wrongdoer to the shareholder, even if the injury is in
4258 whole or in part the same as the injury suffered or threatened to be suffered by the
4259 corporation.

4260

4261

4262 **Commentary to Section 607.0750:**

4263 New section 607.0750 provides a definition of when an action will be considered a direct action
4264 versus a derivative action. The provision is modeled after s. 605.0801 of FRLCA, but modifies
4265 the language in this section to bring it into conformity with recent Florida case law on this topic,
4266 and particularly the holdings in Dinuro Investments, LLC v. Camacho, 141 So.3d 731 (Fla. App.
4267 3 Dist. 2014) and Strazzulla, et. al. v. Riverside Banking Company, et. al., 175 So.3d. 879
4268 (Fla.App.4 Dist. 2015). Similar modifications have also been made to s. 605.0801 so that the two
4269 sections are mirrored.

4270

ARTICLE 8

DIRECTORS AND OFFICERS

4271 607.0801 Requirement for and duties of board of directors.

4272 (1) Except as may be provided in an agreement authorized pursuant to s. 607.0732(1), each
4273 corporation must have a board of directors.

4274 (2) All corporate powers shall be exercised by or under the authority of the board of directors
4275 of the corporation, and the business and affairs of the corporation shall be managed by or under
4276 the direction of, and subject to the oversight of, its board of directors, subject to any limitation set
4277 forth in the articles of incorporation or in an agreement authorized under s. 607.0732.

4278

4279 **Commentary to Section 607.0801:**

4280 No substantive changes have been made to this section.

4281

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4282 607.0802 Qualifications of directors.

4283 (1) Directors must be natural persons who are 18 years of age or older but need not be
4284 residents of this state or shareholders of the corporation unless the articles of incorporation or
4285 bylaws so require. The articles of incorporation or bylaws may prescribe additional qualifications
4286 for directors or nominees for directors.

4287 (2) A qualification for nomination for director prescribed before a person's nomination shall
4288 apply to such person at the time of nomination. A qualification for nomination for director
4289 prescribed after a person's nomination shall not apply to such person with respect to such
4290 nomination.

4291 (3) A qualification for director prescribed before a director has been elected or appointed
4292 may apply only at the time an individual becomes a director or may apply during a director's term.
4293 A qualification prescribed after a director has been elected or appointed does not apply to that
4294 director before the end of that director's term.

4295 (42) In the event that the eligibility to serve as a member of the board of directors of a
4296 condominium association, cooperative association, homeowners' association, or mobile home
4297 owners' association is restricted to membership in such association and membership is appurtenant
4298 to ownership of a unit, parcel, or mobile home, a grantor of a trust described in s. 733.707(3), or a
4299 qualified beneficiary as defined in s. 736.0103 of a trust which owns a unit, parcel, or mobile home
4300 shall be deemed a member of the association and eligible to serve as a director of the condominium
4301 association, cooperative association, homeowners' association, or mobile home owners'
4302 association, provided that said beneficiary occupies the unit, parcel, or mobile home.

4303

4304 **Commentary to Section 607.0802:**

4305 The language in the last sentence of s. 8.02(a) of the Model Act, which provides that "qualifications
4306 must be reasonable as applied to the corporation and must be lawful," has not been added to the
4307 FBCA. Similarly, s. 802(b) of the Model Act, which limits the qualifications that may be adopted
4308 under particular circumstances, was not added. Determinations as to what particular qualifications
4309 are appropriate or inappropriate under particular circumstances should be left to the courts to
4310 decide.

4311 The language in subsection (2) follows the exact wording contained in s. 8.02(d) of the Model Act;
4312 however, the reference to a "person's nomination" in the second sentence presumes that such
4313 person's nomination was proper, even though the word "proper" is not expressly set forth.

4314 Although new subsection (2) and (3) are being added to incorporate the language from subsections
4315 (d) and (e) of s. 8.02 of the Model Act, the intent of these additions is to follow the plain language
4316 of the added sections. In that regard, a disagreement is noted with respect to the aspect of the
4317 commentary to this section of the Model Act which states that if a director meets a qualification at
4318 the beginning of his or her term, but later circumstances change and such director no longer meets
4319 such qualification, such director would no longer be entitled to continue as a director from and
4320 after such date. The determination of whether such a director should be allowed to continue to
4321 hold the director position under such circumstances should be left to the corporation and to the
4322 courts to determine, rather than there being a hard and fast rule of that director automatically losing
4323 the right to continue as a director.

4324

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4325 607.0803 Number of directors.

4326 (1) A board of directors must consist of one or more individuals, with the number specified
4327 in or fixed in accordance with the articles of incorporation or bylaws.

4328 (2) The number of directors may be increased or decreased from time to time by amendment
4329 to, or in the manner provided in, the articles of incorporation or the bylaws.

4330 (3) Directors are elected at the first annual shareholders' meeting and at each annual
4331 shareholders' meeting thereafter, unless elected by written consent in lieu of an annual
4332 shareholders' meeting pursuant to s. 607.0704 or unless their terms are staggered under s.
4333 607.0806.

4334

4335 **Commentary to Section 607.0803:**

4336 The changes are non-substantive clarifying changes based on changes made in the 2016 version of
4337 the Model Act.

4338

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4339 607.0804 Election of directors by certain voting groups; special voting rights of certain
4340 directors.

4341 The articles of incorporation may confer upon holders of any voting group the right to elect
4342 one or more directors who shall serve for such term and have such voting powers as are stated in
4343 the articles of incorporation. The terms of office and voting powers of the directors elected in the
4344 manner provided in the articles of incorporation may be greater than or less than those of any other
4345 director or class of directors. If the articles of incorporation provide that directors elected by the
4346 holders of a voting group shall have more or less than one vote per director on any matter, every
4347 reference in this chapter ~~act~~ to a majority or other proportion of directors shall refer to a majority
4348 or other proportion of the votes of such directors. If a shareholders' agreement meeting the
4349 requirements of s. 607.0732, or articles of incorporation or bylaws meeting the requirements of s.
4350 607.0732, provide that directors shall have more or less than one vote per director on any matter,
4351 every reference in this chapter to a majority or other proportion of directors shall refer to a majority
4352 or other proportion of the votes of such directors.

4353

4354 **Commentary to Section 607.0804:**

4355 Despite certain differences between language in the current version of s. 8.04 of the Model Act
4356 and s. 607.0804 of the FBCA, no conforming changes were made. The FBCA's reference to
4357 "voting group", as defined in s. 607.01401(77) of the FBCA, is believed to be more appropriate
4358 than the Model Act's use of the term "class." Although the FBCA language is considered more
4359 precise, the Model Act language and the FBCA language on this subject are believed to mean
4360 essentially the same thing.

4361 Although the concept of weighted proportional director voting (if permitted in the articles of
4362 incorporation) in s. 8.04 of the FBCA does not appear in the Model Act, it has been in the FBCA
4363 for more than 20 years (and was originally adopted based upon section 141(d) of the DGCL) and
4364 such concept should continue to remain in this section of the FBCA.

4365 The title to this section is being changed to reflect the fact that this section not only addresses the
4366 authorization of election of certain directors by separate voting groups but also the authority for
4367 such designated directors to maintain voting rights that are "weighted" if permitted in the articles
4368 of incorporation.

4369 To eliminate any ambiguity, language is being added to make it clear that if a shareholders'
4370 agreement has been adopted in compliance with s. 607.0732 which changes the weight of director
4371 votes, then all references in Chapter 607 to a majority or other proportion of directors shall refer
4372 to a majority or other proportion of the votes of such directors.

4373

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4374 607.0805 Terms of directors generally.

4375 (1) The terms of the initial directors of a corporation expire at the first shareholders' meeting
4376 at which directors are elected.

4377 (2) The terms of all other directors expire at the next annual shareholders' meeting following
4378 their election, except to the extent:

4379 (a) Provided in s. 607.0806;

4380 (b) Provided in s. 607.1023 if a bylaw electing to be governed by that section is in effect;
4381 or

4382 (c) That a shorter term is specified in the articles of incorporation in the event of a
4383 director nominee failing to receive a specified vote for election ~~unless their terms are staggered~~
4384 ~~under s. 607.0806.~~

4385 (3) A decrease in the number of directors does not shorten an incumbent director's term.

4386 (4) The term of a director elected to fill a vacancy expires at the next shareholders' meeting
4387 at which directors are elected.

4388 (5) Except to the extent otherwise provided in the articles of incorporation or under s.
4389 607.1023, if a bylaw electing to be governed by that section is in effect, despite the expiration of
4390 a director's term, the director continues to serve until his or her successor is elected and qualifies
4391 or until there is a decrease in the number of directors.

4392

4393 **Commentary to Section 607.0805:**

4394 Clarifying language was added to subsection (2) to address when the term of directors expire if
4395 director terms are staggered under s. 607.0806.

4396 Based on subsections 8.05 (b) and (e) of the Model Act, a cross reference has been added to each
4397 of the corresponding subsections in this s. 607.0805 to provide that s. 607.0805 shall not apply to
4398 the extent provided in s. 607.1023 of the FBCA.

4399

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4400 607.0806 Staggered terms for directors.

4401 (1) ~~The directors of any corporation organized under this act may, by the articles of~~
4402 ~~incorporation, the or by an initial bylaws, or by a bylaw adopted by a vote of the shareholders,~~
4403 ~~may provide for staggering the terms of directors by dividing the total number of directors be~~
4404 ~~divided into one, two, or three groups, with each group containing half or one-third of the total, as~~
4405 ~~near as may be practicable. In that event, the terms of the first group expire at the first annual~~
4406 ~~shareholders' meeting after their election, the terms of the second group expire at the second annual~~
4407 ~~shareholders' meeting after their election, and the terms of the third group, if any, expire at the~~
4408 ~~third annual shareholders' meeting after their election. At each annual shareholders' meeting held~~
4409 ~~thereafter, directors shall be elected for a term of two years or three years, as the case may be, to~~
4410 ~~succeed those whose terms expire. classes with the number of directors in each class being as~~
4411 ~~nearly equal as possible; the term of office of those of the first class to expire at the annual meeting~~
4412 ~~next ensuing; of the second class 1 year thereafter; of the third class 2 years thereafter; and at each~~
4413 ~~annual election held after such classification and election, directors shall be chosen for a full term,~~
4414 ~~as the case may be, to succeed those whose terms expire. If the directors have staggered terms,~~
4415 ~~then any increase or decrease in the number of directors shall be so apportioned among the classes~~
4416 ~~as to make all classes as nearly equal in number as possible.~~

4417 (2) In the case of any Florida corporation in existence prior to July 1, 1990, directors of such
4418 corporation divided into four classes may continue to serve staggered terms as the articles of
4419 incorporation or bylaws of such corporation provided immediately prior to July 1, 1990 ~~the~~
4420 ~~effective date of this act,~~ unless and until the articles of incorporation or bylaws are amended to
4421 alter or terminate such classes.

4422

4423 **Commentary to Section 607.0806:**

4424 The changes are not intended to be and should not in any way be viewed as substantive changes.
4425 Rather, these changes are wordsmithing designed to (i) eliminate a reference (i.e., to the word
4426 "one"), which makes no sense under the circumstances of a staggered board, and (ii) clarify the
4427 applicable terms of office and specified dates of expiration of term upon the initial classification
4428 and then upon subsequent annual elections when a staggered board is in place. The language is
4429 modeled after the language in s. 8.06 of the Model Act.

4430 The language in s. 607.0806(1) of the FBCA dealing with apportioning increase or decreases in
4431 the number of directors among classes to make classes as nearly equal in number as possible was
4432 retained, even though such language is not included in s. 8.06 of the Model Act. Although such
4433 language may be implicit in the Model Act language, because this language has been in the FBCA
4434 for many years, the language dealing with this subject has been retained.

4435

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4436 607.0807 Resignation of directors.

4437 (1) A director may resign at any time by delivering written notice of resignation to the board
4438 of directors or its chair or to the secretary of the corporation.

4439 (2) A resignation is effective when the notice of resignation is delivered unless the notice of
4440 resignation specifies a later effective date or an effective date determined upon the subsequent
4441 happening of an event or events. If a resignation is made effective at a later date or upon the
4442 subsequent happening of an event or events, the board of directors may fill the pending vacancy
4443 before the effective date occurs if the board of directors provides that the successor does not take
4444 office until the effective date.

4445 (3) A resignation that specifies a later effective date or that is conditioned upon the
4446 subsequent happening of an event or events or upon failing to receive a specified vote for election
4447 as a director may provide that the resignation is irrevocable.

4448

4449 **Commentary to Section 607.0807:**

4450 The FBCA requirement that any resignation must be in writing was continued, although such
4451 requirement of a writing is not included in either the corresponding Model Act provision or the
4452 corresponding DGCL provision. The language in s. 607.0807(1) of the FBCA was modified to
4453 better coordinate with language in the corresponding Model Act provision and for clarity by using
4454 the words "notice of resignation " (as opposed to simply using the word "notice" or simply using
4455 the word "resignation").

4456 The language additions in subsections (2) and (3) are derived from s. 8.07(b) of the Model Act and
4457 are intended to update and modernize these sections. These changes are clarifying and not
4458 substantive. However, one of those changes (i.e., adding the Model Act language that a resignation
4459 "conditioned upon failing to receive a specified vote for as a director" can be irrevocable) has
4460 somewhat of a substantive aspect; this change is designed to coordinate with the majority voting
4461 (as provided in s. 607.0728) issue for public companies that adopt such provisions.

4462

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4463 607.0808 Removal of directors by shareholders.

4464 (1) The shareholders may remove one or more directors with or without cause unless the
4465 articles of incorporation provide that directors may be removed only for cause.

4466 (2) If a director is elected by a voting group of shareholders, only the shareholders of that
4467 voting group may participate in the vote to remove him or her.

4468 (3) A director may be removed if the number of votes cast to remove the director exceeds the
4469 number of votes cast not to remove the director, except to the extent the articles of incorporation
4470 or bylaws require a greater number; provided that if cumulative voting is authorized, a director
4471 may not be removed if, in the case of a meeting, the number of votes sufficient to elect the director
4472 under cumulative voting is voted against his or her removal and, if action is taken by less than
4473 unanimous written consent, voting shareholders entitled to the number of votes sufficient to elect
4474 the director under cumulative voting do not consent to the removal. If cumulative voting is not
4475 authorized, a director may be removed only if the number of votes cast to remove exceeds the
4476 number of votes cast not to remove the director.

4477 (4) A director may be removed by the shareholders only at a meeting of shareholders called
4478 for the purpose of removing the director and the meeting notice must state that, provided the notice
4479 of the meeting states that the purpose, or one of the purposes of the meeting is the removal of the
4480 director is the purpose of the meeting.

4481

4482 **Commentary to Section 607.0808:**

4483 The changes to subsections (3) and (4) are non-substantive clarifying changes based on changes
4484 to the Model Act made in the 2016 version of the Model Act.

4485

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4486 607.08081 Removal of directors by judicial proceedings.

4487 (1) The circuit court in the applicable county may remove a director from office, and may order
4488 other relief, including barring the director from reelection for a period prescribed by the court, in a
4489 proceeding commenced by or in the right of the corporation if the court finds that:

4490 (a) The director engaged in fraudulent conduct with respect to the corporation or its
4491 shareholders, grossly abused the position of director, or intentionally inflicted harm on the
4492 corporation; and

4493 (b) Considering the director's course of conduct and the inadequacy of other available
4494 remedies, removal or such other relief would be in the best interest of the corporation.

4495 (2) A shareholder proceeding on behalf of the corporation under paragraph (1)(a) shall
4496 comply with all of the requirements of ss. 607.0741-607.0747, except s. 607.0741(1).

4497

4498 **Commentary to Section 607.08081:**

4499

4500 The section is modeled after Model Act s. 8.09. This Model Act section was originally adopted in
4501 2001 and the language was substantially revised in the 2016 version of the Model Act. It is intended
4502 to apply in limited circumstances where other remedies are inadequate to address serious
4503 misconduct by a director and it is impracticable for shareholders to invoke the usual remedy of
4504 removal under s. 8.08 of the Model Act (s. 607.0808). While there was a general view that courts
4505 already have this power in equity and in an injunction proceeding, having this power expressly set
4506 forth in the statute is considered a good policy decision, particularly when more than 30 states
4507 (including Delaware, in DGCL section 225(c)) have included some form of judicial remedy to
4508 remove directors in their statute.

4509 This new section is not intended to restrict a court from exercising its equitable powers under
4510 particular circumstances.

4511

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4512 607.0809 Vacancy on board.

4513 (1) Unless the articles of incorporation provide otherwise, if ~~Whenever~~ a vacancy occurs on
4514 a board of directors, including a vacancy resulting from an increase in the number of directors;~~it~~
4515 ~~may be filled by the affirmative vote of a majority of the remaining directors, though less than a~~
4516 ~~quorum of the board of directors, or by the shareholders, unless the articles of incorporation~~
4517 ~~provide otherwise.~~

4518 (a) The shareholders may fill the vacancy;

4519 (b) The board of directors may fill the vacancy; or

4520 (c) If the directors remaining in office are less than a quorum, the vacancy may be filled
4521 by the affirmative vote of a majority of all the directors then remaining in office.

4522 (2) If the vacant office was held by a director elected by a voting group of shareholders,
4523 only the holders of shares of that voting group are entitled to vote to fill the vacancy if it is filled
4524 by the shareholders, and only the remaining directors elected by that voting group, even if less
4525 than a quorum, are entitled to fill the vacancy if it is filled by the directors. ~~Whenever the holders~~
4526 ~~of shares of any voting group are entitled to elect a class of one or more directors by the provisions~~
4527 ~~of the articles of incorporation, vacancies in such class may be filled by holders of shares of that~~
4528 ~~voting group or by a majority of the directors then in office elected by such voting group or by a~~
4529 ~~sole remaining director so elected. If no director elected by such voting group remains in office,~~
4530 ~~unless the articles of incorporation provide otherwise, directors not elected by such voting group~~
4531 ~~may fill vacancies as provided in subsection (1).~~

4532 (3) A vacancy that ~~will~~ may occur at a specified later date (~~under s. 607.0807(2)~~ by reason
4533 of a resignation effective at a later date under s. 607.0807(2) or otherwise) ~~or upon the subsequent~~
4534 ~~happening of an event or events or otherwise~~) may be filled before the vacancy occurs, but the new
4535 director may not take office until the vacancy occurs.

4536

4537 **Commentary to Section 607.0809:**

4538 With one exception, the changes to this section are non-substantive clarifying changes based on
4539 changes to the Model Act made in the 2016 version of the Model Act.

4540 Subsection (2) now provides that if a particular director is to be elected by a particular voting
4541 group, only the remaining directors elected by that particular voting group or the shareholders in
4542 that particular voting group may fill that director vacancy. Thus, if there are no remaining directors
4543 elected by that voting group, the other remaining directors no longer have the ability to fill the
4544 vacancy (and, in that case, only the shareholders in the particular voting group will be able to fill
4545 the vacancy).

4546

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4547 607.08101 Compensation of directors.

4548 Unless the articles of incorporation or bylaws provide otherwise, the board of directors may
4549 fix the compensation of directors.

4550

4551 **Commentary to Section 607.08101:**

4552 No changes have been made to this section of the FBCA.

4553

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4554 607.0820 Meetings.

4555 (1) The board of directors may hold regular or special meetings in or out of this state.

4556 (2) A majority of the directors present, whether or not a quorum exists, may adjourn any
4557 meeting of the board of directors to another time and place. Unless the bylaws otherwise provide,
4558 notice of any such adjourned meeting shall be given to the directors who were not present at the
4559 time of the adjournment and, unless the time and place of the adjourned meeting are announced at
4560 the time of the adjournment, to the other directors.

4561 (3) Meetings of the board of directors may be called by the chair of the board or by the
4562 president unless otherwise provided in the articles of incorporation or the bylaws.

4563 (4) Unless the articles of incorporation or bylaws provide otherwise, the board of directors
4564 may permit any or all directors to participate in any a regular or special meeting of the board of
4565 directors ~~by, or conduct the meeting~~ through the use of, any means of communication by which all
4566 directors participating may simultaneously hear each other during the meeting. A director
4567 participating in a meeting by this means is deemed to be present in person at the meeting.

4568

4569 **Commentary to Section 607.0820:**

4570 Although minor clean up changes were made to this section to conform the language to certain of
4571 the language in the 2016 version of the Model Act, no substantive changes are have been made.
4572 Although subsections (2) and (3) of s. 607.0820 of the FBCA (which deal with who may call a
4573 meeting of the board and with respect to adjournments of board meetings) are not contained in the
4574 Model Act, because these subsections have been in the FBCA since 1989, they are retained in the
4575 statute.

4576

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4577 607.0821 Action by directors without a meeting.

4578 (1) Unless the articles of incorporation or bylaws provide otherwise, action required or
4579 permitted by this ~~chapter~~ act to be taken at a board of directors' meeting or committee meeting
4580 may be taken without a meeting if the action is taken by all members of the board or of the
4581 committee. The action must be evidenced by one or more written consents describing the action
4582 taken and signed by each director or committee member and delivered to the corporation.

4583 (2) Action taken under this section is effective when the last director signs the consent and
4584 delivers the consent to the corporation, unless the consent specifies a different effective date. A
4585 director's consent may be withdrawn by a revocation signed by the director and delivered to the
4586 corporation prior to delivery to the corporation of unrevoked written consents signed by all the
4587 directors.

4588 (3) A consent signed under this section has the effect of a meeting vote and may be described
4589 as such in any document.

4590

4591 **Commentary to Section 607.0821:**

4592 The concept of required delivery of the board consent to the corporation has been added to the
4593 statute in subsections (1) and (2). This is not intended to be a substantive change, since the concept
4594 of delivery was believed to be implicit under existing law.

4595 The last sentence of s. 8.21(b) of the Model Act has been added to s. 607.0821(2) of the FBCA.
4596 This sentence deals with revocation of consents before a board action by written consent becomes
4597 effective (i.e., upon delivery of unrevoked written consents signed by all directors).

4598 The revised statute does not specify where and how delivery to the corporation of a written consent
4599 shall be made. This issue is left to the determination of courts as to whether delivery was
4600 appropriate under particular circumstances. Cross references are noted to (i) s. 607.08401(3)
4601 providing that the board or the bylaws shall delegate to one or more officers the responsibility for
4602 authenticating records of the corporation, (ii) s. 607.0141, which defines the term "notice," and
4603 (iii) s. 607.1601, which requires the corporation to keep a record of items such as written consents
4604 of directors. However, based on concepts of apparent authority, delivery to the corporation's
4605 secretary or the corporation's president should, in most cases, be considered proper delivery to the
4606 corporation.

4607

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4608 607.0822 Notice of meetings.

4609 (1) Unless the articles of incorporation or bylaws provide otherwise, regular meetings of the
4610 board of directors may be held without notice of the date, time, place, or purpose of the meeting.

4611 (2) Unless the articles of incorporation or bylaws provide for a longer or shorter period,
4612 special meetings of the board of directors must be preceded by at least 2 days' notice of the date,
4613 time, and place of the meeting. The notice need not describe the purpose of the special meeting
4614 unless required by the articles of incorporation or bylaws.

4615

4616 **Commentary to Section 607.0822:**

4617 No changes have been made to this section of the FBCA.

4618

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4619 607.0823 Waiver of notice.

4620 Notice of a meeting of the board of directors need not be given to any director who signs a
4621 waiver of notice either before or after the meeting. Attendance of a director at a meeting shall
4622 constitute a waiver of notice of such meeting and a waiver of any and all objections to the date,
4623 time, place or purpose of the meeting, ~~the time of the meeting,~~ or the manner in which it has been
4624 called or convened, except when a director states, at the beginning of the meeting or promptly
4625 upon arrival at the meeting, any objection to holding the meeting or to the transaction of business
4626 because the meeting is not lawfully called or convened and if the director, after objection, does not
4627 vote for or consent to action taken at the meeting.

4628

4629 **Commentary to Section 607.0823:**

4630 The statute has been clarified to reflect that a director's attendance at a meeting constitutes a waiver
4631 of not only the place and time of the meeting, but also the date and purpose of the meeting, unless
4632 the director properly objects.

4633 The language contained in s. 8.23(a) of the Model Act requiring that a waiver be "filed with the
4634 minutes or corporate records" of the corporation in order for the waiver to be effective has not
4635 been added. Although such practice is considered good corporate practice and may even be an
4636 obligation of the corporation under s. 607.1601(1), this technical requirement for effectiveness of
4637 the waiver should not be mandated (leaving it to the corporation to determine whether it has
4638 received proper evidence of a waiver). However, whether or not such a requirement is included in
4639 the statutory language, since the corporation likely has the burden of proving that a waiver has
4640 been provided, it behooves the corporation to obtain the waiver in writing and place it in the
4641 corporation's records.

4642 Clarifying language has been added (i) to allow for objecting to the holding of the meeting, in
4643 addition to the ability to object to the transaction of business at the meeting, and (ii) to require not
4644 only that the director object to the transaction of business at the meeting (for failure to give notice)
4645 at the start of the meeting, but also not to vote for or consent to the action(s) taken thereafter at the
4646 meeting. Through this change, s. 607.0823 of the FBCA is brought into conformity with the
4647 language in s. 8.23(b) of the Model Act. The Model Act commentary on this section provides that
4648 this additional provision presumes that a director has waived his or her objection to the meeting if
4649 he or she votes for or assents to the action taken at the meeting.

4650

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4651 607.0824 Quorum and voting.

4652 (1) Unless the articles of incorporation or bylaws provide for a greater or lesser require a
4653 different number or unless otherwise expressly provided in this chapter, a quorum of a board of
4654 directors consists of a majority of the number of directors specified in or fixed in accordance with
4655 prescribed by the articles of incorporation or the bylaws.

4656 (2) The quorum of the board of directors specified in or fixed in accordance with the articles
4657 of incorporation or bylaws may not consist of less ~~authorize a quorum of a board of directors to~~
4658 ~~consist of less than a majority but no fewer~~ than one-third of the specified or fixed ~~prescribed~~
4659 number of directors ~~determined under the articles of incorporation or the bylaws.~~

4660 (3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors
4661 present is the act of the board of directors unless the articles of incorporation or bylaws require the
4662 vote of a greater number of directors or unless otherwise expressly provided for in this chapter.

4663 (4) If any directors have special voting rights in compliance with the provisions of s.
4664 607.0804, the quorum and voting requirements of this section shall be determined consistent with
4665 the provisions of s. 607.0804.

4666 (4~~5~~) A director of a corporation who is present at a meeting of the board of directors or a
4667 committee of the board of directors when corporate action is taken is deemed to have assented to
4668 the action taken unless the director:

4669 (a) Objects at the beginning of the meeting (or promptly upon his or her arrival) to
4670 holding it or transacting specified business at the meeting; or

4671 (b) Votes against or abstains from the action taken.

4672

4673 **Commentary to Section 607.0824:**

4674 The changes in subsections (1) and (2) of s. 607.0824 of the FBCA bring this section of the FBCA
4675 into conformity with s. 8.24 of the 2016 version of the Model Act. The language in the Model Act
4676 provision is viewed as doing a better job than subsections (1) and (2) of existing s. 607.0824 of
4677 expressing the default rule regarding a quorum of the board of directors for the transaction of
4678 business.

4679 The revised language also provides greater clarity by including an exception, in the lead in portion
4680 of subsection (1) of s. 607.0824, for other sections of the FBCA that may, under certain
4681 circumstances, require a different quorum or voting of the board on a particular issue.

4682 New subsection (4) cross references in this section s. 607.0804 to deal with the quorum and voting
4683 requirements if directors have been given special voting rights in compliance with the provisions
4684 of s. 607.0804. The manner in which weighted director voting is to be counted is included in s.
4685 607.0804 and, in circumstances where weighted director voting has been established, this section
4686 should be read together with s. 607.0804.

4687 The language of subsection (4)(b) (now (5)(b)) of s. 607.0824 was retained and the requirement
4688 from the corresponding provision of the Model Act that a negative vote must be contained in a
4689 writing delivered by the director to the corporation to avoid the implicit assent to the action by a
4690 director who is present at a board meeting was not added.

4691

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4692 607.0825 Committees.

4693 (1) ~~Unless this chapter, the articles of incorporation, or the bylaws provide otherwise provide,~~
4694 ~~the board of directors, by resolution adopted by a majority of the full board of directors, may~~
4695 ~~designate from among its members~~ establish an executive committee and one or more other board
4696 committees to perform functions of the board of directors. Such committees shall be composed
4697 exclusively of one or more directors, each of which, to the extent provided in such resolution or in
4698 the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the
4699 authority of the board of directors, except that no such committee shall have the authority to:

4700 ~~(a) Approve or recommend to shareholders actions or proposals required by this act to~~
4701 ~~be approved by shareholders~~

4702 ~~(b) Fill vacancies on the board of directors or any committee thereof.~~

4703 ~~(c) Adopt, amend, or repeal the bylaws.~~

4704 ~~(d) Authorize or approve the reacquisition of shares unless pursuant to a general~~
4705 ~~formula or method specified by the board of directors.~~

4706 ~~(e) Authorize or approve the issuance or sale or contract for the sale of shares, or~~
4707 ~~determine the designation and relative rights, preferences, and limitations of a voting group~~
4708 ~~except that the board of directors may authorize a committee (or a senior executive officer of~~
4709 ~~the corporation) to do so within limits specifically prescribed by the board of directors.~~

4710 (2) Unless this chapter, the articles of incorporation, or the bylaws provide otherwise, the
4711 establishment of a board committee, the appointment of members to such committee, the
4712 dissolution of a previously created board committee, and the removal of members from a
4713 previously created board committee must be approved by a majority of all the directors in office
4714 when the action is taken.

4715 (23) ~~Unless the articles of incorporation or bylaws provide otherwise, Sections ss. 607.0820,~~
4716 ~~6070.822, 607.0823 and -607.0824, which govern meetings, notice and waiver of notice, and~~
4717 ~~quorum and voting requirements of the board of directors, apply to board committees and their~~
4718 ~~members as well.~~

4719 (4) A board committee may exercise the powers of the board of directors under s. 607.0801,
4720 except that a board committee may not:

4721 ~~(a) Authorize or approve the reacquisition of shares unless pursuant to a formula or~~
4722 ~~method, or within limits, prescribed by the board of directors.~~

4723 ~~(b) Approve, recommend to shareholders, or propose to shareholders action that this~~
4724 ~~chapter requires be approved by shareholders.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4725 (c) Fill vacancies on the board of directors or on any board committee.

4726 (d) Adopt, amend, or repeal bylaws.

4727 (5) The establishment of, delegation of authority to, or action by a committee does not alone
4728 constitute compliance by a director with the standards of conduct described in s. 607.0830.

4729 ~~(36) Each committee must have two or more members who serve at the pleasure of the board~~
4730 ~~of directors. The board of directors, by resolution adopted in accordance with subsection (1), may~~
4731 ~~designate appoint one or more directors as alternate members of any board such committee to fill~~
4732 ~~a vacancy on the committee or who may act in the place and stead of to replace any absent or~~
4733 ~~disqualified member of such committee or members at any meeting of such committee during the~~
4734 ~~member's absence or disqualification. If the articles of incorporation, the bylaws, or the resolution~~
4735 ~~creating the board committee so provide, the member or members present at any board committee~~
4736 ~~meeting and not disqualified from voting, by unanimous action, may appoint another director to act~~
4737 ~~in place of an absent or disqualified member during that member's absence or disqualification.~~

4738 ~~(4) Neither the designation of any such committee, the delegation thereto of authority, nor~~
4739 ~~action by such committee pursuant to such authority shall alone constitute compliance by any~~
4740 ~~member of the board of directors not a member of the committee in question with his or her~~
4741 ~~responsibility to act in good faith, in a manner he or she reasonably believes to be in the best~~
4742 ~~interests of the corporation, and with such care as an ordinarily prudent person in a like position~~
4743 ~~would use under similar circumstances.~~

4744

4745 **Commentary to Section 607.0825:**

4746 The language in subsection (1), in subsection (2), in the first sentence of subsection (3), and in
4747 subsection (4) has been replaced with language from subsections (a), (b), (c), and (d), of s. 8.25 of
4748 the Model Act, except to the extent discussed below. Of note, these changes now allow board
4749 committees to be comprised of only one member, unless a greater number is otherwise required in
4750 the chapter (such as, for example, in ss. 607.0741 and 607.0832) or in the particular corporation's
4751 articles of incorporation or bylaws. The prior law (s. 607.0825(3)) required at least two persons
4752 to comprise each board committee.

4753 The matters that may not be delegated to a committee have been changed (i) to retain subsection
4754 (1)(d) of the current statute relative to delegation to committees of the right to authorize and
4755 approve reacquisition of shares (i.e., redemption payments), to redesignate it as subsection (4)(a)
4756 and not to extend that exception to follow the language of subsection (e)(1) of s. 8.25 of the Model
4757 Act (covering all "distributions"), (ii) to follow the second, third and fourth matters set forth in
4758 subsection (d) of s. 8.25 of the Model Act (which is mostly a reordering of what already appeared
4759 in subsection (1)(a) through (c) of the current statute), except that the limited override for filling
4760 committee vacancies reflected in the Model Act is added. By retaining subsection (1)(d) of the
4761 current statute (now subsection (4)(a)) relative to delegation to committees of the right to authorize
4762 and approve reacquisition of shares (i.e., redemption payments) and not covering all
4763 "distributions," a board of a Florida corporation continues to have the ability to delegate to a
4764 committee of the board the right to approve a dividend distribution (subject to any limitations and
4765 restrictions applicable to the board itself), without the board having to approve the particular
4766 distribution or to approve any formula or other parameters with respect to any distribution before
4767 it is authorized by a committee.

4768 The Florida only provision, subsection (1)(e), limiting the ability to delegate to a board committee
4769 the issuance or sale of shares, or the designation of relative rights, preferences, and limitations of
4770 a voting group, other than in situations where limits on such issuances are specifically prescribed
4771 by the board of directors has been eliminated. The removal of this exception also eliminates the
4772 ability to delegate all such issuances (within proscribed limits) to a senior executive officer of the
4773 corporation. This provision is not in the Model Act, the DGCL or the corporate statutes of many
4774 other states, including New York, California and Texas.

4775 Old subsection (4) has been deleted. The duties of members of board committees are left to the
4776 provisions governing the duties of directors under s. 607.0830. A cross reference to this effect has
4777 been added in new subsection (5).

4778 By way of clarifying language from s. 8.25 of the Model Act, this section confirms the intent of
4779 prior s. 607.0825 to the effect that this section relates only to board committees exercising one or
4780 more board functions. This section does not apply to other committees set up by the board that
4781 may include officers, employees, or others who are not board members and that might be created

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4782 to deal with non-board issues or to make recommendations for the board or a board committee to
4783 consider. Moreover, it does not limit the board's power to designate non-board member observers
4784 to attend meetings of board committees. However, no such non-board member observer can be a
4785 voting member of a board committee.

4786

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4787 607.0826 Submission of matters for a shareholder vote.

4788 A corporation may agree to submit a matter to a vote of its shareholders even if, after
4789 approving the matter, the board of directors determines it no longer recommends the matter.

4790

4791 **Commentary to Section 607.0826:**

4792 This section, which is new to the FBCA, follows the language of Model Act s. 8.26 added in 2008.
4793 This section expressly authorizes a corporation to enter into an agreement (such as a merger
4794 agreement) with a "force the vote" provision. The Model Act commentary notes, however, that
4795 this provision is not intended to relieve the board of directors from its duty to carefully consider a
4796 proposed transaction and the interests of its shareholders. Thirteen states, including Delaware,
4797 have statutes similar to s. 8.26. Of these states, six (i.e., Connecticut, Georgia, Maine,
4798 Massachusetts, Mississippi and Washington) are Model Act states.

4799

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4800 607.0830 General standards for directors.

4801 (1) Each member of the board of directors, when discharging the duties of a director,
4802 including in discharging his or her duties as a member of a board committee, must act ~~A director~~
4803 ~~shall discharge his or her duties as a director, including his or her duties as a member of a~~
4804 ~~committee:~~

4805 (a) In good faith; and

4806 (b) ~~With the care an ordinarily prudent person in a like position would exercise~~
4807 ~~under similar circumstances; and~~

4808 (c) ~~In a manner he or she reasonably believes to be in the best interests of the~~
4809 ~~corporation.~~

4810 (2) The members of the board of directors or a board committee, when becoming
4811 informed in connection with a decisionmaking function or devoting attention to an oversight
4812 function, shall discharge their duties with the care that an ordinary prudent person in a like position
4813 would reasonably believe appropriate under similar circumstances. ~~In discharging his or her~~
4814 ~~duties, a director is entitled to rely on information, opinions, reports, or statements, including~~
4815 ~~financial statements and other financial data, if prepared or presented by:~~

4816 (a) ~~One or more officers or employees of the corporation whom the director~~
4817 ~~reasonably believes to be reliable and competent in the matters presented;~~

4818 (b) ~~Legal counsel, public accountants, or other persons as to matters the director~~
4819 ~~reasonably believes are within the persons' professional or expert competence; or~~

4820 (c) ~~A committee of the board of directors of which he or she is not a member if the~~
4821 ~~director reasonably believes the committee merits confidence.~~

4822 (3) In discharging board or board committee duties, a director who does not have
4823 knowledge that makes reliance unwarranted is entitled to rely on the performance by any of the
4824 persons specified in paragraph (5)(a) or paragraph (5)(b) to whom the board may have delegated,
4825 formally or informally by course of conduct, the authority or duty to perform one or more of the
4826 board's functions that are delegable under applicable law.

4827 (4) In discharging board or board committee duties, a director who does not have
4828 knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or
4829 statements, including financial statements and other financial data, prepared or presented by any
4830 of the persons specified in subsection (5).

4831 (5) A director is entitled to rely, in accordance with subsection (3) or subsection (4), on:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4832 (a) One or more officers or employees of the corporation whom the director
4833 reasonably believes to be reliable and competent in the functions performed or the
4834 information, opinions, reports, or statements provided;

4835 (b) Legal counsel, public accountants, or other persons retained by the corporation
4836 or by a committee of the board of the corporation as to matters involving skills or
4837 expertise the director reasonably believes are matters:

4838 1. Within the particular person's professional or expert competence; or

4839 2. As to which the particular person merits confidence; or

4840 (c) A committee of the board of directors of which the director is not a member if
4841 the director reasonably believes the committee merits confidence.

4842 (36) In discharging board or board committee ~~his or her~~ duties, a director may consider
4843 such factors as the director deems relevant, including the long-term prospects and interests of the
4844 corporation and its shareholders, and the social, economic, legal, or other effects of any action on
4845 the employees, suppliers, customers of the corporation or its subsidiaries, the communities and
4846 society in which the corporation or its subsidiaries operate, and the economy of the state and the
4847 nation.

4848 ~~(4) A director is not acting in good faith if he or she has knowledge concerning the matter~~
4849 ~~in question that makes reliance otherwise permitted by subsection (2) unwarranted.~~

4850 ~~(5) A director is not liable for any action taken, as a director, if he or she performed the~~
4851 ~~duties of his or her office in compliance with this section.~~

4852

4853 **Commentary to Section 607.0830:**

4854 This Section has been modified to follow the organization and the wording of Model Act s. 8.30,
4855 although for the most part the change in language does not change the substance of standards
4856 applicable to directors.

4857 Unlike s. 8.30(a) of the Model Act, s. 607.0830(1) retains the clarifying reference from the prior
4858 Florida statute that these standards apply to directors whether they are acting as members of the
4859 board or as members of a committee of the board. The applicability to service as a board committee
4860 member is believed to be implicit under the Model Act provision, but this express concept was
4861 retained because it was included in the prior Florida statute and there was concern that deleting it
4862 might be interpreted as taking that standard and its protections away from directors when acting in
4863 their capacity as a committee member of a board committee.

4864 The "prudent person" standard of care in subsection (1) of the existing statute was replaced in
4865 subsection (2) with a standard of care that "a person in a like position would reasonably believe
4866 appropriate under similar circumstances" standard, thus incorporating into the standard the concept
4867 of a "reasonable belief" under the circumstances. The new language is derived from the Model
4868 Act provision, and is not believed to change the standard in any meaningful way, but rather to give
4869 better guidance to courts about how to consider this standard under various circumstances and to
4870 allow courts to consider case law in other Model Act states that have adopted this Model Act
4871 provision as their standard of care for directors.

4872 The provisions that previously appeared in subsection (2) are now found, with substantially similar
4873 language, in subsections (3), (4) and (5).

4874 Subsection 8.30(c) of the Model Act, which was added to the Model Act in 2005, was not adopted
4875 for inclusion in the FBCA. Subsection (c), dealing with a director's obligations of disclosure to
4876 the board under various circumstances, was one of several Model Act changes that flowed from
4877 the Enron/WorldCom scandals, and the work of the ABA Task Force on Corporate Responsibility
4878 and the group addressing revisions to the conflict of interest provisions of the Model Act. This
4879 concept of disclosure is believed to already be the standard in Florida. Silence on this issue will
4880 allow Florida courts the latitude to determine the scope of a director's obligation to disclose under
4881 each particular circumstance that may arise from time to time.

4882 In subsection (5)(b), language not found in the Model Act is added in an effort to more clearly
4883 recognize that, under certain circumstances, a committee of the board, rather the corporation itself,
4884 may engage its own legal counsel, accountants and/or other advisors.

4885 Old subsection (5) has been removed, based on the view that the topic is adequately covered in s.
4886 607.0831 and that the language in this section is ambiguous. However, the elimination of old
4887 subsection (5) is not intended to be a substantive change in the law. See s. 607.0831(1)(a).

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4888 607.0831 Liability of directors.

4889 (1) A director is not personally liable for monetary damages to the corporation or any other
4890 person for any statement, vote, decision to take or not to take action, or any failure to take any
4891 action, or failure to act, regarding corporate management or policy, as by a director, unless:

4892 (a) The director breached or failed to perform his or her duties as a director; and

4893 (b) The director's breach of, or failure to perform, those duties constitutes any of the
4894 following:

4895 1. A violation of the criminal law, unless the director had reasonable cause to
4896 believe his or her conduct was lawful or had no reasonable cause to believe his or her
4897 conduct was unlawful. A judgment or other final adjudication against a director in any
4898 criminal proceeding for a violation of the criminal law estops that director from contesting
4899 the fact that his or her breach, or failure to perform, constitutes a violation of the criminal
4900 law; but does not estop the director from establishing that he or she had reasonable cause
4901 to believe that his or her conduct was lawful or had no reasonable cause to believe that
4902 his or her conduct was unlawful;

4903 2. A circumstance under which the a transaction at issue is one from which the
4904 director derived an improper personal benefit, either directly or indirectly;

4905 3. A circumstance under which the liability provisions of s. 607.0834 are
4906 applicable;

4907 4. In a proceeding by or in the right of the corporation to procure a judgment in its
4908 favor or by or in the right of a shareholder, conscious disregard for the best interest of the
4909 corporation, or willful or intentional misconduct; or

4910 5. In a proceeding by or in the right of someone other than the corporation or a
4911 shareholder, recklessness or an act or omission which was committed in bad faith or with
4912 malicious purpose or in a manner exhibiting wanton and willful disregard of human
4913 rights, safety, or property.

4914 (2) For the purposes of this section, the term "recklessness" means the action, or omission
4915 to act, in conscious disregard of a risk:

4916 (a) Known, or so obvious that it should have been known, to the director; and

4917 (b) Known to the director, or so obvious that it should have been known, to be so great
4918 as to make it highly probable that harm would follow from such action or omission.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4919 (3) A director is deemed not to have derived an improper personal benefit from any
4920 transaction if the transaction and the nature of any personal benefit derived by the director are not
4921 prohibited by state or federal law or regulation and, without further limitation:

4922 (a) In an action other than a derivative suit regarding a decision by the director to
4923 approve, reject, or otherwise affect the outcome of an offer to purchase the shares ~~stock~~ of, or
4924 to effect a merger of, the corporation, the transaction and the nature of any personal benefits
4925 derived by a director are disclosed or known to all directors voting on the matter, and the
4926 transaction was authorized, approved, or ratified by at least two directors who comprise a
4927 majority of the disinterested directors (whether or not such disinterested directors constitute a
4928 quorum); or

4929 (b) The transaction is fair to the corporation at the time it is ~~and the nature of any~~
4930 ~~personal benefits derived by a director are~~ authorized, approved, or ratified as determined in
4931 accordance with s. 607.0832. ~~disclosed or known to the shareholders entitled to vote, and the~~
4932 ~~transaction was authorized, approved, or ratified by the affirmative vote or written consent of~~
4933 ~~such shareholders who hold a majority of the shares, the voting of which is not controlled by~~
4934 ~~directors who derived a personal benefit from or otherwise had a personal interest in the~~
4935 ~~transaction;~~ or

4936 (c) ~~The transaction was fair and reasonable to the corporation at the time it was~~
4937 ~~authorized by the board, a committee, or the shareholders, notwithstanding that a director~~
4938 ~~received a personal benefit.~~

4939 (4) The circumstances set forth in subsection (3) are not exclusive and do not preclude the
4940 existence of other circumstances under which a director will be deemed not to have derived an
4941 improper benefit.

4942

4943 **Commentary to Section 607.0831:**

4944 This section does not follow the structure and approach of Model Act s. 8.31. Rather, it continues
4945 with the structure and approach of the current s. 607.0831; however, certain language and concepts
4946 from Model Act s. 8.31 have been incorporated into the changes to this section. Two of the key
4947 reasons for staying with the current statute as the base was the consensus that the provisions of the
4948 current statute (i) work well and (ii) are grafted by cross-reference into other Florida statutes such
4949 as Florida's not-for-profit statute (Chapter 617).

4950 In that regard:

4951 1. The phrase "is not personally liable for monetary damages" has not been removed
4952 even though such language does not appear in Model Act s. 8.31. The phrase was retained in
4953 order to be clear that this provision is about monetary damages and not about equitable relief.

4954 2. The words "or any other person" were not changed to the language in the Model Act
4955 corollary, "or its shareholders". The 1989 commentary to the proposed FBCA included this
4956 provision and expressly stated that this provision was intentionally adopted to limit personal
4957 liability of directors to third parties in the manner set forth in the statute when they are acting
4958 in their capacity as directors.

4959 3. The phrase "regarding corporate management or policy" was deleted as being too
4960 limiting.

4961 4. The reference to "by a director" was changed to "as a director" to match the Model
4962 Act approach and to make it clear that the exculpation is available only when the director is
4963 acting in the capacity of a director.

4964 5. The description of decisions and actions that are covered by the exculpation
4965 provision in this Section was changed to match the Model Act approach (i.e., "to take or not
4966 take action or any failure to take action") because the Model Act approach was viewed as
4967 being clearer. Similar language has been added in s. 607.0830(7).

4968 6. The burden of proof language in the Model Act language providing that a director
4969 has no liability unless "the party asserting liability establishes that:" has not been added and
4970 leaves the issue of who has the burden of proof in appropriate circumstances to the courts.

4971 The language in Model Act subsections 8.31(b)(1), (2) and (3) was not added to the statute.

4972 Revised s. 607.0831 retains the "self-executing" nature of the existing Florida statute under which
4973 a director is generally not personally liable to the corporation, instead of following the Model Act's
4974 "opt-in" language. Because the exculpation in s. 607.0831 remains self-executing, the provisions
4975 in the Model Act language cross referencing to the ability to add authorization language in a
4976 corporation's Articles of Incorporation in s. 8.31(a)(1) was not added.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

4977 In subsection (3)(b), rather than repeating how an interested party transaction is to be approved,
4978 the statute provides a cross reference to the applicable standard for approval contained in s.
4979 607.0832. Further, subsection 3(c) has been removed from the statute based on the changes made
4980 to s. 607.0832.

4981

FINAL STATUTE AS ADOPTED
(With Commentary)

4982 607.0832 Director conflicts of interest.

4983 (1) ~~No contract or other transaction between a corporation and one or more of its directors~~
4984 ~~or any other corporation, firm, association, or entity in which one or more of its directors are~~
4985 ~~directors or officers or are financially interested shall be either void or voidable because of such~~
4986 ~~relationship or interest, because such director or directors are present at the meeting of the board~~
4987 ~~of directors or a committee thereof which authorizes, approves, or ratifies such contract or~~
4988 ~~transaction, or because his or her or their votes are counted for such purpose, if:~~

4989 (a) ~~The fact of such relationship or interest is disclosed or known to the board of~~
4990 ~~directors or committee which authorizes, approves, or ratifies the contract or transaction by a~~
4991 ~~vote or consent sufficient for the purpose without counting the votes or consents of such~~
4992 ~~interested directors;~~

4993 (b) ~~The fact of such relationship or interest is disclosed or known to the shareholders~~
4994 ~~entitled to vote and they authorize, approve, or ratify such contract or transaction by vote or~~
4995 ~~written consent; or~~

4996 (c) ~~The contract or transaction is fair and reasonable as to the corporation at the time it~~
4997 ~~is authorized by the board, a committee, or the shareholders.~~

4998 (2) ~~For purposes of paragraph (1)(a) only, a conflict of interest transaction is authorized,~~
4999 ~~approved, or ratified if it receives the affirmative vote of a majority of the directors on the board~~
5000 ~~of directors, or on the committee, who have no relationship or interest in the transaction described~~
5001 ~~in subsection (1), but a transaction may not be authorized, approved, or ratified under this section~~
5002 ~~by a single director. If a majority of the directors who have no such relationship or interest in the~~
5003 ~~transaction vote to authorize, approve, or ratify the transaction, a quorum is present for the purpose~~
5004 ~~of taking action under this section. The presence of, or a vote cast by, a director with such~~
5005 ~~relationship or interest in the transaction does not affect the validity of any action taken under~~
5006 ~~paragraph (1)(a) if the transaction is otherwise authorized, approved, or ratified as provided in that~~
5007 ~~subsection, but such presence or vote of those directors may be counted for purposes of~~
5008 ~~determining whether the transaction is approved under other sections of this act.~~

5009 (3) ~~For purposes of paragraph (1)(b), a conflict of interest transaction is authorized,~~
5010 ~~approved, or ratified if it receives the vote of a majority of the shares entitled to be counted under~~
5011 ~~this subsection. Shares owned by or voted under the control of a director who has a relationship or~~
5012 ~~interest in the transaction described in subsection (1) may not be counted in a vote of shareholders~~
5013 ~~to determine whether to authorize, approve, or ratify a conflict of interest transaction under~~
5014 ~~paragraph (1)(b). The vote of those shares, however, is counted in determining whether the~~
5015 ~~transaction is approved under other sections of this act. A majority of the shares, whether or not~~
5016 ~~present, that are entitled to be counted in a vote on the transaction under this subsection constitutes~~
5017 ~~a quorum for the purpose of taking action under this section.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5018 (1) As used in this section, the following terms and definitions apply:

5019 (a) "Director's conflict of interest transaction" means a transaction between a
5020 corporation and one or more of its directors, or another entity in which one or more of the
5021 corporation's directors is directly or indirectly a party to the transaction, other than being an
5022 indirect party as a result of being a shareholder of the corporation, and has a direct or indirect
5023 material financial interest or other material interest.

5024 (b) "Fair to the corporation" means that the transaction, as a whole, is beneficial to the
5025 corporation and its shareholders, taking into appropriate account whether it is:

5026 1. Fair in terms of the director's dealings with the corporation in connection with
5027 that transaction; and

5028 2. Comparable to what might have been obtainable in an arm's length transaction.

5029 (c) "Family member" includes any of the following:

5030 1. The director's spouse.

5031 2. A child, stepchild, parent, step parent, grandparent, sibling, step sibling, or half
5032 sibling of the director or the director's spouse.

5033 (d) A director is "indirectly" a party to a transaction if that director has a material
5034 financial interest in or is a director, officer, member, manager, or partner of a person, other
5035 than the corporation, who is a party to the transaction.

5036 (e) A director has an "indirect material financial interest" if a family member has a
5037 material financial interest in the transaction, other than having an indirect interest as a
5038 shareholder of the corporation, or if the transaction is with an entity, other than the
5039 corporation, which has a material financial interest in the transaction and controls, or is
5040 controlled by, the director or another person specified in this subsection.

5041 (f) "Material financial interest" and "other material interest" means a financial or other
5042 interest in the transaction that would reasonably be expected to impair the objectivity of the
5043 director's judgment when participating in the action on the authorization of the transaction.

5044 (2) If a director's conflict of interest transaction is fair to the corporation at the time it is
5045 authorized, approved, effectuated, or ratified:

5046 (a) Such transaction is not void or voidable; and

5047 (b) The fact that the transaction is a director's conflict of interest transaction is not
5048 grounds for any equitable relief, an award of damages or other sanctions,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5049 because of that relationship or interest, because such director or directors are present at the meeting
5050 of the board of directors or a committee thereof which authorizes, approves, or ratifies such
5051 transaction, or because his or her or their votes are counted for such purpose.

5052 (3) (a) In a proceeding challenging the validity of a director's conflict of interest transaction
5053 or in a proceeding seeking equitable relief, award of damages, or other sanctions with respect
5054 to a director's conflict of interest transaction, the person challenging the validity or seeking
5055 equitable relief, award of damages, or other sanctions has the burden of proving the lack of
5056 fairness of the transaction if:

5057 1. The material facts of the transaction and the director's interest in the transaction
5058 were disclosed or known to the board of directors or committee that authorizes, approves,
5059 or ratifies the transaction and the transaction was authorized, approved, or ratified by a
5060 vote of a majority of the qualified directors even if the qualified directors constitute less
5061 than a quorum of the board or the committee; however, the transaction cannot be
5062 authorized, approved, or ratified under this subsection solely by a single director; or

5063 2. The material facts of the transaction and the director's interest in the transaction
5064 were disclosed or known to the shareholders who voted upon such transaction and the
5065 transaction was authorized, approved, or ratified by a majority of the votes cast by
5066 disinterested shareholders or by the written consent of disinterested shareholders
5067 representing a majority of the votes that could be cast by all disinterested shareholders.
5068 Shares owned by or voted under the control of a director who has a relationship or interest
5069 in the director's conflict of interest transaction may not be considered shares owned by a
5070 disinterested shareholder and may not be counted in a vote of shareholders to determine
5071 whether to authorize, approve, or ratify a director's conflict of interest transaction under
5072 this subparagraph. The vote of those shares, however, is counted in determining whether
5073 the transaction is approved under other sections of this chapter. A majority of the shares,
5074 whether or not present, that are entitled to be counted in a vote on the transaction under
5075 this subparagraph constitutes a quorum for the purpose of taking action under this section.

5076 (b) If neither of the conditions provided in paragraph (a) has been satisfied, the person
5077 defending or asserting the validity of a director's conflict of interest transaction has the burden
5078 of proving its fairness in a proceeding challenging the validity of the transaction.

5079 (4) The presence of or a vote cast by a director with an interest in the transaction does not
5080 affect the validity of an action taken under paragraph (3)(a) if the transaction is otherwise
5081 authorized, approved, or ratified as provided in subsection (3), but the presence or vote of the
5082 director may be counted for purposes of determining whether the transaction is approved under
5083 other sections of this chapter.

5084 (5) In addition to other grounds for challenge, a party challenging the validity of the
5085 transaction is not precluded from asserting and proving that a particular director or shareholder

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5086 was not disinterested on grounds of financial or other interest for purposes of the vote on, consent
5087 to, or approval of the transaction.

5088 (6) If directors' action under this section does not otherwise satisfy a quorum or voting
5089 requirement applicable to the authorization of the transaction by directors as required by the
5090 articles of incorporation, the bylaws, this chapter, or any other law, an action to satisfy those
5091 authorization requirements, whether as part of the same action or by way of another action, must
5092 be taken by the board of directors or a committee in order to authorize the transaction. In such
5093 action, the vote or consent of directors who are not disinterested may be counted.

5094 (7) Where shareholders' action under this section does not satisfy a quorum or voting
5095 requirement applicable to the authorization of the transaction by shareholders as required by the
5096 articles of incorporation, the bylaws, this chapter, or any other law, an action to satisfy those
5097 authorization requirements, whether as part of the same action or by way of another action, must
5098 be taken by the shareholders in order to authorize the transaction. In such action, the vote or
5099 consent of shareholders who are not disinterested shareholders may be counted.

5100

5101 **Commentary to Section 607.0832:**

5102 Section 607.0832 is revised to follow the approach taken in and to parallel the language appearing
5103 in s. 605.04092 of FRLCA, in an effort to harmonize the two entity statutes and because the
5104 FRLCA provision does a good job of answering the two key questions that need to be covered
5105 by the director conflicts of interest transactions section of the FBCA, as follows:

5106 (i) can an unfair conflict of interest transaction that is approved by disinterested directors or
5107 disinterested shareholders get clearance under the statute; and
5108

5109 (ii) if, under all circumstances, the conflict of interest transaction must be fair, should
5110 approval by disinterested directors or disinterested shareholders shift the burden of proof to the
5111 persons challenging the transaction.
5112

5113 Current s. 607.0832 can be read to provide that an "unfair" director conflict of interest transaction
5114 would not be void or voidable if it were approved by disinterested directors or disinterested
5115 shareholders. The revised statute expressly removes that ambiguity from the statute.

5116 The changes made to this section are as follows:

5117 1. Following the approach taken by s. 605.04092, and based on a view that "contracts"
5118 are a subset of "transactions," the "contracts and other transactions" language has not been
5119 retained; instead all references are instead to just "transactions." The removal of the references
5120 to "contracts" is not intended to be a substantive change; but rather is consistent with the belief
5121 that "contracts" are a subset of "transactions" and thus the references to "contracts" are
5122 considered superfluous. Furthermore, the removal of the references to "contracts" eliminates
5123 the risk that the transactions (including contracts) covered by s. 607.0832 of FBCA should be
5124 in any way different from the transactions (including contracts) covered by s. 605.04092 of
5125 FRLCA.

5126 2. With respect to "indirect interests," the FRLCA construct is followed. Section
5127 607.0832 defines an "indirect interest" as one where the "director has an indirect material
5128 financial interest in or is a director, officer, member, manager or partner of a person, other
5129 than the corporation, who is a party to the transaction."

5130 3. The word "control," which is defined in the Model Act, is not being defined in s.
5131 607.0832, following the approach taken in the predecessor s. 607.0832 and in s. 605.04092 of
5132 FRLCA.

5133 4. In subsection (3), the words "at the time it is authorized" are continued to be used
5134 rather than the Model Act concept of "relevant time."

5135

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5136 5. The word "material" as set forth in s. 605.04092 of FRLCA is used in s. 607.0832.
5137 Although it could be argued that the Model Act definition may be better worded, it is believed
5138 that the FRLCA terminology is perfectly acceptable; using the FRLCA terminology
5139 respects consistency and avoids the potential that a court might give undue meaning to
5140 differences in wording, where no difference in meaning was intended.

5141 6. A definition of the term "related person" has not been added. Instead, the term
5142 "indirect material financial interest" is defined and used in this statute.

5143 7. A definition of the phrase "fair to the corporation" is added, mirroring the defined
5144 phrase as it currently appears in s. 605.04092.

5145 8. A decision was made not to define what is meant by "required disclosure," based on
5146 the view that the concept of required disclosure is already built into the language of s.
5147 605.04092(4), which language has now been mirrored in s. 607.0832.

5148 9. A decision was made to leave it to the courts to determine who may challenge an
5149 interested director transaction and not to expressly address this subject in the statute. Both the
5150 predecessor s. 607.0832 and s. 605.04092 of FRLCA are silent on this issue; however, s.
5151 605.04092, because of the way the burden of proof is now defined, might imply that there is
5152 a broader group of persons who could seek to challenge a conflict of interest transaction.

5153 10. In an attempt to streamline the language used throughout the statute, a definition of
5154 "director's conflict of interest transaction" has been added, but the approach taken is different
5155 from the approach taken in the Model Act. By adding this definition and using this term in
5156 subsection 607.0832(3), the confusion created in parallel subsections 605.04092(4)(a) and (b)
5157 by the cross references used in those subsections is eliminated, with clarity provided as to
5158 which transactions are being referenced.

5159 11. Although not defined, the term "disinterested shareholder" has been used, and
5160 continues to be used, throughout the statute. With respect to board approval, the statute now
5161 uses the defined term "qualified directors."

5162 12. In securing approval from "qualified directors," s. 607.0832 continues to require that
5163 more than one qualified director on the board or board committee considering the transaction
5164 must approve the transaction in order for the transaction to be approved under subsection
5165 607.0832(4)(a)1.

5166 13. In subsection (3)(a)1., the vote to approve the transaction must be by "a majority of
5167 the qualified directors." However, because the reference did not deal with the possibility that
5168 director votes might be weighted under s. 607.0804, there was some confusion as to how the
5169 majority was to be determined in cases where director votes were weighted under s. 607.0804.
5170 The issue was resolved by adding language to s. 607.0804 of the FBCA to make it clear that

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5171 if a shareholders' agreement has been adopted in compliance with s. 607.0732 which changes
5172 the weight of director votes, then all references in Chapter 607 to a majority or other
5173 proportion of directors shall refer to a majority or other proportion of the votes of such
5174 directors.

5175

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5176 607.0833 Loans to officers, directors, and employees; guaranty of obligations.

5177 Any corporation may lend money to, guarantee any obligation of, or otherwise assist any
5178 officer, director, or employee of the corporation or of a subsidiary, whenever, in the judgment of
5179 the board of directors, such loan, guaranty, or assistance may reasonably be expected to benefit
5180 the corporation. The loan, guaranty, or other assistance may be with or without interest and may
5181 be unsecured or secured in such manner as the board of directors shall approve, including, ~~without~~
5182 ~~limitation~~, a pledge of shares of stock of the corporation. Nothing in this section shall be deemed
5183 to deny, limit, or restrict the powers of guaranty or warranty of any corporation at common law or
5184 under any statute. Loans, guarantees, or other types of assistance are subject to s. 607.0832.

5185

5186 **Commentary to Section 607.0833:**

5187 This subsection is identical to DGCL Section 143 and was in the predecessor Florida corporate
5188 statute adopted prior to the adoption of the FBCA (old s. 607.141). Although this provision does
5189 not appear in the Model Act, this provision has been retained in the FBCA.

5190

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5191 607.0834 Directors' liability for unlawful distributions.

5192 (1) A director who votes for or assents to a distribution made in violation of s. 607.06401,
5193 s. 607.1410(1), or the articles of incorporation is personally liable to the corporation for the amount
5194 of the distribution that exceeds what could have been distributed without violating s. 607.06401,
5195 s. 607.1410(1), or the articles of incorporation if it is established that the director did not perform
5196 his or her duties in compliance with s. 607.0830. In any proceeding commenced under this section,
5197 a director has all of the defenses ordinarily available to a director.

5198 (2) A director held liable under subsection (1) for an unlawful distribution is entitled to
5199 contribution:

5200 (a) From every other director who could be liable under subsection (1) for the unlawful
5201 distribution; and

5202 (b) From each shareholder for the amount the shareholder accepted knowing the
5203 distribution was made in violation of s. 607.06401 or the articles of incorporation.

5204 (3) A proceeding under this section is barred unless it is commenced:

5205 (a) Within 2 years after the date on which the effect of the distribution was measured
5206 under s. 607.06401(6) or (8);

5207 (b) Within 2 years after the date as of which the violation of s. 607.06401 occurred as the
5208 consequence of disregard of a restriction in the articles of incorporation;

5209 (c) Within 2 years after the date on which the distribution of assets to shareholders under
5210 s. 607.1410(1) was made; or

5211 (d) With regard to contribution or recoupment under subsection (2) above, within 1 year
5212 after the liability of the claimant has been finally adjudicated under subsection (1).

5213

5214 **Commentary to Section 607.0834:**

5215 The changes to subsection (3) (adding new subsections (b) and (c)) follow s. 8.33(c)(1) and (2) of
5216 the Model Act that was added to the Model Act in 2000. Subsection (3)(b) adds a two-year statute
5217 of limitations based upon the date on which the violation of s. 607.06401 occurs in circumstances
5218 where the violation is in disregard of a restriction contained in the articles of incorporation. For
5219 actions brought under s. 607.0834(2) for contribution or recoupment, subsection (3)(d) establishes
5220 a one year statute of limitation from when the liability of the claimant has been finally adjudicated
5221 under subsection (1). Addressing the issue of whether there was an overlap between subsections
5222 (3)(a), (b), (c) and (d), it was determined that because the word "or" is used at the end of subsection
5223 (3)(b), the applicable statute of limitations becomes the last to expire of the three applicable
5224 periods.

5225

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5226 607.08401 Required officers.

5227 (1) A corporation shall have the officers described in its bylaws or appointed by the board
5228 of directors in accordance with the bylaws.

5229 (2) The board of directors may appoint one or more individuals to act as the officers of the
5230 corporation. A duly appointed officer may appoint one or more officers or assistant officers if
5231 authorized by the bylaws or the board of directors.

5232 (3) The bylaws or the board of directors shall ~~delegate~~ assign to one of the officers
5233 responsibility for preparing minutes of the directors' and shareholders' meetings and for
5234 authenticating the records of the corporation required to be kept pursuant to s. 607.1601(1) and
5235 (5).

5236 (4) The same individual may simultaneously hold more than one office in a corporation.

5237

5238 **Commentary to Section 607.08401:**

5239 The first sentence of subsection (1) was left unchanged, despite the fact that there is a slight
5240 difference in its wording as compared to s. 8.40 of the Model Act. No change was made because
5241 it is believed that the language is substantively the same and because the language in subsection
5242 (1) has been in place since before adoption of the FBCA in 1989.

5243 Following s. 8.40(b) of the Model Act, a new sentence was added to subsection (2) to make clear
5244 that officers of a corporation must be natural persons meeting the same requirements as exist in s.
5245 607.0802(1) for directors. This sentence was in the Model Act when the FBCA was adopted in
5246 1989 and was not added to the statute, presumably because its substance was considered implicit
5247 in the Florida statute as written. However, the Subcommittee has come to learn that some
5248 corporations have listed entities as officers on sunbiz.com. As a result, this change is being made
5249 to make explicitly clear that officers of a corporation must be individuals.

5250 The word "delegate" in subsection (3) was changed to "assign" to be consistent with the wording
5251 used in the Model Act and because the change in wording was viewed as being more reflective of
5252 how such obligations are imposed on officers.

5253 Similarly, to be consistent with the wording of the Model Act and to make clear which of the
5254 records identified in Chapter 607 are to be the subject of authentication, subsection (3) was further
5255 changed. It was noted that the Delaware statute does not provide expressly for the appointment of
5256 an officer to authenticate records, since as a practical matter when records must be authenticated
5257 an officer will be assigned to handle that function even if not required by the statute. However,
5258 since this provision for authentication has been in this section of the FBCA since 1989, the decision
5259 was made to leave this concept of assigning the "authentication" function in the statute, but to add
5260 the parallel qualifying language from the Model Act.

5261

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5262 607.0841 Duties of officers.

5263 Each officer has the authority and shall perform the duties set forth in the bylaws or, to the
5264 extent consistent with the bylaws, the duties prescribed by the board of directors or by direction of
5265 any officer authorized by the bylaws or the board of directors to prescribe the duties of other
5266 officers.

5267

5268 **Commentary to Section 607.0841:**

5269 While the Model Act, in s. 8.41, uses the term "function" instead of "duties" in the four places
5270 where the word appears in this section, since the corollary section of the DGCL uses the term
5271 "duties" in this context, and since this provision has been in the FBCA in this form since 1989 and
5272 is believed adequate to describe the duties (or functions) of officers, the Model Act wording has
5273 not been added to this section of the FBCA.

5274

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5275 607.08411 General standards for officers.

5276 (1) An officer, when performing in such capacity, shall act:

5277 (a) In good faith; and

5278 (b) In a manner the officer reasonably believes to be in the best interests of the
5279 corporation.

5280 (2) An officer, when becoming informed in connection with a decisionmaking function, shall
5281 discharge his or her duties with the care that an ordinary prudent person in a like position would
5282 reasonably believe appropriate under similar circumstances.

5283 (3) The duty of an officer includes the obligation to:

5284 (a) Inform the superior officer to whom, or the board of directors or the committee to
5285 which, the officer reports of information about the affairs of the corporation known to the
5286 officer, within the scope of the officer's functions, and known or as should be known to the
5287 officer to be material to such superior officer, board or committee; and

5288 (b) Inform his or her superior officer, or another appropriate person within the
5289 corporation, or the board of directors, or a committee thereof, of any actual or probable
5290 material violation of law involving the corporation or material breach of duty to the
5291 corporation by an officer, employee, or agent of the corporation the officer believes has
5292 occurred or is likely to occur.

5293 (4) In discharging his or her duties, an officer who does not have knowledge that makes
5294 reliance unwarranted is entitled to rely on the performance by any of the persons specified in
5295 subsection (6) to whom the responsibilities were properly delegated, formally or informally, by
5296 course of conduct.

5297 (5) In discharging his or her duties, an officer who does not have knowledge that makes
5298 reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including
5299 financial statements and other financial data, prepared or presented by any of the persons
5300 specified in subsection (6).

5301 (6) An officer is entitled to rely, in accordance with subsection (4) or subsection (5), on:

5302 (a) One or more other officers of the corporation or one or more employees of the
5303 corporation whom the officer reasonably believes to be reliable and competent in the
5304 functions performed or the information, opinions, reports, or statements provided;

5305 (b) Legal counsel, public accountants, or other persons retained by the corporation as to
5306 matters involving skills or expertise the officer reasonably believes are matters within the

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5307 particular person's professional or expert competence or as to which the particular person
5308 merits confidence.
5309

5310 **Commentary to Section 607.08411:**

5311 While this new section of the FBCA is modeled after s. 8.42 of the Model Act, it includes language
5312 intended to make it consistent with the language used in s. 607.0830 (general standards for
5313 directors).

5314 Section 8.42 first became part of the Model Act in 1984 and was amended in 1999 and again in
5315 2005. This section was excluded from the FBCA as adopted in 1989. The following commentary
5316 explained the rationale for the omission of this section in 1989:

5317 "Currently, Florida does not have a statute dictating standards of conduct for officers.
5318 These standards are currently imposed under common law and general contract law.
5319 Although Georgia has recently adopted a statute that is similar to Model Act Section 8.42,
5320 the Committee believes there is no need to adopt a similar statute at this time".

5321 Today, 28 of the 34 Model Act jurisdictions, including Georgia, Massachusetts, North Carolina,
5322 Oregon, Pennsylvania, Washington DC, and Washington State, have adopted either the 1984 or
5323 updated versions of this Model Act provision. Further, the current version of the Model Act is far
5324 more robust than it was in the 1984 version of the Model Act, and the commentary is lengthy and
5325 detailed on this topic.

5326 As a result, this provision has been added to the FBCA. It provides clear guidance to its audience
5327 (counselors to corporate officers and directors) with as little as possible left to interpretation,
5328 including a roadmap for courts as to the duties of officers. It replaces common law principles of
5329 an agent's duties, which arguably do not provide clear guidance. Further, the more specific
5330 guidance provided by this section could be helpful in determining an officer's entitlement to
5331 indemnification and in providing offensive and defensive arguments when an officer is named as
5332 a defendant in litigation (derivative or otherwise). Other aspects of this new provision that are
5333 considered to be of some significance are the specific requirements for "up the line" reporting and
5334 transparency, and the very specific (and corporate structure-related) definitions of reasonable
5335 "reliance", the latter of which is not necessarily believed to be part of traditional agency rules.

5336 In some cases, the failure to observe relevant standards of conduct may give rise to an officer's
5337 liability to the corporation or its shareholders. A court review of challenged conduct will involve
5338 an evaluation of the particular facts and circumstances in light of applicable law. In this connection,
5339 a court may consider whether the relevant principles of s. 607.0831, such as duties to deal fairly
5340 with the corporation and its shareholders and the challenger's burden of establishing proximately
5341 caused harm, should be taken into account. In addition, although various courts around the country
5342 have opined in different ways on the issue, it is at least possible that a Florida court might find that
5343 the business judgment rule applies to decisions within an officer's discretionary authority. Liability
5344 to others can also arise from an officer's own acts or omissions (e.g., violations of law or tort

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5345 claims) and, in some cases, an officer with supervisory responsibilities can have risk exposure in
5346 connection with the acts or omissions of others.

5347

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5348 607.0842 Resignation and removal of officers.

5349 (1) An officer may resign at any time by delivering a written notice to the corporation. A
5350 resignation is effective as provided in s. 607.0141(5) when the notice is delivered unless the notice
5351 provides for a delayed effectiveness, including effectiveness determined upon a future event or
5352 events specifies a later effective date. If effectiveness of a resignation is stated to be delayed and
5353 the corporation board of directors or appointing officer made effective at a later date accepts the
5354 delay future effective date, the its board of directors or the appointing officer may fill the pending
5355 vacancy before the delayed effectiveness effective date if the board of directors or appointing
5356 officer provides that the successor does not take office until the vacancy occurs effective date.

5357 (2) ~~A board of directors may remove any officer at any time with or without cause. Any~~
5358 ~~officer or assistant officer, if appointed by another officer, may likewise be removed by such~~
5359 ~~officer.~~ An officer may be removed at any time with or without cause by:

5360 (a) The board of directors;

5361 (b) The appointing officer, unless the bylaws or the board of directors provide otherwise;
5362 or

5363 (c) Any other officer, if authorized by the bylaws or the board of directors.

5364 (3) For purposes of this section, the term "appointing officer" means the officer, including
5365 any successor to that officer, who appointed the officer resigning or being removed.

5366

5367 **Commentary to Section 607.0842:**

5368 Changes to this section of the FBCA update this section for wording changes made in Model Act
5369 s. 8.43 in 2000. These changes are believed to be better wording and clarifying/cleanup changes,
5370 but are not intended to change the substance of the statute.

5371

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5372 607.0843 Contract rights of officers.

5373 (1) The appointment of an officer does not itself create contract rights.

5374 (2) An officer's removal does not affect the officer's contract rights, if any, with the
5375 corporation. An officer's resignation does not affect the corporation's contract rights, if any, with
5376 the officer.

5377

5378 **Commentary to Section 607.0843:**

5379 No changes were made to this section of the FBCA.

5380

FINAL STATUTE AS ADOPTED
(With Commentary)

5381 607.0850 Definitions. Indemnification of officers, directors, employees, and agents.

5382 (1) ~~A corporation shall have power to indemnify any person who was or is a party to any~~
5383 ~~proceeding (other than an action by, or in the right of, the corporation), by reason of the fact that~~
5384 ~~he or she is or was a director, officer, employee, or agent of the corporation or is or was serving~~
5385 ~~at the request of the corporation as a director, officer, employee, or agent of another corporation,~~
5386 ~~partnership, joint venture, trust, or other enterprise against liability incurred in connection with~~
5387 ~~such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he~~
5388 ~~or she reasonably believed to be in, or not opposed to, the best interests of the corporation and,~~
5389 ~~with respect to any criminal action or proceeding, had no reasonable cause to believe his or her~~
5390 ~~conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or~~
5391 ~~conviction or upon a plea of nolo contendere or its equivalent shall not, of itself, create a~~
5392 ~~presumption that the person did not act in good faith and in a manner which he or she reasonably~~
5393 ~~believed to be in, or not opposed to, the best interests of the corporation or, with respect to any~~
5394 ~~criminal action or proceeding, had reasonable cause to believe that his or her conduct was~~
5395 ~~unlawful.~~

5396 (2) ~~A corporation shall have power to indemnify any person, who was or is a party to any~~
5397 ~~proceeding by or in the right of the corporation to procure a judgment in its favor by reason of~~
5398 ~~the fact that the person is or was a director, officer, employee, or agent of the corporation or is or~~
5399 ~~was serving at the request of the corporation as a director, officer, employee, or agent of another~~
5400 ~~corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts~~
5401 ~~paid in settlement not exceeding, in the judgment of the board of directors, the estimated expense~~
5402 ~~of litigating the proceeding to conclusion, actually and reasonably incurred in connection with~~
5403 ~~the defense or settlement of such proceeding, including any appeal thereof. Such indemnification~~
5404 ~~shall be authorized if such person acted in good faith and in a manner he or she reasonably~~
5405 ~~believed to be in, or not opposed to, the best interests of the corporation, except that no~~
5406 ~~indemnification shall be made under this subsection in respect of any claim, issue, or matter as to~~
5407 ~~which such person shall have been adjudged to be liable unless, and only to the extent that, the~~
5408 ~~court in which such proceeding was brought, or any other court of competent jurisdiction, shall~~
5409 ~~determine upon application that, despite the adjudication of liability but in view of all~~
5410 ~~circumstances of the case, such person is fairly and reasonably entitled to indemnity for such~~
5411 ~~expenses which such court shall deem proper.~~

5412 (3) ~~To the extent that a director, officer, employee, or agent of a corporation has been~~
5413 ~~successful on the merits or otherwise in defense of any proceeding referred to in subsection (1)~~
5414 ~~or subsection (2), or in defense of any claim, issue, or matter therein, he or she shall be~~
5415 ~~indemnified against expenses actually and reasonably incurred by him or her in connection~~
5416 ~~therewith.~~

5417 (4) ~~Any indemnification under subsection (1) or subsection (2), unless pursuant to a~~
5418 ~~determination by a court, shall be made by the corporation only as authorized in the specific case~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5419 upon a determination that indemnification of the director, officer, employee, or agent is proper in
5420 the circumstances because he or she has met the applicable standard of conduct set forth in
5421 subsection (1) or subsection (2). Such determination shall be made:

5422 (a) — By the board of directors by a majority vote of a quorum consisting of directors
5423 who were not parties to such proceeding;

5424 (b) — If such a quorum is not obtainable or, even if obtainable, by majority vote of a
5425 committee duly designated by the board of directors (in which directors who are parties may
5426 participate) consisting solely of two or more directors not at the time parties to the
5427 proceeding;

5428 (c) — By independent legal counsel:

5429 1. — Selected by the board of directors prescribed in paragraph (a) or the committee
5430 prescribed in paragraph (b); or

5431 2. — If a quorum of the directors cannot be obtained for paragraph (a) and the
5432 committee cannot be designated under paragraph (b), selected by majority vote of the
5433 full board of directors (in which directors who are parties may participate); or

5434 (d) — By the shareholders by a majority vote of a quorum consisting of shareholders
5435 who were not parties to such proceeding or, if no such quorum is obtainable, by a majority
5436 vote of shareholders who were not parties to such proceeding.

