Regular Session, 2013

HOUSE BILL NO. 408

BY REPRESENTATIVE FOIL

(On Recommendation of the Louisiana State Law Institute)

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

CORPORATIONS: Revises the business corporation laws

1 AN ACT

2 To amend and reenact R.S. 12:1501, 1502(A), and 1601 through 1604, R.S. 44:4.1(B)(5),
3 R.S. 49:222(B)(1) and (6), and Code of Civil Procedure Article 611, to enact R.S.
4 12:1-101 through 1-1704, 1702, and 1703 and to repeal R.S. 12:1 through 178 and
5 1605 through 1607, relative to corporations; to provide for general provisions; to
6 provide for incorporation; to provide for the purposes and powers of corporations;
7 to provide for names; to provide for offices and agents; to provide for shares and
8 distributions; to provide with respect to shareholders; to provide with respect to
9 directors and officers; to provide for domestication and conversion; to provide for
10 the amendment of articles of incorporation and bylaws; to provide for mergers and
11 share exchanges; to provide for the disposition of assets; to provide for appraisal
12 rights; to provide for dissolution; to provide for foreign corporations; to provide for
13 records and reports; to provide for transition provisions; to provide for the
14 applicability of Chapter 24 of Title 12 of the Louisiana Revised Statutes of 1950; to
15 provide for the conversion of business organizations; to provide for fees; to provide
16 for derivative actions; to provide for the continuous revision of Title 12 of the
17 Louisiana Revised Statutes of 1950; to provide an effective date; and to provide for
18 related matters.

19 Be it enacted by the Legislature of Louisiana:

20 Section 1. R.S. 12:1501, 1502(A), and 1601 through 1604 are hereby amended and
21 reenacted and R.S. 12:1-101 through 1-1704, 1702, and 1703 are hereby enacted to read as
22 follows:

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1 PART 1. GENERAL PROVISIONS

2 SUBPART A. SHORT TITLE AND RESERVATION OF POWER

3 §1-101. Short title

4 This Chapter shall be known and may be cited as the "Business Corporation
5 Act." References in this Chapter to "this Act" and elsewhere in the Revised Statutes
6 to the Business Corporation Law shall be deemed to be references to this Chapter.

7 Source: MBCA §1.01.

8 Comment - 2013 Revision

9 The former statute was known as the "Business Corporation Law." The
10 distinct name for this Act will make it consistent with that of the Model Business
11 Corporation Act, on which it is based, and provide a convenient means of
12 distinguishing the earlier statute from the current one.

13 §1-102. Reservation of power to amend or repeal

14 The Legislature has power to amend or repeal all or part of this Act at any
15 time and all domestic and foreign corporations subject to this Act are governed by
16 the amendment or repeal.

17 Source: MBCA §1.02.

18 SUBPART B. FILING DOCUMENTS

19 §1-120. Requirements for documents; extrinsic facts

20 A. A document must satisfy the requirements of this Section, and of any
21 other Section that adds to or varies these requirements, to be entitled to filing by the
22 secretary of state.

23 B. The filing of the document in the office of the secretary of state must be
24 required or permitted by this Act.

25 C. The document must contain the information required by this Act. It may
26 contain other information as well.

27 D. The document must be typewritten or printed or, if electronically
28 transmitted, it must be in a format that can be retrieved or reproduced in typewritten
29 or printed form. The inclusion of handwritten notations or entries on a typewritten
30 or printed document does not affect the eligibility of the document for filing.

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1 E. The document must be in the English language. A corporate name need
2 not be in English if written in English letters or Arabic or Roman numerals, and the
3 certificate of existence required of foreign corporations need not be in English if
4 accompanied by a reasonably authenticated English translation.
5 F. The document must be signed:
6 (1) By the chairman of the board of directors of a domestic or foreign
7 corporation, by its president, or by another of its officers;
8 (2) If directors have not been selected or the corporation has not been
9 formed, by an incorporator; or
10 (3) If the corporation is in the hands of a receiver, liquidator, trustee, or other
11 court-appointed fiduciary, by that fiduciary.
12 G. The person executing the document shall sign it and state beneath or
13 opposite the person's signature the person's name and the capacity in which the
14 document is signed. The document may but need not contain a corporate seal,
15 attestation, acknowledgment, or verification.
16 H. If the secretary of state has prescribed a mandatory form for the document
17 under Section 1-121, the document must be in or on the prescribed form.
18 I. The document must be delivered to the office of the secretary of state for
19 filing. Delivery may be made by electronic transmission if and to the extent
20 permitted by the secretary of state. If it is filed in typewritten or printed form and
21 not transmitted electronically, the secretary of state may require one exact or
22 conformed copy to be delivered with the document (except as provided in Section
23 1-503).
24 J. When the document is delivered to the office of the secretary of state for
25 filing, the correct filing fee, and any tax, fee, or penalty required to be paid therewith
26 by this Act or other law must be paid or provision for payment made in a manner
27 permitted by the secretary of state.

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1 K. Whenever a provision of this Act permits any of the terms of a plan or a
2 filed document to be dependent on facts objectively ascertainable outside the plan
3 or filed document, the following provisions apply:
4 (1) The manner in which the facts will operate upon the terms of the plan or
5 filed document shall be set forth in the plan or filed document.
6 (2) The facts may include, but are not limited to:
7 (a) Any of the following that is available in a nationally recognized news or
8 information medium either in print or electronically: statistical or market indices,
9 market prices of any security or group of securities, interest rates, currency exchange
10 rates, or similar economic or financial data;
11 (b) A determination or action by any person or body, including the
12 corporation or any other party to a plan or filed document; or
13 (c) The terms of, or actions taken under, an agreement to which the
14 corporation is a party, or any other agreement or document.
15 (3) As used in this Subsection:
16 (a) "Filed document" means a document filed with the secretary of state
17 under any provision of this Act except Section 1-1621; and
18 (b) "Plan" means a plan of domestication, nonprofit conversion, entity
19 conversion, merger, or share exchange.
20 (4) The following provisions of a plan or filed document may not be made
21 dependent on facts outside the plan or filed document:
22 (a) The name and address of any person required in a filed document.
23 (b) The registered office of any entity required in a filed document.
24 (c) The registered agent of any entity required in a filed document.
25 (d) The number of authorized shares and designation of each class or series
26 of shares.
27 (e) The effective date of a filed document.

