

Regular Session, 2014

HOUSE BILL NO. 319

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

CORPORATIONS: Provides for revisions to business corporation law

1 AN ACT

2 To amend and reenact R.S. 12:1501, 1502(A), 1601 through 1604, and 1701, R.S.
3 44:4.1(B)(5), R.S. 49:222(B)(1) and (6), and Code of Civil Procedure Article 611,
4 to enact R.S. 12:1-101 through 1-1704, and 1702 through 1704, and to repeal R.S.
5 12:1 through 178 and 1605 through 1607, relative to corporations; to provide for
6 general provisions; to provide for incorporation; to provide for the purposes and
7 powers of corporations; to provide for names; to provide for offices and agents; to
8 provide for shares and distributions; to provide with respect to shareholders; to
9 provide with respect to directors and officers; to provide for domestication and
10 conversion; to provide for the amendment of articles of incorporation and bylaws;
11 to provide for mergers and share exchanges; to provide for the disposition of assets;
12 to provide for appraisal rights; to provide for dissolution; to provide for foreign
13 corporations; to provide for records and reports; to provide for transition provisions;
14 to provide for the applicability of Chapter 24 of Title 12 of the Louisiana Revised
15 Statutes of 1950; to provide for the conversion of business organizations; to provide
16 for fees; to provide for derivative actions; to provide for the continuous revision of
17 Title 12 of the Louisiana Revised Statutes of 1950; to provide an effective date; and
18 to provide for related matters.

19 Be it enacted by the Legislature of Louisiana:

1 Section 1. R.S. 12:1501, 1502(A), 1601 through 1604, and 1701 are hereby amended
2 and reenacted and R.S. 12:1-101 through 1-1704, and 1702 through 1704 are hereby enacted
3 to read as follows:

4 PART 1. GENERAL PROVISIONS

5 SUBPART A. SHORT TITLE AND RESERVATION OF POWER

6 §1-101. Short title

7 This Chapter shall be known and may be cited as the "Business Corporation
8 Act". References in this Chapter and elsewhere in the Revised Statutes to the
9 Business Corporation Act or the Business Corporation Law shall be deemed to be
10 references to this Chapter.

11 Source: MBCA §1.01.

12 Comment - 2014 Revision

13 The former Chapter was known as the "Business Corporation Law". The
14 distinct name for this Chapter will make it consistent with that of the Model Business
15 Corporation Act, on which it is based, and provide a convenient means of
16 distinguishing the earlier statute from the current one.

17 §1-102. Reservation of power to amend or repeal

18 The Legislature has power to amend or repeal all or part of this Chapter at
19 any time and all domestic and foreign corporations subject to this Chapter are
20 governed by the amendment or repeal.

21 Source: MBCA §1.02.

22 SUBPART B. FILING DOCUMENTS

23 §1-120. Requirements for documents; extrinsic facts

24 A. A document must satisfy the requirements of this Section, and of any
25 other provision of this Chapter that adds to or varies these requirements, to be
26 entitled to filing by the secretary of state.

27 B. The filing of the document in the office of the secretary of state must be
28 required or permitted by this Chapter.

29 C. The document must contain the information required by this Chapter. It
30 may contain other information as well.

1 D. The document must be typewritten or printed or, if electronically
2 transmitted, it must be in a format that can be retrieved or reproduced in typewritten
3 or printed form. The inclusion of handwritten notations or entries on a typewritten
4 or printed document does not affect the eligibility of the document for filing.

5 E. The document must be in the English language. A corporate name need
6 not be in English if written in English letters or Arabic or Roman numerals, and the
7 certificate of existence required of foreign corporations need not be in English if
8 accompanied by a reasonably authenticated English translation.

9 F. The document must be signed by one of the following:

10 (1) By the chairman of the board of directors of a domestic or foreign
11 corporation, by its president, or by another of its officers.

12 (2) If directors have not been selected or the corporation has not been
13 formed, by an incorporator.

14 (3) If the corporation is in the hands of a receiver, liquidator, trustee, or other
15 court-appointed fiduciary, by that fiduciary.

16 G. The person executing the document shall sign it and state, beneath or
17 opposite the person's signature, the person's name and the capacity in which the
18 document is signed. The document may but need not contain a corporate seal.

19 H. Except as provided in R.S. 12:1701, the following documents shall be
20 acknowledged by one of the persons who signs the document or instead shall be
21 executed by authentic act:

22 (1) Articles of incorporation.

23 (2) Written consent to appointment by a registered agent.

24 (3) Articles of correction.

25 (4) Articles of amendment.

26 (5) Articles of merger.

27 (6) Articles of share exchange.

28 (7) Articles of domestication.

29 (8) Articles of nonprofit conversion.

- 1 (9) Articles of nonprofit domestication and conversion.
- 2 (10) Articles of entity conversion.
- 3 (11) Articles of dissolution.
- 4 (12) Articles of revocation of dissolution.
- 5 (13) Articles of termination.
- 6 (14) Articles of reinstatement.
- 7 (15) Contract acknowledgment statement by a corporation that contracts with
- 8 the state.
- 9 I. If the secretary of state has prescribed a mandatory form for the document
- 10 pursuant to R.S. 12:1-121, the document must be in or on the prescribed form.
- 11 J. The document must be delivered to the office of the secretary of state for
- 12 filing. Delivery may be made by electronic transmission if and to the extent
- 13 permitted by the secretary of state. If it is filed in typewritten or printed form and
- 14 not transmitted electronically, the secretary of state may require one exact or
- 15 conformed copy to be delivered with the document, except as provided in R.S.
- 16 12:1-503.
- 17 K. When the document is delivered to the office of the secretary of state for
- 18 filing, the correct filing fee and any tax, fee, or penalty required to be paid therewith
- 19 by this Chapter or other provision of law must be paid or provision for payment
- 20 made in a manner permitted by the secretary of state.
- 21 L. Whenever a provision of this Chapter permits any of the terms of a plan
- 22 or a filed document to be dependent on facts objectively ascertainable outside the
- 23 plan or filed document, the following provisions apply:
- 24 (1) The manner in which the facts will operate upon the terms of the plan or
- 25 filed document shall be set forth in the plan or filed document.
- 26 (2) The facts may include any of the following but are not limited to:
- 27 (a) Any of the following that is available in a nationally recognized news or
- 28 information medium either in print or electronically: statistical or market indices,

1 market prices of any security or group of securities, interest rates, currency exchange
2 rates, or similar economic or financial data.

3 (b) A determination or action by any person or body, including the
4 corporation or any other party to a plan or filed document.

5 (c) The terms of, or actions taken under, an agreement to which the
6 corporation is a party or any other agreement or document.

7 (3) As used in this Subsection:

8 (a) "Filed document" means a document filed with the secretary of state
9 under any provision of this Chapter except R.S. 12:1-1621.

10 (b) "Plan" means a plan of domestication, nonprofit conversion, entity
11 conversion, merger, or share exchange.

12 (4) The following provisions of a plan or filed document may not be made
13 dependent on facts outside the plan or filed document:

14 (a) The name and address of any person required in a filed document.

15 (b) The registered office of any entity required in a filed document.

16 (c) The registered agent of any entity required in a filed document.

17 (d) The number of authorized shares and designation of each class or series
18 of shares.

19 (e) The effective date of a filed document.

20 (f) Any required statement in a filed document of the date on which the
21 underlying transaction was approved or the manner in which that approval was
22 given.

23 (5) If a provision of a filed document is made dependent on a fact
24 ascertainable outside of the filed document, and that fact is not ascertainable by
25 reference to a source described in Subparagraph (K)(2)(a) of this Section or a
26 document that is a matter of public record, or the affected shareholders have not
27 received notice of the fact from the corporation, then the corporation shall file with
28 the secretary of state articles of amendment setting forth the fact promptly after the
29 time when the fact referred to is first ascertainable or thereafter changes. Articles of

1 amendment under this Paragraph are deemed to be authorized by the authorization
2 of the original filed document or plan to which they relate and may be filed by the
3 corporation without further action by the board of directors or the shareholders.

4 Source: MBCA §1.20.

5 Comments - 2014 Revision

6 (a) The Model Act language in Subsection (b) provided that "[t]his Act must
7 require or permit filing the document in the office of the secretary of state." The
8 Model Act language was modified in this Chapter to make it clear that the terms of
9 Subsection B of this Section operated as one of the conditions to be satisfied to make
10 a document eligible for filing under this Chapter, and not as a free-standing
11 requirement that was to be imposed on the Chapter itself.

12 (b) The second sentence of Subsection D of this Section was added to
13 preserve the eligibility for filing of typewritten or printed documents that contain
14 handwritten entries or notations, which are commonly used to complete blank spaces
15 or to modify printed provisions in form documents.

16 (c) A new Subsection H of this Section was added, and the existing Model
17 Act subsections (h) through (k) were redesignated as Subsections I through L of this
18 Section, to retain the rule in prior law that required documents of the kind listed in
19 Subsection H of this Section to be acknowledged or executed by authentic act. As
20 in prior law, this rule is subject to exceptions provided elsewhere in the law,
21 currently in R.S. 12:1701. If the requirements of those exceptions are satisfied, they
22 permit documents that are signed and filed electronically, or in person at the
23 secretary of state's office, to be filed without the acknowledgment or authentic act
24 that would otherwise be required.

25 (d) Subsection K of this Section requires the payment of the correct filing fee
26 for a document. Those fees are set forth in R.S. 49:222.

27 §1-121. Forms

28 A.(1) The secretary of state may prescribe and furnish on request forms for
29 any of the following:

30 (a) An application for a certificate of existence and standing.

31 (b) A foreign corporation's application for a certificate of authority to do
32 business in this state.

33 (c) A foreign corporation's application for a certificate of withdrawal.

34 (d) The annual report.

35 (2) If the secretary of state so requires, use of these forms is mandatory.

36 B. The secretary of state may prescribe and furnish on request forms for
37 other documents required or permitted to be filed by this Chapter but their use is not
38 mandatory.

1 Source: MBCA §1.21.

2 Comment - 2014 Version

3 The title of the "certificate of existence" in the Model Act was modified to
4 add the phrase "and standing" to reflect the added content in the "certificate of
5 existence and standing" as provided in R.S. 12:1-128.

6 §1-122. Filing, service, and copying fees

7 The secretary of state shall collect the fee authorized in R.S. 49:222 when a
8 document described in this Chapter is delivered to the secretary of state for filing.

9 Source: MBCA §1.22.

10 §1-123. Effective time and date of document

11 A. Except as provided in Subsections B and C of this Section and in R.S.
12 12:1-124(C), a document accepted for filing is effective at one of the following:

13 (1) The date and time of its receipt for filing, as evidenced by such means
14 as the secretary of state may use for the purpose of recording the date and time of
15 receipt.

16 (2) A later time, on the date of receipt, specified in the document as its
17 effective time.

18 B. Except as provided in Subsection C of this Section, a corporation's
19 original articles of incorporation become effective when signed as provided in R.S.
20 12:1-120 if all of the following conditions are met:

21 (1) The articles are received for filing by the secretary of state within five
22 days, exclusive of legal holidays, after the date that the articles are signed.

23 (2) The articles are accepted for filing.

24 C. A document may specify a delayed effective time and date, and if it does
25 so the document becomes effective at the time and date specified. If a delayed
26 effective date but no time is specified, the document is effective at the close of
27 business on that date. A delayed effective date for a document may not be earlier
28 than the first date and time that the document otherwise would have become
29 effective under this Section or later than the ninetieth day after the date the document
30 is received for filing by the secretary of state.

1 D. A document is accepted for filing when the secretary of state files the
2 document as provided in R.S. 12:1-125(B).

3 Source: MBCA §1.23.

4 Comments - 2014 Revision

5 (a) The Model Act provision was modified to add a new Subsection B of this
6 Section, and to redesignate Model Act Subsection (b) as Subsection C of this
7 Section. The new Subsection B of this Section retains the five-day grace period
8 provided under former Louisiana law for the filing of a corporation's original articles
9 of incorporation, making them effective when signed if they are delivered for filing
10 within five days, exclusive of holidays. Prior law had applied the five-day grace
11 period to several other documents, such as articles of amendment and articles of
12 merger, but this Section drops those documents from the coverage of the five-day
13 rule to avoid unfair surprise to those who may rely upon documents already on file
14 in the secretary of state's office. The grace period for a corporation's original articles
15 of incorporation does not pose that kind of risk but rather supports the reasonable
16 expectations of those dealing with or on behalf of the new corporation.

17 The term "original articles of incorporation" is used in this provision to
18 distinguish a corporation's initial articles of incorporation from other, later-filed
19 documents that would be considered part of a corporation's "articles of
20 incorporation" as that term is defined in R.S. 12:1-140(1). As used in the definition
21 and in this Section, the term "original" is not related to the distinction between a
22 manually-signed document and a copy.

23 In some cases incorporators may not wish for the five-day grace period to
24 apply. For example, articles may be signed near the end of a calendar or tax year,
25 but be intended to take effect on the first day of the next year. In that case, the
26 parties may specify a delayed effective date as provided in Subsection C of this
27 Section.

28 (b) A phrase was added to Model Act Subsection (c), concerning delayed
29 effective dates, to take account of the fact that a corporation's original articles of
30 incorporation may take effect under Subsection B up to five business days before
31 they are delivered for filing to the secretary of state. As modified, Subsection C of
32 this Section permits the effective date of the articles to fall on any date between the
33 date that they are signed, provided that the conditions of the five-day grace period
34 are satisfied, and the ninetieth day after the articles are received by the secretary of
35 state. For example, original articles that were signed on day one, but stated that they
36 were to become effective on day three would become effective on day three as long
37 as they were delivered for filing by day five and were accepted for filing by the
38 secretary of state. If the same articles stated that they were to become effective on
39 the first day of the month after the month in which they were filed, they would take
40 effect on that date.

41 (c) A new Subsection D of this Section was added to the Model Act to make
42 it clear that a document is "accepted for filing" within the meaning of this Subsection
43 only if the secretary of state "files" the document as provided in R.S. 12:1-125(B).

44 (d) The Model Act language in Paragraph (A)(2) of this Section was
45 modified to make it clear that the effective time of a document must be a time that
46 occurs on the date of filing, and not, as the original language may have suggested,
47 any time on any chosen date, as long as that time was specified in the filed document
48 on the date that the document was filed.

1 §1-124. Correcting filed document2 A. A domestic or foreign corporation may correct a document filed with the
3 secretary of state if any of the following apply:4 (1) The document contains an inaccuracy.5 (2) The document was defectively signed, attested, sealed, verified, or
6 acknowledged.7 (3) The electronic transmission was defective.8 B. A document is corrected by doing all of the following:9 (1) Preparing articles of correction that perform all of the following:10 (a) Describe the document, including its filing date, or attach a copy of it to
11 the articles.12 (b) Specify the inaccuracy or defect to be corrected.13 (c) Correct the inaccuracy or defect.14 (2) By delivering the articles to the secretary of state for filing.15 C. Articles of correction are effective on the effective date of the document
16 they correct except as to persons relying on the uncorrected document and adversely
17 affected by the correction. As to those persons, articles of correction are effective
18 when filed.

19 Source: MBCA §1.24.

20 §1-125. Filing duty of secretary of state21 A. If a document delivered to the office of the secretary of state for filing
22 satisfies the requirements of R.S. 12:1-120, the secretary of state shall file it.23 B. The secretary of state files a document by recording it as filed on the date
24 and time of receipt. After filing a document, except as provided in R.S. 12:1-503,
25 the secretary of state shall deliver to the domestic or foreign corporation or its
26 representative a copy of the document with an acknowledgment of the date of filing.27 C. If the secretary of state refuses to file a document, it shall be returned to
28 the domestic or foreign corporation or its representative within five days after the

1 document was delivered, together with a brief, written explanation of the reason for
2 the refusal.

3 D. The secretary of state's duty to file documents under this Section is
4 ministerial. The secretary's filing or refusing to file a document does not do any of
5 the following:

6 (1) Affect the validity or invalidity of the document in whole or part.

7 (2) Relate to the correctness or incorrectness of information contained in the
8 document.

9 (3) Create a presumption that the document is valid or invalid or that
10 information contained in the document is correct or incorrect.

11 Source: MBCA § 1.25

12 §1-126. Appeal from secretary of state's refusal to file document

13 [Reserved.]

14 Comment - 2014 Revision

15 Section 1.26 of the Model Act, concerning the procedure for appealing a
16 refusal by the secretary of state to file a document, was omitted from this Chapter to
17 avoid any redundancy or conflict with the provisions of the Code of Civil Procedure
18 concerning writs of mandamus. Under Article 3863 of the Code of Civil Procedure,
19 a writ of mandamus may be directed to a public officer to compel the performance
20 of a ministerial duty required by law. R.S. 12:1-125(A) imposes on the secretary of
21 state a legal duty to file documents that satisfy the requirements of R.S. 12:1-120,
22 and R.S. 12:1-125(D) states that this filing duty is ministerial. Hence, a writ of
23 mandamus is available to compel the secretary of state to file a document that is
24 submitted in compliance with this Chapter.

25 §1-127. Evidentiary effect of copy of filed document

26 [Reserved.]

27 Comment - 2014 Revision

28 Section 1.27 of the Model Act, concerning the evidentiary effects of a
29 certificate of filing from the secretary of state, was omitted from this Chapter to
30 avoid any redundancy or conflict with the provisions of the Code of Evidence. See
31 C.E. Arts. 902 and 904.

32 §1-128. Certificate of existence and standing

33 A. Anyone may apply to the secretary of state to furnish a certificate of
34 existence and standing for a domestic corporation or a certificate of authorization
35 and standing for a foreign corporation.

1 a certificate of existence and a certificate of good standing. Although most
 2 applicants for certificates concerning domestic corporations will wish to obtain a
 3 certificate that affirms all three items are true, experience suggests that some
 4 certificate applicants may be satisfied with a certificate of existence even in the
 5 absence of a certificate of good standing. A statement of good standing is redundant
 6 of the statement that a corporation has filed its annual report as required, but the
 7 traditional terminology was added to the Model Act language to harmonize it with
 8 that commonly used in corporate transactional work.

9 (c) The rule in Model Act Subsection (c) concerning the conclusive effect of
 10 a certificate of existence, or authorization, and good standing was retained as a rule
 11 of substantive law similar to former R.S. 12:25(B) on the conclusive effects of a
 12 certificate of incorporation. The certificate of existence, or authorization, and good
 13 standing supplants the formerly separate certificates of incorporation or
 14 authorization, of existence, and of good standing.

15 (d) A reference to R.S. 12:309 was added to Paragraph (B)(4) of this Section
 16 to reflect the retention of existing Chapter 3 of Title 12, in place of Model Act
 17 Chapter 15, to govern the qualification of foreign corporations to do business in
 18 Louisiana.

19 (e) Model Act Subsection (b)(5) was modified to reflect the distinction drawn
 20 in this Chapter between a dissolution and termination. See R.S. 12:1-1440 through
 21 1-1445 and related comments.

22 §1-129. Penalty for signing false document

23 [Reserved.]

24 Comment - 2014 Version

25 Section 1.29 of the Model Act, concerning the imposition of a criminal
 26 penalty for signing a false document, was omitted to avoid any redundancy or
 27 conflict with the state's general criminal law.

28 SUBPART C. SECRETARY OF STATE

29 §1-130. Powers

30 [Reserved.]

31 Comment - 2014 Version

32 Section 1.30 of the Model Act, concerning the power of the secretary of state
 33 to do the things necessary to fulfill the duties of the secretary under this Chapter, was
 34 omitted to avoid redundancy or conflict with existing constitutional and statutory
 35 provisions concerning the powers of the secretary of state.

36 SUBPART D. DEFINITIONS

37 §1-140. Definitions

38 In this Chapter:

39 (1) "Articles of incorporation" means the original articles of incorporation,
 40 all amendments thereof, and any other documents permitted or required to be filed

1 by a domestic business corporation with the secretary of state under any provision
2 of this Chapter except R.S. 12:1-1621. If an amendment of the articles or any other
3 document filed under this Chapter restates the articles in their entirety, thenceforth
4 the "articles" shall not include any prior documents.

5 (2) "Authorized shares" means the shares of all classes a domestic or foreign
6 corporation is authorized to issue.

7 (2A) "Beneficial shareholder" means a person who owns the beneficial
8 interest in shares, including a record shareholder or a person on whose behalf shares
9 are registered in the name of an intermediary or nominee.

10 (3) "Conspicuous" means so written, displayed, or presented that a
11 reasonable person against whom the writing is to operate should have noticed it. For
12 example, text in italics, boldface, contrasting color, capitals, or underlined is
13 conspicuous.

14 (4) "Corporation," "domestic corporation", or "domestic business
15 corporation" means a corporation for profit, which is not a foreign corporation,
16 incorporated under or subject to the provisions of this Chapter.

17 (5) "Deliver" or "delivery" means any method of delivery used in
18 conventional commercial practice, including delivery by hand, mail, commercial
19 delivery, and, if authorized in accordance with R.S. 12:1-141, by electronic
20 transmission.

21 (6) "Distribution" means a direct or indirect transfer of money or other
22 property, except its own shares, or incurrence of indebtedness by a corporation to or
23 for the benefit of its shareholders in respect of any of its shares. A distribution may
24 be in any of the following forms:

25 (a) A declaration or payment of a dividend.

26 (b) A purchase, redemption, or other acquisition of shares.

27 (c) A distribution of indebtedness.

28 (d) Any other form.

29 (6A) "Document" means either of the following:

1 (a) Any tangible medium on which information is inscribed, and includes any
2 writing or written instrument.

3 (b) An electronic record.

4 (6B) "Domestic unincorporated entity" means an unincorporated entity
5 whose internal affairs are governed by the laws of this state.

6 (7) "Effective date of notice" is defined in R.S. 12:1-141.

7 (7A) "Electronic" means relating to technology having electrical, digital,
8 magnetic, wireless, optical, electromagnetic, or similar capabilities.

9 (7B) "Electronic record" means information that is stored in an electronic or
10 other medium and is retrievable in paper form through an automated process used
11 in conventional commercial practice, unless otherwise authorized in accordance with
12 R.S. 12:1-141(J).

13 (7C) "Electronic transmission" or "electronically transmitted" means any
14 form or process of communication, not directly involving the physical transfer of
15 paper or another tangible medium, which is both of the following:

16 (a) Suitable for the retention, retrieval, and reproduction of information by
17 the recipient.

18 (b) Retrievable in paper form by the recipient through an automated process
19 used in conventional commercial practice, unless otherwise authorized in accordance
20 with R.S. 12: 1-141(J).

21 (7D) "Eligible entity" means a domestic or foreign unincorporated entity or
22 a domestic or foreign nonprofit corporation.

23 (7E) "Eligible interests" means interests or memberships.

24 (8) [Reserved.]

25 (9) "Entity" includes a domestic and foreign business corporation, a domestic
26 and foreign nonprofit corporation, an estate, a trust, a domestic and foreign
27 unincorporated entity, and a state, the United States, and a foreign government.

28 (9A) The phrase "facts objectively ascertainable" outside of a filed document
29 or plan is defined in R.S. 12:1-120(K).

1 (9B) "Expenses" means reasonable expenses of any kind, including
2 attorney's fees and other litigation-related expenses, that are incurred in connection
3 with a matter.

4 (9C) "Filing entity" means an unincorporated entity that is required by law
5 to file a public organic document for any of the purposes stated in the definition of
6 that term.

7 (10) "Foreign corporation" means a corporation incorporated under a law
8 other than the law of this state, which would be a business corporation if
9 incorporated under the laws of this state.

10 (10A) "Foreign nonprofit corporation" means a corporation incorporated
11 under a law other than the law of this state, which would be a nonprofit corporation
12 if incorporated under the laws of this state.

13 (10B) "Foreign unincorporated entity" means an unincorporated entity whose
14 internal affairs are governed by an organic law of a jurisdiction other than this state.

15 (11) "Governmental subdivision" includes parish, authority, county, district,
16 municipality, and any other state or local political subdivision.

17 (12) "Includes" denotes a partial definition.

18 (13) "Individual" means a natural person.

19 (13A) "Intangible property" means a thing that is classified as incorporeal,
20 as distinguished from corporeal, or property that is classified as intangible, as
21 distinguished from tangible, by the law of the jurisdiction that governs its ownership.

22 (13B) "Interest" means either or both of the following rights under the
23 organic law of an unincorporated entity:

24 (a) The right to receive distributions from the entity either in the ordinary
25 course or upon liquidation, other than as an assignee or other similar role.

26 (b) The right to receive notice or vote on issues involving its internal affairs,
27 other than as an agent, assignee, proxy, or person responsible for managing its
28 business and affairs.

29 (13C) "Interest holder" means a person who owns an interest.

1 (13D) "Knowledge" means actual knowledge. "Know" has a corresponding
2 meaning.

3 (14) "Means" denotes an exhaustive definition.

4 (14A) "Membership" means the rights of a member in a domestic or foreign
5 nonprofit corporation.

6 (14B) "Nonfiling entity" means an unincorporated entity that is not a filing
7 entity.

8 (14C) "Nonprofit corporation" or "domestic nonprofit corporation" means
9 a corporation incorporated under the laws of this state and subject to the provisions
10 of the Nonprofit Corporation Law.

11 (15) "Notice" is defined in R.S. 12:1-141.

12 (15A) "Organic document" means a public organic document or a private
13 organic document.

14 (15B) "Organic law" means the statute governing the internal affairs of a
15 domestic or foreign business or nonprofit corporation or unincorporated entity.

16 (15C) "Owner liability" means personal liability for a debt, obligation, or
17 liability of a domestic or foreign business or nonprofit corporation or unincorporated
18 entity that is imposed on a person by either of the following:

19 (a) Solely by reason of the person's status as a shareholder, partner, member,
20 or interest holder.

21 (b) By the articles of incorporation, bylaws, or an organic document under
22 a provision of the organic law of an entity authorizing the articles of incorporation,
23 bylaws or an organic document to make one or more specified shareholders, partners,
24 members, or interest holders liable in their capacity as shareholders, partners,
25 members, or interest holders for all or specified debts, obligations, or liabilities of
26 the entity.

27 (16) "Person" includes an individual and an entity.

1 (16A) "Personal property" means a thing that is classified as movable, as
2 distinguished from immovable, or property that is classified as personal, as
3 distinguished from real, by the law of the jurisdiction that governs its ownership.

4 (17) "Principal office" means the office, in or out of this state, so designated
5 in the most recent annual report or, until an annual report is filed, in the articles of
6 incorporation, where the principal executive offices of a domestic or foreign
7 corporation are located.

8 (17A) "Private organic document" means any document, other than the
9 public organic document, if any, that determines the internal governance of an
10 unincorporated entity. Where a private organic document has been amended or
11 restated, the term means the private organic document as last amended or restated.

12 (17B) "Public organic document" means the document, if any, that is filed
13 of public record to create an unincorporated entity, to allow it to own immovable
14 property as to third persons, or to protect its shareholders, partners, members, or
15 interest holders against owner liability. Where a public organic document has been
16 amended or restated, the term means the public organic document as last amended
17 or restated.

18 (18) "Proceeding" includes civil suit and civil, criminal, administrative, and
19 investigatory action.

20 (18A) "Public corporation" means a corporation that has shares listed on a
21 national securities exchange or regularly traded in a market maintained by one or
22 more members of a national securities association.

23 (18B) "Qualified director" is defined in R.S. 12:1-143.

24 (18C) "Real property" means a thing that is classified as immovable, as
25 distinguished from movable, or property that is classified as real, as distinguished
26 from personal, by the law of the jurisdiction that governs its ownership.

27 (19) "Record date" means the date established under Part 6 or 7 of this
28 Chapter on which a corporation determines the identity of its shareholders and their
29 shareholdings for purposes of this Chapter. The determinations shall be made as of

1 the close of business on the record date unless another time for doing so is specified
2 when the record date is fixed.

3 (19A) "Record shareholder" means either of the following:

4 (a) The person in whose name shares are registered in the records of the
5 corporation.

6 (b) The person identified as the beneficial owner of shares in a beneficial
7 ownership certificate pursuant to R.S. 12:1-723 on file with the corporation to the
8 extent of the rights granted by such certificate.

9 (20) "Secretary" means the corporate officer responsible for custody of the
10 minutes of the meetings of the board of directors and of the shareholders and for
11 authenticating records of the corporation.

12 (21) "Shareholder" means, unless varied for purposes of a specific provision
13 of this Chapter, a record shareholder.

14 (22) "Shares" means the units into which the proprietary interests in a
15 corporation are divided.

16 (22A) "Sign" or "signature" means, with present intent to authenticate or
17 adopt a document, either of the following:

18 (a) To execute or adopt a tangible symbol in a document, and includes any
19 manual, facsimile, or conformed signature.

20 (b) To attach to or logically associate with an electronic transmission an
21 electronic sound, symbol, or process, and includes an electronic signature in an
22 electronic transmission.

23 (23) "State," when referring to a part of the United States, includes a state
24 and commonwealth, and their agencies and governmental subdivisions, and a
25 territory and insular possession, and their agencies and governmental subdivisions,
26 of the United States.

27 (24) "Subscriber" means a person who subscribes for shares in a corporation,
28 whether before or after incorporation.

1 (24A) "Tangible property" means a thing that is classified as corporeal, as
2 distinguished from incorporeal, or property that is classified as tangible as
3 distinguished from intangible, by the law of the jurisdiction that governs its
4 ownership.

5 (24B) "Unincorporated entity" means an organization or juridical person that
6 has a separate juridical personality and that is not any of the following: a domestic
7 or foreign business or nonprofit corporation, an estate, a trust, a state, the United
8 States, a foreign government, or any agency or subdivision of a foreign government.
9 In addition, the term includes a general partnership, limited liability company,
10 limited partnership, partnership in commendam, registered limited liability
11 partnership, business trust, joint stock association, and unincorporated nonprofit
12 association, regardless of whether any of those included forms of organization is
13 treated as a juridical person under the relevant organic law.

14 (25) "Unanimous governance agreement" is defined in R.S. 12:1-732.

15 (25A) "United States" includes a district, authority, bureau, commission,
16 department, and any other agency of the United States.

17 (26) "Voting group" means all shares of one or more classes or series that
18 under the articles of incorporation or this Chapter are entitled to vote and be counted
19 together collectively on a matter at a meeting of shareholders. All shares entitled by
20 the articles of incorporation or this Chapter to vote generally on the matter are for
21 that purpose a single voting group.

22 (27) "Voting power" means the current power to vote in the election of
23 directors.

24 (27A) "Voting trust beneficial owner" means an owner of a beneficial interest
25 in shares of the corporation held in a voting trust established pursuant to R.S.
26 12:1-730(A). "Unrestricted voting trust beneficial owner" means, with respect to any
27 shareholder rights, a voting trust beneficial owner whose entitlement to exercise the
28 shareholder right in question is not inconsistent with the voting trust agreement.

1 (28) "Writing" or "written" means any information in the form of a
2 document.

3 Source: MBCA §1.40.

4 Comments - 2014 Revision

5 (a) This Section deletes the Model Act definition of "employee" in Paragraph
6 (8) of this Section because the definition is not relevant to the meaning of any
7 provision in the Chapter, other than R.S. 12: 1-858(E), where the definition actually
8 would work against the intended meaning of the provision. The deletion of the
9 definition also prevents it from being used for unintended purposes, such as
10 determining whether an officer is an employee for purposes of workers'
11 compensation law or the imposition of vicarious tort liability on an employer.

12 (b) The definition of "expenses" in Paragraph (9B) of this Section has been
13 modified to include an express reference to attorney's fees and other litigation-related
14 expenses. This modification does not change the intended meaning of the Model Act
15 definition; the Official Comments to the relevant provision say that reasonable fees
16 and disbursements of counsel are to be considered expenses. The phrase added by
17 this Section simply puts the comment's position on that issue into the language of the
18 statute itself.

19 (c) This Act modifies the definition of three terms to make them apply as
20 intended to partnerships governed by Louisiana law. The three affected terms are
21 "filing entity" (9C), "nonfiling entity" (14B), and "public organic document" (17B).
22 The three terms are used strictly in connection with entity conversions under Part 9
23 of this Chapter, and operate there to require the filing of appropriate public
24 documents by an entity that survives a conversion if the "creation" of that form of
25 entity would require the filing of a public organic document. The terms are designed
26 to apply mainly to limited partnerships and limited liability partnerships that are
27 "formed" or "created" under the laws of most states by the filing of articles or a
28 certificate of partnership.

29 Under Louisiana law, however, the filing of this kind of document does not
30 necessarily "form" or "create" either a partnership in commendam or a registered
31 limited liability partnership. An existing general partnership can obtain the form of
32 limited liability that is available in a limited liability partnership or partnership in
33 commendam by, among other things, filing the appropriate document with the
34 secretary of state. The filing of that document does not affect the filing partnership's
35 already-existing juridical personality. Moreover, Louisiana law does not limit its
36 filing obligations to limited liability forms of partnership; it requires even general
37 partnerships to file a document with the secretary of state to acquire the legal
38 capacity to own immovable property as to third persons. C.C. Art. 2806; R.S.
39 9:3401-3410. Still, in neither context - limited liability nor ownership of immovable
40 property- is the filing required to create the partnership as a separate juridical person.

41 Nevertheless, the purpose of the relevant Model Act rules on "filing entities"
42 - that they be required to file the appropriate public documents in connection with
43 an entity conversion - should apply to Louisiana partnerships in the same way they
44 would apply to a limited partnership or a limited liability partnership formed under
45 the laws of another state. To achieve that end, this Section broadens the definition
46 of a "public organic document" to include not only a document filed to "create" an
47 entity, but also one that must be filed for the entity to own immovable property as
48 to third persons or to protect the entity's owners against liability. The definitions of
49 "filing entity" and "nonfiling entity" are then made to depend on this broader
50 definition of the term "public organic document."

1 In one type of transaction, this approach could theoretically require the filing
2 of a public document where it would otherwise not be required: in the conversion of
3 a corporation or other form of entity into a general partnership. Louisiana law does
4 not require a general partnership to file an organic document with the secretary of
5 state unless the partnership wishes to own immovable property. As a practical
6 matter, however, few owners of a general partnership would really wish to relinquish
7 their partnership's capacity to own immovable property merely to save a small filing
8 fee. Accordingly, this Section includes a general partnership within the meaning of
9 a "filing entity" so that a conversion of another form of business into a general
10 partnership will trigger the filing that preserves the capacity of the converted
11 business entity to own immovable property.

12 (d) Following the example set in Louisiana's adoption of the Uniform
13 Commercial Code, this Section adds definitions to the Model Act to deal with
14 differences in common law and civil law terminology in the area of what the
15 common law calls property and the civil law calls things. The four new
16 property-related definitions cover the terms "real property" (18C), "personal
17 property" (16A), "tangible property" (24A), and "intangible property" (13A). Each
18 definition includes both the common law and civil law terminology, and applies
19 them based on the law that governs the ownership of the thing or property in
20 question. So, for example, a Louisiana corporation that owned land both in
21 Louisiana and in Texas would own "real property" in both states within the meaning
22 of that term in this Section, because the land would be classified as an immovable
23 thing under Louisiana law and as real property under Texas law.

24 (e) The Model Act defines an "interest holder" as a person who "holds of
25 record" an interest. This Section substitutes the term "owner" for the "holds of
26 record" phrase. The Model Act's implicit assumption that the organic law governing
27 all forms of unincorporated entities will provide a corporation-like record holder
28 rule, and that the unincorporated entities will maintain those records as required, may
29 not be correct. In an informally-operated partnership or limited liability company,
30 it is possible, even likely, that no partner or member will hold an interest "of record"
31 in the usual sense of those words. Because the term "interest holder" is used in this
32 Section to identify the persons whose approval is required to carry out a merger or
33 entity conversion, limiting those persons to holders of record could mean that no one
34 within an informally-operated partnership or limited liability company would have
35 the power to approve those types of transactions. The "holds of record" phrase is
36 omitted to avoid that problem. However, the deletion of those words is not intended
37 to deprive a record ownership rule, if one exists, of its normal effects. If the organic
38 law governing an unincorporated entity does contain a record ownership rule, that
39 rule should operate by itself to permit the unincorporated entity to determine the
40 persons entitled to vote on a merger or entity conversion in accordance with the
41 record ownership rule.

42 (f) This Section adds a definition of "know" or "knowledge" in Paragraph
43 (13D) of this Section that is identical to that in the Uniform Commercial Code, R.S.
44 10:1-202 (b). Although the notice rules in the two statutes differ, the definition of
45 "knowledge" provided in Paragraph (13D) of this Section is intended to draw the
46 same distinction between knowledge and notice that is drawn by the UCC, and to
47 express the same concept of actual knowledge.

48 (g) This Section adds "partner" to the list of persons who may bear "owner
49 liability" under Paragraph (15C) of this Section to avoid any question whether a
50 partner is among the types of owners who may bear that form of liability. This
51 Section rejects the Model Act rule that would have permitted the articles of
52 incorporation of a corporation governed by this Chapter to contain a provision
53 imposing owner liability on the shareholders of the corporation. See R.S. 12:1-202,
54 Comment (b). Nevertheless, that feature of the definition of owner liability was
55

1 retained in Paragraph (15C) of this Section because it may be relevant to a
 2 transaction with a foreign corporation or unincorporated entity. For example, if a
 3 plan of merger proposed the merger of a Louisiana corporation into a foreign
 4 corporation whose articles contained a provision imposing owner liability on the
 5 corporation's shareholders, R.S. 12:1-1104(H) would require the plan of merger to
 6 be approved by each shareholder who would bear owner liability as a result of the
 7 merger. The full definition of "owner liability" in Paragraph (15C) of this Section
 8 is retained to deal with that kind of transaction.

9 (h) This Section modifies the definition of "principal office" in Paragraph
 10 (17) of this Section to reflect the requirement in R.S. 12:1-202 that the address of an
 11 initial principal office, if different from the registered office, be included in a
 12 corporation's initial articles of incorporation.

13 (i) The Model Act definition of "secretary" in Paragraph (20) of this Section
 14 has been modified in this Section to reflect the requirement imposed by this Chapter
 15 that a corporation elect an officer called a "secretary." The Model Act requires the
 16 election of someone with the responsibilities traditionally associated with a corporate
 17 secretary, but does not require that person to be called "secretary." Thus, in the
 18 Model Act, a definition of "secretary" is required to describe the person to whom the
 19 Model Act is referring when it uses that term. The definition is retained in this
 20 Section to describe the minimum, statutorily-designated responsibilities of the person
 21 elected to the office of secretary.

22 (j) This Section modifies the Model Act definition of "unincorporated entity"
 23 in Paragraph (24B) of this Section in two ways. First, it replaces the Model Act
 24 references to an "artificial legal person" and to a "separate legal entity" with the
 25 equivalent Louisiana terminology, "juridical person" and "separate juridical
 26 personality." See C.C. Art. 24. And, second, it deletes the Model Act reference to
 27 an organization that has the capacity to "own an estate in real property." That
 28 phrase, which is foreign to Louisiana law, appeared to be included in the model
 29 definition primarily to deal with partnerships and unincorporated nonprofit
 30 associations that are governed by the law of a state that has yet make the transition
 31 from an aggregate to entity theory for those forms of organization. The same
 32 purpose is served in this Section by retaining the Model Act's listing of those
 33 organizations by name in the definition, along with the names of the analogous
 34 Louisiana organizations, and then by stating that the inclusive listing controls
 35 regardless of whether the listed entities are treated as juridical persons in their states
 36 of organization.

37 This list-by-name approach, when combined with the general juridical
 38 personality rule, provides a clear, simple rule for all of the currently-realistic
 39 possibilities for an entity conversion transaction, while also allowing for expansion
 40 of the covered entities to include any new form of organization that is given the
 41 juridical personality that modern law nearly always confers on new forms of business
 42 organization. Of course, this approach does exclude the possibility that a corporation
 43 could engage in an entity conversion transaction under Louisiana law with some
 44 newly-discovered or newly-invented form of business organization that lacked
 45 juridical personality, yet still possessed the capacity to own immovable property.
 46 But this Section chooses deliberately to leave for future consideration the rules that
 47 should apply in that type of transaction.

1 §1-141. Notices and other communications

2 A. Except as provided in R.S. 12:1-303, notice under this Chapter must be
3 in writing. Unless otherwise agreed between the sender and the recipient, a notice
4 or other communication under this Chapter must be in English.

5 B. A notice or other communication may be given or sent by any method of
6 delivery, except that electronic transmissions must be in accordance with this
7 Section. If these methods of delivery are impracticable, a notice or other
8 communication may be communicated by a newspaper of general circulation in the
9 area where published.

10 C. Notice or other communication to a domestic or foreign corporation
11 authorized to transact business in this state may be delivered to its registered agent
12 or to the secretary of the corporation at its principal office shown in its most recent
13 annual report or, in the case of a foreign corporation that has not yet delivered an
14 annual report, in its application for a certificate of authority.

15 D. Notice or other communications may be delivered by electronic
16 transmission if consented to by the recipient or if authorized by Subsection J of this
17 Section.

18 E. Any consent under Subsection D of this Section may be revoked by the
19 person who consented by written or electronic notice to the person to whom the
20 consent was delivered. Any such consent is deemed revoked if both of the following
21 conditions are met:

22 (1) The corporation is unable to deliver two consecutive electronic
23 transmissions given by the corporation in accordance with such consent.

24 (2) The inability becomes known to the secretary or an assistant secretary of
25 the corporation or to the transfer agent or other person responsible for the giving of
26 notice or other communications; provided, however, the inadvertent failure to treat
27 such inability as a revocation shall not invalidate any meeting or other action.

28 F. Unless otherwise agreed between the sender and the recipient, an
29 electronic transmission is received when all of the following occurs:

1 (1) It enters an information processing system that the recipient has
2 designated or uses for the purposes of receiving electronic transmissions or
3 information of the type sent, and from which the recipient is able to retrieve the
4 electronic transmission.

5 (2) It is in a form capable of being processed by that system.

6 G. Receipt of an electronic acknowledgment from an information processing
7 system described in Paragraph (F)(1) of this Section establishes that an electronic
8 transmission was received but, by itself, does not establish that the content sent
9 corresponds to the content received.

10 H. An electronic transmission is received under this Section even if no
11 individual is aware of its receipt.

12 I. Notice or other communication, if in a comprehensible form or manner,
13 is effective at the earliest of the following:

14 (1) If in physical form, the earliest of when it is actually received, or when
15 it is left at a place apparently designated for the receipt of mail or other similar
16 communication at any of the following:

17 (a) A shareholder's address shown on the corporation's record of
18 shareholders maintained by the corporation under R.S. 12:1-1601(C).

19 (b) A director's residence or usual place of business.

20 (c) The corporation's principal place of business.

21 (2) If mailed postage prepaid and correctly addressed to a shareholder, upon
22 deposit in the United States mail.

23 (3) If mailed by United States mail postage prepaid and correctly addressed
24 to a recipient other than a shareholder, the earliest of when it is actually received, or
25 either of the following:

26 (a) If sent by registered or certified mail, return receipt requested, the date
27 shown on the return receipt signed by or on behalf of the addressee.

28 (b) Five days after it is deposited in the United States mail.

1 (4) If an electronic transmission, when it is received as provided in
2 Subsection F of this Section.

3 J. A notice or other communication may be in the form of an electronic
4 transmission that cannot be directly reproduced in paper form by the recipient
5 through an automated process used in conventional commercial practice only if both
6 of the following conditions are met:

7 (1) The electronic transmission is otherwise retrievable in perceivable form.

8 (2) The sender and the recipient have consented in writing to the use of such
9 form of electronic transmission.

10 K. If this Chapter prescribes requirements for notices or other
11 communications in particular circumstances, those requirements govern. If articles
12 of incorporation or bylaws prescribe requirements for notices or other
13 communications, not inconsistent with this Section or other provisions of this
14 Chapter, those requirements govern. The articles of incorporation or bylaws may
15 authorize or require delivery of notices of meetings of directors by electronic
16 transmission.

17 Source: MBCA §1.41.

18 Comment - 2014 Revision

19 This Section omits the phrase in Model Act Subsection (a) that would have
20 permitted oral notice if "reasonable in the circumstances" and the rule in Model Act
21 Paragraph (i)(5) concerning the time at which an oral notice becomes effective.
22 When this Chapter requires a notice, the notice must be in writing, as defined.
23 However, the rejection of an oral statement as an acceptable form notice does not
24 affect any inference of knowledge that may be drawn from evidence that an oral
25 statement was made to an individual.

26 §1-142. Number of shareholders

27 A. For purposes of this Chapter, the following identified as a shareholder in
28 a corporation's current record of shareholders constitutes one shareholder:

29 (1) Co-owners.

30 (2) A corporation, partnership or other entity.

31 (3) A trust or estate or the trustees, guardians, custodians, succession
32 representatives, or other fiduciaries of a single trust, estate, succession, or account.

1 B. For purposes of this Chapter, shareholdings registered in substantially
 2 similar names constitute one shareholder if it is reasonable to believe that the names
 3 represent the same person.

4 Source: MBCA §1.42.

5 Comments - 2014 Revision

6 (a) Under Louisiana law, the heirs or legatees of a decedent succeed
 7 immediately to ownership of the decedent's assets. See C.C. Arts. 871, 934, and 935.
 8 If specific shares owned by the decedent are not bequeathed to particular successors,
 9 the shares are co-owned by the decedent's successors. See C.C. Arts. 872, 935, and
 10 1292. To achieve the result intended by the Model Act's treating an estate as one
 11 owner, this Section treats co-owners by succession, either of the shares or of the
 12 estate in which the shares are included, as one owner under Paragraph (A)(1) of this
 13 Section.

14 (b) The Model Act counts co-owners as a single shareholder only when the
 15 shares involved are owned by three or fewer co-owners. This Section counts all
 16 co-owners of the same shares as a single shareholder, regardless of the number of
 17 co-owners, so that direct co-ownership is treated for counting purposes in the same
 18 way as the various forms of indirect co-ownership that are counted as a single
 19 shareholder for counting purposes under Paragraph (A)(2) of this Section. The
 20 removal of the numerical limitation on the operation of the co-ownership rule also
 21 allows the rule on co-ownership by succession to operate as intended, regardless of
 22 the number of heirs or legatees involved.

23 (c) The Model Act includes a trust or estate in the list of entities treated as
 24 a single shareholder under Paragraph (a)(2). Because Louisiana law does not treat
 25 a trust or estate as an entity, and because the entity status of an estate or trust is not
 26 relevant to the operation of the counting rule stated by Subsection A of this Section,
 27 this Section covers estates and trusts in Paragraph (A)(3) of this Section instead of
 28 (A)(2).

29 (d) As used in Paragraph (A)(3) of this Section, the term "estate" was
 30 retained as a means of applying the Model Act rule to estates existing under the laws
 31 of another state. The rule applicable under Louisiana law to shares held by the heirs
 32 or legatees of a deceased shareholder is not provided by the rule in Paragraph (A)(3)
 33 of this Section concerning estates, but rather by the rule in Paragraph (A)(1) of this
 34 Section concerning co-owners by succession. The rule is the same in both places,
 35 of course, but the co-ownership by succession phrase in Paragraph (A)(1) of this
 36 Section is the more technically accurate source of the rule in the context of Louisiana
 37 succession law.

38 (e) This Section adds a reference to succession representatives of a
 39 succession in Paragraph (A)(3) of this Section, to supply the Louisiana analogue to
 40 the estate fiduciaries included in the Model Act.

41 (f) Under the Model Act, the rules in this Section are relevant only for
 42 purposes of two provisions, Model Act Section 13.02(b)(2), concerning the
 43 availability of appraisal rights, and Model Act Section 14.30(a)(2), concerning the
 44 availability of dissolution of the corporation on grounds of oppression. Under this
 45 Chapter, the rules are relevant only for the first purpose. This Chapter does not
 46 require a counting of shareholders to determine whether the remedies it provides on
 47 grounds of oppression are available to a shareholder. See R.S. 12:1-1435(J).

1 §1-143. Qualified director

2 A. A "qualified director" is a director who meets the following criteria:

3 (1) At the time action is to be taken under R.S. 12:1-744, does not have
4 either of the following:5 (a) A material interest in the outcome of the proceeding.6 (b) A material relationship with a person who has such an interest.7 (2) At the time action is to be taken under R.S. 12:1-853 or 1-855, does not
8 have a material relationship with a director described in either Subparagraph
9 (A)(2)(a) or Subparagraph (A)(2)(b) of this Section and is not either of the following:10 (a) A party to the proceeding.11 (b) A director as to whom a transaction is a director's conflicting interest
12 transaction or who sought a disclaimer of the corporation's interest in a business
13 opportunity under R.S. 12:1-870, which transaction or disclaimer is challenged in the
14 proceeding.15 (3) At the time action is to be taken under R.S. 12:1-862, is not either of the
16 following:17 (a) A director who has a material relationship with another director as to
18 whom the transaction is a director's conflicting interest transaction.19 (4) At the time action is to be taken under R.S. 12: 1-870, would be a
20 qualified director under Paragraph (A)(3) of this Section if the business opportunity
21 were a director's conflicting interest transaction.

22 B. For purposes of this Section and R.S. 12:1-860:

23 (1) "Material relationship" means a familial, financial, professional,
24 employment or other relationship that would reasonably be expected to impair the
25 objectivity of the director's judgment when participating in the action to be taken.26 (2) "Material interest" means an actual or potential benefit or detriment,
27 other than one which would devolve on the corporation or the shareholders
28 generally, that would reasonably be expected to impair the objectivity of the
29 director's judgment when participating in the action to be taken.

1 C. The presence of one or more of the following circumstances shall not
2 automatically prevent a director from being a qualified director:

3 (1) Nomination or election of the director to the current board by any
4 director who is not a qualified director with respect to the matter, or by any person
5 that has a material relationship with that director, acting alone or participating with
6 others.

7 (2) Service as a director of another corporation of which a director who is
8 not a qualified director with respect to the matter, or any individual who has a
9 material relationship with that director, is or was also a director.

10 (3) With respect to action to be taken under R.S. 12:1-744, status as a named
11 defendant, as a director against whom action is demanded, or as a director who
12 approved the conduct being challenged.

13 Source: MBCA §1.43.

14 Comment - 2014 Revision

15 This Section makes the definitions in Subsection B of this Section applicable
16 not only for purposes of this Section, as provided in the Model Act, but also for
17 purposes of R.S. 12:1-860. As explained in the comments to that Section, this
18 Section utilizes the definition of "material relationship" to broaden the definition of
19 a director's conflicting interest transaction.

20 §1-144. Householding

21 A. A corporation has delivered written notice or any other report or
22 statement under this Chapter, the articles of incorporation, or the bylaws to all
23 shareholders who share a common address if all of the following conditions are met:

24 (1) The corporation delivers one copy of the notice, report, or statement to
25 the common address.

26 (2) The corporation addresses the notice, report, or statement to those
27 shareholders either as a group or to each of those shareholders individually or to the
28 shareholders in a form to which each of those shareholders has consented.

29 (3) Each of those shareholders consents to delivery of a single copy of such
30 notice, report or statement to the shareholders' common address. Any such consent
31 shall be revocable by any of the shareholders who deliver written notice of

1 revocation to the corporation. If the written notice of revocation is delivered, the
2 corporation shall begin providing individual notices, reports, or other statements to
3 the revoking shareholder no later than thirty days after delivery of the written notice
4 of revocation.

5 B. Any shareholder who fails to object by written notice to the corporation,
6 within sixty days of written notice by the corporation of its intention to send single
7 copies of notices, reports or statements to shareholders who share a common address
8 as permitted by Subsection A of this Section, shall be deemed to have consented to
9 receiving such single copy at the common address.

10 Source: MBCA §1.44.

11 PART 2. INCORPORATION

12 §1-201. Incorporators

13 One or more persons capable of contracting may act as the incorporator or
14 incorporators of a corporation by delivering to the secretary of state for filing articles
15 of incorporation and the written consent of the registered agent required by R.S.
16 12:1-202(E).

17 Source: MBCA §2.01

18 Comments - 2014 Revision

19 (a) Under former R.S. 12:21, one or more "natural or artificial" persons
20 "capable of contracting" were permitted to act as incorporators. The "natural or
21 artificial" phrase was eliminated as unnecessary due to the definition of "person" in
22 R.S. 12:1-140. The "capable of contracting" phrase from the former provision was
23 added to the Model Act provision as a means of requiring incorporators to possess
24 contractual capacity, thus disqualifying unemancipated minors and others lacking the
25 required capacity from acting as incorporators. The added language is not meant to
26 suggest that an incorporator, in filing the contemplated corporate documents, is
27 becoming a party to a contract.

28
29 (b) This Section modifies the Model Act language to retain the substance of
30 the requirement in the former law that a notarized affidavit of acceptance from the
31 corporation's registered agent be filed as part of the incorporation process. The
32 document is now described as a written consent, not an affidavit, but the document
33 still must be acknowledged or executed by authentic act as provided in R.S.
34 12:1-120(H), unless it satisfies one of the exceptions in R.S. 12:1701.

1 §1-202. Articles of incorporation and signed consent by agent to appointment

2 A. The articles of incorporation must set forth all of the following:

3 (1) A corporate name for the corporation that satisfies the requirements of
4 R.S. 12:1-401.

5 (2) The number of shares the corporation is authorized to issue.

6 (3) The street address, not a post office box only, of the corporation's initial
7 registered office, and, if different, the street address, not a post office box only, of
8 the corporation's initial principal office.

9 (4) The name and street address, not a post office box only, of its initial
10 registered agent.

11 (5) Whether the corporation accepts, rejects, or limits, with a statement of
12 the limitations, the protection against liability of directors and officers that is
13 provided by R.S. 12:1-832.

14 (6) The name and address of each incorporator.

15 B. The articles of incorporation may set forth any of the following:

16 (1) The names and addresses of the individuals who are to serve as the initial
17 directors.

18 (2) Provisions not inconsistent with law regarding any of the following:

19 (a) The purpose or purposes for which the corporation is organized.

20 (b) Managing the business and regulating the affairs of the corporation.

21 (c) Defining, limiting, and regulating the powers of the corporation, its board
22 of directors, and shareholders.

23 (d) A par value for authorized shares or classes of shares.

24 (3) Any provision that the provisions of this Chapter requires or permits to
25 be set forth in the bylaws.

26 (4) A provision that limits, reduces, qualifies, or conditions the protection
27 against liability of directors and officers provided by R.S. 12:1-832.

28 (5) A provision permitting or making obligatory indemnification of a
29 director for liability, as defined in R.S. 12:1-850(3), to any person for any action

1 taken, or any failure to take any action, as a director, except liability for any of the
2 following:

3 (a) A breach of the duty of loyalty owed by the director or officer to the
4 corporation or its shareholders.

5 (b) An intentional infliction of harm on the corporation or its shareholders.

6 (c) A violation of R.S. 12:1-833.

7 (d) An intentional violation of criminal law.

8 (6) A provision that cash, property or share dividends, shares issuable to
9 shareholders in connection with a reclassification of stock, and the redemption price
10 of redeemed shares, that are not claimed by the shareholders entitled thereto within
11 a reasonable time, not less than one year in any event, after the dividend or
12 redemption price became payable or the shares became issuable, despite reasonable
13 efforts by the corporation to pay the dividend or redemption price or deliver the
14 certificates for the shares to such shareholders within such time, shall, at the
15 expiration of such time, revert in full ownership to the corporation, and the
16 corporation's obligation to pay such dividend or redemption price or issue such
17 shares, as the case may be, shall thereupon cease; provided that the board of directors
18 may, at any time, for any reason satisfactory to it, but need not, authorize either of
19 the following:

20 (a) Payment of the amount of any cash or property dividend or redemption
21 price.

22 (b) Issuance of any shares, ownership of which has reverted to the
23 corporation pursuant to a provision of the articles authorized by this Section, to the
24 person that would be entitled thereto had such reversion not occurred.

25 C. The articles of incorporation need not set forth any of the corporate
26 powers enumerated in this Act.

27 D. Provisions of the articles of incorporation may be made dependent upon
28 facts objectively ascertainable outside the articles of incorporation in accordance
29 with R.S. 12:1-120(K).

1 E. A written consent to appointment, signed by the initial registered agent,
2 shall be attached or appended to the articles of incorporation.

3 Source: MBCA §2.02; R.S. 12:24.

4 Comments - 2014 Revision

5 (a) The Model Act unifies the address of a corporation's registered agent
6 with that of its registered office. That approach was rejected in this Section in favor
7 of the traditional Louisiana approach of permitting the two addresses to be handled
8 independently of one another. The registered office of a Louisiana corporation may
9 be relevant for purposes other than service of process on the registered agent.
10 Venue, for example, is proper in the parish in which a corporation's registered office
11 is located. See C.C.P. Art. 42(2). A corporation may wish to appoint a registered
12 agent in a given parish without submitting itself to the treatment of that parish as a
13 parish of proper venue. The Model Act language was modified to permit that kind
14 of choice. The Model Act was also modified to add a requirement that the address
15 of the corporation's initial principal office, if different from its initial registered
16 office, be included in the articles of incorporation.

17 (b) Model Act Subparagraph 2.02(b)(2)(v), which would have permitted the
18 articles of incorporation to impose personal liability on shareholders for corporate
19 debts, was deleted from this Section because of the risks that it posed of subjecting
20 shareholders to personal liability without their knowledge. The deletion of the Model
21 Act provision does not affect the ability of shareholders to undertake personal
22 liability through their own personal guarantees.

23 (c) The Model Act permits the inclusion of a provision in the articles of
24 incorporation that exculpates corporate directors from personal liability for monetary
25 damages arising from a breach of fiduciary duty, subject to four exceptions for
26 serious forms of misconduct that are considered beyond the reach of private
27 agreements. Experience suggests that most parties who receive legal advice do
28 include the permitted exculpatory provision in their articles of incorporation, usually
29 "to the fullest extent allowed by law." Reflecting this strong preference for the
30 statutory form of exculpation, this Section makes the inclusion of statutory
31 exculpation the default rule. But because of the importance of the issue both to
32 shareholders and to management, the Section does not merely permit shareholders
33 to opt out of the statutory exculpation rules, it requires that an explicit choice be
34 made on the subject in the corporation's articles of incorporation. Paragraph (A)(5)
35 of this Section requires that the articles include a statement that selects one of three
36 choices: to accept, to limit, with a statement of the limitations, or to reject the default
37 exculpation rules.

38 (d) Paragraph (A)(5) of this Section contemplates that most parties will make
39 the simple choice between accepting and rejecting the statutory exculpation rules in
40 full. If the parties wish to engage in the more difficult task of devising their own
41 customized exculpatory rules, the particular limitations they wish to place on the
42 default statutory rules must be stated in the articles of incorporation. Under R.S.
43 12:1-832, if the articles choose the "accept with limitations" option, but fail to
44 include the limitations in the articles, the default statutory rules will apply in full.
45 Conversely, if statements of limitation are indeed included in the articles, but an
46 inconsistent choice is made under Paragraph (A)(5), the statement of limitations will
47 control over the inconsistent Paragraph (A)(5) selection.

48 (e) Model Act Paragraph (b)(5) was modified to harmonize the limitations
49 on indemnity provisions with the limits of exculpation permitted under R.S.
50 12:1-832.

1 (f) Former R.S. 12:24(C)(3), concerning the reversion to the corporation of
2 dividends and other similar distributions that remained unclaimed after a year, was
3 retained and added to this Part as R.S. 12:1-202(B)(6).

4 (g) A new Subsection E of this Section was added to the Model Act
5 provision to retain the substance of the requirement in prior law that a notarized
6 affidavit of acceptance from the corporation's initial registered agent be filed as part
7 of the incorporation process. The document is now described as a written consent,
8 not an affidavit, but the document still must be acknowledged or executed by
9 authentic act as provided in R.S. 12:1-120(H), unless it satisfies one of the
10 exceptions in R.S. 12:1701.

11 §1-203. Incorporation

12 A. Except as provided in Subsection C of this Section, the corporate
13 existence begins, and the corporation is duly incorporated, when the articles of
14 incorporation become effective under R.S. 12:1-123.

15 B. The secretary of state's filing of the articles of incorporation is conclusive
16 proof that the incorporators satisfied all conditions precedent to incorporation and
17 that the corporation is duly incorporated, except in a proceeding by the state to
18 cancel or revoke the incorporation or involuntarily dissolve the corporation.

19 C. When immovable property is acquired by one or more persons acting in
20 any capacity for and in the name of any corporation that is not duly incorporated, and
21 the corporation is subsequently duly incorporated, the corporate existence shall be
22 retroactive to the date of acquisition of an interest in the immovable property, but
23 such retroactive existence shall be without prejudice to rights validly acquired by
24 third persons in the interim between the date of acquisition and the date that the
25 corporation is duly incorporated.

26 Source: MBCA §2.03, R.S. 12:25.1.

27 Comments - 2014 Revision

28 (a) Model Act Subsection (a) was modified to accommodate the grace
29 periods provided by R.S. 12:1-123(B) for the delivery of original articles of
30 incorporation to the secretary of state.

31 (b) The reference to a delayed effective date in Section 2.03 of the Model
32 Act was deleted as redundant of the rules in R.S. 12:1-123(C) concerning delayed
33 effective dates.

34 (c) Former R.S. 12:25.1 was retained and added as Subsection C of this
35 Section, to retain the retroactivity effects provided by prior law in connection with
36 acquisitions of immovable property. An introductory reference to the rule in
37 Subsection C of this Section was added to Subsection A of this Section.

1 (d) A phrase was added to Subsections A and B of this Section to make the
 2 filing of articles of incorporation conclusive evidence that a corporation has been
 3 "duly incorporated," effective on the date established by R.S. 12:1-123. The phrase
 4 was added to harmonize Subsections A and B of this Section with the "duly
 5 incorporated" language added in Subsection C of this Section from former R.S.
 6 12:25.1, and to support the traditional form of legal opinion that is commonly
 7 required in connection with a corporate transaction, to the effect that one or more of
 8 the corporations involved in the transaction is "duly incorporated."

9 §1-204. Liability for preincorporation transactions

10 [Reserved.]

11 Comment - 2014 Revision

12 Section 9 of Louisiana's 1928 business corporation act imposed personal
 13 liability on non-dissenting directors and participating officers for all debts and
 14 liabilities of a corporation that arose from the transaction of corporate business
 15 before the corporation's articles of incorporation were properly filed. 1928 La. Acts
 16 No. 250, §9. That rule was deliberately omitted from the 1968 statute "to permit full
 17 application of the de facto-corporation and estoppel-to-deny-corporate existence
 18 rules." Model Act Section 2.04 would have reinserted a modified version of the
 19 older rule, imposing liability only if the participants in pre-incorporation transactions
 20 acted while "knowing" that the corporation had not yet been formed. Like the 1968
 21 statute, this Section rejects a mechanical liability rule, even the improved version
 22 offered by the Model Act, in favor of the broader, more factually-sensitive approach
 23 taken in de-facto-corporation and estoppel-to-deny-corporate-existence cases. See
 24 §§9.03-.04 Glenn G. Morris and Wendell H. Holmes, Louisiana Business
 25 Organizations, Vols. 7 & 8, Louisiana Civil Law Treatise Series (West Group 1999);
 26 Fred S. McChesney, Doctrinal Analysis and Statistical Modeling in Law: The Case
 27 of Defective Incorporation, 71 Wash. U.L.Q. 493 (1993).

28 §1-205. Organization of corporation

29 A. After incorporation, the following shall apply:

30 (1) If initial directors are named in the articles of incorporation, the initial
 31 directors shall hold an organizational meeting, at the call of a majority of the
 32 directors, to complete the organization of the corporation by appointing officers and
 33 carrying on any other business brought before the meeting.

34 (2) If initial directors are not named in the articles, the incorporator or
 35 incorporators shall hold an organizational meeting at the call of a majority of the
 36 incorporators to elect a board of directors who shall complete the organization of the
 37 corporation.

38 B. The election by the incorporators of a board of directors may be
 39 conducted without a meeting by means of one or more written consents signed by
 40 each incorporator.

