

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2718

SPONSOR: Senator Klein

SUBJECT: Business Corp. Act/Shareholders

DATE: April 5, 2004

REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR | REFERENCE | ACTION           |
|----|--------------|----------------|-----------|------------------|
| 1. | <u>Brown</u> | <u>Lang</u>    | <u>JU</u> | <u>Favorable</u> |
| 2. | <u>Rhea</u>  | <u>Wilson</u>  | <u>GO</u> | <u>Favorable</u> |
| 3. | _____        | _____          | <u>CM</u> | _____            |
| 4. | _____        | _____          | _____     | _____            |
| 5. | _____        | _____          | _____     | _____            |
| 6. | _____        | _____          | _____     | _____            |

## I. Summary:

This bill is a glitch bill to the 2003 comprehensive overhaul of the Florida Business Corporation Act.

This bill revises certain shareholders rights, including the rights that accrue when a shareholder demands payment pursuant to certain corporate actions, and the procedure that follows. Language is clarified regarding a corporate filing of a notice of dissolution.

This bill amends sections 607.1302 and 607.1407 of the Florida Statutes.

This bill creates section 607.1330 of the Florida Statutes.

## II. Present Situation:

### *Florida Business Corporation Act*

Chapter 607, F.S., the Florida Business Corporation Act (the "Act"), provides for the regulation of corporations. The Corporate Law Revision Committee of the Business Law Section of the Florida Bar assisted in drafting the Act.<sup>1</sup> The Act was adopted during the 1989 Legislative Session, through intent to update the law to contemporary corporate practice.<sup>2</sup> In the 2003 Legislative Session, this chapter was substantially overhauled, again, through consultation with the Business Law Section, of the Florida Bar.<sup>3</sup>

<sup>1</sup> Stuart R. Cohn and Stuart D. Ames, *Florida Business Laws Annotated 2002-2003*, pgs. 2-3.

<sup>2</sup> See Chapter 89-154, L.O.F.

<sup>3</sup> See Chapter 2003-283, L.O.F.

The Act entitles a shareholder to appraisal rights<sup>4</sup>, or the right to obtain payment of the fair value of that shareholder's shares, provided that one of the following corporate actions has occurred:

- Consummation of a merger where the corporation is a party if shareholder approval is required, and the shareholder is entitled to vote on the merger, or if the corporation is a subsidiary and the merger is a parent-sub subsidiary merger;
- Consummation of a share exchange, for which appraisal is limited to the class or series of shares exchanged;
- Consummation of certain dispositions of assets;
- Other amendments to the articles of incorporation, merger, share exchange, or disposition of assets provided certain criterion are met; and,
- Amendments to the articles of incorporation where the shareholder is entitled to vote on the amendment and the amendment adversely affects the shareholder in specified ways.<sup>5</sup>

***'Glitch' Areas Identified in the Act:***

Several areas of the 2003 legislation are identified as raising concerns by practitioners:

- Shares of the same class are not treated equally in terms of rights and preferences under the law;
- No provision exists addressing certain civil processes, such as the initiating of court action, deadlines, venue and service of pleadings;
- An incorrect cross-reference exists in s. 607.1407(3), F.S., which relates to a statute of limitations for claimants in certain corporate dissolution actions. The cross-reference in current law is to s. 607.1456(10), F.S., which is now obsolete. The correct cross-reference should be s. 607.1406(10), F.S., which requires a dissolved corporation or successor entity that has not followed proper procedure regarding claims to pay certain claims and obligations in full, and where unable, to pay in order of priority status;
- The Department of State was inadvertently omitted as the entity to whom the dissolved corporation or successor entity files a notice of corporate dissolution. Also, the time certain when the four year statute of limitations expires is unclear.

### **III. Effect of Proposed Changes:**

This bill corrects and clarifies recent changes made to the Florida Business Corporation Act.

This bill specifically provides for certain rights and process regarding shareholder actions:

- When a shareholder demands payment, a corporation that does not settle the payment must bring action within 60 days after the demand; otherwise, the shareholder is authorized to initiate an action in the corporate name;
- The action must be brought in the court of the county in which the corporation's principal, or registered office, is located, or where the domestic office of a foreign corporation is located;

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<sup>4</sup> Previously known as "dissenter's rights".

<sup>5</sup> Section 607.1302, F.S.

- All shareholders, both in and out of state, are parties to the action, and are required to be served with the initial pleading by the corporation in a certain manner;
- The jurisdiction of the court is complete and exclusive;
- The court is authorized to appoint appraisers to recommend fair value;
- Shareholder parties are entitled to fair value of shares plus interest;
- The corporation is required to pay the judgment within 10 days after the court's final determination; payment relinquishes each shareholder's interest.

Clarifications are also provided regarding unknown claims of dissolved corporations, to include that notice of dissolution is filed with the Department of State, and that a case must be brought within a specified period.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

These corrections provide a clearer judicial mechanism to private shareholders to initiate claims, including language providing for a date certain regarding a statutes of limitation. Shares of the same class are granted the same treatment and preferences under this bill, regardless of date of issuance.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

Under the rules of statutory construction, a section of law that cross-references another section or portion thereof that is subsequently amended does not incorporate those amendments unless the section containing the cross-reference is reenacted (republished). Otherwise, the statutory cross-reference is linked to the version of the section that existed prior to the amendment.

Section 607.1302, F.S., as revised in this bill, is cross-referenced in s. 607.1106, F.S. which relates to effects of corporate mergers or share exchanges. Section 607.1302, F.S., is also cross-referenced in s. 607.1107, F.S., which addresses mergers or share exchanges with foreign corporations. Section 607.1302, F.S., is also cross-referenced in s. 607.1109, F.S., which governs articles of merger. Section 607.1302, F.S., is also cross-referenced in s. 607.1321, F.S., which relates to notice of intent to demand payment. These sections may need to be republished in order to incorporate the amendments to s. 607.1302, F.S.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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