2016 Regular Session

# **ACT No. 442**

HOUSE BILL NO. 714

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

1 AN ACT 2 To amend and reenact R.S. 12:1-124(B), 1-128(B)(introductory paragraph) and (2), 3 1-140(15C), 1-141(I)(1)(introductory paragraph) and (3) and (J)(introductory 4 paragraph), 1-202(A)(5) and (B)(6) and (E), 1-302(introductory paragraph), 1-5 303(A)(introductory paragraph) and (D), 1-401(D)(introductory paragraph) and (2), 6 1-601(C)(introductory paragraph) and (1), 1-621(F)(2)(a)(introductory paragraph), 7 1-622(D)(introductory paragraph), 1-623(B)(introductory paragraph), 8 624(B)(introductory paragraph), 1-703(A)(introductory paragraph), 9 721(E)(2)(introductory paragraph), 1-725(A), (C), and (D), 1-727, 1-802, 1-805(B) 10 and (E), 1-820(C), 1-831(A)(1), 1-833(C)(1)(introductory paragraph), 1-11 842(C)(introductory paragraph), 1-851(A)(introductory paragraph) and (1), 1-12 854(A)(introductory paragraph) and (3), 1-860(5), 1-870(A), 1-1022, 1-13 1106(A)(introductory paragraph), 1-1107(A)(9) and (F)(introductory paragraph) and 14 (2), 1-1301(5.1)(introductory paragraph), 1-1432(C)(introductory paragraph), 1-15 1435(F), 1-1436(D)(2)(b), 1-1444(A), and 1-1602(F)(introductory paragraph) and 16 to enact R.S. 12:1-143(A)(5), 1-202(B)(7) and (F), 1-709, 1-832(D), 1-870(C), 1-17 955(F) and 1-1705, relative to corporations; to provide for qualifications of directors; 18 to provide relative to business opportunities; to provide for remote participation in 19 shareholders' meetings; to provide relative to quorum and voting requirements; to 20 provide relative to board of director meetings; to provide relative to protection 21 against monetary liability; to provide for required disclosures; to provide for service

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of process on foreign entities; to provide relative to public corpo	ration bylaws
provisions relating to the election of directors; to provide for previous	s delivery of a
share certificate for withdrawal by an oppressed shareholder; to provi	de a transition
rule for reinstatement of corporations with revoked charters; to provid	e for technical
corrections; and to provide for related matters.	
Be it enacted by the Legislature of Louisiana:	
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Section 1. R.S. 12:1-124(B), 1-128(B)(introductory paragraph) and (2), 1-140(15C), 1-141(I)(1)(introductory paragraph) and (3) and (J)(introductory paragraph), 1-202(A)(5) and (B)(6) and (E), 1-302(introductory paragraph), 1-303(A)(introductory paragraph) and (D), 1-401(D)(introductory paragraph) and (2), 1-601(C)(introductory paragraph) and (1), 1-621(F)(2)(a)(introductory paragraph), 1-622(D)(introductory paragraph), 1-623(B)(introductory paragraph), 1-624(B)(introductory paragraph), 1-703(A)(introductory paragraph), 1-721(E)(2)(introductory paragraph), 1-725(A), (C), and (D), 1-727, 1-802, 1-805(B) and (E), 1-820(C), 1-831(A)(1), 1-833(C)(1)(introductory paragraph), 1-842(C)(introductory paragraph), 1-851(A)(introductory paragraph) and (1), 1-854(A)(introductory paragraph) and (3), 1-860(5), 1-870(A), 1-1022, 1-1106(A)(introductory paragraph), 1-1107(A)(9) and (F)(introductory paragraph) and (2), 1-1301(5.1)(introductory paragraph), 1-1432(C)(introductory paragraph), 1-1435(F), 1-1436(D)(2)(b), 1-1444(A) and 1-1602(F)(introductory paragraph) are hereby amended and reenacted and R.S. 12:1-143(A)(5), 1-202(B)(7) and (F), 1-709, 1-832(D), 1-870(C), 1-955(F) and 1-1705 are hereby enacted to read as follows:

§1-124. Correcting filed document

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filing articles of correction. The articles of correction shall do all of the following: (1) Preparing articles of correction that perform all of the following: (a)(1) Describe the document, including its filing date, or attach a copy of it to the articles.

B. A document is corrected by doing delivering to the secretary of state for

- (b)(2) Specify the inaccuracy or defect to be corrected.
- (c)(3) Correct the inaccuracy or defect.

