

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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Representative Goodlette offered the following:

Amendment (with title amendment)

Remove line(s) 632-1360, and insert:

(5) "Interest" means interest from the effective date of the corporate action until the date of payment, at the rate of interest on judgments in this state on the effective date of the corporate action.

(6) "Preferred shares" means a class or series of shares the holders of which have preference over any other class or series with respect to distributions.

(7) "Record shareholder" means the person in whose name shares are registered in the records of the corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with the corporation.

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26 (8) "Senior executive" means the chief executive officer,
27 chief operating officer, chief financial officer, or anyone in
28 charge of a principal business unit or function.

29 (9) "Shareholder" means both a record shareholder and a
30 beneficial shareholder.

31 Section 22. Section 607.1302, Florida Statutes, is amended
32 to read:

33 (Substantial rewording of section. See s.
34 607.1302, Florida Statutes, for present text.)

35 607.1302 Right of shareholders to appraisal.--

36 (1) A shareholder is entitled to appraisal rights, and to
37 obtain payment of the fair value of that shareholder's shares,
38 in the event of any of the following corporate actions:

39 (a) Consummation of a merger to which the corporation is a
40 party if shareholder approval is required for the merger by s.
41 607.1103 and the shareholder is entitled to vote on the merger
42 or if the corporation is a subsidiary and the merger is governed
43 by s. 607.1104;

44 (b) Consummation of a share exchange to which the
45 corporation is a party as the corporation whose shares will be
46 acquired if the shareholder is entitled to vote on the exchange,
47 except that appraisal rights shall not be available to any
48 shareholder of the corporation with respect to any class or
49 series of shares of the corporation that is not exchanged;

50 (c) Consummation of a disposition of assets pursuant to s.
51 607.1202 if the shareholder is entitled to vote on the
52 disposition, including a sale in dissolution but not including a
53 sale pursuant to court order or a sale for cash pursuant to a
54 plan by which all or substantially all of the net proceeds of

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55 the sale will be distributed to the shareholders within 1 year
56 after the date of sale;

57 (d) Any other amendment to the articles of incorporation,
58 merger, share exchange, or disposition of assets to the extent
59 provided by the articles of incorporation, bylaws, or a
60 resolution of the board of directors, except that no bylaw or
61 board resolution providing for appraisal rights may be amended
62 or otherwise altered except by shareholder approval; or

63 (e) With regard to shares issued prior to October 1, 2003,
64 any amendment of the articles of incorporation if the
65 shareholder is entitled to vote on the amendment and if such
66 amendment would adversely affect such shareholder by:

67 1. Altering or abolishing any preemptive rights attached
68 to any of his or her shares;

69 2. Altering or abolishing the voting rights pertaining to
70 any of his or her shares, except as such rights may be affected
71 by the voting rights of new shares then being authorized of any
72 existing or new class or series of shares;

73 3. Effecting an exchange, cancellation, or
74 reclassification of any of his or her shares, when such
75 exchange, cancellation, or reclassification would alter or
76 abolish the shareholder's voting rights or alter his or her
77 percentage of equity in the corporation, or effecting a
78 reduction or cancellation of accrued dividends or other
79 arrearages in respect to such shares;

80 4. Reducing the stated redemption price of any of the
81 shareholder's redeemable shares, altering or abolishing any
82 provision relating to any sinking fund for the redemption or
83 purchase of any of his or her shares, or making any of his or

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84 her shares subject to redemption when they are not otherwise
85 redeemable;

86 5. Making noncumulative, in whole or in part, dividends of
87 any of the shareholder's preferred shares which had theretofore
88 been cumulative;

89 6. Reducing the stated dividend preference of any of the
90 shareholder's preferred shares; or

91 7. Reducing any stated preferential amount payable on any
92 of the shareholder's preferred shares upon voluntary or
93 involuntary liquidation.

94 (2) Notwithstanding subsection (1), the availability of
95 appraisal rights under paragraphs (1)(a), (b), (c), and (d)
96 shall be limited in accordance with the following provisions:

97 (a) Appraisal rights shall not be available for the
98 holders of shares of any class or series of shares which is:

99 1. Listed on the New York Stock Exchange or the American
100 Stock Exchange or designated as a national market system
101 security on an interdealer quotation system by the National
102 Association of Securities Dealers, Inc.; or

103 2. Not so listed or designated, but has at least 2,000
104 shareholders and the outstanding shares of such class or series
105 has a market value of at least \$10 million, exclusive of the
106 value of such shares held by its subsidiaries, senior
107 executives, directors, and beneficial shareholders owning more
108 than 10 percent of such shares.

