

2016 Regular Session

HOUSE BILL NO. 714

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

CORPORATIONS: Provides relative to the Business Corporation Act

1 AN ACT

2 To amend and reenact R.S. 12:1-124(B), 1-128(B)(introductory paragraph) and (2),

3 1-140(15C), 1-141(I)(1)(introductory paragraph) and (3) and (J)(introductory

4 paragraph), 1-202(A)(5) and (B)(6) and (E), 1-302(introductory paragraph), 1-

5 303(A)(introductory paragraph) and (D), 1-401(D)(introductory paragraph) and (2),

6 1-601(C)(introductory paragraph) and (1), 1-621(F)(2)(a)(introductory paragraph),

7 1-622(D)(introductory paragraph), 1-623(B)(introductory paragraph), 1-

8 624(B)(introductory paragraph), 1-703(A)(introductory paragraph), 1-

9 721(E)(2)(introductory paragraph), 1-725(A), (C), and (D), 1-727, 1-802, 1-805(B)

10 and (E), 1-820(C), 1-831(A)(1), 1-833(C)(1)(introductory paragraph), 1-

11 842(C)(introductory paragraph), 1-851(A)(introductory paragraph) and (1), 1-

12 854(A)(introductory paragraph) and (3), 1-860(5), 1-870(A), 1-1022, 1-

13 1106(A)(introductory paragraph), 1-1107(A)(9) and (F)(introductory paragraph) and

14 (2), 1-1301(5.1)(introductory paragraph), 1-1432(C)(introductory paragraph), 1-

15 1435(F), 1-1436(D)(2)(b), 1-1444(A), and 1-1602(F)(introductory paragraph) and

16 to enact R.S. 12:1-143(A)(5), 1-202(B)(7) and (F), 1-709, 1-832(D), 1-870(C), 1-

17 955(F) and 1-1705, relative to corporations; to provide for qualifications of directors;

18 to provide relative to business opportunities; to provide for remote participation in

19 shareholders' meetings; to provide relative to quorum and voting requirements; to

20 provide relative to board of director meetings; to provide relative to protection

1 against monetary liability; to provide for required disclosures; to provide for service
2 of process on foreign entities; to provide relative to public corporation bylaws
3 provisions relating to the election of directors; to provide for previous delivery of a
4 share certificate for withdrawal by an oppressed shareholder; to provide a transition
5 rule for reinstatement of corporations with revoked charters; to provide for technical
6 corrections; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 12:1-124(B), 1-128(B)(introductory paragraph) and (2), 1-140(15C),
9 1-141(I)(1)(introductory paragraph) and (3) and (J)(introductory paragraph), 1-202(A)(5)
10 and (B)(6) and (E), 1-302(introductory paragraph), 1-303(A)(introductory paragraph) and
11 (D), 1-401(D)(introductory paragraph) and (2), 1-601(C)(introductory paragraph) and (1),
12 1-621(F)(2)(a)(introductory paragraph), 1-622(D)(introductory paragraph),
13 1-623(B)(introductory paragraph), 1-624(B)(introductory paragraph), 1-703(A)(introductory
14 paragraph), 1-721(E)(2)(introductory paragraph), 1-725(A), (C), and (D), 1-727, 1-802, 1-
15 805(B) and (E), 1-820(C), 1-831(A)(1), 1-833(C)(1)(introductory paragraph),
16 1-842(C)(introductory paragraph), 1-851(A)(introductory paragraph) and (1),
17 1-854(A)(introductory paragraph) and (3), 1-860(5), 1-870(A), 1-1022,
18 1-1106(A)(introductory paragraph), 1-1107(A)(9) and (F)(introductory paragraph) and (2),
19 1-1301(5.1)(introductory paragraph), 1-1432(C)(introductory paragraph), 1-1435(F),
20 1-1436(D)(2)(b), 1-1444(A) and 1-1602(F)(introductory paragraph) are hereby amended and
21 reenacted and R.S. 12:1-143(A)(5), 1-202(B)(7) and (F), 1-709, 1-832(D), 1-870(C),
22 1-955(F) and 1-1705 are hereby enacted to read as follows:

23 §1-124. Correcting filed document

24 * * *

25 B. A document is corrected by ~~doing~~ delivering to the secretary of state for
26 filing articles of correction. The articles of correction shall do all of the following:

27 ~~(1) Preparing articles of correction that perform all of the following:~~

28 ~~(a)~~(1) Describe the document, including its filing date, or attach a copy of
29 it to the articles.

1 ~~(b)(2)~~ Specify the inaccuracy or defect to be corrected.

2 ~~(c)(3)~~ Correct the inaccuracy or defect.

3 ~~(2) Delivering the articles to the secretary of state for filing.~~

4 * * *

5 §1-128. Certificate of existence and standing

6 * * *

7 B. A certificate of existence, or authorization, and standing shall ~~set forth~~
8 state all of the following:

9 * * *

10 ~~(2) That either~~ One of the following ~~apply~~:

11 (a) ~~The~~ That the domestic corporation is duly incorporated under the law of
12 this state, along with the date of its incorporation and the period of its duration if less
13 than perpetual.

14 (b) ~~The~~ That the foreign corporation is authorized to do business in this
15 state.

