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A bill to be entitled

An act relating to the Florida Business Corporations Act; amending s. 607.0120, F.S.; clarifying a document execution provision relating to filing requirement; amending s. 607.0122, F.S.; clarifying an agent statement of resignation fee provision; amending s. 607.0123, F.S.; clarifying an effective time and date of document provision; amending s. 607.0124, F.S.; clarifying a filed document correction provision; amending s. 607.0141, F.S.; revising certain required notice provisions; providing for nonapplication to certain provisions; amending s. 607.0401, F.S.; clarifying a corporate name provision; providing construction relating to a corporate name; amending s. 607.0505, F.S.; providing for agent designation withdrawals by alien business organizations; amending s. 607.0630, F.S.; clarifying shareholder's preemptive rights provisions relating to certain securities; amending s. 607.0701, F.S.; providing for remote communications at annual shareholder meetings; providing requirements; amending s. 607.0702, F.S.; providing for remote communications at special shareholder meetings; providing requirements; amending s. 607.07401, F.S.; revising a complaint verification and allegation requirement under a shareholder derivative action provision; amending s. 607.0902, F.S.; revising a notice of shareholder meeting requirement; providing construction of control shares voting rights; deleting a rights of dissenting shareholders provision; amending s. 607.10025,



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F.S.; clarifying certain articles of incorporation provisions; amending s. 607.1004, F.S.; clarifying certain voting group amendment voting provisions; amending s. 607.1006, F.S.; clarifying certain execution of articles of amendment provisions; amending s. 607.1103, F.S.; clarifying a notification of certain plan actions provision; amending s. 607.1104, F.S.; clarifying a merger of subsidiary corporation plan of merger information requirement; amending s. 607.1108, F.S.; correcting a cross reference; amending s. 607.11101, F.S.; clarifying certain effect of merger provisions; amending s. 607.1202, F.S.; clarifying a notice requirement relating to certain sales of assets; amending s. 607.1301, F.S.; providing definitions relating to appraisal rights; amending s. 607.1302, F.S.; providing for shareholders' rights to appraisals under certain circumstances; providing limitations; providing for limiting or eliminating appraisal rights under certain circumstances; prohibiting certain corporate action challenges under certain circumstances; creating s. 607.1303, F.S.; providing procedures, requirements, and limitations for assertion of rights by nominees and beneficial owners; amending s. 607.1320, F.S.; providing requirements for notice of appraisal rights; creating s. 607.1321, F.S.; providing requirements for notice of intent to demand payment; creating s. 607.1322, F.S.; providing appraisal notice and form requirements; creating s. 607.1323, F.S.; providing procedures, requirements, and limitations for perfection



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of appraisal rights; providing for right to withdraw under certain circumstances; creating s. 607.1324, F.S.; providing procedures and requirements for shareholders' acceptance of certain offers; creating s. 607.1326, F.S.; providing procedures for shareholder dissatisfaction with certain offers; providing for waiver of certain rights; creating s. 607.1331, F.S.; providing for assessment and award of court costs and attorney fees under certain circumstances; creating s. 607.1332, F.S.; providing for disposition of certain acquired shares; creating s. 607.1333, F.S.; providing limitations on corporate payouts; providing certain shareholder notice requirements; amending s. 607.1403, F.S.; providing for execution of articles of dissolution; clarifying requirements; amending s. 607.1406, F.S.; clarifying provisions relating to claims against dissolved corporations; creating s. 607.1407, F.S.; providing procedures and requirements for administration of unknown claims against dissolved corporations; providing conditions under which certain claims are barred; amending s. 607.1422, F.S.; revising procedural requirements for reinstatement after administrative dissolution; amending s. 607.1503, F.S.; clarifying certain foreign corporation name requirements; amending s. 607.1504, F.S.; revising certain execution procedures and requirements for amended certificates of authority; amending s. 607.1506, F.S.; clarifying name requirements for foreign corporations; creating s. 607.1605, F.S.; providing requirements,



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procedures, and limitations on inspection of corporate records by directors; amending s. 607.1622, F.S.; deleting an annual report information requirement relating to corporate liability for certain taxes; amending s. 607.1907, F.S.; clarifying an effect of repeal of prior acts provision; repealing s. 607.0903, F.S., relating to application of certain provisions to foreign corporations; providing effective dates.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) of section 607.0120, Florida Statutes, is amended to read:

607.0120 Filing requirements.--

(6) The document must be executed:

(a) By a director ~~the chair or any vice chair of the board of directors~~ of a domestic or foreign corporation, or by its president or by another of its officers;

(b) If directors or officers have not been selected or the corporation has not been formed, by an incorporator; or

(c) If the corporation is in the hands of a receiver, trustee, or other court-appointed fiduciary, by that fiduciary.

Section 2. Subsection (7) of section 607.0122, Florida Statutes, is amended to read:

607.0122 Fees for filing documents and issuing certificates.--The Department of State shall collect the following fees when the documents described in this section are delivered to the department for filing:



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(7) Agent's statement of resignation from an inactive  
~~administratively dissolved~~ corporation: \$35.

