

1                   A bill to be entitled  
2           An act relating to business organizations; amending s.  
3           605.0410, F.S.; revising requirements relating to  
4           inspecting certain records of limited liability  
5           companies; amending s. 607.1301, F.S.; revising the  
6           definition of the term "accrued interest"; amending s.  
7           607.1302, F.S.; revising the circumstances under which  
8           shareholders are entitled to appraisal rights and  
9           certain payments; revising limitations relating to  
10          such rights and payments; revising applicability;  
11          amending s. 607.1303, F.S.; revising the circumstances  
12          in which certain shareholders may assert specified  
13          appraisal rights; amending s. 607.1321, F.S.; revising  
14          requirements for shareholders who wish to assert  
15          appraisal rights relating to specified corporate  
16          actions; amending s. 607.1322, F.S.; making a  
17          technical change; amending s. 607.1326, F.S.;  
18          entitling corporations to prepay a shareholder if the  
19          shareholder makes a demand for payment; specifying  
20          when interest is applicable to such prepayments;  
21          making technical changes; amending s. 607.1330, F.S.;  
22          revising requirements for proceedings relating to  
23          unsettled demands for payment; revising the  
24          eligibility requirements for shareholders entitled to  
25          the fair value of shares during court proceedings;

26 making technical and conforming changes; amending s.  
 27 607.1405, F.S.; revising the requirements for eligible  
 28 entities to use the name of a dissolved corporation;  
 29 amending s. 617.0725, F.S.; providing applicability;  
 30 amending ss. 617.0825 and 617.1703, F.S.; revising  
 31 applicability; providing an effective date.

32

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

34

35 Section 1. Paragraph (b) of subsection (3) of section  
 36 605.0410, Florida Statutes, is amended to read:

37 605.0410 Records to be kept; rights of member, manager,  
 38 and person dissociated to information.—

39 (3) In a manager-managed limited liability company, the  
 40 following rules apply:

41 (b) During regular business hours and at a reasonable  
 42 location specified by the company, a member may inspect and  
 43 copy:

44 1. The records described in subsection (1); and

45 2. Full information regarding the activities, affairs,  
 46 financial condition, and other circumstances of the company as  
 47 is just and reasonable if:

48 a. The member seeks the information for a purpose  
 49 reasonably related to the member's interest as a member; and ~~or~~

50 b. The member makes a demand in a record received by the

51 company, describing with reasonable particularity the  
52 information sought and the purpose for seeking the information,  
53 and if the information sought is directly connected to the  
54 member's purpose.

55 Section 2. Subsection (1) of section 607.1301, Florida  
56 Statutes, is amended to read:

57 607.1301 Appraisal rights; definitions.—The following  
58 definitions apply to ss. 607.1301-607.1340:

59 (1) "Accrued interest" means interest ~~from the date the~~  
60 ~~corporate action becomes effective until the date of payment,~~ at  
61 the rate agreed to by the corporation and the shareholder  
62 asserting appraisal rights, or at the rate determined by the  
63 court to be equitable, which rate may not be greater than the  
64 rate of interest ~~of interest~~ determined for judgments pursuant  
65 to s. 55.03; however, if the court finds that the shareholder  
66 asserting appraisal rights acted arbitrarily or otherwise not in  
67 good faith, no interest shall be allowed by the court,  
68 ~~determined as of the effective date of the corporate action.~~

69 Section 3. Subsections (1) and (2) of section 607.1302,  
70 Florida Statutes, are amended to read:

71 607.1302 Right of shareholders to appraisal.—

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

76 (a) Consummation of a domestication or a conversion of  
77 such corporation pursuant to s. 607.11921 or s. 607.11932, as  
78 applicable, if shareholder approval is required for the  
79 domestication or the conversion;

80 (b) Consummation of a merger to which such corporation is  
81 a party:

82 1. If shareholder approval is required for the merger  
83 under s. 607.1103 or would be required but for s. 607.11035,  
84 except that appraisal rights shall not be available to any  
85 shareholder of the corporation with respect to shares of any  
86 class or series that remains outstanding after consummation of  
87 the merger where the terms of such class or series have not been  
88 materially altered; or

89 2. If such corporation is a subsidiary and the merger is  
90 governed by s. 607.1104;

91 (c) Consummation of a share exchange to which the  
92 corporation is a party as the corporation whose shares will be  
93 acquired, except that appraisal rights shall not be ~~are not~~  
94 available to any shareholder of the corporation with respect to  
95 any class or series of shares of the corporation that is not  
96 acquired in the share exchange;

