

The Florida Bar Business Law Section Legislation Committee Policy and Procedures 2021-2022

- **Mission Statement** – To support and advance legislative positions of the Florida Bar's Business Law Section (the "Section") and its substantive committees for the betterment of business in Florida.

- **Purpose** – The Committee is charged with overseeing the Section's legislative activities, including working with the Section's substantive committees and special committees (such as ad hoc committees and task forces) and interfacing with the Section's lobbyists (i) to propose, provide explanation for and provide testimony with respect to legislation supported by the Section, (ii) to support, oppose and/or provide technical assistance for legislation filed by others, (iii) to monitor legislative filings made with respect to Sessions of the Florida legislature and (iv) to provide input on proposed legislation and legislative action that affect the substantive areas of law and operations of Florida government relevant to the Section and its members.

- **Leadership and Membership** – The core of the Committee is comprised of a chair, vice chair, representatives from each Section substantive committee (generally, a vice chair of the substantive committee), at large members appointed by the Chairperson of the Section, and one or more representatives from the offices of the Section's Lobbyist. The chair, vice-chair and at large members are appointed by and serve at the pleasure of the Chairperson of the Section. Since many matters discussed at the Committee's meetings are off the record, there is no Secretary for the Committee.

- **Meetings** - The Committee meets in person at all meetings of the Section and regularly by telephone throughout the year to address Section-sponsored legislation as well as legislation and legislative action that impacts or affects its members. Anyone who is a member in good standing of the Florida Bar and its Business Law Section can attend Committee meetings.

- **Legislative positions and technical support**¹ – The Committee works with the Section's substantive committees on various legislative measures and positions. This includes short term positions to support or defend against certain legislative positions. Efforts to draft and advance legislation often takes many years and often requires work with other Bar sections and groups. There are also times when legislation is proposed during a legislative session with little advance notice. The Committee, through its members and representatives of the section's Lobbyist, frequently works with legislators and their staff, other Bar sections, and groups to provide

¹ The Committee recognizes Section members and their firms may individually and not in conjunction with the Section advance legislative positions that may not have Bar or Section approval. The Committee's focus is on Section approved legislative measures and positions and, from time to time, Section provided technical support. All legislative measures and positions that involve more than just providing technical support, must receive triple motion support (see Exhibit 3).

technical advice to support or oppose legislative initiatives. This may include drafting, legal research, and analysis of potential impact and constitutionality.

- **Substantive and Special Committees** – The Section's substantive and special committees prepare and advance the majority of the Section developed or sponsored legislative measures, analyze and advance the Section's other legislative positions, and assist with technical assistance when requested and deemed appropriate to provide. The Section's Executive Council will also form special committees (such as ad hoc committees or task forces) to prepare and advance certain legislative measures and positions. These substantive and special committees will draft actual proposed legislation, prepare supporting white papers, propose changes to legislation proposed by others, seek Executive Council approval and work with the advancing committee to advance the legislation. Each substantive committee should establish and maintain its own standing legislative review committee or liaison (LRC) within its committee. Each LRC is charged with reviewing bills and other legislative measures that may impact the practice areas which are the focus of that particular substantive committee and provide recommendations and guidance to the Committee.

Committees should not engage in drafting legislation, supporting or opposing legislative positions, or consulting with other stakeholders (other sections of the Florida Bar, trade or industry groups, advocacy organizations, etc.) without consulting with the Committee and receiving approval to proceed.

- **White Papers**

Authoritative reports that analyze an issue and present the Section's perspective ("White Papers") should be written in plain English and should be as short as possible while conveying the necessary information. White Papers should provide an overview as to the reasons that the legislation is being proposed (why the legislation is necessary and what it is intended to accomplish) and should provide a brief history of any statutory provisions that are proposed to be amended.

If the legislation is based on a model or uniform act, the White Paper should so state, should identify the model or uniform act and should identify generally the extent to which the proposed legislation deviates materially and substantively from the model or uniform act.

The White Paper should, in summary fashion, explain the impact of each section of the legislation (section by section) and how it differs from any existing statute addressing such item or compares to parallel statutes (such as comparing the corporate law to LLC legislation).

The White Paper should address how the proposed legislation interfaces with federal law on a comparable subject and any preemption issues.

If the proposed legislation is designed to override or clarify existing case law, the case or cases should be identified and the override or clarification and the rationale for such change should be explained in a succinct manner.

If the proposed legislation is a very long piece of legislation, an executive summary or overview should be prepared and included and the preparer should consider including a Table of Contents.