109 (b) The applicability of paragraph (2)(a) shall be
110 determined as of:

111 1. The record date fixed to determine the shareholders
112 entitled to receive notice of, and to vote at, the meeting of

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113 shareholders to act upon the corporate action requiring
114 appraisal rights; or

115 2. If there will be no meeting of shareholders, the close
116 of business on the day on which the board of directors adopts
117 the resolution recommending such corporate action.

118 (c) Paragraph (2)(a) shall not be applicable and appraisal
119 rights shall be available pursuant to subsection (1) for the
120 holders of any class or series of shares who are required by the
121 terms of the corporate action requiring appraisal rights to
122 accept for such shares anything other than cash or shares of any
123 class or any series of shares of any corporation, or any other
124 proprietary interest of any other entity, that satisfies the
125 standards set forth in paragraph (2)(a) at the time the
126 corporate action becomes effective.

127 (d) Paragraph (2)(a) shall not be applicable and appraisal
128 rights shall be available pursuant to subsection (1) for the
129 holders of any class or series of shares if:

130 1. Any of the shares or assets of the corporation are
131 being acquired or converted, whether by merger, share exchange,
132 or otherwise, pursuant to the corporate action by a person, or
133 by an affiliate of a person, who:

134 a. Is, or at any time in the 1-year period immediately
135 preceding approval by the board of directors of the corporate
136 action requiring appraisal rights was, the beneficial owner of
137 20 percent or more of the voting power of the corporation,
138 excluding any shares acquired pursuant to an offer for all
139 shares having voting power if such offer was made within 1 year
140 prior to the corporate action requiring appraisal rights for

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141 consideration of the same kind and of a value equal to or less
142 than that paid in connection with the corporate action; or

143 b. Directly or indirectly has, or at any time in the 1-
144 year period immediately preceding approval by the board of
145 directors of the corporation of the corporate action requiring
146 appraisal rights had, the power, contractually or otherwise, to
147 cause the appointment or election of 25 percent or more of the
148 directors to the board of directors of the corporation; or

149 2. Any of the shares or assets of the corporation are
150 being acquired or converted, whether by merger, share exchange,
151 or otherwise, pursuant to such corporate action by a person, or
152 by an affiliate of a person, who is, or at any time in the 1-
153 year period immediately preceding approval by the board of
154 directors of the corporate action requiring appraisal rights
155 was, a senior executive or director of the corporation or a
156 senior executive of any affiliate thereof, and that senior
157 executive or director will receive, as a result of the corporate
158 action, a financial benefit not generally available to other
159 shareholders as such, other than:

160 a. Employment, consulting, retirement, or similar benefits
161 established separately and not as part of or in contemplation of
162 the corporate action;

163 b. Employment, consulting, retirement, or similar benefits
164 established in contemplation of, or as part of, the corporate
165 action that are not more favorable than those existing before
166 the corporate action or, if more favorable, that have been
167 approved on behalf of the corporation in the same manner as is
168 provided in s. 607.0832; or

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169 c. In the case of a director of the corporation who will,
170 in the corporate action, become a director of the acquiring
171 entity in the corporate action or one of its affiliates, rights
172 and benefits as a director that are provided on the same basis
173 as those afforded by the acquiring entity generally to other
174 directors of such entity or such affiliate.

175 (e) For the purposes of paragraph (2)(d) only, the term
176 "beneficial owner" means any person who, directly or indirectly,
177 through any contract, arrangement, or understanding, other than
178 a revocable proxy, has or shares the power to vote, or to direct
179 the voting of, shares, provided that a member of a national
180 securities exchange shall not be deemed to be a beneficial owner
181 of securities held directly or indirectly by it on behalf of
182 another person solely because such member is the record holder
183 of such securities if the member is precluded by the rules of
184 such exchange from voting without instruction on contested
185 matters or matters that may affect substantially the rights or
186 privileges of the holders of the securities to be voted. When
187 two or more persons agree to act together for the purpose of
188 voting their shares of the corporation, each member of the group
189 formed thereby shall be deemed to have acquired beneficial
190 ownership, as of the date of such agreement, of all voting
191 shares of the corporation beneficially owned by any member of
192 the group.

