

2015 Regular Session

HOUSE BILL NO. 743

BY REPRESENTATIVE FOIL

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CORPORATIONS: Provides relative to the Business Corporation Act

1 AN ACT

2 To amend and reenact R.S. 12:1-202(B)(5)(introductory paragraph), 1-501(2)(b)

3 (introductory paragraph) and (i), 1-502(A)(5), 1-504(A), 1-1435(C), 1-1436(D),

4 (E)(introductory paragraph), (1)(introductory paragraph), and (2), and 1-1442(A)(2)

5 and (C) and to enact R.S. 12:1-140(25B), 1-501(2)(b)(ii), 1-502(A)(7), and 1-832(D),

6 relative to corporations; to provide with respect to articles of incorporation; to

7 provide with respect to registered agents and service of process; to provide with

8 respect to judicial determinations relative to withdrawing shareholders; to provide

9 with respect to withdrawal rights; to provide for definitions; to provide for

10 retroactivity; to provide for technical corrections; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 12:1-202(B)(5)(introductory paragraph), 1-501(2)(b)(introductory

13 paragraph) and (i), 1-502(A)(5), 1-504(A), 1-1435(C), 1-1436(D), (E)(introductory

14 paragraph), (1)(introductory paragraph), and (2), and 1-1442(A)(2) and (C) are hereby

15 amended and reenacted and R.S. 12:1-140(25B), 1-501(2)(b)(ii), 1-502(A)(7), and 1-832(D)

16 are hereby enacted to read as follows:

17 §1-140. Definitions

18 In this Chapter:

19 \* \* \*



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

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

5 \* \* \*

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

9 \* \* \*

10 (7) If the registered agent is a corporation or eligible entity, the name of at  
11 least two individuals at its address in this state, each of whom is authorized to  
12 receive any process served on it as such agent.

13 \* \* \*

14 §1-504. Service on corporation

15 A. A corporation's registered agent is the corporation's agent for service of  
16 process, notice, or demand required or permitted by law to be served on the  
17 corporation. If the registered agent is a corporation or eligible entity, service of  
18 process may be made on an individual who is identified as authorized to receive  
19 service for the registered agent in a statement on file with the secretary of state.

20 \* \* \*

21 §1-832. Protection against monetary liability

22 \* \* \*

23 D. Articles of incorporation of a corporation formed before January 1, 2015  
24 are deemed to include a statement that accepts the protection against liability  
25 provided for in this Section, unless the corporation, in a provision of the articles in  
26 effect on December 31, 2014, or in an amendment of the articles adopted after  
27 December 31, 2014, tacitly or expressly fails to provide protection against a

1 director's or officer's personal liability to the corporation or its shareholders for  
2 monetary damages for breach of fiduciary duty as a director or officer.

3 \* \* \*

4 §1-1435. Oppressed shareholder's right to withdraw

5 \* \* \*

6 C.(1) The term "fair value" has the same meaning in this Section and in R.S.  
7 12:1-1436 as it does in R.S. 12:1-1301(4) concerning appraisal rights, except that the  
8 value of a withdrawing shareholder's shares ~~under this Section and R.S. 12:1-1436~~  
9 is to be determined as of the effective date of the notice of withdrawal ~~under~~  
10 pursuant to Subsection D of this Section.

11 (2) The context of the transaction requiring appraisal, as described in R.S.  
12 12:1-1301(4), is a sale of the entire corporation in an arm's length transaction  
13 between the corporation and a person who owns all of the stock of a corporation.

14 §1-1436. Judicial determination of fair value and payment terms for withdrawing  
15 shareholder's shares

16 \* \* \*

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 described in Paragraph(1) or (2) or  
19 this Subsection as follows:

20 (1) In favor of the shareholder and against the corporation for the fair value  
21 of the shareholder's shares.

22 (2) In favor of the corporation that does both of the following ~~and~~ against the  
23 shareholder ~~for the following:~~

24 (a) ~~Terminating~~ Terminates the shareholder's ownership of shares in the  
25 corporation.

26 (b) ~~Ordering~~ Orders the shareholder to deliver to the corporation within  
27 thirty days of the date of the judgment any certificate issued by the corporation for

1 the shares or an affidavit by the shareholder that the certificate has been lost, stolen,  
2 or destroyed.

