2017 Regular Session

HOUSE BILL NO. 310

BY REPRESENTATIVES REYNOLDS AND FOIL

(On Recommendation of the Louisiana State Law Institute)

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 <u>a</u> shareholder <u>quorum or</u> approval of an action, means the
21	number of votes in a voting group that would be cast at a meeting at which all shares
22	in the voting group were present and voting.
23	* * *

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

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1	§1-402.	Reserved name

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

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§1-727. Greater quorum or voting requirements

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

13 * * *

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

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

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§1-742.2. Jurisdiction over a director

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

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§1-742.3. Venue in derivative proceeding

A derivative proceeding sha	ll be brought in the	e parish where th	e registered
office of the corporation is located.			

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

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

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

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E. If at the conclusion of the trial the court finds that the corporation has proved that a full payment in cash of the fair value of the withdrawing shareholder's shares would violate the provisions of R.S. 12:1-640 its payment of the judgment rendered in accordance with Subsection D of this Section would violate a limitation or requirement as described in R.S. 12:1-1435(I) or cause undue harm to the corporation or its creditors, the court shall not render the judgment specified in Subsection D of this Section, but shall instead render a final judgment that, by itself or in conjunction with earlier orders or partial judgments of the court, provides relief as close in value and effect as feasible to that contemplated by Subsection D of this Section, but adjusted as necessary to avoid the relevant violation or undue harm. does both of the following:

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1 (1) Orders the corporation to issue and deliver to the shareholder within 2 thirty days of the date of the judgment an unsecured negotiable promissory note of 3 the corporation which is all of the following: 4 (a) Payable to the order of the shareholder. 5 (b) In a principal amount equal to the fair value of the withdrawing 6 shareholder's shares. 7 (c) Bearing simple interest on the unpaid balance of the note at a floating rate 8 equal to the judicial rate of interest. 9 (d) Having a term up to ten years, as specified by the court in its judgment 10 as necessary to prevent a violation of R.S. 12:1-640 or undue harm to the corporation 11 or its creditors. 12 (e) Containing such other terms, customary in negotiable promissory notes 13 issued in commercial transactions, as the court may order. 14 (2) Terminates the shareholder's ownership of shares in the corporation upon 15 delivery to the shareholder of the note required by the judgment issued pursuant to 16 Paragraph (1) of this Subsection, and orders the shareholder to deliver to the 17 corporation, within ten days of the delivery of the note, any certificate issued by the 18 corporation for the shares or an affidavit by the shareholder that the certificate has 19 been lost, stolen, destroyed, or previously delivered to the corporation. 20 F. If a withdrawing shareholder fails to deliver the certificate for a share 21 covered by a judgment rendered under as provided in Subsection C or D or E of this 22 Section, and a third person presents the certificate to the corporation after the 23 shareholder's ownership of the share is terminated by the judgment, the shareholder 24 shall indemnify the corporation for any dilution in value imposed on other 25 shareholders as a result of the corporation's obligations obligation to recognize the 26 person presenting the certificate as the owner of the shares represented by the

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certificate.

1 §1-1444. Reinstatement of terminated corporation 2 A. A terminated corporation may be reinstated if the corporation satisfies 3 both of the following conditions: 4 (2) It requests reinstatement in accordance with this Section no later than 5 three five years after the effective date of its articles or certificate of termination. 6 7 8 F. The secretary of state shall file the articles of reinstatement only if both 9 of the following conditions are satisfied: 10 (1) The articles are delivered for filing to the secretary of state within three five years after the effective date of the articles or certificate of termination for the 11 12 corporation. 13 SPEAKER OF THE HOUSE OF REPRESENTATIVES PRESIDENT OF THE SENATE GOVERNOR OF THE STATE OF LOUISIANA

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APPROVED: ___