

Practice Update

New Year Ushers in Extensive Changes to Florida Business Corporation Act

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By [Philip Schwartz](#) and [Andrew Schwartz](#)

Florida's Updated and Modernized Corporate Statute has Become Effective

During the 2019 legislative session, the Florida legislature adopted major changes to the Florida Business Corporation Act (the FBCA). The revised act (designated CS/CS/HB 1009) was unanimously passed by the Florida House of Representatives on April 25, 2019 and by the Florida Senate on April 30, 2019, and Governor DeSantis signed the revised act into law on June 7, 2019. The bill as adopted has been designated as Chapter 2019-90, Florida Statutes. The revised act made significant changes to existing law and became effective on January 1, 2020.

Florida's corporate statute (Part I of the FBCA) is largely modeled on the Revised Model Business Corporation Act (the Model Act). The Model Act is promulgated by the Corporate Laws Committee of the Business Law Section of the American Bar Association. In preparing the revised act, the drafting subcommittee that developed the proposed statute reviewed and considered recent changes to the Model Act, including changes made in the recently adopted 2016 version of the Model Act. Although the Model Act has changed extensively over the past thirty-five years, the FBCA has been overhauled only once (in 1989, based on the 1984

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version of the Model Act) and has otherwise endured patchwork amendments, with more significant changes in 1996 and 2003. Thus, it was considered necessary to comprehensively amend Florida's corporate statute so that Florida can keep pace with modern statutory developments relating to corporations.

It is especially important in Florida because of the large number of corporations organized here. At the end of 2018, Florida had almost 780,000 corporations and grew in 2018 by slightly more than 100,000 new corporations (while the annual net growth is smaller than the number of corporations organized in any year because of dissolutions, it is still significant growth under any circumstances). Because so many of the users of Florida's corporate statutes are private companies, Florida's corporate laws need to be as proscriptive as possible to offer clarity for users of the statute, who range from non-lawyers, to lawyers (some of whom are not necessary experts in entity matters), to judges. In all cases, users benefit if the statute is concise and easy to understand.

The revised act includes (i) a large number of changes based on the Model Act, (ii) language changes that make the statutory provisions more understandable and usable by those who have to work with the statute (including judges who have to interpret the statute), (iii) fixes to a number of substantive provisions in the existing statute where problems have been identified over the years, (iv) changes that borrow parallel language and approaches from the Florida Revised Limited Liability Company Act (FRLUCA) for purposes of harmonizing the two statutes on issues where harmonization was considered appropriate, and (v) necessary corrections to cross references appearing in other Chapter 607 sections and in other Florida Statutes. It also retains certain non-Model Act provisions already contained in existing Chapter 607 and continues, in certain cases, to borrow language from the Delaware General Corporation Law (DGCL).

The revised act was developed by the Chapter 607 Drafting Subcommittee (the Subcommittee) of the Corporations, Securities and Financial Services Committee of the Business Law Section of The Florida Bar. The 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 the corporate statutes in 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 Subcommittee met about 100 times during the almost five year period that it took to complete the proposal that in large part became the revised act.

Because the revised FBCA makes extensive changes to Florida's corporate statute, it is beyond the scope of this client alert to explain the extensive changes made in the revised act. However, Philip Schwartz recently co-authored four extensive articles which explain the important changes made to the FBCA in the revised act. These articles can be found here:

Article Topic

Article I.A. FBCA Articles 1-6

Article I.B. FBCA Articles 7 and 8

Article II.A. FBCA Article 10, Articles 14-16
and Article 9

Article II.B. FBCA Articles 11-13

If you wish to receive further information about the revised act, please contact Philip Schwartz or Andrew Schwartz. Philip was the co-chair of the task force that drafted the revised act and is a former chair of the Business Law Section of The Florida Bar. Andrew served on the task force that drafted the revised act and is currently the chair of the Corporations, Securities and Financial Services Committee of the Business Law Section of The Florida Bar.

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