5437 (5) — Evaluation of the reasonableness of expenses and authorization of indemnification
5438 shall be made in the same manner as the determination that indemnification is permissible.
5439 However, if the determination of permissibility is made by independent legal counsel, persons
5440 specified by paragraph (4)(c) shall evaluate the reasonableness of expenses and may authorize
5441 indemnification.

5442 (6) — Expenses incurred by an officer or director in defending a civil or criminal proceeding
5443 may be paid by the corporation in advance of the final disposition of such proceeding upon
5444 receipt of an undertaking by or on behalf of such director or officer to repay such amount if he or
5445 she is ultimately found not to be entitled to indemnification by the corporation pursuant to this
5446 section. Expenses incurred by other employees and agents may be paid in advance upon such
5447 terms or conditions that the board of directors deems appropriate.

5448 (7) — The indemnification and advancement of expenses provided pursuant to this section
5449 are not exclusive, and a corporation may make any other or further indemnification or
5450 advancement of expenses of any of its directors, officers, employees, or agents, under any bylaw,
5451 agreement, vote of shareholders or disinterested directors, or otherwise, both as to action in his or
5452 her official capacity and as to action in another capacity while holding such office. However,
5453 indemnification or advancement of expenses shall not be made to or on behalf of any director,

FINAL STATUTE AS ADOPTED
(With Commentary)

5454 ~~officer, employee, or agent if a judgment or other final adjudication establishes that his or her~~
5455 ~~actions, or omissions to act, were material to the cause of action so adjudicated and constitute:~~

5456 ~~(a) A violation of the criminal law, unless the director, officer, employee, or agent had~~
5457 ~~reasonable cause to believe his or her conduct was lawful or had no reasonable cause to~~
5458 ~~believe his or her conduct was unlawful;~~

5459 ~~(b) A transaction from which the director, officer, employee, or agent derived an~~
5460 ~~improper personal benefit;~~

5461 ~~(c) In the case of a director, a circumstance under which the liability provisions of s.~~
5462 ~~607.0834 are applicable; or~~

5463 ~~(d) Willful misconduct or a conscious disregard for the best interests of the~~
5464 ~~corporation in a proceeding by or in the right of the corporation to procure a judgment in its~~
5465 ~~favor or in a proceeding by or in the right of a shareholder.~~

5466 ~~(8) Indemnification and advancement of expenses as provided in this section shall~~
5467 ~~continue as, unless otherwise provided when authorized or ratified, to a person who has ceased to~~
5468 ~~be a director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and~~
5469 ~~administrators of such a person, unless otherwise provided when authorized or ratified.~~

5470 ~~(9) Unless the corporation's articles of incorporation provide otherwise, notwithstanding~~
5471 ~~the failure of a corporation to provide indemnification, and despite any contrary determination of~~
5472 ~~the board or of the shareholders in the specific case, a director, officer, employee, or agent of the~~
5473 ~~corporation who is or was a party to a proceeding may apply for indemnification or advancement~~
5474 ~~of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another~~
5475 ~~court of competent jurisdiction. On receipt of an application, the court, after giving any notice~~
5476 ~~that it considers necessary, may order indemnification and advancement of expenses, including~~
5477 ~~expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it~~
5478 ~~determines that:~~

5479 ~~(a) The director, officer, employee, or agent is entitled to mandatory indemnification~~
5480 ~~under subsection (3), in which case the court shall also order the corporation to pay the~~
5481 ~~director reasonable expenses incurred in obtaining court-ordered indemnification or~~
5482 ~~advancement of expenses;~~

5483 ~~(b) The director, officer, employee, or agent is entitled to indemnification or~~
5484 ~~advancement of expenses, or both, by virtue of the exercise by the corporation of its power~~
5485 ~~pursuant to subsection (7); or~~

5486 ~~(c) The director, officer, employee, or agent is fairly and reasonably entitled to~~
5487 ~~indemnification or advancement of expenses, or both, in view of all the relevant~~

FINAL STATUTE AS ADOPTED
(With Commentary)

5488 circumstances, regardless of whether such person met the standard of conduct set forth in
5489 subsection (1), subsection (2), or subsection (7).

5490 (10) ~~For purposes of this section, the term "corporation" includes, in addition to the~~
5491 ~~resulting corporation, any constituent corporation (including any constituent of a constituent)~~
5492 ~~absorbed in a consolidation or merger, so that any person who is or was a director, officer,~~
5493 ~~employee, or agent of a constituent corporation, or is or was serving at the request of a~~
5494 ~~constituent corporation as a director, officer, employee, or agent of another corporation,~~
5495 ~~partnership, joint venture, trust, or other enterprise, is in the same position under this section with~~
5496 ~~respect to the resulting or surviving corporation as he or she would have with respect to such~~
5497 ~~constituent corporation if its separate existence had continued.~~

5498 (11) ~~For purposes of this section:~~

5499 (a) ~~The term "other enterprises" includes employee benefit plans;~~

5500 (b) ~~The term "expenses" includes counsel fees, including those for appeal;~~

5501 (c) ~~The term "liability" includes obligations to pay a judgment, settlement, penalty,~~
5502 ~~fine (including an excise tax assessed with respect to any employee benefit plan), and~~
5503 ~~expenses actually and reasonably incurred with respect to a proceeding;~~

5504 (d) ~~The term "proceeding" includes any threatened, pending, or completed action, suit,~~
5505 ~~or other type of proceeding, whether civil, criminal, administrative, or investigative and~~
5506 ~~whether formal or informal;~~

5507 (e) ~~The term "agent" includes a volunteer;~~

5508 (f) ~~The term "serving at the request of the corporation" includes any service as a~~
5509 ~~director, officer, employee, or agent of the corporation that imposes duties on such persons,~~
5510 ~~including duties relating to an employee benefit plan and its participants or beneficiaries;~~
5511 ~~and~~

5512 (g) ~~The term "not opposed to the best interest of the corporation" describes the actions~~
5513 ~~of a person who acts in good faith and in a manner he or she reasonably believes to be in the~~
5514 ~~best interests of the participants and beneficiaries of an employee benefit plan.~~

5515 (12) ~~A corporation shall have power to purchase and maintain insurance on behalf of any~~
5516 ~~person who is or was a director, officer, employee, or agent of the corporation or is or was~~
5517 ~~serving at the request of the corporation as a director, officer, employee, or agent of another~~
5518 ~~corporation, partnership, joint venture, trust, or other enterprise against any liability asserted~~
5519 ~~against the person and incurred by him or her in any such capacity or arising out of his or her~~
5520 ~~status as such, whether or not the corporation would have the power to indemnify the person~~
5521 ~~against such liability under the provisions of this section.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5522 In ss. 607.0850-607.0859, the term:

5523 (1) "Agent" includes a volunteer.

5524 (2) "Corporation" includes, in addition to the resulting corporation, any constituent
5525 corporation (including any constituent of a constituent) absorbed in a merger, so that any person
5526 who is or was a director or officer of a constituent corporation, or is or was serving at the request
5527 of a constituent corporation as a director or officer, member, manager, partner, trustee, employee,
5528 or agent of another domestic or foreign corporation, limited liability company, partnership, joint
5529 venture, trust, employee benefit plan, or other enterprise or entity, is in the same position under
5530 this section with respect to the resulting or surviving corporation as he or she would have been
5531 with respect to such constituent corporation if its separate existence had continued.

5532 (3) "Director" or "officer" means an individual who is or was a director or officer,
5533 respectively, of a corporation or who, while a director or officer of the corporation, is or was
5534 serving at the corporation's request as a director or officer, manager, partner, trustee, employee, or
5535 agent of another domestic or foreign corporation, limited liability company, partnership, joint
5536 venture, trust, employee benefit plan, or another enterprise or entity. A director or officer is
5537 considered to be serving an employee benefit plan at the corporation's request if the individual's
5538 duties to the corporation or such plan also impose duties on, or otherwise involve services by, the
5539 individual to the plan or to participants in or beneficiaries of the plan. The term includes, unless
5540 the context otherwise requires, the estate, heirs, executors, administrators, and personal
5541 representatives of a director or officer.

5542 (4) "Expenses" includes reasonable attorney fees, including those incurred in connection with
5543 any appeal.

5544 (5) "Liability" means the obligation to pay a judgment, settlement, penalty, fine (including
5545 an excise tax assessed with respect to an employee benefit plan), or reasonable expenses incurred
5546 with respect to a proceeding.

5547 (6) "Party" means an individual who was, is, or is threatened to be made, a defendant or
5548 respondent in a proceeding.

5549 (7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding,
5550 whether civil, criminal, administrative, arbitative, or investigative and whether formal or
5551 informal.

5552 (8) "Serving at the corporation's request" includes any service as a director, officer,
5553 employee, or agent of the corporation that imposes duties on such persons, including duties relating
5554 to an employee benefit plan and its participants or beneficiaries.

5555 **Commentary to Sections 607.0850-607.0859 Generally (Indemnification)**

5556 The FBCA currently includes all of the indemnification provisions in a single statutory section, s.
5557 607.0850. On the other hand, the Model Act breaks this topic into multiple sections (ss. 8.50-8.59).
5558 The revisions that have been made to ss. 607.0850-607.0859 follow the approach of the Model
5559 Act and thus break the indemnification provisions into multiple sections in the manner similar to
5560 the Model Act. At the same time, and as noted in the commentary to the various indemnification
5561 sections in the FBCA (ss. 607.0850-607.0859), many of these sections follow the wording of the
5562 existing Florida statute and, to that extent, are not intended to make substantive changes to those
5563 sections. Further, to the extent that existing s. 607.0850 parallels the indemnification provisions
5564 contained in the DGCL, we do not intend by merely breaking up of this topic into multiple sections
5565 to substantively change the meaning of those sections or to no longer look towards Delaware case
5566 law for guidance on the interpretation of those sections in the current statute.

5567 **Commentary to Section 607.0850:**

5568 Subsection (2) is derived from the definition of corporation in s. 607.0850(10).

5569 Subsections (1), (4), (5), (7) and (8) are derived from existing s. 607.0850(11).

5570 The definition of "official capacity" from s. 8.50 of the Model Act was not included because the
5571 proposal does not include different standards for indemnification when a director is acting in an
5572 official capacity or otherwise.

5573 The last sentence of subsection (3) states that "[D]irector" or "officer" includes, unless the context
5574 requires otherwise, the estate, heirs, executors, administrators and personal representatives of a
5575 director or officer. Although this adds slightly to the list of parties who receive the benefits of
5576 indemnity that are currently included in s. 607.0850(8), the changes are believed to be consistent
5577 with the intent of the current statute.

5578 While a definition of "expenses" was added in s. 607.01401(32) (including within that definition
5579 the concept of reasonableness of such expenses), the definition of expenses in subsection (4) deals
5580 with reasonable expenses of counsel, so it is retained.

5581

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5582 607.0851 Permissible indemnification.

5583 (1) Except as otherwise provided in this section and in s. 607.0859, and not in limitation of
5584 indemnification allowed under s. 607.0858(1), a corporation may indemnify an individual who is
5585 a party to a proceeding because the individual is or was a director or officer against liability
5586 incurred in the proceeding if:

5587 (a) The director or officer acted in good faith;

5588 (b) The director or officer acted in a manner he or she reasonably believed to be in, or
5589 not opposed to, the best interests of the corporation; and

5590 (c) In the case of any criminal proceeding, the director or officer had no reasonable cause
5591 to believe his or her conduct was unlawful.

5592 (2) The conduct of a director or officer with respect to an employee benefit plan for a purpose
5593 the director or officer reasonably believed to be in the best interest of the participants in, and the
5594 beneficiaries of, the plan is conduct that satisfies the requirement of paragraph (1)(b).

5595 (3) The termination of a proceeding by judgment, order, settlement, or conviction, or upon a
5596 plea of nolo contendere or its equivalent, does not, of itself, create a presumption that the director
5597 or officer did not meet the relevant standard of conduct described in this section.

5598 (4) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5599 director or an officer in connection with a proceeding by or in the right of the corporation except
5600 for expenses and amounts paid in settlement not exceeding, in the judgment of the board of
5601 directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonably
5602 incurred in connection with the defense or settlement of such proceeding, including any appeal
5603 thereof, where such person acted in good faith and in a manner he or she reasonably believed to
5604 be in, or not opposed to, the best interests of the corporation.

5605

5606 **Commentary to Section 607.0851:**

5607 The Model Act leaves indemnity of employees and agents to the laws of agency. Although the
5608 Florida statute in effect prior to this revision included employees and agents in the applicable
5609 sections of s. 607.0850 that provided for permissible and mandatory indemnification, the new
5610 structure of which this new section is a part follows the Model Act structure and elects to cover
5611 employees and agents under the laws of agency. Notwithstanding, this change is not believed or
5612 intended to substantively cut back on the power of a corporation to indemnify its employees or
5613 agents, and new s. 607.0858(6) states that nothing in s. 607.0850-607.0859 limits the power of the
5614 corporation to indemnify agents and employees.

5615 Section 8.56 of the Model Act provides for indemnification of officers. However, the new structure
5616 of which this new section is a part includes officers as covered persons directly in the applicable
5617 sections of s. 607.0851, s. 607.0852 and s. 607.0853, thus eliminating the need for inclusion of a
5618 parallel of Model Act s. 8.56.

5619 Section 8.51(a)(2) of the Model Act, dealing with indemnity beyond the statutory provisions that
5620 is included in the corporation's articles of incorporation, has not been included. Further, s.
5621 607.0202 of the FBCA does not include the Model Act language which would expressly authorize
5622 indemnity beyond the statutory provisions, only in circumstances where authorization is set forth
5623 in the corporation's articles of incorporation.

5624 This section acknowledges that, subject to the limitations contained in s. 607.0859(1), s.
5625 607.0858(1) allows the corporation to provide any other or further indemnification or advancement
5626 of expenses beyond that permitted in the statute. However, in comparison to the corollary Model
5627 Act provisions, s. 607.0858(1), consistent with the Florida statute in effect prior to this revision,
5628 allows this expanded indemnification to be included in the corporation's articles of incorporation,
5629 in its bylaws or in any agreement, or to be approved by a vote of shareholders or disinterested
5630 directors, or otherwise. See commentary to s. 607.0858(1).

5631 The statute does not follow the Model Act construct that creates a different standard of what needs
5632 to be established for indemnification of directors when they are acting in an "official capacity"
5633 compared to when they are not acting in an "official capacity." Under s. 8.51(a)(1)(ii) of the Model
5634 Act, if a director is acting in his or her official capacity, to obtain indemnification he or she must
5635 establish that he or she reasonably believed that his or her conduct was in the best interest of the
5636 corporation, and in all other cases, to obtain indemnification, he or she must establish that he or
5637 she reasonably believed that his or her conduct was at least not opposed to the best interests of the
5638 corporation.

5639

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5640 607.0852 Mandatory indemnification.

5641 A corporation must indemnify an individual who is or was a director or officer who was
5642 wholly successful, on the merits or otherwise, in the defense of any proceeding to which the
5643 individual was a party because he or she is or was a director or officer of the corporation against
5644 expenses incurred by the individual in connection with the proceeding.

5645

5646 **Commentary to Section 607.0852:**

5647 The standard for statutory mandatory indemnification under the new structure of which this new
5648 section is a part follows the Model Act requirement that an officer or director must be "wholly
5649 successful" to be entitled to mandatory indemnification. This is in contrast with the "successful"
5650 standard in s. 607.0850(3) that was in effect prior to this revision. The commentary to s. 8.52 of
5651 the Model Act provides:

5652 A defendant is "wholly successful" only if the entire proceeding is disposed of on a basis
5653 which does not involve a finding of liability. A director who is precluded from mandatory
5654 indemnification by this requirement may still be entitled to permissible indemnification
5655 under section 8.51(a) [s. 607.0851(1)] or court-ordered indemnification under section
5656 8.54(a)(3) [s. 607.0854(1)(c)].

5657 Under the structure of the statute, those corporations that desire to continue to be obligated to
5658 provide mandatory indemnification based on some other standard, such as the "successful"
5659 standard in s. 607.0850(3) that was in effect prior to this revision, are entitled to do so by way of
5660 provisions in articles, bylaws, agreements or otherwise, consistent with the authorization in new s.
5661 607.0858, but subject to the restrictions provided for in new s. 607.0859.

5662 In *Banco Industrial de Venezuela C.A., Miami Agency v. De Saad*, 68 S.3d 895 (Fla. 2011), the
5663 Florida Supreme Court, in *dicta*, grafted a good faith requirement into s. 607.0850(3) dealing with
5664 mandatory indemnification, despite the fact that no such express requirement appears to be
5665 required under the current statute in the context of mandatory indemnification. The *Banco* case
5666 appeared to base its grafting of the good faith requirement, in significant part, on the cross
5667 reference in s. 607.0850(3) to subsections (1) and (2) of s. 607.0850.

5668 Because of the concerns about the *Banco* court's reading of the intent of the cross reference, a
5669 comparable cross reference to s. 607.0851 has not been included in s. 607.0852. The decision not
5670 to bring forward such cross reference is designed to more clearly reflect that any such cross
5671 reference was intended to merely identify the type of proceeding to which mandatory
5672 indemnification applied and not to link to the good faith requirement that applies to permissive
5673 indemnification. It is also believed that the change in the standard for mandatory indemnification
5674 from "successful" to "wholly successful" makes it unlikely that a situation such as the *Banco* case
5675 will arise in the future. However, if there were to be such a case where, for technical reasons, a
5676 defendant (who had not necessarily acted in good faith) were to have been wholly successful by
5677 virtue of some procedural grounds rather than on the merits, it is the view of the Subcommittee
5678 that such defendant would have a right to mandatory indemnification, with no requirement under
5679 s. 607.0853 to demonstrate good faith on the part of the defendant. As set forth in the Model Act
5680 commentary to s. 8.52:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5681 While this standard may result in an occasional defendant becoming entitled to
5682 indemnification because of procedural defenses not related to the merits, *e.g.* the statute of
5683 limitations or disqualification of the plaintiff, it is unreasonable to require a defendant with
5684 a valid procedural defense to undergo a possible prolonged and expensive trial on the merits
5685 in order to establish eligibility for mandatory indemnification.

5686

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5687 607.0853 Advance for expenses.

5688 (1) A corporation may, before final disposition of a proceeding, advance funds to pay for or
5689 reimburse expenses incurred in connection with the proceeding by an individual who is a party to
5690 the proceeding because that individual is or was a director or an officer if the director or officer
5691 delivers to the corporation a signed written undertaking of the director or officer to repay any funds
5692 advanced if:

5693 (a) The director or officer is not entitled to mandatory indemnification under s.
5694 607.0852; and

5695 (b) It is ultimately determined under s. 607.0854 or s. 607.0855 that the director or
5696 officer has not met the relevant standard of conduct described in s. 607.0851 or the director
5697 or officer is not entitled to indemnification under s. 607.0859.

5698 (2) The undertaking required by paragraph (1)(b) must be an unlimited general obligation of
5699 the director or officer but need not be secured and may be accepted without reference to the
5700 financial ability of the director or officer to make repayment.

5701 (3) Authorizations under this section shall be made:

5702 (a) By the board of directors:

5703 1. If there are two or more qualified directors, by a majority vote of all of the
5704 qualified directors (a majority of whom shall for such purpose constitute a quorum) or by
5705 a majority of the members of a committee appointed by such vote and comprised of two
5706 or more qualified directors; or

5707 2. If there are fewer than two qualified directors, by the vote necessary for action
5708 by the board of directors under s. 607.0824(3), in which authorization vote directors who
5709 are not qualified directors may participate; or

5710 (b) By the shareholders, but shares owned by or voted under the control of a director or
5711 officer who at the time of the authorization is not a qualified director or an officer who is a
5712 party to the proceeding may not be counted as a vote in favor of the authorization.

5713

5714 **Commentary to Section 607.0853:**

5715 Subsection (2) is intended to mean that the undertaking may, but need not, be secured and may,
5716 but need not, be accepted without reference to the financial ability of the director or officer to make
5717 the repayment. It is up to the board of directors to decide whether these issues should or should
5718 not be considered in agreeing to advance expenses in the proper exercise of their fiduciary duties.

5719 Subsection (3) expressly provides that a decision to advance expenses on behalf of a director or
5720 officer is to be made by the board of directors or the shareholders. Although the statute in effect
5721 prior to this revision (s. 607.0850(6)) does not specifically state who makes this decision, it is
5722 believed to be implied under the statute in effect prior to this revision.

5723 The provisions in Model Act s. 8.53(c), which establish how advancement of expenses is to be
5724 determined when there are directors who are parties to the proceeding at the time of authorization,
5725 has been included in the statute to clearly reflect how this decision is to be made under different
5726 circumstances. The language on shareholder votes in subsection (3)(b) is modeled on the language
5727 in the Model Act, and not the language in s. 607.0850(4)(d) that was in effect prior to this revision.
5728 Further, the term "qualified director" as defined in s. 607.0143 is used to reflect true independent
5729 directors making the decision as to advancement of expenses.

5730 Model Act s. 8.53(a)(1) regarding advancement of expenses if the proceeding involves conduct
5731 for which liability has been eliminated under a provision of the articles of incorporation as
5732 authorized by s. 2.02 of the Model Act has not been included. See Commentary regarding s.
5733 607.0851 above.

5734 A corporation may obligate itself pursuant to Section 607.0858(1) to advance for expenses under
5735 Section 607.0853 by means of a provision set forth in its articles of incorporation or bylaws, by a
5736 resolution of its board of directors or shareholders, or in an agreement. Moreover, unless provided
5737 otherwise, Section 607.0858(1) expressly deems a general obligatory provision requiring
5738 indemnification to the fullest extent permitted by law to include advance for expenses to the fullest
5739 extent permitted by law (unless the provision specifically provides otherwise), even if not
5740 specifically mentioned, subject to providing the required repayment undertaking. No other
5741 procedures, including without limitation any requirement of certification of good faith and
5742 reasonable belief or any requirement of merits proof, are required or contemplated, although
5743 obligatory arrangements may expressly include notice and/or any other requirements (including
5744 without limitation certification of good faith and reasonable belief and/or merits proof) that the
5745 directors decide are appropriate to include in such obligatory arrangements.

5746

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5747 607.0854 Court-ordered indemnification and advance for expenses.

5748 (1) Unless the corporation's articles of incorporation provide otherwise, notwithstanding the
5749 failure of a corporation to provide indemnification, and despite any contrary determination of the
5750 board of directors or of the shareholders in the specific case, a director or officer of the corporation
5751 who is a party to a proceeding because he or she is or was a director or officer may apply for
5752 indemnification or an advance for expenses, or both, to a court having jurisdiction over the
5753 corporation that is conducting the proceeding, or to a circuit court of competent jurisdiction. After
5754 receipt of an application and after giving any notice it considers necessary, the court may:

5755 (a) Order indemnification if the court determines that the director or officer is entitled to
5756 mandatory indemnification under s. 607.0852;

5757 (b) Order indemnification or advance for expenses if the court determines that the
5758 director or officer is entitled to indemnification or advance for expenses pursuant to a
5759 provision authorized by s. 607.0858(1); or

5760 (c) Order indemnification or advance for expenses if the court determines, in view of all
5761 the relevant circumstances, that it is fair and reasonable to indemnify the director or officer,
5762 or to advance expenses to the director or officer, even if he or she has not met the relevant
5763 standard of conduct set forth in s. 607.0851(1), has failed to comply with s. 607.0853, or was
5764 adjudged liable in a proceeding referred to in s. 607.0859. If the director or officer was
5765 adjudged liable, indemnification shall be limited to expenses incurred in connection with the
5766 proceeding.

5767 (2) If the court determines that the director or officer is entitled to indemnification under
5768 paragraph (1)(a) or to indemnification or advance for expenses under paragraph (1)(b), it shall also
5769 order the corporation to pay the director's or officer's expenses incurred in connection with
5770 obtaining court-ordered indemnification or advance for expenses. If the court determines that the
5771 director or officer is entitled to indemnification or advance for expenses under paragraph (1)(c), it
5772 may also order the corporation to pay the director's or officer's expenses to obtain court-ordered
5773 indemnification or advance for expenses.

5774

5775 **Commentary to Section 607.0854:**

5776 The lead in language that has been added to subsection (1) is derived from existing s. 607.0850(9).
5777 Further, language has been added to subsection (1) to make clear that the corporation must be a
5778 party to the proceeding in which indemnification is ordered (which, while not expressly stated in
5779 the statute that was in effect prior to this revision, is believed to be the rule under that statute).

5780 In subsection (1), the word "may" that is contained in existing s. 607.0850(9) has been retained.
5781 The word "shall" is used in the Model Act. Subparagraphs 607.0854(1)(a), (b) and (c) provide that
5782 the court shall determine whether the grounds for mandatory indemnification exist under s.
5783 607.0852, whether indemnification or advancement of expenses is available to an officer or
5784 director in the articles, or bylaws or in an agreement under s. 607.0858, or whether indemnification
5785 or advancement of expenses is available under the discretionary standard set forth in subparagraph
5786 (c). At the same time, the Subcommittee believes that the continued inclusion of the word "may"
5787 in this context does not mean that a court has further discretion not to grant indemnification or
5788 advancement of expenses in situations where the court finds that indemnification or advancement
5789 of expenses is required under subparagraphs (1)(a), (1)(b) and (1)(c). Further, with respect to the
5790 determination under subparagraph (1)(a) that mandatory indemnification is appropriate, the
5791 Subcommittee expects that a court considering this issue will look at the record leading up to a
5792 director or officer meeting that standard and will not require the director or officer to prove on a
5793 *de novo* basis the satisfaction of the mandatory indemnification standard.

5794 Subsection (2) is consistent with existing s. 607.0850(9).

5795

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5796 607.0855 Determination and authorization of indemnification.

5797 (1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5798 director or officer under s. 607.0851 unless authorized for a specific proceeding after a
5799 determination has been made that indemnification is permissible because the director or officer
5800 has met the relevant standard of conduct set forth in s. 607.0851.

5801 (2) The determination shall be made:

5802 (a) If there are two or more qualified directors, by the board of directors by a majority
5803 vote of all of the qualified directors, a majority of whom shall for such purposes constitute a
5804 quorum, or by a majority of the members of a committee of two or more qualified directors
5805 appointed by such a vote; or

5806 (b) By independent special legal counsel:

5807 1. Selected in the manner prescribed by paragraph (a); or

5808 2. If there are fewer than two qualified directors, selected by the board of directors,
5809 in which selection directors who are not qualified directors may participate;

5810 (c) By the shareholders, but shares owned by or voted under the control of a director or
5811 officer who, at the time of the determination, is not a qualified director or an officer who is a
5812 party to the proceeding may not be counted as votes in favor of the determination.

5813 (3) Authorization of indemnification shall be made in the same manner as the determination
5814 that indemnification is permissible, except that if the determination of permissibility has been
5815 made by independent special legal counsel under paragraph (2)(b), any authorization of
5816 indemnification associated with such determination shall be made by either such independent
5817 special legal counsel or by those who otherwise would be entitled to select independent special
5818 legal counsel under paragraph (2)(b).

5819

5820 **Commentary to Section 607.0855:**

5821 This section combines the substance and the wording of Model Act s. 8.55 with the existing
5822 language contained in s. 607.0850(4) and (5) of the FBCA. It uses the term "qualified director" as
5823 defined in s. 607.0143 so that the decision is clearly made by independent directors.

5824

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5825 Model Act § 8.56 Indemnification of officers.

5826 This section of the Model Act has not been included since officers remain within the scope of
5827 coverage under ss. 607.0851, 607.0852 and 607.0853. See commentary to s. 607.0851.

5828

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5829 607.0857 Insurance.

5830 A corporation shall have the power to purchase and maintain insurance on behalf of and for
5831 the benefit of an individual who is or was a director or officer of the corporation, or who, while a
5832 director or officer of the corporation, is or was serving at the corporation's request as a director,
5833 officer, manager, member, partner, trustee, employee, or agent of another domestic or foreign
5834 corporation, limited liability company, partnership, joint venture, trust, employee benefit plan, or
5835 other enterprise or entity, against liability asserted against or incurred by the individual in that
5836 capacity or arising from his or her status as a director or officer, whether or not the corporation
5837 would have power to indemnify or advance expenses to the individual against the same liability
5838 under this chapter.

5839

5840 **Commentary to Section 607.0857:**

5841 The language contained in s. 607.0850(12) that was in effect prior to this revision has been largely
5842 followed in this s. 607.0857. Minor changes have been made to add limited liability companies to
5843 the types of entities to which a director or officer can be serving at the corporation's request and to
5844 eliminate employees and agents from the coverage of this provision (with respect to this second
5845 issue, see the commentary to s. 607.0851).

5846

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5847 607.0858 Variation by corporate action; application of subchapter.

5848 (1) The indemnification provided pursuant to s. 607.0851 and 607.0852 and the advancement
5849 of expenses provided pursuant to s. 607.0853 are not exclusive, and a corporation may, by a
5850 provision in its articles of incorporation, bylaws or any agreement, or by vote of shareholders or
5851 disinterested directors, or otherwise, obligate itself in advance of the act or omission giving rise to
5852 a proceeding to provide any other or further indemnification or advancement of expenses to any
5853 of its directors or officers. Any such obligatory provision shall be deemed to satisfy the
5854 requirements for authorization referred to in ss. 607.0853(3) and 607.0855(3). Any such provision
5855 that obligates the corporation to provide indemnification to the fullest extent permitted by law shall
5856 be deemed to obligate the corporation to advance funds to pay for or reimburse expenses in
5857 accordance with s. 607.0853 to the fullest extent permitted by law, unless the provision specifically
5858 provides otherwise.

5859 (2) A right of indemnification or to advance for expenses created by this chapter or under
5860 subsection (1) and in effect at the time of an act or omission may not be eliminated or impaired
5861 with respect to such act or omission by an amendment of the articles of incorporation or bylaws or
5862 a resolution of the directors or shareholders, adopted after the occurrence of such act or omission,
5863 unless, in the case of a right created under subsection (1), the provision creating such right and in
5864 effect at the time of such act or omission explicitly authorizes such elimination or impairment after
5865 such act or omission has occurred.

5866 (3) Any provision pursuant to subsection (1) shall not obligate the corporation to indemnify
5867 or advance for expenses to a director or officer of a predecessor of the corporation, pertaining to
5868 conduct with respect to the predecessor, unless otherwise specifically provided. Any provision for
5869 indemnification or advance for expenses in the articles of incorporation, bylaws, or a resolution of
5870 the board of directors or shareholders of a predecessor of the corporation in a merger or in a
5871 contract to which the predecessor is a party, existing at the time the merger takes effect, shall be
5872 governed by s. 607.1106(1)(d).

5873 (4) Subject to subsection (2), a corporation may, by a provision in its articles of incorporation,
5874 limit any of the rights to indemnification or advance for expenses created by or pursuant to this
5875 chapter.

5876 (5) Sections 607.0850-607.0859 do not limit a corporation's power to pay or reimburse
5877 expenses incurred by a director, an officer, an employee, or an agent in connection with appearing
5878 as a witness in a proceeding at a time when he or she is not a party.

5879 (6) Sections 607.0850-607.0859 do not limit a corporation's power to indemnify, advance
5880 expenses to, or provide or maintain insurance on behalf of or for the benefit of an individual who
5881 is or was an employee or agent.

5882 **Commentary to Section 607.0858:**

5883 This statute follows the construct of s. 8.57(f) of the Model Act and leaves the issue of
5884 indemnification of employees and agents to the laws of agency and related principles. See the
5885 commentary to s. 607.0851.

5886 The wording of s. 607.0850(7) that was in effect prior to this revision, which sets forth how a
5887 corporation may obligate itself to provide indemnification beyond the provisions contained in s.
5888 607.0851-607.0853, has been retained in s. 607.0858(1) rather than following the more limited
5889 corollary provision contained in the Model Act. However, even under this subsection, as in the
5890 FBCA provision that was in effect prior to this revision, indemnification cannot be provided under
5891 the circumstances described in s. 607.0859.

5892 The elimination of the wording from s. 607.0850 that was in effect prior to this revision, which
5893 references both acting in an official capacity or acting in any other capacity, is not intended in any
5894 way to limit the ability of a corporation to vary or expand indemnification. The broad language
5895 contained in subsection (1) is intended to operate as broadly as the language in s. 607.0850 that
5896 was in effect prior to this revision, thus allowing a corporation to indemnify and to advance
5897 expenses for an action taken by a director or officer, in whatever capacity (whether official or
5898 otherwise). No substantive change from the broad authorization provided in the statute that was in
5899 effect prior to this revision is intended.

5900

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5901 607.0859 Overriding restrictions on indemnification.

5902 (1) Unless ordered by a court under s. 607.0854(1)(c), a corporation may not indemnify a
5903 director or officer under s. 607.0851 or s. 607.0858 or advance expenses to a director or officer
5904 under s. 607.0853 or s. 607.0858 if a judgment or other final adjudication establishes that his or
5905 her actions, or omissions to act, were material to the cause of action so adjudicated and constitute:

5906 (a) Willful or intentional misconduct or a conscious disregard for the best interests of
5907 the corporation in a proceeding by or in the right of the corporation to procure a judgment in
5908 its favor or in a proceeding by or in the right of a shareholder;

5909 (b) A transaction in which a director or officer derived an improper personal benefit;

5910 (c) A violation of the criminal law, unless the director or officer had reasonable cause to
5911 believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct
5912 was unlawful; or

5913 (d) In the case of a director, a circumstance under which the liability provisions of s.
5914 607.0834 are applicable.

5915 (2) A corporation may provide indemnification or advance expenses to a director or an officer
5916 only as allowed by ss. 607.0850-607.0859.

5917

5918 **Commentary to Section 607.0859:**

5919 The limits of permitted indemnification are contained in subsection (1). They are derived from s.
5920 607.0850(7) that was in effect prior to this revision. These limits are intentionally not applicable
5921 to mandatory indemnification. It is believed that if a director or officer is able to satisfy the
5922 relatively high threshold conditions of being entitled to mandatory indemnification under s.
5923 607.0852, it is highly unlikely that the limitations set forth in s. 607.0859 will have been exceeded.
5924 The choice that has been made, consistent with s. 607.0850 that was in effect prior to this revision,
5925 was to always mandate indemnification where the requirements of s. 607.0852 are met, rather than
5926 to impose on the director or officer or on the corporation an obligation to further establish that
5927 none of the limits in s. 607.0859 were exceeded. It is recognized that, at least in theory, there
5928 could be those very rare cases where the facts would otherwise support having exceeded the limits
5929 in s. 607.0859, but meet the requirements for mandatory indemnification under s. 607.0852.

5930 In conformity with s. 8.59 of the Model Act, ss. 607.0850-607.8059 are expressly stated to be the
5931 exclusive source for the power of a corporation to indemnify or advance expenses to a director or
5932 officer. While this exclusivity was not expressly stated in the current statute, this is not believed
5933 to be a substantive change.

5934

5935 ARTICLE 9

5936 AFFILIATED TRANSACTIONS AND CONTROL-SHARE ACQUISITIONS

5937 **NOTE:** Article 9 of the FBCA was adopted in 1987 as part of a panoply of statutes designed to
5938 prevent perceived abuses in hostile takeovers of publicly held companies, with the aim of
5939 protecting Florida-based and their employees from unwanted hostile takeover attempts. It is not a
5940 Model Act provision. Article 9 includes two statutory provisions, (i) the "affiliated transaction"
5941 statute (s. 607.0901), and (ii) the control share acquisition statute (s. 607.0902). Each of these
5942 sections, or their counterpart in the statutes of other states, has withstood attacks on constitutional
5943 grounds.

5944 For reference, the other provisions added to the FBCA as part of these anti-takeover statutes
5945 included (a) s. 607.0624, validating shareholders' rights plans, and (b) s. 607.0830(3), the
5946 "stakeholders" or "other constituencies" provision.

5947

5948 607.0901 Affiliated transactions.

5949 (1) For purposes of this section:

5950 (a) "Affiliate" means a person who directly, or indirectly through one or more
5951 intermediaries, controls or is controlled by, or is under common control with, a specified
5952 person.

5953 (b) "Affiliated transaction," when used in reference to the corporation and any
5954 interested shareholder, means:

5955 1. Any merger or consolidation of the corporation or any subsidiary of the
5956 corporation with:

5957 a. The interested shareholder; or

5958 b. Any other corporation, partnership, limited liability company,
5959 or other entity in each case, whether or not itself an interested shareholder,
5960 which is, or after such merger or consolidation would be, an affiliate or
5961 associate of the interested shareholder;

5962 2. Any sale, lease, exchange, mortgage, pledge, transfer, or other
5963 disposition (in one transaction or a series of transactions), except proportionately
5964 as a shareholder of such corporation, to or with the interested shareholder or any

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5965 affiliate or associate of the interested shareholder, whether as part of a dissolution
5966 or otherwise, of assets of the corporation or any subsidiary of the corporation:

5967 a. Having an aggregate fair market value equal to 10 5 percent or
5968 more of the aggregate fair market value of all the assets, determined on a
5969 consolidated basis, of the corporation;

5970 b. Having an aggregate fair market value equal to 10 5 percent or
5971 more of the aggregate fair market value of all the outstanding shares of the
5972 corporation; or

5973 c. Representing 10 5 percent or more of the earning power or net
5974 income, determined on a consolidated basis, of the corporation;

5975 3. The issuance or transfer by the corporation or any subsidiary of the
5976 corporation (in one transaction or a series of transactions) of any shares of the
5977 corporation or any subsidiary of the corporation which have an aggregate fair
5978 market value equal to 105 percent or more of the aggregate fair market value of all
5979 the outstanding shares of the corporation to the interested shareholder or any
5980 affiliate or associate of the interested shareholder except:

5981 a. Pursuant to the exercise, exchange, or conversion of securities
5982 exercisable for, exchangeable for, or convertible into shares of the
5983 corporation or any subsidiary of the corporation which were outstanding
5984 prior to the time that the interested shareholder became such;

5985 b. Pursuant to a merger under s. 607.11045;

5986 c. Provided that the interested shareholders' proportionate share
5987 of the shares of any class or series of the corporation or of the voting shares
5988 of the corporation has not increased as a result thereof;

5989 I. Pursuant to a ~~warrants or rights to purchase stock offered,~~
5990 ~~or a dividend or distribution paid or made, or the exercise, exchange,~~
5991 ~~or conversion of securities exercisable for, exchangeable for, or~~
5992 ~~convertible into shares of the corporation which security is distributed,~~
5993 pro rata to all holders of a class or series of shares of such corporation
5994 subsequent to the time the interested shareholder became such
5995 shareholders of the corporation;

5996 II. Pursuant to an exchange offer by the corporation to
5997 purchase shares of such corporation made on the same terms to all
5998 holders of said shares; or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

5999 III. Any issuance or transfer of shares by the corporation;

6000 4. The adoption of any plan or proposal for the liquidation or dissolution
6001 of the corporation proposed by, or pursuant to any agreement, arrangement, or
6002 understanding (whether or not in writing) with, the interested shareholder or any
6003 affiliate or associate of the interested shareholder;

6004 5. Any reclassification of securities (including, without limitation, any
6005 stock split, stock dividend, or other distribution of shares in respect of shares, or
6006 any reverse stock split) or recapitalization of the corporation, or any merger or
6007 consolidation of the corporation with any subsidiary of the corporation, or any other
6008 transaction (whether or not with or into or otherwise involving the interested
6009 shareholder), with the interested shareholder or any affiliate or associate of the
6010 interested shareholder, which has the effect, directly or indirectly (in one
6011 transaction or a series of transactions during any 12-month period), of increasing
6012 by more than 10 ~~5~~ percent the percentage of the outstanding voting shares of the
6013 corporation or any subsidiary of the corporation beneficially owned by the
6014 interested shareholder; or

6015 6. Any receipt by the interested shareholder or any affiliate or associate of
6016 the interested shareholder of the benefit, directly or indirectly (except
6017 proportionately as a shareholder of the corporation), of any loans, advances,
6018 guaranties, pledges, or other financial assistance or any tax credits or other tax
6019 advantages, other than those expressly allowed in subparagraph 3., provided by or
6020 through the corporation or any subsidiary of the corporation.

6021 (c) "Announcement date," when used in reference to any affiliated transaction,
6022 means the date of the first general public announcement of the proposed affiliated
6023 transaction or of the intention to propose an affiliated transaction, or the date on which the
6024 proposed affiliated transaction or the intention to propose an affiliated transaction is first
6025 communicated generally to the shareholders of the corporation, whichever is earlier.

6026 (d) "Associate," when used to indicate a relationship with any person, means any
6027 entity, other than the corporation or any of its subsidiaries, of which such person is an
6028 officer, director, or partner or is, directly or indirectly, the beneficial owner of 20 ~~10~~
6029 percent or more of any class of voting shares; any trust or other estate in which such person
6030 has at least a 20 percent ~~a substantial~~ beneficial interest or as to which such person serves
6031 as trustee or in a similar fiduciary capacity; and any relative or spouse of such person, or
6032 any relative of such spouse, who has the same residence ~~home~~ as such person or who is an
6033 officer or director of the corporation or any of its affiliates.

6034 (e) A person is deemed to be a "beneficial owner" of voting shares as to which
6035 such person and such person's affiliates and associates, individually or in the aggregate,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6036 have or share directly, or indirectly through any contract, arrangement, understanding,
6037 relationship, or otherwise:

6038 1. Voting power, which includes the power to vote or to direct the voting of
6039 the voting shares;

6040 2. Investment power, which includes the power to dispose of or to direct the
6041 disposition of the voting shares; or

6042 3. The right to acquire the voting power or investment power, whether such
6043 right is exercisable immediately or only after the passage of time, pursuant to any
6044 contract, arrangement, or understanding, upon the exercise of conversion rights,
6045 exchange rights, warrants, or options, or otherwise; however, in no case shall a
6046 director of the corporation be deemed to be the beneficial owner of voting shares
6047 beneficially owned by another director of the corporation solely by reason of actions
6048 undertaken by such persons in their capacity as directors of the corporation.

6049 (f) "Control," "controlling," "controlled by," and "under common control with" means
6050 the possession, directly or indirectly, through the ownership of voting shares, by contract,
6051 arrangement, understanding, relationship, or otherwise, of the power to direct or cause the
6052 direction of the management and policies of a person. A person who is the owner of 20 percent
6053 or more of the outstanding voting shares of any corporation, partnership, unincorporated
6054 association, or other entity is presumed to have control of such entity, in the absence of proof
6055 by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a person
6056 shall not be deemed to have control of an entity ~~a corporation~~ if such person holds voting
6057 shares, in good faith and not for the purpose of circumventing this section, as an agent, bank,
6058 broker, nominee, custodian, or trustee for one or more beneficial owners who do not
6059 individually or as a group have control of such entity ~~corporation~~.

6060 (g) "Determination date" means the date on which an interested shareholder became an
6061 interested shareholder.

6062 (h) Unless otherwise specified in the articles of incorporation initially filed with the
6063 department ~~of State~~, a "disinterested director" means as to any particular interested
6064 shareholder:

6065 1. Any member of the board of directors of the corporation who was a member of
6066 the board of directors before the later of January 1, 1987, or the determination date; and

6067 2. Any member of the board of directors of the corporation who was recommended
6068 for election by, or was elected to fill a vacancy and received the affirmative vote of, a
6069 majority of the disinterested directors then on the board.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6070 (i) "Exchange Act" means the Act of Congress known as the Securities Exchange Act
6071 of 1934, as the same has been or hereafter may be amended from time to time.

6072 (j) "Fair market value" means:

6073 1. In the case of shares; the highest closing sale price of a share quoted during the
6074 30-day period immediately preceding the date in question on the composite tape for
6075 shares listed on the New York Stock Exchange; or, if such shares are not quoted on the
6076 composite tape on the New York Stock Exchange, the highest closing sale price quoted
6077 during such period on the New York Stock Exchange; or, if such shares are not listed on
6078 such exchange, the highest closing sale price quoted during such period on the principal
6079 United States securities exchange registered under the Exchange Act on which such
6080 shares are listed; or, if such shares are not listed on any such exchange, the highest closing
6081 bid quotation with respect to a share during the 30-day period preceding the date in
6082 question on the National Association of Securities Dealers, Inc., automated quotations
6083 system or any other stock price quotation similar system then in general use; or, if no
6084 such quotations are available, the fair market value of a share on the date in question as
6085 determined by:

6086 a. A majority of disinterested directors; or

6087 b. If at such time there are no disinterested directors, by the board of directors
6088 of such corporation in good faith; and

6089 2. In the case of property other than cash or shares, the fair market value of such
6090 property on the date in question as determined by:

6091 a. A majority of the disinterested directors; or

6092 b. If at such time there are no disinterested directors, by the board of directors
6093 of such corporation in good faith.

6094 (k) "Interested shareholder" means any person who is the beneficial owner of more than
6095 15 ~~10~~ percent of the outstanding voting shares of the corporation. However, the term
6096 "interested shareholder" shall not include:

6097 1. The corporation or any of its subsidiaries;

6098 2. Any savings, employee stock ownership, or other employee benefit plan of
6099 the corporation or any of its subsidiaries; or any fiduciary with respect to any such
6100 plan when acting in such capacity; or

6101 3. Any person whose ownership of shares in excess of the 15 percent limitation
6102 is the result of action taken solely by the corporation; provided that such person shall
6103 be an interested shareholder if thereafter such person acquires additional shares of

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6104 voting shares of the corporation, except as a result of further corporate action not
6105 caused, directly or indirectly, by such person. For the purpose of determining
6106 whether a person is an interested shareholder, the number of voting shares deemed
6107 to be outstanding shall include shares deemed owned by the interested shareholder
6108 through application of subparagraph (e)3. but shall not include any other voting
6109 shares that may be issuable pursuant to any contract, arrangement, or understanding,
6110 upon the exercise of conversion rights, exchange rights, warrants, or options, or
6111 otherwise.

6112 (l) "Shares" means the units into which the proprietary interests in an entity are divided
6113 and includes:

6114 1. Any stock or similar security, any certificate of interest, any participation in
6115 any profit-sharing agreement, any voting trust certificate, or any certificate of deposit
6116 for shares; and

6117 2. Any security convertible, with or without consideration, into shares; or any
6118 warrant, call, or other option or privilege of buying shares without being bound to do
6119 so; or any other security carrying any right to acquire, subscribe to, or purchase shares.

6120 (m) "Subsidiary" means, as to any corporation, any other corporation of which it owns,
6121 directly or indirectly through one or more subsidiaries, a majority of the voting shares.

6122 (n) "Valuation date" means, if the affiliated transaction is voted upon by shareholders,
6123 the day before the date of the vote of shareholders or, if the affiliated transaction is not voted
6124 upon by shareholders, the date of the consummation of the affiliated transaction.

6125 (o) "Voting shares" means the outstanding shares of all classes or series of the
6126 corporation entitled to vote generally in the election of directors.

6127 (2) Except to the extent as provided in subsections (4) and (5), and with respect to such
6128 exceptions, in compliance with other applicable provisions of this chapter, a corporation may not
6129 engage in any affiliated transaction with any interested shareholder for a period of 3 years
6130 following the time that such shareholder became an interested shareholder, unless:

6131 (a) Prior to the time that such shareholder became an interested shareholder, the board
6132 of directors of the corporation approved either the affiliated transaction or the transaction
6133 which resulted in the shareholder becoming an interested shareholder; or

6134 (b) Upon consummation of the transaction which resulted in the shareholder
6135 becoming an interested shareholder, the interested shareholder owned at least 85 percent
6136 of the voting shares of the corporation outstanding at the time the transaction commenced,
6137 excluding for purposes of determining the voting shares outstanding, but not the
6138 outstanding voting shares owned by the interested shareholder, those shares owned by

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6139 persons who are directors and also officers and by employee stock plans in which employee
6140 participants do not have the right to determine confidentially whether shares held subject
6141 to the plan will be tendered in a tender or exchange offer; or

6142 (c) At or subsequent to the time that such shareholder became an interested
6143 shareholder, the affiliated transaction is approved by the board of directors and authorized
6144 at an annual or special meeting of shareholders, and not by written consent, by the
6145 affirmative vote of at least two-thirds of the outstanding voting shares which are not owned
6146 by the interested shareholder.

6147 ~~, in addition to any affirmative vote required by any other section of this act or by the~~
6148 ~~articles of incorporation, an affiliated transaction shall be approved by the affirmative vote~~
6149 ~~of the holders of two-thirds of the voting shares other than the shares beneficially owned~~
6150 ~~by the interested shareholder.~~

6151 (3) A majority of the disinterested directors shall have the power to determine for the
6152 purposes of this section:

6153 (a) Whether a person is an interested shareholder;

6154 (b) The number of voting shares beneficially owned by any person;

6155 (c) Whether a person is an affiliate or associate of another; and

6156 (d) Whether the securities to be issued or transferred by the corporation or any of
6157 its subsidiaries to any interested shareholder or any affiliate or associate of the interested
6158 shareholder have an aggregate fair market value equal to or greater than 10 ~~5~~ percent of
6159 the aggregate fair market value of all of the outstanding voting shares of the corporation
6160 or any of its subsidiaries.

6161 (4) The voting requirements set forth in subsection (2) do not apply to a particular affiliated
6162 transaction if all of the conditions specified in any one of the following paragraphs are met:

6163 (a) The affiliated transaction has been approved by a majority of the disinterested
6164 directors;

6165 (b) The corporation has not had more than 300 shareholders of record at any time
6166 during the 3 years preceding the announcement date;

6167 (c) The interested shareholder has been the beneficial owner of at least 80 percent of
6168 the corporation's outstanding voting shares for at least 3 ~~5~~ years preceding the
6169 announcement date;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6170 (d) The interested shareholder is the beneficial owner of at least 90 percent of the
6171 outstanding voting shares of the corporation, exclusive of shares acquired directly from the
6172 corporation in a transaction not approved by a majority of the disinterested directors;

6173 (e) The corporation is an investment company registered under the Investment
6174 Company Act of 1940; or

6175 (f) In the affiliated transaction, consideration shall be paid to the holders of each
6176 class or series of voting shares and all of the following conditions shall be met:

6177 1. The aggregate amount of the cash and the fair market value as of the valuation
6178 date of consideration other than cash to be received per share by holders of each class
6179 or series of voting shares in such affiliated transaction are at least equal to the highest
6180 of the following:

6181 a. If applicable, the highest per share price, including any brokerage
6182 commissions, transfer taxes, and soliciting dealers' fees, paid by the interested
6183 shareholder for any shares of such class or series acquired by it within the 2-year
6184 period immediately preceding the announcement date or in the transaction in
6185 which it became an interested shareholder, whichever is higher;

6186 b. The fair market value per share of such class or series on the
6187 announcement date or on the determination date, whichever is higher;

6188 c. If applicable, the price per share equal to the fair market value per share
6189 of such class or series determined pursuant to sub-subparagraph b., multiplied by
6190 the ratio of the highest per share price, including any brokerage commissions,
6191 transfer taxes, and soliciting dealers' fees, paid by the interested shareholder for
6192 any shares of such class or series acquired by it within the 2-year period
6193 immediately preceding the announcement date, to the fair market value per share
6194 of such class or series on the first day in such 2-year period on which the interested
6195 shareholder acquired any shares of such class or series; and

6196 d. If applicable, the highest preferential amount, if any, per share to which
6197 the holders of such class or series are entitled in the event of any voluntary or
6198 involuntary dissolution of the corporation.

6199 2. The consideration to be received by holders of outstanding shares shall be in
6200 cash or in the same form as the interested shareholder has previously paid for shares of the
6201 same class or series, and if the interested shareholder has paid for shares with varying forms
6202 of consideration, the form of the consideration shall be either cash or the form used to
6203 acquire the largest number of shares of such class or series previously acquired by the
6204 interested shareholder.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6205 3. During such portion of the 3-year period preceding the announcement date that
6206 such interested shareholder has been an interested shareholder, except as approved by a
6207 majority of the disinterested directors:

6208 a. There shall have been no failure to declare and pay at the regular date
6209 therefor any full periodic dividends, whether or not cumulative, on any outstanding
6210 shares of the corporation;

6211 b. There shall have been:

6212 I. No reduction in the annual rate of dividends paid on any class
6213 or series of voting shares, except as necessary to reflect any subdivision of
6214 the class or series; and

6215 II. An increase in such annual rate of dividends as necessary to
6216 reflect any reclassification, including any reverse stock split,
6217 recapitalization, reorganization, or similar transaction which has the effect
6218 of reducing the number of outstanding shares of the class or series; and

6219 c. Such interested shareholder shall not have become the beneficial owner of
6220 any additional voting shares except as part of the transaction which results in such
6221 interested shareholder becoming an interested shareholder.

6222 4. During such portion of the 3-year period preceding the announcement date that
6223 such interested shareholder has been an interested shareholder, except as approved by a
6224 majority of the disinterested directors, such interested shareholder shall not have received
6225 the benefit, directly or indirectly (except proportionately as a shareholder), of any loans,
6226 advances, guaranties, pledges, or other financial assistance or any tax credits or other tax
6227 advantages provided by the corporation, whether in anticipation of or in connection with
6228 such affiliated transaction or otherwise.

6229 5. Except as otherwise approved by a majority of the disinterested directors, a
6230 proxy or information statement describing the affiliated transaction and complying with
6231 the requirements of the Exchange Act and the rules and regulations thereunder has been
6232 mailed to holders of voting shares of the corporation at least 25 days before the
6233 consummation of such affiliated transaction, whether or not such proxy or information
6234 statement is required to be mailed pursuant to the Exchange Act or such rules or
6235 regulations.

6236 (5) The provisions of this section do not apply:

6237 (a) To any corporation the original articles of incorporation of which contain a
6238 provision expressly electing not to be governed by this section;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6239 (b) To any corporation which adopted an amendment to its articles of incorporation
6240 prior to July 1, 2018 ~~January 1, 1989~~, expressly electing not to be governed by this section,
6241 provided that such amendment does not apply to any affiliated transaction of the corporation
6242 with an interested shareholder whose determination date is on or prior to the effective date of
6243 such amendment;

6244 (c) To any corporation which adopts an amendment to its articles of incorporation or
6245 bylaws, approved by the affirmative vote of the holders, other than interested shareholders
6246 and their affiliates and associates, of a majority of the outstanding voting shares of the
6247 corporation, excluding the voting shares of interested shareholders and their affiliates and
6248 associates, expressly electing not to be governed by this section, provided that such
6249 amendment to the articles of incorporation or bylaws shall not be effective until 18 months
6250 after such vote of the corporation's shareholders and shall not apply to any affiliated
6251 transaction of the corporation with an interested shareholder whose determination date is on
6252 or prior to the effective date of such amendment; or

6253 (d) To any affiliated transaction of the corporation with an interested shareholder of the
6254 corporation which became an interested shareholder inadvertently, if such interested
6255 shareholder, as soon as practicable, divests itself of a sufficient amount of the voting shares
6256 of the corporation so that it no longer is the beneficial owner, directly or indirectly, of 20 ~~40~~
6257 percent or more of the outstanding voting shares of the corporation, and would not at any time
6258 within the 3 ~~5~~-year period preceding the announcement date with respect to such affiliated
6259 transaction have been an interested shareholder but for such inadvertent acquisition.

6260 (6) Any corporation that elected not to be governed by this section, either through a
6261 provision in its original articles of incorporation or through an amendment to its articles of
6262 incorporation or bylaws may elect to be bound by the provisions of this section by adopting an
6263 amendment to its articles of incorporation or bylaws that repeals the original article or the
6264 amendment. In addition to any requirements of this chapter ~~aet~~, or the articles of incorporation or
6265 bylaws of the corporation, any such amendment shall be approved by the affirmative vote of the
6266 holders of two-thirds of the voting shares other than shares beneficially owned by any interested
6267 shareholder.

6268

6269 **Commentary to s. 607.0901:**

6270 The purpose of s. 607.0901 is to deter coercive "two-step, front-end loaded" tender offers that are
6271 not approved by the disinterested directors of the target company (i.e., tender offers that are hostile
6272 and not friendly). It accomplishes this purpose by regulating the exercise, as opposed to the
6273 acquisition, of corporate control in a way that makes the acquisition unpalatable to the bidder.

6274 Section 607.0901 requires that any "affiliated transaction" with an "interested shareholder" receive
6275 the approval of either "disinterested directors" or a supermajority vote of disinterested
6276 shareholders, or, absent either such approval, that a statutory "fair price" be paid to the shareholders
6277 in the transaction. The shareholder vote requirement is in addition to any shareholder vote required
6278 under any other section of the FBCA or the corporation's articles of incorporation. For a publicly
6279 traded corporation, this supermajority vote will be difficult, if not impossible, to obtain because
6280 the votes of the shares beneficially owned by the "interested shareholder" are not counted. In
6281 addition, the "fair price" alternative to the special shareholder vote requirement is likewise difficult
6282 to satisfy because the formula for determining the price will often result in a higher price being
6283 paid to the non-tendering shareholder in any "back-end" or "affiliated transaction" that was paid
6284 in the "front-end" tender offer.

6285 Generally, s. 607.0901 will only apply to publicly held companies because of the 300-record
6286 shareholders condition in subsection 4(b). However, the section may also apply to private
6287 companies which, at any time in the prior three years preceding the affiliated transaction, had more
6288 than 300 shareholders.

6289 The changes in the definition of "affiliated transaction," including the changes to increase the
6290 threshold in subsection (2) from 5% to 10% are derived from changes made subsequent to the
6291 adoption of this statute in s. 203(c)(3)(ii) of the DGCL, and are similar to the corollary Maryland
6292 and Michigan statutes.

6293 The change to the definition of "associate" is derived from the corollary provision of the DGCL.

6294 Subsection (2), the heart of the affiliated transaction statute, has been expanded in order to follow
6295 DGCL s. 203(a) and thus to more clearly provide the exceptions to the affiliated transaction statute.
6296 While the changes appear extensive, they reflect an understanding of the exceptions that many
6297 corporate practitioners understood to be in the statute historically even though unstated.

6298

6299 607.0902 Control-share acquisitions.

6300 (1) "Control shares." As used in this section, "control shares" means shares that, except for
6301 this section, would have voting power with respect to shares of an issuing public corporation that,
6302 when added to all other shares of the issuing public corporation owned by a person or in respect
6303 to which that person may exercise or direct the exercise of voting power, would entitle that person,
6304 immediately after acquisition of the shares, directly or indirectly, alone or as a part of a group, to
6305 exercise or direct the exercise of the voting power of the issuing public corporation in the election
6306 of directors within any of the following ranges of voting power:

6307

6308 (a) One-fifth or more but less than one-third of all voting power.

6309

6310 (b) One-third or more but less than a majority of all voting power.

6311

6312 (c) A majority or more of all voting power.

6313

6314 (2) "Control-share acquisition."

6315

6316 (a) As used in this section, "control-share acquisition" means the acquisition, directly
6317 or indirectly, by any person of ownership of, or the power to direct the exercise of voting
6318 power with respect to, issued and outstanding control shares.

6319

6320 (b) For purposes of this section, all shares, the beneficial ownership of which is acquired
6321 within 90 days before or after the date of the acquisition of the beneficial ownership of shares
6322 which result in a control share acquisition, and all shares the beneficial ownership of which is
6323 acquired pursuant to a plan to make a control-share acquisition shall be deemed to have been
6324 acquired in the same acquisition.

6325

6326 (c) For purposes of this section, a person who acquires shares in the ordinary course of
6327 business for the benefit of others in good faith and not for the purpose of circumventing this
6328 section has voting power only of shares in respect of which that person would be able to
6329 exercise or direct the exercise of votes without further instruction from others.

6330

6331 (d) The acquisition of any shares of an issuing public corporation does not constitute a
6332 control-share acquisition if the acquisition is consummated in any of the following
6333 circumstances:

6334

6335 1. Before July 2, 1987.

6336

6337 2. Pursuant to a contract existing before July 2, 1987.

6338

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6339 3. Pursuant to the laws of intestate succession or pursuant to a gift or
6340 testamentary transfer.

6341
6342 4. Pursuant to the satisfaction of a pledge or other security interest created in
6343 good faith and not for the purpose of circumventing this section.

6344
6345 5. Pursuant to a merger or share exchange effected in compliance with s.
6346 607.1101, s. 607.1102, s. 607.1103, s. 607.1104, or s. 607.1105 ~~607.1107~~, if the
6347 issuing public corporation is a party to the agreement of merger or plan of share
6348 exchange.

6349
6350 6. Pursuant to any savings, employee stock ownership, or other employee
6351 benefit plan of the issuing public corporation or any of its subsidiaries or any
6352 fiduciary with respect to any such plan when acting in such fiduciary capacity.

6353
6354 7. Pursuant to an acquisition of shares of an issuing public corporation if the
6355 acquisition has been approved by the board of directors of such issuing public
6356 corporation before acquisition.

6357
6358 (e) The acquisition of shares of an issuing public corporation in good faith and not for
6359 the purpose of circumventing this section by or from:

6360
6361 1. Any person whose voting rights had previously been authorized by
6362 shareholders in compliance with this section; or

6363
6364 2. Any person whose previous acquisition of shares of an issuing public
6365 corporation would have constituted a control-share acquisition but for paragraph (d),

6366
6367 does not constitute a control-share acquisition, unless the acquisition entitles any person,
6368 directly or indirectly, alone or as a part of a group, to exercise or direct the exercise of voting
6369 power of the corporation in the election of directors in excess of the range of the voting power
6370 otherwise authorized.

6371
6372 (f) For the purpose of this section, persons shall not be deemed to be part of a "group"
6373 if such persons join together to exercise or direct the exercise of the voting power of an issuing
6374 public corporation (whether through a voting trust, a shareholder agreement, or through other
6375 arrangements), and the voting trustee of any voting trust shall not be deemed to be an
6376 "acquiring person" if such persons or all the parties to the voting trust:
6377

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6378 1. Are related by blood or marriage or are the personal representatives or trustees
6379 of such persons; and

6380
6381 2. Such persons were shareholders (or the beneficial owners of shares) of the
6382 issuing public corporation (or were trustees, personal representatives, or heirs of such
6383 shareholders or beneficial owners) on July 1, 1987, and have continued to be shareholders
6384 (or the beneficial owners of shares) of the issuing public corporation (or have been trustees,
6385 personal representatives, or heirs of such shareholders or beneficial owners) since that time.
6386

6387 (3) "Interested shares." As used in this section, "interested shares" means the shares of an
6388 issuing public corporation in respect of which any of the following persons may exercise or direct
6389 the exercise of the voting power of the corporation in the election of directors:

6390
6391 (a) An acquiring person or member of a group with respect to a control-share
6392 acquisition.

6393
6394 (b) Any officer of the issuing public corporation.

6395
6396 (c) Any employee of the issuing public corporation who is also a director of the
6397 corporation.
6398

6399 (4) "Issuing public corporation."

6400
6401 (a) As used in this section, "issuing public corporation" means a corporation that has:

6402
6403 1. One hundred or more shareholders;

6404
6405 2. Its principal place of business, its principal office, or substantial assets within
6406 this state; and

6407
6408 3. Either:

6409
6410 a. More than 10 percent of its shareholders resident in this state;

6411
6412 b. More than 10 percent of its shares owned by residents of this state; or

6413
6414 c. One thousand shareholders resident in this state.

6415
6416 (b) The residence of a shareholder is presumed to be the address appearing in the
6417 records of the corporation.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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(c) Shares held by banks (except as trustee or guardian), brokers, or nominees shall be disregarded for purposes of calculating the percentages or numbers described in this subsection.

(5) Law applicable to control-share voting rights. Unless the corporation's articles of incorporation or bylaws provide that this section does not apply to control-share acquisitions of shares of the corporation before the control-share acquisition, control shares of an issuing public corporation acquired in a control-share acquisition have only such voting rights as are conferred by subsection (9).

(6) Notice of control-share acquisition. Any person who proposes to make or has made a control-share acquisition may at the person's election deliver an acquiring person statement to the issuing public corporation at the issuing public corporation's principal office. The acquiring person statement must set forth all of the following:

(a) The identity of the acquiring person and each other member of any group of which the person is a part for purposes of determining control shares.

(b) A statement that the acquiring person statement is given pursuant to this section.

(c) The number of shares of the issuing public corporation owned, directly or indirectly, by the acquiring person and each other member of the group.

(d) The range of voting power under which the control-share acquisition falls or would, if consummated, fall.

(e) If the control-share acquisition has not taken place:

1. A description in reasonable detail of the terms of the proposed control-share acquisition; and

2. Representations of the acquiring person, together with a statement, in reasonable detail of the facts upon which they are based, that the proposed control-share acquisition, if consummated, will not be contrary to law and that the acquiring person has the financial capacity to make the proposed control-share acquisition.

(7) Shareholder meeting to determine control-share voting rights.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6457 (a) If the acquiring person so requests at the time of delivery of an acquiring person
6458 statement and gives an undertaking to pay the corporation's expenses of a special meeting,
6459 within 10 days thereafter, the directors of the issuing public corporation or others authorized
6460 to call such a meeting under the issuing public corporation's articles of incorporation or
6461 bylaws shall call a special meeting of shareholders of the issuing public corporation for the
6462 purpose of considering the voting rights to be accorded the shares acquired or to be acquired
6463 in the control-share acquisition.

6464
6465 (b) Unless the acquiring person agrees in writing to another date, the special meeting of
6466 shareholders shall be held within 50 days after receipt by the issuing public corporation of the
6467 request.

6468
6469 (c) If the acquiring person so requests in writing at the time of delivery of the acquiring
6470 person statement, the special meeting must not be held sooner than 30 days after receipt by
6471 the issuing public corporation of the acquiring person statement.

6472
6473 (d) If no request is made, the voting rights to be accorded the shares acquired in the
6474 control-share acquisition shall be presented to the next special or annual meeting of the
6475 shareholders.

6476
6477 (8) Notice of shareholder meeting.

6478
6479 (a) If a special meeting is requested, notice of the special meeting of shareholders shall
6480 be given as promptly as reasonably practicable by the issuing public corporation to all
6481 shareholders of record as of the record date set for the meeting, whether or not entitled to vote
6482 at the meeting.

6483
6484 (b) Notice of the special or annual shareholder meeting at which the voting rights are
6485 to be considered must include or be accompanied by each of the following:

6486
6487 1. A copy of the acquiring person statement delivered to the issuing public
6488 corporation pursuant to this section.

6489
6490 2. A statement by the board of directors of the corporation, authorized by its
6491 directors, of its position or recommendation, or that it is taking no position or making no
6492 recommendation, with respect to the proposed control-share acquisition.

6493
6494 (9) Resolution granting control-share voting rights.

6495

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6496 (a) Control shares acquired in a control-share acquisition have the same voting rights as
6497 were accorded the shares before the control-share acquisition only to the extent granted by
6498 resolution approved by the shareholders of the issuing public corporation.
6499

6500 (b) To be approved under this subsection, the resolution must be approved by:
6501

6502 1. Each class or series entitled to vote separately on the proposal by a
6503 majority of all the votes entitled to be cast by the class or series, with the holders
6504 of the outstanding shares of a class or series being entitled to vote as a separate
6505 class if the proposed control-share acquisition would, if fully carried out, result in
6506 any of the changes described in s. 607.1004; and
6507

6508 2. Each class or series entitled to vote separately on the proposal by a
6509 majority of all the votes entitled to be cast by that group, excluding all interested
6510 shares.
6511

6512 (c) Any control shares that do not have voting rights because such rights were not
6513 accorded to such shares by approval of a resolution by the shareholders pursuant to paragraph
6514 (b) shall regain voting rights and shall no longer be deemed control shares upon a transfer to
6515 a person other than the acquiring person or associate or affiliate, as defined in s. 607.0901, of
6516 the acquiring person unless the acquisition of the shares by the other person constitutes a
6517 control-share acquisition, in which case the voting rights of the shares remain subject to the
6518 provisions of this section.
6519

6520 (10) Redemption of control-shares.
6521

6522 (a) If authorized in a corporation's articles of incorporation or bylaws before a control-
6523 share acquisition has occurred, control shares acquired in a control-share acquisition with
6524 respect to which no acquiring person statement has been filed with the issuing public
6525 corporation may, at any time during the period ending 60 days after the last acquisition of
6526 control shares by the acquiring person, be subject to redemption by the corporation at the fair
6527 value thereof pursuant to the procedures adopted by the corporation.
6528

6529 (b) Control shares acquired in a control-share acquisition are not subject to redemption
6530 after an acquiring person statement has been filed unless the shares are not accorded full voting
6531 rights by the shareholders as provided in subsection (9).
6532

6533 **Commentary to s. 607.0902:**

6534 Like the affiliated transaction section (s. 607.0901), the control-share acquisition section is
6535 intended to deter hostile takeovers of publicly-held Florida corporations. It does this by regulating
6536 the acquisition of control of an "issuing public corporation", which is defined in the section as a
6537 corporation that has a more than 100 shareholders and a substantial nexus to Florida. The statute
6538 is based on a similar statute adopted in Indiana that was held to be constitutional by the United
6539 States Supreme Court in *CTS v. Dynamics Corporation of America*, 481 U.S. 69, 107 S. Ct. 1637,
6540 95 L. Ed. 2d 67 (1987).

6541
6542 Under s. 607.0902, "control shares" acquired in a "control-share acquisition" have voting rights
6543 only if, and to the extent, granted in a resolution of the shareholders of the corporation approved
6544 by (1) a majority of all the votes entitled to be cast by each class or series entitled, by virtue of s.
6545 607.1004, to vote on the proposed control-share acquisition, and (2) a majority of all shares of
6546 each class or series entitled to vote separately on the proposal, excluding all "interested shares".
6547 "Interested shares" are shares that are owned by the acquiring person or persons, each officer of
6548 the corporation, and each employee of the corporation who is also a director of the corporation.
6549 These voting provisions are formidable obstacles to completion of a hostile takeover attempt.

6550
6551 Subsection (2)(d)7., which was added in 1994, permits "friendly" acquisitions of a corporation,
6552 or of a significant block of a corporation's issued shares (i.e. "control shares"), without the
6553 necessity of complying with the convoluted shareholder voting requirements of the section. The
6554 provision permits the board of directors of the corporation, by its approval of the transaction, to
6555 remove the acquisition from the definition of "control-share acquisition", which takes the
6556 acquisition out of the purview of the statute. The provision was further amended in 1997 to
6557 require that any such board approval must come *before* the control share acquisition occurs.

6558
6559 The definitions of "control shares" and "control-share acquisition" in the section limit the scope
6560 of the section and create ambiguities that have not been resolved by amendment or court
6561 construction. For example, the acquisition of, e.g. 12% of the voting shares, followed one year
6562 later by the acquisition of an additional 8%, triggers the control share provisions, but it is not
6563 clear whether the loss of voting rights applies to the entire 20% or only to the 8% portion that
6564 triggered the provision. The definition of a control-share acquisition in s. 607.0902(2)(b) applies
6565 to all shares acquired within 90 days and those acquired pursuant to a plan to make a control-
6566 share acquisition. If neither of those elements is present, do previously acquired shares of less
6567 than 20% lose their voting power when the acquiror subsequently exceeds the 20% threshold? It
6568 could be argued that all shares become non-voting, as all shares are totaled for purposes of
6569 determining the 20% threshold. On the other hand, if the earlier acquisitions were not control-
6570 share acquisitions, and if the statute (as it does) permits voting power up to 19%, perhaps it is
6571 only the latter-acquired shares that lose voting power. There appear to be arguments supporting
6572 conflicting interpretations within the statutory provision.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6573

6574 Subsection 10 grants a redemption right to the corporation with respect to control shares acquired
6575 in a control-share acquisition if either (i) no 'acquiring person statement' is filed by the acquiring
6576 person or (ii) if an acquiring person statement has been filed, the control shares are not accorded
6577 full voting rights by shareholders as provided in subs. (9).

6578

6579 Subsection 10(b) is curiously worded and has raised interpretative issues, particularly with regard
6580 to the length of the permitted redemption period after the shareholders meeting in which the
6581 acquiring person's shares are not accorded full voting rights. This was the central issue in *H.T.E.,*
6582 *Inc. v. Tyler Technologies, Inc.*, 217 F.Supp.2d 1255 (Dist. Ct., M.D. Fla., 2002), in which the
6583 court held that the 60—day time limit in subs. 10(a) must be read into subs. 10(b), with the effect
6584 that a corporation only has 60 days following the shareholders meeting at which voting rights are
6585 not accorded to the acquiring person's shares in which to redeem those shares. Although not at
6586 issue in that case, the court noted that the 'fair value' requirement of subs. 10(a) should also be
6587 read into subs. 10(b).

6588

6589 Subsection 9(c) was added in 2003 to clarify that control shares lose their "taint" under the control
6590 share acquisition provisions, and regain any voting rights, once they are sold or transferred in a
6591 non-control share acquisition transaction. This allows for marketability of control shares, which
6592 might not otherwise be able to be sold or transferred if the restrictions of Section 607.0902
6593 remained on the shares. The amendment is regarded as a clarification of existing law.

6594

6595 One change was made to s. 607.0902(2)(d) to reflect a change in the cross reference to the merger
6596 statutes.

6597

6598 ARTICLE 10

6599 AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

6600

6601 607.1001 Authority to amend the articles of incorporation.

6602

6603 (1) A corporation may amend its articles of incorporation at any time to add or change a
6604 provision that is required or permitted in the articles of incorporation or to delete a provision not
6605 required to be contained in the articles of incorporation. Whether a provision is required or
6606 permitted in the articles of incorporation is determined as of the effective date of the amendment.

6607

6608 (2) A shareholder of the corporation does not have a vested property right resulting from any
6609 provision in the articles of incorporation, including provisions relating to management, control,
6610 capital structure, dividend entitlement, or purpose or duration of the corporation.

6611

6612 **Commentary to Section 607.1001:**

6613 This section of the FBCA follows the prior version of the Model Act. Although minor, non-
6614 substantive changes were made to the language in the Model Act, the current language was
6615 considered clearer. The clarifying change made to this section is not considered substantive.
6616 Thirty-one jurisdictions, including Connecticut, Georgia, and Massachusetts, have similar
6617 sections. Other states, like Delaware (in DGCL s. 242) provide a shortened "laundry list" of
6618 possible subjects of amendments.

6619 Subsection (2) expressly rejects the concept that an otherwise lawful amendment to the articles of
6620 incorporation might be restricted or invalidated because it modified particular rights conferred on
6621 shareholders by the original or prior version of the articles of incorporation. At the same time,
6622 subsection (2) does not override contracts by a corporation outside its articles of incorporation
6623 which might be violated by an otherwise lawful amendment to the articles of incorporation or
6624 invalidate provisions in articles of incorporation that require procedures for approval of
6625 amendments that limit the power to amend the articles of incorporation without particular
6626 shareholder consent.

6627

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6628 607.1002 Amendment by board of directors.

6629 Unless the articles of incorporation provide otherwise, a corporation's board of directors
6630 may adopt one or more amendments to the corporation's articles of incorporation without
6631 shareholder ~~action~~ approval:

6632 (1) To extend the duration of the corporation if it was incorporated at a time when limited
6633 duration was required by law;

6634 (2) To delete the names and addresses of the initial directors;

6635 (3) To delete the name and address of the initial registered agent or registered office, if a
6636 statement of change is on file with the department ~~of State~~;

6637 (4) To delete any other information contained in the articles of incorporation that is solely of
6638 historical interest;

6639 (5) To delete the authorization for a class or series of shares authorized pursuant to s.
6640 607.0602, if no shares of such class or series are issued;

6641 (6) To change the corporate name by substituting the word "corporation," "incorporated," or
6642 "company," or the abbreviation "corp.," "Inc.," or "Co.," for a similar word or abbreviation in the
6643 name, or by adding, deleting, or changing a geographical attribution for the name;

6644 (7) To change the par value for a class or series of shares;

6645 (8) To provide that if the corporation acquires its own shares, such shares belong to the
6646 corporation and constitute treasury shares until disposed of or canceled by the corporation; ~~or~~

6647 (9) To reflect a reduction in authorized shares, as a result of the operation of s. 607.0631(2),
6648 when the corporation has acquired its own shares and the articles of incorporation prohibit the
6649 reissue of the acquired shares;

6650 (10) To delete a class of shares from the articles of incorporation, as a result of the operation
6651 of s. 607.0631(2), when there are no remaining shares of the class because the corporation has
6652 acquired all shares of the class and the articles of incorporation prohibit the reissue of the acquired
6653 shares; or

6654 (119) To make any other change expressly permitted by this act to be made without
6655 shareholder ~~action~~ approval.

