

By Senator Klein

30-1421B-04

See HB 1035

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

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

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

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 607.1302 Right of shareholders to appraisal.--

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

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 (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

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1 | if the shareholder is entitled to vote on the amendment and if
2 | such amendment would adversely affect such shareholder by:
3 | 1. Altering or abolishing any preemptive rights
4 | attached to any of his or her shares;
5 | 2. Altering or abolishing the voting rights pertaining
6 | to any of his or her shares, except as such rights may be
7 | affected by the voting rights of new shares then being
8 | authorized of any existing or new class or series of shares;
9 | 3. Effecting an exchange, cancellation, or
10 | reclassification of any of his or her shares, when such
11 | exchange, cancellation, or reclassification would alter or
12 | abolish the shareholder's voting rights or alter his or her
13 | percentage of equity in the corporation, or effecting a
14 | reduction or cancellation of accrued dividends or other
15 | arrearages in respect to such shares;
16 | 4. Reducing the stated redemption price of any of the
17 | shareholder's redeemable shares, altering or abolishing any
18 | provision relating to any sinking fund for the redemption or
19 | purchase of any of his or her shares, or making any of his or
20 | her shares subject to redemption when they are not otherwise
21 | redeemable;
22 | 5. Making noncumulative, in whole or in part,
23 | dividends of any of the shareholder's preferred shares which
24 | had theretofore been cumulative;
25 | 6. Reducing the stated dividend preference of any of
26 | the shareholder's preferred shares; or
27 | 7. Reducing any stated preferential amount payable on
28 | any of the shareholder's preferred shares upon voluntary or
29 | involuntary liquidation.
30 | Section 2. Section 607.1330, Florida Statutes, is
31 | created to read:

1 607.1330 Court action.--

2 (1) If a shareholder makes demand for payment under s.
3 607.1326 which remains unsettled, the corporation shall
4 commence a proceeding within 60 days after receiving the
5 payment demand and petition the court to determine the fair
6 value of the shares and accrued interest. If the corporation
7 does not commence the proceeding within the 60-day period, any
8 shareholder who has made a demand pursuant to s. 607.1326 may
9 commence the proceeding in the name of the corporation.

10 (2) The proceeding shall be commenced in the
11 appropriate court of the county in which the corporation's
12 principal office, or, if none, its registered office, in this
13 state is located. If the corporation is a foreign corporation
14 without a registered office in this state, the proceeding
15 shall be commenced in the county in this state in which the
16 principal office or registered office of the domestic
17 corporation merged with the foreign corporation was located at
18 the time of the transaction.

19 (3) All shareholders, whether or not residents of this
20 state, whose demands remain unsettled shall be made parties to
21 the proceeding as in an action against their shares. The
22 corporation shall serve a copy of the initial pleading in such
23 proceeding upon each shareholder party who is a resident of
24 this state in the manner provided by law for the service of a
25 summons and complaint and upon each nonresident shareholder
26 party by registered or certified mail or by publication as
27 provided by law.

28 (4) The jurisdiction of the court in which the
29 proceeding is commenced under subsection (2) is plenary and
30 exclusive. If it so elects, the court may appoint one or more
31 persons as appraisers to receive evidence and recommend a

1 decision on the question of fair value. The appraisers shall
2 have the powers described in the order appointing them or in
3 any amendment to the order. The shareholders demanding
4 appraisal rights are entitled to the same discovery rights as
5 parties in other civil proceedings. There shall be no right to
6 a jury trial.

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

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

15 Section 3. Subsections (2) and (3) of section
16 607.1407, Florida Statutes, are amended to read:

17 607.1407 Unknown claims against dissolved
18 corporation.--A dissolved corporation or successor entity, as
19 defined in s. 607.1406(15), may choose to execute one of the
20 following procedures to resolve payment of unknown claims.

21 (2) A dissolved corporation or successor entity may,
22 within 10 days after filing of~~adopting the~~ articles of
23 dissolution with the Department of State, publish a "Notice of
24 Corporate Dissolution." The notice shall appear once a week
25 for 2 consecutive weeks in a newspaper of general circulation
26 in a county in the state in which ~~wherein~~ the corporation has
27 its principal office, if any, or, if none, in a county in the
28 state in which the corporation owns real or personal property.
29 Such newspaper shall meet the requirements as are prescribed
30 by law for such purposes. The notice shall:

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

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

6 (c) State that a claim against the corporation under
7 this subsection will be barred unless a proceeding to enforce
8 the claim is commenced within 4 years after the date of the
9 second consecutive weekly publication ~~filing~~ of the notice
10 authorized by this section.

11 (3) If the dissolved corporation or successor entity
12 complies with subsection (1) or subsection (2), the claim of
13 each of the following claimants is barred unless the claimant
14 commences a proceeding to enforce the claim against the
15 dissolved corporation within 4 years after the filing date of
16 filing the notice with the Department of State or the date of
17 the second consecutive weekly publication, as applicable:

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

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

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

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