1 C. An organizational meeting may be held in or out of this state.

2 Source: MBCA §2.05.

3 Comment - 2014 Revision

4 The Model Act allows incorporators to engage in the post-incorporation acts
5 that are typically carried out to complete the organization of a corporation, such as
6 electing officers and issuing stock. This Section retains the approach taken under
7 prior Louisiana law. It limits the role of incorporators to the signing and delivery of
8 articles of incorporation for filing, and to the election of the corporation's first
9 directors. Unless initial directors are named in the articles of incorporation, directors
10 must be elected by the incorporators to complete the organization of the corporation.

11 §1-206. Bylaws

12 A. The board of directors of a corporation may adopt bylaws for the
13 corporation.

14 B. The bylaws of a corporation may contain any provision for managing the
15 business and regulating the affairs of the corporation that is not inconsistent with law
16 or the articles of incorporation.

17 C. The bylaws may contain one or both of the following provisions:

18 (1) A requirement that if the corporation solicits proxies or consents with
19 respect to an election of directors, the corporation include in its proxy statement and
20 any form of its proxy or consent, to the extent and subject to such procedures or
21 conditions as are provided in the bylaws, one or more individuals nominated by a
22 shareholder in addition to individuals nominated by the board of directors.

23 (2) A requirement that the corporation reimburse the expenses incurred by
24 a shareholder in soliciting proxies or consents in connection with an election of
25 directors, to the extent and subject to such procedures or conditions as are provided
26 in the bylaws, provided that no bylaw so adopted shall apply to elections for which
27 any record date precedes its adoption.

28 D. Notwithstanding R.S. 12:1-1020(B)(2), the shareholders in amending,
29 repealing, or adopting a bylaw described in Subsection C of this Section may not
30 limit the authority of the board of directors to amend or repeal any condition or
31 procedure set forth in or to add any procedure or condition to such a bylaw in order
32 to provide for a reasonable, practicable, and orderly process.

1 Source: MBCA §2.06

2 Comment - 2014 Revision

3 Model Act Section 2.06 was modified in this Section: (1) to make the
4 adoption of bylaws permissive rather than mandatory, and (2) not to grant authority
5 to incorporators to adopt bylaws. Both changes were made to retain the existing
6 Louisiana law on the subject.

7 §1-207. Emergency bylaws

8 A. Unless the articles of incorporation provide otherwise, the board of
9 directors of a corporation may adopt bylaws to be effective only in an emergency
10 defined in Subsection D of this Section. The emergency bylaws, which are subject
11 to amendment or repeal by the shareholders, may make all provisions necessary for
12 managing the corporation during the emergency, including any of the following:

13 (1) Procedures for calling a meeting of the board of directors.

14 (2) Quorum requirements for the meeting.

15 (3) Designation of additional or substitute directors.

16 B. All provisions of the regular bylaws consistent with the emergency
17 bylaws remain effective during the emergency. The emergency bylaws are effective
18 only during the emergency.

19 C. Corporate action taken in good faith in accordance with the emergency
20 bylaws binds the corporation and may not be used to impose liability on a corporate
21 director, officer, employee, or agent.

22 D. An emergency exists for purposes of this Section if a catastrophic event
23 makes it impracticable to attain a quorum of the corporation's directors when and as
24 necessary to carry out the functions of the board of directors.

25 Source: MBCA §2.07.

26 Comment - 2014 Revision

27 The definition of emergency in R.S. 12:1-207(D) has been modified to
28 harmonize it with the Louisiana-modified definition of the same term in R.S.
29 12:1-303(D), for the reasons explained in the Comments to that section.

1 PART 3. PURPOSES AND POWERS2 §1-301. Purposes

3 A. Every corporation incorporated under this Chapter has the purpose of
4 engaging in any lawful business or activity unless a more limited purpose is set forth
5 in the articles of incorporation.

6 B. A corporation engaging in a business that is subject to regulation under
7 another statute of this state may incorporate under this Chapter only if permitted by,
8 and subject to all limitations of, the other statute.

9 Source: MBCA §3.01.

10 Comment - 2014 Revision

11 The phrase "or activity" was added to Subsection A of this Section to make
12 it consistent with former law, which had permitted a business corporation to engage
13 in "any lawful activity", and to make it clear that business corporations may used for
14 purposes other than the operation of a business in the usual sense of the term. This
15 Section also allows business corporations to be used, for example, to hold assets, to
16 facilitate financial transactions, and to provide services to affiliated operating
17 companies.

18 §1-302. General powers

19 Unless its articles of incorporation provide otherwise, every corporation has
20 perpetual duration and has the power to do all things necessary or convenient to carry
21 out its business and affairs, including without limitation power to perform any of the
22 following actions:

23 (1) Sue and be sued, complain and defend in its corporate name.

24 (2) Have a corporate seal, which may be altered at will, and to use it, or a
25 facsimile of it, by impressing or affixing it or in any other manner reproducing it.

26 (3) Make and amend bylaws, not inconsistent with its articles of
27 incorporation or with the laws of this state, for managing the business and regulating
28 the affairs of the corporation.

29 (4) Purchase, receive, lease, or otherwise acquire and own, hold, improve,
30 use, and otherwise deal with real or personal property, or any interest in property,
31 wherever located.

1 (5) Sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose
2 of all or any part of its property.

3 (6) Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote,
4 use, sell, mortgage, lend, pledge, or otherwise dispose of, and deal in and with shares
5 or other interests in, or obligations of, any other entity.

6 (7) Make contracts and guarantees, incur liabilities, borrow money, issue its
7 notes, bonds, and other obligations, which may be convertible into or include the
8 option to purchase other securities of the corporation, and secure any obligation by
9 mortgage, pledge, or security interests of any kind in any of its property, franchises,
10 or income.

11 (8) Lend money, invest and reinvest its funds, and receive and hold real and
12 personal property as security for repayment.

13 (9) Be a promoter, partner, member, associate, or manager of any limited
14 liability company, partnership, joint venture, trust, or other entity.

15 (10) Conduct its business, locate offices, and exercise the powers granted by
16 this Chapter within or without this state.

17 (11) Elect directors and appoint officers, employees, and agents of the
18 corporation, define their duties, fix their compensation, and lend them money and
19 credit.

20 (12) Pay pensions and establish pension plans, pension trusts, profit sharing
21 plans, share bonus plans, share option plans, and benefit or incentive plans for any
22 or all of the current or former directors, officers, employees, and agents of the
23 corporation and its affiliated entities, and the dependents and families of those
24 individuals.

25 (13) Make donations for the public welfare or for charitable, scientific, or
26 educational purposes.

27 (14) Transact any lawful business that will aid governmental policy.

1 (15) Make payments or donations, or do any other act, not inconsistent with
 2 law, that furthers the business and affairs of the corporation.

3 Source: MBCA §3.02.

4 Comments - 2014 Revision

5 (a) The introductory sentence of the Section was modified to eliminate the
 6 Model Act statement that corporations hold powers coextensive with those of an
 7 individual. While this Section does provide broad powers to business corporations,
 8 corporations still may not do such uniquely human things as adopt children, vote, or
 9 hold political office.

10 (b) The Model Act refers to "real or personal" property in Model Act
 11 Paragraphs (4) and (8), and to "legal or equitable" interests in Model Act Paragraph
 12 (4). This Chapter defines the terms "real property" and "personal property" in
 13 Section 1-140 in a way that encompasses both the common law meaning of the terms
 14 and the analogous civil law concepts of "immovable" and "movable" things. That
 15 approach supports consistency between the language in this Chapter and in the
 16 Model Act, and also allows the references to those forms of property to apply as
 17 intended with respect to real and personal property owned by Louisiana corporations
 18 in other states. However, the Model Act terms "legal" and "equitable" interests in
 19 property, which appear only in this Section, were omitted because they could not be
 20 reconciled with any classification scheme under Louisiana law, and because they
 21 were not necessary to make the intended point of the provision: that corporations
 22 have the power to deal with all forms of interest in property. The Model Act makes
 23 the point by including the only two forms of interest that are recognized in other
 24 states, while this Section makes the same point by removing any words of limitation
 25 or qualification concerning the property interests that are covered by the provision.

26 (c) The phrase "or security interests of any kind" was added to Paragraph (7)
 27 of the Model Act to avoid any implication that the Subsection covered only the two
 28 particular types of security interests, mortgages and pledges, that it listed. Paragraph
 29 (7) was also modified to permit the corporation to provide security for "any
 30 obligation" and not merely "its" obligations as provided in the Model Act.

31 (d) The phrase "limited liability company" was added to Paragraph (9) of the
 32 Model Act to include explicit coverage for that widely-used form of business
 33 organization.

34 (e) The coverage of Model Act Paragraph (12) was broadened to include the
 35 power to provide pension and similar benefits for the families of the listed corporate
 36 workers and to provide those benefits to the workers and worker families of affiliated
 37 entities such as subsidiaries.

38 (f) Former law had included among a corporation's listed powers the power
 39 to provide inter-corporate guarantees among a parent corporation and its
 40 wholly-owned subsidiaries. See former R.S. 12:41(C). That provision was omitted
 41 from this Chapter because it could have carried with it the unintended negative
 42 implication that similar guarantees might be ultra vires among affiliates without a
 43 common 100% parent. The issue of a corporation's power to issue inter-corporate
 44 guarantees is covered fully by Paragraph (7) of this Section. Subject only to contrary
 45 provisions in a corporation's articles, Paragraph (7) of this Section states without
 46 qualification that a corporation has the power to issue guarantees. Paragraph (7) of
 47 this Section does not attempt to address all of the situations in which such guarantees
 48 may or may not be appropriate. Like other transactions in which a corporation has
 49 the power to engage, the power to issue guarantees may be exercised in many

1 different factual contexts, either in accordance with or in violation of the legal duties
2 owed to and by the corporation. If the guarantee power is exercised lawfully and
3 properly, the resulting guarantee is enforceable in the usual way, without any ultra
4 vires obstacle, while if the guarantee violates some legal duty owed to or by the
5 corporation, the normal remedies for a breach of the relevant duty are available. The
6 fact that the inter-corporate beneficiary of a guarantee is a 100% parent or affiliate
7 may be relevant in evaluating whether the legal duties owed in connection with the
8 guarantee have been satisfied. See, e.g., *Trenwick America Litigation Trust v. Billet*,
9 931 A.2d 438 (Del.2007) (en banc), affirming and adopting the rationale of *Trenwick*
10 *American Litigation Trust v. Ernst & Young, L.L.P.*, 906 A.2d 168 (Del. Ch. 2006).
11 But the propriety of such guarantees must be determined on the basis of those legal
12 duties, not as an issue of corporate power. As a matter strictly of corporate power,
13 a corporation formed under this Chapter may issue guarantees without limitation.

14 §1-303. Emergency powers

15 A. In anticipation of or during an emergency defined in Subsection D of this
16 Section, the board of directors of a corporation may do either of the following:

17 (1) Modify lines of succession to accommodate the incapacity of any
18 director, officer, employee, or agent.

19 (2) Relocate the principal office, designate alternative principal offices or
20 regional offices, or authorize the officers to do so.

21 B. During an emergency defined in Subsection D of this Section, unless
22 emergency bylaws provide otherwise, all of the following provisions shall apply:

23 (1) Notice of a meeting of the board of directors need be given only to those
24 directors whom it is practicable to reach and may be given in any practicable
25 manner, including by publication and radio.

26 (2) Any or all directors may participate in a regular or special meeting of the
27 board by, and the meeting may be conducted through the use of, any means of
28 communication by which all directors participating may simultaneously hear each
29 other during the meeting.

30 (3) A director participating in a meeting by the means authorized in
31 Paragraph (B)(2) of this Section is deemed to be present in person at the meeting.

32 (4) Unless the application of Paragraphs (B)(2) and (B)(3) of this Section is
33 sufficient to attain a quorum of directors, a quorum of directors consists of the
34 number of directors who participate in a meeting if both of the following conditions
35 are met:

1 (a) Reasonable efforts have been made to provide actual knowledge of the
2 meeting to all directors.

3 (b) All of the directors who have actual knowledge of the meeting, and who
4 could participate in the meeting lawfully and without undue hardship or risk of
5 injury, do participate in the meeting.

6 (5) If business is conducted at a meeting of directors at which a quorum
7 would be present only by application of the rule in Paragraph (B)(4) of this Section,
8 a quorum of directors under Paragraph (B)(4) is presumed to be present.

9 C. Corporate action taken in good faith during an emergency under this
10 Section to further the ordinary business affairs of the corporation binds the
11 corporation and may not be used to impose liability on a corporate director, officer,
12 employee, or agent.

13 D. An emergency exists for purposes of this Section if a catastrophic event
14 makes it impracticable, without applying the rules pursuant to Subsection B of this
15 Section, to attain a quorum of the corporation's directors when and as necessary to
16 carry out the functions of the board of directors.

17 Source: MBCA §3.03.

18 Comments - 2014 Revision

19 (a) The definition of emergency in Subsection (d) of the Model Act was
20 modified in this Act to tie more closely together the extraordinary powers provided
21 by this Section and the necessities that would justify the exercise of those powers.
22 If the board is capable of achieving a quorum under its normal rules, without
23 application of the rules in Subsection B of this Section, then no emergency exists as
24 that term is defined in Subsection D of this Section.

25 (b) The functions of the board are described in R.S. 12:1-801. To the extent
26 that no action of the board was required during or in the aftermath of a catastrophic
27 event, no emergency would exist under this Section. A major hurricane, for
28 example, might make it impossible to convene a quorum of directors for a period of
29 several days. But that catastrophic event would not justify the exercise of corporate
30 powers under this Section if no need existed for board action during the period in
31 which a quorum could not be attained. If the required decisions fell within the
32 normal authority of the corporation's officers, for example, or if the decisions could
33 be delayed without significant harm to the corporation's interests for the few days
34 needed to attain the needed quorum, emergency actions under this Section would not
35 be authorized.

36 (c) R.S. 12:1-820(B) provides authority to a board of directors to permit
37 participation in board meetings by communication devices that permit all
38 participants in the meeting to hear each other simultaneously. Paragraphs (B)(2) and

1 (B)(3) of this Section provide rules identical to those in R.S. 12:1-820(B), except that
 2 the rules in this Section are self-operative; they apply in the case of an emergency
 3 without regard to whether the board has taken action to approve of that form of
 4 participation. In many cases, the board will have taken action before a catastrophic
 5 event to permit this type of telephonic or other similar form of participation in a
 6 meeting. If so, the corporation may be able to attain a quorum of directors under its
 7 normal rules. In that event, the special quorum and participation rules of this Section
 8 would not be needed, so no "emergency" would exist within the meaning of
 9 Subsection D.

10 (d) During an emergency, Model Act Section 3.03(b)(2) allows officers to
 11 be substituted for absent directors as needed to achieve a quorum of the directors.
 12 This Section does not permit that form of substitution. Instead, it deals with the
 13 emergency by relaxing the quorum requirement itself.

14 (e) If a normal quorum can be achieved under the corporation's normal rules,
 15 then no emergency exists, by definition, under Subsection D. If a quorum could be
 16 achieved by allowing telephonic or other similar forms of participation in the
 17 meeting, and the board has yet to exercise its power to permit those forms of
 18 participation under R.S. 12:1-820(B), then Paragraphs (B)(2) and (B)(3) of this
 19 Section will operate to permit telephonic or similar participation during the
 20 emergency. If application of those two Subsections is enough by itself to resolve the
 21 quorum problem, then the number of directors required to attain a quorum is not
 22 affected by Paragraph (B)(4) of this Section. The special rule in Paragraph (B)(4)
 23 of this Section does not apply in those circumstances because the rule is designed to
 24 decrease, not increase, the number of directors required to establish a quorum, and
 25 the number of directors able to participate in a meeting under Paragraph (B)(4) may
 26 actually exceed the number normally required for a quorum. In that case, the normal
 27 number would control. In a typical corporation, in which a majority of directors
 28 would constitute a quorum, the effect of the rule in Paragraph (B)(4) of this Section
 29 would be to set a quorum at a majority of directors (the normal rule) or a smaller
 30 number equal to those who were able to participate in the meeting lawfully and
 31 without undue hardship or risk of injury.

32 (f) The participation of a director in a meeting is excused, and does not count
 33 in determining the quorum under Paragraph (B)(4) of this Section, if two conditions
 34 are satisfied: (1) the corporation has made reasonable efforts to give actual
 35 knowledge of the meeting to all of its directors, and (2) all directors who know about
 36 the meeting, and could participate in it lawfully and without undue hardship or risk
 37 of injury, do participate. The reference to lawful participation in Paragraph (B)(4)
 38 of this Section is designed to excuse participation that is made impracticable by
 39 reason of some rule, order or instruction by a governmental agency, official or other
 40 actor who is exercising lawful authority during the emergency. For example, if
 41 emergency road closures or restrictions prevented a director from reaching the board
 42 meeting site, and downed telephone lines and cellular towers prevented telephonic
 43 participation, that director would not be able to participate in the meeting lawfully,
 44 i.e., without violating the road closure or restriction orders. Under those
 45 circumstances, that director's participation in the meeting would be excused, and
 46 would not count toward the number needed to achieve a quorum, regardless of
 47 whether the closed roads were passable enough to allow the director to reach the
 48 meeting.

49 (g) Paragraph (B)(5) of this Section creates a presumption that an emergency
 50 quorum under Paragraph (B)(4) of this Section is present at any meeting at which the
 51 board conducts business during an emergency. The presumption is designed to give
 52 the benefit of doubt to directors who are doing their best to deal with emergency
 53 conditions, perhaps without full documentation of the efforts they are making to
 54 notify all directors and to arrange for their participation in the meeting. The

1 presumption may be rebutted by a preponderance of evidence to the contrary. But
2 in the absence of such evidence, the interests of the corporation are best served by
3 attaching a presumption of regularity, not usurpation, to the steps taken by directors
4 during the emergency.

5 §1-304. Ultra vires

6 A. Except as provided in Subsection B of this Section, the validity of
7 corporate action may not be challenged on the ground that the corporation lacks or
8 lacked power to act.

9 B. A corporation's power to act may be challenged in any of the following:

10 (1) A proceeding by a shareholder against the corporation to enjoin the act.

11 (2) A proceeding by the corporation, directly, derivatively, or through a
12 receiver, trustee, or other legal representative, against a current or former director,
13 officer, employee, or agent of the corporation.

14 (3) A proceeding by the attorney general under R.S. 12:1-1430.

15 C. In a shareholder's proceeding under Paragraph (B)(1) of this Section to
16 enjoin an unauthorized corporate act, the court may enjoin or set aside the act if
17 equitable, and may award damages for loss, other than anticipated profits, suffered
18 by the corporation or another party to the proceeding because of enjoining the
19 unauthorized act. If an act to be enjoined in the proceeding is the performance of a
20 duty owed by the corporation under the terms of a contract to which the corporation
21 is a party, the court may enjoin the act only if the other parties to the contract are
22 joined in the proceeding.

23 Source: MBCA §3.04.

24 Comments - 2014 Revision

25 The Model Act requires the joinder of "all affected persons" to a proceeding
26 to enjoin an ultra vires act. Because of concern about the potential breadth and
27 uncertainty of that requirement, this Section replaces it with the joinder requirement
28 that was imposed under the former Louisiana law. As modified, Subsection (C) of
29 this Section requires the joinder of a third person in an ultra vires proceeding only
30 if the proceeding is brought to enjoin the performance of a duty owed by the
31 corporation under a contract to which that person is a party.

1 PART 4. NAME2 §1-401. Corporate name3 A.(1) A corporate name may include words in any language but must be
4 written in English letters or characters.5 (2) A corporate name must contain the word "corporation", "incorporated",
6 "company", or "limited," or the abbreviation, with or without punctuation, "corp.",
7 "inc.", "co.", or "ltd."8 (3) A corporate name may not contain any of the following:9 (a) Any language stating or implying that the corporation is organized for a
10 purpose other than that permitted by R.S. 12:1-301 and its articles of incorporation.11 (b) The phrase "doing business as" or any abbreviation of that phrase, such
12 as "d/b/a".13 (c) Any words that deceptively or falsely suggest a charitable or nonprofit
14 nature or that imply that the corporation is an administrative agency of this state or
15 any of its political subdivisions or of the United States.16 (d) Except as indicated, any of the following quoted words or phrases in any
17 form:18 (i) "Casualty," "redevelopment corporation", or "electrical cooperative".19 (ii) Except for a bank holding company, "bank", "banker", "banking",
20 "savings", "safe deposit", "trust", "trustee", "building and loan", "homestead", or
21 "credit union".22 (iii) Except for an independent insurance agency or brokerage corporation,
23 "insurance".24 (4) A court having jurisdiction may, upon application of the state or of any
25 interested or affected person, enjoin a corporation from doing business under a name
26 that violates any part of R.S. 12:1-401(A)(3)(c) or (d).27 B. Except as authorized by Subsections C and D of this Section, a corporate
28 name must be distinguishable from all of the following:

1 (1) The corporate name of a corporation or nonprofit corporation
2 incorporated in this state.

3 (2) A corporate name reserved or registered under R.S. 12:1-402 or 1-403.

4 (3) The name of a foreign corporation or foreign nonprofit corporation, as
5 stated in the certificate of authority to do business in this state issued to that
6 corporation under Chapter 3 of this Title.

7 (4) The name of a domestic limited liability company or the name of a
8 foreign limited liability company used in the foreign limited liability company's
9 certificate of authority to do business in this state.

10 (5) The name of a partnership whose contract for partnership is filed for
11 registry with the secretary of state or the name of a duly registered foreign
12 partnership.

13 (6) A trade name registered with the secretary of state.

14 C. A corporation may apply to the secretary of state for authorization to use
15 a name in its filings with the secretary of state that is not distinguishable from one
16 or more of the names described in Subsection B of this Section. The secretary of
17 state shall authorize the use of the name applied for if either of the following occur:

18 (1) The other registrant consents to the use in writing and submits an
19 undertaking in a form satisfactory to the secretary of state to change its name to a
20 name that is distinguishable from the name of the applying corporation.

21 (2) The applicant delivers to the secretary of state a certified copy of the final
22 judgment of a court of competent jurisdiction establishing the applicant's right to use
23 the name applied for in this state.

24 D. A corporation may use in its filings with the secretary of state a name that
25 is not distinguishable from one or more of the names described in Subsection B of
26 this Section if the registrant of the name is incorporated, organized, or authorized to
27 transact business in this state and the proposed user corporation performed any of the
28 following actions:

29 (1) Merged with the other registrant.

1 (2) Been formed by reorganization of the other registrant.

2 (3) Acquired all or substantially all of the assets, including the name, of the
3 other registrant.

4 E. This Act does not control the use of fictitious, assumed, or trade names.

5 F. If the secretary of state receives for filing articles of incorporation that
6 include in the corporate name the word "bank", "banker", "banking", "savings", "safe
7 deposit", "trust", "trustee", "building and loan", "homestead", "credit union", or any
8 other word of similar import, the secretary of state shall not file the articles of
9 incorporation until the secretary of state receives satisfactory evidence that written
10 notice of the proposed use of that name was delivered to the office of financial
11 institutions at least ten days earlier.

12 G. If the secretary of state receives for filing articles of incorporation that
13 include in the corporate name the word "engineer", "engineering", "surveyor", or
14 "surveying," the secretary of state shall not file the articles of incorporation until the
15 secretary of state receives either of the following:

16 (1) Satisfactory evidence that written notice of the proposed use of that name
17 was delivered to the Louisiana Professional Engineering and Land Surveying Board
18 at least ten days earlier.

19 (2) A written waiver of the ten-day notice requirement, signed by the
20 executive secretary or any officer of the Louisiana Professional Engineering and
21 Land Surveying Board.

22 H. If the secretary of state receives for filing articles of incorporation that
23 include in the corporate name the word "architect", "architectural", or "architecture",
24 the secretary of state shall not file the articles of incorporation until the secretary of
25 state receives either of the following:

26 (1) Satisfactory evidence that written notice of the proposed use of that name
27 was delivered to the State Board of Architectural Examiners at least ten days earlier.

28 (2) A written waiver of the ten-day notice requirement, signed by the
29 executive director or any member of the State Board of Architectural Examiners.

1 I. The assumption or use of a name in violation of this Section does not
2 affect or vitiate the corporate existence.

3 Source: MBCA §4.01, R.S. 12:23.

4 Comments - 2014 Revision

5 (a) The Model Act includes periods as punctuations after the abbreviations
6 listed in Paragraph (A)(2) of this Section. This Section adds the phrase "with or
7 without punctuation" to permit the abbreviations to be used with or without periods.

8 (b) Model Act Subsection (a) was modified to retain the substance of the
9 rules in former R.S. 12:23 that prohibited the use of certain words or phrases in
10 corporate names (see Subparagraphs (A)(3)(b)-(d) of this Section) and that required
11 the corporate name to be expressed in English letters or characters (see Paragraph
12 (A)(1) of this Section).

13 (c) The Model Act language in Paragraph (a)(2) would have permitted the
14 required designations of corporate status, such as "corporation" or "corp", to be
15 expressed in "words or abbreviations of like import in any language". That language
16 was omitted to require the use of the listed English words and abbreviations.

17 (d) Model Act Paragraph (b)(3) was modified in this Section to take account
18 of the retention of existing Chapter 3 of Title 12 (in place of Model Act Chapter 15)
19 to govern the qualification of foreign corporations to do business in this state.

20 (e) The Model Act standard for distinguishing corporate and other related
21 names, i.e. "distinguishable upon the records of the secretary of state", was modified
22 in this Section to retain the standard in prior law that the names be "distinguishable",
23 without any reference to the records of the secretary of state. That standard falls
24 between the early standard of "deceptive similarity", which both the Model Act and
25 this Section reject, and the purely linguistic, on-the-records standard used in the
26 Model Act. Except for a brief return to the deceptive similarity standard between
27 1993 and 1997, distinguishability has been the name-difference standard in
28 Louisiana since 1988.

29 (f) Under the distinguishability standard, the secretary of state's office has
30 required that names be distinguishable not only in writing, upon the secretary's
31 records, but also in pronunciation. The name "B C Corporation", for example, would
32 not be treated as distinguishable from "Bee See Corporation". This Section retains
33 the distinguishability standard to allow the secretary of state to leave the
34 distinguishable pronunciation requirement in place. The required difference in the
35 pronunciation of names serves two functions: it helps the secretary of state's office
36 avoid confusion during telephone inquiries concerning corporate records, and it lets
37 the secretary of state withhold any form of perceived official sanction for the use of
38 a name so similar in sound that it is more likely than most to lead to name-use
39 disputes. Still, nothing in this Section precludes a person from doing business
40 lawfully under an assumed or trade name, even if that name has been declined for
41 filing purposes because it was considered insufficiently distinguishable from some
42 other name already on file. Similarly, nothing in this Section confers any form of
43 presumption that a name accepted for filing by the secretary of state may be used in
44 business operations, free of any competing claims by others who may hold superior
45 rights to the name. Rights in trade names are governed by trade name and unfair
46 competition law, not by this Chapter or by the filing decisions of the secretary of
47 state under this Chapter. See Subsection E of this Section; Gulf Coast Bank v. Gulf
48 Coast Bank & Trust Company, 652 So.2d 1306 (La. 1995) (explaining sources and
49 requirements of trade name protection). This Section rejects the rule in some

1 reported cases that the filing decisions of the secretary of state with respect to
2 corporate names are entitled to "some weight" or "great weight" in trade name
3 disputes; they are entitled to no weight at all.

4 (g) The phrase "in its filings with the secretary of state" was added to
5 Subsections C and D of this Section to make it clear that the "use" of a corporation
6 name under those Subsections meant strictly the use of a name in a corporation's
7 filings with the secretary of state, and not the more general use of a corporate or
8 fictitious name in the corporation's business operations.

9
10 (h) Former R.S. 12:23(F) provided that the assumption of an improper name
11 did not affect a corporation's legal existence, but could be the basis of an injunction
12 against continued use of the improper name. The former provision was divided and
13 placed into two different Subsections in this Section. The rule that protected a
14 corporation's legal existence, despite an improper name, was retained as a general
15 rule, in Subsection I, applicable to all of the naming rules set forth in this Section.
16 But the injunctive relief rule was included as Paragraph (A)(4) of this Section, and
17 made to apply only to those items in Paragraph (A)(3) of this Section that prohibit the
18 use of words or language in a corporate name that would imply a corporation was
19 something other than an ordinary business corporation, such as a charity or
20 governmental agency. The injunctive relief rule was made inapplicable to the
21 Section's provisions concerning the distinguishability of corporate names because the
22 distinguishability requirements were designed to serve principally a recordkeeping
23 function, not to provide grounds for remedies in trade name or unfair competition
24 disputes.

25 (i) Subsections F through H of this Section were added to the Model Act
26 provision to retain the rules in former R.S. 12:23(E) that required advance notice to
27 the listed regulatory or licensing agencies if certain words, such as "bank",
28 "engineer", or "architect" were included in a corporation's proposed corporate name.
29 Changes were made in the terminology and style of the former rules to harmonize
30 them with those of the Model Act.

31 §1-402. Reserved name

32 A. A person may reserve the exclusive use of a corporate name in its filings
33 with the secretary of state, including a fictitious name for a foreign corporation
34 whose corporate name is not available, by delivering an application to the secretary
35 of state for filing. The application must set forth the name and address of the
36 applicant and the name proposed to be reserved. If the secretary of state finds that
37 the corporate name applied for is available, the secretary of state shall reserve the
38 name for the applicant's exclusive use for a nonrenewable period of one hundred and
39 twenty days.

40 B. The owner of a reserved corporate name may transfer the reservation to
41 another person by delivering to the secretary of state a signed notice of the transfer
42 that states the name and address of the transferee.

1 C. A terminated corporation's name is reserved by operation of law for three
2 years after the effective date of the corporation's termination.

3 Source: MBCA §4.02.

4 Comments - 2014 Revision

5 (a) The phrase "in its filings with the secretary of state" was added to the first
6 sentence of Subsection A of this Section to make it clear that the reservation of the
7 name related strictly to a corporation's filings with the secretary of state, and not to
8 the right to use the reserved name in business operations.

9 (b) The qualification of foreign corporations is governed by Title 12, Chapter
10 3. Nevertheless, the Model Act reference to a foreign corporation was retained in
11 this Section to allow a foreign corporation to reserve a name under which it intends
12 to do business in this state.

13 (c) This Section adds a new Subsection C to the Model Act. The new
14 subsection automatically reserves the name of a terminated corporation for a period
15 of three years after the effective date of the corporation's termination. This
16 reservation causes the terminated corporation's name to be included among the
17 names from which a new corporate name must be distinguishable under R.S. 12:1-
18 401(B)(2), and so protects the name from adoption by another company during the
19 period in which R.S. 12:1-1444 allows the terminated corporation to be reinstated.

20 §1-403. Registered name

21 A. A foreign corporation may register its corporate name, or its corporate
22 name with any addition authorized by R.S. 12:303(A)(3), if the name is
23 distinguishable upon the records of the secretary of state from the corporate names
24 that are not available under R.S. 12:1-401(B).

25 B. A foreign corporation registers its corporate name, or its corporate name
26 with any addition authorized by R.S. 12:303(A)(3), by delivering to the secretary of
27 state for filing an application which does both of the following:

28 (1) Sets forth its corporate name, or its corporate name with any addition
29 authorized by R.S. 12:303(A)(3), the state or country and date of its incorporation,
30 and a brief description of the nature of the business in which it is engaged.

31 (2) Is accompanied by a certificate of existence, or a document of similar
32 import, from the state or country of incorporation.

33 C. The name is registered for the applicant's exclusive use upon the effective
34 date of the application.

1 Comment - 2014 Revision

2 The Model Act requires a corporation's registered office to be located at the
3 street address of its registered agent. This Section permits a corporation to specify
4 a street address for its registered office different from that of its registered agent.
5 See Comment (a) to R.S. 12:1-202. This Section was modified to accommodate the
6 possible distinction between those two addresses.

7 §1-502. Change of registered office or registered agent

8 A. A corporation may change its registered office or the identity or address
9 of its registered agent by delivering to the secretary of state for filing a statement of
10 change that sets forth all of the following information:

11 (1) The name of the corporation.

12 (2) The street address of its current registered office.

13 (3) If the current registered office is to be changed, the street address of the
14 new registered office.

15 (4) The name and street address of its current registered agent.

16 (5) If the identity of the current registered agent is to be changed, the name
17 of the new registered agent and the new agent's signed written consent, either on the
18 statement or attached to it, to the appointment.

19 (6) If the street address of the registered agent is to be changed, the new
20 street address of the registered agent.

21 B. A registered agent may change its street address on the records of the
22 secretary of state for all corporations for which it serves as registered agent by
23 delivering to the secretary of state a statement of change that sets forth all of the
24 following information:

25 (1) The name of the registered agent.

26 (2) Its current street address to be changed.

27 (3) Its new street address.

28 (4) A certification that the registered agent has notified all of the
29 corporations for which it serves as registered agent of the change in its address to the
30 new street address specified in the statement of change.

31 Source: MBCA §5.02.

1 Comments - 2014 Revision

2 (a) The Model Act requires a corporation's registered office to be located at
3 the street address of its registered agent. This Section permits a corporation to
4 specify a street address for its registered office different from that of its registered
5 agent. See Comment (a) to R.S. 12:1-202. This Section was modified to
6 accommodate the possible distinction between those two addresses, and to delete the
7 requirement in Model Act Subsection (b) that the two addresses be the same.

8 (b) This Section replaces Model Act Subsection (b) with a new provision
9 that allows a registered agent to notify the secretary of state of a change in address
10 by utilizing a single statement for all of the corporations for which the agent is
11 serving.

12 §1-503. Resignation of registered agent

13 A. A registered agent may resign the agent's appointment by signing and
14 delivering to the secretary of state for filing the signed original and two exact or
15 conformed copies of a statement of resignation. If the office of the registered agent
16 is also the registered office of the corporation, the statement may include a statement
17 that the registered office is also discontinued.

18 B. After filing the statement the secretary of state shall mail one copy to the
19 registered office, if not discontinued, and the other copy to the corporation at its
20 principal office.

21 C. The agency appointment is terminated, and the registered office
22 discontinued if so provided, on the thirty-first day after the date on which the
23 statement was filed.

24 Source: MBCA §5.03.

25 Comment - 2014 Revision

26 The Model Act requires a corporation's registered office to be located at the
27 street address of its registered agent. This Section permits a corporation to specify
28 a street address for its registered office different from that of its registered agent.
29 See Comment (a) to R.S. 12:1-202. Subsection A of this Section was modified to
30 limit the statement about the discontinuation of a registered office upon resignation
31 of the registered agent to those situations in which the addresses of the registered
32 office and registered agent are the same.

33 §1-504. Service on corporation

34 A. A corporation's registered agent is the corporation's agent for service of
35 process, notice, or demand required or permitted by law to be served on the
36 corporation.

1 B. If a corporation has no registered agent, or the agent cannot with
2 reasonable diligence be served, the corporation may be served by registered or
3 certified mail, return receipt requested, addressed to the secretary of the corporation
4 at its principal office. Service is perfected under this Subsection at the earliest of the
5 following:

6 (1) The date the corporation receives the mail.

7 (2) The date shown on the return receipt, if signed on behalf of the
8 corporation.

9 (3) Five days after its deposit in the United States Mail, as evidenced by the
10 postmark, if mailed postpaid and correctly addressed.

11 C. This Section does not prescribe the only means, or necessarily the
12 required means of serving a corporation.

13 Source: MBCA §5.04.

14 Comment - 2014 Revision

15 A corporation's principal office will ordinarily be stated in the corporation's
16 most recent annual report. See R.S. 12:1-1621(A)(4). If a corporation has not yet
17 filed an annual report, the initial principal office, if different from the registered
18 office, will be stated in the corporation's articles of incorporation. If no principal
19 office is identified in a corporation's annual report or articles of incorporation, the
20 corporation's principal office will be the same as its registered office. See R.S.
21 12:1-140(17) and 1-202(A)(3).

22 PART 6. SHARES AND DISTRIBUTIONS

23 SUBPART A. SHARES

24 §1-601. Authorized shares

25 A. The articles of incorporation must set forth any classes of shares and
26 series of shares within a class, and the number of shares of each class and series, that
27 the corporation is authorized to issue. If more than one class or series of shares is
28 authorized, the articles of incorporation must prescribe a distinguishing designation
29 for each class or series and must describe, prior to the issuance of shares of a class
30 or series, the terms, including the preferences, rights, and limitations, of that class
31 or series. Except to the extent varied as permitted by this Section, all shares of a

1 class or series must have terms, including preferences, rights, and limitations that are
2 identical with those of other shares of the same class or series.

3 B. The articles of incorporation must authorize both of the following:

4 (1) One or more classes or series of shares that together have unlimited
5 voting rights.

6 (2) One or more classes or series of shares, which may be the same class or
7 classes as those with voting rights, that together are entitled to receive the net assets
8 of the corporation upon dissolution.

9 C. The articles of incorporation may authorize one or more classes or series
10 of shares that meet any of the following criteria:

11 (1) Have special, conditional, or limited voting rights, or no right to vote,
12 except to the extent otherwise provided by this Chapter.

13 (2) Are redeemable or convertible as specified in the articles of
14 incorporation, at the option of the corporation, the shareholder, or another person or
15 upon the occurrence of a specified event, for cash, indebtedness, securities, or other
16 property at prices and in amounts specified or determined in accordance with a
17 formula.

18 (3) Entitle the holders to distributions calculated in any manner, including
19 dividends that may be cumulative, noncumulative, or partially cumulative.

20 (4) Have preference over any other class or series of shares with respect to
21 distributions, including distributions upon the dissolution of the corporation.

22 D. Terms of shares may be made dependent upon facts objectively
23 ascertainable outside the articles of incorporation in accordance with R.S.
24 12:1-120(K).

25 E. Any of the terms of shares may vary among holders of the same class or
26 series so long as such variations are expressly set forth in the articles of
27 incorporation.

1 F. The description of the preferences, rights, and limitations of classes or
2 series of shares in Subsection C of this Section is not exhaustive.

3 Source: MBCA §6.01.

4 §1-602. Terms of class or series determined by board of directors

5 A. If the articles of incorporation so provide, the board of directors is
6 authorized, without shareholder approval, to do any of the following:

7 (1) Classify any unissued shares into one or more classes or into one or more
8 series within a class.

9 (2) Reclassify any unissued shares of any class into one or more classes or
10 into one or more series within one or more classes.

11 (3) Reclassify any unissued shares of any series of any class into one or more
12 classes or into one or more series within a class.

13 B. If the board of directors acts pursuant to Subsection A of this Section, it
14 must determine the terms, including the preferences, rights, and limitations, to the
15 same extent permitted under R.S. 12:1-601, of the following:

16 (1) Any class of shares before the issuance of any shares of that class.

17 (2) Any series within a class before the issuance of any shares of that series.

18 C. Before issuing any shares of a class or series created under this Section,
19 the corporation must deliver to the secretary of state for filing articles of amendment
20 setting forth the terms determined under Subsection A of this Section.

21 Source: MBCA §6.02.

22 §1-603. Issued and outstanding shares

23 A. A corporation may issue the number of shares of each class or series
24 authorized by the articles of incorporation. Shares that are issued are outstanding
25 shares until they are reacquired, redeemed, converted, or cancelled.

26 B. The reacquisition, redemption, or conversion of outstanding shares is
27 subject to the limitations of Subsection C of this Section and to R.S. 12:1-640.

28 C. At all times that shares of the corporation are outstanding, one or more
29 shares that together have unlimited voting rights and one or more shares that together

1 are entitled to receive the net assets of the corporation upon dissolution must be
2 outstanding.

3 Source: MBCA §6.03.

4 §1-604. Fractional shares

5 A. A corporation may do any of the following:

6 (1) Issue fractions of a share or pay in money the value of fractions of a
7 share.

8 (2) Arrange for disposition of fractional shares by the shareholders.

9 (3) Issue scrip in registered or bearer form entitling the holder to receive a
10 full share upon surrendering enough scrip to equal a full share.

11 B. Each certificate representing scrip must be conspicuously labeled "scrip"
12 and must contain the information required by R.S. 12:1-625(B).

13 C. The holder of a fractional share is entitled to exercise the rights of a
14 shareholder, including the right to vote, to receive dividends, and to participate in the
15 assets of the corporation upon liquidation. The holder of scrip is not entitled to any
16 of these rights unless the scrip provides for them.

17 D. The board of directors may authorize the issuance of scrip subject to any
18 condition considered desirable, including either of the following:

19 (1) That the scrip will become void if not exchanged for full shares before
20 a specified date.

21 (2) That the shares for which the scrip is exchangeable may be sold and the
22 proceeds paid to the scripholders.

23 Source: MBCA §6.04.

24 SUBPART B. ISSUANCE OF SHARES

25 §1-620. Subscription for shares before incorporation

26 A. A subscription for shares entered into before incorporation is irrevocable
27 for six months unless the subscription agreement provides a longer or shorter period
28 or all the subscribers agree to revocation.

1 B. The board of directors may determine the payment terms of subscription
2 for shares that were entered into before incorporation, unless the subscription
3 agreement specifies them. A call for payment by the board of directors must be
4 uniform so far as practicable as to all shares of the same class or series, unless the
5 subscription agreement specifies otherwise.

6 C. Shares issued pursuant to subscriptions entered into before incorporation
7 are fully paid and nonassessable when the corporation receives the consideration
8 specified in the subscription agreement.

9 D. If a subscriber defaults in payment of money or property under a
10 subscription agreement entered into before incorporation, the corporation may
11 collect the amount owed as any other debt. Alternatively, unless the subscription
12 agreement provides otherwise, the corporation may rescind the agreement and may
13 sell the shares if the debt remains unpaid for more than twenty days after the
14 corporation sends written demand for payment to the subscriber.

15 E. A subscription agreement entered into after incorporation is a contract
16 between the subscriber and the corporation subject to R.S. 12:1-621.

17 Source: MBCA §6.20.

18 §1-621. Issuance of shares

19 A. The powers granted in this Section to the board of directors may be
20 reserved to the shareholders by the articles of incorporation.

21 B. The board of directors may authorize shares to be issued for consideration
22 consisting of any tangible or intangible property or benefit to the corporation,
23 including cash, promissory notes, services performed, contracts for services to be
24 performed, or other securities of the corporation.

25 C. Before the corporation issues shares, the board of directors must
26 determine that the consideration received or to be received for shares to be issued is
27 adequate. That determination by the board of directors is conclusive insofar as the
28 adequacy of consideration for the issuance of shares relates to whether the shares are
29 validly issued, fully paid, and nonassessable.

1 D. When the corporation receives the consideration for which the board of
2 directors authorized the issuance of shares, the shares issued therefor are fully paid
3 and nonassessable.

4 E. The corporation may place in escrow shares issued for a contract for
5 future services or benefits or a promissory note, or make other arrangements to
6 restrict the transfer of the shares, and may credit distributions in respect of the shares
7 against their purchase price, until the services are performed, the note is paid, or the
8 benefits received. If the services are not performed, the note is not paid, or the
9 benefits are not received, the shares escrowed or restricted and the distributions
10 credited may be cancelled in whole or part.

11 F.(1) An issuance of shares or other securities convertible into or rights
12 exercisable for shares, in a transaction or a series of integrated transactions, requires
13 approval of the shareholders, at a meeting at which a quorum consisting of at least
14 a majority of the votes entitled to be cast on the matter exists, if both of the following
15 conditions are satisfied:

16 (a) The shares, other securities, or rights are issued for consideration other
17 than cash or cash equivalents.

18 (b) The voting power of shares that are issued and issuable as a result of the
19 transaction or series of integrated transactions will comprise more than twenty
20 percent of the voting power of the shares of the corporation that were outstanding
21 immediately before the transaction.

22 (2) In this Subsection, both of the following shall apply:

23 (a) For purposes of determining the voting power of shares issued and
24 issuable as a result of a transaction or series of integrated transactions, the voting
25 power of shares shall be the greater of either of the following:

26 (i) The voting power of the shares to be issued.

27 (ii) The voting power of the shares that would be outstanding after giving
28 effect to the conversion of convertible shares and other securities and the exercise
29 of rights to be issued.

1 Comments - 2014 Revision

2 (a) Subsection (b) of the Model Act was modified by deleting the phrase,
3 "Unless otherwise provided in the articles of incorporation," at the beginning of the
4 sentence and the phrase, "except that he may become personally liable by reason of
5 his own acts or conduct," at the end of the sentence.

6 (b) The first phrase was included in the Model Act to make the provision
7 consistent with Model Act Section 2.02(b)(2)(v), which allowed provisions in the
8 articles of incorporation to impose personal liability on shareholders for the debts of
9 a corporation. That provision of the Model Act was deleted from this Section to
10 avoid the risk that such a provision might result in a shareholder's incurring personal
11 liability inadvertently. See Comment (b) to R.S. 12:1-202. The related phrase in
12 Subsection B of this Section was deleted because the underlying authority to include
13 such a provision in the articles had itself been deleted.

14 (c) The second phrase, concerning an exception for personal liability arising
15 out of personal conduct, was deleted from this Section because it could have been
16 interpreted to provide an independent basis for personal liability based simply on a
17 corporate actor's having engaged in some kind of personal conduct in connection
18 with the corporation's operations. It is true that liability may attach to a corporate
19 actor's personal conduct if, for example, the conduct is tortious or amounts to an
20 undertaking of personal contractual duties. But the grounds for such liability are
21 determined by other bodies of law, not corporation law, and they do not impose
22 liability on a corporate actor merely because the actor has engaged in personal
23 conduct on behalf of a corporation. If a corporate actor does bear personal liability
24 based on his personal acts or conduct in connection with the operation of the
25 corporation, the actor is being held liable for his own acts or debts, not those of the
26 corporation, so no need exists to state the exception contained in the Model Act.

27 (d) The Model Act does not impose liability on a shareholder for a wrongful
28 distribution, except indirectly in an action under Section 8.33(b)(2) for recoupment
29 by a director held liable for the unlawful distribution. This Section adds a new
30 Subsection C to retain the existing Louisiana rule that a shareholder is liable to return
31 to the corporation any unlawful distributions received by that shareholder. The
32 liability imposed by Subsection C of this Section does not depend upon proof of any
33 culpable conduct by the receiving shareholder, but merely on proof that the
34 shareholder received a distribution that was unlawful. However, Subsection C of this
35 Section imposes liability on a shareholder to return only the unlawful portion of any
36 distribution received by that shareholder. The shareholder does not bear liability
37 under Subsection C for any part of the distribution made to other shareholders or for
38 any part of the distribution to him that was made lawfully.

39 (e) Subsection D of this Section was added to retain the prior law's two-year
40 time limit on actions to enforce a shareholder's liability for the receipt of an unlawful
41 distribution. However, unlike the earlier law, Subsection D of this Section explicitly
42 makes the two-year period preemptive rather than prescriptive. The two-year
43 preemptive period begins on the date on which lawfulness of the distribution would
44 have been measured for purposes of R.S. 12:1-640(C), to the extent that a violation
45 of R.S. 12:1-640(C) is alleged as the basis of recovery, or on the date on which the
46 distribution first violated a restriction in the articles of incorporation, to the extent
47 that a violation of the articles is alleged as the basis of recovery.

48 §1-623. Share dividends

49 A. Unless the articles of incorporation provide otherwise, shares may be
50 issued pro rata and without consideration to the corporation's shareholders or to the

1 shareholders of one or more classes or series. An issuance of shares under this
2 Subsection is a share dividend.

3 B. Shares of one class or series may not be issued as a share dividend in
4 respect of shares of another class or series unless one of the following conditions are
5 satisfied:

6 (1) The articles of incorporation so authorize.

7 (2) A majority of the votes entitled to be cast by the class or series to be
8 issued approve the issue.

9 (3) There are no outstanding shares of the class or series to be issued.

10 C. If the board of directors does not fix the record date for determining
11 shareholders entitled to a share dividend, it is the date the board of directors
12 authorizes the share dividend.

13 Source: MBCA §6.23.

14 §1-624. Share options

15 A. A corporation may issue rights, options, or warrants for the purchase of
16 shares or other securities of the corporation. The board of directors shall determine
17 the terms upon which the rights, options, or warrants are issued and the terms,
18 including the consideration, for which the shares or other securities are to be issued.
19 The authorization by the board of directors for the corporation to issue such rights,
20 options, or warrants constitutes authorization of the issuance of the shares or other
21 securities for which the rights, options, or warrants are exercisable.

22 B. The terms and conditions of such rights, options or warrants, including
23 those outstanding on the effective date of this Section, may include, without
24 limitation, restrictions or conditions that do either of the following:

25 (1) Preclude or limit the exercise, transfer or receipt of such rights, options,
26 or warrants by any person or persons owning or offering to acquire a specified
27 number or percentage of the outstanding shares or other securities of the corporation
28 or by any transferee or transferees of any such person or persons.

1 (2) Invalidate or void such rights, options, or warrants held by any such
2 person or persons or any such transferee or transferees.

3 C. The board of directors may authorize one or more officers to designate
4 the recipients of rights, options, warrants, or other equity compensation awards that
5 involve the issuance of shares and to determine, within an amount and subject to any
6 other limitations established by the board and, if applicable, the stockholders, the
7 number of such rights, options, warrants, or other equity compensation awards and
8 the terms thereof to be received by the recipients, provided that an officer may not
9 use such authority to designate himself or herself or any other persons the board of
10 directors may specify as a recipient of such rights, options, warrants, or other equity
11 compensation awards.

12 Source: MBCA §6.24.

13 §1-625. Form and content of certificates

14 A. Shares shall be represented by share certificates unless the issuing
15 corporation is a participant in the Direct Registration System of the Depository Trust
16 & Clearing Corporation or of a similar book-entry system used in the trading of
17 shares of public corporations. If the issuing corporation is a participant in the Direct
18 Registration System or a similar book-entry system, shares may but need not be
19 represented by certificates. Unless this Chapter or another statute expressly provides
20 otherwise, the rights and obligations of shareholders are identical whether or not
21 their shares are represented by certificates.

22 B. At a minimum each share certificate must state on its face all of the
23 following:

24 (1) The name of the issuing corporation and that it is organized under the law
25 of this state.

26 (2) The name of the person to whom issued.

27 (3) The number and class of shares and the designation of the series, if any,
28 the certificate represents.

1 (c) When applicable, the statutory requirement that shares be issued in
2 certificated form is a duty imposed by law on the corporation, not a defense that may
3 be asserted by the corporation against a person who genuinely owns shares for which
4 the corporation has failed to issue a certificate. A person may own shares without
5 possessing a certificate for the shares, even if the law requires the corporation to
6 issue its shares in certificated form. See, e.g., *Mercer v. Mercer*, 930 So.2d 348 (La.
7 App. 2d Cir. 2006); *Age v. Age*, 820 So.2d 1167 (La. App. 4th Cir. 2002);
8 *International Stevedores, Inc., v. Hanlon*, 499 So.2d 1183 (La. App. 5th Cir. 1986).

9 (d) Subsection (d) of the Model Act was modified to supply a default rule
10 for the two officers, president and secretary, who are to sign a share certificate in the
11 event that the signing officers are not designated in the corporation's bylaws or by
12 its board of directors.

13 §1-626. Shares without certificates

14 A. If a corporation is eligible to issue shares without certificates, the board
15 of directors of the corporation may authorize the issue of some or all of the shares
16 of any or all of its classes or series without certificates, except to the extent that its
17 articles of incorporation or bylaws provide otherwise. The authorization does not
18 affect shares already represented by certificates until they are surrendered to the
19 corporation.

20 B. Within a reasonable time after the issue or transfer of shares without
21 certificates, the corporation shall send the shareholder a written statement of the
22 information required on certificates by R.S. 12:1-625(B) and (C), and, if applicable,
23 R.S. 12:1-627.

24 Source: MBCA §6.26.

25 Comment - 2014 Revision

26 This Section limits the application of the rule in Subsection A of this Section
27 to those corporations that are eligible to issue uncertificated shares. Under R.S.
28 12:1-625(A), a corporation is eligible to issue uncertificated shares only if the
29 corporation is a participant in the Direct Registration System of the Depository Trust
30 & Clearing Corporation or some similar system. Most Louisiana corporations are
31 not participants in that kind of system, and so would not be eligible either to issue
32 uncertificated shares or to utilize the rules in this Section.

33 §1-627. Restriction on transfer of shares and other securities

34 A. The articles of incorporation, bylaws, an agreement among shareholders,
35 or an agreement between shareholders and the corporation may impose restrictions
36 on the transfer or registration of transfer of shares of the corporation. A restriction

1 does not affect shares issued before the restriction was adopted unless the holders of
2 the shares are parties to the restriction agreement or voted in favor of the restriction.

3 B. A restriction on the transfer or registration of transfer of shares is valid
4 and enforceable against the holder or a transferee of the holder if the restriction is
5 authorized by this Section and its existence is noted conspicuously on the front or
6 back of the certificate or is contained in the information statement required by R.S.
7 12:1-626(B). Unless so noted or contained, a restriction is not enforceable against
8 a person without knowledge of the restriction.

9 C. A restriction on the transfer or registration of transfer of shares is
10 authorized for any of the following:

11 (1) To maintain the corporation's status when it is dependent on the number
12 or identity of its shareholders.

13 (2) To preserve exemptions under federal or state securities law.

14 (3) For any other reasonable purpose.

15 D. A restriction on the transfer or registration of transfer of shares may do
16 any of the following:

17 (1) Obligate the shareholder first to offer the corporation or other persons,
18 separately, consecutively, or simultaneously, an opportunity to acquire the restricted
19 shares.

20 (2) Obligate the corporation or other persons, separately, consecutively, or
21 simultaneously, to acquire the restricted shares.

22 (3) Require the corporation, the holders of any class of its shares, or another
23 person to approve the transfer of the restricted shares, if the requirement is not
24 manifestly unreasonable.

25 (4) Prohibit the transfer of the restricted shares to designated persons or
26 classes of persons, if the prohibition is not manifestly unreasonable.

27 E. For purposes of this Section, "shares" includes a security convertible into
28 or carrying a right to subscribe for or acquire shares.

29 Source: MBCA §6.27.

1 Comment - 2014 Revision

2 The rule in Subsection B of this Section is consistent with the rule in Article
3 8 of the Uniform Commercial Code concerning the enforceability of transfer
4 restrictions on investment securities generally. Under both the UCC and this
5 Section, a transfer restriction that is not noted as required on the certificate of a
6 certificated security, or in a required notification statement for an uncertificated
7 security, is unenforceable except against a person with "knowledge" of the
8 restriction. See R.S. 10:8-204. As used in this Section and in the UCC, the term
9 "knowledge" means actual knowledge. The terms "knowledge" and "know" are
10 defined in R.S. 12:1-140 in the same way as in R.S. 10:1-202, Louisiana's enactment
11 of the UCC.

12 §1-628. Expense of issue

13 A corporation may pay the expenses of selling or underwriting its shares, and
14 of organizing or reorganizing the corporation, from the consideration received for
15 shares.

16 Source: MBCA §6.28.

17 SUBPART C. SUBSEQUENT ACQUISITION OF SHARES

18 BY SHAREHOLDERS AND CORPORATION

19 §1-630. Shareholders' preemptive rights

20 A. The shareholders of a corporation do not have a preemptive right to
21 acquire the corporation's unissued shares except to the extent the articles of
22 incorporation so provide. The articles of incorporation of a corporation that was
23 incorporated before January 1, 1969, shall be deemed to contain a statement that "the
24 corporation elects to have preemptive rights," unless the articles of incorporation
25 contain a specific provision enlarging, limiting, or denying preemptive rights.

26 B. A statement included in the articles of incorporation that "the corporation
27 elects to have preemptive rights", or words of similar import, means that the
28 following principles apply except to the extent the articles of incorporation expressly
29 provide otherwise:

30 (1) The shareholders of the corporation have a preemptive right, granted on
31 uniform terms and conditions prescribed by the board of directors to provide a fair
32 and reasonable opportunity to exercise the right, to acquire proportional amounts of
33 the corporation's unissued shares upon the decision of the board of directors to issue
34 them. Shareholders have a fair and reasonable opportunity to exercise the right to

1 acquire shares if they are given at least forty-five days to purchase the shares after
2 notice to them of that right, but shorter periods of time may be fair and reasonable
3 under the circumstances in which the shares are being issued.

4 (2) A shareholder may waive his preemptive right. A waiver evidenced by
5 a writing is irrevocable even though it is not supported by consideration.

6 (3) There is no preemptive right with respect to any of the following:

7 (a) Shares issued as compensation to directors, officers, agents, or employees
8 of the corporation, its subsidiaries, or affiliates.

9 (b) Shares issued to satisfy conversion or option rights created to provide
10 compensation to directors, officers, agents, or employees of the corporation, its
11 subsidiaries, or affiliates.

12 (c) Shares authorized in articles of incorporation that are issued within six
13 months from the effective date of incorporation.

14 (d) Shares sold otherwise than for money.

15 (4) Holders of shares of any class without general voting rights but with
16 preferential rights to distributions or assets have no preemptive rights with respect
17 to shares of any class.

18 (5) Holders of shares of any class with general voting rights but without
19 preferential rights to distributions or assets have no preemptive rights with respect
20 to shares of any class with preferential rights to distributions or assets unless the
21 shares with preferential rights are convertible into or carry a right to subscribe for or
22 acquire shares without preferential rights.

23 (6) Shares subject to preemptive rights that are not acquired by shareholders
24 may be issued to any person for a period of one year after being offered to
25 shareholders at a consideration set by the board of directors that is not lower than the
26 consideration set for the exercise of preemptive rights. An offer at a lower
27 consideration or after the expiration of one year is subject to the shareholders'
28 preemptive rights.

1 C. For purposes of this Section, "shares" includes a security convertible into
 2 or carrying a right to subscribe for or acquire shares.

3 D. On or after January 1, 2016, no action to enforce a preemptive right of a
 4 shareholder shall be brought unless filed in a court of competent jurisdiction and
 5 proper venue within one year of the date of the issuance of the share to which the
 6 shareholder had the preemptive right, or within one year of the date that the issuance
 7 of the share is discovered or should have been discovered. Such an action is
 8 perempted three years after the date of the issuance of the share.

9 Source: MBCA §6.30.

10 Comments - 2014 Revision

11 (a) Before January 1, 1969, the effective date of the 1968 business
 12 corporation law, Louisiana provided an "opt out" form of preemptive rights; the
 13 earlier corporation statute supplied preemptive rights automatically unless a
 14 corporation's articles of incorporation provided otherwise. See former R.S. 12:28(B)
 15 (1951, superseded). The 1968 statute reversed the rule, and made preemptive rights
 16 "opt in;" shareholders did not have preemptive rights unless the articles affirmatively
 17 approved them. See former R.S. 12:72(A) (1994, superseded). To prevent the
 18 change in the default rule from eliminating preemptive rights in corporations whose
 19 articles were silent on the subject, the 1968 statute contained a provision that deemed
 20 the articles of pre-1969 corporations to contain a statement approving of preemptive
 21 rights, except to the extent that the articles actually enlarged, limited or denied those
 22 rights. See former R.S. 12:24(C)(1) (1994, superseded). Because this Section retains
 23 the opt-in approach of the 1968 statute, and of the Model Act, some pre-1969
 24 corporations may still need the statutory transition rule that was provided in the 1968
 25 statute. That rule has been added to Subsection A of this Section.

26 (b) Model Act Paragraph (b)(1) does not specify how much time the
 27 shareholders must be given to exercise their preemptive rights, saying only that the
 28 corporation must provide a "fair and reasonable opportunity" to exercise them. This
 29 Section adds a sentence to Paragraph (b)(1) that establishes a safe harbor of
 30 forty-five days for the preemptive period, measured from notice to the shareholders
 31 of their opportunity to purchase the shares. (See R.S. 12:1-141 for the effective date
 32 of the notice.) Shorter periods may also be fair and reasonable, based on the
 33 circumstances of the transactions in question, but the corporation would bear the
 34 burden of proving the fairness and reasonableness of a shorter period. Examples of
 35 factors that would help justify a shorter period would be the corporation's need for
 36 funds before the expiration of the forty-five-day period, advance knowledge and
 37 involvement by a complaining shareholder in the decision to issue additional shares,
 38 and the ability of a complaining shareholder to raise the required funds without
 39 financial hardship.

40 (c) This Section adds a new time limit for an action to enforce a preemptive
 41 right. The new time limits are especially important to pre-1969 corporations, which
 42 may inadvertently fail to afford the preemptive rights that their articles, if silent on
 43 the point, are deemed to provide.

1 §1-631. Corporation's acquisition of its own shares

2 A. A corporation may acquire its own shares, and shares so acquired
3 constitute authorized but unissued shares.

4 B. If the articles of incorporation prohibit the reissue of the acquired shares,
5 the number of authorized shares is reduced by the number of shares acquired.

6 Source: MBCA §6.31.

7 SUBPART D. DISTRIBUTIONS

8 §1-640. Distributions to shareholders

9 A. A board of directors may authorize and the corporation may make
10 distributions to its shareholders subject to restriction by the articles of incorporation
11 and the limitation in Subsection C of this Section.

12 B. If the board of directors does not fix the record date for determining
13 shareholders entitled to a distribution, other than one involving a purchase,
14 redemption, or other acquisition of the corporation's shares, it is the date the board
15 of directors authorizes the distribution.

16 C. No distribution may be made if, after giving it effect, either of the
17 following conditions would exist:

18 (1) The corporation would not be able to pay its debts as they become due
19 in the usual course of business.

20 (2) The corporation's total assets would be less than the sum of its total
21 liabilities plus, unless the articles of incorporation permit otherwise, the amount that
22 would be needed, if the corporation were to be dissolved at the time of the
23 distribution, to satisfy the preferential rights upon dissolution of shareholders whose
24 preferential rights are superior to those receiving the distribution.

25 D. The board of directors may base a determination that a distribution is not
26 prohibited under Subsection C of this Section either on financial statements prepared
27 on the basis of accounting practices and principles that are reasonable in the
28 circumstances or on a fair valuation or other method that is reasonable in the
29 circumstances.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 E. Except as provided in Subsection G of this Section, the effect of a
2 distribution under Subsection C of this Section is measured by one of the following:

3 (1) In the case of distribution by purchase, redemption, or other acquisition
4 of the corporation's shares, as of the earlier of the date money or other property is
5 transferred or debt incurred by the corporation or the date the shareholder ceases to
6 be a shareholder with respect to the acquired shares.

7 (2) In the case of any other distribution of indebtedness, as of the date the
8 indebtedness is distributed.

9 (3) In all other cases, as of the date the distribution is authorized if the
10 payment occurs within one hundred and twenty days after the date of authorization
11 or the date the payment is made if it occurs more than one hundred and twenty days
12 after the date of authorization.

13 F. A corporation's indebtedness to a shareholder incurred by reason of a
14 distribution made in accordance with this Section is at parity with the corporation's
15 indebtedness to its general, unsecured creditors except to the extent subordinated by
16 agreement.

17 G. Indebtedness of a corporation, including indebtedness issued as a
18 distribution, is not considered a liability for purposes of determinations under
19 Subsection C of this Section if its terms provide that payment of principal and
20 interest are made only if and to the extent that payment of a distribution to
21 shareholders could then be made under this Section. If the indebtedness is issued as
22 a distribution, each payment of principal or interest is treated as a distribution, the
23 effect of which is measured on the date the payment is actually made.

24 H. This Section shall not apply to distributions in liquidation under Part 14
25 of this Chapter.

26 Source: MBCA §6.40.

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PART 7. SHAREHOLDERS

SUBPART A. MEETINGS

§1-701. Annual meeting

A. Unless directors are elected by written consent in lieu of an annual meeting as permitted by R.S. 12:1-704, a corporation shall hold a meeting of shareholders annually at a time stated in or fixed in accordance with the bylaws or, if not so stated or fixed, as stated or fixed in accordance with a resolution of the board of directors. If a corporation's articles of incorporation authorize shareholders to cumulate their votes when electing directors pursuant to R.S. 12:1-728, directors may not be elected by written consent unless the written consent is unanimous.

B. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws or, if not so stated or fixed, as stated or fixed in accordance with a resolution of the board of directors. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

C. The failure to hold an annual meeting at the time stated in or fixed in accordance with Subsection A of this Section does not affect the validity of any corporate action.

D. If no annual shareholders' meeting is held for a period of eighteen months, and directors are not elected by written consent in lieu of an annual meeting during that period, any shareholder may by notice to the secretary demand that the secretary call such a meeting, to be held at the corporation's principal office or, if none in this state, at its registered office. The secretary shall call the meeting and shall provide notice of the meeting as required by R.S. 12:1-705 within thirty days after the notice to the secretary of the shareholder's demand for the meeting.

Source: MBCA §7.01.

Comments - 2014 Revision

(a) This Section adds language to Subsection A through C of this Section to accommodate the rule, retained from prior law, that makes the adoption of bylaws optional. Under the added language, the time and place of an annual meeting of

1 shareholders may set by or in accordance with a resolution of the board of directors
2 if the corporation has not adopted a bylaw that controls the matter.

3 (b) This Section changes the Model Act wording in the second sentence of
4 Subsection A of this Section to make it clear that the effect of cumulative voting on
5 the election of directors under Subsection A is to require the election of directors at
6 a meeting, and not through written consents in lieu of a meeting, unless the written
7 consent is unanimous. The Model Act language could have been interpreted to
8 require directors to be elected by unanimous consent whenever shareholders had the
9 right to vote cumulatively.

10 (c) This Section adds a new Subsection D to retain a modified version of the
11 provision in prior law that allowed any shareholder to call an annual meeting for the
12 election of directors if no such meeting had been held for a period of eighteen
13 months. As modified, the new Subsection D does not empower the shareholder
14 actually to call the meeting, but rather to demand that the secretary do so. The
15 secretary, unlike the shareholder, has the ability to arrange for the meeting and to
16 provide the notice of the meeting required by R.S. 12:1-705. Subsection D of this
17 Section requires both that the meeting be called and that the required notice be
18 provided within thirty days of the notice to the secretary of the shareholder's demand
19 for a meeting. The secretary has the discretion, acting consistently with the
20 secretary's fiduciary duties, to choose the date of the meeting, provided that the date
21 chosen permits the secretary to provide notice of the meeting no fewer than ten and
22 no more than sixty days before the date of the meeting. The duties of the secretary
23 under Subsection D are subject to enforcement through a writ of mandamus. See
24 C.C.P. Art. 3864.

25 §1-702. Special meeting

26 A. A corporation shall hold a special meeting of shareholders upon either of
27 the following:

28 (1) On call of its board of directors or the person or persons authorized to do
29 so by the articles of incorporation or bylaws.

30 (2) If the shareholders holding at least ten percent of all the votes entitled to
31 be cast on an issue proposed to be considered at the proposed special meeting sign,
32 date, and deliver to the corporation one or more written demands for the meeting
33 describing the purpose or purposes for which it is to be held, provided that the
34 articles of incorporation may fix a lower percentage or a higher percentage not
35 exceeding twenty-five percent of all the votes entitled to be cast on any issue
36 proposed to be considered. Unless otherwise provided in the articles of
37 incorporation, a written demand for a special meeting may be revoked by a writing
38 to that effect received by the corporation prior to the receipt by the corporation of
39 demands sufficient in number to require the holding of a special meeting.

1 within the earlier of six months after the end of the corporation's fiscal year or fifteen
2 months after its last annual meeting.

3 (2) On application of a shareholder who signed a demand for a special
4 meeting valid under R.S. 12:1-702, if either of the following conditions exist:

5 (a) Notice of the special meeting was not given within thirty days after the
6 date the demand was delivered to the corporation's secretary.

7 (b) The special meeting was not held in accordance with the notice.

8 B. The court may fix the time and place of the meeting, determine the shares
9 entitled to participate in the meeting, specify a record date for determining
10 shareholders entitled to notice of and to vote at the meeting, prescribe the form and
11 content of the meeting notice, fix the quorum required for specific matters to be
12 considered at the meeting or direct that the votes represented at the meeting
13 constitute a quorum for action on those matters, and enter other orders necessary to
14 accomplish the purpose or purposes of the meeting.

15 C. For purposes of Paragraph (A)(1) of this Section, "shareholder" means a
16 record shareholder, a beneficial shareholder, and an unrestricted voting trust
17 beneficial owner.

18 Source: MBCA §7.03.

19 Comment - 2014 Revision

20 Subsection B of this Section authorizes a court to enter orders as necessary
21 "to accomplish the purpose or purposes of the meeting." As used in that Subsection
22 the phrase "purpose or purposes of the meeting" refers to the deliberation and voting
23 for which a meeting is being called, and not to the subsequent implementation of the
24 votes that may be taken at the meeting. The effects of the votes taken, and the
25 remedies available for their implementation, are issues that are governed by other
26 principles of law, not by this Section.

27 §1-704. Action without meeting

28 A. Action required or permitted by this Chapter to be taken at a shareholders'
29 meeting may be taken without a meeting if the action is taken by all the shareholders
30 entitled to vote on the action. The action must be evidenced by one or more written
31 consents bearing the date of signature and describing the action taken, signed by all

1 the shareholders entitled to vote on the action and delivered to the corporation for
2 inclusion in the minutes or filing with the corporate records.

3 B. The articles of incorporation may provide that any action required or
4 permitted by this Chapter to be taken at a shareholders' meeting may be taken
5 without a meeting, and without prior notice, if consents in writing setting forth the
6 action so taken are signed by the holders of outstanding shares having not less than
7 the minimum number of votes that would be required to authorize or take the action
8 at a meeting at which all shares entitled to vote on the action were present and voted.
9 The written consent shall bear the date of signature of the shareholder who signs the
10 consent and be delivered to the corporation for inclusion in the minutes or filing with
11 the corporate records.

12 C. If an earlier date has not been fixed under R.S. 12:1-707 and if prior board
13 action is not required respecting the action to be taken without a meeting, the record
14 date for determining the shareholders entitled to take action without a meeting shall
15 be the first date on which a signed written consent is delivered to the corporation.
16 If not otherwise fixed under R.S. 12:1-707 and if prior board action is required
17 respecting the action to be taken without a meeting, the record date shall be the close
18 of business on the day the resolution of the board taking such prior action is adopted.
19 No written consent shall be effective to take the corporate action referred to therein
20 unless, within sixty days of the earliest date on which a consent delivered to the
21 corporation as required by this Section was signed, written consents signed by
22 sufficient shareholders to take the action have been delivered to the corporation. A
23 written consent may be revoked by a writing to that effect delivered to the
24 corporation before unrevoked written consents sufficient in number to take the
25 corporate action are delivered to the corporation.

26 D. A consent signed pursuant to the provisions of this Section has the effect
27 of a vote taken at a meeting and may be described as such in any document. Unless
28 the articles of incorporation, bylaws, or a resolution of the board of directors
29 provides for a reasonable delay to permit tabulation of written consents, the action

1 taken by written consent shall be effective when written consents signed by sufficient
2 shareholders to take the action are delivered to the corporation.

3 E. If this Chapter requires that notice of a proposed action be given to
4 nonvoting shareholders and the action is to be taken by written consent of the voting
5 shareholders, the corporation must give its nonvoting shareholders written notice of
6 the action not more than ten days after written consents sufficient to take the action
7 have been delivered to the corporation, or such later date that tabulation of consents
8 is completed pursuant to an authorization under Subsection D of this Section. The
9 notice must reasonably describe the action taken and contain or be accompanied by
10 the same material that, under any provision of this Chapter, would have been
11 required to be sent to nonvoting shareholders in a notice of a meeting at which the
12 proposed action would have been submitted to the shareholders for action.

13 F. If action is taken by less than unanimous written consent of the voting
14 shareholders, the corporation must give its nonconsenting voting shareholders
15 written notice of the action not more than ten days after written consents sufficient
16 to take the action have been delivered to the corporation, or such later date that
17 tabulation of consents is completed pursuant to an authorization under Subsection
18 D of this Section. The notice must reasonably describe the action taken and contain
19 or be accompanied by the same material that, under any provision of this Chapter,
20 would have been required to be sent to voting shareholders in a notice of a meeting
21 at which the action would have been submitted to the shareholders for action.

22 G. The notice requirements in Subsections E and F of this Section shall not
23 delay the effectiveness of actions taken by written consent, and a failure to comply
24 with such notice requirements shall not invalidate actions taken by written consent,
25 provided that this Subsection shall not be deemed to limit judicial power to fashion
26 any appropriate remedy in favor of a shareholder adversely affected by a failure to
27 give such notice within the required time period.

28 Source: MBCA §7.04.

1 Comment - 2014 Revision

2 Model Act Subsection (c) was modified in this Section to allow a record date
3 established under R.S. 12:1-707 to control over the date fixed by Subsection C of this
4 Section itself only if the R.S. 12:1-707 date is earlier than that established by
5 Subsection C of this Section. Subsection C of this Section fixes the record date as
6 the first date on which a signed shareholder's consent is delivered to the corporation.
7 If the board of directors of the corporation were permitted to select a record date
8 occurring after the Subsection C date, they could invalidate written consents already
9 delivered to the corporation. Under this Section, the persons who are soliciting the
10 shareholder's consents are entitled to rely upon the date fixed in Subsection C unless
11 an earlier record date has been established under R.S. 12:1-707.

12 §1-705. Notice of meeting

13 A. A corporation shall notify shareholders of the date, time, and place of
14 each annual and special shareholders' meeting no fewer than ten nor more than sixty
15 days before the meeting date. Unless this Chapter or the articles of incorporation
16 require otherwise, the corporation is required to give notice only to shareholders
17 entitled to vote at the meeting.

18 B. Unless this Chapter or the articles of incorporation require otherwise, both
19 of the following shall apply:

20 (1) Notice of an annual meeting need not include a description of the purpose
21 or purposes for which the meeting is called.

22 (2) If a notice of an annual meeting does include a description of one or more
23 purposes, the meeting is not limited to those purposes.

24 C. Notice of a special meeting must include a description of the purpose or
25 purposes for which the meeting is called.

26 D. If not otherwise fixed under R.S. 12:1-703 or 1-707, the record date for
27 determining shareholders entitled to notice of and to vote at an annual or special
28 shareholders' meeting is the day before the first notice to shareholders is effective.

29 E. Unless the bylaws require otherwise, if an annual or special shareholders'
30 meeting is adjourned to a different date, time, or place, notice need not be given of
31 the new date, time, or place if the new date, time, or place is announced at the
32 meeting before adjournment. If a new record date for the adjourned meeting is or
33 must be fixed under R.S. 12:1-707, however, notice of the adjourned meeting must

1 be given under this Section to persons who are shareholders as of the new record
2 date.

3 Source: MBCA §7.05.

4 Comments - 2014 Revision

5 (a) The second sentence of Subsection B of this Section was added in this
6 Section as a corollary to the Model Act rule that no notice is required of the purpose
7 of an annual meeting.

8 (b) The default rule in Subsection D of this Section on fixing of the record
9 date for the meeting was modified in this Section to refer to the day on which the
10 first notice to shareholders is effective, rather than the day on which the first notice
11 is delivered. The "effective" standard was chosen over that of "delivery" to allow the
12 corporation to rely on the rules in R.S. 12:1-141 concerning the date on which a
13 notice becomes effective.

14 §1-706. Waiver of notice

15 A. A shareholder may waive any notice required by this Chapter, the articles
16 of incorporation, or bylaws before or after the date and time stated in the notice. The
17 waiver must be in writing, be signed by the shareholder entitled to the notice, and be
18 delivered to the corporation for inclusion in the minutes or filing with the corporate
19 records.

20 B. A shareholder's attendance at a meeting does both of the following:

21 (1) Waives objection to lack of notice or defective notice of the meeting,
22 unless the shareholder at the beginning of the meeting objects to holding the meeting
23 or transacting business at the meeting.

24 (2) Waives objection to consideration of a particular matter at the meeting
25 that is not within the purpose or purposes described in the meeting notice, unless the
26 shareholder objects to considering the matter when it is presented.

27 C. A shareholder attends a meeting if the shareholder is present at the
28 meeting in person or by proxy. If a shareholder attends a meeting by proxy, then for
29 purposes of Subsection B of this Section, an objection by the shareholder's proxy has
30 the same effect as an objection by the shareholder.

31 Source: MBCA §7.06.

1 Comment - 2014 Revision

2 A new Subsection C was added in this Section to provide support in the
3 statute itself for the statement in Official Comment 1 of the Model Act that the word
4 "attendance" means the presence of a shareholder in person or by proxy. The same
5 Subsection similarly treats an objection by the proxy as an objection by the
6 shareholder.

7 §1-707. Record date

8 A. The bylaws may fix or provide the manner of fixing the record date for
9 one or more voting groups in order to determine the shareholders entitled to notice
10 of a shareholders' meeting, to demand a special meeting, to vote, or to take any other
11 action. If the bylaws do not fix or provide for fixing a record date, the board of
12 directors of the corporation may fix a future date as the record date.

13 B. A record date fixed under this Section may not be more than seventy days
14 before the meeting or action requiring a determination of shareholders.

15 C. A determination of shareholders entitled to notice of or to vote at a
16 shareholders' meeting is effective for any adjournment of the meeting unless the
17 board of directors fixes a new record date, which it must do if the meeting is
18 adjourned to a date more than one hundred and twenty days after the date fixed for
19 the original meeting.

20 D. If a court orders a meeting adjourned to a date more than one hundred and
21 twenty days after the date fixed for the original meeting, it may provide that the
22 original record date continues in effect or it may fix a new record date.

23 Source: MBCA §7.07.

24 §1-708. Conduct of the meeting

25 A. At each meeting of shareholders, a chair shall preside. The chair shall be
26 appointed as provided in the bylaws or, in the absence of such provision, by the
27 board.

28 B. The chair, unless the articles of incorporation or bylaws provide
29 otherwise, shall determine the order of business and shall have the authority to
30 establish rules for the conduct of the meeting.

1 C. Any rules adopted for, and the conduct of, the meeting shall be fair to
2 shareholders.

3 D. The chair of the meeting shall announce at the meeting when the polls
4 close for each matter voted upon. If no announcement is made, the polls shall be
5 deemed to have closed upon the final adjournment of the meeting. After the polls
6 close, no ballots, proxies, or votes nor any revocations or changes thereto may be
7 accepted.

8 Source: MBCA §7.08.

9 SUBPART B. VOTING

10 §1-720. Shareholders' list for meeting

11 A. After fixing a record date for a meeting, a corporation shall prepare an
12 alphabetical list of the names of all its shareholders who are entitled to notice of a
13 shareholders' meeting. The list must be arranged by voting group, and within each
14 voting group by class or series of shares, and show the address of and number of
15 shares held by each shareholder.

16 B. The shareholders' list must be available for inspection by any shareholder,
17 beginning two business days after notice of the meeting is given for which the list
18 was prepared and continuing through the meeting, at the corporation's principal
19 office or at a place identified in the meeting notice in the city where the meeting will
20 be held. A shareholder, or the shareholder's agent or attorney, is entitled on written
21 demand to inspect and, subject to the requirements of R.S. 12:1-1602(C) other than
22 the required percentage and duration of ownership of shares, to copy the list, during
23 regular business hours and at the shareholder's expense, during the period it is
24 available for inspection.

25 C. The corporation shall make the shareholders' list available at the meeting,
26 and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the
27 list at any time during the meeting or any adjournment.

28 D. If the corporation refuses to allow a shareholder, or the shareholder's
29 agent or attorney, to inspect the shareholders' list before or at the meeting, or copy

1 the list as permitted by Subsection B of this Section, the district court of the parish
2 where a corporation's principal office or, if none in this state, its registered office, is
3 located, on application of the shareholder, may in a summary proceeding order the
4 inspection or copying at the corporation's expense and may postpone the meeting for
5 which the list was prepared until the inspection or copying is complete.

6 E. Refusal or failure to prepare or make available the shareholders' list does
7 not affect the validity of action taken at the meeting.

8 Source: MBCA §7.20.

9 §1-721. Voting entitlement of shares

10 A. Except as provided in Subsections B and D of this Section, or unless the
11 articles of incorporation provide otherwise, each outstanding share, regardless of
12 class, is entitled to one vote on each matter voted on at a shareholders' meeting.
13 Only shares are entitled to vote.

14 B. Absent special circumstances, the shares issued by a corporation are not
15 entitled to vote if they are owned, directly or indirectly, by a subsidiary.

16 C. Subsection B of this Section does not limit the power of a corporation or
17 subsidiary to vote any shares, including its own shares, held by it in a fiduciary
18 capacity.

19 D. Redeemable shares are not entitled to vote after notice of redemption is
20 mailed to the holders and a sum sufficient to redeem the shares has been deposited
21 with a bank, trust company, or other financial institution under an irrevocable
22 obligation to pay the holders the redemption price on surrender of the shares.

23 E. For purposes of Subsections B and C of this Section, the following
24 meanings shall apply:

25 (1) The term "subsidiary" means a domestic or foreign corporation, limited
26 liability company, partnership, or other juridical person that is subject to at least
27 majority control by the issuer of the shares, but does not include the issuer itself.

28 (2) "Majority control" means ownership, direct or indirect, of a majority of
29 either of the following:

1 (a) The shares entitled to vote for the directors of a corporation.

2 (b) The membership, partnership, or other interests in an unincorporated
3 entity that are entitled either to vote for those who hold the general managerial
4 authority in the unincorporated entity or to exercise that authority directly.

5 Source: MBCA §7.21.

6 Comments - 2014 Revision

7 (a) Model Act Subsection (b) provides an explicit statutory rule against
8 "circular" voting only where the circular voting is occurring through a subsidiary that
9 is organized as a corporation. The Model Act leaves other forms of circular voting
10 to common law principles, as noted in Model Act Comment 3. Because Louisiana
11 law does not include those common law principles, this Section extends the express
12 statutory rule against circular voting to all subsidiaries generally, whether
13 incorporated or unincorporated. Subsection B of this Section provides the rule
14 against the voting of shares held by a "subsidiary," and Subsection E of this Section
15 provides the definition of that term.

16 (b) The rule in this Section against circular voting prohibits only a
17 subsidiary's voting the shares that it owns in its direct or indirect parent companies,
18 something that might be pictured as "upstream voting." That kind of voting is
19 prohibited because it would allow the management of the parent company to exercise
20 voting control over the parent company itself, through management's directing the
21 votes of the subsidiary-owned shares in the parent. The rule in this Section against
22 circular voting does not affect the formation of holding companies or the exercise of
23 "downstream" voting power by a parent company over the shares that it owns in a
24 subsidiary.

25 §1-722. Proxies

26 A. A shareholder may vote the shareholder's shares in person or by proxy.

27 B. A shareholder, or the shareholder's agent or attorney-in-fact, may appoint
28 a proxy to vote or otherwise act for the shareholder by signing an appointment form,
29 or by an electronic transmission. An electronic transmission must contain or be
30 accompanied by information from which one can determine that the shareholder, the
31 shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.

32 C. An appointment of a proxy is effective when a signed appointment form
33 or an electronic transmission of the appointment is received by the inspector of
34 election, the secretary, or other officer or agent of the corporation authorized to
35 tabulate votes. An appointment is valid for eleven months unless a longer period is
36 expressly provided in the appointment form.

1 D. An appointment of a proxy is revocable unless the appointment form or
2 electronic transmission states that it is irrevocable and the appointment is coupled
3 with an interest. Appointments coupled with an interest include the appointment of:

4 (1) A pledgee or other person having a security interest in the shares;

5 (2) A person who purchased or agreed to purchase the shares;

6 (3) A creditor of the corporation who extended it credit under terms
7 requiring the appointment;

8 (4) An employee of the corporation whose employment contract requires the
9 appointment; or

10 (5) A party to a voting agreement created under Section 1-731.

11 E. The revocation of a proxy appointment or the death or incapacity of the
12 shareholder appointing a proxy does not affect the right of the corporation to accept
13 the proxy's authority unless notice of the revocation, death or incapacity is received
14 by the secretary or other officer or agent authorized to tabulate votes before the
15 proxy exercises authority under the appointment.

16 F. An appointment made irrevocable under Subsection D of this Section is
17 revoked when the interest with which it is coupled is extinguished.

18 G. Unless it otherwise provides, an appointment made irrevocable under
19 Subsection D of this Section continues in effect after a transfer of the shares and a
20 transferee takes subject to the appointment, except that a transferee for value of
21 shares subject to an irrevocable appointment may revoke the appointment if the
22 transferee did not know of its existence when acquiring the shares and the existence
23 of the irrevocable appointment was not noted conspicuously on the certificate
24 representing the shares or on the information statement for shares without
25 certificates.

1 H. Subject to Section 1-724 and to any express limitation on the proxy's
2 authority stated in the appointment form or electronic transmission, a corporation is
3 entitled to accept the proxy's vote or other action as that of the shareholder making
4 the appointment.

5 Source: MBCA §7.22.

6 Comment - 2014 Revision

7 The authority granted to corporate officials by this Section must be exercised
8 in good faith. See the Comment to R.S. 12:1-702.

9 §1-723. Shares held by intermediaries and nominees

10 A. A corporation's board of directors may establish a procedure under which
11 a person on whose behalf shares are registered in the name of an intermediary or
12 nominee may elect to be treated by the corporation as the record shareholder by
13 filing with the corporation a beneficial ownership certificate. The extent, terms,
14 conditions, and limitations of this treatment shall be specified in the procedure. To
15 the extent such person is treated under such procedure as having rights or privileges
16 that the record shareholder otherwise would have, the record shareholder shall not
17 have those rights or privileges.

18 B. The procedure shall specify all of the following information:

19 (1) The types of intermediaries or nominees to which it applies.

20 (2) The rights or privileges that the corporation recognizes in a person with
21 respect to whom a beneficial ownership certificate is filed.

22 (3) The manner in which the procedure is selected, which shall include that
23 the beneficial ownership certificate be signed or assented to by or on behalf of the
24 record shareholder and the person or persons on whose behalf the shares are held.

25 (4) The information that must be provided when the procedure is selected.

26 (5) The period for which selection of the procedure is effective.

27 (6) Requirements for notice to the corporation with respect to the
28 arrangement.

29 (7) The form and contents of the beneficial ownership certificate.

1 C. The procedure may specify any other aspects of the rights and duties
2 created by the filing of a beneficial ownership certificate.

3 Source: MBCA §7.23.

4 §1-724. Corporation's acceptance of votes

5 A. If the name signed on a vote, consent, waiver, or proxy appointment
6 corresponds to the name of a shareholder, the corporation if acting in good faith is
7 entitled to accept the vote, consent, waiver, or proxy appointment and give it effect
8 as the act of the shareholder.

9 B. If the name signed on a vote, consent, waiver, or proxy appointment does
10 not correspond to the name of its shareholder, the corporation if acting in good faith
11 is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and
12 give it effect as the act of the shareholder if any of the following conditions are met:

13 (1) The shareholder is an entity and the name signed purports to be that of
14 an officer or agent of the entity.

15 (2) The name signed purports to be that of an administrator, executor,
16 guardian, conservator, curator, tutor or judicially authorized representative of the
17 shareholder and, if the corporation requests, evidence of fiduciary status and
18 authority acceptable to the corporation has been presented with respect to the vote,
19 consent, waiver, or proxy appointment.

20 (3) The name signed purports to be that of a receiver or trustee in bankruptcy
21 of the shareholder and, if the corporation requests, evidence of this status acceptable
22 to the corporation has been presented with respect to the vote, consent, waiver, or
23 proxy appointment.

24 (4) The name signed purports to be that of a pledgee or other person having
25 a security interest in the shares, a beneficial owner, or an attorney-in-fact or
26 representative through mandate or procuration of the shareholder and, if the
27 corporation requests, evidence acceptable to the corporation of the signatory's
28 authority to sign for the shareholder has been presented with respect to the vote,
29 consent, waiver, or proxy appointment.

1 Louisiana law does not recognize the doctrine of laches. *Fishbein v. State ex rel.*
2 Louisiana State University Health Sciences Center, 898 So.2d 1260 (La. 2005).
3 Accordingly, Subsection (e) of the Model Act has been modified in this Section to
4 provide a statutory rule similar to laches, and similar to the rule in prior law that a
5 proxy regular on its face was valid unless it was challenged before it was exercised.
6 See former R.S. 12:75(C)(4). Under Subsection E of this Section, a corporation's
7 acceptance or rejection of a vote or other similar item is treated as conclusive unless
8 a shareholder objects to the corporation's treatment of the item before the end of the
9 meeting at which the item is relevant or, if the action is being taken without a
10 meeting, before the corporation incurs a legal obligation in good faith reliance on
11 that treatment. If the shareholder's objection is timely, and the corporation rejects
12 the objection, then the corporation's decision is conclusive unless the shareholder
13 commences a summary proceeding within ten days of the date that the corporation's
14 notice to the shareholder becomes effective under R.S. 12:1-141 and proves in that
15 proceeding that the corporation's decision concerning the validity of the challenged
16 item was incorrect.

17 §1-725. Quorum and voting requirements for voting groups

18 A. Shares entitled to vote as a separate voting group may take action on a
19 matter at a meeting only if a quorum of those shares exists with respect to that
20 matter. Unless the articles of incorporation provide otherwise, a majority of the
21 votes entitled to be cast on the matter by the voting group constitutes a quorum of
22 that voting group for action on that matter.

23 B. Once a share is represented for any purpose at a meeting, it is deemed
24 present for quorum purposes for the remainder of the meeting and for any
25 adjournment of that meeting unless a new record date is or must be set for that
26 adjourned meeting.

27 C. If a quorum exists, action on a matter, other than the election of directors,
28 by a voting group is approved if the votes cast within the voting group favoring the
29 action exceed the votes cast opposing the action, unless the articles of incorporation
30 require a greater number of affirmative votes.

31 D. An amendment of articles of incorporation adding, changing, or deleting
32 a quorum or voting requirement for a voting group greater than specified in
33 Subsection A or C of this Section is governed by R.S. 12:1-727.

34 E. The election of directors is governed by R.S. 12:1-728.

1 F. Whenever a provision of this Chapter provides for voting of classes or
2 series as separate voting groups, the rules provided in R.S. 12:1-1004(C) for
3 amendments of articles of incorporation apply to that provision.

4 Source: MBCA §7.25.

5 §1-726. Action by single and multiple voting groups

6 A. If the articles of incorporation or this Act provide for voting by a single
7 voting group on a matter, action on that matter is taken when voted upon by that
8 voting group as provided in R.S. 12:1-725.

9 B. If the articles of incorporation or this Chapter provide for voting by two
10 or more voting groups on a matter, action on that matter is taken only when voted
11 upon by each of those voting groups counted separately as provided in R.S.
12 12:1-725. Action may be taken by one voting group on a matter even though no
13 action is taken by another voting group entitled to vote on the matter.

14 Source: MBCA § 7.26.

15 §1-727. Greater quorum or voting requirements

16 A. The articles of incorporation may provide for a greater quorum or voting
17 requirement for shareholders, or voting groups of shareholders, than is provided for
18 by this Chapter.

19 B. An amendment to the articles of incorporation that adds, changes, or
20 deletes a greater quorum or voting requirement must meet the same quorum
21 requirement and be adopted by the same vote and voting groups required to take
22 action under the quorum and voting requirements then in effect or proposed to be
23 adopted, whichever is greater.

24 Source: MBCA §7.27.

25 §1-728. Voting for directors; cumulative voting

26 A. Unless otherwise provided in the articles of incorporation, directors are
27 elected by a plurality of the votes cast by the shares entitled to vote in the election
28 at a meeting at which a quorum is present.

1 B. Shareholders do not have a right to cumulate their votes for directors
2 unless the articles of incorporation so provide.

3 C. A statement included in the articles of incorporation that shareholders,
4 or a designated group of shareholders, "are entitled to cumulate their votes for
5 directors", or words of similar import, means that the shareholders designated are
6 entitled to multiply the number of votes they are entitled to cast by the number of
7 directors for whom they are entitled to vote and cast the product for a single
8 candidate or distribute the product among two or more candidates.

9 Source: MBCA §7.28.

10 Comments - 2014 Revision

11 (a) This Section deleted Subsection (d) of the Model Act, and its related
12 comments, which would have conditioned the exercise of cumulative voting rights
13 on prior notice by the corporation, or by the shareholders wishing to exercise the
14 rights, that cumulative voting was to be exercised at a particular shareholders'
15 meeting. Under this Section, the availability of cumulative voting depends only on
16 whether that form of voting is authorized by the articles of incorporation. No
17 separate notice is required for each meeting at which cumulative voting may occur.

18 (b) If cumulative voting is authorized in the articles of incorporation, a
19 director may not be removed if the votes in opposition to the director's removal
20 would be sufficient under cumulative voting to elect the director. See R.S.
21 12:1-808(C).

22 §1-729. Inspectors of election

23 A. A public corporation shall, and any other corporation may, appoint one
24 or more inspectors to act at a meeting of shareholders and make a written report of
25 the inspectors' determinations. Each inspector shall take and sign an oath faithfully
26 to execute the duties of inspector with strict impartiality and according to the best of
27 the inspector's ability.

28 B. The inspectors shall do all of the following:

29 (1) Ascertain the number of shares outstanding and the voting power of each.

30 (2) Determine the shares represented at a meeting.

31 (3) Determine the validity of proxies and ballots.

32 (4) Count all votes.

33 (5) Determine the result.

1 C. An inspector may be an officer or employee of the corporation.

2 Source: MBCA §7.29.

3 SUBPART C. VOTING TRUSTS AND AGREEMENTS

4 §1-730. Voting trusts

5 A. One or more shareholders may create a voting trust, conferring on a
6 trustee the right to vote or otherwise act for them, by signing an agreement setting
7 out the provisions of the trust, which may include anything consistent with its
8 purpose, and transferring their shares to the trustee. When a voting trust agreement
9 is signed, the trustee shall prepare a list of the names and addresses of all voting trust
10 beneficial owners, together with the number and class of shares each transferred to
11 the trust, and deliver copies of the list and agreement to the corporation's principal
12 office.

13 B. A voting trust becomes effective on the date the first shares subject to the
14 trust are registered in the trustee's name.

15 C. Limits, if any, on the duration of a voting trust shall be as set forth in the
16 voting trust. The duration of a voting trust that became effective before January 1,
17 2015, may not exceed fifteen years, but may stipulate that it may be extended under
18 the same terms and conditions for an additional period not to exceed ten years from
19 the date of the expiration of the initial term. The limitation imposed by this
20 Subsection on the duration of a voting trust that became effective before January 1,
21 2015, may be modified or eliminated by unanimous agreement of the parties to the
22 voting trust.

23 Source: MBCA §7.30.

24 Comment - 2014 Revision

25 The Model Act version of Subsection C of this Section provided a transitional
26 rule for voting trusts that became effective before the Model Act eliminated its
27 ten-year limitation on the duration of a voting trust. This Chapter provides a similar
28 transition rule for voting trusts that took effect before the effective date of this
29 Chapter, when the law limited the duration of a voting trust to an initial fifteen-year
30 period, followed by one ten-year extension.

1 §1-731. Voting agreements

2 A. Two or more shareholders may provide for the manner in which they will
3 vote their shares by signing an agreement for that purpose. A voting agreement
4 created under this Section is not subject to the provisions of R.S. 12:1-730.

5 B. A voting agreement created under this Section is specifically enforceable.

6 Source: MBCA §7.31.

7 §1-732. Unanimous governance agreements

8 A. The term "unanimous governance agreement" means any written
9 agreement, other than the articles of incorporation or bylaws, that satisfies all of the
10 following criteria:

11 (1) Is approved in one or more writings signed by all persons who are
12 shareholders at the time of the agreement.

13 (2) Governs the exercise of the corporate powers or the management of the
14 business and affairs of the corporation or the relationship among the shareholders,
15 the directors, and the corporation, or among any of them.

16 (3) States that it is a unanimous governance agreement or that it is governed
17 by this Section.

18 B. A unanimous governance agreement is effective among the shareholders
19 and the corporation, and shall be interpreted and enforced among those persons in
20 accordance with the principle of freedom of contract, subject only to the limitations
21 imposed by public policy. A unanimous governance agreement is enforceable among
22 the shareholders and the corporation even though it is inconsistent with one or more
23 other provisions of this Chapter in that it does any of the following:

24 (1) Eliminates the board of directors or restricts the discretion or powers of
25 the board of directors.

26 (2) Governs the authorization or making of distributions whether or not in
27 proportion to ownership of shares, subject to the limitations in R.S. 12:1-640.

28 (3) Establishes who shall be directors or officers of the corporation, or their
29 terms of office or manner of selection or removal.

1 (4) Governs, in general or in regard to specific matters, the exercise or
2 division of voting power by or between the shareholders and directors or by or
3 among any of them, including use of weighted voting rights or director proxies.

4 (5) Establishes the terms and conditions of any agreement for the transfer or
5 use of property or the provision of services between the corporation and any
6 shareholder, director, officer, or employee of the corporation or among any of them.

7 (6) Transfers to one or more shareholders or other persons all or part of the
8 authority to exercise the corporate powers or to manage the business and affairs of
9 the corporation, including the resolution of any issue about which there exists a
10 deadlock among directors or shareholders.

11 (7) Requires dissolution of the corporation at the request of one or more of
12 the shareholders or upon the occurrence of a specified event or contingency.

13 (8) Otherwise changes, in a manner not contrary to public policy, the result
14 that would be reached under other provisions of this Chapter.

15 C.(1) The existence of a unanimous governance agreement shall be noted
16 conspicuously on the front or back of each certificate for outstanding shares. If, at
17 the time of the agreement, the corporation has shares outstanding represented by
18 certificates, the corporation shall recall the outstanding certificates and issue
19 substitute certificates that comply with this Subsection. The failure to note the
20 existence of the agreement on the certificate shall not affect the validity of the
21 agreement or any action taken pursuant to it.

22 (2) Any purchaser of shares who, at the time of purchase, did not have
23 knowledge of the existence of the agreement shall be entitled to rescission of the
24 purchase. A purchaser shall be deemed to have knowledge of the existence of the
25 agreement if its existence is noted on the certificate for the shares in compliance with
26 this Subsection.

27 (3) An action to enforce the right of rescission authorized by this Subsection
28 must be commenced within the earlier of ninety days after discovery of the existence
29 of the agreement or two years after the time of purchase of the shares.

1 D. The provisions of a unanimous governance agreement shall cease to be
2 effective when the corporation becomes a public corporation. If the agreement
3 ceases to be effective for any reason, the board of directors may adopt an amendment
4 to the articles of incorporation or bylaws, without shareholder action, to delete any
5 references to it.

6 E. A unanimous governance agreement that limits the discretion or powers
7 of the board of directors shall relieve the directors of, and impose upon the person
8 or persons in whom such discretion or powers are vested, liability for acts or
9 omissions imposed by law on directors to the extent that the discretion or powers of
10 the directors are limited by the agreement. A person who is subjected to liability by
11 this Subsection may be held liable only to the extent that a director vested with the
12 same discretion or powers could be held liable, and is entitled to indemnity under
13 R.S. 12:1-850 through 1-859, and to protection against liability under R.S. 12:1-832,
14 to the same extent as a director vested with the same discretion or powers.

15 F. The existence or performance of a unanimous governance agreement shall
16 not be a ground for imposing personal liability on any shareholder for the acts or
17 debts of the corporation even if the agreement or its performance treats the
18 corporation as if it were a partnership or results in failure to observe the corporate
19 formalities otherwise applicable to the matters governed by the agreement.

20 G. Incorporators or subscribers for shares may act as shareholders with
21 respect to a unanimous governance agreement if no shares have been issued when
22 the agreement is made.

23 H. If the shareholders have approved more than one unanimous governance
24 agreement, all of the agreements shall, to the extent reasonable, be construed
25 together as one agreement in which all provisions are given effect. To the extent that
26 conflicting provisions cannot be reconciled through that rule of construction, the
27 more recently-approved provision controls.

28 I. Except as otherwise provided in the agreement, a unanimous governance
29 agreement shall have all of the following characteristics:

1 as a unanimous governance agreement only if the agreement states that it is a
2 unanimous governance agreement or that it is governed by R.S. 12:1-732.

3 (4) A rule of construction is provided to deal with multiple unanimous
4 written operating agreements, requiring that the multiple agreements be interpreted
5 together as one document to the extent reasonable, and otherwise resolving
6 inconsistencies in provisions by allowing the more recent provision to control.

7 (5) Unless otherwise provided, the agreement has an initial term of twenty,
8 subject to renewals, and the unanimous governance agreement remains in effect even
9 the after the expiration of its term until shareholders of at least twenty-five percent
10 of the issued shares of any class deliver to the corporation written consents to
11 termination of the agreement.

12 (6) A new Subsection K is added as a savings provision to preserve the
13 contractual freedom that shareholders had before the enactment of R.S. 12:1-732.

14 (b) A unanimous governance agreement is not the only mechanism under
15 this Section through which shareholders may modify the governance rules for their
16 corporation. Many of the provisions in this Section concerning corporate governance
17 are subject to modification through appropriate provisions in the articles of
18 incorporation or bylaws, and shareholders may enter into lawful agreements with one
19 another, such as voting agreements, that do not satisfy the requirements of a
20 unanimous governance agreement as defined in Subsection A of this Section. What
21 is distinctive about a unanimous governance agreement is, first, that it may modify
22 what would otherwise be mandatory statutory rules concerning corporation
23 governance, and, second, that it is governed by the special rules in R.S. 12:1-732
24 concerning its creation, disclosure, renewal, amendment, and termination.

25 (c) This Section provides three rules to prevent the inadvertent triggering of
26 the special rules in R.S. 12:1-732, two in Subsection A of this Section and the one
27 in Subsection K of this Section. Subsection A excludes the articles and bylaws as
28 forms of unanimous governance agreement, and also requires an otherwise
29 qualifying agreement to state that it is a unanimous governance agreement or that it
30 is governed by R.S. 12:1-732. Subsection K provides that R.S. 12:1-732 has no
31 effect on the enforceability of a shareholders' agreement that does not meet the
32 requirements of Subsection A of this Section. Through a combination of the two
33 Subsections, this Section preserves the freedom that shareholders had before the
34 enactment of R.S. 12:1-732 to modify the governance rules in their corporation by
35 means of customized terms in the articles or bylaws, or through contracts among the
36 shareholders. The enforceability of those non-R.S. 12:1-732 forms of agreement is
37 governed by ordinary principles of corporation and contract law, without regard to
38 the special rules in R.S. 12:1-732.

39 (d) Provisions concerning corporate governance usually remain in effect
40 indefinitely, until they are changed. Reflecting the usual understanding, and to
41 prevent the automatic and perhaps unexpected termination of governance terms with
42 which shareholders may continue to be satisfied, and on which they may be
43 continuing to rely, this Section provides that a unanimous governance agreement
44 remains in effect indefinitely even after the expiration of its term. Still, because of
45 the extraordinary power of a unanimous governance agreement to override statutory
46 provisions that would otherwise be considered mandatory, this Section does provide
47 a default term for a unanimous governance agreement and does allow the agreement
48 to be terminated by a substantial minority of shares - at least twenty-five percent -
49 after the term expires. The default term is twenty years, a period chosen to
50 correspond roughly with one generation of investors. As a new generation of
51 investors is introduced, they may wish to renegotiate or terminate the unanimous
52 governance agreement.

1 (e) If the shareholders wish for some of their agreed modifications to be
 2 governed by the usual rules, e.g. to be subject to amendment by less than unanimous
 3 consent, but to apply indefinitely until amended as required for the amendment of
 4 the type of provision involved, but also wish to make some of them subject to the
 5 powers and requirements of R.S. 12:1-732, they should place the ordinary
 6 modifications in the usual place, in the articles or bylaws, for example, and place the
 7 more extraordinary provisions, those that may be unenforceable in the absence of
 8 R.S. 12:1-732, into an agreement that meets the definition of a unanimous
 9 governance agreement under Subsection A of this Section.

10 SUBPART D. DERIVATIVE PROCEEDINGS

11 §1-740. Subpart definitions

12 In this Subpart, the following meanings shall apply:

13 (1) "Derivative proceeding" means a civil suit in the right of a domestic
 14 corporation or, to the extent provided in R.S. 12:1-747, in the right of a foreign
 15 corporation.

16 (2) "Shareholder" means a record shareholder, a beneficial shareholder, and
 17 an unrestricted voting trust beneficial owner.

18 Source: MBCA §7.40.

19 §1-741. Standing

20 A. A shareholder may not commence or maintain a derivative proceeding
 21 unless the shareholder satisfies all of the following conditions:

22 (1) Was a shareholder of the corporation at the time of the act or omission
 23 complained of or became a shareholder through transfer by operation of law from
 24 one who was a shareholder at that time.

25 (2) Fairly and adequately represents the interests of the corporation in
 26 enforcing the right of the corporation.

27 B. A shareholder who meets the requirements of R.S. 12:1-741(A) may file
 28 a derivative proceeding to enforce a right of the corporation, but only after the
 29 shareholder satisfies the requirements of R.S. 12:1-742.

30 Source: MBCA §7.41.

31 Comment - 2014 Revision

32 This Section designated the original Model Act provision as Subsection A of
 33 this Section and added a new Subsection B of this Section. The new Subsection B
 34 states explicitly what the Model Act provisions imply: that a shareholder may file a
 35 derivative proceeding to enforce a right of the corporation if the shareholder

1 complies with the requirements of R.S. 12:1-741 and 1-742. Prior law had stated a
2 similar rule in Art. 611 of the Code of Civil Procedure, but that article was amended
3 in connection with the adoption of this Section to exempt derivative proceedings
4 governed by this Section from the coverage of the class and derivative action
5 provisions of the Code of Civil Procedure, i.e., Chapter 5 of Book I, Title 2.
6 Subsection B of this Section now provides an authorization of derivative proceedings
7 on behalf of business corporations that replaces the authorization formerly provided
8 by Art. 611.

9 §1-742. Demand

10 No shareholder may commence a derivative proceeding until the following
11 conditions are satisfied:

12 (1) A written demand has been made upon the corporation to take suitable
13 action.

14 (2) Ninety days have expired from the date the demand was made unless the
15 shareholder has earlier been notified that the demand has been rejected by the
16 corporation or unless irreparable injury to the corporation would result by waiting
17 for the expiration of the ninety-day period.

18 Source: MBCA §7.42.

19 Comments - 2014 Revision

20 This Section, like the Model Act, rejects the approach taken by the Delaware
21 courts to determining whether demand in a derivative action is required or, instead,
22 is excused as futile. The Delaware law on demand futility is expressed through a
23 complicated body of decisions that began in the 1984 decision of the Delaware
24 Supreme Court in Aronson v. Lewis, 473 A.2d 805 (Del. 1984). The Aronson
25 approach has been criticized on grounds that it requires a court to determine
26 hypothetically - at the complaint stage of a case and without any of the evidence that
27 might be produced through discovery - whether the directors of a corporation are
28 facing enough prospect of personal liability in the case to disqualify them from
29 responding disinterestedly if the plaintiff, contrary to fact, were to make a demand
30 on them for corrective action.

31 This Section, like the Model Act, adopts what is known as a "universal
32 demand" requirement. Under this approach, demand is always required. A court is
33 never required to determine whether a board of directors or other corporate actors
34 could respond appropriately to a hypothetical demand that has not really been made.
35 Instead, because demand always must be made, the court is able to evaluate, in
36 accordance with R.S. 12:1-744, what the board or other appropriate corporate
37 officials have actually done in response to the required demand.

38 Before the adoption of this Section, Louisiana courts had rejected the
39 Aronson approach to demand, preferring instead the traditional, pre-Aronson rule
40 that allowed demand to be excused as futile in any case in which a majority of the
41 corporation's directors were themselves named as defendants in the suit. Smith v.
42 Wembley Industries, Inc., 490 So.2d 1107 (La. App. 4th Cir. 1986); Robinson v.
43 Snell's Limbs and Braces of New Orleans, Inc., 538 So.2d 1045 (La. App. 4th Cir.
44 1989). While this traditional rule avoided the problems posed by Aronson, it posed

1 a serious problem of its own: it gave a plaintiff virtually unfettered power to evade
2 the demand rule, simply by naming a majority of the directors as defendants.

3 This Section abrogates the demand and demand-futility rules in Smith and
4 Robinson. Demand is always required, and so never is excused as futile. But the
5 making of demand under this Section does not mean that unfettered control over the
6 suit is being turned over to the defendants. Rather, the suit may be dismissed as
7 against the best interests of the corporation only if the persons rejecting the demand,
8 or recommending dismissal of the suit, are sufficiently disinterested to be "qualified"
9 as defined in R.S. 12:1-143, and only if those qualified persons have conducted the
10 inquiry and made their decisions in accordance with the standards of R.S. 12:1-744.

11 §1-742.1. Petition in derivative proceeding

12 The petition in a derivative proceeding shall do all of the following:

13 (1) Allege that the plaintiff meets the standing requirements of R.S.
14 12:1-741.

15 (2) Allege either that the plaintiff made demand upon the corporation at least
16 ninety days before the filing of the petition as required by R.S. 12:1-742 or that the
17 plaintiff made the demand and, for reasons alleged in the petition, the filing of the
18 petition before the expiration of the ninety-day period complies with R.S. 12:1-742.

19 (3) Join as defendants the corporation and the obligor on the obligation
20 sought to be enforced.

21 (4) Include a prayer for judgment in favor of the corporation and against the
22 obligor on the obligation sought to be enforced.

23 (5) Be verified by the affidavit of the plaintiff or his counsel.

24 Source: MBCA §7.42.1.

25 Comments - 2014 Revision

26 (a) This Section is not part of the Model Act. It was added to this Part to
27 retain the pleading requirements formerly imposed on derivative actions by Art. 615
28 of the Code of Civil Procedure, modified as necessary to harmonize them with the
29 Model Act provisions on derivative proceedings.

30 (b) As applied to derivative proceedings on behalf of business corporations,
31 this Section eliminates the distinction drawn by the Code of Civil Procedure between
32 derivative suits that are treated as class actions and those that require the joinder of
33 all shareholders as parties to the suit. The rules that apply to derivative actions are
34 provided directly by this Section, based on the Model Act, and not by making some
35 of the class action rules apply to some derivative suits.

1 §1-743. Stay of proceedings

2 If the corporation commences an inquiry into the allegations made in the
3 demand or petition, the court may stay any derivative proceeding for such period as
4 the court deems appropriate.

5 Source: MBCA §7.43.

6 §1-744. Dismissal

7 A. A derivative proceeding shall be dismissed by the court on motion by the
8 corporation if one of the groups specified in Subsection B or Subsection E of this
9 Section has determined in good faith, after conducting a reasonable inquiry upon
10 which its conclusions are based, that the maintenance of the derivative proceeding
11 is not in the best interests of the corporation.

12 B. Unless a panel is appointed pursuant to Subsection E of this Section, the
13 determination in Subsection A of this Section shall be made by one of the following:

14 (1) A majority vote of qualified directors present at a meeting of the board
15 of directors if the qualified directors constitute a quorum.

16 (2) A majority vote of a committee consisting of two or more qualified
17 directors appointed by majority vote of qualified directors present at a meeting of the
18 board of directors, regardless of whether such qualified directors constitute a
19 quorum.

20 C. If a derivative proceeding is commenced after a determination has been
21 made rejecting a demand by a shareholder, the petition shall allege with particularity
22 facts establishing either of the following:

23 (1) That a majority of the board of directors did not consist of qualified
24 directors at the time the determination was made.

25 (2) That the requirements of Subsection A of this Section have not been met.

26 D. If a majority of the board of directors consisted of qualified directors at
27 the time the determination was made, the plaintiff shall have the burden of proving
28 that the requirements of Subsection A of this Section have not been met; if not, the

1 corporation shall have the burden of proving that the requirements of Subsection A
2 of this Section have been met.

3 E. Upon motion by the corporation, the court may appoint a panel of one or
4 more individuals to make a determination whether the maintenance of the derivative
5 proceeding is in the best interests of the corporation. In such case, the plaintiff shall
6 have the burden of proving that the requirements of Subsection A of this Section
7 have not been met.

8 Source: MBCA §7.44.

9 Comment - 2014 Revision

10 The Official Comments to this section of the Model Act explain that the word
11 "inquiry" is used in Subsection A of this Section, rather than the word
12 "investigation," to make it clear the nature of the procedure used to consider the
13 allegations made in the demand or complaint depend on the nature of those
14 allegations and the knowledge of the persons who conduct the inquiry. In some
15 cases, the Comment suggests, the issues may be simple enough, and the knowledge
16 of those conducting the inquiry so extensive, that little additional effort will be
17 required to satisfy the statutory standard that the inquiry be conducted in good faith.
18 This Section does not disagree with the Model Act or the official comments on that
19 issue. Nevertheless, in the case of serious allegations of misconduct against the
20 management of a corporation, a good faith inquiry ordinarily will require the
21 preparation of a written report, with the assistance of independent legal counsel, in
22 support of a recommendation either to reject demand or to dismiss the suit.

23 §1-745. Discontinuance or settlement

24 A. Unless approved unanimously by the shareholders of the corporation, a
25 derivative proceeding may not be discontinued or settled without the court's
26 approval. If the court determines that a proposed discontinuance or settlement will
27 substantially affect the interests of the corporation's shareholders or a class of
28 shareholders, the court shall direct that notice be given to the shareholders affected.

29 B. This Section does not affect the plaintiff's right under Article 1671 of the
30 Code of Civil Procedure to obtain a judgment of dismissal without prejudice if the
31 application for dismissal is made before any defendant, including the corporation in
32 its capacity as a defendant, makes any appearance of record in the proceeding.

33 Source: MBCA §7.45.

34 Comments - 2014 Revision

35 (a) This Section adds a provision that permits a derivative action to be settled
36 or discontinued without court approval if the settlement or discontinuation is

1 approved unanimously by the shareholders of the corporation. The rule that requires
2 judicial approval of the settlement of derivative suits is based on the risk that the
3 named plaintiff in the suit may agree to settlement terms that are satisfactory to the
4 parties who are participating in the settlement negotiations - the defendants, the
5 named plaintiff and the named plaintiff's lawyers - but that produce little or no
6 benefit for the other shareholders of the corporation. But if all shareholders actually
7 agree to the settlement, a realistic possibility only in closely-held corporations, each
8 shareholder is able to decide personally whether the settlement is acceptable. Under
9 those circumstances, the parties should be free to settle the case on the terms they
10 consider appropriate.

11 (b) This Section also adds a sentence to make it clear that this Section does
12 not affect a plaintiff's ability to obtain a judgment of dismissal without prejudice as
13 provided in Art. 1671 of the Code of Civil Procedure. The plaintiff is entitled to that
14 form of judgment only if he pays all costs of the proceeding and if he applies for the
15 dismissal before the defendant makes any appearance of record in the proceeding.
16 Id. Because the corporation in a derivative action participates in the suit both as a
17 plaintiff, represented by the plaintiff shareholder, and as a defendant, represented by
18 management-authorized agents, the last sentence of this Section makes the point that
19 the plaintiff's right to a dismissal without prejudice under Art. 1671 is cut off by the
20 corporation's appearance in the suit only if the corporation is appearing of record in
21 its capacity as a defendant. The requirement in Art. 1671 that the plaintiff pay the
22 costs of the proceeding as a condition to the dismissal applies in the normal way.

23 §1-746. Payment of expenses

24 On termination of the derivative proceeding the court may do any of the
25 following:

26 (1) Order the corporation to pay the plaintiff's expenses incurred in the
27 proceeding if it finds that the proceeding has resulted in a substantial benefit to the
28 corporation.

29 (2) Order the plaintiff to pay any defendant's expenses incurred in defending
30 the proceeding if it finds that the proceeding was commenced or maintained without
31 reasonable cause or for an improper purpose.

32 (3) Order a party to pay an opposing party's expenses incurred because of the
33 filing of a pleading, motion, or other paper, if it finds that the pleading, motion, or
34 other paper was not well grounded in fact, after reasonable inquiry, or warranted by
35 existing law or a good faith argument for the extension, modification, or reversal of
36 existing law and was interposed for an improper purpose, such as to harass or cause
37 unnecessary delay or needless increase in the cost of litigation.

38 Source: MBCA §7.46.

1 §1-747. Applicability to foreign corporations

2 In any derivative proceeding in the right of a foreign corporation, the matters
3 covered by this Subpart shall be governed by the laws of the jurisdiction of
4 incorporation of the foreign corporation except for R.S. 12: 1-743, 1-745, and 1-746.

5 Source: MBCA §7.47.

6 SUBPART E. PROCEEDING TO APPOINT RECEIVER7 §1-748. Shareholder action to appoint receiver

8 A. The district court of the parish in which the registered office of the
9 corporation is located may appoint one or more to be receivers, of and for a
10 corporation in a proceeding by a shareholder where it is established that either of the
11 following conditions exist:

12 (1) The directors are deadlocked in the management of the corporate affairs,
13 the shareholders are unable to break the deadlock, and irreparable injury to the
14 corporation is threatened or being suffered.

15 (2) The directors or those in control of the corporation are acting
16 fraudulently and irreparable injury to the corporation is threatened or being suffered.

17 B.(1) The court may issue injunctions, appoint a temporary receiver with all
18 the powers and duties the court directs, take other action to preserve the corporate
19 assets wherever located, and carry on the business of the corporation until a full
20 hearing is held.

21 (2) The court shall hold a full hearing, after notifying all parties to the
22 proceeding and any interested persons designated by the court, before appointing a
23 receiver.

24 (3) The court has jurisdiction over the corporation and all of its property,
25 wherever located.

26 C. The court may appoint an individual or domestic or foreign corporation,
27 authorized to transact business in this state, as a receiver and may require the
28 receiver to post bond, with or without sureties, in an amount the court directs.

1 D. The court shall describe the powers and duties of the receiver in its
2 appointing order, which may be amended from time to time. Among other powers,
3 a receiver may do any of the following:

4 (1) Exercise all of the powers of the corporation, through or in place of its
5 board of directors, to the extent necessary to manage the business and affairs of the
6 corporation.

7 (2) Dispose of all or any part of the assets of the corporation wherever
8 located, at a public or private sale, if authorized by the court.

9 (3) Sue and defend in the receiver's own name as receiver in all courts of this
10 state.

11 E. [Reserved.]

12 F. The court from time to time during the receivership may order
13 compensation paid and expense disbursements or reimbursements made to the
14 receiver from the assets of the corporation or proceeds from the sale of its assets.

15 G. In this Section, "shareholder" means a record shareholder, a beneficial
16 shareholder, and an unrestricted voting trust beneficial owner.

17 Source: MBCA §7.48.

18 Comment - 2014 Revision

19 The Model Act distinction between the appointment of custodians for solvent
20 companies and receivers for insolvent ones is omitted from this Section to retain the
21 prior law that authorized the appointment of receivers for both solvent and insolvent
22 companies. Model Act Subsection (e), which authorized a court to redesignate a
23 custodian as a receiver and a receiver as a custodian, was omitted as irrelevant to the
24 receiver-only scheme adopted in this Section.

25 PART 8. DIRECTORS AND OFFICERS

26 SUBPART A. BOARD OF DIRECTORS

27 §1-801. Requirement for and functions of board of directors

28 A. Except as provided in R.S. 12:1-732, each corporation must have a board
29 of directors.

30 B. All corporate powers shall be exercised by or under the authority of the
31 board of directors of the corporation, and the business and affairs of the corporation
32 shall be managed by or under the direction, and subject to the oversight, of its board

1 of directors, subject to any limitation set forth in the articles of incorporation or in
2 an agreement authorized under R.S. 12:1-732.

3 C. In the case of a public corporation, the board's oversight responsibilities
4 include attention to all of the following:

5 (1) Business performance and plans.

6 (2) Major risks to which the corporation is or may be exposed.

7 (3) The performance and compensation of senior officers.

8 (4) Policies and practices to foster the corporation's compliance with law and
9 ethical conduct.

10 (5) Preparation of the corporation's financial statements.

11 (6) The effectiveness of the corporation's internal controls.

12 (7) Arrangements for providing adequate and timely information to directors.

13 (8) The composition of the board and its committees, taking into account the
14 important role of independent directors.

15 Source: MBCA §8.01.

16 §1-802. Qualifications of directors

17 The articles of incorporation or bylaws may prescribe qualifications for
18 directors. A director need not be a resident of this state or a shareholder of the
19 corporation unless the articles of incorporation or bylaws so prescribe.

20 Source: MBCA §8.02.

21 §1-803. Number and election of directors

22 A. A board of directors must consist of one or more individuals. The
23 number of directors shall be fixed by or in accordance with the articles of
24 incorporation or, if not so fixed, shall be the number fixed by or in accordance with
25 the bylaws. If not fixed by or in accordance with the articles or the bylaws, the
26 number of directors shall be the number elected from time to time by the
27 shareholders and, if directors have not been elected by the shareholders, the number
28 of directors shall be the number of directors named as initial directors in the articles
29 of incorporation.

1 B. The number of directors may be increased or decreased from time to time
2 by amendment to, or in the manner provided in, the articles of incorporation or the
3 bylaws.

4 C. Directors are elected at the first annual shareholders' meeting and at each
5 annual meeting thereafter unless their terms are staggered under R.S. 12:1-806.

6 Source: MBCA §8.03.

7 Comments - 2014 Revision

8 (a) This Section modifies the language of Model Act Subsection (a) to retain
9 the former Louisiana law concerning the determination of the number of directors
10 to be elected.

11 (b) Former R.S. 12:81(A) provided that an incumbent director's term could
12 not be shortened by means of an amendment to the articles or bylaws that reduced
13 the number of directors. The substance of that rule is retained in R.S. 12:1-805(C).

14 §1-804. Election of directors by certain classes of shareholders

15 If the articles of incorporation authorize dividing the shares into classes, the
16 articles may also authorize the election of all or a specified number of directors by
17 the holders of one or more authorized classes of shares. A class, or classes, of shares
18 entitled to elect one or more directors is a separate voting group for purposes of the
19 election of directors.

20 Source: MBCA §8.04.

21 §1-805. Terms of directors generally

22 A. The terms of the initial directors of a corporation expire at the first
23 shareholders' meeting at which directors are elected.

24 B. The terms of all other directors expire at the next, or if their terms are
25 staggered in accordance with R.S. 12:1-806, at the applicable second or third, annual
26 shareholders' meeting following their election, except to the extent provided in R.S.
27 12:1-1022 if a bylaw electing to be governed by that Section is in effect or a shorter
28 term is specified in the articles of incorporation in the event of a director nominee
29 failing to receive a specified vote for election.

30 C. A decrease in the number of directors does not shorten an incumbent
31 director's term.

1 §1-807. Resignation of directors2 A. A director may resign at any time by delivering a written resignation to
3 the board of directors, or its chair, or to the secretary of the corporation.4 B. A resignation is effective when the resignation is delivered unless the
5 resignation specifies a later effective date or an effective date determined upon the
6 happening of an event or events. A resignation that is conditioned upon failing to
7 receive a specified vote for election as a director may provide that it is irrevocable.

8 Source: MBCA §8.07.

9 §1-808. Removal of directors by shareholders10 A. The shareholders may remove one or more directors with or without
11 cause unless the articles of incorporation provide that directors may be removed only
12 for cause.13 B. If a director is elected by a voting group of shareholders, only the
14 shareholders of that voting group may participate in the vote to remove that director.15 C. If cumulative voting is authorized, a director may not be removed if the
16 number of votes sufficient to elect the director under cumulative voting is voted
17 against removal. If cumulative voting is not authorized, a director may be removed
18 only if the number of votes cast to remove is a majority of the number of votes
19 entitled to be cast in an election of directors.20 D. A director may be removed by the shareholders only at a meeting called
21 for the purpose of removing the director and the meeting notice must state that the
22 purpose, or one of the purposes, of the meeting is removal of the director.

23 Source: MBCA §8.08.

24 Comment - 2014 Revision

25 Subject to exceptions for cumulative voting and for directors elected by
26 particular voting groups, the Model Act permits the removal of a director by a
27 majority of the votes cast on the issue. This Section requires the removal to be
28 approved by a majority of the votes entitled to be cast in an election of directors.29 §1-809. [Reserved]

1 §1-810. Vacancy on board

2 A. Unless the articles of incorporation or bylaws provide otherwise, if a
 3 vacancy occurs on a board of directors, including a vacancy resulting from an
 4 increase in the number of directors, the vacancy may be filled by one of the
 5 following methods:

6 (1) The shareholders may fill the vacancy.

7 (2) The board of directors may fill the vacancy.

8 (3) If the directors remaining in office constitute fewer than a quorum of the
 9 board, they may fill the vacancy by the affirmative vote of a majority of all the
 10 directors remaining in office.

11 B. If the vacant office was held by a director elected by a voting group of
 12 shareholders, only the holders of shares of that voting group are entitled to vote to
 13 fill the vacancy if it is filled by the shareholders, and only the directors elected by
 14 that voting group are entitled to fill the vacancy if it is filled by the directors.

15 C. A vacancy that will occur at a specific later date, by reason of a
 16 resignation effective at a later date under R.S. 12:1-807(B) or otherwise, may be
 17 filled before the vacancy occurs but the new director may not take office until the
 18 vacancy occurs.

19 Source: MBCA §8.10.

20 Comment - 2014 Revision

21 This Section adds the phrase "or bylaws" to Model Act Subsection (a).

22 §1-811. Compensation of directors

23 Unless the articles of incorporation or bylaws provide otherwise, the board
 24 of directors may fix the compensation of directors.

25 Source: MBCA §8.11.

26 §1-812. Director proxies

27 A. A director may vote by proxy at a meeting of the board of directors or of
 28 a committee of the board only if the articles of incorporation so provide.

1 B. A director may appoint as proxy only another director, and the
 2 appointment may be made only by means of a signed writing, that is delivered to the
 3 person who is presiding at the meeting at which the proxy seeks to cast the absent
 4 director's vote. The writing may contain instructions, general or special, concerning
 5 the proxy's authority.

6 C. Except as otherwise provided in the articles of incorporation, a separate
 7 appointment of a proxy is required for each meeting, and the proxy's authority under
 8 any appointment terminates at the conclusion of the meeting for which the
 9 appointment was made.

10 D. The proxy shall cast the votes of the absent director consistently with any
 11 instructions that the proxy receives from the absent director, but otherwise may cast
 12 votes on behalf of the absent director in accordance with the proxy's own discretion.

Comments - 2014 Revision

14 (a) R.S. 12:1-812 is a new section, which is not part of the Model Act, added
 15 to retain the "opt in" rule in prior law concerning proxy voting by directors. This
 16 Section governs only those votes cast by a director in the capacity of director. A
 17 director who is also a shareholder may vote by proxy as a shareholder in accordance
 18 with R.S. 12:1-722, on shareholder proxies.

19 (b) This Section uses the term "proxy" in the same way it is used in R.S.
 20 12:1-722, to refer to the person who is authorized to exercise the appointing person's
 21 voting power. Only another director may be appointed as proxy and the appointment
 22 may be made only through a signed writing that is delivered to the person who is
 23 presiding at the relevant meeting.

24 (c) Subsection C of this Section requires a separate proxy appointment for
 25 each meeting at which a proxy is to vote for an absent director. The purpose of the
 26 limited term is to discourage the routine use of proxies or the use of long-term
 27 proxies as a means of granting one director what is effectively the voting power of
 28 two or more directors.

29 (d) Subsection D of this Section gives to a director's proxy the same
 30 discretion, and the same obligation to follow the appointing director's voting
 31 instructions, as apply in the case of a shareholder's proxy.

SUBPART B. MEETINGS AND ACTION OF THE BOARD

§1-820. Meetings

34 A. The board of directors may hold regular or special meetings in or out of
 35 this state.

1 B. Unless the articles of incorporation or bylaws provide otherwise, the
 2 board of directors may permit any or all directors to participate in a regular or special
 3 meeting by, or conduct the meeting through the use of, any means of communication
 4 by which all directors participating may simultaneously hear each other during the
 5 meeting. A director participating in a meeting by this means is deemed to be present
 6 in person at the meeting.

7 C. A meeting of the board of directors may be called by the board chair, by
 8 the chief executive officer, regardless of the title used by the corporation to designate
 9 that officer, or by a majority of the directors.