16 * * *

17 §1-140. Definitions

18 In this Chapter:

19 * * *

20 (15C) "Owner liability" means personal liability for a debt, obligation, or
21 liability of a domestic or foreign business or nonprofit corporation or unincorporated
22 entity that is imposed on a person ~~by either of the following:~~

23 ~~(a) Solely~~ solely by reason of the person's status as a shareholder, partner,
24 member, or interest holder:

25 ~~(b) By the~~ or solely by the terms of articles of incorporation, bylaws, or an
26 organic document under a provision of the organic law of an entity authorizing the
27 articles of incorporation, bylaws or an organic document to make one or more
28 specified shareholders, partners, members, or interest holders liable in their capacity

1 as shareholders, partners, members, or interest holders for all or specified debts,
2 obligations, or liabilities of the entity.

3 * * *

4 §1-141. Notices and other communications

5 * * *

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

8 (1) If in physical form, the earliest of when it is actually received, or when
9 it is left at a place apparently designated for the receipt of mail or other similar
10 communication at ~~any~~ the relevant one of the following:

11 * * *

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

15 (a) The date when actually received.

16 ~~(a)~~(b) If sent by registered or certified mail, return receipt requested, the date
17 shown on the return receipt signed by or on behalf of the addressee.

18 ~~(b)~~(c) Five days after it is deposited in the United States mail.

19 * * *

20 J. A notice or other communication may be in the form of an electronic
21 transmission that cannot be directly reproduced in paper form by the recipient
22 through an automated process used in conventional commercial practice only if ~~both~~
23 all of the following ~~conditions~~ requirements are met:

24 * * *

25 §1-143. Qualified director

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

27 * * *

28 (5) At the time action is to be taken under R.S. 12:1-2.02(B)(6), a director
29 who is neither of the following:

1 (a) A director to whom the limitation or elimination of the duty of an officer
2 to offer potential business opportunities to the corporation would apply.

3 (b) A director who is a related person to another officer to whom the
4 limitation or elimination would apply.

5 * * *

6 §1-202. Articles of incorporation and signed consent by agent to appointment

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

8 * * *

9 (5) If the corporation chooses to reject or limit ~~Whether the corporation~~
10 ~~accepts, rejects, or limits, with a statement of the limitations,~~ the protection against
11 liability of directors and officers that is provided by R.S. 12:1-832, a statement of the
12 rejection or limitation.

13 * * *

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

15 * * *

16 (6) A provision prospectively limiting or eliminating any duty of a director
17 or any other person to offer the corporation the right to participate in any business
18 opportunity or in any class or category of business opportunity. The provision shall
19 not limit or eliminate any duty of an officer or a related person of an officer until
20 qualified directors, acting after the effective date of the provision and in accordance
21 with the procedures set forth in R.S. 12:1-862, approve the application of the
22 provision to that officer or related person. The approval shall have prospective effect
23 only and may allow the provision to apply in full or to apply as limited by the terms
24 of the approval.

25 ~~(6)~~(7) A provision that cash, property or share dividends, shares issuable to
26 shareholders in connection with a reclassification of stock, and the redemption price
27 of redeemed shares, that are not claimed by the shareholders entitled thereto within
28 a reasonable time, not less than one year in any event, after the dividend or
29 redemption price became payable or the shares became issuable, despite reasonable

1 efforts by the corporation to pay the dividend or redemption price or deliver the
2 certificates for the shares to such shareholders within such time, shall, at the
3 expiration of such time, revert in full ownership to the corporation, and the
4 corporation's obligation to pay such dividend or redemption price or issue such
5 shares, as the case may be, shall thereupon cease; provided that the board of directors
6 may, at any time, for any reason satisfactory to it, but need not, authorize either of
7 the following:

8 * * *

9 E. As used in this Section, "related person" has the meaning specified in R.S.
10 12:860(5).

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

13 Comment - 2016

14 Paragraph (A)(5) of this Section was amended in 2016 to eliminate the
15 mandatory nature of the statement in the articles of incorporation of a corporation's
16 acceptance, rejection or limitation of the protection against monetary liability - often
17 called "exculpation" - provided by R.S. 12:1-832. A statement concerning
18 exculpation is required only if the corporation chooses to reject or limit the
19 protections provided by R.S. 12:1-832. The earlier approach was designed only to
20 alert those filing new articles of incorporation to the change in the law concerning
21 the default rule on the subject. A reference to the now-optional statement remains
22 part of Subsection (A) to draw attention to the possibility of rejecting or limiting the
23 protections that R.S. 12:1-832 provides by default.

24 * * *

25 §1-302. General powers

26 Unless its articles of incorporation provide otherwise, every corporation has
27 perpetual duration and has the power to do all things necessary or convenient to carry
28 out its business and affairs, including without limitation power to do ~~perform~~ any of
29 the following ~~actions~~:

30 * * *

31 §1-303. Emergency powers

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

34 * * *

1 D. An emergency exists for purposes of this Section if a catastrophic event
2 makes it impracticable, without applying the rules ~~pursuant to~~ stated in Subsection
3 B of this Section, to attain a quorum of the corporation's directors when and as
4 necessary to carry out the functions of the board of directors.

5 * * *

6 §1-401. Corporate name

7 * * *

8 D. A corporation may use in its filings with the secretary of state a name that
9 is not distinguishable from one or more of the names described in Subsection B of
10 this Section if the registrant of the name is incorporated, organized, or authorized to
11 transact business in this state and the proposed user corporation ~~performed~~ did any
12 of the following actions:

13 * * *

14 (2) ~~Been formed by~~ Came into existence through the reorganization of the
15 other registrant.

16 * * *

17 §1-601. Authorized shares

18 * * *

19 C. The articles of incorporation may authorize one or more classes or series
20 of shares that ~~meet~~ have any of the following characteristics ~~criteria~~:

21 (1) ~~Have~~ Are entitled to special, conditional, or limited voting rights, or no
22 right to vote, except to the extent otherwise provided by this Chapter.

