

CHAMBER ACTION

1 The Committee on Commerce recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the Florida Business Corporation Act;
7 amending s. 607.1302, F.S.; clarifying a corporate action
8 entitling a shareholder to certain appraisal rights and
9 payments for shares; creating s. 607.1330, F.S.; providing
10 requirements, procedures, and limitations on court
11 actions; providing for entitlement to certain judgments;
12 requiring corporate payments under certain circumstances;
13 amending s. 607.1407, F.S.; revising certain notice
14 requirements for dissolved corporations; revising a
15 procedure to clarify an exemption for certain claims
16 against dissolved corporations being barred; correcting a
17 cross reference; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

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21 Section 1. Paragraph (e) of subsection (1) of section
22 607.1302, Florida Statutes, is amended to read:

23 607.1302 Right of shareholders to appraisal.--

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

27 (e) With regard to a class of shares prescribed in the
28 articles of incorporation ~~issued~~ prior to October 1, 2003,
29 including any shares within that class subsequently authorized
30 by amendment, any amendment of the articles of incorporation if
31 the shareholder is entitled to vote on the amendment and if such
32 amendment would adversely affect such shareholder by:

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

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

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

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

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

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

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

60 Section 2. Section 607.1330, Florida Statutes, is created
61 to read:

62 607.1330 Court action.--

63 (1) If a shareholder makes demand for payment under s.
64 607.1326 which remains unsettled, the corporation shall commence
65 a proceeding within 60 days after receiving the payment demand
66 and petition the court to determine the fair value of the shares
67 and accrued interest. If the corporation does not commence the
68 proceeding within the 60-day period, any shareholder who has
69 made a demand pursuant to s. 607.1326 may commence the
70 proceeding in the name of the corporation.

71 (2) The proceeding shall be commenced in the appropriate
72 court of the county in which the corporation's principal office,
73 or, if none, its registered office, in this state is located. If
74 the corporation is a foreign corporation without a registered
75 office in this state, the proceeding shall be commenced in the
76 county in this state in which the principal office or registered
77 office of the domestic corporation merged with the foreign
78 corporation was located at the time of the transaction.

79 (3) All shareholders, whether or not residents of this
 80 state, whose demands remain unsettled shall be made parties to
 81 the proceeding as in an action against their shares. The
 82 corporation shall serve a copy of the initial pleading in such
 83 proceeding upon each shareholder party who is a resident of this
 84 state in the manner provided by law for the service of a summons
 85 and complaint and upon each nonresident shareholder party by
 86 registered or certified mail or by publication as provided by
 87 law.

88 (4) The jurisdiction of the court in which the proceeding
 89 is commenced under subsection (2) is plenary and exclusive. If
 90 it so elects, the court may appoint one or more persons as
 91 appraisers to receive evidence and recommend a decision on the
 92 question of fair value. The appraisers shall have the powers
 93 described in the order appointing them or in any amendment to
 94 the order. The shareholders demanding appraisal rights are
 95 entitled to the same discovery rights as parties in other civil
 96 proceedings. There shall be no right to a jury trial.

97 (5) Each shareholder made a party to the proceeding is
 98 entitled to judgment for the amount of the fair value of such
 99 shareholder's shares, plus interest, as found by the court.

100 (6) The corporation shall pay each such shareholder the
 101 amount found to be due within 10 days after final determination
 102 of the proceedings. Upon payment of the judgment, the
 103 shareholder shall cease to have any interest in the shares.

104 Section 3. Subsections (2) and (3) of section 607.1407,
 105 Florida Statutes, are amended to read:

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106 607.1407 Unknown claims against dissolved corporation.--A
107 dissolved corporation or successor entity, as defined in s.
108 607.1406(15), may choose to execute one of the following
109 procedures to resolve payment of unknown claims.

110 (2) A dissolved corporation or successor entity may,
111 within 10 days after filing ~~of adopting the~~ articles of
112 dissolution with the Department of State, publish a "Notice of
113 Corporate Dissolution." The notice shall appear once a week for
114 2 consecutive weeks in a newspaper of general circulation in a
115 county in the state in which ~~wherein~~ the corporation has its
116 principal office, if any, or, if none, in a county in the state
117 in which the corporation owns real or personal property. Such
118 newspaper shall meet the requirements as are prescribed by law
119 for such purposes. The notice shall:

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

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

125 (c) State that a claim against the corporation under this
126 subsection will be barred unless a proceeding to enforce the
127 claim is commenced within 4 years after the date of the second
128 consecutive weekly publication ~~filing~~ of the notice authorized
129 by this section.

130 (3) If the dissolved corporation or successor entity
131 complies with subsection (1) or subsection (2), the claim of
132 each of the following claimants is barred unless the claimant
133 commences a proceeding to enforce the claim against the

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134 dissolved corporation within 4 years after the ~~filing~~ date of
135 filing the notice with the Department of State or the date of
136 the second consecutive weekly publication, as applicable:

137 (a) A claimant who did not receive written notice under s.
138 607.1406(9), or whose claim was not provided for under s.
139 607.1406(10) ~~607.1456(10)~~, whether such claim is based on an
140 event occurring before or after the effective date of
141 dissolution.

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

144 Section 4. This act shall take effect upon becoming a law.