- **Guidelines for review of and response to proposed legislation.**

Each LRC or substantive committee member charged with reviewing proposed legislation should be prepared to review proposed legislation and provide input on an expedited basis. Requests for review of proposed legislation will generally come from the committee chair or representatives from the offices of the Section's Lobbyist. If possible, an initial response that the legislation does not impact a particular substantive committee or, if there is potential impact, note how the substantive committee will address, i.e. review in detail and provide general or technical comments, draft a white paper with a detailed position, create a study group, etc. Please note that during a legislative session, Committee members may be asked to provide a response within hours of the request.

Exhibit 1 - Current Standing Legislative Positions

Business Law Section 2020-2022 Legislative Positions

1. Bankruptcy / Uniform Commercial Codes / Debtor-Creditor Issues

In any proposed legislation regarding “Credit Counseling Services”, supports clear definitions and language to exclude licensed Florida attorneys, including bankruptcy attorneys who represent debtors, from the scope of the bills.

Opposes any amendment to existing Florida law governing real property foreclosures unless those amendments carefully preserve and protect the property rights and due process rights of the holders of interests in or affecting Florida real property.

Supports enactment of a separately credited financial literacy course as a prerequisite for high school graduation and a standard high school diploma.

Supports the Uniform Fraudulent Transfer Act in Florida, as promulgated by the National Conference on Uniform State Laws (NCCUSL), which would amend the current Chapter 727, Uniform Fraudulent Transfers Act.

Supports the Bankruptcy Venue Reform Act of 2019 or any similar subsequent legislation.
Opposes amendments to Section 689.151, Fla. Stat. that would (1) permit an owner of personal property create a tenancy by the entireties by a direct transfer to the owner and the owner’s spouse, notwithstanding the absence of the required common law unities of time and title, and/or (2) change the presumptions to (a) require “clear and convincing” proof that TBE was not intended or created, and (b) create a “conclusive presumption” as to the “intent to create a tenancy by the entirety” when a spouse’s name is added to an ownership document.

Supports legislation to update and clarify Section 55.205, F.S., Effect of judgment lien, to explicitly cross-reference section 319.27, F.S.

Supports changes to Chapter 222 F.S. that protect Florida residents from unintentionally assigning, pledging, or waiving rights to assets that are otherwise exempt from legal process. (Added Oct. 23, 2020)

Supports the creation of §702.13 Florida Statutes, providing for notice to homeowner in mortgage foreclosure action of possibility of relief under U.S. Bankruptcy Code. (Added Oct. 23, 2020)

Supports amendments to Chapters 55, 56 and 319 to (i) clarify the effect of a certificate of title on a judgment lien, and (ii) establish procedures for enforcement of a judgment lien against a motor vehicle, mobile home, or vessel. (Added 7/23/2021)

Supports legislation to amend Fla. Stat. §§679.4061 and 679.4081 to clarify that certain “overrides” of restrictions on transferability do not apply to an ownership interest in a general partnership, limited partnership or limited liability company. (Added 7/23/2021)

2. Business Entities / Securities / Financial Services

Opposes legislation to impose income tax on limited liability companies and subchapter S corporations.

Opposes legislation that would transfer the functions of the Division of Corporations in the Department of State to the Department of Revenue.

Opposes “sunset” of the Division of Corporations of the Department of State.

Supports clarification of Florida Statutes, Section 213.758 “Transfer of tax liabilities” in order to streamline the transfers of businesses and stocks of goods.

Opposes changes to Ch. 607, F.S. which addresses the filing of biennial reports by domestic and foreign corporations.

Supports proposed legislation updating and modernizing the Florida Business Corporation Act (Chapter 607 of the Florida Statutes), harmonizing certain of those provisions with provisions in other Florida entity statutes, including within Chapters 605 and 620, and cleaning up certain glitches within such other Florida entity statutes.

Supports proposed legislation updating and modernizing the Florida Business Corporation Act and other for profit and not for profit business entities. (Added Oct. 3, 2020)

3. Business Litigation / Alternative Dispute Resolution

Supports the replacement of word “files” and “filing” with “serves” and “serving” wherever they appear in subsection (1) of §768.79, the Offer of Judgment and Demand for Judgment Statute.

Supports amending Florida Statute 542.335 relating to restrictive covenants in a manner to provide exemptions to employees receiving limited compensation and to provide the court additional discretion in those same cases to interpret restrictions in a manner consistent with traditional contract rules of construction. (Added Oct. 23, 2020)

Supports changes to Ch. 48, F.S. and Ch. 15, F.S. to (1) simplify the methods of service of process on business entities to eliminate redundancies and inconsistencies, (2) clarify the statutory scheme to avoid confusion, (3) better elucidate the methods for effectuating service of process in foreign countries, and (4) modernize the methods and procedures for service of process on business entities, while ensuring compliance with fundamental notions of due process. (Added 7/23/2021)

4. Intellectual Property / Computer Law

Opposes changes that weaken contracts governed under current franchise laws and expand claims available under Florida's Unfair and Deceptive Trade Practices Act.