97 (d) Consummation of a disposition of assets pursuant to s.  
98 607.1202 if the shareholder is entitled to vote on the  
99 disposition, ~~including a sale in dissolution,~~ except that  
100 appraisal rights shall not be available to any shareholder of

101 the corporation with respect to shares or any class or series  
102 if:

103 1. Under the terms of the corporate action approved by the  
104 shareholders there is to be distributed to shareholders in cash  
105 the corporation's net assets, in excess of a reasonable amount  
106 reserved to meet claims of the type described in ss. 607.1406  
107 and 607.1407, within 1 year after the shareholders' approval of  
108 the action and in accordance with their respective interests  
109 determined at the time of distribution; and

110 2. The disposition of assets is not an interested  
111 transaction;

112 (e) An amendment of the articles of incorporation with  
113 respect to a class or series of shares which reduces the number  
114 of shares of a class or series owned by the shareholder to a  
115 fraction of a share if the corporation has the obligation or the  
116 right to repurchase the fractional share so created;

117 (f) Any other merger, share exchange, disposition of  
118 assets, or amendment to the articles of incorporation, in each  
119 case to the extent provided as of the record date by the  
120 articles of incorporation, bylaws, or a resolution of the board  
121 of directors providing for appraisal rights, except that no  
122 bylaw or board resolution providing for appraisal rights may be  
123 amended or otherwise altered except by shareholder approval;

124 (g) ~~An amendment to the articles of incorporation or~~  
125 ~~bylaws of the corporation, the effect of which is to alter or~~

126 ~~abolish voting or other rights with respect to such interest in~~  
127 ~~a manner that is adverse to the interest of such shareholder,~~  
128 ~~except as the right may be affected by the voting or other~~  
129 ~~rights of new shares then being authorized of a new class or~~  
130 ~~series of shares;~~

131 ~~(h)~~ An amendment to the articles of incorporation or  
132 bylaws of a corporation, the effect of which is to adversely  
133 affect the interest of the shareholder by altering or abolishing  
134 appraisal rights under this section;

135 (h)(i) With regard to a class of shares prescribed in the  
136 articles of incorporation in any corporation as to which that  
137 particular class of shares was in existence prior to October 1,  
138 2003, including any shares within that class subsequently  
139 authorized by amendment, and for classes of shares authorized on  
140 or after October 1, 2003, in any corporation with 100 or fewer  
141 shareholders ~~prior to October 1, 2003, including any shares~~  
142 ~~within that class subsequently authorized by amendment, any~~  
143 amendment of the articles of incorporation if the shareholder is  
144 entitled to vote on the amendment and if such amendment would  
145 adversely affect such shareholder by:

146 1. Altering or abolishing any preemptive rights attached  
147 to any of his, her, or its shares;

148 2. Altering or abolishing the voting rights pertaining to  
149 any of his, her, or its shares, except as such rights may be  
150 affected by the voting rights of new shares then being

151 authorized of any existing or new class or series of shares;

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

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

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

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

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

173 (i)~~(j)~~ An amendment of the articles of incorporation of a  
174 social purpose corporation to which s. 607.504 or s. 607.505  
175 applies;

176        (j)~~(k)~~ An amendment of the articles of incorporation of a  
 177 benefit corporation to which s. 607.604 or s. 607.605 applies;

178        (k)~~(l)~~ A merger, domestication, conversion, or share  
 179 exchange of a social purpose corporation to which s. 607.504  
 180 applies; or

181        (l)~~(m)~~ A merger, domestication, conversion, or share  
 182 exchange of a benefit corporation to which s. 607.604 applies.

183        (2) Notwithstanding subsection (1), the availability of  
 184 appraisal rights under paragraphs (1) (a), (b), (c), (d), ~~and~~  
 185 (e), (f), and (h) shall be limited in accordance with the  
 186 following provisions:

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

189            1. A covered security under s. 18(b)(1)(A) or (B) of the  
 190 Securities Act of 1933;

191            2. Not a covered security, but traded in an organized  
 192 market (or subject to a comparable trading process) and has at  
 193 least 2,000 shareholders and the outstanding shares of such  
 194 class or series have a market value of at least \$20 million,  
 195 exclusive of the value of outstanding shares held by the  
 196 corporation's subsidiaries, by the corporation's senior  
 197 executives, by the corporation's directors, and by the  
 198 corporation's beneficial shareholders and voting trust  
 199 beneficial owners owning more than 10 percent of the outstanding  
 200 shares; or



201           3. Issued by an open end management investment company  
 202 registered with the Securities and Exchange Commission under the  
 203 Investment Company Act of 1940 and which may be redeemed at the  
 204 option of the holder at net asset value.