6656

6657 **Commentary to Section 607.1002:**

6658 The changes to the articles of incorporation may be made by the board of directors without
6659 shareholder approval because they are routine and ministerial and are not believed to affect the
6660 substantive rights of shareholders in a meaningful way.

6661 Section 607.1002 compares to the corollary section of the Model Act (s. 10.05) as follows:

6662 Subsections (1), (2), and (3) of Florida's statute match subsections (a)(1), (2), and (3) of the Model
6663 Act.

6664 Subsection (4) was added to this section of the FBCA in 1989. It is not in the corollary section of
6665 the Model Act.

6666 New subsection (d) of the Model Act has not been added because of the inclusion of s. 607.10025
6667 in the FBCA.

6668 Subsection (6) of Florida's statute substantially matches subsection (e) of the corollary provision
6669 of the Model Act. The FBCA provision, when adopted in 1989, did not to include the use of the
6670 word "limited" or the abbreviation "Ltd." for a corporation, and this limitation has been carried
6671 forward in current proposed version of the FBCA.

6672 Subsection (7) of the FBCA does not appear in the Model Act, but has been retained to allow the
6673 ministerial task of changing par value to be undertaken by the directors, without shareholder
6674 approval, in those cases where the corporation continues to have shares that have a par value.

6675 Subsection (8) was added in 1997. It was added to permit the board of directors of any corporation
6676 (not just public companies) on its own to amend the articles of incorporation to treat reacquired
6677 shares as treasury shares.

6678 New subsections (9) and (10) follow subsections (f) and (g) of the corollary Model Act provision
6679 and relate to changes made in light of s. 607.0631.

6680 Subsection (9) of Florida's statute (renumbered subsection (11) matches the pre-1999 version of
6681 the Model Act. Cleanup changes matching the current version of this section to the current version
6682 of the Model Act have been made to the statute.

6683 In the 1999 amendments to Article 10 of the Model Act, this section was renumbered from s. 10.02
6684 to s. 10.05. However, since this concept has been numbered as s. 607.1002 since 1982, this section
6685 was not moved from its current place in Article 10.

6686

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6687 607.10025 Shares; combination or division.

6688 (1) A corporation may effect a division or combination of its shares in the manner as provided
6689 in this section. For purposes of this section, the terms "division" and "combination" mean dividing
6690 or combining shares of any issued and outstanding class or series into a greater or lesser number
6691 of shares of the same class or series.

6692 (2) Unless the articles of incorporation provide otherwise, a division or combination may be
6693 effected solely by the action of the board of directors. In effecting a share combination or division,
6694 the board shall have authority to amend the articles to:

6695 (a) Increase or decrease the par value of shares;

6696 (b) Increase or decrease the number of authorized shares; or

6697 (c) Make any other changes necessary or appropriate to assure that the rights or
6698 preferences of each holder of outstanding shares of all classes and series will not be adversely
6699 affected by the combination or division.

6700 The board shall not have the authority to amend the articles, and shareholder approval of any
6701 amendment shall be required pursuant to s. 607.1003, if, as a result of the amendment, the rights
6702 or preferences of the holders of any outstanding class or series will be adversely affected, or the
6703 percentage of authorized shares remaining unissued after the share division or combination will
6704 exceed the percentage of authorized shares that was unissued before the division or combination.

6705 (3) Fractional shares created by a division or combination effected under this section may
6706 not be redeemed for cash under s. 607.0604.

6707 (4) If a division or combination is effected by a board action without shareholder approval
6708 and includes an amendment to the articles of incorporation, there shall be signed ~~executed~~ in
6709 accordance with s. 607.0120 on behalf of the corporation and filed in the office of the department
6710 ~~of State~~ articles of amendment which shall set forth:

6711 (a) The name of the corporation.

6712 (b) The date of adoption by the board of directors of the resolution approving the division
6713 or combination.

6714 (c) That the amendment to the articles of incorporation does not adversely affect the
6715 rights or preferences of the holders of outstanding shares of any class or series and does not
6716 result in the percentage of authorized shares that remain unissued after the division or
6717 combination exceeding the percentage of authorized shares that were unissued before the
6718 division or combination.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6719 (d) The class or series and number of shares subject to the division or combination and
6720 the number of shares into which the shares are to be divided or combined.

6721 (e) The amendment of the articles of incorporation made in connection with the division
6722 or combination.

6723 (f) If the division or combination is to become effective at a time subsequent to the time
6724 of filing, the date, which may not exceed 90 days after the date of filing, when the division or
6725 combination becomes effective.

6726 (5) Within 30 days after effecting a division or combination without shareholder approval,
6727 the corporation shall give written notice to its shareholders setting forth the material terms of the
6728 division or combination.

6729 (6) If a division or combination is effected by action of the board and of the shareholders,
6730 there shall be signed ~~executed~~ on behalf of the corporation and filed with the department of State
6731 articles of amendment as provided in ~~s. 607.1003~~ s. 607.1006, which articles shall set forth, in
6732 addition to the information required by s. 607.1006 ~~s. 607.1003~~, the information required in
6733 subsection (4).

6734 (7) Upon the effectiveness of a combination, the authorized shares of the classes or series
6735 affected by the combination shall be reduced by the same percentage by which the issued shares
6736 of such class or series were reduced as a result of the combination, unless the articles of
6737 incorporation otherwise provide or the combination was approved by the shareholders pursuant to
6738 s. 607.1003.

6739 ~~(8) This section applies only to corporations with more than 35 shareholders of record.~~

6740

6741 **Commentary to Section 607.10025:**

6742 This section of the FBCA was added to the statute in 1993. It is not in the Model Act. It was added
6743 to the FBCA to allow forward stock splits and reverse stock splits without shareholder approval.
6744 The statute contains protective provisions to avoid squeeze-outs, forced buy-outs of fractional
6745 shares, and dilution, along with a provision in subsection (2)(c) precluding the board from acting
6746 without shareholder approval where the division or combination would adversely affect pre-
6747 existing shareholder rights.

6748 Section (8) has been eliminated. Since the protective provisions of this statute (particularly
6749 subsections (3) and (7) make it impossible for this statute to be used for squeeze out transactions
6750 or to dilute the interests of minority shareholders, the limitation of this provision to use in
6751 corporations with more than 35 shareholders of record is no longer believed to serve a useful
6752 purpose.

6753

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6754 607.1003 Amendment by board of directors and shareholders.

6755 (1) ~~A corporation's board of directors may propose one or more amendments to the articles~~
6756 ~~of incorporation for submission to the shareholders. If a corporation has issued shares, an~~
6757 ~~amendment to the articles of incorporation shall be adopted in the following manner:~~

6758 (1) The proposed amendment shall first be adopted by the board of directors.

6759 (2) (a) Except as provided in ss. 607.1002, 607.10025, and 607.1008, and, with respect to
6760 restatements that do not require shareholder approval, s. 607.1007, the amendment shall then
6761 be approved by the shareholders.

6762 (b) In submitting the proposed amendment to the shareholders for approval, the board of
6763 directors shall recommend that the shareholders approve the amendment unless:

6764 1. The board of directors makes a determination that because of a conflict of
6765 interest or other special circumstances it should not make such a recommendation; or

6766 2. Section 607.0826 applies.

6767 (c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board must inform the
6768 shareholders of the basis for its proceeding without such recommendation.

6769 For the amendment to be adopted:

6770 (a) ~~The board of directors must recommend the amendment to the shareholders,~~
6771 ~~unless the board of directors determines that because of conflict of interest or other special~~
6772 ~~circumstances it should make no recommendation and communicates the basis for its~~
6773 ~~determination to the shareholders with the amendment; and~~

6774 (b) ~~The shareholders entitled to vote on the amendment must approve the~~
6775 ~~amendment as provided in subsection (5).~~

6776 (3) The board of directors may set conditions for the approval of the amendment by the
6777 shareholders or the effectiveness of the amendment ~~its submission of the proposed amendment on~~
6778 ~~any basis.~~

6779 (4) If the amendment is required to be approved by the shareholders, and the approval is to
6780 be given at a meeting, the corporation must notify each shareholder, whether or not entitled to
6781 vote, of the meeting of shareholders at which the amendment is to be submitted for approval. The
6782 notice must be given in accordance with s. 607.0705, state that the purpose, or one of the purposes,
6783 of the meeting is to consider the amendment, and must contain or be accompanied by a copy of
6784 the amendment. The corporation shall notify each shareholder, whether or not entitled to vote, of

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6785 ~~the proposed shareholders' meeting in accordance with s. 607.0705. The notice of meeting must~~
6786 ~~also state that the purpose, or one of the purposes, of the meeting is to consider the proposed~~
6787 ~~amendment and contain or be accompanied by a copy or summary of the amendment.~~

6788 (5) Unless this ~~chapter act~~, the articles of incorporation, or the board of directors, ~~(acting~~
6789 ~~pursuant to subsection (3)), requires a greater vote or a greater quorum vote by voting groups, the~~
6790 ~~amendment to be adopted must be approved by approval of the amendment requires the approval~~
6791 ~~of the shareholders at a meeting at which a quorum consisting of at least a majority of the shares~~
6792 ~~entitled to be cast on the amendment exists, and, if any class or series of shares is entitled to vote~~
6793 ~~as a separate group on the amendment, except as provided in s. 607.1004(3), the approval of each~~
6794 ~~such separate voting group at a meeting at which a quorum of the voting group exists consisting~~
6795 ~~of at least a majority of the votes entitled to be cast on the amendment by that voting group.~~

6796 (a) ~~A majority of the votes entitled to be cast on the amendment by any voting group~~
6797 ~~with respect to which the amendment would create dissenters' rights; and~~

6798 (b) ~~The votes required by ss. 607.0725 and 607.0726 by every other voting group~~
6799 ~~entitled to vote on the amendment.~~

6800 (6) ~~If the amendment by any voting group would create appraisal rights, approval of the~~
6801 ~~amendment must also require the vote of a majority of the votes entitled to be cast by such voting~~
6802 ~~group.~~

6803 (67) Unless otherwise provided in the articles of incorporation, the shareholders of a
6804 corporation having 35 or fewer shareholders may amend the articles of incorporation without an
6805 act of the directors at a meeting for which notice of the changes to be made is given. For purposes
6806 of this subsection, the term "shareholder" means a record shareholder, a beneficial shareholder, or
6807 an unrestricted voting trust beneficial owner.

6808 (8) If as a result of an amendment of the articles of incorporation one or more shareholders of
6809 a domestic corporation would become subject to new interest holder liability, approval of the
6810 amendment shall require the signing in connection with the amendment, by each such shareholder,
6811 of a separate written consent to become subject to such new interest holder liability, unless in the
6812 case of a shareholder that already has interest holder liability the terms and conditions of the new
6813 interest holder liability are substantially identical to those of the existing interest holder liability
6814 (other than changes that eliminate or reduce such interest holder liability).

6815 (9) For purposes of subsection (8) and s. 607.1009, the term "new interest holder liability"
6816 means interest holder liability of a person resulting from an amendment of the articles of
6817 incorporation if the person did not have interest holder liability before the amendment becomes
6818 effective, or the person had interest holder liability before the amendment becomes effective, the
6819 terms and conditions of which are changed when the amendment becomes effective.

6820 **Commentary to Section 607.1003:**

6821 Subsections (1) through (5) were modified to reflect language changes to the current version of
6822 the Model Act. These provisions substantially clean up the language of the statute, but are not
6823 considered substantive. The language in subsection (6) also continues the concept of bifurcated
6824 required vote in Florida in situations where a voting group will receive appraisal rights as a result
6825 of the amendment, but uses different language.

6826 In line with the Model Act, subsection (4) has been modified to require that a copy of the amendment
6827 be provided, rather than allowing, as an alternative, a summary of the amendment to be provided (as
6828 is permitted in the current version of this section of the FBCA). Allowing just a summary to be
6829 presented to shareholders raises the issue of whether the summary is complete, and, as a result, it
6830 is believed best that shareholders receive a full copy of the amendment so they can read and make
6831 their own decisions on the entire provision. It is also not believed to be an onerous burden to
6832 provide a copy of the full amendment.

6833 Subsection (7) is not a Model Act provision. It was included in the FBCA in 1989 and represented
6834 a compromise between those that believed that the provisions of this section should apply to all
6835 amendments regardless of the size of the corporation and those who believed that shareholders
6836 should have more control in a closely held corporation. While this provision has been retained in
6837 the FBCA, the definition of "shareholder" for purposes of this subsection has been modified so
6838 that this provision only applies in true closely held corporations.

6839 New subsections (8) and (9) are derived from s. 10.3 of the Model Act. These new sections add the
6840 concept of separate approval by interest holders on amendments where the interest holder will have
6841 interest holder liability following the transaction.

6842

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6843 607.1004 Voting on amendments by voting groups.

6844 (1) If the corporation has more than one class of shares outstanding, the holders of the
6845 outstanding shares of a class are entitled to vote as a separate voting group class (if shareholder
6846 voting is otherwise required by this chapter act) upon a proposed amendment to the articles of
6847 incorporation, if the amendment would:

6848 (a) Effect an exchange or reclassification of all or part of the shares of the class into
6849 shares of another class.

6850 (b) Effect an exchange or reclassification, or create a right of exchange, of all or part of
6851 the shares of another class into the shares of the class.

6852 (c) Change the designation, rights, preferences, or limitations of all or part of the shares
6853 of the class.

6854 (d) Change the shares of all or part of the class into a different number of shares of the
6855 same class.

6856 (e) Create a new class of shares having rights or preferences with respect to distributions
6857 or to dissolution that are prior or superior to the shares of the class.

6858 (f) Increase the rights, preferences, or number of authorized shares of any class that,
6859 after giving effect to the amendment, have rights or preferences with respect to distributions
6860 or to dissolution that are prior or superior to the shares of the class,

6861 (g) Limit or deny an existing preemptive right of all or part of the shares of the class.

6862 (h) Cancel or otherwise affect rights to distributions or dividends that have accumulated
6863 but not yet been declared on all or part of the shares of the class.

6864 (2) If a proposed amendment would affect a series of a class of shares in one or more of the
6865 ways described in subsection (1), the shares of that series are entitled to vote as a separate voting
6866 group class on the proposed amendment.

6867 (3) If a proposed amendment that entitles the holders of two or more classes or series of
6868 shares to vote as separate voting groups under this section would affect those two or more classes
6869 or series in the same or substantially similar way, the holders of ~~the~~ shares of all the classes or
6870 series so affected must vote together as a single voting group on the proposed amendment, unless
6871 otherwise provided in the articles of incorporation or added as a condition by the board of directors
6872 pursuant to s. 607.1003(3).

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6873 (4) A class or series of shares is entitled to the voting rights granted by this section even if
6874 ~~although~~ the articles of incorporation provide that the shares are nonvoting shares.

6875

6876 **Commentary to Section 607.1004:**

6877 This section substantially follows the Model Act. Cleanup changes were made to conform to the
6878 current version of the corollary section of the Model Act. One minor change was to retain the
6879 words "or to dissolution" in subsections (1)(e) and (1)(f). While it can be argued that the statutory
6880 term "distribution" includes all forms of distribution, including payments in liquidation or
6881 dissolution, there was a concern that there may be cases where there are rights or preferences
6882 triggered upon dissolution that are not in the nature of distributions.

6883

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6884 607.1005 Amendment before issuance of shares.

6885 If a corporation has not yet issued shares, its board of directors, or ~~its~~ a majority of its
6886 incorporators if it has no ~~or~~ board of directors, may adopt one or more amendments to the
6887 corporation's articles of incorporation.

6888

6889 **Commentary to Section 607.1005:**

6890 This section is substantively similar to s. 10.02 of the Model Act. Although not in the Model Act,
6891 language requiring that the vote of the incorporators or the directors approving such an amendment
6892 be a majority vote of the incorporators or the board of directors, as applicable, has been retained.

6893 In the 1999 amendments to Article 10 of the Model Act, this section was renumbered from s. 10.05
6894 to s. 10.02.

6895

FINAL STATUTE AS ADOPTED
(With Commentary)

6896 607.1006 Articles of amendment.

6897 (1) After an amendment to the A corporation amending its articles of incorporation has
6898 been adopted and approved as required by this chapter, the corporation shall deliver to the
6899 department of State for filing articles of amendment which ~~must shall~~ be signed executed in
6900 accordance with s. 607.0120 and which ~~must shall~~ set forth:

6901 (a~~1~~) The name of the corporation;

6902 (b~~2~~) The text of each amendment adopted, or the information required by s.
6903 607.0120(11)(e), if applicable;

6904 (c~~3~~) If an amendment provides for an exchange, reclassification, or cancellation of
6905 issued shares, provisions for implementing the amendment if not contained in the
6906 amendment itself, which may be made dependent upon facts objectively ascertainable
6907 outside of the articles of amendment in accordance with s. 607.0120(11);

6908 (d~~4~~) The date of each amendment's adoption; and

6909 (e~~5~~) If an amendment:

6910 1. Was adopted by the incorporators or board of directors without
6911 shareholder approval action, a statement that the amendment was duly adopted by
6912 the incorporators or by the board of directors, as the case may be, to that effect and
6913 that shareholder approval action was not required;

6914 (6)~~2~~. If an amendment was approved Required approval by the
6915 shareholders, a statement that the number of votes cast for the amendment by the
6916 shareholders in the manner required by this chapter and by the articles of
6917 incorporation was sufficient for approval and if more than one voting group was
6918 entitled to vote on the amendment, a statement designating each voting group
6919 entitled to vote separately on the amendment, and a statement that the number of
6920 votes cast for the amendment by the shareholders in each voting group was
6921 sufficient for approval by that voting group-; or

6922 3. Is being filed pursuant to s. 607.0120(11)(e), a statement to that effect.

6923 (2) Articles of amendment shall take effect at the effective date determined pursuant to
6924 s. 607.0123.

6925

6926 **Commentary to Section 607.1006:**

6927 With some exceptions, the current Florida statute follows the pre-1999 version of the Model Act,
6928 except that Florida, in current subsection (6), is unique in requiring a broad statement regarding
6929 what voting groups had a separate vote on the amendment. The revised statute modifies the
6930 wording of this provision to bring it in line with the language in the 2016 version of the Model
6931 Act. With two exceptions (noted below), these are not substantive changes.

6932 While the vast majority of state corporate statutes require only a statement that the amendment
6933 was duly approved by the shareholders in the manner required by the act and by the articles of
6934 incorporation, Florida has always required a statement in the amendment as filed as to what voting
6935 groups had a separate vote on the amendment. While this difference pre-dates the 1989 statute, it
6936 is believed that this language adds meaningfully to the public information about the corporation
6937 available in the filed articles of incorporation and forces practitioners to consider this issue in
6938 interpreting the statute.

6939 Conforming language has been added to the text of this section to implement the changes to s.
6940 607.0120(11) that allow a filed document to be dependent on facts objectively ascertainable
6941 outside a filed document.

6942

FINAL STATUTE AS ADOPTED
(With Commentary)

6943 607.1007 Restated articles of incorporation.

6944 (1) A corporation's board of directors may restate its articles of incorporation at any time
6945 ~~with or~~ without shareholder ~~action~~ approval, subject to subsection (2).

6946 (2) ~~The restatement may~~ If the restated articles include one or more new amendments to the
6947 ~~articles. If the restatement includes an amendment requiring that require~~ shareholder approval, if
6948 ~~the amendments~~ must be adopted and approved as provided in s. 607.1003.

6949 (3) Notwithstanding subsection (1), if the board of directors submits a restatement for
6950 shareholder approval action, and the approval is to be given at a meeting, the corporation must
6951 ~~shall~~ notify each shareholder, whether or not entitled to vote, of the meeting of shareholders at
6952 which the restatement is to be submitted for approval. The notice must be given of the proposed
6953 ~~shareholders' meeting~~ in accordance with s. 607.0705 and. ~~The notice must also state that the~~
6954 purpose, or one of the purposes, of the meeting is to consider the ~~proposed~~ restatement and must
6955 contain or be accompanied by a copy of the restatement ~~that identifies any amendment or other~~
6956 ~~change it would make in the articles.~~

6957 (4) A corporation ~~restating that restates~~ its articles of incorporation shall execute and deliver
6958 to the department of State for filing articles of restatement, that comply with the provisions of s.
6959 607.0120, and to the extent applicable, s. 607.0202, setting forth:

6960 (a) The name of the corporation;

6961 (b) ~~and~~ The text of the restated articles of incorporation;

6962 (c) ~~together with a certificate setting forth:~~ A statement that the restated articles
6963 consolidate all amendments into a single document; and

6964 (d) If one or more new amendments are included in the restated articles, the statements
6965 required under s. 607.1006 with respect to each new amendment.

6966 ~~(a) Whether the restatement contains an amendment to the articles requiring~~
6967 ~~shareholder approval and, if it does not, that the board of directors adopted the restatement;~~
6968 ~~or~~

6969 ~~(b) If the restatement contains an amendment to the articles requiring shareholder~~
6970 ~~approval, the information required by s. 607.1006.~~

6971 (5) Duly adopted restated articles of incorporation supersede the original articles of
6972 incorporation and all amendments to ~~them~~ the articles of incorporation.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6973 (6) The department of State may certify restated articles of incorporation, as the articles of
6974 incorporation currently in effect, without including the statements ~~certificate information~~ required
6975 by subsection (4).

6976

6977 **Commentary to Section 607.1007:**

6978 Florida's current statute was identical to the pre-1999 version of the Model Act. The changes
6979 proposed to be made to this section add confirming language to bring this section into line with
6980 the current version of the Model Act. These changes are not believed to be substantive.

6981 Subsection (3), which is not in the Model Act, but is in the current Florida statute, has been
6982 retained, but the language has been modified to make it consistent with s. 607.1003(4).

6983

**FINAL STATUTE AS ADOPTED
(With Commentary)**

6984 607.1008 Amendment pursuant to reorganization.

6985 (1) A corporation's articles of incorporation may be amended without action by the board of
6986 directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of
6987 competent jurisdiction under ~~any federal or Florida statute if the articles of incorporation after~~
6988 ~~amendment contain only provisions required or permitted by s. 607.0202~~ the authority of a law of
6989 the United States or of this state.

6990 (2) The individual or individuals designated by the court shall deliver to the department of
6991 State for filing articles of amendment setting forth:

6992 (a) The name of the corporation;

6993 (b) The text of each amendment approved by the court;

6994 (c) The date of the court's order or decree approving the articles of amendment;

6995 (d) The title of the reorganization proceeding in which the order or decree was
6996 entered; and

6997 (e) A statement that the court had jurisdiction of the proceeding under a federal or
6998 Florida statute.

6999 (3) Shareholders of a corporation undergoing reorganization do not have appraisal dissenters'
7000 rights except as and to the extent provided in the reorganization plan.

7001 (4) This section does not apply after entry of a final decree in the reorganization proceeding
7002 even though the court retains jurisdiction of the proceeding for limited purposes unrelated to
7003 consummation of the reorganization plan.

7004

7005 **Commentary to Section 607.1008:**

7006 Changes made to subsection (1) mirror clarifying changes in the Model Act. These changes are
7007 not believed to be substantive.

7008 The Model Act only references reorganizations under federal law. The concept of a Florida state
7009 law reorganization was added to the FBCA in 1989 and has been retained.

7010 Subsection (3) has been retained, notwithstanding its removal from the Model Act in 1999.

7011

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7012 607.1009 Effect of amendment.

7013 (1) An amendment to articles of incorporation does not affect a cause of action existing
7014 against or in favor of the corporation, a proceeding to which the corporation is a party, or the
7015 existing rights of persons other than shareholders of the corporation. An amendment changing a
7016 corporation's name does not affect ~~abate~~ a proceeding brought by or against the corporation in its
7017 former name.

7018 (2) A shareholder who becomes subject to new interest holder liability in respect of the
7019 corporation as a result of an amendment to the articles of incorporation shall have that new interest
7020 holder liability only in respect of interest holder liabilities that arise after the amendment becomes
7021 effective.

7022 (3) Except as otherwise provided in the articles of incorporation of the corporation, the
7023 interest holder liability of a shareholder who had interest holder liability in respect of the corporation
7024 before the amendment becomes effective and has new interest holder liability after the amendment
7025 becomes effective shall be as follows:

7026 (a) The amendment does not discharge that prior interest holder liability with respect
7027 to any interest holder liabilities that arose before the amendment becomes effective.

7028 (b) The provisions of the articles of incorporation of the corporation relating to
7029 interest holder liability as in effect immediately prior to the amendment shall continue to apply
7030 to the collection or discharge of any interest holder liabilities preserved by paragraph (a), as if
7031 the amendment had not occurred.

7032 (c) The shareholder shall have such rights of contribution from other persons as are
7033 provided by the articles of incorporation relating to interest holder liability as in effect
7034 immediately prior to the amendment with respect to any interest holder liabilities preserved by
7035 paragraph (3)(a), as if the amendment had not occurred.

7036 (d) The shareholder shall not, by reason of such prior interest holder liability, have
7037 interest holder liability with respect to any interest holder liabilities that arise after the
7038 amendment becomes effective.

7039

7040 **Commentary to Section 607.1009:**

7041 This section mirrors the Model Act.

7042 New subsections (2) and (3) govern the effects of amendments to the articles of incorporation that

7043 impose or change interest holder liability.

7044

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 7045 607.1020 Amendment of bylaws by board of directors or shareholders.
- 7046 (1) A corporation’s board of directors may amend or repeal the corporation’s bylaws unless:
- 7047 (a) The articles of incorporation or this chapter ~~act~~, reserves ~~the~~ that power ~~to amend the~~
7048 ~~bylaws generally or a particular bylaw provision~~ exclusively to the shareholders in whole or
7049 in part; or
- 7050 (b) Except as provided in s. 607.0206(5), the shareholders, in amending, ~~or~~ repealing,
7051 or adopting the bylaws generally or a particular bylaw provision, ~~provide expressly~~ provide
7052 that the-board of directors may not amend, ~~or~~ repeal, adopt, or reinstate the bylaws generally
7053 or that particular bylaw provision.
- 7054 (2) A corporation’s shareholders may amend or repeal the corporation’s bylaws even though
7055 the bylaws may also be amended or repealed by its board of directors.
- 7056 (3) A shareholder does not have a vested property right resulting from any provision in the
7057 bylaws.
- 7058

7059 **Commentary to Section 607.1020:**

7060 Except for the fact that subsections (1) and (2) in the FBCA are reversed, this section mirrors the
7061 Model Act. The changes made do not affect the substance of these provisions.

7062 Florida is among thirty-eight jurisdictions that authorize both the board of directors and the
7063 shareholders to amend the bylaws, and one of 36 that allow this to be restricted by the articles of
7064 incorporation. This is in opposition to the Delaware model, followed by six jurisdictions other than
7065 Delaware, which authorize the shareholders to amend the bylaws but allow for board amendment
7066 as allowed by the articles of incorporation.

7067 Subsection (3) was added to this section of the FBCA. It follows the language in s. 10.20(c) of the
7068 Model Act. Like s. 607.1001(2) dealing with the same issue with respect to articles of
7069 incorporation, it expressly rejects the concept that an otherwise lawful amendment to the bylaws
7070 might be restricted or invalidated because it modified particular rights conferred on shareholders
7071 by the original or prior version of the bylaws. At the same time, subsection (3) does not override
7072 contracts by a corporation outside its bylaws which might be violated by an otherwise lawful
7073 amendment to the bylaws or invalidate provisions in bylaws that require procedures for approval
7074 of amendments that limit the power to amend the articles of incorporation without particular
7075 shareholder consent.

7076

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7077 607.1021 Bylaw increasing quorum or voting requirements for shareholders.

7078 (1) If authorized by the articles of incorporation, the shareholders may adopt or amend a
7079 bylaw that fixes a greater quorum or voting requirement for shareholders (or voting groups of
7080 shareholders) than is required by this chapter ~~act~~. The adoption or amendment of a bylaw that adds,
7081 changes, or deletes a greater quorum or voting requirement for shareholders must meet the same
7082 quorum requirement and be adopted by the same vote and voting groups required to take action
7083 under the quorum and voting requirement then in effect or proposed to be adopted, whichever is
7084 greater.

7085 (2) A bylaw that fixes a greater quorum or voting requirement for shareholders under
7086 subsection (1) may not be adopted, amended, or repealed by the board of directors.

7087

7088 **Commentary to Section 607.1021:**

7089 The 1984 version of the Model Act included Section 10.21, which deals with quorum or voting
7090 requirements for shareholders, and Section 10.22, which deals with quorum or voting requirements
7091 for directors. In the 1999 amendments, Section 10.21, regarding quorum and voting requirements
7092 for shareholders, was deleted. Section 10.22, regarding quorum and voting requirements for
7093 directors, was amended and renumbered as s. 10.21. A new section 10.22, relating to bylaw
7094 provisions dealing with the election of directors, was added to the Model Act in 2006 as a way to
7095 help corporations and shareholder groups who want to alter the traditional plurality vote for
7096 electing directors (renumbered s. 607.1023 in the FBCA).

7097 This section, which has been in the FBCA since 1989, has been retained.

7098

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7099 607.1022 Bylaw increasing quorum or voting requirements for directors.

7100 (1) A bylaw that increases a ~~fixes a greater~~ quorum or voting requirement for the board of
7101 directors may be amended or repealed:

7102 (a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw
7103 otherwise provides; or

7104 (b) If originally adopted by the board of directors, either by the shareholders or by the
7105 board of directors.

7106 (2) A bylaw adopted or amended by the shareholders that increases a ~~fixes a greater~~ quorum
7107 or voting requirement for the board of directors may provide that it may be amended or repealed
7108 only by a specified vote of either the shareholders or the board of directors.

7109 (3) Action by the board of directors under subsection (1) to amend or repeal ~~paragraph (1)(b)~~
7110 ~~to adopt or amend~~ a bylaw that changes the quorum or voting requirement for the board of directors
7111 must meet the same quorum requirement and be adopted by the same vote required to take action
7112 under the quorum and voting requirement then in effect or proposed to be adopted, whichever is
7113 greater.

7114

7115 **Commentary to Section 607.1022:**

7116 See commentary to s. 607.0121 above.

7117 The changes bring the FBCA section into conformity with the corollary provision in the Model
7118 Act (s. 10.21).

7119

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7120 607.1023 Bylaw provisions relating to the election of directors.

7121 (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw
7122 pursuant to this section, alter the vote specified in s. 607.0728(1), or provide for cumulative voting,
7123 a corporation may elect in its bylaws to be governed in the election of directors as follows:

7124 (a) Each vote entitled to be cast may be voted for or against up to the number of
7125 candidates that is equal to the number of directors to be elected, or a shareholder may
7126 indicate an abstention, but without cumulating the votes;

7127 (b) To be elected, a nominee must have received a plurality of the votes cast by
7128 holders of shares entitled to vote in the election at a meeting at which a quorum is present,
7129 provided that a nominee who is elected but receives more votes against than for election
7130 shall serve as a director for a term that shall terminate on the date that is the earlier of 90
7131 days from the date on which the voting results are determined pursuant to s. 607.0729(2)(e)
7132 or the date on which an individual is selected by the board of directors to fill the office held
7133 by such director, which selection shall be deemed to constitute the filling of a vacancy by
7134 the board to which s. 607.0809 applies. Subject to paragraph (c), a nominee who is elected
7135 but receives more votes against than for election shall not serve as a director beyond the
7136 90-day period referenced above; and

7137 (c) The board of directors may select any qualified individual to fill the office held by
7138 a director who received more votes against than for election.

7139 (2) Subsection (1) does not apply to an election of directors by a voting group if:

7140 (a) At the expiration of the time fixed under a provision requiring advance
7141 notification of director candidates; or

7142 (b) Absent such a provision, at a time fixed by the board of directors which is not
7143 more than 14 days before notice is given of the meeting at which the election is to occur,

7144 there are more candidates for election by the voting group than the number of directors to be
7145 elected, one or more of whom are properly proposed by shareholders. An individual shall not be
7146 considered a candidate for purposes of this subsection if the board of directors determines before
7147 the notice of meeting is given that such individual's candidacy does not create a bona fide election
7148 contest.

7149 (3) A bylaw electing to be governed by this section may be repealed:

7150 (a) If originally adopted by the shareholders, only by the shareholders, unless the
7151 bylaw otherwise provides; or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7152

(b) If adopted by the board of directors, by the board of directors or the shareholders.

7153

7154 **Commentary to Section 607.1023:**

7155 This new section was added to the Model Act in 2006, as new s. 10.22. It deals with bylaws relating
7156 to the election of directors and concepts of majority voting and holdover directors. It has to be
7157 expressly adopted into a corporation's bylaws for this statutory provision to apply to a particular
7158 corporation, and is largely for use by public companies, although all corporations can elect to be
7159 governed by this provision.

7160

ARTICLE 11

PART A – MERGERS AND SHARE EXCHANGES

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607.1101 Merger.

(1) By complying with this chapter, including adopting of a plan of merger in accordance with subsection (3) and complying with s. 607.1103:

(a) One or more domestic corporations may merge with one or more domestic or foreign corporations eligible entities pursuant to a plan of merger, resulting in a survivor if the board of directors of each corporation adopts and its shareholders (if required by s. 607.1103) approve a plan of merger; and

(b) Any two or more entities, each of which is either a domestic eligible entity or a foreign eligible entity, may merge, resulting in a survivor that is a domestic corporation created in the merger.

(2) A domestic eligible entity that is not a corporation may be a party to a merger with a domestic corporation, or may be created as the survivor in a merger in which a domestic corporation is a party, but only if the parties to the merger comply with the applicable provisions of this chapter and the merger is permitted by the organic law of the domestic eligible entity that is not a corporation. A foreign eligible entity may be a party to a merger with a domestic corporation, or may be created as the survivor in a merger in which a domestic corporation is a party, but only if the parties to the merger comply with the applicable provisions of this chapter and the merger is permitted by the organic law of the foreign eligible entity.

(23) The plan of merger must shall set forth:

(a) As to each party to the merger, its name, jurisdiction of formation, and type of entity ~~The name of each corporation planning to merge and the name of the surviving corporation into which each other corporation plans to merge, which is hereinafter designated as the surviving corporation;~~

(b) The survivor's name, jurisdiction of formation, and type of entity, and, if the survivor is to be created in the merger, a statement to that effect;

(c) The terms and conditions of the proposed merger; and

(d) The manner and basis of converting;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7191 1. The shares of each domestic or foreign corporation and the eligible
7192 interests of each merging domestic or foreign eligible entity into:

7193 a. Shares or other securities.

7194 b. Eligible interests.

7195 c. Obligations.

7196 d. Rights to acquire shares, other securities, or eligible interests.

7197 e. Cash.

7198 f. Other property.

7199 g. Any combination of the foregoing, and

7200 2. Rights to acquire shares of each merging domestic or foreign
7201 corporation and rights to acquire eligible interests of each merging domestic or
7202 foreign eligible entity into:

7203 a. Shares or other securities.

7204 b. Eligible interests.

7205 c. Obligations.

7206 d. Rights to acquire shares, other securities, or eligible interests.

7207 e. Cash.

7208 f. Other property.

7209 g. Any combination of the foregoing corporation into shares,
7210 obligations, or other securities of the surviving corporation or any other
7211 corporation or, in whole or in part, into cash or other property and the
7212 manner and basis of converting rights to acquire shares of each corporation
7213 into rights to acquire shares, obligations, or other securities of the surviving
7214 or any other corporation or, in whole or in part, into cash or other property;

7215 (e) The articles of incorporation of any domestic or foreign corporation, or the
7216 public organic record of any other domestic or foreign eligible entity to be created by the
7217 merger, or if a new domestic or foreign corporation or other eligible entity is not to be

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7218 created by the merger, any amendments to, or restatements of, the survivor's articles of
7219 incorporation or other public organic record;

7220 (f) The effective date and time of the merger, which may be on or after the filing
7221 date of the articles of merger; and

7222 (g) Any other provisions required by the laws under which any party to the merger
7223 is organized or by which it is governed, or by the articles of incorporation or organic rules
7224 of any such party.

7225 (34) In addition to the requirements of subsection (3), a The plan of merger may contain
7226 set forth any other provision that is not prohibited by law.

7227 (a) Amendments to, or a restatement of, the articles of incorporation of the surviving
7228 corporation;

7229 (b) The effective date of the merger, which may be on or after the date of filing the
7230 certificate; and

7231 (c) Other provisions relating to the merger.

7232 (5) Terms of a plan of merger may be made dependent on facts objectively ascertainable
7233 outside the plan in accordance with s. 607.0120(11).

7235 (6) A plan of merger may be amended only with the consent of each party to the merger,
7236 except as provided in the plan. A domestic party to a merger may approve an amendment to a plan:

7237 (a) In the same manner as the plan was approved, if the plan does not provide
7238 for the manner in which it may be amended; or

7239 (b) In the manner provided in the plan, except that shareholders, members, or
7240 interest holders that were entitled to vote on or consent to the approval of the plan are
7241 entitled to vote on or consent to any amendment to the plan that will change:

7242 1. The amount or kind of shares or other securities, eligible interests,
7243 obligations, rights to acquire shares, other securities, or eligible interests, cash,
7244 other property, or any combination of the foregoing, to be received under the plan
7245 by the shareholders, holders of rights to acquire shares, other securities, or eligible
7246 interests, members, or interest holders of any party to the merger;

7247 2. The articles of incorporation of any domestic corporation, or the
7248 organic rules of any other type of entity, that will be the survivor of the merger,
7249 except for changes permitted by s. 607.1002 or by comparable provisions of the
7250 organic law of any other type of entity; or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7251 3. Any of the other terms or conditions of the plan if the change would
7252 adversely affect such shareholders, members, or interest holders in any material
7253 respect.

7254 (7) The redomestication of a foreign insurer to this state under s. 628.520 shall be deemed a
7255 merger of a foreign corporation and a domestic corporation, and the surviving corporation shall be
7256 deemed to be a domestic corporation incorporated under the laws of this state. The redomestication
7257 of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a
7258 domestic corporation and a foreign corporation, and the surviving corporation shall be deemed to
7259 be a foreign corporation.

7260

7261 **Commentary to Article 11 Generally:**

7262 Article 11 of the Model Act, dealing with mergers and share exchanges, is new Part A of Article
7263 11 of the FBCA. New Part B of Article 11 of the FBCA contains the domestication provisions of
7264 the Model Act, which are derived from Article 9 of the Model Act. New Part C of Article 11 of
7265 the FBCA contains the conversion provisions of the Model Act, which are also derived from
7266 Article 9 of the Model Act. The numbering of Article 11 is intended to keep each part separated,
7267 in a similar format to the corollary provisions in Article 10 of FRLUCA.

7268 Each part of Article 9 and Article 11 of the Model Act includes definitions applicable to each part.
7269 All such required definitions have been included in s. 607.01401.

7270 **Commentary to Section 607.1101:**

7271 Major changes have been proposed to s. 607.1101 to bring the section in line with the current
7272 corollary section of the Model Act (s. 11.02). The current version of Florida's merger statute
7273 (which reflects certain updates) is based on the pre-1999 version of the Model Act, which made
7274 no provisions for the merger of a domestic corporation or other eligible entity with a foreign
7275 corporation or other eligible entity, nor did it allow for the merger of foreign corporations to result
7276 in the formation of a Florida corporation. However, changes were made to Model Act s. 11.02 in
7277 1999 and then again in 2003 to allow for these transactions (and these changes were adopted as ss.
7278 607.1107-607.11101 of the FBCA). Further changes have been made in the 2016 draft of the
7279 Model Act, and now all of these types of merger transactions are covered by s. 607.1101.

7280 Article 11 uses the term "eligible entity" largely as defined in FRLUCA to deal with the types of
7281 entities that can be a party to a merger with a domestic corporation. This harmonizes the types of
7282 entities that can participate in a merger with the types of entities that can merge with a domestic
7283 LLC. The Model Act uses the term "eligible entity" for the same purpose. The difference in the
7284 wording of the definition is not considered substantive.

7285 Subsection (3) of Model Act s. 11.02 has not been recommended for adoption. That section covers
7286 procedures for a domestic eligible entity to approve a merger. Since the Florida Statutes provide
7287 procedures for approving a cross-entity merger with respect to other types of entities, this section
7288 is believed unnecessary.

7289 Subsection (6) of the Model Act has been added to cover the topic of amendments to a plan of
7290 merger. This topic was previously covered in s. 607.1103(8) of the FBCA.

7291 Subsection (7) has been moved here from existing s. 607.1107(5). It is not a Model Act
7292 provision.

7293

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7294 607.1102 Share exchange.

7295 (1) By complying with this chapter, including adopting a plan of share exchange in
7296 accordance with subsection (3) and complying with s. 607.1103:

7297 ~~A corporation may acquire all of the outstanding shares of one or more classes or~~
7298 ~~series of another corporation if the board of directors of each corporation adopts and its~~
7299 ~~shareholders (if required by s. 607.1103) approve a plan of share exchange.~~

7300 (a) A domestic corporation may acquire all of the shares or rights to acquire shares
7301 of one or more classes or series of shares or rights to acquire shares of another domestic or
7302 foreign corporation, or all of the eligible interests of one or more classes or series of
7303 interests of a domestic or foreign eligible entity, or any combination of the foregoing,
7304 pursuant to a plan of share exchange, in exchange for:

7305 1. Shares or other securities.

7306 2. Eligible interests.

7307 3. Obligations.

7308 4. Rights to acquire shares, other securities, or eligible interests.

7309 5. Cash.

7310 6. Other property.

7311 7. Any combination of the foregoing; or

7312 (b) All of the shares of one or more classes or series of shares or rights to acquire
7313 shares of a domestic corporation may be acquired by another domestic or foreign eligible
7314 entity, pursuant to a plan of share exchange, in exchange for:

7315 1. Shares or other securities.

7316 2. Eligible interests.

7317 3. Obligations.

7318 4. Rights to acquire shares, other securities, or eligible interests.

7319 5. Cash.

7320 6. Other property.

FINAL STATUTE AS ADOPTED
(With Commentary)

- 7321 7. Any combination of the foregoing.
- 7322 (2) A foreign eligible entity may be the acquired eligible entity in a share exchange only
7323 if the share exchange is permitted by the organic law of that eligible entity.
- 7324 (23) The plan of share exchange must shall set forth:
- 7325 (a) The name of ~~the~~ each domestic or foreign corporation eligible entity the shares
7326 or eligible interests of which will be acquired and the name of the domestic or foreign
7327 acquiring corporation or eligible entity that will acquire those shares or eligible interests;
- 7328 (b) The terms and conditions of the share exchange;
- 7329 (c) The manner and basis of exchanging:
- 7330 1. The shares of each domestic or foreign corporation, and the eligible
7331 interests of each domestic or foreign eligible entity, the shares or eligible interests that
7332 are to be acquired in the share exchange, into shares or other securities, eligible
7333 interests, obligations, rights to acquire shares, other securities, or eligible interests,
7334 cash, other property, or any combination of the foregoing; and
- 7335 2. Rights to acquire shares of each domestic or foreign corporation and rights
7336 to acquire eligible interests of each domestic or foreign eligible entity, that are to be
7337 acquired in the share exchange, into shares or other securities, eligible interests,
7338 obligations, rights to acquire shares, to be acquired for shares obligations, or other
7339 securities of the acquiring or any other corporation or, in whole or in part, for cash or
7340 other property, and the manner and basis of exchanging rights to acquire shares other
7341 securities, or eligible interests, of the corporation to be acquired for rights to acquire
7342 shares, obligations, or, in whole or in part, other securities of the acquiring or any other
7343 corporation or, in whole or in part, for cash, or other property, or any combination of
7344 the foregoing; and
- 7345 (d) Any other provisions required by the organic law governing the acquired eligible
7346 entity or its articles of incorporation or organic rules.
- 7347 (34) In addition to the requirements of subsection (3), the plan of share exchange may
7348 contain any set forth other provisions relating to the exchange that are not prohibited by law.
- 7349 (5) Terms of a plan of share exchange may be made dependent on facts objectively
7350 ascertainable outside the plan in accordance with s. 607.0120(11).

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7351 (6) A plan of share exchange may be amended only with the consent of each party to the
7352 share exchange, except as provided in the plan. A domestic eligible entity may approve an
7353 amendment to a plan:

7354 (a) In the same manner as the plan was approved, if the plan does not provide for
7355 the manner in which it may be amended; or

7356 (b) In the manner provided in the plan, except that shareholders, members, or
7357 interest holders that were entitled to vote on or consent to approval of the plan are entitled
7358 to vote on or consent to any amendment of the plan that will change:

7359 1. The amount or kind of shares or other securities, eligible interests,
7360 obligations, rights to acquire shares, other securities, or eligible interests, cash, or other
7361 property to be received under the plan by the shareholders, members, or interest
7362 holders of the acquired eligible entity; or

7363 2. Any of the other terms or conditions of the plan if the change would
7364 adversely affect such shareholders, members or interest holders in any material
7365 respect.

7366 (74) This section does not limit the power of a corporation to acquire all or part of the
7367 shares, or rights to acquire shares, of one or more classes or series of another corporation or eligible
7368 interests, or rights to acquire eligible interests, of any other eligible entity through a voluntary
7369 exchange or otherwise.

7370

7371 **Commentary to Section 607.1102:**

7372 Changes have been made to bring this section into conformity with the corollary provision of s.
7373 11.03 of the Model Act.

7374 Subsection (3) of Model Act s. 11.03 has not been recommended for adoption. That section covers
7375 procedures for a domestic eligible entity to approve a merger. Since the Florida Statutes provide
7376 procedures for approving a cross-entity merger with respect to other types of entities, this section
7377 is believed unnecessary.

7378 Subsections (3) (now subsection (4)) and (4) (now subsection (7)) are not in the Model Act.
7379 However, they have been retained herein for the elimination of doubt and possible confusion that
7380 might result if the sections were removed.

7381

FINAL STATUTE AS ADOPTED
(With Commentary)

7382 607.1103 Action on a plan of merger or share exchange.

7383 In the case of a domestic corporation that is a party to a merger or the acquired eligible
7384 entity in a share exchange, the plan of merger or the plan of share exchange must be adopted in
7385 the following manner:

7386 (1) ~~After adopting a~~ The plan of merger or the plan of share exchange shall first be
7387 adopted by; the board of directors of such domestic corporation of each corporation party to the
7388 merger, and the board of directors of the corporation the shares of which will be acquired in the
7389 share exchange, shall submit the plan of merger (except as provided in subsection (7)) or the plan
7390 of share exchange for approval by its shareholders.

7391 (2) (a) Except as provided in subsections (8), (10) and (11), and in ss. 607.11035 and
7392 607.1104, the plan of merger or the plan of share exchange shall then be adopted by the
7393 shareholders.

7394 (b) In submitting the plan of merger or the plan of share exchange to the
7395 shareholders for approval, the board of directors shall recommend that the shareholders
7396 approve the plan, or in the case of an offer referred to in s. 607.11035(1)(b), that the
7397 shareholders tender their shares to the offeror in response to the offer, unless:

7398 1. The board of directors makes a determination that because of conflicts of
7399 interest or other special circumstances, it should not make such a recommendation;
7400 or

7401 2. Section 607.0826 applies.

7402 (c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board shall inform
7403 the shareholders of the basis for its so proceeding without such recommendation.

7404 ~~(2) For a plan of merger or share exchange to be approved:~~

7405 ~~(a) The board of directors must recommend the plan of merger or share exchange~~
7406 ~~to the shareholders, unless the board of directors determines that it should make no~~
7407 ~~recommendation because of conflict of interest or other special circumstances and~~
7408 ~~communicates the basis for its determination to the shareholders with the plan; and~~

7409 ~~(b) The shareholders entitled to vote must approve the plan as provided in~~
7410 ~~subsection (5).~~

7411 (3) The board of directors may condition its submission set conditions for the approval
7412 of the proposed merger or share exchange by the shareholders or the effectiveness of the plan of
7413 merger or the plan of share exchange on any basis.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7414 (4) ~~The corporation the~~ If the plan of merger or the plan of share exchange is required to
7415 be approved by the shareholders of which are entitled to vote on the matter, and if the approval is
7416 to be given at a meeting, the corporation shall notify each shareholder, regardless of whether or
7417 not entitled to vote, of the proposed shareholders' meeting of shareholders at which the plan is to
7418 be submitted for approval, in accordance with s. 607.0705. The notice shall also state that the
7419 purpose, or one of the purposes, of the meeting is to consider the plan of merger or the plan of
7420 share exchange, regardless of whether or not the meeting is an annual or a special meeting, and
7421 contain or be accompanied by a copy or summary of the plan. If the corporation is to be merged
7422 into an existing foreign or domestic eligible entity, the notice must also include or be accompanied
7423 by a copy of the articles of incorporation and bylaws or the organic rules of that eligible entity into
7424 which the corporation is to be merged. If the corporation is to be merged with a domestic or foreign
7425 eligible entity and a new domestic or foreign eligible entity is to be created pursuant to the merger,
7426 the notice must include or be accompanied by a copy of the articles of incorporation and bylaws
7427 or the organic rules of the new eligible entity. Furthermore, if applicable, the notice shall contain
7428 a clear and concise statement that, if the plan of merger or share exchange is effected, shareholders
7429 dissenting therefrom may be entitled, if they comply with the provisions of this chapter act
7430 regarding appraisal rights, to be paid the fair value of their shares, and shall be accompanied by a
7431 copy of ss. ~~607.1301-607.1340~~ 607.1301-607.1333.

7432 (5) Unless this chapter act, the articles of incorporation, or the board of directors (acting
7433 pursuant to subsection (3)) requires a greater vote or a ~~vote by classes~~ greater quorum in the
7434 respective case, approval of the plan of merger or the plan of share exchange to be authorized shall
7435 be approved by each class entitled to vote on the plan by a majority of all the votes entitled to be
7436 cast on the plan by that class shall require the approval of the shareholders at a meeting at which a
7437 quorum exists by a majority of the votes entitled to be cast on the plan, and, if any class or series
7438 of shares is entitled to vote as a separate group on the plan of merger or the plan of share exchange,
7439 the approval of each such separate voting group at a meeting at which a quorum of the voting
7440 group is present by a majority of the votes entitled to be cast on the merger or share exchange by
7441 that voting group.

7442 (6) (a) Subject to subsection (7), voting by a class or series as a separate voting group
7443 is required:

7444 1. By each class or series of shares of the corporation that would be entitled to
7445 vote as a separate group on any provision in the plan contains a provision which, if
7446 contained in which, if such provision had been contained in a proposed amendment
7447 to the articles of incorporation of a surviving corporation, would have entitled the
7448 class or series to vote as a separate voting group on the proposed amendment under
7449 s. 607.1004; or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7450 2. If the plan contains a provision that would allow the plan to be amended to
7451 include the type of amendment to the articles of incorporation referenced in
7452 subparagraph 1., by each class or series of shares of the corporation that would have
7453 been entitled to vote as a separate group on any such amendment to the articles of
7454 incorporation; or

7455 3. By each class or series of shares of the corporation that is to be converted
7456 under the plan of merger into shares, other securities, eligible interests, obligations,
7457 rights to acquire shares, other securities, or eligible interests, cash, property, or any
7458 combination of the foregoing; or

7459 4. If the plan contains a provision that would allow the plan to be amended to
7460 convert other classes or series of shares of the corporation, by each class or series of
7461 shares of the corporation that would have been entitled to vote as a separate group if
7462 the plan were to be so amended.

7463 (b) Subject to subsection (7), voting by a class or series as a separate voting group
7464 is required on a plan of share exchange;

7465 1. By each if the shares of such class or series are to be converted or exchanged
7466 under such plan, that is to be exchanged in the exchange, with each class or series
7467 constituting a separate voting group; or if the plan contains any provisions which, if
7468 contained in a proposed amendment to articles of incorporation, would entitle the
7469 class or series to vote as a separate voting group on the proposed amendment under
7470 s. 607.1004.

7471 2. If the plan contains a provision that would allow the plan to be amended to
7472 include the type of amendment to the articles of incorporation referenced in
7473 subparagraph (a)1., by each class or series of shares of the corporation that would
7474 have been entitled to vote as a separate group on any such amendment to the articles
7475 of incorporation.

7476
7477 (c) Subject to subsection (7), voting by a class or series as a separate voting group
7478 is required on a plan of merger or a plan of share exchange if the group is entitled under
7479 the articles of incorporation to vote as a voting group to approve the plan of merger or the
7480 plan of share exchange, respectively.

7481 (7) The articles of incorporation may expressly limit or eliminate the separate voting
7482 rights provided in any of subparagraphs (6)(a)3. or 4. or subparagraph (6)(b)1. as to any class or
7483 series of shares, except when the plan of merger or the plan of share exchange;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7484 (a) Includes what is or would be, in effect, an amendment subject to any one or
7485 more of subparagraphs (6)(a)1. and 2. and subparagraph (6)(b)2.; and

7486 (b) Will not effect a substantive business combination.

7487 ~~(78) Notwithstanding the requirements of this section, Unless required by the~~
7488 ~~corporation's~~ its articles of incorporation provide otherwise, approval action by the corporation's
7489 ~~shareholders of the surviving corporation on~~ of a plan of merger is not required if:

7490 (a) The corporation will survive the merger;

7491 ~~(ab)~~ The articles of incorporation of the surviving corporation will not differ
7492 (except for amendments enumerated in s. 607.1002) from its articles of incorporation
7493 before the merger; and

7494 ~~(bc)~~ Each shareholder of the surviving corporation whose shares were outstanding
7495 immediately prior to the effective date of the merger will hold the same number of shares,
7496 with identical designations, preferences, rights, and limitations, ~~and relative rights,~~
7497 immediately after the effective date of the merger.

7498 ~~(8) Any plan of merger or share exchange may authorize the board of directors of each~~
7499 ~~corporation party to the merger or share exchange to amend the plan at any time prior to the filing~~
7500 ~~of the articles of merger or share exchange. An amendment made subsequent to the approval of~~
7501 ~~the plan by the shareholders of any corporation party to the merger or share exchange may not:~~

7502 ~~(a) Change the amount or kind of shares, securities, cash, property, or rights to be~~
7503 ~~received in exchange for or on conversion of any or all of the shares of any class or series~~
7504 ~~of such corporation;~~

7505 ~~(b) Change any other terms and conditions of the plan if such change would~~
7506 ~~materially and adversely affect such corporation or the holders of the shares of any class~~
7507 ~~or series of such corporation; or~~

7508 ~~(c) Except as specified in s. 607.1002 or without the vote of shareholders entitled to~~
7509 ~~vote on the matter, change any term of the articles of incorporation of any corporation the~~
7510 ~~shareholders of which must approve the plan of merger or share exchange.~~

7511 ~~If articles of merger or share exchange already have been filed with the Department of~~
7512 ~~State, amended articles of merger or share exchange shall be filed with the Department of State~~
7513 ~~prior to the effective date of the merger or share exchange.~~

7514 ~~(9) Unless a plan of merger or share exchange prohibits abandonment of the merger or~~
7515 ~~share exchange without shareholder approval after a merger or share exchange has been~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7516 ~~authorized, the planned merger or share exchange may be abandoned (subject to any contractual~~
7517 ~~rights) at any time prior to the filing of articles of merger or share exchange by any corporation~~
7518 ~~party to the merger or share exchange, without further shareholder action, in accordance with the~~
7519 ~~procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner~~
7520 ~~determined by the board of directors of such corporation.~~

7521 (9) If as a result of a merger or share exchange one or more shareholders of a domestic
7522 corporation would become subject to new interest holder liability, approval of the plan of merger
7523 or the plan of share exchange shall require, in connection with the transaction, the signing by each
7524 such shareholder of a separate written consent to become subject to such new interest holder
7525 liability, unless in the case of a shareholder that already has interest holder liability with respect to
7526 such domestic corporation:

7527 (a) The new interest holder liability is with respect to a domestic or foreign corporation
7528 (which may be a different or the same domestic corporation in which the person is a
7529 shareholder); and

7530 (b) The terms and conditions of the new interest holder liability are substantially
7531 identical to those of the existing interest holder liability (other than for changes that reduce or
7532 eliminate such interest holder liability).

7533 (10) Unless the articles of incorporation otherwise provide, approval of a plan of share
7534 exchange by the shareholders of a domestic corporation is not required if the corporation is the
7535 acquiring eligible entity in the share exchange.

7537 (11) Unless the articles of incorporation otherwise provide, shares in the acquired eligible
7538 entity not to be exchanged under the plan of share exchange are not entitled to vote on the plan.

7539

7540 **Commentary to Section 607.1103:**

7541 Florida's current version of s. 607.1103 follows the 1984 version of Model Act s. 11.04. This
7542 section of the Model Act was substantially revised in 1999, and the revisions to this section are
7543 intended to provide greater clarity as to what is required to approve a merger or share exchange.
7544 Particularly, this section as revised is designed to correct a long-standing ambiguity under Florida
7545 law that arguably allows any class or series of shares to have a separate class vote on a merger or
7546 share exchange even under circumstances where the articles of incorporation arguably provide
7547 otherwise.

7548 The exception in subsection (2) is intended to allow a shareholder vote without a recommendation
7549 from the Board, including where there is a "force the vote" provision in a plan of merger or the
7550 plan of share exchange.

7551 Subsection (5) continues the requirement that a majority of the shares entitled to vote at the meeting
7552 (*i.e.*, an absolute majority, rather than just a majority of the quorum) must approve the merger or
7553 share exchange. This is consistent with existing Florida law, the Model Act and s. 251(e) of the
7554 DGCL.

7555 Subsection (6) sets forth circumstances when voting by a class or series as a separate voting group
7556 is required. While largely based on the Subsection (f) of s. 11.04 of the Model Act, the proposed
7557 language has been expanded to not only cover the substantive provisions of the plan, but also
7558 provisions that would permit amendments to the plan that could subsequently cover such a
7559 substantive provision. Accordingly, subparagraphs (a)2. and 4. and subparagraph (b)2. have been
7560 added for clarification.

7561 New subsection (7) largely follows the Model Act, although the provisions have been modified in
7562 light of the changes to subsection (6). Under subsection (7), the general rule is to allow the
7563 elimination or limitation of separate voting rights under subsection (7) by adding a provision to
7564 the articles of incorporation. However, that exception is overridden when both (i) the plan of
7565 merger or share exchange includes what would be an amendment to the articles of incorporation
7566 of the surviving corporation that would require a vote by separate voting groups under s. 607.1004,
7567 and (ii) the transaction detailed in such plan of merger or share exchange will not effect a
7568 "substantive business combination." The commentary to the Model Act provides guidance
7569 (including examples) as to when a merger or share exchange is considered to be (or not to be) a
7570 "substantive business combination." While the term is somewhat vague, this section is intended to
7571 preclude a corporation from going around the requirements of s. 607.1004 (dealing with when a
7572 class vote is required on changes to the corporation's articles of incorporation) by effecting a
7573 merger which seeks to amend the articles of incorporation but does not constitute a substantive
7574 business combination.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7575 Previous subsection (8), dealing with amendment to a plan of merger or share exchange, has been
7576 moved following the 2016 version of the Model Act into ss. 607.1101(6) and 607.1102(6). The
7577 topic in previous subsection (9), regarding abandonment of a merger or share exchange, is now
7578 covered in new s. 607.1107.

7579 New subsection (9), dealing with protections for shareholders who have interest holder liability,
7580 has been added in conformity with the corollary Model Act provision.

7581 Subsections (10) and (11) deal with the two situations in which, unless the articles of incorporation
7582 provide otherwise, shareholders do not get a vote on a share exchange.

7583

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7584 607.11035 Shareholder approval of a merger or share exchange in connection with a
7585 tender offer.

7586 (1) Unless the articles of incorporation otherwise provide, shareholder approval of a plan
7587 of merger or a plan of share exchange under s. 607.1103(1)(b) is not required if:

7588 (a) The plan of merger or share exchange expressly:

7589 1. Permits or requires the merger or share exchange to be effected under this
7590 section; and

7591 2. Provides that, if the merger or share exchange is to be effected under this
7592 section, the merger or share exchange will be effected as soon as practicable
7593 following the satisfaction of the requirement in paragraph (f);

7594 (b) Another party to the merger, the acquiring eligible entity in the share exchange,
7595 or a parent of another party to the merger or the parent of the acquiring eligible entity in
7596 the share exchange, makes an offer to purchase, on the terms provided in the plan of
7597 merger or the plan of share exchange, any and all of the outstanding shares of the
7598 corporation that, absent this section, would be entitled to vote on the plan of merger or
7599 the plan of share exchange, except that the offer may exclude shares of the corporation
7600 that are owned at the commencement of the offer by the corporation, the offeror, or any
7601 parent of the offeror, or by any wholly owned subsidiary of any of the foregoing;

7602 (c) The offer discloses that the plan of merger or the plan of share exchange provides
7603 that the merger or share exchange will be effected as soon as practicable following the
7604 satisfaction of the requirement set forth in paragraph (f) and that the shares of the
7605 corporation that are not tendered in response to the offer will be treated pursuant to
7606 paragraph (h);

7607 (d) The offer remains open for at least 10 days;

7608 (e) The offeror purchases all shares properly tendered in response to the offer
7609 and not properly withdrawn;

7610 (f) The shares listed below are collectively entitled to cast at least the minimum
7611 number of votes on the merger or share exchange that, absent this section, would be
7612 required by this chapter and by the articles of incorporation for the approval of the merger
7613 or share exchange by the shareholders and by each other voting group entitled to vote on
7614 the merger or share exchange at a meeting at which all shares entitled to vote on the
7615 approval were present and voted:

7616 1. Shares purchased by the offeror in accordance with the offer;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7617 2. Shares otherwise owned by the offeror or by any parent of the offeror or
7618 any wholly owned subsidiary of any of the foregoing; and

7619 3. Shares subject to an agreement that they are to be transferred, contributed,
7620 or delivered to the offeror, any parent of the offeror, or any wholly owned subsidiary
7621 of any of the foregoing in exchange for shares or eligible interests in such offeror,
7622 parent, or subsidiary;

7623 (g) The offeror or a wholly owned subsidiary of the offeror merges with or into, or
7624 effects a share exchange in which it acquires shares of, the corporation; and

7625 (h) Each outstanding share of each class or series of shares of the corporation that
7626 the offeror is offering to purchase in accordance with the offer, and that is not purchased
7627 in accordance with the offer, is to be converted in the merger into, or into the right to
7628 receive, or is to be exchanged in the share exchange for, or for the right to receive, the same
7629 amount and kind of securities, eligible interests, obligations, rights, cash, other property,
7630 or any combination of the foregoing, to be paid or exchanged in accordance with the offer
7631 for each share of that class or series of shares that is tendered in response to the offer,
7632 except that shares of the corporation that are owned by the corporation or that are described
7633 in subparagraphs (f)2. or 3. need not be converted into or exchanged for the consideration
7634 described in this paragraph.

7635 (2) As used in this section, the term:

7636 (a) "Offer" means the offer referred to in paragraph (1)(b).

7637 (b) "Offeror" means the person making the offer.

7638 (c) "Parent" of an eligible entity means a person that owns, directly or indirectly
7639 through one or more wholly owned subsidiaries, all of the outstanding shares of or eligible
7640 interests in that eligible entity.

7641 (d) Shares tendered in response to the offer shall be deemed to have been
7642 "purchased" in accordance with the terms of the offer at the earliest time as of which:

7643 1. The offeror has irrevocably accepted those shares for payment; and

7644 2. In the case of shares represented by certificates, the offeror, or the
7645 offeror's designated depository or other agent, has physically received the
7646 certificates representing those shares or, in the case of shares without certificates,
7647 those shares have been transferred into the account of the offeror or its designated
7648 depository or other agent, or an agent's message relating to those shares has been
7649 received by the offeror or its designated depository or other agent.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7650 (e) "Wholly owned subsidiary" of a person means an eligible entity of or in
7651 which a person owns, directly or indirectly, all of the outstanding shares or eligible
7652 interests.

7653

7654 **Commentary to Section 607.11035:**

7655 New s. 607.11035 is derived from subsection (j) of Model Act s. 11.04. Similar to Delaware law,
7656 it allows for a "two step" transaction in which the offeror first makes a tender offer to shareholders,
7657 and through the tender offer acquires enough of an interest in the Company to satisfy the
7658 shareholder approval that would otherwise be required.

7659

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7660 607.1104 Merger between parent and subsidiary or between subsidiaries of subsidiary
7661 corporation.

7662 (1) (a) A domestic or foreign parent corporation eligible entity that owns shares of a
7663 domestic corporation which carry owning at least 80 percent of the voting power outstanding
7664 shares of each class and series of the outstanding shares of the a subsidiary ~~corporation~~ may:

7665 1. Merge the subsidiary into itself, if it is a domestic or foreign eligible entity,
7666 or into another domestic or foreign eligible entity in which the parent eligible entity
7667 owns at least 80 percent of the voting power of each class and series of the
7668 outstanding shares or eligible interests which have voting power; or

7669 2. ~~may~~ Merge itself, if it is a domestic or foreign eligible entity, into such the
7670 subsidiary.

7671 (b) Mergers under subparagraphs (a)1. or (a)2. do not require the approval of the
7672 board of directors or shareholders of the subsidiary unless the articles of incorporation or
7673 organic rules of the parent eligible entity or the articles of incorporation of the subsidiary
7674 otherwise provide. Section 607.1103(9) applies to a merger under this section. The articles
7675 of merger relating to a merger under this section do not need to be signed by the subsidiary
7676 ~~, merge the subsidiary into and with another subsidiary in which the parent corporation~~
7677 ~~owns at least 80 percent of the outstanding shares of each class of the subsidiary without~~
7678 ~~the approval of the shareholders of the parent or subsidiary. In a merger of a parent~~
7679 ~~corporation into its subsidiary corporation, the approval of the shareholders of the parent~~
7680 ~~corporation shall be required if the articles of incorporation of the surviving corporation~~
7681 ~~will differ, except for amendments enumerated in s. 607.1002, from the articles of~~
7682 ~~incorporation of the parent corporation before the merger, and the required vote shall be~~
7683 ~~the greater of the vote required to approve the merger and the vote required to adopt each~~
7684 ~~change to the articles of incorporation as if each change had been presented as an~~
7685 ~~amendment to the articles of incorporation of the parent corporation.~~

7686 (b) ~~The board of directors of the parent shall adopt a plan of merger sets forth:~~

7687 1. ~~The names of the parent and subsidiary corporations;~~

7688 2. ~~The manner and basis of converting the shares of the subsidiary or parent into~~
7689 ~~shares, obligations, or other securities of the parent or any other corporation or, in whole~~
7690 ~~or in part, into cash or other property, and the manner and basis of converting rights to~~
7691 ~~acquire shares of each corporation into rights to acquire shares, obligations, and other~~
7692 ~~securities of the surviving or any other corporation or, in whole or in part, into cash or other~~
7693 ~~property;~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7694 3. ~~If the merger is between the parent and a subsidiary corporation and the parent~~
7695 ~~is not the surviving corporation, a provision for the pro rata issuance of shares of the~~
7696 ~~subsidiary to the holders of the shares of the parent corporation upon surrender of any~~
7697 ~~certificates therefor; and~~

7698 4. ~~A clear and concise statement that shareholders of the subsidiary who, except~~
7699 ~~for the applicability of this section, would be entitled to vote and who dissent from the~~
7700 ~~merger pursuant to s. 607.1321, may be entitled, if they comply with the provisions of this~~
7701 ~~act regarding appraisal rights, to be paid the fair value of their shares.~~

7702 (2) ~~The parent shall, within 10 days after the effective date of a merger approved under~~
7703 ~~subsection (1), notify each of the subsidiary's shareholders that the merger has become effective~~
7704 ~~mail a copy or summary of the plan of merger to each shareholder of the subsidiary who does not~~
7705 ~~waive the mailing requirement in writing.~~

7706 (3) ~~—The parent may not deliver articles of merger to the Department of State for filing~~
7707 ~~until at least 30 days after the date it mailed a copy of the plan of merger to each shareholder of~~
7708 ~~the subsidiary who did not waive the mailing requirement, or, if earlier, upon the waiver thereof~~
7709 ~~by the holders of all of the outstanding shares of the subsidiary.~~

7710 (4) ~~—Articles of merger under this section may not contain amendments to the articles of~~
7711 ~~incorporation of the parent corporation (except for amendments enumerated in s. 607.1002).~~

7712 (5) ~~—Two or more subsidiaries may be merged into the parent pursuant to this section.~~

7713 (3) Except as provided for in subsections (1) and (2), a merger between a parent eligible
7714 entity and a domestic subsidiary corporation shall be governed by the provisions of ss. 607.1101-
7715 607.1107 applicable to mergers generally.

7716

7717 **Commentary to Section 607.1104:**

7718 Like the rest of Article 11, this section was fundamentally changed in 1999 and then further
7719 fundamentally changed in the 2016 version of the Model Act.

7720 Subsection (2) is a Model Act provision. It requires that shareholders be given notice within 10
7721 days of the effective date of the merger. A similar requirement is contained in the DGCL.

7722 Subsection (3) has been deleted. The 30 day notice requirement was deleted from the Model Act
7723 in 1999. The requirement still exists in approximately 17 other jurisdictions (including New York
7724 and Illinois), but most states, including other large Model Act states, have removed this
7725 requirement. Removal of subsection (3) eliminates the key objection that many practitioners have
7726 had to this provision in the FBCA.

7727 This section continues to use the 80% threshold for application of this section. While the Model
7728 Act and the DGCL (and many other states) use a 90% threshold, it was believed that because this
7729 threshold has been used in Florida since 1989, that it should be retained in the statute.

7730

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7731 607.11045 Holding company formation by merger by certain corporations.

7732 (1) This section applies only to a corporation that has shares registered pursuant to s. 12
7733 of the Securities Exchange Act of 1934 ~~of any class or series which are either registered on a~~
7734 ~~national securities exchange or designated as a national market system security on an interdealer~~
7735 ~~quotation system by the National Association of Securities Dealers, Inc.,~~ or held of record by not
7736 fewer than 2,000 shareholders.

7737 (2) As used in this section, the term:

7738 (a) "Constituent corporation" means a corporation that is a party to a merger
7739 governed by this section.

7740 (b) "Holding company" means a corporation that, from the date it first issued shares
7741 until consummation of a merger governed by this section, was at all times a wholly owned
7742 subsidiary of a constituent corporation, and whose shares are issued in such merger.

7743 (c) "Wholly owned subsidiary" means, as to a corporation, any other corporation of
7744 which it owns, directly or indirectly through one or more subsidiaries, all of the issued and
7745 outstanding shares.

7746 (3) Notwithstanding the requirements of s. 607.1103, unless expressly required by its
7747 articles of incorporation, no vote of shareholders of a corporation is necessary to authorize a merger
7748 of the corporation with or into a wholly owned subsidiary of such corporation if:

7749 (a) Such corporation and wholly owned subsidiary are the only constituent
7750 corporations to the merger;

7751 (b) Each share or fraction of a share of the constituent corporation whose shares are
7752 being converted pursuant to the merger which are outstanding immediately prior to the
7753 effective date of the merger is converted in the merger into a share or equal fraction of
7754 share of a holding company having the same designations, rights, powers and preferences,
7755 and qualifications, limitations and restrictions thereof as the share of the constituent
7756 corporation being converted in the merger;

7757 (c) The holding company and each of the constituent corporations to the merger are
7758 domestic corporations;

7759 (d) The articles of incorporation and bylaws of the holding company immediately
7760 following the effective date of the merger contain provisions identical to the articles of
7761 incorporation and bylaws of the constituent corporation whose shares are being converted
7762 pursuant to the merger immediately prior to the effective date of the merger, except
7763 provisions regarding the incorporators, the corporate name, the registered office and agent,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7764 the initial board of directors, the initial subscribers for shares and matters solely of
7765 historical significance, and such provisions contained in any amendment to the articles of
7766 incorporation as were necessary to effect a change, exchange, reclassification, or
7767 cancellation of shares, if such change, exchange, reclassification, or cancellation has
7768 become effective;

7769 (e) As a result of the merger, the constituent corporation whose shares are being
7770 converted pursuant to the merger or its successor corporation becomes or remains a direct
7771 or indirect wholly owned subsidiary of the holding company;

7772 (f) The directors of the constituent corporation become or remain the directors of
7773 the holding company upon the effective date of the merger;

7774 (g) The articles of incorporation of the surviving corporation immediately following
7775 the effective date of the merger are identical to the articles of incorporation of the
7776 constituent corporation whose shares are being converted pursuant to the merger
7777 immediately prior to the effective date of the merger, except provisions regarding the
7778 incorporators, the corporate name, the registered office and agent, the initial board of
7779 directors, the initial subscribers for shares and matters solely of historical significance, and
7780 such provisions contained in any amendment to the articles of incorporation as were
7781 necessary to effect a change, exchange, reclassification, or cancellation of shares, if such
7782 change, exchange, reclassification, or cancellation has become effective. The articles of
7783 incorporation of the surviving corporation must be amended in the merger to contain a
7784 provision requiring, by specific reference to this section, that any act or transaction by or
7785 involving the surviving corporation, other than the election or removal of directors, which
7786 requires for its adoption under this chapter ~~æ~~ or its articles of incorporation the approval
7787 of the shareholders of the surviving corporation also be approved by the shareholders of
7788 the holding company, or any successor by merger, by the same vote as is required by this
7789 chapter ~~æ~~ or the articles of incorporation of the surviving corporation. The articles of
7790 incorporation of the surviving corporation may be amended in the merger to reduce the
7791 number of classes and shares which the surviving corporation is authorized to issue;

7792 (h) The board of directors of the constituent corporation determines that the
7793 shareholders of the constituent corporation will not recognize gain or loss for United States
7794 federal income tax purposes; and

7795 (i) The board of directors of such corporation adopts a plan of merger that sets forth:

7796 1. The names of the constituent corporations;

7797 2. The manner and basis of converting the shares of the corporation into
7798 shares of the holding company and the manner and basis of converting rights to

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7799 acquire shares of such corporation into rights to acquire shares of the holding
7800 company; and

7801 3. A provision for the pro rata issuance of shares of the holding company
7802 to the holders of shares of the corporation upon surrender of any certificates
7803 therefor.

7804 (4) From and after the effective time of a merger adopted by a constituent corporation
7805 by action of its board of directors and without any vote of shareholders pursuant to this section:

7806 (a) To the extent the restrictions of ss. 607.0901 and 607.0902 applied to the
7807 constituent corporation and its shareholders at the effective time of the merger, such
7808 restrictions also apply to the holding company and its shareholders immediately after the
7809 effective time of the merger as though it were the constituent corporation, and all shares of
7810 the holding company acquired in the merger shall, for purposes of ss. 607.0901 and
7811 607.0902, be deemed to have been acquired at the time that the shares of the constituent
7812 corporation converted in the merger were acquired, and provided further that any
7813 shareholder who immediately prior to the effective time of the merger was not an interested
7814 shareholder within the meaning of s. 607.0901 shall not, solely by reason of the merger,
7815 become an interested shareholder of the holding company; and

7816 (b) If the corporate name of the holding company immediately following the
7817 effective time of the merger is the same as the corporate name of the constituent corporation
7818 immediately prior to the effective time of the merger, the shares of the holding company
7819 into which the shares of the constituent corporation are converted in the merger shall be
7820 represented by the share certificates that previously represented shares of the constituent
7821 corporation.

7822 (5) If a plan of merger is adopted by a constituent corporation by selection of its board
7823 of directors without any vote of shareholders pursuant to this section, the secretary or assistant
7824 secretary of the constituent corporation shall certify in the articles of merger that the plan of merger
7825 has been adopted pursuant to this section and that the conditions specified in subsection (3) have
7826 been satisfied. The articles of merger so certified shall then be filed and become effective in
7827 accordance with s. 607.1106.

7828

7829

7830 **Commentary to Section 607.11045:**

7831 This section is not in the Model Act. It was added to the FBCA in 1998, based on s. 251(g) of the
7832 DGCL. This provision only applies to public companies, although the section has been modified
7833 to make the definition of what is a public company consistent with other proposed FBCA sections
7834 (such as the majority voting section of the FBCA).

7835 The proposed changes bring this section into conformity with certain aspects of the current version
7836 of s. 251(g) of the DGCL, which allows for these transactions to include additional amendments
7837 to constituent documents under subsection (3)(d). However, although the DGCL also attempts to
7838 allow for the transactions to include LLCs, the DGCL revisions in that regard are a bit confusing
7839 and, after consideration, have not been added to the text of this section.

7840

FINAL STATUTE AS ADOPTED
(With Commentary)

7841 607.1105 Articles of merger or share exchange.