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1	(2) Delivering the articles to the secretary of state for filing.
2	* * *
3	§1-128. Certificate of existence and standing
4	* * *
5	B. A certificate of existence, or authorization, and standing shall set forth
6	state all of the following:
7	* * *
8	(2) That either One of the following apply:
9	(a) The That the domestic corporation is duly incorporated under the law of
10	this state, along with the date of its incorporation and the period of its duration if less
11	than perpetual.
12	(b) The That the foreign corporation is authorized to do business in this
13	state.
14	* * *
15	§1-140. Definitions
16	In this Chapter:
17	* * *
18	(15C) "Owner liability" means personal liability for a debt, obligation, or
19	liability of a domestic or foreign business or nonprofit corporation or unincorporated
20	entity that is imposed on a person by either of the following:
21	(a) Solely solely by reason of the person's status as a shareholder, partner,
22	member, or interest holder.
23	(b) By the or solely by the terms of articles of incorporation, bylaws, or an
24	organic document under a provision of the organic law of an entity authorizing the
25	articles of incorporation, bylaws or an organic document to make one or more
26	specified shareholders, partners, members, or interest holders liable in their capacity

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obligations, or liabilities of the entity.

as shareholders, partners, members, or interest holders for all or specified debts,

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1	§1-141. Notices and other communications
2	* * *
3	I. Notice or other communication, if in a comprehensible form or manner,
4	is effective at the earliest of the following:
5	(1) If in physical form, the earliest of when it is actually received, or when
6	it is left at a place apparently designated for the receipt of mail or other similar
7	communication at any the relevant one of the following:
8	* * *
9	(3) If mailed by United States mail postage prepaid and correctly addressed
10	to a recipient other than a shareholder, the earliest of when it is actually received, or
1	either of the following:
12	(a) The date when actually received.
13	(a)(b) If sent by registered or certified mail, return receipt requested, the date
14	shown on the return receipt signed by or on behalf of the addressee.
15	(b)(c) Five days after it is deposited in the United States mail.
16	* * *
17	J. A notice or other communication may be in the form of an electronic
18	transmission that cannot be directly reproduced in paper form by the recipient
19	through an automated process used in conventional commercial practice only if both
20	all of the following conditions requirements are met:
21	* * *
22	§1-143. Qualified director
23	A. A "qualified director" is a director who meets the following criteria:
24	* * *
25	(5) At the time action is to be taken under R.S. 12:1-202(B)(6), a director
26	who is neither of the following:
27	(a) A director to whom the limitation or elimination of the duty of an officer

to offer potential business opportunities to the corporation would apply.

1	(b) A director who is a related person to another officer to whom the
2	limitation or elimination would apply.
3	* * *
4	§1-202. Articles of incorporation and signed consent by agent to appointment
5	A. The articles of incorporation must set forth all of the following:
6	* * *
7	(5) If the corporation chooses to reject or limit Whether the corporation
8	accepts, rejects, or limits, with a statement of the limitations, the protection against
9	liability of directors and officers that is provided by R.S. 12:1-832, a statement of the
10	rejection or limitation.
1	* * *
12	B. The articles of incorporation may set forth any of the following:
13	* * *
4	(6) A provision prospectively limiting or eliminating any duty of a director
15	or any other person to offer the corporation the right to participate in any business
16	opportunity or in any class or category of business opportunity. The provision shall
17	not limit or eliminate any duty of an officer or a related person of an officer until
18	qualified directors, acting after the effective date of the provision and in accordance
19	with the procedures set forth in R.S. 12:1-862, approve the application of the
20	provision to that officer or related person. The approval shall have prospective effect
21	only and may allow the provision to apply in full or to apply as limited by the terms
22	of the approval.
23	(6)(7) A provision that cash, property or share dividends, shares issuable to
24	shareholders in connection with a reclassification of stock, and the redemption price
25	of redeemed shares, that are not claimed by the shareholders entitled thereto within
26	a reasonable time, not less than one year in any event, after the dividend or
27	redemption price became payable or the shares became issuable, despite reasonable
28	efforts by the corporation to pay the dividend or redemption price or deliver the
29	certificates for the shares to such shareholders within such time, shall, at the