193 (3) Notwithstanding any other provision of this section,
194 the articles of incorporation as originally filed or any
195 amendment thereto may limit or eliminate appraisal rights for
196 any class or series of preferred shares, but any such limitation
197 or elimination contained in an amendment to the articles of

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198 incorporation that limits or eliminates appraisal rights for any
199 of such shares that are outstanding immediately prior to the
200 effective date of such amendment or that the corporation is or
201 may be required to issue or sell thereafter pursuant to any
202 conversion, exchange, or other right existing immediately before
203 the effective date of such amendment shall not apply to any
204 corporate action that becomes effective within 1 year of that
205 date if such action would otherwise afford appraisal rights.

206 (4) A shareholder entitled to appraisal rights under this
207 chapter may not challenge a completed corporate action for which
208 appraisal rights are available unless such corporate action:

209 (a) Was not effectuated in accordance with the applicable
210 provisions of this section or the corporation's articles of
211 incorporation, bylaws, or board of directors' resolution
212 authorizing the corporate action; or

213 (b) Was procured as a result of fraud or material
214 misrepresentation.

215 Section 23. Section 607.1303, Florida Statutes, is created
216 to read:

217 607.1303 Assertion of rights by nominees and beneficial
218 owners.--

219 (1) A record shareholder may assert appraisal rights as to
220 fewer than all the shares registered in the record shareholder's
221 name but owned by a beneficial shareholder only if the record
222 shareholder objects with respect to all shares of the class or
223 series owned by the beneficial shareholder and notifies the
224 corporation in writing of the name and address of each
225 beneficial shareholder on whose behalf appraisal rights are
226 being asserted. The rights of a record shareholder who asserts

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227 appraisal rights for only part of the shares held of record in
228 the record shareholder's name under this subsection shall be
229 determined as if the shares as to which the record shareholder
230 objects and the record shareholder's other shares were
231 registered in the names of different record shareholders.

232 (2) A beneficial shareholder may assert appraisal rights
233 as to shares of any class or series held on behalf of the
234 shareholder only if such shareholder:

235 (a) Submits to the corporation the record shareholder's
236 written consent to the assertion of such rights no later than
237 the date referred to in s. 607.1322(2)(b)2.

238 (b) Does so with respect to all shares of the class or
239 series that are beneficially owned by the beneficial
240 shareholder.

241 Section 24. Section 607.1320, Florida Statutes, is amended
242 to read:

243 (Substantial rewording of section. See s.
244 607.1320, Florida Statutes, for present text.)

245 607.1320 Notice of appraisal rights.--

246 (1) If proposed corporate action described in s.
247 607.1302(1) is to be submitted to a vote at a shareholders'
248 meeting, the meeting notice must state that the corporation has
249 concluded that shareholders are, are not, or may be entitled to
250 assert appraisal rights under this chapter. If the corporation
251 concludes that appraisal rights are or may be available, a copy
252 of ss. 607.1301-607.1333 must accompany the meeting notice sent
253 to those record shareholders entitled to exercise appraisal
254 rights.

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255 (2) In a merger pursuant to s. 607.1104, the parent
256 corporation must notify in writing all record shareholders of
257 the subsidiary who are entitled to assert appraisal rights that
258 the corporate action became effective. Such notice must be sent
259 within 10 days after the corporate action became effective and
260 include the materials described in s. 607.1322.

261 (3) If the proposed corporate action described in s.
262 607.1302(1) is to be approved other than by a shareholders'
263 meeting, the notice referred to in s. 607.1320(1) must be sent
264 to all shareholders at the time that consents are first
265 solicited pursuant to s. 607.0704, whether or not consents are
266 solicited from all shareholders, and include the materials
267 described in s. 607.1322.

268 Section 25. Section 607.1321, Florida Statutes, is created
269 to read:

270 607.1321 Notice of intent to demand payment.--

271 (1) If proposed corporate action requiring appraisal
272 rights under s. 607.1302 is submitted to a vote at a
273 shareholders' meeting, or is submitted to a shareholder pursuant
274 to a consent vote under s. 607.0704, a shareholder who wishes to
275 assert appraisal rights with respect to any class or series of
276 shares:

277 (a) Must deliver to the corporation before the vote is
278 taken, or within 20 days after receiving the notice pursuant to
279 s. 607.1320(3) if action is to be taken without a shareholder
280 meeting, written notice of the shareholder's intent to demand
281 payment if the proposed action is effectuated.

