

Proposed Modifications to Chapter 607 (Florida Business Corporation Act)

January 24, 2019

The Florida Bar Business Law Section ("Section") has a long history of proposing entity statutes for our state. The Section comprehensively updated and modernized Florida's corporate statute in the late 1980s, updated Florida's partnership statute in the mid 1990s, updated Florida's limited partnership statute in the early 2000s, and updated Florida's LLC statute in the late 1990s and, in a far more comprehensive fashion, in 2013, and the Section is now – once again – proposing to update and modernize Florida's corporate statute.

When it comes to for-profit corporations in Florida, Florida generally follows the revised Model Business Corporation Act (the "Model Act"), which is promulgated by the Corporate Laws Committee of the ABA Business Law Section. Although the Model Act has changed extensively over the past thirty-five years, Chapter 607 of the Florida Statutes, which is known as the Florida Business Corporation Act ("FBCA"), has been overhauled only once (in 1989), and otherwise has endured patchwork amendments, with more significant changes in 1996 and 2003. Recently, in 2016, the Model Act itself was updated and modernized in its entirety. For all of these reasons, it has been deemed a necessity to consider comprehensively amending Florida's corporate statute so that Florida keeps pace with modern statutory developments relating to corporations.

There are a large number of entities organized in Florida. At the beginning of 2018, Florida had 760,000 corporations and almost 1.2 million limited liability companies in existence - probably more than any other state – growing at the rate of about 100,000 new corporations and more than 250,000 new LLCs per year (while the net growth is smaller, because many corporations and LLCs are dissolved each year, it is still significant growth under any circumstances). Because so many of the users of Florida's entity statutes are private companies, Florida's entity laws have tended to be as proscriptive as possible to offer clarity in our law for users that range from non-lawyers, to lawyers who are not necessary experts in entity matters, and to judges, all of whom are able to benefit from the proscriptive guidance in our State's entity statutes.

In 2014, a drafting task force (the "Drafting Subcommittee") was organized under the auspices of the Corporations, Securities and Financial Services Committee of the Section to make recommendations as to proposed changes to the FBCA. The Drafting Subcommittee's mission statement was to comprehensively study Florida's business corporation statute and to propose a more cohesive revision and set of amendments with the purpose of (i) bringing Florida's business corporation statute in line with the revisions to the Model Act and the trends affecting the use of corporations by businesses today, (ii) maintaining Florida's competitiveness with other jurisdictions, (iii) seeking to fix issues presented by the existing statute that have been experienced by practitioners in practice and in litigating disputes concerning the operations of Florida corporations, and (iv) continuing to encourage formation and use of Florida corporations, where appropriate.

The proposal includes changes to Chapter 607 of the Florida Statutes, harmonizing changes to other Florida entity statutes to make them consistent with revised Chapter 607, and necessary

corrections to cross references appearing in other Chapter 607 sections and in other Florida Statutes.

The proposal follows, for the most part, the 2016 version of the Model Act, yet deviates in a number of respects by:

- (i) retaining certain non-Model Act provisions already contained in existing Chapter 607;
- (ii) borrowing language from the Delaware General Corporation Law; and
- (iii) borrowing parallel language and approaches from Chapter 605 (the Florida Revised Limited Liability Company Act) for purposes of harmonizing the two statutes on issues where harmonization is considered appropriate.

The proposal contemplates that if it is passed by the Florida legislature during the 2019 legislative session, it will become effective for all Florida corporations as of January 1, 2020.

If you have any questions about the proposal, please feel free to contact the co-chairs of the Drafting Subcommittee, Philip B. Schwartz (philip.schwartz@akerman.com) and Gary I. Teblum (gteblum@trenam.com).