expiration of such time, revert in full ownership to the corporation, and the

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1	corporation's obligation to pay such dividend or redemption price or issue such
2	shares, as the case may be, shall thereupon cease; provided that the board of directors
3	may, at any time, for any reason satisfactory to it, but need not, authorize either of
4	the following:
5	* * *
6	E. As used in this Section, "related person" has the meaning specified in R.S.
7	<u>12:1-860(5).</u>
8	E.F. A written consent to appointment, signed by the initial registered agent,
9	shall be attached or appended to the articles of incorporation.
10	Comment - 2016
11 12 13 14 15 16 17 18 19 20	Paragraph (A)(5) of this Section was amended in 2016 to eliminate the mandatory nature of the statement in the articles of incorporation of a corporation's acceptance, rejection or limitation of the protection against monetary liability - often called "exculpation" - provided by R.S. 12:1-832. A statement concerning exculpation is required only if the corporation chooses to reject or limit the protections provided by R.S. 12:1-832. The earlier approach was designed only to alert those filing new articles of incorporation to the change in the law concerning the default rule on the subject. A reference to the now-optional statement remains part of Subsection (A) to draw attention to the possibility of rejecting or limiting the protections that R.S. 12:1-832 provides by default.
21	* * *
22	§1-302. General powers
23	Unless its articles of incorporation provide otherwise, every corporation has
24	perpetual duration and has the power to do all things necessary or convenient to carry
25	out its business and affairs, including without limitation power to do perform any of
26	the following actions:
27	* * *
28	§1-303. Emergency powers
29	A. In anticipation of or during an emergency defined in Subsection D of this
30	Section, the board of directors of a corporation may do either any of the following:
31	* * *
32	D. An emergency exists for purposes of this Section if a catastrophic event

makes it impracticable, without applying the rules <del>pursuant to</del> stated in Subsection

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B of this Section, to attain a quorum of the corporation's directors when and as

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2 necessary to carry out the functions of the board of directors. 3 4 §1-401. Corporate name 5 6 D. A corporation may use in its filings with the secretary of state a name that 7 is not distinguishable from one or more of the names described in Subsection B of 8 this Section if the registrant of the name is incorporated, organized, or authorized to 9 transact business in this state and the proposed user corporation performed did any 10 of the following actions: 11 (2) Been formed by Came into existence through the reorganization of the 12 13 other registrant. 14 15 §1-601. Authorized shares 16 17 C. The articles of incorporation may authorize one or more classes or series 18 of shares that meet have any of the following characteristics eriteria: 19 (1) Have Are entitled to special, conditional, or limited voting rights, or no 20 right to vote, except to the extent otherwise provided by this Chapter. 21 22 §1-621. Issuance of shares 23 24 F. 25 26 (2) In this Subsection, both of the following shall apply: 27 (a) For purposes of determining the voting power of shares issued and 28 issuable as a result of a transaction or series of integrated transactions, the voting 29 power of shares shall be the greater of either of the following: 30

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'S	§1-622. Liability of shareholders	1
* *	*	2
orce the liability of a shareholder under Subsection	D. A proceeding to enforc	3
peremptive period of two years measured from the	C of this Section is subject to a per	4
tes date of either of the following:	relevant one of the following dates	5
* *	*	6
	§1-623. Share dividends	7
* *	*	8
or series may not be issued as a share dividend in	B. Shares of one class or	9
or series unless one of the following conditions are	respect of shares of another class or	10
	is satisfied:	11
* *	*	12
	§1-624. Share options	13
* *	*	14
tions of such rights, options or warrants, including	B. The terms and conditio	15
etive date of this Section, may include, without	those outstanding on the effective	16
ions that do either any of the following:	limitation, restrictions or condition	17
* *	*	18
	§1-703. Court-ordered meeting	19
the parish where a corporation's principal office or,	A. The district court of the	20
ed office, is located may in a summary proceeding	if none in this state, its registered	21
on either of the following:	order a meeting to be held at upon	22
* *	*	23
annual and special meetings	§1-709. Remote participation in a	24
class or series may participate in any meeting of	A. Shareholders of any cl	25
e communication to the extent the board of directors	shareholders by means of remote co	26
or such class or series. Participation by means of	authorizes such participation for	27
subject to such guidelines and procedures as the	remote communication shall be su	28

board of directors adopts, and shall be in conformity with Subsection B.

1	B. Shareholders participating in a shareholders meeting by means of remote
2	communication shall be deemed present and may vote at such a meeting if the
3	corporation has implemented reasonable measures to do all of the following:
4	(1) Verify that each person participating remotely is a shareholder.
5	(2) Provide such shareholders a reasonable opportunity to participate in the
6	meeting and to vote on matters submitted to the shareholders, including an
7	opportunity to communicate, and to read or hear the proceedings of the meeting,
8	substantially concurrently with such proceedings.
9	* * *
10	§1-721. Voting entitlement of shares
11	* * *
12	E. For purposes of Subsections B and C of this Section, the following
13	meanings shall apply:
14	* * *
15	(2) "Majority control" means ownership, direct or indirect, of a majority of
16	either any of the following:
17	* * *
18	§1-725. Quorum and voting requirements for voting groups
19	A. Shares entitled to vote as a separate voting group may take action on a
20	matter at a meeting only if a quorum of those shares exists with respect to that
21	matter. Unless the articles of incorporation provide otherwise Unless a provision in
22	the articles of incorporation authorized by R.S. 12:1-727 provides otherwise, a
23	majority of the votes entitled to be cast on the matter by the voting group constitutes
24	a quorum of that voting group for action on that matter.
25	* * *
26	C. If a quorum exists, action on a matter, other than the election of directors,
27	by a voting group is approved if the votes cast within the voting group favoring the
28	action exceed the votes cast opposing the action, unless this Chapter or the articles
29	of incorporation require a greater number of affirmative votes.

