

2015 Regular Session

HOUSE BILL NO. 225

BY REPRESENTATIVE LORUSSO

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

CORPORATIONS: Provides relative to minority shareholders of closely held corporations

1 AN ACT

2 To amend and reenact R.S. 12:1-1602(E) through (G) and to enact R.S. 12:1-1203 and 1-
3 1602(H), relative to minority shareholders; to provide for a right of first refusal for
4 minority shareholders of closely held corporations; to provide for inspections of
5 records by minority shareholders of closely held corporations; to provide for
6 corporate written notice to shareholders for the purchase, sale, or lease of corporate
7 property; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 12:1-1602(E) through (G) are hereby amended and reenacted and
10 R.S. 12:1-1203 and 1-1602(H) are hereby enacted to read as follows:

11 §1-1203. Minority shareholder right of first refusal

12 A.(1) Upon a corporation's approval of a sale, lease, exchange or other
13 disposition of assets, any minority shareholder of the corporation shall be granted a
14 right of first refusal in connection with the proposed transaction.

15 (2) The right of first refusal authorized in this Section becomes effective
16 when the corporation approves a sale, lease, exchange, or other disposition of assets,
17 but prior to the corporation entering into a binding contract; however, if the
18 corporation does enter into a binding contract, that contract is subject to the right of
19 first refusal.

20 (3) The right of first refusal authorized in this Section is only made
21 applicable to closely held corporations with five or fewer shareholders and to a

1 single minority shareholder of the corporation holding at least thirty-three percent
2 of the corporation's total issued shares for at least the preceding six months.

3 B. Once the minority shareholder's right of first refusal becomes effective,
4 the corporation shall provide written notice to the shareholder with full and complete
5 disclosure of the terms of the proposed transaction and requiring the shareholder to
6 accept or reject the transaction in writing within fifteen business days from the date
7 of the shareholder's receipt of written notice. If the minority shareholder elects to
8 exercise the right of first refusal, a commercially reasonable form of contract of
9 purchase shall be signed by the president or authorized representative of the
10 corporation and the minority shareholder within a period of thirty days from the date
11 of the shareholder's receipt of written notice. As used in this Section, "commercially
12 reasonable" has the same meaning as in the Commercial Laws, R.S. 10:1-101 et seq.

13 C. Upon the exercise of the right of first refusal by the minority shareholder,
14 the contract of purchase and the transfer of the property or consummation of the
15 transaction shall be closed with the minority shareholder at the price and on the exact
16 terms of the transaction as approved by the corporation.

17 D. If the minority shareholder does not accept the right of first refusal or
18 execute the required contract within the time periods stipulated in Subsection B of
19 this Section, the right of first refusal for which written notice was provided shall be
20 null and void, and the corporation shall be permitted to proceed otherwise with the
21 proposed transaction.

22 * * *

23 §1-1602. Inspection of records by shareholders

24 * * *

25 E.(1) The provisions of this Subsection are only made applicable to closely
26 held corporations with five or fewer shareholders and to a single minority
27 shareholder of the corporation holding at least thirty-three percent of the
28 corporation's total issued shares for at least the preceding six months.

1 (2) Within five business days from the date a shareholder gives a request
2 through written notice to the corporation, the shareholder shall have all of the
3 following rights:

4 (a) To inspect and copy any and all non-privileged records of the corporation
5 during ordinary business hours.

6 (b) To obtain from time to time, but no more than monthly, the following
7 information and documents during ordinary business hours:

8 (I) True and complete information regarding the state of the business and
9 financial condition of the corporation.

10 (ii) Drafts of the corporation's federal and state income tax returns.

11 (iii) Promptly after becoming available, a copy of the corporation's federal
12 and state income tax returns for each year.

13 (iv) Monthly profit and loss statements for the corporation.

14 (v) Other information regarding the affairs of the corporation as is just and
15 reasonable.