Section 3. Subsections (1) and (2) of section 607.0123,  
 Florida Statutes, are amended to read:

607.0123 Effective time and date of document.--

(1) Except as provided in subsections ~~subsection~~ (2) and  
~~(4)~~ and in s. 607.0124(3), a document accepted for filing is  
 effective on:-

~~(a) At~~ the date and at the time of filing, as evidenced by  
 such means as the Department of State may use for the purpose of  
 recording the date and time of filing; ~~or~~

~~(b) At the date specified in the document as its effective~~  
~~date.~~

(2) A document may specify a delayed effective date and,  
if desired, a time on that date, and if it does the document  
 shall become effective on the date and at the time, if any,  
 specified. If a delayed effective date is specified without  
specifying a time on that date, the document shall become  
 effective at the start of business on that date. Unless  
 otherwise permitted by this act, a delayed effective date for a  
 document may not be later than the 90th day after the date on  
 which it is filed.

Section 4. Subsections (1) and (2) of section 607.0124,  
 Florida Statutes, are amended to read:

607.0124 Correcting filed document.--

(1) A domestic or foreign corporation may correct a  
 document filed by the Department of State within 30 ~~10-business~~  
 days after ~~of~~ filing if the document:



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- (a) Contains an inaccuracy;
- (b) Was defectively executed, attested, sealed, verified, or acknowledged; or
- (c) The electronic transmission was defective.
- (2) A document is corrected:
  - (a) By preparing articles of correction that:
    - 1. Describe the document (including its filing date) ~~or attach a copy of it to the articles;~~
    - 2. Specify the inaccuracy or defect to be corrected; and
    - 3. Correct the inaccuracy or defect; and
  - (b) By delivering the ~~executed~~ articles of correction to the Department of State for filing, executed in accordance with s. 607.0120.

Section 5. Subsection (3) of section 607.0141, Florida Statutes, is amended to read:

607.0141 Notice.--

(3)(a) Written notice by a domestic or foreign corporation authorized to transact business in this state to its shareholder, if in a comprehensible form, is effective:

1.(a) Upon deposit into the United States mail, if mailed postpaid and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders; or

2.(b) When electronically transmitted to the shareholder in a manner authorized by the shareholder.

(b) Unless otherwise provided in the articles of incorporation or bylaws, and without limiting the manner by which notice otherwise may be given effectively to shareholders, any notice to shareholders given by the corporation under any



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provision of this chapter, the articles of incorporation, or the bylaws, shall be effective if given by a single written notice to shareholders who share an address if consented to by the shareholders at that address to whom such notice is given. Any such consent shall be revocable by a shareholder by written notice to the corporation.

(c) Any shareholder who fails to object in writing to the corporation, within 60 days after having been given written notice by the corporation of its intention to send the single notice permitted under paragraph (b), shall be deemed to have consented to receiving such single written notice.

(d) This subsection shall not apply to s. 607.0620, s. 607.1402, or s. 607.1404.

Section 6. Subsection (1) of section 607.0401, Florida Statutes, is amended, and subsection (5) is added to said section, to read:

607.0401 Corporate name.--A corporate name:

(1) Must contain the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," ~~or words or abbreviations of like import in language, or the~~ designation "Corp," "Inc," or "Co," as will clearly indicate that it is a corporation instead of a natural person, or partnership, or other business entity;

(5) The name of the corporation as filed with the Department of State shall be for public notice only and shall not alone create any presumption of ownership beyond that which is created under the common law.



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Section 7. Subsection (12) is added to section 607.0505, Florida Statutes, to read:

607.0505 Registered agent; duties.--

(12) Any alien business organization may withdraw its registered agent designation by delivering an application for certificate of withdrawal to the Department of State for filing. Such application shall set forth:

(a) The name of the alien business organization and the jurisdiction under the law of which it is incorporated or organized.

(b) That it is no longer required to maintain a registered agent in this state.

Section 8. Subsection (1) and paragraphs (a), (c), (d), and (e) of subsection (2) of section 607.0630, Florida Statutes, are amended to read:

607.0630 Shareholders' preemptive rights.--

(1) The shareholders of a corporation do not have a preemptive right to acquire the corporation's unissued shares or the corporation's treasury shares, except in each case to the extent the articles of incorporation so provide.

(2) A statement included in the articles of incorporation that "the corporation elects to have preemptive rights" (or words of similar import) means that the following principles apply except to the extent the articles of incorporation expressly provide otherwise:

(a) The shareholders of the corporation have a preemptive right, granted on uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity





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to exercise the right, to acquire proportional amounts of the corporation's unissued shares and treasury shares upon the decision of the board of directors to issue them.

(c) There is no preemptive right with respect to:

1. Shares issued as compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;

2. Shares issued to satisfy conversion or option rights created to provide compensation to directors, officers, agents, or employees of the corporation or its subsidiaries or affiliates;

3. Shares authorized in articles of incorporation that are issued within 6 months from the effective date of incorporation;

4. Shares issued pursuant to a plan of reorganization approved by a court of competent jurisdiction pursuant to a law of this state or of the United States; or

~~5.4. Shares issued for consideration other sold otherwise than ~~for~~ money.~~

(d) Holders of shares of any class or series without general voting rights but with preferential rights to distributions or net assets upon dissolution and liquidation have no preemptive rights with respect to shares of any class.