D. [Reserved.] An amendment of articles of incorporation adding, changing, or deleting a quorum or voting requirement for a voting group greater than specified in Subsection A or C of this Section is governed by R.S. 12:1-727.

\* \* \*

### Comment - 2016

Model Act § 7.25 (d) was omitted from this Section in connection with an amendment of R.S. 12:1-727 that covered the same subject matter.

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## §1-727. Greater quorum or voting requirements

A. The articles of incorporation may provide for a greater <del>quorum or voting</del> 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 twenty-five percent of the shares entitled to vote on a matter.

B. An amendment to the articles of incorporation that adds, changes, or deletes a greater quorum or voting requirement must meet the same quorum requirement and be adopted by the same vote and voting groups required to take action under the quorum and voting requirements then in effect or proposed to be adopted, whichever is greater.

## Comment - 2016

This Section was amended in 2016 to clarify the extent to which the quorum and voting requirements provided by this Chapter could be changed by provisions in the articles of incorporation. This Section effectively adopts the approach to the issue taken by the former LBCL. While the LBCL did permit the voting requirement for most fundamental decisions, such as mergers and amendments of the articles of incorporation, to be reduced from its statutory default standard of two-thirds of shares present, it did not permit the standard to be reduced to less than a majority of voting power. This Chapter provides the equivalent of that minimum standard, a majority of shares entitled to vote on a matter, as the default rule for fundamental decisions. Hence, by allowing only increases in that standard in the articles of incorporation, this Section is effectively retaining the floor that was imposed by the LBCL with respect to decisions of that kind. The other two voting requirements provided by this Chapter - plurality voting for directors and a majority-of-votes-cast standard for decisions not governed by other rules - are already as low as they

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1 2	practically could be for such decisions. They may be increased, but not decreased, by a provision in the articles of incorporation.
3	* * *
4	§1-802. Qualifications of directors
5	A. The articles of incorporation or bylaws may prescribe qualifications for
6	directors or for nominees for director. A director need not be a resident of this state
7	or a shareholder of the corporation unless the articles of incorporation or bylaws so
8	<del>prescribe.</del>
9	B. A requirement that is based on a past, current or prospective action, or
10	expression of an opinion, by a nominee or director that could limit the ability of a
11	nominee or director to discharge his or her duties as a director is not a permissible
12	qualification under this Section. Notwithstanding the foregoing, qualifications may
13	include not being or having been subject to specified criminal, civil or regulatory
14	sanctions or not having been removed as a director by judicial action or for cause.
15	C. A director need not be a resident of this state or a shareholder of the
16	corporation unless the articles of incorporation or bylaws so provide.
17	D. A qualification for nomination for director adopted before a person's
18	nomination shall apply to such person at the time of nomination. A qualification for
19	nomination for director adopted after a person's nomination shall not apply to such
20	person with respect to such nomination.
21	E. A qualification for director adopted before the start of a director's term
22	may apply only at the time an individual becomes a director or may apply during a
23	director's term. A qualification adopted during a director's term shall not apply to that
24	director before the end of that term.
25	* * *
26	§1-805. Terms of directors generally
27	* * *
28	B. The terms of all other directors expire at the next, or if their terms are
29	staggered in accordance with R.S. 12:1-806, at the applicable second or third, annual
30	shareholders' meeting following their election, except to the extent provided in a

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1	bylaw authorized by R.S. 12:1-1022 if a bylaw electing to be governed by that
2	Section is in effect or a shorter term is specified in the articles of incorporation in the
3	event of a director nominee failing to receive a specified vote for election.
4	* * *
5	E. Except to the extent otherwise provided in the articles of incorporation or
6	under a bylaw authorized by R.S. 12:1-1022 if a bylaw electing to be governed by
7	that Section is in effect, despite the expiration of a director's term, the director
8	continues to serve until the director's successor is elected and qualifies or there is a
9	decrease in the number of directors.
10	* * *
11	§1-820. Meetings
12	* * *
13	C. A meeting of the board of directors may be called as provided in the
14	bylaws, and may also be called by the board chair, by the chief executive officer,
15	regardless of the title used by the corporation to designate that officer, or by a
16	majority of the directors.
17	* * *
18	§1-831. Standards of liability for directors
19	A. A director shall not be liable to the corporation or its shareholders for any
20	decision to take or not to take action, or any failure to take any action, as a director,
21	unless the party asserting liability in a proceeding establishes both of the following:
22	(1) No defense interposed by the director based on R.S. 12:1-832, a
23	provision in the articles of incorporation authorized by R.S. 12:1-202(B)(6), the
24	protection afforded by R.S. 12:1-861, for action taken in compliance with R.S.
25	12:1-862 or R.S. 12:1-863, or the protection afforded by R.S. 12:1-870, precludes
26	liability.

