

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; reenacting ss. 607.1106(1)(g) and  
17          (2), 607.1107(2)(b), 607.1109(1)(g), and  
18          607.1321(1), F.S., relating to effect of merger  
19          or share exchange, merger or share exchange  
20          with foreign corporations, articles of merger,  
21          and notice of intent to demand payment, to  
22          incorporate the amendment to s. 607.1302, F.S.,  
23          in references thereto; providing an effective  
24          date.

25  
26   Be It Enacted by the Legislature of the State of Florida:

27  
28           Section 1. Paragraph (e) of subsection (1) of section  
29   607.1302, Florida Statutes, is amended to read:  
30           607.1302   Right of shareholders to appraisal.--  
31

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

5 (e) With regard to a class of shares prescribed in the  
6 articles of incorporation issued prior to October 1, 2003,  
7 including any shares within that class subsequently authorized  
8 by amendment, any amendment of the articles of incorporation  
9 if the shareholder is entitled to vote on the amendment and if  
10 such amendment would adversely affect such shareholder by:

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

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

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

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

30

31

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

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

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

9           Section 2. Section 607.1330, Florida Statutes, is  
10 created to read:

11           607.1330 Court action.--

12           (1) If a shareholder makes demand for payment under s.  
13 607.1326 which remains unsettled, the corporation shall  
14 commence a proceeding within 60 days after receiving the  
15 payment demand and petition the court to determine the fair  
16 value of the shares and accrued interest. If the corporation  
17 does not commence the proceeding within the 60-day period, any  
18 shareholder who has made a demand pursuant to s. 607.1326 may  
19 commence the proceeding in the name of the corporation.

20           (2) The proceeding shall be commenced in the  
21 appropriate court of the county in which the corporation's  
22 principal office, or, if none, its registered office, in this  
23 state is located. If the corporation is a foreign corporation  
24 without a registered office in this state, the proceeding  
25 shall be commenced in the county in this state in which the  
26 principal office or registered office of the domestic  
27 corporation merged with the foreign corporation was located at  
28 the time of the transaction.

29           (3) All shareholders, whether or not residents of this  
30 state, whose demands remain unsettled shall be made parties to  
31 the proceeding as in an action against their shares. The

1 corporation shall serve a copy of the initial pleading in such  
2 proceeding upon each shareholder party who is a resident of  
3 this state in the manner provided by law for the service of a  
4 summons and complaint and upon each nonresident shareholder  
5 party by registered or certified mail or by publication as  
6 provided by law.

7 (4) The jurisdiction of the court in which the  
8 proceeding is commenced under subsection (2) is plenary and  
9 exclusive. If it so elects, the court may appoint one or more  
10 persons as appraisers to receive evidence and recommend a  
11 decision on the question of fair value. The appraisers shall  
12 have the powers described in the order appointing them or in  
13 any amendment to the order. The shareholders demanding  
14 appraisal rights are entitled to the same discovery rights as  
15 parties in other civil proceedings. There shall be no right to  
16 a jury trial.

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

20 (6) The corporation shall pay each such shareholder  
21 the amount found to be due within 10 days after final  
22 determination of the proceedings. Upon payment of the  
23 judgment, the shareholder shall cease to have any interest in  
24 the shares.

25 Section 3. Subsections (2) and (3) of section  
26 607.1407, Florida Statutes, are amended to read:

27 607.1407 Unknown claims against dissolved  
28 corporation.--A dissolved corporation or successor entity, as  
29 defined in s. 607.1406(15), may choose to execute one of the  
30 following procedures to resolve payment of unknown claims.  
31

1           (2) A dissolved corporation or successor entity may,  
2 within 10 days after filing ~~of adopting the~~ articles of  
3 dissolution with the Department of State, publish a "Notice of  
4 Corporate Dissolution." The notice shall appear once a week  
5 for 2 consecutive weeks in a newspaper of general circulation  
6 in a county in the state in which ~~wherein~~ the corporation has  
7 its principal office, if any, or, if none, in a county in the  
8 state in which the corporation owns real or personal property.

9 Such newspaper shall meet the requirements as are prescribed  
10 by law for such purposes. The notice shall:

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

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

16           (c) State that a claim against the corporation under  
17 this subsection will be barred unless a proceeding to enforce  
18 the claim is commenced within 4 years after the date of the  
19 second consecutive weekly publication ~~filing~~ of the notice  
20 authorized by this section.

