

Senate Bill No. 2718

An act relating to the Florida Business Corporation Act; amending s. 607.1302, F.S.; clarifying a corporate action entitling a shareholder to certain appraisal rights and payments for shares; creating s. 607.1330, F.S.; providing requirements, procedures, and limitations on court actions; providing for entitlement to certain judgments; requiring corporate payments under certain circumstances; amending s. 607.1407, F.S.; revising certain notice requirements for dissolved corporations; revising a procedure to clarify an exemption for certain claims against dissolved corporations being barred; correcting a cross reference; reenacting ss. 607.1106(1)(g) and (2), 607.1107(2)(b), 607.1109(1)(g), and 607.1321(1), F.S., relating to effect of merger or share exchange, merger or share exchange with foreign corporations, articles of merger, and notice of intent to demand payment, to incorporate the amendment to s. 607.1302, F.S., in references thereto; providing an effective date.

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

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

607.1302 Right of shareholders to appraisal.—

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

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

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

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

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

4. Reducing the stated redemption price of any of the shareholder's redeemable shares, altering or abolishing any provision relating to any sinking fund for the redemption or purchase of any of his or her shares, or

making any of his or her shares subject to redemption when they are not otherwise redeemable;

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

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

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

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

607.1330 Court action.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

607.1106 Effect of merger or share exchange.—

(1) When a merger becomes effective:

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

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

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

607.1107 Merger or share exchange with foreign corporations.—

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

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

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

607.1109 Articles of merger.—

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

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

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

2. A statement that the surviving entity is deemed to have appointed the Secretary of State as its agent for service of process in a proceeding to

enforce any obligation or the rights of dissenting shareholders of each domestic corporation that is a party to the merger.

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

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

607.1321 Notice of intent to demand payment.—

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

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

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

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

Approved by the Governor June 24, 2004.

Filed in Office Secretary of State June 24, 2004.