10 Source: MBCA §8.20.

11 Comment - 2014 Revision

12 This Section adds a new Subsection C to the Model Act to retain the prior
 13 law concerning the persons entitled to call a meeting of the board of directors, while
 14 updating the titles used in prior law. As used in the new Subsection, the term "chief
 15 executive officer" is used descriptively, not as a title, to refer to the highest ranking
 16 executive officer in the corporation. In many corporations, that officer will indeed
 17 be called the chief executive officer or CEO, but it is the nature of the office, not the
 18 title, that is controlling for purposes of Subsection C of this Section. A corporation
 19 that used more traditional titles for its officers, for example, might call this person
 20 the "president."

21 §1-821. Action without meeting

22 A. Except to the extent that the articles of incorporation or bylaws require
 23 that action by the board of directors be taken at a meeting, action required or
 24 permitted by this Chapter to be taken by the board of directors may be taken without
 25 a meeting if each director signs a consent describing the action to be taken and
 26 delivers it to the corporation.

27 B. Action taken under this Section is the act of the board of directors when
 28 one or more consents signed by all the directors are delivered to the corporation. The
 29 consent may specify the time at which the action taken thereunder is to be effective.
 30 A director's consent may be withdrawn by a revocation signed by the director and
 31 delivered to the corporation prior to delivery to the corporation of unrevoked written
 32 consents signed by all the directors.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 C. A consent signed under this Section has the effect of action taken at a
2 meeting of the board of directors and may be described as such in any document.

3 Source: MBCA §8.21.

4 §1-822. Notice of meeting

5 A. Unless the articles of incorporation or bylaws provide otherwise, regular
6 meetings of the board of directors may be held without notice of the date, time,
7 place, or purpose of the meeting.

8 B. Unless the articles of incorporation or bylaws provide for a longer or
9 shorter period, special meetings of the board of directors must be preceded by at least
10 forty-eight hour notice of the date, time, and place of the meeting. Except as
11 otherwise provided in the articles of incorporation or bylaws, the notice shall
12 describe the purpose or purposes of the special meeting.

13 Source: MBCA §8.22.

14 Comments - 2014 Revision

15 (a) This Sectopm modifies Model Act Subsection (b) to require notice of at
16 least forty-eight hours, rather than two days, for a special meeting, and to change the
17 default rule concerning a statement of purpose in the notice from one that requires
18 no such statement to one that does require a statement of purpose.

19 (b) This Section rejects the rule in Model Act Section 1.41(a) that a notice
20 required by this Section may be oral if reasonable under the circumstances.
21 Accordingly, it also rejects the statement in the Model Act's Official Comment to
22 this Section that notice of a board meeting may be provided orally; all notices
23 required by this Section must be in "writing," as that term is defined in R.S.
24 12:1-140. Absent a proper objection, however, a director's attendance at a meeting
25 of the board operates as a waiver of notice by the director under R.S. 12:1-823(B).
26 So, as a practical matter, oral notice that results in actual attendance at a meeting by
27 all directors, something that is fairly easy to accomplish in many closely-held
28 companies, will be effective in satisfying the notice requirement -- not by
29 legally-sufficient notice, but by waiver.

30 §1-823. Waiver of notice

31 A. A director may waive any notice required by this Part, the articles of
32 incorporation, or bylaws before or after the date and time stated in the notice. Except
33 as provided by Subsection B of this Section, the waiver must be in writing, signed
34 by the director entitled to the notice, and filed with the minutes or corporate records.

35 B. A director's attendance at or participation in a meeting waives any
36 required notice to the director of the meeting unless one of the following occurs:

1 Subsection C of this Section, a director's participation in a meeting after an earlier
2 objection of inadequate notice does not waive the objection except with respect to
3 those actions at the meeting that the director votes to approve.

4 §1-824. Quorum and voting

5 A. Unless the articles of incorporation or bylaws require a greater number
6 or unless otherwise specifically provided in this Chapter, a quorum of a board of
7 directors consists of a majority of the number of directors determined in accordance
8 with R.S. 12:1-803.

9 B. The articles of incorporation or bylaws may authorize a quorum of a
10 board of directors to consist of no fewer than one-third of the number of directors
11 determined in accordance with R.S. 12:1-803.

12 C.(1) If a quorum is present when a vote is taken, the affirmative vote of the
13 required majority of directors is the act of the board of directors. The required
14 majority of directors is a majority of the directors present, or the number of directors
15 whose votes are required by the articles of incorporation or bylaws for the board to
16 take the relevant action, whichever number is greater.

17 (2) If a quorum is present when a meeting is convened, but the quorum is
18 lost through the withdrawal from the meeting of one or more directors, the
19 affirmative vote of the required majority of directors is the act of the board of
20 directors provided that the number of affirmative votes is not fewer than the number
21 that would have been required had the quorum not been lost.

22 D. A director who is present at a meeting of the board of directors or a
23 committee of the board of directors when corporate action is taken is deemed to have
24 assented to the action taken unless one of the following occurs:

25 (1) The director objects at the beginning of the meeting, or promptly upon
26 arrival, to holding it or transacting business at the meeting.

27 (2) The dissent or abstention from the action taken is entered in the minutes
28 of the meeting.

29 (3) The director delivers written notice of the director's dissent or abstention
30 to the presiding officer of the meeting before its adjournment or to the corporation

1 immediately after adjournment of the meeting. The right of dissent or abstention is
2 not available to a director who votes in favor of the action taken.

3 Source: MBCA §8.24.

4 Comments - 2014 Revision

5 (a) This Section simplifies Model Act Subsection (a) by deleting its
6 references to a variable range size board, and by defining a quorum by reference to
7 the number of directors established under R.S. 12:1-803. A similar change was made
8 in Model Act Subsection (b), linking it to R.S. 12:1-803 rather than to the formerly
9 more complex rules in Subsection (a).

10 (b) This Section modifies Model Act Subsection (c) by introducing a new
11 defined term, "required majority of directors" to facilitate the statement of the
12 minimum number of affirmative votes required to establish an act of the board of
13 directors. Ordinarily, assuming that the quorum requirement is satisfied, the required
14 majority of directors is a majority of the directors present at the meeting. But that
15 figure may be increased in the articles of incorporation or bylaws, and that greater
16 number controls over the statutory minimum.

17 (c) Subsection (c) also is modified to retain the rule in prior law that a board
18 of directors may in some cases continue to conduct business at a meeting that has
19 lost its initial quorum. The rule is designed to preclude minority directors from
20 blocking action by the majority through a withdrawal from the meeting that causes
21 the quorum to be lost. But, at the same time, the rule respects the basic purpose of
22 the quorum and majority approval rules; it applies only when a meeting was
23 convened with a quorum, and it recognizes as acts of the board only those acts that
24 are supported by the number of directors that would have been required to approve
25 the action had the quorum not been lost.

26 (d) As an example of the operation of the anti-quorum-loss rule in
27 Subsection C of this Section, consider a corporation with a nine-member board of
28 directors. Under the default statutory rules, the presence of five of those directors
29 at a meeting would be required to establish a quorum, and the affirmative votes of
30 a majority of the five directors present, three, would be required to establish an act of
31 the board. In the absence of the anti-quorum-loss rule in modified Subsection C of
32 this Section, any one director present at a meeting with a quorum of five could block
33 action by the remaining eighty percent of the directors present simply by walking out
34 of the meeting; that would cause the quorum to be lost by reducing the number
35 directors present from five to four. But under the rule in modified Subsection C of
36 this Section, the affirmative votes of at least a majority of the remaining four
37 directors would remain sufficient to constitute an act of the board of directors
38 because a majority of four is three, and the majority vote required at a meeting with
39 a minimal quorum of five, i.e., a meeting at which a quorum had not been lost, would
40 also be three. If, on the other hand, two directors withdrew from the meeting, the
41 affirmative vote of a bare majority of the three directors still present would not
42 constitute an act of the board of directors because two votes is not a majority of the
43 minimal quorum of five. If only three directors remained at the meeting, they could
44 take action only by unanimous vote. If fewer than three remained, no further action
45 could be taken at the meeting.

46 §1-825. Committees

47 A. Unless this Chapter, the articles of incorporation or the bylaws provide
48 otherwise, the board of directors may create one or more committees and appoint one

1 or more members of the board of directors to serve on any such committee. If the
2 board of directors appoints a person who is not a director, that person may serve only
3 in an advisory capacity and shall not be a member of the committee for purposes of
4 any reference by this Chapter to a committee or to one or more members of a
5 committee.

6 B. Unless this Chapter otherwise provides, the creation of a committee and
7 appointment of members to it must be approved by the greater of the following:

8 (1) A majority of all the directors in office when the action is taken.

9 (2) The number of directors required by the articles of incorporation or
10 bylaws to take action under R.S. 12:1-824.

11 C. R.S. 12:1-820 through 1-824 apply both to committees of the board and
12 to their members.

13 D. To the extent specified by the board of directors or in the articles of
14 incorporation or bylaws, each committee may exercise the powers of the board of
15 directors under R.S. 12:1-801.

16 E. A committee may not, however do any of the following:

17 (1) Authorize or approve distributions, except according to a formula or
18 method, or within limits, prescribed by the board of directors.

19 (2) Approve or propose to shareholders action that this Chapter requires be
20 approved by shareholders.

21 (3) Fill vacancies on the board of directors or, subject to Subsection G of this
22 Section, on any of its committees.

23 (4) Adopt, amend, or repeal bylaws.

24 F. The creation of, delegation of authority to, or action by a committee does
25 not alone constitute compliance by a director with the standards of conduct described
26 in R.S. 12:1-830.

27 G. The board of directors may appoint one or more directors as alternate
28 members of any committee to replace any absent or disqualified member during the
29 member's absence or disqualification. Unless the articles of incorporation or the

1 bylaws or the resolution creating the committee provide otherwise, in the event of
2 the absence or disqualification of a member of a committee, the member or members
3 present at any meeting and not disqualified from voting, unanimously, may appoint
4 another director to act in place of the absent or disqualified member.

5 Source: MBCA §8.25.

6 Comment - 2014 Revision

7 This Section adds a second sentence to Model Act Subsection (a) to address
8 the question whether the membership of a committee of the board of directors may
9 include persons who are not members of the board itself. In some cases, the board
10 of directors may wish to appoint one or more non-director staff members who have
11 knowledge or experience that would be helpful to the committee's work. The added
12 sentence recognizes that possibility, but permits the non-director appointees to the
13 committee to act only in an advisory capacity. Appointees of that kind are not
14 considered members of the committee for purposes of any of the statutory rules
15 concerning committees or members of committees. So, for example, the rules
16 concerning the required quorum and vote for committee action would apply only
17 with respect to the directors who were members of the committee. If a committee
18 consisted of three directors and five non-director staff members, a quorum of the
19 committee could be established only if a majority of the three directors were present
20 at a meeting, and only the vote of a majority of the directors present at the committee
21 meeting would constitute the act of the committee.

22 §1-826. Submission of matters for shareholder vote

23 A corporation may agree to submit a matter to a vote of its shareholders even
24 if, after approving the matter, the board of directors determines it no longer
25 recommends the matter.

26 Source: MBCA §8.26.

27 SUBPART C. DIRECTORS

28 §1-830. Standards of conduct for directors

29 A. Each member of the board of directors, when discharging the duties of a
30 director, shall act in good faith and in a manner the director reasonably believes to
31 be in the best interests of the corporation.

32 B. The members of the board of directors or a committee of the board, when
33 becoming informed in connection with their decision-making function or devoting
34 attention to their oversight function, shall discharge their duties with the care that a
35 person in a like position would reasonably believe appropriate under similar
36 circumstances.

1 C. In discharging board or committee duties a director shall disclose, or
2 cause to be disclosed, to the other board or committee members information not
3 already known by them but known by the director to be material to the discharge of
4 their decision-making or oversight functions, except that disclosure is not required
5 to the extent that the director reasonably believes that doing so would violate a duty
6 imposed under law, a legally enforceable obligation of confidentiality, or a
7 professional ethics rule.

8 D. In discharging board or committee duties a director who does not have
9 knowledge that makes reliance unwarranted is entitled to rely on the performance by
10 any of the persons specified in Paragraph (F)(1) or Paragraph (F)(3) of this Section
11 to whom the board may have delegated, formally or informally by course of conduct,
12 the authority or duty to perform one or more of the board's functions that are
13 delegable under applicable law.

14 E. In discharging board or committee duties a director who does not have
15 knowledge that makes reliance unwarranted is entitled to rely on information,
16 opinions, reports, or statements, including financial statements and other financial
17 data, prepared or presented by any of the persons specified in Subsection F of this
18 Section.

19 F. A director is entitled to rely, in accordance with Subsection D or E of this
20 Section, on any of the following:

21 (1) One or more officers or employees of the corporation whom the director
22 reasonably believes to be reliable and competent in the functions performed or the
23 information, opinions, reports, or statements provided.

24 (2) Legal counsel, public accountants, or other persons retained by the
25 corporation as to matters involving skills or expertise the director reasonably
26 believes are matters within the particular person's professional or expert competence
27 or as to which the particular person merits confidence.

1 (3) A committee of the board of directors of which the director is not a
2 member if the director reasonably believes the committee merits confidence.

3 Source: MBCA §8.30.

4 §1-831. Standards of liability for directors

5 A. A director shall not be liable to the corporation or its shareholders for any
6 decision to take or not to take action, or any failure to take any action, as a director,
7 unless the party asserting liability in a proceeding establishes both of the following:

8 (1) No defense interposed by the director based on R.S. 12:1-832 or the
9 protection afforded by R.S. 12:1-861, for action taken in compliance with R.S.
10 12:1-862 or R.S. 12:1-863, or the protection afforded by R.S. 12:1-870, precludes
11 liability.

12 (2) The challenged conduct consisted or was the result of one of the
13 following:

14 (a) Action not in good faith.

15 (b) A decision which the director did not reasonably believe to be in the best
16 interests of the corporation, or as to which the director was not informed to an extent
17 the director reasonably believed appropriate in the circumstances.

18 (c) A lack of objectivity due to the director's familial, financial, or business
19 relationship with, or a lack of independence due to the director's domination or
20 control by, another person having a material interest in the challenged conduct,
21 which relationship or which domination or control could reasonably be expected to
22 have affected the director's judgment respecting the challenged conduct in a manner
23 adverse to the corporation, and after a reasonable expectation to such effect has been
24 established, the director shall not have established that the challenged conduct was
25 reasonably believed by the director to be in the best interests of the corporation.

26 (d) A sustained failure of the director to devote attention to ongoing
27 oversight of the business and affairs of the corporation, or a failure to devote timely
28 attention, by making, or causing to be made, appropriate inquiry, when particular

1 facts and circumstances of significant concern materialize that would alert a
2 reasonably attentive director to the need therefore.

3 (e) Receipt of a financial benefit to which the director was not entitled or any
4 other breach of the director's duties to deal fairly with the corporation and its
5 shareholders that is actionable under applicable law.

6 B.(1) The party seeking to hold the director liable for money damages, shall
7 also have the burden of establishing both of the following:

8 (a) Harm to the corporation or its shareholders has been suffered.

9 (b) The harm suffered was proximately caused by the director's challenged
10 conduct.

11 (2) The party seeking to hold the director liable for other money payment
12 under a legal remedy, such as compensation for the unauthorized use of corporate
13 assets, shall also have whatever persuasion burden may be called for to establish that
14 the payment sought is appropriate in the circumstances.

15 (3) The party seeking to hold the director liable for other money payment
16 under an equitable remedy, such as profit recovery by or disgorgement to the
17 corporation, shall also have whatever persuasion burden may be called for to
18 establish that the equitable remedy sought is appropriate in the circumstances.

19 C. Nothing contained in this Section shall be construed to do any of the
20 following:

21 (1) In any instance where fairness is at issue, such as consideration of the
22 fairness of a transaction to the corporation under R.S. 12:1-861(B)(3), alter the
23 burden of proving the fact or lack of fairness otherwise applicable.

24 (2) Alter the fact or lack of liability of a director under another provision of
25 this Chapter, such as the provisions governing the consequences of an unlawful
26 distribution under R.S.12:1-833 or a transactional interest under R.S. 12:1-861.

27 (3) Affect any rights to which the corporation or a shareholder may be
28 entitled under another statute of this state or the United States.

29 Source: MBCA §8.31.

1 Comments - 2014 Revision

2 (a) The Model Act language in Subparagraph (A)(1)(a) was modified to
3 substitute the default exculpation provision, R.S. 12:1-832, for the reference to the
4 Model Act's optional exculpation provision. Under the Model Act, exculpation is
5 an opt-in provision that may be placed in the articles of incorporation. Under this
6 Section, exculpation is provided by statute except to the extent that it is rejected or
7 limited by the articles of incorporation.

8 (b) If R.S. 12:1-832 protects a director or officer against liability for the
9 conduct that is being challenged in a lawsuit, that Section and Subparagraph
10 (A)(1)(a) of this Section preclude the imposition of liability regardless of whether
11 the plaintiff can satisfy the remainder of the requirements imposed by R.S. 12:1-831.

12 §1-832. Protection against monetary liability

13 A. Except to the extent that the articles of incorporation limit or reject the
14 protection against liability provided by this Section, no director or officer shall be
15 liable to the corporation or its shareholders for money damages for any action taken,
16 or any failure to take action, as a director or officer, except for one of the following:

17 (1) A breach of the director's or officer's duty of loyalty to the corporation
18 or the shareholders.

19 (2) An intentional infliction of harm on the corporation or the shareholders.

20 (3) A violation of R.S. 12:1-833.

21 (4) An intentional violation of criminal law.

22 B. The liability of a director or officer for conduct described in Paragraphs
23 (A)(1) through (4) of this Section may not be limited or eliminated, but the
24 corporation may purchase insurance against that liability as provided in R.S.
25 12:1-857.

26 C. For purposes of this Section, the duty of loyalty does not include any duty
27 to act with any degree of care in the exercise of the director's or officer's
28 responsibilities to the corporation or its shareholders.

29 Comments - 2014 Revision

30 (a) Paragraph 2.04(b)(4) of the Model Act authorizes the exculpation of
31 directors against liability to the corporation or its shareholders through an optional
32 provision in a corporation's articles of incorporation. Because articles that are
33 prepared with the benefit of legal advice nearly always provide exculpation "to the
34 fullest extent allowed by law," this Section reflects the normal preference for
35 exculpation by making it the default rule. To prevent unfair surprise, R.S.
36 12:1-202(A)(5) requires the articles of incorporation to state whether the corporation
37 accepts, rejects or limits the default rule under this Section.

1 (b) If the articles of incorporation contain a statement to the effect that the
2 protection against liability provided by Subsection A of this Section is rejected, the
3 liability of a director or officer is not affected by Subsection A of this Section. If the
4 articles of incorporation contain a limitation on the protection against liability
5 provided by Subsection A of this Section, the stated limitation applies even if the
6 articles of incorporation do not otherwise say that they limit the protection. If the
7 articles of incorporation contain a statement to the effect that they limit the
8 protection against liability provided by Subsection A of this Section, but fail to state
9 the nature of the limitation, the protection against liability provided by Subsection
10 A of this Section applies without limitation.

11 (c) The limitations on exculpation provided by this Section are the same as
12 those provided by Model Act Section 2.02(b)(4), with one exception. This Section
13 prohibits the exculpation of a director from liability for damages caused by the
14 director's breaching the duty of loyalty owed by the director to the corporation or its
15 shareholders. The comparable Model Act provision is narrower, prohibiting
16 exculpation only for the amount of an improper financial benefit received by a
17 director. The broader exception was adopted in Louisiana to avoid the exculpation
18 of a director who caused more harm to the corporation through disloyalty than the
19 director received in the form of a personal financial benefit. Under the broader
20 Louisiana exception, for example, a director who received a kickback of only a
21 portion of a corporate overpayment for supplies would be at risk for the entire
22 amount of the overpayment, not merely the amount of the kickback.

23 (d) This Section does not provide or permit the exculpation of a director or
24 officer from liability for disloyalty. But it does provide protection against liability
25 for carelessness. Delaware courts have suggested that some egregious forms of
26 carelessness may be tantamount to disloyalty, and so be nonexculpable under a
27 "breach of loyalty" exception like the one in this Section. See, e.g., *Stone v. Ritter*,
28 911 A.2d 362 (Del. 2006). Subsection C of this Section rejects that view. No level
29 of carelessness may be treated as a breach of the duty of loyalty for purposes of the
30 default form of exculpation provided by this Section. If shareholders wish to adopt
31 the Delaware approach, or any other limitation on the exculpation provided by this
32 Section, they may do so by adding appropriate language to the articles of
33 incorporation.

34 §1-833. Directors' liability for unlawful distributions

35 A. A director who votes for or assents to a distribution in excess of what may
36 be authorized and made pursuant to R.S. 12:1-640(A) or 1-1409(A) is personally
37 liable to the corporation for the amount of the distribution that exceeds what could
38 have been distributed without violating R.S. 12:1-640(A) or 1-1409(A) if the party
39 asserting liability establishes that when taking the action the director did not comply
40 with R.S. 12:1-830.

41 B. A director held liable under Subsection A of this Section for an unlawful
42 distribution is entitled to both of the following:

43 (1) Contribution from every other director who could be held liable under
44 Subsection A of this Section for the unlawful distribution.

1 (2) Indemnity from each shareholder, for the pro-rata portion of the amount
2 of the unlawful distribution the shareholder received.

3 C.(1) A proceeding to enforce the liability of a director under Subsection A
4 of this Section is barred unless it is commenced within two years after of one of the
5 following:

6 (a) The date on which the effect of the distribution was measured under
7 R.S.12:1-640(E) or (G).

8 (b) The date as of which the violation of R.S. 12:1-640(A) occurred as the
9 consequence of disregard of a restriction in the articles of incorporation.

10 (c) The date on which the distribution of assets to shareholders under R.S.
11 12:1-1409(A) was made.

12 (2) A proceeding to enforce contribution or indemnity under Subsection B
13 of this Section is barred unless it is commenced within one year after the liability of
14 the claimant has been finally adjudicated under Subsection A of this Section.

15 D. The time limits provided in Subsection C of this Section are preemptive.

16 Source: MBCA §8.33.

17 Comments - 2014 Revision

18 (a) Model Act Subsection (b)(2) is modified in this Section to make it
19 consistent with the rule in R.S. 12:1-622(C), also added, that makes a shareholder
20 liable without fault to return the amount of an unlawful distribution received by the
21 shareholder.

22 (b) The Model Act reference to recoupment was replaced in this Section by
23 a reference to indemnity, to retain the prior law on the subject.

24 (c) This Section adds a new Subsection D to the Model Act to make it clear
25 that the time periods provided in Subsection C of this Section are preemptive.

26 **SUBPART D. OFFICERS**

27 **§1-840. Officers**

28 A. A corporation shall have a secretary and such other officers as described
29 in its bylaws or appointed by the board of directors in a manner not inconsistent with
30 any bylaws.

1 B. The board of directors may elect individuals to fill one or more offices of
 2 the corporation. An officer may appoint one or more officers if authorized by the
 3 bylaws or the board of directors.

4 C. The secretary shall have the authority and responsibility for preparing the
 5 minutes of the directors' and shareholders' meetings and for maintaining and
 6 authenticating the records of the corporation required to be kept under R.S.
 7 12:1-1601(A) and 1-1601(E).

8 D. The same individual may simultaneously hold more than one office in a
 9 corporation.

10 Source: MBCA §8.40.

11 Comments - 2014 Version

12 (a) The Model Act does not require the appointment of an officer called the
 13 "secretary," but it does require the corporation to appoint an officer who is given a
 14 secretary's responsibilities. See Model Act Section 8.40(c). The Model Act also uses
 15 the term "secretary" as a defined term that means the person who is given a
 16 secretary's usual recordkeeping responsibilities under Section 7.40(c) (see Model Act
 17 Section 1.40(20)). It also names the secretary in several places as the appropriate
 18 recipient on the corporation's behalf of some legally-relevant notification. See, e.g.,
 19 Sections 7.03 (shareholder demand for shareholder meeting), 7.04 (delivery of
 20 shareholder written consents), 8.07 (resignation of a director), and 8.63 (notice of a
 21 director's conflicting interest).

22 (b) This Section requires a corporation to appoint an officer with the title,
 23 "secretary," and then gives to that named officer the responsibility for preparing the
 24 corporation's minutes and for maintaining and authenticating the corporation's
 25 records as provided in R.S. 12:1-840(C). The required use of the usual "secretary"
 26 terminology is designed to facilitate the efforts of shareholders and third parties, who
 27 may be unaware of a particular corporation's preferences concerning officer titles,
 28 to contact the person who has the authority provided by this Section to the
 29 corporation's secretary. The person designated as secretary may hold other offices
 30 and titles in addition to that of secretary.

31 (c) The reference to "the" bylaws in Subsection A of this Section changes to
 32 "any" bylaws, to reflect the optional nature of bylaws under this Chapter.
 33 Nevertheless, if the corporation has adopted bylaws concerning the appointment of
 34 officers, the board of directors must comply with those bylaws. Although the board
 35 of directors ordinarily has the power to adopt, amend and repeal bylaws, the
 36 shareholders of the corporation do have the power under R.S. 12:1-1020(B) to adopt
 37 a bylaw that may not be amended or repealed by the board of directors. Moreover,
 38 even if the board of directors does have the power to amend or repeal a relevant
 39 bylaw, the board must comply with the bylaw until the amendment or repeal takes
 40 effect. The board is not entitled to ignore a bylaw in lieu of amending or repealing
 41 it.

1 §1-841. Functions of officers

2 In addition to the secretary's authority under R.S. 12:1-840, each officer has
3 the authority and shall perform the functions set forth in the bylaws or, to the extent
4 consistent with any bylaws, the authority and functions prescribed by the board of
5 directors or by direction of an officer authorized by the board of directors to
6 prescribe the authority and functions of other officers.

7 Source: MBCA §8.41.

8 Comment - 2014 Revision

9 This Section modifies the Model Act Section in three respects: (1) it adds a
10 reference to the statutory authority conferred by R.S. 12:1-840 on the corporation's
11 secretary; (2) it requires the conferral of authority by the board of directors or by an
12 appropriate officer to be consistent with "any" bylaws (rather than "the" bylaws), to
13 reflect the optional nature of bylaws under this Chapter; and (3) it uses the phrase
14 "authority and functions" consistently throughout the provision to describe the
15 matters that may be addressed in the bylaws or by the board of directors or an
16 appropriate officer.

17 §1-842. Standards of conduct for officers

18 A. An officer, when performing in such capacity, has the duty to act in all
19 of the following manners:

20 (1) In good faith.

21 (2) With the care that a person in a like position would reasonably exercise
22 under similar circumstances.

23 (3) In a manner the officer reasonably believes to be in the best interests of
24 the corporation.

25 B. [Reserved.]

26 C. In discharging his or her duties, an officer who does not have knowledge
27 that makes reliance unwarranted is entitled to rely on either of the following:

28 (1) The performance of properly delegated responsibilities by one or more
29 employees of the corporation whom the officer reasonably believes to be reliable and
30 competent in performing the responsibilities delegated.

31 (2) Information, opinions, reports or statements, including financial
32 statements and other financial data, prepared or presented by one or more employees
33 of the corporation whom the officer reasonably believes to be reliable and competent

1 in the matters presented or by legal counsel, public accountants, or other persons
2 retained by the corporation as to matters involving skills or expertise the officer
3 reasonably believes are matters within the particular person's professional or expert
4 competence or as to which the particular person merits confidence.

5 D. An officer shall not be liable to the corporation or its shareholders for any
6 decision to take or not to take action, or any failure to take any action, as an officer,
7 if the duties of the office are performed in compliance with this Section. Whether an
8 officer who does not comply with this Section shall have liability will depend in such
9 instance on applicable law, including those principles of R.S. 12:1-831 that have
10 relevance.

11 Source: MBCA §8.42.

12 Comment - 2014 Revision

13 Model Act Subsection (b) states that an officer's duty includes the obligation
14 to inform the officer's superiors or other appropriate persons of certain information,
15 and of any actual or probable material violation of law or breach of duty to the
16 corporation that the officer believes has occurred or is likely to occur. This Section
17 deletes Model Act Subsection (b) as being ill-suited to many of the
18 informally-managed, closely-held corporations that are common in Louisiana
19 corporate practice. The deletion of Subsection (b) does not mean that an officer
20 never owes the duties described in Subsection (b), but rather that the extent of an
21 officer's duty to inform others of information in the officer's possession should be
22 judged based on the standards stated in Subsection A of this Section.

23 §1-843. Resignation and removal of officers

24 A. An officer may resign at any time by delivering notice to the corporation.
25 A resignation is effective when the notice is effective unless the notice specifies a
26 later effective time. If a resignation is made effective at a later time and the board or
27 the appointing officer accepts the future effective time, the board or the appointing
28 officer may fill the pending vacancy before the effective time if the board or the
29 appointing officer provides that the successor does not take office until the effective
30 time.

31 B. An officer may be removed at any time with or without cause by any of
32 the following:

33 (1) The board of directors.

1 (2) The officer who appointed such officer, unless the bylaws or the board
2 of directors provide otherwise.

3 (3) Any other officer if authorized by the bylaws or the board of directors.

4 C. In this Section, "appointing officer" means the officer, including any
5 successor to that officer, who appointed the officer resigning or being removed.

6 Source: MBCA §8.43.

7 §1-844. Contract rights of officers

8 A. The appointment of an officer does not itself create contract rights.

9 B. An officer's removal does not affect the officer's contract rights, if any,
10 with the corporation. An officer's resignation does not affect the corporation's
11 contract rights, if any, with the officer.

12 Source: MBCA §8.44.

13 SUBPART E. INDEMNIFICATION AND ADVANCE FOR EXPENSES

14 §1-850. Subpart definitions

15 In this Subpart, the following meanings shall apply:

16 (1) "Corporation" includes any domestic or foreign predecessor entity of a
17 corporation in a merger.

18 (2) "Director" or "officer" means an individual who is or was a director or
19 officer, respectively, of a corporation or who, while a director or officer of the
20 corporation, is or was serving at the corporation's request as a director, officer,
21 manager, partner, trustee, employee, or agent of another entity or employee benefit
22 plan. A director or officer is considered to be serving an employee benefit plan at
23 the corporation's request if the individual's duties to the corporation also impose
24 duties on, or otherwise involve services by, the individual to the plan or to
25 participants in or beneficiaries of the plan. "Director" or "officer" includes, unless
26 the context requires otherwise, the estate or personal representative of a director or
27 officer.

1 (3) "Liability" means the obligation to pay a judgment, settlement, penalty,
2 fine, including an excise tax assessed with respect to an employee benefit plan, or
3 reasonable expenses incurred with respect to a proceeding.

4 (4) "Official capacity" means, when used with respect to a director, the
5 office of director in a corporation. "Official capacity" means, when used with
6 respect to an officer, as contemplated in R.S. 12: 1-856, the office in a corporation
7 held by the officer. "Official capacity" does not include service for any other
8 domestic or foreign corporation or any partnership, joint venture, trust, employee
9 benefit plan, or other entity.

10 (5) "Party" means an individual who was, is, or is threatened to be made, a
11 defendant or respondent in a proceeding.

12 (6) "Proceeding" means any threatened, pending, or completed action, suit,
13 or proceeding, whether civil, criminal, administrative, arbitative, or investigative
14 and whether formal or informal.

15 Source: MBCA §8.50.

16 §1-851. Permissible indemnification

17 A. Except as otherwise provided in this Section, a corporation may
18 indemnify an individual who is a party to a proceeding because the individual is a
19 director against liability incurred in the proceeding if either condition exists:

20 (1)(a) The director conducted himself or herself in good faith and reasonably
21 believed either of the following:

22 (i) In the case of conduct in an official capacity, that his or her conduct was
23 in the best interests of the corporation.

24 (ii) In all other cases, that the director's conduct was at least not opposed to
25 the best interests of the corporation.

26 (b) In the case of any criminal proceeding, the director had no reasonable
27 cause to believe his or her conduct was unlawful.

28 (2) The director engaged in conduct for which broader indemnification has
29 been made permissible or obligatory under a provision of the articles of

1 incorporation, as authorized by R.S. 12:1-202(B)(5), for which liability has been
2 eliminated under R.S. 12:1-832.

3 B. A director's conduct with respect to an employee benefit plan for a
4 purpose the director reasonably believed to be in the interests of the participants in,
5 and the beneficiaries of, the plan is conduct that satisfies the requirement of Item
6 (A)(1)(a)(ii) of this Section.

7 C. The termination of a proceeding by judgment, order, settlement, or
8 conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself,
9 determinative that the director did not meet the relevant standard of conduct
10 described in this Section.

11 D. Unless ordered by a court under R.S. 12:1-854(A)(3), a corporation may
12 not indemnify a director in connection with either of the following:

13 (1) A proceeding by or in the right of the corporation, except for expenses
14 incurred in connection with the proceeding if it is determined that the director has
15 met the relevant standard of conduct under Subsection A of this Section.

16 (2) Any proceeding with respect to conduct for which the director was
17 adjudged liable on the basis of receiving a financial benefit to which he or she was
18 not entitled, whether or not involving action in the director's official capacity.

19 Source: MBCA §8.51.

20 Comment - 2014 Revision

21 The Model Act language in Paragraph (A)(2) of this Section was modified
22 to add a reference to the exculpation provided by R.S. 12:1-832. Under this Section,
23 a corporation may indemnify a director for any liability that arises from conduct for
24 which the director is exculpated under R.S. 12:1-832. Of course, if the director is
25 exculpated then no "liability" in the usual sense of that term should be imposed on
26 the director. But the term "liability" as defined for indemnity purposes in R.S.
27 12:1-850(3) includes litigation expenses. The exculpable conduct language is
28 included in this provision to make it clear that litigation expenses of that kind are
29 subject to permissive indemnification under this Section.

30 §1-852. Mandatory indemnification

31 A corporation shall indemnify a director who was wholly successful, on the
32 merits or otherwise, in the defense of any proceeding to which the director was a

1 party because he or she was a director of the corporation against expenses incurred
2 by the director in connection with the proceeding.

3 Source: MBCA §8.52.

4 Comment - 2014 Revision

5 This Chapter, like the Model Act, covers the indemnification of directors
6 separately from the indemnification of officers because a decision by directors
7 concerning their own indemnification poses conflicting interest problems that are not
8 present in the case of non-director officers. This Section provides for mandatory
9 indemnification only of directors simply because it is one of the director-indemnity
10 provisions. However, officers actually are covered by this Section through one of
11 the officer-indemnity provisions, R.S. 12:1-856(C), which provides that an officer
12 is entitled, among other things, to mandatory indemnification to the same extent as
13 a director.

14 §1-853. Advance for expenses

15 A. A corporation may, before final disposition of a proceeding, advance
16 funds to pay for or reimburse expenses incurred in connection with the proceeding
17 by an individual who is a party to the proceeding because that individual is a member
18 of the board of directors if the director delivers to the corporation both of the
19 following:

20 (1) A written affirmation of the director's good faith belief that the relevant
21 standard of conduct described in R.S. 12:1-851 has been met by the director or that
22 the proceeding involves conduct for which liability has been eliminated under R.S.
23 12: 1-832.

24 (2) A written undertaking of the director to repay any funds advanced if the
25 director is not entitled to mandatory indemnification under R.S. 12:1-852 and it is
26 ultimately determined under R.S. 12:1-854 or 1-855 that the director has not met the
27 relevant standard of conduct described in R.S. 12:1-851.

28 B. The undertaking required by Paragraph (A)(2) of this Section must be an
29 unlimited general obligation of the director but need not be secured and may be
30 accepted without reference to the financial ability of the director to make repayment.

31 C. Authorizations under this Section shall be made by one of the following:

32 (1) By the board of directors in either of the following manners:

1 (a) If there are two or more qualified directors, by a majority vote of all the
2 qualified directors, a majority of whom shall for such purpose constitute a quorum,
3 or by a majority of the members of a committee of two or more qualified directors
4 appointed by such a vote.

5 (b) If there are fewer than two qualified directors, by the vote necessary for
6 action by the board in accordance with R.S. 12:1-824(C), in which authorization
7 directors who are not qualified directors may participate.

8 (2) By the shareholders, but shares owned by or voted under the control of
9 a director who at the time is not a qualified director may not be voted on the
10 authorization.

11 Source: MBCA §8.53.

12 Comment - 2014 Revision

13 The Model Act language in Paragraph (A)(1) of this Section was modified
14 to substitute the reference to R.S. 12:1-832 for the Model Act's optional exculpatory
15 provision.

16 §1-854. Court-ordered indemnification and advance for expenses

17 A. A director who is a party to a proceeding because he or she is a director
18 may petition the court conducting the proceeding for indemnification or an advance
19 for expenses or, if the indemnification or advance for expenses is beyond the scope
20 of the proceeding or of the jurisdiction of the court or other forum for the proceeding,
21 may petition another court of competent jurisdiction. After ordering any notice it
22 considers necessary, the court shall hear the petition by summary proceeding and
23 shall order one of the following:

24 (1) Indemnification if the court determines that the director is entitled to
25 mandatory indemnification under R.S. 12:1-852.

26 (2) Indemnification or advance for expenses if the court determines that the
27 director is entitled to indemnification or advance for expenses pursuant to a
28 provision authorized by R.S. 12:1-858(A).

1 (3) Indemnification or advance for expenses if the court determines, in view
2 of all the relevant circumstances, that it is fair and reasonable to do either of the
3 following:

4 (a) Indemnify the director.

5 (b) Advance expenses to the director, even if he or she has not met the
6 relevant standard of conduct set forth in R.S. 12:1-851(A), failed to comply with R.S.
7 12:1-853 or was adjudged liable in a proceeding referred to in R.S. 12:1-851(D)(1)
8 or (D)(2), but if the director was adjudged so liable indemnification shall be limited
9 to expenses incurred in connection with the proceeding.

10 B. If the court determines that the director is entitled to indemnification
11 under Paragraph (A)(1) of this Section or to indemnification or advance for expenses
12 under Paragraph (A)(2) of this Section, it shall also order the corporation to pay the
13 director's expenses incurred in connection with obtaining court-ordered
14 indemnification or advance for expenses. If the court determines that the director is
15 entitled to indemnification or advance for expenses under Paragraph (A)(3) of this
16 Section, it may also order the corporation to pay the director's expenses to obtain
17 court-ordered indemnification or advance for expenses.

18 Source: MBCA §8.54.

19 Comments - 2014 Revision

20 (a) Model Act Subsection (a) permits a director to make application for
21 indemnification or an advance of expenses either to the court conducting the
22 proceeding in which the relevant expenses are incurred or to another court of
23 competent jurisdiction. This Section uses the Louisiana term "petition" in place of
24 the Model Act term "application" and specifies that the petition is to be heard by
25 summary proceeding.

26 (b) This Section also modifies Model Act Subsection (a) to allow resort to
27 another court only if the court or other forum that is conducting the proceeding in
28 which the relevant expenses are being incurred cannot itself consider the petition.

29 §1-855. Determination and authorization of indemnification

30 A. A corporation may not indemnify a director under R.S. 12:1-851 unless
31 authorized for a specific proceeding after a determination has been made that
32 indemnification is permissible because the director has met the relevant standard of
33 conduct set forth in R.S. 12:1-851.

1 B. The determination shall be made by one of the following:

2 (1) If there are two or more qualified directors, by the board of directors by
3 a majority vote of all the qualified directors, a majority of whom shall for such
4 purpose constitute a quorum, or by a majority of the members of a committee of two
5 or more qualified directors appointed by such a vote.

6 (2) By special legal counsel selected using either of the following means:

7 (a) Selected in the manner prescribed in Paragraph (B)(1) of this Section.

8 (b) If there are fewer than two qualified directors, selected by the board of
9 directors, in which selection directors who are not qualified directors may
10 participate.

11 (3) By the shareholders, but shares owned by or voted under the control of
12 a director who at the time is not a qualified director may not be voted on the
13 determination.

14 C. Authorization of indemnification shall be made in the same manner as the
15 determination that indemnification is permissible except that if there are fewer than
16 two qualified directors, or if the determination is made by special legal counsel,
17 authorization of indemnification shall be made by those entitled to select special
18 legal counsel under Subparagraph (B)(2)(b) of this Section.

19 Source: MBCA §8.55.

20 §1-856. Indemnification of officers

21 A. A corporation may indemnify and advance expenses under this Subpart
22 to an officer of the corporation who is a party to a proceeding because he or she is
23 an officer of the corporation to the same extent as a director and, if he or she is an
24 officer but not a director, to such further extent as may be provided by the articles
25 of incorporation, the bylaws, a resolution of the board of directors, or contract except
26 for either of the following:

27 (1) Liability in connection with a proceeding by or in the right of the
28 corporation other than for expenses incurred in connection with the proceeding.

29 (2) Liability arising out of conduct that constitutes any of the following:

1 (a) A breach of the officer's duty of loyalty to the corporation or its
2 shareholders.

3 (b) An intentional infliction of harm on the corporation or the shareholders.

4 (c) An intentional violation of criminal law.

5 B. [Reserved.]

6 C. An officer of a corporation is entitled to mandatory indemnification under
7 R.S. 12:1-852, and may apply to a court under R.S. 12:1-854 for indemnification or
8 an advance for expenses, in each case to the same extent to which a director may be
9 entitled to indemnification or advance for expenses under those provisions.

10 Source: MBCA §8.56.

11 Comments - 2014 Revision

12 (a) Model Act Item (a)(2)(B)(I) was changed to make it consistent with the
13 change made to the source language for the exculpation of directors from liability
14 under R.S. 12:1-832. This Section does not permit either the exculpation from
15 liability or the indemnification of an officer or director for conduct that violates the
16 officer or director's duty of loyalty to the corporation.

17 (b) Model Act Subsection (b) was omitted from this Section. The omitted
18 Subsection would have permitted officers who were also directors to be indemnified
19 under the more liberal rules applicable to officers if the conduct that was the subject
20 of the litigation had been carried out in the indemnitee's capacity as an officer rather
21 than as a director. But, as the comments to the Model Act indicate, the purpose of
22 the stricter rules in the indemnification of directors is to minimize the effects of the
23 conflicts of interests faced by directors in voting for their own or a fellow board
24 member's indemnification. Because those conflicts of interest arise from the
25 indemnitee's status as a director, and not from the nature of the conduct that is being
26 challenged in the litigation, this Section rejects the Model Act's approval of more
27 liberal indemnity rules in the case of officer-capacity conduct by directors.

28 (c) This Section eliminates a phrase in Model Act Subsection (c) which
29 could have been interpreted to limit the effects of the Subsection to an officer "who
30 [was] not a director." As modified, Subsection B of this Section extends the
31 described indemnity and court-ordered payment rights to officers without regard to
32 whether they are also directors.

33 §1-857. Insurance

34 A corporation may purchase and maintain insurance on behalf of an
35 individual who is a director or officer of the corporation, or who, while a director or
36 officer of the corporation, serves at the corporation's request as a director, officer,
37 partner, trustee, employee, or agent of another domestic or foreign corporation,
38 partnership, joint venture, trust, employee benefit plan, or other entity, against

1 liability asserted against or incurred by the individual in that capacity or arising from
2 his or her status as a director or officer, whether or not the individual could be
3 protected against the same liability under R.S. 12:1-832 and whether or not the
4 corporation would have power to indemnify or advance expenses to the individual
5 against the same liability under this Subpart.

6 Source: MBCA §8.57.

7 Comments - 2014 Revision

8 (a) A reference to R.S. 12:1-832 was added to the Model Act language to
9 permit the corporation to purchase insurance against liability even if that liability
10 could not be the subject of exculpation under R.S. 12:1-832. The rationale for
11 allowing a corporation to purchase insurance to cover liability that it could not
12 exculpate is the same as that for insuring against a liability that could not
13 indemnified. The insurer will provide an outside source of funds to cover the
14 liability, and will have the incentive to exclude from coverage the types of
15 non-accidental risks of loss that pose serious risks of moral hazard.

16 (b) Under former R.S. 12:83(F), a corporation could "self insure" liability
17 that could not be indemnified. This Section has repealed that rule. Corporations may
18 still purchase insurance from true insurance companies, licensed and regulated by
19 the appropriate jurisdictions, even if they are affiliated companies. And
20 self-insurance may still be used to fund a corporation's indemnity and
21 advance-of-expense payments. But self-insurance, not purchased from a regulated
22 insurance company, may not be used to avoid the limitations imposed by this Subpart
23 on indemnification and exculpation.

24 §1-858. Variation by corporate action; application of Subpart

25 A. A corporation may, by a provision in its articles of incorporation or
26 bylaws or in a resolution adopted or a contract approved by its board of directors or
27 shareholders, obligate itself in advance of the act or omission giving rise to a
28 proceeding to provide indemnification in accordance with R.S. 12:1-851 or advance
29 funds to pay for or reimburse expenses in accordance with R.S. 12:1-853. Any such
30 obligatory provision shall be deemed to satisfy the requirements for authorization
31 referred to in R.S. 12:1-853(C) and 1-855(C). Any such provision that obligates the
32 corporation to provide indemnification to the fullest extent permitted by law shall be
33 deemed to obligate the corporation to advance funds to pay for or reimburse
34 expenses in accordance with R.S. 12:1-853 to the fullest extent permitted by law,
35 unless the provision specifically provides otherwise.

1 B. A right of indemnification or to advances for expenses created by this
2 Subpart or under Subsection A of this Section and in effect at the time of an act or
3 omission shall not be eliminated or impaired with respect to such act or omission by
4 an amendment of the articles of incorporation or bylaws or a resolution of the
5 directors or shareholders, adopted after the occurrence of such act or omission,
6 unless, in the case of a right created under Subsection A of this Section, the provision
7 creating such right and in effect at the time of such act or omission explicitly
8 authorizes such elimination or impairment after such act or omission has occurred.

9 C. Any provision pursuant to Subsection A of this Section shall not obligate
10 the corporation to indemnify or advance expenses to a director of a predecessor of
11 the corporation, pertaining to conduct with respect to the predecessor, unless
12 otherwise specifically provided. Any provision for indemnification or advance for
13 expenses in the articles of incorporation, bylaws, or a resolution of the board of
14 directors or shareholders of a predecessor of the corporation in a merger or in a
15 contract to which the predecessor is a party, existing at the time the merger takes
16 effect, shall be governed by R.S. 12:1-1107(A)(4).

17 D. A corporation may, by a provision in its articles of incorporation, limit
18 any of the rights to indemnification or advance for expenses created by or pursuant
19 to this Subpart.

20 E. This Subpart does not limit a corporation's power to pay or reimburse
21 expenses incurred by a director or an officer in connection with appearing as a
22 witness in a proceeding at a time when he or she is not a party.

23 F. This Subpart does not limit a corporation's power to indemnify, advance
24 expenses to, or provide or maintain insurance on behalf of an employee or agent.

25 Source: MBCA §8.58.

26 Comment - 2014 Revision

27 Under R.S. 12:1-851(A)(1), a corporation may indemnify any liability that
28 may be made the subject of exculpation under R.S. 12:1-832. As a result, under this
29 Section, a corporation that obligates itself in advance to indemnify a director or
30 officer "to the fullest extent permitted by law" also obligates itself both to indemnify
31 and to advance expenses for any liability that is exculpated under R.S. 12:1-832.
32 However, unlike R.S. 12:1-832 itself, which provides exculpation by statute except

1 as limited in the articles of incorporation, this Section does not by itself obligate a
2 corporation to indemnify or to advance expenses for conduct that is covered by R.S.
3 12:1-832. A corporation is permitted in such cases to provide indemnification under
4 R.S. 12:1-851 and to advance expenses under R.S. 12:1-853. But in the absence of
5 an advance obligation under this Section, a corporation is required to make
6 indemnity or expense payments in connection with litigation over exculpated
7 liability only if the prospective indemnitee actually succeeds in the defense of the
8 suit, thus triggering his right to indemnity under R.S. 12:1-852, or if he convinces a
9 court to order indemnification or expense payments under the "fair and equitable"
10 standards of R.S. 12:1-854.

11 §1-859. Exclusivity of Subpart

12 A corporation may provide indemnification or advance expenses to a director
13 or an officer only as permitted by this Subpart.

14 Source: MBCA § 8.59.

15 SUBPART F. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS

16 §1-860. Subpart definitions

17 In this Subpart, the following meanings shall apply:

18 (1) "Director's conflicting interest transaction" means any of the following:

19 (a) A transaction effected or proposed to be effected by the corporation, or
20 by an entity controlled by the corporation, to which, at the relevant time, the director
21 is a party.

22 (b) A transaction effected or proposed to be effected by the corporation, or
23 by an entity controlled by the corporation, respecting which, at the relevant time, the
24 director had knowledge and a material financial interest known to the director.

25 (c) A transaction effected or proposed to be effected by the corporation, or
26 by an entity controlled by the corporation, respecting which, at the relevant time, the
27 director knew that a related person was a party or had a material financial interest.

28 (2) "Control", including the term "controlled by",) means either of the
29 following:

30 (a) Having the power, directly or indirectly, to elect or remove a majority of
31 the members of the board of directors or other governing body of an entity, whether
32 through the ownership of voting shares or interests, by contract, or otherwise.

33 (b) Being subject to a majority of the risk of loss from the entity's activities
34 or entitled to receive a majority of the entity's residual returns.

1 (3) "Relevant time" means the time at which directors' action respecting the
2 transaction is taken in compliance with R.S. 12:1-862, or if the transaction is not
3 brought before the board of directors of the corporation or its committee for action
4 under R.S. 12:1-862, at the time the corporation, or an entity controlled by the
5 corporation, becomes legally obligated to consummate the transaction.

6 (4) "Material financial interest" means a financial interest in a transaction
7 that would reasonably be expected to impair the objectivity of the director's
8 judgment when participating in action on the authorization of the transaction.

9 (5) "Related person" means, at the relevant time, one of the following:

10 (a) The director's spouse.

11 (b) A child, stepchild, grandchild, parent, step parent, grandparent, sibling,
12 step sibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of
13 the director or of the director's spouse.

14 (c) An individual living in the same home as the director.

15 (d) An entity, other than the corporation or an entity controlled by the
16 corporation, controlled by the director or any person specified above in this
17 Paragraph;

18 (e) A domestic or foreign business or nonprofit corporation, other than the
19 corporation or an entity controlled by the corporation, of which the director is a
20 director, a domestic or foreign unincorporated entity of which the director is a
21 general partner or a member of the governing body, or a domestic or foreign
22 individual, trust, or estate for whom or of which the director is a trustee, guardian,
23 personal representative, or like fiduciary.

24 (f) A person that is, or an entity that is controlled by, an employer of the
25 director.

26 (g) A person with whom the director has a material relationship.

27 (6) "Fair to the corporation" means, for purposes of R.S. 12:1-861(B)(3), that
28 the transaction as a whole was beneficial to the corporation, taking into appropriate
29 account whether it was fair in terms of the director's dealings with the corporation,

1 and comparable to what might have been obtainable in an arm's length transaction,
2 given the consideration paid or received by the corporation.

3 (7) "Required disclosure" means disclosure of the existence and nature of
4 the director's conflicting interest, and all facts known to the director respecting the
5 subject matter of the transaction that a director free of such conflicting interest would
6 reasonably believe to be material in deciding whether to proceed with the
7 transaction.

8 Source: MBCA §8.60.

9 Comments - 2014 Revision

10 (a) This Section modifies the Model Act definition of "related person" in
11 Paragraph 8.60(5) to add as a new Subparagraph (5)(g) of this Section the phrase,
12 "person with whom the director has a material relationship." The purpose of the
13 added language is to broaden the description of the persons whose financial interests
14 in a transaction would cause the transaction to be treated as a conflicting interest
15 transaction for a director.

16 (b) The Model Act definition of "related persons" does capture the more
17 common kinds of relationships, such as those among spouses and immediate family
18 members, that would cause a reasonable person to perceive a serious conflict of
19 interest on the part of a director. But left out of the list are other types of
20 relationships, such one between a director and someone with whom the director was
21 having an adulterous affair, that would cause a reasonable person to question the
22 objectivity of the director's judgment in approving a transaction. Those types of
23 relationships would be covered by the reference in Subparagraph (5)(g) of this
24 Section to a "material relationship," which is defined in R.S. 12:1-143 to mean any
25 form of relationship "that would reasonably be expected to impair the objectivity of
26 the director's judgment when participating in the action to be taken." R.S.
27 12:1-143(B)(1).

28 (c) This Section also adds the phrase "at the relevant time" to the
29 introductory clause in R.S. 12:1-860(5). The relationships listed in R.S. 12:1-860(5)
30 are to be determined as of the "relevant time" as defined in R.S. 12:1-860(3). A
31 transaction would not fit the definition of a director's conflicting interest transaction
32 if the listed relationship arose only after the relevant time, or had been terminated
33 before the relevant time.

34 §1-861. Judicial action

35 A. A transaction effected or proposed to be effected by the corporation, or
36 by an entity controlled by the corporation, may not be the subject of any form of
37 relief, or give rise to an award of damages or other sanctions against a director of the
38 corporation, in a proceeding by a shareholder or by or in the right of the corporation,
39 on the ground that the director has an interest respecting the transaction, if it is not
40 a director's conflicting interest transaction.

1 B. A director's conflicting interest transaction may not be the subject of
2 equitable relief, or give rise to an award of damages or other sanctions against a
3 director of the corporation, in a proceeding by a shareholder or by or in the right of
4 the corporation, on the ground that the director has an interest respecting the
5 transaction, if any of the following conditions are satisfied:

6 (1) Directors' action respecting the transaction was taken in compliance with
7 R.S. 12:1-862 at any time.

8 (2) Shareholders' action respecting the transaction was taken in compliance
9 with R.S. 12: 1-863 at any time.

10 (3) The transaction, judged according to the circumstances at the relevant
11 time, is established to have been fair to the corporation.

12 Source: MBCA §8.61.

13 Comments - 2014 Revision

14 (a) As the Model Act Official Comments explain, the current Model Act
15 protects a transaction between a corporation and a director from any form of judicial
16 remedy based on the director's conflicting interest in the transaction unless the
17 transaction first fits the statutory definition of a "director's conflicting interest
18 transaction" and then, if it does so, also fails to satisfy any one of the three statutory
19 grounds for upholding the transaction against any challenge that is based on the
20 conflicting interest. The current approach differs sharply from that taken in earlier
21 versions of the Model Act (those before 1989) and under prior Louisiana law. Under
22 the earlier approach, compliance with the statutory rules concerning what were then
23 called self-dealing transactions did not wholly protect a transaction from a challenge
24 based on the conflicting interest, it merely prevented application of the early
25 corporation law rule that a self-dealing transaction was automatically voidable by the
26 corporation without regard to the fairness of the transaction. See former R.S. 12:84.

27 (b) This Section adopts the Model Act approach. This Section differs from
28 the Model Act in one respect, however. It adds a residual category of relationship,
29 called a "material relationship," to the definition of "related person" in R.S.
30 12:1-860(5). The effect of that addition is to broaden the types of relationships
31 between a director and another person that could cause the other person's financial
32 interest in the transaction to be treated as a conflicting interest in the transaction on
33 the part of the director.

34 §1-862. Directors' action

35 A. Directors' action respecting a director's conflicting interest transaction is
36 effective for purposes of R.S. 12:1-861(B)(l) if the transaction has been authorized
37 by the affirmative vote of a majority, but no fewer than two, of the qualified directors
38 who voted on the transaction, after required disclosure by the conflicted director of

1 information not already known by such qualified directors, or after modified
2 disclosure in compliance with Subsection B of this Section, provided that both of the
3 following criteria are satisfied:

4 (1) The qualified directors have deliberated and voted outside the presence
5 of and without the participation by any other director.

6 (2) Where the action has been taken by a committee, all members of the
7 committee were qualified directors, and either the committee was composed of all
8 the qualified directors on the board of directors or the members of the committee
9 were appointed by the affirmative vote of a majority of the qualified directors on the
10 board.

11 B. Notwithstanding Subsection A of this Section, when a transaction is a
12 director's conflicting interest transaction only because a related person described in
13 R.S. 12: 1-860(5)(e), (f), or (g) is a party to or has a material financial interest in the
14 transaction, the conflicted director is not obligated to make required disclosure to the
15 extent that the director reasonably believes that doing so would violate a duty
16 imposed under law, a legally enforceable obligation of confidentiality, or a
17 professional ethics rule, provided that the conflicted director discloses to the
18 qualified directors voting on the transaction all of the following:

19 (1) All information required to be disclosed that is not so violative.

20 (2) The existence and nature of the director's conflicting interest.

21 (3) The nature of the conflicted director's duty not to disclose the
22 confidential information.

23 C. A majority, but no fewer than two, of all the qualified directors on the
24 board of directors, or on the committee, constitutes a quorum for purposes of action
25 that complies with this Section.

26 D. Where directors' action under this Section does not satisfy a quorum or
27 voting requirement applicable to the authorization of the transaction by reason of the
28 articles of incorporation, the bylaws, or a provision of law, independent action to
29 satisfy those authorization requirements must be taken by the board of directors or

1 a committee, in which action directors who are not qualified directors may
2 participate.

3 Source: MBCA §8.62.

4 §1-863. Shareholders' action

5 A. Shareholders' action respecting a director's conflicting interest transaction
6 is effective for purposes of R.S. 12:1-861(B)(2) if a majority of the votes cast by the
7 holders of all qualified shares are in favor of the transaction after notice to
8 shareholders describing the action to be taken respecting the transaction, provision
9 to the corporation of the information referred to in Subsection B of this Section, and
10 communication to the shareholders entitled to vote on the transaction of the
11 information that is the subject of required disclosure, to the extent the information
12 is not known by them.

13 B. A director who has a conflicting interest respecting the transaction shall,
14 before the shareholders' vote, inform the secretary or other officer or agent of the
15 corporation authorized to tabulate votes, in writing, of the number of shares that the
16 director knows are not qualified shares under Subsection C of this Section, and the
17 identity of the holders of those shares.

18 C.(1) For purposes of this Section, "holder" means and "held by" refers to
19 shares held by a record shareholder, a beneficial shareholder, and an unrestricted
20 voting trust beneficial shareholder.

21 (2) For the purposes of this Section, "qualified shares" means all shares
22 entitled to be voted with respect to the transaction except for shares that the secretary
23 or other officer or agent of the corporation authorized to tabulate votes either knows
24 or, under Subsection B of this Section, is notified are held by a director who has a
25 conflicting interest respecting the transaction or a related person of the director,
26 excluding a person described in R.S. 12:1-860(5)(f).

27 D. A majority of the votes entitled to be cast by the holders of all qualified
28 shares constitutes a quorum for purposes of compliance with this Section. Subject
29 to the provisions of Subsection E of this Section, shareholders' action that otherwise

1 complies with this Section is not affected by the presence of holders, or by the
2 voting, of shares that are not qualified shares.

3 E. If a shareholders' vote does not comply with Subsection A of this Section
4 solely because of a director's failure to comply with Subsection B of this Section, and
5 if the director establishes that the failure was not intended to influence and did not
6 in fact determine the outcome of the vote, the court may take such action respecting
7 the transaction and the director, and may give such effect, if any, to the shareholders'
8 vote, as the court considers appropriate in the circumstances.

9 F. Where shareholders' action under this Section does not satisfy a quorum
10 or voting requirement applicable to the authorization of the transaction by reason of
11 the articles of incorporation, the bylaws or a provision of law, independent action to
12 satisfy those authorization requirements must be taken by the shareholders, in which
13 action shares that are not qualified shares may participate.

14 Source: MBCA §8.63.

15 SUBPART G. BUSINESS OPPORTUNITIES

16 §1-870. Business opportunities

17 A. A director's taking advantage, directly or indirectly, of a business
18 opportunity may not be the subject of any form of relief, or give rise to an award of
19 damages or other sanctions against the director, in a proceeding by or in the right of
20 the corporation on the ground that such opportunity should have first been offered
21 to the corporation, if before becoming legally obligated respecting the opportunity
22 the director brings it to the attention of the corporation, and either of the following
23 occurs:

24 (1) Action by qualified directors disclaiming the corporation's interest in the
25 opportunity is taken in compliance with the procedures set forth in R.S. 12:1-862, as
26 if the decision being made concerned a director's conflicting interest transaction.

27 (2) Shareholders' action disclaiming the corporation's interest in the
28 opportunity is taken in compliance with the procedures set forth in R.S. 12:1-863, as
29 if the decision being made concerned a director's conflicting interest transaction;

1 except that, rather than making "required disclosure" as defined in R.S. 12: 1-860,
2 in each case the director shall have made prior disclosure to those acting on behalf
3 of the corporation of all material facts concerning the business opportunity that are
4 then known to the director.

5 B. In any proceeding seeking equitable relief or other remedies based upon
6 an alleged improper taking advantage of a business opportunity by a director, the fact
7 that the director did not employ the procedure described in Subsection A of this
8 Section before taking advantage of the opportunity shall not create an inference that
9 the opportunity should have been first presented to the corporation or alter the
10 burden of proof otherwise applicable to establish that the director breached a duty
11 to the corporation in the circumstances.

12 Source: MBCA §8.70.

13 PART 9. DOMESTICATION AND CONVERSION

14 SUBPART A. PRELIMINARY PROVISIONS

15 §1-901. Excluded transactions

16 A. This Part may not be used to effect a transaction that causes an eligible
17 entity or domestic or foreign corporation to hold any right, privilege, license, or
18 franchise under the laws of this state that it is ineligible to hold.

19 B. Property received through a conditional donation, grant, or devise, or held
20 in trust or for charitable purposes pursuant to the laws of this state by a party to a
21 transaction under this Part shall not be diverted by that transaction from the objects
22 for which it was donated, granted, or devised, except to the extent authorized by a
23 court judgment based upon principles of cy pres or approximation.

24 C. A person who is a member, interest holder, or an affiliate of an eligible
25 entity with a charitable purpose may not receive a direct or indirect financial benefit
26 in connection with a transaction under this Part to which the eligible entity is a party

1 unless the person is itself an eligible entity with a charitable purpose. This
 2 Subsection does not apply to the receipt of reasonable compensation for services
 3 rendered.

4 Source: MBCA §9.01.

5 Comments - 2014 Revision

6 (a) Louisiana law does not permit the use of an ordinary business corporation
 7 for the operation of an insurance company, bank or other financial institution.
 8 Separate statutes govern the creation and operation of those forms of corporation.
 9 See Title 6 on Banks and Banking and Title 22 on Insurance. This Section does not
 10 purport to authorize domestications or conversions involving those special forms of
 11 corporation, so the optional provisions of the Model Act concerning those forms of
 12 corporation are not needed in this Section. Instead, this Section states a rule for
 13 conversions and domestications similar to the rule in R.S. 12:1-1107 concerning
 14 mergers: that the transactions authorized by this Part cannot cause a domestic or
 15 foreign corporation or eligible entity to hold any right or license under the laws of
 16 this state that the corporation or entity is ineligible to hold.

17 (b) This Section adds a new Subsection B, based on optional Model Act
 18 Section 9.02 (b), to impose the same limitations on transactions available under this
 19 Part as apply to mergers under R.S. 12:1-1102(F).

20 §1-902. Required approvals

21 [Reserved.]

22 Comment - 2014 Revision

23 Subsection (a) of this optional Model Act provision was deleted as
 24 unnecessary for the reasons explained in Comment (a) to R.S. 12:1-901. Subsection
 25 B of this Section was moved to R.S. 12:1-901(B), making a separate R.S. 12:1-902
 26 unnecessary.

27 SUBPART B. DOMESTICATION

28 §1-920. Domestication

29 A. A foreign business corporation may become a domestic business
 30 corporation only if the domestication is permitted by the organic law of the foreign
 31 corporation.

32 B. A domestic business corporation may become a foreign business
 33 corporation if the domestication is permitted by the laws of the foreign jurisdiction.
 34 Regardless of whether the laws of the foreign jurisdiction require the adoption of a
 35 plan of domestication, the domestication shall be approved by the adoption by the
 36 corporation of a plan of domestication in the manner provided in this Subpart.

37 C. The plan of domestication must include all of the following:

1 (1) A statement of the jurisdiction in which the corporation is to be
2 domesticated.