7842 (1) ~~After a plan of merger or share exchange has been adopted and approved as required~~
7843 ~~by this chapter or if the merger is being effected under s. 607.1101(1)(b), the merger has been~~
7844 ~~approved as required by the organic law governing the parties to the merger, the articles of merger~~
7845 ~~must be signed by each party to the merger, except as provided in s. 607.1104(1). The articles~~
7846 ~~approved by the shareholders, or adopted by the board of directors if shareholder approval is not~~
7847 ~~required, the surviving or acquiring corporation shall deliver to the Department of State for filing~~
7848 ~~articles of merger or share exchange which shall be executed by each corporation as required by~~
7849 ~~s. 607.0120 and which shall~~ must set forth:

7850 (a) ~~The plan of merger or share exchange name, jurisdiction of formation, and type~~
7851 ~~of entity of each party to the merger;~~ of entity of each party to the merger;

7852 (b) ~~If not already identified as the survivor pursuant to paragraph (a), the name,~~
7853 ~~jurisdiction of formation, and type of entity of the survivor effective date of the merger or~~
7854 ~~share exchange, which may be on or after the date of filing the articles of merger or share~~
7855 ~~exchange; if the articles of merger or share exchange do not provide for an effective date~~
7856 ~~of the merger or share exchange, then the effective date shall be the date on which the~~
7857 ~~articles of merger or share exchange are filed;~~ articles of merger or share exchange are filed;

7858 (c) ~~If shareholder approval was not required, a statement to that effect; and the~~
7859 ~~survivor of the merger is a domestic corporation and its articles of incorporation are being~~
7860 ~~amended, or if a new domestic corporation is being created as a result of the merger:~~ amended, or if a new domestic corporation is being created as a result of the merger:

7861 1. The amendments to the survivor's articles of incorporation; or

7862 2. The articles of incorporation of the new corporation;

7863 (d) ~~As to each corporation, to the extent applicable, the date of adoption of the plan~~
7864 ~~of merger or share exchange by the shareholders or by the board of directors when no vote~~
7865 ~~of the shareholders is required. If the survivor of the merger is a domestic eligible entity,~~
7866 ~~other than a domestic corporation, and its public organic record is being amended in~~
7867 ~~connection with the merger, or if a new domestic eligible entity is being created as a result~~
7868 ~~of the merger:~~ of the merger:

7869 1. The amendments to the public organic record of the survivor; or

7870 2. The public organic record of the new eligible entity;

7871 (e) If the plan of merger required approval by the shareholders of a domestic
7872 corporation that is a party to the merger, a statement that the plan was duly approved by
7873 the shareholders and, if voting by any separate voting group was required, by each such

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7874 separate voting group, in the manner required by this chapter and the articles of
7875 incorporation of such domestic corporation;

7876 (f) If the plan of merger did not require approval by the shareholders of a domestic
7877 corporation that is a party to the merger, a statement to that effect;

7878 (g) As to each foreign corporation that is a party to the merger, a statement that the
7879 participation of the foreign corporation was duly authorized in accordance with such
7880 corporation's organic law;

7881 (h) As to each domestic or foreign eligible entity that is a party to the merger and
7882 that is not a domestic or foreign corporation, a statement that the participation of the eligible
7883 entity in the merger was duly authorized in accordance with such eligible entity's organic
7884 law; and

7885 (i) If the survivor is created by the merger and is a domestic limited liability
7886 partnership, the document required to elect that status, as an attachment.

7887 (2) After a plan of share exchange in which the acquired eligible entity is a domestic
7888 corporation or other eligible entity has been adopted and approved as required by this chapter,
7889 articles of share exchange must be signed by the acquired eligible entity and the acquiring eligible
7890 entity. The articles must set forth:

7891 (a) The name, jurisdiction of formation, and type of entity of the acquired eligible
7892 entity;

7893 (b) The name, jurisdiction of formation, and type of entity of the domestic or foreign
7894 eligible entity that is the acquiring eligible entity; and

7895 (c) A statement that the plan of share exchange was duly approved by the acquired
7896 eligible entity by:

7897 1. The required vote or consent of each class or series of shares or eligible
7898 interests included in the exchange; and

7899 2. The required vote or consent of each other class or series of shares or
7900 eligible interests entitled to vote on approval of the exchange by the articles of
7901 incorporation or the organic rules of the acquired eligible entity.

7902 (3) In addition to the requirements of subsections (1) and (2), articles of merger or
7903 articles of share exchange may contain any other provision not prohibited by law.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7904 (4) The articles of merger or the articles of share exchange shall be delivered to the
7905 department for filing, and, subject to subsection (5), the merger or share exchange shall take effect
7906 at the effective date determined in accordance with s. 607.0123.

7907 (5) With respect to a merger in which one or more foreign entities is a party or a foreign
7908 eligible entity created by the merger is the survivor, the merger itself shall become effective at the
7909 later of:

7910 (a) When all documents required to be filed in all foreign jurisdictions to effect the
7911 merger have become effective; or

7912 (b) When the articles of merger take effect.

7913 (6) Articles of merger required to be filed under this section may be combined with any
7914 filing required under the organic law governing any other domestic eligible entity involved in the
7915 transaction if the combined filing satisfies the requirements of both this section and the other
7916 organic law.

7917 (27) A copy of the articles of merger or share exchange, certified by the department of
7918 ~~State~~, may be filed in the office of the official who is the recording officer of each county in this
7919 state in which real property of a constituent corporation other than the surviving corporation is
7920 situated.

7921

7922 **Commentary to Section 607.1105:**

7923 This section has been rewritten to largely bring it into conformity with the 1999 and 2016 changes
7924 to the Model Act. Subsection (2) (now subsection (7)) has been retained even though it is not a
7925 Model Act provision.

7926

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7927 607.1106 Effect of merger or share exchange.

7928 (1) When a merger becomes effective:

7929 (a) ~~The domestic or foreign Every other corporation~~ eligible entity that is
7930 ~~designated in the plan of merger as the survivor continues party to the merger merges into~~
7931 ~~the surviving corporation or comes into existence, as the case may be and the separate~~
7932 ~~existence of every corporation except the surviving corporation ceases;~~

7933 (b) The separate existence of every domestic or foreign eligible entity that is a
7934 party to the merger, other than the survivor, ceases;

7935 (b~~c~~) All The title to all real property estate and other property, including or any
7936 interest therein and or all title thereto, owned by, and every contract right possessed by,
7937 each domestic or foreign corporation eligible entity that is a party to the merger, other than
7938 the survivor, is vested in the surviving corporation become the property and contract rights
7939 of and become vested in the survivor, without transfer, reversion, or impairment;

7940 (e~~d~~) All debts, obligations, and other liabilities of each domestic or foreign The
7941 surviving corporation eligible entity that is a shall thenceforth be responsible and liable for
7942 all the liabilities and obligations of each corporation party to the merger, other than the
7943 survivor, become debts, obligations, and liabilities of the survivor;

7944 (e~~e~~) The name of the survivor may be, but need not be, Any claim existing or
7945 action or proceeding pending by or against any corporation party to the merger may be
7946 continued as if the merger did not occur or the surviving corporation may be substituted in
7947 any pending the proceeding for the name of any party to the merger whose separate for
7948 the which ceased existence ceased in the merger;

7949 (e~~f~~) Neither the rights of creditors nor any liens upon the property of any
7950 corporation party to the merger shall be impaired by such merger;

7951 (f~~g~~) If the survivor is a domestic eligible entity, the articles of incorporation and
7952 bylaws or the organic rules of the survivor surviving corporation are amended to the extent
7953 provided in the plan of merger; and

7954 (h) The articles of incorporation and bylaws or the organic rules of a survivor
7955 that is a domestic eligible entity and is created by the merger become effective;

7956 (g~~i~~) The shares (and the rights to acquire shares, obligations, or other securities)
7957 of each domestic or foreign corporation party to the merger, and the eligible interests in
7958 any other eligible entity that is party to a merger, that are to be converted in accordance
7959 with the terms of the merger into shares or other securities, eligible interests, rights,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7960 obligations, rights to acquire shares, other securities, or eligible interests, ~~or other securities~~
7961 ~~of the surviving or any other corporation or into cash, or other property, or any combination~~
7962 of the foregoing are converted, are converted, and the former holders of such the shares,
7963 rights to acquire shares, or other eligible interests are entitled only to the rights provided to
7964 them by those terms of the merger or to any rights they may have in the articles of merger
7965 ~~or to their rights under s. 607.1302 or under the organic law governing the eligible entity;~~

7966 (j) Except as provided by law or the plan of merger, all the rights, privileges,
7967 franchises and immunities of each eligible entity that is a party to the merger, other than
7968 the survivor, become the rights, privileges, franchises and immunities of the survivor.

7969 (k) If the survivor exists before the merger:

7970 1. All the property and contract rights of the survivor remain its property
7971 and contract rights without transfer, reversion, or impairment;

7972 2. The survivor remains subject to all of its debts, obligations, and other
7973 liabilities; and

7974 3. Except as provided by law or the plan of merger, the survivor continues
7975 to hold all of its rights, privileges, franchises, and immunities.

7976 (2) When a share exchange becomes effective, the shares, eligible interests, and rights to
7977 acquire shares or eligible interests, in the of each-acquired eligible entity corporation that are to be
7978 exchanged in accordance with the terms of the share exchange for:

7979 (a) Shares or other securities;

7980 (b) Eligible interests;

7981 (c) Obligations;

7982 (d) Rights to acquire shares, other securities or eligible interests;

7983 (e) Cash;

7984 (f) Other property; or

7985 (g) Any combination of the foregoing

7986 are entitled only to the rights provided to them by the terms of the as provided in the plan of share
7987 exchange, and the former holders of the shares are entitled only to the exchange rights provided in
7988 the articles of share exchange or to any their rights they may have under s. 607.1302 or under the
7989 organic law governing the acquired eligible entity.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

7990 (3) Except as otherwise provided in the articles of incorporation of a domestic
7991 corporation or the organic law governing or organic rules of a domestic or foreign eligible entity,
7992 the effect of a merger or share exchange on interest holder liability is as follows:

7993 (a) A person who becomes subject to new interest holder liability in respect of
7994 an eligible entity as a result of a merger or share exchange shall have that new interest
7995 holder liability only in respect of interest holder liabilities that arise after the merger or
7996 share exchange becomes effective.

7997 (b) If a person had interest holder liability with respect to a party to the merger
7998 or the acquired eligible entity before the merger or share exchange becomes effective with
7999 respect to shares or eligible interests of such party or acquired entity which were exchanged
8000 in the merger or share exchange, which were cancelled in the merger, or the terms and
8001 conditions of which relating to interest holder liability were amended pursuant to the
8002 merger:

8003 1. The merger or share exchange does not discharge that prior interest
8004 holder liability with respect to any interest holder liabilities that arose before the
8005 merger or share exchange becomes effective.

8006 2. The provisions of the organic law governing any eligible entity for
8007 which the person had that prior interest holder liability shall continue to apply to
8008 the collection or discharge of any interest holder liabilities preserved by
8009 subparagraph 1. as if the merger or share exchange had not occurred.

8010 3. The person shall have such rights of contribution from other persons as
8011 are provided by the organic law governing the eligible entity for which the person
8012 had that prior interest holder liability with respect to any interest holder liabilities
8013 preserved by subparagraph 1. as if the merger or share exchange had not occurred.

8014 4. The person shall not, by reason of such prior interest holder liability,
8015 have interest holder liability with respect to any interest holder liabilities that arise
8016 after the merger or share exchange becomes effective.

8017 (c) If a person has interest holder liability both before and after a merger
8018 becomes effective with unchanged terms and conditions with respect to the eligible entity
8019 that is the survivor by reason of owning the same shares or eligible interests before and
8020 after the merger becomes effective, the merger has no effect on such interest holder
8021 liability.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8022 (d) A share exchange has no effect on interest holder liability related to shares
8023 or eligible interests of the acquired eligible entity that were not exchanged in the share
8024 exchange.

8025 (4) Upon a merger becoming effective, a foreign eligible entity that is the survivor of the
8026 merger is deemed to:

8027 (a) Appoint the secretary of state as its agent for service of process in a
8028 proceeding to enforce the rights of shareholders of each domestic corporation that is a party
8029 to the merger who exercise appraisal rights, and

8030 (b) Agree that it will promptly pay any amount that the shareholders are entitled
8031 to under ss. 607.1301-607.1340.

8032 (5) Except as provided in the organic law governing a party to a merger or in its articles
8033 of incorporation or organic rules, the merger does not give rise to any rights that an interest holder,
8034 governor, or third party would have upon a dissolution, liquidation, or winding up of that party.
8035 The merger does not require a party to the merger to wind up its affairs and does not constitute or
8036 cause its dissolution or termination.

8037 (6) Property held for a charitable purpose under the law of this state by a domestic or
8038 foreign eligible entity immediately before a merger becomes effective may not, as a result of the
8039 transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise
8040 transferred except and only to the extent permitted by or pursuant to the laws of this state
8041 addressing cy pres or dealing with nondiversion of charitable assets.

8042 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
8043 donation, subscription, or conveyance which is made to an eligible entity that is a party to a merger
8044 that is not the survivor and which takes effect or remains payable after the merger inures to the
8045 survivor.

8046 (8) A trust obligation that would govern property if the property is directed to be
8047 transferred to a nonsurviving eligible entity will apply to property that is to be transferred instead
8048 to the survivor after a merger becomes effective.

8049

8050 **Commentary to Section 607.1106:**

8051 Changes have been made above following other changes made in Article 11 of the Model Act to
8052 provide more clarity on the effect of mergers or share exchanges of domestic and foreign
8053 corporations, to allow mergers with non-corporate entities, and for mergers resulting in the
8054 formation of a new corporation.

8055 Subsection (1)(e) (now subsection (1)(f)) is no longer in the Model Act but has been retained herein
8056 for the elimination of doubt and possible confusion that might result if the section were to be
8057 removed.

8058

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8059 607.1107 Abandonment of a merger or share exchange.

8060 (1) After a plan of merger or a plan of share exchange has been adopted and approved
8061 as required by this chapter, and before the articles of merger or the articles of share exchange have
8062 become effective, the plan may be abandoned by a domestic corporation that is a party to the plan
8063 without action by its shareholders in accordance with any procedures set forth in the plan of merger
8064 or the plan of share exchange, or, if no such procedures are set forth in the plan, in the manner
8065 determined by the board of directors.

8066 (2) If a merger or share exchange is abandoned under subsection (1) after articles of
8067 merger or articles of share exchange have been delivered to the department for filing but before
8068 the merger or articles of share exchange has become effective, a statement of abandonment signed
8069 by all the parties that signed the articles of merger or articles of share exchange must be delivered
8070 to the department for filing before the articles of merger or articles of share exchange become
8071 effective. The statement shall take effect on filing, whereupon the merger or share exchange shall
8072 be deemed abandoned and shall not become effective. The statement of abandonment must
8073 contain:

8074 (a) The name of each party to the merger or the names of the acquiring and acquired
8075 entities in a share exchange;

8076 (b) The date on which the articles of merger or articles of share exchange were filed
8077 by the department; and

8078 (c) A statement that the merger or share exchange has been abandoned in
8079 accordance with this section.

8080

8081 **Commentary to Section 607.1107:**

8082 This section (s. 11.08 of the Model Act) was added to the Model Act in 1999 to allow for
8083 abandonment of mergers or share exchanges prior to their effectiveness. This topic was previously
8084 covered in s. 607.1103(9) of the FBCA.

8085 Section 607.1103(9) currently reads as follows:

8086 (9)Unless a plan of merger or share exchange prohibits abandonment of the
8087 merger or share exchange without shareholder approval after a merger or share exchange
8088 has been authorized, the planned merger or share exchange may be abandoned (subject to
8089 any contractual rights) at any time prior to the filing of articles of merger or share
8090 exchange by any corporation party to the merger or share exchange, without further
8091 shareholder action, in accordance with the procedure set forth in the plan of merger or
8092 share exchange or, if none is set forth, in the manner determined by the board of directors
8093 of such corporation.

8094

FINAL STATUTE AS ADOPTED
(With Commentary)

8095 ~~607.1107—Merger or share exchange with foreign corporations.~~

8096

8097 (1) ~~One or more foreign corporations may merge or enter into a share exchange with one~~
8098 ~~or more domestic corporations if:~~

8099

8100 (a) ~~In a merger, the merger is permitted by the law of the state or country under~~
8101 ~~the law of which each foreign corporation is incorporated and each foreign corporation~~
8102 ~~complies with that law in effecting the merger;~~

8103

8104 (b) ~~In a share exchange, the corporation the shares of which will be acquired is a~~
8105 ~~domestic corporation, whether or not a share exchange is permitted by law of the state or~~
8106 ~~country under the law of which the acquiring corporation is incorporated;~~

8107

8108 (c) ~~The foreign corporation complies with s. 607.1105 if it is the surviving~~
8109 ~~corporation of the merger or acquiring corporation of the share exchange; and~~

8110

8111 (d) ~~Each domestic corporation complies with the applicable provisions of ss.~~
8112 ~~607.1101-607.1104 and, if it is the surviving corporation of the merger or acquiring~~
8113 ~~corporation of the share exchange, with s. 607.1105.~~

8114

8115 (2) ~~Upon the merger becoming effective, the surviving foreign corporation of a merger,~~
8116 ~~and the acquiring foreign corporation in a share exchange, is deemed:~~

8117

8118 (a) ~~To appoint the Secretary of State as its agent for service of process in a~~
8119 ~~proceeding to enforce any obligation or the rights of dissenting shareholders of each~~
8120 ~~domestic corporation party to the merger or share exchange; and~~

8121

8122 (b) ~~To agree that it will promptly pay to the dissenting shareholders of each~~
8123 ~~domestic corporation party to the merger or share exchange the amount, if any, to which~~
8124 ~~they are entitled under s. 607.1302.~~

8125

8126 (3) ~~This section does not limit the power of a foreign corporation to acquire all or part of~~
8127 ~~the shares of one or more classes or series of a domestic corporation through a voluntary exchange~~
8128 ~~or otherwise.~~

8129

8130 (4) ~~The effect of such merger shall be the same as in the case of the merger of domestic~~
8131 ~~corporations if the surviving corporation is to be governed by the laws of this state. If the surviving~~
8132 ~~corporation is to be governed by the laws of any state other than this state, the effect of such merger~~
8133 ~~shall be the same as in the case of the merger of domestic corporations except insofar as the laws~~
8134 ~~of such other state provide otherwise.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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~~(5) The redomestication of a foreign insurer to this state under s. 628.520 shall be deemed a merger of a foreign corporation and a domestic corporation, and the surviving corporation shall be deemed to be a domestic corporation incorporated under the laws of this state. The redomestication of a Florida corporation to a foreign jurisdiction under s. 628.525 shall be deemed a merger of a domestic corporation and a foreign corporation, and the surviving corporation shall be deemed to be a foreign corporation.~~

8143 **Commentary to Section 607.1107:**

8144

8145 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8146 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8147 this section.

8148 This section was originally modeled on old Model Act s. 11.07, which was deleted from the Model
8149 Act in 1999.

8150

FINAL STATUTE AS ADOPTED
(With Commentary)

8151 ~~607.1108 — Merger of domestic corporation and other business entity.~~

8152

8153 ~~(1) — As used in this section and ss. 607.1109 and 607.11101, the term "other business~~
8154 ~~entity" means a limited liability company, a foreign corporation, a not for profit corporation, a~~
8155 ~~business trust or association, a real estate investment trust, a common law trust, an unincorporated~~
8156 ~~business, a general partnership, a limited partnership, or any other entity that is formed pursuant~~
8157 ~~to the requirements of applicable law. Notwithstanding the provisions of chapter 617, a domestic~~
8158 ~~not for profit corporation acting under a plan of merger approved pursuant to s. 617.1103 shall be~~
8159 ~~governed by the provisions of ss. 607.1109, 607.11101, and this section.~~

8160

8161 ~~(2) — Pursuant to a plan of merger complying and approved in accordance with this section,~~
8162 ~~one or more domestic corporations may merge with or into one or more other business entities~~
8163 ~~formed, organized, or incorporated under the laws of this state or any other state, the United States,~~
8164 ~~foreign country, or other foreign jurisdiction, if:~~

8165

8166 ~~(a) — Each domestic corporation which is a party to the merger complies with the~~
8167 ~~applicable provisions of this chapter.~~

8168

8169 ~~(b) — Each domestic partnership that is a party to the merger complies with the~~
8170 ~~applicable provisions of chapter 620.~~

8171

8172 ~~(c) — Each domestic limited liability company that is a party to the merger complies~~
8173 ~~with the applicable provisions of chapter 605.~~

8174

8175 ~~(d) — The merger is permitted by the laws of the state, country, or jurisdiction under~~
8176 ~~which each other business entity that is a party to the merger is formed, organized, or~~
8177 ~~incorporated and each such other business entity complies with such laws in effecting the~~
8178 ~~merger.~~

8179

8180 ~~(3) — The plan of merger shall set forth:~~

8181

8182 ~~(a) — The name of each domestic corporation and the name and jurisdiction of~~
8183 ~~formation, organization, or incorporation of each other business entity planning to merge,~~
8184 ~~and the name of the surviving or resulting domestic corporation or other business entity~~
8185 ~~into which each other domestic corporation or other business entity plans to merge, which~~
8186 ~~is hereinafter and in ss. 607.1109 and 607.11101 designated as the surviving entity.~~

8187

8188 ~~(b) — The terms and conditions of the merger.~~

8189

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8190 ~~(c) — The manner and basis of converting the shares of each domestic corporation~~
8191 ~~that is a party to the merger and the partnership interests, interests, shares, obligations or~~
8192 ~~other securities of each other business entity that is a party to the merger into partnership~~
8193 ~~interests, interests, shares, obligations or other securities of the surviving entity or any other~~
8194 ~~domestic corporation or other business entity or, in whole or in part, into cash or other~~
8195 ~~property, and the manner and basis of converting rights to acquire the shares of each~~
8196 ~~domestic corporation that is a party to the merger and rights to acquire partnership interests,~~
8197 ~~interests, shares, obligations or other securities of each other business entity that is a party~~
8198 ~~to the merger into rights to acquire partnership interests, interests, shares, obligations or~~
8199 ~~other securities of the surviving entity or any other domestic corporation or other business~~
8200 ~~entity or, in whole or in part, into cash or other property.~~

8201
8202 ~~(d) — If a partnership is to be the surviving entity, the names and business addresses~~
8203 ~~of the general partners of the surviving entity.~~

8204
8205 ~~(e) — If a limited liability company is to be the surviving entity and management~~
8206 ~~thereof is vested in one or more managers, the names and business addresses of such~~
8207 ~~managers.~~

8208
8209 ~~(f) — All statements required to be set forth in the plan of merger by the laws under~~
8210 ~~which each other business entity that is a party to the merger is formed, organized, or~~
8211 ~~incorporated.~~

8212
8213 ~~(4) — The plan of merger may set forth:~~

8214
8215 ~~(a) — If a domestic corporation is to be the surviving entity, any amendments to, or~~
8216 ~~a restatement of, the articles of incorporation of the surviving entity, and such amendments~~
8217 ~~or restatement shall be effective at the effective date of the merger.~~

8218
8219 ~~(b) — The effective date of the merger, which may be on or after the date of filing~~
8220 ~~the certificate of merger.~~

8221
8222 ~~(c) — Any other provisions relating to the merger.~~

8223
8224 ~~(5) — The plan of merger required by subsection (3) shall be adopted and approved by each~~
8225 ~~domestic corporation that is a party to the merger in the same manner as is provided in s. 607.1103.~~
8226 ~~Notwithstanding the foregoing, if the surviving entity is a partnership, no shareholder of a domestic~~
8227 ~~corporation that is a party to the merger shall, as a result of the merger, become a general partner~~
8228 ~~of the surviving entity, unless such shareholder specifically consents in writing to becoming a~~
8229 ~~general partner of the surviving entity, and unless such written consent is obtained from each such~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8230 shareholder who, as a result of the merger, would become a general partner of the surviving entity,
8231 such merger shall not become effective under s. 607.11101. Any shareholder providing such
8232 consent in writing shall be deemed to have voted in favor of the plan of merger for purposes of s.
8233 607.1103.

8234
8235 (6) ~~Sections 607.1103 and 607.1301-607.1333 shall, insofar as they are applicable, apply~~
8236 ~~to mergers of one or more domestic corporations with or into one or more other business entities.~~

8237
8238 (7) ~~Notwithstanding any provision of this section or ss. 607.1109 and 607.11101, any~~
8239 ~~merger consisting solely of the merger of one or more domestic corporations with or into one or~~
8240 ~~more foreign corporations shall be consummated solely in accordance with the requirements of s.~~
8241 ~~607.1107.~~

8242

8243 **Commentary to Section 607.1108:**

8244

8245 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8246 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8247 this section.

8248

FINAL STATUTE AS ADOPTED
(With Commentary)

8249 ~~607.1109—Articles of merger.~~

8250

8251 ~~(1) After a plan of merger is approved by each domestic corporation and other business~~
8252 ~~entity that is a party to the merger, the surviving entity shall deliver to the Department of State for~~
8253 ~~filing articles of merger, which shall be executed by each domestic corporation as required by s.~~
8254 ~~607.0120 and by each other business entity as required by applicable law, and which shall set forth:~~

8255

8256 ~~(a) The plan of merger.~~

8257

8258 ~~(b) A statement that the plan of merger was approved by each domestic~~
8259 ~~corporation that is a party to the merger in accordance with the applicable provisions of~~
8260 ~~this chapter, and, if applicable, a statement that the written consent of each shareholder of~~
8261 ~~such domestic corporation who, as a result of the merger, becomes a general partner of the~~
8262 ~~surviving entity has been obtained pursuant to s. 607.1108(5).~~

8263

8264 ~~(c) A statement that the plan of merger was approved by each domestic~~
8265 ~~partnership that is a party to the merger in accordance with the applicable provisions of~~
8266 ~~chapter 620.~~

8267

8268 ~~(d) A statement that the plan of merger was approved by each domestic limited~~
8269 ~~liability company that is a party to the merger in accordance with the applicable provisions~~
8270 ~~of chapter 605.~~

8271

8272 ~~(e) A statement that the plan of merger was approved by each other business~~
8273 ~~entity that is a party to the merger, other than domestic corporations, limited liability~~
8274 ~~companies, and partnerships formed, organized, or incorporated under the laws of this~~
8275 ~~state, in accordance with the applicable laws of the state, country, or jurisdiction under~~
8276 ~~which such other business entity is formed, organized, or incorporated.~~

8277

8278 ~~(f) The effective date of the merger, which may be on or after the date of filing~~
8279 ~~the articles of merger, provided, if the articles of merger do not provide for an effective~~
8280 ~~date of the merger, the effective date shall be the date on which the articles of merger are~~
8281 ~~filed.~~

8282

8283 ~~(g) If the surviving entity is another business entity formed, organized, or~~
8284 ~~incorporated under the laws of any state, country, or jurisdiction other than this state:~~

8285

8286 ~~1. The address, including street and number, if any, of its principal office~~
8287 ~~under the laws of the state, country, or jurisdiction in which it was formed,~~
8288 ~~organized, or incorporated.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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~~2.—A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger.~~

~~3.—A statement that the surviving entity has agreed to promptly pay to the dissenting shareholders of each domestic corporation that is a party to the merger the amount, if any, to which they are entitled under s. 607.1302.~~

~~(2)—A copy of the articles of merger, certified by the Department of State, may be filed in the office of the official who is the recording officer of each county in this state in which real property of a party to the merger other than the surviving entity is situated.~~

~~(3)—A domestic corporation is not required to file articles of merger pursuant to subsection (1) if the domestic corporation is named as a party or constituent organization in articles of merger or a certificate of merger filed for the same merger in accordance with s. 605.1025, s. 617.1108, s. 620.2108(3), or s. 620.8918(1) and (2), and if the articles of merger or certificate of merger substantially complies with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (2).~~

8310 **Commentary to Section 607.1109:**

8311

8312 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8313 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8314 this section.

8315

FINAL STATUTE AS ADOPTED
(With Commentary)

8316 ~~607.11101—Effect of merger of domestic corporation and other business entity.~~

8317

8318 When a merger becomes effective:

8319

8320 (1) ~~Every domestic corporation and other business entity that is a party to the merger~~
8321 ~~merges into the surviving entity and the separate existence of every domestic corporation and other~~
8322 ~~business entity that is a party to the merger except the surviving entity ceases.~~

8323

8324 (2) ~~The title to all real estate and other property, or any interest therein, owned by each~~
8325 ~~domestic corporation and other business entity that is a party to the merger is vested in the~~
8326 ~~surviving entity without reversion or impairment.~~

8327

8328 (3) ~~The surviving entity shall thereafter be responsible and liable for all the liabilities and~~
8329 ~~obligations of each domestic corporation and other business entity that is a party to the merger,~~
8330 ~~including liabilities arising out of appraisal rights with respect to such merger under applicable~~
8331 ~~law.~~

8332

8333 (4) ~~Any claim existing or action or proceeding pending by or against any domestic~~
8334 ~~corporation or other business entity that is a party to the merger may be continued as if the merger~~
8335 ~~did not occur or the surviving entity may be substituted in the proceeding for the domestic~~
8336 ~~corporation or other business entity which ceased existence.~~

8337

8338 (5) ~~Neither the rights of creditors nor any liens upon the property of any domestic~~
8339 ~~corporation or other business entity shall be impaired by such merger.~~

8340

8341 (6) ~~If a domestic corporation is the surviving entity, the articles of incorporation of such~~
8342 ~~corporation in effect immediately prior to the time the merger becomes effective shall be the~~
8343 ~~articles of incorporation of the surviving entity, except as amended or restated to the extent~~
8344 ~~provided in the plan of merger.~~

8345

8346 (7) ~~The shares, partnership interests, interests, obligations, or other securities, and the~~
8347 ~~rights to acquire shares, partnership interests, interests, obligations, or other securities, of each~~
8348 ~~domestic corporation and other business entity that is a party to the merger shall be converted into~~
8349 ~~shares, partnership interests, interests, obligations, or other securities, or rights to such securities,~~
8350 ~~of the surviving entity or any other domestic corporation or other business entity or, in whole or~~
8351 ~~in part, into cash or other property as provided in the plan of merger, and the former holders of~~
8352 ~~shares, partnership interests, interests, obligations, or other securities, or rights to such securities,~~
8353 ~~shall be entitled only to the rights provided in the plan of merger and to their appraisal rights, if~~
8354 ~~any, under s. 605.1006, ss. 605.1061–605.1072, ss. 607.1301–607.1333, ss. 620.2114–620.2124, or~~
8355 ~~other applicable law.~~

8356 **Commentary to Section 607.11101:**

8357

8358 This section has been deleted from the FBCA. The changes in the 1999 and 2016 Model Act,
8359 which now cover this issue within ss. 607.1101-607.1107, now duplicate the intent and effect of
8360 this section.

8361

PART B - DOMESTICATION

607.11920 Domestication.

(1) By complying with the provisions of this section and ss. 607.11921-607.11924, as applicable, a foreign corporation may become a domestic corporation if the domestication is permitted by the organic law of the foreign corporation.

(2) By complying with the provisions of this section and ss. 607.11921-607.11924, as applicable, a domestic corporation may become a foreign corporation pursuant to a plan of domestication if the domestication is permitted by the organic law of the foreign corporation.

(3) In a domestication under subsections (2), the domesticating eligible entity must enter into a plan of domestication. The plan of domestication must include:

(a) The name of the domesticating corporation;

(b) The name and jurisdiction of formation of the domesticated corporation;

(c) The manner and basis of reclassifying the shares of the domesticating corporation into shares or other securities, obligations, rights to acquire shares or other securities, cash, other property, or any combination of the foregoing;

(d) The proposed organic rules of the domesticated corporation which must be in writing; and

(e) The other terms and conditions of the domestication.

(4) In addition to the requirements of subsection (3), a plan of domestication may contain any other provision not prohibited by law.

(5) The terms of a plan of domestication may be made dependent upon facts objectively ascertainable outside the plan in accordance with a. 607.0120(11).

(6) If a protected agreement of a domesticating corporation in effect immediately before the domestication becomes effective contains a provision applying to a merger of the corporation and the agreement does not refer to a domestication of the corporation, the provision applies to a domestication of the corporation as if the domestication were a merger until such time as the provision is first amended after January 1, 2020.

8402 **Commentary to Section 607.11920:**

8403 The FBCA currently has one section dealing with domestication, s. 607.1801. Florida law currently
8404 allows non-United States corporations (with corporations being broadly defined in the existing
8405 statute) to domesticate into Florida. New proposed ss. 607.11920-607.11924 expands the use of
8406 those types of domestications that can be completed under the FBCA and provides greater
8407 guidance as to the effect of those domestications.
8408

8409 This proposal allows domestications of (i) Florida corporations into foreign corporations organized
8410 in other states of the United States and in non-United States jurisdictions, and (ii) foreign
8411 corporations organized in other states of the United States and in non-United States jurisdictions
8412 to become Florida domestic corporations, so long as, in both cases, the domestication is permitted
8413 by the organic law of the foreign corporation. This proposal does not permit other types of entities
8414 to domesticate into Florida or Florida corporations to domesticate into other types of foreign
8415 entities, with the view that such transactions can be completed as either a conversion or a merger.
8416

8417 Because the definition of foreign corporation under the FBCA includes not only a corporation
8418 organized in another state of the United States but also an eligible entity organized under the law
8419 of a non-United States jurisdiction that would be a business corporation if incorporated under the
8420 law of this state, this definition would include entities in non-United States jurisdictions called
8421 something other than "corporations" that are the functional equivalent of what would be a domestic
8422 corporation in Florida.
8423

8424 607.11921 Action on a plan of domestication.
8425

8426 In the case of a domestication of a domestic corporation into a foreign jurisdiction, the plan
8427 of domestication shall be adopted in the following manner:
8428

8429 (1) The plan of domestication must first be adopted by the board of directors of such
8430 domestic corporation.
8431

8432 (2) (a) The plan of domestication must then be approved by the shareholders of such
8433 domestic corporation.
8434

8435 (b) In submitting the plan of domestication to the shareholders for approval, the board
8436 of directors shall recommend that the shareholders approve the plan, unless:
8437

8438 1. The board of directors makes a determination that because of conflicts of
8439 interest or other special circumstances it should not make such a recommendation; or
8440

8441 2. Section 607.0826 applies.
8442

8443 (c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board shall inform
8444 the shareholders of the basis for its so proceeding without such recommendation.
8445

8446 (3) The board of directors may set conditions for approval of the plan of domestication
8447 by the shareholders or the effectiveness of the plan of domestication.
8448

8449 (4) If the plan of domestication is required to be approved by the shareholders, and if the
8450 approval of the shareholders is to be given at a meeting, the corporation must notify each shareholder,
8451 regardless of whether entitled to vote, of the meeting of shareholders at which the plan of domestication
8452 is to be submitted for approval. The notice must state that the purpose, or one of the purposes, of the
8453 meeting is to consider the plan of domestication and must contain or be accompanied by a copy of the
8454 plan. The notice must include or be accompanied by a written copy of the organic rules of the
8455 domesticated eligible entity as they will be in effect immediately after the domestication.
8456

8457 (5) Unless the articles of incorporation, or the board of directors acting pursuant to
8458 subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan
8459 of domestication requires:
8460

8461 (a) The approval of the shareholders at a meeting at which a quorum exists consisting
8462 of a majority of the votes entitled to be cast on the plan; and,
8463

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8464 (b) Except as provided in subsection (6), the approval of each class or series of shares
8465 voting as a separate voting group at a meeting at which a quorum of the voting group exists
8466 consisting of a majority of the votes entitled to be cast on the plan by that voting group.
8467

8468 (6) The articles of incorporation may expressly limit or eliminate the separate voting
8469 rights provided in paragraph (5)(b) as to any class or series of shares, except when the public
8470 organic rules of the foreign corporation resulting from the domestication include what would be
8471 in effect an amendment that would entitle the class or series to vote as a separate group under s.
8472 607.1004 if it were a proposed amendment of the articles of incorporation of a domestic
8473 domesticating corporation.
8474

8475 (7) If as a result of a domestication one or more shareholders of a domestic domesticating
8476 corporation would become subject to interest holder liability, approval of the plan of domestication
8477 shall require the signing in connection with the domestication, by each such shareholder, of a
8478 separate written consent to become subject to such interest holder liability, unless in the case of a
8479 shareholder that already has interest holder liability with respect to the domesticating corporation,
8480 the terms and conditions of the interest holder liability with respect to the domesticated corporation
8481 are substantially identical to those of the existing interest holder liability, other than for changes
8482 that eliminate or reduce such interest holder liability.
8483

8484 **Commentary to Section 607.11921:**

8485 This section largely follows s. 9.21 of the Model Act with respect to the votes required to approve a
8486 domestication of a Florida corporation into a corporation formed in another jurisdiction.

8487

FINAL STATUTE AS ADOPTED
(With Commentary)

8488 607.11922 Articles of domestication; effectiveness.

8489

8490 (1) Articles of domestication must be signed by the domesticating corporation after:

8491

8492 (a) A plan of domestication of a domestic corporation has been adopted and
8493 approved as required by this chapter; or

8494

8495 (b) A foreign corporation that is the domesticating corporation has approved a
8496 domestication as required by the applicable provisions of this chapter and under the foreign
8497 corporation's organic law.

8498

8499 (2) Articles of domestication must set forth:

8500

8501 (a) The name of the domesticating corporation and its jurisdiction of formation;

8502

8503 (b) The name and jurisdiction of formation of the domesticated corporation;
8504 and

8505

8506 (c) 1. If the domesticating corporation is a domestic corporation, a statement that
8507 the plan of domestication was approved in accordance with this chapter; or

8508

8509 2. If the domesticating corporation is a foreign corporation, a statement that
8510 the domestication was approved in accordance with its organic law.

8511

8512 (3) If the domesticated corporation is to be a domestic corporation, articles of
8513 incorporation of the domesticated corporation that satisfy the requirements of s. 607.0202 must be
8514 attached to the articles of domestication. Provisions that would not be required to be included in
8515 restated articles of incorporation may be omitted from the articles of incorporation attached to the
8516 articles of domestication.

8517

8518 (4) The articles of domestication shall be delivered to the department for filing and shall
8519 take effect at the effective date determined in accordance with s. 607.0123.

8520

8521 (5) (a) If the domesticated corporation is a domestic corporation, the domestication
8522 becomes effective when the articles of domestication are effective.

8523

8524 (b) If the domesticated corporation is a foreign corporation, the domestication
8525 becomes effective on the later of the date and time provided by the organic law of the
8526 domesticated corporation or when the articles of domestication are effective.

8527

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8528 (6) If the domesticating corporation is a foreign corporation that is qualified to transact
8529 business in this state under ss. 607.1501-607.1532, its certificate of authority is automatically
8530 cancelled when the domestication becomes effective.
8531

8532 (7) A copy of the articles of domestication, certified by the department, may be filed in
8533 the official records of any county in this state in which the domesticating eligible entity holds an
8534 interest in real property.

8535

8536 **Commentary to Section 607.11922:**

8537 This section largely follows s. 9.22 of the Model Act with respect to the filing of articles of
8538 domestication and effectiveness of a domestication. It is very similar to the provisions in the Model
8539 Act relating to conversions of entities.

8540

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8541 607.11923 Amendment of a plan of domestication; abandonment.

8542

8543 (1) A plan of domestication of a domestic corporation adopted under s. 607.11920(3) may be
8544 amended:

8545

8546 (a) In the same manner as the plan of domestication was approved, if the plan does
8547 not provide for the manner in which it may be amended; or

8548

8549 (b) In the manner provided in the plan of domestication, except that a shareholder
8550 that was entitled to vote on or consent to approval of the plan is entitled to vote on or consent
8551 to any amendment of the plan that will change:

8552

8553 1. The amount or kind of shares or other securities, obligations, rights to
8554 acquire shares, other securities, or eligible interests, cash, other property, or any
8555 combination of the foregoing, to be received by any of the shareholders or holders of
8556 rights to acquire shares, other securities, or eligible interests of the domesticating
8557 corporation under the plan;

8558

8559 2. The organic rules of the domesticated corporation that are to be in writing
8560 and that will be in effect immediately after the domestication becomes effective, except
8561 for changes that do not require approval of the shareholders of the domesticated
8562 corporation under its organic rules as set forth in the plan of domestication; or

8563

8564 3. Any of the other terms or conditions of the plan, if the change would
8565 adversely affect the shareholder in any material respect.

8566

8567 (2) After a plan of domestication has been adopted and approved by a domestic corporation
8568 as required by this chapter, and before the articles of domestication have become effective, the
8569 plan may be abandoned by the corporation without action by its shareholders in accordance with
8570 any procedures set forth in the plan or, if no such procedures are set forth in the plan, in the manner
8571 determined by the board of directors of the domestic corporation.

8572

8573 (3) If a domestication is abandoned after the articles of domestication have been delivered to
8574 the department for filing but before the articles of domestication have become effective, a
8575 statement of abandonment, signed by the domesticating corporation must be delivered to the
8576 department for filing before the articles of domestication become effective. The statement shall
8577 take effect upon filing, and the domestication shall be deemed abandoned and shall not become
8578 effective. The statement of abandonment must contain:

8579

8580 (a) The name of the domesticating corporation;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8581

8582 **(b) The date on which the articles of domestication were filed by the department; and**

8583

8584 **(c) A statement that the domestication has been abandoned in accordance with this**
8585 **section.**

8586

8587 **Commentary to Section 607.11923:**

8588 This section largely follows s. 9.23 of the Model Act.

8589

8590 607.11924 Effect of domestication.

8591

8592 (1) When a domestication becomes effective:

8593

8594

8595 (a) All real property and other property owned by the domesticating corporation,
8596 including any interests therein and all title thereto, and every contract right possessed by the
8597 domesticating corporation, are the property and contract rights of the domesticated corporation
8598 without transfer, reversion, or impairment;

8599

8600 (b) All debts, obligations, and other liabilities of the domesticating corporation are
8601 the debts, obligations, and other liabilities of the domesticated corporation;

8602

8603 (c) The name of the domesticated corporation may be, but need not be, substituted
8604 for the name of the domesticating corporation in any pending proceeding;

8605

8606 (d) The organic rules of the domesticated corporation become effective;

8607

8608 (e) The shares or equity interests of the domesticating corporation are reclassified
8609 into shares or other securities, obligations, rights to acquire shares or other securities, cash, or
8610 other property in accordance with the terms of the domestication, and the shareholders or
8611 equity owners of the domesticating corporation are entitled only to the rights provided to them
8612 by those terms and to any appraisal rights they may have under the organic law of the
8613 domesticating corporation; and

8614

8615 (f) The domesticated corporation is:

8616 1. Incorporated under and subject to the organic law of the domesticated
8617 corporation;

8618

8619 2. The same corporation, without interruption, as the domesticating
8620 corporation; and

8621

8622 3. Deemed to have been incorporated or formed on the date the domesticating
8623 corporation was originally incorporated.

8624

8625 (2) In addition, when a domestication of a domestic corporation into a foreign
8626 jurisdiction becomes effective, the domesticated corporation is deemed to:

8627

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8628 (a) Appoint the secretary of state as its agent for service of process in a
8629 proceeding to enforce the rights of shareholders who exercise appraisal rights in connection
8630 with the domestication; and

8631
8632 (b) Agree that it will promptly pay any amount that the shareholders are entitled
8633 to under ss. 607.1301-607.1340.

8634
8635 (3) Except as otherwise provided in the organic law or organic rules of a domesticating
8636 foreign corporation, the interest holder liability of a shareholder or equity holder in a foreign
8637 corporation that is domesticated into this state who had interest holder liability in respect of such
8638 domesticating corporation before the domestication becomes effective shall be as follows:

8639
8640 (a) The domestication does not discharge that prior interest holder liability with
8641 respect to any interest holder liabilities that arose before the domestication becomes
8642 effective.

8643
8644 (b) The provisions of the organic law of the domesticating corporation shall
8645 continue to apply to the collection or discharge of any interest holder liabilities preserved
8646 by paragraph (a), as if the domestication had not occurred.

8647
8648 (c) The shareholder or equity holder shall have such rights of contribution from
8649 other persons as are provided by the organic law of the domesticating corporation with
8650 respect to any interest holder liabilities preserved by paragraph (a), as if the domestication
8651 had not occurred.

8652
8653 (d) The shareholder or equity holder may not, by reason of such prior interest
8654 holder liability, have interest holder liability with respect to any interest holder liabilities
8655 that are incurred after the domestication becomes effective.

8656
8657 (4) A shareholder or equity holder who becomes subject to interest holder liability in respect
8658 of the domesticated corporation as a result of the domestication shall have such interest holder
8659 liability only in respect of interest holder liabilities that arise after the domestication becomes
8660 effective.

8661
8662 (5) A domestication does not constitute or cause the dissolution of the domesticating
8663 corporation.

8664
8665 (6) Property held for charitable purposes under the laws of this state by a domestic or foreign
8666 corporation immediately before a domestication becomes effective may not, as a result of the
8667 transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise

FINAL STATUTE AS ADOPTED
(With Commentary)

8668 transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy
8669 pres or dealing with nondiversion of charitable assets.

8670
8671 (7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of
8672 donation, subscription, or conveyance which is made to the domesticating corporation and which
8673 takes effect or remains payable after the domestication inures to the domesticated corporation.

8674
8675 (8) A trust obligation that would govern property if transferred to the domesticating
8676 corporation applies to property that is transferred to the domesticated corporation after the
8677 domestication takes effect.

8678

8679 **Commentary to Section 607.11924:**

8680 This section largely follows s. 9.24 of the Model Act and resolves one of the shortcomings of the
8681 existing FBCA domestication statute, which does not explicitly describe the effect of a
8682 domestication.

8683

8684

PART C - CONVERSIONS

8685 607.11930~~12~~ Conversion of domestic corporation into another business entity.

8686 (1) ~~As used in this section and ss. 607.1113 and 607.1114, the term "another business entity"~~
8687 ~~or "other business entity" means a limited liability company; a common law or business trust or~~
8688 ~~association; a real estate investment trust; a general partnership, including a limited liability~~
8689 ~~partnership; a limited partnership, including a limited liability limited partnership; or any other~~
8690 ~~domestic or foreign entity that is organized under a governing law or other applicable law, provided~~
8691 ~~such term shall not include a corporation and shall not include any entity that has not been~~
8692 ~~organized for profit.~~

8693 ~~(2) By complying with this chapter, including adopting a plan of conversion in accordance~~
8694 ~~with s. 607.11931 and complying with s. 607.11932, a domestic corporation may become:~~
8695 ~~Pursuant to a plan of conversion complying with and approved in accordance with this section, a~~
8696 ~~domestic corporation may convert to another business entity organized under the laws of this state~~
8697 ~~or any other state, the United States, a foreign country, or other foreign jurisdiction, if:~~

8698 (a) ~~A domestic eligible entity, other than a domestic corporation; or the domestic~~
8699 ~~corporation converting to the other business entity complies with the applicable provisions of~~
8700 ~~this chapter.~~

8701 (b) ~~If the conversion is permitted by the organic law of the foreign eligible entity, a~~
8702 ~~foreign eligible entity The conversion is permitted by the laws of the jurisdiction that enacted~~
8703 ~~the applicable laws under which the other business entity is governed and the other business~~
8704 ~~entity complies with such laws in effecting the conversion.~~

8705 (2) ~~By complying with this section and ss. 607.11931-607.11935, as applicable, and applicable~~
8706 ~~provisions of its organic law, a domestic eligible entity other than a domestic corporation may~~
8707 ~~become a domestic corporation.~~

8709 (3) ~~By complying with this section and ss. 607.11931-607.11935, as applicable, and by~~
8710 ~~complying with the applicable provisions of its organic law, a foreign eligible entity may become a~~
8711 ~~domestic corporation, but only if the organic law of the foreign eligible entity permits it to become~~
8712 ~~a corporation in another jurisdiction.~~

8714 (4) ~~If a protected agreement of a domestic converting eligible entity in effect immediately~~
8715 ~~before the conversion becomes effective contains a provision applying to a merger of the corporation~~
8716 ~~that is a converting eligible entity and the agreement does not refer to a conversion of the corporation,~~
8717 ~~the provision applies to a conversion of the corporation as if the conversion were a merger, until such~~
8718 ~~time as the provision is first amended after January 1, 2020.~~

8719

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8720 ~~(3) — The plan of conversion shall set forth:~~

8721 ~~(a) The name of the domestic corporation and the name, jurisdiction of organization~~
8722 ~~of the other business entity to which the domestic corporation is to be converted.~~

8723 ~~(b) The terms and conditions of the conversion, including the manner and basis of~~
8724 ~~converting the shares, obligations, or other securities, or rights to acquire shares,~~
8725 ~~obligations, or other securities, of the domestic corporation into the partnership interests,~~
8726 ~~limited liability company interests, obligations, or other securities of the other business~~
8727 ~~entity, including any rights to acquire any such interests, obligations, or other securities,~~
8728 ~~or, in whole or in part, into cash or other consideration.~~

8729 ~~(c) All statements required to be set forth in the plan of conversion by the laws under~~
8730 ~~which the other business entity is governed.~~

8731 ~~(4) — The plan of conversion shall include, or have attached to it, the articles, certificate,~~
8732 ~~registration, or other organizational document by which the other business entity has been or will~~
8733 ~~be organized under its governing laws.~~

8734 ~~(5) — The plan of conversion may also set forth any other provisions relating to the~~
8735 ~~conversion.~~

8736 ~~(6) — The plan of conversion shall be adopted and approved by the board of directors and~~
8737 ~~shareholders of a domestic corporation in the same manner as a merger of a domestic corporation~~
8738 ~~under s. 607.1103. Notwithstanding such requirement, if the other business entity is a partnership~~
8739 ~~or limited partnership, no shareholder of the converting domestic corporation shall, as a result of~~
8740 ~~the conversion, become a general partner of the partnership or limited partnership, unless such~~
8741 ~~shareholder specifically consents in writing to becoming a general partner of such partnership or~~
8742 ~~limited partnership and, unless such written consent is obtained from each such shareholder, such~~
8743 ~~conversion shall not become effective under s. 607.1114. Any shareholder providing such consent~~
8744 ~~in writing shall be deemed to have voted in favor of the plan of conversion pursuant to which the~~
8745 ~~shareholder became a general partner.~~

8746 ~~(7) — Section 607.1103 and ss. 607.1301–607.1333 shall, insofar as they are applicable,~~
8747 ~~apply to a conversion of a domestic corporation into another business entity in accordance with~~
8748 ~~this chapter.~~

8749

8750 **Commentary to Section 607.11930:**

8751 This section is largely based on s. 9.30 of the Model Act.

8752 In 2001, amended several times since, this section of the Model Act was split into three different
8753 sections. This proposal follows the Model Act in that regard. All types of conversions of a domestic
8754 corporation into a domestic or foreign eligible entity (other than a domestic corporation) and all
8755 conversions of a domestic or foreign eligible entity into a domestic corporation are now addressed
8756 in this section with applicable details set forth in subsequent sections addressing conversions.

8757

8758 607.119313 Plan Certificate of conversion.

8759 (1) A domestic corporation may convert to a domestic or foreign eligible entity under
8760 this chapter by approving After a plan of conversion. The plan of conversion must include is
8761 approved by the board of directors and shareholders of a converting domestic corporation such
8762 corporation shall deliver to the Department of State for filing a certificate of conversion which
8763 shall be executed by the domestic corporation as required by s. 607.0120 and shall set forth:

8764 (a) The name of the domestic converting corporation; A statement that the
8765 domestic corporation has been converted into another business entity in compliance with
8766 this chapter and that the conversion complies with the applicable laws governing the other
8767 business entity.

8768 (b) The name, jurisdiction of formation, and type of entity of the converted
8769 eligible entity; A statement that the plan of conversion was approved by the converting
8770 domestic corporation in accordance with this chapter and, if applicable, a statement that
8771 the written consent of each shareholder of such domestic corporation who, as a result of
8772 the conversion, becomes a general partner of the surviving entity has been obtained
8773 pursuant to s. 607.1112(6).

8774 (c) The manner and basis of converting the shares of the domestic corporation, or
8775 the rights to acquire shares, obligations or other securities, of the domestic corporation
8776 into:

8777 1. Shares.

8778 2. Other securities.

8779 3. Eligible interests.

8780 4. Obligations.

8781 5. Rights to acquire shares, other securities or eligible interests.

8782 6. Cash.

8783 7. Other property.

8784 8. Any combination of the foregoing; effective date of the conversion, which,
8791 subject to the limitations in s. 607.0123(2), may be on or after the date of filing the
8792 certificate of conversion but shall not be different than the effective date of the
8793 conversion under the laws governing the other business entity into which the
8794 domestic corporation has been converted.

FINAL STATUTE AS ADOPTED
(With Commentary)

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~~(d) The other terms and conditions of the conversion; and address, including street and number, if any, of the principal office of the other business entity under the laws of the state, country, or jurisdiction in which such other business entity was organized.~~

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~~(e) The full text, as it will be in effect immediately after the conversion becomes effective, of the organic rules of the converted eligible entity which are to be in writing If the other business entity is a foreign entity and is not authorized to transact business in this state, a statement that the other business entity appoints the Secretary of State as its agent for service of process in a proceeding to enforce obligations of the converting domestic corporation, including any appraisal rights of shareholders of the converting domestic corporation under ss. 607.1301-607.1333 and the street and mailing address of an office which the Department of State may use for purposes of s. 607.1114(4).~~

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~~(f) A statement that the other business entity has agreed to pay any shareholders having appraisal rights the amount to which they are entitled under ss. 607.1301-607.1333.~~

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~~(2) In addition to the requirements of subsection (1), a plan of conversion may contain any other provision not prohibited by law A copy of the certificate of conversion, certified by the department of State, may be filed in the official records of any county in this state in which the converting domestic corporation holds an interest in real property.~~

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~~(3) The terms of a plan of conversion may be made dependent upon facts objectively ascertainable outside the plan in accordance with section 607.0120(11) A converting domestic corporation is not required to file a certificate of conversion pursuant to subsection (1) if the converting domestic corporation files articles of conversion or a certificate of conversion that substantially complies with the requirements of this section pursuant to s. 605.1045, s. 620.2104(1)(b), or s. 620.8914(1)(b) and contains the signatures required by this chapter. In such a case, the other certificate of conversion may also be used for purposes of subsection (2).~~

8820

8821 **Commentary to Section 607.11931:**

8822 This provision largely follows the corollary provision of the Model Act (s. 9.31).

8823 Subsection (4) has been retained even though it is not part of the Model Act.

8824 Part B of Article 11 uses the term "converted eligible entity" to mean the converting eligible entity
8825 as it continues in existence after (following) the conversion. Put another way, it is the entity to
8826 which the converting eligible entity is converted. At the same time, it's the same entity as the
8827 converting eligible entity. Thus, there was some concern as to whether the term "converted eligible
8828 entity" (not unlike the term currently used in the FBCA, the "other business entity") causes
8829 confusion. Based on this concern, the Subcommittee considered using a term other than "converted
8830 eligible entity" (such as "resulting eligible entity" or the "eligible entity to which the converting
8831 eligible entity is converted" or the "as-converted eligible entity"). However, there was a view that
8832 all of these terms had the same issues, so the decision was made to retain the Model Act definition.

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**FINAL STATUTE AS ADOPTED
(With Commentary)**

8834 607.11932+4 **Action on a plan** ~~Effect of conversion of domestic corporation into another~~
8835 ~~business entity.~~

8836 In the case of a conversion of a domestic corporation to a domestic or foreign eligible
8837 entity other than a domestic corporation, the plan of conversion must be adopted in the following
8838 manner:
8839

8840 (1) The plan of conversion must first be adopted by the board of directors of such
8841 domestic corporation ~~When a conversion becomes effective: A domestic corporation that has been~~
8842 ~~converted into another business entity pursuant to this chapter is for all purposes the same entity~~
8843 ~~that existed before the conversion.~~

8844 (2) (a) The plan of conversion shall then be approved by the shareholders of such domestic
8845 corporation.

8846 (b) In submitting the plan of conversion to the shareholders for their approval, the board
8847 of directors shall recommend that the shareholders approve the plan of conversion, unless:

8848 1, The board of directors makes a determination that because of conflicts of interest
8849 or other special circumstances it should not make such a recommendation; or

8850 2. Section 607.0826 applies.

8851 (c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board of directors shall
8852 inform the shareholders of the basis for its so proceeding without such recommendation ~~title~~
8853 ~~to all real property and other property, or any interest therein, owned by the domestic~~
8854 ~~corporation at the time of its conversion into the other business entity remains vested in the~~
8855 ~~converted entity without reversion or impairment by operation of this chapter.~~

8856 (3) The board of directors may set conditions for approval of the plan of conversion by
8857 the shareholders or the effectiveness of the plan of conversion ~~other business entity into which the~~
8858 ~~domestic corporation was converted shall continue to be responsible and liable for all the liabilities~~
8859 ~~and obligations of the converting domestic corporation, including liability to any shareholders~~
8860 ~~having appraisal rights under ss. 607.1301-607.1333 with respect to such conversion.~~

8861 (4) If a plan of conversion is required to be approved by the shareholders, and if the
8862 approval is to be given at a meeting, the corporation shall notify each shareholder, regardless of
8863 whether entitled to vote, of the meeting of shareholders at which the plan is to be submitted for
8864 approval, in accordance with s. 607.0705. The notice must state that the purpose, or one of the
8865 purposes, of the meeting is to consider the plan of conversion and must contain or be accompanied
8866 by a copy of the plan. The notice must include or be accompanied by a written copy of the organic
8867 rules of the converted eligible entity as they will be in effect immediately after the conversion ~~Any~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8868 ~~claim existing or action or proceeding pending by or against any domestic corporation that is~~
8869 ~~converted into another business entity may be continued as if the conversion did not occur.~~

8870 ~~(5) Neither the rights of creditors nor any liens upon the property of a domestic~~
8871 ~~corporation that is converted into another business entity under this chapter shall be impaired by~~
8872 ~~such conversion. Unless the articles of incorporation, or the board of directors acting pursuant to~~
8873 ~~subsection (3), require a greater vote or a greater quorum in the respective case, approval of the plan~~
8874 ~~of conversion requires:~~

8875 ~~(a) The approval of the shareholders at a meeting at which a quorum exists consisting~~
8876 ~~of a majority of the votes entitled to be cast on the plan; and~~

8877 ~~(b) The approval of each class or series of shares voting as a separate voting group at a~~
8878 ~~meeting at which a quorum of the voting group exists consisting of a majority of the votes~~
8879 ~~entitled to be cast on the plan by that voting group.~~

8880 ~~(6) If as a result of the conversion one or more shareholders of the converting domestic~~
8881 ~~corporation would become subject to interest holder liability, approval of the plan of conversion shall~~
8882 ~~require the signing in connection with the transaction, by each such shareholder, of a separate written~~
8883 ~~consent to become subject to such interest holder liability. The shares, obligations, and other~~
8884 ~~securities, or rights to acquire shares, obligations, or other securities, of the domestic corporation~~
8885 ~~shall be converted into the partnership interests, limited liability company interests, obligations, or~~
8886 ~~other securities of the other business entity, including any rights to acquire any such interests,~~
8887 ~~obligations, or other securities, or, in whole or in part, into cash, or other consideration, as provided~~
8888 ~~in the plan of conversion. The former shareholders of the converting domestic corporation shall be~~
8889 ~~entitled only to the rights provided in the plan of conversion and to their appraisal rights, if any,~~
8890 ~~under ss. 607.1301-607.1333 or other applicable law.~~

8891 ~~(7) If the converted eligible entity is a partnership or limited partnership, no shareholder~~
8892 ~~of the converting domestic corporation shall, as a result of the conversion, become a general~~
8893 ~~partner of the partnership or limited partnership, unless such shareholder specifically consents in~~
8894 ~~writing to becoming a general partner of such partnership or limited partnership and, unless such~~
8895 ~~written consent is obtained from each such shareholder, such conversion may not become effective~~
8896 ~~under s. 607.11933. Any shareholder providing such consent in writing shall be deemed to have~~
8897 ~~voted in favor of the plan of conversion pursuant to which the shareholder became a general~~
8898 ~~partner.~~

8899 ~~(8) Sections 607.1301-607.1340 shall, insofar as they are applicable, apply to a conversion~~
8900 ~~in accordance with this chapter of a domestic corporation into a domestic or foreign eligible entity~~
8901 ~~that is not a domestic corporation.~~

8902

8903 **Commentary to Section 607.11932:**

8904 Like the other sections in Chapter 11, the section of the Model Act (s, 9.32 in the 2016 Model Act)
8905 has been substantially changed in both 1999 and 2016. This revised draft largely follows the Model
8906 Act construct.

8907 Subsection (7) was retained from existing FBCA s. 607.1112(6) even though it is not in the Model
8908 Act.

8909 For clarity, subsection (8) was retained from existing s. 607.1112(7) even though it is not a Model
8910 Act provision.

8911

FINAL STATUTE AS ADOPTED
(With Commentary)

8912 607.11933-15 Articles of conversion; effectiveness of another business entity to a
8913 domestic corporation.

8914 (1) After a plan of conversion of a domestic corporation has been adopted and approved
8915 as required by this chapter, or a domestic or foreign eligible entity, other than a domestic
8916 corporation, that is the converting eligible entity has approved a conversion as required under its
8917 organic law, articles of conversion must be signed by the converting eligible entity as required by s.
8918 607.0120 and must: ~~As used in this section, the term "other business entity" means a limited~~
8919 liability company; a common law or business trust or association; a real estate investment trust; a
8920 general partnership, including a limited liability partnership; a limited partnership, including a
8921 limited liability limited partnership; or any other domestic or foreign entity that is organized under
8922 a governing law or other applicable law, provided such term shall not include a corporation and
8923 shall not include any entity that has not been organized for profit.
8924

8925 (a) State the name, jurisdiction of formation, and type of entity of the
8926 converting eligible entity;
8927

8928 (b) State the name, jurisdiction of formation, and type of entity of the converted
8929 eligible entity;
8930

8931 (c) If the converting eligible entity is:
8932

8933 1. A domestic corporation, state that the plan of conversion was approved
8934 in accordance with this chapter; or
8935

8936 2. A domestic or foreign eligible entity other than a domestic corporation,
8937 state that the conversion was approved by the eligible entity in accordance with its
8938 organic law; and
8939

8940 (d) If the converted eligible entity is:
8941

8942 1. A domestic corporation or a domestic or foreign eligible entity that is not
8943 a domestic corporation, attach the public organic record of the converted eligible
8944 entity, except that provisions that would not be required to be included in a restated
8945 public organic record may be omitted; or
8946

8947 2. A domestic limited liability partnership, attach the filing or filings
8948 required to become a domestic limited liability partnership.
8949

8950 (2) If the converted eligible entity is a domestic corporation, its articles of incorporation
8951 must satisfy the requirements of section 607.0202, except that provisions that would not be required to

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8952 be included in restated articles of incorporation may be omitted from the articles of incorporation. If
8953 the converted eligible entity is a domestic eligible entity that is not a domestic corporation, its public
8954 organic record, if any, must satisfy the applicable requirements of the organic law of this state, except
8955 that the public organic record does not need to be signed. Any other business entity may convert to
8956 a domestic corporation if the conversion is permitted by the laws of the jurisdiction that enacted
8957 the applicable laws governing the other business entity and the other business entity complies with
8958 such laws and the requirements of this section in effecting the conversion. The other business entity
8959 shall file with the Department of State in accordance with s. 607.0120:

8960 ~~(a) A certificate of conversion that has been executed in accordance with~~
8961 ~~s. 607.0120 and by the other business entity as required by applicable law.~~

8962 ~~(b) Articles of incorporation that comply with s. 607.0202 and have been executed~~
8963 ~~in accordance with s. 607.0120.~~

8964 (3) The articles of conversion shall be delivered to the department for filing, and shall take
8965 effect at the effective date determined in accordance with s. 607.0123. The certificate of conversion
8966 shall state:

8967 ~~(a) The date on which, and the jurisdiction in which, the other business entity was~~
8968 ~~first organized and, if the entity has changed, its jurisdiction immediately prior to its~~
8969 ~~conversion.~~

8970 ~~(b) The name of the other business entity immediately prior to the filing of the~~
8971 ~~certificate of conversion to a corporation.~~

8972 ~~(c) The name of the corporation as set forth in its articles of incorporation filed in~~
8973 ~~accordance with subsection (2).~~

8974 ~~(d) The delayed effective date or time, which, subject to the limitations in~~
8975 ~~s. 607.0123(2), shall be a date or time certain, of the conversion if the conversion is not to~~
8976 ~~be effective upon the filing of the certificate of conversion and the articles of incorporation,~~
8977 ~~provided such delayed effective date may not be different than the effective date and time~~
8978 ~~of the articles of incorporation.~~

8979 (4) (a) If a converted eligible entity is a domestic eligible entity, the conversion
8980 becomes effective when the articles of conversion are effective.

8981 (b) If the converted eligible entity is a foreign eligible entity, the conversion itself shall
8982 become effective at the later of:

8983 1. The date and time provided by the organic law of that eligible entity, or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

8984 2. When the articles of conversion take effect ~~Upon the filing with the Department of~~
8985 ~~State of the certificate of conversion and the articles of incorporation, or upon the delayed~~
8986 ~~effective date or time of the certificate of conversion and the articles of incorporation, the~~
8987 ~~other business entity shall be converted into a domestic corporation and the corporation~~
8988 ~~shall thereafter be subject to all of the provisions of this chapter, except notwithstanding~~
8989 ~~s. 607.0123, the existence of the corporation shall be deemed to have commenced when~~
8990 ~~the other business entity commenced its existence in the jurisdiction in which the other~~
8991 ~~business entity was first organized.~~

8992 (5) Articles of conversion required to be filed under this section may be combined with any
8993 filing required under the organic law of a domestic eligible entity that is the converting eligible entity or
8994 the converted eligible entity if the combined filing satisfies the requirements of both this section and
8995 the other organic law. ~~The conversion of any other business entity into a domestic corporation shall~~
8996 ~~not affect any obligations or liabilities of the other business entity incurred prior to its conversion~~
8997 ~~to a domestic corporation or the personal liability of any person incurred prior to such conversion.~~

8998 (6) If the converting eligible entity is a foreign eligible entity that is authorized to transact
8999 business in this state under a provision of law similar to ss. 607.1501-607.1532, its foreign qualification
9000 shall be cancelled automatically on the effective date of its conversion ~~When any conversion~~
9001 ~~becomes effective under this section, for all purposes of the laws of this state, all of the rights,~~
9002 ~~privileges, and powers of the other business entity that has been converted, and all property, real,~~
9003 ~~personal, and mixed, and all debts due to such other business entity, as well as all other things and~~
9004 ~~causes of action belonging to such other business entity, shall be vested in the domestic corporation~~
9005 ~~into which it was converted and shall thereafter be the property of the domestic corporation as they~~
9006 ~~were of the other business entity. Without limiting this provision, title to any real property, or any~~
9007 ~~interest therein, vested by deed or otherwise in such other business entity at the time of conversion~~
9008 ~~shall remain vested in the converted entity without reversion or impairment by operation of this~~
9009 ~~chapter. All rights of creditors and all liens upon any property of such other business entity shall~~
9010 ~~be preserved unimpaired, and all debts, liabilities, and duties of such other business entity shall~~
9011 ~~thenceforth attach to the domestic corporation into which it was converted and may be enforced~~
9012 ~~against the domestic corporation to the same extent as if said debts, liabilities, and duties had been~~
9013 ~~incurred or contracted by the domestic corporation.~~

9014 (7) ~~Unless otherwise agreed, or as required under applicable laws of states other than~~
9015 ~~this state, the converting entity shall not be required to wind up its affairs or pay its liabilities and~~
9016 ~~distribute its assets and the conversion shall not constitute a dissolution of such entity and shall~~
9017 ~~constitute a continuation of the existence of the converting entity in the form of a domestic~~
9018 ~~corporation.~~

9019 (8) ~~Prior to filing a certificate of conversion with the Department of State, the conversion~~
9020 ~~shall be approved in the manner provided for by the document, instrument, agreement, or other~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9021 ~~writing, as the case may be, governing the internal affairs of the other business entity or by other~~
9022 ~~applicable law, as appropriate, and the articles of incorporation and bylaws of the corporation shall~~
9023 ~~be approved by the same authorization required to approve the conversion. As part of such an~~
9024 ~~approval, a plan of conversion or other record may describe the manner and basis of converting~~
9025 ~~the partnership interests, limited liability company interests, obligations, or securities of, or other~~
9026 ~~interests or rights in, the other business entity, including any rights to acquire any such interests,~~
9027 ~~obligations, securities, or other rights, into shares of the domestic corporation, or rights to acquire~~
9028 ~~shares, obligations, securities, or other rights, or, in whole or in part, into cash or other~~
9029 ~~consideration. Such a plan or other record may also contain other provisions relating to the~~
9030 ~~conversion, including without limitation the right of the other business entity to abandon a~~
9031 ~~proposed conversion, or an effective date for the conversion that is not inconsistent with paragraph~~
9032 ~~(2)(d).~~

9033 (7) A copy of the articles of conversion, certified by the department, may be filed in the
9034 official records of any county in this state in which the converting eligible entity holds an interest
9035 in real property.

9036

9037 **Commentary to Section 607.11933:**

9038 This section largely follows s. 9.33 of the Model Act, but retains some aspects of existing Florida
9039 law.

9040 Subsection (7) is retained from existing s. 607.1113(2).

9041

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9042 607.1193416 Amendment of plan of conversion; abandonment.

9043

9044 (1) A plan of conversion of a converting eligible entity that is a domestic corporation
9045 may be amended:

9046

9047 (a) In the same manner as the plan of conversion was approved, if the plan does
9048 not provide for the manner in which it may be amended; or

9049

9050 (b) In the manner provided in the plan of conversion, except that shareholders
9051 that were entitled to vote on or consent to approval of the plan are entitled to vote on or
9052 consent to any amendment of the plan that will change:

9053

9054 1. The amount or kind of shares or other securities, eligible interests,
9055 obligations, rights to acquire shares, other securities, or eligible interests, cash, other
9056 property, or any combination of the foregoing, to be received by any of the
9057 shareholders of the converting corporation under the plan;

9058

9059 2. The organic rules of the converted eligible entity that will be in effect
9060 immediately after the conversion becomes effective, except for changes that do not
9061 require approval of the eligible interest holders of the converted eligible entity under
9062 its organic law or organic rules; or

9063

9064 3. Any other terms or conditions of the plan, if the change would adversely
9065 affect such shareholders in any material respect.

9066

9067 (2) After a plan of conversion has been adopted and approved by a converting eligible
9068 entity that is a domestic corporation in the manner required by this chapter and before the articles
9069 of conversion become effective, the plan may be abandoned by the domestic corporation without
9070 action by its shareholders in accordance with any procedures set forth in the plan or, if no such
9071 procedures are set forth in the plan, in the manner determined by the board of directors of the
9072 domestic corporation.

9073

9074 (3) If a conversion is abandoned after the articles of conversion have been delivered to
9075 the department for filing but before the articles of conversion have become effective, a statement
9076 of abandonment signed by the converting eligible entity must be delivered to the department for
9077 filing before the articles of conversion become effective. The statement shall take effect on filing,
9078 and the conversion shall be deemed abandoned and shall not become effective. The statement of
9079 abandonment must contain:

9080

9081 (a) The name of the converting eligible entity;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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(b) The date on which the articles of conversion were filed by the department; and

(c) A statement that the conversion has been abandoned in accordance with this section.

9088 **Commentary to Section 607.11934:**

9089 This section largely adopts Model Act s. 9.34 and for the most part follows the corollary provisions
9090 in the Model Act regarding amendment and abandonment of a plan of merger or a plan of share
9091 exchange.

9092

9093 607.1193517 Effect of conversion.

9094

9095 (1) When a conversion becomes effective:

9096

9097 (a) All real property and other property owned by, including any interest therein and
9098 all title thereto, and every contract right possessed by, the converting eligible entity remain the
9099 property and contract rights of the converted eligible entity without transfer, reversion, or
9100 impairment;

9101

9102 (b) All debts, obligations, and other liabilities of the converting eligible entity
9103 remain the debts, obligations, and other liabilities of the converted eligible entity;

9104

9105 (c) The name of the converted eligible entity may be, but need not be, substituted
9106 for the name of the converting eligible entity in any pending action or proceeding;

9107

9108 (d) If the converted eligible entity is a filing entity, a domestic corporation, or a
9109 domestic or foreign nonprofit corporation, its public organic record and its private organic
9110 rules become effective;

9111

9112 (e) If the converted eligible entity is a nonfiling entity, its private organic rules
9113 become effective;

9114

9115 (f) If the converted eligible entity is a limited liability partnership, the filing required
9116 to become a limited liability partnership and its private organic rules become effective;

9117

9118 (g) The shares, rights to acquire shares, eligible interests, other securities and
9119 obligations of the converting eligible entity are reclassified into shares, other securities, rights
9120 to acquire shares or other securities, eligible interests, obligations, cash, other property, or any
9121 combination thereof, in accordance with the terms of the conversion, and the shareholders or
9122 interest holders of the converting eligible entity are entitled only to the rights provided to them
9123 by those terms and to any rights they may have under s. 607.1302 or under the organic law of
9124 the converting eligible entity; and

9125

9126 (h) The converted eligible entity is:

9127

9128 1. Deemed to be incorporated or organized under and subject to the organic law of
9129 the converted eligible entity;

9130

9131 2. Deemed to be the same entity without interruption as the converting eligible
9132 entity; and

FINAL STATUTE AS ADOPTED
(With Commentary)

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3. Deemed to have been incorporated or otherwise organized on the date that the converting eligible entity was originally incorporated or organized.

(2) When a conversion of a domestic corporation to a domestic or foreign eligible entity other than a domestic corporation becomes effective, the converted eligible entity is deemed to:

(a) Appoint the secretary of state as its agent for service of process in a proceeding to enforce the rights of shareholders who exercise appraisal rights in connection with the conversion; and

(b) Agree that it will promptly pay any amount that shareholders are entitled to under ss. 607.1301-607.1340.

(3) Except as otherwise provided in the articles of incorporation of a domestic corporation or the organic law or organic rules of a domestic or foreign eligible entity other than a domestic corporation, a shareholder or eligible interest holder who becomes subject to interest holder liability in respect of a domestic corporation or domestic or foreign eligible entity other than a domestic corporation as a result of the conversion shall have such interest holder liability only in respect of interest holder liabilities that arise after the conversion becomes effective.

(4) Except as otherwise provided in the organic law or the organic rules of the domestic or foreign eligible entity, the interest holder liability of an interest holder in a converting eligible entity that converts to a domestic corporation who had interest holder liability in respect of such converting eligible entity before the conversion becomes effective shall be as follows:

(a) The conversion does not discharge that prior interest holder liability with respect to any interest holder liabilities that arose before the conversion became effective.

(b) The provisions of the organic law of the eligible entity shall continue to apply to the collection or discharge of any interest holder liabilities preserved by paragraph (a), as if the conversion had not occurred.

(c) The eligible interest holder shall have such rights of contribution from other persons as are provided by the organic law of the eligible entity with respect to any interest holder liabilities preserved by paragraph (a), as if the conversion had not occurred.

(d) The eligible interest holder may not, by reason of such prior interest holder liability, have interest holder liability with respect to any interest holder liabilities that arise after the conversion becomes effective.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

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(5) A conversion does not require the converting eligible entity to wind up its affairs and does not constitute or cause the dissolution or termination of the entity.

(6) Property held for charitable purposes under the laws of this state by a domestic or foreign eligible entity immediately before a conversion becomes effective may not, as a result of the transaction, be diverted from the objects for which it was donated, granted, devised, or otherwise transferred except and to the extent permitted by or pursuant to the laws of this state addressing cy pres or dealing with nondiversion of charitable assets.

(7) A bequest, devise, gift, grant, or promise contained in a will or other instrument of donation, subscription, or conveyance which is made to the converting eligible entity and which takes effect or remains payable after the conversion inures to the converted eligible entity.

(8) A trust obligation that would govern property if transferred to the converting eligible entity applies to property that is to be transferred to the converted eligible entity after the conversion becomes effective.

9191 **Commentary to Section 607.11935:**

9192 This section largely adopts Model Act s. 9.35 and for the most part follows the corollary provisions
9193 in the Model Act regarding the effect of a merger or share exchange.

9194

9195 ARTICLE 12

9196 SALE OF ASSETS

9197
9198 607.1201 Disposition of Sale of assets not requiring shareholder approval in regular
9199 course of business and mortgage of assets.

9200
9201 (4) Unless the articles of incorporation otherwise provide, no approval by shareholders
9202 is required to A corporation may, on the terms and conditions and for the consideration determined
9203 by the board of directors:

9204
9205 (1a) Sell, lease, exchange, or otherwise dispose of any or all, of the corporation's
9206 assets or substantially all, of its property in the usual and regular course of business;

9207
9208 (2b) Mortgage, pledge, dedicate to the repayment of indebtedness (whether with
9209 or without recourse), create a security interest in, or otherwise encumber any or all of the
9210 corporation's its assets, property regardless of whether or not in the usual and regular course
9211 of business; ~~or~~

9212
9213 (3e) Transfer any or all of the corporation's assets to one or more domestic or
9214 foreign corporations or other entities all of the shares or interests of which its property to a
9215 corporation all the shares of which are owned by the corporation; or

9216
9217 (4) Distribute assets pro rata to the holders of one or more classes or series of
9218 the corporation's shares, except to the extent that the distribution is part of a dissolution of
9219 the corporation under ss. 607.1401-607.14401.

9220
9221 (2) ~~Unless the articles of incorporation require it, approval by the shareholders of a~~
9222 ~~transaction described in subsection (1) is not required.~~

9224 **Commentary to Section 607.1201:**

9225

9226 This section makes changes to largely conform this section to the provisions of s. 12.01 of the
9227 Model Act. While many of these changes are not considered substantive, the revised section
9228 clarifies situations where shareholder approval would not be required even though one might argue
9229 that that such transactions constitute a sale of substantially all of the assets of the corporation.