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§1-832. Protection against monetary liability

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D. A provision in a corporation's articles of incorporation that became effective before January 1, 2015, and that purports to protect a director or officer of the corporation against monetary liability to the corporation or its shareholders, shall not operate as a limitation of the protection against liability provided by this Section except to the extent that it provides less protection against liability than was permitted by the law in effect at the time the provision became effective.

### Comment - 2016

In accordance with R.S. 12:1-1701, the protections provided by this Section apply to all Louisiana business corporations, including those formed before January 1, 2015. However, many corporations that were formed before that date will already have provisions in their articles of incorporation that were designed to provide similar protections under the "opt in" form of exculpation provision that was permitted under former law. Subsection (D) of this Section was added in 2016 to provide a transitional rule for corporations whose articles of incorporation contain that kind of exculpatory provision.

The transitional rule turns on whether a pre-2015 exculpatory provision provided less protection than allowed by law at the time that the provision became effective. While such a provision might theoretically create a complicated set of questions concerning the law in effect at a particular time, the law that authorized exculpatory provisions was first enacted in 1987 and did not change until it was repealed, effective January 1, 2015, the date that the current law took effect. The relevant provision was former R.S. 12:24(C)(4), which read as follows:

A provision eliminating or limiting the personal liability of a director or officer to the corporation or its shareholders for monetary damages for breach of fiduciary duty as a director or officer, provided that such provision shall not eliminate or limit the liability of a director or officer:

- (a) For any breach of the director's or officer's duty of loyalty to the corporation or its shareholders;
- (b) For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law;
  - (c) For liability under R.S. 12:92(D); or
- (d) For any transaction from which the director or officer derived a improper personal benefit.

No such provision shall eliminate or limit the liability of a director or officer for any act or omission occurring prior to the date when such provision becomes effective.

The four exceptions to exculpation listed in former R.S. 12:24(C)(4) are similar, but not identical, to the four exceptions listed in Subsection (A) of this Section. Hence, pre-2015 exculpatory provisions that essentially copied the former statutory language will contain exceptions to exculpation that will differ from those provided in this Section. Some of those differences will not matter. The old reference to former R.S. 12:92(D), for example, which dealt with unlawful dividends, has been replaced in the current law by a reference to R.S. 12:1-833, the current unlawful dividend provision. But the current law states its own prohibition

against the elimination of the unlawful dividend liability imposed by R.S. 12:1-833,

regardless of whether a similar limitation appears in a corporation's articles of

of exceptions could matter. The former law, for example, did not allow a

corporation to eliminate a director's or officer's liability for any form of "intentional

misconduct" or any "knowing violation of law," while the current law excludes that

form of protection only for an intentional infliction of harm on the corporation or its

shareholders or for an intentional violation of criminal law. Hence, it is possible that

the language of a pre-2015 exculpatory provision could be construed as a limitation

on exculpation if it tracked the old statutory language, even though a provision of

extent allowed by law, and thus to the full extent provided by this Section. In the

unlikely event that a corporation did choose to adopt an exculpatory provision before

2015, but on terms more limited than those allowed by former R.S. 12:24(C)(4), the

Still, it is possible that other differences between the former and current list

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that kind was far more likely intended to provide, not limit, the broadest form of exculpation permitted by law. Subsection (D) of this Section is designed to give effect to the likely intention of the shareholders who approved a pre-2015 exculpation provision. If a pre-2015 provision provided for exculpation subject only to exceptions that tracked the old statutory language, the provision is treated as calling for exculpation to the full

incorporation. See R.S. 12:1-832(B).

greater-than-required form of limitation continues to be respected by Subsection (D), as that form of limitation suggests a deliberate choice by shareholders not to provide as much protection against liability as allowed by law.

§1-833. Directors' liability for unlawful distributions

C.(1) A proceeding to enforce the liability of a director under Subsection A of this Section is barred unless it is commenced within two years after of the relevant

one of the following dates:

§1-842. Standards of conduct for officers

C. In discharging his or her duties, an officer who does not have knowledge

that makes reliance unwarranted is entitled to rely on either any of the following:

§1-851. Permissible indemnification

Except as otherwise provided in this Section, a corporation may indemnify an individual who is a party to a proceeding because the individual is a director against liability incurred in the proceeding if either condition exists the requirements of Paragraph (1) or (2) of this Subsection are met:

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1	(1)(a) The director satisfied the requirements of Subparagraphs (a) and (b)
2	and, if applicable, Subparagraph (c) of this Paragraph:
3	(a) The director conducted himself or herself in good faith. and reasonably
4	believed either of the following:
5	(b) The director reasonably believed the relevant one of the following:
6	(i) In the case of conduct in an official capacity, that his or her conduct was
7	in the best interests of the corporation.
8	(ii) In all other cases, that the director's conduct was at least not opposed to
9	the best interests of the corporation.
10	(b)(c) In the case of any criminal proceeding, the director had no reasonable
11	cause to believe his or her conduct was unlawful.
12	* * *
13	§1-854. Court-ordered indemnification and advance for expenses
14	A. A director who is a party to a proceeding because he or she is a director
15	may petition the court conducting the proceeding for indemnification or an advance
16	for expenses or, if the indemnification or advance for expenses is beyond the scope
17	of the proceeding or of the jurisdiction of the court or other forum for the proceeding,
18	may petition another court of competent jurisdiction. After ordering any notice it
19	considers necessary, the court shall hear the petition by summary proceeding and
20	shall, if it makes the required determination, order one of the following:
21	* * *
22	(3) Indemnification or advance for expenses if the court determines, in view
23	of all the relevant circumstances, that it is fair and reasonable for the corporation to
24	provide the ordered indemnification or advance for expenses, a do either of the
25	following:
26	(a) Indemnify the director.
27	(b) Advance expenses to the director, even if, in the case of (a) or (b), he or
28	she has not met even though the director did not meet the relevant standard of
29	conduct set forth in R.S. 12:1-851(A), failed to comply with R.S. 12:1-853, or was
30	adjudged liable in a proceeding referred to in R.S. 12:1-851(D)(1) or (D)(2), but if

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1	in the director was adjudged so hable in a proceeding referred to in R.S.
2	12:1-851(D)(1) or (D)(2), indemnification shall be limited to expenses incurred in
3	connection with the proceeding.
4	* * *
5	§1-860. Subpart definitions
6	In this Subpart, the following meanings shall apply:
7	* * *
8	(5) "Related person" means, at the relevant time, one any of the following:
9	(a) The director's individual's spouse.
10	(b) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling,
11	stepsibling, half sibling, aunt, uncle, niece or nephew, or spouse of any thereof, of
12	the director individual or of the director's individual's spouse.
13	(c) An individual A natural person living in the same home as the director
14	individual.
15	(d) An entity, other than the corporation or an entity controlled by the
16	corporation, controlled by the director individual or any person specified above in
17	this Paragraph.
18	(e) A domestic or foreign business or nonprofit corporation, other than the
19	corporation or an entity controlled by the corporation, of which the director
20	individual is a director, a domestic or foreign unincorporated entity of which the
21	director individual is a general partner or a member of the governing body, or a
22	domestic or foreign individual, trust, or estate for whom or of which the director
23	individual is a trustee, guardian, personal representative, or like fiduciary.
24	(f) A person that is, or an entity that is controlled by, an employer of the
25	director individual.
26	(g) A person with whom the director individual has a material relationship.
27	* * *
28	§1-870. Business opportunities
29	A. A director's If a director or officer or related person of either pursues or
30	takes taking advantage, directly or indirectly, of a business opportunity, that action

may not be the subject of any form of relief, or give rise to an award of damages or other sanctions against the director, <u>officer or related person</u>, in a proceeding by or in the right of the corporation on the ground that such opportunity should have first been offered to the corporation, if <u>before becoming legally obligated respecting the opportunity the director brings it to the attention of the corporation, and either of the <u>following occurs the requirements of Paragraph (1) or (2) of this Subsection are satisfied:</u></u>

(1) Before the director, officer or related person becomes legally obligated respecting the opportunity, the director or officer brings it to the attention of the corporation and either of the following occurs:

(1)(a) Action by qualified directors disclaiming the corporation's interest in the opportunity is taken in compliance with the <u>same</u> procedures set forth in R.S. 12:1-862, as if the decision being made concerned a director's conflicting interest transaction.

(2)(b) Shareholders' action disclaiming the corporation's interest in the opportunity is taken in compliance with the procedures set forth in R.S. 12:1-863, as if the decision being made concerned a director's conflicting interest transaction; except that, rather than making "required disclosure" as defined in R.S. 12: 1-860, in each case the director shall have made prior disclosure to those acting on behalf of the corporation of all material facts concerning the business opportunity that are then known to the director.

(2) The duty to offer the corporation the particular business opportunity has been limited or eliminated pursuant to a provision of the articles of incorporation adopted, and in the case of officers and their related persons made effective by action of qualified directors, in accordance with R.S. 12:1-202(B)(6).