Supports legislation that defines blockchain technology in such a manner as to encourage innovation in the blockchain space without tying any statutory definition to a specific implementation of the technology. (Added Oct. 23, 2020)

Supports amending pending legislation relating to trade secret information to require Florida state agencies to inform potential bidders, vendors, service providers, contractors and/or others that may engage in business with state agencies that their submission of information to an agency may waive trade secret protection and to further require informed consent by potential bidders, vendors, service providers, contractors and/or others that may engage in business with the state agencies, in order to prevent inadvertent waiver of said trade secrets and potential litigation. (Added Oct. 23, 2020)

Supports legislation relating to data privacy and protection, including cybersecurity, that strikes the appropriate balance between protecting personal information without placing undue restrictions on business development or unnecessarily stifling technological advancement in this state. (Added Oct. 23, 2020)

5. Judiciary / Administration of Justice

Supports adequate funding of the state courts' system, state attorneys' offices, public defenders' offices, and court-appointed counsel.

Supports legislation consistent with the Supreme Court of Florida's certification of need for additional judges.

Supports adequate funding for civil legal assistance to indigent persons through the Florida Access to Civil Legal Assistance Act.

Opposes term limits for judges at any level of Florida's state court system.

Exhibit 2 - Sample White Papers

Tab

- A White Paper in Opposition to Proposed Amendments to Chapter 673 and 674, Florida Statutes
- B Analysis of Proposed Amendments to Chapter 56
- C White Paper in Support of the Proposed Amendment to UCC Section 670.108
- D Proposed Legislation to Amend Chapter 607, Florida Statutes to Provide for the Creation of a Florida Social Purpose Corporation and a Florida Benefit Corporation (2013)
- E Computer Abuse and Data Recovery Act
- F Support for Proposed Amendments to Chapter 727 Assignments for the Benefits of Creditors
- G Proposed Legislation to Amend Chapter 607, Florida Statutes to Provide for the Creation of a Florida Social Purpose Corporation and a Florida Benefit Corporation (2014) Rewrite
- H Analysis of Proposed Revisions to the Florida Arbitration Code

Exhibit 3 – September 2011 Memo - What is a Triple Motion

WHAT IS A TRIPLE MOTION

Philip B. Schwartz
Parliamentarian
Business Law Section
September 5, 2011

Section Legislative Positions

- The Section's ability to take a position on a legislative matter is governed by the Standing Board Policies of the Board of Governors of The Florida Bar.
- For the Section to lobby on a particular legislative matter, the matter must meet all of the criteria listed in Section 9.50(a) of the Standing Board Policies.
- When the Executive Council adopts a "triple motion," it is affirmatively agreeing that the Section's proposed position on a particular legislative matter meets each of the criteria listed in Section 9.50(a).

Section 9.50(a) Criteria

A section may be recognized by the board of governors as taking a position on or advocating a position on a legislative issue only when all of the following criteria are met:

- the issue involved is within the section's subject matter jurisdiction as described in the section's bylaws;
- the issue is beyond the scope of the permissible legislative activity of The Florida Bar (or the issue is within the permissible scope of the legislative activity of The Florida Bar but the proposed section position is not inconsistent with an official position of the bar on that issue); and
- the issue is not one that carries the potential of deep philosophical or emotional division among a substantial segment of the membership of the Bar.

Section's Subject Matter

Section 2(a) of the Bylaws of the Business Law Section provides that the purposes of the Section are:

- to provide an organization within The Florida Bar that is open to all members in good standing of The Florida Bar who have a common interest in corporation, banking, business and related areas of law;

- to provide a forum for discussion and exchange of ideas leading to the improvement of the laws relating to corporation, financial institutions, business and related areas of law including, but not limited to, the substantive areas of law within the purview of the committees of the section;
- To provide education and professional development in substantive areas of law that are within the purview of committees of the section, and to enhance business law education generally; and
- To propose and comment upon legislation and regulations in the substantive areas of law that are within the purview of the committees of the section.

Notice of Section Proposals

- Sections are required to advise The Florida Bar of proposed legislative activity.
- Sections are required to report whether the legislative proposal has been circulated to all divisions, sections or committees that may be interested in the issue (and reciting the comments received).

Vote Required

To approve a legislative position, a section legislative proposal must be approved by:

- a 2/3 vote of the section's executive council present, finding the proposed legislative position to be within the scope of the requirements of Section 9.50(a); and
- a majority vote of those members present approving the position.