23 * * *

24 §1-621. Issuance of shares

25 * * *

26 F.

27 * * *

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

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

4 * * *

5 §1-622. Liability of shareholders

6 * * *

7 D. A proceeding to enforce the liability of a shareholder under Subsection
8 C of this Section is subject to a preemptive period of two years measured from the
9 relevant one of the following dates ~~date of either of the following~~:

10 * * *

11 §1-623. Share dividends

12 * * *

13 B. Shares of one class or series may not be issued as a share dividend in
14 respect of shares of another class or series unless one of the following conditions ~~are~~
15 is satisfied:

16 * * *

17 §1-624. Share options

18 * * *

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

22 * * *

23 §1-703. Court-ordered meeting

24 A. The district court of the parish where a corporation's principal office or,
25 if none in this state, its registered office, is located may in a summary proceeding
26 order a meeting to be held ~~at upon either of the following~~:

27 * * *

1 §1-709. Remote participation in annual and special meetings

2 A. Shareholders of any class or series may participate in any meeting of
3 shareholders by means of remote communication to the extent the board of directors
4 authorizes such participation for such class or series. Participation by means of
5 remote communication shall be subject to such guidelines and procedures as the
6 board of directors adopts, and shall be in conformity with Subsection B.

7 B. Shareholders participating in a shareholders' meeting by means of remote
8 communication shall be deemed present and may vote at such a meeting if the
9 corporation has implemented reasonable measures to do all of the following:

10 (1) Verify that each person participating remotely is a shareholder.

11 (2) Provide such shareholders a reasonable opportunity to participate in the
12 meeting and to vote on matters submitted to the shareholders, including an
13 opportunity to communicate, and to read or hear the proceedings of the meeting,
14 substantially concurrently with such proceedings.

15 * * *

16 §1-721. Voting entitlement of shares

17 * * *

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

20 * * *

21 (2) "Majority control" means ownership, direct or indirect, of a majority of
22 ~~either~~ any of the following:

23 * * *

24 §1-725. Quorum and voting requirements for voting groups

25 A. Shares entitled to vote as a separate voting group may take action on a
26 matter at a meeting only if a quorum of those shares exists with respect to that
27 matter. ~~Unless the articles of incorporation provide otherwise~~ Unless a provision in
28 the articles of incorporation authorized by R.S. 12:1-727 provides otherwise, a

1 majority of the votes entitled to be cast on the matter by the voting group constitutes
2 a quorum of that voting group for action on that matter.

3 * * *

4 C. If a quorum exists, action on a matter, other than the election of directors,
5 by a voting group is approved if the votes cast within the voting group favoring the
6 action exceed the votes cast opposing the action, unless this Chapter or the articles
7 of incorporation require a greater number of affirmative votes.

8 D. [Reserved.] ~~An amendment of articles of incorporation adding, changing,~~
9 ~~or deleting a quorum or voting requirement for a voting group greater than specified~~
10 ~~in Subsection A or C of this Section is governed by R.S. 12:1-727.~~

11 * * *

12 Comment - 2016

13 Model Act § 7.25 (d) was omitted from this Section in connection with an
14 amendment of R.S. 12:1-727 that covered the same subject matter.

15 * * *

16 §1-727. Greater quorum or voting requirements

17 A. The articles of incorporation may provide for a greater ~~quorum~~ or voting
18 requirement for shareholders, or voting groups of shareholders, than is provided for
19 by this Chapter. The articles of incorporation may make a quorum requirement for
20 shareholders, or for a voting group of shareholders, greater or lesser than that
21 provided by this Chapter, but the requirement may not be lower than twenty-five
22 percent of the shares entitled to vote on a matter.

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

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Comment - 2016

This Section was amended in 2016 to clarify the extent to which the quorum and voting requirements provided by this Chapter could be changed by provisions in the articles of incorporation. This Section effectively adopts the approach to the issue taken by the former LBCL. While the LBCL did permit the voting requirement for most fundamental decisions, such as mergers and amendments of the articles of incorporation, to be reduced from its statutory default standard of two-thirds of shares present, it did not permit the standard to be reduced to less than a majority of voting power. This Chapter provides the equivalent of that minimum standard, a majority of shares entitled to vote on a matter, as the default rule for fundamental decisions. Hence, by allowing only increases in that standard in the articles of incorporation, this Section is effectively retaining the floor that was imposed by the LBCL with respect to decisions of that kind. The other two voting requirements provided by this Chapter - plurality voting for directors and a majority-of-votes-cast standard for decisions not governed by other rules - are already as low as they practically could be for such decisions. They may be increased, but not decreased, by a provision in the articles of incorporation.

* * *

§1-802. Qualifications of directors

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

B. A requirement that is based on a past, current or prospective action, or expression of an opinion, by a nominee or director that could limit the ability of a nominee or director to discharge his or her duties as a director is not a permissible qualification under this Section. Notwithstanding the foregoing, qualifications may include not being or having been subject to specified criminal, civil or regulatory sanctions or not having been removed as a director by judicial action or for cause.

C. A director need not be a resident of this state or a shareholder of the corporation unless the articles of incorporation or bylaws so provide.

D. A qualification for nomination for director adopted before a person's nomination shall apply to such person at the time of nomination. A qualification for nomination for director adopted after a person's nomination shall not apply to such person with respect to such nomination.

