

ACT No. 442

2016 Regular Session

HOUSE BILL NO. 714

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

AN ACT

To amend and reenact R.S. 12:1-124(B), 1-128(B)(introductory paragraph) and (2), 1-140(15C), 1-141(I)(1)(introductory paragraph) and (3) and (J)(introductory paragraph), 1-202(A)(5) and (B)(6) and (E), 1-302(introductory paragraph), 1-303(A)(introductory paragraph) and (D), 1-401(D)(introductory paragraph) and (2), 1-601(C)(introductory paragraph) and (1), 1-621(F)(2)(a)(introductory paragraph), 1-622(D)(introductory paragraph), 1-623(B)(introductory paragraph), 1-624(B)(introductory paragraph), 1-703(A)(introductory paragraph), 1-721(E)(2)(introductory paragraph), 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)(introductory paragraph), 1-842(C)(introductory paragraph), 1-851(A)(introductory paragraph) and (1), 1-854(A)(introductory paragraph) and (3), 1-860(5), 1-870(A), 1-1022, 1-1106(A)(introductory paragraph), 1-1107(A)(9) and (F)(introductory paragraph) and (2), 1-1301(5.1)(introductory paragraph), 1-1432(C)(introductory paragraph), 1-1435(F), 1-1436(D)(2)(b), 1-1444(A), and 1-1602(F)(introductory paragraph) and to enact 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, relative to corporations; to provide for qualifications of directors; to provide relative to business opportunities; to provide for remote participation in shareholders' meetings; to provide relative to quorum and voting requirements; to provide relative to board of director meetings; to provide relative to protection against monetary liability; to provide for required disclosures; to provide for service

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

6 Be it enacted by the Legislature of Louisiana:

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

22 §1-124. Correcting filed document

23 * * *

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

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

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

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

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

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

2 * * *

3 §1-128. Certificate of existence and standing

4 * * *

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

7 * * *

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

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

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

14 * * *

15 §1-140. Definitions

16 In this Chapter:

17 * * *

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

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

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

29 * * *

1 §1-141. Notices and other communications

2 * * *

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

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

8 * * *

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

12 (a) The date when actually received.

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

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

16 * * *

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

21 * * *

22 §1-143. Qualified director

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

24 * * *

25 (5) At the time action is to be taken under R.S. 12:1-202(B)(6), a director
26 who is neither of the following:

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

1 corporation's obligation to pay such dividend or redemption price or issue such
2 shares, as the case may be, shall thereupon cease; provided that the board of directors
3 may, at any time, for any reason satisfactory to it, but need not, authorize either of
4 the following:

5 * * *

6 E. As used in this Section, "related person" has the meaning specified in R.S.
7 12:1-860(5).

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

10 Comment - 2016

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

21 * * *

22 §1-302. General powers

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

27 * * *

28 §1-303. Emergency powers

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

31 * * *

32 D. An emergency exists for purposes of this Section if a catastrophic event
33 makes it impracticable, without applying the rules ~~pursuant to~~ stated in Subsection

1 B of this Section, to attain a quorum of the corporation's directors when and as
2 necessary to carry out the functions of the board of directors.

3 * * *

4 §1-401. Corporate name

5 * * *

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

11 * * *

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

14 * * *

15 §1-601. Authorized shares

16 * * *

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

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

21 * * *

22 §1-621. Issuance of shares

23 * * *

24 F.

25 * * *

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

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

30 * * *

1 §1-622. Liability of shareholders

2 * * *

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

6 * * *

7 §1-623. Share dividends

8 * * *

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

12 * * *

13 §1-624. Share options

14 * * *

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

18 * * *

19 §1-703. Court-ordered meeting

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

23 * * *

24 §1-709. Remote participation in annual and special meetings

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

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

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

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

9 * * *

10 §1-721. Voting entitlement of shares

11 * * *

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

14 * * *

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

17 * * *

18 §1-725. Quorum and voting requirements for voting groups

19 A. Shares entitled to vote as a separate voting group may take action on a
20 matter at a meeting only if a quorum of those shares exists with respect to that
21 ~~matter. Unless the articles of incorporation provide otherwise~~ Unless a provision in
22 the articles of incorporation authorized by R.S. 12:1-727 provides otherwise, a
23 majority of the votes entitled to be cast on the matter by the voting group constitutes
24 a quorum of that voting group for action on that matter.