9230

9231 New s. 607.1201 does not include existing language in s. 607.1201 that, although not believed to
9232 be intended, could have been read as requiring all sales of assets to be approved by the board of
9233 directors. While most Florida lawyers do not believe that such board approval is required in all
9234 circumstances under the existing statute, this revised provision removes the ambiguous language
9235 and appropriately leaves the issue of whether the particular transaction requires board approval to
9236 the general rules relating to when the board is required to approve a transaction.

9237

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9238 607.1202 **Shareholder approval of certain dispositions** ~~Sale of assets other than in~~
9239 ~~regular course of business.~~

9240
9241 (1) A corporation may sell, lease, exchange or otherwise dispose or all, or substantially
9242 all, of its property (with or without the good will), otherwise than in the usual and regular course
9243 of business, on the terms and conditions and for the consideration determined by the corporation's
9244 board of directors, but only if the board of directors proposes and its shareholders ~~of record~~ approve
9245 the proposed transaction.

9246
9247 (2) (a) To obtain the approval of the shareholders under subsection (1), the ~~For a~~
9248 ~~transaction to be authorized:~~ (a) The board of directors must first adopt a resolution
9249 approving the disposition and thereafter, the disposition must also be approved by the
9250 corporation's shareholders.

9251
9252 (b) In submitting the disposition to the shareholders for approval, the board of
9253 directors must recommend the proposed transaction to the shareholders unless:

9254
9255 1. The board of directors makes a determination that ~~determines that it should~~
9256 ~~make no recommendation~~ because of conflict of interest or other special
9257 circumstances it should not make such a recommendation;

9258
9259 2. Section 607.0826 applies.

9260
9261 (c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board of directors
9262 shall inform the shareholders of the basis for its so proceeding without a recommendation.
9263 ~~and communicates the basis for its determination to the shareholders of record with the~~
9264 ~~submission of the proposed transaction; and~~

9265
9266 ~~(b)The shareholders entitled to vote must approve the transaction as provided in~~
9267 ~~subsection (5).~~

9268
9269 (3) The board of directors may set conditions for approval of the disposition or the
9270 effectiveness of the disposition ~~its submission of the proposed transaction on any basis.~~

9271
9272 (4) If the disposition is required to be approved by the shareholders under subsection (1)
9273 and if the approval is to be given at a meeting, the corporation shall notify each shareholder,
9274 regardless of record, whether ~~or not~~ entitled to vote, of the ~~proposed shareholders' meeting of~~
9275 shareholders at which the disposition is to be submitted for approval in accordance with s.
9276 607.0705. The notice ~~must~~ shall also state that the purpose, or one of the purposes, of the meeting
9277 is to consider the disposition ~~sale, lease, exchange, or other disposition of all, or substantially all,~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9278 ~~the property of the corporation, regardless of whether or not the meeting is an annual or a special~~
9279 ~~meeting, and shall contain or be accompanied by a description of the transaction disposition and~~
9280 ~~the consideration to be received by the corporation.~~ Furthermore, the notice shall contain a clear
9281 and concise statement that, if the transaction is effected, shareholders dissenting therefrom are or
9282 may be entitled, if they comply with the provisions of this act regarding appraisal rights, to be paid
9283 the fair value of their shares and such notice ~~must shall~~ be accompanied by a copy of ss. 607.1301-
9284 607.1340 ~~607.1301-607.1333.~~

9285
9286 (5) Unless this ~~chapter act~~, the articles of incorporation, or the board of directors acting
9287 pursuant to subsection (3) requires a greater vote or a greater quorum vote ~~by voting groups~~, the
9288 approval of the disposition shall require the approval of the shareholders at a meeting at which a
9289 quorum exists consisting of ~~transaction to be authorized shall be approved by~~ a majority of all the
9290 votes entitled to be cast on the disposition ~~transaction~~.

9291
9292 (6) After a disposition has been approved by the shareholders under this chapter, and at
9293 any time before the disposition has been consummated, it may be abandoned by the corporation
9294 without action by the shareholders, subject to any contractual rights of other parties to the
9295 disposition. Any plan or agreement providing for a sale, lease, exchange, or other disposition of
9296 property, or any resolution of the board of directors or shareholders approving such transaction,
9297 may authorize the board of directors of the corporation to amend the terms thereof at any time
9298 prior to the consummation of such transaction. An amendment made subsequent to the approval
9299 of the transaction by the shareholders of the corporation may not:

9300
9301 (a) ~~Change the amount or kind of shares, securities, cash, property, or rights to be~~
9302 ~~received in exchange for the corporation's property; or~~

9303
9304 (b) ~~Change any other terms and conditions of the transaction if such change would~~
9305 ~~materially and adversely affect the shareholders or the corporation.~~

9306
9307 (7) ~~Unless a plan or agreement providing for a sale, lease, exchange, or other disposition~~
9308 ~~of property, or any resolution of the board of directors or shareholders approving such transaction,~~
9309 ~~prohibits abandonment of the transaction without shareholder approval after a transaction has been~~
9310 ~~authorized, the planned transaction may be abandoned (subject to any contractual rights) at any~~
9311 ~~time prior to consummation thereof, without further shareholder action, in accordance with the~~
9312 ~~procedure set forth in the plan, agreement, or resolutions providing for or approving such~~
9313 ~~transaction or, if none is set forth, in the manner determined by the board of directors.~~

9314
9315 (78) A disposition of assets in the course of dissolution is governed by ss. 607.1401-
9316 607.14401 ~~transaction that constitutes a distribution is governed by s. 607.06401~~ and not by this
9317 section.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9318 (8) For purposes of this section, the assets of a direct or indirect consolidated subsidiary
9319 shall be deemed to be the assets of the parent corporation.

9320
9321 (9) For purposes of this section, the term "shareholder" includes a beneficial shareholder
9322 and a voting trust beneficial owner.

9323

9324 **Commentary to Section 607.1202:**

9325

9326 Model Act s. 12.02, adopted in 1999, moves away from the "all or substantially all of the assets"
9327 test for when shareholder approval of a sale of assets is required (which was in the Model Act prior
9328 to that time) to an evaluation of whether the disposition would leave the corporation "without a
9329 significant continuing business activity." The historical commentary provided that this change was
9330 made because of the belief on the part of the Corporate Laws Committee that in evaluating the
9331 issue of whether a disposition was a sale of substantially all of the assets of the corporation outside
9332 the ordinary course of business, courts, in reaching decisions on that issue, were actually
9333 substantively evaluating whether there remained "significant continuing business activity" in the
9334 corporation.

9335

9336 The Model Act provision also includes a quantitative conclusive presumption safe harbor, which,
9337 if satisfied, means that the corporation is deemed to be retaining a significant business activity
9338 after the transaction (and that therefore no shareholder approval is required for the sale), as follows:

9339

9340 A corporation will conclusively be deemed to have retained a significant continuing
9341 business activity if it retains a business activity that represented, for the corporation and its
9342 subsidiaries on a consolidated basis, at least (i) 25% of total assets at the end of the most
9343 recently completed fiscal year, and (ii) either 25% of either income from continuing
9344 operations before taxes or 25% of revenues from continuing operations, in each case for
9345 the most recent completed fiscal year.

9346

9347 In its commentary to the 1999 version of s. 12.02 of the Model Act, the Corporate Laws Committee
9348 explained that the safe harbor represents a policy judgment that a greater measure of certainty is
9349 highly desirable and that, although setting the percentage threshold at 25% is arbitrary, it was
9350 considered reasonable under the circumstances.

9351

9352 To date, 15 states have adopted the new Model Act standard to evaluate whether shareholder action
9353 is required for the particular disposition of assets. All of these states have also adopted the Model
9354 Act safe harbor at the 25% threshold level (except for one that set a 20% threshold). Further, three
9355 additional states require shareholder approval to sell all or substantially all of the corporation's
9356 assets outside the ordinary course of business, but include a presumption that if the Model Act
9357 25% safe harbor is satisfied, it is conclusively presumed that such disposition is not a sale of all or
9358 substantially all of the corporation's assets. All other states (including Delaware) retain the "all or
9359 substantially all of the assets" test.

9360

9361 In its consideration of s. 607.1201, the Subcommittee was concerned that moving away from the
9362 current standard for when obtaining shareholder approval is required might very well provide more
9363 uncertainty than electing to stay with the existing standard, in light of the fact that much of the

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9364 significant case law evaluating this topic is found in Delaware (where the traditional "all or
9365 substantially all of the assets" test remains the standard). Further, although the benefit of adding a
9366 quantitative safe harbor was considered, there was some disagreement over whether the Model
9367 Act safe harbor standard was too high or too low and as a result, a decision was made not to add a
9368 quantitative safe harbor to the proposed statute.

9369

9370 The addition in subsection (1) of the words "but only if" is not intended to be substantive change,
9371 but rather to make clear the meaning of this provision, which is that a sale or other disposition of
9372 "all or substantially all of the assets" of a Florida corporation outside the ordinary course of
9373 business can only occur with shareholder approval and also, except in limited circumstances, board
9374 of directors approval. It is believed that this has been the interpretation of this provision even
9375 without these clarifying words, but that these clarifying words clear up any question as to what is
9376 intended by this provision.

9377

9378 Subsections (3)-(7) have been updated largely based on the Model Act and are consistent with
9379 corollary provisions in Article 11, to the extent applicable. These changes are considered clarifying
9380 and not substantive.

9381

9382 Subsection (7) was added, from the corollary provision of the Model Act, to make it clear that in
9383 addition to pro rata distributions, dissolutions are governed by Article 14 (Dissolutions) and not
9384 by Article 12 (Sales of assets).

9385

9386 ARTICLE 13

9387 APPRAISAL RIGHTS

9388 607.1301 Appraisal rights; definitions.

9389 The following definitions apply to ss. 607.1301-607.1340 ~~607.1302-607.1333~~:

9390 (1) "Accrued interest" means interest from the date the corporate action becomes effective
9391 until the date of payment, at the rate of interest determined for judgments pursuant to s. 55.03,
9392 determined as of the effective date of the corporate action.

9393 (2) "Affiliate" means a person that directly or indirectly through one or more intermediaries
9394 controls, is controlled by, or is under common control with another person or is a senior executive
9395 of such person thereof. For purposes of paragraph (6)(a) ~~s. 607.132(2)(d)~~, a person is deemed to
9396 be an affiliate of its senior executives.

9397 (3) "Corporate action" means an event described in s. 607.1302(1).

9398 ~~(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a~~
9399 ~~voting trust or by a nominee on the beneficial owner's behalf.~~

9400 ~~(4)~~ "Corporation" means the domestic corporation that is the issuer of the shares held by a
9401 shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1340 ~~ss. 607.1322-~~
9402 ~~607.1333~~, includes the domesticated eligible entity in a domestication, the converted eligible entity
9403 in a conversion, and the survivor of surviving entity in a merger.

9404 ~~(5)~~ "Fair value" means the value of the corporation's shares determined:

9405 (a) Immediately before the effectiveness ~~effectuation~~ of the corporate action to which
9406 the shareholder objects.

9407 (b) Using customary and current valuation concepts and techniques generally employed
9408 for similar businesses in the context of the transaction requiring appraisal, excluding any
9409 appreciation or depreciation in anticipation of the corporate action unless exclusion would be
9410 inequitable to the corporation and its remaining shareholders.

9411 ~~(c) For a corporation with 10 or fewer shareholders,~~ Without discounting for lack of
9412 marketability or minority status.

9413 ~~(5) "Interest" means interest from the effective date of the corporate action until the date of~~
9414 ~~payment, at the rate of interest on judgments in this state on the effective date of the corporate~~
9415 ~~action.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9416 (6) "Interested transaction" means a corporate action described in s. 607.1302(1), other than a
9417 merger pursuant to s. 607.1104, involving an interested person in which any of the shares or assets of
9418 the corporation are being acquired or converted. As used in this definition:

9419 (a) "Interested person" means a person, or an affiliate of a person, who at any time during
9421 the 1-year period immediately preceding approval by the board of directors of the corporate
9422 action:

9423 1. Was the beneficial owner of 20 percent or more of the voting power of the
9424 corporation, other than as owner of excluded shares;

9425 2. Had the power, contractually or otherwise, other than as owner of excluded shares,
9426 to cause the appointment or election of 25 percent or more of the directors to the board of
9427 directors of the corporation; or

9428 3. Was a senior executive or director of the corporation or a senior executive of any
9429 affiliate of the corporation, and will receive, as a result of the corporate action, a financial
9430 benefit not generally available to other shareholders as such, other than:

9431 a. Employment, consulting, retirement, or similar benefits established
9432 separately and not as part of or in contemplation of the corporate action;

9433 b. Employment, consulting, retirement, or similar benefits established in
9434 contemplation of, or as part of, the corporate action that are not more favorable than
9435 those existing before the corporate action or, if more favorable, that have been approved
9436 on behalf of the corporation in the same manner as is provided in s. 607.0832; or

9437 c. In the case of a director of the corporation who, in the corporate action, will
9438 become a director or governor of the acquiror or any of its affiliates in the corporate
9439 action, rights and benefits as a director or governor that are provided on the same basis
9440 as those afforded by the acquiror generally to other directors or governors of such
9441 entity or such affiliate.

9442 (b) "Beneficial owner" means any person who, directly or indirectly, through any contract,
9443 arrangement, or understanding, other than a revocable proxy, has or shares the power to vote, or
9444 to direct the voting of, shares; except that a member of a national securities exchange is not deemed
9445 to be a beneficial owner of securities held directly or indirectly by it on behalf of another person
9446 if the member is precluded by the rules of the exchange from voting without instruction on
9447 contested matters or matters that may affect substantially the rights or privileges of the holders of
9448 the securities to be voted. When two or more persons agree to act together for the purpose of
9449 the securities to be voted.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9456 voting their shares of the corporation, each member of the group formed thereby is deemed to
9457 have acquired beneficial ownership, as of the date of the agreement, of all shares having voting
9458 power of the corporation beneficially owned by any member of the group.
9459

9460 (c) "Excluded shares" means shares acquired pursuant to an offer for all shares having
9461 voting power if the offer was made within 1 year before the corporate action for consideration
9462 of the same kind and of a value equal to or less than that paid in connection with the corporate
9463 action.

9464
9465 (7) "Preferred shares" means a class or series of shares the holders of which have preference
9466 over any other class or series of shares with respect to distributions.

9467 ~~(7) "Record shareholder" means the person in whose name shares are registered in the records~~
9468 ~~of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee~~
9469 ~~certificate on file with the corporation.~~

9470 (8) "Senior executive" means the chief executive officer, chief operating officer, chief
9471 financial officer, or any anyone individual in charge of a principal business unit or function.

9472 (9) Notwithstanding s. 607.01401(67), "shareholder" means both a record shareholder, and
9473 a beneficial shareholder, and a voting trust beneficial owner.

9474

9475 **Commentary to Section 607.1301:**

9476 The statute follows FRLUCA for the most part and the Model Act in certain respects. With very
9477 few exceptions, the changes are considered non-substantive; rather, they are designed to define
9478 certain terms that are used in Article 13 and to remove terms that are already being defined in s.
9479 607.01401. However, the change to the definition of "fair value" is a substantive change in that it
9480 follows FRLUCA by indicating that fair value is determined, in all cases, without any discounting
9481 for lack of marketability or minority status (i.e., it removes the language that had been added back
9482 in 2005 which qualified such exclusion of discounting for lack of marketability or minority status
9483 for corporations with 10 or fewer shareholders). Thus, the amendment in 2005 had left some
9484 ambiguity in the statute in terms of whether the statutory language implied that, for corporations
9485 with more than 10 shareholders, discounts for lack of marketability and minority status should be
9486 applied. By virtue of the change in the statute, this ambiguity has been resolved with the effect
9487 that fair value, in the context of appraisal rights valuation, should always be determined without
9488 any discount for lack of marketability or minority status.

9489
9490 The statute adds the definition of an "interested transaction" from Section 13.01 of the Model Act.
9491 While this definition is only used in a few places (s. 607.1302(2)(d), s. 607.1302(1)(d)2., and s.
9492 607.1302(2)(c)), it was concluded that the definition of "interested transaction" was a more
9493 fulsome complete definition of the concept that ought to be included in identifying an "interested
9494 transaction."

9495

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9496 607.1302 Right of shareholders to appraisal.

9497 (1) A shareholder of a domestic corporation is entitled to appraisal rights, and to obtain
9498 payment of the fair value of that shareholder's shares, in the event of any of the following corporate
9499 actions:

9500 (a) Consummation of a domestication or a conversion of such corporation pursuant
9501 to s. 607.11921 or s. 607.11932, as applicable, if shareholder approval is required for the
9502 domestication or the conversion; and the shareholder is entitled to vote on the conversion
9503 under s. 607.1112(6), or the

9504 (b) Consummation of a merger to which such corporation is a party:

9505 1. If shareholder approval is required for the merger under s. 607.1103 or
9506 would be required, but for s. 607.11035, and the shareholder is entitled to vote on the
9507 merger, except that appraisal rights shall not be available to any shareholder of the
9508 corporation with respect to shares of any class or series that remains outstanding after
9509 consummation of the merger where the terms of such class or series have not been
9510 materially altered; or

9511 2. If such corporation is a subsidiary and the merger is governed by s.
9512 607.1104;

9513 (c**b**) Consummation of a share exchange to which the corporation is a party as the
9514 corporation whose shares will be acquired if the shareholder is entitled to vote on the
9515 exchange, except that appraisal rights are not available to any shareholder of the
9516 corporation with respect to any class or series of shares of the corporation that is not
9517 exchanged-acquired in the share exchange;

9518 (d**e**) Consummation of a disposition of assets pursuant to s. 607.1202 if the
9519 shareholder is entitled to vote on the disposition, including a sale in dissolution, but not
9520 including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or
9521 substantially all of the net proceeds of the sale will be distributed to the shareholders within
9522 1 year after the date of sale; except that appraisal rights shall not be available to any
9523 shareholder of the corporation with respect to shares of any class or series if:

9524 1. Under the terms of the corporate action approved by the shareholders there
9525 is to be distributed to shareholders in cash the corporation's net assets, in excess of a
9526 reasonable amount reserved to meet claims of the type described in ss. 607.1406 and
9527 607.1407, within 1 year after the shareholders' approval of the action and in
9528 accordance with their respective interests determined at the time of distribution; and

9529 2. The disposition of assets is not an interested transaction;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9530 ~~(ed)~~ An amendment of the articles of incorporation with respect to ~~a the~~ class or series
9531 of shares which reduces the number of shares of a class or series owned by the shareholder
9532 to a fraction of a share if the corporation has the obligation or the right to repurchase the
9533 fractional share so created;

9534 ~~(fe)~~ Any other ~~amendment to the articles of incorporation~~, merger, share exchange,
9535 ~~or disposition of assets, or amendment to the articles of incorporation~~, in each case to the
9536 extent provided by the articles of incorporation, bylaws, or a resolution of the board of
9537 directors, except that no bylaw or board resolution providing for appraisal rights may be
9538 amended or otherwise altered except by shareholder approval;

9539 (g) An amendment to the articles of incorporation or bylaws of the corporation, the
9540 effect of which is to alter or abolish voting or other rights with respect to such interest in a
9541 manner that is adverse to the interest of such shareholder, except as the right may be
9542 affected by the voting or other rights of new shares then being authorized of a new class or
9543 series of shares;

9544 (h) An amendment to the articles of incorporation or bylaws of a corporation the
9545 effect of which is to adversely affect the interest of the shareholder by altering or abolishing
9546 appraisal rights under this section;

9547 ~~(if)~~ With regard to a class of shares prescribed in the articles of incorporation prior
9548 to October 1, 2003, including any shares within that class subsequently authorized by
9549 amendment, any amendment of the articles of incorporation if the shareholder is entitled
9550 to vote on the amendment and if such amendment would adversely affect such shareholder
9551 by:
9552

9553 1. Altering or abolishing any preemptive rights attached to any of his or her
9554 shares;

9555 2. Altering or abolishing the voting rights pertaining to any of his or her shares,
9556 except as such rights may be affected by the voting rights of new shares then being
9557 authorized of any existing or new class or series of shares;

9558 3. Effecting an exchange, cancellation, or reclassification of any of his or her
9559 shares, when such exchange, cancellation, or reclassification would alter or abolish
9560 the shareholder's voting rights or alter his or her percentage of equity in the
9561 corporation, or effecting a reduction or cancellation of accrued dividends or other
9562 arrearages in respect to such shares;

9563 4. Reducing the stated redemption price of any of the shareholder's
9564 redeemable shares, altering or abolishing any provision relating to any sinking fund

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9565 for the redemption or purchase of any of his or her shares, or making any of his or
9566 her shares subject to redemption when they are not otherwise redeemable;

9567 5. Making noncumulative, in whole or in part, dividends of any of the
9568 shareholder's preferred shares which had theretofore been cumulative;

9569 6. Reducing the stated dividend preference of any of the shareholder's
9570 preferred shares; or

9571 7. Reducing any stated preferential amount payable on any of the
9572 shareholder's preferred shares upon voluntary or involuntary liquidation;

9573 (~~j~~) An amendment of the articles of incorporation of a social purpose corporation
9574 to which s. 607.504 or s. 607.505 applies;

9575 (~~k~~) An amendment of the articles of incorporation of a benefit corporation to which
9576 s. 607.604 or s. 607.605 applies;

9577 (~~l~~) A merger, domestication, conversion, or share exchange of a social purpose
9578 corporation to which s. 607.504 applies; or

9579 (~~m~~) A merger, domestication, conversion, or share exchange of a benefit corporation
9580 to which s. 607.604 applies.

9581 (2) Notwithstanding subsection (1), the availability of appraisal rights under paragraphs
9582 (1)(a), (b), (c), ~~and~~ (d), and (e) shall be limited in accordance with the following provisions:

9583 (a) Appraisal rights shall not be available for the holders of shares of any class or
9584 series of shares which is:

9585 1. A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933
9586 Listed on the New York Stock Exchange or the American Stock Exchange or
9587 designated as a national market system security on an interdealer quotation system
9588 by the National Association of Securities Dealers, Inc.; or

9589 2. Not a covered security, but traded in an organized market and Not so listed
9590 or designated, but has at least 2,000 shareholders and the outstanding shares of such
9591 class or series have a market value of at least \$20 \$10 million, exclusive of the value
9592 of outstanding such shares held by the corporation's ~~its~~ subsidiaries, by the
9593 corporation's senior executives, by the corporation's directors, and by the
9594 corporation's beneficial shareholders and voting trust beneficial owners shareholders
9595 owning more than 10 percent of the outstanding such shares; or

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9596 3. Issued by an open end management investment company registered with the
9597 Securities and Exchange Commission under the Investment Company Act of 1940
9598 and which may be redeemed at the option of the holder at net asset value.

9599 (b) The applicability of paragraph (a) shall be determined as of:

9600 1. The record date fixed to determine the shareholders entitled to receive
9601 notice of, ~~and to vote at,~~ the meeting of shareholders to act upon the corporate action
9602 requiring appraisal rights, or, in the case of an offer made pursuant to s. 607.11035,
9603 the date of such offer; or

9604 2. If there will be no meeting of shareholders and no offer is made pursuant to
9605 s. 607.11035, the close of business on the day before the consummation of the ~~on~~
9606 ~~which the board of directors adopts the resolution recommending such~~ corporate
9607 ~~action~~ or the effective date of the amendment of the articles, as applicable.

9608 (c) Paragraph (a) ~~is not shall not be~~ applicable and appraisal rights shall be available
9609 pursuant to subsection (1) for the holders of any class or series of shares where the
9610 corporate action is an interested transaction. ~~who are required by the terms of the corporate~~
9611 ~~action requiring appraisal rights to accept for such shares anything other than cash or shares~~
9612 ~~of any class or any series of shares of any corporation, or any other proprietary interest of~~
9613 ~~any other entity, that satisfies the standards set forth in paragraph (a) at the time the~~
9614 ~~corporate action becomes effective;~~

9615 (d) ~~Paragraph (a) shall not be applicable and appraisal rights shall be available pursuant~~
9616 ~~to subsection (1) for the holders of any class or series of shares if:~~

9617 1. ~~Any of the shares or assets of the corporation are being acquired or converted,~~
9618 ~~whether by merger, share exchange, or otherwise, pursuant to the corporate action by a~~
9619 ~~person, or by an affiliate of a person, who:~~

9620 a. ~~Is, or at any time in the 1-year period immediately preceding approval by~~
9621 ~~the board of directors of the corporate action requiring appraisal rights was, the~~
9622 ~~beneficial owner of 20 percent or more of the voting power of the corporation,~~
9623 ~~excluding any shares acquired pursuant to an offer for all shares having voting power~~
9624 ~~if such offer was made within 1 year prior to the corporate action requiring appraisal~~
9625 ~~rights for consideration of the same kind and of a value equal to or less than that paid~~
9626 ~~in connection with the corporate action; or~~

9627 b. ~~Directly or indirectly has, or at any time in the 1-year period immediately~~
9628 ~~preceding approval by the board of directors of the corporation of the corporate~~
9629 ~~action requiring appraisal rights had, the power, contractually or otherwise, to cause~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9630 ~~the appointment or election of 25 percent or more of the directors to the board of~~
9631 ~~directors of the corporation; or~~

9632 ~~2.— Any of the shares or assets of the corporation are being acquired or converted,~~
9633 ~~whether by merger, share exchange, or otherwise, pursuant to such corporate action by a~~
9634 ~~person, or by an affiliate of a person, who is, or at any time in the 1 year period~~
9635 ~~immediately preceding approval by the board of directors of the corporate action~~
9636 ~~requiring appraisal rights was, a senior executive or director of the corporation or a senior~~
9637 ~~executive of any affiliate thereof, and that senior executive or director will receive, as a~~
9638 ~~result of the corporate action, a financial benefit not generally available to other~~
9639 ~~shareholders as such, other than:~~

9640 ~~a.— Employment, consulting, retirement, or similar benefits established~~
9641 ~~separately and not as part of or in contemplation of the corporate action;~~

9642 ~~b.— Employment, consulting, retirement, or similar benefits established in~~
9643 ~~contemplation of, or as part of, the corporate action that are not more favorable than~~
9644 ~~those existing before the corporate action or, if more favorable, that have been~~
9645 ~~approved on behalf of the corporation in the same manner as is provided in s.~~
9646 ~~607.0832; or~~

9647 ~~c.— In the case of a director of the corporation who will, in the corporate action,~~
9648 ~~become a director of the acquiring entity in the corporate action or one of its~~
9649 ~~affiliates, rights and benefits as a director or governor that are provided on the same~~
9650 ~~basis as those afforded by the acquiring entity generally to other directors or~~
9651 ~~governors of such entity or such affiliate.~~

9652 ~~(e) For the purposes of paragraph (d) only, the term "beneficial owner" means any~~
9653 ~~person who, directly or indirectly, through any contract, arrangement, or understanding, other~~
9654 ~~than a revocable proxy, has or shares the power to vote, or to direct the voting of, shares,~~
9655 ~~provided that a member of a national securities exchange shall not be deemed to be a beneficial~~
9656 ~~owner of securities held directly or indirectly by it on behalf of another person solely because~~
9657 ~~such member is the recordholder of such securities if the member is precluded by the rules of~~
9658 ~~such exchange from voting without instruction on contested matters or matters that may affect~~
9659 ~~substantially the rights or privileges of the holders of the securities to be voted. When two or~~
9660 ~~more persons agree to act together for the purpose of voting their shares of the corporation,~~
9661 ~~each member of the group formed thereby shall be deemed to have acquired beneficial~~
9662 ~~ownership, as of the date of such agreement, of all shares having voting power shares of the~~
9663 ~~corporation beneficially owned by any member of the group.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9664 (3) Notwithstanding any other provision of this section, the articles of incorporation as
9665 originally filed or any amendment to the articles of incorporation thereto may limit or eliminate
9666 appraisal rights for any class or series of preferred shares, except that:

9667 (a) No such limitation or elimination shall be effective if the class or series does not
9668 have the right to vote separately as a voting group, alone or as part of a group, on the action
9669 or if the action is a domestication under s. 607.11920 or a conversion under s. 607.11930,
9670 or a merger having a similar effect as a domestication or conversion in which the
9671 domesticated eligible entity or the converted eligible entity, as applicable, is an eligible
9672 entity, and

9673 (b) ~~but~~ Any such limitation or elimination contained in an amendment to the articles
9674 of incorporation that limits or eliminates appraisal rights for any of such shares that are
9675 outstanding immediately before ~~prior to~~ the effective date of such amendment or that the
9676 corporation is or may be required to issue or sell thereafter pursuant to any conversion,
9677 exchange, or other right existing immediately before the effective date of such amendment
9678 shall not apply to any corporate action that becomes effective within 1 year after the
9679 effective of that date of such amendment if such action would otherwise afford appraisal
9680 rights.

9681 (4) ~~A shareholder entitled to appraisal rights under this chapter may not challenge a~~
9682 ~~completed corporate action for which appraisal rights are available unless such corporate action:~~

9683 (a) ~~Was not effectuated in accordance with the applicable provisions of this section~~
9684 ~~or the corporation's articles of incorporation, bylaws, or board of directors' resolution~~
9685 ~~authorizing the corporate action; or~~

9686 (b) ~~Was procured as a result of fraud or material misrepresentation.~~

9687

9688 **Commentary to Section 607.1302:**

9689 Consistent with FRLCA, this section is revised to separate out conversions from mergers into
9690 two separate subparagraphs rather than continuing to include them within the same subparagraph.
9691 In addition, with respect to conversions, domestications, mergers and share exchanges and
9692 consistent with the approach of the Model Act, the requirement that the shareholder be entitled to
9693 vote on the transaction in order to have appraisal rights has been removed.

9694
9695 Because of the addition of s. 607.11035 relating to "mop up" mergers, the requirement with respect
9696 to granting appraisal rights in connection with mergers that shareholder approval must be required
9697 is overridden with respect to those transactions that are subject to s. 607.11035. In other words,
9698 the minority shareholder in a s. 607.11035 "mop up" merger would be entitled to appraisal rights
9699 in connection with such merger even though the statute expressly overrides any need to secure
9700 shareholder approval for such "mop up" merger transactions.

9701
9702 Because the transactions with respect to which domestications can occur have been expanded to
9703 follow the expanded scope set forth in the Model Act, the Model Act provision triggering appraisal
9704 rights with respect to certain domestication transactions from the Model Act has been added to the
9705 statute.

9706
9707 The public company override of appraisal rights has been modified to follow the Model Act by
9708 referencing "covered securities," and trading in an organized market where the market value is at
9709 least \$20 million instead of \$10 million and by adding the reference to issuances by open end
9710 management investment companies registered under the 1940 Act. However, this public company
9711 override has certain exceptions. Consistent with the Model Act and FRLCA, an additional
9712 exception has been added to include consummation of a disposition of assets pursuant to s.
9713 607.1202.

9714
9715 The provisions in s. 607.1302(4) have, consistent with the Model Act, been moved to new s.
9716 607.1340, with certain clean-up changes to mirror the language used in s. 607.1340. However,
9717 certain of the aspects of Section 13.40 of the Model Act, which are not covered at all in s.
9718 607.1302(4) have not been adopted, as more specifically described in the commentary to s.
9719 607.1340.

9720
9721 FRLCA contains two additional grounds for appraisal rights that were considered: (i) following
9722 s. 605.1006(1)(h), to the extent authorized in the articles of incorporation or by laws or a
9723 shareholders' agreement under s. 607.0732. and (ii) following s. 605.1006(2), the right to abolish
9724 appraisal rights in an operating agreement. While a shareholders agreement under s. 607.0732
9725 might arguably abolish appraisal rights if such change does not violate fundamental public policy,
9726 as a general rule, the subcommittee decided that these provisions should not be added to the FBCA
9727 in the context of a corporation (compared to an LLC).

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9728 607.1303 Assertion of rights by nominees and beneficial owners.

9729 (1) A record shareholder may assert appraisal rights as to fewer than all the shares
9730 registered in the record shareholder's name but owned by a beneficial shareholder or a voting trust
9731 beneficial owner only if the record shareholder objects with respect to all shares of the class or
9732 series owned by a beneficial shareholder or a voting trust beneficial owner and notifies the
9733 corporation in writing of the name and address of each beneficial shareholder or voting trust
9734 beneficial owner on whose behalf appraisal rights are being asserted. The rights of a record
9735 shareholder who asserts appraisal rights for only part of the shares held of record in the record
9736 shareholder's name under this subsection shall be determined as if the shares as to which the record
9737 shareholder objects and the record shareholder's other shares were registered in the names of
9738 different record shareholders.

9739 (2) A beneficial shareholder and a voting trust beneficial owner may assert appraisal
9740 rights as to shares of any class or series held on behalf of the shareholder only if such shareholder:

9741 (a) Submits to the corporation the record shareholder's written consent to the
9742 assertion of such rights no later than the date referred to in s. 607.1322(2)(b)2.

9743 (b) Does so with respect to all shares of the class or series that are beneficially
9744 owned by the beneficial shareholder or the voting trust beneficial owner.

9745

9746 **Commentary to Section 607.1303:**

9747 No substantive changes have been made to this section.

9748

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9749 607.1320 Notice of appraisal rights.

9750 (1) If a proposed corporate action described in s. 607.1302(1) is to be submitted to a vote
9751 at a shareholders' meeting, the meeting notice (or, where no approval of such action is required
9752 pursuant to s. 607.11035, the offer made pursuant to s. 607.11035), must state that the corporation
9753 has concluded that shareholders are, are not, or may be entitled to assert appraisal rights under this
9754 chapter. If the corporation concludes that appraisal rights are or may be available, a copy of ss.
9755 607.1301-607.1340 ~~ss. 607.1301-607.1333~~ must accompany the meeting notice or offer sent to
9756 those record shareholders entitled to exercise appraisal rights.

9757 (2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all
9758 record shareholders of the subsidiary who are entitled to assert appraisal rights that the corporate
9759 action became effective. Such notice must be sent within 10 days after the corporate action became
9760 effective and include the materials described in s. 607.1322.

9761 (3) If a ~~the~~ proposed corporate action described in s. 607.1302(1) is to be approved by
9762 written consent of the shareholders pursuant to s. 607.0704: ~~other than by a shareholders' meeting,~~

9763 (a) Written notice that appraisal rights are, are not, or may be available must be sent
9764 to each shareholder from whom a consent is solicited at the time consent of such
9765 shareholder is first solicited, and, if the corporation has concluded that appraisal rights
9766 are or may be available, a copy of ss. 607.1301-607.1340 must accompany such written
9767 notice; and

9768 (b) Written notice that appraisal rights are, are not, or may be available must be
9769 delivered, at least 10 days before the corporate action becomes effective, to all
9770 nonconsenting and nonvoting shareholders, and, if the corporation has concluded that
9771 appraisal rights are or may be available, a copy of ss. 607.1301-607.1340 must
9772 accompany such written notice ~~the notice referred to in subsection (1) must be sent to all~~
9773 ~~shareholders at the time that consents are first solicited pursuant to s. 607.0704, whether~~
9774 ~~or not consents are solicited from all shareholders, and include the materials described in~~
9775 ~~s. 607.1322.~~

9776 (4) Where a corporate action described in s. 607.1302(1) is proposed or a merger
9777 pursuant to s. 607.1104 is effected, and the corporation concludes that appraisal rights are or may
9778 be available, the notice referred to in subsection (1), paragraph (3)(a), or paragraph (3)(b) must be
9779 accompanied by:

9780 (a) Financial statements of the corporation that issued the shares that may be or are
9781 subject to appraisal rights, consisting of a balance sheet as of the end of the fiscal year
9782 ending not more than 16 months before the date of the notice, an income statement for
9783 that fiscal year, and a cash flow statement for that fiscal year; however, if such financial

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9784 statements are not reasonably available, the corporation must provide reasonably
9785 equivalent financial information; and

9786 (b) The latest available interim financial statements, including year-to-date through
9787 the end of the interim period, of such corporation, if any.

9788 (5) The right to receive the information described in subsection (4) may be waived in
9789 writing by a shareholder before or after the corporate action is effected.

9790

9791 **Commentary to Section 607.1320:**

9792 This section has been harmonized with s. 605.1063, which in turn, when drafted, had been based
9793 in large part on the corollary provision in the Model Act. In addition, language addressing
9794 coordination with new s. 607.11035 relating to "mop up" mergers have been added.

9795
9796 Most importantly, consistent with FRLICA, the provisions of this section have been modified to
9797 eliminate certain circularity that existed under the prior statute relating to corporate actions that
9798 were being approved other than by way of vote at a shareholders meeting, such as an approval by
9799 way of written consent. The change, which follows the parallel provision in FRLICA, now (i)
9800 contemplates providing written notice of the appraisal rights being sent to a shareholder from
9801 whom a consent is being solicited at the time the consent of that shareholder is first solicited rather
9802 than arguably having to send notice of appraisal rights to all shareholders at the time the first
9803 shareholder's consent is being solicited, and (ii) adds that, when such a transaction is being
9804 approved by written consent rather than by a vote at a shareholders meeting, notice of the appraisal
9805 rights must be sent at least 10 days before the corporate action becomes effective to any
9806 nonconsenting or nonvoting shareholders.

9807
9808 The statute has also been updated to make it clear that certain financial statements need to be
9809 provided to the shareholders together with the written notice indicating that appraisal rights may
9810 be available, which again is consistent with the provisions of FRLICA. However, subsection (5)
9811 has been added to make it clear that the right to receive the financial statement information can be
9812 waived in writing by any shareholder either before or after the particular corporate action is
9813 effected.

9814

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9815 607.1321 Notice of intent to demand payment.

9816 (1) If a proposed corporate action requiring appraisal rights under s. 607.1302 is
9817 submitted to a vote at a shareholders' meeting, ~~or is submitted to a shareholder pursuant to a~~
9818 ~~consent vote under s. 607.0704~~, a shareholder who wishes to assert appraisal rights with respect to
9819 any class or series of shares:

9820 (a) Must deliver to the corporation before the vote is taken, ~~or within 20 days after~~
9821 ~~receiving the notice pursuant to s. 607.1320(3) if action is to be taken without a shareholder~~
9822 ~~meeting~~, written notice of the shareholder's intent to demand payment if the proposed
9823 corporate action is effectuated; and-

9824 (b) Must not vote, or cause or permit to be voted, any shares of such class or series
9825 in favor of the proposed corporate action.

9826 (2) If a proposed corporate action requiring appraisal rights under s. 607.1302 is to be
9827 approved by written consent, a shareholder who wishes to assert appraisal rights with respect to
9828 any class or series of shares must not sign a consent in favor of the proposed corporate action with
9829 respect to that class or series of shares.

9830 (3) If a proposed corporate action specified in s. 607.1302(1) does not require
9831 shareholder approval pursuant to s. 607.11035, a shareholder who wishes to assert appraisal rights
9832 with respect to any class or series of shares:

9833 (a) Must deliver to the corporation before the shares are purchased pursuant to the
9834 offer a written notice of the shareholder's intent to demand payment if the proposed action
9835 is effected; and

9836 (b) Must not tender, or cause or permit to be tendered, any shares of such class or
9837 series in response to such offer.

9838 (24) A shareholder who may otherwise be entitled to appraisal rights but does not satisfy
9839 the requirements of subsections (1), (2), or (3) ~~subsection (1)~~ is not entitled to payment under this
9840 chapter.

9841

9842 **Commentary to Section 607.1321:**

9843 Similar to s. 607.1320, this section has been updated to be harmonized with s. 605.1064 of
9844 FRLUCA, which in turn had been modeled after the provisions in the corollary section of the
9845 Model Act. As with s. 607.1320, the procedure applicable to the shareholder in terms of noticing
9846 an intent to demand payment has been modified so that the provisions relating to transactions that
9847 are approved by written consent, rather than at a shareholders' meeting, are separately addressed
9848 to avoid the circularity that existed under the previous version of the statute. In addition, because
9849 of the addition of s. 607.11035 relating to "mop up" mergers where no vote is required, the process
9850 for a shareholder to assert appraisal rights in that type of transaction is added as new subsection
9851 (3).
9852

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9853 607.1322 Appraisal notice and form.

9854 (1) If a ~~proposed~~ corporate action requiring appraisal rights under s. 607.1302(1)
9855 becomes effective, the corporation must deliver a written appraisal notice and form required by
9856 paragraph (2)(a) to all shareholders who satisfied the requirements of s. 607.1321(1), (2), or (3) ~~s.~~
9857 ~~607.1321~~. In the case of a merger under s. 607.1104, the parent must deliver a written appraisal
9858 notice and form to all record shareholders who may be entitled to assert appraisal rights.

9859 (2) The appraisal notice must be delivered ~~sent~~ no earlier than the date the corporate
9860 action became effective, and no later than 10 days after such date, and must:

9861 (a) Supply a form that specifies the date that the corporate action became effective
9862 and that provides for the shareholder to state:

9863 1. The shareholder's name and address.

9864 2. The number, classes, and series of shares as to which the shareholder asserts
9865 appraisal rights.

9866 3. That the shareholder did not vote for or consent to the transaction.

9867 4. Whether the shareholder accepts the corporation's offer as stated in
9868 subparagraph (b)4.

9869 5. If the offer is not accepted, the shareholder's estimated fair value of the
9870 shares and a demand for payment of the shareholder's estimated value plus accrued
9871 interest.

9872 (b) State:

9873 1. Where the form must be sent and where certificates for certificated shares
9874 must be deposited and the date by which those certificates must be deposited, which
9875 date may not be earlier than the date by which the corporation must receive ~~for~~
9876 ~~receiving~~ the required form under subparagraph 2.

9877 2. A date by which the corporation must receive the form, which date may not
9878 be fewer than 40 nor more than 60 days after the date the subsection (1) appraisal
9879 notice and form are sent, and state that the shareholder shall have waived the right to
9880 demand appraisal with respect to the shares unless the form is received by the
9881 corporation by such specified date.

9882 3. The corporation's estimate of the fair value of the shares.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9883 4. An offer to each shareholder who is entitled to appraisal rights to pay the
9884 corporation's estimate of fair value set forth in subparagraph 3.

9885 5. That, if requested in writing, the corporation will provide to the shareholder
9886 so requesting, within 10 days after the date specified in subparagraph 2., the number
9887 of shareholders who return the forms by the specified date and the total number of
9888 shares owned by them.

9889 6. The date by which the notice to withdraw under s. 607.1323 must be
9890 received, which date must be within 20 days after the date specified in subparagraph
9891 2.

9892 (c) If not previously provided, be accompanied by a copy of ss. 607.1301-607.1340.

9893 ~~(c) Be accompanied by:~~

9894 1. ~~Financial statements of the corporation that issued the shares to be~~
9895 ~~appraised, consisting of a balance sheet as of the end of the fiscal year ending not~~
9896 ~~more than 15 months prior to the date of the corporation's appraisal notice, an~~
9897 ~~income statement for that year, a cash flow statement for that year, and the latest~~
9898 ~~available interim financial statements, if any.~~

9899 2. ~~A copy of ss. 607.1301-607.1333.~~

9900

9901 **Commentary to Section 607.1322:**

9902 The changes to this section are mostly non-substantive. Subsection (2)(c) has been deleted
9903 because, by the time the appraisal notice and form is being provided to those shareholders
9904 indicating their intent to exercise appraisal rights, such shareholders will have already received the
9905 appropriate financial statements and a copy of the appraisal statute earlier on in the process.

9906 The requirement to provide financial statements in old subsection (3) is now included in s.
9907 607.1320(4).

9908

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9909 607.1323 Perfection of rights; right to withdraw.

9910 (1) A shareholder who receives notice pursuant to s. 607.1322 and who wishes to
9911 exercise appraisal rights must sign ~~execute~~ and return the form received pursuant to s. 607.1322(1)
9912 and, in the case of certificated shares, deposit the shareholder's certificates in accordance with the
9913 terms of the notice by the date referred to in the notice pursuant to s. 607.1322(2)(b)2. Once a
9914 shareholder deposits that shareholder's certificates or, in the case of uncertificated shares, returns
9915 the signed ~~executed~~ forms, that shareholder loses all rights as a shareholder, unless the shareholder
9916 withdraws pursuant to subsection (2).

9917 (2) A shareholder who has complied with subsection (1) may nevertheless decline to
9918 exercise appraisal rights and withdraw from the appraisal process by so notifying the corporation
9919 in writing by the date set forth in the appraisal notice pursuant to s. 607.1322(2)(b)6. A shareholder
9920 who fails to so withdraw from the appraisal process may not thereafter withdraw without the
9921 corporation's written consent.

9922 (3) A shareholder who does not sign ~~execute~~ and return the form and, in the case of
9923 certificated shares, deposit that shareholder's share certificates if required, each by the date set
9924 forth in the notice described in s. 607.1322(2) subsection (2), shall not be entitled to payment under
9925 ss. 607.1301-607.1340 ~~this chapter~~.

9926

9927 **Commentary to Section 607.1323:**

9928 There are no substantive changes to this section.

9929

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9930 607.1324 Shareholder's acceptance of corporation's offer.

9931 (1) If the shareholder states on the form provided in s. 607.1322(1) that the shareholder
9932 accepts the offer of the corporation to pay the corporation's estimated fair value for the shares, the
9933 corporation shall make such payment to the shareholder within 90 days after the corporation's
9934 receipt of the form from the shareholder.

9935 (2) Upon payment of the agreed value, the shareholder shall cease to have any right to
9936 receive any further consideration with respect to such ~~interest in the~~ shares.

9937

9938 **Commentary to Section 607.1324:**

9939 The language in subsection (2) has been changed so as to make it clear that a shareholder who
9940 receives payment of an agreed value ceases to have any right to receive any further consideration
9941 with respect to the shares rather than such shareholder ceasing to have any interest in the shares
9942 given that other sections of Article 13 will have already caused the shareholder to cease to have
9943 any interest in the shares themselves.

9944

9945 A decision was made not to add subsection (b) from Model Act s. 13.24 requiring delivery of
9946 financial statements, an estimate of fair value and a right to demand further payment because such
9947 information will have already previously been provided to the shareholder.

9948

9949 Model Act s. 13.25 After-acquired shares.

9950 Model Act s. 13.25 covers after-acquired shares and allows a corporation to withhold payments
9951 required by Model Act s. 13.24 with respect to certain after-acquired shares. This provision
9952 coordinates with the provisions of Model Act s. 13.24 that require payment of the corporation's
9953 estimate of fair value prior to the resolution of the appraised value. Since a decision was made not
9954 to include this concept of early payment in the FBCA, this Model Act provision was considered
9955 unnecessary and it has not been added to this proposal.

9956 While it is not expressly stated in the commentary to the 2002 proposal, it is clear that a decision
9957 was made at that time not to include this provision in the FBCA. This provision is not in FRLCA,
9958 and is believed unnecessary if the advance payment provisions from the Model Act that are in s.
9959 13.24 are not added to the FBCA.

9960

FINAL STATUTE AS ADOPTED
(With Commentary)

9961 607.1326 Procedure if shareholder is dissatisfied with offer.

9962 (1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to
9963 s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1)
9964 of that shareholder's estimate of the fair value of the shares and demand payment of that estimate
9965 plus accrued interest.

9966 (2) A shareholder who fails to notify the corporation in writing of that shareholder's
9967 demand to be paid the shareholder's stated estimate of the fair value plus accrued interest under
9968 subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand
9969 payment under this section and shall be entitled only to the payment offered by the corporation
9970 pursuant to s. 607.1322(2)(b)4.

9971

9972 **Commentary to Section 607.1326:**

9973 No substantive changes have been made to this section.

9974

**FINAL STATUTE AS ADOPTED
(With Commentary)**

9975 607.1330 Court action.

9976 (1) If a shareholder makes demand for payment under s. 607.1326 which remains
9977 unsettled, the corporation shall commence a proceeding within 60 days after receiving the payment
9978 demand and petition the court to determine the fair value of the shares and accrued interest from
9979 the date of the corporate action. If the corporation does not commence the proceeding within the
9980 60-day period, any shareholder who has made a demand pursuant to s. 607.1326 may commence
9981 the proceeding in the name of the corporation.

9982 (2) The proceeding shall be commenced in the circuit court in the applicable county
9983 appropriate court of the county in which the corporation's principal office, or, if none, its registered
9984 office, in this state is located. If by virtue of the corporate action becoming effective the entity has
9985 become the corporation is a foreign eligible entity corporation without a registered office in this
9986 state, the proceeding shall be commenced in the county in this state in which the principal office
9987 or registered office of the domestic corporation merged with the foreign eligible entity corporation
9988 was located immediately before the time the corporate action became effective. If such entity has,
9989 and immediately before the corporate action became effective had, no principal office or registered
9990 office in this state, then the proceeding shall be commenced in the county in this state in which the
9991 corporation has, or immediately before the time the corporate action became effective had, an
9992 office in this state. If such entity has, or immediately before the time the corporate action became
9993 effective had, no office in this state, the proceeding shall be commenced in the county in which
9994 the corporation's registered office is or was last located at the time of the transaction.

9995 (3) All shareholders, whether or not residents of this state, whose demands remain
9996 unsettled shall be made parties to the proceeding as in an action against their shares. The
9997 corporation shall serve a copy of the initial pleading in such proceeding upon each shareholder
9998 party who is a resident of this state in the manner provided by law for the service of a summons
9999 and complaint and upon each nonresident shareholder party by registered or certified mail or by
10000 publication as provided by law.

10001 (4) The jurisdiction of the court in which the proceeding is commenced under subsection
10002 (2) is plenary and exclusive. If it so elects, the court may appoint one or more persons as appraisers
10003 to receive evidence and recommend a decision on the question of fair value. The appraisers shall
10004 have the powers described in the order appointing them or in any amendment to the order. The
10005 shareholders demanding appraisal rights are entitled to the same discovery rights as parties in other
10006 civil proceedings. There shall be no right to a jury trial.

10007 (5) Each shareholder made a party to the proceeding is entitled to judgment for the
10008 amount of the fair value of such shareholder's shares, plus accrued interest, as found by the court.

10009 (6) The corporation shall pay each such shareholder the amount found to be due within
10010 10 days after final determination of the proceedings. Upon payment of the judgment, the

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10011 shareholder shall cease to have any rights to receive any further consideration with respect to such
10012 ~~interest in the shares~~ other than any amounts ordered to be paid for court costs and attorney fees
10013 under s. 607.1331.

10014

10015 **Commentary to Section 607.1330:**

10016 In subsection (2), the concept of "applicable county" (which has been added to the definitions in
10017 s. 607.01401) has been incorporated into this section. Some additional language has been added to
10018 deal with situations where the corporation, by virtue of the corporate action becoming effective,
10019 has become a foreign entity and what to do where that corporation did not have a principal office
10020 in Florida prior to the transaction. In addition, in subsection (6), language has been clarified such
10021 that, upon payment of the judgment, the shareholder ceases to have any right to receive any further
10022 consideration with respect to the shares rather than such shareholder ceasing to have any interest
10023 in the shares, given that other sections of Article 13 will have already caused the shareholder to
10024 cease to have any interest in the shares themselves. However, this provision is not intended to
10025 eliminate rights to receive reimbursement for court costs and attorney fees that might be assessed
10026 under s. 607.1331 (and language has been added to reflect this concept).

10027

10028 Other than these clarifying changes, no substantive changes have been made to this section.

10029

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10030 607.1331 Court costs and counsel fees.

10031 (1) The court in an appraisal proceeding shall determine all costs of the proceeding,
10032 including the reasonable compensation and expenses of appraisers appointed by the court. The
10033 court shall assess the costs against the corporation, except that the court may assess costs against
10034 all or some of the shareholders demanding appraisal, in amounts the court finds equitable, to the
10035 extent the court finds such shareholders acted arbitrarily, vexatiously, or not in good faith with
10036 respect to the rights provided by this chapter.

10037 (2) The court in an appraisal proceeding may also assess the fees and expenses of counsel
10038 and experts for the respective parties, in amounts the court finds equitable:

10039 (a) Against the corporation and in favor of any or all shareholders demanding
10040 appraisal if the court finds the corporation did not substantially comply with ss. 607.1320
10041 and 607.1322; or

10042 (b) Against either the corporation or a shareholder demanding appraisal, in favor of
10043 any other party, if the court finds that the party against whom the fees and expenses are
10044 assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights
10045 provided by this chapter.

10046 (3) If the court in an appraisal proceeding finds that the services of counsel for any
10047 shareholder were of substantial benefit to other shareholders similarly situated, and that the fees
10048 for those services should not be assessed against the corporation, the court may award to such
10049 counsel reasonable fees to be paid out of the amounts awarded the shareholders who were
10050 benefited.

10051 (4) To the extent the corporation fails to make a required payment pursuant to s.
10052 607.1324, the shareholder may sue directly for the amount owed and, to the extent successful, shall
10053 be entitled to recover from the corporation all costs and expenses of the suit, including attorney
10054 ~~counsel~~ fees.

10055

10056 **Commentary to Section 607.1331:**

10057 The existing statute follows the Model Act (and matches the corollary provision in FRLUCA), so
10058 only minor clean-up changes have been made.

10059

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10060 607.1332 Disposition of acquired shares.

10061 Shares acquired by a corporation pursuant to payment of the agreed value thereof or
10062 pursuant to payment of the judgment entered therefor, as provided in this chapter, may be held and
10063 disposed of by such corporation as authorized but unissued shares of the corporation, except that,
10064 in the case of a merger or share exchange, they may be held and disposed of as the plan of merger
10065 or share exchange otherwise provides. The shares of the survivor ~~surviving corporation~~ into which
10066 the shares of such shareholders demanding appraisal rights would have been converted had they
10067 assented to the merger shall have the status of authorized but unissued shares of the survivor
10068 ~~surviving corporation~~.

10069

10070 **Commentary to Section 607.1332:**

10071 This is not a Model Act provision. Rather it is an existing FBCA provision that matches the
10072 corollary provision in FRLUCA. No substantive changes were made to this section.

10073

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10074 607.1333 Limitation on corporate payment.

10075 (1) No payment shall be made to a shareholder seeking appraisal rights if, at the time of
10076 payment, the corporation is unable to meet the distribution standards of s. 607.06401. In such
10077 event, the shareholder shall, at the shareholder's option:

10078 (a) Withdraw his or her notice of intent to assert appraisal rights, which shall in such
10079 event be deemed withdrawn with the consent of the corporation; or

10080 (b) Retain his or her status as a claimant against the corporation and, if it is
10081 liquidated, be subordinated to the rights of creditors of the corporation, but have rights
10082 superior to the shareholders not asserting appraisal rights, and if the corporation ~~it~~ is not
10083 liquidated, retain his or her right to be paid for the shares, which right the corporation
10084 shall be obliged to satisfy when the restrictions of this section do not apply.

10085 (2) The shareholder shall exercise the option under paragraph (1)(a) or paragraph (1)(b)
10086 by written notice filed with the corporation within 30 days after the corporation has given written
10087 notice that the payment for shares cannot be made because of the restrictions of this section. If the
10088 shareholder fails to exercise the option, the shareholder shall be deemed to have withdrawn his or
10089 her notice of intent to assert appraisal rights.

10090

10091 **Commentary to Section 607.1333:**

10092 This is not a Model Act provision. Rather it is an existing FBCA provision that matches the
10093 corollary provision in FRLUCA. No substantive changes were made to this section.

10094

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10095 607.1340 Other remedies limited.

10096 (1) A shareholder entitled to appraisal rights under this chapter may not challenge a
10097 completed corporate action for which appraisal rights are available unless such corporate action
10098 was either:

10099 (a) Not authorized and approved in accordance with the applicable provisions of this
10100 chapter;

10101 (b) Procured as a result of fraud, a material misrepresentation, or an omission of a
10102 material fact necessary to make statements made, in light of the circumstances in which they
10103 were made, not misleading.

10104 (2) Nothing in this section operates to override or supersede the provisions of s. 607.0832.

10105

10106 **Commentary to Section 607.1340:**

10107 Subsections (1) and (2) follow the wording of s. 13.40 (a) and (b) of the Model Act. While this
10108 language is somewhat different language from the language currently included in s. 607.1302(4),
10109 the changes are not considered substantive.

10110
10111 The proposal does not add subsections (2)(c) and (2)(d) of Model Act s. 13.40. However,
10112 subsection (2) has been added to the proposal to make clear that this provision is not intended to
10113 override the rights or operative provisions of Section 607.0832 relating to conflict of interest
10114 transactions, and that the failure to add these two Model Act provisions is not intended to prohibit
10115 a shareholder from contesting a completed conflict of interest transaction in accordance with (and
10116 subject to the burden of proof set forth in) s. 607.0832.

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ARTICLE 14
DISSOLUTION

607.1401 Dissolution by incorporators or directors.

If a corporation has not yet issued shares, its board of directors, or a majority of the
incorporators if it has no board of ~~or directors, of a corporation that has not issued shares or has~~
~~not commenced business~~ may dissolve the corporation by delivering to the department of State for
filing articles of dissolution that must set forth:

- (1) The name of the corporation;
- (2) The date of its incorporation ~~filing of its articles of incorporation;~~
- (3) ~~Either:~~
 - ~~(a) That none of the corporation's shares have been issued, or~~
 - ~~(b) That the corporation has not commenced business;~~
- (4) That no debt of the corporation remains unpaid;
- (5) That the net assets of the corporation remaining after winding up, if any, have been
distributed ~~to the shareholders, if shares were issued;~~ and
- (6) That a majority of the incorporators or directors authorized the dissolution.

10135 **Commentary to Section 607.1401:**

10136 Minor non-substantive changes have been made to conform this section to the current version of
10137 the corollary section of the Model Act.

10138 Nearly all Model Act states, along with California and Delaware, have adopted very similar
10139 statutes regarding dissolution by incorporators or initial directors. California expressly allows
10140 dissolution where the corporation has not issued shares at the time of dissolution (Cal. Corp. Code.
10141 §1900.5(6) in a situation where: "the known assets of the corporation remaining after payment of,
10142 or adequately providing for, known debts and liabilities have been distributed to the persons
10143 entitled thereto or that the corporation acquired no known assets, as the case may be".) Other states,
10144 including Illinois and Maryland, permit dissolution by incorporators only where no shares have
10145 been issued, while Kansas and Pennsylvania permit dissolution only where the corporation has not
10146 commenced business. Eight states, including Nevada and Texas, require both that shares must not
10147 have been issued and business has not commenced.

10148

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10149 607.1402 Dissolution by board of directors and shareholders; dissolution by written consent
10150 of shareholders.

10151 (1) A corporation's board of directors may propose dissolution for submission to the
10152 shareholders by first adopting a resolution authorizing the dissolution.

10153 (2) (a) For a proposal to dissolve to be adopted, it must be approved by the
10154 shareholders pursuant to subsection (5).

10155 (b) In submitting the proposal to dissolve to the shareholders for approval, (a) the
10156 board of directors must recommend dissolution that to the shareholders approve the
10157 dissolution, unless:

10158 1. The board of directors determines that because of conflict of interest or
10159 other special circumstances it should make no recommendation; or

10160 2. Section 607.0826 applies.

10161 (c) If either subparagraph (b)1. or subparagraph (b)2. applies, the board must inform
10162 the shareholders of the basis for its so proceeding without such recommendation and
10163 communicates the basis for its determination to the shareholders; and (b) The
10164 shareholders entitled to vote must approve the proposal to dissolve as provided in
10165 subsection (5).

10166 (3) The board of directors may set conditions for the approval its submission of the proposal
10167 for dissolution on any basis by shareholders or for the effectiveness of the dissolution.

10168 (4) If the approval of the shareholders is to be given at a meeting, the corporation shall
10169 notify, in accordance with s. 607.0705, each shareholder of record, regardless of whether or not
10170 entitled to vote, of the proposed shareholders' meeting of shareholders at which the dissolution is
10171 to be submitted for approval in accordance with s. 607.0705. The notice must also state that the
10172 purpose, or one of the purposes, of the meeting is to consider dissolving the corporation.

10173 (5) Unless the articles of incorporation or the board of directors (acting pursuant to
10174 subsection (3)) require a greater vote or a vote by voting groups, the proposal to dissolve to be
10175 adopted must be approved by a majority of all the votes entitled to be cast on ~~that~~ the proposal to
10176 dissolve.

10177 (6) Alternatively, without action of the board of directors, action to dissolve a corporation
10178 may be taken by the written consent of the shareholders pursuant to s. 607.0704.

10179

10180 **Commentary to Section 607.1402:**

10181 The language in subsections (1) through (4) has been modified to adopt many of the language
10182 changes in the Model Act in these provisions. None of these changes are substantive.

10183 There are two substantive differences between this section of the FBCA and the corollary Model
10184 Act provision. First, the Florida only provision in subsection (6) that allows shareholders to
10185 approve dissolution of the corporation by written consent without action of the board of directors
10186 has been retained. This non-Model Act provision was specifically added to the FBCA in 1989.
10187 Second, the statute continues the requirement in subsection (5) that the shareholders approve a
10188 proposal for dissolution by a vote of a majority of the shares entitled to vote on the proposal,
10189 compared to the requirement in the corollary provision of the Model Act only requiring approval
10190 by a majority of the quorum in attendance at a meeting called to consider the proposal.

10191

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10192 607.1403 Articles of dissolution.

10193 (1) At any time after dissolution is authorized, the corporation may dissolve by delivering
10194 to the department of State for filing articles of dissolution which must ~~shall~~ be signed ~~executed~~ in
10195 accordance with s. 607.0120 and which must ~~shall~~ set forth:

10196 (a) The name of the corporation;

10197 (b) The date dissolution was authorized;

10198 (c) If dissolution was approved by the shareholders, a statement that the proposal to
10199 dissolve was duly approved by the shareholders in the manner required by this chapter and by
10200 the articles of incorporation ~~the number cast for dissolution by the shareholders was~~
10201 ~~sufficient for approval.~~

10202 ~~(d) If dissolution was approved by the shareholders and if voting by voting groups was~~
10203 ~~required, a statement that the number cast for dissolution by the shareholders was sufficient~~
10204 ~~for approval must be separately provided for each voting group entitled to vote separately on~~
10205 ~~the plan to dissolve.~~

10206 (2) The articles of dissolution shall take effect at the effective date determined pursuant to
10207 s. 607.0123. A corporation is dissolved upon the effective date of its articles of dissolution.

10208 (3) For purposes of ss. 607.1401-607.1410, "dissolved corporation" means a corporation
10209 whose articles of dissolution have become effective and includes a successor entity. Further, for
10210 the purposes of this subsection, the term "successor entity" includes a trust, receivership, or other
10211 legal entity governed by the laws of this state to which the remaining assets and liabilities of a
10212 dissolved corporation are transferred and which exists solely for the purposes of prosecuting and
10213 defending suits by or against the dissolved corporation, thereby enabling the dissolved corporation
10214 to settle and close the business of the dissolved corporation, to dispose of and convey the property
10215 of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to
10216 distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose
10217 of continuing the activities and affairs for which the dissolved corporation was organized.

10218

10219 **Commentary to Section 607.1403:**

10220 The statute has been modified to make the clarifying language changes contained in the corollary
10221 version of the Model Act. These changes are not substantive.

10222 Two issues were considered:

10223 1. Subsection 1(c) of the FBCA was modified to conform to the Model Act. However, it
10224 removes the requirement that the vote of voting groups be noted in the articles of
10225 dissolution. This difference has existed in the FBCA since 1989.

10226
10227 2. The language "in accordance with s. 607.0120" in the FBCA in subsection (1) has been
10228 retained, although not in the corollary section of the Model Act. It has been in the statute
10229 since 1989 and has been retained as a reminder to users of the FBCA that they need to
10230 comply with the FBCA section on filing requirements in filing articles of dissolution.

10231
10232 Thirty-four states, including most Model Act states, along with Delaware and New York follow
10233 the general process of Model Act s. 14.03. Some states additionally require certain statements as
10234 to the settlement of debts, distribution of property, and the status of any pending litigation against
10235 the company. These are not in the Model Act or the existing FBCA provision, and have not been
10236 included.

10237
10238 Following dissolution, the existence of the corporation continues as a "dissolved corporation"
10239 while the corporation is being liquidated under s. 607.1405. However, after the dissolution
10240 becomes effective, the corporation can conduct no business other than to wind down and liquidate.

10241 Subsection (3) includes the definition of a "successor entity" that was previously included in s.
10242 607.1406(15). A successor entity is included within the definition of a "dissolved corporation"
10243 under subsection (3).

10244

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10245 607.1404 Revocation of dissolution.

10246 (1) A corporation may revoke its dissolution at any time prior to the expiration of 120 days
10247 following the effective date of the articles of dissolution.

10248 (2) Revocation of dissolution must be authorized in the same manner as the dissolution was
10249 authorized unless that authorization permitted revocation by action of the board of directors alone,
10250 in which event the board of directors may revoke the dissolution without shareholder action.

10251 (3) After the revocation of dissolution is authorized, the corporation may revoke the
10252 dissolution by delivering to the department of State, within the 120 day period following the
10253 effective date of the articles of dissolution, for filing articles of revocation of dissolution, together
10254 with a copy of its articles of dissolution, that set forth:

10255 (a) The name of the corporation;

10256 (b) The effective date of the dissolution that was revoked;

10257 (c) The date that the revocation of dissolution was authorized;

10258 (d) If the corporation's board of directors or incorporators revoked the dissolution, a
10259 statement to that effect;

10260 (e) If the corporation's board of directors revoked a dissolution authorized by the
10261 shareholders, a statement that revocation was permitted by action by the board of directors
10262 alone pursuant to that authorization; and

10263 (f) If shareholder action was required to revoke the dissolution, ~~the information required~~
10264 ~~by s. 607.1403(1)(c) or (d)~~ a statement that the revocation was authorized by the shareholders
10265 in the manner required by this chapter and by the articles of incorporation.

10266 (4) Revocation of dissolution is effective upon the effective date of the articles of revocation
10267 of dissolution.

10268 (5) When the revocation of dissolution is effective, it relates back to and takes effect as of
10269 the effective date of the dissolution and the corporation resumes carrying on its business as if
10270 dissolution had never occurred.

10271

10272 **Commentary to Section 607.1404:**

10273 The FBCA provision is identical to the Model Act.

10274 Many states allow a corporation to revoke dissolution as long as the revocation occurs prior to 120
10275 days after the effective date of the articles of dissolution. Delaware allows it for three years, while
10276 California allows for revocation prior to the distribution of assets, with no time limit. Four states,
10277 including New York, do not allow for revocation of a voluntarily dissolution.

10278

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 10279 607.1405 Effect of dissolution.
- 10280 (1) A ~~dissolved~~ corporation that has dissolved continues its corporate existence but the
10281 dissolved corporation may not carry on any business except that appropriate to wind up and
10282 liquidate its business and affairs, including:
- 10283 (a) Collecting its assets;
- 10284 (b) Disposing of its properties that will not be distributed in kind to its
10285 shareholders;
- 10286 (c) Discharging or making provision for discharging its liabilities;
- 10287 (d) Making distributions of ~~Distributing~~ its remaining assets ~~property~~ among its
10288 shareholders according to their interests; and
- 10289 (e) Doing every other act necessary to wind up and liquidate its business and affairs.
- 10290 (2) Dissolution of a corporation does not:
- 10291 (a) Transfer title to the corporation's property;
- 10292 (b) Prevent transfer of its shares or securities, ~~although the authorization to dissolve may~~
10293 ~~provide for closing the corporation's share transfer records;~~
- 10294 (c) Subject its directors or officers to standards of conduct different from those
10295 prescribed in ss. 607.0801-607.0859 ~~ss. 607.0801-607.0850~~ ~~except as provided in s.~~
10296 ~~607.1421(4);~~
- 10297 (d) Change quorum or voting requirements for its board of directors or shareholders;
10298 change provisions for selection, resignation, or removal of its directors or officers or both; or
10299 change provisions for amending its bylaws;
- 10300 (e) Prevent commencement of a proceeding by or against the corporation in its
10301 corporate name;
- 10302 (f) Abate or suspend a proceeding pending by or against the corporation on the effective
10303 date of dissolution; or
- 10304 (g) Terminate the authority of the registered agent of the corporation.
- 10305 (3) A distribution in liquidation under this section may only be made by a dissolved corporation.
10306 For purposes of determining the shareholders entitled to receive a distribution in liquidation, the board
10307 of directors may fix a record date for determining shareholders entitled to a distribution in liquidation,

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10308 which date may not be retroactive. If the board of directors does not fix a record date for determining
10309 shareholders entitled to a distribution in liquidation, the record date is the date the board of directors
10310 authorizes the distribution in liquidation.

10311 (4) The directors, officers, and agents of a corporation dissolved pursuant to s. 607.1403
10312 shall not incur any personal liability thereby by reason of their status as directors, officers, and
10313 agents of a dissolved corporation, as distinguished from a corporation which is not dissolved.

10314 (45) The name of a dissolved corporation ~~is not shall not be~~ available for assumption or use
10315 by another eligible entity corporation until 1 year 120 days after the effective date of dissolution
10316 unless the dissolved corporation provides the department of State with a record an affidavit, signed
10317 ~~executed as required by pursuant to~~ s. 607.0120, permitting the immediate assumption or use of
10318 the name by another eligible entity corporation.

10319 (56) For purposes of this section, the circuit court may appoint a trustee, custodian, or
10320 receiver for any property owned or acquired by the corporation who may engage in any act
10321 permitted under subsection (1) if any director or officer of the dissolved corporation is unwilling
10322 or unable to serve or cannot be located.

10323

10324 **Commentary to Section 607.1405:**

10325 Subsections (1) and (2) of the FBCA follow subsections (a) and (b) of the corollary section of the
10326 Model Act. The reference to s. 607.1421(4) of the FBCA, which deals with possible personal
10327 liability of officers or directors in dissolution, has been removed because that provision has not
10328 been retained in the FBCA.

10329 Distributions in liquidation that occur after dissolution are distinct from the pre-dissolution
10330 distributions governed by s. 607.06401. As a result, new subsection (3) has been added to allow
10331 for setting a record date for determining shareholders entitled to receive a distribution in
10332 liquidation.

10333 Subsections (3), (4), and (5) of the FBCA (renumbered as sections (4), (5) and (6) above) do not
10334 appear in the Model Act. Subsection (3) was added to the FBCA in 1989 to make clear that
10335 dissolution does not change the duty of care, fiduciary duty, limitations on liability or right to
10336 indemnification of officers, directors and agents of the dissolved corporation. Subsection (6)
10337 expressly allows a court to appoint a trustee, custodian or receiver to carry out the winding up
10338 process, presumably at the behest of creditors or shareholders who have a stake in the liquidation
10339 of the corporation if the directors or officers are unwilling to serve. Finally, subsection (5) deals
10340 with use of a corporate name following dissolution.

10341

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10342 607.1406 Known claims against dissolved corporation.

10343 (1) A dissolved corporation may dispose of the known claims against it by giving written
10344 notice that satisfies the requirements of subsection (2) to its known claimants at any time after the
10345 effective date of the dissolution, but no later than the date that is 270 days before the date which
10346 is 3 years after the effective date of the dissolution.

10347 (2) The written notice must:

10348 (a) State the name of the corporation that is the subject of the dissolution;

10349 (b) State that the corporation is the subject of a dissolution and the effective
10350 date of the dissolution;

10351 (c) Specify the information that must be included in a claim;

10352 (d) State that a claim must be in writing and provide a mailing address where a
10353 claim may be sent;

10354 (e) State the deadline, which may not be fewer than 120 days after the date the
10355 written notice is received by the claimant, by which the dissolved corporation must receive
10356 the claim;

10357 (f) State that the claim will be barred if not received by the deadline;

10358 (g) State that the dissolved corporation may make distributions thereafter to
10359 other claimants and to the dissolved corporation's shareholders or persons interested
10360 without further notice; and

10361 (h) Be accompanied by a copy of ss. 607.1405-607.1410.

10362 (3) A dissolved corporation may reject, in whole or in part, a claim submitted by a claimant
10363 and received prior to the deadline specified in the written notice given pursuant to subsections (1)
10364 and (2) by mailing notice of the rejection to the claimant on or before the date that is the earlier of
10365 90 days after the dissolved corporation receives the claim or the date that is 150 days before the
10366 date which is 3 years after the effective date of the dissolution. A rejection notice sent by the
10367 dissolved corporation pursuant to this subsection must state that the claim will be barred unless
10368 the claimant, not later than 120 days after the claimant receives the rejection notice, commences
10369 an action in the circuit court in the applicable county against the dissolved corporation to enforce
10370 the claim.

10371 (4) A claim against the dissolved corporation is barred:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10372 (a) If a claimant who was given written notice pursuant to subsections (1) and
10373 (2) does not deliver the claim to the dissolved corporation by the specified deadline; or

10374 (b) If the claim was timely received by the dissolved corporation but was timely
10375 rejected by the dissolved corporation under subsection (3) and the claimant does not
10376 commence the required action in the applicable county within 120 days after the claimant
10377 receives the rejection notice.

10378 (5) (a) For purposes of this section, "known claims" means any claim or liability that,
10379 as of the date of the giving of the written notice contemplated by subsections (1) and (2):

10380 1. Has matured sufficiently on or prior to the effective date of the dissolution
10381 to be legally capable of assertion against the dissolved corporation; or

10382 2. Is unmatured as of the effective date of the dissolution but will mature in
10383 the future solely based on the passage of time.

10384 (b) The term "known claims" does not include a claim based on an event occurring
10385 after the effective date of the dissolution or a claim that is a contingent claim.

10386 (6) The giving of any notice pursuant to this section does not revive any claim then barred or
10387 constitute acknowledgment by the dissolved corporation that any person to whom such notice is
10388 sent is a proper claimant and does not operate as a waiver of any defense or counterclaim in respect
10389 of any claim asserted by any person to whom such notice is sent.

10390 ~~(1) A dissolved corporation or successor entity, as defined in subsection (15), may dispose~~
10391 ~~of the known claims against it by following the procedures described in subsections (2) (3), and~~
10392 ~~(4).~~

10393 ~~(2) The dissolved corporation or successor entity shall deliver to each of its known claimants~~
10394 ~~written notice of the dissolution at any time after its effective date. The written notice shall:~~

10395 ~~(a) Provide a reasonable description of the claim that the claimant may be entitled~~
10396 ~~to assert;~~

10397 ~~(b) State whether the claim is admitted or not admitted, in whole or in part, and,~~
10398 ~~if admitted:~~

10399 ~~1. The amount that is admitted, which may be as of a given date; and~~

10400 ~~2. Any interest obligation if fixed by an instrument of indebtedness;~~

10401 ~~(c) Provide a mailing address where a claim may be sent;~~

FINAL STATUTE AS ADOPTED
(With Commentary)

10402 ~~(d) State the deadline, which may not be fewer than 120 days after the effective~~
10403 ~~date of the written notice, by which confirmation of the claim must be delivered to the~~
10404 ~~dissolved corporation or successor entity; and~~

10405 ~~(e) State that the corporation or successor entity may make distributions thereafter~~
10406 ~~to other claimants and the corporation's shareholders or persons interested as having been~~
10407 ~~such without further notice.~~

10408 ~~(3) A dissolved corporation or successor entity may reject, in whole or in part, any claim~~
10409 ~~made by a claimant pursuant to this subsection by mailing notice of such rejection to the claimant~~
10410 ~~within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of~~
10411 ~~3 years following the effective date of dissolution. A notice sent by the dissolved corporation or~~
10412 ~~successor entity pursuant to this subsection shall be accompanied by a copy of this section.~~

10413 ~~(4) A dissolved corporation or successor entity electing to follow the procedures described~~
10414 ~~in subsections (2) and (3) shall also give notice of the dissolution of the corporation to persons~~
10415 ~~with known claims, that are contingent upon the occurrence or nonoccurrence of future events or~~
10416 ~~otherwise conditional or unmatured, and request that such persons present such claims in~~
10417 ~~accordance with the terms of such notice. Such notice shall be in substantially the same form, and~~
10418 ~~sent in the same manner, as described in subsection (2).~~

10419 ~~(5) A dissolved corporation or successor entity shall offer any claimant whose known claim~~
10420 ~~is contingent, conditional, or unmatured such security as the corporation or such entity determines~~
10421 ~~is sufficient to provide compensation to the claimant if the claim matures. The dissolved~~
10422 ~~corporation or successor entity shall deliver such offer to the claimant within 90 days after receipt~~
10423 ~~of such claim and, in all events, at least 150 days before expiration of 3 years after following the~~
10424 ~~effective date of dissolution. If the claimant offered such security does not deliver in writing to the~~
10425 ~~dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt~~
10426 ~~of such offer for security, the claimant is deemed to have accepted such security as the sole source~~
10427 ~~from which to satisfy his or her claim against the corporation.~~

10428 ~~(6) A dissolved corporation or successor entity which has given notice in accordance with~~
10429 ~~subsection (2) shall petition the circuit court in the county where the corporation's principal office~~
10430 ~~is located or was located at the effective date of dissolution to determine the amount and form of~~
10431 ~~security that will be sufficient to provide compensation to any claimant who has rejected the offer~~
10432 ~~for security made pursuant to subsection (5).~~

10433 ~~(7) A dissolved corporation or successor entity which has given notice in accordance with~~
10434 ~~subsection (2) shall petition the circuit court in the county where the corporation's principal office~~
10435 ~~is located or was located at the effective date of dissolution to determine the amount and form of~~
10436 ~~security which will be sufficient to provide compensation to claimants whose claims are known to~~
10437 ~~the corporation or successor entity but whose identities are unknown. The court shall appoint a~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10438 ~~guardian ad litem to represent all claimants whose identities are unknown in any proceeding~~
10439 ~~brought under this subsection. The reasonable fees and expenses of such guardian, including all~~
10440 ~~reasonable expert witness fees, shall be paid by the petitioner in such proceeding.~~

10441 ~~(8) The giving of any notice or making of any offer pursuant to the provisions of this section~~
10442 ~~shall not revive any claim then barred or constitute acknowledgment by the dissolved corporation~~
10443 ~~or successor entity that any person to whom such notice is sent is a proper claimant, and shall not~~
10444 ~~operate as a waiver of any defense or counterclaim in respect of any claim asserted by any person~~
10445 ~~to whom such notice is sent.~~

10446 ~~(9) A dissolved corporation or successor entity which has followed the procedures described~~
10447 ~~in subsections (2)-(7):~~

10448 ~~(a) Shall pay the claims admitted or made and not rejected in accordance with~~
10449 ~~subsection (3);~~

10450 ~~(b) Shall post the security offered and not rejected pursuant to subsection (5);~~

10451 ~~(c) Shall post any security ordered by the circuit court in any proceeding under~~
10452 ~~subsections (6) and (7); and~~

10453 ~~(d) Shall pay or make provision for all other known obligations of the corporation~~
10454 ~~or such successor entity.~~

10455 ~~Such claims or obligations shall be paid in full, and any such provision for payments shall be made~~
10456 ~~in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall~~
10457 ~~be paid or provided for according to their priority and, among claims of equal priority, ratably to~~
10458 ~~the extent of funds legally available therefor. Any remaining funds shall be distributed to the~~
10459 ~~shareholders of the dissolved corporation; however, such distribution may not be made before the~~
10460 ~~expiration of 150 days from the date of the last notice of rejections given pursuant to subsection~~
10461 ~~(3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or~~
10462 ~~the governing persons of such successor entity as to the provisions made for the payment of all~~
10463 ~~obligations under paragraph (d) is conclusive.~~

10464 ~~(10) A dissolved corporation or successor entity which has not followed the procedures~~
10465 ~~described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims~~
10466 ~~and obligations, including all contingent, conditional, or unmatured claims known to the~~
10467 ~~corporation or such successor entity and all claims which are known to the dissolved corporation~~
10468 ~~or such successor entity but for which the identity of the claimant is unknown. Such claims shall~~
10469 ~~be paid in full, and any such provision for payment made shall be made in full if there are sufficient~~
10470 ~~funds. If there are insufficient funds, such claims and obligations shall be paid or provided for~~
10471 ~~according to their priority and, among claims of equal priority, ratably to the extent of funds legally~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10472 available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved
10473 corporation.