21           (3) If the dissolved corporation or successor entity  
22 complies with subsection (1) or subsection (2), the claim of  
23 each of the following claimants is barred unless the claimant  
24 commences a proceeding to enforce the claim against the  
25 dissolved corporation within 4 years after the ~~filing~~ date of  
26 filing the notice with the Department of State or the date of  
27 the second consecutive weekly publication, as applicable:

28           (a) A claimant who did not receive written notice  
29 under s. 607.1406(9), or whose claim was not provided for  
30 under s. 607.1406(10) ~~607.1456(10)~~, whether such claim is

31

1 based on an event occurring before or after the effective date  
2 of dissolution.

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

5 Section 4. For the purpose of incorporating the  
6 amendment made by this act to section 607.1302, Florida  
7 Statutes, in references thereto, paragraph (g) of subsection  
8 (1) and subsection (2) of section 607.1106, Florida Statutes,  
9 are reenacted to read:

10 607.1106 Effect of merger or share exchange.--

11 (1) When a merger becomes effective:

12 (g) The shares (and the rights to acquire shares,  
13 obligations, or other securities) of each corporation party to  
14 the merger that are to be converted into shares, rights,  
15 obligations, or other securities of the surviving or any other  
16 corporation or into cash or other property are converted, and  
17 the former holders of the shares are entitled only to the  
18 rights provided in the articles of merger or to their rights  
19 under s. 607.1302.

20 (2) When a share exchange becomes effective, the  
21 shares of each acquired corporation are exchanged as provided  
22 in the plan of exchange, and the former holders of the shares  
23 are entitled only to the exchange rights provided in the  
24 articles of share exchange or to their rights under s.  
25 607.1302.

26 Section 5. For the purpose of incorporating the  
27 amendment made by this act to section 607.1302, Florida  
28 Statutes, in references thereto, paragraph (b) of subsection  
29 (2) of section 607.1107, Florida Statutes, is reenacted to  
30 read:

31

1           607.1107 Merger or share exchange with foreign  
2 corporations.--

3           (2) Upon the merger becoming effective, the surviving  
4 foreign corporation of a merger, and the acquiring foreign  
5 corporation in a share exchange, is deemed:

6           (b) To agree that it will promptly pay to the  
7 dissenting shareholders of each domestic corporation party to  
8 the merger or share exchange the amount, if any, to which they  
9 are entitled under s. 607.1302.

10           Section 6. For the purpose of incorporating the  
11 amendment made by this act to section 607.1302, Florida  
12 Statutes, in references thereto, paragraph (g) of subsection  
13 (1) of section 607.1109, Florida Statutes, is reenacted to  
14 read:

15           607.1109 Articles of merger.--

16           (1) After a plan of merger is approved by each  
17 domestic corporation and other business entity that is a party  
18 to the merger, the surviving entity shall deliver to the  
19 Department of State for filing articles of merger, which shall  
20 be executed by each domestic corporation as required by s.  
21 607.0120 and by each other business entity as required by  
22 applicable law, and which shall set forth:

23           (g) If the surviving entity is another business entity  
24 formed, organized, or incorporated under the laws of any  
25 state, country, or jurisdiction other than this state:

26           1. The address, including street and number, if any,  
27 of its principal office under the laws of the state, country,  
28 or jurisdiction in which it was formed, organized, or  
29 incorporated.

30           2. A statement that the surviving entity is deemed to  
31 have appointed the Secretary of State as its agent for service

1 of process in a proceeding to enforce any obligation or the  
2 rights of dissenting shareholders of each domestic corporation  
3 that is a party to the merger.

4 3. A statement that the surviving entity has agreed to  
5 promptly pay to the dissenting shareholders of each domestic  
6 corporation that is a party to the merger the amount, if any,  
7 to which they are entitled under s. 607.1302.

8 Section 7. For the purpose of incorporating the  
9 amendment made by this act to section 607.1302, Florida  
10 Statutes, in references thereto, subsection (1) of section  
11 607.1321, Florida Statutes, is reenacted to read:

12 607.1321 Notice of intent to demand payment.--

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

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

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

28 Section 8. This act shall take effect upon becoming a  
29 law.

30  
31