E. A qualification for director adopted before the start of a director's term may apply only at the time an individual becomes a director or may apply during a

1 director's term. A qualification adopted during a director's term shall not apply to that
2 director before the end of that term.

3 * * *

4 §1-805. Terms of directors generally

5 * * *

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

12 * * *

13 E. Except to the extent otherwise provided in the articles of incorporation or
14 ~~under a bylaw authorized by R.S. 12:1-1022~~ if a bylaw electing to be governed by
15 ~~that Section is in effect~~, despite the expiration of a director's term, the director
16 continues to serve until the director's successor is elected and qualifies or there is a
17 decrease in the number of directors.

18 * * *

19 §1-820. Meetings

20 * * *

21 C. A meeting of the board of directors may be called as provided in the
22 bylaws, and may also be called by the board chair, by the chief executive officer,
23 regardless of the title used by the corporation to designate that officer, or by a
24 majority of the directors.

25 * * *

26 §1-831. Standards of liability for directors

27 A. A director shall not be liable to the corporation or its shareholders for any
28 decision to take or not to take action, or any failure to take any action, as a director,
29 unless the party asserting liability in a proceeding establishes both of the following:

1 (1) No defense interposed by the director based on R.S. 12:1-832, a
2 provision in the articles of incorporation authorized by R.S. 12:1-202(B)(6), the
3 protection afforded by R.S. 12:1-861, for action taken in compliance with R.S.
4 12:1-862 or R.S. 12:1-863, or the protection afforded by R.S. 12:1-870, precludes
5 liability.

6 * * *

7 §1-832. Protection against monetary liability

8 * * *

9 D. A provision in a corporation's articles of incorporation that became
10 effective before January 1, 2015, and that purports to protect a director or officer of
11 the corporation against monetary liability to the corporation or its shareholders, shall
12 not operate as a limitation of the protection against liability provided by this Section
13 except to the extent that it provides less protection against liability than was
14 permitted by the law in effect at the time the provision became effective.

15 Comment - 2016

16 In accordance with R.S. 12:1-1701, the protections provided by this Section
17 apply to all Louisiana business corporations, including those formed before January
18 1, 2015. However, many corporations that were formed before that date will already
19 have provisions in their articles of incorporation that were designed to provide
20 similar protections under the "opt in" form of exculpation provision that was
21 permitted under former law. Subsection (D) of this Section was added in 2016 to
22 provide a transitional rule for corporations whose articles of incorporation contain
23 that kind of exculpatory provision.

24 The transitional rule turns on whether a pre-2015 exculpatory provision
25 provided less protection than allowed by law at the time that the provision became
26 effective. While such a provision might theoretically create a complicated set of
27 questions concerning the law in effect at a particular time, the law that authorized
28 exculpatory provisions was first enacted in 1987 and did not change until it was
29 repealed, effective January 1, 2015, the date that the current law took effect. The
30 relevant provision was former R.S. 12:24(C)(4), which read as follows:

31
32 A provision eliminating or limiting the personal liability of a director or
33 officer to the corporation or its shareholders for monetary damages for
34 breach of fiduciary duty as a director or officer, provided that such provision
35 shall not eliminate or limit the liability of a director or officer:

36
37 (a) For any breach of the director's or officer's duty of loyalty to the
38 corporation or its shareholders;

39 (b) For acts or omissions not in good faith or which involve
40 intentional misconduct or a knowing violation of law;

1 (c) For liability under R.S. 12:92(D); or

2 (d) For any transaction from which the director or officer derived a
3 improper personal benefit.

4
5 No such provision shall eliminate or limit the liability of a director or officer
6 for any act or omission occurring prior to the date when such provision
7 becomes effective.

8
9 The four exceptions to exculpation listed in former R.S. 12:24(C)(4) are
10 similar, but not identical, to the four exceptions listed in Subsection (A) of this
11 Section. Hence, pre-2015 exculpatory provisions that essentially copied the former
12 statutory language will contain exceptions to exculpation that will differ from those
13 provided in this Section. Some of those differences will not matter. The old
14 reference to former R.S. 12:92(D), for example, which dealt with unlawful
15 dividends, has been replaced in the current law by a reference to R.S. 12:1-833, the
16 current unlawful dividend provision. But the current law states its own prohibition
17 against the elimination of the unlawful dividend liability imposed by R.S. 12:1-833,
18 regardless of whether a similar limitation appears in a corporation's articles of
19 incorporation. See R.S. 12:1-832(B).

20
21 Still, it is possible that other differences between the former and current list
22 of exceptions could matter. The former law, for example, did not allow a
23 corporation to eliminate a director's or officer's liability for any form of "intentional
24 misconduct" or any "knowing violation of law," while the current law excludes that
25 form of protection only for an intentional infliction of harm on the corporation or its
26 shareholders or for an intentional violation of criminal law. Hence, it is possible that
27 the language of a pre-2015 exculpatory provision could be construed as a limitation
28 on exculpation if it tracked the old statutory language, even though a provision of
29 that kind was far more likely intended to provide, not limit, the broadest form of
30 exculpation permitted by law.

31
32 Subsection (D) of this Section is designed to give effect to the likely intention
33 of the shareholders who approved a pre-2015 exculpation provision. If a pre-2015
34 provision provided for exculpation subject only to exceptions that tracked the old
35 statutory language, the provision is treated as calling for exculpation to the full
36 extent allowed by law, and thus to the full extent provided by this Section. In the
37 unlikely event that a corporation did choose to adopt an exculpatory provision before
38 2015, but on terms more limited than those allowed by former R.S. 12:24(C)(4), the
39 greater-than-required form of limitation continues to be respected by Subsection (D),
40 as that form of limitation suggests a deliberate choice by shareholders not to provide
41 as much protection against liability as allowed by law.