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1 (f) Any required statement in a filed document of the date on which the
2 underlying transaction was approved or the manner in which that approval was
3 given.
4 (5) If a provision of a filed document is made dependent on a fact
5 ascertainable outside of the filed document, and that fact is not ascertainable by
6 reference to a source described in Subparagraph (K)(2)(a) of this Section or a
7 document that is a matter of public record, or the affected shareholders have not
8 received notice of the fact from the corporation, then the corporation shall file with
9 the secretary of state articles of amendment setting forth the fact promptly after the
10 time when the fact referred to is first ascertainable or thereafter changes. Articles of
11 amendment under this Paragraph are deemed to be authorized by the authorization
12 of the original filed document or plan to which they relate and may be filed by the
13 corporation without further action by the board of directors or the shareholders.
14 Source: MBCA §1.20.
15 Comments - 2013 Revision
16 (a) The Model Act language in Subsection (b) provided that "[t]his Act must
17 require or permit filing the document in the office of the secretary of state." The
18 Model Act language was modified in this Act to make it clear that the terms of
19 Subsection (B) operated as one of the conditions to be satisfied to make a document
20 eligible for filing under this Act, and not as a free-standing requirement that was to
21 be imposed on the Act itself.
22 (b) The second sentence of Subsection (D) was added to preserve the
23 eligibility for filing of typewritten or printed documents that contain handwritten
24 entries or notations, which are commonly used to complete blank spaces or to modify
25 printed provisions in form documents.
26 (c) Subsection (J) requires the payment of the correct filing fee for a
27 document. Those fees are set forth in R.S. 49:222.
28 §1-121. Forms
29 A. The secretary of state may prescribe and furnish on request forms for: (1)
30 an application for a certificate of existence and standing, (2) a foreign corporation's
31 application for a certificate of authority to do business in this state, (3) a foreign
32 corporation's application for a certificate of withdrawal, (4) and the annual report.
33 If the secretary of state so requires, use of these forms is mandatory.

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1 B. The secretary of state may prescribe and furnish on request forms for
2 other documents required or permitted to be filed by this Act but their use is not
3 mandatory.
4 Source: MBCA §1.21.
5 Comment - 2013 Version
6 The title of the "certificate of existence" in the Model Act was modified to
7 add the phrase "and standing," to reflect the added content in the "certificate of
8 existence and standing," as provided by in Section 1-128 of this Act.
9 §1-122. Filing, service, and copying fees
10 The secretary of state shall collect the fee authorized in R.S. 49:222 when a
11 document described in this Act is delivered to the secretary of state for filing.
12 Source: MBCA §1.22.
13 §1-123. Effective time and date of document
14 A. Except as provided in Subsections B and C of this Section and in
15 Subsection 1-124(C) of this Act, a document accepted for filing is effective:
16 (1) At the date and time of its receipt for filing, as evidenced by such means
17 as the secretary of state may use for the purpose of recording the date and time of
18 receipt; or
19 (2) At the time, on the date of receipt, specified in the document as its
20 effective time.
21 B. Except as provided in Subsection C of this Section, a corporation's
22 original articles of incorporation become effective when signed as provided in
23 Section 1-120 if:
24 (1) The articles are received for filing by the secretary of state within five
25 days (exclusive of legal holidays) after the date that the articles are signed; and
26 (2) The articles are accepted for filing.
27 C. A document may specify a delayed effective time and date, and if it does
28 so the document becomes effective at the time and date specified. If a delayed
29 effective date but no time is specified, the document is effective at the close of
30 business on that date. A delayed effective date for a document may not be earlier

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than the first date and time that the document otherwise would have become effective under this Section or later than the ninetieth day after the date the document is received for filing by the secretary of state.

D. A document is accepted for filing when the secretary of state files the document as provided in Subsection 1-125(B) of this Act.

Source: MBCA §1.23.

Comments - 2013 Revision

(a) The Model Act provision was modified to add a new Subsection (B), and to redesignate Model Act Subsection (b) as Subsection (C). The new Subsection (B) retains the five-day grace period provided under former Louisiana law for the filing of a corporation's original articles of incorporation, making them effective when signed if they are delivered for filing within five days, exclusive of holidays. Prior law had applied the five day grace period to several other documents, such as articles of amendment and articles of merger, but this Act drops those documents from the coverage of the five-day rule to avoid unfair surprise to those who may rely upon documents already on file in the secretary of state's office. The grace period for a corporation's original articles of incorporation does not pose that kind of risk, but rather supports the reasonable expectations of those dealing with or on behalf of the new corporation.

The term "original articles of incorporation" is used in this provision to distinguish a corporation's initial articles of incorporation from other, later-filed documents that would be considered part of a corporation's "articles of incorporation" as that term is defined in Section 1-140(1). As used in the definition and in this Section, the term "original" is not related to the distinction between a manually-signed document and a copy.

In some cases incorporators may not wish for the five-day grace period to apply. For example, articles may be signed near the end of a calendar or tax year, but be intended to take effect on the first day of the next year. In that case, the parties may specify a delayed effective date as provided in Subsection (C).

(b) A phrase was added to Subsection (c), concerning delayed effective dates, to take account of the fact that a corporation's original articles of incorporation may take effect under Subsection (B) up to five business days before they are delivered for filing to the secretary of state. As modified, Subsection (C) permits the effective date of the articles to fall on any date between the date that they are signed (provided that the conditions of the five-day grace period are satisfied) and the ninetieth day after the articles are received by the secretary of state. For example, original articles that were signed on day one, but stated that they were to become effective on day three would become effective on day three as long as they were delivered for filing by day five and were accepted for filing by the secretary of state. If the same articles stated that they were to become effective on the first day of the month after the month in which they were filed, they would take effect on that date.

(c) A new Subsection (D) was added to the Model Act to make it clear that a document is "accepted for filing" within the meaning of this Section only if the secretary of state "files" the document as provided in Section 1-125(B).

(d) The Model Act language in Paragraph (a)(2) was modified to make it clear that the effective time of a document must be a time that occurs on the date of

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filing, and not, as the original language may have suggested, any time on any chosen date, as long as that time was specified in the filed document on the date that the document was filed.

§ 1-124. Correcting filed document

A. A domestic or foreign corporation may correct a document filed with the secretary of state if (1) the document contains an inaccuracy, or (2) the document was defectively signed, attested, sealed, verified, or acknowledged, or (3) the electronic transmission was defective.