3 (2) The terms and conditions of the domestication.

4 (3) The manner and basis of reclassifying the shares of the corporation
5 following its domestication into shares or other securities, obligations, rights to
6 acquire shares or other securities, or into cash, other property, or any combination
7 of the foregoing.

8 (4) Any desired amendments to the articles of incorporation of the
9 corporation following its domestication.

10 D. The plan of domestication may also include a provision that the plan may
11 be amended prior to filing the document required by the laws of this state or the other
12 jurisdiction to consummate the domestication, except that subsequent to approval of
13 the plan by the shareholders the plan may not be amended to change any of the
14 following:

15 (1) The amount or kind of shares or other securities, obligations, rights to
16 acquire shares or other securities, or the cash or other property to be received by the
17 shareholders under the plan.

18 (2) The articles of incorporation as they will be in effect immediately
19 following the domestication, except for changes permitted by R.S. 12:1-1005 or by
20 comparable provisions of the laws of the other jurisdiction.

21 (3) Any of the other terms or conditions of the plan if the change would
22 adversely affect any of the shareholders in any material respect.

23 E. Terms of a plan of domestication may be made dependent upon facts
24 objectively ascertainable outside the plan in accordance with R.S. 12:1-120(K).

25 F. If any debt security, note, or similar evidence of indebtedness for money
26 borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred,
27 or signed by a domestic business corporation before January 1, 2015, contains a
28 provision applying to a merger of the corporation and the document does not refer
29 to a domestication of the corporation, the provision shall be deemed to apply to a

1 domestication of the corporation until such time as the provision is amended
2 subsequent to that date.

3 Source: MBCA §9.20.

4 §1-921. Action on a plan of domestication

5 In the case of a domestication of a domestic business corporation in a foreign
6 jurisdiction, all of the following shall apply:

7 (1) The plan of domestication must be adopted by the board of directors.

8 (2) After adopting the plan of domestication, the board of directors must
9 submit the plan to the shareholders for their approval. The board of directors must
10 also transmit to the shareholders a recommendation that the shareholders approve the
11 plan, unless the board of directors makes a determination that because of conflicts
12 of interest or other special circumstances it should not make such a recommendation
13 or R.S. 12:1-826 applies. If either the board of director makes such a determination
14 or R.S. 12:1-826 applies, the board of directors must transmit to the shareholders the
15 basis for so proceeding.

16 (3) The board of directors may condition its submission of the plan of
17 domestication to the shareholders on any basis.

18 (4) If the approval of the shareholders is to be given at a meeting, the
19 corporation must notify each shareholder, whether or not entitled to vote, of the
20 meeting of shareholders at which the plan of domestication is to be submitted for
21 approval. The notice must state that the purpose, or one of the purposes, of the
22 meeting is to consider the plan and must contain or be accompanied by a copy or
23 summary of the plan. The notice shall include or be accompanied by a copy of the
24 articles of incorporation as they will be in effect immediately after the domestication.

25 (5) Unless the articles of incorporation, or the board of directors acting
26 pursuant to Paragraph (3) of this Section, requires a greater vote, approval of the plan
27 of domestication requires the approval of at least a majority of the votes entitled to
28 be cast on the plan, and, if any class or series of shares is entitled to vote as a
29 separate group on the plan, the approval of each such separate voting group by at

1 least a majority of the votes entitled to be cast on the domestication by that voting
2 group.

3 (6) Subject to Paragraph (7) of this Section, separate voting by voting groups
4 is required by each class or series of shares that are any of the following:

5 (a) To be reclassified under the plan of domestication into other securities,
6 obligations, rights to acquire shares or other securities, or into cash, other property,
7 or any combination of the foregoing.

8 (b) Entitled to vote as a separate group on a provision of the plan that, if
9 contained in a proposed amendment to articles of incorporation, would require action
10 by separate voting groups under R.S. 12: 1-1004.

11 (c) Entitled under the articles of incorporation to vote as a voting group to
12 approve an amendment of the articles.

13 (7) The articles of incorporation may expressly limit or eliminate the
14 separate voting rights provided for in Subparagraph (6)(a) of this Section.

15 (8) If any provision of the articles of incorporation, bylaws or an agreement
16 to which any of the directors or shareholders are parties, adopted or entered into
17 before January 1, 2015, applies to a merger of the corporation and that document
18 does not refer to a domestication of the corporation, the provision shall be deemed
19 to apply to a domestication of the corporation until such time as the provision is
20 amended subsequent to that date.

21 Source: MBCA §9.21.

22 Comment - 2014 Revision

23 This Section changes Model Act paragraph (5) to require that a plan of
24 domestication be approved by a majority of the votes entitled to be cast on the plan
25 and, if applicable, a majority of the votes of each class or series of shares entitled to
26 vote as a separate group on the plan. The Model Act would have permitted a plan
27 to be approved by each voting group by a majority of votes cast at a meeting at
28 which a majority quorum existed.

29 §1-922. Articles of domestication

30 A. After the domestication of a foreign business corporation has been
31 authorized as required by the laws of the foreign jurisdiction, articles of

1 domestication shall be signed by any officer or other duly authorized representative.

2 The articles shall set forth all of the following:

3 (1) The name of the corporation immediately before the filing of the articles
4 of domestication and, if that name is unavailable for use in this state or the
5 corporation desires to change its name in connection with the domestication, a name
6 that satisfies the requirements of R.S. 12:1-401.

7 (2) The jurisdiction of incorporation of the corporation immediately before
8 the filing of the articles of domestication and the date the corporation was
9 incorporated in that jurisdiction.

10 (3) A statement that the domestication of the corporation in this state was
11 duly authorized as required by the laws of the jurisdiction in which the corporation
12 was incorporated immediately before its domestication in this state.

13 B. The articles of domestication shall either contain all of the provisions that
14 R.S. 12:1-202(A) requires to be set forth in articles of incorporation and any other
15 desired provisions that R.S. 12:1-202(B) permits to be included in articles of
16 incorporation, or shall have attached articles of incorporation. In either case,
17 provisions that would not be required to be included in restated articles of
18 incorporation may be omitted.

19 C. The articles of domestication shall be delivered to the secretary of state
20 for filing, and shall take effect at the effective time provided in R.S. 12:1-123.

21 D. If the foreign corporation is authorized to transact business in this state
22 under Chapter 3 of Title 12, its certificate of authority shall be cancelled
23 automatically on the effective date of its domestication.

24 E. Within thirty days after the date that articles of domestication take effect,
25 a duplicate original or certified copy of the articles shall be filed in the conveyance
26 records of each parish in this state in which the corporation owns immovable
27 property.

28 Source: MBCA §9.22.

1 Comment - 2014 Revision

2 This Act adds a new Subsection E, which requires the filing of a multiple
3 original or certified copy of the articles of domestication in any parish in which the
4 domesticated corporation owns immovable property.

5 §1-923. Surrender of charter upon domestication

6 A. Whenever a domestic business corporation has adopted and approved, in
7 the manner required by this Subpart, a plan of domestication providing for the
8 corporation to be domesticated in a foreign jurisdiction, articles of charter surrender
9 shall be signed on behalf of the corporation by any officer or other duly authorized
10 representative. The articles of charter surrender shall set forth all of the following:

11 (1) The name of the corporation.

12 (2) A statement that the articles of charter surrender are being filed in
13 connection with the domestication of the corporation in a foreign jurisdiction.

14 (3) A statement that the domestication was duly approved by the
15 shareholders and, if voting by any separate voting group was required, by each such
16 separate voting group, in the manner required by this Subpart and the articles of
17 incorporation.

18 (4) The corporation's new jurisdiction of incorporation.

19 B. The articles of charter surrender shall be delivered by the corporation to
20 the secretary of state for filing. The articles of charter surrender shall take effect on
21 the effective time provided in R.S. 12:1-123.

22 Source: MBCA §9.23.

23 §1-924. Effect of domestication

24 A. When a domestication becomes effective, all of the following shall apply:

25 (1) The title to all real and personal property, both tangible and intangible,
26 of the corporation remains in the corporation without any transfer, assignment,
27 reversion, or impairment.

28 (2) The liabilities of the corporation remain the liabilities of the corporation.

29 (3) An action or proceeding pending against the corporation continues
30 against the corporation as if the domestication had not occurred.

1 (4) The articles of domestication, or the articles of incorporation attached to
2 the articles of domestication, constitute the articles of incorporation of a foreign
3 corporation domesticating in this state,

4 (5) The shares of the corporation are reclassified into shares, other securities,
5 obligations, rights to acquire shares or other securities, or into cash or other property
6 in accordance with the terms of the domestication, and the shareholders are entitled
7 only to the rights provided by those terms and to any appraisal rights they may have
8 under the organic law of the domesticating corporation,

9 (6) The corporation is deemed to be all of the following:

10 (a) Incorporated under and subject to the organic law of the domesticated
11 corporation for all purposes.

12 (b) The same corporation without interruption as the domesticating
13 corporation.

14 (c) Incorporated on the date the domesticating corporation was originally
15 incorporated.

16 B. When a domestication of a domestic business corporation in a foreign
17 jurisdiction becomes effective, the foreign business corporation remains both of the
18 following:

19 (1) Obligated under the laws of this state to pay promptly the amount, if any,
20 to which shareholders who exercise appraisal rights in connection with the
21 domestication are entitled under Part 13 of this Chapter.

22 (2) Subject to the personal jurisdiction of the courts of this state in
23 accordance with R.S. 13:3201, and to service of process in accordance with law.

24 C. The owner liability of a shareholder in a foreign corporation that is
25 domesticated in this state shall be as follows:

26 (1) The domestication does not discharge any owner liability under the laws
27 of the foreign jurisdiction to the extent any such owner liability arose before the
28 effective time of the articles of domestication.

1 domestication has become effective, a statement that the domestication has been
2 abandoned in accordance with this Section, signed by an officer or other duly
3 authorized representative, shall be delivered to the secretary of state for filing prior
4 to the effective date of the domestication. The statement shall take effect upon filing
5 and the domestication shall be deemed abandoned and shall not become effective.

6 C. If the domestication of a foreign business corporation in this state is
7 abandoned in accordance with the laws of the foreign jurisdiction after articles of
8 domestication have been filed with the secretary of state, a statement that the
9 domestication has been abandoned, signed by an officer or other duly authorized
10 representative, shall be delivered to the secretary of state for filing. The statement
11 shall take effect upon filing and the domestication shall be deemed abandoned and
12 shall not become effective.

13 Source: MBCA §9.25.

14 SUBPART C. NONPROFIT CONVERSION

15 §1-930. Nonprofit conversion

16 A. A domestic business corporation may become a domestic nonprofit
17 corporation pursuant to a plan of nonprofit conversion.

18 B. A domestic business corporation may become a foreign nonprofit
19 corporation if the nonprofit conversion is permitted by the laws of the foreign
20 jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the
21 adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be
22 approved by the adoption by the domestic business corporation of a plan of nonprofit
23 conversion in the manner provided in this Subpart.

24 C. The plan of nonprofit conversion must include all of the following:

25 (1) The terms and conditions of the conversion.

26 (2) The manner and basis of reclassifying the shares of the corporation
27 following its conversion into memberships, if any, or securities, obligations, rights
28 to acquire memberships or securities, or into cash, other property, or any
29 combination of the foregoing.

1 (3) Any desired amendments to the articles of incorporation of the
2 corporation following its conversion.

3 (4) If the domestic business corporation is to be converted to a foreign
4 nonprofit corporation, a statement of the jurisdiction in which the corporation will
5 be incorporated after the conversion.

6 D. The plan of nonprofit conversion may also include a provision that the
7 plan may be amended prior to filing articles of nonprofit conversion, except that
8 subsequent to approval of the plan by the shareholders the plan may not be amended
9 to change any of the following:

10 (1) The amount or kind of memberships or securities, obligations, rights to
11 acquire memberships or securities, or the cash or other property to be received by the
12 shareholders under the plan.

13 (2) The articles of incorporation as they will be in effect immediately
14 following the conversion, except for changes permitted by R.S. 12:1-1005.

15 (3) Any of the other terms or conditions of the plan if the change would
16 adversely affect any of the shareholders in any material respect.

17 E. Terms of a plan of nonprofit conversion may be made dependent upon
18 facts objectively ascertainable outside the plan in accordance with R.S. 12:1-120(K).

19 F. If any debt security, note, or similar evidence of indebtedness for money
20 borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred
21 or signed by a domestic business corporation before January 1, 2015, contains a
22 provision applying to a merger of the corporation and the document does not refer
23 to a nonprofit conversion of the corporation, the provision shall be deemed to apply
24 to a nonprofit conversion of the corporation until such time as the provision is
25 amended subsequent to that date.

26 Source: MBCA §9.30.

27 §1-931. Action on a plan of nonprofit conversion

28 In the case of a conversion of a domestic business corporation to a domestic
29 or foreign nonprofit corporation, all of the following shall apply:

1 (1) The plan of nonprofit conversion must be adopted by the board of
2 directors.

3 (2) After adopting the plan of nonprofit conversion, the board of directors
4 must submit the plan to the shareholders for their approval. The board of directors
5 must also transmit to the shareholders a recommendation that the shareholders
6 approve the plan, unless the board of directors makes a determination that because
7 of conflicts of interest or other special circumstances it should not make such a
8 recommendation, or R.S. 12: 1-826 applies. If the board of directors makes such ad
9 determination or R.S. 12:1-826 applies, the board must transmit to the shareholders
10 the basis for so proceeding.

11 (3) The board of directors may condition its submission of the plan of
12 nonprofit conversion to the shareholders on any basis.

13 (4) If the approval of the shareholders is to be given at a meeting, the
14 corporation must notify each shareholder of the meeting of shareholders at which the
15 plan of nonprofit conversion is to be submitted for approval. The notice must state
16 that the purpose, or one of the purposes, of the meeting is to consider the plan and
17 must contain or be accompanied by a copy or summary of the plan. The notice shall
18 include or be accompanied by a copy of the articles of incorporation as they will be
19 in effect immediately after the nonprofit conversion.

20 (5) Unless the articles of incorporation, or the board of directors acting
21 pursuant to Paragraph (3) of this Section, requires a greater vote, approval of the plan
22 of nonprofit conversion requires the approval of each class or series of shares of the
23 corporation voting as a separate voting group by at least a majority of the votes
24 entitled to be cast on the nonprofit conversion by that voting group.

25 (6) If any provision of the articles of incorporation, bylaws or an agreement
26 to which any of the directors or shareholders are parties, adopted before January 1,
27 2015, applies to a merger, other than a provision that limits or eliminates voting or
28 appraisal rights, and the document does not refer to a nonprofit conversion of the

1 corporation, the provision shall be deemed to apply to a nonprofit conversion of the
2 corporation until such time as the provision is amended subsequent to that date.

3 Source: MBCA §9.31.

4 Comments - 2014 Revision

5 This Section changes Model Act paragraph (5) to require that a plan of
6 nonprofit conversion be approved by a majority of the votes entitled to be cast on the
7 plan and, if applicable, a majority of the votes of each class or series of shares
8 entitled to vote as a separate group on the plan. The Model Act would have
9 permitted a plan to be approved by each voting group by a majority of votes cast at
10 a meeting at which a majority quorum existed.

11 §1-932. Articles of nonprofit conversion

12 A. After a plan of nonprofit conversion providing for the conversion of a
13 domestic business corporation to a domestic nonprofit corporation has been adopted
14 and approved as required by this Subpart, articles of nonprofit conversion shall be
15 signed on behalf of the corporation by any officer or other duly authorized
16 representative. The articles shall set forth both of the following:

17 (1) The name of the corporation immediately before the filing of the articles
18 of nonprofit conversion and if that name does not satisfy the requirements of the
19 Nonprofit Corporation Law, or the corporation desires to change its name in
20 connection with the conversion, a name that satisfies the requirements of the
21 Nonprofit Corporation Law.

22 (2) A statement that the plan of nonprofit conversion was duly approved by
23 the shareholders in the manner required by this Subpart and the articles of
24 incorporation.

25 B. The articles of nonprofit conversion shall either contain all of the
26 provisions that the Nonprofit Corporation Law requires to be set forth in articles of
27 incorporation of a domestic nonprofit corporation and any other desired provisions
28 permitted by the Nonprofit Corporation Law, or shall have attached articles of
29 incorporation that satisfy the requirements of the Nonprofit Corporation Law. In
30 either case, provisions that would not be required to be included in restated articles
31 of incorporation of a domestic nonprofit corporation may be omitted.

1 C. The articles of nonprofit conversion shall be delivered to the secretary of
2 state for filing, and shall take effect at the effective time provided in R.S. 12:1-123.

3 Source: MBCA §9.32.

4 §1-933. Surrender of charter upon foreign nonprofit conversion

5 A. Whenever a domestic business corporation has adopted and approved, in
6 the manner required by this Subpart, a plan of nonprofit conversion providing for the
7 corporation to be converted to a foreign nonprofit corporation, articles of charter
8 surrender shall be signed on behalf of the corporation by any officer or other duly
9 authorized representative. The articles of charter surrender shall set forth all of the
10 following:

11 (1) The name of the corporation.

12 (2) A statement that the articles of charter surrender are being filed in
13 connection with the conversion of the corporation to a foreign nonprofit corporation.

14 (3) A statement that the foreign nonprofit conversion was duly approved by
15 the shareholders in the manner required by this Act and the articles of incorporation.

16 (4) The corporation's new jurisdiction of incorporation.

17 B. The articles of charter surrender shall be delivered by the corporation to
18 the secretary of state for filing. The articles of charter surrender shall take effect on
19 the effective time provided in R.S. 12:1-123.

20 Source: MBCA §9.33.

21 §1-934. Effect of nonprofit conversion

22 A. When a conversion of a domestic business corporation to a domestic
23 nonprofit corporation becomes effective, all of the following shall apply:

24 (1) The title to all real and personal property, both tangible and intangible,
25 of the corporation remains in the corporation without any transfer, assignment,
26 reversion, or impairment.

27 (2) The liabilities of the corporation remain the liabilities of the corporation.

28 (3) An action or proceeding pending against the corporation continues
29 against the corporation as if the conversion had not occurred.

1 (4) The articles of incorporation of the domestic or foreign nonprofit
2 corporation become effective.

3 (5) The shares of the corporation are reclassified into memberships,
4 securities, obligations, rights to acquire memberships or securities, or into cash or
5 other property in accordance with the plan of conversion, and the shareholders are
6 entitled only to the rights provided in the plan of nonprofit conversion or to any
7 rights they may have under Part 13 of this Chapter.

8 (6) The corporation is deemed to be all of the following:

9 (a) A domestic nonprofit corporation for all purposes.

10 (b) The same corporation without interruption as the corporation that existed
11 prior to the conversion.

12 (c) Incorporated on the date that it was originally incorporated as a domestic
13 business corporation.

14 B. When a conversion of a domestic business corporation to a foreign
15 nonprofit corporation becomes effective, the foreign nonprofit corporation remains
16 both of the following:

17 (1) Obligated under the laws of this state to pay promptly the amount, if any,
18 to which shareholders who exercise appraisal rights in connection with the
19 conversion are entitled under Part 13 of this Chapter.

20 (2) Subject to the personal jurisdiction of the courts of this state in
21 accordance with R.S. 13:3201, and to service of process in accordance with law.

22 C. [Reserved.]

23 D. A shareholder who becomes subject to owner liability for some or all of
24 the debts, obligations, or liabilities of the nonprofit corporation shall have owner
25 liability only for those debts, obligations, or liabilities of the nonprofit corporation
26 that arise after the effective time of the articles of nonprofit conversion.

27 Source: MBCA §9.34.

28 Comments - 2014 Revision

29 (a) Model Act Subsection (b) uses legal fictions to state the legal obligations
30 of the "outbound" corporation in a conversion of a domestic business corporation

1 into a foreign nonprofit corporation, deeming that the resulting foreign corporation
 2 has agreed to pay appraisal rights and to appoint the secretary of state as its agent for
 3 service of process in connection with appraisal rights suits. This Section modifies
 4 Subsection (b) to state the outbound corporation's legal obligations in a more
 5 straightforward fashion. The corporation remains liable under the laws of this state
 6 to pay any appraisal rights when due, not because it agrees to make the payments but
 7 because the law requires it to do so. Similarly, the corporation remains subject to the
 8 personal jurisdiction of the courts of this state not because the corporation has made
 9 the secretary of state its agent for service of process, but because this state asserts the
 10 personal jurisdiction of its courts to the full extent constitutionally permissible, and
 11 provides by law for appropriate forms of service of process.

12 (b) Model Act Subsection (c) was omitted from this Section because it deals
 13 with transition issues associated with the nonprofit conversion of a domestic business
 14 corporation in which a shareholder is made subject to owner liability, as defined in
 15 R.S. 12:1-140(15C). Transition issues of that kind cannot arise under this Section
 16 because the form of liability addressed by Subsection (c) is not imposed by this
 17 Section. Subsection (c) was omitted to avoid the implication that the form of
 18 liability addressed by the Subsection could exist. This Section retained Model Act
 19 Subsection (d), which addresses a similar transition issue for owner liability arising
 20 under the law governing a post-conversion nonprofit corporation, because it is
 21 possible for the nonprofit corporation law of another state to permit the imposition
 22 of owner liability. Louisiana's Nonprofit Corporation Law does not impose owner
 23 liability.

24 §1-935. Abandonment of a nonprofit conversion

25 A. Unless otherwise provided in a plan of nonprofit conversion of a domestic
 26 business corporation, after the plan has been adopted and approved as required by
 27 this Subpart, and at any time before the nonprofit conversion has become effective,
 28 it may be abandoned by the board of directors without action by the shareholders.

29 B. If a nonprofit conversion is abandoned under Subsection A of this Section
 30 after articles of nonprofit conversion or articles of charter surrender have been filed
 31 with the secretary of state but before the nonprofit conversion has become effective,
 32 a statement that the nonprofit conversion has been abandoned in accordance with this
 33 Section, signed by an officer or other duly authorized representative, shall be
 34 delivered to the secretary of state for filing prior to the effective date of the nonprofit
 35 conversion. The statement shall take effect upon filing and the nonprofit conversion
 36 shall be deemed abandoned and shall not become effective.

37 Source: MBCA §9.35.

1 SUBPART D. FOREIGN NONPROFIT DOMESTICATION AND CONVERSION2 §1-940. Foreign nonprofit domestication and conversion

3 A foreign nonprofit corporation may become a domestic business corporation
4 if the domestication and conversion is permitted by the organic law of the foreign
5 nonprofit corporation.

6 Source: MBCA §9.40.

7 §1-941. Articles of nonprofit domestication and conversion

8 A. After the conversion of a foreign nonprofit corporation to a domestic
9 business corporation has been authorized as required by the laws of the foreign
10 jurisdiction, articles of nonprofit domestication and conversion shall be signed by
11 any officer or other duly authorized representative. The articles shall set forth all of
12 the following:

13 (1) The name of the corporation immediately before the filing of the articles
14 of nonprofit domestication and conversion and, if that name is unavailable for use
15 in this state or the corporation desires to change its name in connection with the
16 domestication and conversion, a name that satisfies the requirements of R.S.
17 12:1-401.

18 (2) The jurisdiction of incorporation of the corporation immediately before
19 the filing of the articles of nonprofit domestication and conversion and the date the
20 corporation was incorporated in that jurisdiction.

21 (3) A statement that the domestication and conversion of the corporation in
22 this state was duly authorized as required by the laws of the jurisdiction in which the
23 corporation was incorporated immediately before its domestication and conversion
24 in this state.

25 B. The articles of nonprofit domestication and conversion shall either contain
26 all of the provisions that R.S. 12:1-202(A) requires to be set forth in articles of
27 incorporation and any other desired provisions that R.S. 12:1-202(B) permits to be
28 included in articles of incorporation, or shall have attached articles of incorporation.

1 In either case, provisions that would not be required to be included in restated
2 articles of incorporation may be omitted.

3 C. The articles of nonprofit domestication and conversion shall be delivered
4 to the secretary of state for filing, and shall take effect at the effective time provided
5 in R.S. 12:1-123.

6 D. If the foreign nonprofit corporation is authorized to transact business in
7 this state under Chapter 3 of this Title, its certificate of authority shall be cancelled
8 automatically on the effective date of its domestication and conversion.

9 Source: MBCA §9.41.

10 §1-942. Effect of foreign nonprofit domestication and conversion

11 A. When a domestication and conversion of a foreign nonprofit corporation
12 to a domestic business corporation becomes effective, all of the following shall
13 apply:

14 (1) The title to all real and personal property, both tangible and intangible,
15 of the corporation remains in the corporation without any transfer, assignment,
16 reversion or impairment.

17 (2) The liabilities of the corporation remain the liabilities of the corporation.

18 (3) An action or proceeding pending against the corporation continues
19 against the corporation as if the domestication and conversion had not occurred.

20 (4) The articles of nonprofit domestication and conversion, or the articles of
21 incorporation attached to the articles of nonprofit domestication and conversion,
22 constitute the articles of incorporation of the corporation.

23 (5) Shares, other securities, obligations, rights to acquire shares or other
24 securities of the corporation, or cash or other property shall be issued or paid as
25 provided pursuant to the laws of the foreign jurisdiction, so long as at least one share
26 is outstanding immediately after the effective time.

27 (6) The corporation is deemed to be all of the following:

28 (a) A domestic corporation for all purposes.

1 (b) The same corporation without interruption as the foreign nonprofit
2 corporation.

3 (c) Incorporated on the date the foreign nonprofit corporation was originally
4 incorporated.

5 B. The owner liability of a member of a foreign nonprofit corporation that
6 domesticates and converts to a domestic business corporation shall be as follows:

7 (1) The domestication and conversion does not discharge any owner liability
8 under the laws of the foreign jurisdiction to the extent any such owner liability arose
9 before the effective time of the articles of nonprofit domestication and conversion.

10 (2) The member shall not have owner liability under the laws of the foreign
11 jurisdiction for any debt, obligation, or liability of the corporation that arises after the
12 effective time of the articles of nonprofit domestication and conversion.

13 (3) The provisions of the laws of the foreign jurisdiction shall continue to
14 apply to the collection or discharge of any owner liability preserved by Paragraph
15 (B)(1) of this Section, as if the domestication and conversion had not occurred.

16 (4) The member shall have whatever rights of contribution from other
17 members are provided by the laws of the foreign jurisdiction with respect to any
18 owner liability preserved by Paragraph (B)(1) of this Section, as if the domestication
19 and conversion had not occurred.

20 Source: MBCA §9.42.

21 Comment - 2014 Revision

22 Model Act Subsection (c), which deals with the transition issues associated
23 with the conversion of a foreign nonprofit corporation into a domestic business
24 corporation in which the shareholders are subject to owner liability as defined in R.S.
25 12:1-140(15C), was omitted from this Section because this Section does not permit
26 the form of owner liability that made the transition provision necessary. See
27 Comment (b) to R.S. 12:1-202. Subsection B of this Section, which deals with
28 similar transition issues in connection with the conversion into a Louisiana business
29 corporation of a foreign nonprofit corporation, was retained because it is possible
30 that the laws of the foreign jurisdiction would allow the imposition of this form of
31 liability.

32 §1-943. Abandonment of a foreign nonprofit domestication and conversion

33 If the domestication and conversion of a foreign nonprofit corporation to a
34 domestic business corporation is abandoned in accordance with the laws of the

1 foreign jurisdiction after articles of nonprofit domestication and conversion have
2 been filed with the secretary of state, a statement that the domestication and
3 conversion has been abandoned, signed by an officer or other duly authorized
4 representative, shall be delivered to the secretary of state for filing. The statement
5 shall take effect upon filing and the domestication and conversion shall be deemed
6 abandoned and shall not become effective.

7 Source: MBCA §9.43.

8 SUBPART E. ENTITY CONVERSION

9 §1-950. Entity conversion authorized; definitions

10 A. A domestic business corporation may become a domestic unincorporated
11 entity pursuant to a plan of entity conversion.

12 B. A domestic business corporation may become a foreign unincorporated
13 entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

14 C. A domestic unincorporated entity may become a domestic business
15 corporation or another form of domestic unincorporated entity. If the organic law
16 of a domestic unincorporated entity does not provide procedures for the approval of
17 an entity conversion, the conversion shall be adopted and approved, and the entity
18 conversion effectuated, in the same manner as a merger of the unincorporated entity.

19 D. A foreign unincorporated entity may become a domestic business
20 corporation if the organic law of the foreign unincorporated entity authorizes it to
21 become a corporation in another jurisdiction.

22 E. If any debt security, note, or similar evidence of indebtedness for money
23 borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred,
24 or signed by a domestic business corporation before January 1, 2015, applies to a
25 merger of the corporation and the document does not refer to an entity conversion
26 of the corporation, the provision shall be deemed to apply to an entity conversion of
27 the corporation until such time as the provision is amended subsequent to that date.

1 F. As used in this Subpart:

2 (1) "Converting entity" means the domestic business corporation or domestic
3 unincorporated entity that adopts a plan of entity conversion or the foreign
4 unincorporated entity converting to a domestic business corporation.

5 (2) "Surviving entity" means the corporation or unincorporated entity that
6 is in existence immediately after consummation of an entity conversion pursuant to
7 this Subpart.

8 Source: MBCA §9.50.

9 Comments - 2014 Revision

10 (a) This Section broadens the scope of Model Act Subsection (c) to cover
11 conversions of one form of domestic unincorporated entity into another. The
12 procedures in this Subpart replace those formerly provided in Chapter 25 of Title 12
13 for that form of transaction. Chapter 25 continues to provide rules concerning
14 licensing and taxing issues relating to the surviving entity in an entity conversion,
15 regardless of whether the surviving entity is incorporated or unincorporated. See
16 R.S. 12:1603-04.

17 (b) The provisions in Model Act Subsection (c) that govern the procedures
18 for approval of an entity conversion in an entity whose organic law does not provide
19 procedures for either an entity conversion or merger were deleted from this Section
20 as unnecessary. Louisiana law does provide procedures for the merger of its
21 unincorporated business organizations. The merger of limited liability companies
22 is governed by R.S. 12:1357-62. The merger of partnerships, including partnerships
23 in commendam and registered limited liability partnerships, is governed by R.S.
24 9:3441-47.

25 §1-951. Plan of entity conversion

26 A. A plan of entity conversion must include all of the following:

27 (1) A statement of the type of entity the surviving entity will be and, if it
28 will be a foreign entity, its jurisdiction of organization.

29 (2) The terms and conditions of the conversion.

30 (3) If the converting entity is a domestic business corporation, the manner
31 and basis of converting the shares of the corporation following its conversion into
32 interests or other securities, obligations, rights to acquire interests or other securities,
33 or into cash, other property, or any combination of the foregoing.

34 (4) If the converting entity is an unincorporated entity, the manner and basis
35 of converting the interests in the entity into shares, interests, or other securities,

1 obligations, rights to acquire shares, interests, or other securities, or into cash, other
2 property, or any combination of the foregoing.

3 (5) The full text, as they will be in effect immediately after consummation
4 of the conversion, of the organic documents of the surviving entity.

5 B. The plan of entity conversion may also include a provision that the plan
6 may be amended prior to filing articles of entity conversion, except that subsequent
7 to approval of the plan by the shareholders the plan may not be amended to change
8 any of the following:

9 (1) The amount or kind of shares or other securities, interests, obligations,
10 rights to acquire shares, other securities or interests, or the cash or other property to
11 be received under the plan by the shareholders.

12 (2) The organic documents that will be in effect immediately following the
13 conversion, except for changes permitted by a provision of the organic law of the
14 surviving entity comparable to R.S. 12:1-1005.

15 (3) Any of the other terms or conditions of the plan if the change would
16 adversely affect any of the shareholders in any material respect.

17 C. Terms of a plan of entity conversion may be made dependent upon facts
18 objectively ascertainable outside the plan in accordance with R.S. 12:1-120(K).

19 Source: MBCA §9.51.

20 Comments - 2014 Revision

21 (a) This Section changes the references in Model Act Paragraph (a)(1) to an
22 "other entity" to "entity." The term "other entity" was a defined term in earlier
23 versions of the Model Act that has since been eliminated as a defined term. The term
24 "entity" is used in this Section to refer to whatever form of entity survives an entity
25 conversion. Because the survivor of an entity conversion must be either a domestic
26 corporation or a domestic or foreign unincorporated entity, the term "entity" in
27 Subsection A of this Section is limited in meaning to one of those forms of entity.

28 (b) This Section adds a new Paragraph (A)(4) of this Section, and modifies
29 Model Act Paragraph (a)(3), to take account of conversions not only of domestic
30 corporations into unincorporated entities but also of unincorporated entities into
31 domestic corporations or other forms of domestic unincorporated entities.

32 §1-952. Action on a plan of entity conversion

33 In the case of an entity conversion of a domestic business corporation to a
34 domestic or foreign unincorporated entity, all of the following shall apply:

1 (1) The plan of entity conversion must be adopted by the board of directors.

2 (2) After adopting the plan of entity conversion, the board of directors must
3 submit the plan to the shareholders for their approval. The board of directors must
4 also transmit to the shareholders a recommendation that the shareholders approve the
5 plan, unless the board of directors makes a determination that because of conflicts
6 of interest or other special circumstances it should not make such a recommendation
7 or R.S. 12:1-826 applies. If the board of directors makes such a determination or
8 R.S. 12:1-826 applies, the board must transmit to the shareholders the basis for so
9 proceeding.

10 (3) The board of directors may condition its submission of the plan of entity
11 conversion to the shareholders on any basis.

12 (4) If the approval of the shareholders is to be given at a meeting, the
13 corporation must notify each shareholder, whether or not entitled to vote, of the
14 meeting of shareholders at which the plan of entity conversion is to be submitted for
15 approval. The notice must state that the purpose, or one of the purposes, of the
16 meeting is to consider the plan and must contain or be accompanied by a copy or
17 summary of the plan. The notice shall include or be accompanied by a copy of the
18 organic documents as they will be in effect immediately after the entity conversion.

19 (5) Unless the articles of incorporation, or the board of directors acting
20 pursuant to Paragraph (3) of this Section, requires a greater vote, approval of the plan
21 of entity conversion requires the approval of each class or series of shares of the
22 corporation voting as a separate voting group by at least a majority of the votes
23 entitled to be cast on the conversion by that voting group.

24 (6) If any provision of the articles of incorporation, bylaws, or an agreement
25 to which any of the directors or shareholders are parties, adopted, or entered into
26 before January 1, 2015, applies to a merger of the corporation, other than a provision
27 that limits or eliminates voting or appraisal rights, and the document does not refer
28 to an entity conversion of the corporation, the provision shall be deemed to apply to

1 an entity conversion of the corporation until such time as the provision is
2 subsequently amended.

3 (7) If as a result of the conversion one or more shareholders of the
4 corporation would become subject to owner liability for the debts, obligations, or
5 liabilities of any other person or entity, approval of the plan of conversion shall
6 require the signing, by each such shareholder, of a separate written consent to
7 become subject to such owner liability.

8 Source: MBCA §9.52.

9 Comment - 2014 Revision

10 This Section modifies Model Act Paragraph (5) to require shareholder
11 approval of an entity conversion by a majority of the votes entitled to be cast in each
12 relevant voting group. The Model Act requires approval from each group by only
13 a majority of the votes cast at a meeting at which a majority quorum exists.

14 §1-953. Articles of entity conversion

15 A. After the conversion of a domestic business corporation to a domestic
16 unincorporated entity has been adopted and approved as required by this Subpart,
17 articles of entity conversion shall be signed on behalf of the corporation by any
18 officer or other duly authorized representative. The articles shall do all of the
19 following:

20 (1) Set forth the name of the corporation immediately before the filing of the
21 articles of entity conversion and the name to which the name of the corporation is to
22 be changed, which shall be a name that satisfies the organic law of the surviving
23 entity.

24 (2) State the type of unincorporated entity that the surviving entity will be.

25 (3) Set forth a statement that the plan of entity conversion was duly approved
26 by the shareholders in the manner required by this Subpart and the articles of
27 incorporation.

28 (4) If the surviving entity is a filing entity, either contain all of the provisions
29 required to be set forth in its public organic document and any other desired
30 provisions that are permitted, or have attached such a public organic document;

1 except that, in either case, provisions that would not be required to be included in a
2 restated public organic document may be omitted.

3 B. After the conversion of a domestic unincorporated entity to a domestic
4 business corporation or to another form of domestic unincorporated entity has been
5 adopted and approved as required by the organic law of the converting entity, articles
6 of entity conversion shall be signed on behalf of the converting entity by an officer
7 or other duly authorized partner, member, manager or other representative. The
8 articles shall do all of the following:

9 (1) Set forth the name of the converting entity immediately before the filing
10 of the articles of entity conversion and the name to which the name of the converting
11 entity is to be changed, which shall be a name that satisfies the requirements of the
12 organic law of the surviving entity.

13 (2) Set forth a statement that the plan of entity conversion was duly approved
14 in accordance with the organic law of the converting entity.

15 (3) Satisfy one of the following requirements concerning the provisions
16 required by law to be included in the organic document of the surviving entity and,
17 if required, in its initial report, do either of the following:

18 (a) If the surviving entity is a domestic business corporation, the articles of
19 entity conversion shall either contain all of the provisions that R.S. 12:1-202(A)
20 requires to be set forth in articles of incorporation and any other desired provisions
21 that R.S. 12:1-202(B) permits to be included in articles of incorporation, or have
22 attached articles of incorporation; except that, in either case, provisions that would
23 not be required to be included in restated articles of incorporation of a domestic
24 business corporation may be omitted.

25 (b) If the surviving entity is a domestic filing entity, either contain all of the
26 provisions required to be set forth in its public organic document and any other
27 desired provisions that are permitted, or have attached such a public organic
28 document; except that, in either case, provisions that would not be required to be
29 included in a restated public organic document may be omitted.

1 C. After the conversion of a foreign unincorporated entity to a domestic
2 business corporation has been authorized as required by the laws of the foreign
3 jurisdiction, articles of entity conversion shall be signed on behalf of the foreign
4 unincorporated entity by any officer or other duly authorized representative. The
5 articles shall do all of the following:

6 (1) Set forth the name of the unincorporated entity immediately before the
7 filing of the articles of entity conversion and the name to which the name of the
8 unincorporated entity is to be changed, which shall be a name that satisfies the
9 requirements of R.S. 12:1-401.

10 (2) Set forth the jurisdiction under the laws of which the unincorporated
11 entity was organized immediately before the filing of the articles of entity conversion
12 and the date on which the unincorporated entity was organized in that jurisdiction.

13 (3) Set forth a statement that the conversion of the unincorporated entity was
14 duly approved in the manner required by its organic law.

15 (4) Either contain all of the provisions that R.S. 12:1-202(A) requires to be
16 set forth in articles of incorporation and any other desired provisions that R.S.
17 12:1-202(B) permits to be included in articles of incorporation, or have attached
18 articles of incorporation; except that, in either case, provisions that would not be
19 required to be included in restated articles of incorporation of a domestic business
20 corporation may be omitted.

21 D. The articles of entity conversion shall be delivered to the secretary of
22 state for filing, and shall take effect at the effective time provided in R.S. 12:1-123.
23 Articles of entity conversion under Subsection A or B of this Section may be
24 combined with any required conversion filing under the organic law of the domestic
25 unincorporated entity if the combined filing satisfies the requirements of both this
26 Section and the other organic law.

27 E. If the converting entity is a foreign unincorporated entity that is
28 authorized to transact business in this state under a provision of law similar to

1 Chapter 3 of this Title, its certificate of authority or other type of foreign
2 qualification shall be cancelled automatically on the effective date of its conversion.

3 F. Within thirty days after the date that the articles of entity conversion are
4 delivered for filing to the secretary of state, a duplicate original of the articles shall
5 be filed in the conveyance records of each parish in this state in which the converting
6 entity owns immovable property.

7 Source: MBCA §9.53.

8 Comments - 2014 Revision

9 (a) Model Act Subsection (b) covers only the conversion of a domestic
10 unincorporated entity into a domestic business corporation. This Section broadens
11 Model Act Subsection (b) to also cover a conversion of one form of domestic
12 unincorporated entity into another.

13 (b) The terms "filing entity" and "public organic document" are defined in
14 R.S. 12:1-140. Under those definitions, limited liability companies and partnerships,
15 including partnerships in commendam and registered limited liability partnerships,
16 are "filing entities." If a limited liability company or partnership is the surviving
17 entity in an entity conversion, the items required in a public organic document for
18 that form of entity must be included either in the articles of conversion or in a public
19 organic document that is attached to the articles of entity conversion. In the case of
20 a limited liability company, the public organic document consists of both the articles
21 of organization and the initial report, as both must be filed to create a limited liability
22 company. See R.S. 12:1-140(17B); R.S. 12:1304. This Section utilizes the singular
23 term "document" to refer to both limited liability company documents, together, in
24 accordance with the general interpretational rule in R.S. 1:7 that the singular includes
25 the plural.

26 (c) This Section adds a new Subsection F of this Section to harmonize the
27 parish filing requirements in an entity conversion with those in a merger or
28 domestication.

29 §1-954. Surrender of charter upon conversion

30 A. Whenever a domestic business corporation has adopted and approved, in
31 the manner required by this Subpart, a plan of entity conversion providing for the
32 corporation to be converted to a foreign unincorporated entity, articles of charter
33 surrender shall be signed on behalf of the corporation by any officer or other duly
34 authorized representative. The articles of charter surrender shall set forth all of the
35 following:

36 (1) The name of the corporation.

37 (2) A statement that the articles of charter surrender are being filed in
38 connection with the conversion of the corporation to a foreign unincorporated entity.

1 (3) A statement that the conversion was duly approved by the shareholders
2 in the manner required by this Subpart and the articles of incorporation.

3 (4) The jurisdiction under the laws of which the surviving entity will be
4 organized.

5 (5) If the surviving entity will be a nonfiling entity, the address of its
6 executive office immediately after the conversion.

7 B. The articles of charter surrender shall be delivered by the corporation to
8 the secretary of state for filing. The articles of charter surrender shall take effect on
9 the effective time provided in R.S. 12:1-123.

10 Source: MBCA §9.54.

11 §1-955. Effect of entity conversion

12 A. When a conversion under this Subpart becomes effective, all of the
13 following shall apply:

14 (1) The title to all real and personal property, both tangible and intangible,
15 of the converting entity remains in the surviving entity without transfer, assignment,
16 reversion or impairment.

17 (2) The liabilities of the converting entity remain the liabilities of the
18 surviving entity.

19 (3) A pending action or proceeding by or against the converting entity
20 continues by or against the surviving entity as if the conversion had not occurred
21 without any need for substitution of parties.

22 (4) The provisions included in or attached to the articles of entity conversion
23 in accordance with R.S. 12:1-953(B)(3) become effective as the articles of
24 incorporation, articles of organization, initial report, registered contract of
25 partnership, or registered application for registry of a registered limited liability
26 partnership, as appropriate for the surviving entity.

27 (5) In the case of a surviving entity that is a nonfiling entity, its private
28 organic document becomes effective.

1 (6) The shares or interests of the converting entity are reclassified into
2 shares, interests, other securities, obligations, rights to acquire shares, interests, or
3 other securities, or into cash or other property in accordance with the plan of
4 conversion; and the shareholders or interest holders of the converting entity are
5 entitled only to the rights provided to them under the terms of the conversion and to
6 any appraisal rights they may have under the organic law of the converting entity.

7 (7) The surviving entity is deemed to be all of the following:

8 (a) Incorporated or organized under and subject to the organic law of the
9 surviving entity for all purposes.

10 (b) The same corporation or unincorporated entity without interruption as the
11 converting entity.

12 (c) Incorporated or otherwise organized on the date that the converting entity
13 was originally incorporated or organized.

14 B. When a conversion of a domestic business corporation to a foreign
15 unincorporated entity becomes effective, the surviving entity remains both of the
16 following:

17 (1) Obligated under the laws of this state to pay promptly the amount, if any,
18 to which shareholders who exercise appraisal rights in connection with the
19 conversion are entitled under Part 13 of this Chapter.

20 (2) Subject to the personal jurisdiction of the courts of this state in
21 accordance with R.S. 13:3201, and to service of process in accordance with law.

22 C. A shareholder who becomes subject to owner liability for some or all of
23 the debts, obligations, or liabilities of the surviving entity shall be personally liable
24 only for those debts, obligations, or liabilities of the surviving entity that arise after
25 the effective time of the articles of entity conversion.

26 D. The owner liability of an interest holder in an unincorporated entity that
27 converts to another form of domestic unincorporated entity or to a domestic business
28 corporation shall be as follows:

1 (1) The conversion does not discharge any owner liability under the organic
 2 law of the converting entity to the extent any such owner liability arose before the
 3 effective time of the articles of entity conversion.

4 (2) The interest holder shall not have owner liability under the organic law
 5 of the converting entity for any debt, obligation, or liability of the corporation that
 6 arises after the effective time of the articles of entity conversion.

7 (3) The provisions of the organic law of the converting entity shall continue
 8 to apply to the collection or discharge of any owner liability preserved by Paragraph
 9 (D)(1) of this Section, as if the conversion had not occurred.

10 (4) The interest holder shall have whatever rights of contribution from other
 11 interest holders are provided by the organic law of the converting entity with respect
 12 to any owner liability preserved by Paragraph (D)(1) of this Section, as if the
 13 conversion had not occurred.

14 E. The provisions of R.S. 12:1603 and 12:1604, concerning tax filing
 15 requirements and professional licenses, apply in either of the following cases of an
 16 entity conversion:

17 (1) By a domestic business corporation to a domestic unincorporated entity.

18 (2) By a domestic unincorporated entity to a domestic business corporation
 19 or to another form of domestic unincorporated entity.

20 Source: MBCA §9.55.

21 Comments - 2014 Revision

22 (a) This Section modifies Model Act Paragraph (a)(4) to name the particular
 23 forms of public organic documents most likely to be relevant in an entity conversion
 24 transaction.

25 (b) Model Act Subsection (b) uses legal fictions to state the legal obligations
 26 of an "outbound" surviving entity in an entity conversion, deeming the surviving
 27 entity to "agree" to pay appraisal rights and to appoint the secretary of state as its
 28 agent for service of process in connection with appraisal rights suits. This Section
 29 modifies Subsection (b) to state the surviving entity's legal obligations in a more
 30 straightforward fashion. The surviving entity remains liable under the laws of this
 31 state to pay any appraisal rights when due, not because it agrees to make the
 32 payments but because the law requires it to do so. Similarly, the surviving entity
 33 remains subject to the personal jurisdiction of the courts of this state not because the
 34 entity has made the secretary of state its agent for service of process, but because this
 35 state asserts the personal jurisdiction of its courts to the full extent constitutionally
 36 permissible, and provides by law for appropriate forms of service of process.

1 (c) This Section adds a new Subsection E of this Section to retain the
2 substance of prior law concerning the filing of short-period tax returns by the
3 converting entity and the continuation of licensing with respect to a surviving entity
4 that is a domestic business corporation or domestic unincorporated entity.

5 §1-956. Abandonment of an entity conversion

6 A. Unless otherwise provided in a plan of entity conversion of a domestic
7 business corporation, after the plan has been adopted and approved as required by
8 this Subpart, and at any time before the entity conversion has become effective, it
9 may be abandoned by the board of directors without action by the shareholders.

10 B. If an entity conversion is abandoned after articles of entity conversion or
11 articles of charter surrender have been filed with the secretary of state but before the
12 entity conversion has become effective, a statement that the entity conversion has
13 been abandoned in accordance with this Section, signed by an officer or other duly
14 authorized representative, shall be delivered to the secretary of state for filing prior
15 to the effective date of the entity conversion. Upon filing, the statement shall take
16 effect and the entity conversion shall be deemed abandoned and shall not become
17 effective.

18 Source: MBCA §9.56.

19 PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

20 SUBPART A. AMENDMENT OF ARTICLES OF INCORPORATION

21 §1-1001. Authority to amend

22 A. A corporation may amend its articles of incorporation at any time to add
23 or change a provision that is required or permitted in the articles of incorporation as
24 of the effective date of the amendment or to delete a provision that is not required
25 to be contained in the articles of incorporation.

26 B. A shareholder of the corporation does not have a vested property right
27 resulting from any provision in the articles of incorporation, including provisions
28 relating to management, control, capital structure, dividend entitlement, or purpose
29 or duration of the corporation.

30 C. An amendment that extends the duration of a corporation may be adopted
31 even after that duration expires unless one of the following conditions exist:

1 (1) Articles of termination or a certificate of termination has been filed and
2 the existence of the corporation has not been reinstated.

3 (2) Articles of dissolution have been delivered to the secretary of state and
4 have not been revoked.

5 (3) A judgment ordering dissolution has become final.

6 D. If the duration of a corporation has expired and the adoption of an
7 amendment extending that duration is permissible under Subsection C of this
8 Section, then the following shall apply:

9 (1) The amendment may be adopted in the same manner as if the
10 corporation's duration had not expired.

11 (2) The amendment has the same effect as if it had been adopted before the
12 duration expired.

13 Source: MBCA §10.01, R.S. 12:31.

14 Comments - 2014 Revision

15 (a) The authority of a business corporation to amend its articles of
16 incorporation in accordance with Subsection A of this Section is not limited by the
17 principles that were applied to an amendment of the articles of a charitable, nonprofit
18 corporation in *New Orleans Opera Ass'n, Inc. v. Southern Regional Opera*
19 *Endowment Fund*, 993 So.2d 791(La. App. 4th Cir. 8/27/08), writ denied, 996 So.2d
20 1114 (11/21/08).

21 (b) Subsections C and D of this Section were added to the Model Act
22 provision to retain the effect of former R.S. 12:31(D). Under the former provision,
23 the duration of a corporation could be extended through an amendment to its articles
24 that was adopted even after the expiration of the corporation's duration, but before
25 liquidation procedures had begun, and the amendment was given retroactive effect.
26 This Section retains the rule against duration-extending amendments while a
27 dissolution process is ongoing through Paragraph (C)(2) of this Section. But it adds
28 a new Paragraph (C)(1) to take account of the availability of reinstatement for a
29 terminated corporation under R.S. 12:-1444.

30 §1-1002. Amendment before issuance of shares

31 If a corporation has not yet issued shares, its board of directors, or its
32 incorporators if it has no board of directors, may adopt one or more amendments to
33 the corporation's articles of incorporation.

34 Source: MBCA §10.02.

1 §1-1003. Amendment by board of directors and shareholders

2 A. If a corporation has issued shares, but is not a public corporation, an
3 amendment to the articles of incorporation shall be adopted in the following manner:

4 (1) Except as provided in R.S. 12:1-1005, 1-1007, and 1-1008, the
5 amendment must be approved by the shareholders.

6 (2) If the approval is to be given at a meeting, the corporation must notify
7 each shareholder, whether or not entitled to vote, of the meeting of shareholders at
8 which the amendment is to be submitted for approval. The notice must state that the
9 purpose, or one of the purposes, of the meeting is to consider the amendment and
10 must contain or be accompanied by a copy of the amendment. If Paragraph (A)(3)
11 of this Section requires the approval of one or more separate voting groups, in
12 addition to the approval of all shareholders entitled to vote on the amendment, the
13 notice must also identify each class or series of shares that the corporation plans to
14 treat as part of each separate voting group.

15 (3) Unless the articles of incorporation require a greater vote, approval of the
16 amendment by the shareholders requires the approval of at least a majority of the
17 votes entitled to be cast on the amendment, and, if any class or series of shares is
18 entitled to vote as a separate group on the amendment, except as provided in R.S.
19 12:1-1004(C), the approval of at least a majority of the votes entitled to be cast on
20 the amendment by each such separate voting group.

21 B. An amendment to the articles of incorporation of a public corporation
22 shall be adopted in the following manner:

23 (1) The proposed amendment must be adopted by the board of directors.

24 (2) Except as provided in R.S. 12:1-1005, 1-1007, and 1-1008, after adopting
25 the proposed amendment the board of directors must submit the amendment to the
26 shareholders for their approval. The board of directors must also transmit to the
27 shareholders a recommendation that the shareholders approve the amendment, unless
28 the board of directors makes a determination that because of conflicts of interest or
29 other special circumstances it should not make such a recommendation, in which

1 case the board of directors must transmit to the shareholders the basis for that
2 determination.

3 (3) The board of directors may condition its submission of the amendment
4 to the shareholders on any basis.

5 (4) If the amendment is required to be approved by the shareholders, and the
6 approval is to be given at a meeting, the corporation must notify each shareholder,
7 whether or not entitled to vote, of the meeting of shareholders at which the
8 amendment is to be submitted for approval. The notice must state that the purpose,
9 or one of the purposes, of the meeting is to consider the amendment and must contain
10 or be accompanied by a copy of the amendment. If Paragraph (B)(5) of this Section
11 requires the approval of one or more separate voting groups, in addition to the
12 approval of all shareholders entitled to vote on the amendment, the notice must also
13 identify each class or series of shares that the corporation plans to treat as part of
14 each separate voting group.

15 (5) Unless the articles of incorporation, or the board of directors acting
16 pursuant to Paragraph (B)(3) of this Section, requires a greater vote, approval of the
17 amendment by the shareholders requires the approval of at least a majority of the
18 votes entitled to be cast on the amendment, and, if any class or series of shares is
19 entitled to vote as a separate group on the amendment, except as provided in R.S.
20 12:1-1004(C), the approval of at least a majority of the votes entitled to be cast on
21 the amendment by each such separate voting group.

22 Source: MBCA §10.03.

23 Comments - 2014 Revision

24 (a) The Model Act provides a single set of rules for the adoption of an
25 amendment to the articles of incorporation. Two features of those rules seem
26 better-suited to public corporations than to the closely-held, often one-shareholder
27 corporations that dominate corporate practice in Louisiana. Those two features are:
28 (1) that shareholders be unable to amend the articles without board approval; and (2)
29 that the board, after adopting an amendment, also make an affirmative
30 recommendation to shareholders of approval, or provide an acceptable explanation
31 of why the board is unable to make such a recommendation.

32 (b) This Section provides two separate procedures for the adoption of an
33 amendment to the articles of incorporation, one for public corporations, as defined
34 in R.S. 12:1-140, and another for nonpublic corporations. The nonpublic corporation

1 rules are provided in Subsection A of this Section. They eliminate the requirements
2 of prior board adoption and recommendation of an amendment. The public
3 corporation rules are provided in Subsection B of this Section. They track the Model
4 Act, except that: (1) they add a requirement that the notice of the meeting include an
5 identification of any voting group that is eligible to vote separately on the
6 amendment; and (2) require an amendment to be approved by at least a majority of
7 the votes entitled to be cast on the amendment, and by a majority of the votes of any
8 class of shares entitled to vote separately on the amendment as a class.

9 §1-1004. Voting on amendments by voting groups

10 A. If a corporation has more than one class of shares outstanding, the holders
11 of the outstanding shares of a class are entitled to vote as a separate voting group, if
12 shareholder voting is otherwise required by this Subpart, on a proposed amendment
13 to the articles of incorporation if the amendment would do any of the following:

14 (1) Effect an exchange or reclassification of all or part of the shares of the
15 class into shares of another class.

16 (2) Effect an exchange or reclassification, or create the right of exchange, of
17 all or part of the shares of another class into shares of the class.

18 (3) Change the rights, preferences, or limitations of all or part of the shares
19 of the class.

20 (4) Change the shares of all or part of the class into a different number of
21 shares of the same class.

22 (5) Create a new class of shares having rights or preferences with respect to
23 distributions that are prior or superior to the shares of the class.

24 (6) Increase the rights, preferences, or number of authorized shares of any
25 class that, after giving effect to the amendment, have rights or preferences with
26 respect to distributions that are prior or superior to the shares of the class.

27 (7) Limit or deny an existing preemptive right of all or part of the shares of
28 the class.

29 (8) Cancel or otherwise affect rights to distributions that have accumulated
30 but not yet been authorized on all or part of the shares of the class.

31 B. If a proposed amendment would affect a series of a class of shares in one
32 or more of the ways described in Subsection A of this Section, the holders of shares

1 of that series are entitled to vote as a separate voting group on the proposed
2 amendment.

3 C. If a proposed amendment that entitles the holders of two or more classes
4 or series of shares to vote as separate voting groups under this Section would affect
5 those two or more classes or series in the same or a substantially similar way, the
6 holders of shares of all the classes or series so affected must vote together as a single
7 voting group on the proposed amendment, unless otherwise provided in the articles
8 of incorporation or required by the board of directors.

9 D. A class or series of shares is entitled to the voting rights granted by this
10 Section although the articles of incorporation provide that the shares are nonvoting
11 shares.

12 Source: MBCA §10.04.

13 §1-1005. Amendment by board of directors

14 Unless the articles of incorporation provide otherwise, a corporation's board
15 of directors may adopt amendments to the corporation's articles of incorporation
16 without shareholder approval to do any of the following:

17 (1) Extend the duration of the corporation if it was incorporated at a time
18 when limited duration was required by law.

19 (2) Delete the names and addresses of the initial directors.

20 (3) Delete the name and address of the initial registered agent or registered
21 office, if a statement of change is on file with the secretary of state, or to delete the
22 address of the initial principal office if the corporation has provided the address of
23 its principal office in an annual report on file with the secretary of state.

24 (4) If the corporation has only one class of shares outstanding, then to do
25 either of the following:

26 (a) Change each issued and unissued authorized share of the class into a
27 greater number of whole shares of that class.

28 (b) Increase the number of authorized shares of the class to the extent
29 necessary to permit the issuance of shares as a share dividend.

1 (5) Change the corporate name by substituting the word "corporation",
2 "incorporated", "company", "limited", or the abbreviation, with or without
3 punctuation, "corp", "inc", "co", or "ltd", for a similar word or abbreviation in the
4 name, or by adding, deleting, or changing a geographical attribution for the name.

5 (6) Reflect a reduction in authorized shares, as a result of the operation of
6 R.S. 12:1-631(B), when the corporation has acquired its own shares and the articles
7 of incorporation prohibit the reissue of the acquired shares.

8 (7) Delete a class of shares from the articles of incorporation, as a result of
9 the operation of R.S. 12:1-631(B), when there are no remaining shares of the class
10 because the corporation has acquired all shares of the class and the articles of
11 incorporation prohibit the reissue of the acquired shares.

12 (8) To make any change expressly permitted by R.S. 12:1-602(A) or (B) to
13 be made without shareholder approval.

14 Source: MBCA §10.05.

15 §1-1006. Articles of amendment

16 After an amendment to the articles of incorporation has been adopted and
17 approved in the manner required by this Subpart and by the articles of incorporation,
18 the corporation shall deliver to the secretary of state, for filing, articles of
19 amendment, which shall set forth all of the following:

20 (1) The name of the corporation.

21 (2) The text of each amendment adopted, or the information required by R.S.
22 12:1-120(K)(5).

23 (3) If an amendment provides for an exchange, reclassification, or
24 cancellation of issued shares, provisions for implementing the amendment if not
25 contained in the amendment itself, which may be made dependent upon facts
26 objectively ascertainable outside the articles of amendment in accordance with R.S.
27 12:1-120(K)(5).

28 (4) The date of each amendment's adoption.

1 (5)(a) If an amendment was adopted by the incorporators or board of
2 directors without shareholder approval, a statement that the amendment was duly
3 approved by the incorporators or by the board of directors, as the case may be, and
4 that shareholder approval was not required.

5 (b) If an amendment required approval by the shareholders, a statement that
6 the amendment was duly approved by the shareholders in the manner required by
7 this Act and by the articles of incorporation.

8 (c) If an amendment is being filed pursuant to R.S. 12:1-120(K)(5), a
9 statement to that effect.

10 Source: MBCA §10.06.

11 §1-1007. Restated articles of incorporation

12 A. A corporation's board of directors may restate its articles of incorporation
13 at any time, with or without shareholder approval, to consolidate all amendments into
14 a single document.

15 B. If the restated articles include one or more new amendments that require
16 shareholder approval, the amendments must be adopted and approved as provided
17 in R.S. 12:1-1003.

18 C. A corporation that restates its articles of incorporation shall deliver to the
19 secretary of state for filing articles of restatement setting forth the name of the
20 corporation and the text of the restated articles of incorporation together with a
21 certificate which states that the restated articles consolidate all amendments into a
22 single document and, if a new amendment is included in the restated articles, which
23 also includes the statements required under R.S. 12:1-1006.

24 D. Duly adopted restated articles of incorporation supersede the original
25 articles of incorporation and all amendments thereto.

26 E. The secretary of state may certify restated articles of incorporation as the
27 articles of incorporation currently in effect, without including the certificate
28 information required by Subsection C of this Section.

29 Source: MBCA §10.07.

1 §1-1008. Amendment pursuant to reorganization

2 A. A corporation's articles of incorporation may be amended without action
3 by the board of directors or shareholders to carry out a plan of reorganization ordered
4 or decreed by a court of competent jurisdiction under the authority of a law of the
5 United States.

6 B. The individual or individuals designated by the court shall deliver to the
7 secretary of state for filing articles of amendment setting forth all of the following:

8 (1) The name of the corporation.

9 (2) The text of each amendment approved by the court.

10 (3) The date of the court's order or decree approving the articles of
11 amendment.

12 (4) The title of the reorganization proceeding in which the order or decree
13 was entered.

14 (5) A statement that the court had jurisdiction of the proceeding under
15 federal statute.

16 C. This Section does not apply after entry of a final decree in the
17 reorganization proceeding even though the court retains jurisdiction of the
18 proceeding for limited purposes unrelated to consummation of the reorganization
19 plan.

20 Source: MBCA §10.08.

21 §1-1009. Effect of amendment

22 An amendment to the articles of incorporation does not affect a cause of
23 action existing against or in favor of the corporation, a proceeding to which the
24 corporation is a party, or the existing rights of persons other than shareholders of the
25 corporation. An amendment changing a corporation's name does not abate a
26 proceeding brought by or against the corporation in its former name.

27 Source: MBCA §10.09.

1 SUBPART B. AMENDMENT OF BYLAWS

2 §1-1020. Amendment by board of directors or shareholders

3 A. A corporation's shareholders may amend or repeal the corporation's
4 bylaws.

5 B. A corporation's board of directors may adopt, amend or repeal the
6 corporation's bylaws, unless either of the following conditions exist:

7 (1) The articles of incorporation, R.S. 12:1-1021 or, if applicable, R.S.
8 12:1-1022 reserve that power exclusively to the shareholders in whole or part.

9 (2) The shareholders in amending, repealing, or adopting a bylaw expressly
10 provide that the board of directors may not amend, repeal, or reinstate that bylaw.

11 Source: MBCA §10.20.

12 §1-1021. Bylaw increasing quorum or voting requirement for directors

13 A. A bylaw that increases a quorum or voting requirement for the board of
14 directors may be amended or repealed under either of the following circumstances:

15 (1) If originally adopted by the shareholders, only by the shareholders, unless
16 the bylaw otherwise provides.

17 (2) If adopted by the board of directors, either by the shareholders or by the
18 board of directors.

19 B. A bylaw adopted or amended by the shareholders that increases a quorum
20 or voting requirement for the board of directors may provide that it can be amended
21 or repealed only by a specified vote of either the shareholders or the board of
22 directors.

23 C. Action by the board of directors under Subsection A of this Section to
24 amend or repeal a bylaw that changes the quorum or voting requirement for the
25 board of directors must meet the same quorum requirement and be adopted by the
26 same vote required to take action under the quorum and voting requirement then in
27 effect or proposed to be adopted, whichever is greater.

28 Source: MBCA §10.21.

1 §1-1022. Public corporation bylaw provisions relating to the election of directors

2 A. Unless the articles of incorporation specifically prohibit the adoption of
3 a bylaw pursuant to this Section, alter the vote specified in R.S. 12:1-728(A), or
4 provide for cumulative voting, a public corporation may elect in its bylaws to be
5 governed in the election of directors as follows:

6 (1) Each vote entitled to be cast may be voted for or against up to that
7 number of candidates that is equal to the number of directors to be elected, or a
8 shareholder may indicate an abstention, but without cumulating the votes.