282 (b) Must not vote, or cause or permit to be voted, any
283 shares of such class or series in favor of the proposed action.

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284 (2) A shareholder who does not satisfy the requirements of
285 subsection (1) is not entitled to payment under this chapter.

286 Section 26. Section 607.1322, Florida Statutes, is created
287 to read:

288 607.1322 Appraisal notice and form.--

289 (1) If proposed corporate action requiring appraisal
290 rights under s. 607.1302(1) becomes effective, the corporation
291 must deliver a written appraisal notice and form required by
292 paragraph (2)(a) to all shareholders who satisfied the
293 requirements of s. 607.1321. In the case of a merger under s.
294 607.1104, the parent must deliver a written appraisal notice and
295 form to all record shareholders who may be entitled to assert
296 appraisal rights.

297 (2) The appraisal notice must be sent no earlier than the
298 date the corporate action became effective and no later than 10
299 days after such date and must:

300 (a) Supply a form that specifies the date that the
301 corporate action became effective and that provides for the
302 shareholder to state:

303 1. The shareholder's name and address.

304 2. The number, classes, and series of shares as to which
305 the shareholder asserts appraisal rights.

306 3. That the shareholder did not vote for the transaction.

307 4. Whether the shareholder accepts the corporation's offer
308 as stated in subparagraph (2)(b)4.

309 5. If the offer is not accepted, the shareholder's
310 estimated fair value of the shares and a demand for payment of
311 the shareholder's estimated value plus interest.

312 (b) State:

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313 1. Where the form must be sent and where certificates for
314 certificated shares must be deposited and the date by which
315 those certificates must be deposited, which date may not be
316 earlier than the date for receiving the required form under
317 subparagraph (2)(b)2.

318 2. A date by which the corporation must receive the form,
319 which date may not be fewer than 40 nor more than 60 days after
320 the date the subsection (1) appraisal notice and form are sent,
321 and state that the shareholder shall have waived the right to
322 demand appraisal with respect to the shares unless the form is
323 received by the corporation by such specified date.

324 3. The corporation's estimate of the fair value of the
325 shares.

326 4. An offer to each shareholder who is entitled to
327 appraisal rights to pay the corporation's estimate of fair value
328 set forth in subparagraph (2)(b)3.

329 5. That, if requested in writing, the corporation will
330 provide to the shareholder so requesting, within 10 days after
331 the date specified in subparagraph (2)(b)2., the number of
332 shareholders who return the forms by the specified date and the
333 total number of shares owned by them.

334 6. The date by which the notice to withdraw under s.
335 607.1323 must be received, which date must be within 20 days
336 after the date specified in subparagraph (2)(b)2.

337 (c) Be accompanied by:

338 1. Financial statements of the corporation that issued the
339 shares to be appraised, consisting of a balance sheet as of the
340 end of the fiscal year ending not more than 15 months prior to
341 the date of the corporation's appraisal notice, an income

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342 statement for that year, a cash flow statement for that year,
343 and the latest available interim financial statements, if any.

344 2. A copy of ss. 607.1301-607.1333.

345 Section 27. Section 607.1323, Florida Statutes, is created
346 to read:

347 607.1323 Perfection of rights; right to withdraw.--

348 (1) A shareholder who wishes to exercise appraisal rights
349 must execute and return the form received pursuant to s.
350 607.1322(1) and, in the case of certificated shares, deposit the
351 shareholder's certificates in accordance with the terms of the
352 notice by the date referred to in the notice pursuant to s.
353 607.1322(2)(b)2. Once a shareholder deposits that shareholder's
354 certificates or, in the case of uncertificated shares, returns
355 the executed forms, that shareholder loses all rights as a
356 shareholder, unless the shareholder withdraws pursuant to
357 subsection (2).

358 (2) A shareholder who has complied with subsection (1) may
359 nevertheless decline to exercise appraisal rights and withdraw
360 from the appraisal process by so notifying the corporation in
361 writing by the date set forth in the appraisal notice pursuant
362 to s. 607.1322(2)(b)6. A shareholder who fails to so withdraw
363 from the appraisal process may not thereafter withdraw without
364 the corporation's written consent.

365 (3) A shareholder who does not execute and return the form
366 and, in the case of certificated shares, deposit that
367 shareholder's share certificates if required, each by the date
368 set forth in the notice described in subsection (2), shall not
369 be entitled to payment under this chapter.