B. A document is corrected:

(1) By preparing articles of correction that

(a) Describe the document (including its filing date) or attach a copy of it to the articles,

(b) Specify the inaccuracy or defect to be corrected, and

(c) Correct the inaccuracy or defect; and

(2) By delivering the articles to the secretary of state for filing.

C. Articles of correction are effective on the effective date of the document they correct except as to persons relying on the uncorrected document and adversely affected by the correction. As to those persons, articles of correction are effective when filed.

Source: MBCA §1.24.

§1-125. Filing duty of secretary of state

A. If a document delivered to the office of the secretary of state for filing satisfies the requirements of Section 1-120, the secretary of state shall file it.

B. The secretary of state files a document by recording it as filed on the date and time of receipt. After filing a document, except as provided in Section 1-503, the secretary of state shall deliver to the domestic or foreign corporation or its representative a copy of the document with an acknowledgment of the date of filing.

C. If the secretary of state refuses to file a document, it shall be returned to the domestic or foreign corporation or its representative within five days after the

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1 document was delivered, together with a brief, written explanation of the reason for
2 the refusal.
3 D. The secretary of state's duty to file documents under this Section is
4 ministerial. The secretary's filing or refusing to file a document does not:
5 (1) Affect the validity or invalidity of the document in whole or part;
6 (2) Relate to the correctness or incorrectness of information contained in the
7 document; or
8 (3) Create a presumption that the document is valid or invalid or that
9 information contained in the document is correct or incorrect.
10 Source: MBCA § 1.25
11 §1-126. Appeal from secretary of state's refusal to file document
12 [Reserved.]
13 Comment - 2013 Revision
14 Section 1.26 of the Model Act, concerning the procedure for appealing a
15 refusal by the secretary of state to file a document, was omitted from this Act to
16 avoid any redundancy or conflict with the provisions of the Code of Civil Procedure
17 concerning writs of mandamus. Under Art. 3863 of the Code of Civil Procedure, a
18 writ of mandamus may be directed to a public officer to compel the performance of
19 a ministerial duty required by law. Section 1-125 (A) of this Act imposes on the
20 secretary of state a legal duty to file documents that satisfy the requirements of
21 Section 1-120, and Section 1-125 (D) states that this filing duty is ministerial.
22 Hence, a writ of mandamus is available to compel the secretary of state to file a
23 document that is submitted in compliance with this Act.
24 §1-127. Evidentiary effect of copy of filed document
25 [Reserved.]
26 Comment - 2013 Revision
27 Section 1.27 of the Model Act, concerning the evidentiary effects of a
28 certificate of filing from the secretary of state, was omitted from this Act to avoid
29 any redundancy or conflict with the provisions of the Code of Evidence. See C.E.
30 Arts. 902 and 904.
31 §1-128. Certificate of existence and standing
32 A. Anyone may apply to the secretary of state to furnish a certificate of
33 existence and standing for a domestic corporation or a certificate of authorization
34 and standing for a foreign corporation.
35 B. A certificate of existence (or authorization) and standing sets forth:

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1 (1) The domestic corporation's corporate name or the foreign corporation's
2 corporate name used in this state;
3 (2) That:
4 (a) The domestic corporation is duly incorporated under the law of this state,
5 the date of its incorporation, and the period of its duration if less than perpetual; or
6 (b) The foreign corporation is authorized to do business in this state;
7 (3) [Reserved.]
8 (4) That its most recent annual report required by Section 1-1621 or R.S.
9 12:309 has been filed with the secretary of state and that the corporation is in good
10 standing, or that its most recent annual report has not been filed as required by law;
11 and
12 (5) That the corporation is not dissolved or terminated.
13 C. Subject to any qualification stated in the certificate, a certificate of
14 existence (or authorization) and standing issued by the secretary of state may be
15 relied upon as conclusive evidence that the domestic corporation is in existence or
16 the foreign corporation is authorized to transact business in this state, and, if the
17 certificate so states, that the corporation is in good standing.
18 Source: MBCA §1.28.
19 Comments - 2013 Revision
20 (a) Subsection (b)(3) of the Model Act, concerning the secretary of state's
21 records on the payment of taxes and fees that could affect a corporation's existence,
22 was omitted from this Act because the secretary of state does not maintain records
23 of taxes or fees owed by a corporation to the state, other than the filing fees for
24 documents filed in the secretary of state's office. A corporation's existence or
25 authority to do business in this state could be affected by its failure to file annual
26 reports as required by Section 1-1621 or R.S. 12:309, but compliance with the annual
27 report filing requirement is covered by a separate Paragraph, (b)(4), which was
28 retained in this Act in a modified form.
29 (b) Paragraph (b)(4) was modified to require the certificate of existence and
30 standing to state either that the most recent annual report required by Section 1-1621
31 or R.S. 12:309 had been filed, and that the corporation was in good standing, or that
32 the most recent annual report had not been filed. The change was made to allow the
33 secretary of state to utilize a single certificate in the place of the multiple certificates
34 used under prior law, including a certificate of incorporation, a certificate of
35 existence and a certificate of good standing. Although most applicants for
36 certificates concerning domestic corporations will wish to obtain a certificate that
37 affirms all three items are true, experience suggests that some certificate applicants
38 may be satisfied with a certificate of existence even in the absence of a certificate of

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good standing. A statement of good standing is redundant of the statement that a corporation has filed its annual report as required, but the traditional terminology was added to the Model Act language to harmonize it with that commonly used in corporate transactional work.

(c) The rule in Subsection (c) concerning the conclusive effect of a certificate of existence (or authorization) and good standing was retained as a rule of substantive law similar to former R.S. 12:25(B) on the conclusive effects of a certificate of incorporation. The certificate of existence (or authorization) and good standing supplants the formerly separate certificates of incorporation (or authorization), of existence, and of good standing.

(d) A reference to R.S. 12:309 was added to Subsection (b)(4) to reflect the retention of existing Chapter 3 of Title 12, in place of Model Act Chapter 15, to govern the qualification of foreign corporations to do business in Louisiana.

(e) Model Act Subsection (b)(5) was modified in this Act to reflect distinction drawn in this Act between a dissolution and termination. See Sections 1-1440 through 1-1445 and related comments.

§1-129. Penalty for signing false document

[Reserved.]

Comment - 2013 Version

Section 1.29 of the Model Act, concerning the imposition of a criminal penalty for signing a false document, was omitted to avoid any redundancy or conflict with the state's general criminal law.

SUBPART C. SECRETARY OF STATE

§1-130. Powers

[Reserved.]