(e) Holders of shares of any class or series with general voting rights but without preferential rights to distributions or net assets upon dissolution or liquidation have no preemptive rights with respect to shares of any class with preferential rights to distributions or assets unless the shares with



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preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

Section 9. Subsection (4) is added to section 607.0701, Florida Statutes, to read:

607.0701 Annual meeting.--

(4) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at an annual meeting of shareholders may, by means of remote communication:

(a) Participate in an annual meeting of shareholders.

(b) Be deemed present in person and vote at an annual meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the annual meeting by means of remote communication is a shareholder or proxyholder;

2. The corporation shall implement reasonable measures to provide such shareholders or proxyholders a reasonable opportunity to participate in the annual meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the annual meeting substantially concurrently with such proceedings; and

3. If any shareholder or proxyholder votes or takes other action at the annual meeting by means of remote communication, a



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record of such vote or other action shall be maintained by the corporation.

Section 10. Subsection (4) is added to section 607.0702, Florida Statutes, to read:

607.0702 Special meeting.--

(4) If authorized by the board of directors, and subject to such guidelines and procedures as the board of directors may adopt, shareholders and proxyholders not physically present at a special meeting of shareholders may, by means of remote communication:

(a) Participate in a special meeting of shareholders.

(b) Be deemed present in person and vote at a special meeting of shareholders, whether such meeting is to be held at a designated place or solely by means of remote communication, provided that:

1. The corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the special meeting by means of remote communication is a shareholder or proxyholder;

2. The corporation shall implement reasonable measures to provide such shareholders or proxyholders a reasonable opportunity to participate in the special meeting and to vote on matters submitted to the shareholders, including, without limitation, an opportunity to communicate and to read or hear the proceedings of the special meeting substantially concurrently with such proceedings; and

3. If any shareholder or proxyholder votes or takes other action at the special meeting by means of remote communication,



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a record of such vote or other action shall be maintained by the corporation.

Section 11. Subsection (2) of section 607.07401, Florida Statutes, is amended to read:

607.07401 Shareholders' derivative actions.--

(2) A complaint in a proceeding brought in the right of a corporation must be verified and allege with particularity the demand made to obtain action by the board of directors and that the demand was refused or ignored by the board of directors for a period of at least 90 days from the first demand unless, prior to the expiration of the 90 days, the person was notified in writing that the corporation rejected the demand, or unless irreparable injury to the corporation would result by waiting for the expiration of the 90-day period. If the corporation commences an investigation of the charges made in the demand or complaint, the court may stay any proceeding until the investigation is completed.

Section 12. Subsections (8), (9), and (11) of section 607.0902, Florida Statutes, are amended to read:

607.0902 Control-share acquisitions.--

(8) NOTICE OF SHAREHOLDER MEETING.--

(a) If a special meeting is requested, notice of the special meeting of shareholders shall be given as promptly as reasonably practicable by the issuing public corporation to all shareholders of record as of the record date set for the meeting, whether or not entitled to vote at the meeting.



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(b) Notice of the special or annual shareholder meeting at which the voting rights are to be considered must include or be accompanied by each of the following:

1. A copy of the acquiring person statement delivered to the issuing public corporation pursuant to this section.

2. A statement by the board of directors of the corporation, authorized by its directors, of its position or recommendation, or that it is taking no position or making no recommendation, with respect to the proposed control-share acquisition.

~~3. A statement that shareholders are or may be entitled to assert dissenters' rights, to be accompanied by a copy of ss. 607.1301, 607.1302, and 607.1320.~~

(9) RESOLUTION GRANTING CONTROL-SHARE VOTING RIGHTS.--

(a) Control shares acquired in a control-share acquisition have the same voting rights as were accorded the shares before the control-share acquisition only to the extent granted by resolution approved by the shareholders of the issuing public corporation.

(b) To be approved under this subsection, the resolution must be approved by:

1. Each class or series entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by the class or series, with the holders of the outstanding shares of a class or series being entitled to vote as a separate class if the proposed control-share acquisition would, if fully carried out, result in any of the changes described in s. 607.1004; and



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2. Each class or series entitled to vote separately on the proposal by a majority of all the votes entitled to be cast by that group, excluding all interested shares.

(c) Any control shares that do not have voting rights because such rights were not accorded to such shares by approval of a resolution by the shareholders pursuant to paragraph (b) shall regain voting rights and shall no longer be deemed control shares upon a transfer to a person other than the acquiring person or associate or affiliate, as defined in s. 607.0901, of the acquiring person unless the acquisition of the shares by the other person constitutes a control-share acquisition, in which case the voting rights of the shares remain subject to the provisions of this section.

~~(11) RIGHTS OF DISSENTING SHAREHOLDERS.~~

~~(a) Unless otherwise provided in a corporation's articles of incorporation or bylaws before a control-share acquisition has occurred, in the event control shares acquired in a control-share acquisition are accorded full voting rights and the acquiring person has acquired control shares with a majority or more of all voting power, all shareholders of the issuing public corporation shall have dissenters' rights to receive the fair value of their shares as provided in ss. 607.1301, 607.1302, and 607.1320 as provided in this section.~~

~~(b) As used in this subsection, "fair value" means a value not less than the highest price paid per share by the acquiring person in the control-share acquisition.~~

Section 13. Subsections (4) and (6) of section 607.10025, Florida Statutes, are amended to read:



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607.10025 Shares; combination or division.--

(4) If a division or combination is effected by a board action without shareholder approval and includes an amendment to the articles of incorporation, there shall be executed in accordance with s. 607.0120 on behalf of the corporation and filed in the office of the Department of State articles a certificate of amendment which shall set ~~setting~~ forth:

(a) The name of the corporation.