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370 Section 28. Section 607.1324, Florida Statutes, is created
371 to read:

372 607.1324 Shareholder's acceptance of corporation's
373 offer.--

374 (1) If the shareholder states on the form provided in s.
375 607.1322(1) that the shareholder accepts the offer of the
376 corporation to pay the corporation's estimated fair value for
377 the shares, the corporation shall make such payment to the
378 shareholder within 90 days after the corporation's receipt of
379 the form from the shareholder.

380 (2) Upon payment of the agreed value, the shareholder
381 shall cease to have any interest in the shares.

382 Section 29. Section 607.1326, Florida Statutes, is created
383 to read:

384 607.1326 Procedure if shareholder is dissatisfied with
385 offer.--

386 (1) A shareholder who is dissatisfied with the
387 corporation's offer as set forth pursuant to s. 607.1322(2)(b)4.
388 must notify the corporation on the form provided pursuant to s.
389 607.1322(1) of that shareholder's estimate of the fair value of
390 the shares and demand payment of that estimate plus interest.

391 (2) A shareholder who fails to notify the corporation in
392 writing of that shareholder's demand to be paid the
393 shareholder's stated estimate of the fair value plus interest
394 under subsection (1) within the timeframe set forth in s.
395 607.1322(2)(b)2. waives the right to demand payment under this
396 section and shall be entitled only to the payment offered by the
397 corporation pursuant to s. 607.1322(2)(b)4.

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398 Section 30. Section 607.1331, Florida Statutes, is created
399 to read:

400 607.1331 Court costs and counsel fees.--

401 (1) The court in an appraisal proceeding commenced under
402 s. 607.1330 shall determine all costs of the proceeding,
403 including the reasonable compensation and expenses of appraisers
404 appointed by the court. The court shall assess the costs against
405 the corporation, except that the court may assess costs against
406 all or some of the shareholders demanding appraisal, in amounts
407 the court finds equitable, to the extent the court finds such
408 shareholders acted arbitrarily, vexatiously, or not in good
409 faith with respect to the rights provided by this chapter.

410 (2) The court in an appraisal proceeding may also assess
411 the fees and expenses of counsel and experts for the respective
412 parties, in amounts the court finds equitable:

413 (a) Against the corporation and in favor of any or all
414 shareholders demanding appraisal if the court finds the
415 corporation did not substantially comply with ss. 607.1320 and
416 607.1322; or

417 (b) Against either the corporation or a shareholder
418 demanding appraisal, in favor of any other party, if the court
419 finds that the party against whom the fees and expenses are
420 assessed acted arbitrarily, vexatiously, or not in good faith
421 with respect to the rights provided by this chapter.

422 (3) If the court in an appraisal proceeding finds that the
423 services of counsel for any shareholder were of substantial
424 benefit to other shareholders similarly situated, and that the
425 fees for those services should not be assessed against the
426 corporation, the court may award to such counsel reasonable fees

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427 to be paid out of the amounts awarded the shareholders who were
428 benefited.

429 (4) To the extent the corporation fails to make a required
430 payment pursuant to s. 607.1324, the shareholder may sue
431 directly for the amount owed and, to the extent successful,
432 shall be entitled to recover from the corporation all costs and
433 expenses of the suit, including counsel fees.

434 Section 31. Section 607.1332, Florida Statutes, is created
435 to read:

436 607.1332 Disposition of acquired shares.--Shares acquired
437 by a corporation pursuant to payment of the agreed value thereof
438 or pursuant to payment of the judgment entered therefor, as
439 provided in this chapter, may be held and disposed of by such
440 corporation as authorized but unissued shares of the
441 corporation, except that, in the case of a merger or share
442 exchange, they may be held and disposed of as the plan of merger
443 or share exchange otherwise provides. The shares of the
444 surviving corporation into which the shares of such shareholders
445 demanding appraisal rights would have been converted had they
446 assented to the merger shall have the status of authorized but
447 unissued shares of the surviving corporation.

448 Section 32. Section 607.1333, Florida Statutes, is created
449 to read:

450 607.1333. Limitation on corporate payment.--

451 (1) No payment shall be made to a shareholder seeking
452 appraisal rights if, at the time of payment, the corporation is
453 unable to meet the distribution standards of s. 607.06401. In
454 such event, the shareholder shall, at the shareholder's option:

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455 (a) Withdraw his or her notice of intent to assert
456 appraisal rights, which shall in such event be deemed withdrawn
457 with the consent of the corporation; or

458 (b) Retain his or her status as a claimant against the
459 corporation and, if it is liquidated, be subordinated to the
460 rights of creditors of the corporation, but have rights superior
461 to the shareholders not asserting appraisal rights, and if it is
462 not liquidated, retain his or her right to be paid for the
463 shares, which right the corporation shall be obliged to satisfy
464 when the restrictions of this section do not apply.