42 §1-833. Directors' liability for unlawful distributions

43 * * *

44 C.(1) A proceeding to enforce the liability of a director under Subsection A
45 of this Section is barred unless it is commenced within two years after ~~of~~ the relevant
46 one of the following dates:

47 * * *

1 §1-842. Standards of conduct for officers

2 * * *

3 C. In discharging his or her duties, an officer who does not have knowledge
4 that makes reliance unwarranted is entitled to rely on ~~either~~ any of the following:

5 * * *

6 §1-851. Permissible indemnification

7 A. Except as otherwise provided in this Section, a corporation may
8 indemnify an individual who is a party to a proceeding because the individual is a
9 director against liability incurred in the proceeding if ~~either condition exists~~ the
10 requirements of Paragraph (1) or (2) of this Subsection are met:

11 (1)~~(a)~~ The director satisfied the requirements of Subparagraphs (a) and (b)
12 and, if applicable, Subparagraph (c) of this Paragraph:

13 (a) The director conducted himself or herself in good faith, ~~and reasonably~~
14 ~~believed either of the following:~~

15 (b) The director reasonably believed the relevant one of the following:

16 (i) In the case of conduct in an official capacity, that his or her conduct was
17 in the best interests of the corporation.

18 (ii) In all other cases, that the director's conduct was at least not opposed to
19 the best interests of the corporation.

20 ~~(b)~~(c) In the case of any criminal proceeding, the director had no reasonable
21 cause to believe his or her conduct was unlawful.

22 * * *

23 §1-854. Court-ordered indemnification and advance for expenses

24 A. A director who is a party to a proceeding because he or she is a director
25 may petition the court conducting the proceeding for indemnification or an advance
26 for expenses or, if the indemnification or advance for expenses is beyond the scope
27 of the proceeding or of the jurisdiction of the court or other forum for the proceeding,
28 may petition another court of competent jurisdiction. After ordering any notice it

1 considers necessary, the court shall hear the petition by summary proceeding and
2 shall, if it makes the required determination, order one of the following:

3 * * *

4 (3) Indemnification or advance for expenses if the court determines, in view
5 of all the relevant circumstances, that it is fair and reasonable for the corporation to
6 provide the ordered indemnification or advance for expenses, ~~a do either of the~~
7 ~~following:~~

8 (a) ~~Indemnify the director.~~

9 (b) ~~Advance expenses to the director, even if, in the case of (a) or (b), he or~~
10 ~~she has not met~~ even though the director did not meet the relevant standard of
11 conduct set forth in R.S. 12:1-851(A), failed to comply with R.S. 12:1-853, or was
12 adjudged liable in a proceeding referred to in R.S. 12:1-851(D)(1) or (D)(2), ~~but if~~
13 If the director was adjudged so liable in a proceeding referred to in R.S.
14 12:1-851(D)(1) or (D)(2), indemnification shall be limited to expenses incurred in
15 connection with the proceeding.

16 * * *

17 §1-860. Subpart definitions

18 In this Subpart, the following meanings shall apply:

19 * * *

20 (5) "Related person" means, at the relevant time, ~~one~~ any of the following:

21 (a) The ~~director's~~ individual's spouse.

22 (b) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling,
23 stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of
24 the ~~director~~ individual or of the ~~director's~~ individual's spouse.

25 (c) ~~An individual~~ A natural person living in the same home as the ~~director~~
26 individual.

27 (d) An entity, other than the corporation or an entity controlled by the
28 corporation, controlled by the ~~director~~ individual or any person specified above in
29 this Paragraph.

1 (e) A domestic or foreign business or nonprofit corporation, other than the
 2 corporation or an entity controlled by the corporation, of which the ~~director~~
 3 individual is a director, a domestic or foreign unincorporated entity of which the
 4 ~~director~~ individual is a general partner or a member of the governing body, or a
 5 domestic or foreign individual, trust, or estate for whom or of which the ~~director~~
 6 individual is a trustee, guardian, personal representative, or like fiduciary.

7 (f) A person that is, or an entity that is controlled by, an employer of the
 8 ~~director~~ individual.

9 (g) A person with whom the ~~director~~ individual has a material relationship.

10 * * *

11 §1-870. Business opportunities

12 A. ~~A director's~~ If a director or officer or related person of either pursues or
 13 takes ~~taking~~ advantage, directly or indirectly, of a business opportunity, that action
 14 may not be the subject of any form of relief, or give rise to an award of damages or
 15 other sanctions against the director, officer or related person, in a proceeding by or
 16 in the right of the corporation on the ground that such opportunity should have first
 17 been offered to the corporation, ~~if before becoming legally obligated respecting the~~
 18 ~~opportunity the director brings it to the attention of the corporation, and either of the~~
 19 ~~following occurs~~ the requirements of Paragraph (1) or (2) of this Subsection are
 20 satisfied:

21 (1) Before the director, officer or related person becomes legally obligated
 22 respecting the opportunity, the director or officer brings it to the attention of the
 23 corporation and either of the following occurs:

24 ~~(1)~~(a) Action by qualified directors disclaiming the corporation's interest in
 25 the opportunity is taken in compliance with the same procedures set forth in R.S.
 26 12:1-862, ~~as if the decision being made concerned a director's conflicting interest~~
 27 ~~transaction.~~

28 ~~(2)~~(b) Shareholders' action disclaiming the corporation's interest in the
 29 opportunity is taken in compliance with the procedures set forth in R.S. 12:1-863, as

1 if the decision being made concerned a director's conflicting interest transaction;
2 ~~except that, rather than making "required disclosure" as defined in R.S. 12:1-860,~~
3 ~~in each case the director shall have made prior disclosure to those acting on behalf~~
4 ~~of the corporation of all material facts concerning the business opportunity that are~~
5 ~~then known to the director.~~

6 (2) The duty to offer the corporation the particular business opportunity has
7 been limited or eliminated pursuant to a provision of the articles of incorporation
8 adopted, and in the case of officers and their related persons made effective by action
9 of qualified directors, in accordance with R.S. 12:1-202(B)(6).

