

ACT No. 356

2015 Regular Session

HOUSE BILL NO. 743

BY REPRESENTATIVE FOIL

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AN ACT

To amend and reenact R.S. 12:1-202(B)(5)(introductory paragraph), 1-143(A)(3), 1-501(2)(b), 1-502(A)(5), 1-504(A), 1-1435(C), 1-1436(D), (E)(introductory paragraph), (1)(introductory paragraph), and (2), and 1-1442(A)(2) and (C) and to enact R.S. 12:1-140(25B), and 1-502(A)(7), relative to corporations; to provide with respect to articles of incorporation; to provide for qualified directors; to provide with respect to registered agents and service of process; to provide with respect to judicial determinations relative to withdrawing shareholders; to provide with respect to withdrawal rights; to provide for definitions; to provide for retroactivity; to provide for technical corrections; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 12:1-202(B)(5)(introductory paragraph), 1-143(A)(3), 1-501(2)(b), 1-502(A)(5), 1-504(A), 1-1435(C), 1-1436(D), (E)(introductory paragraph), (1)(introductory paragraph), and (2), and 1-1442(A)(2) and (C) are hereby amended and reenacted and R.S. 12:1-140(25B), and 1-502(A)(7) are hereby enacted to read as follows:

§1-140. Definitions

In this Chapter:

* * *

(25B) "Votes entitled to be cast", when used in specifying the proportion of 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 §1-143. Qualified director

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

6 * * *

7 (3) At the time action is to be taken under R.S. 12:1-862, a director who is
8 neither of the following:

9 (a) A director as to whom the transaction is a director's conflicting interest
10 transaction.

11 (b) A director who has ~~does not have~~ a material relationship with another
12 director as to whom the transaction is a director's conflicting interest transaction.

13 * * *

14 §1-202. Articles of incorporation and signed consent by agent to appointment

15 * * *

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

17 * * *

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

22 * * *

23 §1-501. Registered office and registered agent

24 Each corporation must continuously maintain in this state both of the
25 following:

26 * * *

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

28 * * *

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

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

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

7 * * *

8 §1-502. Change of registered office or registered agent

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

12 * * *

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

16 * * *

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

20 * * *

21 §1-504. Service on corporation

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

27 * * *

28 §1-1435. Oppressed shareholder's right to withdraw

29 * * *

1 C.(1) The term "fair value" has the same meaning in this Section and in R.S.
 2 12:1-1436 as it does in R.S. 12:1-1301(4) concerning appraisal rights, except that the
 3 value of a withdrawing shareholder's shares ~~under this Section and R.S. 12:1-1436~~
 4 is to be determined as of the effective date of the notice of withdrawal ~~under~~
 5 pursuant to Subsection D of this Section.

6 (2) The context of the transaction requiring appraisal, as described in R.S.
 7 12:1-1301(4), is a sale of the entire corporation in an arm's-length transaction by a
 8 person who owns all of the shares in the corporation.

9 * * *

10 §1-1436. Judicial determination of fair value and payment terms for withdrawing
 11 shareholder's shares

12 * * *

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

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

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

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

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

26 E. If at the conclusion of the trial the court finds that the corporation has
 27 proved that a full payment in cash of the fair value of the withdrawing shareholder's
 28 shares would violate the provisions of R.S. 12:1-640 or cause undue harm to the
 29 corporation or its creditors, the court shall not render the judgment specified in

1 Subsection D of this Section, but shall instead render final judgment ~~which provides~~
2 for that does both of the following:

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

6 * * *

7 (2) ~~Terminating~~ Terminates the shareholder's ownership of shares in the
8 corporation upon delivery to the shareholder of the note required by the judgment
9 ~~under issued pursuant to Paragraph (E)(1) of this Section~~ Paragraph (1) of this
10 Subsection, and ~~ordering~~ orders the shareholder to deliver to the corporation, within
11 ten days of the delivery of the note, any certificate issued by the corporation for the
12 shares or an affidavit by the shareholder that the certificate has been lost, stolen, ~~or~~
13 destroyed, or previously delivered to the corporation.

14 * * *

15 §1-1442. Administrative termination

16 A. Subject to Subsection B of this Section, the secretary of state shall
17 terminate the existence of a corporation if, according to the records of the secretary
18 of state, the corporation has failed for ninety consecutive days to do either of the
19 following:

20 * * *

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

22 * * *

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

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

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____