465 (2) The shareholder shall exercise the option under
466 paragraph (1)(a) or (b) by written notice filed with the
467 corporation within 30 days after the corporation has given
468 written notice that the payment for shares cannot be made
469 because of the restrictions of this section. If the shareholder
470 fails to exercise the option, the shareholder shall be deemed to
471 have withdrawn his or her notice of intent to assert appraisal
472 rights.

473 Section 33. Subsection (1) of section 607.1403, Florida
474 Statutes, is amended to read:

475 607.1403 Articles of dissolution.--

476 (1) At any time after dissolution is authorized, the
477 corporation may dissolve by delivering to the Department of
478 State for filing articles of dissolution which shall be executed
479 in accordance with s. 607.0120 and which shall set ~~setting~~
480 forth:

481 (a) The name of the corporation;

482 (b) The date dissolution was authorized;

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483 (c) If dissolution was approved by the shareholders, a
484 statement that the number cast for dissolution by the
485 shareholders was sufficient for approval.

486 (d) If dissolution was approved by the shareholders and if
487 voting by voting groups was required, a statement that the
488 number cast for dissolution by the shareholders was sufficient
489 for approval must be separately provided for each voting group
490 entitled to vote separately on the plan to dissolve.

491 Section 34. Section 607.1406, Florida Statutes, is amended
492 to read:

493 607.1406 Known claims against dissolved corporation.--

494 (1) A dissolved corporation or successor entity, as
495 defined in subsection (15), may dispose of the known claims
496 against it by following the procedures described in subsections
497 (2), (3), and(4).

498 (2) The dissolved corporation or successor entity shall
499 deliver to each of its known claimants written notice of the
500 dissolution at any time after its effective date. The written
501 notice shall:

502 (a) Provide a reasonable description of the claim that the
503 claimant may be entitled to assert;

504 (b) State whether the claim is admitted or not admitted,
505 in whole or in part, and, if admitted:

506 1. The amount that is admitted, which may be as of a given
507 date; and

508 2. Any interest obligation if fixed by an instrument of
509 indebtedness;

510 (c) Provide a mailing address where a claim may be sent;

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511 (d) State the deadline, which may not be fewer than 120
512 days after the effective date of the written notice, by which
513 confirmation of the claim must be delivered to the dissolved
514 corporation or successor entity; and

515 (e) State that the corporation or successor entity may
516 make distributions thereafter to other claimants and the
517 corporation's shareholders or persons interested as having been
518 such without further notice.

519 (3) A dissolved corporation or successor entity may
520 reject, in whole or in part, any claim made by a claimant
521 pursuant to this subsection by mailing notice of such rejection
522 to the claimant within 90 days after receipt of such claim and,
523 in all events, at least 150 days before expiration of 3 years
524 following the effective date of dissolution. A notice sent by
525 the dissolved corporation or successor entity pursuant to this
526 subsection shall be accompanied by a copy of this section.

527 (4) A dissolved corporation or successor entity electing
528 to follow the procedures described in subsections(2) and (3)
529 shall also give notice of the dissolution of the corporation to
530 persons with known claims, that are contingent upon the
531 occurrence or nonoccurrence of future events or otherwise
532 conditional or unmatured, and request that such persons present
533 such claims in accordance with the terms of such notice. Such
534 notice shall be in substantially the form, and sent in the same
535 manner, as described in subsection (2).

536 (5) A dissolved corporation or successor entity shall
537 offer any claimant whose known claim is contingent, conditional,
538 or unmatured such security as the corporation or such entity
539 determines is sufficient to provide compensation to the claimant

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540 if the claim matures. The dissolved corporation or successor
541 entity shall deliver such offer to the claimant within 90 days
542 after receipt of such claim and, in all events, at least 150
543 days before expiration of 3 years following the effective date
544 of dissolution. If the claimant offered such security does not
545 deliver in writing to the dissolved corporation or successor
546 entity a notice rejecting the offer within 120 days after
547 receipt of such offer for security, the claimant is deemed to
548 have accepted such security as the sole source from which to
549 satisfy his or her claim against the corporation.