Comment - 2013 Version

Section 1.30 of the Model Act, concerning the power of the secretary of state to do the things necessary to fulfill the duties of the secretary under the Act, was omitted to avoid redundancy or conflict with existing constitutional and statutory provisions concerning the powers of the secretary of state.

SUBPART D. DEFINITIONS

§1-140. Act definitions

In this Act:

(1) "Articles of incorporation" means the original articles of incorporation, all amendments thereof, and any other documents permitted or required to be filed by a domestic business corporation with the secretary of state under any provision of this Act except Section 1-1621. If an amendment of the articles or any other

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1 document filed under this Act restates the articles in their entirety, thenceforth the
2 "articles" shall not include any prior documents.
3 (2) "Authorized shares" means the shares of all classes a domestic or foreign
4 corporation is authorized to issue.
5 (3) "Conspicuous" means so written, displayed or presented that a reasonable
6 person against whom the writing is to operate should have noticed it. For example,
7 text in italics, boldface, contrasting color, capitals or underlined is conspicuous.
8 (4) "Corporation," "domestic corporation" or "domestic business
9 corporation" means a corporation for profit, which is not a foreign corporation,
10 incorporated under or subject to the provisions of this Act.
11 (5) "Deliver" or "delivery" means any method of delivery used in
12 conventional commercial practice, including delivery by hand, mail, commercial
13 delivery, and, if authorized in accordance with Section 1-141, by electronic
14 transmission.
15 (6) "Distribution" means a direct or indirect transfer of money or other
16 property (except its own shares) or incurrence of indebtedness by a corporation to
17 or for the benefit of its shareholders in respect of any of its shares. A distribution
18 may be in the form of a declaration or payment of a dividend; a purchase,
19 redemption, or other acquisition of shares; a distribution of indebtedness; or
20 otherwise.
21 (6A) "Document" means (a) any tangible medium on which information is
22 inscribed, and includes any writing or written instrument, or (b) an electronic record.
23 (6B) "Domestic unincorporated entity" means an unincorporated entity
24 whose internal affairs are governed by the laws of this state.
25 (7) "Effective date of notice" is defined in Section 1-141.
26 (7A) "Electronic" means relating to technology having electrical, digital,
27 magnetic, wireless, optical, electromagnetic, or similar capabilities.
28 (7B) "Electronic record" means information that is stored in an electronic or
29 other medium and is retrievable in paper form through an automated process used

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1 in conventional commercial practice, unless otherwise authorized in accordance with
2 Subsection 1-141(J) of this Act.
3 (7C) "Electronic transmission" or "electronically transmitted" means any
4 form or process of communication, not directly involving the physical transfer of
5 paper or another tangible medium, which (a) is suitable for the retention, retrieval,
6 and reproduction of information by the recipient, and (b) is retrievable in paper form
7 by the recipient through an automated process used in conventional commercial
8 practice, unless otherwise authorized in accordance with Subsection 1-141(J) of this
9 Act.
10 (7D) "Eligible entity" means a domestic or foreign unincorporated entity or
11 a domestic or foreign nonprofit corporation.
12 (7E) "Eligible interests" means interests or memberships.
13 (8) [Reserved.]
14 (9) "Entity" includes domestic and foreign business corporation; domestic
15 and foreign nonprofit corporation; estate; trust; domestic and foreign unincorporated
16 entity; and state, United States, and foreign government.
17 (9A) The phrase "facts objectively ascertainable" outside of a filed document
18 or plan is defined in Subsection 1-120(K) of this Act.
19 (9B) "Expenses" means reasonable expenses of any kind, including
20 attorney's fees and other litigation-related expenses, that are incurred in connection
21 with a matter.
22 (9C) "Filing entity" means an unincorporated entity that is required by law
23 to file a public organic document for any of the purposes stated in the definition of
24 that term.
25 (10) "Foreign corporation" means a corporation incorporated under a law
26 other than the law of this state, which would be a business corporation if
27 incorporated under the laws of this state.

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1 (10A) "Foreign nonprofit corporation" means a corporation incorporated
2 under a law other than the law of this state, which would be a nonprofit corporation
3 if incorporated under the laws of this state.
4 (10B) "Foreign unincorporated entity" means an unincorporated entity whose
5 internal affairs are governed by an organic law of a jurisdiction other than this state.
6 (11) "Governmental subdivision" includes parish, authority, county, district,
7 municipality, and any other state or local political subdivision.
8 (12) "Includes" denotes a partial definition.
9 (13) "Individual" means a natural person.
10 (13A) "Intangible property" means a thing that is classified as incorporeal
11 (as distinguished from corporeal), or property that is classified as intangible (as
12 distinguished from tangible), by the law of the jurisdiction that governs its
13 ownership.
14 (13B) "Interest" means either or both of the following rights under the
15 organic law of an unincorporated entity:
16 (a) The right to receive distributions from the entity either in the ordinary
17 course or upon liquidation, other than as an assignee or other similar role; or
18 (b) The right to receive notice or vote on issues involving its internal affairs,
19 other than as an agent, assignee, proxy or person responsible for managing its
20 business and affairs.
21 (13C) "Interest holder" means a person who owns an interest.
22 (13D) "Knowledge" means actual knowledge. "Know" has a corresponding
23 meaning.
24 (14) "Means" denotes an exhaustive definition.
25 (14A) "Membership" means the rights of a member in a domestic or foreign
26 nonprofit corporation.
27 (14B) "Nonfiling entity" means an unincorporated entity that is not a filing
28 entity.