(b) The date of adoption by the board of directors of the resolution approving the division or combination.

(c) That the amendment to the articles of incorporation does not adversely affect the rights or preferences of the holders of outstanding shares of any class or series and does not result in the percentage of authorized shares that remain unissued after the division or combination exceeding the percentage of authorized shares that were unissued before the division or combination.

(d) The class or series and number of shares subject to the division or combination and the number of shares into which the shares are to be divided or combined.

(e) The amendment of the articles of incorporation made in connection with the division or combination.

(f) If the division or combination is to become effective at a time subsequent to the time of filing, the date, which may not exceed 90 days after the date of filing, when the division or combination becomes effective.

(6) If a division or combination is effected by action of the board and of the shareholders, there shall be executed on



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behalf of the corporation and filed with the Department of State articles ~~a certificate~~ of amendment as provided in s. 607.1003, which articles ~~certificate~~ shall set forth, in addition to the information required by s. 607.1003, the information required in subsection(4).

Section 14. Subsections (1) and (3) of section 607.1004, Florida Statutes, are amended to read:

607.1004 Voting on amendments by voting groups.--

(1) The holders of the outstanding shares of a class are entitled to vote as a class (if shareholder voting is otherwise required by this act) upon a proposed amendment, if the amendment would:

~~(a) Increase or decrease the aggregate number of authorized shares of the class.~~

(a)~~(b)~~ Effect an exchange or reclassification of all or part of the shares of the class into shares of another class.

(b)~~(e)~~ Effect an exchange or reclassification, or create a right of exchange, of all or part of the shares of another class into the shares of the class.

(c)~~(d)~~ Change the designation, rights, preferences, or limitations of all or part of the shares of the class.

(d)~~(e)~~ Change the shares of all or part of the class into a different number of shares of the same class.

(e)~~(f)~~ Create a new class of shares having rights or preferences with respect to distributions or to dissolution that are prior or, superior, ~~or substantially equal~~ to the shares of the class.





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~~(f)(g)~~ Increase the rights, preferences, or number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with respect to distributions or to dissolution that are prior or, superior, ~~or~~ ~~substantially equal~~ to the shares of the class.

~~(g)(h)~~ Limit or deny an existing preemptive right of all or part of the shares of the class.

~~(h)(i)~~ Cancel or otherwise affect rights to distributions or dividends that have accumulated but not yet been declared on all or part of the shares of the class.

(3) If a proposed amendment that entitles the holders of two or more classes or series of shares to vote as separate voting groups ~~classes~~ under this section would affect those two or more classes or series in the same or substantially similar way, the holders of the shares of all the classes or series so affected must vote together as a single voting group ~~class~~ on the proposed amendment, unless otherwise provided in the articles of incorporation.

Section 15. Section 607.1006, Florida Statutes, is amended to read:

607.1006 Articles of amendment.--

~~(1)~~ A corporation amending its articles of incorporation shall deliver to the Department of State for filing articles of amendment which shall be executed in accordance with s. 607.0120 and which shall set ~~setting~~ forth:

~~(1)(a)~~ The name of the corporation;

~~(2)(b)~~ The text of each amendment adopted;



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(3)~~(e)~~ If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4)~~(d)~~ The date of each amendment's adoption;

(5)~~(e)~~ If an amendment was adopted by the incorporators or board of directors without shareholder action, a statement to that effect and that shareholder action was not required;

(6)~~(f)~~ If an amendment was approved by the shareholders, a statement that the number of votes cast for the amendment by the shareholders was sufficient for approval and if more than one voting group was entitled to vote on the amendment, a statement designating each voting group entitled to vote separately on the amendment, and a statement that the number of votes cast for the amendment by the shareholders in each voting group was sufficient for approval by that voting group.

~~(2) If the amendment is made by the incorporators or board of directors without shareholder action, the articles of amendment shall be executed by an incorporator or director, as the case may be, approving the amendment.~~

Section 16. Subsection (4) of section 607.1103, Florida Statutes, is amended to read:

607.1103 Action on plan.--

(4) The corporation the shareholders of which are entitled to vote on the matter shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to



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consider the plan of merger or share exchange, regardless of whether or not the meeting is an annual or a special meeting, and contain or be accompanied by a copy or summary of the plan. Furthermore, the notice shall contain a clear and concise statement that, if the plan of merger or share exchange is effected, shareholders dissenting therefrom may be entitled, if they comply with the provisions of this act regarding appraisal ~~the rights of dissenting shareholders~~, to be paid the fair value of their shares, and shall be accompanied by a copy of ss. 607.1301-607.1333, ~~607.1302~~, and ~~607.1320~~.

