

By Senator Burgess

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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 ss. 617.0825 and 617.1703, F.S.; revising

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30 applicability; providing an effective date.

31

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

33

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

36 605.0410 Records to be kept; rights of member, manager, and  
37 person dissociated to information.—

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

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

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

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

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

49 b. The member makes a demand in a record received by the  
50 company, describing with reasonable particularity the  
51 information sought and the purpose for seeking the information,  
52 and if the information sought is directly connected to the  
53 member's purpose.

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

56 607.1301 Appraisal rights; definitions.—The following  
57 definitions apply to ss. 607.1301-607.1340:

58 (1) "Accrued interest" means interest ~~from the date the~~

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

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

70 607.1302 Right of shareholders to appraisal.—

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

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

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

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

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

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

96           (d) Consummation of a disposition of assets pursuant to s.  
97 607.1202 if the shareholder is entitled to vote on the  
98 disposition, ~~including a sale in dissolution~~, except that  
99 appraisal rights shall not be available to any shareholder of  
100 the corporation with respect to shares or any class or series  
101 if:

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

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

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

116           (f) Any other merger, share exchange, disposition of

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

123 ~~(g) An amendment to the articles of incorporation or bylaws~~  
124 ~~of the corporation, the effect of which is to alter or abolish~~  
125 ~~voting or other rights with respect to such interest in a manner~~  
126 ~~that is adverse to the interest of such shareholder, except as~~  
127 ~~the right may be affected by the voting or other rights of new~~  
128 ~~shares then being authorized of a new class or series of shares;~~

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

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

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

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146           2. Altering or abolishing the voting rights pertaining to  
147 any of his, her, or its shares, except as such rights may be  
148 affected by the voting rights of new shares then being  
149 authorized of any existing or new class or series of shares;

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

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

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

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

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

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

174           (j)~~(k)~~ An amendment of the articles of incorporation of a

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175 benefit corporation to which s. 607.604 or s. 607.605 applies;

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

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

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

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

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

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

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

203 (b) The applicability of paragraph (a) shall be determined

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204 as of:

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

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

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

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

223 1. The market price of the corporation's shares is  
224 determined at least quarterly based on an independent valuation  
225 and by following a formalized process that is designed to  
226 determine a value for the corporation's shares that is  
227 comparable to the value of comparable publicly traded companies;  
228 and

229 2. The corporation repurchases the shares at the price set  
230 by its board of directors based upon the independent valuation  
231 and subject to certain terms and conditions established by the  
232 corporation and provides the corporation's shareholders with a



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233 trading market comparable to that typically available had the  
234 corporation's shares been traded in an organized market.

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

238 607.1303 Assertion of rights by nominees and beneficial  
239 owners.—

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

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

247 (b) The particular beneficial shareholder or voting trust  
248 beneficial owner acquired all such shares before the record date  
249 established under s. 607.1321 in connection with the applicable  
250 corporate action; and

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

258  
259 The rights of a record shareholder who asserts appraisal rights  
260 for only part of the shares held of record in the record  
261 shareholder's name under this subsection shall be determined as

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262 if the shares as to which the record shareholder objects and the  
263 record shareholder's other shares were registered in the names  
264 of different record shareholders.

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

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

272 Section 5. Subsections (1), (2), and (3) of section  
273 607.1321, Florida Statutes, are amended to read:

274 607.1321 Notice of intent to demand payment.—

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

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

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

290 (c) ~~(b)~~ Must not vote, or cause or permit to be voted, any

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291 shares of such class or series in favor of the proposed  
292 corporate action.

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

297 (a) Must have beneficially owned the shares of such class  
298 or series as of the record date established for determining who  
299 is entitled to sign a written consent;

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

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

306 (3) If a proposed corporate action specified in s.  
307 607.1302(1) does not require shareholder approval pursuant to s.  
308 607.11035, a shareholder who wishes to assert appraisal rights  
309 with respect to any class or series of shares:

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

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

319 (c) ~~(b)~~ Must not tender, or cause or permit to be tendered,

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320 any shares of such class or series in response to such offer.