\* \* \*

C. For purposes of this Section, the term "required disclosure" as used in R.S. 12:1-862 and R.S. 12:1-863 means prior disclosure to those acting on behalf of

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1	the corporation of an material facts concerning the business opportunity that are then
2	known to the director or officer.
3	* * *
4	§1-955. Effect of entity conversion
5	* * *
6	F. For purposes of service of process under Paragraph (B)(2) of this Section,
7	a foreign eligible entity that is a survivor of a merger may be served in accordance
8	with the rules applicable to service of process on a foreign corporation, as if both of
9	the following conditions existed:
10	(1) The survivor were a foreign corporation.
11	(2) Each of the following persons were a director of that corporation:
12	(a) A general partner if the survivor is a partnership of any kind.
13	(b) A member if the survivor is a member-managed limited liability
14	company.
15	(c) A manager if the survivor is a manager-managed limited liability
16	company.
17	(d) A person holding managerial authority in the survivor, regardless of the
18	form of the surviving entity, that is similar to that of an officer or director of a
19	domestic business corporation.
20	* * *
21	§1-1022. Public corporation bylaw provisions relating to the election of directors
22	A. Unless the articles of incorporation specifically prohibit the adoption of
23	a bylaw pursuant to this Section, alter the vote specified in R.S. 12:1-728(A), or
24	provide for cumulative voting, a public corporation may elect in its bylaws to
25	provide a means for a shareholder to vote against the election of an individual to
26	serve as a director and, notwithstanding a director's election by plurality vote, to limit
27	the term or require the resignation of any director who receives more votes against
28	than for his or her election. be governed in the election of directors as follows:

B. The expiration of a limited term, or the resignation of a director, pursuant to a bylaw authorized by this Section creates a vacancy that is governed by R.S. 12:1-810.

- (1) Each vote entitled to be cast may be voted for or against up to that number of candidates that is equal to the number of directors to be elected, or a shareholder may indicate an abstention, but without cumulating the votes.
- (2) To be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present, provided that a nominee who is elected but receives more votes against than for election shall serve as a director for a term that shall terminate on the date that is the earlier of ninety days from the date on which the voting results are determined pursuant to R.S. 12:1-729(B)(5) or the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which R.S. 12:1-810 applies. Subject to Paragraph (A)(3) of this Section, a nominee who is elected but receives more votes against than for election shall not serve as a director beyond the ninety-day period referenced above.
- (3) The board of directors may select any qualified individual to fill the office held by a director who received more votes against than for election.

B. Subsection A of this Section does not apply to an election of directors by a voting group if at the expiration of the time fixed under a provision requiring advance notification of director candidates, or absent such a provision, at a time fixed by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this Subsection if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

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1	C. A dylaw electing to be governed authorized by this Section may be
2	repealed by either of the following:
3	(1) If originally adopted by the shareholders, only by the shareholders, unless
4	the bylaw otherwise provides.
5	(2) If adopted by the board of directors, by the board of directors or the
6	shareholders.
7	Source: MBCA § 10.22.
8	Comments - 2016
9 10 11 12 13 14	(a) As originally enacted, this Section tracked the approach taken in the Model Act. Under that approach, a public corporation that wished to provide in its bylaws for procedures through which shareholders could vote against the election of a director could do so only by opting in to a detailed set of rules provided in the Model Act itself. This Section was amended in 2016 to replace the earlier standardized approach with a more general statement of authority for the adoption of bylaws of that kind.
16 17 18 19 20	(b) Bylaws authorized by this Section do not change the plurality vote rule stated in R.S. 12:1-728(A); that rule may be changed only in the articles of incorporation. Rather, they cause the effect of an election to be limited by a resignation or an abbreviated term, and to create vacancy on the board that may be filled in accordance with R.S. 12:1-810.
21	* * *
22	§1-1106. Articles of merger or share exchange
23	A. After a plan of merger or share exchange has been adopted and approved
24	as required by this Subpart, articles of merger or share exchange shall be signed on
25	behalf of each party to the merger or share exchange by any officer or other duly
26	authorized representative. Articles of merger need not be signed on behalf of any
27	subsidiary that is a party to a merger authorized without the approval of the
28	subsidiary's board of directors or shareholders as permitted by R.S. 12:1-1105(A).
29	The articles shall set forth all of the following:
30	* * *
31	§1-1107. Effect of merger or share exchange
32	A. When the merger becomes effective, all of the following shall apply:
33	* * *
34	(9) The survivor possesses all the rights, licenses, privileges, and franchises
35	possessed by each of the parties to the merger, except that the survivor does not