10 * * *

11 C. For purposes of this Section, the term "required disclosure" as used in
12 R.S. 12:1-862 and R.S. 12:1-863 means prior disclosure to those acting on behalf of
13 the corporation of all material facts concerning the business opportunity that are then
14 known to the director or officer.

15 * * *

16 §1-955. Effect of entity conversion

17 * * *

18 F. For purposes of service of process under Paragraph (B)(2) of this Section,
19 a foreign eligible entity that is a survivor of a merger may be served in accordance
20 with the rules applicable to service of process on a foreign corporation, as if both of
21 the following conditions existed:

- 22 (1) The survivor were a foreign corporation.
- 23 (2) Each of the following persons were a director of that corporation:
 - 24 (a) A general partner if the survivor is a partnership of any kind.
 - 25 (b) A member if the survivor is a member-managed limited liability
26 company.
 - 27 (c) A manager if the survivor is a manager-managed limited liability
28 company.

1 (d) A person holding managerial authority in the survivor, regardless of the
2 form of the surviving entity, that is similar to that of an officer or director of a
3 domestic business corporation.

4 * * *

5 §1-1022. Public corporation bylaw provisions relating to the election of directors
6 A. Unless the articles of incorporation specifically prohibit the adoption of
7 a bylaw pursuant to this Section, alter the vote specified in R.S. 12:1-728(A), or
8 provide for cumulative voting, a public corporation may elect in its bylaws to
9 provide a means for a shareholder to vote against the election of an individual to
10 serve as a director and, notwithstanding a director's election by plurality vote, to limit
11 the term or require the resignation of any director who receives more votes against
12 than for his or her election. ~~be governed in the election of directors as follows:~~

13 B. The expiration of a limited term, or the resignation of a director, pursuant
14 to a bylaw authorized by this Section creates a vacancy that is governed by R.S.
15 12:1-810.

16 ~~(1) Each vote entitled to be cast may be voted for or against up to that~~
17 ~~number of candidates that is equal to the number of directors to be elected, or a~~
18 ~~shareholder may indicate an abstention, but without cumulating the votes.~~

19 ~~(2) To be elected, a nominee must have received a plurality of the votes cast~~
20 ~~by holders of shares entitled to vote in the election at a meeting at which a quorum~~
21 ~~is present, provided that a nominee who is elected but receives more votes against~~
22 ~~than for election shall serve as a director for a term that shall terminate on the date~~
23 ~~that is the earlier of ninety days from the date on which the voting results are~~
24 ~~determined pursuant to R.S. 12:1-729(B)(5) or the date on which an individual is~~
25 ~~selected by the board of directors to fill the office held by such director, which~~
26 ~~selection shall be deemed to constitute the filling of a vacancy by the board to which~~
27 ~~R.S. 12:1-810 applies. Subject to Paragraph (A)(3) of this Section, a nominee who~~
28 ~~is elected but receives more votes against than for election shall not serve as a~~
29 ~~director beyond the ninety-day period referenced above.~~

1 (3) ~~The board of directors may select any qualified individual to fill the~~
2 office held by a director who received more votes against than for election.

3 B. ~~Subsection A of this Section does not apply to an election of directors by~~
4 a voting group if at the expiration of the time fixed under a provision requiring
5 advance notification of director candidates, or absent such a provision, at a time
6 fixed by the board of directors which is not more than fourteen days before notice
7 is given of the meeting at which the election is to occur, there are more candidates
8 for election by the voting group than the number of directors to be elected, one or
9 more of whom are properly proposed by shareholders. An individual shall not be
10 considered a candidate for purposes of this Subsection if the board of directors
11 determines before the notice of meeting is given that such individual's candidacy
12 does not create a bona fide election contest.

13 C. A bylaw ~~electing to be governed~~ authorized by this Section may be
14 repealed by either of the following:

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, by the board of directors or the
18 shareholders.

19 Source: MBCA § 10.22.

20 Comments - 2016

21 (a) As originally enacted, this Section tracked the approach taken in the
22 Model Act. Under that approach, a public corporation that wished to provide in its
23 bylaws for procedures through which shareholders could vote against the election of
24 a director could do so only by opting in to a detailed set of rules provided in the
25 Model Act itself. This Section was amended in 2016 to replace the earlier
26 standardized approach with a more general statement of authority for the adoption
27 of bylaws of that kind.

28 (b) Bylaws authorized by this Section do not change the plurality vote rule
29 stated in R.S. 12:1-728(A); that rule may be changed only in the articles of
30 incorporation. Rather, they cause the effect of an election to be limited by a
31 resignation or an abbreviated term, and to create vacancy on the board that may be
32 filled in accordance with R.S. 12:1-810.