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1 (14C) "Nonprofit corporation" or "domestic nonprofit corporation" means
2 a corporation incorporated under the laws of this state and subject to the provisions
3 of the Nonprofit Corporation Law.
4 (15) "Notice" is defined in Section 1-141.
5 (15A) "Organic document" means a public organic document or a private
6 organic document.
7 (15B) "Organic law" means the statute governing the internal affairs of a
8 domestic or foreign business or nonprofit corporation or unincorporated entity.
9 (15C) "Owner liability" means personal liability for a debt, obligation or
10 liability of a domestic or foreign business or nonprofit corporation or unincorporated
11 entity that is imposed on a person
12 (a) Solely by reason of the person's status as a shareholder, partner, member,
13 or interest holder; or
14 (b) By the articles of incorporation, bylaws or an organic document under
15 a provision of the organic law of an entity authorizing the articles of incorporation,
16 bylaws or an organic document to make one or more specified shareholders, partners,
17 members or interest holders liable in their capacity as shareholders, partners,
18 members or interest holders for all or specified debts, obligations or liabilities of the
19 entity.
20 (16) "Person" includes an individual and an entity.
21 (16A) "Personal property" means a thing that is classified as movable (as
22 distinguished from immovable), or property that is classified as personal (as
23 distinguished from real), by the law of the jurisdiction that governs its ownership.
24 (17) "Principal office" means the office (in or out of this state) so designated
25 in the most recent annual report or, until an annual report is filed, in the articles of
26 incorporation, where the principal executive offices of a domestic or foreign
27 corporation are located.
28 (17A) "Private organic document" means any document (other than the
29 public organic document, if any) that determines the internal governance of an

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1 unincorporated entity. Where a private organic document has been amended or
2 restated, the term means the private organic document as last amended or restated.
3 (17B) "Public organic document" means the document, if any, that is filed
4 of public record to create an unincorporated entity, to allow it to own immovable
5 property as to third persons, or to protect its shareholders, partners, members or
6 interest holders against owner liability. Where a public organic document has been
7 amended or restated, the term means the public organic document as last amended
8 or restated.
9 (18) "Proceeding" includes civil suit and civil, criminal, administrative, and
10 investigatory action.
11 (18A) "Public corporation" means a corporation that has shares listed on a
12 national securities exchange or regularly traded in a market maintained by one or
13 more members of a national securities association.
14 (18B) "Qualified director" is defined in Section 1-143.
15 (18C) "Real property" means a thing that is classified as immovable (as
16 distinguished from movable), or property that is classified as real (as distinguished
17 from personal), by the law of the jurisdiction that governs its ownership.
18 (19) "Record date" means the date established under Part 6 or 7 on which a
19 corporation determines the identity of its shareholders and their shareholdings for
20 purposes of this Act. The determinations shall be made as of the close of business
21 on the record date unless another time for doing so is specified when the record date
22 is fixed.
23 (20) "Secretary" means the corporate officer responsible for custody of the
24 minutes of the meetings of the board of directors and of the shareholders and for
25 authenticating records of the corporation.
26 (21) "Shareholder" means the person in whose name shares are registered in
27 the records of a corporation or the beneficial owner of shares to the extent of the
28 rights granted by a nominee certificate on file with a corporation.

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1 (22) "Shares" means the units into which the proprietary interests in a
2 corporation are divided.
3 (22A) "Sign" or "signature" means, with present intent to authenticate or
4 adopt a document:
5 (a) To execute or adopt a tangible symbol in a document, and includes any
6 manual, facsimile, or conformed signature; or
7 (b) To attach to or logically associate with an electronic transmission an
8 electronic sound, symbol or process, and includes an electronic signature in an
9 electronic transmission.
10 (23) "State," when referring to a part of the United States, includes a state
11 and commonwealth (and their agencies and governmental subdivisions) and a
12 territory and insular possession (and their agencies and governmental subdivisions)
13 of the United States.
14 (24) "Subscriber" means a person who subscribes for shares in a corporation,
15 whether before or after incorporation.
16 (24A) "Tangible property" means a thing that is classified as corporeal (as
17 distinguished from incorporeal), or property that is classified as tangible (as
18 distinguished from intangible), by the law of the jurisdiction that governs its
19 ownership.
20 (24B) "Unincorporated entity" means an organization or juridical person that
21 has a separate juridical personality and that is not any of the following: a domestic
22 or foreign business or nonprofit corporation, an estate, a trust, a state, the United
23 States, a foreign government, or any agency or subdivision of a foreign government.
24 In addition, the term includes a general partnership, limited liability company,
25 limited partnership, partnership in commendam, registered limited liability
26 partnership, business trust, joint stock association and unincorporated nonprofit
27 association, regardless of whether any of those included forms of organization is
28 treated as a juridical person under the relevant organic law.

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1 (25) "United States" includes district, authority, bureau, commission,
2 department, and any other agency of the United States.
3 (25A) "Unanimous governance agreement" is defined in Section 1-723.
4 (26) "Voting group" means all shares of one or more classes or series that
5 under the articles of incorporation or this Act are entitled to vote and be counted
6 together collectively on a matter at a meeting of shareholders. All shares entitled by
7 the articles of incorporation or this Act to vote generally on the matter are for that
8 purpose a single voting group.
9 (27) "Voting power" means the current power to vote in the election of
10 directors.
11 (28) "Writing" or "written" means any information in the form of a
12 document.
13 Source: MBCA §1.40.
14 Comments - 2013 Revision
15 (a) This Act deletes the Model Act definition of "employee" in Paragraph (8)
16 because the definition is not relevant to the meaning of any provision in the Act,
17 other than Section 1-858(E), where the definition actually would work against the
18 intended meaning of the provision. The deletion of the definition also prevents it
19 from being used for unintended purposes, such as determining whether an officer is
20 an employee for purposes of workers compensation law or the imposition of
21 vicarious tort liability on an employer.

22 (b) The definition of "expenses" in Paragraph (9B) has been modified to
23 include an express reference to attorney's fees and other litigation-related expenses.
24 This modification does not change the intended meaning of the Model Act definition;
25 the Official Comments to the relevant provision say that reasonable fees and
26 disbursements of counsel are to be considered expenses. The phrase added by this
27 Act simply puts the comment's position on that issue into the language of the statute
28 itself.

29 (c) This Act modifies the definition of three terms to make them apply as
30 intended to partnerships governed by Louisiana law. The three affected terms are
31 "filing entity" (9C), "nonfiling entity" (14B), and "public organic document" (17B).
32 The three terms are used strictly in connection with entity conversions under Part 9,
33 and operate there to require the filing of appropriate public documents by an entity
34 that survives a conversion if the "creation" of that form of entity would require the
35 filing of a public organic document. The terms are designed to apply mainly to
36 limited partnerships and limited liability partnerships that are "formed" or "created"
37 under the laws of most states by the filing of articles or a certificate of partnership.

38 Under Louisiana law, however, the filing of this kind of document does not
39 necessarily "form" or "create" either a partnership in commendam or a registered
40 limited liability partnership. An existing general partnership can obtain the form of
41 limited liability that is available in an LLP or partnership in commendam by, among

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other things, filing the appropriate document with the secretary of state. The filing of that document does not affect the filing partnership's already-existing juridical personality. Moreover, Louisiana law does not limit its filing obligations to limited liability forms of partnership; it requires even general partnerships to file a document with the secretary of state to acquire the legal capacity to own immovable property as to third persons. C.C. Art. 2806; R.S. 9:3401-3410. Still, in neither context - limited liability nor ownership of immovable property- is the filing required to create the partnership as a separate juridical person.

