
DIGEST

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HB 743 Engrossed

2015 Regular Session

Foil

Abstract: Makes various changes to the Business Corporation Act.

Proposed law defines "votes entitled to be cast", when used in specifying the proportion of votes required to provide shareholder approval of an action, as the number of votes in a voting group that would be cast at a meeting at which all shares in the voting group were 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 secretary of state. Proposed law retains present law and adds the filing requirement of a statement setting forth the name of at least two 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 secretary of state setting forth certain information. Proposed law retains present law and further requires such corporation to file with the secretary of state the name of at least two 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 secretary 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 such protection against monetary liability. Proposed law retains present law.

Proposed law provides that articles of incorporation are deemed to include a statement that accepts the protection against monetary liability provided for in present law, if a provision in the articles adopted on or before Dec. 31, 2014, limits or eliminates all personal liability of a director or officer

for any reason except the following:

- (1) Breach of the director's or officer's duty of loyalty to the corporation or its shareholders.
- (2) Acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law.
- (3) For liability arising under R.S. 12:92(D) as repealed by Act No. 328 of the 2014 Regular Session of the Legislature, which is knowingly or without the exercise of reasonable care and inquiry, voting in favor of an unlawful dividend or other unlawful distribution, payment or return of assets to shareholders, or for the purchase or redemption of the corporation's own shares.
- (4) Deriving an improper personal benefit from any transaction.

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, but requires such judicial determinations to be made as follows:

- (1) In favor of the shareholder and against the corporation for the fair value of the shareholder's shares.
- (2) In favor of the corporation and against the shareholder to: (a) terminate the shareholder's ownership of corporate shares, and (b) order the shareholder to deliver to the corporation any certificate issued by the corporation or an affidavit specifying certain information within 30 days of the judgment.

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 by a person who owns all of the shares in the corporation.

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

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the original bill:

1. Modify the proposed law definition of "votes entitled to be cast".
2. Provide that articles of incorporation are deemed to include a statement that accepts the protection against monetary liability provided for in present law, if a provision in the articles adopted on or before Dec. 31, 2014, limits or eliminates all personal liability of a director or officer. Provides for exceptions to limitations of liability.
3. Modify the proposed law definition of the phrase "context of transactions requiring appraisal", as such phrase is indicated in present law.
4. Make technical changes.