9 (2) To be elected, a nominee must have received a plurality of the votes cast
10 by holders of shares entitled to vote in the election at a meeting at which a quorum
11 is present, provided that a nominee who is elected but receives more votes against
12 than for election shall serve as a director for a term that shall terminate on the date
13 that is the earlier of ninety days from the date on which the voting results are
14 determined pursuant to R.S. 12:1-729(B)(5) or the date on which an individual is
15 selected by the board of directors to fill the office held by such director, which
16 selection shall be deemed to constitute the filling of a vacancy by the board to which
17 R.S. 12:1-810 applies. Subject to Paragraph (A)(3) of this Section, a nominee who
18 is elected but receives more votes against than for election shall not serve as a
19 director beyond the ninety-day period referenced above.

20 (3) The board of directors may select any qualified individual to fill the
21 office held by a director who received more votes against than for election.

22 B. Subsection A of this Section does not apply to an election of directors by
23 a voting group if at the expiration of the time fixed under a provision requiring
24 advance notification of director candidates, or absent such a provision, at a time
25 fixed by the board of directors which is not more than fourteen days before notice
26 is given of the meeting at which the election is to occur, there are more candidates
27 for election by the voting group than the number of directors to be elected, one or
28 more of whom are properly proposed by shareholders. An individual shall not be
29 considered a candidate for purposes of this Subsection if the board of directors

1 determines before the notice of meeting is given that such individual's candidacy
2 does not create a bona fide election contest.

3 C. A bylaw electing to be governed by this Section may be repealed by either
4 of the following:

5 (1) If originally adopted by the shareholders, only by the shareholders, unless
6 the bylaw otherwise provides.

7 (2) If adopted by the board of directors, by the board of directors or the
8 shareholders.

9 Source: MBCA §10.22.

10 PART 11. MERGERS AND SHARE EXCHANGES

11 §1-1101. Definitions

12 As used in this Part, the following meanings shall apply:

13 A. "Merger" means a business combination pursuant to R.S. 12:1-1102.

14 B. "Party to a merger" or "party to a share exchange" means any domestic
15 or foreign corporation or eligible entity that will do any of the following:

16 (1) Merge under a plan of merger.

17 (2) Acquire shares or eligible interests of another corporation or an eligible
18 entity in a share exchange.

19 (3) Have all of its shares or eligible interests or all of one or more classes or
20 series of its shares or eligible interests acquired in a share exchange.

21 C. "Share exchange" means a business combination pursuant to R.S.
22 12:1-1103.

23 D. "Survivor" in a merger means the corporation or eligible entity into which
24 one or more other corporations or eligible entities are merged. A survivor of a
25 merger may preexist the merger or be created by the merger.

26 Source: MBCA §11.01.

27 Comment - 2014 Revision

28 Model Act Comment 4, concerning the meaning of the term "other entity" is
29 irrelevant under this Section. Comment 4 covered a defined term in an earlier draft
30 of Model Act Section 11.01 that was changed before final adoption. Compare, 56
31 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final

1 adoption). As adopted in its final form, the term used in the Model Act to express
2 the "other entity" concept is "eligible entity." See Paragraph 1.40 (7D). At the time
3 that this Section was enacted, the Model Act used the older term in some provisions
4 and the newer terms in other provisions. This Section uses the term "eligible entity"
5 consistently throughout its provisions to identify the types of entities that may enter
6 with a business corporation into a merger, share exchange, domestication, nonprofit
7 conversion, or entity conversion transaction.

8 §1-1102. Merger

9 A. One or more domestic business corporations may merge with one or
10 more domestic or foreign business corporations or eligible entities pursuant to a plan
11 of merger, or two or more eligible entities or foreign business corporations may
12 merge into a new domestic business corporation to be created in the merger in the
13 manner provided in this Part.

14 B. A foreign business corporation, or a foreign eligible entity, may be a party
15 to a merger with a domestic business corporation, or may be created by the terms of
16 the plan of merger, only if the merger is permitted by the organic law governing the
17 foreign business corporation or foreign eligible entity, and only if the requirements
18 of that law concerning the merger have been satisfied. A domestic eligible entity
19 must approve the merger in accordance with the organic law applicable to it.

20 C. The plan of merger must include all of the following:

21 (1) The name of each domestic or foreign business corporation or eligible
22 entity that will merge and the name of the domestic or foreign business corporation
23 or eligible entity that will be the survivor of the merger.

24 (2) The terms and conditions of the merger.

25 (3) The manner and basis of converting the shares of each merging domestic
26 or foreign business corporation and eligible interests of each merging eligible entity
27 into shares or other securities, eligible interests, obligations, rights to acquire shares
28 other securities or eligible interests, or into cash, other property, or any combination
29 of the foregoing.

30 (4) The articles of incorporation of any domestic or foreign business or
31 nonprofit corporation, or the organic documents of any domestic or foreign
32 unincorporated entity, to be created by the merger, or if a new domestic or foreign

1 business or nonprofit corporation or unincorporated entity is not to be created by the
2 merger, any amendments to the survivor's articles of incorporation or organic
3 documents.

4 (5) Any other provisions required by the laws under which any party to the
5 merger is organized or by which it is governed, or by the articles of incorporation or
6 organic document of any such party.

7 D. Terms of a plan of merger may be made dependent on facts objectively
8 ascertainable outside the plan in accordance with R.S. 12:1-120(K).

9 E. The plan of merger may also include a provision that the plan may be
10 amended prior to filing articles of merger, but if the shareholders of a domestic
11 corporation that is a party to the merger are required or permitted to vote on the plan,
12 the plan must provide that subsequent to approval of the plan by such shareholders
13 the plan may not be amended to change any of the following:

14 (1) The amount or kind of shares or other securities; eligible interests;
15 obligations; rights to acquire shares, other securities or eligible interests; or the cash
16 or other property to be received under the plan by the shareholders of or owners of
17 eligible interests in any party to the merger.

18 (2) The articles of incorporation of any corporation, or the organic
19 documents of any unincorporated entity, that will survive or be created as a result of
20 the merger, except for changes permitted by R.S. 12:1-1005 or by comparable
21 provisions of the organic laws of any such foreign corporation or domestic or foreign
22 unincorporated entity.

23 (3) Any of the other terms or conditions of the plan if the change would
24 adversely affect such shareholders in any material respect.

25 F. Property received through a conditional donation, grant, or devise, or held
26 in trust or for charitable purposes under the laws of this state by an eligible entity
27 shall not be diverted by a merger from the object for which it was donated, granted,
28 or devised, except to the extent authorized by a court judgment based upon principles
29 of cy pres or approximation.

1 G. A person who is a member, interest holder, or an affiliate of an eligible
 2 entity with a charitable purpose shall not receive a direct or indirect financial benefit
 3 in connection with a merger to which the eligible entity is a party unless the person
 4 is itself a charitable corporation or unincorporated entity with a charitable purpose.
 5 This Subsection does not apply to the receipt of reasonable compensation for
 6 services rendered.

7 Source: MBCA §11.02.

8 Comments - 2014 Revision

9 (a) Subsection (b) of the Model Act appears to contain an editorial error. It
 10 allows a merger with a foreign business corporation or eligible entity if the foreign
 11 corporation or entity itself permits the merger. This Section corrects the apparent
 12 error by adding a phrase that refers not to the foreign corporation or entity itself, but
 13 rather to the organic law that governs it. This Section also adds the requirement that
 14 the foreign organization actually comply with the foreign law that permits its
 15 participation in a merger, thus making explicit what was merely implicit in the
 16 Model Act.

17 (b) The Model Act contains an optional Paragraph (b)(1) that provides rules
 18 analogous to the corporate law rules for mergers involving unincorporated business
 19 organizations. This Section replaces the optional provision with the sentence at the
 20 end of Subsection B of this Section, which requires the domestic eligible entity, i.e.,
 21 a partnership, partnership in commendam or limited liability company, to comply
 22 with the organic law applicable to it. The organic law governing the merger of a
 23 partnership or partnership in commendam is set forth in R.S. 9:3441-3447, while that
 24 governing limited liability company mergers is set forth in R.S. 12:1357-1362.

25 (c) This Section modifies the anti-diversion rule in Model Act Subsection (f)
 26 slightly by replacing its reference to a particular cy pres or anti-diversion statute with
 27 a reference to the legal principles of cy pres more generally, whether those principles
 28 are expressed in particular statutes, such as R.S. 9:2331, or the civil law doctrine of
 29 approximation. See, e.g., Succession of Mizell, 468 So.2d 1371 (La. App. 1st Cir.
 30 1985), rev'd on other grounds, 475 So.2d 765 (1985); Ada C. Pollock-Blundon Ass'n,
 31 Inc. v. Evans' Heirs, 273 So.2d 552 (La. App. 1st Cir. 1973). Because Subsection
 32 D of this Section is designed merely to include cy pres principles by reference, and
 33 not to state any independent or fixed understanding of those principles, the
 34 Subsection does not limit itself to any particular statutory or jurisprudential
 35 formulation of the controlling rules.

36 (d) Subsection G of this Section is based on Section 9.03 of the Model
 37 Nonprofit Corporation Act and was added to this Section as a complement to
 38 Subsection F of this Section to prevent the misuse of assets held for charitable
 39 purposes. The term "charitable" means the same thing in Subsection F of this
 40 Section as it does under federal income tax law.

41 (e) The Model Act Official Comment to Section 11.02 contains several
 42 references to an "other entity," a term used in an earlier draft of the Model Act that
 43 was changed before final adoption to the term "eligible entity." Compare, 56
 44 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final
 45 adoption). The Model Act sometimes uses the older term and sometimes the newer
 46 term. This Section consistently uses the newer term "eligible entity" in place of the

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 older one. Also, because the term "eligible entity," unlike the term it replaced,
2 includes both domestic and foreign forms of entity, Model Act references to
3 "domestic or foreign eligible entities" have been corrected to eliminate the
4 redundancy. References to "foreign eligible entities" or "domestic eligible entities"
5 have been retained where appropriate to indicate the narrower category of eligible
6 entity intended.

7 §1-1103. Share exchange

8 A. Through a share exchange, either of the following may occur:

9 (1) A domestic corporation may acquire all of the shares of one or more
10 classes or series of shares of another domestic or foreign corporation, or all of the
11 interests of one or more classes or series of interests of an eligible entity, in exchange
12 for shares or other securities, eligible interests, obligations, rights to acquire shares
13 or other securities, or for cash, other property, or any combination of the foregoing,
14 pursuant to a plan of share exchange.

15 (2) All of the shares of one or more classes or series of shares of a domestic
16 corporation may be acquired by another domestic or foreign corporation or eligible
17 entity, in exchange for shares or other securities, eligible interests, obligations, rights
18 to acquire shares or other securities, or for cash, other property, or any combination
19 of the foregoing, pursuant to a plan of share exchange.

20 B. A foreign corporation or foreign eligible entity may be a party to a share
21 exchange only if the share exchange is permitted by the organic law governing the
22 foreign corporation or foreign eligible entity and only if the requirements of that law
23 concerning the share exchange have been satisfied.

24 C. The plan of share exchange must include all of the following:

25 (1) The name of each corporation or eligible entity whose shares or interests
26 will be acquired and the name of the corporation or eligible entity that will acquire
27 those shares or interests.

28 (2) The terms and conditions of the share exchange.

29 (3) The manner and basis of exchanging shares of a corporation or interests
30 in an eligible entity whose shares or interests will be acquired under the share
31 exchange into shares or other securities, eligible interests, obligations, rights to

1 acquire shares or other securities, or into cash, other property, or any combination
2 of the foregoing.

3 (4) Any other provisions required by the laws under which any party to the
4 share exchange is organized or by the articles of incorporation or organic document
5 of any such party.

6 D. Terms of a plan of share exchange may be made dependent on facts
7 objectively ascertainable outside the plan in accordance with R.S. 12:1-120(K).

8 E. The plan of share exchange may also include a provision that the plan
9 may be amended prior to filing articles of share exchange, but if the shareholders of
10 a domestic corporation that is a party to the share exchange are required or permitted
11 to vote on the plan, the plan must provide that subsequent to approval of the plan by
12 such shareholders the plan may not be amended to change either of the following:

13 (1) The amount or kind of shares or other securities, interests, obligations,
14 rights to acquire shares, other securities, or interests, or the cash or other property,
15 to be issued by the corporation or to be received under the plan by the shareholders
16 of or owners of interests in any party to the share exchange.

17 (2) Any of the other terms or conditions of the plan if the change would
18 adversely affect such shareholders in any material respect.

19 F. This Section does not limit the power of any person to acquire shares of
20 another corporation or interests in an eligible entity in a transaction other than a
21 share exchange.

22 Source: MBCA §11.03.

23 Comments - 2014 Revision

24 (a) In an apparent error of terminology, the Model Act uses the term "other
25 entity" (instead of "eligible entity") in this Section and its comments to refer to
26 unincorporated business organizations and nonprofit corporations. The error appears
27 due to a change in terminology between the text originally proposed and that finally
28 adopted in dealing with such entities in Sections 11.01 and 11.02. Compare, 56
29 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final
30 adoption). Reflecting the final terminology, this Section substitutes the term
31 "eligible entity," defined in R.S. 12:1-140(7B), for "other entity" throughout R.S.
32 12:1-1104 and its Official Comments. Also, because the term "eligible entity"
33 includes both domestic and foreign forms of entity, Model Act references to
34 "domestic and foreign other entities" have been corrected to eliminate the
35 redundancy. References to "foreign eligible entities" or "domestic eligible entities"

1 have been retained where appropriate to indicate the narrower category of eligible
2 entity intended.

3 (b) Subsection (b) of the Model Act appears to contain an editorial error. It
4 allows a share exchange with a foreign business corporation or eligible entity if the
5 foreign corporation or entity itself permits the share exchange. This Section corrects
6 the apparent error by adding a phrase that refers not to the foreign corporation or
7 entity itself, but rather to the organic law that governs it. This Section also adds the
8 requirement that the foreign organization actually comply with the foreign law that
9 permits its participation in a share exchange, thus making explicit what was merely
10 implicit in the Model Act.

11 (c) The Model Act provides in Subsection (f) that Section 11.03 does not
12 affect the power of a domestic corporation to acquire shares or interests outside of
13 a share exchange. The limitation of the statement to domestic corporations is likely
14 due to the limited scope of Section 11.03 itself, which reaches only share exchanges
15 that involve a domestic corporation. Nevertheless, to avoid the unintended negative
16 implication that Section 11.03 might affect acquisitions by persons other than a
17 domestic corporation, this Section broadens the statement in Subsection (f) to make
18 it applicable to acquisitions outside a share exchange by any person.

19 §1-1104. Action on a plan of merger or share exchange

20 In the case of a domestic corporation that is a party to a merger or share
21 exchange, all of the following shall apply:

22 A. The plan of merger or share exchange must be adopted by the board of
23 directors.

24 B. Except as provided in Subsection H of this Section and in R.S. 12:1-1105,
25 after adopting the plan of merger or share exchange, the board of directors must
26 submit the plan to the shareholders for their approval. The board of directors must
27 also transmit to the shareholders a recommendation that the shareholders approve the
28 plan, unless the board of directors makes a determination that because of conflicts
29 of interest or other special circumstances it should not make such a recommendation
30 or R.S. 12:1-826 applies. If the board of directors makes such a determination ro R.S.
31 12:1-826 applies, the board must transmit to the shareholders the basis for so
32 proceeding.

33 C. The board of directors may condition its submission of the plan of merger
34 or share exchange to the shareholders on any basis.

35 D. If the plan of merger or share exchange is required to be approved by the
36 shareholders, and if the approval is to be given at a meeting, the corporation must
37 notify each shareholder, whether or not entitled to vote, of the meeting of

1 shareholders at which the plan is to be submitted for approval. The notice must state
2 that the purpose, or one of the purposes, of the meeting is to consider the plan and
3 must contain or be accompanied by a copy or summary of the plan. If the
4 corporation is to be merged into an existing corporation or eligible entity, the notice
5 shall also include or be accompanied by a copy or summary of the articles of
6 incorporation or organizational documents of that corporation or eligible entity. If
7 the corporation is to be merged into a corporation or eligible entity that is to be
8 created pursuant to the merger, the notice shall include or be accompanied by a copy
9 or a summary of the articles of incorporation or organizational documents of the new
10 corporation or eligible entity.

11 E. Unless the articles of incorporation, or the board of directors acting
12 pursuant to Subsection C of this Section, requires a greater vote, approval of the plan
13 of merger or share exchange requires the approval of at least a majority of the votes
14 entitled to be cast on the plan, and, if any class or series of shares is entitled to vote
15 as a separate group on the plan of merger or share exchange, the approval of each
16 such separate voting group at a meeting by at least a majority of the votes entitled
17 to be cast on the merger or share exchange by that voting group.

18 F. Subject to Subsection G of this Section, separate voting by voting groups
19 is required on all of the following:

20 (1) A plan of merger, by each class or series of shares that is either of the
21 following:

22 (a) To be converted under the plan of merger into other securities, interests,
23 obligations, rights to acquire shares, other securities, or interests, or into cash, other
24 property, or any combination of the foregoing.

25 (b) Entitled to vote as a separate group on a provision in the plan that
26 constitutes a proposed amendment to articles of incorporation of a surviving
27 corporation and that requires action by separate voting groups under R.S. 12:1-1004.

28 (2) A plan of share exchange, by each class or series of shares included in
29 the exchange, with each class or series constituting a separate voting group.

1 (3) A plan of merger or share exchange, if the voting group is entitled under
2 the articles of incorporation to vote as a voting group to approve a plan of merger or
3 share exchange.

4 G. The articles of incorporation may expressly limit or eliminate the separate
5 voting rights provided in Subparagraph (F)(1)(a) and Paragraph (F)(2) of this Section
6 as to any class or series of shares, except for a transaction that includes what is or
7 would be, if the corporation were the surviving corporation, an amendment subject
8 to Subparagraph (F)(1)(b) of this Section, and that will effect no significant change
9 in the assets of the resulting entity, including all parents and subsidiaries on a
10 consolidated basis.

11 H. Unless the articles of incorporation otherwise provide, approval by the
12 corporation's shareholders of a plan of merger or share exchange is not required if
13 all of the following criteria are satisfied:

14 (1) The corporation will survive the merger or is the acquiring corporation
15 in a share exchange.

16 (2) Except for amendments permitted by R.S. 12:1-1005, its articles of
17 incorporation will not be changed.

18 (3) Each shareholder of the corporation whose shares were outstanding
19 immediately before the effective date of the merger or share exchange will hold the
20 same number of shares, with identical preferences, limitations, and relative rights,
21 immediately after the effective date of change.

22 (4) The issuance in the merger or share exchange of shares or other securities
23 convertible into or rights exercisable for shares does not require a vote under R.S.
24 12:1-621(F).

25 I. If as a result of a merger or share exchange one or more shareholders of
26 a domestic corporation would become subject to owner liability for the debts,
27 obligations, or liabilities of any other person or entity, approval of the plan of merger

1 or share exchange shall require the execution, by each such shareholder, of a separate
2 written consent to become subject to such owner liability.

3 Source: MBCA §11.04.

4 Comment - 2014 Revision

5 Model Act Subsection (f) requires that shareholders approve a plan of merger
6 or share exchange by a majority of votes cast at a meeting at which at least a
7 majority of the votes entitled to be cast on the plan is present in person or by proxy,
8 plus separate approvals by voting groups that are entitled to vote separately on the
9 plan using the same quorum and majority-of-votes-cast standards. This Section
10 increases the vote required for approval of a plan of merger from a majority of votes
11 cast to a majority of the shares entitled to vote. Because the higher voting standard
12 can be achieved only if the quorum requirement of the Model Act is also satisfied,
13 the Model Act's separate reference to a required quorum is eliminated.

14 §1-1105. Merger between parent and subsidiary or between subsidiaries

15 A. A domestic parent corporation that owns shares of a domestic or foreign
16 subsidiary corporation that carry at least ninety percent of the voting power of each
17 class and series of the outstanding shares of the subsidiary that have voting power
18 may merge the subsidiary into itself or into another such subsidiary, or merge itself
19 into the subsidiary, without the approval of the board of directors or shareholders of
20 the subsidiary, unless the articles of incorporation of any of the corporations
21 otherwise provide, or unless, in the case of a foreign subsidiary, approval by the
22 subsidiary's board of directors or shareholders is required by the laws under which
23 the subsidiary is organized.

24 B. If under Subsection A of this Section approval of a merger by the
25 subsidiary's shareholders is not required, the parent corporation shall, within ten days
26 after the effective date of the merger, notify each of the subsidiary's shareholders that
27 the merger has become effective.

28 C. Except as provided in Subsections A and B of this Section, a merger
29 between a parent and a subsidiary shall be governed by the provisions of Part 11 of
30 this Chapter applicable to mergers generally.

31 Source: MBCA §11.05.

1 §1-1106. Articles of merger or share exchange

2 A. After a plan of merger or share exchange has been adopted and approved
3 as required by this Subpart, articles of merger or share exchange shall be signed on
4 behalf of each party to the merger or share exchange by any officer or other duly
5 authorized representative. The articles shall set forth all of the following:

6 (1) The names of the parties to the merger or share exchange.

7 (2) If the articles of incorporation of the survivor of a merger are amended,
8 or if a new corporation is created as a result of a merger, the amendments to the
9 survivor's articles of incorporation or the articles of incorporation of the new
10 corporation.

11 (3) If the plan of merger or share exchange required approval by the
12 shareholders of a domestic corporation that was a party to the merger or share
13 exchange, a statement that the plan was duly approved by the shareholders and, if
14 voting by any separate voting group was required, by each such separate voting
15 group, in the manner required by this Subpart and the articles of incorporation.

16 (4) If the plan of merger or share exchange did not require approval by the
17 shareholders of a domestic corporation that was a party to the merger or share
18 exchange, a statement to that effect.

19 (5) As to each eligible entity or foreign corporation that was a party to the
20 merger or share exchange, a statement that the participation of the eligible entity or
21 foreign corporation was duly authorized as required by the organic law of the eligible
22 entity or corporation.

23 B. Articles of merger or share exchange shall be delivered to the secretary
24 of state for filing by the survivor of the merger or the acquiring corporation in a
25 share exchange, and shall take effect at the effective time provided in R.S. 12:1-123.
26 Articles of merger or share exchange filed under this Section may be combined with
27 any filing required under the organic law of any domestic eligible entity involved in
28 the transaction if the combined filing satisfies the requirements of both this Section
29 and the other organic law.

1 (7) The articles of incorporation or organic documents of a survivor that is
2 created by the merger become effective.

3 (8) The shares of each corporation that is a party to the merger, and the
4 interests in an eligible entity that is a party to a merger, that are to be converted
5 under the plan of merger into shares, eligible interests, obligations, rights to acquire
6 securities, other securities, or eligible interests, or into cash, other property, or any
7 combination of the foregoing, are converted, and the former holders of such shares
8 or eligible interests are entitled only to the rights provided to them in the plan of
9 merger or to any rights they may have under Part 13 of this Chapter or the organic
10 law of the eligible entity.

11 (9) The survivor possesses all the rights, licenses, privileges, and franchises
12 possessed by each of the parties to the merger, except that the survivor does not
13 possess any right, license, privilege, or franchise that meets either of the following
14 conditions:

15 (a) The survivor is ineligible to possess or to exercise.

16 (b) Does not survive a merger because of a provision to that effect in the law
17 or administrative rules under which the right, license, privilege, or franchise is held
18 at the time of the merger.

19 B. When a share exchange becomes effective, the shares of each domestic
20 corporation that are to be exchanged for shares or other securities, eligible interests,
21 obligations, rights to acquire shares, other securities, or eligible interests, or for cash,
22 other property, or any combination of the foregoing, are entitled only to the rights
23 provided to them in the plan of share exchange or to any rights they may have under
24 Part 13 of this Chapter.

25 C. A person who becomes subject to owner liability for some or all of the
26 debts, obligations, or liabilities of any entity as a result of a merger or share
27 exchange shall have owner liability only to the extent provided in the organic law of
28 the entity and only for those debts, obligations, and liabilities that arise after the
29 effective time of the articles of merger or share exchange.

1 D. Upon a merger becoming effective, a foreign corporation, or a foreign
2 eligible entity, that is the survivor of the merger remains both of the following:

3 (1) Obligated under the laws of this state to pay promptly the amount, if any,
4 to which shareholders of each domestic corporation who exercise appraisal rights are
5 entitled under Part 13 of this Chapter.

6 (2) Subject to the personal jurisdiction of the courts of this state in
7 accordance with R.S. 13:3201, and to service of process in accordance with law.

8 E. The effect of a merger or share exchange on the owner liability of a
9 person who had owner liability for some or all of the debts, obligations, or liabilities
10 of a party to the merger or share exchange shall be as follows:

11 (1) The merger or share exchange does not discharge any owner liability
12 under the organic law of the entity in which the person was a shareholder or interest
13 holder to the extent any such owner liability arose before the effective time of the
14 articles of merger or share exchange.

15 (2) The person shall not have owner liability under the organic law of the
16 entity in which the person was a shareholder or interest holder prior to the merger or
17 share exchange for any debt, obligation, or liability that arises after the effective time
18 of the articles of merger or share exchange.

19 (3) The provisions of the organic law of any entity for which the person had
20 owner liability before the merger or share exchange shall continue to apply to the
21 collection or discharge of any owner liability preserved by Paragraph (E)(1) of this
22 Section, as if the merger or share exchange had not occurred.

23 (4) The person shall have whatever rights of contribution from other persons
24 are provided by the organic law of the entity for which the person had owner liability
25 with respect to any owner liability preserved by Paragraph (E)(1) of this Section, as
26 if the merger or share exchange had not occurred.

27 F. For purposes of service of process under Paragraph (D)(2) of this Section,
28 a foreign eligible entity that is a survivor of a merger may be served in accordance

1 with the rules applicable to service of process on a foreign corporation, as if both of
2 the following conditions exist:

3 (1) The survivor were a foreign corporation.

4 (2) Each of following persons were a director of that corporation:

5 (a) A general partner if the survivor is a partnership of any kind.

6 (b) A member if the survivor is a member-managed limited liability
7 company.

8 (c) A manager if the survivor is a manager-managed limited liability
9 company.

10 (d) A person holding managerial authority in the survivor, regardless of the
11 form of the surviving entity, that is similar to that of an officer or director of a
12 domestic business corporation.

13 Source: MBCA §11.07.

14 Comments - 2014 Revision

15 (a) This Section adds a new Paragraph (9) to Subsection A of this Section
16 to retain the rule in prior law that the survivor of a merger holds all of the rights,
17 privileges and franchises held by each of the parties to the merger. Prior law
18 restricted the operation of the rule to those objects or functions for which a domestic
19 business corporation could be formed. Because the survivor of a merger under this
20 Section may be something other than a domestic corporation, and because the prior
21 limitation did not yield even to contrary provision in the controlling licensing laws,
22 the limitation of the rule in Paragraph (A)(9) of this Section has been broadened in
23 this Section from that in prior law. Under the broader limitation, the survivor does
24 not possess the rights and licenses of the merging parties under two circumstances:
25 (1) the survivor would be ineligible to hold the right or license or (2) the licensing
26 or regulatory law applicable to the activity or business in question precludes the right
27 or license from surviving a merger. Hence, as a general matter, Paragraph (A)(9) of
28 this Section is designed to let the survivor of a merger continue to operate all of the
29 businesses that were engaged in by the merging parties before the merger, without
30 triggering the need for new license applications or approvals merely because the
31 licensing or regulatory body may deem the survivor of the merger not to be the same
32 legal person as the merged company. A survivor becomes a licensee through a
33 merger with a licensed party not by means of transfer but by operation of law,
34 subject only to the exceptions stated in Paragraph (A)(9) of this Section. The
35 exceptions in Paragraph (A)(9) of this Section are designed not to permit a merger
36 party that would be ineligible for a particular form of license or franchise to acquire
37 one through a merger (as in a merger between a bank and an ordinary business
38 corporation in which the business corporation survived and claimed the right to
39 operate a bank), and to yield to more specific provisions on the subject that may exist
40 in a given licensing or regulatory scheme.

41 (b) Model Act Paragraph (d)(1) provides that a foreign survivor of a merger
42 is deemed to appoint the secretary of state as its agent for service of process in a
43 proceeding to enforce the appraisal rights of shareholders of any domestic

1 corporations that were parties to the merger. Because service on the secretary of
 2 state is a last-resort mechanism for serving foreign entities under Louisiana law, this
 3 Section modifies Paragraph (d)(1) to say simply that service of process may be
 4 carried out in accordance with law. The Code of Civil Procedure, supplemented by
 5 reference to provisions of the long arm statute, R.S. 13:3201-3207, provides the rules
 6 for service of process. The rules for domestic and foreign corporations are stated in
 7 Arts. 1261 and 1262, for partnerships in Art. 1263, for unincorporated associations
 8 in Art. 1264, and for domestic and foreign limited liability companies in Arts. 1266
 9 and 1267.

10 (c) The rules in the Code of Civil Procedure for service of process on foreign
 11 entities are well-developed and similar with respect to corporations and limited
 12 liability companies. The partnership and unincorporated association rules, however,
 13 are more abbreviated and may not apply or work as well as the corporate rules would
 14 work in dealing with foreign partnerships and other foreign entities that do not fit
 15 well into any of the listed categories of organizations. This Section addresses those
 16 problems in the context of appraisal rights suits by adding a new Subsection F.
 17 Subsection F of this Section provides that, for purposes of service under Paragraph
 18 (D)(1) of this Section, all foreign eligible entities are treated as foreign corporations,
 19 and those who hold managerial authority in a foreign eligible entity comparable to
 20 that of a corporate officer or director are treated as directors. Combining the rules
 21 in Subsection F of this Section with those in Code of Civil Procedure Arts. 1261 and
 22 1262, all forms of foreign eligible entities may be served process in a suit to enforce
 23 appraisal rights through personal service on a registered agent of the entity or, if no
 24 registered agent can be served, then by personal service on any of the directors or
 25 director-like participants in the organization or on an entity employee of suitable age
 26 and discretion at any place where the foreign eligible entity regularly does business,
 27 or by service, typically by registered or certified mail, in accordance with the long
 28 arm statute or, finally, failing all those other efforts, by service on the secretary of
 29 state.

30 §1-1108. Abandonment of a merger or share exchange

31 A. Unless otherwise provided in a plan of merger or share exchange or in the
 32 laws under which an eligible entity or foreign business corporation that is a party to
 33 a merger or a share exchange is organized or by which it is governed, after the plan
 34 has been adopted and approved as required by this Part, and at any time before the
 35 merger or share exchange has become effective, it may be abandoned by a domestic
 36 business corporation that is a party thereto without action by its shareholders in
 37 accordance with any procedures set forth in the plan of merger or share exchange or,
 38 if no such procedures are set forth in the plan, in the manner determined by the board
 39 of directors, subject to any contractual rights of other parties to the merger or share
 40 exchange.

41 B. If a merger or share exchange is abandoned under Subsection A of this
 42 Section after articles of merger or share exchange have been filed with the secretary
 43 of state but before the merger or share exchange has become effective, a statement

1 that the merger or share exchange has been abandoned in accordance with this
2 Section, signed on behalf of a party to the merger or share exchange by an officer or
3 other duly authorized representative, shall be delivered to the secretary of state for
4 filing prior to the effective date of the merger or share exchange. Upon filing, the
5 statement shall take effect and the merger or share exchange shall be deemed
6 abandoned and shall not become effective.

7 Source: MBCA §11.08.

8 PART 12. DISPOSITION OF ASSETS

9 §1-1201. Disposition of assets not requiring shareholder approval

10 No approval of the shareholders of a corporation is required for any of the
11 following actions, unless the articles of incorporation otherwise provide:

12 (1) To sell, lease, exchange, or otherwise dispose of any or all of the
13 corporation's assets in the usual and regular course of business.

14 (2) To mortgage, pledge, dedicate to the repayment of indebtedness, whether
15 with or without recourse, or otherwise encumber any or all of the corporation's
16 assets, whether or not in the usual and regular course of business.

17 (3) To transfer any or all of the corporation's assets to one or more
18 corporations or other entities all of the shares or interests of which are owned by the
19 corporation.

20 (4) To distribute assets pro rata to the holders of one or more classes or series
21 of the corporation's shares, provided that the distribution does not violate the rights
22 of any class or series of shares.

23 Source: MBCA §12.01.

24 Comment - 2014 Revision

25 This Section adds a requirement to the rule in Model Act Paragraph (4) that
26 the distribution be made without violating the rights of any class or series of shares.

27 §1-1202. Shareholder approval of certain dispositions

28 A. A sale, lease, exchange, or other disposition of assets, other than a
29 disposition described in R.S. 12:1-1201, requires approval of the corporation's
30 shareholders if the disposition would leave the corporation without a significant

1 continuing business activity. If a corporation retains a business activity that
2 represented at least twenty-five percent of total assets at the end of the most recently
3 completed fiscal year, and twenty-five percent of either income from continuing
4 operations before taxes or revenues from continuing operations for that fiscal year,
5 in each case of the corporation and its subsidiaries on a consolidated basis, the
6 corporation will conclusively be deemed to have retained a significant continuing
7 business activity.

8 B. A disposition that requires approval of the shareholders under Subsection
9 A of this Section shall be initiated by a resolution by the board of directors
10 authorizing the disposition. After adoption of such a resolution, the board of
11 directors shall submit the proposed disposition to the shareholders for their approval.
12 The board of directors shall also transmit to the shareholders a recommendation that
13 the shareholders approve the proposed disposition, unless the board of directors
14 makes a determination that because of conflicts of interest or other special
15 circumstances it should not make such a recommendation, or R.S. 12:1-826 applies.
16 If the board of directors makes such a determination or R.S. 12:1-826 applies, the
17 board of directors shall transmit to the shareholders the basis for so proceeding.

18 C. The board of directors may condition its submission of a disposition to
19 the shareholders under Subsection B of this Section on any basis.

20 D. If a disposition is required to be approved by the shareholders under
21 Subsection A of this Section, and if the approval is to be given at a meeting, the
22 corporation shall notify each shareholder, whether or not entitled to vote, of the
23 meeting of shareholders at which the disposition is to be submitted for approval. The
24 notice shall state that the purpose, or one of the purposes, of the meeting is to
25 consider the disposition and shall contain a description of the disposition, including
26 the terms and conditions thereof and the consideration to be received by the
27 corporation.

28 E. Unless the articles of incorporation or the board of directors acting
29 pursuant to Subsection C of this Section requires a greater vote, the approval of a

1 disposition by the shareholders shall require the approval of at least a majority of the
2 votes entitled to be cast on the disposition.

3 F. After a disposition has been approved by the shareholders under
4 Subsection B of this Section, and at any time before the disposition has been
5 consummated, it may be abandoned by the corporation without action by the
6 shareholders, subject to any contractual rights of other parties to the disposition.

7 G. A disposition of assets in the course of dissolution under Part 14 of this
8 Chapter is not governed by this Section.

9 H. The assets of a direct or indirect consolidated subsidiary shall be deemed
10 the assets of the parent corporation for the purposes of this Section.

11 Source: MBCA §12.02.

12 Comment - 2014 Revision

13 This Section modifies Model Act Subsection (e) to increase the vote required
14 to approve a covered disposition of assets from a majority of the votes cast at a
15 meeting with at least a majority quorum to a majority of all votes entitled to be cast.

16 PART 13. APPRAISAL RIGHTS

17 SUBPART A. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES

18 §1-1301. Definitions

19 In this Part, the following meanings shall apply:

20 (1) "Affiliate" means a person that directly or indirectly through one or more
21 intermediaries controls, is controlled by, or is under common control with another
22 person or is a senior executive thereof. For purposes of R.S. 12:1-1302(B)(4), an
23 entity is deemed to be an affiliate of its senior executives.

24 (2) "Beneficial owner" means any person who, directly or indirectly, through
25 any contract, arrangement, or understanding, other than a revocable proxy, has or
26 shares the power to vote, or to direct the voting of, shares; except that a member of
27 a national securities exchange is not deemed to be a beneficial owner of securities
28 held directly or indirectly by it on behalf of another person solely because the
29 member is the record holder of the securities if the member is precluded by the rules
30 of the exchange from voting without instruction on contested matters or matters that

1 may affect substantially the rights or privileges of the holders of the securities to be
2 voted. When two or more persons agree to act together for the purpose of voting
3 their shares of the corporation, each member of the group formed thereby is deemed
4 to have acquired beneficial ownership, as of the date of the agreement, of all voting
5 shares of the corporation beneficially owned by any member of the group.

6 (3) "Corporation" means the issuer of the shares held by a shareholder
7 demanding appraisal and, for matters covered in R.S. 12:1-1322 through 1-1331,
8 includes the surviving entity in a merger.

9 (3.1) "Excluded shares" means shares acquired pursuant to an offer for all
10 shares having voting power if the offer was made within one year prior to the
11 corporate action for consideration of the same kind and of a value equal to or less
12 than that paid in connection with the corporate action.

13 (4) "Fair value" means the value of the corporation's shares determined
14 immediately before the effectuation of the corporate action to which the shareholder
15 objects, using customary and current valuation concepts and techniques generally
16 employed for similar businesses in the context of the transaction requiring appraisal,
17 and without discounting for lack of marketability or minority status except, if
18 appropriate, for amendments to the articles pursuant to R.S. 12:1-1302(A)(5).

19 (5) "Interest" means interest from the effective date of the corporate action
20 until the date of payment, at the rate of judicial interest.

21 (5.1) "Interested person" means a person, or an affiliate of a person, who at
22 any time during the one-year period immediately preceding approval by the board
23 of directors of the corporate action, satisfies one of the following criteria:

24 (a) Was the beneficial owner of twenty percent or more of the voting power
25 of the corporation, other than as owner of excluded shares.

26 (b) Had the power, contractually or otherwise, other than as owner of
27 excluded shares, to cause the appointment or election of twenty-five percent or more
28 of the directors to the board of directors of the corporation.

1 (c) Was a senior executive or director of the corporation or a senior
2 executive of any affiliate thereof, and that senior executive or director will receive,
3 as a result of the corporate action, a financial benefit not generally available to other
4 shareholders as such, other than any of the following:

5 (i) Employment, consulting, retirement, or similar benefits established
6 separately and not as part of or in contemplation of the corporate action.

7 (ii) Employment, consulting, retirement, or similar benefits established in
8 contemplation of, or as part of, the corporate action that are not more favorable than
9 those existing before the corporate action or, if more favorable, that have been
10 approved on behalf of the corporation in the same manner as is provided in R.S.
11 12:1-862.

12 (iii) In the case of a director of the corporation who will, in the corporate
13 action, become a director of the acquiring entity in the corporate action or one of its
14 affiliates, rights and benefits as a director that are provided on the same basis as
15 those afforded by the acquiring entity generally to other directors of such entity or
16 such affiliate.

17 (5.2) "Interested transaction" means a corporate action described in R.S.
18 12:1-1302(A) involving an interested person in which any of the shares or assets of
19 the corporation are being acquired or converted.

20 (6) "Preferred shares" means a class or series of shares whose holders have
21 preference over any other class or series with respect to distributions.

22 (7) [Reserved.]

23 (8) "Senior executive" means the chief executive officer, chief operating
24 officer, chief financial officer, and anyone in charge of a principal business unit or
25 function.

26 (9) "Shareholder" means a record shareholder, a beneficial shareholder, and
27 a voting trust beneficial owner.

28 Source: MBCA §13.01

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Comment - 2014 Revision

The Model Act excludes so-called "short form mergers" from its definition of "interested transaction" in Paragraph (5.2) of this Section. A short form merger is a merger that is carried out between a ninety percent or greater parent company and one or more of its subsidiaries, or among one or more ninety-percent-or-greater subsidiaries of the same parent. See Subsection 11.05(a). The merger is called "short form" because it may be carried out without the approval of either the board or shareholders of the subsidiary. Id. The purpose of the "interested transaction" definition is to prevent the defined transaction from qualifying for the so-called "market out" exception that makes appraisal rights unavailable in transactions in which they would otherwise be provided.

This Section removes the exclusion of short form mergers from the definition of "interested transaction" so that short form mergers may be treated as "interested transactions" in the same way as ordinary mergers if they otherwise fit the definition in Paragraph (5.2) of this Section. The effect is to make appraisal rights available, and the market out exception unavailable, in a short form mergers that qualifies as an interested transaction.

The Model Act's removal of short form mergers from the definition of an interested transaction is puzzling because a short form merger is one of the clearest examples imaginable of a conflicting-interest transaction. It allows a parent company to dictate unilaterally to a ninety-percent subsidiary the terms under which a merger with the subsidiary will occur, without even the formality of an approving vote by the subsidiary's board or shareholders.

The only setting in which a market-out exception for a short-term merger or, indeed, for any parent-subsidiary merger, is justified is in a two-step cash, or public-shares, transaction in which the terms are set by market forces in the first step, and then carried through to the second step short-form merger as well. A typical example would be an unrelated acquirer making an all-shares cash tender offer that resulted in the acquisition of at least a majority of the target's shares, followed soon thereafter by a second-step merger at the same price, paid in cash, as that provided in the tender offer. In that kind of transaction, the usual justifications for the market out exception, i.e., liquidity and a market-set price, are met.

But the Model Act deals with that form of transaction elsewhere, through more narrowly-tailored provisions. In general, without the exception for short form mergers that this Section rejects, a parent company is an interested person because it owns twenty percent or more of the subsidiary's shares. See Model Act Item 13.01(5.1)(i)(A). However, in calculating the percentage of shares owned by the parent, so-called "excluded shares" are not counted. Excluded shares are shares that are acquired in an all-shares offer within one year of the date of a merger, as long as the merger terms provide at least the same price, paid in the same form, as offered in the first-step deal. See Subparagraph (3.1) of this Section. Hence, a bidder that acquired control of a target through a first-stage cash tender offer would not be treated as an interested person in a second-stage merger (whether short form or ordinary), as long as the merger occurred within a year and on the same terms as the tender offer. Note, however, that two-step management buyout could not use the excluded share concept to avoid being treated as an "interested transaction." Another provision, Item (5.1)(i)(C), would independently cause that kind of transaction to be treated as an "interested transaction" if the transaction otherwise fit the terms of that provision.

Because the "excluded shares" definition deals appropriately with the kinds of mergers in which the market out exception should apply, this Section rejects the

1 general exception for short form mergers provided by the Model Act in Subsection
2 (5.2) of this Section.

3 §1-1302. Right to appraisal

4 A. A shareholder is entitled to appraisal rights, and to obtain payment of the
5 fair value of that shareholder's shares, in the event of any of the following corporate
6 actions:

7 (1) Consummation of a merger to which the corporation is a party if
8 shareholder approval is required for the merger by R.S. 12:1-1104, except that
9 appraisal rights shall not be available to any shareholder of the corporation with
10 respect to shares of any class or series that remain outstanding after consummation
11 of the merger, or if the corporation is a subsidiary and the merger is governed by
12 R.S. 12:1-1105.

13 (2) Consummation of a share exchange to which the corporation is a party
14 as the corporation whose shares will be acquired, except that appraisal rights shall
15 not be available to any shareholder of the corporation with respect to any class or
16 series of shares of the corporation that is not exchanged.

17 (3) Consummation of a disposition of assets pursuant to R.S. 12:1-1202,
18 except that appraisal rights shall not be available to any shareholder of the
19 corporation with respect to shares of any class or series if, under the terms of the
20 corporate action approved by the shareholders, there is to be distributed to
21 shareholders in cash its net assets in excess of a reasonable amount reserved to meet
22 claims of the type described in R.S. 12:1-1406 and 1-1407, within one year after the
23 shareholders' approval of the action and in accordance with their respective interests
24 determined at the time of distribution, and the disposition of assets is not an
25 interested transaction.

26 (4) An amendment of the articles of incorporation with respect to a class or
27 series of shares that reduces the number of shares of a class or series owned by the
28 shareholder to a fraction of a share if the corporation has the obligation or right to
29 repurchase the fractional share so created.

1 (5) Any other amendment to the articles of incorporation, merger, share
2 exchange, or disposition of assets to the extent provided by the articles of
3 incorporation, bylaws, or a resolution of the board of directors.

4 (6) Consummation of a domestication if the shareholder does not receive
5 shares in the foreign corporation resulting from the domestication that have terms as
6 favorable to the shareholder in all material respects, and represent at least the same
7 percentage interest of the total voting rights of the outstanding shares of the
8 corporation, as the shares held by the shareholder before the domestication.

9 (7) Consummation of a conversion of the corporation to nonprofit status
10 pursuant to Subpart 9C of this Part.

11 (8) Consummation of a conversion of the corporation to an unincorporated
12 entity pursuant to Subpart 9E of this Part.

13 B. Notwithstanding Subsection A of this Section, the availability of appraisal
14 rights under Paragraphs (A)(1), (2), (3), (4), (6), and (8) of this Section shall be
15 limited in accordance with the following provisions:

16 (1) Appraisal rights shall not be available for the holders of shares of any
17 class or series of shares which is one of the following:

18 (a) A covered security under Section 18(b)(1)(A) or (B) of the Securities Act
19 of 1933, as amended.

20 (b) Traded in an organized market and has at least two thousand shareholders
21 and a market value of at least twenty million dollars, exclusive of the value of such
22 shares held by the corporation's subsidiaries, senior executives, and directors and by
23 beneficial shareholders and voting trust beneficial owners owning more than ten
24 percent of such shares.

25 (c) Issued by an open end management investment company registered with
26 the Securities and Exchange Commission under the Investment Company Act of
27 1940 and may be redeemed at the option of the holder at net asset value.

28 (2) The applicability of Paragraph (B)(1) of this Section shall be determined
29 as of either of the following:

1 (a) The record date fixed to determine the shareholders entitled to receive
2 notice of the meeting of shareholders to act upon the corporate action requiring
3 appraisal rights.

4 (b) The day before the effective date of such corporate action if there is no
5 meeting of shareholders.

6 (3) Paragraph (B)(1) of this Section shall not be applicable and appraisal
7 rights shall be available pursuant to Subsection A of this Section for the holders of
8 any class or series of shares who are required by the terms of the corporate action
9 requiring appraisal rights to accept for such shares anything other than cash or shares
10 of any class or any series of shares of any corporation, or any other proprietary
11 interest of any other entity, that satisfies the standards set forth in Paragraph (B)(1)
12 of this Section at the time the corporate action becomes effective or, in the case of
13 the consummation of a disposition of assets pursuant to R.S. 12:1-1202, unless such
14 cash, shares, or proprietary interests are, under the terms of the corporate action
15 approved by the shareholders, to be distributed to the shareholders as part of a
16 distribution to shareholders of the net assets of the corporation in excess of a
17 reasonable amount to meet claims of the type described in R.S. 12:1-1406 and
18 1-1407, within one year after the shareholders' approval of the action and in
19 accordance with their respective interests determined at the time of the distribution.

20 (4) Paragraph (B)(1) of this Section shall not be applicable and appraisal
21 rights shall be available pursuant to Subsection A of this Section for the holders of
22 any class or series of shares where the corporate action is an interested transaction.

23 C. Notwithstanding any other provision of this Section, the articles of
24 incorporation as originally filed or any amendment thereto may limit or eliminate
25 appraisal rights for any class or series of preferred shares, except for both of the
26 following:

27 (1) No such limitation or elimination shall be effective if the class or series
28 does not have the right to vote separately as a voting group, alone or as part of a
29 group, on the action or if the action is a nonprofit conversion under Subpart 9C of

1 this Part or a conversion to an unincorporated entity under Subpart 9E of this Part,
2 or a merger having a similar effect.

3 (2) Any such limitation or elimination contained in an amendment to the
4 articles of incorporation that limits or eliminates appraisal rights for any of such
5 shares that are outstanding immediately prior to the effective date of such
6 amendment or that the corporation is or may be required to issue or sell thereafter
7 pursuant to any conversion, exchange, or other right existing immediately before the
8 effective date of such amendment shall not apply to any corporate action that
9 becomes effective within one year of that date if such action would otherwise afford
10 appraisal rights.

11 Source: MBCA §13.02.

12 §1-1303. Assertion of rights by nominees and beneficial shareholders

13 A. A record shareholder may assert appraisal rights as to fewer than all the
14 shares registered in the record shareholder's name but owned by a beneficial
15 shareholder or a voting trust beneficial owner only if the record shareholder objects
16 with respect to all shares of the class or series owned by the beneficial shareholder
17 or the voting trust beneficial owner and notifies the corporation in writing of the
18 name and address of each beneficial shareholder on whose behalf appraisal rights are
19 being asserted. The rights of a record shareholder who asserts appraisal rights for
20 only part of the shares held of record in the record shareholder's name under this
21 Subsection shall be determined as if the shares as to which the record shareholder
22 objects and the record shareholder's other shares were registered in the names of
23 different record shareholders.

24 B. A beneficial shareholder may assert appraisal rights as to shares of any
25 class or series held on behalf of the shareholder only if such shareholder submits to
26 the corporation the record shareholder's written consent to the assertion of such
27 rights no later than the date referred to in R.S. 12:1-1322(B)(2)(b), and does so with

1 respect to all shares of the class or series that are beneficially owned by the beneficial
2 shareholder.

3 Source: MBCA §13.03.

4 SUBPART B. PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS

5 §1-1320. Notice of appraisal rights

6 A. Where any corporate action specified in R.S. 12:1-1302(A) is to be
7 submitted to a vote at a shareholders' meeting, the meeting notice must state that the
8 corporation has concluded that the shareholders are, are not, or may be entitled to
9 assert appraisal rights under this Part. If the corporation concludes that appraisal
10 rights are or may be available, the following statement shall be included in the
11 meeting notice sent to those record shareholders entitled to exercise appraisal rights:

12 "Appraisal rights allow a shareholder to avoid the effects of the proposed
13 corporate action described in this notice by selling the shareholder's shares
14 to the corporation at their fair value, paid in cash. To retain the right to assert
15 appraisal rights, a shareholder is required by law: (1) to deliver to the
16 corporation, before the vote is taken on the action described in this notice, a
17 written notice of the shareholder's intent to demand appraisal if the corporate
18 action proposed in this notice takes effect, and (2) not to vote, or cause or
19 permit to be voted, in favor of the proposed corporate action any shares of
20 the class or series for which the shareholder intends to assert appraisal rights.
21 If a shareholder complies with those requirements, and the action proposed
22 in this notice takes effect, the law requires the corporation to send to the
23 shareholder an appraisal form that the shareholder must complete and return,
24 and a copy of Part 13 of the Business Corporation Act, governing appraisal
25 rights".

26 B. In a merger pursuant to R.S. 12:1-1105, the parent corporation must
27 notify in writing all record shareholders of the subsidiary who are entitled to assert
28 appraisal rights that the corporate action became effective. Such notice must be sent
29 within ten days after the corporate action became effective and include the materials
30 described in R.S. 12:1-1322.

31 C. Where any corporate action specified in R.S. 12:1-1302(A) is to be
32 approved by written consent of the shareholders pursuant to R.S. 12:1-704.

33 (1) Written notice that appraisal rights are, are not, or may be available must
34 be sent to each record shareholder from whom a consent is solicited at the time
35 consent of such shareholder is first solicited and, if the corporation has concluded

1 that appraisal rights are or may be available, the following statement must be
2 included in the notice:

3 "Appraisal rights allow a shareholder to avoid the effects of the proposed
4 corporate action described in this notice by selling the shareholder's shares
5 to the corporation at their fair value, paid in cash. To retain the right to assert
6 appraisal rights, a shareholder is required by law not to sign any consent in
7 favor of the proposed corporate action with respect to any shares of the class
8 or series for which the shareholder intends to assert appraisal rights. If a
9 shareholder complies with this requirement, and the corporate action
10 proposed in this notice takes effect, the law requires the corporation to send
11 to the shareholder an appraisal form that the shareholder must complete and
12 return, and a copy of Part 13 of the Business Corporation Act, governing
13 appraisal rights".

14 (2) Written notice that appraisal rights are, are not, or may be available must
15 be delivered together with the notice to nonconsenting and nonvoting shareholders
16 required by R.S. 12:1-704(E) and (F), may include the materials described in R.S.
17 12:1-1322 and, if the corporation has concluded that appraisal rights are or may be
18 available, must be accompanied by a copy of this Part and the following statement:

19 "Appraisal rights allow a shareholder to avoid the effects of the corporate
20 action described in this notice by selling the shareholder's shares to the
21 corporation at their fair value, paid in cash. A shareholder may obtain
22 appraisal rights only by completing and returning an appraisal form that the
23 law requires the corporation to send to the shareholder, and by complying
24 with all other requirements of Part 13 of the Business Corporation Act, a
25 copy of which is enclosed".

26 D. Where corporate action described in R.S. 12:1-1302(A) is proposed, or
27 a merger pursuant to R.S. 12:1-1105 is effected, the notice referred to in Subsection
28 A or C of this Section, if the corporation concludes that appraisal rights are or may
29 be available, and in Subsection B of this Section shall be accompanied by both of the
30 following:

31 (1) The annual financial statements specified in R.S. 12:1-1620(B) of the
32 corporation that issued the shares that may be subject to appraisal, which shall be as
33 of a date ending not more than sixteen months before the date of the notice and shall
34 comply with R.S. 12: 1-1620(B); provided that, if such annual financial statements
35 are not reasonably available, the corporation shall provide reasonably equivalent
36 financial information.

1 series of shares only if the shareholder does not sign a consent in favor of the
2 proposed action with respect to that class or series of shares.

3 C. A shareholder who fails to satisfy the requirements of Subsection A or B
4 of this Section is not entitled to appraisal under this Part.

5 Source: MBCA §13.21.

6 Comments - 2014 Revision

7 (a) The Model Act references to "payment" in the caption of this Section and
8 in Paragraph (A)(1) and Subsection C of this Section have been replaced with the
9 term "appraisal" to avoid possible confusion between the payment that may be
10 available through appraisal rights and the payment being offered under the terms of
11 the transaction with respect to which the appraisal rights are being asserted.

12 (b) This Section modifies the Model Act language in Subsection B of this
13 Section to make it clear that a shareholder is not entitled to exercise appraisal rights
14 with respect to a class or series of shares if the shareholder has signed a consent with
15 respect to the relevant shares in a transaction that is approved by the written consent
16 of shareholders.

17 §1-1322. Appraisal notice and form

18 A. If a corporate action requiring appraisal rights under R.S. 12:1-1302(A)
19 becomes effective, the corporation must send a written appraisal notice and the form
20 required by Paragraph (B)(1) of this Section to all shareholders who satisfy the
21 requirements of R.S. 12:1-1321(A) or R.S. 12:1-1321(B). In the case of a merger
22 under R.S. 12:1-1105, the parent must deliver an appraisal notice and form to all
23 record shareholders who may be entitled to assert appraisal rights.

24 B. The appraisal notice must be delivered no earlier than the date the
25 corporate action specified in R.S. 12:1-1302(A) became effective, and no later than
26 ten days after such date, and must do all of the following:

27 (1) Supply a form that requires the shareholder asserting appraisal rights to
28 certify that such shareholder did not vote for or consent to the transaction.

29 (2) State all of the following:

30 (a) Where the form must be sent and where certificates for certificated shares
31 must be deposited and the date by which those certificates must be deposited, which
32 date may not be earlier than the date for receiving the required form under
33 Subparagraph (B)(2)(b) of this Section.

1 (b) A date by which the corporation must receive the form, which date may
2 not be fewer than forty nor more than sixty days after the date the appraisal notice
3 is sent pursuant to Subsection A of this Section, and state that the shareholder shall
4 have waived the right to demand appraisal with respect to the shares unless the form
5 is received by the corporation by such specified date.

6 (c) The corporation's estimate of the fair value of the shares.

7 (d) That, if requested in writing, the corporation will provide, to the
8 shareholder so requesting, within ten days after the date specified in Subparagraph
9 (B)(2)(b) of this Section the number of shareholders who return the forms by the
10 specified date and the total number of shares owned by them.

11 (e) The date by which the notice to withdraw under R.S. 12:1-1323 must be
12 received, which date must be at least twenty days after the date specified in
13 Subparagraph (B)(2)(b) of this Section.

14 (3) Be accompanied by a copy of this Part.

15 C. A corporation may elect to withhold payment as permitted by R.S.
16 12:1-1325 only if the form required by Subsection B of this Section does both of the
17 following:

18 (1) Specifies the first date of any announcement to shareholders made prior
19 to the date the corporate action became effective of the principal terms of the
20 proposed corporate action.

21 (2) If such announcement was made, requires the shareholder asserting
22 appraisal rights to certify whether beneficial ownership of those shares for which
23 appraisal rights are asserted was acquired before that date.

24 Source: MBCA §13.22.

25 Comment - 2014 Revision

26 Model Act Paragraph (b)(1) requires all notices of appraisal to include
27 "announcement date" information concerning the transaction with respect to which
28 a shareholder is demanding appraisal rights, and to require certifications from the
29 shareholder that the relevant shares were acquired before that date. Those items are
30 relevant only where the corporation wishes to exercise its right not to make an
31 immediate payment for so-called "after acquired" shares under R.S. 12:1-1324 and
32 1-1325. Because the after-acquired shares issue is irrelevant to most closely-held
33 corporations, this Section moves the announcement and acquisition date items from

1 the general rules in Paragraph (B)(1) of this Section to a new Subsection C of this
2 Section. The notice required by Subsection B of this Section need not include the
3 items covered by new Subsection C of this Section unless the corporation wishes to
4 preserve its right to withhold an immediate payment for after-acquired shares,
5 something that is likely to be relevant only where an active trading market exists for
6 the corporation's shares.

7 §1-1323. Perfection of rights and right to withdraw

8 A. A shareholder who receives notice pursuant to R.S. 12:1-1322 and who
9 wishes to exercise appraisal rights must sign and return the form sent by the
10 corporation and, in the case of certificated shares, deposit the shareholder's
11 certificates in accordance with the terms of the notice by the date referred to in the
12 notice pursuant to R.S. 12:1-1322(B)(2)(b). In addition, if applicable, the
13 shareholder must certify on the form whether the beneficial owner of such shares
14 acquired beneficial ownership of the shares before the date required to be set forth
15 in the notice pursuant to R.S. 12:1-1322(B)(1). If a shareholder fails to make this
16 certification, the corporation may elect to treat the shareholder's shares as
17 after-acquired shares under R.S. 12:1-1325. Once a shareholder deposits that
18 shareholder's certificates or, in the case of uncertificated shares, returns the signed
19 forms, that shareholder loses all rights as a shareholder, unless the shareholder
20 withdraws pursuant to Subsection B of this Section.

21 B. A shareholder who has complied with Subsection A of this Section may
22 nevertheless decline to exercise appraisal rights and withdraw from the appraisal
23 process by so notifying the corporation in writing by the date set forth in the
24 appraisal notice pursuant to R.S. 12:1-1322(B)(2)(e). A shareholder who fails to so
25 withdraw from the appraisal process may not thereafter withdraw without the
26 corporation's written consent.

27 C. A shareholder who does not sign and return the form and, in the case of
28 certificated shares, deposit that shareholder's share certificates where required, each
29 by the date set forth in the notice described in R.S. 12:1-1322(B), shall not be
30 entitled to payment under this Part.

31 Source: MBCA §13.23.

1 §1-1324. Payment

2 A. Except as provided in R.S. 12:1-1325, within thirty days after the form
3 required by R.S. 12:1-1322(B)(2)(b) is due, the corporation shall pay in cash to those
4 shareholders who complied with R.S. 12:1-1323(A) the amount the corporation
5 estimates to be the fair value of their shares, plus interest.

6 B. Except as provided in Subsection C of this Section, the payment to each
7 shareholder pursuant to Subsection A of this Section must be accompanied by all of
8 the following:

9 (1)(a) The annual financial statements specified in R.S. 12:1-1620(B) of the
10 corporation that issued the shares to be appraised, which shall be of a date ending not
11 more than sixteen months before the date of payment and shall comply with R.S.
12 12:1-1620(B); provided that, if such annual financial statements are not reasonably
13 available, the corporation shall provide reasonably equivalent financial information.

14 (b) The latest available quarterly financial statements of such corporation,
15 if any.

16 (2) A statement of the corporation's estimate of the fair value of the shares,
17 which estimate must equal or exceed the corporation's estimate given pursuant to
18 R.S. 12:1-1322(B)(2)(c);

19 (3) A statement that shareholders described in Subsection A of this Section
20 have the right to demand further payment under R.S. 12:1-1326 and that if any such
21 shareholder does not do so within the time period specified therein, such shareholder
22 shall be deemed to have accepted such payment in full satisfaction of the
23 corporation's obligations under this Part.

24 C. The financial information described in Paragraph (B)(1) of this Section
25 need not accompany the corporation's payment under Subsection A of this Section
26 if the corporation has earlier delivered to the shareholder financial information that
27 meets the requirements of Paragraph (B)(1) of this Section as of the time of the
28 payment.

29 Source: MBCA §13.24.

1 Comments - 2014 Revision

2 This Section adds a new Subsection C that allows a corporation to avoid
3 duplicative deliveries of financial information. R.S. 12:1-1320(D) requires the
4 notice of appraisal rights to be accompanied by the same financial statements as
5 those required under Subsection B of this Section in connection with the
6 corporation's payment of the amount it estimates as the fair value of the shares.
7 Under new Subsection C of this Section, the second delivery of financial statements
8 is excused if the statements sent earlier still meet the requirements of Subsection B.
9 of this Section. A second delivery of annual financial statements or their equivalents
10 would be required only if enough time had passed between the notice of appraisal
11 under R.S. 12:1-1320 and the payment under this Section to cause the
12 earlier-delivered financial statements no longer to meet the requirement that they be
13 stated as of a date ending not more than sixteen months before the date of the
14 payment. The elimination of the duplicate delivery requirement does not affect the
15 discovery rights of a shareholder in an action to enforce the shareholder's appraisal
16 rights.

17 §1-1325. After-acquired shares

18 A. A corporation may elect to withhold payment required by R.S. 12:1-1324
19 from any shareholder who was required to, but did not, certify that beneficial
20 ownership of all of the shareholder's shares for which appraisal rights are asserted
21 was acquired before the date specified in the appraisal notice sent in accordance with
22 R.S. 12:1-1322(B)(1) and R.S. 12:1-1322(C).

23 B. If the corporation elects to withhold payment under Subsection A of this
24 Section, it must, within thirty days after the form required by R.S.
25 12:1-1322(B)(2)(b) is due, notify all shareholders who are described in Subsection
26 A of this Section of all of the following:

- 27 (1) The information required by R.S. 12:1-1324(B)(1).
28 (2) The corporation's estimate of fair value pursuant to R.S. 12:1-1324(B)(2).
29 (3) That they may accept the corporation's estimate of fair value, plus
30 interest, in full satisfaction of their demands or demand appraisal under R.S.
31 12:1-1326.
32 (4) That those shareholders who wish to accept such offer must so notify the
33 corporation of their acceptance of the corporation's offer within thirty days after
34 receiving the offer.

1 (5) That those shareholders who do not satisfy the requirements for
2 demanding appraisal under R.S. 12:1-1326 shall be deemed to have accepted the
3 corporation's offer.

4 C. Within ten days after receiving the shareholder's acceptance pursuant to
5 Subsection B of this Section, the corporation must pay in cash the amount it offered
6 under Paragraph (B)(2) of this Section to each shareholder who agreed to accept the
7 corporation's offer in full satisfaction of the shareholder's demand.

8 D. Within forty days after sending the notice described in Subsection B of
9 this Section, the corporation must pay in cash the amount it offered to pay under
10 Paragraph (B)(2) of this Section to each shareholder described in Paragraph (B)(5)
11 of this Section.

12 Source: MBCA §13.25.

13 §1-1326. Procedure if shareholder dissatisfied with payment or offer

14 A. A shareholder paid pursuant to R.S. 12:1-1324 who is dissatisfied with
15 the amount of the payment must notify the corporation in writing of that
16 shareholder's estimate of the fair value of the shares and demand payment of that
17 estimate plus interest, less any payment under R.S. 12:1-1324. A shareholder offered
18 payment under R.S. 12:1-1325 who is dissatisfied with that offer must reject the
19 offer and demand payment of the shareholder's stated estimate of the fair value of the
20 shares plus interest.