10474 (11) ~~Directors of a dissolved corporation or governing persons of a successor entity which~~
10475 ~~has complied with subsection (9) or subsection (10) are not personally liable to the claimants of~~
10476 ~~the dissolved corporation.~~

10477 (12) ~~A shareholder of a dissolved corporation the assets of which were distributed pursuant~~
10478 ~~to subsection (9) or subsection (10) is not liable for any claim against the corporation in an amount~~
10479 ~~in excess of such shareholder's pro rata share of the claim or the amount distributed to the~~
10480 ~~shareholder, whichever is less.~~

10481 (13) ~~A shareholder of a dissolved corporation, the assets of which were distributed pursuant~~
10482 ~~to subsection (9), is not liable for any claim against the corporation, which claim is known to the~~
10483 ~~dissolved corporation or successor entity, on which a proceeding is not begun prior to the~~
10484 ~~expiration of 3 years following the effective date of dissolution.~~

10485 (14) ~~The aggregate liability of any shareholder of a dissolved corporation for claims against~~
10486 ~~the dissolved corporation arising under this section, s. 607.1407, or otherwise, may not exceed the~~
10487 ~~amount distributed to the shareholder in dissolution.~~

10488 (15) ~~As used in ss. 601.1401—607.1409 this section, or s. 607.1407, the term "successor~~
10489 ~~entity" includes a trust, receivership, or other legal entity governed by the laws of this state to~~
10490 ~~which the remaining assets and liabilities of a dissolved corporation are transferred and which~~
10491 ~~exists solely for the purposes of prosecuting and defending suits by or against the dissolved~~
10492 ~~corporation, thereby enabling the dissolved corporation to settle and close the business of the~~
10493 ~~dissolved corporation, to dispose of and convey the property of the dissolved corporation, to~~
10494 ~~discharge the liabilities of the dissolved corporation, and to distribute to the dissolved~~
10495 ~~corporation's shareholders any remaining assets, but not for the purpose of continuing the activities~~
10496 ~~and affairs for which the dissolved corporation was organized.~~

10497

10498 **Commentary to Section 607.1406:**

10499 The current FBCA provisions dealing with claims against a dissolved corporation are largely
10500 Florida only provisions. The original s. 607.1406 was adopted in 1989 and, according to the
10501 commentary from the 1989 committee, was based on DGCL ss. 280, 281 and 282 as those statutes
10502 existed at that time. The revised section of the FBCA is largely based on the corollary section of
10503 the Model Act, with some language and structure borrowed from the corollary provision in
10504 RULLCA. However, some of the wording from the existing FBCA provision has been retained
10505 where the Subcommittee believes it reflects more clarity than the Model Act.

10506 The words "or successor entity" are no longer contained in the statute because the definition of
10507 "dissolved corporation" under s. 607.1403(3) now includes a successor entity.

10508 The Model Act commentary describes what is a "known claim" (covered by s. 14.06) and what is an
10509 "other claim" (covered by s. 14.07), in the following manner:

10510 Sections 14.06 and 14.07 provide a simplified system for handling claims against a dissolved
10511 corporation. Section 14.06 deals solely with known claims while section 14.07 deals with
10512 unknown or subsequently arising claims. Known claims may be unliquidated, but a claim that
10513 is contingent or has not yet matured (or in certain cases has matured but has not been asserted)
10514 is not a "claim" for purposes of section 14.06(d). For example, an unmatured liability under a
10515 guarantee, a potential default under a lease, or an unasserted claim based upon a defective
10516 product manufactured by the dissolved corporation would not be a "claim" under section
10517 14.06."

10518 Notwithstanding, unlike the Model Act, s. 607.1406 treats claims that are unmatured as of the
10519 effective date of the dissolution, but that will mature solely with the passage of time, as known
10520 claims. An example would be a debt due under a promissory note that is not yet due or a trade
10521 payable that has been accrued for accounting purposes but is not yet due.

10522 A "known claim" does not include a claim that would accrue upon the occurrence of an event after
10523 the effective date of the dissolution or a claim that is a contingent claim. Examples would include
10524 an unmatured liability under a guarantee, a potential default under a lease, or an unasserted claim
10525 based on a defective product manufactured by the dissolved corporation.

10526 The principles of s. 607.1406 do not lengthen the statute of limitations applicable under general
10527 state law and claims that are not barred under s. 607.1406 may be made within the general statute
10528 of limitations.

10529 Section 607.1406 is voluntary. If the corporation does not follow this section in handling known
10530 claims in dissolution, the directors and the shareholders do not get the protections of this section
10531 and s. 607.1410.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10532 Under s. 607.1406, claimants who comply with the statutory requirements and are not barred have
10533 the ability to have recourse to the remaining assets of the corporation or to recover from
10534 shareholders. Such recovery from each shareholder is limited to the lesser of the respective
10535 shareholder's pro rata share of the claim or the total amount of assets received by the respective
10536 shareholder as a liquidating distribution. However, if s. 607.1406 is not followed, the shareholder
10537 could be liable for its share of any claim not barred by the regular statute of limitation up to the
10538 amount of the distribution which it received in liquidation. See s. 607.1408.

10539

FINAL STATUTE AS ADOPTED
(With Commentary)

10540 607.1407 ~~Other Unknown~~ Other claims against dissolved corporation.

10541 (1) A dissolved corporation ~~or successor entity, as defined in s. 607.1406(15),~~ may choose
10542 to execute one of the following procedures to resolve ~~payment of unknown~~ any claims other than
10543 known claims:-

10544 ~~(1)(a)~~ (a) A dissolved corporation ~~or successor entity~~ may file notice of its dissolution with
10545 the department ~~of State~~ on the form prescribed by the department ~~of State~~ and request that
10546 persons with claims against the corporation which are not known to the dissolved corporation
10547 ~~or successor entity~~ present them in accordance with the notice. The notice ~~shall~~ must:

10548 ~~(a)1.~~ (a)1. State the name of the corporation and the date that is the subject of the
10549 dissolution;

10550 ~~(b)2.~~ (b)2. Describe the information that must be included in a claim and provide
10551 a mailing address to which the claim may be sent State that the corporation is the
10552 subject of a dissolution and the effective date of the dissolution; and

10553 3. Specify the information that must be included in a claim;

10554 4. State that a claim must be in writing and provide a mailing address where a
10555 claim may be sent; and

10556 ~~(e)5.~~ (e)5. State that a claim against the corporation under this subsection will be
10557 barred unless a proceeding to enforce the claim is commenced within 4 years after
10558 the filing of the notice.

10559 ~~(2)(b)~~ (2)(b) A dissolved corporation ~~or successor entity~~ may, within 10 days after filing
10560 articles of dissolution with the department ~~of State~~, publish a "Notice of Corporate
10561 Dissolution." The notice shall appear once a week for 2 consecutive weeks in a newspaper of
10562 general circulation in a county in the state in which the corporation has its principal office, if
10563 any, or, if none, in a county in the state in which the corporation owns real or personal
10564 property. Such newspaper shall meet the requirements as are prescribed by law for such
10565 purposes. The notice ~~must shall~~:

10566 1. State the name of the corporation that is the subject of the dissolution;

10567 2. State that the corporation is the subject of a dissolution and the effective
10568 date of the dissolution;

10569 3. Specify the information that must be included in the claim;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10570 4. State that a claim must be in writing and provide a mailing address where a
10571 claim may be sent; and

10572 5. State that a claim against the corporation under this subsection will be
10573 barred unless a proceeding to enforce the claim is commenced within 4 years after
10574 the date of the second consecutive weekly publication of the notice authorized by
10575 this section.

10576 ~~(a) — State the name of the corporation and the date of dissolution;~~

10577 ~~(b) — Describe the information that must be included in a claim and provide a~~
10578 ~~mailing address to which the claim may be sent; and~~

10579 ~~(c) — State that a claim against the corporation under this subsection will be barred~~
10580 ~~unless a proceeding to enforce the claim is commenced within 4 years after the date of the~~
10581 ~~second consecutive weekly publication of the notice authorized by this section.~~

10582 (23) If the dissolved corporation ~~or successor entity~~ complies with paragraph 1(a) or
10583 paragraph (1)(b) subsection (1) or subsection (2), unless sooner barred by another statute limiting
10584 actions, the claim of each of the following claimants with known or other claims is barred unless
10585 the claimant commences a proceeding to enforce the claim against the dissolved corporation within
10586 4 years after the date of filing the notice with the department ~~of State~~ or the date of the second
10587 consecutive weekly publication, as applicable:

10588 (a) A claimant who did not receive written notice under s. 607.1406 ~~s.~~
10589 ~~607.1406(9) or whose claim was not provided for under s. 607.1406(1), whether such claim~~
10590 ~~is based on an event occurring before or after the effective date of dissolution.~~

10591 (b) A claimant whose claim was timely sent to the dissolved corporation but on
10592 which no action was taken by the dissolved corporation.

10593 (c) A claimant whose claim is not a known claim under s. 607.1406(5).

10594 ~~(4) — A claim may be entered under this section:~~

10595 ~~(a) — Against the dissolved corporation, to the extent of its undistributed assets; or~~

10596 ~~(b) — If the assets have been distributed in liquidation, against a shareholder of the~~
10597 ~~dissolved corporation to the extent of such shareholder's pro rata share of the claim or the~~
10598 ~~corporate assets distributed to such shareholder in liquidation, whichever is less, provided~~
10599 ~~that the aggregate liability of any shareholder of a dissolved corporation arising under~~
10600 ~~this section, s. 607.1406, or otherwise may not exceed the amount distributed to the~~
10601 ~~shareholder in dissolution.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10602 (3) Nothing in this section shall preclude or relieve the corporation from its notification
10603 to claimants otherwise set forth in this chapter.

10604

10605 **Commentary to Section 607.1407:**

10606 The FBCA is one of two state corporate statutes (along with California) with a four year statute of
10607 limitations. Most jurisdictions have a three year limitations period (the statute of limitations under
10608 the Model Act) or five years (the statute of limitations in Delaware), while seven jurisdictions,
10609 including New York, provide no statute of limitations (instead, the statute of limitations is dictated
10610 by the underlying cause of action).

10611 The Model Act allows for posting on the dissolved corporation's website and newspaper
10612 publication as the means to notify potential claimants of a dissolved corporation, and a publication
10613 option is included in the current version of this statute. However, it was the Subcommittee's view
10614 that from a policy perspective, filing with the Department is a more permanent, accessible notice
10615 to potential claimants than the publication of a notice in a newspaper of limited circulation, and
10616 the original draft of the proposal had eliminated the publication option. However, because of
10617 concerns expressed by the publications lobby during the legislative session, Section 607.1407
10618 continues to include the right to notify claimants by either publication or the filing of a notice with
10619 the Department on a form prescribed by the Department.

10620 The principles of s. 607.1407 do not lengthen the statute of limitations applicable under general
10621 state law and claims that are not barred under s. 607.1407 may be made within the general statute
10622 of limitations.

10623 Section 607.1407 is voluntary. If the corporation follows this section in handling claims other than
10624 known claims in dissolution, certain known claims and certain other claims, unless earlier barred,
10625 may become barred following a four year statute of limitations. On the other hand, if the
10626 corporation does not follow this section in this regard, the corporation, its board and its
10627 shareholders do not get the protections afforded by this section and by s. 607.1410.

10628 Section 607.1407 addresses problems created by possible claims that might arise long after the
10629 dissolution process is completed and the corporate assets distributed to shareholders. The problems
10630 raised by these claims are difficult. On the one hand, the application of a mechanical limitation
10631 period of a claim for injury that occurs after the period has expired may involve injustice to the
10632 plaintiff. On the other hand, to permit these suits generally could make it impossible to ever
10633 complete the winding up of the corporation, make suitable provisions for creditors and distribute
10634 the balance of the corporate assets to the shareholders. The approach taken in s. 607.1407 is to
10635 continue the liability of the dissolved corporation for an arbitrary period of time (three years in the
10636 Model Act provision; four years in the current corollary FBCA provision and in this proposal).

10637 Under s. 607.1407, claimants have the ability within this arbitrary statute of limitations to have
10638 recourse to the remaining assets of the corporation or to recover from shareholders. Such recovery
10639 from each shareholder is limited to the lesser of the respective shareholder's pro rata share of the
10640 claim or the total amount of assets received by the respective shareholder as a liquidating

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10641 distribution. However, if s. 607.1407 is not followed, the shareholder could be liable for its share
10642 of any claim not barred by the regular statute of limitation up to the amount of the distribution
10643 which it received in liquidation. See s. 607.1408.

10644 Section 607.1407 allows a dissolved corporation to initiate a court proceeding to establish what, if
10645 any, provision should be made for contingent or unknown claims that are not reasonably expected
10646 to be barred after the limitations period in s. 607.1407(2). This provision is designed to permit the
10647 court to adopt procedures appropriate to the circumstances. If the dissolved corporation provides
10648 for security for claims under s. 607.1409(4), that section protects shareholders who receive
10649 distributions against those claims and also protects directors for a breach of their duty under s.
10650 607.1410(1) to discharge or make reasonable provision for payment of claims, thereby protecting
10651 the directors from liability for those distributions.

10652

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 10653 607.1408 Claims against dissolved corporations; enforcement.
- 10654 A claim that is not barred by s. 607.1406(4), by s. 607.1407(2), or by another statute limiting
10655 actions may be enforced:
- 10656 (1) Against the dissolved corporation, to the extent of its undistributed assets; or
- 10657 (2) Except as provided in s. 607.1409(4), if the assets have been distributed in liquidation,
10658 against a shareholder of the dissolved corporation to the extent of the shareholder's pro rata share of
10659 the claim or the corporate assets distributed to the shareholder in liquidation, whichever is less,
10660 provided that the aggregate liability of any shareholder of a dissolved corporation arising under s.
10661 607.1406, under s. 607.1407, or otherwise may not exceed the total amount of assets distributed
10662 to the shareholder in dissolution.
- 10663

10664 **Commentary to Section 607.1408:**

10665 Although this section is a new section, it effectively keeps in the FBCA the voluntary claims
10666 provisions from ss. 607.1406 and 607.1407 of the existing statute that are beneficial to
10667 shareholders of those corporations that elect to utilize those particular sections to deal with the
10668 corporation's claims in dissolution. Under new s. 607.1408, if a claim is barred under ss. 607.1406
10669 or 607.1407, pursuit of such claim against a shareholder who received a distribution from the
10670 corporation in liquidation is now barred entirely. Because of the significant changes to s. 607.1406,
10671 which now includes a bar to claims if that statute is followed, the three year statute of limitations
10672 for claims against shareholders previously in s. 607.1406(13) has now been eliminated as it seemed
10673 appropriate that pursuing a shareholder for any non-barred claims should not have the benefit of
10674 any special statute of limitations.

10675

FINAL STATUTE AS ADOPTED
(With Commentary)

10676 607.1409 Court proceedings.
10677

10678 (1) A dissolved corporation that has filed a notice under s. 607.1407(1)(a) or published
10679 a notice under s. 607.1407(1)(b) may file an application with the circuit court in the applicable
10680 county for a determination of the amount and form of security to be provided for payment of
10681 claims that are contingent or have not been made known to the dissolved corporation or that are
10682 based on an event occurring after the effective date of dissolution but that, based on the facts
10683 known to the dissolved corporation, are reasonably estimated to arise after the effective date of
10684 dissolution. Provision need not be made for any claim that is or is reasonably anticipated to be
10685 barred under s. 607.1407(2).
10686

10687 (2) Within 10 days after the filing of the application under subsection (1), notice of the
10688 proceeding shall be given by the dissolved corporation to each claimant holding a contingent claim
10689 whose identity and contingent claim is known to the dissolved corporation. Such notice shall be
10690 accompanied by a copy of ss. 607.1405-607.1410.

10691 (3) In any proceeding under this section, the court may appoint a guardian ad litem to
10692 represent all claimants whose identities are unknown. The reasonable fees and expenses of such
10693 guardian, including all reasonable expert witness fees, shall be paid by the dissolved corporation.
10694

10695 (4) Provision by the dissolved corporation for security in the amount and the form
10696 ordered by the court under subsection (1) shall satisfy the dissolved corporation's obligations with
10697 respect to claims that are contingent, have not been made known to the dissolved corporation or
10698 are based on an event occurring after the effective date of dissolution, and such claims may not be
10699 enforced against a shareholder who received assets in liquidation.
10700

10701 **Commentary to Section 607.1409:**

10702 This section was added to the Model Act in 2000 to provide a procedure for handling unknown
10703 and contingent claims against the dissolved corporation. It has now been added to the FBCA.

10704 Subsection (4) was part of the current version of s. 607.1406, but has been moved here because
10705 those types of claims are now to be covered under s. 607.1407.

10706

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10707 607.1410 Director duties.

10708

10709 (1) Directors shall cause the dissolved corporation to discharge or make reasonable provision
10710 for the payment of claims and make distributions in liquidation of assets to shareholders after
10711 payment or provision for claims.

10712

10713 (2) Directors of a dissolved corporation that has disposed of claims under s. 607.1406, s.
10714 607.1407, or s. 607.1409 are not liable to any claimant or shareholder for a breach of subsection
10715 (1) with respect to claims against the dissolved corporation that are barred or satisfied in
10716 accordance with s. 607.1406, s. 607.1407, or s. 607.1409.

10717

10718 **Commentary to Section 607.1410:**

10719 This is a new section. It is based on the corollary section of the Model Act (s. 14.09).

10720 Section 14.09 of the Model Act was added to the Model Act in 2000 and establishes the terms
10721 under which a director could be relieved of liability for unlawful distributions in liquidation under
10722 s. 607.1401 et seq., and thus avoid the general distribution liability under s. 607.06401. Although
10723 similar in large respect, the new terms under which a director could be relieved of such liability
10724 differ somewhat from the exculpatory provisions that previously had appeared in subsection (11)
10725 of s. 607.1406.

10726

FINAL STATUTE AS ADOPTED
(With Commentary)

- 10727 607.1420 ~~Grounds for Administrative dissolution.~~
- 10728 (1) The department of State may ~~commence a proceeding under s. 607.1421 to~~
10729 ~~administratively dissolve a corporation administratively if the corporation does not:~~
- 10730 (a) Deliver its annual report to the department ~~The corporation has failed to file its~~
10731 ~~annual report and pay the annual report filing fee by 5 p.m. Eastern Time on the third Friday~~
10732 ~~in September of each year;~~
- 10733 (b) Pay a fee or penalty due to the department under this chapter;
- 10734 (c) Appoint and maintain ~~The corporation is without a registered agent and~~ or ~~registered~~
10735 ~~office as required by s. 607.0501 in this state for 30 days or more;~~
- 10736 (d~~e~~) Deliver for filing a statement of change under s. 607.0502 ~~The corporation does~~
10737 ~~not notify the Department of State within 30 days after a change has occurred in the name or~~
10738 ~~address of the agent unless, within 30 days after the change occurred: that its the corporation's~~
10739 ~~registered agent or registered office has been changed, that its registered agent has resigned,~~
10740 ~~or that its registered office has been discontinued;~~
- 10741 1. The agent filed a statement of change under s. 607.05031; or
- 10742 2. The change was made in accordance with s. 607.0502(4);
- 10743 (d~~e~~) The corporation has failed to answer truthfully and fully, within the time prescribed
10744 by this chapter ~~act~~, interrogatories propounded by the department ~~of State~~; or
- 10745 (e~~f~~) The corporation's period of duration stated in its articles of incorporation expires ~~has~~
10746 ~~expired.~~
- 10747 ~~(2) The foregoing enumeration in subsection (1) of grounds for administrative dissolution~~
10748 ~~shall not exclude actions or special proceedings by the Department of Legal Affairs or any state~~
10749 ~~officials for the annulment or dissolution of a corporation for other causes as provided in any other~~
10750 ~~statute of this state.~~
- 10751 (2) Administrative dissolution of a corporation for failure to file an annual report must occur
10752 on the fourth Friday in September of each year. The department shall issue a notice in a record of
10753 administrative dissolution to the corporation dissolved for failure to file an annual report. Issuance
10754 of the notice may be by electronic transmission to a corporation that has provided the department
10755 with an e-mail address.
- 10756 (3) If the department determines that one or more grounds exist for administratively
10757 dissolving a corporation under paragraph (1)(b), paragraph (1)(c), or paragraph (1)(d), the

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10758 department shall serve notice in a record to the corporation of its intent to administratively dissolve
10759 the corporation. Issuance of the notice may be by electronic transmission to a corporation that has
10760 provided the department with an e-mail address.

10761 (4) If, within 60 days after sending the notice of intent to administratively dissolve pursuant
10762 to subsection (3), a corporation does not correct each ground for dissolution under paragraph
10763 (1)(b), paragraph (1)(c), or paragraph (1)(d) or demonstrate to the reasonable satisfaction of the
10764 department that each ground determined by the department does not exist, the department shall
10765 dissolve the corporation administratively and issue to the corporation a notice in a record of
10766 administrative dissolution that states the grounds for dissolution. Issuance of the notice of
10767 administrative dissolution may be by electronic transmission to a corporation that has provided the
10768 department with an e-mail address.

10769 (5) A corporation that has been administratively dissolved continues in existence but may
10770 only carry on activities necessary to wind up its activities and affairs, liquidate and distribute its
10771 assets, and notify claimants under ss. 607.1405, 607.1406 and 607.1407.

10772 (6) The administrative dissolution of a corporation does not terminate the authority of its
10773 registered agent for service of process.

10774

10775 **Commentary to Section 607.1420:**

10776 This provision has been updated and modernized to follow the substance of FRLUCA s. 605.0714.

10777 The FBCA contains a provision allowing for administrative dissolution in certain other situations
10778 (old subsection (2)). This ground for administrative dissolution was not included in the corollary
10779 provision of FRLUCA.

10780

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10781 ~~607.1421—Procedure for and effect of administrative dissolution.~~

10782 ~~(1) If the Department of State determines that one or more grounds exist under s. 607.1420~~
10783 ~~for dissolving a corporation, it shall serve the corporation with notice of its intention to~~
10784 ~~administratively dissolve the corporation. If the corporation has provided the Department with an~~
10785 ~~electronic mail address, such notice shall be by electronic transmission. Administrative dissolution~~
10786 ~~for failure to file an annual report shall occur on the fourth Friday in September of each year. The~~
10787 ~~Department of State shall issue a certificate of dissolution to each dissolved corporation. Issuance~~
10788 ~~of the certificate of dissolution may be by electronic transmission to any corporation that has~~
10789 ~~provided the department with an electronic mail address.~~

10790 ~~(2) If the corporation does not correct each ground for dissolution under s. 607.1420(1)(b),~~
10791 ~~(c), (d), or (e) or demonstrate to the reasonable satisfaction of the Department of State that each~~
10792 ~~ground determined by the department does not exist within 60 days of issuance of the notice, the~~
10793 ~~department shall administratively dissolve the corporation by issuing a certificate of dissolution~~
10794 ~~that recites the ground or grounds for dissolution and its effective date. Issuance of the certificate~~
10795 ~~of dissolution may be by electronic transmission to any corporation that has provided the~~
10796 ~~department with an electronic mail address.~~

10797 ~~(3) A corporation administratively dissolved continues its corporate existence but may not~~
10798 ~~carry on any business except that necessary to wind up and liquidate its business and affairs under~~
10799 ~~s. 607.1405 and notify claimants under ss. 607.1406 and 607.1407.~~

10800 ~~(4) A director, officer, or agent of a corporation dissolved pursuant to this section,~~
10801 ~~purporting to act on behalf of the corporation, is personally liable for the debts, obligations, and~~
10802 ~~liabilities of the corporation arising from such action and incurred subsequent to the corporation's~~
10803 ~~administrative dissolution only if he or she has actual notice of the administrative dissolution at~~
10804 ~~the time such action is taken; but such liability shall be terminated upon the ratification of such~~
10805 ~~action by the corporation's board of directors or shareholders subsequent to the reinstatement of~~
10806 ~~the corporation under ss. 607.1401-607.14401.~~

10807 ~~(5) The administrative dissolution of a corporation does not terminate the authority of its~~
10808 ~~registered agent.~~

10809

10810 **Commentary to Section 607.1421:**

10811 The substance of this section has been added to s. 607.1420 to follow the corollary FRLCA
10812 model. As a result, this section has been eliminated.

10813 One of the subsections eliminated was subsection (4), which previously provided that:

10814 (4)A director, officer, or agent of a corporation dissolved pursuant to this section,
10815 purporting to act on behalf of the corporation, is personally liable for the debts, obligations,
10816 and liabilities of the corporation arising from such action and incurred subsequent to the
10817 corporation's administrative dissolution only if he or she has actual notice of the
10818 administrative dissolution at the time such action is taken; but such liability shall be
10819 terminated upon the ratification of such action by the corporation's board of directors or
10820 shareholders subsequent to the reinstatement of the corporation under ss. 607.1401-
10821 607.14401.

10822 This subsection was not added to the corollary provisions of FRLCA and is not in the Model Act.
10823 Its exclusion is not intended to say that a director or agent cannot be personally liable for the debts
10824 of a corporation that has been administratively dissolved, but rather to leave that topic to agency
10825 law and courts to make the determination under the particular circumstances.

10826

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10827 607.1422 Reinstatement following administrative dissolution.

10828 (1) A corporation that is administratively dissolved under s. 607.1420 or that was dissolved
10829 under s. 607.1421 before January 1, 2020 ~~s. 607.1421~~ may apply to the department of State for
10830 reinstatement at any time after the effective date of dissolution. The corporation must submit all
10831 fees and penalties then owed by the corporation at the rates provided by laws at the time the
10832 corporation applies for reinstatement, together with an application for a reinstatement form
10833 prescribed and furnished by the department of State, which is or a current uniform business report
10834 signed by both the registered agent and an officer or director of ~~and all fees then owed by the~~
10835 corporation; and states: computed at the rate provided by law at the time the corporation applies
10836 for reinstatement.

10837 (a) The name of the corporation;

10838 (b) The street address of the corporation's principal office and mailing address;

10839 (c) The date of the corporation's organization;

10840 (d) The corporation's federal employer identification number or, if none, whether one
10841 has been applied for;

10842 (e) The name, title or capacity, and address of at least one officer or director of the
10843 corporation; and

10844 (f) Additional information that is necessary or appropriate to enable the department to
10845 carry out this chapter.

10846 (2) In lieu of the requirement to file an application for reinstatement as described in
10847 subsection (1), an administratively dissolved corporation may submit all fees and penalties owed
10848 by the corporation at the rates provided by law at the time the corporation applies for reinstatement,
10849 together with a current annual report, signed by both the registered agent and an officer or director
10850 of the corporation, which contains the information described in subsection (1).

10851 (3) If the department determines that an application for reinstatement contains the
10852 information required under subsection (1) or subsection (2) and that the information is correct,
10853 upon payment of all required fees and penalties, the department shall reinstate the corporation.

10854 (4) When reinstatement under this section becomes effective;

10855 (a) The reinstatement relates back to and takes effect as of the effective date of the
10856 administrative dissolution.

10857 (b) The corporation may operate as if the administrative dissolution had never occurred.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10858 (c) The rights of a person arising out of an act or omission in reliance on the dissolution
10859 before the person knew or had notice of the reinstatement are not affected.

10860 ~~(2) If the Department of State determines that the application contains the information~~
10861 ~~required by subsection (1) and that the information is correct, it shall reinstate the corporation.~~

10862 ~~(3) When the reinstatement is effective, it relates back to and takes effect as of the~~
10863 ~~effective date of the administrative dissolution and the corporation resumes carrying on its business~~
10864 ~~as if the administrative dissolution had never occurred.~~

10865 (54) The name of the dissolved corporation is shall not be available for assumption or use
10866 by another eligible entity corporation until 1 year after the effective date of dissolution unless the
10867 dissolved corporation provides the department of State with a record ~~an affidavit~~ signed ~~executed~~
10868 as required by s. 607.0120 permitting the immediate assumption or use of the name by another
10869 eligible entity corporation.

10870 (65) If the name of the dissolved corporation has been lawfully assumed in this state by
10871 another business entity corporation, the department of State shall require the dissolved corporation
10872 to amend its articles of incorporation to change its name before accepting its application for
10873 reinstatement.

10874

10875 **Commentary to Section 607.1422:**

10876 This section has been modified to make it consistent with s. 605.0715, the corollary section of
10877 FRLCA.

10878 The corollary provision of the Model Act limits administrative dissolution to a two-year period
10879 following the administrative dissolution. Florida is one of twenty-four jurisdictions, including
10880 Delaware, that do not expressly limit the period for reinstatement. Another twenty-four
10881 jurisdictions permit reinstatement for time periods between two and ten years after dissolution.
10882 This section retains the ability to reinstate a corporation at any time after dissolution.

10883

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10884 607.1423 Judicial review of ~~appeal from~~ denial of reinstatement.

10885 (1) If the department of ~~State~~ denies a corporation's application for reinstatement after
10886 following administrative dissolution, the department ~~it~~ shall serve the corporation under either s.
10887 607.0504(1) or s. 607.0504(2) with a written notice that explains the reason or reasons for denial.

10888 (2) Within 30 days after service of a notice of denial of reinstatement, a ~~After exhaustion of~~
10889 ~~administrative remedies, the corporation may appeal the denial of reinstatement to~~ by petitioning
10890 the Circuit Court of Leon County to set aside the dissolution ~~the appropriate court as provided in~~
10891 ~~s. 120.68 within 30 days after service of the notice of denial is perfected effected.~~ The petition
10892 must be served on the department and contain a copy of the department's notice of administrative
10893 ~~corporation appeals by petitioning the court to set aside the dissolution and attaching to the petition~~
10894 ~~copies of the Department of State's certificate of dissolution, the corporation's application for~~
10895 ~~reinstatement, and the department's notice of denial.~~

10896 (3) The court may ~~summarily~~ order the department of ~~State~~ to reinstate the dissolved
10897 corporation or ~~may~~ take other action the court considers appropriate.

10898 (4) The court's final decision may be appealed as in other civil proceedings.

10899

10900 **Commentary to Section 607.1423:**

10901 This section is revised to follow the wording of the corollary section of FRLLCA. It also conforms
10902 this section with the change requested by the Department of State as to where these suits must be
10903 brought.

10904

**FINAL STATUTE AS ADOPTED
(With Commentary)**

10905 607.1430 Grounds for judicial dissolution.

10906 (1) A circuit court may dissolve a corporation or order such other remedy as provided in
10907 s. 607.1434:

10908 (1a) In a proceeding by the Department of Legal Affairs to dissolve a corporation if
10909 it is established that:

10910 1. The corporation obtained its articles of incorporation through fraud; or

10911 2. The corporation has continued to exceed or abuse the authority conferred
10912 upon it by law.

10913 ~~(b)~~The enumeration in subparagraphs 1. and 2. paragraph (a) of grounds for involuntary dissolution
10914 does not exclude actions or special proceedings by the Department of Legal Affairs or any state
10915 official for the annulment or dissolution of a corporation for other causes as provided in any other
10916 statute of this state;

10917 ~~(b)(2)~~ In a proceeding by a shareholder to dissolve a corporation if it is established that:

10918 ~~(a)~~1. The directors are deadlocked in the management of the corporate
10919 affairs, the shareholders are unable to break the deadlock, and:

10920 a. Irreparable injury to the corporation is threatened or being
10921 suffered;

10922 b. The business and affairs of the corporation can no longer be
10923 conducted to the advantage of the shareholders generally because of the
10924 deadlock; or

10925 c. Both; or

10926 ~~(b)~~2. The shareholders are deadlocked in voting power and have failed to elect
10927 successors to directors whose terms have expired or would have expired upon
10928 qualification of their successors;

10929 ~~(3)~~~~In a proceeding by a shareholder or group of shareholders in a corporation having~~
10930 ~~35 or fewer shareholders if it is established that:~~

10931 ~~(a)~~3. The corporate assets are being misapplied or wasted, causing material
10932 injury to the corporation; or

10933 ~~(b)~~4. The directors or those in control of the corporation have acted, are
10934 acting, or are reasonably expected to act in a manner that is illegal or fraudulent;

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 10935 ~~(4)~~(c) In a proceeding by a creditor if it is established that:
- 10936 ~~(a)~~1. The creditor's claim has been reduced to judgment, the execution on
10937 the judgment returned unsatisfied, and the corporation is insolvent; or
- 10938 ~~(b)~~2. The corporation has admitted in writing that the creditor's claim is due
10939 and owing and the corporation is insolvent; ~~or~~
- 10940 ~~(5)~~(d) In a proceeding by the corporation to have its voluntary dissolution
10941 continued under court supervision; or
- 10942 (e) In a proceeding by a shareholder if the corporation has abandoned its
10943 business and has failed within a reasonable period of time to liquidate and distribute its
10944 assets and dissolve.
- 10945 (2) Paragraph (1)(b) does not apply in the case of a corporation that, on the date of the filing
10946 of the proceeding, has shares that are:
- 10947 (a) A covered security under s. 18(b)(1)(A) or (B) of the Securities Act of 1933; or
- 10948 (b) Not a covered security, but are held by at least 300 shareholders and the shares
10949 outstanding have a market value of at least \$20 million, exclusive of the value of outstanding
10950 shares of the corporation held by the corporation's subsidiaries, by the corporation's senior
10951 executives, by the corporation's directors, and by the corporation's beneficial shareholders and
10952 voting trust beneficial owners owning more than 10 percent of the outstanding shares of the
10953 corporation.
- 10954 (3) (a) In the event of a deadlock situation that satisfies subparagraph (1)(b)1. or
10955 subparagraph (1)(b)2., if the shareholders are subject to a shareholder agreement that
10956 complies with s. 607.0732 and contains a deadlock sale provision, then such deadlock
10957 sale provision shall apply to the resolution of such deadlock in lieu of the court entering
10958 an order of judicial dissolution or an order directing the purchase of petitioner's shares
10959 under s. 607.1436, so long as the provisions of such deadlock sale provision are initiated
10960 and effectuated within the time periods specified for the corporation to act under s.
10961 607.1436 and in accordance with the terms of such deadlock sale provision.
- 10962 (b) As used in this section, the term "deadlock sale provision" means a provision in
10963 a shareholder agreement that complies with s. 607.0732, which is or may be applicable
10964 in the event of a deadlock among the directors or shareholders of the corporation, which
10965 neither the directors nor the shareholders, as applicable, of the corporation are able to
10966 break; and which provides for a deadlock breaking mechanism, including, but not limited
10967 to:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 10968 1. A redemption or a purchase and sale of shares or other equity securities;
- 10969 2. A governance change;
- 10970 3. A sale of the corporation or all or substantially all of the assets of the
10971 corporation; or
- 10972 4. A similar provision that, if initiated and effectuated, breaks the deadlock by
10973 causing the transfer of the shares or other equity securities, a governance change, or
10974 a sale of the corporation or all or substantially all of the corporation's assets.

10975 (4) A deadlock sale provision in a shareholder agreement that complies with s. 607.0732
10976 which is not initiated and effectuated before the court enters an order of judicial dissolution under
10977 subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an order directing the
10978 purchase of petitioner's interest under s. 607.1436, does not adversely affect the rights of
10979 shareholders to seek judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as
10980 the case may be, or the rights of the corporation or one or more shareholders to purchase the
10981 petitioner's interest under s. 607.1436. The filing of an action for judicial dissolution on the
10982 grounds described in subparagraph (1)(b)1. or subparagraph (1)(b)2., as the case may be, or an
10983 election to purchase the petitioner's interest under s. 607.1436, does not adversely affect the right
10984 of a shareholder to initiate an available deadlock sale provision under the shareholder agreement
10985 that complies with s. 607.0732 or to enforce a shareholder-initiated or an automatically-initiated
10986 deadlock sale provision if the deadlock sale provision is initiated and effectuated before the court
10987 enters an order of judicial dissolution under subparagraph (1)(b)1. or subparagraph (1)(b)2., as the
10988 case may be, or an order directing the purchase of petitioner's interest under s. 607.1436.

10989 (5) For purposes of subsections (1) and (2), the term "shareholder" means a record
10990 shareholder, a beneficial shareholder, or an unrestricted voting trust beneficial owner.

10991

10992 **Commentary to Section 607.1430:**

10993 Florida largely follows the corollary provision of the Model Act.

10994 This section changes existing law such that the rights of shareholders to petition the circuit court
10995 to seek judicial dissolution are limited to corporations other than those that are essentially public
10996 companies rather than under current Florida law where such rights are limited to shareholders of
10997 smaller corporations with 35 or fewer shareholders in Florida.

10998 In the bill originally presented to the legislature, oppression of minority shareholders was included
10999 as a ground for judicial dissolution. The proposal also provided that only a shareholder who owns
11000 more than 10% of the outstanding membership interests could assert this right. The Model Act
11001 includes "oppression" as a ground for judicial dissolution.

11002 During the legislative process, one or more legislators raised concerns about including oppression
11003 as a ground for judicial dissolution and a decision was made to remove oppression as a ground for
11004 judicial dissolution from the bill. It is anticipated that the Subcommittee will consider taking this
11005 subject up again in a future bill after having more discussion among the members of our group as
11006 well as interested litigators and others who might have an interest in this topic.

11007 The revised statute, conforming to s. 605.0702, adds provisions addressing the effect of
11008 shareholder agreements that expressly provide a mechanism for resolving deadlocks.

11009 Language has been added to s. 607.0732 to make clear that provisions in shareholder agreements
11010 that comply with that section and which provide mechanisms for how deadlocks are to be resolved
11011 or addressed are permissible and are not believed to be contrary to public policy.

11012 The intent of the exceptions in subsection (2)(b) are to compute the excluded value by taking into
11013 account the sum of the values of all shares owned (i) by the corporation's subsidiaries, (ii) by the
11014 corporation's senior executives, (iii) by the corporation's directors, and adding to that the value of
11015 all shares owned by shareholders (including beneficial shareholders and voting trust beneficiaries)
11016 who separately (rather than collectively or in the aggregate) own more than 10% of the outstanding
11017 shares of the corporation.

11018 In connection with making this change, it is noted that certain protections are already in the FBCA
11019 for corporations faced with an action for judicial dissolution. First, under s. 607.1431(5), a court
11020 may award attorney fees and other reasonable expenses to a party who has been adversely affected
11021 by such actions if the court determines that a party who has commenced, continued, or participated
11022 in a proceeding under s. 607.1430 has acted arbitrarily, frivolously, vexatiously, or not in good
11023 faith in bringing such proceeding. Second, the corporation has an absolute right to purchase the
11024 interest in the corporation of the petitioning shareholder for fair value under s. 607.1436, which
11025 provides the corporation and the remaining shareholders with an ability to end the litigation if they
11026 so choose.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11027 607.1431 Procedure for judicial dissolution.

11028 (1) Venue for a proceeding brought under s. 607.1430 lies in the circuit court in ~~of~~ the
11029 applicable county ~~where the corporation's principal office is or was last located, as shown by the~~
11030 ~~records of the Department of State, or, if none in this state, where its registered office is or was~~
11031 ~~last located.~~

11032 (2) It is not necessary to make shareholders parties to a proceeding to dissolve a corporation
11033 unless relief is sought against them individually.

11034 (3) A court in a proceeding brought under s. 607.1430 ~~to dissolve a corporation~~ may issue
11035 injunctions, appoint a receiver or custodian ~~pendent lite~~ during the proceeding with all powers and
11036 duties the court directs, take other action required to preserve the corporate assets wherever
11037 located, and carry on the business of the corporation until a full hearing can be held.

11038 (4) Within 30 days of the commencement of a proceeding under s. 607.1430(1)(b), the
11039 corporation shall deliver to all shareholders, other than the petitioner, a notice stating that the
11040 shareholders are entitled to avoid the dissolution of the corporation by electing to purchase the
11041 petitioner's shares under s. 607.1436 and accompanied by a copy of s. 607.1436.

11042 (4~~5~~) If the court determines that any party has commenced, continued, or participated in a
11043 proceeding ~~an action~~ under s. 607.1430 and has acted arbitrarily, frivolously, vexatiously, or not
11044 in good faith, the court may, in its discretion, award attorney ~~attorney's~~ fees and other reasonable
11045 expenses to the other parties to the action who have been affected adversely by such actions.

11046

11047 **Commentary to Section 607.1431:**

11048 With some non-material differences, subsections (1)-(3) match their corresponding subsections in
11049 the Model Act. Subsection (5) is unique to the FBCA.

11050 The FBCA did not previously include subsection (d) of the corollary provision of the Model Act,
11051 which relates to notification to shareholders of their rights to purchase the holdings of the
11052 petitioning shareholders under s. 607.1436 of the FBCA. This subsection has been added to the
11053 FBCA in new subsection (4).

11054

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11055 607.1432 Receivership or custodianship.

11056 (1) A court in a judicial proceeding brought under s. 607.1430 ~~to dissolve a corporation~~ may
11057 appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the
11058 business and affairs of the corporation. The court shall hold a hearing, after notifying all parties to
11059 the proceeding and any interested persons designated by the court, before appointing a receiver or
11060 custodian. The court appointing a receiver or custodian has exclusive jurisdiction over the
11061 corporation and all of its property wherever located.

11062 (2) The court may appoint a natural person or an eligible entity ~~a corporation~~ authorized to
11063 act as a receiver or custodian. The eligible entity ~~corporation~~ may be a domestic eligible entity
11064 ~~corporation~~ or a foreign eligible entity ~~corporation~~ authorized to transact business in this state. The
11065 court may require the receiver or custodian to post bond, with or without sureties, in an amount
11066 the court directs.

11067 (3) The court shall describe the powers and duties of the receiver or custodian in its
11068 appointing order, which may be amended from time to time. Among other powers:

11069 (a) The receiver:

11070 1. May dispose of all or any part of the assets of the corporation wherever located,
11071 at a public or private sale, if authorized by the court; and

11072 2. May sue and defend in his, ~~or her,~~ or its own name as receiver of the corporation
11073 in all courts of this state.

11074 (b) The custodian may exercise all of the powers of the corporation, through or in place
11075 of its board of directors or officers, to the extent necessary to manage the affairs of the
11076 corporation in the best interests of its shareholders and creditors.

11077 (4) The court during a receivership may redesignate the receiver a custodian, and during a
11078 custodianship may redesignate the custodian a receiver, if doing so is determined by the court to
11079 be in the best interests of the corporation and its shareholders and creditors.

11080 (5) The court from time to time during the receivership or custodianship may order
11081 compensation paid and expense disbursements or reimbursements made to the receiver or
11082 custodian and his, ~~or her,~~ or its counsel from the assets of the corporation or proceeds from the
11083 sale of the assets.

11084 (6) The court has jurisdiction to appoint an ancillary receiver for the assets and business of
11085 a corporation. The ancillary receiver shall serve ancillary to a receiver located in any other state,
11086 whenever the court deems that circumstances exist requiring the appointment of such a receiver.
11087 The court may appoint such an ancillary receiver for a foreign corporation even though no receiver

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11088 has been appointed elsewhere. Such receivership shall be converted into an ancillary receivership
11089 when an order entered by a court of competent jurisdiction in the other state provides for a
11090 receivership of the corporation.

11091

11092 **Commentary to Section 607.1432:**

11093 Subsections (1)-(5) of this section of the FBCA are materially the same as their counterpart
11094 subsections in the Model Act. The only difference appears in subsection (1). The Model Act
11095 provision provides that a receiver or custodian cannot be appointed during the 90-day period in
11096 which the corporation and other shareholders are given the right in s. 607.1436 to purchase the
11097 shares of the complaining shareholder. The corollary provision of the FBCA does not include that
11098 limitation, and that limitation has not been added to this section. In exigent circumstances, the
11099 court should have the right to immediately appoint a receiver or custodian during such 90-day
11100 period, even if it turns out that the receiver or custodian can be dismissed after a purchase of the
11101 complaining shareholders' interest is completed under s. 607.1436.

11102 Subsection (6) of the FBCA has been retained in the statute even though it is not in the Model Act.

11103

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11104 607.1433 Judgment of dissolution.

11105 (1) If after a hearing in a proceeding under s. 607.1430 the court determines that one or more
11106 grounds for judicial dissolution described in s. 607.1430 exist, it may enter a judgment dissolving
11107 the corporation and specifying the effective date of the dissolution, and the clerk of the court shall
11108 deliver a certified copy of the judgment to the department ~~of State~~, which shall file it.

11109 (2) After entering the judgment of dissolution, the court shall direct the winding up and
11110 liquidation of the corporation's business and affairs in accordance with s. 607.1405 and the
11111 notification of claimants in accordance with ss. 607.1406 and 607.1407 ~~s. 607.1406~~, subject to the
11112 provisions of subsection (3).

11113 (3) In a proceeding for judicial dissolution, the court may require all creditors of the
11114 corporation to file with the clerk of the court or with the receiver, in such form as the court may
11115 prescribe, proofs under oath of their respective claims. If the court requires the filing of claims, it
11116 shall fix a date, which shall be not less than 4 months from the date of the order, as the last day for
11117 filing of claims. The court shall prescribe the method by which such notice of the deadline for
11118 filing claims shall be given to creditors and claimants. Prior to the date so fixed, the court may
11119 extend the time for the filing of claims by court order. Creditors and claimants failing to file proofs
11120 of claim on or before the date so fixed shall ~~may~~ be barred, ~~by order of court~~, from participating
11121 in the distribution of the assets of the corporation. Nothing in this section affects the enforceability
11122 of any recorded mortgage or lien or the perfected security interest or rights of a person in
11123 possession of real or personal property.

11124

11125 **Commentary to Section 607.1433:**

11126 Subsections (1) and (2) of s. 607.1433 generally follow the Model Act. One minor clean-up
11127 change was made in subsection (2) to require notice to potential claimants in accordance with s.
11128 607.1407, consistent with the Model Act language.

11129 Florida is one of nine jurisdictions (including California) that limits the claims to four months (or
11130 120 days) after the date of the order. Some other jurisdictions (including New York) provide for
11131 a six month period. The Model Act does not have a comparable subsection.

11132 The revision to subsection (3) changes the claims bar from being discretionary at the court's
11133 option to being mandatory.

11134

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11135 607.1434 Alternative remedies to judicial dissolution.

11136 (1) In a proceeding an action for dissolution under pursuant to s. 607.1430, the court may, as
11137 an alternative to directing the dissolution of the corporation and upon a showing of sufficient merit
11138 to warrant such remedy:

11139 (a~~1~~) Appoint a receiver or custodian ~~pendent lite~~ during the proceeding as provided in
11140 s. 607.1432;

11141 (b~~2~~) Appoint a provisional director as provided in s. 607.1435;

11142 (c~~3~~) Order a purchase of the petitioning ~~complaining~~ shareholder's shares pursuant to s.
11143 607.1436; or

11144 (d~~4~~) ~~Upon proof of good cause,~~ Make any order or grant any equitable relief other than
11145 dissolution ~~or liquidation~~ as in its discretion it may deem appropriate.

11146 (2) Alternative remedies, such as the appointment of a receiver or custodian, may also be
11147 ordered in the discretion of the court, upon a showing of sufficient merit to warrant such remedy,
11148 in advance of directing the dissolution of the corporation or, after a judgment of dissolution is
11149 entered, to assist in facilitating the winding up of the corporation.

11150

11151 **Commentary to Section 607.1434:**

11152 Section 607.1434 was added to the FBCA in 1994 to enumerate and clarify the alternative remedies
11153 available for actions brought under s. 607.1430. The "sufficient merit" phrase in the opening clause
11154 is intended to require that none of these remedies be imposed unless the petitioner meets the burden
11155 of proving the necessity of such relief. This section is intended to explicitly recognize the existing
11156 equity powers of courts to fashion a remedy other than dissolution in circumstances where the
11157 grounds for judicial dissolution are present.

11158 A minor change was included in paragraph (1)(a) to match a similar change made in Section
11159 607.1431(3).

11160 Subsection (2) has been added to make clear that these alternative remedies can be implemented
11161 in advance of an order of dissolution and/or to assist in facilitating the winding up process.

11162

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11163 607.1435 Provisional director.

11164 (1) In a proceeding under s. 607.1430, a provisional director may be appointed in the
11165 discretion of the court if it appears that such action by the court will remedy the grounds alleged
11166 by the complaining shareholder to support the jurisdiction of the court under s. 607.1430. A
11167 provisional director may be appointed notwithstanding the absence of a vacancy on the board of
11168 directors, and such director shall have all the rights and powers of a duly elected director, including
11169 the right to notice of and to vote at meetings of directors, until such time as the provisional director
11170 is removed by order of the court or, unless otherwise ordered by a court, removed by a vote of the
11171 shareholders sufficient either to elect a majority of the board of directors or, if greater than majority
11172 voting is required by the articles of incorporation or the bylaws, to elect the requisite number of
11173 directors needed to take action. A provisional director shall be an impartial person who is neither
11174 a shareholder nor a creditor of the corporation or of any subsidiary or affiliate of the corporation,
11175 and whose further qualifications, if any, may be determined by the court.

11176 (2) A provisional director shall report from time to time to the court concerning the matter
11177 complained of, or the status of the deadlock, if any, and of the status of the corporation's business,
11178 as the court shall direct. No provisional director shall be liable for any action taken or decision
11179 made, except as directors may be liable under s. 607.0831. In addition, the provisional director
11180 shall submit to the court, if so directed, recommendations as to the appropriate disposition of the
11181 action. Whenever a provisional director is appointed, any officer or director of the corporation
11182 may, from time to time, petition the court for instructions clarifying the duties and responsibilities
11183 of such officer or director.

11184 (3) In any proceeding under which a provisional director is appointed pursuant to this
11185 section, the court shall allow reasonable compensation to the provisional director for services
11186 rendered and reimbursement or direct payment of reasonable costs and expenses, which amounts
11187 shall be paid by the corporation.

11188

11189 **Commentary to Section 607.1435:**

11190 This section was added to the FBCA in 1994. It allows a court, on its own or at the request of one
11191 of the parties, under circumstances where the court by such an action can remedy a situation under
11192 s. 607.1430, to appoint a provisional director to act with full power and authority along with the
11193 corporation's other directors. The remedy, which could be used to break a deadlock on the board
11194 of directors, is considered less intrusive on corporate management than the appointment of a
11195 receiver or custodian.

11196 Because the remedy discussed in s. 607.1435 can only be granted in connection with a suit for
11197 dissolution, a new standalone section has been added to the FBCA (s. 607.0749) to allow a court
11198 to appoint a provisional director in the event of a deadlock even if no party is seeking to dissolve
11199 the corporation.

11200

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11201 607.1436 Election to purchase instead of dissolution.

11202 (1) In a proceeding under s. ~~607.1430(1)(b) s. 607.1430(2) or (3)~~ to dissolve a corporation,
11203 the corporation may elect or, if it fails to elect, one or more shareholders may elect to purchase all
11204 shares owned by the petitioning shareholder at the fair value of the shares. An election pursuant to
11205 this section shall be irrevocable unless the court determines that it is equitable to set aside or
11206 modify the election.

11207 (2) An election to purchase pursuant to this section may be filed with the court at any time
11208 within 90 days after the filing of the petition under s. ~~607.1430(1)(b) s. 607.1430(2) or (3)~~ or at
11209 such later time as the court in its discretion may allow. If the election to purchase is filed by one
11210 or more shareholders, the corporation shall, within 10 days thereafter, give written notice to all
11211 shareholders, other than the petitioner. The notice must state the name and number of shares owned
11212 by the petitioner and the name and number of shares owned by each electing shareholder and must
11213 advise the recipients of their right to join in the election to purchase shares in accordance with this
11214 section. Shareholders who wish to participate must file notice of their intention to join in the
11215 purchase no later than 30 days after the effective date of the notice to them. All shareholders who
11216 have filed an election or notice of their intention to participate in the election to purchase thereby
11217 become parties to the proceeding and shall participate in the purchase in proportion to their
11218 ownership of shares as of the date the first election was filed, unless they otherwise agree or the
11219 court otherwise directs. After an election has been filed by the corporation or one or more
11220 shareholders, the proceeding under s. ~~607.1430(1)(b) s. 607.1430(2) or (3)~~ may not be
11221 discontinued or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her
11222 shares, unless the court determines that it would be equitable to the corporation and the
11223 shareholders, other than the petitioner, to permit such discontinuance, settlement, sale, or other
11224 disposition.

11225 (3) If, within 60 days after the filing of the first election, the parties reach agreement as to
11226 the fair value and terms of the purchase of the petitioner's shares, the court shall enter an order
11227 directing the purchase of the petitioner's shares upon the terms and conditions agreed to by the
11228 parties.

11229 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the
11230 court, upon application of any party, ~~may shall~~ stay the proceeding to dissolve under s.
11231 ~~607.1430(1)(b) proceeding~~ and shall, whether or not the proceeding is stayed, determine the fair
11232 value of the petitioner's shares as of the day before the date on which the petition under s. 607.1430
11233 was filed or as of such other date as the court deems appropriate under the circumstances.

11234 (5) Upon determining the fair value of the shares, the court shall enter an order directing the
11235 purchase upon such terms and conditions as the court deems appropriate, which may include
11236 payment of the purchase price in installments, when necessary in the interests of equity, provision
11237 for security to assure payment of the purchase price and any additional costs, fees, and expenses

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11238 as may have been awarded, and, if the shares are to be purchased by shareholders, the allocation
11239 of shares among such shareholders. In allocating the petitioner's shares among holders of different
11240 classes of shares, the court shall attempt to preserve any ~~the~~ existing distribution of voting rights
11241 among holders of different classes and series insofar as practicable and may direct that holders of
11242 any a specific class or classes or series shall not participate in the purchase. Interest may be allowed
11243 at the rate and from the date determined by the court to be equitable; however, if the court finds
11244 that the refusal of the petitioning shareholder to accept an offer of payment was arbitrary or
11245 otherwise not in good faith, no interest shall be allowed. If the court finds that the petitioning
11246 shareholder had probable grounds for relief under s. 607.1430(1)(b)(~~3~~), it may award expenses to
11247 the petitioning shareholder, including reasonable fees and expenses of counsel and of any experts
11248 employed by petitioner.

11249 (6) ~~The~~ Upon entry of an order under subsection (3) or subsection (5); shall be subject to the
11250 provisions of subsection (8), and the order shall not be entered unless and until the award is
11251 determined by the court to be permitted under the provisions of subsection (8). In determining
11252 compliance with s. 607.06401, the court may rely on an affidavit from the corporation as to
11253 compliance with that section as of the measurement date. Upon entry of an order under subsection
11254 (3) or subsection (5), the court shall dismiss the petition to dissolve the corporation under s.
11255 607.1430(1)(b) and the petitioning shareholder shall no longer have any rights or status as a
11256 shareholder of the corporation, except the right to receive the amounts awarded by the order of the
11257 court, which shall be enforceable in the same manner as any other judgment.

11258 (7) The purchase ordered pursuant to subsection (5) shall be made within 10 days after the
11259 date the order becomes final ~~unless, before that time, the corporation files with the court a notice~~
11260 ~~of its intention to adopt articles of dissolution pursuant to ss. 607.1402 and 607.1403, which~~
11261 ~~articles shall then be adopted and filed within 50 days thereafter. Upon filing of such articles of~~
11262 ~~dissolution, the corporation shall be dissolved in accordance with the provisions of ss. 607.1405~~
11263 ~~and 607.1406, and the order entered pursuant to subsection (5) shall no longer be of any force or~~
11264 ~~effect, except that the court may award the petitioning shareholder reasonable fees and expenses~~
11265 ~~of counsel and any experts in accordance with the provisions of subsection (5) and the petitioner~~
11266 ~~may continue to pursue any claims previously asserted on behalf of the corporation.~~

11267 (8) Any payment by the corporation pursuant to an order under subsection (3) or subsection
11268 (5), other than an award of fees and expenses pursuant to subsection (5), is subject to the provisions
11269 of s. 607.06401. Unless otherwise provided in the court's order, the effect of the distribution under
11270 s. 607.06401 shall be measured as of the date of the court's order under subsection (3) or subsection
11271 (5).

11272

11273 **Comments to Section 607.1436:**

11274 This section largely follows the Model Act.

11275 Section 14.36(g) of the Model Act no longer includes the right to dissolve the corporation in lieu
11276 of completing the purchase based on the purchase price determined by the court. This change was
11277 made because the Corporate Laws Committee determined that giving the corporation the option to
11278 purchase and then reversing its course and dissolving would be unfair to petitioning shareholders
11279 and discourage them from making such petitions. The revised FBCA eliminates most of
11280 subsection (7) for this reason.

11281 Eliminating most of subsection (7) also eliminates the concerns raised by the decision in Jones v.
11282 Pfaff, 77 So.3rd 884 (2nd DCA, Florida, 2012). In that case, the court determined, in a situation
11283 where the corporation elected not to complete its purchase of the petitioning shareholders' shares
11284 under s. 607.1436, but rather elected to wind up and liquidate, that such action moved the
11285 liquidation under the auspices of a voluntary dissolution and thus eliminated the jurisdiction of the
11286 court to oversee the dissolution proceedings.

11287 In subsection (4), the requirement that the court stay the dissolution proceeding while determining
11288 the fair value of the shares to be purchased has been eliminated in favor of giving the court the
11289 option to do so under appropriate circumstances. While it may be appropriate to stay the dissolution
11290 proceeding under many circumstances, this change leaves the court with the discretion to continue
11291 to monitor the activities of the corporation and to take other equitable actions, as it deems
11292 appropriate, and to continue the dissolution proceedings while the purchase process is being
11293 completed in those circumstances where the court determines that such oversight remains
11294 appropriate. That may also include, for example, the equitable power to require the corporation to
11295 post a bond where that may be reasonable or appropriate.

11296 Under subsection (8), after entry of an order under subsection (5), the petitioner is a creditor with
11297 respect to the corporation or the electing shareholders who participate in the purchase, but any
11298 payments to be made by the corporation, other than expenses awarded under subsection (5) fall
11299 within the definition of "distribution" under s. 607.06401. Subsection (8) provides that the
11300 evaluation of whether the "distribution" is permissible under the requirements of s. 607.06401
11301 shall be tested at the time of the order unless the order expressly provides that such determination
11302 shall be made at some other time, such as at the time of payment. A cross reference of subsection
11303 (8) has been added to subsection (6) to make clear that the Court should consider the
11304 measurement under subsection (8) before dismissing the petition to dissolve the corporation
11305 under that subsection.

11306

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11307 607.14401 Deposit with Department of Financial Services.

11308 Assets of a dissolved corporation that should be transferred to a creditor, claimant, or
11309 shareholder of the corporation who cannot be found or who is not competent to receive them shall
11310 be reduced to cash and deposited, ~~within 6 months from the date fixed for the payment of the final~~
11311 ~~liquidating distribution~~, with the Department of Financial Services for safekeeping, ~~where such~~
11312 ~~assets shall be held as abandoned property~~. When the creditor, claimant, or shareholder furnishes
11313 satisfactory proof of entitlement to the amount or assets deposited, the Department of Financial
11314 Services shall pay such person ~~the creditor, claimant, or shareholder~~ or his or her representative
11315 that amount ~~or those assets~~.

11316

11317 **Commentary to Section 607.14401:**

11318 This provision has been modified to match the corollary provision in the Model Act.

11319

11320

ARTICLE 15

11321

FOREIGN CORPORATIONS

11322

11323 607.1501 Authority of foreign corporation to transact business required; activities not
11324 constituting transacting business.

11325 (1) A foreign corporation may not transact business in this state until it obtains a certificate
11326 of authority from the department of State.

11327 (2) The following activities, among others, do not constitute transacting business within the
11328 meaning of subsection (1):

11329 (a) Maintaining, defending, mediating, arbitrating, or settling any proceeding.

11330 (b) Carrying on any activity concerning the internal affairs of the foreign corporation,
11331 including holding meetings of its shareholders or the board of directors or shareholders or
11332 carrying on other activities concerning internal corporate affairs.

11333 (c) Maintaining bank accounts in financial institutions.

11334 (d) Maintaining ~~officers offices~~ offices or agencies for the transfer, exchange, and registration
11335 of ~~the corporation's own~~ securities of the foreign corporation or maintaining trustees or
11336 depositaries with respect to those securities.

11337 (e) Selling through independent contractors.

11338 (f) Soliciting or obtaining orders, whether by mail or through employees, agents, or
11339 otherwise, if the orders require acceptance outside this state before they become contracts.

11340 (g) Creating or acquiring indebtedness, mortgages, or ~~and~~ security interests in real or
11341 personal property.

11342 (h) Securing or collecting debts or enforcing mortgages or ~~and~~ security interests in
11343 property securing the debts, and holding, protecting, or maintaining property so acquired.

11344 (i) Transacting business in interstate commerce.

11345 (j) Conducting an isolated transaction that is completed within 30 days and that is not
11346 one in the course of repeated transactions of a like nature.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11347 (k) Owing and controlling a subsidiary corporation incorporated in or limited liability
11348 company formed in, or transacting business within, this state; ~~or~~ voting the shares stock of
11349 any such subsidiary corporation; or voting the membership interests of any such limited
11350 liability company, which it has lawfully acquired.

11351 (l) Owing a limited partnership interest in a limited partnership that is transacting doing
11352 business within this state, unless the such limited partner manages or controls the partnership
11353 or exercises the powers and duties of a general partner.

11354 (m) Owing, protecting, and maintaining, without more, real or personal property.

11355 (3) The list of activities in subsection (2) is not an exhaustive list of activities that do not
11356 constitute transacting business within the meaning of subsection (1).

11357 (4) This section ~~has no application to the question of whether any~~ does not apply in
11358 determining the contacts or activities that may subject a foreign corporation is subject to service
11359 of process, taxation, or regulation ~~and suit in~~ under any the law of this state other than this chapter.

11360

11361 **Note to Article 15 generally:**

11362 Article 15 is largely based on the substance contained in Article 9 of FRLUCA. At the same time,
11363 a number of sections are in different places than where they are found in FRLUCA, so as to make
11364 the form of this Article 15 continue to follow the structure of the current version of Article 15 in
11365 the FBCA. Further, a number of changes have been made where appropriate to integrate into
11366 Article 15 some of the modifications in the Model Act, and corollary changes in Article 9 of
11367 FRLUCA are proposed. However, the Model Act's change in terminology to reflect the registration
11368 concept in the Model Act has not been incorporated.

11369 **Commentary to Section 607.1501:**

11370 Florida substantially follows the Model Act's list of transactions that do not constitute transacting
11371 business in the state. Florida's list contains all of the transactions listed under the Model Act and
11372 adds two additional types of transactions (under subsections (2)(k) and (2)(l)) as well.

11373 Modifications have been made to reflect changes in subsection (2) from s. 605.0905 of FRLUCA.
11374 Further, subsections (a), (b), (c), (g), (h), and (m) reflect changes based on the 2016 version of the
11375 Model Act.

11376 Subsection (3) does not appear in the Model Act. Modifications to this section reflect changes to
11377 bring this subsection into conformity with s. 605.0905 of FRLUCA.

11378

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 11379 607.15015 Governing law.
- 11380 (1) The law of the state or other jurisdiction under which a foreign corporation exists
11381 governs:
- 11382 (a) The organization and internal affairs of the foreign corporation; and
- 11383 (b) The interest holder liability of its shareholders.
- 11384 (2) A foreign corporation may not be denied a certificate of authority by reason of a
11385 difference between the laws of its jurisdiction of formation and the laws of this state.
- 11386 (3) A certificate of authority does not authorize a foreign corporation to engage in any
11387 business or exercise any power that a corporation may not engage in or exercise in this state.
11388

11389 **Commentary to Section 607.15015:**

11390 This section is based largely on the language used in s. 605.0901 of FRLCA. It also is similar to
11391 s. 15.01 of the Model Act, although it does not use the Model Act wording regarding "registration"
11392 to do business in this State. Subsection (2) is replaced in s. 607.1503(4)

11393

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11394 607.1502 Effect of failure to have a certificate of ~~Consequences of transacting business~~
11395 without authority.

11396 (1) A foreign corporation transacting business in this state or its successors ~~without a~~
11397 ~~certificate of authority~~ may not prosecute or maintain an action or proceeding in any court in this
11398 state until it has obtained ~~obtains~~ a certificate of authority to transact business in this state.

11399 (2) The successor to a foreign corporation that transacted business in this state without a
11400 certificate of authority and the assignee of a cause of action arising out of that business may not
11401 prosecute or maintain a proceeding based on that cause of action in a any court in this state until
11402 the foreign corporation or its successor has obtained ~~obtains~~ a certificate of authority to transact
11403 business in this state.

11404 (3) A court may stay a proceeding commenced by a foreign corporation or its successor or
11405 assignee until it determines whether the foreign corporation or its successor requires a certificate
11406 of authority. If it so determines, the court may further stay the proceeding until the foreign
11407 corporation or its successor has obtained ~~obtains the a~~ certificate of authority to transact business
11408 in this state.

11409 (4) A foreign corporation which transacts business in this state without obtaining a certificate
11410 of authority to do so shall be ~~is~~ liable to this state for the years or parts thereof during which it
11411 transacted business in this state without obtaining a certificate of authority in an amount equal to
11412 all fees and penalties ~~taxes which that~~ would have been imposed by this chapter ~~act~~ upon the
11413 foreign ~~such~~ corporation had it duly applied for and received a certificate of authority to transact
11414 business in this state as required under ~~by~~ this chapter ~~act~~. In addition to the payments thus
11415 prescribed, ~~such~~ the foreign corporation may, to the extent ordered by a court of competent
11416 jurisdiction, shall be liable for a civil penalty of not less than \$500 but not ~~or~~ more than \$1,000 for
11417 each year or part thereof during which it transacts business in this state without a certificate of
11418 authority. The department of State may collect all penalties due under this subsection and may
11419 bring an action in circuit court to recover all penalties and fees due and owing the state.

11420 (5) ~~Notwithstanding subsections (1) and (2),~~ The failure of a foreign corporation to have
11421 obtain a certificate of authority to transact business in this state does not impair the validity of any
11422 of its contracts, deeds, mortgages, security interests, or corporate acts or prevent the foreign
11423 corporation ~~it~~ from defending an action or any proceeding in this state.

11424 (6) A shareholder, officer, or director of a foreign corporation is not liable for the debts,
11425 obligations, or other liabilities of the foreign corporation solely because the foreign corporation
11426 transacted business in this state without a certificate of authority.

11427 (7) Section 607.15015(1) applies even if a foreign corporation fails to have a certificate of
11428 authority to transact business in this state.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11429 (8) If a foreign corporation transacts business in this state without a certificate of
11430 authority or cancels its certificate of authority, it appoints the secretary of state as its agent for
11431 service of process for rights of action arising out of the transaction of business in this state.

11432

11433 **Commentary to Section 607.1502:**

11434 This section has been harmonized with s. 605.0904 of FRLICA.

11435 The word "maintain" is defined in the commentary to s. 15.02 of the Model Act as follows:

11436 The distinction between "maintaining" and "defending" an action or proceeding is
11437 determined on the basis of whether affirmative relief is sought. Such a nonregistered
11438 foreign corporation may interpose any defense or permissive or mandatory counterclaim to
11439 defeat a claimed recovery, but may not obtain a judgment based on the counterclaim until it
11440 has registered.

11441 The word "maintain" in the derivative action sections of Article 7 is used in a different context
11442 than the context in which it is used in Article 15. The use of the same word in Article 7 (which
11443 deals with maintaining an interest in the corporation during the pendency of the derivative action
11444 proceeding) should not be confused with the way the word "maintain" is being used in Article
11445 15.

11446 The changes to subsection (4) clarifying when payment of the described penalty is required
11447 reflects the current position of the Department of State not to collect this penalty unless required
11448 to do so by a court of competent jurisdiction.

11449

FINAL STATUTE AS ADOPTED
(With Commentary)

11450 607.1503 Application for certificate of authority.

11451 (1) A foreign corporation may apply for a certificate of authority to transact business in
11452 this state by delivering an application to the department ~~of State~~ for filing. Such application shall
11453 be made on forms prescribed ~~and furnished~~ by the department ~~of State~~. The application must
11454 contain the following and shall set forth:

11455 (a) The name of the foreign corporation and, ~~as long as its name satisfies the~~
11456 ~~requirements of if the name does not comply with~~ s. 607.0401, an alternate name adopted
11457 pursuant to ~~but if its name does not satisfy such requirements, a corporate name that~~
11458 ~~otherwise satisfies the requirements of~~ s. 607.1506.;

11459 (b) The name of the foreign corporation's jurisdiction of incorporation, ~~under~~
11460 ~~the law of which it is incorporated;~~

11461 (c) Its date of incorporation and period of duration.;

11462 (d) The principal office and mailing street address of the foreign corporation.
11463 ~~its principal office;~~

11464 (e) The name and street address of its registered office in this state of, and the
11465 written acceptance by, the foreign corporation's initial and the name of its registered agent
11466 at that office in this state.;

11467 (f) The names and usual business addresses of its current directors and
11468 officers.;

11469 (g) ~~Such~~ Additional information as may be necessary or appropriate in order to
11470 enable the department ~~of State~~ to determine whether the foreign ~~such~~ corporation is entitled
11471 to file an application for certificate of authority to transact business in this state and to
11472 determine and assess the fees ~~and taxes~~ payable as prescribed in this chapter ~~aet~~.

11473 (2) The foreign corporation shall deliver with a ~~the~~ completed application under
11474 subsection (1) a certificate of existence or a record (~~or a document of similar import~~), duly
11475 authenticated, not more than 90 days prior to delivery of the application to the department ~~of State~~,
11476 signed by the ~~Secretary of State or other~~ official having custody of the foreign corporation's
11477 publicly filed corporate records in its the jurisdiction of incorporation under the law of which it is
11478 ~~incorporated~~. A translation of the certificate, under oath of the translator, must be attached to a
11479 certificate which is in a language other than the English language.

11480 (3) ~~—A foreign corporation shall not be denied authority to transact business in this state~~
11481 ~~by reason of the fact that the laws of the jurisdiction under which such corporation is organized~~
11482 ~~governing its organization and internal affairs differ from the laws of this state.~~

11483 **Commentary to Section 607.1503:**

11484 This section is harmonized with s. 605.0902 of FRLCA.

11485 The requirement for an English translation in subsection (2) is consistent with the language in s.
11486 607.0120(5).

11487

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11488 607.1504 Amended certificate of authority.

11489 (1) A foreign corporation authorized to transact business in this state shall deliver for
11490 filing an amendment to its ~~make application to the Department of State to obtain an amended~~
11491 certificate of authority to reflect a change in any of the following if it changes:

11492 (a) Its ~~corporate~~ name on the records of the department;

11493 (b) ~~The period of its duration; or~~

11494 (c) The jurisdiction of its incorporation.

11495 (d) The name and street address in this state of the foreign corporation's registered
11496 agent in this state, unless the change was timely made in accordance with s. 607.0502 or
11497 s. 607.05031.

11498 (2) The amendment must be filed within 90 days after the occurrence of a change
11499 described in subsection (1), must be signed by an officer of the foreign corporation, and must state
11500 the following ~~Such application shall be made within 90 days after the occurrence of any change~~
11501 ~~mentioned in subsection (1), shall be made on forms prescribed by the Department of State, and~~
11502 ~~shall be executed in accordance with s. 607.0120. The foreign corporation shall deliver with the~~
11503 ~~completed application, a certificate, or a document of similar import, authenticated as of a date not~~
11504 ~~more than 90 days prior to delivery of the application to the Department of State by the Secretary~~
11505 ~~of State or other official having custody of corporate records in the jurisdiction under the laws of~~
11506 ~~which it is incorporated, evidencing the amendment. A translation of the certificate, under oath or~~
11507 ~~affirmation of the translator, must be attached to a certificate that is in a language other than~~
11508 ~~English. The application shall set forth:~~

11509 (a) The name of the foreign corporation as it appears on the records of the
11510 department ~~of State.~~

11511 (b) The jurisdiction of its incorporation.

11512 (c) The date the foreign corporation ~~it~~ was authorized to do business in this state.

11513 (d) If the name of the foreign corporation has been changed, the name relinquished;
11514 ~~the and its new name, a statement that the change of name has been effected under the laws~~
11515 ~~of the jurisdiction of its incorporation, and the date the change was effected.~~

11516 (e) If the amendment changes its period of duration, a statement of such change.

11517 (f) If the amendment changes the jurisdiction of incorporation of the foreign
11518 corporation, a statement of that ~~such~~ change.

FINAL STATUTE AS ADOPTED
(With Commentary)

11519 (3) The requirements of s. 607.1503 for obtaining an original certificate of authority apply to
11520 obtaining an amended certificate under this section unless the official having custody of the foreign
11521 corporation's publicly filed records in its jurisdiction of incorporation did not require an
11522 amendment to effectuate the change on its records.

11523 (4) Subject to subsection (3), a foreign corporation authorized to transact business in this
11524 state may make application to the department to obtain an amended certificate of authority to add,
11525 remove, or change the name, title, capacity, or address of an officer or director of the foreign
11526 corporation.

11527

11528 **Commentary to Section 607.1504:**

11529 This section has been harmonized with s. 605.0907 of FRLICA.

11530

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11531 607.1505 Effect of a certificate of authority.

11532 (1) Unless the department determines than an application for a certificate of authority of a
11533 authorizes the foreign corporation which it is issued to transact business in this state does not
11534 comply with the filing requirements of this chapter, subject, however, to the right of the department
11535 of State shall, upon payment of all filing fees, authorize the foreign corporation to transact business
11536 in this state and file the application for to suspend or revoke the certificate of authority as provided
11537 in this act.

11538 (2) The filing by the department of an application for a certificate of authority means that the
11539 foreign corporation that filed the application to transact business in this state has obtained a
11540 certificate of authority to transact business in this state and is authorized to transact business in
11541 this state, subject, however, to the right of the department to suspend or revoke the certificate of
11542 authority as provided in this chapter A foreign corporation with a valid certificate of authority has
11543 the same but no greater rights and has the same but no greater privileges as, and except as otherwise
11544 provided by this act is subject to the same duties, restrictions, penalties, and liabilities now or later
11545 imposed on, a domestic corporation of like character.

11546 (3) ~~This act does not authorize this state to regulate the organization or internal affairs of a~~
11547 ~~foreign corporation authorized to transact business in this state.~~

11548

11549 **Commentary to Section 607.1505:**

11550 This section has been harmonized with s. 605.0903 of FRLUCA.

11551 The language deleted in subsection (2) is now covered in s. 607.15015(3). While the language used
11552 in that section is slightly different than the wording in the existing FBCA (based on the wording
11553 in the corollary section of FRLUCA), it is not intended to be a substantive change to existing law.