Section 17. Paragraph (b) of subsection (1) of section 607.1104, Florida Statutes, is amended to read:

607.1104 Merger of subsidiary corporation.--

(1)

(b) The board of directors of the parent shall adopt a plan of merger that sets forth:

1. The names of the parent and subsidiary corporations;
2. The manner and basis of converting the shares of the subsidiary or parent into shares, obligations, or other securities of the parent or any other corporation or, in whole or in part, into cash or other property, and the manner and basis of converting rights to acquire shares of each corporation into rights to acquire shares, obligations, and other securities of the surviving or any other corporation or, in whole or in part, into cash or other property;

3. If the merger is between the parent and a subsidiary corporation and the parent is not the surviving corporation, a provision for the pro rata issuance of shares of the subsidiary



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to the holders of the shares of the parent corporation upon surrender of any certificates therefor; and

4. A clear and concise statement that shareholders of the subsidiary who, except for the applicability of this section, would be entitled to vote and who dissent from the merger pursuant to s. 607.1321 ~~607.1320~~, may be entitled, if they comply with the provisions of this act regarding appraisal ~~the rights of dissenting shareholders~~, to be paid the fair value of their shares.

Section 18. Subsection (6) of section 607.1108, Florida Statutes, is amended to read:

607.1108 Merger of domestic corporation and other business entity.--

(6) Sections 607.1103 and 607.1301-607.1333 ~~607.1320~~ shall, insofar as they are applicable, apply to mergers of one or more domestic corporations with or into one or more other business entities.

Section 19. Subsections (3) and (7) of section 607.11101, Florida Statutes, are amended to read:

607.11101 Effect of merger of domestic corporation and other business entity.--When a merger becomes effective:

(3) The surviving entity shall thereafter be responsible and liable for all the liabilities and obligations of each domestic corporation and other business entity that is a party to the merger, including liabilities arising out of appraisal ~~the rights of dissenters~~ with respect to such merger under applicable law.



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(7) The shares, partnership interests, interests, obligations, or other securities, and the rights to acquire shares, partnership interests, interests, obligations, or other securities, of each domestic corporation and other business entity that is a party to the merger shall be converted into shares, partnership interests, interests, obligations, or other securities, or rights to such securities, of the surviving entity or any other domestic corporation or other business entity or, in whole or in part, into cash or other property as provided in the plan of merger, and the former holders of shares, partnership interests, interests, obligations, or other securities, or rights to such securities, shall be entitled only to the rights provided in the plan of merger and to their appraisal rights as dissenters, if any, under ss. 607.1301-607.1333 ~~607.1301-607.1320~~, s. 608.4384, s. 620.205, or other applicable law.

Section 20. Subsection (4) of section 607.1202, Florida Statutes, is amended to read:

607.1202 Sale of assets other than in regular course of business.--

(4) The corporation shall notify each shareholder of record, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with s. 607.0705. The notice shall also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation, regardless of whether or not the meeting is an annual or a special meeting, and shall contain or be accompanied



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by a description of the transaction. Furthermore, the notice shall contain a clear and concise statement that, if the transaction is effected, shareholders dissenting therefrom are or may be entitled, if they comply with the provisions of this act regarding appraisal ~~the rights of dissenting shareholders~~, to be paid the fair value of their shares and such notice shall be accompanied by a copy of ss. 607.1301-607.1333 ~~607.1301, 607.1302, and 607.1320.~~

Section 21. Section 607.1301, Florida Statutes, is amended to read:

(Substantial rewording of section. See s. 607.1301, Florida Statutes, for present text.)

607.1301 Appraisal rights; definitions.--The following definitions apply to ss. 607.1302-607.1333:

(1) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another person or is a senior executive thereof. For purposes of s. 607.1302(2)(d), a person is deemed to be an affiliate of its senior executives.

(2) "Beneficial shareholder" means a person who is the beneficial owner of shares held in a voting trust or by a nominee on the beneficial owner's behalf.

(3) "Corporation" means the issuer of the shares held by a shareholder demanding appraisal and, for matters covered in ss. 607.1322-607.1333, includes the surviving entity in a merger.

(4) "Fair value" means the value of the corporation's shares determined:



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(a) Immediately before the effectuation of the corporate action to which the shareholder objects.

(b) Using customary and current valuation concepts and techniques generally employed for similar businesses in the context of the transaction requiring appraisal, excluding any appreciation or depreciation in anticipation of the corporate action unless exclusion would be inequitable to the corporation and its remaining shareholders.

(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.

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

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

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

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



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607.1302 Right of shareholders to appraisal.--

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

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

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

(c) Consummation of a disposition of assets pursuant to s. 607.1202 if the shareholder is entitled to vote on the disposition, including a sale in dissolution but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within 1 year after the date of sale;

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





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

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

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

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

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or making any of his or her shares subject to redemption when they are not otherwise redeemable;

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

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



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

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

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

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

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

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

1. The record date fixed to determine the shareholders entitled to receive notice of, and to vote at, the meeting of shareholders to act upon the corporate action requiring appraisal rights; or

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



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

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

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

a. Is, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporate action requiring appraisal rights was, the beneficial owner of 20 percent or more of the voting power of the corporation, excluding any shares acquired pursuant to an offer for all shares having voting power if such offer was made within 1 year prior to the corporate action requiring appraisal rights for consideration of the same kind and of a value equal to or less than that paid in connection with the corporate action; or

b. Directly or indirectly has, or at any time in the 1-year period immediately preceding approval by the board of directors of the corporation of the corporate action requiring



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appraisal rights had, the power, contractually or otherwise, to cause the appointment or election of 25 percent or more of the directors to the board of directors of the corporation; or

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

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

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

c. In the case of a director of the corporation who will, in the corporate action, become a director of the acquiring entity in the corporate action or one of its affiliates, rights and benefits as a director that are provided on the same basis



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as those afforded by the acquiring entity generally to other directors of such entity or such affiliate.

