

2015 Regular Session

HOUSE BILL NO. 743

BY REPRESENTATIVE FOIL

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

CORPORATIONS: Provides relative to the Business Corporation Act

1 AN ACT

2 To amend and reenact R.S. 12:1-202(B)(5)(introductory paragraph), 1-501(2)(b), 1-
3 502(A)(5), 1-504(A), 1-1435(C), 1-1436(D), (E)(introductory paragraph),
4 (1)(introductory paragraph), and (2), and 1-1442(A)(2) and (C) and to enact R.S.
5 12:1-140(25B), 1-502(A)(7), and 1-832(D), relative to corporations; to provide with
6 respect to articles of incorporation; to provide with respect to registered agents and
7 service of process; to provide with respect to judicial determinations relative to
8 withdrawing shareholders; to provide with respect to withdrawal rights; to provide
9 for definitions; to provide for retroactivity; to provide for technical corrections; and
10 to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. R.S. 12:1-202(B)(5)(introductory paragraph), 1-501(2)(b), 1-502(A)(5),
13 1-504(A), 1-1435(C), 1-1436(D), (E)(introductory paragraph), (1)(introductory paragraph),
14 and (2), and 1-1442(A)(2) and (C) are hereby amended and reenacted and R.S. 12:1-
15 140(25B), 1-502(A)(7), and 1-832(D) 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 shareholder approval of an action, means the number of

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

3 * * *

4 §1-202. Articles of incorporation and signed consent by agent to appointment

5 * * *

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

7 * * *

8 (5) A provision permitting or making obligatory indemnification of a
9 director or officer for liability, as defined in R.S. 12:1-850(3), to any person for any
10 action taken, or any failure to take any action, as a director or officer, except liability
11 for any of the following:

12 * * *

13 §1-501. Registered office and registered agent

14 Each corporation must continuously maintain in this state both of the
15 following:

16 * * *

17 (2) A registered agent, who may be either of the following:

18 * * *

19 (b) A domestic or foreign corporation or other eligible entity that does all of
20 the following:

21 (i) continuously Continuously maintains an office in this state and, in the case
22 of a foreign corporation or foreign eligible entity, is authorized to transact business
23 in this state.

24 (ii) Files with the secretary of state a statement setting forth the name of at
25 least two individuals at its address in this state, each of whom is authorized to
26 receive any process served on it as such agent.

27 * * *

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

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

5 * * *

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

9 * * *

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

13 * * *

14 §1-504. Service on corporation

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

20 * * *

21 §1-832. Protection against monetary liability

22 * * *

23 D. Articles of incorporation of a corporation are deemed to include a
24 statement that accepts the protection against monetary liability provided for in this
25 Section, if a provision in the articles adopted on or before December 31, 2014, limits
26 or eliminates all personal liability of a director or officer, except for any of the
27 following reasons:

28 (1) Breach of the director's or officer's duty of loyalty to the corporation or
29 its shareholders.

1 (2) Acts or omissions not in good faith or which involve intentional
2 misconduct or a knowing violation of law.

3 (3) For liability arising under R.S. 12:92(D) as repealed by Act No. 328 of
4 the 2014 Regular Session of the Legislature, which is knowingly or without the
5 exercise of reasonable care and inquiry, voting in favor of an unlawful dividend or
6 other unlawful distribution, payment or return of assets to shareholders, or for the
7 purchase or redemption of the corporation's own shares.

8 (4) Deriving an improper personal benefit from any transaction.

9 * * *

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

11 * * *

12 C.(1) The term "fair value" has the same meaning in this Section and in R.S.
13 12:1-1436 as it does in R.S. 12:1-1301(4) concerning appraisal rights, except that the
14 value of a withdrawing shareholder's shares ~~under this Section and R.S. 12:1-1436~~
15 is to be determined as of the effective date of the notice of withdrawal ~~under~~
16 pursuant to Subsection D of this Section.

17 (2) The context of the transaction requiring appraisal, as described in R.S.
18 12:1-1301(4), is a sale of the entire corporation in an arm's length transaction by a
19 person who owns all of the shares in the corporation.

20 * * *

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

23 * * *

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

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

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

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

5 (b) ~~Ordering~~ Orders the shareholder to deliver to the corporation within
6 thirty days of the date of the judgment any certificate issued by the corporation for
7 the shares or an affidavit by the shareholder that the certificate has been lost, stolen,
8 or destroyed.

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

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

18 * * *

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

26 * * *

27 §1-1442. Administrative termination

28 A. Subject to Subsection B of this Section, the secretary of state shall
29 terminate the existence of a corporation if, according to the records of the secretary

1 of state, the corporation has failed for ninety consecutive days to do either of the
2 following:

3 * * *

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

5 * * *

6 C. The secretary of state terminates the existence of a corporation under this
7 Section by filing a certificate of termination that states the grounds for termination.
8 ~~The secretary shall serve a copy of the certificate of termination on the corporation~~
9 ~~in accordance with R.S. 12:1-504.~~

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

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 743 Reengrossed 2015 Regular Session Foil

Abstract: Makes various changes to the Business Corporation Act.

Proposed law defines "votes entitled to be cast", when used in specifying the proportion of votes required to provide shareholder approval of an action, as the number of votes in a voting group that would be cast at a meeting at which all shares in the voting group were present and voting.

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

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

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

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

Present law provides for a director's or officer's protection against personal liability for monetary damages. Further deems articles of incorporation of a corporation formed before Jan. 1, 2015, to include a statement accepting such protection against monetary liability. Proposed law retains present law.

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

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

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

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

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

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

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

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

Summary of Amendments Adopted by House

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

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

The House Floor Amendments to the engrossed bill:

1. Make technical changes.