21 B. A shareholder who fails to notify the corporation in writing of that
22 shareholder's demand to be paid the shareholder's stated estimate of the fair value
23 plus interest under Subsection A of this Section within thirty days after receiving the
24 corporation's payment or offer of payment under R.S. 12:1-1324 or 1-1325,
25 respectively, waives the right to demand payment under this Section and shall be
26 entitled only to the payment made or offered pursuant to those respective Sections.

27 Source: MBCA §13.26.

1 SUBPART C. JUDICIAL APPRAISAL OF SHARES2 §1-1330. Court action

3 A. If a shareholder makes demand for payment under R.S. 12:1-1326 which
4 remains unsettled, the corporation shall commence a summary proceeding within
5 sixty days after receiving the payment demand and petition the court to determine
6 the fair value of the shares and accrued interest. If the corporation does not
7 commence the proceeding within the sixty-day period, it shall pay in cash to each
8 shareholder the amount the shareholder demanded pursuant to R.S. 12:1-1326, plus
9 interest, within ten days after the expiration of the sixty-day period.

10 B. The corporation shall commence the proceeding in the district court of the
11 parish where the corporation's principal office or, if none, its registered office in this
12 state is located. If the corporation is a foreign corporation without a registered office
13 in this state, it shall commence the proceeding in the parish in this state where the
14 principal office or registered office of the domestic corporation merged with the
15 foreign corporation was located at the time of the transaction.

16 C. The corporation shall make all shareholders, whether or not residents of
17 this state, whose demands remain unsettled parties to the proceeding, and all parties
18 must be served with a copy of the petition. Nonresidents may be served as provided
19 by law.

20 D. The jurisdiction of the court in which the proceeding is commenced under
21 Subsection B of this Section is exclusive. The court may appoint an appraiser to file
22 a written report with the court on the question of fair value. The appraiser shall have
23 the powers described in the appointing order, or in any amendment to it. The
24 shareholders demanding appraisal rights are entitled to the same discovery rights as
25 parties in other civil proceedings. If the court appoints an appraiser, the appraiser's
26 written report shall be treated as the report of an expert witness, and the corporation
27 and shareholders demanding appraisal shall be entitled to depose and to examine and
28 cross-examine the appraiser as an expert witness.

1 E. Each shareholder made a party to the proceeding is entitled to judgment
2 for either of the following:

3 (1) The amount, if any, by which the court finds the fair value of the
4 shareholder's shares, plus interest, exceeds the amount paid by the corporation to the
5 shareholder for such shares.

6 (2) The fair value, plus interest, of the shareholder's shares for which the
7 corporation elected to withhold payment under R.S. 12:1-1325.

8 Source: MBCA §13.30.

9 Comments - 2014 Revision

10 (a) This Section modifies Model Act Subsection (a) to state that the
11 proceeding to be commenced by the corporation is to be a summary proceeding.
12 Because a jury is unavailable in a summary proceeding, the Model Act rule against
13 a jury trial in Subsection (d) was deleted as redundant.

14 (b) This Section also adds a date by which the corporation must pay the
15 amount demanded by a shareholder if the corporation fails to commence the
16 appraisal proceeding within the sixty-day period specified in Subsection A of this
17 Section. The peremptive period for the enforcement of this payment obligation,
18 which is provided in R.S. 12:1-1331(D), is measured from that date.

19 (c) Model Act Subsection (d) provides that a court-appointed appraiser may
20 "receive evidence and a recommend a decision" in the appraisal proceeding. This
21 Section modifies Subsection (d) to treat the appraiser as a court-appointed expert
22 witness.

23 §1-1331. Court costs and expenses

24 A. The court in an appraisal proceeding commenced under R.S. 12:1-1330
25 shall determine all court costs of the proceeding, including the reasonable
26 compensation and expenses of appraisers appointed by the court. The court shall
27 assess the court costs against the corporation, except that the court may assess court
28 costs against all or some of the shareholders demanding appraisal, in amounts which
29 the court finds equitable, to the extent the court finds such shareholders acted
30 arbitrarily, vexatiously, or not in good faith with respect to the rights provided by
31 this Part.

32 B. The court in an appraisal proceeding may also assess the expenses of the
33 respective parties in amounts the court finds equitable against either of the following:

1 set aside or rescinded, in any proceeding commenced by a shareholder after the
2 shareholders have approved the corporate action.

3 B. Subsection A of this Section does not apply to a corporate action that is
4 any of the following:

5 (1) Not authorized and approved in accordance with the applicable
6 provisions of any of the following:

7 (a) Part 9, 10, 11, or 12 of this Chapter.

8 (b) The articles of incorporation or bylaws.

9 (c) The resolution of the board of directors authorizing the corporate action.

10 (2) [Reserved.]

11 (3) [Reserved.]

12 (4) Approved by less than unanimous consent of the voting shareholders
13 pursuant to R.S. 12:1-704 if both of the following requirements are met:

14 (a) The challenge to the corporate action is brought by a shareholder who did
15 not consent and as to whom notice of the approval of the corporate action was not
16 effective at least ten days before the corporate action was effected.

17 (b) The proceeding challenging the corporate action is commenced within
18 ten days after notice of the approval of the corporate action is effective as to the
19 shareholder bringing the proceeding.

20 Source: MBCA §13.40.

21 Comment - 2014 Revision

22 Model Act Paragraphs (b)(2) and (3) provide exceptions to the operation of
23 Subsection A of this Section for a corporate action that was an "interested
24 transaction," if not approved as provided in R.S. 12:1-862 and 1-863, or one that was
25 procured as a result of a material mistake, misrepresentation or omission. This
26 Section deletes those subsections because of the potential they create of negating the
27 effects of Subsection A of this Section almost entirely.

28 PART 14. DISSOLUTION

29 SUBPART A. VOLUNTARY DISSOLUTION

30 §1-1401. [Reserved.]

1 Comment - 2014 Revision

2 The substance of the simplified dissolution mechanism provided by Model
3 Act Section 14.01 has been incorporated into R.S. 12:1-1441, concerning a
4 simplified form of termination.

5 §1-1402. Dissolution by board of directors and shareholders

6 A. A corporation's board of directors may propose dissolution for submission
7 to the shareholders.

8 B. For a proposal to dissolve to be adopted, both of the following
9 requirements must be met:

10 (1) The board of directors must recommend dissolution to the shareholders
11 unless the board of directors determines that because of conflict of interest or other
12 special circumstances it should make no recommendation and communicates the
13 basis for its determination to the shareholders.

14 (2) The shareholders entitled to vote must approve the proposal to dissolve
15 as provided in Subsection E of this Section.

16 C. The board of directors may condition its submission of the proposal for
17 dissolution on any basis.

18 D. The corporation shall notify each shareholder, whether or not entitled to
19 vote, of the proposed shareholders' meeting. The notice must also state that the
20 purpose, or one of the purposes, of the meeting is to consider dissolving the
21 corporation.

22 E. Unless the articles of incorporation or the board of directors acting
23 pursuant to Subsection C of this Section require a greater vote or a vote by voting
24 groups, adoption of the proposal to dissolve shall require the approval of at least a
25 majority of the votes entitled to be cast.

26 Source: MBCA §14.02.

27 §1-1403. Articles of dissolution

28 A. At any time after dissolution is authorized, the corporation may dissolve
29 by delivering to the secretary of state for filing articles of dissolution setting forth all
30 of the following:

- 1 (1) The name of the corporation.
- 2 (2) The date dissolution was authorized.
- 3 (3) If dissolution was approved by the shareholders, a statement that the
 4 proposal to dissolve was duly approved by the shareholders in the manner required
 5 by this Act and by the articles of incorporation.
- 6 B. A corporation is dissolved upon the effective date of its articles of
 7 dissolution.
- 8 C. For purposes of this Subpart, "dissolved corporation" means a corporation
 9 whose articles of dissolution have become effective and includes a successor entity
 10 to which the remaining assets of the corporation are transferred subject to its
 11 liabilities for purposes of liquidation.
- 12 D. The secretary of state shall deliver a notice of the filing of the articles of
 13 dissolution to all of the following:
- 14 (1) The secretary of the Department of Revenue.
- 15 (2) The secretary of the Department of Environmental Quality.
- 16 (3) The administrator of the Louisiana Employment Security Law.

17 Source: MBCA §14.03, R.S. 12:148.

18 Comments - 2014 Revision

- 19 (a) The rules in this Section concerning the content of a corporation's articles
 20 of dissolution are supplemented by the general rules in R.S. 12:1-120 for the filing
 21 of documents under this Section. The effective date of the articles is governed by
 22 R.S. 12:1-123(A), and the duty of the secretary of state to file the articles, if they
 23 meet the requirements for filing, is provided by R.S. 12:1-125(A).
- 24 (b) Subsection D of this Section is not part of the Model Act. It was added
 25 to this Section to retain a modified version of former R.S. 12:148(B). That Section
 26 conditioned the obligation of the secretary of state to file a corporation's final articles
 27 of dissolution, declaring its liquidation to be complete, on the filing of a certificate
 28 from each of the three listed agencies, to the effect that the already-liquidated
 29 corporation owed no unpaid debts to the agency or to the funds that the agency
 30 administered. The former approach was not retained unchanged in this Section
 31 because it imposed indefinite delays on the completion of the dissolution process,
 32 while providing the required notices only when they were too late to do much good,
 33 after the corporation had already liquidated and distributed all its assets.
- 34 (c) As adopted in this Section, Subsection D of this Section requires the
 35 secretary of state to notify the listed agencies of the filing of articles of dissolution
 36 under this Section. Because articles of dissolution are filed at the beginning of a
 37 corporation's liquidation process, the notice is provided when it is still useful, before
 38 the corporation has already paid its other debts and distributed its residual value to

1 its shareholders. And because the agencies are relieved of any obligation to take
2 some affirmative position on whether a debt is owed, they are free to pursue the
3 enforcement strategies they consider most efficient with respect to dissolved
4 corporations, without delaying the completion of all corporate dissolutions for the
5 indefinite time required to make the affirmative certifications required by the prior
6 law.

7 §1-1404. Revocation of dissolution

8 A. A corporation that is not terminated may revoke its dissolution within one
9 hundred and twenty days of its effective date.

10 B. Revocation of dissolution must be authorized in the same manner as the
11 dissolution was authorized unless that authorization permitted revocation by action
12 of the board of directors alone, in which event the board of directors may revoke the
13 dissolution without shareholder action.

14 C. After the revocation of dissolution is authorized, the corporation may
15 revoke the dissolution by delivering to the secretary of state for filing articles of
16 revocation of dissolution that set forth all of the following:

17 (1) The name of the corporation.

18 (2) The effective date of the dissolution that was revoked.

19 (3) The date that the revocation of dissolution was authorized.

20 (4) If the corporation's board of directors, or incorporators, revoked the
21 dissolution, a statement to that effect.

22 (5) If the corporation's board of directors revoked a dissolution authorized
23 by the shareholders, a statement that revocation was permitted by action by the board
24 of directors alone pursuant to that authorization.

25 (6) If shareholder action was required to revoke the dissolution, the
26 information required by R.S. 12:1-1403(A)(3).

27 D. Revocation of dissolution is effective upon the effective date of the
28 articles of revocation of dissolution.

29 E. When the revocation of dissolution is effective, it relates back to and takes
30 effect as of the effective date of the dissolution and the corporation resumes carrying
31 on its business as if dissolution had never occurred.

1 F. A dissolution under R.S. 12:1-1438 is not revocable.

2 Source: MBCA §14.04.

3 Comments - 2014 Revision

4 (a) Unlike the Model Act, this Section distinguishes between a corporation
5 that has been dissolved and one that has been terminated. A corporation may revoke
6 its dissolution under Subsection A of this Section only if the corporation is not
7 already terminated. If the corporation is terminated, it may seek reinstatement as
8 provided in R.S. 12:1-1444.

9 (b) This Section adds a new Subsection F to provide that a dissolution under
10 R.S. 12:1-1438 is not revocable. R.S. 12:1-1438 permits a corporation to dissolve
11 in lieu of carrying out a court-ordered buyout of an oppressed shareholder. A
12 revocation of dissolution under those circumstances is prohibited to prevent the
13 majority shareholders of the corporation from circumventing the effects of the
14 remedy, either a buyout or dissolution, that this Section makes available to an
15 oppressed shareholder.

16 §1-1405. Effect of dissolution

17 A. A dissolved corporation continues its corporate existence but may not
18 carry on any business except that appropriate to wind up and liquidate its business
19 and affairs, including any of the following:

20 (1) Collecting its assets.

21 (2) Disposing of its properties that will not be distributed in kind to its
22 shareholders.

23 (3) Discharging or making reasonable provision for discharging its liabilities.

24 (4) Distributing its remaining property among its shareholders according to
25 their interests.

26 (5) Doing every other act necessary to wind up and liquidate its business and
27 affairs.

28 B. Dissolution of a corporation does not do any of the following:

29 (1) Transfer title to the corporation's property.

30 (2) Prevent transfer of its shares or securities, although the authorization to
31 dissolve may provide for closing the corporation's share transfer records.

32 (3) Subject its directors or officers to standards of conduct different from
33 those prescribed in Part 8 of this Chapter.

1 (4) Change quorum or voting requirements for its board of directors or
2 shareholders; change provisions for selection, resignation, or removal of its directors
3 or officers or both; or change provisions for amending its bylaws.

4 (5) Prevent commencement of a proceeding by or against the corporation in
5 its corporate name.

6 (6) Abate or suspend a proceeding pending by or against the corporation on
7 the effective date of dissolution.

8 (7) Terminate the authority of the registered agent of the corporation.

9 C. The limitation imposed by Subsection A of this Section on the business
10 to be conducted by a dissolved corporation does not do either of the following:

11 (1) Require the corporation to discontinue operations in any part of its
12 business that the corporation plans to sell as a going concern in connection with the
13 winding up and liquidation of the corporation's affairs.

14 (2) Affect any right acquired by a third person before the third person knows
15 or has reason to know that the corporation is dissolved.

16 D. The filing of articles of dissolution by a corporation does not by itself
17 give a third person knowledge or reason to know that the corporation is dissolved.

18 E. The provisions of Code of Civil Procedure Articles 692 and 740 do not
19 apply to a dissolved corporation that has not been terminated. A dissolved and
20 unterminated corporation continues to be the proper party plaintiff under Code of
21 Civil Procedure Article 690 and the proper party defendant under Code of Civil
22 Procedure Article 739. An action by or against a terminated corporation is governed
23 by R.S. 12: 1-1443.

24 Source: MBCA §14.05.

25 Comments - 2014 Revision

26 (a) This Section adds a new Subsection C to make it clear that the limitation
27 on the business of a dissolved corporation imposed by Subsection A of this Section
28 does not interfere with the ability of a dissolved corporation to sell all or part of its
29 business as a going concern, or affect any right acquired by a third party without
30 knowledge or reason to know of the dissolution. A new Subsection D of this Section
31 rejects the view that the simple filing of articles of dissolution is enough by itself to
32 put a third party on notice of the dissolution.

1 (b) This Section adds a new Subsection E to confirm the continued
2 procedural capacity of a dissolved corporation that has not been terminated. If the
3 corporation has been terminated, its procedural capacity is governed by R.S.
4 12:1-1443.

5 §1-1406. Known claims against dissolved corporation

6 A. A dissolved corporation may dispose of the known claims against it by
7 notifying its known claimants in writing of the dissolution at any time after its
8 effective date.

9 B. The written notice must do all of the following:

10 (1) Describe information that must be included in a claim.

11 (2) Provide a mailing address where a claim may be sent.

12 (3) State the deadline, which may not be fewer than one hundred and twenty
13 days from the effective date of the written notice, by which the dissolved corporation
14 must receive the claim.

15 (4) State that the claim will be extinguished by preemption if not received
16 by the deadline.

17 C. A claim against the dissolved corporation is preempted either of the
18 following:

19 (1) If a claimant who was given written notice under Subsection B of this
20 Section does not deliver the claim to the dissolved corporation by the deadline.

21 (2) If a claimant whose claim was rejected by the dissolved corporation does
22 not commence a proceeding to enforce the claim by the deadline stated in the
23 rejection notice for the commencement of an enforcement proceeding, which may
24 not be fewer than ninety days after the effective date of the rejection notice.

25 D. For purposes of this Section, "claim" does not include a contingent
26 liability or a claim based on an event occurring after the effective date of dissolution.

27 Source: MBCA §14.06.

28 Comments - 2014 Revision

29 (a) This Section changes the word "barred" in Subsection C of this Section
30 to "preempted" to make it clear that the time limitation in Subsection C of this
31 Section is preemptive rather than prescriptive. Reflecting that change in
32 terminology, the language of the notice in Paragraph (B)(4) of this Section is
33 modified to use the phrase "extinguished by preemption." That phrase is used in the

1 notice both because it is technically correct and because the word "extinguished" is
2 likely to convey to a layperson the critical idea that the affected claim will be
3 terminated or eliminated in some fashion if the deadline stated in the notice is
4 missed.

5 (b) The Model Act deadline in Paragraph (C)(2) of this Section for the
6 commencement of an enforcement proceeding on a rejected claim is ninety days after
7 the effective date of the corporation's notice to the claimant that the corporation has
8 rejected the claim. Unlike the initial notice to the claimant under Paragraph (B)(3)
9 of this Section, the Model Act rejection notice is not required to state the deadline
10 that applies. Paragraph (C)(2) of this Section is modified to require a statement of
11 the deadline in the rejection notice similar to that required in the initial notice. As
12 modified, the deadline for the commencement of a proceeding to enforce a rejected
13 claim under Paragraph (C)(2) of this Section is the deadline stated in the rejection
14 notice, and that deadline must be at least ninety days after the effective date of the
15 rejection notice.

16 §1-1407. Other claims against dissolved corporation

17 A. A dissolved corporation may also publish notice of its dissolution and
18 request that persons with claims against the dissolved corporation present them in
19 accordance with the notice.

20 B. The notice must do all of the following:

21 (1) Be published one time in a newspaper of general circulation in the parish
22 where the dissolved corporation's principal office or, if none in this state, its
23 registered office, is or was last located.

24 (2) Describe the information that must be included in a claim and provide a
25 mailing address where the claim may be sent.

26 (3) State that a claim against the dissolved corporation will be extinguished
27 by peremption unless a proceeding to enforce the claim is commenced within three
28 years after the publication of the notice.

29 C. If the dissolved corporation publishes a newspaper notice in accordance
30 with Subsection B of this Section, any claim not earlier preempted by R.S.
31 12:1-1406(C) is preempted unless the claimant commences a proceeding to enforce
32 the claim against the dissolved corporation within three years after the publication
33 date of the newspaper notice.

34 D. A claim that is not preempted by R.S. 12:1-1406(C) or 1-1407(C) may
35 be enforced against either of the following:

36 (1) The dissolved corporation, to the extent of its undistributed assets.

1 corporation publishes a newspaper notice in accordance with Subsection C of this
2 Section.

3 (f) The effect of adding the two-year bar in Subsection E of this Section,
4 when combined with a similar two-year bar for claims against directors under R.S.
5 12:1-833, is to make the three-year bar in Subsection C of this Section relevant only
6 to claims against the corporation itself, recoverable under this Section only from
7 undistributed assets of the corporation. Because the corporation is unlikely to hold
8 any undistributed assets other than those unknown to the corporation itself or already
9 dedicated to the payment of contingent and post-dissolution claims, the three-year
10 bar is unlikely to protect the corporation itself from the adverse effects of a
11 late-arising claim. Still, the three-year bar remains important for two other reasons.
12 First, where the corporation has made provision for the post-dissolution payment of
13 claimants, it allows that class to be closed and payments to be made as provided.
14 Second, it bars successor liability claims that might otherwise be made against a firm
15 that purchased substantially all of the assets of the dissolved corporation, or of one
16 of its divisions or product lines. Both of those effects are consistent with the balance
17 struck by the Model Act between the competing goals of compensating injured
18 plaintiffs and of protecting asset transferees against liability for the dissolved
19 corporation's contingent claims.

20 (g) This Section adds a new Subsection F to make it clear that the contingent
21 and post-dissolution claims that are excluded from the effects of R.S. 12:1-1406
22 through the special definition of "claim" in Subsection D of that Section are not
23 excluded from the meaning of that term in this Section. This Section applies to all
24 claims of any kind, including those not affected by R.S. 12:1-1406.

25 §1-1408. Court proceedings

26 A. A dissolved corporation that has published a notice under R.S. 12:1-1407
27 may file an application with the district court of the parish where the dissolved
28 corporation's principal office or, if none in this state, its registered office is located
29 for a determination of the amount and form of security to be provided for payment
30 of claims that are contingent or have not been made known to the dissolved
31 corporation or that are based on an event occurring after the effective date of
32 dissolution but that, based on the facts known to the dissolved corporation, are
33 reasonably estimated to arise after the effective date of dissolution. Provision need
34 not be made for any claim that is or is reasonably anticipated to be barred under R.S.
35 12:1-1407(C).

36 B. Within ten days after the filing of the application, notice of the proceeding
37 shall be given by the dissolved corporation to each claimant holding a contingent
38 claim whose contingent claim is shown on the records of the dissolved corporation.

39 C. The court shall appoint an attorney at law to represent all claimants whose
40 identities or whereabouts are unknown in any proceeding brought under this Section.

1 as if those claimants were absentee defendants under Code of Civil Procedure Article
2 5091. The reasonable fees and expenses of the appointed attorney, including all
3 reasonable expert witness fees, shall be paid by the dissolved corporation.

4 D. Provision by the dissolved corporation for security in the amount and the
5 form ordered by the court under R.S. 12:1-1408(A) shall satisfy the dissolved
6 corporation's obligations with respect to claims that are contingent, have not been
7 made known to the dissolved corporation, or are based on an event occurring after
8 the effective date of dissolution, and such claims may not be enforced against a
9 shareholder who received assets in liquidation.

10 Source: MBCA §14.08.

11 Comment - 2014 Revision

12 Subsection C of this Section authorizes a court to appoint an attorney under
13 Art. 5091 of the Code of Civil Procedure to perform the functions assigned by
14 Subsection (c) of the Model Act to a guardian ad litem.

15 §1-1409. Responsibility of the board of directors

16 A. The board of directors of a dissolved corporation is responsible for
17 winding up and liquidating the business and affairs of the corporation as
18 contemplated by R.S. 12:1-1405 (A). The board of directors may authorize a
19 distribution to shareholders only after the corporation pays, or makes reasonable
20 provision to pay, all obligations owed by the corporation as contemplated by R.S.
21 12:1-1405(A).

22 B. Directors of a dissolved corporation which has disposed of claims under
23 R.S. 12:1-1406, 1-1407, or 1-1408 shall not be liable for breach of Subsection A of
24 this Section with respect to claims against the dissolved corporation that are barred
25 or satisfied under R.S. 12:1-1406, 1-1407, or 1-1408.

26 Comments - 2014 Revision

27 (a) Model Act Subsection (a) has been redrafted to avoid the inadvertent
28 suggestion in the model language that individual directors owe a personal duty to
29 cause a dissolved corporation to pay claims, even if the corporation is insolvent. As
30 redrafted, R.S. 12:1-1409(A) does all of the following:

31 (1) More clearly places responsibility for the winding up of the corporation's
32 business and affairs on the board of directors, not on directors individually.

1 (2) Incorporates by reference the board's responsibilities under R.S.
2 12:1-1405.

3 (3) Makes the payment or provision for payment of claims not an absolute
4 duty of the board, but rather a condition of the board's authority to distribute the
5 remaining corporate assets to the corporation's shareholders.

6 (b) The liability of a director for distributions made in violation of
7 Subsection A of this Section is governed by R.S. 12:1-833, not by Subsection A
8 itself.

9 §1-1410. Certain sections in subpart a applicable to all dissolved corporations

10 R.S. 12:1-1405 through 1-1409 apply to a dissolved corporation regardless
11 of whether the dissolution is voluntary or judicial.

12 Comment - 2014 Revision

13 This Section adds a new R.S. 12:1-1410 to make it clear that the provisions
14 in Subpart A of Part 14 of this Chapter, which provide the rules for winding up the
15 affairs of a dissolved corporation, apply even if the dissolution is judicial, and so
16 occurs under Subpart C rather than Subpart A of Part 14 of this Chapter.

17 SUBPART B. ADMINISTRATIVE DISSOLUTION

18 [Reserved.]

19 Comment - 2014 Revision

20 Chapter B of the Model Act, concerning administrative dissolution, has been
21 omitted from this Section. In place of those provisions, this Part adds two new
22 provisions on administrative termination and reinstatement, R.S. 12:1-1442 and
23 1-1444, which are similar in substance to the charter revocation and reinstatement
24 provisions in prior law.

25 SUBPART C. JUDICIAL DISSOLUTION

26 §1-1430. Grounds for judicial dissolution

27 A district court may dissolve a corporation in any of the following:

28 A.(1) A proceeding by the attorney general if either of the following is
29 established:

30 (a) The corporation obtained its articles of incorporation through fraud.

31 (b) The corporation has continued to exceed or abuse the authority conferred
32 upon it by law.

33 (2) A proceeding by a shareholder if any of the following is established:

34 (a) The directors are deadlocked in the management of the corporate affairs,
35 the shareholders are unable to break the deadlock, and irreparable injury to the

1 corporation is threatened or being suffered, or the business and affairs of the
2 corporation can no longer be conducted to the advantage of the shareholders
3 generally, because of the deadlock.

4 (b) [Reserved.]

5 (c) The shareholders are deadlocked in voting power and have failed, for a
6 period that includes at least two consecutive annual meeting dates, to elect
7 successors to directors whose terms have expired.

8 (d) [Reserved.]

9 (3) A proceeding by a creditor if either of the following is established:

10 (a) The creditor's claim has been reduced to judgment, the execution on the
11 judgment returned unsatisfied, and the corporation is insolvent.

12 (b) The corporation is insolvent and has admitted in writing that the
13 creditor's claim is due and owing.

14 (4) A proceeding by the corporation, or by shareholders of shares with at
15 least twenty-five percent of the voting power in the corporation, to have its voluntary
16 dissolution continued under court supervision.

17 (5) A proceeding by a shareholder if the corporation has abandoned its
18 business and has failed within a reasonable time to liquidate and distribute its assets
19 and dissolve.

20 B. Paragraph (A)(2) of this Section shall not apply in the case of a
21 corporation that, on the date of the filing of the proceeding, has shares that are
22 covered securities under Section 18(b)(1)(A) or (B) of the Securities Act of 1933, as
23 amended.

24 C. In Subsection A of this Section, "shareholder" means a record
25 shareholder, a beneficial shareholder, and a voting trust beneficial owner.

26 Source: MBCA §14.30.

27 Comments - 2014 Revision

28 (a) For reasons explained in the comments to R.S. 12:1-1435, this Part omits
29 Model Act Subparagraphs (a)(2)(ii) and (iv).

1 (b) This Part changes the wording of Model Act Subparagraph (a)(3)(ii) to
2 make it clear that an insolvent corporation need not admit its insolvency in writing
3 to allow a creditor to obtain dissolution under that Subsection, but need only admit
4 in writing that the creditor's claim is due and owing.

5 (c) This Section adds language to Model Act Paragraph (a)(4) to retain the
6 rule in prior law that holders of twenty-five percent or more of the voting power in
7 a corporation could obtain court supervision of a voluntary dissolution.

8 (d) Subsection B of this Section is modified to limit the exception provided
9 in that Section to a corporation that has shares that are "covered securities" under the
10 cited provisions of federal law. The term refers generally to securities that are traded
11 on a recognized national securities exchange or trading system. This Section deletes
12 the Model Act's alternative means of qualification for the exception based on the
13 number of beneficial shareholders and market value of its shares.

14 §1-1431. Procedure for judicial dissolution

15 A. Venue for a proceeding by the attorney general to dissolve a corporation
16 lies in East Baton Rouge Parish. Venue for a proceeding brought by any other party
17 named in R.S. 12:1-1430(A) lies in the parish where the corporation's principal
18 office or, if none in this state, its registered office is or was last located.

19 B. It is not necessary to make shareholders parties to a proceeding to
20 dissolve a corporation unless relief is sought against them individually.

21 C. A court in a proceeding brought to dissolve a corporation or to continue
22 a dissolution under court supervision may issue injunctions, appoint a receiver or
23 liquidator with all powers and duties the court directs, take other action required to
24 preserve the corporate assets wherever located, and carry on the business of the
25 corporation until a full hearing can be held.

26 D. Within ten days of the commencement of a proceeding to dissolve a
27 corporation under R.S. 12:1-1430(A)(2), the corporation must send to all
28 shareholders, other than the petitioner, a notice stating that the shareholders are
29 entitled to avoid the dissolution of the corporation by electing to purchase the
30 petitioner's shares under R.S. 12:1-1434 and accompanied by a copy of R.S.
31 12:1-1434.

32 Source: MBCA §14.31.

33 Comment - 2014 Revision

34 This Section adds language to Model Act Subsection (c) to make it clear that
35 the court has the same power to appoint a liquidator or receiver in a proceeding to

1 obtain court supervision of a voluntary dissolution as in an action for involuntary
2 dissolution.

3 §1-1432. Appointment of receiver or liquidator

4 A. Unless an election to purchase has been filed under R.S. 12:1-1434, a
5 court in a judicial proceeding brought to dissolve a corporation or to continue a
6 dissolution under court supervision may appoint one or more liquidators to wind up
7 and liquidate, or one or more receivers to manage, the business and affairs of the
8 corporation. The court shall hold a hearing, after notifying all parties to the
9 proceeding and any interested persons designated by the court, before appointing a
10 receiver or liquidator. The court appointing a receiver or liquidator has jurisdiction
11 over the corporation and all of its property wherever located.

12 B. The court may appoint an individual or a domestic or foreign corporation,
13 authorized to transact business in this state, as a receiver or liquidator. The court may
14 require the receiver or liquidator to post bond, with or without sureties, in an amount
15 the court directs.

16 C. The court shall describe the powers and duties of the receiver or liquidator
17 in its appointing order, which may be amended from time to time and may require
18 the receiver or liquidator to file interim and final reports with the court as the court
19 considers appropriate. Except as limited by the court, either of the following actions
20 may be taken:

21 (1) The liquidator may exercise all of the powers of the corporation, through
22 or in place of its board of directors, to the extent necessary to wind up the business
23 and affairs of the corporation as contemplated by R.S. 12:1-1405.

24 (2) The receiver may exercise all of the powers of the corporation, through
25 or in place of its board of directors, to the extent necessary to manage the affairs of
26 the corporation in the best interests of its shareholders and creditors.

27 D. The court may redesignate the receiver a liquidator, and may redesignate
28 the liquidator a receiver, if doing so is in the best interests of the corporation, its
29 shareholders, and creditors.

1 E. The court from time to time may order compensation paid and expenses
2 paid or reimbursed to the receiver or liquidator from the assets of the corporation or
3 proceeds from the sale of the assets.

4 F. If a court appoints a receiver or liquidator under this Section, then during
5 the period of the appointment the receiver or liquidator assumes the responsibility
6 and authority of the board of directors, except to the extent the appointing order
7 provides otherwise, and the board of directors is relieved of that responsibility and
8 authority. The receiver or liquidator is liable for a breach of duty as receiver or
9 liquidator to the same extent that a director holding the same authority and
10 responsibility would be liable.

11 Source: MBCA §14.32.

12 Comments - 2014 Revision

13 (a) This Section changes the titles of the persons who may be appointed by
14 a court under this Section to make the titles consistent with those used under prior
15 law. What the Model Act calls a "receiver" this Section calls a "liquidator," and
16 what the Model Act calls a "custodian" this Section calls a "receiver."

17 (b) This Section adds language to Model Act Subsection (a) to make it clear
18 that the court has the same power to appoint a liquidator or receiver in a proceeding
19 to obtain court supervision of a voluntary dissolution as in an action for involuntary
20 dissolution. It also adds language to Model Act Subsection (c) to authorize the court
21 to require the filing of interim and final reports by a liquidator or receiver.

22 (c) Subsection F of this Section addresses the effects of the appointment of
23 a receiver or liquidator on the duties of the corporation's board of directors. To the
24 extent that an appointing order confers authority on a receiver or liquidator, the
25 receiver or liquidator assumes the board's normal authority and responsibilities, and
26 the board is relieved of those responsibilities. In most cases, the receiver or
27 liquidator will assume the full responsibility of the board to operate or liquidate the
28 corporation. But in some cases, a court may confer a more limited form of authority
29 on an appointed receiver or liquidator, and in that event the board's authority is
30 supplanted only as provided in the appointing order.

31 §1-1433. Judgment of dissolution

32 A. If after a hearing the court determines that one or more grounds for
33 judicial dissolution described in R.S. 12:1-1430 exist, it may enter a judgment
34 dissolving the corporation and specifying the effective date of the dissolution, and
35 the clerk of the court shall deliver a certified copy of the judgment to the secretary
36 of state, who shall file it.

1 B. After entering the judgment of dissolution, the court shall direct the
2 winding up and liquidation of the corporation's business and affairs in accordance
3 with R.S. 12:1-1405 and the notification of claimants in accordance with R.S.
4 12:1-1406 and 1-1407.

5 Source: MBCA §14.33.

6 §1-1434. Election to purchase in lieu of dissolution

7 A. In a proceeding under R.S. 12:1-1430(A)(2) to dissolve a corporation, the
8 corporation may elect or, if it fails to elect, one or more shareholders may elect to
9 purchase all shares owned by the petitioning shareholder at the fair value of the
10 shares. An election pursuant to this Section shall be irrevocable unless the court
11 determines that it is equitable to set aside or modify the election.

12 B.(1) An election to purchase pursuant to this Section may be filed with the
13 court at any time within ninety days after the filing of the petition under R.S.
14 12:1-1430(A)(2) or at such later time as the court in its discretion may allow or as
15 all shareholders of the corporation may agree.

16 (2) If the election to purchase is filed by one or more shareholders, the
17 corporation shall, within ten days thereafter, give written notice to all shareholders,
18 other than the petitioner. The notice must state the name and number of shares
19 owned by the petitioner and the name and number of shares owned by each electing
20 shareholder and must advise the recipients of their right to join in the election to
21 purchase shares in accordance with this Section.

22 (3) Shareholders who wish to participate must file notice of their intention
23 to join in the purchase no later than thirty days after the effective date of the notice
24 to them. All shareholders who have filed an election or notice of their intention to
25 participate in the election to purchase thereby become parties to the proceeding and
26 shall participate in the purchase in proportion to their ownership of shares as of the
27 date the first election was filed, unless they otherwise agree or the court otherwise
28 directs.

1 (4) After an election has been filed by the corporation or one or more
2 shareholders, the proceeding under R.S. 12:1-1430(A)(2) may not be discontinued
3 or settled, nor may the petitioning shareholder sell or otherwise dispose of his or her
4 shares, unless the court determines that it would be equitable to the corporation and
5 the shareholders, other than the petitioner, to permit such discontinuance, settlement,
6 sale, or other disposition.

7 (5) If an election to purchase is filed by the corporation within ninety days
8 after the filing of the petition under R.S. 12:1-1430(A)(2), the corporation's election
9 shall be given precedence over any shareholder election filed within the same period,
10 even if the shareholder's election is filed before that of the corporation.

11 (6) If the court allows both the corporation and one or more shareholders to
12 file an election after the expiration of the ninety-day period, the court shall direct
13 how the purchase of shares is to be allocated among the electing parties.

14 C. If, within sixty days of the filing of the first election, the parties reach
15 agreement as to the fair value and terms of purchase of the petitioner's shares, the
16 court shall enter an order directing the purchase of petitioner's shares upon the terms
17 and conditions agreed to by the parties.

18 D. If the parties are unable to reach an agreement as provided for in
19 Subsection C of this Section, the court, upon application of any party, shall stay the
20 R.S. 12:1-1430(A)(2) proceedings and determine the fair value of the petitioner's
21 shares as of the day before the date on which the petition under R.S. 12:1-1430(A)(2)
22 was filed or as of such other date as the court deems appropriate under the
23 circumstances.

24 E. Upon determining the fair value of the shares, the court shall enter an
25 order directing the purchase upon such terms and conditions as the court deems
26 appropriate, which may include payment of the purchase price in installments, where
27 necessary in the interests of equity, provision for security to assure payment of the
28 purchase price and any additional expenses as may have been awarded, and, if the
29 shares are to be purchased by shareholders, the allocation of shares among them. In

1 allocating petitioner's shares among holders of different classes of shares, the court
2 shall attempt to preserve the existing distribution of voting rights among holders of
3 different classes insofar as practicable and may direct that holders of a specific class
4 or classes shall not participate in the purchase. Interest may be allowed at the rate
5 and from the date determined by the court to be equitable, but if the court finds that
6 the refusal of the petitioning shareholder to accept an offer of payment was arbitrary
7 or otherwise not in good faith, no interest shall be allowed.

8 F. Upon entry of an order under Subsections C or E of this Section, the court
9 shall dismiss the petition to dissolve the corporation under R.S. 12:1-1430(A)(2), and
10 the petitioning shareholder shall no longer have any rights or status as a shareholder
11 of the corporation, except the right to receive the amounts awarded by the order of
12 the court which shall be enforceable in the same manner as any other judgment.

13 G. The purchase ordered pursuant to Subsection E of this Section shall be
14 made within ten days after the date the order becomes final unless before that time
15 the corporation files with the court a notice of its intention to adopt articles of
16 dissolution pursuant to R.S. 12:1-1402 and 1-1403, which articles must then be
17 adopted and filed within fifty days thereafter. Upon filing of such articles of
18 dissolution, the corporation shall be dissolved in accordance with the provisions of
19 R.S. 12:1-1405 through 1-1407, and the order entered pursuant to Subsection E of
20 this Section shall no longer be of any force or effect, except that the petitioner may
21 continue to pursue any claims previously asserted on behalf of the corporation.

22 H. Any payment by the corporation pursuant to an order under Subsections
23 C or E of this Section is subject to the provisions of R.S. 12:1-640.

24 Source: MBCA §14.34.

25 §1-1435. Oppressed shareholder's right to withdraw

26 A. If a corporation engages in oppression of a shareholder, the shareholder
27 may withdraw from the corporation and require the corporation to buy all of the
28 shareholder's shares at their fair value.

1 B. A corporation engages in oppression of a shareholder if the corporation's
2 distribution, compensation, governance, and other practices, considered as a whole
3 over an appropriate period of time, are plainly incompatible with a genuine effort on
4 the part of the corporation to deal fairly and in good faith with the shareholder.
5 Conduct that is consistent with the good faith performance of an agreement among
6 all shareholders is presumed not to be oppressive. The following factors are relevant
7 in assessing the fairness and good faith of the corporation's practices:

8 (1) The conduct of the shareholder alleging oppression.

9 (2) The treatment that a reasonable shareholder would consider fair under the
10 circumstances, considering the reasonable expectations of all shareholders in the
11 corporation.

12 C. The term "fair value" has the same meaning in this Section and in R.S.
13 12:1-1436 as it does in R.S. 12:1-1301(4) concerning appraisal rights, except that the
14 value of a withdrawing shareholder's shares under this Section and R.S. 12:1-1436
15 is to be determined as of the effective date of the notice of withdrawal under
16 Subsection D of this Section.

17 D. A shareholder may assert a right to withdraw under this Section by giving
18 written notice to the corporation that the shareholder is withdrawing from the
19 corporation on grounds of oppression. When the notice becomes effective it operates
20 as an offer by the shareholder, irrevocable for sixty days, to sell to the corporation
21 at fair value the entirety of the shareholder's shares in the corporation. The notice
22 need not specify the price that the withdrawing shareholder proposes as the fair value
23 of the shares, but if the notice does specify a price, the price is part of the offer to sell
24 made by the shareholder.

25 E. The corporation may accept the offer to sell made in the shareholder's
26 notice of withdrawal by giving the withdrawing shareholder written notice of its
27 acceptance during the sixty days that the offer is irrevocable. If the shareholder's
28 notice of withdrawal specifies a price for the shares, the corporation's notice of
29 acceptance operates as an acceptance of both the offer to sell and the proposed price

1 unless the notice states that the corporation is accepting the offer to sell, but not the
2 price; in that case the notice of acceptance operates only as an acceptance of the
3 shareholder's offer to sell the shares at their fair value. The corporation's acceptance
4 of the shareholder's offer does not operate as an admission or as evidence that the
5 corporation has engaged in oppression of the shareholder.

6 F. A notice of acceptance that operates as an acceptance of both the
7 shareholder's offer to sell and the shareholder's proposed price forms a contract of
8 sale of the shares at that price, payable in cash. The contract includes the warranties
9 of a seller of investment securities under the Uniform Commercial Code and imposes
10 a duty on the selling shareholder to deliver any certificates issued by the corporation
11 for the withdrawing shareholder's shares or, if a certificate has been lost, stolen, or
12 destroyed, an affidavit to that effect. Either party may file an action to enforce the
13 contract at the specified price if the contract is not fully performed within thirty days
14 after the effective date of the notice of acceptance. If a withdrawing shareholder
15 fails to deliver the certificate for a share purchased by the corporation under a
16 contract formed under this Subsection, the shareholder owes the same indemnity
17 obligation as a shareholder who sells shares as described in R.S. 12:1-1436(F).

18 G. If the corporation does not accept the withdrawing shareholder's offer as
19 provided in Subsection E of this Section, the shareholder may file an ordinary
20 proceeding against the corporation in district court to enforce the shareholder's right
21 to withdraw. A judgment in the action that recognizes the right of the shareholder
22 to withdraw on grounds of oppression is a partial judgment under Code of Civil
23 Procedure Article 1915(B). The trial on the valuation of the shares is governed by
24 R.S. 12:1-1436.

25 H. Venue for an action filed under Subsection F or G of this Section lies in
26 the district court of the parish where the corporation's principal office or, if none in
27 this state, its registered office is located.

1 I. A corporation's purchase of a withdrawing shareholder's shares is subject
2 to the rules on a corporation's acquisition of its own shares provided in R.S. 12:1-631
3 and to the limitations on distribution imposed by R.S. 12:1-640.

4 J.(1) The shareholders of a corporation may waive the right to withdraw
5 under this Section by unanimous written consent, provided in accordance with R.S.
6 12:1-704, stating that the shareholders are waiving the right provided by law to
7 withdraw from the corporation on grounds of oppression. The waiver takes effect
8 when the last consent required to make the consent effective under R.S. 12:1-704 is
9 delivered to the corporation, and the corporation shall send written notice to the
10 shareholders of that date promptly after it is known. The waiver remains in effect
11 for fifteen years from the date that it becomes effective, or for any shorter period
12 stated in the waiver to which the shareholders consent.

13 (2) The existence of the waiver shall be noted on each share certificate in the
14 same way that the existence of a unanimous governance agreement is required to be
15 noted under R.S. 12:1-732(C), and the failure to note the existence of the waiver on
16 a share certificate has the same effect with respect to the waiver as a failure to note
17 a unanimous governance agreement has with respect to that agreement. Except as
18 stated in this Subsection and in Subsection K of this Section, the right of an
19 oppressed shareholder to withdraw from a corporation under this Section may not be
20 diminished.

21 K. This Section shall not apply in the case of a corporation that, on the
22 effective date of the withdrawal notice under Subsection C of this Section, has shares
23 that are covered securities under Section 18(b)(1)(A) or (B) of the Securities Act of
24 1933, as amended.

25 L. Without limiting any remedy available on other grounds, the right to
26 withdraw in accordance with this Section and R.S. 12: 1-1436 is the exclusive
27 remedy for oppression. An allegation of oppression, as such, does not provide an
28 independent or additional basis for an action by a shareholder to recover damages

1 from the corporation or its directors, officers, employees, agents, or controlling
 2 persons.

3 Comments - 2014 Revision

4 (a) Model Act Section 14.34 provides a mechanism under which the
 5 corporation or its shareholders may elect to buy out the interests of a shareholder
 6 who is seeking to have the corporation dissolved under Model Act Paragraph
 7 14.30(a)(2). This Section retains the Model Act approach with respect to dissolution
 8 on grounds of deadlock under R.S. 12:1-1430(A)(2)(a) and (c). But, with respect to
 9 other grounds for dissolution under R.S. 12:1-1430(A)(2), this Section replaces the
 10 Model Act scheme with four entirely new Sections, R.S. 12:1-1435 through 1-1438.
 11 As explained in Comment (c), below, the four new Sections provide remedies for a
 12 claim under R.S. 12:1-1430(A)(2) only on grounds of oppression. But the main
 13 effect of the four new Sections is to reverse the order of the remedies provided by the
 14 Model Act for oppression, from dissolution unless the corporation or its shareholders
 15 choose quickly to buy out the plaintiff shareholder, to a buyout of the plaintiff
 16 shareholder unless the corporation chooses to dissolve before final judgment in the
 17 suit is rendered.

18 (b) This change in the order of remedies is designed to do two things: allow
 19 the corporation to contest the plaintiff shareholder's allegations of oppression without
 20 risking an involuntary dissolution of the entire company, and align the statutory
 21 remedies for oppression more closely with those that have been provided in most of
 22 the reported American cases on the subject.

23 (c) This Section narrows the grounds for withdrawal from those provided in
 24 the Model Act for dissolution. Under the Model Act, a shareholder may seek
 25 dissolution on grounds of deadlock, illegality, fraud, waste or oppression. This
 26 Section retains the Model Act approach to deadlock. However, this Section provides
 27 a withdrawal remedy only for oppression, and not for illegality, fraud or waste. The
 28 elimination of the other grounds for relief does not mean that illegality, fraud or
 29 waste, even if directed toward the complaining shareholder, are irrelevant in
 30 determining whether oppression has occurred; they may highly relevant. Rather,
 31 illegality, fraud and waste are omitted as independent grounds for withdrawal to
 32 avoid the implication that simple occurrences of illegal, fraudulent, or wasteful
 33 behavior in some aspect of the corporation's operations may be enough by
 34 themselves to justify withdrawal. While illegal, fraudulent or wasteful acts are likely
 35 to justify some form of penalty or remedy in favor of an appropriate person, they do
 36 not justify the remedy of withdrawal unless, taken as a whole and in context, they
 37 amount to oppression of the complaining shareholder.

38 (d) The Model Act does not define the term "oppression." This Section
 39 defines the term in Subsection B in a way that combines the two leading tests of
 40 oppression used in the case law of other states, the "reasonable expectations" test and
 41 the "departure from standards of fair dealing" test. Those two tests have been
 42 incorporated into this Section to permit comparisons between cases arising under this
 43 Section and those in other jurisdictions in which oppressive behavior has been
 44 considered as grounds for relief in favor of a minority shareholder. However, the
 45 statutory definition in this Section differs in five respects from at least some versions
 46 of the oppression tests articulated by courts in other states:

47 (1) The failure to satisfy reasonable expectations is not itself the direct test
 48 for oppressive conduct. Rather, those expectations are to be considered in
 49 determining whether the directors or others in control have behaved in a way that is
 50 incompatible with a genuine effort to be fair to the complaining shareholder. This
 51 formulation is designed to provide a generous range of discretion to the majority

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 owners in designing corporate policies and operations that are fair. Withdrawal is
 2 not justified on grounds of oppression merely because the business has not been as
 3 successful as hoped, or because the minority's reasonable expectations have been
 4 disappointed in some way, or even because some instances of unfairness can be
 5 shown to have occurred. Rather, to justify withdrawal under the definition of
 6 oppression in Subsection D of this Section, the plaintiff must prove that the
 7 majority's behavior, taken as a whole over an appropriate period of time, is plainly
 8 incompatible with a genuine effort on the part of the majority to be fair to the
 9 shareholders. And the effort to be fair is to be evaluated in light of expectations that
 10 it would be reasonable for the shareholders to hold under the circumstances.

11 (2) In determining fairness, the interests of all shareholders, not just those
 12 of the complaining shareholder, must be considered. The majority shareholders are
 13 entitled to control the business through the exercise of their voting power, and they
 14 are entitled as much as the minority shareholders to have their reasonable
 15 expectations respected. The evaluation of challenged conduct as "oppressive" should
 16 be guided by principles appropriate to the interpretation of a contract that calls for
 17 cooperation and fair dealing from all parties in the operation of a business that entails
 18 uncertainty and risk. A failure by the majority over an extended period of time to
 19 provide a minority investor with any reasonable participation in the benefits of a
 20 successful business will be difficult in most cases to reconcile with a genuine effort
 21 on the part of the majority to be fair to all shareholders. However, the majority
 22 shareholders owe no duty to sacrifice their own legitimate interests as majority
 23 owners of the business, or to make payments or provide benefits to the minority
 24 investor that are out of proportion to the value of the contributions to the business by
 25 the minority investor or his predecessor in interest.

26 (3) The conduct of the complaining shareholder is to be taken into account
 27 in deciding whether withdrawal on grounds of oppression is warranted. While the
 28 shareholders of a closely-held corporation are commonly compensated largely
 29 through their employment by the corporation - making continued employment a
 30 reasonable expectation in many cases - shareholders are not entitled to keep their
 31 jobs regardless of the quality of their job performance. Incompetence, dishonesty
 32 or disloyalty on the part of an employee shareholder may justify the shareholder's
 33 termination as a corporate employee, and a justified termination would not by itself
 34 amount to oppression. Still, a minority shareholder does not forfeit all right to any
 35 economic benefit from his shares merely because his job performance may justify
 36 his termination as an employee. A complete freezeout of a shareholder from any
 37 participation in the benefits of ownership in the corporation could be considered
 38 oppression even if the shareholder's termination as an employee was itself justified.
 39 See, *Gimpel v. Bolstein*, 477 N.Y.S.2d 1014 (Sup. 1984).

40 (4) A leading case concerning "reasonable expectations" requires the
 41 plaintiff in an oppression case to prove that the conduct of the controlling
 42 shareholders has substantially defeated expectations that "objectively viewed, were
 43 both reasonable under the circumstances and were central to the petitioner's decision
 44 to join the venture." *Matter of Kemp & Beatley, Inc.*, 473 N.E.2d 1173 (N.Y. 1984).
 45 This Section embraces the "objectively reasonable under the circumstances" part of
 46 the test, but for the reasons explained in the next comment, it drops the requirement
 47 that the plaintiff prove that the expectations in question actually played some role in
 48 the plaintiff's own decision to join the corporation as a shareholder.

49 (5) Among the original investors, actual expectations will be highly relevant
 50 to what a shareholder would be reasonable in considering fair under the
 51 circumstances. But disputes within closely-held corporations commonly arise among
 52 the children of the founding shareholders, making it unlikely that the litigating
 53 shareholders' expectations will have played any role in the investment decisions that
 54 were made when the inherited shares were first purchased. The arrangements made

1 and practices followed by the founding shareholders could play some role in shaping
2 what a person succeeding to the founders' shares would be reasonable in expecting.
3 But a reasonable person should expect some adjustment in those practices to occur
4 as a result of the passing of the shares from one generation to another. The
5 personalities, interests and skills of the second generation of shareholders may differ
6 substantially from those that shaped the expectations and practices of the original
7 investors. This Section allows those changed factors to be taken into account in
8 determining the expectations that it would be reasonable for a shareholder in the
9 plaintiff's position to hold.

10 (e) In contrast with the Model Act's focus on wrongful conduct by "the
11 directors or those in control of a corporation," this Section defines oppression by
12 reference to the corporation's treatment of the complaining shareholder. Although
13 a corporation's oppression of a shareholder is unlikely to occur without the
14 complicity of its directors or controlling shareholders, this Section does not require
15 the complaining shareholder to prove that any particular participant in corporate
16 management is responsible for the oppression that occurs.

17 (f) The second sentence of Subsection B of this Section creates a
18 presumption that conduct is not oppressive if it is consistent with the good faith
19 performance of an agreement among all shareholders. A unanimous governance
20 agreement under R.S. 12:1-732 is included among the unanimous agreements
21 contemplated by the presumption, but the presumption is not limited to that
22 particular form of agreement. It applies with respect to all unanimous agreements
23 among the shareholders.

24 (g) Conduct that is consistent with the good faith performance of a
25 unanimous shareholders' agreement should be considered oppressive only rarely.
26 The fact that an agreement operates imperfectly, and even unexpectedly in some
27 respects, is not sufficient to rebut the presumption created in Subsection B of this
28 Section. Conduct that qualifies for the presumption in Subsection B of this Section
29 should be treated as oppressive only if (1) it would be considered oppressive but for
30 the presumption and (2) the identities of the shareholders, the nature of the
31 corporation's affairs or other relevant circumstances have changed so profoundly
32 since the signing of the agreement that the fact finder is justified in concluding that
33 parties to the agreement could not have intended to approve as fair, in context, the
34 conduct being challenged as oppressive.

35 (h) The definition of "fair value" in Subsection C of this Section is not
36 affected by the terms of any agreement among the shareholders or in the articles or
37 bylaws of the company that state the value of the shares or state how the value is to
38 be determined. But the definition in Subsection B of this Section applies only in the
39 context of a shareholder's withdrawal on grounds of oppression. It does not affect
40 the valuation of a withdrawing shareholder's shares under other agreements or
41 governance documents, which often deliberately impose some form of discount as
42 a means of discouraging the kind of withdrawal contemplated by the pertinent
43 provision. A corporation's adherence to an agreed value or valuation methodology
44 in connection with a shareholder's withdrawal on grounds other than oppression does
45 not itself constitute oppression under Subsection B of this Section or violate the rule
46 in Subsection J of this Section against the diminution of a shareholder's right to
47 withdraw from the corporation on grounds of oppression.

48 (i) Subsection D of this Section treats a notice of withdrawal as an offer of
49 sale by the withdrawing shareholder, and Subsection E of this Section treats the
50 corporation's notice of acceptance as an acceptance of that offer of sale. But that
51 process creates a contract of sale only if the offer includes a price for the offered
52 shares as provided in Subsection D of this Section and if the corporation accepts that
53 price as provided in Subsection F of this Section. Otherwise, the corporation's

1 acceptance of the shareholder's offer to sell triggers only the right to file an action
2 under R.S. 12:1-1436(A) to obtain a court-ordered sale at a fair price set by the court.

3 (j) If a contract of sale is created as provided in Subsection F of this Section,
4 ownership of the offered shares is transferred from the withdrawing shareholder to
5 the corporation when the contract comes into existence, which occurs when the
6 corporation's notice of acceptance becomes effective under the rules stated in R.S.
7 12:1-141. After that point, the rights of the corporation and former shareholder with
8 respect to the relevant shares are limited to their contract rights against one another
9 under the Subsection F contract. Because ownership of the shares will be transferred
10 immediately and by operation of law, the only items left to be performed under the
11 contract are (1) the corporation's obligation to pay for the shares and (2) the
12 shareholder's obligation with respect to any certificates issued by the corporation for
13 the shares.

14 (k) If the exchange of offer and acceptance does not create a contract of sale
15 under Subsection F of this Section, but only the right to pursue a court-ordered
16 purchase and sale, the shareholder remains a shareholder in the company until the
17 court-ordered transaction is consummated as provided in R.S. 12:1-1436(C) or until
18 the shares are transferred in some other fashion.

19 (l) In some states, courts have used a fiduciary duty theory to protect
20 minority shareholders in a closely held corporation against conduct of the kind
21 defined as oppression in Subsection B of this Section. Subsection L of this Section
22 rejects the treatment of oppression as a breach of fiduciary duty that may justify an
23 action for damages against the corporation, the directors or others in control.
24 Instead, it provides the dissolution and buyout remedies that are set forth in this
25 Section and in R.S. 12:1-1436. Subsection L of this Section does not affect any of
26 the remedies that are available on grounds other than oppression, including the
27 remedies that were available before the special remedy provided by this Section for
28 oppression became effective.

29 §1-1436. Judicial determination of fair value and payment terms for withdrawing
30 shareholder's shares

31 A.(1) If a shareholder's right to withdraw from a corporation is recognized
32 by means of a notice of acceptance under R.S. 12:1-1435(E), but the notice does not
33 create a contract under R.S. 12:1-1435(F), the corporation and shareholder shall have
34 sixty days from the effective date of the notice of acceptance to negotiate the fair
35 value of the shareholder's shares and the terms under which the corporation is to
36 purchase the shares. Within one year after the expiration of the sixty-day period,
37 either party may file an action against the other to determine the fair value of the
38 shares and the terms for the purchase of the shares. Venue for the action lies in the
39 district court of the parish where the corporation's principal office or, if none in this
40 state, its registered office is located.

1 (2) If neither party files an action to establish the fair value of the shares
2 within the time period provided in this Subsection, then subject to the terms of any
3 settlement reached between the parties, the effects of the earlier notices of
4 withdrawal and acceptance under R.S. 12:1-1435 are terminated. The termination
5 of the effects of the earlier notices does not affect the right of the shareholder to
6 reassert the shareholder's right to withdraw through the filing of a new notice of
7 withdrawal in accordance with R.S. 12:1-1435(D).

8 B. If a shareholder's right to withdraw from a corporation is recognized by
9 a judgment in an action under R.S. 12:1-1435(G), the court shall stay the proceeding
10 for a period of at least sixty days from the date that the judgment is rendered to allow
11 the corporation and shareholder to negotiate the fair value and purchase terms for the
12 withdrawing shareholder's shares, or other terms for the settlement of their dispute.
13 After the stay expires or is lifted, either party may file a motion to have the court
14 determine the fair value and terms for the purchase of the shares.

15 C. The court shall conduct the trial of the action under Subsection A of this
16 Section or the motion under Subsection B of this Section by summary proceeding.

17 D. Except as provided in Subsection E of this Section, at the conclusion of
18 the trial the court shall render final judgment as follows:

19 (1) In favor of the shareholder and against the corporation for the fair value
20 of the shareholder's shares.

21 (2) In favor of the corporation and against the shareholder for the following:

22 (a) Terminating the shareholder's ownership of shares in the corporation.

23 (b) Ordering the shareholder to deliver to the corporation within thirty days
24 of the date of the judgment any certificate issued by the corporation for the shares
25 or an affidavit by shareholder that the certificate has been lost, stolen, or destroyed.

26 E. If at the conclusion of the trial the court finds that the corporation has
27 proved that a full payment in cash of the fair value of the withdrawing shareholder's
28 shares would violate the provisions of R.S. 12:1-640 or cause undue harm to the
29 corporation or its creditors, the court shall not render the judgment specified in

1 Subsection D of this Section, but shall instead render final judgment which provides
2 for both of the following:

3 (1) Ordering the corporation to issue and deliver to the shareholder within
4 thirty days of the date of the judgment an unsecured negotiable promissory note of
5 the corporation which is all of the following:

6 (a) Payable to the order of the shareholder.

7 (b) In a principal amount equal to the fair value of the withdrawing
8 shareholder's shares.

9 (c) Bearing simple interest on the unpaid balance of the note at a floating rate
10 equal to the judicial rate of interest.

11 (d) Having a term up to ten years, as specified by the court in its judgment
12 as necessary to prevent a violation of R.S. 12:1-640 or undue harm to the corporation
13 or its creditors.

14 (e) Containing such other terms, customary in negotiable promissory notes
15 issued in commercial transactions, as the court may order.

16 (2) Terminating the shareholder's ownership of shares in the corporation
17 upon delivery to the shareholder of the note required by the judgment under
18 Paragraph (E)(1) of this Section, and ordering the shareholder to deliver to the
19 corporation, within ten days of the delivery of the note, any certificate issued by the
20 corporation for the shares or an affidavit by shareholder that the certificate has been
21 lost, stolen or destroyed.

22 F. If a withdrawing shareholder fails to deliver the certificate for a share
23 covered by a judgment rendered under Subsection C or D of this Section, and a third
24 person presents the certificate to the corporation after the shareholder's ownership
25 of the share is terminated by the judgment, the shareholder shall indemnify the
26 corporation for any dilution in value imposed on other shareholders as a result of the
27 corporation's obligations to recognize the person presenting the certificate as the
28 owner of the shares represented by the certificate.

1 (1) Render a judgment dissolving the corporation as provided in R.S.
2 12:1-1433.

3 (2) Dismiss the withdrawal or valuation cause of action.

4 (3) Make the complaining shareholder in the dismissed cause of action a
5 party to the court-supervised dissolution proceeding.

6 (4) Appoint a liquidator in accordance with R.S. 12:1-1432, or order the
7 corporation to submit to the court for its approval a plan of liquidation and such
8 interim and final reports on the liquidation as the court may consider necessary to
9 protect the interests of the complaining shareholder.

10 B. A motion under Subsection A of this Section may be filed at any time
11 before final judgment.

12 C. If a corporation dissolves or terminates while a withdrawal or valuation
13 proceeding under R.S. 12:1-1435 or 1-1436 is pending, but does not file a motion to
14 convert the proceeding as provided in Subsection A of this Section, the complaining
15 shareholder in the proceeding may by contradictory motion seek to convert the
16 proceeding into one for a court-supervised dissolution of the corporation. If the court
17 finds that the conversion is necessary to protect the interests of the shareholder, it
18 shall grant the motion and take the actions contemplated by Subsection A of this
19 Section for the conversion of a proceeding to a court-supervised dissolution.

20 SUBPART D. TERMINATION AND REINSTATEMENT

21 Introductory Comments to Subpart D

22 (a) This Subpart omits Model Act Section 14.40, which would have allowed
23 a dissolved corporation that is unable to find a creditor, claimant or shareholder to
24 deposit any funds owed to the missing payee with the state treasurer, in a manner
25 similar to that provided by the Uniform Unclaimed Property Act, R.S. 9:151-88. The
26 Section was omitted to allow the state treasurer to deal with the unclaimed funds of
27 a dissolved corporation in the same way as other unclaimed property, as provided in
28 the Unclaimed Property Act.

29 (b) Because Section 14.40 was the only provision contained in Subchapter
30 D of Model Act Chapter 14, the omission of the Section made the Subsection
31 available for other purposes. Subpart D is utilized to deal with the termination and
32 reinstatement of a corporation's existence. The Model Act does not deal with those
33 topics because the Model Act does not terminate the existence of a dissolved
34 corporation; even a dissolved corporation continues to exist perpetually. Subpart D
35 of this Part adopts an approach to corporate dissolution that is similar to that taken

1 under prior Louisiana law, which provided a mechanism for terminating the
2 existence of a dissolved corporation.

3 (c) Under prior Louisiana law, a corporation was dissolved in four steps. In
4 the first step, the dissolution process was begun, either through the filing of articles
5 of dissolution or through a court order of dissolution. The first step resulted in the
6 transfer of managerial power over the corporation from the board of directors to a
7 liquidator. The liquidator was then responsible for the second step, that of winding
8 up and liquidating the business and affairs of the corporation, in some cases subject
9 to court supervision. When the liquidation was completed, the statute required the
10 liquidator to take the third step in the process, that of filing what were confusingly
11 called "articles of dissolution", also the name for the document that began, rather
12 than ended, a liquidation, or if the dissolution was judicially supervised, an order of
13 dissolution. Finally, in the fourth step, if the order or articles of liquidation met the
14 requirements of law and certain listed state agencies certified that the corporation
15 owed no unpaid obligations to them, the secretary of state was required to issue a
16 "certificate of dissolution," which caused the corporation to be dissolved in the sense
17 that its existence was terminated as of the effective date of the certificate. The law
18 dealt with any late-discovered assets or claims by vesting the assets in the liquidator
19 and empowering the liquidator to take any action required to preserve the interests
20 of the corporation, its creditors or shareholders. If the liquidator died or was
21 unwilling or unable to serve, the statute allowed the appointment of a new liquidator
22 "for any proper purpose."

23 (d) Under the Model Act, the dissolution of a corporation involves only two
24 steps: (1) the dissolution is triggered by articles or an order of dissolution and (2) the
25 board of directors (or a liquidator if one is judicially-appointed) conducts or
26 supervises the winding up and liquidation of the corporation's business and affairs.
27 At no point does the Model Act require (or permit) the filing of the documents
28 contemplated by steps three and four of prior Louisiana law, those declaring the
29 liquidation to be complete and the existence of the corporation to be terminated.
30 Instead, a dissolved corporation continues to exist forever under the Model Act
31 scheme, but only for purposes of winding up and liquidating its affairs. Section
32 14.05 of the Model Act provides a single set of rules to govern a dissolved
33 corporation, both during the period in which the corporation is engaged in winding
34 up its affairs and during the perpetual period that follows the completion of that
35 process. In effect, Section 14.05 provides that all of the normal corporate
36 governance rules continue to apply forever to a dissolved corporation, except for the
37 change in the object of corporate operations from normal business to liquidation,
38 even after the corporation has been fully liquidated and its operations - for any
39 purpose - fully shut down.