Nevertheless, the purpose of the relevant Model Act rules on "filing entities" - that they be required to file the appropriate public documents in connection with an entity conversion - should apply to Louisiana partnerships in the same way they would apply to a limited partnership or an LLP formed under the laws of another state. To achieve that end, this Act broadens the definition of a "public organic document" to include not only a document filed to "create" an entity, but also one that must be filed for the entity to own immovable property as to third persons or to protect the entity's owners against liability. The definitions of "filing entity" and "nonfiling entity" are then made to depend on this broader definition of the term "public organic document."

In one type of transaction, this approach could theoretically require the filing of a public document where it would otherwise not be required: in the conversion of a corporation or other form of entity into a general partnership. Louisiana law does not require a general partnership to file an organic document with the secretary of state unless the partnership wishes to own immovable property. As a practical matter, however, few owners of a general partnership would really wish to relinquish their partnership's capacity to own immovable property merely to save a small filing fee. Accordingly, this Act includes a general partnership within the meaning of a "filing entity" so that a conversion of another form of business into a general partnership will trigger the filing that preserves the capacity of the converted business entity to own immovable property.

(d) Following the example set in Louisiana's adoption of the Uniform Commercial Code, this Act adds definitions to the Model Act to deal with differences in common law and civil law terminology in the area of what the common law calls property and the civil law calls things. The four new property-related definitions cover the terms "real property" (18C), "personal property" (16A), "tangible property" (24A), and "intangible property" (13A). Each definition includes both the common law and civil law terminology, and applies them based on the law that governs the ownership of the thing or property in question. So, for example, a Louisiana corporation that owned land both in Louisiana and in Texas would own "real property" in both states within the meaning of that term in this Act, because the land would be classified as an immovable thing under Louisiana law and as real property under Texas law.

(e) The Model Act defines an "interest holder" as a person who "holds of record" an interest. This Act substitutes the term "owner" for the "holds of record" phrase. The Model Act's implicit assumption that the organic law governing all forms of unincorporated entities will provide a corporation-like record holder rule, and that the unincorporated entities will maintain those records as required, may not be correct. In an informally-operated partnership or limited liability company, it is possible, even likely, that no partner or member will hold an interest "of record" in the usual sense of those words. Because the term "interest holder" is used in this Act to identify the persons who whose approval is required to carry out a merger or entity conversion, limiting those persons to holders of record could mean that no one within an informally-operated partnership or limited liability company would have the power to approve those types of transactions. The "holds of record" phrase is omitted to avoid that problem. However, the deletion of those words is not intended

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to deprive a record ownership rule, if one exists, of its normal effects. If the organic law governing an unincorporated entity does contain a record ownership rule, that rule should operate by itself to permit the unincorporated entity to determine the persons entitled to vote on a merger or entity conversion in accordance with the record ownership rule.

(f) This Act adds a definition of "know" or "knowledge" in Paragraph (13D) that is identical to that in the Uniform Commercial Code, R.S. 10:1-202 (b). Although the notice rules in the two statutes differ, the definition of "knowledge" provided in Paragraph (13D) is intended to draw the same distinction between knowledge and notice that is drawn by the UCC, and to express the same concept of actual knowledge.

(g) This Act adds "partner" to the list of persons who may bear "owner liability" under Paragraph (15C) to avoid any question whether a partner is among the types of owners who may bear that form of liability. This Act rejects the Model Act rule that would have permitted the articles of incorporation of a corporation governed by the Act to contain a provision imposing owner liability on the shareholders of the corporation. See Section 1-202, Comment (b). Nevertheless, that feature of the definition of owner liability was retained in Paragraph (15C) because it may be relevant to a transaction with a foreign corporation or unincorporated entity. For example, if a plan of merger proposed the merger of a Louisiana corporation, into a foreign corporation whose articles contained a provision imposing owner liability on the corporation's shareholders, Section 1-1104(H) would require the plan of merger to be approved by each shareholder who would bear owner liability as a result of the merger. The full definition of "owner liability" in Paragraph (15C) is retained to deal with that kind of transaction.

(h) This Act modifies the definition of "principal office" in Paragraph (17) to reflect the requirement in Section 1-202 that the address of an initial principal office, if different from the registered office, be included in a corporation's initial articles of incorporation.

(i) The Model Act definition of "secretary" in Paragraph (20) has been modified in this Act to reflect the requirement imposed by this Act that a corporation elect an officer called a "secretary." The Model Act requires the election of someone with the responsibilities traditionally associated with a corporate secretary, but does not require that person to be called "secretary." Thus, in the Model Act, a definition of "secretary" is required to describe the person to whom the Model Act is referring when it uses that term. The definition is retained in this Act to describe the minimum, statutorily-designated responsibilities of the person elected to the office of secretary.

(j) This Act modifies the Model Act definition of "unincorporated entity" in Paragraph (24B) in two ways. First, it replaces the Model Act references to an "artificial legal person" and to a "separate legal entity" with the equivalent Louisiana terminology, "juridical person" and "separate juridical personality." See C.C. Art. 24. And, second, it deletes the Model Act reference to an organization that has the capacity to "own an estate in real property." That phrase, which is foreign to Louisiana law, appeared to be included in the model definition primarily to deal with partnerships and unincorporated nonprofit associations that are governed by the law of a state that has yet make the transition from an aggregate to entity theory for those forms of organization. The same purpose is served in this Act by retaining the Model Act's listing of those organizations by name in the definition, along with the names of the analogous Louisiana organizations, and then by stating that the inclusive listing controls regardless of whether the listed entities are treated as juridical persons in their states of organization.

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1 This list-by-name approach, when combined with the general juridical
2 personality rule, provides a clear, simple rule for all of the currently-realistic
3 possibilities for an entity conversion transaction, while also allowing for expansion
4 of the covered entities to include any new form of organization that is given the
5 juridical personality that modern law nearly always confers on new forms of business
6 organization. Of course, this approach does exclude the possibility that a corporation
7 could engage in an entity conversion transaction under Louisiana law with some
8 newly-discovered or newly-invented form of business organization that lacked
9 juridical personality, yet still possessed the capacity to own immovable property.
10 But this Act chooses deliberately to leave for future consideration the rules that
11 should apply in that type of transaction.