33 * * *

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. Articles of merger need not be signed on behalf of any
6 subsidiary that is a party to a merger authorized without the approval of the
7 subsidiary's board of directors or shareholders as permitted by R.S. 12:1-1105(A).

8 The articles shall set forth all of the following:

9 * * *

10 §1-1107. Effect of merger or share exchange

11 A. When the merger becomes effective, all of the following shall apply:

12 * * *

13 (9) The survivor possesses all the rights, licenses, privileges, and franchises
14 possessed by each of the parties to the merger, except that the survivor does not
15 possess any right, license, privilege, or franchise that ~~meets either of the following~~
16 ~~conditions:~~

17 ~~(a) The~~ the survivor is ineligible to possess or to exercise: or that does

18 ~~(b) Does~~ not survive a merger because of a provision to that effect in the law
19 or administrative rules under which the right, license, privilege, or franchise is held
20 at the time of the merger.

21 * * *

22 F. For purposes of service of process under Paragraph (D)(2) of this Section,
23 a foreign eligible entity that is a survivor of a merger may be served in accordance
24 with the rules applicable to service of process on a foreign corporation, as if both of
25 the following conditions ~~exist~~ existed:

26 * * *

27 (2) Each of the following persons were a director of that corporation:

28 * * *

1 §1-1301. Definitions

2 In this Part, the following meanings shall apply:

3 * * *

4 (5.1) "Interested person" means a person, or an affiliate of a person, who at
5 any time during the one-year period immediately preceding approval by the board
6 of directors of the corporate action, satisfies ~~one~~ any of the following criteria:

7 * * *

8 §1-1432. Appointment of receiver or liquidator

9 * * *

10 C. The court shall describe the powers and duties of the receiver or liquidator
11 in its appointing order, which may be amended from time to time and may require
12 the receiver or liquidator to file interim and final reports with the court as the court
13 considers appropriate. Except as limited by the court, ~~either~~ of the following powers
14 may be exercised ~~actions may be taken~~:

15 * * *

16 §1-1435. Oppressed shareholder's right to withdraw

17 * * *

18 F. A notice of acceptance that operates as an acceptance of both the
19 shareholder's offer to sell and the shareholder's proposed price forms a contract of
20 sale of the shares at that price, payable in cash. The contract includes the warranties
21 of a seller of investment securities under the Uniform Commercial Code and imposes
22 a duty on the selling shareholder to deliver any certificates issued by the corporation
23 for the withdrawing shareholder's shares or, if a certificate has been lost, stolen, ~~or~~
24 destroyed, or previously delivered to the corporation, an affidavit to that effect.
25 Either party may file an action to enforce the contract at the specified price if the
26 contract is not fully performed within thirty days after the effective date of the notice
27 of acceptance. If a withdrawing shareholder fails to deliver the certificate for a share
28 purchased by the corporation under a contract formed under this Subsection, the

1 shareholder owes the same indemnity obligation as a shareholder who sells shares
2 as described in R.S. 12:1-1436(F).

3 * * *

4 §1-1436. Judicial determination of fair value and payment terms for withdrawing
5 shareholder's shares

6 * * *

7 D. Except as provided in Subsection E of this Section, at the conclusion of
8 the trial the court shall render final judgment as described in Paragraphs (1) and (2)
9 of this Subsection:

10 * * *

11 (2) In favor of the corporation and against the shareholder that does both of
12 the following:

13 * * *

14 (b) Orders the shareholder to deliver to the corporation within thirty days of
15 the date of the judgment any certificate issued by the corporation for the shares or
16 an affidavit by shareholder that the certificate has been lost, stolen, ~~or destroyed,~~ or
17 previously delivered to the corporation.

18 * * *

19 §1-1444. Reinstatement of terminated corporation

20 A. A terminated corporation may be reinstated if the corporation satisfies
21 both of the following conditions:

22 (1) It was ~~Was~~ not dissolved by a judgment of dissolution.

23 (2) It requests ~~Requests~~ reinstatement in accordance with this Section no
24 later than three years after the effective date of its articles or certificate of
25 termination.

26 * * *

27 §1-1602. Inspection of records by shareholders

28 * * *

1 F. This Section does not affect ~~either~~ any of the following:

2 * * *

3 §1-1705. Transition rule for reinstatement of a corporation with a revoked charter

4 A. A corporation whose charter was revoked before January 1, 2015, may
5 be reinstated as provided in R.S. 12:1-1444 for a corporation that was terminated
6 administratively. Subject to the time limitation stated in Subsection (F) of this
7 Section, a corporation whose charter was revoked before January 1, 2015, may also
8 be reinstated as provided in Subsections (B) through (E) of this Section.

9 B. A corporation whose charter was revoked before January 1, 2015, may
10 request reinstatement by delivering to the secretary of state for filing articles of
11 charter-revocation reinstatement and the current annual report. The articles of
12 charter-revocation reinstatement and the annual report shall be signed by an officer
13 or director of the corporation who is entitled to approve articles of reinstatement
14 under R.S. 12:1-1444(B). The annual report shall be accompanied by a written
15 consent to appointment signed by the registered agent named in the annual report.

16 C. The articles of charter-revocation reinstatement shall state all of the
17 following:

18 (1) The name of the corporation.

19 (2) That the charter of the corporation was revoked before January 1, 2015.

20 (3) That the reinstatement was approved by an officer or director who is
21 entitled to approve articles of reinstatement pursuant to R.S. 12:1-1444(B).

22 (4) That the corporation is reinstated, effective retroactively as if the
23 corporation had never been terminated.

