

2015 Regular Session

HOUSE BILL NO. 666

BY REPRESENTATIVE REYNOLDS

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

BANKS/BANKING: Provides relative to banking provisions and liability of banking directors and officers

1 AN ACT

2 To amend and reenact R.S. 6:213(B), 291(D) and (E), 705(C)(2), 786(D), and 1191(C) and
3 to enact R.S. 6:213(C), relative to banking regulations; to provide relative to articles
4 of incorporation; to allow and restrict authorizing reversion of ownership interests;
5 to allow and restrict limited liability; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 6:213(B), 291(D) and (E), 705(C)(2), 786(D), and 1191(C) are
8 hereby amended and reenacted and R.S. 6:213(C) is hereby enacted to read as follows:

9 §213. Articles of incorporation, filing, form, content; letter of acceptance for filing

10 * * *

11 B.(1) Notwithstanding the provisions of R.S. 6:291, the articles of
12 incorporation may contain other provisions for the regulation of the business and the
13 conduct of the affairs of the state bank including any provision authorized by ~~R.S.~~
14 ~~12:24(C)(3) or (4)~~ R.S. 6:213(B)(2) or (3), but they shall not contain any provision
15 which is in derogation of the provisions of this law or violates any other provision
16 of the laws of this state or of the laws of the United States.

17 (2)(a) The articles of incorporation of a bank or bank holding company may
18 contain a provision that any of the following not claimed by the entitled shareholder
19 despite reasonable efforts by the corporation to pay dividends or redemption price

1 or deliver certificates for shares to the shareholder shall revert in full ownership to
2 the corporation:

3 (i) Cash.

4 (ii) Property or share dividends.

5 (iii) Shares issuable to shareholders in connection with a reclassification of
6 stock.

7 (iv) The redemption price of redeemed shares.

8 (b) An obligation of the corporation to pay the dividend or the redemption
9 price or issue the shares shall, in any event, exist for no less than one year after the
10 dividend or redemption price became payable or after the shares became issuable.

11 (c) The obligation of the corporation to pay the dividend or redemption price
12 or issue the shares shall thereupon cease if the board of directors may, at any time
13 and for any reason satisfactory to the board, authorize either of the following:

14 (i) Payment of the amount of any cash, property dividend, or redemption
15 price, ownership of which has reverted to the corporation pursuant to a provision of
16 the articles authorized by this Section, to the entity who would be entitled thereto had
17 such reversion not occurred.

18 (ii) Issuance of any shares, ownership of which has reverted to the
19 corporation pursuant to a provision of the articles authorized by this Section, to the
20 entity who would be entitled thereto had such reversion not occurred.

21 (3)(a) The articles of incorporation of a bank or a bank holding company
22 may contain a provision eliminating or limiting the personal liability of a director or
23 officer to the corporation or its shareholders for monetary damages for breach of
24 fiduciary duty as a director or officer, provided that the provision shall not eliminate
25 or limit the liability of a director or officer for any of the following:

26 (i) A breach of a duty of loyalty, which is imposed on a director or officer,
27 to the bank, bank holding company, or its shareholders.

28 (ii) Acts or omissions not in good faith or involving intentional misconduct
29 or involving a knowing violation of law.

(iii) Liability incurred pursuant to R.S. 12:1-833.

(iv) Any transaction from which the director or officer derived an improper personal benefit.

(b) For the purposes of this Paragraph, no provision shall eliminate or limit the liability of a director or officer for any act or omission that occurred prior to the date the provision becomes effective.

(2) C. When all fees and charges have been paid as required by law, the commissioner shall review the filed articles and, if the articles comply with the provisions of this law, shall issue a letter of acceptance for filing endorsed with the date and hour, if requested, of his acceptance. If the commissioner finds that the articles of incorporation violate any part of this law, he shall notify the proposed incorporators of such violation and shall require that the articles be amended to conform to the provisions of this Section.

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§291. Relation and liability of directors and officers to bank and bank holding company stockholders

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D. The provisions of this Section shall not affect the right of incorporators or shareholders of banks or bank holding companies to include in articles of incorporation provisions as authorized by ~~R.S. 12:24(C)(4)~~ or R.S. 6:213(B)(1) or (3).