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

(3) Notwithstanding any other provision of this section, the articles of incorporation as originally filed or any amendment thereto may limit or eliminate appraisal rights for any class or series of preferred shares, but any such limitation or elimination contained in an amendment to the articles of incorporation that limits or eliminates appraisal rights for any of such shares that are outstanding immediately prior to the effective date of such amendment or that the corporation is or



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may be required to issue or sell thereafter pursuant to any conversion, exchange, or other right existing immediately before the effective date of such amendment shall not apply to any corporate action that becomes effective within 1 year of that date if such action would otherwise afford appraisal rights.

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

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

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

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

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

(1) A record shareholder may assert appraisal rights as to fewer than all the shares registered in the record shareholder's name but owned by a beneficial shareholder only if the record shareholder objects with respect to all shares of the class or series owned by the beneficial shareholder and notifies the corporation in writing of the name and address of each beneficial shareholder on whose behalf appraisal rights are being asserted. The rights of a record shareholder who asserts appraisal rights for only part of the shares held of record in the record shareholder's name under this subsection shall be



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determined as if the shares as to which the record shareholder objects and the record shareholder's other shares were registered in the names of different record shareholders.

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

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

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

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

(Substantial rewording of section. See s. 607.1320, Florida Statutes, for present text.)  
607.1320 Notice of appraisal rights.--

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

(2) In a merger pursuant to s. 607.1104, the parent corporation must notify in writing all record shareholders of



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the subsidiary who are entitled to assert appraisal rights that the corporate action became effective. Such notice must be sent within 10 days after the corporate action became effective and include the materials described in s. 607.1322.

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

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

607.1321 Notice of intent to demand payment.--

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

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

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





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

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

607.1322 Appraisal notice and form.--

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

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

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

1. The shareholder's name and address.
2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
3. That the shareholder did not vote for the transaction.
4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (2)(b)4.
5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus interest.



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(b) State:

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

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

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

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

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

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

(c) Be accompanied by:

1. Financial statements of the corporation that issued the shares to be appraised, consisting of a balance sheet as of the



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end of the fiscal year ending not more than 15 months prior to the date of the corporation's appraisal notice, an income statement for that year, a cash flow statement for that year, and the latest available interim financial statements, if any.

2. A copy of ss. 607.1301-607.1333.

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

607.1323 Perfection of rights; right to withdraw.--

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

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

(3) A shareholder who does not execute and return the form and, in the case of certificated shares, deposit that shareholder's share certificates if required, each by the date



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set forth in the notice described in subsection (2), shall not be entitled to payment under this chapter.

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

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

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

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

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

607.1326 Procedure if shareholder is dissatisfied with offer.--

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

(2) A shareholder who fails to notify the corporation in writing of that shareholder's demand to be paid the shareholder's stated estimate of the fair value plus interest under subsection (1) within the timeframe set forth in s. 607.1322(2)(b)2. waives the right to demand payment under this



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section and shall be entitled only to the payment offered by the corporation pursuant to s. 607.1322(2)(b)4.

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

607.1331 Court costs and counsel fees.--

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

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

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

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

(3) If the court in an appraisal proceeding finds that the services of counsel for any shareholder were of substantial



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benefit to other shareholders similarly situated, and that the fees for those services should not be assessed against the corporation, the court may award to such counsel reasonable fees to be paid out of the amounts awarded the shareholders who were benefited.

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

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

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

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

607.1333. Limitation on corporate payment.--



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

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

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

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

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

607.1403 Articles of dissolution.--

(1) At any time after dissolution is authorized, the corporation may dissolve by delivering to the Department of State for filing articles of dissolution which shall be executed



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in accordance with s. 607.0120 and which shall set ~~setting~~  
forth:

- (a) The name of the corporation;
- (b) The date dissolution was authorized;
- (c) If dissolution was approved by the shareholders, a statement that the number cast for dissolution by the shareholders was sufficient for approval.
- (d) If dissolution was approved by the shareholders and if voting by voting groups was required, a statement that the number cast for dissolution by the shareholders was sufficient for approval must be separately provided for each voting group entitled to vote separately on the plan to dissolve.

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

607.1406 Known claims against dissolved corporation.--

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

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

- (a) Provide a reasonable description of the claim that the claimant may be entitled to assert;
- (b) State whether the claim is admitted or not admitted, in whole or in part, and, if admitted:





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

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

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

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

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

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

(4) A dissolved corporation or successor entity electing to follow the procedures described in subsections(2) and (3) shall also give notice of the dissolution of the corporation to persons with known claims, that are contingent upon the occurrence or nonoccurrence of future events or otherwise conditional or unmatured, and request that such persons present such claims in accordance with the terms of such notice. Such



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notice shall be in substantially the form, and sent in the same manner, as described in subsection (2).