12 §1-141. Notices and other communications

13 A. Notice under this Act must be in writing. Unless otherwise agreed
14 between the sender and the recipient, a notice or other communication under this Act
15 must be in English.

16 B. A notice or other communication may be given or sent by any method of
17 delivery, except that electronic transmissions must be in accordance with this
18 Section. If these methods of delivery are impracticable, a notice or other
19 communication may be communicated by a newspaper of general circulation in the
20 area where published, or by radio, television, or other form of public broadcast
21 communication.

22 C. Notice or other communication to a domestic or foreign corporation
23 authorized to transact business in this state may be delivered to its registered agent
24 or to the secretary of the corporation at its principal office shown in its most recent
25 annual report or, in the case of a foreign corporation that has not yet delivered an
26 annual report, in its application for a certificate of authority.

27 D. Notice or other communications may be delivered by electronic
28 transmission if consented to by the recipient or if authorized by Subsection J of this
29 Section.

30 E. Any consent under Subsection D of this Section may be revoked by the
31 person who consented by written or electronic notice to the person to whom the
32 consent was delivered. Any such consent is deemed revoked if (1) the corporation
33 is unable to deliver two consecutive electronic transmissions given by the
34 corporation in accordance with such consent, and (2) such inability becomes known

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1 to the secretary or an assistant secretary of the corporation or to the transfer agent,
2 or other person responsible for the giving of notice or other communications;
3 provided, however, the inadvertent failure to treat such inability as a revocation shall
4 not invalidate any meeting or other action.
5 F. Unless otherwise agreed between the sender and the recipient, an
6 electronic transmission is received when:
7 (1) It enters an information processing system that the recipient has
8 designated or uses for the purposes of receiving electronic transmissions or
9 information of the type sent, and from which the recipient is able to retrieve the
10 electronic transmission; and
11 (2) It is in a form capable of being processed by that system.
12 G. Receipt of an electronic acknowledgment from an information processing
13 system described in Paragraph (F)(1) of this Section establishes that an electronic
14 transmission was received but, by itself, does not establish that the content sent
15 corresponds to the content received.
16 H. An electronic transmission is received under this Section even if no
17 individual is aware of its receipt.
18 I. Notice or other communication, if in a comprehensible form or manner,
19 is effective at the earliest of the following:
20 (1) If in physical form, the earliest of when it is actually received, or when
21 it is left at a place apparently designated for the receipt of mail or other similar
22 communication at:
23 (a) A shareholder's address shown on the corporation's record of
24 shareholders maintained by the corporation under Subsection 1-1601(C) of this Act;
25 (b) A director's residence or usual place of business; or
26 (c) The corporation's principal place of business;
27 (2) If mailed postage prepaid and correctly addressed to a shareholder, upon
28 deposit in the United States mail;

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1 (3) If mailed by United States mail postage prepaid and correctly addressed
2 to a recipient other than a shareholder, the earliest of when it is actually received, or:
3 (a) If sent by registered or certified mail, return receipt requested, the date
4 shown on the return receipt signed by or on behalf of the addressee; or
5 (b) Five days after it is deposited in the United States mail; and
6 (4) If an electronic transmission, when it is received as provided in
7 Subsection F of this Section.
8 J. A notice or other communication may be in the form of an electronic
9 transmission that cannot be directly reproduced in paper form by the recipient
10 through an automated process used in conventional commercial practice only if (1)
11 the electronic transmission is otherwise retrievable in perceivable form, and (2) the
12 sender and the recipient have consented in writing to the use of such form of
13 electronic transmission.
14 K. If this Act prescribes requirements for notices or other communications
15 in particular circumstances, those requirements govern. If articles of incorporation
16 or bylaws prescribe requirements for notices or other communications, not
17 inconsistent with this Section or other provisions of this Act, those requirements
18 govern. The articles of incorporation or bylaws may authorize or require delivery
19 of notices of meetings of directors by electronic transmission.
20 Source: MBCA §1.41.
21 Comment - 2013 Revision
22 This Act omits the phrase in Model Act Subsection (a) that would have
23 permitted oral notice if "reasonable in the circumstances" and the rule in Paragraph
24 (i)(5) concerning the time at which an oral notice becomes effective. When this Act
25 requires a notice, the notice must be in writing, as defined. However, the rejection
26 of an oral statement as an acceptable form notice does not affect any inference of
27 knowledge that may be drawn from evidence that an oral statement was made to an
28 individual.
29 §1-142. Number of shareholders
30 A. For purposes of this Act, the following identified as a shareholder in a
31 corporation's current record of shareholders constitutes one shareholder:
32 (1) Co-owners;

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1 (2) A corporation, partnership or other entity;

2 (3) A trust or estate or the trustees, guardians, custodians, succession
3 representatives or other fiduciaries of a single trust, estate, succession, or account.

4 B. For purposes of this Act, shareholdings registered in substantially similar
5 names constitute one shareholder if it is reasonable to believe that the names
6 represent the same person.

7 Source: MBCA §1.42.

8 Comments - 2013 Revision

9 (a) Under Louisiana law, the heirs or legatees of a decedent succeed
10 immediately to ownership of the decedent's assets. See C.C. Arts. 871, 934 and 935.
11 If specific shares owned by the decedent are not bequeathed to particular successors,
12 the shares are co-owned by the decedent's successors. See C.C. Arts. 872, 935 and
13 1292. To achieve the result intended by the Model Act's treating an estate as one
14 owner, this Act treats co-owners by succession (either of the shares or of the estate
15 in which the shares are included) as one owner under Paragraph (A)(1).

16 (b) The Model Act counts co-owners as a single shareholder only when the
17 shares involved are owned by three or fewer co-owners. This Act counts all
18 co-owners of the same shares as a single shareholder, regardless of the number of
19 co-owners, so that direct co-ownership is treated for counting purposes in the same
20 way as the various forms of indirect co-ownership that are counted as a single
21 shareholder for counting purposes under Paragraph (A)(2). The removal of the
22 numerical limitation on the operation of the co-ownership rule also allows the rule
23 on co-ownership by succession to operate as intended, regardless of the number of
24 heirs or legatees involved.

25 (c) The Model Act includes a trust or estate in the list of entities treated as
26 a single shareholder under Paragraph (a)(2). Because Louisiana law does not treat
27 a trust or estate as an entity, and because the entity status of an estate or trust is not
28 relevant to the operation of the counting rule stated by Subsection (A), this Act
29 covers estates and trusts in Paragraph (A)(3) instead of (A)(2).