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

207           1. The record date fixed to determine the shareholders  
 208 entitled to receive notice of the meeting of shareholders to act  
 209 upon the corporate action requiring appraisal rights, the record  
 210 date fixed to determine the shareholders entitled to sign a  
 211 written consent approving the corporate action requiring  
 212 appraisal rights, or, in the case of an offer made pursuant to  
 213 s. 607.11035, the date of such offer; or

214           2. If there will be no meeting of shareholders, no written  
 215 consent approving the corporate action, and no offer ~~is~~ made  
 216 pursuant to s. 607.11035, the close of business on the day  
 217 before the consummation of the corporate action or the effective  
 218 date of the amendment of the articles, as applicable.

219           (c) Paragraph (a) is not applicable and appraisal rights  
 220 shall be available pursuant to subsection (1) for the holders of  
 221 any class or series of shares where the corporate action is an  
 222 interested transaction.

223           (d) For the purposes of subparagraph (a)2., a comparable  
 224 trading process exists if:

225           1. The market price of the corporation's shares is

226 determined at least quarterly based on an independent valuation  
227 and by following a formalized process that is designed to  
228 determine a value for the corporation's shares that is  
229 comparable to the value of comparable publicly traded companies;  
230 and

231 2. The corporation repurchases the shares at the price set  
232 by its board of directors based upon the independent valuation  
233 and subject to certain terms and conditions established by the  
234 corporation and provides the corporation's shareholders with a  
235 trading market comparable to that typically available had the  
236 corporation's shares been traded in an organized market.

237 Section 4. Subsection (1) of section 607.1303, Florida  
238 Statutes, is amended, and paragraph (c) is added to subsection  
239 (2) of that section, to read:

240 607.1303 Assertion of rights by nominees and beneficial  
241 owners.—

242 (1) A record shareholder may assert appraisal rights as to  
243 fewer than all the shares registered in the record shareholder's  
244 name but owned by a beneficial shareholder or a voting trust  
245 beneficial owner only if:

246 (a) The record shareholder objects with respect to all  
247 shares of the class or series owned by the beneficial  
248 shareholder or the voting trust beneficial owner;

249 (b) The particular beneficial shareholder or voting trust  
250 beneficial owner acquired all such shares before the record date

251 established under s. 607.1321 in connection with the applicable  
 252 corporate action; and

253 (c) The record shareholder ~~and~~ notifies the corporation in  
 254 writing of its ~~the~~ name and address (if the record shareholder  
 255 beneficially owns the shares as to which appraisal rights are  
 256 being asserted) or notifies the corporation in writing of the  
 257 name and address of the particular ~~of each~~ beneficial  
 258 shareholder or voting trust beneficial owner on whose behalf  
 259 appraisal rights are being asserted.

260  
 261 The rights of a record shareholder who asserts appraisal rights  
 262 for only part of the shares held of record in the record  
 263 shareholder's name under this subsection shall be determined as  
 264 if the shares as to which the record shareholder objects and the  
 265 record shareholder's other shares were registered in the names  
 266 of different record shareholders.

267 (2) A beneficial shareholder and a voting trust beneficial  
 268 owner may assert appraisal rights as to shares of any class or  
 269 series held on behalf of the shareholder only if such  
 270 shareholder:

271 (c) Acquired all shares of the class or series before the  
 272 record date established under s. 607.1321 in connection with the  
 273 applicable corporate action.

274 Section 5. Subsections (1), (2), and (3) of section  
 275 607.1321, Florida Statutes, are amended to read:

276 607.1321 Notice of intent to demand payment.—

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

281 (a) Must have beneficially owned the shares of such class  
 282 or series as of the record date for the shareholders' meeting at  
 283 which the proposed corporate action is to be submitted to a  
 284 vote;

285 (b) Must deliver to the corporation before the vote is  
 286 taken written notice of the shareholder's intent, if the  
 287 proposed corporate action is effectuated, to demand payment for  
 288 all shares of such class or series beneficially owned by the  
 289 shareholder as of the record date for the shareholders' meeting  
 290 at which the proposed corporate action is to be submitted to a  
 291 vote ~~if the proposed corporate action is effectuated;~~ and

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

295 (2) If a proposed corporate action requiring appraisal  
 296 rights under s. 607.1302 is to be approved by written consent, a  
 297 shareholder who wishes to assert appraisal rights with respect  
 298 to any class or series of shares:

299 (a) Must have beneficially owned the shares of such class  
 300 or series as of the record date established for determining who

301 is entitled to sign a written consent;

302 (b) Must assert such appraisal rights for all shares of  
 303 such class or series beneficially owned by the shareholder as of  
 304 the record date for determining who is entitled to sign the  
 305 written consent; and

306 (c) Must not sign a consent in favor of the proposed  
 307 corporate action with respect to that class or series of shares.

