



Trenam Law
101 East Kennedy Boulevard
Suite 2700
Tampa, FL 33602
Phone: 813-223-7474
Fax: 813-229-6553

MEMORANDUM

From: Dakota Woll
To: Members of the Chapter 607 Subcommittee of the Florida Bar Business Law Section
Date: June 5, 2017
Subject: Delegation of Authority to Board Committees

The Florida Bar Business Law Section has established a subcommittee to update Florida's Business Corporation Act, Chapter 607. In connection with that project, a suggestion has been made by one of the co-chairs of the Chapter 607 Subcommittee to revisit the issue as to whether to permit boards of directors of Florida corporations to delegate the authorization of issuance of shares of the corporations to board committees and executive officers without limit rather than the existing provision which allows such delegation only if "limits" are specified in the resolution delegating the authority. In relevant part, Section 607.0825(1)(e), Florida Statutes, states that:

- (1) Unless the articles of incorporation or the bylaws otherwise provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees each of which, to the extent provided in such resolution or in the articles of incorporation or the bylaws of the corporation, shall have and may exercise all the authority of the board of directors, except that no such committee shall have the authority to:
 - ...
 - (e) Authorize or approve the issuance or sale or contract for the sale of shares, or determine the designation and relative rights, preferences, and limitations of a voting group except that the board of directors may authorize a committee (or a senior executive officer of the corporation) to do so within limits specifically prescribed by the board of directors.

The Florida Business Corporation Act is modeled after the Model Business Corporation Act (the "Model Act"). The provision that appears in Section 607.0825(1)(e) is based on the 1984 version of the Model Act.

The current version of the Model Act has removed the parallel of subsection (e) from the Model Act, which would mean that, under the current Model Act provision, boards of directors would have unlimited ability to delegate the authority to authorize the issuance of shares to board committees. In order to re-evaluate whether Florida should make a change to this provision, this memorandum surveys the statutes in each state on this topic.

In short, of all fifty-one statutes surveyed (fifty states plus Puerto Rico), (i) seventeen (including Puerto Rico), similar in most cases to current Florida law, include the general prohibition on delegation, but allow delegation if limits, formula and/or methods are specifically prescribed by the board, (ii) thirty-one (including Delaware) allow full delegation, and without any requirement that such delegation be expressly authorized in the corporation's charter, bylaws or board resolution and (iii) three allow full delegation, but only if such delegation is expressly authorized in either the corporation's charter, its bylaws or a board resolution. Since 2013, (x) six states have shifted from allowing delegation only within limits to allowing for full delegation and (y) one state has opted to limit delegation only to where parameters are set by the board. The names of those states that changed their position are marked with an asterisk.

ALLOWS DELEGATION BUT ONLY WITHIN LIMITS SET BY THE BOARD (17)

<u>State</u>	<u>Statute</u>	<u>Section</u>
Alabama	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Ala. Code § 10A-2-8.25
Alaska	The statute generally restricts board committees from authorizing or approving the issuance or sale of, or a contract to issue or sell, shares or designate the terms of a series of a class of shares (unless the board, having acted regarding general authorization for the issuance or sale of shares, a contract to issue or sell, or the designation of a series, authorizes a committee, under a general formula or method specified by the board by resolution or by adoption of a stock option or other plan, to fix the terms of a contract for the sale of the shares).	Alaska Stat. Ann. § 10.06.468
Arizona	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Ariz. Rev. Stat. § 10-825
Arkansas	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Ark. Code Ann. § 4-27-825
Colorado	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Colo. Rev. Stat. § 7-108-206

Hawaii	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Haw. Rev. Stat. § 414-216
Illinois	The statute generally restricts board committees from authorizing or approving the issuance or sale, or contract for sales, of shares, “except that the board may direct a committee (i) to fix the specific terms of the issuance or sale or contract for sale, including without limitation the pricing terms or the designation and relative rights, preferences, and limitations of a series of shares if the board of directors has approved the maximum number of shares to be issued pursuant to such delegated authority or (ii) to fix the price and the number of shares to be allocated to particular employees under an employee benefit plan.”	805 Ill. Comp. Stat. 5/8.40
Indiana	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Ind. Code Ann. § 23-1-34-6
Maryland	The statute generally restricts board committees from authorizing or approving the issuance of stock. If the board of directors has given general authorization for the issuance of stock providing for or establishing a method or procedure for determining the maximum number or the maximum aggregate offering price of shares to be issued, a committee of the board, in accordance with that general authorization or any stock option or other plan or program adopted by the board, may authorize or fix the terms of stock subject to classification or reclassification and the terms on which any stock may be issued, including all terms and conditions required or permitted to be established or authorized by the board of directors.	Md. Code Ann., Corps. & Assn’s § 2-411
Montana	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Mont. Code Ann. § 35-1-439