24 D. If the corporation's name is no longer available for use, the secretary of
25 state shall file the articles of charter-revocation reinstatement only if the corporation
26 also delivers for filing articles of amendment that change the name of the corporation
27 to a name that meets the requirements of R.S. 12:1-401.

1 E. When the secretary of state files articles of charter-revocation
 2 reinstatement, the existence of the corporation is reinstated retroactively, and the
 3 corporation continues to exist as if the termination had never occurred.

4 F. A corporation may be reinstated pursuant to Subsections (B) through (E)
 5 of this Section only if the documents required by those Subsections, and entitled to
 6 filing pursuant to R.S. 12:1-120, are delivered for filing to the secretary of state
 7 before January 1, 2019.

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)]

HB 714 Engrossed

2016 Regular Session

Foil

Abstract: Provides for revisions to the Business Corporation Act.

Present law (R.S. 12:1-143) provides for the requirements of a qualified director.

Proposed law provides an exception to those who are qualified directors with respect to offering potential business opportunities to the corporation.

Present law (R.S. 12:1-202(A)) requires an acceptance, rejection, or limitation of the protection against liability of directors and officers to be included in the articles of incorporation.

Proposed law eliminates the requirement of providing for acceptance of the protection in the articles of incorporation.

Present law (R.S. 12:1-202(B)) provides for permissive inclusions in the articles of incorporation.

Proposed law (R.S. 12:1-202(B)(6)) provides that a prospective limitation or elimination of the duty to offer business opportunities to the corporation may be included in the articles of incorporation.

Proposed law (R.S. 12:1-709) provides for remote participation in shareholders' meetings.

Present law (R.S. 12:1-727) provides that greater quorum or voting requirements for shareholders may be included in the articles of incorporation.

Proposed law provides that greater voting requirements or greater or lesser quorum requirements for shareholders may be included in the articles of incorporation.

Present law (R.S. 12:1-802) provides generally that qualifications for directors may be included in the articles of incorporation or bylaws.

Proposed law provides for the specific qualifications for directors or nominees for directors that may be included and the applicability of such qualifications.

Present law (R.S. 12:1-820) provides for the manner in which meetings of the board of directors may be called.

Proposed law allows meetings of the board of directors to be called in accordance with the bylaws.

Present law (R.S. 12:1-832) provides for protection against monetary liability for directors and officers of all Louisiana business corporations, including those formed under former law.

Proposed law provides a transitional rule for corporations whose articles of incorporation contain "opt in" exculpation provisions under former law.

Present law (R.S. 12:1-955) provides for the effects of entity conversion.

Proposed law provides that a foreign entity may be served in accordance with the service of process rules for foreign corporations.

Present law (R.S. 12:1-1022) provides for a detailed set of rules concerning public corporation bylaw provisions relating to the election of directors.

Proposed law replaces the detailed set of rules provided under present law with a more general statement of authority.

Present law (R.S. 12:1-1106(A)) requires the articles of merger or share exchange to be signed on behalf of each party to the transaction.

Proposed law adds an exception for any subsidiary that is a party to a merger without the approval of its board of directors or shareholders.

Present law (R.S. 12:1-1435) allows an oppressed shareholder to deliver an affidavit with respect to any lost, stolen, or destroyed share certificates.

Proposed law additionally allows an oppressed shareholder to deliver an affidavit with respect to any share certificates that were previously delivered to the corporation.

Proposed law (R.S. 12:1-1705) provides a transition rule for reinstatement of a corporation whose charter was revoked before Jan. 1, 2015. Provides for such a corporation seeking reinstatement to file with the secretary of state a current annual report along with articles of charter-revocation reinstatement.

Present law provides for the Business Corporations Act, modeled after the Model Business Corporations Act, as enacted in 2014.

Proposed law incorporates revisions to the Model Business Corporations Act since the enactment of present law and provides for other technical corrections.

(Amends R.S. 12:1-124(B), 1-128(B)(intro. para.) and (2), 1-140(15C), 1-141(I)(1)(intro. para.) and (3) and (J)(intro. para.), 1-202(A)(5) and (B)(6) and (E), 1-302(intro. para.), 1-303(A)(intro. para.) and (D), 1-401(D)(intro. para.) and (2), 1-601(C)(intro. para.) and (1), 1-621(F)(2)(a)(intro. para.), 1-622(D)(intro. para.), 1-623(B)(intro. para.), 1-624(B)(intro. para.), 1-703(A)(intro. para.), 1-721(E)(2)(intro. para.), 1-725(A), (C), and (D), 1-727, 1-802, 1-805(B) and (E), 1-820(C), 1-831(A)(1), 1-833(C)(1)(intro. para.), 1-842(C)(intro. para.), 1-851(A)(intro. para.) and (1), 1-854(A)(intro. para.) and (3), 1-860(5), 1-870(A), 1-1022, 1-1106(A)(intro. para.), 1-1107(A)(9) and (F)(intro. para.) and (2), 1-1301(5.1)(intro. para.), 1-1432(C)(intro. para.), 1-1435(F), 1-1436(D)(2)(b), 1-1444(A), and 1-1602(F)(intro. para.); Adds R.S. 12:1-143(A)(5), 1-202(B)(7) and (F), 1-709, 1-832(D), 1-870(C), 1-955(F), and 1-1705)

Summary of Amendments Adopted by House

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

1. Make technical corrections.
2. Specify for certain corporations seeking reinstatement to file with the secretary of state the corporation's current annual report with the articles of charter-revocation reinstatement.