308 (3) If a proposed corporate action specified in s.  
 309 607.1302(1) does not require shareholder approval pursuant to s.  
 310 607.11035, a shareholder who wishes to assert appraisal rights  
 311 with respect to any class or series of shares:

312 (a) Must have beneficially owned the shares of such class  
 313 or series as of the date the offer to purchase is made pursuant  
 314 to s. 607.11035;

315 (b) Must deliver to the corporation before the shares are  
 316 purchased pursuant to the offer a written notice of the  
 317 shareholder's intent to demand payment if the proposed corporate  
 318 action is effected for all shares of such class or series  
 319 beneficially owned by the shareholder as of the date the offer  
 320 to purchase is made pursuant to s. 607.11035; and

321 (c) ~~(b)~~ Must not tender, or cause or permit to be tendered,  
 322 any shares of such class or series in response to such offer.

323 Section 6. Paragraph (a) of subsection (2) of section  
 324 607.1322, Florida Statutes, is amended to read:

325 607.1322 Appraisal notice and form.—

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

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

332 1. The shareholder's name and address.

333 2. The number, classes, and series of shares as to which  
 334 the shareholder asserts appraisal rights.

335 3. That the shareholder did not vote for or consent to the  
 336 transaction.

337 4. Whether the shareholder accepts the corporation's offer  
 338 as stated in subparagraph (b)4.

339 5. If the offer is not accepted, the shareholder's  
 340 estimated fair value of the shares and a demand for payment of  
 341 the shareholder's estimated value plus accrued interest, if and  
 342 to the extent applicable.

343 Section 7. Section 607.1326, Florida Statutes, is amended  
 344 to read:

345 607.1326 Procedure if shareholder is dissatisfied with  
 346 offer.—

347 (1) A shareholder who is dissatisfied with the  
 348 corporation's offer as set forth pursuant to s. 607.1322(2)(b)4.  
 349 must notify the corporation on the form provided pursuant to s.  
 350 607.1322(1) of that shareholder's estimate of the fair value of

351 the shares and demand payment of that estimate plus accrued  
352 interest, if and to the extent applicable.

353 (2) A shareholder who fails to notify the corporation in  
354 writing of that shareholder's demand to be paid the  
355 shareholder's stated estimate of the fair value plus accrued  
356 interest, if and to the extent applicable, under subsection (1)  
357 within the timeframe set forth in s. 607.1322(2)(b)2. waives the  
358 right to demand payment under this section and shall be entitled  
359 only to the payment offered by the corporation pursuant to s.  
360 607.1322(2)(b)4.

361 (3) With respect to a shareholder who properly makes  
362 demand for payment pursuant to subsection (1), at any time after  
363 the shareholder makes such demand, including during a court  
364 proceeding under s. 607.1330, the corporation shall have the  
365 right to prepay to the shareholder all or any portion of the  
366 amount that the corporation determines to be due under s.  
367 607.1322(2)(b)3. and the shareholder shall be obligated to  
368 accept such prepayment.

369 (a) If such prepayment is made within 90 days after the  
370 earlier of the date on which the appraisal notice is provided by  
371 the corporation under s. 607.1322(1) or the deadline date by  
372 which the appraisal notice is required to be provided by the  
373 corporation under s. 607.1322(2), accrued interest will be  
374 payable, if at all, to the shareholder entitled to appraisal  
375 rights, calculated and accrued from the date on which the

376 corporate action became effective and only on amounts that are  
377 determined to be due to the shareholder and are above the amount  
378 so prepaid. Accrued interest will not be payable to the  
379 shareholder entitled to appraisal rights on the prepayment  
380 previously made to the shareholder by the corporation pursuant  
381 to this paragraph.

382 (b) If such prepayment is made more than 90 days after the  
383 earlier of the date on which the appraisal notice is provided by  
384 the corporation under s. 607.1322(1) or the deadline date by  
385 which the appraisal notice is required to be provided by the  
386 corporation under s. 607.1322(2), the prepayment must include  
387 accrued interest on the amount of the prepayment, calculated at  
388 the rate of interest determined for judgments pursuant to s.  
389 55.03 and calculated and accrued from the date that the  
390 corporate action became effective through the date of the  
391 prepayment previously made to the shareholder by the corporation  
392 pursuant to this paragraph. In addition, accrued interest will  
393 be payable to the shareholder entitled to appraisal rights on  
394 such amounts, if any, determined to be due to the shareholder in  
395 excess of the prepaid amount, calculated and accrued from the  
396 date on which the corporate action became effective.