11554

FINAL STATUTE AS ADOPTED
(With Commentary)

11555 607.1506 Corporate name of foreign corporation.

11556 (1) A foreign corporation ~~whose name is unavailable under or whose name does is not~~
11557 ~~otherwise comply with~~ entitled to file an application for a certificate of authority unless the
11558 ~~corporate name of such foreign such corporation satisfies the requirements of s. 607.0401~~ shall use
11559 an alternate name that complies with . ~~If the corporate name of a foreign corporation does not~~
11560 ~~satisfy the requirements of s. 607.0401, the foreign corporation, to obtain or maintain a certificate~~
11561 ~~of authority to transact business in this state. An alternate name adopted for use in this state shall~~
11562 be cross-referenced to the actual name of the foreign corporation in the records of the department,
11563 provided that no cross reference is required if the alternate name involves no more than adding the
11564 suffix "corporation," "company," or "incorporated" or the abbreviation "Corp.," or "Inc.," or Co."
11565 or the designation "Corp.," or "Inc." or "Co." to the name. If the actual name of the foreign
11566 corporation subsequently becomes available in this state and the foreign corporation elects to
11567 operate in this state under its actual name, or the foreign corporation chooses to change its alternate
11568 name, a record approving the election or change, as the case may be, by its directors or
11569 shareholders, and signed as required pursuant to s. 607.0120, shall be delivered to the department
11570 for filing.

11571 (a) ~~May add the word "corporation," "company," or "incorporated" or the abbreviation~~
11572 ~~"Corp.," or "Inc.," or "Co.," or the designation "Corp.," or "Inc.," or "Co.," as will clearly~~
11573 ~~indicate that it is a corporation instead of a natural person, partnership, or other business entity;~~
11574 ~~or~~

11575 (b) ~~May use an alternate name to transact business in this state if its real name is~~
11576 ~~unavailable. Any such alternate corporate name, adopted for use in this state, shall be cross-~~
11577 ~~referenced to the real corporate name in the records of the Division of Corporations. If the~~
11578 ~~corporation's real corporate name becomes available in this state or the corporation chooses~~
11579 ~~to change its alternate name, a copy of the resolution of its board of directors changing or~~
11580 ~~withdrawing the alternate name, executed as required by s. 607.0120, shall be delivered for~~
11581 ~~filing.~~

11582 (2) A The corporate name (including the alternate name) of a foreign corporation that adopts
11583 an alternate name under subsection (1) and obtains a certificate of authority with the alternate name
11584 need not comply with s. 865.09 with respect to the alternate name. ~~must be distinguishable upon~~
11585 the records of the Division of Corporations from:

11586 (a) ~~Any corporate name of a corporation incorporated or authorized to transact business~~
11587 ~~in this state;~~

11588 (b) ~~The alternate name of another foreign corporation authorized to transact business in~~
11589 ~~this state;~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11590 ~~(e) The corporate name of a not for profit corporation incorporated or authorized to~~
11591 ~~transact business in this state; and~~

11592 ~~(d) The names of all other entities or filings, except fictitious name registrations pursuant~~
11593 ~~to s. 865.09, organized or registered under the laws of this state that are on file with the~~
11594 ~~Division of Corporations.~~

11595 (3) So long as a foreign corporation maintains a certificate of authority with an alternate
11596 name, a foreign corporation shall transact business in this state under the alternate name unless the
11597 corporation is authorized under s. 865.09 to transact business in this state under another name.

11598 ~~(34) If a foreign corporation authorized to transact business in this state changes its corporate~~
11599 ~~name to one that does not comply with satisfy the requirements of s. 607.0401, it may not thereafter~~
11600 ~~transact business in this state under the changed name until it complies with subsection (1) adopts~~
11601 ~~a name satisfying the requirements of s. 607.0401 and obtains an amended certificate of authority~~
11602 ~~under s. 607.1504.~~

11603 (5) Notwithstanding the foregoing, a foreign corporation may register under a name that
11604 is not otherwise distinguishable on the records of the department with the written consent of the
11605 other entity if the consent is filed with the department at the time of registration of such name and
11606 if such name is not identical to the name of the other entity.

11607

11608 **Commentary to Section 607.1506:**

11609 This section has been harmonized with s. 605.0906 of FRLICA.

11610 Subsection (5), consistent with s. 607.0401(1)(e) with respect to domestic corporations, allows a
11611 name otherwise unavailable to be used by consent. The section also provides that the department
11612 shall deny such a request if the name of the entity requested with consent is identical to the name
11613 of the other entity.

11614

FINAL STATUTE AS ADOPTED
(With Commentary)

11615 607.1507 Registered office and registered agent of foreign corporation.

11616 (1) Each foreign corporation authorized to transact business in this state shall designate and
11617 ~~must~~ continuously maintain in this state:

11618 (a) A registered office, which ~~that~~ may be the same as ~~any of~~ its places of business in
11619 this state; and

11620 (b) A registered agent, which must ~~who may~~ be:

11621 1. An individual who resides in this state and whose business address ~~office~~ is
11622 identical to the address of ~~with~~ the registered office;

11623 2. A domestic entity that is an authorized entity and whose business address is
11624 identical to the address of the registered office; or

11625 3. Another foreign entity authorized to transact business in this state which is an
11626 authorized entity and whose business address ~~corporation or not-for-profit corporation as~~
11627 ~~defined in chapter 617, the business office of which~~ is identical to the address of ~~with~~ the
11628 registered office.

11629 ~~3. Another foreign corporation or foreign not for profit corporation authorized~~
11630 ~~pursuant to this chapter or chapter 617, to transact business or conduct its affairs in this~~
11631 ~~state the business office of which is identical with the registered office.~~

11632 (2) This section does not apply to corporations that are required by law to designate the
11633 Chief Financial Officer as their attorney for the service of process, associations subject to the
11634 provisions of chapter 665, and banks and trust companies subject to the financial institutions codes.

11635 (32) Each initial registered agent, and each ~~A registered agent appointed pursuant to this~~
11636 ~~section or a successor registered agent that is appointed, pursuant to s. 607.1508 on whom process~~
11637 ~~may be served~~ shall ~~each~~ file a statement in writing with the department of State, in the ~~such~~ form
11638 and manner ~~as shall be~~ prescribed by the department, accepting the appointment as a registered
11639 agent while simultaneously ~~with his or her~~ being designated as the registered agent. The ~~Such~~
11640 statement of acceptance must provide ~~shall state~~ that the registered agent is familiar with, and
11641 accepts, the obligations of that position.

11642 (4) The duties of a registered agent are as follows:

11643 (a) To forward to the foreign corporation at the address most recently supplied to the
11644 registered agent by the foreign corporation, a process, notice, or demand pertaining to the
11645 foreign corporation which is served on or received by the registered agent; and

FINAL STATUTE AS ADOPTED
(With Commentary)

11646 (b) If the registered agent resigns, to provide the notice required under s. 607.1509 to the
11647 foreign corporation at the address most recently supplied to the registered agent by the foreign
11648 corporation.

11649 (5) The department shall maintain an accurate record of the registered agents and registered
11650 offices for service of process and shall promptly furnish any information disclosed thereby upon
11651 request and payment of the required fee.

11652 (6) A foreign corporation may not prosecute or maintain any action in a court in this state
11653 until the foreign corporation complies with the provisions of this section, pays to the department
11654 the amounts required by this chapter, and, to the extent ordered by a court of competent
11655 jurisdiction, pays to the department a penalty of \$5 for each day it has failed to so comply or \$500,
11656 whichever is less.

11657 (7) A court may stay a proceeding commenced by a foreign corporation until the
11658 corporation complies with this section.

11659

11660 **Commentary to Section 607.1507:**

11661 This section has been harmonized with s. 607.0501 of the FBCA.

11662 The change to subsection (1)(a) is to make it consistent with s. 607.0501 of the FBCA and the
11663 corollary section of FRLUCA. It is not intended to be a substantive change.

11664 The change in subsection (6) relating to payment of a penalty reflects the current position of the
11665 Department of State not to collect this penalty unless required to do so by a court of competent
11666 jurisdiction.

11667 New subsection (7) is modeled after s. 607.1502(3) and allows a court to stay a proceeding
11668 commenced by a corporation until the corporation complies with this section.

11669

FINAL STATUTE AS ADOPTED
(With Commentary)

11670 607.1508 Change of registered office and registered agent of foreign corporation.

11671 (1) In order to change its registered agent or registered office address, a foreign corporation
11672 authorized to transact business in this state may deliver change its registered office or registered
11673 agent by delivering to the department of State for filing a statement of change containing the
11674 following that sets forth:

11675 (a) The ~~its~~ name of the foreign corporation.;

11676 (b) The name ~~street address~~ of its current registered agent ~~office~~.;

11677 (c) If the current registered agent is to be changed, the name of the new registered agent.

11678 (d) The street address of its current registered office for its current registered agent.

11679 (e) If the street address of the current registered office is to be changed, the new street
11680 address of ~~the~~ its new registered office.

11681 ~~(d) The name of its current registered agent;~~

11682 ~~(e) If the current registered agent is to be changed, the name of its new registered agent~~
11683 ~~and the new agent's written consent (either on the statement or attached to it) to the~~
11684 ~~appointment;~~

11685 ~~(f) That, after the change or changes are made, the street address of its registered office~~
11686 ~~and the business office of its registered agent will be identical; and~~

11687 ~~(g) That such change was authorized by resolution duly adopted by its board of directors~~
11688 ~~or by an officer of the corporation so authorized by the board of directors.~~

11689 (2) If a registered agent changes the street address of her or his business office, she or he may
11690 change the street address of the registered office of any foreign corporation for which she or he is
11691 the registered agent by notifying the corporation in writing of the change and signing (either
11692 manually or in facsimile) and delivering to the Department of State for filing a statement of change
11693 that complies with the requirements of paragraphs (1)(a) (f) and recites that the corporation has
11694 been notified of the change. If the registered agent is changed, the written acceptance of the
11695 successor registered agent described in s. 607.1507(3) must also be included in or attached to the
11696 statement of change.

11697 (3) A statement of change is effective when filed by the department.

11698 (4) The changes described in this section may also be made on the foreign corporation's
11699 annual report or in an application for reinstatement filed with the department under s. 607.1622.

11700 **Commentary to Section 607.1508:**

11701 This section has been harmonized with s. 607.0502 of the FBCA and s. 605.0114 of FRLCA.

11702

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11703 607.1509 Resignation of registered agent of foreign corporation.

11704 (1) A registered agent may resign as agent for a foreign corporation by delivering to the
11705 department for filing a signed statement of resignation containing the name of the foreign
11706 corporation. The registered agent of a foreign corporation may resign his or her agency
11707 appointment by signing and delivering to the Department of State for filing a statement of
11708 resignation and mailing a copy of such statement to the corporation at the corporation's principal
11709 office address shown in its most recent annual report or, if none, shown in its application for a
11710 certificate of authority or other most recently filed document. The statement of resignation must
11711 state that a copy of such statement has been mailed to the corporation at the address so stated. The
11712 statement of resignation may include a statement that the registered office is also discontinued.

11713 (2) After delivering the statement of resignation to the department for filing, the registered
11714 agent must promptly mail a copy to the foreign corporation at its current mailing address. The
11715 agency appointment is terminated as of the 31st day after the date on which the statement was filed
11716 and, unless otherwise provided in the statement, termination of the agency acts as a termination of
11717 the registered office.

11718 (3) A registered agent is terminated upon the earlier of:

11719 (a) The 31st day after the department files the statement of resignation; or

11720 (b) When a statement of change or other record designating a new registered agent is
11721 filed by the department.

11722 (4) When a statement of resignation takes effect, the registered agent ceases to have
11723 responsibility for a matter thereafter tendered to it as agent for the foreign corporation. The
11724 resignation does not affect contractual rights that the foreign corporation has against the agent or
11725 that the agent has against the foreign corporation.

11726 (5) A registered agent may resign from a foreign corporation regardless of whether the
11727 foreign corporation has active status.

11728

11729 **Commentary to Section 607.1509:**

11730 This section has been harmonized with s. 607.0503 of the FBCA and s. 605.0115 of FRLCA.

11731

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 11732 607.15091 Change of name or address by registered agent.
- 11733 (1) If a registered agent changes his or her name or address, the agent may deliver to the
- 11734 department for filing a statement of change containing the following:
- 11735 (a) The name of the foreign corporation represented by the registered agent.
- 11736 (b) The name of the registered agent as currently shown in the records of the department
- 11737 for the corporation.
- 11738 (c) If the name of the registered agent has changed, its new name.
- 11739 (d) If the address of the registered agent has changed, the new address.
- 11740 (e) A statement that the registered agent has given the notice required under subsection
- 11741 (2).
- 11742 (2) A registered agent shall promptly furnish notice of the statement of change and the
- 11743 changes made by the statement filed with the department to the represented foreign corporation.
- 11744

11745 **Commentary to Section 607.15091:**

11746 This section has been harmonized with s. 607.05031 of the FBCA. It replaces s. 607.1509(2).

11747

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11748 607.15092 Delivery of notice or other communication.

11749 (1) Except as otherwise provided in this chapter, permissible means of delivery of a notice
11750 or other communication includes delivery by hand, the United States Postal Service, a commercial
11751 delivery service, and electronic transmission, all as more particularly described in s. 607.0141.

11752 (2) Except as provided in subsection (3), delivery to the department is effective only when
11753 a notice or other communication is received by the department.

11754 (3) If a check is mailed to the department for payment of an annual report fee or the annual
11755 supplemental fee required under s. 607.193, the check shall be deemed to have been received by
11756 the department as of the postmark date appearing on the envelope or package transmitting the
11757 check if the envelope or package is received by the department.

11758

11759 **Commentary to Section 607.15092:**

11760 This section has been harmonized with s. 607.05032 of the FBCA which, in turn, was derived from
11761 s. 605.0118 of FRLLCA. It is new to the FBCA.

11762

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11763 607.15101 Service of process, notice, or demand on a foreign corporation.

11764 (1) A foreign corporation may be served with process required or authorized by law by
11765 serving on its registered agent.

11766
11767 (2) If a foreign corporation ceases to have a registered agent or if its registered agent
11768 cannot with reasonable diligence be served, the process required or permitted by law may instead
11769 be served on the chair of the board, the president, any vice president, the secretary, or the treasurer
11770 of the foreign corporation at the principal office of the foreign corporation in this state.

11771
11772 (3) If the process cannot be served on a foreign corporation pursuant to subsection (1) or
11773 subsection (2), the process may be served on the secretary of state as an agent of the foreign
11774 corporation.

11775
11776 (4) Service of process on the secretary of state may be made by delivering to and leaving
11777 with the department duplicate copies of the process.

11778
11779 (5) Service is effectuated under subsection (3) on the date shown as received by the
11780 department.

11781
11782 (6) The department shall keep a record of each process served on the secretary of state
11783 pursuant to this section and record the time of and the action taken regarding the service.

11784
11785 (7) Any notice or demand on a foreign corporation under this chapter may be given or
11786 made to the chair of the board, the president, any vice president, the secretary, or the treasurer of
11787 the foreign corporation; to the registered agent of the foreign corporation at the registered office
11788 of the foreign corporation in this state; or to any other address in this state that is in fact the
11789 principal office of the foreign corporation in this state.

11790
11791 (8) This section does not affect the right to serve process, give notice, or make a demand
11792 in any other manner provided by law.

11793
11794 ~~(1) — The registered agent of a foreign corporation authorized to transact business in this~~
11795 ~~state is the corporation's agent for service of process, notice, or demand required or permitted by~~
11796 ~~law to be served on the foreign corporation.~~

11797
11798 ~~(2) — A foreign corporation may be served by registered or certified mail, return receipt~~
11799 ~~requested, addressed to the secretary of the foreign corporation at its principal office shown in its~~
11800 ~~application for a certificate of authority or in its most recent annual report if the foreign~~
11801 ~~corporation:~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 11802 ~~(a) Has no registered agent or its registered agent cannot with reasonable diligence~~
11803 ~~be served;~~
- 11804 ~~(b) Has withdrawn from transacting business in this state under s. 607.1520; or~~
- 11805 ~~(c) Has had its certificate of authority revoked under s. 607.1531.~~
- 11806 ~~(3) Service is perfected under subsection (2) at the earliest of:~~
- 11807 ~~(a) The date the foreign corporation receives the mail;~~
- 11808 ~~(b) The date shown on the return receipt, if signed on behalf of the foreign~~
11809 ~~corporation; or~~
- 11810 ~~(c) Five days after its deposit in the United States mail, as evidenced by the~~
11811 ~~postmark, if mailed postpaid and correctly addressed.~~
- 11812 ~~(4) This section does not prescribe the only means, or necessarily the required means, of~~
11813 ~~serving a foreign corporation. Process against any foreign corporation may also be served in~~
11814 ~~accordance with chapter 48 or chapter 49.~~
- 11815 ~~(5) Any notice to or demand on a foreign corporation made pursuant to this act may be made~~
11816 ~~in accordance with the procedures for notice to or demand on domestic corporations under s.~~
11817 ~~607.0504.~~
- 11818

11819 **Commentary to Section 607.15101:**

11820 This section has been harmonized with s. 607.0504 of the FBCA.

11821

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11822 607.1520 Withdrawal and cancellation of certificate of authority for foreign
11823 corporation.

11824 (1) To cancel its certificate of authority to transact business in this state, a foreign
11825 corporation must deliver to the department for filing a notice of withdrawal of certificate of
11826 authority. The certificate of authority is canceled when the notice of withdrawal becomes effective
11827 pursuant to s. 607.0123. The notice of withdrawal of certificate of authority must be signed by an
11828 officer or director and state the following:

11829 (a) The name of the foreign corporation as it appears on the records of the
11830 department.

11831 (b) The name of the foreign corporation's jurisdiction of incorporation.

11832 (c) The date the foreign corporation was authorized to transact business in this state.

11833 (d) That the foreign corporation is withdrawing its certificate of authority in this
11834 state.

11835 (e) That it revokes the authority of its registered agent to accept service on its behalf
11836 and appoints the secretary of state as its agent for service of process based on a cause of
11837 action arising during the time it was authorized to transact business in this state.

11838 (f) A mailing address to which the secretary of state may mail a copy of any process
11839 served on the secretary of state under paragraph (e).

11840 (g) A commitment to notify the department in the future of any change in its mailing
11841 address.

11842 ~~A foreign corporation authorized to transact business in this state may not withdraw from~~
11843 ~~this state until it obtains a certificate of withdrawal from the Department of State.~~

11844 ~~(2) A foreign corporation authorized to transact business in this state may apply for a~~
11845 ~~certificate of withdrawal by delivering an application to the Department of State for filing. The~~
11846 ~~application shall be made on forms prescribed and furnished by the Department of State and shall~~
11847 ~~set forth:~~

11848 ~~(a) The name of the foreign corporation and the jurisdiction under the law of which~~
11849 ~~it is incorporated;~~

11850 ~~(b) That it is not transacting business in this state and that it surrenders its authority~~
11851 ~~to transact business in this state;~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11852 ~~(c) That it revokes the authority of its registered agent to accept service on its behalf~~
11853 ~~and appoints the Department of State as its agent for service of process based on a cause~~
11854 ~~of action arising during the time it was authorized to transact business in this state;~~

11855 ~~(d) A mailing address to which the Department of State may mail a copy of any~~
11856 ~~process served on it under paragraph (c); and~~

11857 ~~(e) A commitment to notify the Department of State in the future of any change in~~
11858 ~~its mailing address.~~

11859 (23) After the withdrawal of the foreign corporation is effective, service of process on the
11860 secretary of state ~~Department of State~~ under this section is service on the foreign corporation. Upon
11861 receipt of the process, the secretary of state ~~Department of State~~ shall mail a copy of the process
11862 to the foreign corporation at the mailing address set forth under paragraph (1)(f) ~~subsection (2)~~.

11863

11864 **Commentary to Section 607.1520:**

11865 This section has been harmonized with s. 605.0910 of FRLCA.

11866

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11867 607.1521 Withdrawal deemed on conversion to domestic filing entity.

11868 A foreign corporation authorized to transact business in this state that converts to a
11869 domestic corporation or another domestic eligible entity that is organized, incorporated, registered,
11870 or otherwise formed through the delivery of a record to the department for filing is deemed to have
11871 withdrawn its certificate of authority on the effective date of the conversion.

11872

11873 **Commentary to Section 607.1521:**

11874 This section is new to the FBCA. It is based on s. 605.0911 of FRLLCA and s. 15.08 of the Model
11875 Act.

11876

FINAL STATUTE AS ADOPTED
(With Commentary)

11877 607.1522 Withdrawal on dissolution, merger, or conversion to **certain** nonfiling
11878 entities.

11879
11880 (1) A foreign corporation that is authorized to transact business in this state that has
11881 dissolved and completed winding up, has merged into a foreign eligible entity that is not authorized
11882 to transact business in this state, or has converted to a domestic or foreign eligible entity that is not
11883 organized, incorporated, registered or otherwise formed through the public filing of a record, shall
11884 deliver a notice of withdrawal of certificate of authority to the department for filing in accordance
11885 with s. 607.1520.

11886 (2) After a withdrawal under this section of a foreign corporation that has converted to
11887 another type of entity is effective, service of process in any action or proceeding based on a cause
11888 of action arising during the time the foreign corporation was authorized to transact business in this
11889 state may be made pursuant to s. 607.15101.

11890

11891 **Commentary to Section 607.1522:**

11892 This section is new to the FBCA. It is based on s. 605.0912 of FRLLCA and s. 15.09 of the Model
11893 Act.

11894

11895 607.1523 Action by Department of Legal Affairs.

11896

11897 The Department of Legal Affairs may maintain an action to enjoin a foreign corporation

11898 from transacting business in this state in violation of this chapter.

11899

11900 **Commentary to Section 607.1523:**

11901 This section is new to the FBCA. It is based on s. 605.0913 of FRLLCA and s. 15.12 of the Model
11902 Act.

11903

FINAL STATUTE AS ADOPTED
(With Commentary)

11904 607.1530 ~~Grounds for~~ **Revocation of certificate of authority to transact business.**

11905 (1) A The Department of State may commence a proceeding under s. 607.1531 to revoke
11906 ~~the~~ certificate of authority of a foreign corporation authorized to transact business in this state may
11907 be revoked by the department if:

11908 (a~~1~~) The foreign corporation does not deliver ~~has failed to file~~ its annual report
11909 to with the department of State by 5 p.m. Eastern Time on the third Friday in September of
11910 each year;-

11911 (b~~2~~) The foreign corporation does not pay, ~~within the time required by this act,~~
11912 any a fees, taxes, or penalty penalties due to the department under this chapter; imposed
11913 by this act or other law.

11914 (c~~3~~) The foreign corporation does not appoint and maintain a is without a
11915 registered agent as required by s. 607.1507; or registered office in this state for 30 days or
11916 more.

11917 (d~~4~~) The foreign corporation does not deliver for filing a statement of a change
11918 under notify the Department of State under s. 607.1508 within 30 days after the change in
11919 the name or address of the agent has occurred, unless, within 30 days after the change
11920 occurred either; or s. 607.1509 that its registered agent has resigned or that its registered
11921 office has been discontinued within 30 days of the resignation or discontinuance.

11922 1. The registered agent files a statement of change under s. 607.15091; or

11923 2. The change was made in accordance with s. 607.1508(4) or s.
11924 607.1504(1)(c);

11925 (e) The foreign corporation has failed to amend its certificate of authority to
11926 reflect a change in its name on the records of the department or its jurisdiction of
11927 incorporation;

11928 (f) The foreign corporation's period of duration stated in its articles of
11929 incorporation has expired;

11930 (g~~5~~) An incorporator, director, officer, or agent of the foreign corporation signs
11931 signed a document that she or he knew was false in a ~~any~~ material respect with the intent
11932 that the document be delivered to the department of State for filing;-

11933 (h~~6~~) The department of State receives a duly authenticated certificate from the
11934 secretary of state or other official having custody of corporate records in the jurisdiction
11935 under the law of which the foreign corporation is incorporated stating that it has been

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11936 dissolved or is no longer active on the official's records; or disappeared as the result of a
11937 merger.

11938 (i7) The foreign corporation has failed to answer truthfully and fully, within the
11939 time prescribed by this chapter act, interrogatories propounded by the department of State.

11940 (2) Revocation of a foreign corporation's certificate of authority for failure to file an
11941 annual report shall occur on the fourth Friday in September of each year. The department shall
11942 issue a notice in a record of the revocation to the revoked foreign corporation. Issuance of the
11943 notice may be by electronic transmission to a foreign corporation that has provided the department
11944 with an e-mail address.

11945 (3) If the department determines that one or more grounds exist under paragraph (1)(b)
11946 for revoking a foreign corporation's certificate of authority, the department shall issue a notice in
11947 a record to the foreign corporation of the department's intent to revoke the certificate of authority.
11948 Issuance of the notice may be by electronic transmission to a foreign corporation that has provided
11949 the department with an e-mail address.

11950 (4) If, within 60 days after the department sends the notice of intent to revoke in
11951 accordance with subsection (3), the foreign corporation does not correct each ground for
11952 revocation or demonstrate to the reasonable satisfaction of the department that each ground
11953 determined by the department does not exist, the department shall revoke the foreign corporation's
11954 authority to transact business in this state and issue a notice in a record of revocation which states
11955 the grounds for revocation. Issuance of the notice may be by electronic transmission to a foreign
11956 corporation that has provided the department with an e-mail address.

11957 (5) Revocation of a foreign corporation's certificate of authority does not terminate the
11958 authority of the registered agent of the corporation.

11959

11960 **Commentary to Section 607.1530:**

11961 This provision has been updated and modernized to follow the substance of FRLICA s. 605.0908.

11962 Subsection (5) has been added from s. 607.0531(4) since s. 607.0131 is being removed.

11963

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11964 ~~607.1531—Procedure for and effect of revocation.~~

11965 (1) ~~If the Department of State determines that one or more grounds exist under s. 607.1530~~
11966 ~~for revocation of a certificate of authority, the Department of State shall serve the foreign~~
11967 ~~corporation with notice of its intent to revoke the foreign corporation's certificate of authority. If~~
11968 ~~the foreign corporation has provided the department with an electronic mail address, such notice~~
11969 ~~shall be by electronic transmission. Revocation for failure to file an annual report shall occur on~~
11970 ~~the fourth Friday in September of each year. The department shall issue a certificate of revocation~~
11971 ~~to each revoked corporation. Issuance of the certificate of revocation may be by electronic~~
11972 ~~transmission to any corporation that has provided the department with an electronic mail address.~~

11973 ~~—(2) If the foreign corporation does not correct each ground for revocation under s.~~
11974 ~~607.1530(2) (7) or demonstrate to the reasonable satisfaction of the Department of State that each~~
11975 ~~ground determined by the Department of State does not exist within 60 days after issuance of~~
11976 ~~notice, the Department of State shall revoke the foreign corporation's certificate of authority by~~
11977 ~~issuing a certificate of revocation that recites the ground or grounds for revocation and its effective~~
11978 ~~date. Issuance of the certificate of revocation may be by electronic transmission to any foreign~~
11979 ~~corporation that has provided the department with an electronic mail address.~~

11980 ~~—(3) The authority of a foreign corporation to transact business in this state ceases on the date~~
11981 ~~shown on the certificate revoking its certificate of authority.~~

11982 ~~—(4) Revocation of a foreign corporation's certificate of authority does not terminate the~~
11983 ~~authority of the registered agent of the corporation.~~

11984

11985 **Commentary to Section 607.1531:**

11986 The substance of this section has been added to s. 607.1530 of the FBCA in order to follow the
11987 corollary FRLCA model. As a result, this section has been eliminated.

11988

**FINAL STATUTE AS ADOPTED
(With Commentary)**

11989 607.15315 ~~Revocation; application for~~ **Reinstatement** following revocation of certificate
11990 of authority.

11991 (1) ~~(a)~~ A foreign corporation the certificate of authority of which has been revoked
11992 pursuant to s. 607.1530 or former s. 607.1531 may apply to the department of State for
11993 reinstatement at any time after the effective date of revocation of authority. ~~The application must~~
11994 foreign corporation applying for reinstatement must submit all fees and penalties then owed by the
11995 foreign corporation at rates provided by law at the time the foreign corporation applies for
11996 reinstatement, together with an application for reinstatement prescribed and furnished by the
11997 department, which is signed by both the registered agent and an officer or director of the company
11998 and states:

11999 ~~(a)1. Recite~~ The name under which of the foreign corporation is authorized to transact
12000 business in this state. and the effective date of its revocation of authority;

12001 ~~(b)2. The street address of the corporation's principal office and mailing address.~~
12002 State that the ground or grounds for revocation of authority either did not exist or have
12003 been eliminated and that no further grounds currently exist for revocation of authority;

12004 ~~(c)3. The jurisdiction of State that the foreign corporation's formation and the date on~~
12005 which it became qualified to transact business in this state. name satisfies the requirements
12006 of s. 607.1506; and

12007 4. — ~~State that all fees owed by the corporation and computed at the rate provided by~~
12008 law at the time the foreign corporation applies for reinstatement have been paid; or

12009 ~~(d) The foreign corporation's federal employer identification number or, if none,~~
12010 whether one has been applied for.

12011 ~~(e) The name, title or capacity, and address of at least one officer or director of the~~
12012 corporation.

12013 ~~(f) Additional information that is necessary or appropriate to enable the department~~
12014 to carry out this chapter.

12015 (2) In lieu of the requirement to file an application for reinstatement as described in
12016 subsection (1), a foreign corporation whose certificate of authority has been revoked may submit
12017 all fees and penalties owed by the corporation at the rates provided by law at the time the
12018 corporation applies for reinstatement, together with a current annual report, signed by both the
12019 registered agent and an officer or director of the corporation, which contains the information
12020 described in subsection (1).

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12021 ~~(b) — As an alternative, the foreign corporation may submit a current annual~~
12022 ~~report, signed by the registered agent and an officer or director, which substantially~~
12023 ~~complies with the requirements of paragraph (a).~~

12024 (3) If the department determines that an application for reinstatement contains the
12025 information required under subsection (1) or subsection (2) and that the information is correct,
12026 upon payment of all required fees and penalties, the department shall reinstate the foreign
12027 corporation's certificate of authority.

12028 ~~(2) — If the Department of State determines that the application contains the information~~
12029 ~~required by subsection (1) and that the information is correct, it shall cancel the certificate of~~
12030 ~~revocation of authority and prepare a certificate of reinstatement that recites its determination and~~
12031 ~~prepare a certificate of reinstatement, file the original of the certificate, and serve a copy on the~~
12032 ~~corporation under s. 607.0504(2).~~

12033 ~~(43) When a the reinstatement becomes is effective, it relates back to and takes effect as of the~~
12034 ~~effective date of the revocation of authority and the foreign corporation may operate in this state~~
12035 ~~resumes carrying on its business as if the revocation of authority had never occurred.~~

12036 ~~(54) The name of the foreign corporation whose the certificate of authority of which has been~~
12037 ~~revoked is not available for assumption or use by another eligible entity corporation until 1 year~~
12038 ~~after the effective date of revocation of authority unless the corporation provides the department~~
12039 ~~of State with a record an affidavit signed executed as required by s. 607.0120 which authorizes~~
12040 ~~permitting the immediate assumption or use of the name by another eligible entity corporation.~~

12041 ~~(65) If the name of the foreign corporation applying for reinstatement has been lawfully~~
12042 ~~assumed in this state by another eligible entity corporation, the department of State shall require~~
12043 ~~the foreign corporation to comply with s. 607.1506 before accepting its application for~~
12044 ~~reinstatement.~~

12045

12046 **Commentary to Section 607.15315:**

12047 This section has been modified to harmonize with s. 605.0909 of FRLCA.

12048

FINAL STATUTE AS ADOPTED
(With Commentary)

12049 607.1532 **Judicial review of denial of reinstatement** ~~Appeal from revocation.~~

12050 (1) ~~If the department of State denies a foreign corporation's application for reinstatement after~~
12051 ~~revocation of its certificate of authority, the department shall serve the foreign corporation under~~
12052 ~~s. 607.15101 with a written notice that explains the reason or reasons for the denial revokes the~~
12053 ~~authority of any foreign corporation to transact business in this state pursuant to the provisions of~~
12054 ~~this act, such foreign corporation may likewise appeal to the circuit court of the county where the~~
12055 ~~registered office of such corporation in this state is situated by filing with the clerk of such court a~~
12056 ~~petition setting forth a copy of its application for authority to transact business in this state and a~~
12057 ~~copy of the certificate of revocation given by the Department of State, whereupon the matter shall~~
12058 ~~be tried de novo by the court, and the court shall either sustain the action of the Department of~~
12059 ~~State or direct the department to take such action as the court deems proper.~~

12060 (2) ~~Within 30 days after service of a notice of denial of reinstatement, a foreign corporation~~
12061 ~~may appeal the denial by petitioning the Circuit Court of Leon County to set aside the revocation.~~
12062 ~~The petition must be served on the department and contain a copy of the department's notice of~~
12063 ~~revocation, the foreign corporation's application for reinstatement, and the department's notice of~~
12064 ~~denial Appeals from all final orders and judgments entered by the circuit court under this section~~
12065 ~~in review of any ruling or decision of the Department of State may be taken as in other civil actions.~~

12066 (3) ~~The circuit court may order the department to reinstate the certificate of authority of the~~
12067 ~~foreign corporation or take other action the court considers appropriate.~~

12068 (4) ~~The circuit court's final decision may be appealed as in other civil proceedings.~~

12069

12070 **Commentary to Section 607.1532:**

12071 This section substantially follows s. 607.1423 of the FBCA.

12072 In subsection (2), Florida, unlike the Model Act, provides for a trial de novo. The Model Act (as
12073 is the case for the majority of Model Act states), does not specify the burden of proof applicable
12074 to an appeal.

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ARTICLE 16

RECORDS AND REPORTS

607.1601 Corporate records.

~~(1) A corporation shall maintain the following records: keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.~~

~~(2) A corporation shall maintain accurate accounting records.~~

~~(3) A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and series of shares held by each.~~

~~(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.~~

~~(5) A corporation shall keep a copy of the following records:~~

~~(a) Its articles or restated articles of incorporation, as and all amendments to them currently in effect;~~

~~(b) Any notices to shareholders referred to in s. 607.0120(11)(d) specifying facts on which a filed document is dependent, if such facts are not included in the articles of incorporation or otherwise available as specified in s. 607.0120(11)(d);~~

~~(b) Its bylaws or restated bylaws, as and all amendments to them currently in effect;~~

~~(e) Resolutions adopted by its board of directors creating one or more classes or series of shares and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding;~~

~~(d) The minutes of all shareholders' meetings and records of all action taken by shareholders without a meeting for the past 3 years;~~

~~(de) All written communications within the past 3 years to all shareholders generally or to all shareholders of a class or series within the past 3 years, including the financial statements furnished for the past 3 years under s. 607.1620;~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12105 (e) Minutes of all meetings of, and records of all actions taken without a meeting by, its
12106 shareholders, its board of directors, and any board committees established under s. 607.0825;

12107 (f) A list of the names and business street addresses of its current directors and officers;
12108 and

12109 (g) Its most recent annual report delivered to the department of ~~State~~ under s. 607.1622.

12110 (2) A corporation shall maintain all annual financial statements prepared for the corporation
12111 for its last 3 fiscal years, or such shorter period of existence, and any audit or other reports with
12112 respect to such financial statements.

12113 (3) A corporation shall maintain accounting records in a form that permits preparation of its
12114 financial statements.

12115 (4) A corporation shall maintain a record of its current shareholders in alphabetical order by
12116 class or series of shares showing the address of, and the number and class or series of shares held
12117 by, each shareholder. This subsection does not require the corporation to include the electronic
12118 mail address or other electronic contact information of a shareholder in such record.

12119 (5) A corporation shall maintain the records specified in this section in a manner so that they
12120 may be available for inspection within a reasonable time.

12121

12122 **Commentary to Section 607.1601:**

12123 This section has been modified to conform to the language used in the 2016 version of the Model
12124 Act. While the changes are not considered substantive, the Model Act language is considered
12125 clearer and easier to understand. Specifically, the deletion of the words "keep as permanent
12126 records" in subsection (1) and the adoption of the word "maintain" (which is used in the Model
12127 Act for this purpose) as to records required to be kept, is not considered or intended to be a
12128 substantive change or to change the duty to maintain the records required to be maintained under
12129 subsection (1).

12130 At some time in the future, the Section may wish to consider changes to the record keeping
12131 requirements to allow shareholder records to be maintained in a blockchain. However, a decision
12132 on that topic is believed to be premature for consideration.

12133

12134

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12135 607.1602 Inspection of records by shareholders.

12136 (1) A shareholder of a corporation is entitled to inspect and copy, during regular business
12137 hours at the corporation's principal office, any of the records of the corporation described in s.
12138 607.1601(1), excluding minutes of meetings of, and records of actions taken without a meeting by,
12139 the corporation's board of directors and any board committees established under s. 607.0825, s,
12140 607.1601(5) if the shareholder gives the corporation written notice of the shareholder's ~~his or her~~
12141 demand at least 5 business days before the date on which the shareholder ~~he or she~~ wishes to
12142 inspect and copy.

12143 (2) A shareholder of a corporation is entitled to inspect and copy, during regular business
12144 hours at a reasonable location specified by the corporation, any of the following records of the
12145 corporation if the shareholder meets the requirements of subsection (3) and gives the corporation
12146 written notice of the shareholder's ~~his or her~~ demand at least 5 business days before the date on
12147 which the shareholder ~~he or she~~ wishes to inspect and copy:

12148 (a) Excerpts from minutes of any meeting of, or records of any actions taken without
12149 a meeting by, the corporation's board of directors, and board committees maintained in
12150 accordance with s. 607.1601(1) records of any action of a committee of the board of directors
12151 while acting in place of the board of directors on behalf of the corporation, minutes of any
12152 meeting of the shareholders, and records of action taken by the shareholders or board of
12153 directors without a meeting, to the extent not subject to inspection under subsection (1);

12154 (b) The financial statements of the corporation maintained in accordance with s.
12155 607.1601(2);

12156 (c) Accounting records of the corporation;

12157 (d) The record of shareholders maintained in accordance with s. 607.1601(4);
12158 and

12159 ~~(e)~~ Any other books and records.

12160 (3) A shareholder may inspect and copy the records described in subsection (2) only if:

12161 (a) The shareholder's demand is made in good faith and for a proper purpose;

12162 (b) The shareholder's demand describes with reasonable particularity the shareholder's
12163 his or her purpose and the records the shareholder ~~he or she~~ desires to inspect; and

12164 (c) The records are directly connected with the shareholder's purpose.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12165 (4) The corporation may impose reasonable restrictions on the disclosure, use, or distribution
12166 of, and reasonable obligations to maintain the confidentiality of, records described in subsection
12167 (2).

12168 ~~(4) A shareholder of a Florida corporation, or a shareholder of a foreign corporation~~
12169 ~~authorized to transact business in this state who resides in this state, is entitled to inspect and copy,~~
12170 ~~during regular business hours at a reasonable location in this state specified by the corporation, a~~
12171 ~~copy of the records of the corporation described in s. 607.1601(5)(b) and (f), if the shareholder~~
12172 ~~gives the corporation written notice of his or her demand at least 15 business days before the date~~
12173 ~~on which he or she wishes to inspect and copy.~~

12174 (5) For any meeting of shareholders for which the record date for determining shareholders
12175 entitled to vote at the meeting is different than the record date for notice of the meeting, any person who
12176 becomes a shareholder subsequent to the record date for notice of the meeting and is entitled to vote at
12177 the meeting is entitled to obtain from the corporation upon request the notice and any other information
12178 provided by the corporation to shareholders in connection with the meeting, unless the corporation has
12179 made such information generally available to shareholders by posting it on its website or by other
12180 generally recognized means. Failure of a corporation to provide such information does not affect the
12181 validity of action taken at the meeting.

12182 (6) The right of inspection granted by this section may not be abolished or limited by a
12183 corporation's articles of incorporation or bylaws.

12184 ~~(57)~~ This section does not affect:

12185 (a) The right of a shareholder to inspect and copy records under s. 607.0720 or, if the
12186 shareholder is in litigation with the corporation, to the same extent as any other litigant; or

12187 (b) The power of a court, independently of this chapter ~~aet.~~, to compel the production of
12188 corporate records for examination and to impose reasonable restrictions as provided in s.
12189 607.1604(3), provided that, in the case of production of records described in subsection (2) at
12190 the request of a shareholder, the shareholder has met the requirements of subsection (3).

12191 ~~(68)~~ A corporation may deny any demand for inspection made pursuant to subsection (2) if
12192 the demand was made for an improper purpose, or if the demanding shareholder has within 2 years
12193 preceding his or her demand sold or offered for sale any list of shareholders of the corporation or
12194 any other corporation, has aided or abetted any person in procuring any list of shareholders for any
12195 such purpose, or has improperly used any information secured through any prior examination of
12196 the records of the corporation or any other corporation.

12197 ~~(79)~~ A shareholder may not sell or otherwise distribute any information or records
12198 inspected under this section, except to the extent that such use is for a proper purpose as defined

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12199 in subsection (~~311~~). ~~Any person who violates this provision shall be subject to civil penalty of~~
12200 ~~\$5,000.~~

12201 (~~810~~) For purposes of this section, the term "shareholder" means a record shareholder,
12202 ~~includes a beneficial shareholder, or an unrestricted owner whose shares are held in a voting trust~~
12203 beneficial owner or by a nominee on his or her behalf.

12204 (~~911~~) For purposes of this section, a "proper purpose" means a purpose reasonably related
12205 to such person's interest as a shareholder.

12206 (12) The rights of a shareholder to obtain records under subsections (1) and (2) shall also
12207 apply to the records of subsidiaries of the corporation.

12208

12209 **Commentary to Section 607.1602:**

12210 Changes have been made to conform this provision of the FBCA with the Model Act. The non-
12211 Model Act provisions contained in subsections (2)(d), (8), (9) and (11) have been retained. These
12212 provisions have been in the FBCA for many years. However, the civil penalty in subsection (9)
12213 has been eliminated, with the view that courts faced with an issue under subsection (9) will
12214 determine the level of penalty or equitable relief that is appropriate under the circumstances.

12215

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12216 607.1603 Scope of inspection right.

12217 (1) ~~A shareholder~~ shareholder's ~~may appoint an agent or attorney has the same to exercise~~
12218 ~~the shareholder's~~ inspection and copying rights as the shareholder he or she represents under s.
12219 607.1602.

12220 (2) ~~The corporation may, if reasonable, satisfy the right of a shareholder to copy records~~
12221 ~~under s. 607.1602 includes, if reasonable, by furnishing to the shareholder right to receive copies~~
12222 ~~made by photographic, xerographic, or other means photocopy or other means chosen by the~~
12223 ~~corporation, including furnishing copies through an electronic transmission.~~

12224 (3) ~~The corporation may impose a reasonable charge covering to cover the costs of labor and~~
12225 ~~material, for providing copies of any documents provided to the shareholder. The charge which~~
12226 ~~may not exceed the estimated cost of production or reproduction of the records be based on an~~
12227 ~~estimate of such costs; If the records are kept in other than written form, the corporation shall~~
12228 ~~convert such records into written form upon the request of any person entitled to inspect the same.~~
12229 ~~The corporation shall bear the costs of converting any records described in s. 607.1601(51). The~~
12230 ~~requesting shareholder shall bear the costs, including the cost of compiling the information~~
12231 ~~requested, incurred to convert any records described in s. 607.1602(2).~~

12232 (4) ~~If requested by a shareholder, The corporation may shall comply at its expense with a~~
12233 ~~shareholder's demand to inspect the records of shareholders under s. 607.1602(2)(ed) by providing~~
12234 ~~the shareholder him or her with a list of its shareholders that was of the nature described in s.~~
12235 ~~607.1601(34). Such a list must be compiled no earlier than the date of the shareholder's demand~~
12236 ~~as of the last record date for which it has been compiled or as of a subsequent date if specified by~~
12237 ~~the shareholder.~~

12238

12239 **Commentary to Section 607.1603:**

12240 Changes have been made to conform this section with the Model Act.

12241

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12242 607.1604 Court-ordered inspection.

12243 (1) If a corporation does not allow a shareholder who complies with s. 607.1602(1) ~~or (4)~~ to
12244 inspect and copy any records required by that subsection to be available for inspection, the circuit
12245 court in the applicable county ~~where the corporation's principal office (or, if none in this state, its~~
12246 ~~registered office) is located~~ may summarily order inspection and copying of the records demanded
12247 at the corporation's expense upon application of the shareholder. If the court orders inspection and
12248 copying of the records demanded under s. 607.1601(1), it shall also order the corporation to pay
12249 the shareholder's expenses, including reasonable attorney fees, incurred to obtain the order and
12250 enforce its rights under this section.

12251 (2) If a corporation does not within a reasonable time allow a shareholder who complies
12252 with s. 607.1602(2) to inspect and copy any other record the records required by that section, the
12253 shareholder who complies with s. ~~607.1602(2) and 607.1602(3)~~; may apply to the circuit court in
12254 the applicable county ~~where the corporation's principal office (or, if none in this state, its registered~~
12255 ~~office) is located~~ for an order to permit inspection and copying of the records demanded. The court
12256 shall dispose of an application under this subsection on an expedited basis.

12257 (3) If the court orders inspection and ~~or~~ copying of the records demanded under s.
12258 607.1602(2), it may impose reasonable restrictions on the disclosure, use, or distribution of, and
12259 reasonable obligations to maintain the confidentiality of, such records, and it shall also order the
12260 corporation to pay the shareholder's expenses incurred ~~costs~~, including reasonable attorney
12261 attorney's fees, reasonably incurred to obtain the order and enforce its rights under this section
12262 unless the corporation, ~~or the officer, director, or agent, as the case may be, proves establishes that~~
12263 the corporation it or she or he refused inspection in good faith because the corporation it or she or
12264 he had:

12265 (a) A reasonable basis for doubt about the right of the shareholder to inspect or copy the
12266 records demanded; or-

12267 (4b) ~~If the court orders inspection or copying of the records demanded, it may impose~~
12268 Required reasonable restrictions on the disclosure, use, or distribution of, and reasonable
12269 obligations to maintain the confidentiality of, such use or distribution of the records demanded
12270 to which by the demanding shareholder had been unwilling to agree.

12271

12272 **Commentary to Section 607.1604:**

12273 Changes were made to conform this section to the corollary provision of the Model Act. These
12274 changes are not believed to be substantive.

12275

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12276 607.1605 Inspection of records by directors **rights of directors.**

12277 (1) A director of a corporation is entitled to inspect and copy the books, records, and
12278 documents of the corporation at any reasonable time to the extent reasonably related to the
12279 performance of the director's duties as a director, including duties as a member of a board
12280 committee, but not for any other purpose or in any manner that would violate any duty to the
12281 corporation.

12282 (2) The circuit court of the applicable county ~~in which the corporation's principal office or,~~
12283 ~~if none in this state, its registered office is located~~ may order inspection and copying of the books,
12284 records, and documents at the corporation's expense, upon application of a director who has been
12285 refused such inspection rights, unless the corporation establishes that the director is not entitled to
12286 such inspection rights. The court shall dispose of an application under this subsection on an
12287 expedited basis.

12288 (3) If an order is issued, the court may include provisions protecting the corporation from
12289 undue burden or expense and prohibiting the director from using information obtained upon
12290 exercise of the inspection rights in a manner that would violate a duty to the corporation, and may
12291 also order the corporation to reimburse the director for the director's costs, including reasonable
12292 attorney counsel fees, incurred in connection with the application.

12293

12294 **Commentary to Section 607.1605:**

12295 This provision was added to the FBCA in 2003 and is identical to the corollary provision in the
12296 Model Act.

12297

12298

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12299 607.1620 Financial statements for shareholders.

12300 (1) Upon the written request of any shareholder ~~Unless modified by resolution of the~~
12301 ~~shareholders within 120 days of the close of each fiscal year,~~ a corporation shall deliver ~~furnish or~~
12302 make available to the requesting shareholder the corporation's ~~its shareholders~~ annual financial
12303 statements for the most recent fiscal year of the corporation ~~which may be consolidated or~~
12304 ~~combined statements of the corporation and one or more of its subsidiaries, as appropriate, that~~
12305 ~~include a balance sheet as of the end of the fiscal year, an income statement for that year, and a~~
12306 ~~statement of cash flows for that year.~~ If annual financial statements ~~are~~ have been prepared for the
12307 corporation on the basis of generally accepted accounting principles for such specified period, the
12308 corporation shall deliver or make available such financial statements to the requesting shareholder.
12309 ~~the annual financial statements must also be prepared on that basis.~~ (2) If the annual financial
12310 statements ~~are~~ to be delivered or made available to the requesting ~~its~~ shareholder are audited or
12311 otherwise reported upon by a public accountant, ~~his or her~~ the report of the public accountant shall
12312 also be delivered or made available to the requesting shareholder. ~~must accompany them.~~ If not,
12313 ~~the statements must be accompanied by a statement of the president or the person responsible for~~
12314 ~~the corporation's accounting records:~~

12315 (a) ~~Stating his or her reasonable belief whether the statements were prepared on the~~
12316 ~~basis of generally accepted accounting principles and, if not, describing the basis of~~
12317 ~~preparation; and~~

12318 (b) ~~Describing any respects in which the statements were not prepared on a basis of~~
12319 ~~accounting consistent with the statements prepared for the preceding year.~~

12320 (3~~2~~) Any A corporation required by subsection (1) to deliver or make available ~~furnish~~
12321 annual financial statements to a requesting shareholder ~~its shareholders~~ shall deliver or make
12322 available ~~furnish~~ such annual financial statements to such ~~each~~ shareholder within 5 business days
12323 after the request if the annual financial statements have already been prepared and are available,
12324 or, if the annual financial statements have not been prepared, must notify the shareholder within 5
12325 business days that the annual financial statements have not yet been prepared and must deliver or
12326 make available such annual financial statements to the shareholder within 120 days after the
12327 request ~~or the close of each fiscal year~~ or within such additional time thereafter as is reasonably
12328 necessary to enable the corporation to prepare its annual financial statements if, for reasons beyond
12329 the corporation's control, it is unable to prepare its annual financial statements within the
12330 prescribed period. ~~Thereafter, on written request from a shareholder who was not furnished the~~
12331 ~~statements, the corporation shall furnish him or her the latest annual financial statements.~~

12332 (3) If requested by the requesting shareholder in its written request under subsection (1), the
12333 corporation shall promptly notify all other shareholders that the annual financial statements that
12334 have or are to be delivered or made available to the requesting shareholder have been or are being

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12335 made available to the requesting shareholder and will also be delivered or made available to any
12336 other shareholder who makes its own written request to the corporation under subsection (1).

12337 ~~(4) If a corporation does not comply with the shareholder's request for annual financial~~
12338 ~~statements pursuant to this section within 30 days of delivery of such request to the corporation,~~
12339 ~~the circuit court in the county where the corporation's principal office (or, if none in this state, its~~
12340 ~~registered office) is located may, upon application of the shareholder, summarily order the~~
12341 ~~corporation to furnish such financial statements. If the court orders the corporation to furnish the~~
12342 ~~shareholder with the financial statements demanded, it shall also order the corporation to pay the~~
12343 ~~shareholder's costs, including reasonable attorney's fees, reasonably incurred to obtain the order~~
12344 ~~and otherwise enforce its rights under this section.~~

12345 (4~~5~~) A corporation may fulfill its responsibilities under this section by delivering the
12346 specified annual financial statements, by posting the specified annual financial statements on its
12347 website, by any other generally recognized means, or in any other manner permitted by the
12348 applicable rules and regulations of the United States Securities and Exchange Commission. The
12349 requirement to furnish annual financial statements as described in this section shall be satisfied by
12350 sending such annual financial statements by mail or electronic transmission. If a corporation has
12351 an outstanding class of securities registered under s. 12 of the Securities Exchange Act of 1934, as
12352 amended, the requirement to furnish annual financial statements may be satisfied by complying
12353 with 17 C.F.R. s. 240.14a-16, as amended, with respect to the obligation of a corporation to furnish
12354 an annual financial report to shareholders pursuant to 17 C.F.R. s. 240.14a-3(b), as amended.

12355 (5) Notwithstanding the provisions of subsections (1), (2) and (3):

12356 (a) As a condition to delivering or making available annual financial statements to
12357 any requesting shareholder, the corporation may require the requesting shareholder to agree
12358 to reasonable restrictions on the confidentiality, use, and distribution of such annual financial
12359 statements; and

12360 (b) The corporation may, if it reasonably determines that the shareholder's request is
12361 not made in good faith or for a proper purpose, decline to deliver or make available such
12362 annual financial statements to that shareholder.

12363 (6) If a corporation does not respond to a shareholder's request for annual financial statements
12364 pursuant to this section in accordance with subsection (3) within the applicable period specified in
12365 subsection (2):

12366 (a) The requesting shareholder may apply to the circuit court in the applicable county
12367 for an order requiring delivery of or access to the requested annual financial statements. The
12368 court shall dispose of an application under this subsection on an expedited basis.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12369 (b) If the court orders delivery or access to the requested annual financial statements,
12370 it may impose reasonable restrictions on their confidentiality, use, or distribution.

12371 (c) In such proceeding, if the corporation has declined to deliver or make available
12372 such annual financial statements because the shareholder had been unwilling to agree to
12373 restrictions proposed by the corporation on the confidentiality, use, and distribution of such
12374 financials statements, the corporation shall have the burden of demonstrating that the
12375 restrictions proposed by the corporation were reasonable.

12376 (d) In such proceeding, if the corporation has declined to deliver or make available
12377 such annual financial statements pursuant to s. 607.1620(5)(b), the corporation shall have the
12378 burden of demonstrating that it had reasonably determined that the shareholder's request was
12379 not made in good faith or for a proper purpose.

12380 (7) If the court orders delivery or access to the requested annual financial statements it shall
12381 order the corporation to pay the shareholder's expenses, including reasonable attorney fees, incurred
12382 to obtain such order unless the corporation establishes that it had refused delivery or access to the
12383 requested annual financial statements because the shareholder had refused to agree to reasonable
12384 restrictions on the confidentiality, use, or distribution of the annual financial statements or that the
12385 corporation had reasonably determined that the shareholder's request was not made in good faith or
12386 for a proper purpose.

12387

12388 **Commentary to Section 607.1620:**

12389 Until 1978, the Model Act required only that the annual financial statements be furnished on
12390 request. Twenty-five jurisdictions currently follow that model. Eighteen jurisdictions follow the
12391 post-1978 Model Act model by requiring that the annual financial statements be furnished to all
12392 shareholders. In the 2016 revision to the Model Act, the Model Act has reversed itself yet again
12393 and now only requires the annual financial statements to be made available upon request.

12394 This provision takes a middle ground and requires that annual financial statements be delivered to
12395 or made available to a requesting shareholder. Like the corollary provision of the Model Act, it
12396 does not prescribe what constitutes annual financial statements, and there is extensive commentary
12397 in the comments to the corollary section of the Model Act that discusses what might constitute
12398 annual financial statements of a particular corporation under particular circumstances.

12399 New subsections (5), (6) and (7) are derived from the 2016 version of the Model Act. Further, the
12400 ability of the corporation's shareholders to waive the requirement to deliver annual financial
12401 statements has been eliminated in favor of the Model Act provision. Finally, while a shareholder
12402 must request annual financial statements before the corporation becomes obligated to provide
12403 them, new subsection (3) has been added to require that the corporation notify its other
12404 shareholders that annual financial statements are being delivered or made available to a requesting
12405 shareholder, and that such annual financial statements will be delivered or made available to any
12406 other shareholder who requests them in the manner provided in subsection (1).

12407

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12408 ~~607.1621—Other reports to shareholders.~~

12409 ~~(1) If a corporation indemnifies or advances expenses to any director or, officer, employee,~~
12410 ~~or agent under s. 607.0850 through 607.0859 otherwise than by court order or action by the~~
12411 ~~shareholders or by an insurance carrier pursuant to insurance maintained by the corporation, the~~
12412 ~~corporation shall report the indemnification or advance in writing to the shareholders with or~~
12413 ~~before the notice of the next shareholders' meeting, or prior to such meeting if the indemnification~~
12414 ~~or advance occurs after the giving of such notice but prior to the time such meeting is held, which~~
12415 ~~report shall include a statement specifying the persons paid, the amounts paid, and the nature and~~
12416 ~~status at the time of such payment of the litigation or threatened litigation.~~

12417 ~~(2) If a corporation issues or authorizes the issuance of shares for promises to render services~~
12418 ~~in the future, the corporation shall report in writing to the shareholders the number of shares~~
12419 ~~authorized or issued, and the consideration received by the corporation, with or before the notice~~
12420 ~~of the next shareholders' meeting.~~

12421

12422 **Commentary to Section 607.1621:**

12423 Section 607.1621 of the FBCA was added to the FBCA in 1989. It was based on an earlier version
12424 of the Model Act as it existed at the time. Subsection (1) requires Florida corporations to report to
12425 shareholders as to certain matters relating to indemnification and advancement of expenses.
12426 Subsection (2) requires disclosure to shareholders when shares are issued by the corporation for
12427 promises to render future services. This provision is no longer in the Model Act.

12428 In its decision to recommend removal of this section from the FBCA, the Subcommittee was
12429 concerned that notwithstanding the fact that this section has been in the statute for many years, it
12430 is a trap for the unwary, because many users of the FBCA are not aware of the provision. The
12431 Subcommittee also concluded that, in its view, this section is unnecessary because shareholders
12432 can demand information about these types of matters under s. 607.1602 under appropriate
12433 circumstances.

12434

FINAL STATUTE AS ADOPTED
(With Commentary)

12435 607.1622 Annual report for department of State.

12436 (1) Each domestic corporation and each foreign corporation authorized to transact
12437 business in this state shall deliver to the department for filing an ~~a sworn~~ annual report ~~on such~~
12438 ~~forms as the Department of State prescribes~~ that states the following sets forth:

12439 (a) The name of the corporation or, if a foreign corporation, the name under which
12440 the foreign corporation is authorized to transact business in this ~~and the state or country~~
12441 ~~under the law of which it is incorporated;~~

12442 (b) The date of its incorporation and ~~or~~, if a foreign corporation, the jurisdiction of
12443 its incorporation and the date on which it became qualified to transact ~~was admitted to do~~
12444 business in this state;

12445 (c) The street address of its principal office and the mailing address of the
12446 corporation;

12447 (d) The corporation's federal employer identification number, if any, or, if none,
12448 whether one has been applied for;

12449 (e) The names and business street addresses of its directors and principal officers;
12450 and

12451 ~~(f) The street address of its registered office and the name of its registered agent at~~
12452 ~~that office in this state;~~

12453 ~~(g) Language permitting a voluntary contribution of \$5 per taxpayer, which~~
12454 ~~contribution shall be transferred into the Election Campaign Financing Trust Fund. A~~
12455 ~~statement providing an explanation of the purpose of the trust fund shall also be included;~~
12456 ~~and~~

12457 ~~(h) Any such additional information that the department has identified as may be~~
12458 ~~necessary or appropriate to enable the department of State to carry out the provisions of~~
12459 ~~this chapter act.~~

12460 ~~(2) Proof to the satisfaction of the Department of State that on or before May 1 such~~
12461 ~~report was deposited in the United States mail in a sealed envelope, properly addressed with~~
12462 ~~postage prepaid, shall be deemed compliance with this requirement.~~

12463 (2) If an annual report contains the name and address of a registered agent which differs
12464 from the information shown in the records of the department immediately before the annual report
12465 becomes effective, the differing information in the annual report is considered a statement of
12466 change under s. 607.0502.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12467 (3) If an annual report does not contain the information required ~~in~~ by this section, the
12468 department of State shall promptly notify the reporting domestic corporation or foreign corporation
12469 ~~in writing and return the report to it for correction.~~ If the report is corrected to contain the
12470 information required in subsection (1) by this section and delivered to the department of State
12471 within 30 days after the effective date of the notice, ~~it is deemed to be~~ will be considered timely
12472 delivered filed.

12473 (4) ~~Each report shall be executed by the corporation by an officer or director or, if the~~
12474 ~~corporation is in the hands of a receiver or trustee, shall be executed on behalf of the corporation~~
12475 ~~by such receiver or trustee, and the signing thereof shall have the same legal effect as if made~~
12476 ~~under oath, without the necessity of appending such oath thereto.~~

12477 (4~~5~~) The first annual report must be delivered to the department of State between January
12478 1 and May 1 of the year following the calendar year in which a domestic corporation's articles of
12479 incorporation became effective or was incorporated or a foreign corporation obtained its certificate
12480 of authority was authorized to transact business in this state. Subsequent annual reports must be
12481 delivered to the department of State between January 1 and May 1 of each the subsequent calendar
12482 years thereafter. If one or more forms of annual report are submitted for a calendar year, the
12483 department shall file each of them and make the information contained in them part of the official
12484 record. The first form of annual report filed in a calendar year shall be considered the annual report
12485 for that calendar year, and each report filed after that one in the same calendar year shall be treated
12486 as an amended report for that calendar year.

12487 (5~~6~~) Information in the annual report must be current as of the date the annual report is
12488 delivered to the department for filing ~~executed on behalf of the corporation.~~

12489 (7) ~~If an additional updated report is received, the department shall file the document and~~
12490 ~~make the information contained therein part of the official record.~~

12491 (6~~8~~) A domestic corporation or foreign ~~Any~~ corporation that fails ~~failing~~ to file an annual
12492 report that which complies with the requirements of this section may not ~~shall not be permitted to~~
12493 prosecute or maintain or defend any action in any court of this state until the such report is filed
12494 and all fees and penalties ~~taxes~~ due under this chapter act are paid, and shall be subject to
12495 dissolution or cancellation of its certificate of authority to transact ~~do~~ business as provided in this
12496 chapter act.

12497 (7~~9~~) The department shall prescribe the forms, which may be in an electronic format, on
12498 which to make the annual report called for in this section and may substitute the uniform business
12499 report, pursuant to s. 606.06, as a means of satisfying the requirement of this chapter part.

12500 (8) As a condition of a merger under s. 607.1101, each party to a merger which exists
12501 under the laws of this state, and each party to the merger which exists under the laws of another

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12502 jurisdiction and has a certificate of authority to transact business or conduct its affairs in this state,
12503 must be active and current in filing its annual reports in the records of the department through
12504 December 31 of the calendar year in which the articles of merger are submitted to the department
12505 for filing.

12506 (9) As a condition of a conversion of an entity to a corporation under s. 607.11930, the
12507 entity, if it exists under the laws of this state or if it exists under the laws of another jurisdiction
12508 and has a certificate of authority to transact business or conduct its affairs in this state, must be
12509 active and current in filing its annual reports in the records of the department through December
12510 31 of the calendar year in which the articles of conversion are submitted to the department for
12511 filing.

12512 (10) As a condition of a conversion of a domestic corporation to another type of entity
12513 under s. 607.11930, the domestic corporation converting to the other type of entity must be active
12514 and current in filing its annual reports in the records of the department through December 31 of
12515 the calendar year in which the articles of conversion are submitted to the department for filing.

12516 (11) As a condition of a share exchange between a corporation and another entity under
12517 s. 607.1102, the corporation, and each other entity that is a party to the share exchange which exists
12518 under the laws of this state, and each party to the share exchange which exists under the laws of
12519 another jurisdiction and has a certificate of authority to transact business or conduct its affairs in
12520 this state, must be active and current in filing its annual reports in the records of the department
12521 through December 31 of the calendar year in which the articles of share exchange are submitted
12522 to the department for filing.

12523 (12) As a condition of domestication of a domestic corporation into a foreign jurisdiction
12524 under s. 607.11920, the domestic corporation domesticating into a foreign jurisdiction must be
12525 active and current in filing its annual reports in the records of the department through December
12526 31 of the calendar year in which the articles of domestication are submitted to the department for
12527 filing.

12528

12529 **Commentary to Section 607.1622:**

12530 This section has been modified to conform the language in this section to the corollary provision
12531 from FRLUCA (s. 605.0212) that was adopted in 2013.

12532 Subsections (8), (9), (10), and (11) are derived from s. 605.0212 and require that the corporation
12533 must have filed an annual report before the corporation can make filings regarding mergers, share
12534 exchanges, and conversions. Subsection (12) relating to domestications is new, but follows the
12535 same premise.

12536

ARTICLES 17, 18 AND 19

TRANSITION AND MISCELLANEOUS PROVISIONS

12537
12538
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607.1701 Application to existing domestic corporation.

This ~~chapter act~~ applies to all domestic corporations in existence on January 1, 2020 ~~July 1, 1990~~, that were incorporated under any general statute of this state providing for incorporation of corporations for profit if power to amend or repeal the statute under which the corporation was incorporated was reserved.

12549 **Commentary to Section 607.1701:**

12550

12551 The change in the effective date that the new FBCA applies to existing Florida corporations has
12552 been updated to the date that the new FBCA will become effective.

12553

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12554 607.1702 Application to qualified foreign corporations.

12555

12556 A foreign corporation authorized to transact business in this state on January 1, 2020 ~~July~~

12557 ~~1, 1990~~, is subject to this chapter, is deemed to be authorized to transact business in this state, and

12558 ~~act but~~ is not required to obtain a new certificate of authority to transact business under this chapter

12559 ~~act.~~

12560

12561 **Commentary to Section 607.1702:**

12562

12563 The change in the effective date that the new FBCA applies to existing foreign corporations
12564 authorized to transact business in Florida has been updated to the date that the new FBCA will
12565 become effective. The additional language added to this statute conforms to the current wording
12566 of s. 17.02 of the Model Act. It is not considered a substantive change.

12567

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12568 607.1711 Application to foreign and interstate commerce.

12569

12570 The provisions of this chapter ~~act~~ apply to commerce with foreign nations and among the
12571 several states only insofar as the same may be permitted under the Constitution and laws of the
12572 United States.

12573

12574 **Commentary to Section 607.1711:**

12575

12576 No substantive change has been made to this section.

12577

FINAL STATUTE AS ADOPTED
(With Commentary)

12578 ~~607.1801—Domestication of foreign corporations.~~

12579

12580 ~~(1) As used in this section, the term "corporation" includes any incorporated~~
12581 ~~organization, private law corporation (whether or not organized for business purposes), public law~~
12582 ~~corporation, partnership, proprietorship, joint venture, foundation, trust, association, or similar~~
12583 ~~entity.~~

12584

12585 ~~(2) Any foreign corporation may become domesticated in this state by filing with the~~
12586 ~~Department of State:~~

12587

12588 ~~(a) A certificate of domestication which shall be executed in accordance with~~
12589 ~~subsection (7) and filed and recorded in accordance with s. 607.0120; and~~

12590

12591 ~~(b) Articles of incorporation, which shall be executed, filed, and recorded in~~
12592 ~~accordance with ss. 607.0120 and 607.0202.~~

12593

12594 ~~(3) The certificate of domestication shall certify:~~

12595

12596 ~~(a) The date on which and jurisdiction where the corporation was first formed,~~
12597 ~~incorporated, or otherwise came into being;~~

12598

12599 ~~(b) The name of the corporation immediately prior to the filing of the certificate~~
12600 ~~of domestication;~~

12601

12602 ~~(c) The name of the corporation as set forth in its articles of incorporation filed in~~
12603 ~~accordance with paragraph (2)(b); and~~

12604

12605 ~~(d) The jurisdiction that constituted the seat, siege social, or principal place of~~
12606 ~~business or central administration of the corporation, or any other equivalent thereto under~~
12607 ~~applicable law, immediately prior to the filing of the certificate of domestication.~~

12608

12609 ~~(4) Upon filing with the Department of State of the certificate of domestication and~~
12610 ~~articles of incorporation, the corporation shall be domesticated in this state, and the corporation~~
12611 ~~shall thereafter be subject to this act, except that notwithstanding the provision of s. 607.0203 the~~
12612 ~~existence of the corporation shall be deemed to have commenced on the date the corporation~~
12613 ~~commenced its existence in the jurisdiction in which the corporation was first formed,~~
12614 ~~incorporated, or otherwise came into being.~~

12615

12616 ~~(5) The domestication of any corporation in this state shall not be deemed to affect any~~
12617 ~~obligations or liabilities of the corporation incurred prior to its domestication.~~

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12618
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~~(6) — The filing of a certificate of domestication shall not affect the choice of law applicable to the corporation, except that, from the date the certificate of domestication is filed, the law of this state, including this act, shall apply to the corporation to the same extent as if the corporation has been incorporated as a corporation of this state on that date.~~

~~(7) — The certificate of domestication shall be signed by any corporation officer, director, trustee, manager, partner, or other person performing functions equivalent to those of an officer or director, however named or described, and who is authorized to sign the certificate of domestication on behalf of the corporation.~~

12629 **Commentary to Section 607.1801:**

12630

12631 This section has been eliminated, as the topic of domestications is now covered in ss. 607.11920-
12632 607.11924.

12633

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12634 607.1805 Procedures for conversion to professional service corporation.

12635

12636 A corporation that is organized for profit under the laws of this state and that is engaged
12637 solely in carrying out the professional services provided by a corporation organized under chapter
12638 621 may change its corporate nature to that of a professional service corporation if it complies
12639 with chapter 621.

12640

12641 **Commentary to Section 607.1805:**
12642
12643 No change has been made to this section.
12644
12645

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12646 607.1904 Estoppel.

12647

12648 No body of persons acting as a corporation shall be permitted to set up the lack of legal
12649 organization as a defense to an action against them as a corporation, nor shall any person sued on
12650 a contract made with the corporation or sued for an injury to its property or a wrong done to its
12651 interests be permitted to set up the lack of such legal organization in his or her defense.

12652

12653 **Commentary to Section 607.1904:**

12654

12655 No change has been made to this section.

12656

FINAL STATUTE AS ADOPTED
(With Commentary)

12657 607.1907 **Saving provision** ~~Effect of repeal of prior acts.~~

12658

12659 (1) Except as ~~provided in subsection (2), the repeal of a statute by this act does not affect:~~
12660 to procedural provisions, this act does not affect a pending action or proceeding or a right accrued
12661 before January 1, 2020, and a pending civil action or proceeding may be completed, and a right
12662 accrued may be enforced, as if this act had not become effective.

12663

12664 (a) ~~The operation of the statute or any action taken under it before its repeal,~~
12665 ~~including, without limiting the generality of the foregoing, the continuing validity of any~~
12666 ~~provision of the articles of incorporation or bylaws of a corporation authorized by the~~
12667 ~~statute at the time of its adoption;~~

12668

12669 (b) ~~Any ratification, right, remedy, privilege, obligation, or liability acquired,~~
12670 ~~accrued, or incurred under the statute before its repeal;~~

12671

12672 (c) ~~Any violation of the statute, or any penalty, forfeiture, or punishment incurred~~
12673 ~~because of the violation, before its repeal; or~~

12674

12675 (d) ~~Any proceeding, merger, consolidation, sale of assets, reorganization, or~~
12676 ~~dissolution commenced under the statute before its repeal, and the proceeding, merger,~~
12677 ~~consolidation, sale of assets, reorganization, or dissolution may be completed in~~
12678 ~~accordance with the statute as if it had not been repealed.~~

12679

12680 (2) If a penalty or punishment ~~imposed~~ for violation of a statute or rule repealed by this act
12681 is reduced by this act, the penalty or punishment, if not already imposed, shall be imposed in
12682 accordance with this act.

12683

12684 **Commentary to Section 607.1907:**

12685

12686 This section largely follows s. 17.03 of the Model Act. Because this proposal is not a complete
12687 repeal of the FBCA, the more extensive savings provisions that were previously included in
12688 existing s. 607.1907 and in the corollary provision of FRLUCA, s. 605.1106, were not considered
12689 to be appropriate under the circumstances.

12690

12691 607.1908 Severability clause.

12692

12693 If any provision of this chapter or its application to any person or circumstance is held
12694 invalid, the invalidity does not affect other provisions or applications of this chapter which can be
12695 given effect without the invalid provision or application, and to this end the provisions of this
12696 chapter are severable.

12697

12698

12699 **Commentary to Section 607.1908:**

12700

12701 This section has been added to the FBCA. It is derived from s. 605.1107 of FRLICA.

12702

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12703 607.193 Supplemental corporate fee.

12704

12705 (1) In addition to any other taxes imposed by law, an annual supplemental corporate fee of
12706 \$88.75 is imposed on each business entity that is authorized to transact business in this state and
12707 is required to file an annual report with the Department of State under s. 605.0212, s. 607.1622, or
12708 s. 620.1210.

12709 (2) (a) The business entity shall remit the supplemental corporate fee to the Department of
12710 State at the time it files the annual report required by s. 605.0212, s. 607.1622, or s. 620.1210.

12711 (b) In addition to the fees levied under ss. 605.0213, 607.0122, and 620.1109 and the
12712 supplemental corporate fee, a late charge of \$400 shall be imposed if the supplemental corporate
12713 fee is remitted after May 1 except in circumstances in which a business entity was
12714 administratively dissolved or its certificate of authority was revoked due to its failure to file an
12715 annual report and the entity subsequently applied for reinstatement and paid the applicable
12716 reinstatement fee.

12717

12718 **Commentary to Section 607.193:**
12719
12720 No changes have been proposed to this section.
12721

**REVISIONS TO FLORIDA ENTITY STATUTES BASED ON
CHANGES TO PART I OF CHAPTER 607**

12722
12723
12724

12725 605.0102 Definitions.

12726 . . .

12727 (23)(a) "Entity" means:

- 12728 1. A business corporation;
- 12729 2. A nonprofit corporation;
- 12730 3. A general partnership, including a limited liability partnership;
- 12731 4. A limited partnership, including a limited liability limited partnership;
- 12732 5. A limited liability company;
- 12733 6. A real estate investment trust; or
- 12734 7. Any other domestic or foreign entity that is organized under an organic law.

12735 (b) "Entity" does not include:

- 12736 1. An individual;
- 12737 2. A trust with a predominantly donative purpose or a charitable trust;
- 12738 3. An association or relationship that is not a partnership solely by reason of s.
12739 620.8202(~~23~~) or a similar provision of the law of another jurisdiction;
- 12740 4. A decedent's estate; or
- 12741 5. A government or a governmental subdivision, agency, or instrumentality.

12742 . . .

12743 (55) "Private organic rules" means the rules, whether or not in a record, which govern the
12744 internal affairs of an entity, are binding on all its interest holders, and are not part of its public
12745 organic record, if any. Where private organic rules have been amended or restated, the term means
12746 the private organic rules as last amended or restated. The term includes:

- 12747 (a) The bylaws of a business corporation.
- 12748 (b) The bylaws of a nonprofit corporation.
- 12749 (c) The partnership agreement of a general partnership.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 12750 (d) The partnership agreement of a limited partnership.
- 12751 (e) The operating agreement, limited liability company agreement, or similar agreement
12752 of a limited liability company.
- 12753 (f) The bylaws, trust instrument, or similar rules of a real estate investment trust.
- 12754 (g) The trust instrument of a statutory trust or similar rules of a business trust or
12755 common law business trust.
- 12756 ...
- 12757 (58) "Public organic record" means a record, the filing of which by a governmental body is
12758 required to form an entity, and an amendment to or restatement of that record. Where a public
12759 organic record has been amended or restated, the term means the public organic record as last
12760 amended or restated. The term includes the following:
- 12761 (a) The articles of incorporation of a business corporation.
- 12762 (b) The articles of incorporation of a nonprofit corporation.
- 12763 (c) The certificate of limited partnership of a limited partnership.
- 12764 (d) The articles of organization of a limited liability company.
- 12765 (e) The articles of incorporation of a general cooperative association or a limited
12766 cooperative association.
- 12767 (f) The certificate of trust of a statutory trust or similar record of a business trust.
- 12768 (g) The articles of incorporation of a real estate investment trust.
- 12769 ...
- 12770

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12771 **Commentary to Sections 605.0102(23), 605.0102(55) and 605.0102(58):**

12772 Modifications to the definitions of "entity," "private organic records," and "public organic records"
12773 reflect clean-up changes based on s. 607.01401 of the FBCA.

12774

- 12775 605.0105 Operating agreement; scope, function and limitations.
- 12776 ...
- 12777 (3) An operating agreement may not do any of the following:
- 12778 (i) Vary the grounds for dissolution specified in s. 605.0702. A deadlock resolution
- 12779 mechanism does not vary the grounds for dissolution for purposes of this paragraph.
- 12780 ...
- 12781

12782 **Commentary to Section 605.0105:**

12783 Changes have been made to make clear that members may include a deadlock resolution
12784 mechanism in the operating agreement. This is in conformity with s. 605.0702.

12785

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12786 605.0112 Name.

12787 (1) The name of a limited liability company:

12788 (a) Must contain the words "limited liability company" or the abbreviation "L.L.C." or
12789 "LLC," as will clearly indicate that it is a limited liability company instead of a natural person,
12790 partnership, corporation, or other business entity.

12791 (b) Must be distinguishable in the records of the ~~Division of Corporations of the~~
12792 department from the names of all other entities or filings that are on file with the department
12793 ~~division~~, except fictitious name registrations pursuant to s. 865.09, general partnership
12794 registrations pursuant to s. 620.8105, and limited liability partnership statements pursuant to
12795 s. 620.9001 which are organized, registered, or reserved under the laws of this state; however,
12796 a limited liability company may register under a name that is not otherwise distinguishable on
12797 the records of the ~~division~~ department with the written consent of the ~~owner~~ other entity if the
12798 consent is filed with the ~~division~~ department at the time of registration of such name and if
12799 such name is not identical to the name of the other entity. A name that is different from the
12800 name of another entity or filing due to any of the following is not considered distinguishable:

12801 1. A suffix.