550 (6) A dissolved corporation or successor entity which has
551 given notice in accordance with subsections (2) and (4) shall
552 petition the circuit court in the county where the corporation's
553 principal office is located or was located at the effective date
554 of dissolution to determine the amount and form of security that
555 will be sufficient to provide compensation to any claimant who
556 has rejected the offer for security made pursuant to subsection
557 (5).

558 (7) A dissolved corporation or successor entity which has
559 given notice in accordance with subsection (2) shall petition
560 the circuit court in the county where the corporation's
561 principal office is located or was located at the effective date
562 of dissolution to determine the amount and form of security
563 which will be sufficient to provide compensation to claimants
564 whose claims are known to the corporation or successor entity
565 but whose identities are unknown. The court shall appoint a
566 guardian ad litem to represent all claimants whose identities
567 are unknown in any proceeding brought under this subsection. The
568 reasonable fees and expenses of such guardian, including all

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569 reasonable expert witness fees, shall be paid by the petitioner
570 in such proceeding.

571 (8) The giving of any notice or making of any offer
572 pursuant to the provisions of this section shall not revive any
573 claim then barred or constitute acknowledgment by the dissolved
574 corporation or successor entity that any person to whom such
575 notice is sent is a proper claimant and shall not operate as a
576 waiver of any defense or counterclaim in respect of any claim
577 asserted by any person to whom such notice is sent.

578 (9) A dissolved corporation or successor entity which has
579 followed the procedures described in subsections (2)-(7):

580 (a) Shall pay the claims admitted or made and not rejected
581 in accordance with subsection (3);

582 (b) Shall post the security offered and not rejected
583 pursuant to subsection (5);

584 (c) Shall post any security ordered by the circuit court
585 in any proceeding under subsections (6) and (7); and

586 (d) Shall pay or make provision for all other known
587 obligations of the corporation or such successor entity.

588
589 Such claims or obligations shall be paid in full, and any such
590 provision for payments shall be made in full if there are
591 sufficient funds. If there are insufficient funds, such claims
592 and obligations shall be paid or provided for according to their
593 priority and, among claims of equal priority, ratably to the
594 extent of funds legally available therefor. Any remaining funds
595 shall be distributed to the shareholders of the dissolved
596 corporation; however, such distribution may not be made before
597 the expiration of 150 days from the date of the last notice of

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598 rejections given pursuant to subsection (3). In the absence of
599 actual fraud, the judgment of the directors of the dissolved
600 corporation or the governing persons of such successor entity as
601 to the provisions made for the payment of all obligations under
602 paragraph (d) is conclusive.

603 (10) A dissolved corporation or successor entity which has
604 not followed the procedures described in subsections (2) and (3)
605 shall pay or make reasonable provision to pay all known claims
606 and obligations, including all contingent, conditional, or
607 unmatured claims known to the corporation or such successor
608 entity and all claims which are known to the dissolved
609 corporation or such successor entity but for which the identity
610 of the claimant is unknown. Such claims shall be paid in full,
611 and any such provision for payment made shall be made in full if
612 there are sufficient funds. If there are insufficient funds,
613 such claims and obligations shall be paid or provided for
614 according to their priority and, among claims of equal priority,
615 ratably to the extent of funds legally available therefor. Any
616 remaining funds shall be distributed to the shareholders of the
617 dissolved corporation.

618 (11) Directors of a dissolved corporation or governing
619 persons of a successor entity which has complied with subsection
620 (9) or subsection (10) are not personally liable to the
621 claimants of the dissolved corporation.

622 (12) A shareholder of a dissolved corporation the assets
623 of which were distributed pursuant to subsection (9) or
624 subsection (10) is not liable for any claim against the
625 corporation in an amount in excess of such shareholder's pro

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626 rata share of the claim or the amount distributed to the
627 shareholder, whichever is less.

628 (13) A shareholder of a dissolved corporation, the assets
629 of which were distributed pursuant to subsection (9), is not
630 liable for any claim against the corporation, which claim is
631 known to the corporation or successor entity, on which a
632 proceeding is not begun prior to the expiration of 3 years
633 following the effective date of dissolution.

634 (14) The aggregate liability of any shareholder of a
635 dissolved corporation for claims against the dissolved
636 corporation arising under this section, s. 607.1407, or
637 otherwise, may not exceed the amount distributed to the
638 shareholder in dissolution.

