

2017 Regular Session

HOUSE BILL NO. 310

BY REPRESENTATIVES REYNOLDS AND FOIL

(On Recommendation of the Louisiana State Law Institute)

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

CORPORATIONS: Provides for revisions to the Business Corporations Act

1 AN ACT

2 To amend and reenact R.S. 12:1-140(25B), 1-402(C), 1-727(A), 1-728(A), 1-1435(I),
3 1-1436(E) and (F), and 1-1444(A)(2) and (F)(1) and to enact R.S. 12:1-742.2 and
4 1-742.3, relative to corporations; to provide relative to quorum and voting
5 requirements; to provide for the reservation of a terminated corporation's name; to
6 provide with respect to shareholder meetings for the election of directors; to provide
7 for personal jurisdiction over nonresident directors; to provide for venue in
8 derivative proceedings; to provide with respect to an oppressed shareholder's right
9 to withdraw and the judicial determination of fair value and payment terms; to
10 provide for the reinstatement of a terminated corporation; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 12:1-140(25B), 1-402(C), 1-727(A), 1-728(A), 1-1435(I), 1-1436(E)
14 and (F), and 1-1444(A)(2) and (F)(1) are hereby amended and reenacted and R.S. 12:1-742.2
15 and 1-742.3 are hereby enacted to read as follows:

16 §1-140. Definitions

17 In this Chapter:

18 * * *

19 (25B) "Votes entitled to be cast", when used in specifying the proportion of
20 votes required to provide a shareholder quorum or approval of an action, means the

1 number of votes in a voting group that would be cast at a meeting at which all shares
2 in the voting group were present and voting.

3 * * *

4 §1-402. Reserved name

5 * * *

6 C. A terminated corporation's name is reserved by operation of law for ~~three~~
7 five years after the effective date of the corporation's termination.

8 * * *

9 §1-727. Greater quorum or voting requirements

10 A. The articles of incorporation may provide for a greater voting requirement
11 for shareholders, or voting groups of shareholders, than is provided for by this
12 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 shares having
15 twenty-five percent of the shares entitled to vote votes entitled to be cast on a matter.

16 * * *

17 §1-728. ~~Voting~~ Quorum and voting for directors; cumulative voting

18 A. Unless otherwise provided in the articles of incorporation, directors are
19 elected by a plurality of the votes cast by the shares entitled to vote in the election
20 at a meeting at which a quorum is present. If a quorum is not present at an annual
21 meeting or at a special meeting called for the election of directors, the shareholders
22 present at the meeting in person or by proxy may, by a majority of the votes cast on
23 the matter, adjourn the meeting to the next day, at the place and time specified in the
24 approved motion to adjourn. The shareholders present in person or by proxy at the
25 meeting to which the earlier meeting is adjourned shall constitute a quorum for the
26 purpose of electing directors, even if a quorum would not otherwise be present.

27 * * *

1 § 1-742.2. Jurisdiction over a director

2 A court may exercise personal jurisdiction over a nonresident who is or has
3 been a director of a domestic corporation as to a cause of action arising from a
4 breach by the nonresident of a duty owed to the corporation or its shareholders
5 because of the nonresident's position as a director.

6 § 1-742.3. Venue in derivative proceeding

7 A derivative proceeding shall be brought in the parish where the registered
8 office of the corporation is located.

9 * * *

10 §1-1435. Oppressed shareholder's right to withdraw

11 * * *

12 I. A corporation's obligation to purchase ~~of~~ a withdrawing shareholder's
13 shares as provided in this Section or R.S. 12:1-1436 is subject to ~~the rules on any~~
14 limitation or requirement respecting a corporation's acquisition of its own shares
15 ~~provided in~~ as imposed by R.S. 12:1-631, and to the limitations on distribution
16 ~~imposed by R.S. 12:1-640,~~ or any other provision of state or federal law applicable
17 to the corporation, including any order, plan, directive, or enforcement action issued
18 by an administrative or regulatory agency pursuant to state or federal law.

19 * * *

20 §1-1436. Judicial determination of fair value and payment terms for withdrawing
21 shareholder's shares

22 * * *

23 E. If at the conclusion of the trial the court finds that the corporation has
24 proved that ~~a full payment in cash of the fair value of the withdrawing shareholder's~~
25 ~~shares would violate the provisions of R.S. 12:1-640~~ its payment of the judgment
26 rendered in accordance with Subsection D of this Section would violate a limitation
27 or requirement as described in R.S. 12:1-1435(I) or cause undue harm to the
28 corporation or its creditors, the court shall ~~not render the judgment specified in~~
29 ~~Subsection D of this Section, but shall instead~~ render a final judgment that, by itself

1 or in conjunction with earlier orders or partial judgments of the court, provides relief
2 as close in value and effect as feasible to that contemplated by Subsection D of this
3 Section, but adjusted as necessary to avoid the relevant violation or undue harm.