25 * * *

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

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

4 * * *

5 Comment - 2016

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

8 * * *

9 §1-727. Greater quorum or voting requirements

10 A. The articles of incorporation may provide for a greater ~~quorum~~ or voting
11 requirement for shareholders, or voting groups of shareholders, than is provided for
12 by this Chapter. The articles of incorporation may make a quorum requirement for
13 shareholders, or for a voting group of shareholders, greater or lesser than that
14 provided by this Chapter, but the requirement may not be lower than twenty-five
15 percent of the shares entitled to vote on a matter.

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

21 Comment - 2016

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

1 practically could be for such decisions. They may be increased, but not decreased,
2 by a provision in the articles of incorporation.

3 * * *

4 §1-802. Qualifications of directors

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

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

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

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

21 E. A qualification for director adopted before the start of a director's term
22 may apply only at the time an individual becomes a director or may apply during a
23 director's term. A qualification adopted during a director's term shall not apply to that
24 director before the end of that term.

25 * * *

26 §1-805. Terms of directors generally

27 * * *

28 B. The terms of all other directors expire at the next, or if their terms are
29 staggered in accordance with R.S. 12:1-806, at the applicable second or third, annual
30 shareholders' meeting following their election, except to the extent provided in a

1 bylaw authorized by R.S. 12:1-1022 ~~if a bylaw electing to be governed by that~~
2 ~~Section is in effect~~ or a shorter term is specified in the articles of incorporation in the
3 event of a director nominee failing to receive a specified vote for election.

4 * * *

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

10 * * *

11 §1-820. Meetings

12 * * *

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

17 * * *

18 §1-831. Standards of liability for directors

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

22 (1) No defense interposed by the director based on R.S. 12:1-832, a
23 provision in the articles of incorporation authorized by R.S. 12:1-202(B)(6), the
24 protection afforded by R.S. 12:1-861, for action taken in compliance with R.S.
25 12:1-862 or R.S. 12:1-863, or the protection afforded by R.S. 12:1-870, precludes
26 liability.

27 * * *

28 §1-832. Protection against monetary liability

29 * * *

1 against the elimination of the unlawful dividend liability imposed by R.S. 12:1-833,
2 regardless of whether a similar limitation appears in a corporation's articles of
3 incorporation. See R.S. 12:1-832(B).
4

5 Still, it is possible that other differences between the former and current list
6 of exceptions could matter. The former law, for example, did not allow a
7 corporation to eliminate a director's or officer's liability for any form of "intentional
8 misconduct" or any "knowing violation of law," while the current law excludes that
9 form of protection only for an intentional infliction of harm on the corporation or its
10 shareholders or for an intentional violation of criminal law. Hence, it is possible that
11 the language of a pre-2015 exculpatory provision could be construed as a limitation
12 on exculpation if it tracked the old statutory language, even though a provision of
13 that kind was far more likely intended to provide, not limit, the broadest form of
14 exculpation permitted by law.
15

16 Subsection (D) of this Section is designed to give effect to the likely intention
17 of the shareholders who approved a pre-2015 exculpation provision. If a pre-2015
18 provision provided for exculpation subject only to exceptions that tracked the old
19 statutory language, the provision is treated as calling for exculpation to the full
20 extent allowed by law, and thus to the full extent provided by this Section. In the
21 unlikely event that a corporation did choose to adopt an exculpatory provision before
22 2015, but on terms more limited than those allowed by former R.S. 12:24(C)(4), the
23 greater-than-required form of limitation continues to be respected by Subsection (D),
24 as that form of limitation suggests a deliberate choice by shareholders not to provide
25 as much protection against liability as allowed by law.

26 §1-833. Directors' liability for unlawful distributions

27 * * *

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

31 * * *

32 §1-842. Standards of conduct for officers

33 * * *

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

36 * * *

37 §1-851. Permissible indemnification

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

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

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

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

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

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

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

12 * * *

13 §1-854. Court-ordered indemnification and advance for expenses

14 A. A director who is a party to a proceeding because he or she is a director
15 may petition the court conducting the proceeding for indemnification or an advance
16 for expenses or, if the indemnification or advance for expenses is beyond the scope
17 of the proceeding or of the jurisdiction of the court or other forum for the proceeding,
18 may petition another court of competent jurisdiction. After ordering any notice it
19 considers necessary, the court shall hear the petition by summary proceeding and
20 shall, if it makes the required determination, order one of the following:

21 * * *

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

26 (a) ~~Indemnify the director:~~

27 (b) ~~Advance expenses to the director, even if, in the case of (a) or (b), he or~~
28 ~~she has not met~~ even though the director did not meet the relevant standard of
29 conduct set forth in R.S. 12:1-851(A), failed to comply with R.S. 12:1-853, or was
30 adjudged liable in a proceeding referred to in R.S. 12:1-851(D)(1) or (D)(2), ~~but if~~

1 If the director was adjudged so liable in a proceeding referred to in R.S.
2 12:1-851(D)(1) or (D)(2), indemnification shall be limited to expenses incurred in
3 connection with the proceeding.

4 * * *

5 §1-860. Subpart definitions

6 In this Subpart, the following meanings shall apply:

7 * * *

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

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

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

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

15 (d) An entity, other than the corporation or an entity controlled by the
16 corporation, controlled by the ~~director~~ individual or any person specified above in
17 this 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~~
20 individual is a director, a domestic or foreign unincorporated entity of which the
21 ~~director~~ individual is a general partner or a member of the governing body, or a
22 domestic or foreign individual, trust, or estate for whom or of which the ~~director~~
23 individual is a trustee, guardian, personal representative, or like fiduciary.

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

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

27 * * *

28 §1-870. Business opportunities

29 A. ~~A director's~~ If a director or officer or related person of either pursues or
30 takes taking advantage, directly or indirectly, of a business opportunity, that action

1 may not be the subject of any form of relief, or give rise to an award of damages or
 2 other sanctions against the director, officer or related person, in a proceeding by or
 3 in the right of the corporation on the ground that such opportunity should have first
 4 been offered to the corporation, if ~~before becoming legally obligated respecting the~~
 5 ~~opportunity the director brings it to the attention of the corporation, and either of the~~
 6 ~~following occurs~~ the requirements of Paragraph (1) or (2) of this Subsection are
 7 satisfied:

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

11 ~~(1)~~(a) Action by qualified directors disclaiming the corporation's interest in
 12 the opportunity is taken in compliance with the same procedures set forth in R.S.
 13 12:1-862, ~~as if the decision being made concerned a director's conflicting interest~~
 14 ~~transaction.~~

15 ~~(2)~~(b) Shareholders' action disclaiming the corporation's interest in the
 16 opportunity is taken in compliance with the procedures set forth in R.S. 12:1-863, as
 17 if the decision being made concerned a director's conflicting interest transaction;
 18 ~~except that, rather than making "required disclosure" as defined in R.S. 12: 1-860,~~
 19 ~~in each case the director shall have made prior disclosure to those acting on behalf~~
 20 ~~of the corporation of all material facts concerning the business opportunity that are~~
 21 ~~then known to the director.~~

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

26 * * *

27 C. For purposes of this Section, the term "required disclosure" as used in
 28 R.S. 12:1-862 and R.S. 12:1-863 means prior disclosure to those acting on behalf of

1 the corporation of all material facts concerning the business opportunity that are then
2 known to the director or officer.

3 * * *

4 §1-955. Effect of entity conversion

5 * * *

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

10 (1) The survivor were a foreign corporation.

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

12 (a) A general partner if the survivor is a partnership of any kind.

13 (b) A member if the survivor is a member-managed limited liability
14 company.

15 (c) A manager if the survivor is a manager-managed limited liability
16 company.

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

20 * * *

21 §1-1022. Public corporation bylaw provisions relating to the election of directors

22 A. Unless the articles of incorporation specifically prohibit the adoption of
23 a bylaw pursuant to this Section, alter the vote specified in R.S. 12:1-728(A), or
24 provide for cumulative voting, a public corporation may elect in its bylaws to
25 provide a means for a shareholder to vote against the election of an individual to
26 serve as a director and, notwithstanding a director's election by plurality vote, to limit
27 the term or require the resignation of any director who receives more votes against
28 than for his or her election. ~~be governed in the election of directors as follows:~~

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

1 B. The expiration of a limited term, or the resignation of a director, pursuant
 2 to a bylaw authorized by this Section creates a vacancy that is governed by R.S.
 3 12:1-810.