639 (15) As used in this section or s. 607.1407, the term
640 "successor entity" includes any trust, receivership, or other
641 legal entity governed by the laws of this state to which the
642 remaining assets and liabilities of a dissolved corporation are
643 transferred and which exists solely for the purposes of
644 prosecuting and defending suits by or against the dissolved
645 corporation, enabling the dissolved corporation to settle and
646 close the business of the dissolved corporation, to dispose of
647 and convey the property of the dissolved corporation, to
648 discharge the liabilities of the dissolved corporation, and to
649 distribute to the dissolved corporation's shareholders any
650 remaining assets, but not for the purpose of continuing the
651 business for which the dissolved corporation was organized.

652 Section 35. Section 607.1407, Florida Statutes, is created
653 to read:

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654 607.1407 Unknown claims against dissolved corporation.--A
655 dissolved corporation or successor entity, as defined in s.
656 607.1406(15), may choose to execute one of the following
657 procedures to resolve payment of unknown claims.

658 (1) A dissolved corporation or successor entity may file
659 notice of its dissolution with the Department of State on the
660 form prescribed by the Department of State and request that
661 persons with claims against the corporation which are not known
662 to the corporation or successor entity present them in
663 accordance with the notice. The notice shall:

664 (a) State the name of the corporation and the date of
665 dissolution;

666 (b) Describe the information that must be included in a
667 claim and provide a mailing address to which the claim may be
668 sent; and

669 (c) State that a claim against the corporation under this
670 subsection will be barred unless a proceeding to enforce the
671 claim is commenced within 4 years after the filing of the
672 notice.

673 (2) A dissolved corporation or successor entity may,
674 within 10 days of adopting the articles of dissolution, publish
675 a "Notice of Corporate Dissolution." The notice shall appear
676 once a week for 2 consecutive weeks in a newspaper of general
677 circulation in a county in the state wherein the corporation
678 owns real or personal property. Such newspaper shall meet the
679 requirements as are prescribed by law for such purposes. The
680 notice shall:

681 (a) State the name of the corporation and the date of
682 dissolution;

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683 (b) Describe the information that must be included in a
684 claim and provide a mailing address to which the claim may be
685 sent; and

686 (c) State that a claim against the corporation under this
687 subsection will be barred unless a proceeding to enforce the
688 claim is commenced within 4 years after the filing of the
689 notice.

690 (3) If the dissolved corporation or successor entity
691 complies with subsections (1) or (2), the claim of each of the
692 following claimants is barred unless the claimant commences a
693 proceeding to enforce the claim against the dissolved
694 corporation within 4 years after the filing date:

695 (a) A claimant who did not receive written notice under s.
696 607.1406(9), or whose claim was not provided for under s.
697 607.1456(10), whether such claim is based on an event occurring
698 before or after the effective date of dissolution.

699 (b) A claimant whose claim was timely sent to the
700 dissolved corporation but on which no action was taken.

701 (4) A claim may be entered under this section:

702 (a) Against the dissolved corporation, to the extent of
703 its undistributed assets; or

704 (b) If the assets have been distributed in liquidation,
705 against a shareholder of the dissolved corporation to the extent
706 of such shareholder's pro rata share of the claim or the
707 corporate assets distributed to such shareholder in liquidation,
708 whichever is less, provided that the aggregate liability of any
709 shareholder of a dissolved corporation arising under this
710 section, s. 607.1406, or otherwise may not exceed the amount
711 distributed to the shareholder in dissolution.

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712
713 Nothing in this section shall preclude or relieve the
714 corporation from its notification to claimants otherwise set
715 forth in this chapter.

716
717 ===== T I T L E A M E N D M E N T =====

718 Remove line(s) 73-89, and insert:

719
720 creating s. 607.1331, F.S.; providing for assessment and award
721 of court costs and attorney fees under certain circumstances;
722 creating s. 607.1332, F.S.; providing for disposition of certain
723 acquired shares; creating s. 607.1333, F.S.; providing
724 limitations on corporate payouts; providing certain shareholder
725 notice requirements; amending s. 607.1403, F.S.; providing for
726 execution of articles of dissolution; clarifying requirements;
727 amending s. 607.1406, F.S.; clarifying provisions relating to
728 claims against dissolved corporations; creating s. 607.1407,
729 F.S.; providing procedures and requirements for administration
730 of unknown claims against dissolved corporations; providing
731 conditions under which certain claims are barred; amending s.
732 607.1422, F.S.; revising