397 Section 8. Subsections (1) and (5) of section 607.1330,  
398 Florida Statutes, are amended to read:

399 607.1330 Court action.—

400 (1) If a shareholder makes demand for payment under s.



401 607.1326 which remains unsettled, the corporation shall commence  
402 a proceeding within 60 days after receiving the payment demand  
403 and petition the court to determine the fair value of the shares  
404 and accrued interest, if and to the extent applicable,  
405 calculated and accrued from the date the corporate action became  
406 effective and taking into account the amount of any prepayment  
407 previously made to the shareholder by the corporation pursuant  
408 to s. 607.1326(3) from the date of the corporate action. If the  
409 corporation does not commence the proceeding within the 60-day  
410 period, any shareholder who has made a demand pursuant to s.  
411 607.1326 may commence the proceeding in the name of the  
412 corporation.

413 (5) Each shareholder entitled to appraisal rights who is  
414 made a party to the proceeding is entitled to judgment for the  
415 amount of the fair value of such shareholder's shares as found  
416 by the court, plus accrued interest, if and to the extent  
417 applicable and as found by the court, taking into account the  
418 amount of any prepayment previously made to the shareholder by  
419 the corporation pursuant to s. 607.1326(3).

420 Section 9. Subsection (5) of section 607.1405, Florida  
421 Statutes, is amended to read:

422 607.1405 Effect of dissolution.—

423 (5) Except as provided in s. 607.1422(4), the name of a  
424 dissolved corporation is not available for assumption or use by  
425 another eligible entity until 120 days ~~1 year~~ after the

426 effective date of dissolution unless the dissolved corporation  
 427 provides the department with a record, signed as required by s.  
 428 607.0120, permitting the immediate assumption or use of the name  
 429 by another eligible entity.

430 Section 10. Section 617.0725, Florida Statutes, is amended  
 431 to read:

432 617.0725 Quorum.—An amendment to the articles of  
 433 incorporation or the bylaws which adds, changes, or deletes a  
 434 greater or lesser quorum or voting requirement must meet the  
 435 same quorum or voting requirement and be adopted by the same  
 436 vote and voting groups required to take action under the quorum  
 437 and voting requirements then in effect or proposed to be  
 438 adopted, whichever is greater. This section does not apply to  
 439 any corporation that is an association, as defined in s.  
 440 720.301, or a corporation regulated under chapter 718 or chapter  
 441 719.

442 Section 11. Subsection (9) of section 617.0825, Florida  
 443 Statutes, is amended to read:

444 617.0825 Board committees and advisory committees.—

445 (9) This section does not apply to a committee established  
 446 under chapter 718, chapter 719, or chapter 720 to perform the  
 447 functions set forth in s. 718.303(3), s. 719.303(3), s.  
 448 720.305(2), ~~s. 720.303(2), or s. 720.3035(1), or s. 720.405,~~  
 449 respectively.

450 Section 12. Section 617.1703, Florida Statutes, is amended

451 to read:

452 617.1703 Application of chapter.—

453 (1) (a) This chapter is applicable to a corporation that is  
454 an association as defined in and regulated by any of chapter 718  
455 regarding condominiums, chapter 719 regarding cooperatives,  
456 chapter 720 regarding homeowners' associations, chapter 721  
457 regarding timeshares, or chapter 723 regarding mobile  
458 homeowners' associations, except:

459 1. For ~~In the event of~~ any conflict between the provisions  
460 of this chapter and chapter 718 ~~regarding condominiums, chapter~~  
461 719 ~~regarding cooperatives, chapter 720 regarding homeowners'~~  
462 associations, chapter 721 ~~regarding timeshares, or chapter 723;~~  
463 or

464 2. As otherwise provided for in chapter 718, chapter 719,  
465 chapter 720, chapter 721, or chapter 723.

466 (b) If subparagraph (a)1. or subparagraph (a)2. applies  
467 regarding mobile home owners' associations, the applicable  
468 provisions of such other respective chapters shall apply.

469 (2) The provisions of ss. 617.0605-617.0608 do not apply  
470 to corporations regulated by any of the foregoing chapters or to  
471 any other corporation where membership in the corporation is  
472 required pursuant to a document recorded in the county property  
473 records.

474 Section 13. This act shall take effect upon becoming a  
475 law.