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1	possess any right, license, privilege, or franchise that meets either of the following
2	<del>conditions:</del>
3	(a) The the survivor is ineligible to possess or to exercise or that does
4	(b) Does not survive a merger because of a provision to that effect in the law
5	or administrative rules under which the right, license, privilege, or franchise is held
6	at the time of the merger.
7	* * *
8	F. For purposes of service of process under Paragraph (D)(2) of this Section,
9	a foreign eligible entity that is a survivor of a merger may be served in accordance
10	with the rules applicable to service of process on a foreign corporation, as if both of
11	the following conditions exist existed:
12	* * *
13	(2) Each of the following persons were a director of that corporation:
14	* * *
15	§1-1301. Definitions
16	In this Part, the following meanings shall apply:
17	* * *
18	(5.1) "Interested person" means a person, or an affiliate of a person, who at
19	any time during the one-year period immediately preceding approval by the board
20	of directors of the corporate action, satisfies one any of the following criteria:
21	* * *
22	§1-1432. Appointment of receiver or liquidator
23	* * *
24	C. The court shall describe the powers and duties of the receiver or liquidator
25	in its appointing order, which may be amended from time to time and may require

\* \* \*

may be exercised actions may be taken:

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the receiver or liquidator to file interim and final reports with the court as the court

considers appropriate. Except as limited by the court, either of the following powers

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F. A notice of acceptance that operates as an acceptance of both the shareholder's offer to sell and the shareholder's proposed price forms a contract of sale of the shares at that price, payable in cash. The contract includes the warranties of a seller of investment securities under the Uniform Commercial Code and imposes a duty on the selling shareholder to deliver any certificates issued by the corporation for the withdrawing shareholder's shares or, if a certificate has been lost, stolen, or destroyed, or previously delivered to the corporation, an affidavit to that effect. Either party may file an action to enforce the contract at the specified price if the contract is not fully performed within thirty days after the effective date of the notice of acceptance. If a withdrawing shareholder fails to deliver the certificate for a share purchased by the corporation under a contract formed under this Subsection, the shareholder owes the same indemnity obligation as a shareholder who sells shares as described in R.S. 12:1-1436(F).

\* \* \*

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

\* \* \*

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

\* \* \*

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

26 \* \* \*

(b) Orders the shareholder to deliver to the corporation within thirty days of the date of the judgment any certificate issued by the corporation for the shares or

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1	an affidavit by shareholder that the certificate has been lost, stolen, or destroyed, or
2	previously delivered to the corporation.
3	* * *
4	§1-1444. Reinstatement of terminated corporation
5	A. A terminated corporation may be reinstated if the corporation satisfies
6	both of the following conditions:
7	(1) <u>It was Was not dissolved by a judgment of dissolution.</u>
8	(2) <u>It requests</u> reinstatement in accordance with this Section no
9	later than three years after the effective date of its articles or certificate of
10	termination.
11	* * *
12	§1-1602. Inspection of records by shareholders
13	* * *
14	F. This Section does not affect either any of the following:
15	* * *
16	§1-1705. Transition rule for reinstatement of a corporation with a revoked charter
17	A. A corporation whose charter was revoked before January 1, 2015, may
18	be reinstated as provided in R.S. 12:1-1444 for a corporation that was terminated
19	administratively. Subject to the time limitation stated in Subsection F of this
20	Section, a corporation whose charter was revoked before January 1, 2015, may also
21	be reinstated as provided in Subsections B through E of this Section.
22	B. A corporation whose charter was revoked before January 1, 2015, may
23	request reinstatement by delivering to the secretary of state for filing articles of
24	charter-revocation reinstatement and the current annual report. The articles of
25	charter-revocation reinstatement and the annual report shall be signed by an office
26	or director of the corporation who is entitled to approve articles of reinstatemen
27	under R.S. 12:1-1444(B). The annual report shall be accompanied by a written
28	consent to appointment signed by the registered agent named in the annual report.

29

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following:

C. The articles of charter-revocation reinstatement shall state all of the

HB NO. 714 **ENROLLED** 1 (1) The name of the corporation. 2 (2) That the charter of the corporation was revoked before January 1, 2015. 3 (3) That the reinstatement was approved by an officer or director who is 4 entitled to approve articles of reinstatement pursuant to R.S. 12:1-1444(B). 5 (4) That the corporation is reinstated, effective retroactively as if the 6 corporation had never been terminated. 7 D. If the corporation's name is no longer available for use, the secretary of 8 state shall file the articles of charter-revocation reinstatement only if the corporation 9 also delivers for filing articles of amendment that change the name of the corporation 10 to a name that meets the requirements of R.S. 12:1-401. 11 E. When the secretary of state files articles of charter-revocation 12 reinstatement, the existence of the corporation is reinstated retroactively, and the 13 corporation continues to exist as if the termination had never occurred. 14 F. A corporation may be reinstated pursuant to Subsections B through E of 15 this Section only if the documents required by those Subsections, and entitled to 16 filing pursuant to R.S. 12:1-120, are delivered for filing to the secretary of state 17 before January 1, 2019. SPEAKER OF THE HOUSE OF REPRESENTATIVES PRESIDENT OF THE SENATE GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_