3 E. If at the conclusion of the trial the court finds that the corporation has  
4 proved that a full payment in cash of the fair value of the withdrawing shareholder's  
5 shares would violate the provisions of R.S. 12:1-640 or cause undue harm to the  
6 corporation or its creditors, the court shall not render the judgment specified in  
7 Subsection D of this Section, but shall instead render final judgment ~~which provides~~  
8 for that does both of the following:

9 (1) ~~Ordering~~ Orders the corporation to issue and deliver to the shareholder  
10 within thirty days of the date of the judgment an unsecured negotiable promissory  
11 note of the corporation which is all of the following:

12 \* \* \*

13 (2) ~~Terminating~~ Terminates the shareholder's ownership of shares in the  
14 corporation upon delivery to the shareholder of the note required by the judgment  
15 ~~under~~ issued pursuant to Paragraph (E)(1) of this Section, and ~~ordering~~ orders the  
16 shareholder to deliver to the corporation, within ten days of the delivery of the note,  
17 any certificate issued by the corporation for the shares or an affidavit by the  
18 shareholder that the certificate has been lost, stolen, ~~or~~ destroyed, or previously  
19 delivered to the corporation.

20 \* \* \*

21 §1-1442. Administrative termination

22 A. Subject to Subsection B of this Section, the secretary of state shall  
23 terminate the existence of a corporation if, according to the records of the secretary  
24 of state, the corporation has failed for ninety consecutive days to do either of the  
25 following:

26 \* \* \*

27 (2) ~~To file~~ File an annual report as required by R.S. 12:1-1621.

28 \* \* \*

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 Section 2. This Act is declared to be remedial and curative and therefore is to be  
 6 applied retroactively to January 1, 2015 as well as prospectively.

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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)]

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HB 743 Original

2015 Regular Session

Foil

**Abstract:** Makes various changes to the Business Corporation Act.

Proposed law defines "votes entitled to be cast" as the number of votes in a voting group that will be cast at a meeting where all shares in the voting group are present and voting.

Present law provides for articles of incorporation to permit or obligate corporate indemnification of a director for "liability", as defined in present law, to any director for any action taken or failure to take any action as a director. Provides for exceptions. Proposed law retains present law and adds a corporate officer for whom the articles may permit or obligate indemnification.

Present law authorizes a registered agent to be a domestic or foreign corporation or other eligible entity. Further requires such registered agent to make certain filings with the secy. of state. Proposed law retains present law and adds the filing requirement of a statement setting forth the name of at least 2 individuals at the registered agent's address in the state of La., each of whom is authorized to receive process served on it as such agent.

Present law authorizes a corporation to change its registered office or the identity or address of its registered agent by requiring the corporation's filing of a statement with the secy. of state setting forth certain information. Proposed law retains present law and further requires such corporation to file with the secy. of state the name of at least 2 individuals at its address in the state of La., each of whom is authorized to receive process served on it as such agent.

Present law provides for a corporation's registered agent to be the corporation's agent for service of process. Proposed law retains present law and authorizes service of process to be made on an individual identified as authorized to receive service for the registered agent, if there is a statement to this effect filed with the secy. of state.

Present law provides for a director's or officer's protection against personal liability for monetary damages. Further deems articles of incorporation of a corporation formed before Jan. 1, 2015 to include a statement accepting the protection against liability provided for in present law, unless the corporation, in a provision of the articles in effect on Dec. 31, 2014, or in an amendment of the articles adopted after Dec. 31, 2014, tacitly or expressly fails to provide protection against a director's or officer's personal liability to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director or officer.

Present law provides for the right of shareholders and oppressed shareholders to withdraw from a corporation. Present law (R.S. 12:1-1436) provides for judicial determination of a withdrawing shareholder's fair value of shares. Proposed law retains present law.

Proposed law provides for the fair value of a shareholder's or oppressed shareholder's shares to be determined as of the effective date of the shareholder's notice of withdrawal pursuant to present law (R.S. 12:1-1435(D)).

Present law provides for the context of transactions requiring appraisal as described in present law (R.S.12:1-1301(4)). Proposed law defines the context of transactions requiring appraisal as a sale of the entire corporation in an arm's length transaction between the corporation and a person owning all of the stock of a corporation.

Present law provides for the secy. of state to terminate the existence of a corporation by filing a certificate of termination stating the grounds for termination. Further requires the secy. of state to serve a copy of the certificate of termination to the corporation. Proposed law removes the service requirement of the secy. of state.

(Amends R.S. 12:1-202(B)(5)(intro. para.), 1-501(2)(b)(intro. para.) and (i), 1-502(A)(5), 1-504(A), 1-1435(C), 1-1436(D), (E)(intro. para.), (1)(intro. para.), and (2), and 1-1442(A)(2) and (C); Adds R.S. 12:1-140(25B), 1-501(2)(b)(ii), 1-502(A)(7), and 1-832(D))