321 Section 6. Paragraph (a) of subsection (2) of section  
322 607.1322, Florida Statutes, is amended to read:

323 607.1322 Appraisal notice and form.—

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

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

330 1. The shareholder's name and address.

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

333 3. That the shareholder did not vote for or consent to the  
334 transaction.

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

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

341 Section 7. Section 607.1326, Florida Statutes, is amended  
342 to read:

343 607.1326 Procedure if shareholder is dissatisfied with  
344 offer.—

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

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

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

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

367 (a) If such prepayment is made within 90 days after the  
368 earlier of the date on which the appraisal notice is provided by  
369 the corporation under s. 607.1322(1) or the deadline date by  
370 which the appraisal notice is required to be provided by the  
371 corporation under s. 607.1322(2), accrued interest will be  
372 payable, if at all, to the shareholder entitled to appraisal  
373 rights, calculated and accrued from the date on which the  
374 corporate action became effective and only on amounts that are  
375 determined to be due to the shareholder and are above the amount  
376 so prepaid. Accrued interest will not be payable to the  
377 shareholder entitled to appraisal rights on the prepayment

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378 previously made to the shareholder by the corporation pursuant  
379 to this paragraph.

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

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

397 607.1330 Court action.—

398 (1) If a shareholder makes demand for payment under s.  
399 607.1326 which remains unsettled, the corporation shall commence  
400 a proceeding within 60 days after receiving the payment demand  
401 and petition the court to determine the fair value of the shares  
402 and accrued interest, if and to the extent applicable,  
403 calculated and accrued from the date the corporate action became  
404 effective and taking into account the amount of any prepayment  
405 previously made to the shareholder by the corporation pursuant  
406 to s. 607.1326(3) ~~from the date of the corporate action.~~ If the

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407 corporation does not commence the proceeding within the 60-day  
408 period, any shareholder who has made a demand pursuant to s.  
409 607.1326 may commence the proceeding in the name of the  
410 corporation.

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

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

420 607.1405 Effect of dissolution.—

421 (5) Except as provided in s. 607.1422(4), the name of a  
422 dissolved corporation is not available for assumption or use by  
423 another eligible entity until 120 days ~~1 year~~ after the  
424 effective date of dissolution unless the dissolved corporation  
425 provides the department with a record, signed as required by s.  
426 607.0120, permitting the immediate assumption or use of the name  
427 by another eligible entity.

428 Section 10. Subsection (9) of section 617.0825, Florida  
429 Statutes, is amended to read:

430 617.0825 Board committees and advisory committees.—

431 (9) This section does not apply to a committee established  
432 under chapter 718, chapter 719, or chapter 720 to perform the  
433 functions set forth in s. 718.303(3), s. 719.303(3), s.  
434 720.305(2), s. 720.303(2), or s. 720.3035(1), or s. 720.405,  
435 respectively.

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436 Section 11. Section 617.1703, Florida Statutes, is amended  
437 to read:

438 617.1703 Application of chapter.—

439 (1) (a) This chapter is applicable to a corporation that is  
440 an association as defined in and regulated by any of chapter 718  
441 regarding condominiums, chapter 719 regarding cooperatives,  
442 chapter 720 regarding homeowners' associations, chapter 721  
443 regarding timeshares, or chapter 723 regarding mobile  
444 homeowners' associations, except:

445 1. For ~~In the event of~~ any conflict between the provisions  
446 of this chapter and chapter 718 ~~regarding condominiums, chapter~~  
447 719 ~~regarding cooperatives, chapter 720 regarding homeowners'~~  
448 associations, chapter 721 ~~regarding timeshares, or chapter 723;~~  
449 or

450 2. As otherwise provided for in chapter 718, chapter 719,  
451 chapter 720, chapter 721, or chapter 723.

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

455 (2) The provisions of ss. 617.0605-617.0608 do not apply to  
456 corporations regulated by any of the foregoing chapters or to  
457 any other corporation where membership in the corporation is  
458 required pursuant to a document recorded in the county property  
459 records.

460 Section 12. This act shall take effect upon becoming a law.