4 ~~does both of the following:~~

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

8 ~~(a) Payable to the order of the shareholder.~~

9 ~~(b) In a principal amount equal to the fair value of the withdrawing~~
10 ~~shareholder's shares.~~

11 ~~(c) Bearing simple interest on the unpaid balance of the note at a floating rate~~
12 ~~equal to the judicial rate of interest.~~

13 ~~(d) Having a term up to ten years, as specified by the court in its judgment~~
14 ~~as necessary to prevent a violation of R.S. 12:1-640 or undue harm to the corporation~~
15 ~~or its creditors.~~

16 ~~(e) Containing such other terms, customary in negotiable promissory notes~~
17 ~~issued in commercial transactions, as the court may order.~~

18 ~~(2) Terminates the shareholder's ownership of shares in the corporation upon~~
19 ~~delivery to the shareholder of the note required by the judgment issued pursuant to~~
20 ~~Paragraph (1) of this Subsection, and orders the shareholder to deliver to the~~
21 ~~corporation, within ten days of the delivery of the note, any certificate issued by the~~
22 ~~corporation for the shares or an affidavit by the shareholder that the certificate has~~
23 ~~been lost, stolen, destroyed, or previously delivered to the corporation.~~

24 F. If a withdrawing shareholder fails to deliver the certificate for a share
25 covered by a judgment rendered ~~under~~ as provided in Subsection ~~C~~ or D ~~or E~~ of this
26 Section, and a third person presents the certificate to the corporation after the
27 shareholder's ownership of the share is terminated by the judgment, the shareholder
28 shall indemnify the corporation for any dilution in value imposed on other
29 shareholders as a result of the corporation's ~~obligations~~ obligation to recognize the

Proposed law clarifies the minimum quorum requirement for shareholders as no lower than shares having 25% of the votes entitled to be cast on a matter.

Present law (R.S. 12:1-728(A)) provides that greater quorum or voting requirements for shareholders may be included in the articles of incorporation.

Proposed law retains present law and further provides that if a quorum is not present at a meeting for the election of directors, the meeting may be adjourned to the next day by a majority vote of the shareholders present at the meeting, and the shareholders present at the next day's meeting will constitute a quorum for the purposes of the election of directors.

Proposed law (R.S. 12:1-742.2) provides for the exercise of personal jurisdiction over a nonresident who is or has been a director of a domestic corporation for actions relating to the nonresident's position as director.

Proposed law (R.S. 12:1-742.3) requires the venue of a derivative proceeding to be the parish in which the corporation's registered office is located.

Present law (R.S. 12:1-1435(I)) provides that a corporation's purchase of a withdrawing shareholder's shares is subject to the rules on a corporation's acquisition of its own shares and to the limitations on distribution.

Proposed law amends present law to further subject the purchase of a withdrawing shareholder's shares to the present and proposed law provisions of R.S. 12:1-1436 and other provisions of state or federal law applicable to the corporation.

Present law (R.S. 12:1-1436(E)) provides exceptions to the general rules on payment terms for a corporation's purchase of a withdrawing shareholder's shares in the event that the payment would violate statutory provisions concerning distributions of shareholders (R.S. 12:1-640) or cause undue harm to the corporation or its creditors.

Proposed law amends present law to replace the reference of R.S. 12:1-640 with references to limitations or requirements as described in present and proposed law (R.S. 12:1-1435(I)).

Proposed law deletes from present law the court's requirement to render certain final judgments. Requires the court to provide relief as close in value and effect as feasible to that contemplated by the general rules on payment terms, but adjusted as necessary to avoid circumstances described in present law (R.S. 12:1-1435(D)) or the additional limitations as described in present and proposed law (R.S. 12:1-1435(I)).

Present law (R.S. 12:1-1444) provides that a terminated corporation may be reinstated if the corporation makes the request to the secy. of state no later than three years after termination. Further requires the secy. of state to file articles of reinstatement only if the corporation delivers the articles to the secy. of state within three years after termination.

Proposed law extends the present law time period from three years to five years.

(Amends R.S. 12:1-140(25B), 1-402(C), 1-727(A), 1-728(A), 1-1435(I), 1-1436(E) and (F), and 1-1444(A)(2) and (F)(1); Adds R.S. 12:1-742.2 and 1-742.3)