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

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

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

20 ~~B. Subsection A of this Section does not apply to an election of directors by~~
 21 ~~a voting group if at the expiration of the time fixed under a provision requiring~~
 22 ~~advance notification of director candidates, or absent such a provision, at a time~~
 23 ~~fixed by the board of directors which is not more than fourteen days before notice~~
 24 ~~is given of the meeting at which the election is to occur, there are more candidates~~
 25 ~~for election by the voting group than the number of directors to be elected, one or~~
 26 ~~more of whom are properly proposed by shareholders. An individual shall not be~~
 27 ~~considered a candidate for purposes of this Subsection if the board of directors~~
 28 ~~determines before the notice of meeting is given that such individual's candidacy~~
 29 ~~does not create a bona fide election contest.~~

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

3 (1) If originally adopted by the shareholders, only by the shareholders, unless
4 the bylaw otherwise provides.

5 (2) If adopted by the board of directors, by the board of directors or the
6 shareholders.

7 Source: MBCA § 10.22.

8 Comments - 2016

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

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

21 * * *

22 §1-1106. Articles of merger or share exchange

23 A. After a plan of merger or share exchange has been adopted and approved
24 as required by this Subpart, articles of merger or share exchange shall be signed on
25 behalf of each party to the merger or share exchange by any officer or other duly
26 authorized representative. Articles of merger need not be signed on behalf of any
27 subsidiary that is a party to a merger authorized without the approval of the
28 subsidiary's board of directors or shareholders as permitted by R.S. 12:1-1105(A).

29 The articles shall set forth all of the following:

30 * * *

31 §1-1107. Effect of merger or share exchange

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

33 * * *

34 (9) The survivor possesses all the rights, licenses, privileges, and franchises
35 possessed by each of the parties to the merger, except that the survivor does not

1 possess any right, license, privilege, or franchise that ~~meets either of the following~~
2 ~~conditions:~~

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

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

7 * * *

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

12 * * *

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

14 * * *

15 §1-1301. Definitions

16 In this Part, the following meanings shall apply:

17 * * *

18 (5.1) "Interested person" means a person, or an affiliate of a person, who at
19 any time during the one-year period immediately preceding approval by the board
20 of directors of the corporate action, satisfies ~~one~~ any of the following criteria:

21 * * *

22 §1-1432. Appointment of receiver or liquidator

23 * * *

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

29 * * *

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

2 * * *

3 F. A notice of acceptance that operates as an acceptance of both the
4 shareholder's offer to sell and the shareholder's proposed price forms a contract of
5 sale of the shares at that price, payable in cash. The contract includes the warranties
6 of a seller of investment securities under the Uniform Commercial Code and imposes
7 a duty on the selling shareholder to deliver any certificates issued by the corporation
8 for the withdrawing shareholder's shares or, if a certificate has been lost, stolen, ~~or~~
9 destroyed, or previously delivered to the corporation, an affidavit to that effect.
10 Either party may file an action to enforce the contract at the specified price if the
11 contract is not fully performed within thirty days after the effective date of the notice
12 of acceptance. If a withdrawing shareholder fails to deliver the certificate for a share
13 purchased by the corporation under a contract formed under this Subsection, the
14 shareholder owes the same indemnity obligation as a shareholder who sells shares
15 as described in R.S. 12:1-1436(F).

16 * * *

17 §1-1436. Judicial determination of fair value and payment terms for withdrawing
18 shareholder's shares

19 * * *

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

23 * * *

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

26 * * *

27 (b) Orders the shareholder to deliver to the corporation within thirty days of
28 the date of the judgment any certificate issued by the corporation for the shares or

1 an affidavit by shareholder that the certificate has been lost, stolen, ~~or destroyed, or~~
2 previously delivered to the corporation.

3 * * *

4 §1-1444. Reinstatement of terminated corporation

5 A. A terminated corporation may be reinstated if the corporation satisfies
6 both of the following conditions:

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

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

11 * * *

12 §1-1602. Inspection of records by shareholders

13 * * *

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

15 * * *

16 §1-1705. Transition rule for reinstatement of a corporation with a revoked charter

17 A. A corporation whose charter was revoked before January 1, 2015, may
18 be reinstated as provided in R.S. 12:1-1444 for a corporation that was terminated
19 administratively. Subject to the time limitation stated in Subsection F of this
20 Section, a corporation whose charter was revoked before January 1, 2015, may also
21 be reinstated as provided in Subsections B through E of this Section.

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

29 C. The articles of charter-revocation reinstatement shall state all of the
30 following:

1 (1) The name of the corporation.

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

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

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

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

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____