

## CHAPTER 2021-13

### Committee Substitute for Senate Bill No. 602

An act relating to business organizations; amending s. 605.0410, F.S.; revising requirements relating to inspecting certain records of limited liability companies; amending s. 607.1301, F.S.; revising the definition of the term “accrued interest”; amending s. 607.1302, F.S.; revising the circumstances under which shareholders are entitled to appraisal rights and certain payments; revising limitations relating to such rights and payments; revising applicability; amending s. 607.1303, F.S.; revising the circumstances in which certain shareholders may assert specified appraisal rights; amending s. 607.1321, F.S.; revising requirements for shareholders who wish to assert appraisal rights relating to specified corporate actions; amending s. 607.1322, F.S.; making a technical change; amending s. 607.1326, F.S.; entitling corporations to prepay a shareholder if the shareholder makes a demand for payment; specifying when interest is applicable to such prepayments; making technical changes; amending s. 607.1330, F.S.; revising requirements for proceedings relating to unsettled demands for payment; revising the eligibility requirements for shareholders entitled to the fair value of shares during court proceedings; making technical and conforming changes; amending s. 607.1405, F.S.; revising the requirements for eligible entities to use the name of a dissolved corporation; amending s. 617.0725, F.S.; providing applicability; amending ss. 617.0825 and 617.1703, F.S.; revising applicability; providing an effective date.

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

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

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

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

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

1. The records described in subsection (1); and
2. Full information regarding the activities, affairs, financial condition, and other circumstances of the company as is just and reasonable if:
  - a. The member seeks the information for a purpose reasonably related to the member’s interest as a member; and ~~or~~

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

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

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

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

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

607.1302 Right of shareholders to appraisal.—

(1) A shareholder of a domestic corporation 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:

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

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

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

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

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

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

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

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

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

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

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

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

~~(h)(i) With regard to a class of shares prescribed in the articles of incorporation in any corporation as to which that particular class of shares was in existence prior to October 1, 2003, including any shares within that class subsequently authorized by amendment, and for classes of shares authorized on or after October 1, 2003, in any corporation with 100 or fewer shareholders 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, her, or its shares;

2. Altering or abolishing the voting rights pertaining to any of his, her, or its 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, her, or its shares, when such exchange, cancellation, or reclassification would alter or abolish the shareholder's voting rights or alter his, her, or its 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, her, or its shares, or making any of his, her, or its 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;

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

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

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

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

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

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

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

2. Not a covered security, but traded in an organized market (or subject to a comparable trading process) and has at least 2,000 shareholders and the outstanding shares of such class or series have a market value of at least \$20

million, exclusive of the value of outstanding shares held by the corporation's subsidiaries, by the corporation's senior executives, by the corporation's directors, and by the corporation's beneficial shareholders and voting trust beneficial owners owning more than 10 percent of the outstanding shares; or

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

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

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

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

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

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

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

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

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

607.1303 Assertion of rights by nominees and beneficial owners.—

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

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

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

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

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

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

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

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

607.1321 Notice of intent to demand payment.—

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

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

(b) Must deliver to the corporation before the vote is taken written notice of the shareholder's intent, if the proposed corporate action is effectuated, to demand payment for all shares of such class or series beneficially owned by the shareholder as of the record date for the shareholders' meeting at which

the proposed corporate action is to be submitted to a vote if the proposed corporate action is effectuated; and

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

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

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

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

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

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

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

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

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

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

607.1322 Appraisal notice and form.—

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

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

1. The shareholder's name and address.

2. The number, classes, and series of shares as to which the shareholder asserts appraisal rights.
3. That the shareholder did not vote for or consent to the transaction.
4. Whether the shareholder accepts the corporation's offer as stated in subparagraph (b)4.
5. If the offer is not accepted, the shareholder's estimated fair value of the shares and a demand for payment of the shareholder's estimated value plus accrued interest, if and to the extent applicable.

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

607.1326 Procedure if shareholder is dissatisfied with offer.—

(1) A shareholder who is dissatisfied with the corporation's offer as set forth pursuant to s. 607.1322(2)(b)4. must notify the corporation on the form provided pursuant to s. 607.1322(1) of that shareholder's estimate of the fair value of the shares and demand payment of that estimate plus accrued interest, if and to the extent applicable.

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

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

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

(b) If such prepayment is made more than 90 days after the earlier of the date on which the appraisal notice is provided by the corporation under s. 607.1322(1) or the deadline date by which the appraisal notice is required to



be provided by the corporation under s. 607.1322(2), the prepayment must include accrued interest on the amount of the prepayment, calculated at the rate of interest determined for judgments pursuant to s. 55.03 and calculated and accrued from the date that the corporate action became effective through the date of the prepayment previously made to the shareholder by the corporation pursuant to this paragraph. In addition, accrued interest will be payable to the shareholder entitled to appraisal rights on such amounts, if any, determined to be due to the shareholder in excess of the prepaid amount, calculated and accrued from the date on which the corporate action became effective.

Section 8. Subsections (1) and (5) of section 607.1330, Florida Statutes, are amended 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 and to the extent applicable, calculated and accrued from the date the corporate action became effective and taking into account the amount of any prepayment previously made to the shareholder by the corporation pursuant to s. 607.1326(3) from the date of the corporate action. 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.

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

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

607.1405 Effect of dissolution.—

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

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

617.0725 Quorum.—An amendment to the articles of incorporation or the bylaws which adds, changes, or deletes a greater or lesser quorum or

voting requirement must meet the same quorum or voting requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater. This section does not apply to any corporation that is an association, as defined in s. 720.301(9), or any corporation regulated under chapter 718 or chapter 719.

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

617.0825 Board committees and advisory committees.—

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

Section 12. Section 617.1703, Florida Statutes, is amended to read:

617.1703 Application of chapter.—

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

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

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

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

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

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

Approved by the Governor May 7, 2021.

Filed in Office Secretary of State May 7, 2021.