40 (e) This Subpart adopts the Model Act approach to the continued existence
41 of a dissolved corporation while the corporation is still engaged in the process of
42 winding up its affairs. It also adopts the Model Act concept that a dissolved
43 corporation continues to exist perpetually for purposes of identifying the person, i.e.
44 the corporation, that owns any undistributed corporate assets and owes any
45 undischarged corporate debts. But this Subpart rejects the Model Act view that a
46 dissolved corporation may continue to be governed by the same Section 14.05 rules
47 both during its active liquidation phase and during the infinitely longer period after
48 the completion of its liquidation. After the active liquidation of the corporation is
49 completed, the corporation continues to exist only to help conceptualize how to deal
50 with items missed during its liquidation. This Subpart provides a mechanism similar
51 to that provided under prior law under which the existence of an already-liquidated
52 corporation may be terminated for all other purposes.

53 (f) This Subpart differs from prior law by eliminating the theoretical vesting
54 of undiscovered assets in a liquidator. Instead, the corporation itself, even after its

1 termination, will continue to hold any undistributed assets and to owe any
2 undischarged debts. The continuation of the corporation for this limited purpose
3 may be viewed either as an exception to the termination of the corporation's
4 existence for other purposes or as a legal fiction that helps conceptualize properly the
5 nature of the interests in any undistributed assets held by various types of claimants
6 or shareholders of the terminated corporation. The practical question posed by the
7 terminated corporation's continuing role with respect to undistributed assets or
8 undischarged debts is how to deal with those items on the corporation's behalf.
9 Those issues are addressed by R.S. 12:1-1444, which for a three-year period permits
10 a terminated corporation to be reinstated fully and retroactively, and by R.S.
11 12:1-1445, which permits a court to appoint a liquidator for the terminated
12 corporation.

13 §1-1440. Articles of termination

14 A. When the board of directors, or the liquidator acting during the
15 liquidator's appointment, determines that the corporation has completed the winding
16 up and liquidation of its business and affairs, the board of directors or liquidator may
17 cause the corporation to deliver to the secretary of state for filing articles of
18 termination.

19 B. The articles of termination shall state all of the following:

20 (1) The name of the corporation.

21 (2) The date of its dissolution.

22 (3) Whether its dissolution was voluntary or judicial.

23 (4) That the corporation has paid or made reasonable provision for the
24 payment of all of its liabilities.

25 (5) That the net assets of the corporation remaining after winding up have
26 been distributed to the shareholders.

27 C. If the articles of termination are signed by a liquidator, the secretary of
28 state shall not file the articles unless the articles have attached or appended to them
29 a certified copy of the court order that authorizes the liquidator to wind up the affairs
30 of the corporation.

31 Comments - 2014 Revision

32 (a) This Section provides a means by which the board of directors or a
33 court-appointed liquidator may declare the liquidation of a dissolved corporation to
34 be complete and to obtain a termination of the corporation's existence for all
35 purposes other than holding any undistributed assets or owing any undischarged
36 corporate debts.

1 (b) The corporation's existence is terminated when the secretary of state files
2 the articles of dissolution. See R.S. 12:1-1443.

3 §1-1441. Simplified termination procedure for certain corporations

4 A. The existence of a corporation may be terminated as provided in this
5 Section if the corporation satisfies all of the following conditions:

6 (1) Does not owe any debts.

7 (2) Does not own any immovable property.

8 (3) Has not issued shares or is not doing business.

9 B. If the corporation has not issued shares, a termination under this Section
10 may be authorized by a majority of the initial directors or, if no initial directors are
11 named in the articles of incorporation, by a majority of the incorporators. If the
12 corporation has issued shares the termination may be authorized as provided in R.S.
13 12:1-1402 or by the unanimous written consent of the shareholders.

14 C. After the termination is authorized, the corporation may deliver to the
15 secretary of state for filing articles of termination that set forth all of the following:

16 (1) The name of the corporation.

17 (2) That no debt of the corporation remains unpaid.

18 (3) That the corporation owns no immovable property.

19 (4) That the corporation has not issued shares, or is not doing business.

20 (5) That the net assets of the corporation remaining after winding up have
21 been distributed to the shareholders, if shares were issued.

22 (6) That the termination was authorized as required by R.S. 12:1-1441(B).

23 Source: MBCA §14.01, R.S. 12:142.1.

24 Comments - 2014 Revision

25 (a) This Section combines features of Model Act Section 14.01, which
26 provides a simplified dissolution mechanism for a corporation that has not issued
27 shares or has not begun business, with those of former R.S. 12:142.1, which
28 permitted a corporation to dissolve by affidavit if it owed no debts and owned no
29 immovable property. As used in the Model Act provision, dissolution would not
30 terminate a corporation's existence; even dissolved corporations would continue to
31 exist perpetually under the Model Act. As used in the former Louisiana provision,
32 dissolution referred to the termination of the corporation's existence. This Section
33 avoids the possible confusion between the two different meanings of dissolution by
34 providing that the procedure authorized in this Section results in a termination of the

1 corporation's existence, and not a mere dissolution in the Model Act sense of the
2 term.

3 (b) This Section rejects the rule in former R.S. 12:142.1 that imposed
4 personal liability for corporate debts on shareholders who utilized that Section's
5 simplified mechanism for terminating the existence of their corporation. The former
6 rule encouraged shareholders who wished to shut down corporate operations to do
7 so without any formal dissolution process, and then simply to stop filing annual
8 reports. The failure to file annual reports for a period of three years triggered a
9 requirement that the secretary of state revoke the non-filing corporation's charter.
10 The charter revocation accomplished the same result as the dissolution-by-affidavit,
11 but without the statutory imposition of personal liability on shareholders for the
12 revoked corporation's debts. Indeed, if the corporation's existence was terminated
13 by revocation rather than affidavit, the shareholders could reinstate their corporation
14 during the first three years following the revocation, with retroactive effect, by filing
15 a simple form with the secretary of state's office and paying a small filing fee. Given
16 the choice between liability-imposing dissolution and cost-free, no-risk charter
17 revocation, most well-advised shareholders opted for charter revocation. This
18 Section eliminates the strong incentive created by the former liability rule to dissolve
19 by violating, rather than by complying with, the requirements of the corporation
20 statute.

21 (c) Shareholders who use the simplified form of dissolution authorized by
22 this Section do not receive the benefits of the claims-barring and claims-discharging
23 rules of R.S. 12:1-1406 through 1-1408. Those rules are available only if the more
24 formalized dissolution procedure required by those provisions is utilized. But, unlike
25 prior law, this Section does not impose personal liability on shareholders who utilize
26 a simplified form of dissolution. Regardless of the form of dissolution that is used,
27 shareholders bear liability only for unlawful distributions from the corporation.
28 They do not bear personal liability for the corporation's debts.

29 §1-1442. Administrative termination

30 A. Subject to Subsection B of this Section, the secretary of state shall
31 terminate the existence of a corporation if, according to the records of the secretary
32 of state, the corporation has failed for ninety consecutive days to do either of the
33 following:

34 (1) Comply with the requirements imposed by R.S. 12:1-501 concerning the
35 continuous maintenance in this state of a registered office and registered agent.

36 (2) To file an annual report as required by R.S. 12:1-1621.

37 B. The secretary of state shall give the corporation at least thirty days'
38 written notice of the secretary's intention to terminate the corporation's existence
39 under Subsection A of this Section. If the corporation eliminates the grounds for its
40 termination before the end of the thirty-day notice period, the secretary of state shall
41 not terminate the existence of the corporation.

1 C. The secretary of state terminates the existence of a corporation under this
2 Section by filing a certificate of termination that states the grounds for termination.
3 The secretary shall serve a copy of the certificate of termination on the corporation
4 in accordance with R.S. 12:1-504.

5 Source: R.S. 12:163.

6 Comment - 2014 Revision

7 This Section is not part of the Model Act. It is based on former R.S. 12:163,
8 which required the secretary of state to revoke the charter of a corporation that failed
9 to file annual reports or failed to maintain a registered office or registered agent.
10 This Section reduces the grace period for the filing of the annual report from three
11 years to ninety days, to discourage the practice of filing the annual report, and paying
12 the required filing fee, only every third year, after receiving the notice of pending
13 revocation from the secretary of state.

14 §1-1443. Effective date and effects of termination

15 A. The filing by the secretary of state of a corporation's articles of
16 termination under R.S. 12:1-1440 or 1-1441 or a certificate of termination under R.S.
17 12:1-1442 causes the existence of the corporation to terminate on the effective date
18 of the articles or certificate of termination. The effects of the filing of the articles or
19 certificate of termination are not affected by any error in the articles or certificate,
20 but the error may justify reinstatement of the corporation as provided in R.S.
21 12:1-1444 or the appointment of a liquidator as provided in R.S. 12:1-1445.

22 B. When the existence of the corporation terminates, the corporation's
23 juridical personality ends except for purposes of any of the following:

24 (1) Reserving the corporation's name as provided in R.S. 12:1-402(C).

25 (2) Concluding any proceeding to which the corporation is a party at the time
26 of the termination.

27 (3) Continuing to own any undistributed corporate assets and to owe any
28 undischarged corporate obligations or liabilities.

29 C. The termination does not do any of the following:

30 (1) Extinguish any claim against the corporation.

31 (2) Abate any proceeding to which the corporation is a party.

1 (3) Cause any obligation or liability owed by the corporation to become the
2 obligation or liability of any of the corporation's current or former shareholders,
3 directors, officers, employees, or agents.

4 (4) Cause any undistributed asset of the corporation to become the property
5 of any of the corporation's current or former shareholders, directors, officers,
6 employees, or agents.

7 D. A terminated corporation's juridical personality, and the authority of a
8 person acting on the corporation's behalf as its legal counsel or managerial
9 representative, continues for purposes of Paragraph (B)(2) of this Section as if the
10 termination had not occurred, but subject to the power of an authorized
11 representative of a reinstated corporation, or of a liquidator appointed in accordance
12 with R.S. 12:1-1445, to change the identity or authority of the legal counsel or
13 managerial representative.

14 E. The existence of a terminated corporation may be reinstated as provided
15 in R.S. 12:1-1444, and a liquidator may be appointed as provided in R.S. 12:1-1445
16 for any proper purpose. Unless a terminated corporation is reinstated, any action that
17 is commenced by or against the corporation after the effective date of its termination
18 shall be brought by or against a liquidator that is appointed in accordance with R.S.
19 12:1-1445.

20 Comments - 2014 Revision

21 (a) This Section is not part of the Model Act. It was added to this Part to
22 retain a mechanism for terminating the existence of a corporation for all purposes
23 other than owning any undistributed corporate assets or owing any undisputed
24 corporate debts. The termination of a corporation under this provision terminates the
25 applicability of the rules of corporate governance that would otherwise continue to
26 apply even to a dissolved corporation under R.S. 12:1-1405.

27 (b) As provided in Paragraph (C)(3) of this Section, the termination of the
28 corporation's existence does not cause any of its former directors, officers or
29 shareholders to become personally liable for the terminated corporation's debts. The
30 rule in Paragraph (C)(3) of this Section does not protect the former shareholders
31 against liability for improper distributions from the terminated corporation, or for
32 post-termination business transactions carried out by them without the protection
33 against personal liability provided by an existing corporation. But corporate
34 shareholders do not become substitute obligors on a corporation's debts merely
35 because the corporation's separate juridical personality is terminated.

1 (c) Similarly, as provided in Paragraph (C)(4) of this Section, corporate
2 shareholders do not become substitute owners of the corporation's assets merely
3 because the existence of the corporation is terminated. A terminated corporation
4 continues to own its undistributed assets and to owe its unpaid debts as provided in
5 Paragraph (B)(3).

6 (d) If a termination is administrative, the terminated corporation may or may
7 not owe unpaid debts or own undistributed assets, depending on whether the
8 administrative termination is triggered inadvertently or deliberately. If the
9 administrative termination occurs unexpectedly, in an ongoing business in which the
10 corporation's annual filing obligations have simply been overlooked, the terminated
11 corporation is very likely to own assets and to owe debts when it is terminated. In
12 that case, the rule in Paragraph (B)(3) of this Section preserves the corporation's
13 position in relation to its assets and liabilities during the period between its
14 termination under R.S. 12:1-1442 and its likely reinstatement under R.S. 12:1-1444.
15 If, on the other hand, the owners of a corporation have already shut down its
16 operations and wound up its affairs, they may choose deliberately to stop filing their
17 corporation's annual reports as a means of causing the secretary of state to terminate
18 their corporation's existence. In that case, the rule in Paragraph (B)(3) of this Section
19 will apply only to the extent that it is needed to deal with assets or liabilities that
20 were undiscovered or overlooked in the informal winding up of the corporation's
21 affairs.

22 (e) If a termination is voluntary, then all of the terminated corporation's
23 assets ordinarily will have been paid out or distributed as part of the pre-termination
24 winding up of the corporation's affairs. If some assets remain undistributed after a
25 voluntary termination, then one, or both, of two explanations is likely to account for
26 that fact: some assets were undiscovered or overlooked during the winding up, or the
27 existence of the corporation was deliberately terminated while the corporation still
28 owned assets and owed debts, in a misguided effort to eliminate the corporation's
29 debts by eliminating the corporate debtor. In both circumstances, Paragraph (B)(3)
30 of this Section continues to treat the corporation as the debtor on corporate liabilities
31 and the owner of corporate assets, to preserve both the existence and priority of the
32 various forms of claims and interests in the undistributed assets.

33 (f) Any transfer of undistributed assets from the terminated corporation to
34 a creditor or shareholder would require the proper exercise of managerial authority
35 on behalf of the corporation. That managerial authority could be obtained through
36 the appointment of a liquidator under R.S. 12:1-1445 or, if the requirements for
37 reinstatement could be satisfied, through a reinstatement of the corporation under
38 R.S. 12:1-1444. The reinstatement would not itself create managerial authority, but
39 it would return the corporation to the position it was in before the termination
40 occurred. Hence, the board of directors, officers and agents of the corporation would
41 hold the same authority after the reinstatement as they would have held had no
42 termination occurred.

43 (g) Subsection D of this Section is designed to prevent the disruption of
44 pending litigation by preserving the authority of a corporation's legal and managerial
45 representatives in the litigation. However, the authorized representatives of a
46 reinstated corporation, or a liquidator who is appointed in accordance with R.S.
47 12:1-1445 and who holds the appropriate authority, may make changes in the
48 identity or authority of the corporation's legal counsel or managerial representatives.

49 (h) Although Subsection B of this Section allows a pending proceeding by
50 or against a terminated corporation to continue, any recovery by the corporation in
51 the litigation will become an undistributed asset of the corporation, and any
52 monetary judgment against the corporation will be collectible only from the

1 corporation's undistributed assets, or through unlawful distribution claims against its
2 former directors or shareholders.

3 §1-1444. Reinstatement of terminated corporation

4 A. A terminated corporation may be reinstated if the corporation satisfies
5 both of the following conditions:

6 (1) Was not dissolved by a judgment of dissolution.

7 (2) Requests reinstatement in accordance with this Section no later than three
8 years after the effective date of its articles or certificate of termination.

9 B. If the corporation was terminated administratively under R.S. 12:1-1442,
10 the articles of reinstatement shall be approved by either of the following:

11 (1) A director or officer listed in the corporation's last annual report before
12 its termination.

13 (2) A director of the corporation elected by the shareholders of the
14 corporation after the last annual report, regardless of whether the director was elected
15 before or after the administrative termination.

16 C. If the corporation was terminated after its dissolution or termination was
17 authorized by a vote of shareholders, then all of the following actions are required:

18 (1) The reinstatement of the corporation shall be approved by the same vote
19 that was required to approve the dissolution or termination, by the persons who were
20 shareholders at the time that the dissolution or termination was approved by the
21 shareholders.

22 (2) The persons entitled to vote on the reinstatement shall elect a board of
23 directors for the reinstated corporation.

24 (3) The board of directors elected in accordance with Paragraph (C)(2) of
25 this Section shall elect officers for the reinstated corporation.

26 D. A corporation may request reinstatement by delivering to the secretary
27 of state for filing articles of reinstatement and an annual report. The articles of
28 reinstatement and the annual report shall be signed by an officer or director of the
29 corporation who is entitled to approve the articles under Subsection B of this Section
30 or, in the case of a reinstatement authorized in accordance with Subsection C of this

1 Section, by a director or officer elected in accordance with that Subsection. The
2 annual report shall be accompanied by a written consent to appointment signed by
3 the registered agent named in the annual report.

4 E. The articles of reinstatement shall state all of the following:

5 (1) The name of the corporation.

6 (2) That the reinstatement was approved in accordance with either of the
7 following:

8 (a) R.S. 12:1-1444(B).

9 (b) R.S. 12:1-1444(C), and that the directors and officers listed in the annual
10 report accompanying the articles of reinstatement were elected in accordance with
11 that Subsection.

12 (3) That the corporation is reinstated, effective retroactively as if the
13 corporation had never been terminated.

14 F. The secretary of state shall file the articles of reinstatement only if both
15 of the following conditions are satisfied:

16 (1) The articles are delivered for filing to the secretary of state within three
17 years after the effective date of the articles or certificate of termination for the
18 corporation.

19 (2) The fee is paid for the filing of an annual report for each year between
20 the corporation's last annual report and the year in which corporation is reinstated.

21 G. In addition to the reinstatement authorized by Subsections A through F
22 of this Section, if the administrative termination of a corporation occurred because
23 of an error in the records of the secretary of state not caused by the corporation, the
24 secretary of state shall file a certificate of reinstatement that states that the certificate
25 of termination was filed in error, and that the corporation is reinstated, with
26 retroactive effect as if the termination had never occurred.

1 H. When the secretary of state files a certificate or articles of reinstatement,
2 the existence of the terminated corporation is reinstated retroactively, and the
3 corporation continues to exist as if the termination had never occurred.

4 Source: R.S. 12:163.

5 Comments - 2014 Revision

6 (a) This Section is not part of the Model Act. It is based on former R.S.
7 12:163(E), which permitted the reinstatement of a corporate charter that had been
8 revoked by the secretary of state on grounds that the corporation had failed to file
9 annual reports, or had failed to maintain a registered agent and registered office as
10 required by law. This Part broadens the scope of the former provision by making
11 reinstatement available not only to corporations terminated administratively, but also
12 to those terminated voluntarily under R.S. 12:1-1440 or 1-1441.

13 (b) The broadening of the reinstatement option to include
14 voluntarily-terminated corporations is designed to deal with similar cases in similar
15 ways. Shareholders who choose to terminate their corporations voluntarily and
16 formally, but then regret having done so because of some overlooked matter, should
17 have the same opportunity to fix the problem as those who regret an administrative
18 termination for a similar reason. Unlike the former law, this Section does not restrict
19 the reinstatement privilege to those who have triggered a termination through a
20 failure to comply with the corporation statute.

21 (c) The prior law's three-year time limit on reinstatements was retained in
22 this Part. A three-year period is long enough to cover most of the post-termination
23 issues that are likely to arise, yet short enough to make it likely that the
24 pre-termination arrangements within the corporation can be reinstated without the
25 need for judicial review. If it is not possible to obtain the vote required for
26 reinstatement, or if the three-year period allowed for reinstatement has expired, a
27 liquidator may be appointed under R.S. 12:1-1445 to deal with any undistributed
28 assets or undischarged claims of a terminated corporation.

29 (d) Articles of reinstatement may be filed by the secretary of state only if
30 they meet the general requirements of R.S. 12:1-120 for the filing of a document
31 under this Chapter. Subsection F of this Section imposes requirements that must be
32 satisfied in addition to those provided in R.S. 12:1-120.

33 §1-1445. Appointment of liquidator for terminated corporation

34 On application of any interested party, a district court may, ex parte or on
35 such notice as the court may order, appoint a liquidator to act on behalf of a
36 terminated corporation with respect to any of its undistributed assets or undischarged
37 claims or interests. The court's appointment of a liquidator under this Section is
38 governed by the provisions of R.S. 12:1-1432, as if the liquidator were being
39 appointed to conduct a dissolution of the corporation under court supervision. The
40 costs and expenses of the liquidator and of the appointment of the liquidator under
41 this Section shall be paid by the party seeking the appointment, subject to

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PART 15. FOREIGN CORPORATIONS

[Reserved.]

Comment - 2014 Revision

Chapter 15 of the Model Business Corporation Act deals with the qualification of foreign business corporations to do business in a state. A separate model act, the Model Nonprofit Corporation Act, deals with the qualification of foreign nonprofit corporations. Because existing Chapter 3 of Title 12 of the Revised Statutes covers the qualification of both forms of foreign corporation, the existing Chapter was retained, and Chapter 15 of the Model Act was omitted from this Act.

PART. 16. RECORDS AND REPORTS

SUBPART A. RECORDS

§1-1601. Corporate records

A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

B. A corporation shall maintain appropriate accounting records.

C. A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

D. A corporation shall maintain its records in the form of a document, including an electronic record, or in another form capable of conversion into paper form within a reasonable time.

E. A corporation shall keep a copy of all of the following records at its principal office:

- (1) Its articles or restated articles of incorporation, all amendments to them currently in effect, and any notices to shareholders referred to in R.S. 12:1-120(K)(5) regarding facts on which a filed document is dependent.

1 (2) Its bylaws or restated bylaws and all amendments to them currently in
2 effect.

3 (3) Resolutions adopted by its board of directors creating one or more classes
4 or series of shares, and fixing their relative rights, preferences, and limitations, if
5 shares issued pursuant to those resolutions are outstanding.

6 (4) The minutes of all shareholders' meetings, and records of all action taken
7 by shareholders without a meeting, for the past three years.

8 (5) All written communications to shareholders generally within the past
9 three years, including the financial statements furnished for the past three years
10 under R.S. 12:1-1620.

11 (6) A list of the names and business addresses of its current directors and
12 officers.

13 (7) Its most recent annual report delivered to the secretary of state under R.S.
14 12:1-1621.

15 (8) Any unanimous governance agreement, as defined in R.S. 12:1-732, then
16 in effect.

17 Source: MBCA §16.01.

18 Comment - 2014 Revision

19 This Part adds a new Paragraph (E)(8) that includes unanimous governance
20 agreements among the records that must be kept at the corporation's principal office
21 under R.S. 12:1-1601, and be available for inspection under R.S. 12:1-1602(A). The
22 new Subsection does not require a corporation to create or maintain a unanimous
23 governance agreement, but only to keep a copy of it, and to allow its inspection, if
24 one is in effect. If a corporation does have a unanimous governance agreement in
25 effect, the agreement is one of the basic documents of corporate governance that
26 must be available for inspection by the corporation's shareholders.

27 §1-1602. Inspection of records by shareholders

28 A. A shareholder of a corporation is entitled to inspect and copy, during
29 regular business hours at the corporation's principal office, any of the records of the
30 corporation described in R.S. 12:1-1601(E) if the shareholder gives the corporation
31 a signed written notice of the shareholder's demand at least five business days before
32 the date on which the shareholder wishes to inspect and copy.

1 B. For any meeting of shareholders for which the record date for determining
2 shareholders entitled to vote at the meeting is different than the record date for notice
3 of the meeting, any person who becomes a shareholder subsequent to the record date
4 for notice of the meeting and is entitled to vote at the meeting is entitled to obtain
5 from the corporation, upon request, the notice and any other information provided
6 by the corporation to shareholders in connection with the meeting, unless the
7 corporation has made such information generally available to shareholders by
8 posting it on its website or by other generally recognized means. Failure of a
9 corporation to provide such information does not affect the validity of action taken
10 at the meeting.

11 C. A shareholder of at least five percent of any class of the issued shares of
12 a corporation for at least the preceding six months is entitled to inspect and copy,
13 during regular business hours at a reasonable location specified by the corporation,
14 any and all of the records of the corporation if the shareholder meets the
15 requirements of Subsection D of this Section and gives the corporation a signed
16 written notice of the shareholder's demand at least five business days before the date
17 on which the shareholder wishes to inspect and copy the records. A shareholder of
18 less than five percent of a corporation's issued shares may exercise the rights
19 provided in this Subsection if the shareholder delivers to the corporation, either
20 before or along with the written notice of demand, written consents to the demand
21 by other shareholders who, in the aggregate with the shareholder making the
22 demand, own the required percentage of shares for the required period.

23 D. A shareholder may inspect and copy the records described in Subsection
24 B of this Section only if the following conditions are satisfied:

25 (1) The shareholder's demand is made in good faith and for a proper purpose.

26 (2) The shareholder describes with reasonable particularity the shareholder's
27 purpose and the records the shareholder desires to inspect.

28 (3) The records are directly connected with the shareholder's purpose.

1 E. The right of inspection granted by this Section may not be abolished or
 2 limited by a corporation's articles of incorporation, bylaws, unanimous governance
 3 agreement, or any other agreement.

4 F. This Section does not affect either of the following:

5 (1) The right of a shareholder to inspect records under R.S. 12:1-720 or, if
 6 the shareholder is in litigation with the corporation, to the same extent as any other
 7 litigant.

8 (2) The power of a court to deny the right of inspection as to confidential
 9 matters, or to place restrictions on the use or distribution of records as provided in
 10 R.S. 12:1-1604(D).

11 G. For purposes of this Section, "shareholder" means a record shareholder,
 12 a beneficial shareholder, and an unrestricted voting trust beneficial owner.

13 Source: MBCA §16.02.

14 Comments - 2014 Revision

15 (a) This Section amends Model Act Subsection (c) to retain the rule in prior
 16 law that limited inspection rights to shareholders who, by themselves or together
 17 with other cooperating shareholders, owned at least five percent of a class of the
 18 corporation's shares for at least six months. The prior law's reference to
 19 "outstanding" shares has been replaced in this Section with a reference to "issued"
 20 shares because "issued" shares is the correct term under this Chapter for what prior
 21 law called "outstanding" shares. Under prior law, an issued share that was owned
 22 by a third party was called an "outstanding" share, to distinguish it from an issued
 23 share that had been reacquired by the corporation, and not canceled, which was
 24 called a "treasury" share. Under R.S. 12:1-631, shares that are reacquired by the
 25 issuing corporation do not retain their issued status as treasury shares. Rather, they
 26 return to the status of unissued shares. The five percent ownership requirement
 27 under Subsection C of this Section applies only to inspections of "any and all"
 28 records under that Subsection. Any shareholder may exercise the inspection rights
 29 provided by Subsection A of this Section.

30 (b) This Section drops the separate and higher percentage ownership
 31 requirement, twenty-five percent, that was imposed under prior law on shareholders
 32 who were competitors of the corporation. A higher percentage requirement could
 33 interfere arbitrarily with the legitimate inspection rights of shareholders who happen
 34 to be competitors, while still failing to protect the corporation adequately against the
 35 inspection of records for improper purposes by competitors who happen to own the
 36 required percentage of shares. This Section deals with inspections by competitors
 37 in two ways. First, all inspections under Subsection C of this Section are subject to
 38 the requirements of Subsection C of this Section, which include the requirement that
 39 the demand for inspection be made in good faith and for a proper purpose. Second,
 40 the court is given the power under Subsection F of this Section to deny the inspection
 41 of records concerning confidential matters.

1 (c) This Section also changes the rule in prior law that multiple shareholders
2 could "jointly" exercise an inspection, to avoid any suggestion that jointly-held
3 inspection rights might somehow have to be exercised differently from those held
4 by just one shareholder. This Section does not require that the inspections
5 themselves be conducted jointly, but only that a group of shareholders owning the
6 required percentage of shares for the required period consent to the inspecting
7 shareholder's demand for inspection.

8 (d) This Section retains the rule in prior law that allowed a shareholder to
9 inspect "any and all" records of the corporation, and not merely those records
10 specifically listed in Model Act Subsection (c). It omits the reference in prior law
11 to "accounts" because accounting records are included in the records that may be
12 inspected under this Section.

13 (e) This Section deletes Model Act Paragraph (f)(2), which preserved the
14 power of a court to compel the production of corporate records independently of the
15 Section. The statement was deleted as unnecessary to preserve any such power and
16 to eliminate the risk that the statement of preservation could itself be construed as
17 an implicit recognition of some unspecified additional authority.

18 (f) This Section uses Paragraph (F)(2) of this Section to retain the rule from
19 prior law that permits a court to deny inspection rights as to confidential matters.
20 The court's power to deny inspection exists in addition to its authority to restrict the
21 use or distribution of inspected items under R.S. 12:1-1604(D). A court should deny
22 the inspection of confidential items only if it concludes that the restrictions that the
23 court may impose on the use or distribution of the inspected records under R.S.
24 12:1-1604(D) are not sufficient to protect the corporation's interests in the
25 confidentiality of the records.

26 §1-1603. Scope of inspection right

27 A. A shareholder's agent or attorney has the same inspection and copying
28 rights as the shareholder represented.

29 B. The right to copy records under R.S. 12:1-1602 includes, if reasonable,
30 the right to receive copies by xerographic or other means, including copies through
31 an electronic transmission if electronic transmission is available and requested by the
32 shareholder.

33 C. The corporation may comply at its expense with a shareholder's demand
34 to inspect the record of shareholders by providing the shareholder with a list of
35 shareholders that was compiled no earlier than the date of the shareholder's demand.

36 D. The corporation may impose a reasonable charge, covering the costs of
37 labor and material, for copies of any documents requested by the shareholder. The
38 charge may not exceed the estimated cost of production, reproduction, or
39 transmission of the records.

40 Source: MBCA §16.03.

1 §1-1604. Court-ordered inspection

2 A. If a corporation does not within a reasonable time allow a shareholder
 3 who complies with the applicable provisions of R.S. 12:1-1602 to inspect and copy
 4 any records required by that Section to be available for inspection, the district court
 5 of the parish where the corporation's principal office or, if none in this state, its
 6 registered office is located may by summary proceeding order inspection and
 7 copying of the records demanded. If the court determines that the shareholder was
 8 entitled to inspect and copy the demanded records under R.S. 12:1-1602(A), then the
 9 court shall order the corporation to provide copies of the demanded records at the
 10 corporation's expense.

11 B. [Reserved.]

12 C. If the court orders inspection and copying of the records demanded, it
 13 shall also order the corporation to pay the shareholder's expenses incurred to obtain
 14 the order unless the corporation proves that it refused inspection in good faith
 15 because it had a reasonable basis for doubt about the right of the shareholder to
 16 inspect the records demanded.

17 D. If the court orders inspection and copying of the records demanded, it
 18 may impose reasonable restrictions on the use or distribution of the records by the
 19 demanding shareholder.

20 Source: MBCA §16.04.

21 Comment - 2014 Revision

22 This Section combines the two separate enforcement provisions in Model Act
 23 Subsections (a) and (b) into a single unified Subsection A of this Section and
 24 reserves Subsection B of this Section for future use.

25 §1-1605. Inspection of records by directors

26 A. A director of a corporation is entitled to inspect and copy the books,
 27 records, and documents of the corporation at any reasonable time to the extent
 28 reasonably related to the performance of the director's duties as a director, including
 29 duties as a member of a committee, but not for any other purpose or in any manner
 30 that would violate any duty to the corporation.

1 on the records of the corporation and have been returned undeliverable or could not
2 be delivered.

3 (2) All, but not less than two, payments of dividends on securities during a
4 twelve-month period, or two consecutive payments of dividends on securities during
5 a period of more than twelve months, have been sent to such shareholder at such
6 shareholder's address as shown on the records of the corporation and have been
7 returned undeliverable or could not be delivered.

8 B. If any such shareholder shall deliver to the corporation a written notice
9 setting forth such shareholder's then-current address, the requirement that notice be
10 given to such shareholder shall be reinstated.

11 Source: MBCA §16.06.

12 SUBPART B. REPORTS

13 §1-1620. Financial statements for shareholders

14 A. Once each calendar year a shareholder may obtain a report of financial
15 information from the corporation. To obtain the report, a shareholder shall give a
16 written notice of the request for the report to the corporation. The notice shall
17 specify a postal mailing address, and if desired an electronic mailing address, to
18 which the report should be delivered. Promptly after receiving the shareholder's
19 notice, the corporation shall deliver to the shareholder, at one of the specified
20 addresses, a report that complies with the requirements of Subsections B and C of
21 this Section.

22 B. A report of financial information shall contain all of the following
23 financial statements, which may be consolidated or combined statements of the
24 corporation and one or more of its subsidiaries, as appropriate, for the last fiscal year
25 ended at least four months before the effective date of the shareholder's notice:

26 (1) A balance sheet.

27 (2) An income statement.

28 (3) A statement of changes in shareholders' equity unless that information
29 appears elsewhere in the financial statements provided.

1 (4) If ordinarily prepared by the corporation, a statement of cash flows.

2 C. If the corporation's financial statements are prepared for the corporation
3 on the basis of generally accepted accounting principles, the statements in the report
4 of financial information listed in Subsection B of this Section must also be prepared
5 on that basis. If those statements are reported upon by a public accountant, the
6 accountant's report shall be delivered as part of the report of financial information
7 described in Subsection B of this Section.

8 D. A public corporation may fulfill its responsibilities under this Section by
9 delivering the financial statements listed in Subsection B of this Section, or
10 otherwise making them available, in any manner permitted by the applicable rules
11 and regulations of the United States Securities and Exchange Commission. A
12 corporation that complies with this Subsection is not required to deliver a report of
13 financial information as provided in Subsection A of this Section.

14 Source: MBCA §16.20.

15 Comment - 2014 Revision

16 This Section modifies the Model Act to retain the rule in prior law that a
17 corporation is required to provide financial reports to its shareholders only annually
18 and only when requested. This Section adopts the substance of the Model Act rules
19 concerning the nature of the financial statements to be provided, and the entitlement
20 of public companies to satisfy their reporting obligations through their securities law
21 filings.

22 §1-1621. Annual report for secretary of state

23 A. Each corporation shall deliver to the secretary of state for filing an annual
24 report that sets forth all of the following information:

- 25 (1) The name of the corporation.
- 26 (2) The address of its registered office.
- 27 (3) The name and address of its registered agent.
- 28 (4) The address of its principal office.
- 29 (5) Names and business addresses of its directors and principal officers.
- 30 (6) The total number of issued shares, itemized by class and series, if any,
31 within each class.

1 §1-1622. Reporting obligation of corporation that contracts with the state

2 A. A corporation that contracts with the state shall deliver for filing to the
3 secretary of state a statement that acknowledges the contract. The statement shall
4 include the names and addresses of all persons or entities who hold an ownership
5 interest of five percent or more in the corporation or who hold by proxy the voting
6 power of five percent or more in the corporation and, if anyone holds stock in his
7 own name that actually belongs to another, the name of the person for whom held,
8 including stock held pursuant to a counterletter.

9 B. This Subsection does not apply to any of the following:

10 (1) Any agreement entered between the state and a corporation for electric
11 or gas service.

12 (2) Publicly traded corporations.

13 (3) State-chartered banks.

14 Source: MBCA §16.22.

15 Comment - 2014 Revision

16 This Section is not part of the Model Act. It was added to this Part to retain
17 the substance of former R.S. 12:25(E). In prior law, the reporting requirement was
18 included as part of the provision that described the requirements for incorporating
19 a business. The requirement was moved to the reporting provisions of this Chapter
20 because the duty to file the required statement is triggered by a contract between the
21 corporation and the state, and not by the act of incorporating a new company.

22 PART 17. TRANSITION PROVISIONS

23 §1-1701. Application to existing domestic corporations

24 This Chapter applies to all domestic corporations in existence on its effective
25 date that were incorporated under the laws of this state for a purpose or purposes for
26 which a corporation might be formed under this Chapter.

27 Source: MBCA §17.01.

28 Comment - 2014 Revision

29 Under Model Act Section 17.01, this Chapter would apply to all corporations
30 for profit formed under a general statute of this state providing for the incorporation
31 of a corporation for profit. This Section modifies the description of the existing
32 corporations to which it applies to those corporations formed for a purpose for which
33 a corporation could be formed under this Chapter. The narrower description is
34 designed to prevent the application of this Chapter to special forms of for-profit

1 corporations, such as banking and insurance corporations, which are governed by
2 separate statutes.

3 §1-1702. Limited applicability to foreign corporations

4 Except where express reference is made to foreign corporations, this Chapter
5 does not apply to foreign corporations.

6 Source: R.S. 12:75.

7 Comments - 2014 Revision

8 (a) Because this Chapter omits Model Act Chapter 15, concerning the
9 qualification of foreign corporations to do business in this state, it also omits Model
10 Act Section 17.02, concerning the transition rules applicable to already-qualified
11 foreign corporations. Chapter 3 of Title 12 continues to govern the qualification of
12 foreign corporations in this state, without any change by this Chapter.

13
14 (b) This Part utilizes R.S. 12:1-1702 to retain the substance of former R.S.
15 12:175, which rendered the predecessor statute generally inapplicable to foreign
16 corporations. R.S. 12:1-1702 states that the Chapter does not apply to foreign
17 corporations except where it makes an express reference to foreign corporations.
18 Examples of express references to foreign corporations include the reference to the
19 names of qualified foreign corporations in R.S. 12:1-401(B) and the references to
20 foreign corporations in Parts 9 and 11 of this Chapter.

21 §1-1703. Saving provisions

22 A. Except as provided in Subsection B of this Section, the repeal of a statute
23 by this Chapter does not affect any of the following:

24 (1) The operation of the statute or any action taken under it, before its repeal.

25 (2) Any ratification, right, remedy, privilege, obligation, or liability acquired,
26 accrued, or incurred under the statute, before its repeal.

27 (3) Any violation of the statute, or any penalty, forfeiture, or punishment
28 incurred because of the violation, before its repeal.

29 (4) Any proceeding, reorganization, or dissolution commenced under the
30 statute before its repeal, and the proceeding, reorganization, or dissolution may be
31 completed in accordance with the statute as if it had not been repealed.

32 B. If a penalty or punishment imposed for violation of a statute repealed by
33 this Chapter is reduced by this Chapter, the penalty or punishment if not already
34 imposed shall be imposed in accordance with this Chapter.

35 C. In the event that any provisions of this Chapter are deemed to modify,
36 limit, or supersede the federal Electronic Signatures in Global and National

1 Commerce Act, 15 U.S.C. §§ 7001 et seq., the provisions of this Chapter shall
2 control to the maximum extent permitted by Section 102(a)(2) of that federal act.

3 Source: MBCA §17.03.

4 §1-1704. [Reserved.]

5 Comment - 2014 Revision

6 Model Act Section 17.04, which provides for severability, is omitted from
7 this Chapter. A general rule of severability is provided in R.S. 24:175 for all acts of
8 the Legislature. A separate severability rule in this Chapter would either be
9 repetitious of or inconsistent with the general rule.

10 * * *

11 §1501. Applicability

12 The provisions of this Chapter shall be applicable to all business
13 organizations defined in R.S. 12:1502(B), ~~except as provided in R.S. 12:92(D),~~
14 ~~93(D), or 1328(C).~~

15 §1502. Actions against persons who control business organizations

16 A. The provisions of this Section shall apply to all business organizations
17 formed under the laws of this state and shall be applicable to actions against any
18 officer, director, shareholder, member, manager, general partner, limited partner,
19 managing partner, or other person similarly situated. The provisions of this Section
20 shall not apply to actions governed by R.S. 12:1-622, 1-833, 1-1407, or 1328(C).

21 * * *

22 §1601. ~~Definitions~~ Conversion of domestic business entities

23 ~~As used in this Chapter, the following terms and phrases shall have the~~
24 ~~meaning ascribed to them in this Section, unless the context clearly indicates~~
25 ~~otherwise:~~

26 (1) ~~"Conversion" means the continuance of a domestic entity of one type as~~
27 ~~a domestic entity of another type.~~

28 (2) ~~"Converted entity" means an entity resulting from a conversion.~~

29 (3) ~~"Converting entity" means an entity as the entity existed before the~~
30 ~~entity's conversion.~~

1 One form of domestic business entity may convert to another form of
2 domestic business entity as provided in the Business Corporation Act. This
3 authorization of domestic entity conversions does not limit the other forms of
4 transaction authorized by the Business Corporation Act.

5 Comments - 2014 Revision

6 (a) The original version of Chapter 25 of Title 12 was enacted in 2006 to
7 authorize the conversion of one form of domestic unincorporated business entity into
8 another. In 2014, the Chapter was revised extensively in connection with the
9 adoption in Louisiana of the Model Business Corporation Act, now Chapter 1 of
10 Title 12, which contains its own provisions on entity conversion.

11 (b) Although the basic concept of entity conversion was similar under the
12 Model Act and former Chapter 25, the two approaches differed in several respects:

13 (1) The Model Act applied only to conversions in which a domestic business
14 corporation was either a converting or surviving entity, but permitted conversions
15 that included as parties foreign corporations and domestic and foreign
16 unincorporated entities, such as partnerships and limited liability companies.
17 Chapter 25 of Title 12, in contrast, applied only to conversions in which both the
18 converting and surviving entities were domestic, but was not limited to conversions
19 that included domestic business corporations as parties.

20 (2) The Model Act rules on the content, execution and filing of the relevant
21 documents were part of a larger model structure, widely adopted in other states. The
22 analogous Louisiana rules were designed to work within the older structure
23 established by Louisiana's 1968 business corporation statute.

24 (3) Chapter 25 of Title 12 addressed two issues on which the Model Act was
25 silent: the need to file "short period" tax returns for the converting entity and the
26 treatment of government-issued licenses held by the converting entity.

27 (c) The two approaches to entity conversion were reconciled in three ways:

28 (1) The scope of the Model Act conversion provisions was expanded to
29 include the types of non-corporate conversions covered by former Chapter 25 of
30 Title 12.

31 (2) The provisions of former Chapter 25 of Title 12 concerning the content,
32 execution and filing of the required conversion documents were repealed and
33 replaced by a cross reference to the Model Act provisions on conversion.

34 (3) The substance of the tax-return and government licensing rules in
35 Chapter 25 of Title 12 was retained.

36 (d) Neither this Chapter nor the Business Corporation Act authorizes the
37 conversion of a nonprofit corporation into a business corporation. Former R.S.
38 12:165, which permitted a nonprofit corporation to "reincorporate" as a business
39 corporation if the provisions of the Nonprofit Corporation Law "no longer appl[ied],"
40 was not retained as part of the current Business Corporation Act. It was not clear
41 how the former reincorporation provision could ever be satisfied, as it required the
42 Nonprofit Corporation Law "no longer [to] apply" to an existing nonprofit
43 corporation. And if the former provision could indeed be satisfied, it appeared to
44 provide an unjustified means of circumventing the prohibition in the Nonprofit

1 Corporation Law against the distribution of profits. See R.S. 12:210(F). The
 2 Nonprofit Corporation Law does permit a nonprofit corporation to merge or
 3 consolidate with a business corporation. R.S. 12:242(A). But a nonprofit
 4 corporation that is not permitted to distribute its net assets to its members upon
 5 dissolution may be merged only with another corporation that is subject to the same
 6 limitation. R.S. 12:242(C).

7 §1602. ~~Conversion of domestic entities~~ Definitions

8 ~~A. Any domestic limited liability company, business corporation, partnership~~
 9 ~~in commendam, or partnership may convert to another type of domestic business~~
 10 ~~entity by submitting a conversion application to the secretary of state. The owners~~
 11 ~~or members of the converting entity must approve the conversion in the same manner~~
 12 ~~provided for by law and by the document, instrument, agreement, or other writing~~
 13 ~~governing the internal affairs of the converting entity and the conduct of its business.~~

14 ~~B. An entity may not convert under this Chapter if an owner or member of~~
 15 ~~the entity, as a result of the conversion, becomes personally liable, without the~~
 16 ~~consent of the owner or member, for a liability or other obligation of the converted~~
 17 ~~entity.~~

18 Terms that are defined in the Business Corporation Act have the same
 19 meaning in this Chapter as in that Act. As used in this Chapter:

20 (1) "Allowed update rule" means a rule of a licensing body allowed by
 21 R.S.12:1604(B) or (C).

22 (2) "Business entity" means any of the following business organizations:
 23 business corporation, limited liability company, partnership, partnership in
 24 commendam, and registered limited liability partnership.

25 (3) "Converting entity" means a domestic business corporation or domestic
 26 unincorporated entity as it exists before the effective date of an entity conversion
 27 under the Business Corporation Act.

28 (4) "Domestic business entity" means a business entity that is incorporated,
 29 organized, or formed under the laws of this state.

30 (5) "License" means any license, permit, or certificate issued by any board,
 31 commission, or agency of the state or any of its political subdivisions.

1 (6) "Licensing body" means the board, commission, or agency of the state
2 or any of its political subdivisions that issues a license.

3 (7) "Publicly traded entity" means a business entity that is the issuer of
4 shares, ownership interests, or other securities that are listed on a national securities
5 exchange or regularly traded in a market maintained by one or more members of a
6 national securities association.

7 (8) "Surviving entity" means a domestic business corporation or domestic
8 unincorporated entity as it exists immediately after the consummation of an entity
9 conversion under the Business Corporation Act.

10 §1603. ~~Conversion application~~ Tax filing requirements

11 ~~A. The application shall set forth the following:~~

12 ~~(1) The name of the converting entity and the converted entity.~~

13 ~~(2) A statement of the type of the resulting converted entity.~~

14 ~~(3) A statement that the converting entity is continuing its existence in the~~
15 ~~organizational form of the converted entity.~~

16 ~~(4) The manner and basis of converting the ownership or membership~~
17 ~~interests of the converting entity into ownership or membership interests of the~~
18 ~~converted entity.~~

19 ~~(5) The fact that the conversion has been authorized and approved in~~
20 ~~accordance with this Section.~~

21 ~~(6)(a) The information required in the articles of organization if the~~
22 ~~converted entity is a limited liability company, along with an attached initial report.~~

23 ~~(b) The information required in the articles of incorporation if the converted~~
24 ~~entity is a corporation along with an attached initial report.~~

25 ~~(c) The information required in a contract of partnership if the converted~~
26 ~~entity is a partnership or a partnership in commendam.~~

27 ~~B. The application shall be signed on behalf of the converting entity in the~~
28 ~~following manner:~~

1 ~~thereof with him, and issue a certificate of conversion that shall show the date of~~
2 ~~filing of the application with him and the effective date of the conversion. A~~
3 ~~duplicate certificate of conversion issued by the secretary of state shall, within thirty~~
4 ~~days after issuance of the certificate, be filed for record in the conveyance records~~
5 ~~of each parish in this state in which the entity has immovable property, title to which~~
6 ~~will be transferred as a result of the conversion. The rules of a licensing body may~~
7 ~~require a surviving entity to update its licensing information by delivering a copy of~~
8 ~~any of the following documents to the licensing body within ninety days after the~~
9 ~~effective date of the conversion, or by a later date set by those rules:~~

10 (1) The articles of entity conversion, acknowledged as filed by the secretary
11 of state as provided in the Business Corporation Act.

12 (2) The license being updated.

13 (3) A bond or certificate of insurance in the name of the surviving entity for
14 any coverage required for the issuance of the kind of license being updated.

15 (4) An amendment or amended version of any contract or other agreement
16 required for the issuance of the kind of license being updated, naming the surviving
17 entity as a party to the required contract or agreement.

18 C. ~~A conversion shall be effective when the application has been recorded~~
19 ~~by the secretary of state. However, if the application was filed within five days,~~
20 ~~exclusive of legal holidays, after signing thereof, the conversion shall be effective~~
21 ~~as of the time of such signing, unless the application specifies that the effective date~~
22 ~~shall be the date filed by the secretary of state. The rules of a licensing body may~~
23 ~~require the surviving entity to pay a fee of up to twenty-five dollars to update the~~
24 ~~license.~~

25 D. An updated license shall be issued by the licensing body within thirty
26 days of its receipt of the documents and fee required by its allowed update rules, but
27 if a surviving entity has complied with the allowed update rules of the licensing
28 body, a failure by the licensing body to issue an updated license does not affect the
29 continued holding of the license as provided in Subsection A of this Section.

1 E. A license held by a converting entity terminates on the effective date of
2 the conversion if the surviving entity in the conversion is a form of business entity
3 that may not hold the license.

4 F. If a surviving entity fails to comply with an allowed update rule
5 concerning a license, the license terminates at the end of the ninetieth day after the
6 effective date of the conversion or, if a later date for compliance is set by the allowed
7 update rule, at the end of the later date.

8 G. Except for publicly traded entities, the provisions of this Section shall not
9 apply to a surviving entity seeking an updated license that has any change in
10 ownership interests or has changed ownership by including an individual or entity
11 that did not have an ownership interest in the surviving entity immediately prior to
12 the conversion.

13 Comments - 2014 Revision

14 (a) This Section retains the substance of former R.S. 12:1607, but has been
15 modified to clarify the meaning of the Section and to address issues left open by the
16 earlier provision.

17 (b) The former provision required an agency to "recognize" a surviving
18 entity's license, but also conferred power on the agency to require the converted
19 licensee to "update" its license and to submit any insurance policies and contracts
20 required of the licensee in the new name of the converted entity. If the updated
21 license was issued, it was given retroactive effect to the date of the entity conversion,
22 leaving open the question of how to reconcile the agency's obligation to recognize
23 a continuing license, while withholding an updated license that would have
24 retroactive effect only if issued. The former language also allowed the agency to
25 refuse to issue an updated license if the entity, presumably either before or after the
26 conversion, owed any unpaid fees or had been "cited or charged" with a violation of
27 the law that the agency was empowered to enforce. This power to withhold an
28 updated license based merely on a charged or cited violation of law, or for any
29 unpaid fee, suggested that the licensing agency could revoke an entity's license in
30 practical effect on grounds that would not have supported license revocation under
31 normal revocation procedures.

32 (c) As modified, this Section does not merely instruct the licensing body to
33 recognize a surviving entity's license. Rather, it continues the license by operation
34 of law, as if the conversion had not occurred, subject to two limitations: (a) the
35 license terminates immediately on conversion if the surviving entity in the
36 conversion is not the kind of entity that may hold that kind of license, and (b) the
37 license terminates at the end of an "update" period of at least ninety days if the
38 surviving entity fails to comply by the end of the update period with any update rules
39 permitted this chapter and adopted by the agency. Otherwise, subject to any
40 enforcement actions that may be pending or that could be initiated against the
41 licensee in the absence of the conversion, the license of the surviving entity in the
42 conversion continues for any period remaining in the term of the continued license.

43 * * *

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored
are additions.

1 §1701. ~~Judicial review, removal of officers, members, managers, and partners~~ Filing
2 Methods

3 A. ~~Should any officer, member, manager, or partner of any corporation,~~
4 ~~limited liability company, or partnership have his name removed from any document~~
5 ~~or record filed with the secretary of state in violation of state law or in contravention~~
6 ~~of any document of creation, organization or management of such business entity,~~
7 ~~the aggrieved party may file suit against the party who caused the aggrieved party's~~
8 ~~name to be removed from such document or record.~~

9 B. ~~Such suit shall be filed in the judicial district court where the business~~
10 ~~entity is domiciled.~~

11 C. ~~The secretary of state shall be made a party to the suit.~~

12 D. ~~The court shall conduct a hearing within ten days after service of process~~
13 ~~of the suit on all parties.~~

14 E. ~~Should the court find that the name of the aggrieved party was improperly~~
15 ~~or fraudulently removed from the documents and records of the secretary of state,~~
16 ~~the court shall order the secretary of state to replace the name of the aggrieved party~~
17 ~~on to all appropriate documents and records of the secretary of state.~~

18 F. ~~Nothing in this Section shall be construed to supercede or conflict with~~
19 ~~the provisions of R.S. 12:208.~~

20 A.(1) The secretary of state may accept any filing authorized by this Title by
21 electronic or facsimile transmission. All electronic filings authorized by this Title
22 shall include an electronic or digital signature.

23 (2) "Digital signature" means a type of electronic signature that transforms
24 a message using an asymmetric crypto system such that a person having the initial
25 message and the signer's public key can accurately determine both of the following:

26 (a) Whether the transformation was created using the private key that
27 corresponds to the signer's public key.

28 (b) Whether the initial message has been altered since the transformation was
29 made.

1 (3) "Electronic signature" means an electronic sound, symbol, or process
2 attached to or logically associated with a record and executed or adopted by a person
3 with the intent to sign the record.

4 B. A filing by facsimile, the process of transmitting printed documents by
5 electronic method to the secretary of state, is deemed to be properly signed when the
6 document received by a facsimile machine or document image attachment in e-mail
7 in the commercial division, office of the secretary of state, purports to be a copy of
8 the original document, and contains the signatures required by this Section.

9 C.(1) Internet filing. The secretary of state is authorized to implement and
10 establish procedures and systems for secure Internet-form filing for the filing of any
11 instrument required under this Title.

12 (2) Any requirement that an instrument filed under this Title shall be
13 subscribed or acknowledged before a notary public may be dispensed with if the
14 instrument is filed and signed electronically as provided in Paragraph (A)(3) of this
15 Section by a person authorized to sign the instrument.

16 D. In-person filing. Any provision of this Title requiring that an instrument
17 filed under this Title shall be subscribed or acknowledged before a notary public may
18 be dispensed with if the instrument is signed, by the person authorized to sign, in the
19 presence of the employee of the secretary of state receiving the instrument for filing
20 and the employee verifies the identity of the person signing the instrument.

21 §1702. Electronic mail addresses and short message service numbers;
22 confidentiality

23 Any electronic mail address or short message service number submitted to
24 or captured by the secretary of state pursuant to the provision of this Title shall be
25 confidential and shall not be disclosed by the secretary of state or any employee or
26 official of the Department of State.

27 §1703. Electronic notification of status changes

28 The secretary of state shall notify any person who subscribes to the secretary
29 of state's electronic mail or short message notification service and who is an officer

1 of a corporation, member or manager of a limited liability company, or partner in a
2 partnership, or any agent thereof, when a filing has occurred that purports to remove
3 that person's name from documents and records of that entity held by the secretary
4 of state.

5 §1704. Judicial review; removal of officers, members, managers, and
6 partners

7 A. Should any officer, member, manager, or partner of any corporation,
8 limited liability company, or partnership have his name removed from any document
9 or record filed with the secretary of state in violation of state law or in contravention
10 of any document of creation, organization, or management of such business entity,
11 the aggrieved party may file suit against the party who caused the aggrieved party's
12 name to be removed from such document or record.

13 B. Such suit shall be filed in the district court of the parish where the
14 business entity is domiciled.

15 C. The secretary of state shall be made a party to the suit.

16 D. The court shall conduct a hearing within ten days after service of process
17 of the suit on all parties.

18 E. Should the court find that the name of the aggrieved party was improperly
19 or fraudulently removed from the documents and records of the secretary of state,
20 the court shall order the secretary of state to restore the name of the aggrieved party
21 in all appropriate documents and records of the secretary of state.

22 F. Nothing in this Section shall be construed to supersede or conflict with the
23 provisions of R.S. 12:208.

24 Section 2. R.S. 44:4.1(B)(5) is hereby amended and reenacted to read as follows:

25 §4.1. Exceptions

26 * * *

27 B. The legislature further recognizes that there exist exceptions, exemptions,
28 and limitations to the laws pertaining to public records throughout the revised
29 statutes and codes of this state. Therefore, the following exceptions, exemptions, and

1 limitations are hereby continued in effect by incorporation into this Chapter by
2 citation:

3 * * *

4 (5) ~~R.S. 12:2.1~~ R.S. 12:1702

5 * * *

6 Section 3. R.S. 49:222(B)(1) and (6) are hereby amended and reenacted to read as
7 follows:

8 §222. Fees chargeable by secretary of state

9 * * *

10 B. The secretary of state is authorized to collect the following fees:

11 (1) Domestic corporations and limited liability companies.

12 (a) Twenty-five dollars for reserving a corporate name or limited liability
13 company name, transferring a reserved corporate name, registering a corporate name,
14 renewing a registered corporate name, or applying for use of an indistinguishable
15 name by a corporation.

16 (b) Seventy-five dollars for filing and recording corporation articles of
17 incorporation, ~~amended articles of incorporation, dissolution proceedings,~~
18 ~~termination of dissolution proceedings,~~ articles of amendment, articles of
19 restatement, articles of domestication, articles of charter surrender, articles of
20 nonprofit conversion, articles of nonprofit domestication and conversion, articles of
21 dissolution, articles of revocation of dissolution, articles of reinstatement
22 proceedings, articles of merger proceedings or share exchange, conversions, and
23 ~~certificates~~ articles of correction.

24 (c) One hundred dollars for filing and recording limited liability company
25 articles of organization, amended articles of organization, dissolution proceedings,
26 termination of dissolution proceedings, reinstatement proceedings, merger
27 proceedings, conversions, and certificates of correction.

28 (d) Twenty dollars for filing any other document or issuing and sealing any
29 other certificate required or permitted by the ~~Louisiana business corporation law~~

1 Business Corporation Act, R.S. 12:1 et seq. R.S. 12:1-101 et seq., or the limited
2 liability companies law, R.S. 12:1301 et seq.

3 (e) Twenty-five dollars for a corporation's statement of change of registered
4 agent or registered office, or both, the resignation of an agent or officer; appointment
5 of a registered agent; change of domicile; appointment of new officers, directors,
6 members, or managers; and change of address for agents, officers, directors,
7 members, or managers.

8 (f) Twenty-five dollars for a supplemental initial report.

9 (g) Thirty dollars for annual reports.

10 * * *

11 (6) ~~Business~~ Articles of entity conversions.

12 (a) Seventy-five dollars for conversion from or to a limited liability
13 company, except as provided in Subparagraph (B)(6)(b) of this Section.

14 (b) One hundred dollars for conversion from or to a partnership, including
15 the conversion of a limited liability company from or to a partnership.

16 (c) ~~Seventy-five dollars for conversion of a corporation to or from a limited~~
17 ~~liability company.~~

18 (d) ~~One hundred dollars for conversion of a corporation to or from a~~
19 ~~partnership.~~

20 * * *

21 Section 4. Code of Civil Procedure Article 611 is hereby amended and reenacted to
22 read as follows:

23 Art. 611. Derivative actions; prerequisites

24 A. When a corporation or unincorporated association refuses to enforce a
25 right of the corporation or unincorporated association, a shareholder, partner, or
26 member thereof may bring a derivative action to enforce the right on behalf of the
27 corporation or unincorporated association. A derivative action may be maintained
28 as a class action when the persons constituting the class are so numerous as to make

1 it impracticable for all of them to join or be joined as parties. In the case of a
2 derivative class action, Articles 594 and 595 shall apply.

3 B. If a derivative action is a "derivative proceeding" as defined in the
4 Business Corporation Act, the action is exempt from the provisions of this Chapter
5 other than this Subsection, and is subject instead to the provisions of the Business
6 Corporation Act concerning derivative proceedings.

7 Comment - 2014

8 The last sentence of Article 611 was added in connection with Louisiana's
9 adoption in 2014 of the Business Corporation Act. The added language causes a
10 derivative action that is filed on behalf of a Louisiana business corporation or, to the
11 limited extent provided in R.S. 12:1-747, on behalf of a foreign corporation to be
12 governed by the derivative proceeding provisions of the Business Corporation Act
13 instead of the class and derivative actions chapter of the Code of Civil Procedure.
14 See R.S. 12:1-740(1). A derivative proceeding that is governed by the Business
15 Corporation Act is exempted only from this Chapter, however, and otherwise
16 remains subject to the provisions of the Code of Civil Procedure.

17 Section 5. R.S. 12:1 through 178 and 1605 through 1607 are hereby repealed in their
18 entirety.

19 Section 6. The Louisiana State Law Institute, as the official advisory law revision
20 commission of the state of Louisiana, shall direct and supervise the continuous revision,
21 clarification, and coordination of Chapter 1 of Title 12 of the Louisiana Revised Statutes of
22 1950, relative to business corporations.

23 Section 7. The provisions of this Act shall become effective on January 1, 2015.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Foil

HB No. 319

Abstract: Enacts the "Business Corporation Act".

Present law (R.S. 12:1-178) provides with regard to the Business Corporation Law.

Proposed law repeals present law.

Proposed law (R.S. 12:1-101-1-1704) enacts the "Business Corporations Act", modeled after the Model Business Corporations Act.

Present law (R.S. 12:1501) provides for the applicability of Chapter 24 of Title 12 of the La. Revised Statutes of 1950 to all business organizations defined in R.S. 12:1502(B), except as provided in R.S. 12:92(D), 93(D), or 1328(C).

Proposed law repeals present law.

Present law (R.S. 12:1502(A)) provides for the applicability of present law to business organizations formed under the laws of the state and to actions against officers, directors, shareholders, members, managers, general partners, limited partners, managing partners, or other persons similarly situated.

Proposed law provides an exception for actions governed by R.S. 12:1-622, 1-833, 1-1407, or 12:1328(C).

Present law (R.S. 12:1601) provides definitions applicable to Chapter 25 of Title 12 of the La. Revised Statutes of 1950.

Proposed law repeals present law and provides for the conversion of domestic business entities.

Present law (R.S. 12:1602) provides for the conversion of domestic entities.

Proposed law repeals present law and provides definitions applicable to Chapter 25 of Title 12 of the La. Revised Statutes of 1950. Proposed law further provides that terms defined in the Business Corporation Act have the same meaning in Chapter 25 of Title 12 of the La. Revised Statutes of 1950.

Present law (R.S. 12:1603) sets forth the conversion application requirements for business organizations.

Proposed law repeals present law and provides tax filing requirements for converting entities.

Present law (R.S. 12:1604) provides for the filing and recording of a conversion application and the issuance and effect of a certificate of conversion.

Proposed law repeals present law and provides for the continuation and updating of a professional or other license.

Present law (R.S. 12:1605) provides for the effect of conversion.

Proposed law repeals present law.

Present law (R.S. 12:1606) provides for tax filing requirements for converting business organizations.

Proposed law repeals present law.

Present law (R.S. 12:1607) provides for the recognition of conversion and updating of a professional license.

Proposed law repeals present law.

Present law (R.S. 12:1701) provides for judicial review of the removal of officers, members, managers, and partners.

Proposed law deletes present law and provides for filing methods.

Proposed law (R.S. 12:1702) provides for the confidentiality of electronic mail addresses and short message service numbers submitted to or captured by the secretary of state.

Proposed law (R.S. 12:1703) provides for electronic notification of status changes when a filing has occurred that may removed a person's name from documents and records of an entity.

Proposed law (R.S. 12:1704) provides for judicial review of the removal of officers, members, managers, and partners.

Present law (R.S. 44:4.1(B)(5)) provides an exception to the laws pertaining to public records for records attained under R.S. 12:2.1.

Proposed law amends present law to provide an exception to laws pertaining to public records for records attained under R.S. 12:1702.

Present law (R.S. 49:222(B)(1)) provides for fees chargeable by the secretary of state for domestic corporations and limited liability companies.

Proposed law amends present law to authorize the secretary of state to collect fees for documents permitted to be filed under the Business Corporation Act.

Present law (R.S. 49:222(B)(6)) provides for fees chargeable by the secretary of state for business entity conversions.

Proposed law amends present law to provide for fees for articles of entity conversion and to authorize the secretary of state to collect fees for conversions permitted to be filed under the Business Corporation Act.

Present law (C.C.P. Art 611) provides for derivative actions.

Proposed law maintains present law and provides that a "derivative proceeding" as defined in the Business Corporation Act is exempt from the provisions of Chapter 5 of Title II of the Code of Civil Procedure and subject to the relevant provisions of the Business Corporations Act.

Effective Jan. 1, 2015.

(Amends R.S. 12:1501, 1502(A), 1601-1604, and 1701, R.S. 44:4.1(B)(5), R.S. 49:222(B)(1) and (6), and C.C.P. Art. 611; Adds R.S. 12:1-101-1-1704 and 1702-1704; Repeals R.S. 12:1-78 and 1605-1607)