12802 2. A definite or indefinite article.

12803 3. The word "and" and the symbol "&."

12804 4. The singular, plural, or possessive form of a word.

12805 5. ~~A recognized abbreviation of a root word.~~

12806 6. A punctuation mark or a symbol.

12807 (c) May not contain language stating or implying that the limited liability company is
12808 organized for a purpose other than a purpose authorized in this chapter and its articles of
12809 organization.

12810 (d) May not contain language stating or implying that the limited liability company is
12811 connected with a state or federal government agency or a corporation or other entity chartered
12812 under the laws of the United States.

12813 (2) Subject to s. 605.0905, this section applies to a foreign limited liability company
12814 transacting business in this state which has a certificate of authority to transact business in this
12815 state or which has applied for a certificate of authority.

12816 (3) In the case of a limited liability company in existence before July 1, 2007, and registered
12817 with the department, the requirement in this section that the name of a limited liability company

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12818 be distinguishable from the names of other entities and filings applies only if the limited liability
12819 company files documents on or after July 1, 2007, which would otherwise have affected its name.

12820 (4) A limited liability company in existence before January 1, 2014, which was registered with
12821 the department and is using an abbreviation or designation in its name authorized under previous
12822 law, may continue using the abbreviation or designation in its name until it dissolves or amends
12823 its name in the records of the department.

12824 (5) The name of the limited liability company must be filed with the department for public
12825 notice only, and the act of filing alone does not create any presumption of ownership beyond that
12826 which is created under the common law.

12827 (6) A limited liability company in existence before January 1, 2020 that has a name that does
12828 not clearly indicate that it is a limited liability company instead of a natural person, partnership,
12829 corporation, or other business entity may continue using such name until it dissolves or amends its
12830 name in the records of the department.

12831

12832 **Commentary to Section 605.0112:**

12833 The changes made in subsections (1)(a) and (1)(b) are changes made to conform this section of
12834 FRLCA to the changes made in the proposed version of s. 607.0401 of the FBCA. The addition
12835 of subsection (6) is a grandfathering provision for names that are being used in Florida by limited
12836 liability companies when the proposed changes become effective and that are not in conformity
12837 with this provision as modified.

12838

FINAL STATUTE AS ADOPTED
(With Commentary)

12839 605.01125 Reserved name.

12840 (1) A person may reserve the exclusive use of the name of a limited liability company,
12841 including an alternate name for a foreign limited liability company whose name is not available,
12842 by delivering an application to the department for filing. The application must set forth the name
12843 and address of the applicant and the name proposed to be reserved. If the department finds that the
12844 name of the limited liability company applied for is available, it shall reserve the name for the
12845 applicant's exclusive use for a nonrenewable 120-day period.

12846 (2) The owner of a reserved name of a limited liability company may transfer the reservation
12847 to another person by delivering to the department a signed notice of the transfer that states the
12848 name and address of the transferee.

12849 (3) The department may revoke any reservation if, after a hearing, it finds that the application
12850 therefor or any transfer thereof was not made in good faith.

12851

12852 **Commentary to Section 605.01125:**

12853 This section conforms to new s. 607.04021 and allows for the reservation of the name of a limited
12854 liability company.

12855

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12856 605.0113 Registered agent.

12857 (1) Each limited liability company and each foreign limited liability company that has a
12858 certificate of authority under s. 605.0902 shall designate and continuously maintain in this state:

12859 (a) A registered office, which may be the same as its place of business in this state; and

12860 (b) A registered agent, who must be:

12861 1. An individual who resides in this state and whose business address is identical to
12862 the address of the registered office; ~~or~~

12863 2. ~~A foreign or domestic entity authorized to transact business in this state whose~~
12864 ~~business address is identical to the address of the registered office.~~ Another domestic entity
12865 that is an authorized entity and whose business address is identical to the address of the
12866 registered office; or

12867 3. A foreign entity authorized to transact business in this state that is an authorized
12868 entity and whose business address is identical to the address of the registered office.

12869 ...

12870 (5) A limited liability company and each foreign limited liability company that has a
12871 certificate of authority under s. 605.0902 may not prosecute or maintain, ~~maintain or defend~~ an
12872 action in a court in this state until the limited liability company complies with this section, pays to
12873 the department any amounts required under this chapter, and, to the extent ordered by a court of
12874 competent jurisdiction, and pays to the department a penalty of \$5 for each day it has failed to so
12875 comply or \$500, whichever is less, and pays any other amounts required under this chapter.

12876 (6) For purposes of this section, "authorized entity" means:

12877 (a) A corporation for profit.

12878 (b) A limited liability company.

12879 (c) A limited liability partnership.

12880 (d) A limited partnership, including a limited liability limited partnership.

12881

12882 **Commentary to Sections 605.0113(1) and 605.0113(5):**

12883 Changes add the concept of authorized entity to Chapter 605 as a subtype of entities that are
12884 permitted to act as registered agents in this state. This change substantively conforms this section
12885 to revised ss. 607.0501 and 607.1507 of the FBCA.

12886

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 12887 605.0114 Change of registered agent or registered office.
- 12888 (1) In order to change its registered agent or registered office address, a limited liability
12889 company or a foreign limited liability company may deliver to the department for filing a statement
12890 of change containing the following:
- 12891 (a) The name of the limited liability company or foreign limited liability company.
- 12892 (b) The name of its current registered agent.
- 12893 (c) If the current registered agent is to be changed, the name of the new registered agent.
- 12894 (d) The street address of its current registered office for its current registered agent.
- 12895 (e) If the street address of the current registered office is to be changed, the new street
12896 address of the registered office in this state.
- 12897 . . .
- 12898

12899 **Commentary to Section 605.0114(1):**

12900 The minor changes in this section are derived from clean-up changes made in s. 607.0502(1) and
12901 s. 607.1508(1) of the FBCA.

12902

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12903 605.0115 Resignation of registered agent.

12904 . . .

12905 (2) After delivering the statement of resignation ~~with~~ to the department for filing, the
12906 registered agent must promptly ~~shall~~ mail a copy to the limited liability company's or foreign
12907 limited liability company's current mailing address.

12908

12909 **Commentary to Section 605.0115(2):**

12910 Makes a minor clarifying change based on a change made in s. 607.0503 of the FBCA.

12911

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12912 605.0116 Change of name or address by registered agent.

12913 (1) If a registered agent changes his or her name or address, the agent may deliver to the
12914 department for filing a statement of change that provides the following:

12915 (a) The name of the limited liability company or foreign limited liability company
12916 represented by the registered agent.

12917 (b) The name of the registered agent as currently shown in the records of the department
12918 for the limited liability company or foreign limited liability company.

12919 (c) If the name of the registered agent has changed, its new name.

12920 (d) If the address of the registered agent has changed, the new address.

12921 (e) A statement that the registered agent has given the notice required under subsection
12922 (2).

12923 (2) A registered agent shall promptly furnish notice of the statement of change and the changes
12924 made by the statement filed with the department to the represented limited liability company or
12925 foreign limited liability company.

12926

12927 **Commentary to Section 605.0116:**

12928 The minor changes in this section are derived from clean-up changes made in s. 607.0531 and s.
12929 607.1509 of the FBCA.

12930

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12931 605.0117 Service of process, notice or demand.

12932 (1) A limited liability company or registered foreign limited liability company may be served
12933 with process, ~~notice, or a demand~~ required or authorized by law by serving on its registered agent.

12934 (2) If a limited liability company or registered foreign limited liability company ceases to have
12935 a registered agent or if its registered agent cannot with reasonable diligence be served, the process,
12936 ~~notice, or demand~~ required or permitted by law may instead be served:

12937 (a) On a member of a member-managed limited liability company or registered foreign
12938 limited liability company; or

12939 (b) On a manager of a manager-managed limited liability company or registered
12940 foreign limited liability company.

12941 (3) If the process, ~~notice, or demand~~ cannot be served on a limited liability company or
12942 registered foreign limited liability company pursuant to subsection (1) or subsection (2), the
12943 process, ~~notice, or demand~~ may be served on the secretary of state department as an agent of the
12944 company.

12945 (4) Service with of process, ~~notice, or a demand~~ on the secretary of state department may be
12946 made by delivering to and leaving with the department duplicate copies of the process, ~~notice, or~~
12947 ~~demand~~.

12948 (5) Service is effectuated under subsection (3) on the date shown as received by the
12949 department.

12950 (6) The department shall keep a record of each process, ~~notice, and demand~~ served pursuant
12951 to this section and record the time of and the action taken regarding the service.

12952 (7) Any notice or demand on a limited liability company or registered foreign limited liability
12953 company under this chapter may be given or made to any member of a member-managed limited
12954 liability company or registered foreign limited liability company or to any manager of a manager-
12955 managed limited liability company or registered foreign limited liability company; to the registered
12956 agent of the limited liability company or registered foreign limited liability company at the
12957 registered office of the limited liability company or registered foreign limited liability company in
12958 this state; or to any other address in this state that is in fact the principal office of the limited
12959 liability company or registered foreign limited liability company in this state.

12960 (78) This section does not affect the right to serve process, notice, or a demand in any
12961 other manner provided by law.

12962

12963 **Commentary to Section 605.0117:**

12964 The revisions to this section track changes made in revised s. 607.0504 and 607.15101 that
12965 bifurcate between service of process and notices and demands to the limited liability company.

12966

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12967 605.0118 Delivery of record.

12968 . . .

12969 (3) If a check is mailed to the department for payment of an annual report fee or the annual
12970 supplemental fee required under s. 607.193, the check shall be deemed to have been received by
12971 the department as of the postmark date appearing on the envelope or package transmitting the
12972 check if the envelope or package is received by the department.

12973

12974 **Commentary to Section 605.0118(3):**

12975 This cleanup change conforms this section to revised ss. 607.05032 and 607.15092 of the FBCA.

12976

**FINAL STATUTE AS ADOPTED
(With Commentary)**

12977 605.0207 Effective date and time.

12978 Except as otherwise provided in s. 605.0208, and subject to s. 605.0209(3), any document
12979 delivered to the department for filing under this chapter may specify an effective time and a
12980 delayed effective date. In the case of initial articles of organization, a prior effective date may be
12981 specified in the articles of organization if such date is within 5 business days before the date of
12982 filing. Subject to ss. 605.0114, 605.0115, 605.0208, and 605.0209, a record filed by the department
12983 is effective:

12984 (1) If the record filed does not specify an effective time and does not specify a prior or a
12985 delayed effective date, on the date and at the time the record is ~~filed~~ accepted as evidenced by the
12986 department's endorsement of the date and time on the filing record.

12987 (2) If the record filed specifies an effective time, but not a prior or delayed effective date,
12988 on the date the record is filed at the time specified in the filing record.

12989 (3) If the record filed specifies a delayed effective date, but not an effective time, at 12:01
12990 a.m. on the earlier of:

12991 (a) The specified date; or

12992 (b) The 90th day after the record is filed.

12993 (4) If the record filed specifies a delayed effective date and an effective time, at the
12994 specified time on the earlier of:

12995 (a) The specified date; or

12996 (b) The 90th day after the record is filed.

12997 (45) If the record filed is the initial articles of organization and specifies an effective a
12998 date before the effective date of the filing, but no effective time, at 12:01 a.m. on the later of:

12999 (a) The specified date; or

13000 (b) The 5th business day before the record is filed.

13001 (56) If the record filed is the initial articles of organization and specifies an effective time
13002 and an effective a ~~delayed effective date, at the specified time on the earlier of:~~

13003 (a) ~~The specified date; or~~

13004 (b) ~~The 90th day after the record is filed.~~

13005 (6) ~~If the record specifies an effective time and~~ date before the date of the filing, at the
13006 specified time on the later of:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13007 (a) The specified date; or

13008 (b) The 5th business day before the record is filed.

13009 (7) If a filed document does not specify the time zone or place at which the date or time,
13010 or both, is to be determined, the date or time, or both, at which it becomes effective shall be those
13011 prevailing at the place of filing in this state.

13012

13013 **Commentary to Section 605.0207:**

13014 This section makes clean-up changes based on the revised version of s. 607.0123 of the FBCA.

13015

13016

13017 605.0209 Correcting filed record.

13018 . . .

13019 (3) A statement of correction:

13020 (a) May not state a delayed effective date;

13021 (b) Must be signed by the person correcting the filed record;

13022 (c) Must identify the filed record to be corrected, including such record's filing date, or
13023 attach a copy of the record to the statement of correction;

13024 (d) Must specify the inaccuracy or defect to be corrected; and

13025 (e) Must correct the inaccuracy or defect.

13026

13027 **Commentary to Section 605.0209(3):**

13028 This correction is based on clean-up changes made to s. 607.0124(2) of the FBCA.

13029

FINAL STATUTE AS ADOPTED
(With Commentary)

13030 605.0210 Duty of department to file; review of refusal to file; transmission of information by
13031 department.

13032 . . .

13033 (7) If the department refuses to file a record delivered to its office for filing, the person who
13034 submitted the record for filing may petition the Circuit Court of Leon County to compel filing of
13035 the record. The record and the explanation ~~of~~ from the department of the refusal to file must be
13036 attached to the petition. The court may decide the matter in a summary proceeding and the court
13037 may summarily order the department to file the record or take other action the court considers
13038 appropriate. The court's final decision may be appealed as in other civil proceedings.

13039

13040 **Commentary to Section 605.0210:**

13041 This change to s. 605.0210(7) conforms this section with the changes made in s. 607.0126.

13042

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13043 605.0211 Certificate of status.

13044

13045 (2) The department, upon request and payment of the requisite fee, shall furnish a certificate
13046 of status for a foreign limited liability company if the records filed show that the department has
13047 filed a certificate of authority. A certificate of status for a foreign limited liability company must
13048 state the following:

13049 (a) The foreign limited liability company's name and any ~~a~~ current alternate name
13050 adopted under s. 605.0906(1) for use in this state.

13051 ...

13052 (3) Subject to any qualification stated in the certificate of status, a certificate of status issued
13053 by the department is conclusive evidence that the domestic limited liability company is in existence
13054 and is of active status in this state or the foreign limited liability company is authorized to transact
13055 business in this state and is of active status in this state.

13056

13057 **Commentary to Sections 605.0211(2)(a) and 605.0211(3):**

13058 Changes conform this section to revised s. 607.0128 of the FBCA.

13059

FINAL STATUTE AS ADOPTED
(With Commentary)

13060 605.0215 Certificates to be received in evidence and evidentiary effect of copy of filed
13061 document.

13062 All certificates issued by the department in accordance with this chapter shall be taken and
13063 received in all courts, public offices, and official bodies as prima facie evidence of the facts stated.
13064 A certificate from the department delivered with a copy of a document filed by the department
13065 bearing the signature of the secretary of state, which may be in facsimile, and the seal of this state
13066 is conclusive evidence that the original document is on file with the department.

13067

13068 **Commentary to Section 605.0215:**

13069 Changes conform this section to the revised version of s. 607.0127 of the FBCA.

13070

13071 605.04092 Conflict of interest transactions.

13072 (1) As used in this section, the following terms and definitions apply:

13073 (a) A member or manager is "indirectly" a party to a transaction if that member or
13074 manager has a material financial interest in or is a director, officer, member, manager, or
13075 partner of a person, other than the limited liability company, who is a party to the
13076 transaction.

13077 (b) A member or manager has an "indirect material financial interest" if a ~~spouse or~~
13078 ~~other~~ family member has a material financial interest in the transaction, other than having
13079 an indirect interest as a member or manager of the limited liability company, or if the
13080 transaction is with an entity, other than the limited liability company, which has a
13081 material financial interest in the transaction and controls, or is controlled by, the member
13082 or manager or another person specified in this subsection.

13083 (c) "Fair to the limited liability company" means that the transaction, as a whole, is
13084 beneficial to the limited liability company and its members, taking into appropriate
13085 account whether it is:

13086 1. Fair in terms of the member's or manager's dealings with the limited
13087 liability company in connection with that transaction; and

13088 2. Comparable to what might have been obtainable in an arm's length
13089 transaction.

13090 (d) "Family member" includes any of the following:

13091 1. The member's or manager's spouse.

13092 2. A child, stepchild, parent, stepparent, grandparent, sibling, step
13093 sibling, or half sibling of the member or manager or the member's or manager's
13094 spouse.

13095 (e) "Manager's conflict of interest transaction" means a transaction between a
13096 limited liability company and one or more of its managers, or another entity in which one
13097 or more of the limited liability company's managers is directly or indirectly a party to the
13098 transaction, other than being an indirect party as a result of being a member of the limited
13099 liability company, and has a direct or indirect material financial interest or other material
13100 interest.

13101 (f) "Material financial interest" or "other material interest" means a financial or other
13102 interest in the transaction that would reasonably be expected to impair the objectivity of
13103 the judgment of the member or manager when participating in the action on the
13104 authorization of the transaction.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13105 (g) "Member's conflict of interest transaction" means a transaction between a limited
13106 liability company and one or more of its members, or another entity in which one or more
13107 of the limited liability company's members is directly or indirectly a party to the
13108 transaction, other than being an indirect party as a result of being a member of the limited
13109 liability company, and has a direct or indirect material financial interest or other material
13110 interest.

13111 (2) If the requirements of this section have been satisfied, a member's conflict of interest
13112 transaction or a manager's conflict of interest transaction between a limited liability company and
13113 one or more of its members or managers, or another entity in which one or more of the limited
13114 liability company's members or managers have a financial or other interest, is not void or voidable
13115 because of that relationship or interest; because the members or managers are present at the
13116 meeting of the members or managers at which the transaction was authorized, approved,
13117 effectuated, or ratified; or because the votes of the members or managers are counted for such
13118 purpose.

13119 (3) If a member's conflict of interest transaction or a manager's conflict of interest
13120 transaction is fair to the limited liability company at the time it is authorized, approved, effectuated,
13121 or ratified, the fact that a member or manager of the limited liability company is directly or
13122 indirectly a party to the transaction, other than being an indirect party as a result of being a member
13123 or manager of the limited liability company, or has a direct or indirect material financial interest
13124 or other interest in the transaction, other than having an indirect interest as a result of being a
13125 member or manager of the limited liability company, is not grounds for equitable relief and does
13126 not give rise to an award of damages or other sanctions.

13127 (4) (a) In a proceeding challenging the validity of a member's conflict of interest
13128 transaction or a manager's conflict of interest transaction or in a proceeding seeking equitable
13129 relief, award of damages or other sanctions with respect to a member's conflict of interest
13130 transaction or a manager's conflict of interest transaction ~~described in subsection (3)~~, the
13131 person challenging the validity or seeking equitable relief, award of damages, or other
13132 sanctions has the burden of proving the lack of fairness of the transaction if:

13133 1. In a manager-managed limited liability company, the material facts of
13134 the transaction and the member's or manager's interest in the transaction were
13135 disclosed or known to the managers or a committee of managers who voted upon
13136 the transaction and the transaction was authorized, approved, or ratified by a
13137 majority of the disinterested managers even if the disinterested managers constitute
13138 less than a quorum; however, the transaction cannot be authorized, approved, or
13139 ratified under this subsection solely by a single manager; and

13140 2. In a member-managed limited liability company, or a manager-
13141 managed limited liability company in which the managers have failed to or cannot

FINAL STATUTE AS ADOPTED
(With Commentary)

13142 act under subparagraph 1., the material facts of the transaction and the member's
13143 or manager's interest in the transaction were disclosed or known to the members
13144 who voted upon such transaction and the transaction was authorized, approved, or
13145 ratified by a majority-in-interest of the disinterested members even if the
13146 disinterested members constitute less than a quorum; however, the transaction
13147 cannot be authorized, approved, or ratified under this subsection solely by a single
13148 member; or

13149 (b) If neither of the conditions provided in paragraph (a) has been satisfied, the
13150 person defending or asserting the validity of a member's conflict of interest transaction or
13151 a manager's conflict of interest transaction ~~described in subsection (3)~~ has the burden of
13152 proving its fairness in a proceeding challenging the validity of the transaction.

13153 . . .

13154

13155 **Commentary to Section 605.04092:**

13156 Changes are clean up changes that conform this statute to the revised s. 607.0832 of the FBCA.

13157 This revised section also eliminates the confusion caused by what appears to be an incorrect cross

13158 reference in subsections (4)(a) and (4)(b).

13159

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13160 605.0410 Records to be kept; rights of member, manager, and person dissociated to
13161 information.

13162 ...

13163 (3) In a manager-managed limited liability company, the following rules apply:

13164 ...

13165 (c) Within 10 days after receiving a demand pursuant to subparagraph (b)2.
13166 ~~(2)(b)(2)~~, the company shall, in a record, inform the member who made the demand of:

13167 1. The information that the company will provide in response to the
13168 demand and when and where the company will provide the information; and

13169 2. The company's reasons for declining, if the company declines to
13170 provide any demanded information.

13171 ...

13172

13173 **Commentary to Section 605.0410(3)(c):**

13174 This change cleans up a glitch in the cross reference contained in subsection (3)(c).

13175

13176 605.0702 Grounds for judicial dissolution.

13177 (1) A circuit court may dissolve a limited liability company:

13178 ...

13179 (b) In a proceeding by a manager or member to dissolve the limited liability company if
13180 it is established that:

13181 1. The conduct of all or substantially all of the company's activities and affairs is
13182 unlawful;

13183 2. It is not reasonably practicable to carry on the company's activities and affairs
13184 in conformity with the articles of organization and the operating agreement;

13185 3. The managers or members in control of the company have acted, are acting, or
13186 are reasonably expected to act in a manner that is illegal or fraudulent;

13187 4. The limited liability company's assets are being misappropriated or wasted,
13188 causing injury to the limited liability company, or in a proceeding by a member, causing
13189 injury to one or more of its members; or

13190 5. The managers or the members of the limited liability company are deadlocked
13191 in the management of the limited liability company's activities and affairs, the members
13192 are unable to break the deadlock, and irreparable injury to the limited liability company is
13193 threatened or being suffered.

13194 (2) (a) If the managers or the members of the limited liability company are deadlocked
13195 in the management of the limited liability company's activities and affairs, the members
13196 are unable to break the deadlock, and irreparable injury to the limited liability company is
13197 threatened or being suffered, if the operating agreement contains a deadlock sale provision
13198 that has been initiated before the time that the court determines that the grounds for judicial
13199 dissolution exist under subparagraph (1)(b)5., then such deadlock sale provision applies to
13200 the resolution of such deadlock instead of the court entering an order of judicial dissolution
13201 or an order directing the purchase of petitioner's interest under s. 605.0706, so long as the
13202 provisions of such deadlock sale provision are thereafter initiated and effectuated in
13203 accordance with the terms of such deadlock sale provision or otherwise pursuant to an
13204 agreement of the members of the company.

13205 (b) As used in this section, the term "deadlock sale provision" means a provision in
13206 an operating agreement which is or may be applicable in the event of a deadlock among
13207 the managers or the members of the limited liability company which the members of the
13208 company are unable to break and which provides for a deadlock breaking mechanism,
13209 including, but not limited to:

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 13210 1. A redemption or a purchase and sale of interests; ~~or~~
- 13211 2. A governance change, among or between members;
- 13212 3. The sale of the company or all or substantially all of the assets of the
- 13213 company; or
- 13214 4. A similar provision that, if initiated and effectuated, breaks the deadlock by
- 13215 causing the transfer of interests, a governance change, or the sale of all or
- 13216 substantially all of the company's assets. ~~A deadlock sale provision in an operating~~
- 13217 ~~agreement which is not initiated and effectuated before the court enters an order of~~
- 13218 ~~judicial dissolution under subparagraph (1)(b)5. or an order directing the purchase~~
- 13219 ~~of petitioner's interest under s. 605.0706 does not adversely affect the rights of~~
- 13220 ~~members and managers to seek judicial dissolution under subparagraph (1)(b)5. or~~
- 13221 ~~the rights of the company or one or more members to purchase the petitioner's~~
- 13222 ~~interest under s. 605.0706. The filing of an action for judicial dissolution on the~~
- 13223 ~~grounds described in subparagraph (1)(b)5. or an election to purchase the~~
- 13224 ~~petitioner's interest under s. 605.0706 does not adversely affect the right of a~~
- 13225 ~~member to initiate an available deadlock sale provision under the operating~~
- 13226 ~~agreement or to enforce a member-initiated or an automatically-initiated deadlock~~
- 13227 ~~sale provision if the deadlock sale provision is initiated and effectuated before the~~
- 13228 ~~court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order~~
- 13229 ~~directing the purchase of petitioner's interest under s. 605.0706.~~
- 13230 (3) A deadlock sale provision in an operating agreement which is not initiated and effectuated
- 13231 before the court enters an order of judicial dissolution under subparagraph (1)(b)5. or an order
- 13232 directing the purchase of petitioner's interest under s. 605.0706, does not adversely affect the rights
- 13233 of members and managers to seek judicial dissolution under subparagraph (1)(b)5. or the rights of
- 13234 the company or one or more members to purchase the petitioner's interest under s. 605.0706. The
- 13235 filing of an action for judicial dissolution on the grounds described in subparagraph (1)(b)5., or an
- 13236 election to purchase the petitioner's interest under s. 605.0706, does not adversely affect the right
- 13237 of a member to initiate an available deadlock sale provision under the operating agreement or to
- 13238 enforce a member-initiated or an automatically-initiated deadlock sale provision if the deadlock
- 13239 sale provision is initiated and effectuated before the court enters an order of judicial dissolution
- 13240 under subparagraph (1)(b)5. or an order directing the purchase of petitioner's interest under s.
- 13241 605.0706.
- 13242

13243 **Commentary to Section 605.0702(1) and new (3), (4) and (5):**

13244 This section makes conforming changes consistent with revised s. 607.1430.

13245 When FRLUCA was originally adopted, a decision was made to postpone including "oppression"
13246 as a ground for judicial dissolution until a decision was made on the subject in the FBCA. In the
13247 bill originally presented to the legislature, oppression of minority members was included as a
13248 ground for judicial dissolution, consistent with the corollary proposed change in s. 607.1430. The
13249 proposal also provided that only a member who owns more than 10% of the outstanding
13250 membership interests could assert this right. RULLCA includes "oppression" as a ground for
13251 judicial dissolution.

13252 During the legislative process, one or more legislators raised concerns about including oppression
13253 of minority members as a ground for judicial dissolution and a decision was made to remove
13254 oppression as a ground for judicial dissolution from the bill. It is anticipated that the Subcommittee
13255 will consider taking this subject up again in a future bill after having more discussion among the
13256 members of our group, as well as interested legislators and others who might have an interest in
13257 this topic.

13258 The last two sentences in subsection (2) have been moved to new subsection (3), consistent with
13259 the structure of the corollary provision in revised s. 607.1430.

13260

13261

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13262 605.0706 Election to purchase instead of dissolution.

13263 (1) In a proceeding initiated by a member of a limited liability company under s.
13264 605.0702(1)(b) ~~to dissolve the company~~, the company may elect, or, if it fails to elect, one or more
13265 other members may elect, to purchase the entire interest of the petitioner in the company at the fair
13266 value of the interest. An election pursuant to this section is irrevocable unless the court determines
13267 that it is equitable to set aside or modify the election.

13268 (2) An election to purchase pursuant to this section may be filed with the court within 90 days
13269 after the filing of the petition by the petitioning member under s. 605.0702(1)(b) ~~or (2)~~ or at such
13270 later time as the court may allow. If the election to purchase is filed, the company shall within 10
13271 days thereafter give written notice to all members, other than the petitioning member. The notice
13272 must describe the interest in the company owned by each petitioning member and must advise the
13273 recipients of their right to join in the election to purchase the petitioning member's interest in
13274 accordance with this section. Members who wish to participate must file notice of their intention
13275 to join in the purchase within 30 days after the effective date of the notice. A member who has
13276 filed an election or notice of the intent to participate in the election to purchase thereby becomes a
13277 party to the proceeding and shall participate in the purchase in proportion to the ownership interest
13278 as of the date the first election was filed unless the members otherwise agree or the court otherwise
13279 directs. After an election to purchase has been filed by the limited liability company or one or more
13280 members, the proceeding under s. 605.0702(1)(b) ~~or (2)~~ may not be discontinued or settled, and
13281 the petitioning member may not sell or otherwise dispose of the interest of the petitioner in the
13282 company unless the court determines that it would be equitable to the company and the members,
13283 other than the petitioner, to authorize such discontinuance, settlement, sale, or other disposition or
13284 the sale is pursuant to a deadlock sale provision described in s. 605.0702(1)(b).

13285 (3) If, within 60 days after the filing of the first election, the parties reach an agreement as to
13286 the fair value and terms of the purchase of the petitioner's interest, the court shall enter an order
13287 directing the purchase of the petitioner's interest upon the terms and conditions agreed to by the
13288 parties, unless the petitioner's interest has been acquired pursuant to a deadlock sale provision
13289 before the order.

13290 (4) If the parties are unable to reach an agreement as provided for in subsection (3), the court,
13291 upon application of a party, ~~may shall~~ stay the proceedings to dissolve under s. 605.0702(1)(b) and
13292 shall, whether or not the proceeding is stayed, determine the fair value of the petitioner's interest
13293 as of the day before the date on which the petition was filed or as of such other date as the court
13294 deems appropriate under the circumstances.

13295 (5) Upon determining the fair value of the petitioner's interest in the company, unless the
13296 petitioner's interest has been acquired pursuant to a deadlock sale provision before the order, the
13297 court shall enter an order directing the purchase upon such terms and conditions as the court deems

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13298 appropriate, which may include: payment of the purchase price in installments, when necessary in
13299 the interests of equity; a provision for security to ensure payment of the purchase price and
13300 additional costs, fees, and expenses as may have been awarded; and, if the interest is to be
13301 purchased by members, the allocation of the interest among those members. In allocating the
13302 petitioner's interest among holders of different classes or series of interests in the company, the
13303 court shall attempt to preserve any ~~the~~ existing distribution of voting rights among holders of
13304 different classes or series insofar as practicable and may direct that holders of any a specific class
13305 or classes or series may not participate in the purchase. Interest may be allowed at the rate and
13306 from the date determined by the court to be equitable; however, if the court finds that the refusal
13307 of the petitioning member to accept an offer of payment was arbitrary or otherwise not in good
13308 faith, payment of interest is not allowed. If the court finds that the petitioning member had probable
13309 grounds for relief under s. 605.0702(1)(b)~~3. or 4.~~, it may award expenses to the petitioning
13310 member, including reasonable fees and expenses of counsel and of experts employed by petitioner.

13311 (6) The ~~Upon~~ entry of an order under subsection (3) or subsection (5) shall be subject to
13312 subsection (8), and the order may not be entered unless the award is determined by the court to be
13313 allowed under subsection (8). In determining compliance with s. 605.0405, the court may rely on
13314 an affidavit from the limited liability company as to compliance with that section as of the
13315 measurement date. Upon entry of an order under subsection (3) or subsection (5), the court shall
13316 dismiss the petition to dissolve the limited liability company under s. 605.1006(1)(b), and the
13317 petitioning member shall no longer have rights or status as a member of the limited liability
13318 company except the right to receive the amounts awarded by the order of the court, which shall be
13319 enforceable in the same manner as any other judgment.

13320 (7) The purchase ordered pursuant to subsection (5) shall ~~must~~ be made within 10 days after
13321 the date the order becomes final ~~unless, before that time, the limited liability company files with~~
13322 ~~the court a notice of its intention to dissolve pursuant to s. 605.0701(2), in which case articles of~~
13323 ~~dissolution for the company must be filed within 50 days thereafter. Upon filing of such articles~~
13324 ~~of dissolution, the limited liability company shall be wound up in accordance with ss. 605.0709-~~
13325 ~~605.0713, and the order entered pursuant to subsection (5) shall no longer be of force or effect~~
13326 ~~except that the court may award the petitioning member reasonable fees and expenses of counsel~~
13327 ~~and experts in accordance with subsection (5), and the petitioner may continue to pursue any claims~~
13328 ~~previously asserted on behalf of the limited liability company.~~

13329 (8) Any award ~~A payment by the limited liability company~~ pursuant to an order under
13330 subsection (3) or subsection (5), other than an award of fees and expenses pursuant to subsection
13331 (5), is subject to s. 605.0405. Unless otherwise provided in the court's order, the effect of a
13332 distribution under s. 605.0405 shall be measured as of the date of the court's order under subsection
13333 (3) or subsection (5).

13334

13335 **Commentary to Section 605.0706:**

13336 The revisions to this section conform this section to the changes made in revised s. 607.1436 of
13337 the FBCA.

13338

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13339 605.0715 Reinstatement

13340 ...

13341 (5) The name of the dissolved limited liability company is not available for assumption or use
13342 by another business entity until 1 year after the effective date of dissolution unless the dissolved
13343 limited liability company provides the department with a record executed as required pursuant to
13344 s. 605.0203 permitting the immediate assumption or use of the name by another ~~limited liability~~
13345 ~~company~~ business entity.

13346 (6) If the name of the dissolved limited liability company has been lawfully assumed in this
13347 state by another business entity, the department shall require the dissolved limited liability
13348 company to amend its articles of organization to change its name before accepting its application
13349 for reinstatement.

13350

13351 **Commentary to Sections 605.0715(5) and 605.0715(6):**

13352 The changes to s. 605.0715(5) and (6) conform this section to revised s. 607.1422 of the FBCA.

13353

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13354 605.0716 Judicial review of denial of reinstatement

13355 (1) If the department denies a limited liability company's application for reinstatement after
13356 administrative dissolution, the department shall serve the company with a notice in a record that
13357 explains the reason or reasons for the denial.

13358 (2) Within 30 days after service of a notice of denial of reinstatement, a limited liability
13359 company may appeal the denial by petitioning the Circuit Court of Leon County ~~the applicable~~
13360 ~~county, as defined in s. 605.0711(15),~~ to set aside the dissolution. The petition must be served on
13361 the department and contain a copy of the department's notice of administrative dissolution, the
13362 company's application for reinstatement, and the department's notice of denial.

13363 (3) The circuit court may order the department to reinstate a dissolved limited liability
13364 company or take other action the court considers appropriate.

13365 (4) The circuit court's final decision may be appealed as in other civil proceedings.

13366

13367 **Commentary to Section 605.0716:**

13368 This section makes changes to conform this section to revised. s. 607.1423 of the FBCA.

13369

13370 605.0801 Direct action by member.

13371 ...

13372 (2) A member maintaining a direct action under this section must plead and prove either:

13373 (a) An actual or threatened injury that is not solely the result of an injury suffered or
13374 threatened to be suffered by the limited liability company; or

13375 (b) An actual or threatened injury resulting from a violation of a separate statutory or
13376 contractual duty owed by the alleged wrongdoer to the member, even if the injury is in
13377 whole or in part the same as the injury suffered or threatened to be suffered by the limited
13378 liability company.

13379

13380 **Commentary to Section 605.0801:**

13381 This section has been modified so that it is consistent with new s. 607.0750 on the topic of when
13382 an action is to be considered a direct action versus a derivative action. The provision brings the
13383 language of this provision into conformity with recent Florida case law on this topic, and
13384 particularly the holdings in Dinuro Investments, LLC v. Camacho, 141 So.3d 731 (Fla. App. 3
13385 Dist. 2014) and Strazzulla, et. al. v. Riverside Banking Company, et. al., 175 So.3d. 879 (Fla.App.4
13386 Dist. 2015).

13387

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13388 605.0803 Proper plaintiff.

13389 A derivative action to enforce a right of a limited liability company may be ~~maintained~~
13390 commenced only by a person who is a member at the time the action is commenced and:

13391 (1) Was a member when the conduct giving rise to the action occurred; or

13392 (2) Whose status as a member devolved on the person by operation of law or pursuant to
13393 the terms of the operating agreement from a person who was a member when ~~at the time of the~~
13394 conduct giving rise to the action occurred.

13395

13396 **Commentary to Section 605.0803:**

13397 The changes to this section are derived from the language used in s. 607.0401(Standing) of the
13398 revised FBCA.

13399

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13400 605.0903 Effect of a certificate of authority

13401 ...

13402 (2) The filing by the department of an application for a certificate of authority means
13403 ~~authorizes~~ the foreign limited liability company that filed ~~files~~ the application to transact business
13404 in this state has obtained a certificate of authority to transact business in this state and is authorized
13405 to transact business in this state, subject, however, to the right of the department to suspend or
13406 revoke the certificate of authority as provided in this chapter.

13407

13408 **Commentary to Section 605.0903:**

13409 The language in subsection (2) is revised to more clearly identify the effect of an acceptance of a
13410 filing by the Department of State. It follows revised s. 607.1505(2) of the FBCA.

13411

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13412 605.0904 Effect of failure to have a certificate of authority.

13413 . . .

13414 (3) A court may stay a proceeding commenced by a foreign limited liability company or its
13415 successor or assignee until it determines whether the foreign limited liability company or its
13416 successor requires a certificate of authority. If it so determines, the court may further stay the
13417 proceeding until the foreign limited liability company or its successor has obtained ~~obtains the a~~
13418 certificate of authority to transact business in this state.

13419 (4) The failure of a foreign limited liability company to have a certificate of authority to
13420 transact business in this state does not impair the validity of any contract, deed, mortgage, security
13421 interest, a contract or act of the foreign limited liability company or prevent the foreign limited
13422 liability company from defending an action or proceeding in this state.

13423 . . .

13424

13425 **Commentary to Section 605.0904(3) and s. 605.0904(4):**

13426 Changes conform these subsections to the corollary provisions of revised s. 607.1502 of the
13427 FBCA.

13428

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13429 605.0906 Noncomplying name of foreign limited liability company.

13430 (1) A foreign limited liability company whose name is unavailable under or whose name does
13431 not otherwise comply with s. 605.0112 ~~may~~ shall use an alternate name that complies with s.
13432 605.0112 to transact business in this state. An alternate name adopted for use in this state shall be
13433 cross-referenced to the actual name of the foreign limited liability company in the records of the
13434 department. If the actual name of the foreign limited liability company subsequently becomes
13435 available in this state or the foreign limited liability company chooses to change its alternate name,
13436 a copy of the record approving the change by its members, managers, or other persons having the
13437 authority to do so, and executed as required pursuant to s. 605.0203, shall be delivered to the
13438 department for filing.

13439 . . .

13440 (4) If a foreign limited liability company authorized to transact business in this state changes
13441 its name to one that does not comply with s. 605.0112, it may not thereafter transact business in
13442 this state until it complies with subsection (1) and obtains an amended certificate of authority under
13443 s. 605.0907.

13444

13445 **Commentary to Section 605.0906:**

13446 The modification in subsection (1) makes this section consistent with revised s. 607.1506(1) of
13447 the FBCA.

13448 The modification to subsection (4) includes a reference to the section dealing with an amended
13449 certificate of authority. It is consistent with subsection (4) of revised s. 607.1506 of the FBCA.

13450

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13451 605.0907 Amendment to certificate of authority.

13452 ...

13453 (2) The amendment must be filed within ~~30~~ 90 days after the occurrence of a change described
13454 in subsection (1), must be signed by an authorized representative of the foreign limited liability
13455 company, and must state the following:

13456 ...

13457 (4) The requirements of s. 605.0902~~(2)~~ for obtaining an original certificate of authority apply
13458 to obtaining an amended certificate under this section unless the ~~Secretary of State or other~~ official
13459 having custody of the foreign limited liability company's publicly filed records in its jurisdiction
13460 of formation did not require an amendment to effectuate the change on its records.

13461

13462 **Commentary to Section 605.0907:**

13463 The change in subsection (2) rationalizes this provision with the 90 day provision in revised. s
13464 607.1504(2) of the FBCA.

13465 The current reference to subsection (4) in to subsection (2) of s. 605.0907 has been removed,
13466 consistent with the approach set forth in subsection (3) of s. 607.1504 of the FBCA. The reference
13467 is to the entire statutory provision (s. 605.0902) and not just to subsection (4).

13468

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13469 605.0908 Revocation of certificate of authority.

13470 (1) A certificate of authority of a foreign limited liability company to transact business in
13471 this state may be revoked by the department if:

13472 (a) The foreign limited liability company does not deliver its annual report to the
13473 department by 5 p.m. Eastern Time on the third Friday in September of each year.;

13474 (b) The foreign limited liability company does not pay a fee or penalty due to the
13475 department under this chapter.;

13476 (c) The foreign limited liability company does not appoint and maintain a
13477 registered agent as required under s. 605.0113.;

13478 (d) The foreign limited liability company does not deliver for filing a statement of
13479 a change under s. 605.0114 within 30 days after a change in the name or address of the
13480 agent has occurred ~~in the name or address of the agent~~, unless, within 30 days after the
13481 change occurred, either:

13482 1. The registered agent files a statement of change under s. 605.0116; or

13483 2. The change was made in accordance with s. 605.0114(4). ~~or s.~~
13484 ~~605.0907(1)(d)~~;

13485 (e) The foreign limited liability company has failed to amend its certificate of
13486 authority to reflect a change in its name on the records of the department or its
13487 jurisdiction of formation.;

13488 (f) The department receives a duly authenticated certificate from the official
13489 having custody of records in the company's jurisdiction of formation stating that it has
13490 been dissolved or is no longer active on the official's records.;

13491 (g) The foreign limited liability company's period of duration has expired.;

13492 (h) A member, manager, or agent of the foreign limited liability company signs a
13493 document that the member, manager, or agent knew was false in a material respect with
13494 the intent that the document be delivered to the department for filing.;

13495 (i) The foreign limited liability company has failed to answer truthfully and fully,
13496 within the time prescribed in s. 605.1104, interrogatories propounded by the department.

13497

13498 **Commentary to Section 605.0908(1)(d):**

13499 Changes conform this subsection to revised s. 607.1530(1) of the FBCA.

13500

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13501 605.09091 Judicial review of denial of reinstatement.

13502 (1) If the department denies a foreign limited liability company's application for
13503 reinstatement after revocation of its certificate of authority, the department shall serve the foreign
13504 limited liability company, pursuant to s. 605.0117(7), with a written notice that explains the
13505 reason or reasons for the denial.

13506 (2) Within 30 days after service of a notice of denial of reinstatement, a foreign limited
13507 liability company may appeal the denial by petitioning the Circuit Court of Leon County to set
13508 aside the revocation. The petition must be served on the department and must contain a copy of
13509 the department's notice of revocation, the foreign limited liability company's application for
13510 reinstatement, and the department's notice of denial.

13511 (3) The circuit court may order the department to reinstate the certificate of authority of the
13512 foreign limited liability company or take other action the court considers appropriate.

13513 (4) The circuit court's final decision may be appealed as in other civil proceedings.

13514

13515 **Commentary to Section 605.09091:**

13516 This section has been added to FRLUCA as new s. 605.09091. It is based on revised s. 607.1532
13517 of the FBCA.

13518

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13519 605.0910 Withdrawal and cancellation of certificate of authority.

13520 (1) To cancel its certificate of authority to transact business in this state, a foreign limited
13521 liability company must deliver to the department for filing a notice of withdrawal of certificate of
13522 authority. The certificate of authority is canceled when the notice becomes effective pursuant to s.
13523 605.0207. The notice of withdrawal of certificate of authority must be signed by an authorized
13524 representative and state the following:

13525 (a~~1~~) The name of the foreign limited liability company as it appears on the records
13526 of the department.

13527 (b~~2~~) The name of the foreign limited liability company's jurisdiction of formation.

13528 (c~~3~~) The date the foreign limited liability company was authorized to transact
13529 business in this state.

13530 (d~~4~~) That the foreign limited liability company is withdrawing its certificate of
13531 authority in this state.

13532 (e) That the foreign limited liability company revokes the authority of its registered
13533 agent to accept service on its behalf and appoints the secretary of state as its agent for service
13534 of process based on a cause of action arising during the time the foreign limited liability
13535 company was authorized to transact business in this state.

13536 (f) A mailing address to which the department may mail a copy of any process
13537 served on the secretary of state under paragraph (e).

13538 (g) A commitment to notify the department in the future of any change in its mailing
13539 address.

13540 (2) After the withdrawal of the foreign limited liability company is effective, service of
13541 process on the secretary of state under this section is service on the foreign limited liability
13542 company. Upon receipt of the process, the department shall mail a copy of the process to the
13543 foreign limited liability company at the mailing address set forth under paragraph (1)(f).

13544

13545 **Commentary to Section 605.0910:**

13546 Revisions to this section are based on changes to s. 607.1520 of the FBCA.

13547

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13548 605.0911 Withdrawal deemed on conversion to domestic filing entity.

13549 A registered foreign limited liability company authorized to transact business in this state
13550 that converts to a domestic limited liability company or to another domestic entity that is organized,
13551 incorporated, registered or otherwise formed through the delivery of a record to the department for
13552 filing is deemed to have withdrawn its certificate of authority on the effective date of the
13553 conversion.

13554

13555

13556 **Commentary to Section 605.0911:**

13557 Revisions to this section are based on changes to s. 607.1521 of the FBCA.

13558

FINAL STATUTE AS ADOPTED
(With Commentary)

13559 605.0912 Withdrawal on dissolution, merger, or conversion to nonfiling entity.

13560 (1) A registered foreign limited liability company that has dissolved and completed winding
13561 up, has merged into a foreign entity that is not authorized to transact business ~~registered~~ in this
13562 state, or has converted to a domestic or foreign entity that is not organized, incorporated, registered
13563 or otherwise formed through the public filing of a record, shall deliver a notice of withdrawal of
13564 certificate of authority to the department for filing in accordance with s. 605.0910.

13565 (2) After a withdrawal under this section of a foreign limited liability company ~~entity~~ that has
13566 converted to another type of entity is effective, service of process in any action or proceeding based
13567 on a cause of action arising during the time the foreign limited liability company was authorized
13568 to transact ~~registered to do~~ business in this state may be made pursuant to s. 605.0117.

13569

13570 **Commentary to Section 605.0912:**

13571 Minor clean-up changes make this provision consistent with the revised version of s. 607.1522 of
13572 the FBCA.

13573

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13574 605.1061 Appraisal rights; definitions

13575 The following definitions apply to this section and to ss. 605.1006 and 605.1062-605.1072:

13576 ...

13577 (5) "Fair value" means the value of the member's membership interest determined:

13578 (a) Immediately before the ~~effectiveness~~ effectuation of the appraisal event to
13579 which the member objects;

13580 (b) Using customary and current valuation concepts and techniques generally
13581 employed for similar businesses in the context of the transaction requiring appraisal,
13582 excluding any appreciation or depreciation in anticipation of the transaction to which the
13583 member objects, unless exclusion would be inequitable to the limited liability company
13584 and its remaining members; and

13585 (c) Without discounting for lack of marketability or minority status.

13586 ...

13587

13588 **Commentary to Section 605.1061(5)(a):**

13589 This change conforms this definition to the corollary definition in s. 607.1301(5)(a).

13590

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13591 605.1063 Notice of appraisal rights.

13592 ...

13593 (3) If the appraisal event is to be approved by written consent of the members pursuant to s.
13594 605.04073 ~~other than by a members' meeting:~~

13595 (a) Written notice that appraisal rights are, are not, or may be available must be sent
13596 to each member from whom a consent is solicited at the time consent of such member is first
13597 solicited, and if the limited liability company has concluded that appraisal rights are or may be
13598 available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany such written notice;
13599 or

13600 (b) Written notice that appraisal rights are, are not, or may be available must be
13601 delivered, at least 10 days before the appraisal event becomes effective, to all nonconsenting
13602 and nonvoting members, and, if the limited liability company has concluded that appraisal
13603 rights are or may be available, a copy of ss. 605.1006 and 605.1061-605.1072 must accompany
13604 such written notice.

13605 ...

13606

13607 **Commentary to Section 605.1063(3):**

13608 This change conforms this section to revised s. 607.1320(3).

13609

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13610 605.1072 Other remedies limited.

13611 (1) A member entitled to appraisal rights under this chapter may not challenge a~~The~~
13612 ~~legality of a proposed or completed appraisal event for which appraisal rights are available unless~~
13613 ~~such completed may not be contested, and the appraisal event may not be enjoined, set aside, or~~
13614 ~~rescinded, in a legal or equitable proceeding by a member after the members have approved the~~
13615 ~~appraisal event was either:-~~

13616 ~~(2) Subsection (1) does not apply to an appraisal event that:~~

13617 (a) ~~Was~~ Not authorized and approved in accordance with the applicable
13618 provisions of this chapter, the organic rules of the limited liability company, or the
13619 resolutions of the members authorizing the appraisal event; ~~or~~

13620 (b) ~~Was~~ Procured as a result of fraud, a material misrepresentation, or an omission
13621 of a material fact that is necessary to make statements made, in light of the circumstances
13622 in which they were made, not misleading.

13623 (2) Nothing in this section operates to override or supersede s. 605.04092.

13624

13625 **Commentary to Section 605.1072:**

13626 This change conforms this section to revised s. 607.1340.

13627

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13628 607.504 Election of social purpose corporation status.

13629 (1) An existing corporation may become a social purpose corporation under this part by
13630 amending its articles of incorporation to include a statement that the corporation is a social purpose
13631 corporation under this part. The amendment must be adopted by the minimum status vote.

13632 (2) A plan of merger, domestication, conversion, or share exchange must be adopted by
13633 the minimum status vote if an entity that is not a social purpose corporation is a party to the merger,
13634 domestication, or conversion or if the exchanging entity in a share exchange and the surviving,
13635 new, or resulting entity is, or will be, a social purpose corporation.

13636 (3) If an entity elects to become a social purpose corporation by amendment of the
13637 articles of incorporation or by a merger, conversion, or share exchange, the shareholders of the
13638 entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1340 ~~ss. 607.1301-~~
13639 ~~607.1333~~.

13640

13641 **Commentary to Section 607.504:**

13642 Makes clarifying changes to s. 607.504 to add "domestications" as transactions in which a social
13643 purpose corporation may participate. Also clarifies the "appraisal rights" provisions in Chapter 607
13644 that are applicable to mergers, domestications, conversions or share exchanges of social purpose
13645 corporations.

13646

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13647 607.604 Election of benefit corporation status.

13648 (1) An existing corporation may become a benefit corporation under this part by
13649 amending its articles of incorporation to include a statement that the corporation is a benefit
13650 corporation under this part. The amendment must be adopted by the minimum status vote.

13651 (2) A plan of merger, domestication, conversion, or share exchange must be adopted by
13652 the minimum status vote if an entity that is not a benefit corporation is a party to a merger,
13653 domestication, or conversion or if the exchanging entity in a share exchange and the surviving,
13654 new, or resulting entity is, or will be, a benefit corporation.

13655 (3) If an entity elects to become a benefit corporation by amendment of the articles of
13656 incorporation or by a merger, domestication, conversion, or share exchange, the shareholders of
13657 the entity are entitled to appraisal rights under and pursuant to ss. 607.1301-607.1340 ~~ss. 607.1301-~~
13658 ~~607.1333~~.

13659

13660 **Commentary to Section 607.604:**

13661 Makes clarifying changes to s. 607.604 to add "domestications" as transactions in which a benefit
13662 corporation may participate. Also clarifies the "appraisal rights" provisions in Chapter 607 that are
13663 applicable to mergers, domestications, conversions or share exchanges of benefit corporations.

13664

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 13665 617.0501 Registered office and registered agent.
- 13666 (1) Each corporation shall have and continuously maintain in this state:
- 13667 (a) A registered office which may be the same as its principal office; and
- 13668 (b) A registered agent, who may be either:
- 13669 1. An individual who resides in this state whose business office is identical with
- 13670 such registered office; or
- 13671 2. Another domestic entity that is an authorized entity whose business address is
- 13672 identical to the address of the registered office, or a foreign entity authorized to transact
- 13673 business in this state that is an authorized entity and whose business address is identical to
- 13674 the address of ~~A corporation for profit or not for profit, authorized to transact business or~~
- 13675 ~~conduct its affairs in this state, having a business office identical with~~ the registered office.
- 13676 ...
- 13677 (5) A corporation may not prosecute or maintain any action in a court in this state until the
- 13678 corporation complies with this section or s. 617.1508, as applicable, ~~and~~ pays to the Department
- 13679 of State any amounts required under this chapter, and to the extent ordered by a court of competent
- 13680 jurisdiction, pays to the Department of State a penalty of \$5 for each day it has failed to so comply
- 13681 or \$500, whichever is less.
- 13682 (6) For purposes of this section, the term "authorized entity" means:
- 13683 (a) A corporation for profit;
- 13684 (b) A limited liability company;
- 13685 (c) A limited liability partnership; or
- 13686 (d) A limited partnership, including a limited liability limited partnership.
- 13687

13688 **Commentary to Section 617.0501:**

13689 Changes add the concept of authorized entity to Chapter 617 as a subtype of entities that are
13690 permitted to act as registered agents in this state. This change substantively conforms this section
13691 to revised s. 607.0501 of the FBCA.

13692

FINAL STATUTE AS ADOPTED
(With Commentary)

13693 617.05015 Reserved name.

13694 (1) A person may reserve the exclusive use of the name of a corporation, including an
13695 alternate name for a foreign corporation whose name is not available, by delivering an application
13696 to the department for filing. The application must set forth the name and address of the applicant
13697 and the name proposed to be reserved. If the department finds that the name of the corporation
13698 applied for is available, it shall reserve the name for the applicant's exclusive use for a
13699 nonrenewable 120-day period.

13700 (2) The owner of a reserved name of a corporation may transfer the reservation to another
13701 person by delivering to the department a signed notice of the transfer that states the name and
13702 address of the transferee.

13703 (3) The department may revoke any reservation if, after a hearing, it finds that the application
13704 therefor or any transfer thereof was not made in good faith.

13705

13706 **Commentary to Section 617.0502:**

13707 This section conforms to new s. 607.04021 and allows for the reservation of the name of a not-for-
13708 profit corporation.

13709

**FINAL STATUTE AS ADOPTED
(With Commentary)**

- 13710 617.1507 Registered office and registered agent of foreign corporation.
- 13711 (1) Each foreign corporation authorized to conduct its affairs in this state must continuously
13712 maintain in this state:
- 13713 (a) A registered office that may be the same as any of the places it conducts its affairs;
13714 and
- 13715 (b) A registered agent, who may be:
- 13716 1. An individual who resides in this state and whose business office is identical
13717 with the registered office;
- 13718 2. Another domestic entity that is an authorized entity whose business address is
13719 identical to the address of the registered office; or
- 13720 3. A foreign entity authorized to transact business in this state that is an authorized
13721 entity and whose business address is identical to the address of ~~A domestic corporation for~~
13722 ~~profit or not for profit the business office of which is identical with the registered office;~~
13723 ~~or~~
- 13724 ~~3. A foreign corporation for profit or not for profit authorized to transact business~~
13725 ~~or conduct its affairs in this state the business office of which is identical with the registered~~
13726 ~~office.~~
- 13727 (2) A registered agent appointed pursuant to this section or a successor registered agent
13728 appointed pursuant to s. 617.1508 on whom process may be served shall each file a statement in
13729 writing with the Department of State, in such form and manner as shall be prescribed by the
13730 department, accepting the appointment as a registered agent simultaneously with his or her being
13731 designated. Such statement of acceptance shall state that the registered agent is familiar with, and
13732 accepts, the obligations of that position.
- 13733 (3) For purposes of this section, "authorized entity" means:
- 13734 (a) A corporation for profit;
- 13735 (b) A limited liability company;
- 13736 (c) A limited liability partnership; or
- 13737 (d) A limited partnership, including a limited liability limited partnership.
- 13738

13739 **Commentary to Section 617.1507:**

13740 Changes add the concept of authorized entity to Chapter 617 as a subtype of entities that are
13741 permitted to act as registered agents in this state. This change substantively conforms this
13742 section to revised s. 607.1507 of the FBCA.

13743

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13744 621.12 Identification with individual shareholders or individual members.

13745 (1) The name of a corporation or limited liability company organized under this act may
13746 contain the last names of some or all of the individual shareholders or individual members and
13747 may contain the last names of retired or deceased former individual shareholders or individual
13748 members of the corporation, limited liability company, a predecessor corporation or limited
13749 liability company, or partnership.

13750 (2) The name shall also contain:

13751 (a) The word "chartered"; or

13752 (b) 1. In the case of a professional corporation, the words "professional association,"
13753 or the abbreviation "P.A." or the designation "PA"; or

13754 2. In the case of a professional limited liability company formed before January 1,
13755 2014, the words "professional limited company" or "professional limited liability
13756 company," the abbreviation "P.L." or "P.L.L.C." or the designation "PL" or "PLLC," in
13757 lieu of the words "limited company" or "limited liability company," or the abbreviation
13758 "L.C." or "L.L.C." or the designation "LC" or "LLC" as otherwise required under s.
13759 605.0112 or former s. 608.406.

13760 3. In the case of a professional limited liability company formed on or after January
13761 1, 2014, the words "professional limited liability company," the abbreviation "P.L.L.C."
13762 or the designation "PLLC," in lieu of the words "limited liability company," or the
13763 abbreviation "L.L.C." or the designation "LLC" as otherwise required under s. 605.0112.

13764 (3) In the case of a corporation, the use of the word "company," "corporation," or
13765 "incorporated" or any other word, abbreviation, affix, or prefix indicating that it is a corporation
13766 in the corporate name of a corporation organized under this act, other than the word "chartered" or
13767 the words "professional association" or the abbreviation "P.A.," is specifically prohibited.

13768 (4) It shall be permissible, however, for the corporation or limited liability company to render
13769 professional services and to exercise its authorized powers under a name which is identical to its
13770 name or contains any one or more of the last names of any shareholder or member included in such
13771 name except that the word "chartered," the words "professional association," "professional limited
13772 company," or "professional limited liability company," the abbreviations "P.A.," "P.L.," or
13773 "P.L.L.C.," or the designation "PA," "PL," or "PLLC" may be omitted, provided that the
13774 corporation or limited liability company has first registered the name to be so used in the manner
13775 required for the registration of fictitious names.

13776

13777 **Commentary to Section 621.12:**

13778 This section makes a change to be clear that the use of either the abbreviation P.A. or the
13779 designation PA are sufficient to reflect that the entity is a professional association.

13780

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13781 620.1108 Name.

13782 (1) The name of a limited partnership may contain the name of any partner.

13783 (2) The name of a limited partnership that is not a limited liability limited partnership must
13784 contain the phrase "limited partnership" or "limited" or the abbreviation "L.P." or "Ltd." or the
13785 designation "LP," and may not contain the phrase "limited liability limited partnership" or the
13786 abbreviation "L.L.L.P." or the designation "LLLP," as will clearly indicate that it is a limited
13787 partnership instead of a natural person, corporation, limited liability company, or other business
13788 entity.

13789 (3) The name of a limited liability limited partnership must contain the phrase "limited
13790 liability limited partnership" or the abbreviation "L.L.L.P." or designation "LLLP," as will
13791 clearly indicate that it is a limited liability limited partnership instead of a natural person or other
13792 business entity, except that a limited liability limited partnership organized prior to January 1,
13793 2006 the effective date of this act that was is using an abbreviation or designation permitted
13794 under prior law shall be entitled to continue using such abbreviation or designation until its
13795 dissolution.

13796 (4) The name of a limited partnership must be distinguishable in the records of the
13797 Department of State from the names of all other entities or filings that are on file with the
13798 Department of State, except fictitious name registrations pursuant to s. 865.09, general
13799 partnership registrations pursuant to s. 620.8105, and limited liability partnership statements
13800 pursuant to s. 620.9001 which are organized, registered, or reserved under the laws of this state;
13801 however, a limited partnership or a limited liability limited partnership may register under a
13802 name that is not otherwise distinguishable on the records of the Department of State with the
13803 written consent of the other entity if the consent is filed with the Department of State at the time
13804 of registration of such name and if such name is not identical to the name of the other entity. A
13805 name that is different from the name of another entity or filing due to any of the following is not
13806 considered distinguishable:

13807 (a) A suffix.

13808 (b) A definite or indefinite article.

13809 (c) The word "and" and the symbol "&."

13810 (d) The singular, plural, or possessive form of a word.

13811 (e) ~~A recognized abbreviation of a root word.~~

13812 (f) A punctuation mark or a symbol.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13813 (5) Subject to s. 620.1905, this section applies to any foreign limited partnership transacting
13814 business in this state, having a certificate of authority to transact business in this state, or applying
13815 for a certificate of authority.

13816 (6) A limited partnership or a limited liability limited partnership in existence before January
13817 1, 2020, that has a name that does not clearly indicate that it is a limited partnership or a limited
13818 liability limited partnership instead of a natural person, corporation, limited liability company, or
13819 other business entity may continue using its name until it dissolves or amends its name in the
13820 records of the Department of State.

13821

13822 **Commentary to Section 620.1108:**

13823 The changes made in subsections (2), (3) and (4) are changes made to conform this section to the
13824 changes made in the proposed version of s. 607.0401 of the FBCA. The addition of subsection (6)
13825 is a grandfathering provision for names that are being used when the proposed changes become
13826 effective and that are not in conformity with this provision as modified.

13827

FINAL STATUTE AS ADOPTED
(With Commentary)

13828 620.11085 Reserved name.

13829 (1) A person may reserve the exclusive use of the name of a limited partnership,
13830 including an alternate name for a foreign limited partnership whose name is not available, by
13831 delivering an application to the Department of State for filing. The application must set forth the
13832 name and address of the applicant and the name proposed to be reserved. If the department finds
13833 that the name of the limited partnership applied for is available, it must reserve the name for the
13834 applicant's exclusive use for a nonrenewable 120-day period.

13835 (2) The owner of a reserved name of a limited partnership may transfer the reservation to
13836 another person by delivering to the Department of State a signed notice of the transfer that states
13837 the name and address of the transferee.

13838 (3) The Department of State may revoke any reservation if, after a hearing, it finds that the
13839 application therefor or any transfer thereof was not made in good faith.

13840

13841 **Commentary to Section 620.11085:**

13842 This section conforms to new s. 607.04021 and allows for the reservation of the name of a limited
13843 partnership.

13844

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13845 865.09 Fictitious name registration.

13846

13847 ...

13848

13849 (14) PROHIBITION.—A fictitious name registered as provided in this section may not
13850 contain the following words, abbreviations, or designations:

13851

13852 (a) "Corporation," "incorporated," "Corp.," or "Inc.," unless the person or
13853 business for which the name is registered is incorporated or has obtained a certificate of
13854 authority to transact business in this state pursuant to chapter 607 or chapter 617.

13855

13856 (b) "Limited partnership," "limited liability limited partnership," "LP," "L.P.,"
13857 "LLLP," or "L.L.L.P.," unless the person or business for which the name is registered is
13858 organized as a limited partnership or has obtained a certificate of authority to transact
13859 business in this state pursuant to ss. 620.1101-620.2205.

13860

13861 (c) "Limited liability partnership," "LLP," or "L.L.P.," unless the person or
13862 business for which the name is registered is registered as a limited liability partnership or
13863 has obtained a certificate of authority to transact business in this state pursuant to s.
13864 620.9102.

13865

13866 (d) "Limited liability company," "LLC," or "L.L.C.," unless the person or
13867 business for which the name is registered is organized as a limited liability company or
13868 has obtained a certificate of authority to transact business in this state pursuant to chapter
13869 605.

13870

13871 (e) "Professional association," "PA," "P.A.," or "chartered," unless the person or
13872 business for which the name is registered is organized as a professional corporation
13873 pursuant to chapter 621, or is organized as a professional corporation pursuant to a
13874 similar law of another jurisdiction and has obtained a certificate of authority to transact
13875 business in this state pursuant to chapter 607.

13876

13877 (f) "Professional limited liability company," "PLLC," "P.L.L.C.," "PL," or
13878 "P.L.," unless the person or business for which the name is registered is organized as a
13879 professional limited liability company pursuant to chapter 621, or is organized as a
13880 professional limited liability company pursuant to a similar law of another jurisdiction
13881 and has obtained a certificate of authority to transact business in this state pursuant to
13882 chapter 605.

13883

13884 ...

13885

13886 **Commentary to Section 865.09(14):**

13887 This amendment makes a conforming change to s. 865.09(14)(e) to reflect the corresponding
13888 change made in s. 621.12.

13889

SECTIONS ADDED TO THE BILL DURING THE BILL DRAFTING PROCESS
PRIMARILY TO MAKE CROSS REFERENCE CORRECTIONS

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605.1025 Articles of merger.

...

(6) A limited liability company is not required to deliver articles of merger for filing pursuant to subsection (1) if the limited liability company is named as a merging entity or surviving entity in articles of merger or a certificate of merger filed for the same merger in accordance with s. 607.1105 ~~s. 607.1109~~, s. 617.1108, s. 620.2108 (3), or s. 620.8918 (3), and if such articles of merger or certificate of merger substantially comply with the requirements of this section. In such a case, the other articles of merger or certificate of merger may also be used for purposes of subsection (5).

605.1035 Articles of interest exchange.

...

(5) A limited liability company is not required to deliver articles of interest exchange for filing pursuant to subsection (1) if the domestic limited liability company is named as an acquired entity or as an acquiring entity in the articles of share exchange filed for the same interest exchange in accordance with s. 607.1105 ~~s. 607.1105(1)~~ and if such articles of share exchange substantially comply with the requirements of this section.

617.0302 Corporate Powers.

Every corporation not for profit organized under this chapter, unless otherwise provided in its articles of incorporation or bylaws, shall have power to:

...

(16) Merge with other corporations or other business eligible entities identified in s. 607.1101 ~~s. 607.1108 (1)~~, both for profit and not for profit, domestic and foreign, if the surviving corporation or other surviving business eligible entity is a corporation not for profit or other eligible business entity that has been organized as a not-for-profit entity under a governing statute or other applicable law that permits such a merger.

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13921 617.0831 Indemnification and liability of officers, directors, employees, and agents.

13922 Except as provided in s. 607.0834, s. 607.0831 and ss. 607.0850-607.0859 ~~s. 607.0850~~ apply
13923 to a corporation organized under this act and a rural electric cooperative organized under chapter
13924 425. Any reference to “directors” in those sections includes the directors, managers, or trustees of
13925 a corporation organized under this act or of a rural electric cooperative organized under chapter
13926 425. However, the term “director” as used in s. 607.0831 and ss. 607.0850-607.0859 ~~ss.~~
13927 ~~607.0831 and 607.0850~~ does not include a director appointed by the developer to the board of
13928 directors of a condominium association under chapter 718, a cooperative association under chapter
13929 719, a homeowners’ association defined in s. 720.301, or a timeshare managing entity under
13930 chapter 721. Any reference to “shareholders” in those sections includes members of a corporation
13931 organized under this act and members of a rural electric cooperative organized under chapter 425.

13932

13933 617.1102 Limitation on merger.

13934 A corporation not for profit organized under this chapter may merge with one or more other
13935 business eligible entities, as identified in s. 607.1101(1) ~~s. 607.1108(1)~~, only if the surviving entity
13936 of such merger is a corporation not for profit or other eligible business entity that has been
13937 organized as a not-for-profit entity under a governing statute or other applicable law that allows
13938 such a merger.

13939

13940 617.1108 Merger of domestic corporation and other business entities.

13941 (1) Subject to s. 617.0302 (16) and other applicable provisions of this chapter, ss. 607.1101,
13942 607.1103, 607.1105, 607.1106, and 607.1107 ~~ss. 607.1108, 607.1109, and 607.11101, and s.~~
13943 ~~607.11101~~ shall apply to a merger involving a corporation not for profit organized under this act
13944 and one or more other eligible business entities identified in s. 607.1108(1).

13945 (2) A domestic corporation not for profit organized under this chapter is not required to file
13946 articles of merger pursuant to this section if the corporation not for profit is named as a party or
13947 constituent organization in articles of merger or a certificate of merger filed for the same merger
13948 in accordance with s. 605.1025, s. 607.1105 ~~s. 607.1109~~, s. 620.2108(3), or s. 620.8918(1) and (2).
13949 In such a case, the other articles of merger or certificate of merger may also be used for purposes
13950 of subsection (3).

13951 (3) A copy of the articles of merger or certificate of merger, certified by the Department of
13952 State, may be filed in the office of the official who is the recording officer of each county in this
13953 state in which real property of a party to the merger, other than the surviving entity, is situated.

13954

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13955 620.2104 Filings required for conversion; effective date.

13956 (1) After a plan of conversion is approved:

13957 ...

13958 (c) A converting limited partnership is not required to file a certificate of conversion
13959 pursuant to paragraph (a) if the converting limited partnership files articles of conversion or
13960 a certificate of conversion that substantially complies with the requirements of this section
13961 pursuant to s. 605.1045, s. 607.1105 ~~s. 607.1115~~, or s. 620.8914(1)(b) and contains the
13962 signatures required by this chapter. In such a case, the other certificate of conversion may also
13963 be used for purposes of s. 620.2105(4).

13964

13965 620.2108 Filings required for merger; effective date.

13966 ...

13967 (3) Each constituent limited partnership shall deliver the certificate of merger for filing in
13968 the Department of State unless the constituent limited partnership is named as a party or constituent
13969 organization in articles of merger or a certificate of merger filed for the same merger in accordance
13970 with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s. 620.8918(1) and (2) and such
13971 articles of merger or certificate of merger substantially complies with the requirements of this
13972 section. In such a case, the other articles of merger or certificate of merger may also be used for
13973 purposes of s. 620.2109(3).

13974

13975 620.8918 Filings required for merger; effective date.

13976 ...

13977 (3) Each domestic constituent partnership shall deliver the certificate of merger for filing
13978 with the Department of State, unless the domestic constituent partnership is named as a party or
13979 constituent organization in articles of merger or a certificate of merger filed for the same merger
13980 in accordance with s. 605.1025, s. 607.1105 ~~s. 607.1109(1)~~, s. 617.1108, or s. 620.2108(3). The
13981 articles of merger or certificate of merger must substantially comply with the requirements of this
13982 section. In such a case, the other articles of merger or certificate of merger may also be used for
13983 purposes of s. 620.8919(3). Each domestic constituent partnership in the merger shall also file a
13984 registration statement in accordance with s. 620.8105(1) if it does not have a currently effective
13985 registration statement filed with the Department of State.

13986

**FINAL STATUTE AS ADOPTED
(With Commentary)**

13987 662.150 Domestication of a foreign family trust company.

13988 (1) A foreign family trust company lawfully organized and currently in good standing with
13989 the state regulatory agency in the jurisdiction where it is organized may become domesticated in
13990 this state by:

13991 (a) Filing with the Department of State articles a certificate of domestication and
13992 articles of incorporation in accordance with and subject to s. 607.11922 ~~s. 607.1801~~ or by
13993 filing articles of conversion in accordance with s. 605.1045 or s. 607.11933; and

13994 (b) Filing an application for a license to begin operations as a licensed family trust
13995 company in accordance with s. 662.121, which must first be approved by the office, or by
13996 filing the prescribed form with the office to register as a family trust company to begin
13997 operations in accordance with s. 662.122.

13998 ...

13999

14000 331.355 Use of name; ownership rights to intellectual property.

14001 (1) (a) The corporate name of a corporation incorporated or authorized to transact
14002 business in this state, or the name of any person or business entity transacting business in
14003 this state, may not use the words “Space Florida,” “Florida Space Authority,” “Florida
14004 Aerospace Finance Corporation,” “Florida Space Research Institute,” “spaceport Florida,”
14005 or “Florida spaceport” in its name unless the Space Florida board of directors gives written
14006 approval for such use.

14007 (b) The Department of State may dissolve, pursuant to s. 607.1420 ~~s. 607.1421~~,
14008 any corporation that violates paragraph (a).

14009

14010 339.12 Aid and contributions by governmental entities for department projects; federal aid.

14011 ...

14012 (4) (a) Prior to accepting the contribution of road bond proceeds, time warrants, or
14013 cash for which reimbursement is sought, the department shall enter into agreements with
14014 the governing body of the governmental entity for the project or project phases in
14015 accordance with specifications agreed upon between the department and the governing body
14016 of the governmental entity. The department in no instance is to receive from such
14017 governmental entity an amount in excess of the actual cost of the project or project phase.
14018 By specific provision in the written agreement between the department and the governing
14019 body of the governmental entity, the department may agree to reimburse the governmental

**FINAL STATUTE AS ADOPTED
(With Commentary)**

14020 entity for the actual amount of the bond proceeds, time warrants, or cash used on a highway
14021 project or project phases that are not revenue producing and are contained in the
14022 department's adopted work program, or any public transportation project contained in the
14023 adopted work program. Subject to appropriation of funds by the Legislature, the department
14024 may commit state funds for reimbursement of such projects or project phases.
14025 Reimbursement to the governmental entity for such a project or project phase must be made
14026 from funds appropriated by the Legislature, and reimbursement for the cost of the project
14027 or project phase is to begin in the year the project or project phase is scheduled in the work
14028 program as of the date of the agreement. Funds advanced pursuant to this section, which
14029 were originally designated for transportation purposes and so reimbursed to a county or
14030 municipality, shall be used by the county or municipality for any transportation expenditure
14031 authorized under s. 336.025(7). Also, cities and counties may receive funds from persons,
14032 and reimburse those persons, for the purposes of this section. Such persons may include, but
14033 are not limited to, those persons defined in s. 607.01401(56) ~~s. 607.01401(19)~~.

14034

14035 628.530 Effects of redomestication.

14036 The certificate of authority, agents appointments and licenses, rates, and other items which
14037 the office or department allows, in its discretion, which are in existence at the time any insurer
14038 licensed to transact the business of insurance in this state transfers its corporate domicile to this or
14039 any other state by merger, consolidation, merger pursuant to s. 607.1101(7) ~~s. 607.1107(5)~~, or any
14040 other lawful method shall continue in full force and effect upon such transfer if such insurer
14041 remains duly qualified to transact the business of insurance in this state. All outstanding policies
14042 of any transferring insurer shall remain in full force and effect and need not be endorsed as to the
14043 new name of the company or its new location unless so ordered by the office. Every transferring
14044 insurer shall file new policy forms with the office on or before the effective date of the transfer,
14045 but may use existing policy forms with appropriate endorsements if allowed by, and under such
14046 conditions as are approved by, the office. However, every such transferring insurer shall notify the
14047 office of the details of the proposed transfer and shall file promptly any resulting amendments to
14048 corporate documents filed or required to be filed with the office.

14049

14050 631.0515 Appointment of receiver; insurance holding company.

14051 A delinquency proceeding pursuant to this chapter constitutes the sole and exclusive method
14052 of dissolving, liquidating, rehabilitating, reorganizing, conserving, or appointing a receiver of a
14053 Florida corporation which is not insolvent as defined by s. 607.01401 ~~s. 607.01401(16)~~; which
14054 through its shareholders, board of directors, or governing body is deadlocked in the management
14055 of its affairs; and which directly or indirectly owns all of the stock of a Florida domestic insurer.
14056 The department may petition for an order directing it to rehabilitate such corporation if the interests

**FINAL STATUTE AS ADOPTED
(With Commentary)**

14057 of policyholders or the public will be harmed as a result of the deadlock. The department shall use
14058 due diligence to resolve the deadlock. Whether or not the department petitions for an order, the
14059 circuit court shall not have jurisdiction pursuant to ¹s. 607.271, ¹s. 607.274, or ¹s. 607.277 to
14060 dissolve, liquidate, or appoint receivers with respect to, a Florida corporation which directly or
14061 indirectly owns all of the stock of a Florida domestic insurer and which is not insolvent as defined
14062 by s. 607.01401 ~~s. 607.01401(16)~~. However, a managing general agent or holding company with
14063 a controlling interest in a domestic insurer in this state is subject to jurisdiction of the court under
14064 the provisions of s. 631.025.

14065

14066 658.44 Approval by stockholders; rights of dissenters; preemptive rights.

14067 ...

14068 (5) The fair value, as defined in s. 607.1301(5) ~~s. 607.1301(4)~~, of dissenting shares of each
14069 constituent state bank or state trust company, the owners of which have not accepted an offer for
14070 such shares made pursuant to subsection (3), shall be determined pursuant to ss. 607.1326-
14071 607.1331 except as the procedures for notice and demand are otherwise provided in this section as
14072 of the effective date of the merger.

14073

14074 663.03 Applicability of the Florida Business Corporation Act.

14075 Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the provisions of part I of chapter 607
14076 not in conflict with the financial institutions codes which relate to foreign corporations apply to all
14077 international banking corporations and their offices doing business in this state.

14078

14079 663.403 Applicability of the Florida Business Corporation Act.

14080 Notwithstanding s. 607.01401(36) ~~s. 607.01401(12)~~, the provisions of part I of chapter 607
14081 which are not in conflict with the financial institutions codes and which relate to foreign
14082 corporations apply to all international trust entities and their offices doing business in this state.

14083

14084 694.16 Conveyances by merger or conversion of business entities.

14085 As to any merger or conversion of business entities prior to June 15, 2000, the title to all real
14086 estate, or any interest therein, owned by a business entity that was a party to a merger or a
14087 conversion is vested in the surviving entity without reversion or impairment, notwithstanding the

**FINAL STATUTE AS ADOPTED
(With Commentary)**

14088 requirement of a deed which was previously required by former s. 607.11101, former s. 608.4383,
14089 former s. 620.204, former s. 620.0894, or former s. 620.8906.
14090