(5) A dissolved corporation or successor entity shall offer any claimant whose known claim is contingent, conditional, or unmatured such security as the corporation or such entity determines is sufficient to provide compensation to the claimant if the claim matures. The dissolved corporation or successor entity shall deliver such offer to the claimant within 90 days after receipt of such claim and, in all events, at least 150 days before expiration of 3 years following the effective date of dissolution. If the claimant offered such security does not deliver in writing to the dissolved corporation or successor entity a notice rejecting the offer within 120 days after receipt of such offer for security, the claimant is deemed to have accepted such security as the sole source from which to satisfy his or her claim against the corporation.

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

(7) A dissolved corporation or successor entity which has given notice in accordance with subsection (2) shall petition the circuit court in the county where the corporation's principal office is located or was located at the effective date



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of dissolution to determine the amount and form of security which will be sufficient to provide compensation to claimants whose claims are known to the corporation or successor entity but whose identities are unknown. The court shall appoint a guardian ad litem to represent all claimants whose identities are unknown in any proceeding brought under this subsection. The reasonable fees and expenses of such guardian, including all reasonable expert witness fees, shall be paid by the petitioner in such proceeding.

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

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

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

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

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

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



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Such claims or obligations shall be paid in full, and any such provision for payments shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any remaining funds shall be distributed to the shareholders of the dissolved corporation; however, such distribution may not be made before the expiration of 150 days from the date of the last notice of rejections given pursuant to subsection (3). In the absence of actual fraud, the judgment of the directors of the dissolved corporation or the governing persons of such successor entity as to the provisions made for the payment of all obligations under paragraph (d) is conclusive.

(10) A dissolved corporation or successor entity which has not followed the procedures described in subsections (2) and (3) shall pay or make reasonable provision to pay all known claims and obligations, including all contingent, conditional, or unmatured claims known to the corporation or such successor entity and all claims which are known to the dissolved corporation or such successor entity but for which the identity of the claimant is unknown. Such claims shall be paid in full, and any such provision for payment made shall be made in full if there are sufficient funds. If there are insufficient funds, such claims and obligations shall be paid or provided for according to their priority and, among claims of equal priority, ratably to the extent of funds legally available therefor. Any



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remaining funds shall be distributed to the shareholders of the dissolved corporation.

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

(12) A shareholder of a dissolved corporation the assets of which were distributed pursuant to subsection (9) or subsection (10) is not liable for any claim against the corporation in an amount in excess of such shareholder's pro rata share of the claim or the amount distributed to the shareholder, whichever is less.

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

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

(15) As used in this section or s. 607.1407, the term "successor entity" includes any trust, receivership, or other legal entity governed by the laws of this state to which the remaining assets and liabilities of a dissolved corporation are transferred and which exists solely for the purposes of



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prosecuting and defending suits by or against the dissolved corporation, enabling the dissolved corporation to settle and close the business of the dissolved corporation, to dispose of and convey the property of the dissolved corporation, to discharge the liabilities of the dissolved corporation, and to distribute to the dissolved corporation's shareholders any remaining assets, but not for the purpose of continuing the business for which the dissolved corporation was organized.

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

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

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

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

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

(c) State that a claim against the corporation under this subsection will be barred unless a proceeding to enforce the



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claim is commenced within 4 years after the filing of the notice.

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

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

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

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

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

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



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

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

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

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

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

Section 36. Subsections (1) and (2) of section 607.1422, Florida Statutes, are amended to read:

607.1422 Reinstatement following administrative dissolution.--

(1)(a) A corporation administratively dissolved under s. 607.1421 may apply to the Department of State for reinstatement at any time after the effective date of dissolution. The corporation ~~application~~ must submit a reinstatement form prescribed and furnished by the Department of State or a current uniform business report signed by the registered agent and an officer or director and all fees then owed by the corporation,





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computed at the rate provided by law at the time the corporation applies for reinstatement;

~~1. Recite the name of the corporation and the effective date of its administrative dissolution;~~

~~2. State that the ground or grounds for dissolution either did not exist or have been eliminated and that no further grounds currently exist for dissolution;~~

~~3. State that the corporation's name satisfies the requirements of s. 607.0401; and~~

~~4. State that all fees owed by the corporation and computed at the rate provided by law at the time the corporation applies for reinstatement have been paid; or~~

~~(b) As an alternative, the corporation may submit a current annual report, signed by the registered agent and an officer or director, which substantially complies with the requirements of paragraph (a).~~

(2) If the Department of State determines that the application contains the information required by subsection (1) and that the information is correct, it shall reinstate the corporation ~~cancel the certificate of dissolution and prepare a certificate of reinstatement that recites its determination and the effective date of reinstatement, file the original of the certificate, and serve a copy on the corporation under s. 607.0504(2).~~

Section 37. Paragraph (a) of subsection (1) of section 607.1503, Florida Statutes, is amended to read:

607.1503 Application for certificate of authority.--



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(1) A foreign corporation may apply for a certificate of authority to transact business in this state by delivering an application to the Department of State for filing. Such application shall be made on forms prescribed and furnished by the Department of State and shall set forth:

(a) The name of the foreign corporation as long as its name satisfies the requirements of s. 607.0401, but if its name does not satisfy such requirements ~~or, if its name is unavailable for use in this state,~~ a corporate name that otherwise satisfies the requirements of s. 607.1506;

Section 38. Subsection (2) of section 607.1504, Florida Statutes, is amended to read:

607.1504 Amended certificate of authority.--

(2) Such application shall be made within 90 ~~30~~ days after the occurrence of any change mentioned in subsection (1), shall be made on forms prescribed by the Department of State and~~7~~ shall be executed in accordance with s. 607.0120. The foreign corporation shall deliver with the completed application, a certificate, or a document of similar import, authenticated as of a date not more than 90 days prior to delivery of the application to the Department of State by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated, evidencing the amendment. A translation of the certificate, under oath or affirmation of the translator, must be attached to a certificate that is in a language other than English. The application ~~and filed in the same manner as an original application for authority,~~ and shall set forth:



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(a) The name of the foreign corporation as it appears on the records of the Department of State.

(b) The jurisdiction of its incorporation.

(c) The date it was authorized to do business in this state.

(d) If the name of the foreign corporation has been changed, the name relinquished, the new name, a statement that the change of name has been effected under the laws of the jurisdiction of its incorporation, and the date the change was effected.

(e) If the amendment changes its period of duration, a statement of such change.

(f) If the amendment changes the jurisdiction of incorporation, a statement of such change.

Section 39. Subsection (1) of section 607.1506, Florida Statutes, is amended to read:

607.1506 Corporate name of foreign corporation.--

(1) A foreign corporation is not entitled to file an application for a certificate of authority unless the corporate name of such corporation satisfies the requirements of s. 607.0401. If the corporate name of a foreign corporation does not satisfy the requirements of s. 607.0401, the foreign corporation, to obtain or maintain a certificate of authority to transact business in this state:

(a) May add the word "corporation," "company," or "incorporated" or the abbreviation "Corp.," "Inc.," "Co.," or the designation "Corp," "Inc," or "Co," ~~or words or abbreviations of like import in language,~~ as will clearly



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indicate that it is a corporation instead of a natural person, ~~or partnership, or other business entity to its corporate name for use in this state;~~ or

(b) May use an alternate name to transact business in this state if its real name is unavailable ~~and it delivers to the Department of State for filing a copy of the resolution of its board of directors, executed as required by s. 607.0120, adopting an alternate name.~~ Any such alternate corporate name, adopted for use in this state, shall be cross-referenced to the real corporate name in the records of the Division of Corporations. If the corporation's real corporate name becomes available in this state or the corporation chooses to change its alternate name, a copy of the resolution of its board of directors changing or withdrawing the alternate name, executed as required by s. 607.0120, shall be delivered for filing.

Section 40. Section 607.1605, Florida Statutes, is created to read:

607.1605 Inspection of records by directors.--

(1) A director of a corporation is entitled to inspect and copy the books, records, and documents of the corporation at any reasonable time to the extent reasonably related to the performance of the director's duties as a director, including duties as a member of a committee, but not for any other purpose or in any manner that would violate any duty to the corporation.

(2) The circuit court of the county in which the corporation's principal office or, if none in this state, its registered office is located may order inspection and copying of the books, records, and documents at the corporation's expense,



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upon application of a director who has been refused such inspection rights, unless the corporation establishes that the director is not entitled to such inspection rights. The court shall dispose of an application under this subsection on an expedited basis.

(3) If an order is issued, the court may include provisions protecting the corporation from undue burden or expense and prohibiting the director from using information obtained upon exercise of the inspection rights in a manner that would violate a duty to the corporation, and may also order the corporation to reimburse the director for the director's costs, including reasonable counsel fees, incurred in connection with the application.

Section 41. Paragraphs (g), (h), and (i) of subsection (1) of section 607.1622, Florida Statutes, are amended to read:

607.1622 Annual report for Department of State.--

(1) Each domestic corporation and each foreign corporation authorized to transact business in this state shall deliver to the Department of State for filing a sworn annual report on such forms as the Department of State prescribes that sets forth:

~~(g) Whether the corporation has liability for intangible taxes under s. 199.032. The Department of State shall annually prepare a list of those corporations that have indicated no intangible tax liability, and provide such list to the Department of Revenue;~~

(g)(h) Language permitting a voluntary contribution of \$5 per taxpayer, which contribution shall be transferred into the Election Campaign Financing Trust Fund. A statement providing an



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explanation of the purpose of the trust fund shall also be included; and

~~(h)(i)~~ Such additional information as may be necessary or appropriate to enable the Department of State to carry out the provisions of this act.

Section 42. Paragraph (b) of subsection (1) of section 607.1907, Florida Statutes, is amended to read:

607.1907 Effect of repeal of prior acts.--

(1) Except as provided in subsection (2), the repeal of a statute by this act does not affect:

(b) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute before its repeal;

Section 43. Section 607.0903, Florida Statutes, is repealed.

Section 44. This act shall take effect October 1, 2003.