E. Notwithstanding any other law to the contrary, ~~particularly but not exclusively R.S. 12:91~~, the provisions of this Section shall be the sole and exclusive law governing the relation and liability of directors and officers to their bank or holding company or to the shareholders thereof or to any other person or entity, except that the provisions of ~~R.S. 12:92~~ R.S. 12:1-833 shall remain applicable to directors and officers of bank holding companies.

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§705. Incorporation; articles of incorporation; content; bylaws

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C. The articles may also contain any of the following:

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(2) Any other provision for the regulation of the business and conduct of the affairs of the corporation not prohibited by this Chapter or other laws of this state, including any provision authorized by ~~R.S. 12:24(C)(4)~~ R.S. 6:213(B)(3). The provisions of ~~R.S. 12:24(C)(4)~~ R.S. 6:213(B)(3) may be included in the articles of both mutual and stock associations.

* * *

§786. Relation and liability of directors and officers

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D. The provisions of this Section shall not affect the right of incorporators or shareholders of financial institutions to include in articles of incorporation provisions as authorized by ~~R.S. 12:24(C)(4)~~ R.S. 6:213(B)(3) or R.S. 6:705.

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§1191. Relation and liability of directors and officers

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C. The provisions of this Section shall not affect the right of incorporators or shareholders of savings banks to include in articles of incorporation provisions as authorized by ~~R.S. 12:24(C)(4)~~ R.S. 6:213(B)(3).

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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 666 Original

2015 Regular Session

Reynolds

Abstract: Authorizes banks or bank holding companies to utilize certain provisions in limited circumstances to allow reversionary events and to provide for limited liability for directors and officers.

Present law includes statutory references to repealed provisions of law. Proposed law removes those references. Proposed law updates these references.

Proposed law allows the articles of incorporation for banks or bank holding companies to include provisions that allow ownership rights over cash, property, or share dividends, shares issuable to shareholders in connection with a reclassification of stock, or the redemption price of redeemed shares to revert in full to the bank or bank holding company in certain circumstances. Proposed law limits those reversion events to circumstances in which the entitled shareholder or property owner has not claimed the shares once they have become issuable or the dividend or redemption price once they have become payable within a reasonable time.

Proposed law indicates that a "reasonable time" shall not, in any event, be less than 1 year after the shares became issuable or after the dividend or redemption price became payable.

Proposed law further limits those reversion events to circumstances in which the bank or bank holding company has made "reasonable efforts" to deliver the certificates for the shares or pay the dividend or redemption price to the shareholder within that "reasonable time".

Proposed law requires that the "reasonable time" has expired and the "reasonable efforts" have been made by the bank or bank holding company before ownership of the cash, property, or share dividends, shares issuable to shareholders in connection with a reclassification of stock, or the redemption price of redeemed shares may revert in full to the bank or bank holding company. However, proposed law authorizes, regardless of the existence of one of these provisions and regardless of whether the requirements imposed on these provisions have been satisfied, the bank or bank holding company to pay the amount of any cash, property dividend, or redemption price or to issue any shares, ownership of which has reverted to the bank or bank holding company, to the entity who would be entitled thereto had the reversion not occurred.

Proposed law allows the articles of incorporation for banks or bank holding companies to include provisions that eliminate or limit the personal liability of their directors and officers to the corporation or to their shareholders for monetary damages when they breach their fiduciary duty as a director or officer.

Proposed law prohibits these limited liability provisions from eliminating or limiting the liability of directors or officers for:

- (1) Any breach of a duty of loyalty to the bank, bank holding company, or its shareholders.
- (2) Acts or omissions not in good faith or involving intentional misconduct or involving a knowing violation of law.
- (3) Any transaction from which the director or officer derived an improper personal benefit.
- (4) Any act or omission that occurred prior to the date the provision became effective.

(Amends R.S. 6:213(B), 291(D) and (E), 705(C)(2), 786(D), and 1191(C); Adds R.S. 6:213(C))