16 (c) To demand a formal accounting of the corporation's affairs whenever
17 circumstances render it just and reasonable.

18 (4) Shareholders making a written request pursuant to Paragraph (2) of this
19 Subsection shall pay all applicable costs associated with the request.

20 (5) A corporation shall provide shareholders with signed written notice at
21 least fifteen business days prior to taking any of the following actions:

22 (a) Entering into a lease that extends beyond three years of any property
23 owned by the corporation.

24 (b) Entering into a lease that extends beyond three years of any property that
25 is not owned by the corporation.

26 (c) Buying or selling any property of the corporation valued at one hundred
27 thousand dollars or greater.

1 F. The right of inspection granted by this Section may not be abolished or
2 limited by a corporation's articles of incorporation, bylaws, unanimous governance
3 agreement, or any other agreement.

4 F. G. This Section does not affect either of the following:

5 (1) The right of a shareholder to inspect records ~~under~~ pursuant to R.S.
6 12:1-720 or, if the shareholder is in litigation with the corporation, to the same extent
7 as any other litigant.

8 (2) The power of a court to deny the right of inspection as to confidential
9 matters, or to place restrictions on the use or distribution of records as provided in
10 R.S. 12:1-1604(D).

11 G. H. For purposes of Subsections A through D and G(1) of this Section,
12 "shareholder" means a record shareholder, a beneficial shareholder, and an
13 unrestricted voting trust beneficial owner.

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 225 Original

2015 Regular Session

Lorusso

Abstract: Authorizes a right of first refusal and right to inspect corporate records for minority shareholders.

Proposed law authorizes a right of first refusal for the sale, lease, exchange, or other disposition of assets of a closely held corporation with five or fewer shareholders. The right of first refusal applies to a minority shareholder owning at least 33% of the total corporate stock for the past six months.

The right of first refusal authorized in proposed law becomes effective when the corporation approves a sale, lease, exchange, or other disposition of assets, but prior to the corporation entering into a binding contract; however, if the corporation does enter into a binding contract, that contract is subject to the right of first refusal.

Proposed law requires the corporation to provide a shareholder with written notice and disclosed terms of the proposed transaction pertaining to a right of first refusal. Proposed law requires the shareholder to accept or reject the proposed transaction within 15 business days from the date the shareholder receives written notice. Further requires a purchase contract to be signed by the corporation and minority shareholder within 30 days from the date of the shareholder's receipt of written notice.

Proposed law requires the transaction closing to be at the price and terms of the corporate approved transaction.

Proposed law authorizes the corporation to proceed otherwise with a proposed transaction if the minority shareholder does not timely accept the right or sign the required contract.

Proposed law authorizes rights to inspect various corporate documents of closely held corporations with five or fewer shareholders. The rights authorized in proposed law apply to a minority shareholder owning at least 33% of the total corporate stock for the past six months.

Proposed law authorizes the shareholder to inspect and copy the following: (1) any and all non-privileged corporate records; (2) true and complete information regarding the business and financial condition of the corporation; (3) drafts of federal and state income tax returns; (4) actual federal and state income tax returns; (5) monthly statements of profit and loss; (6) a formal accounting of corporate affairs whenever just and reasonable; (7) other corporate information deemed just and reasonable. Proposed law further requires a shareholder to provide a written request to inspect corporate records five days prior to inspection, and requires shareholders to pay reasonable costs associated with written requests for inspections.

Proposed law requires the corporation to give shareholders written notice of at least 15 business days before entering into property leases of more than three years, whether or not the property is owned by the corporation, and before buying or selling corporate property valued at \$100,000, or more.

Present law defines "shareholder" as a record shareholder, a beneficial shareholder, and an unrestricted voting trust beneficial owner. Proposed law retains present law and specifies certain provisions for which the term "shareholder" does not mean a minority shareholder.

(Amends R.S. 12:1-1602(E) - (G); Adds R.S. 12:1-1203 and 1-1602(H))