New Mexico	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	N.M. Stat. Ann. § 53-11-41
Puerto Rico	The statute generally restricts board committees from authorizing or approving the issuance of stock. A committee may, to the extent authorized by a resolution of the board of directors providing for the issue of stock, as provided in § 3581 of title 14, fix the designations and any of the preferences or rights of such shares relating to dividends, redemption, dissolution, any distribution of the assets of the corporation or the conversion or exchange of such shares for shares of any class or classes, or any other series of the same or another class of stock of the corporation, or fix the number of stock of any series or authorize the increase or decrease in the number of shares of any series.	14 P.R. Laws Ann. § 3561(c) (PR ST T. 14 § 3561)
South Carolina	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	S.C. Code Ann § 33-8-250
Tennessee	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Tenn. Code Ann. § 48-18-206
Vermont	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Vt. Stat. Ann. tit. 11A, § 8.25

Virginia	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Va. Code Ann § 13.1-689
Washington	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	Wash Rev. Code. Ann. § 23B.08.250
West Virginia	The statute generally restricts board committees from authorizing or approving the issuance or sale or contract for sale of shares or from determining the designation and relative rights, preferences, and limitations of shares (except as authorized to do so by the board of directors, within limits specifically prescribed by the board of directors).	W. Va. Code § 31D-8-825

ALLOWS FULL DELEGATION AS TO ISSUANCE OF SHARES WITHOUT ANY ADDITION TO CHARTER (31)

<u>State</u>	<u>Statute</u>	<u>Section</u>
California	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Ann. Cal. Corp. Code § 311
Connecticut	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Conn. Gen. Stat. § 33-753
Delaware	Does not restrict the delegation of authority to approve issuance or sale of shares.	Del. Code Ann. tit. 8, § 141(c)(2)
District of Columbia	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	D.C. Code Ann. § 29-306.25

Georgia	Does not follow the Model Act. Does not restrict the delegation of authority to approve issuance or sale of shares, but allows, only to the extent authorized by action of the board of directors, such committees to amend the articles of incorporation to fix the designations, preferences, limitations, and relative rights of shares pursuant to Code Section 14-2-602 or to increase or decrease the number of shares contained in a series of shares established in accordance with the Georgia Corporations Code (but not below the number of such shares then issued).	Ga. Code Ann. § 14-2-825
Idaho	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Idaho Code § 30-1-825
Iowa	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Iowa Code Ann. § 490.825
Kentucky	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Ky. Rev. Stat. Ann. § 271B.8-250
Louisiana	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	La. Rev. Stat. Ann. § 12:1-825
Maine*	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Me. Rev. Stat. tit 13-C § 826
Massachusetts	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Mass. Gen. Laws Ann. ch. 156D § 8.25
Michigan	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Mich. Comp. Laws Ann §§ 450.1527, 450.1528
Minnesota	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Minn. Stat. Ann. § 302A.241
Mississippi	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Miss. Code Ann. § 79-4-8.25

Missouri	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Mo. Ann. Stat. § 351.330
Nebraska*	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Neb. Rev. Stat. § 21-2, 100
Nevada	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Nev. Rev. Stat. § 78.125
New Hampshire*	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	N.H. Rev. Stat. Ann. § 293-A:8.25
New Jersey	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	N.J. Stat. Ann. § 14A:6-9
New York	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	N.Y. Bus. Corp. Law § 712
North Carolina*	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	N.C. Gen Stat. § 55-8-25
North Dakota	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	N.D. Cent. Code § 10-19.1-48
Ohio	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Ohio Rev. Code Ann. § 1701.63
Oklahoma	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Okla. Stat. Ann. tit 18 § 441-817
Oregon	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Or. Rev. Stat. § 60.354
Pennsylvania	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	15 Pa. Cons. Stat. Ann. § 1731(a)

Rhode Island	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	R.I. Gen. Laws § 7-1.2-808
South Dakota	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	S.D. Codified Laws § 47-17-12
Utah	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Utah Code § 16-10a-825
Wisconsin*	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Wis. Stat. Ann. § 180.0825
Wyoming	Follows the Model Act by not restricting the delegation of authority to approve issuance or sale of shares.	Wyo. Stat. § 17-16-825

ALLOWS FULL DELEGATION AS TO ISSUANCE OF SHARES WITH AN EXPRESS AUTHORIZATION IN EITHER THE CHARTER, THE BYLAWS OR A BOARD RESOLUTION
(2)

<u>State</u>	<u>Statute</u>	<u>Section</u>
Kansas*	The statute states that, unless the resolution, bylaws, or articles of incorporation expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.	Kan. Stat. Ann. § 17-6301(c)
Texas	The statute states that a committee of the board of directors may authorize a distribution or the issuance of shares if authorized by the resolution designating the committee or by the certificate of formation or by the bylaws.	Tex. Bus. Org. Code Ann. § 21.416