30 (d) As used in Paragraph (A)(3), the term "estate" was retained as a means
31 of applying the Model Act rule to estates existing under the laws of another state.
32 The rule applicable under Louisiana law to shares held by the heirs or legatees of a
33 deceased shareholder is not provided by the rule in Paragraph (A)(3) concerning
34 estates, but rather by the rule in Paragraph (A)(1) concerning co-owners by
35 succession. The rule is the same in both places, of course, but the co-ownership by
36 succession phrase in Paragraph (A)(1) is the more technically accurate source of the
37 rule in the context of Louisiana succession law.

38 (e) This Act adds a reference to succession representatives of a succession
39 in Paragraph (A)(3), to supply the Louisiana analogue to the estate fiduciaries
40 included in the Model Act.

41 (f) Under the Model Act, the rules in this Section are relevant only for
42 purposes of two provisions, Section 13.02(b)(2), concerning the availability of
43 appraisal rights, and Section 14.30(a)(2), concerning the availability of dissolution
44 of the corporation on grounds of oppression. Under this Act, the rules are relevant
45 only for the first purpose. This Act does not require a counting of shareholders to

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1 determine whether the remedies it provides on grounds of oppression are available
2 to a shareholder. See Section 1-1435 (J).

3 §1-143. Qualified director

4 A. A "qualified director" is a director who, at the time action is to be taken
5 under:

6 (1) Section 1-744, does not have (a) a material interest in the outcome of the
7 proceeding, or (b) a material relationship with a person who has such an interest;

8 (2) Section 1-853 or 1-855, (a) is not a party to the proceeding, (b) is not a
9 director as to whom a transaction is a director's conflicting interest transaction or
10 who sought a disclaimer of the corporation's interest in a business opportunity under
11 Section 1-870, which transaction or disclaimer is challenged in the proceeding, and
12 (c) does not have a material relationship with a director described in either
13 Subparagraph (a) or Subparagraph(b) of this Paragraph;

14 (3) Section 1-862, is not a director (a) as to whom the transaction is a
15 director's conflicting interest transaction, or (b) who has a material relationship with
16 another director as to whom the transaction is a director's conflicting interest
17 transaction; or

18 (4) Section 1-870, would be a qualified director under Paragraph (A)(3) of
19 this Section if the business opportunity were a director's conflicting interest
20 transaction.

21 B. For purposes of this Section and Section 1-860:

22 (1) "Material relationship" means a familial, financial, professional,
23 employment or other relationship that would reasonably be expected to impair the
24 objectivity of the director's judgment when participating in the action to be taken;
25 and

26 (2) "Material interest" means an actual or potential benefit or detriment
27 (other than one which would devolve on the corporation or the shareholders
28 generally) that would reasonably be expected to impair the objectivity of the
29 director's judgment when participating in the action to be taken.

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1 C. The presence of one or more of the following circumstances shall not
2 automatically prevent a director from being a qualified director:
3 (1) Nomination or election of the director to the current board by any
4 director who is not a qualified director with respect to the matter (or by any person
5 that has a material relationship with that director), acting alone or participating with
6 others;
7 (2) Service as a director of another corporation of which a director who is
8 not a qualified director with respect to the matter (or any individual who has a
9 material relationship with that director), is or was also a director; or
10 (3) With respect to action to be taken under Section 1-744, status as a named
11 defendant, as a director against whom action is demanded, or as a director who
12 approved the conduct being challenged.
13 Source: MBCA §1.43.
14 Comment - 2013 Revision
15 This Act makes the definitions in Subsection (B) applicable not only for
16 purposes of this Section, as provided in the Model Act, but also for purposes of
17 Section 1-860. As explained in the comments to that Section, this Act utilizes the
18 definition of "material relationship" to broaden the definition of a director's
19 conflicting interest transaction.
20 §1-144. Householding
21 A. A corporation has delivered written notice or any other report or
22 statement under this Act, the articles of incorporation or the bylaws to all
23 shareholders who share a common address if:
24 (1) The corporation delivers one copy of the notice, report or statement to
25 the common address;
26 (2) The corporation addresses the notice, report or statement to those
27 shareholders either as a group or to each of those shareholders individually or to the
28 shareholders in a form to which each of those shareholders has consented; and
29 (3) Each of those shareholders consents to delivery of a single copy of such
30 notice, report or statement to the shareholders' common address. Any such consent
31 shall be revocable by any of such shareholders who deliver written notice of

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revocation to the corporation. If such written notice of revocation is delivered, the corporation shall begin providing individual notices, reports or other statements to the revoking shareholder no later than thirty days after delivery of the written notice of revocation.

B. Any shareholder who fails to object by written notice to the corporation, within sixty days of written notice by the corporation of its intention to send single copies of notices, reports or statements to shareholders who share a common address as permitted by Subsection A of this Section, shall be deemed to have consented to receiving such single copy at the common address.

Source: MBCA §1.44.

PART 2. INCORPORATION

§1-201. Incorporators

One or more persons capable of contracting may act as the incorporator or incorporators of a corporation by delivering to the secretary of state for filing articles of incorporation and the written consent of the registered agent required by Subsection 1-202(E) of this Act.

Source: MBCA §2.01

Comments - 2013 Revision

(a) Under former R.S. 12:21, one or more "natural or artificial" persons "capable of contracting" were permitted to act as incorporators. The "natural or artificial" phrase was eliminated as unnecessary due to the definition of "person" in Section 1-140 of this Act. The "capable of contracting" phrase from the former provision was added to the Model Act provision as a means of requiring incorporators to possess contractual capacity, thus disqualifying unemancipated minors and others lacking the required capacity from acting as incorporators. The added language is not meant to suggest that an incorporator, in filing the contemplated corporate documents, is becoming a party to a contract.

(b) This Act modifies the Model Act language to retain the substance of the requirement in the former law that a notarized affidavit of acceptance from the corporation's registered agent be filed as part of the incorporation process. The description of the document is changed to reflect the fact that it need not be notarized, only signed, but the document still must be filed to confirm that the registered agent has indeed accepted the appointment.

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

A. The articles of incorporation must set forth:

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1 (1) A corporate name for the corporation that satisfies the requirements of
2 Section 1-401;
3 (2) The number of shares the corporation is authorized to issue;
4 (3) The street address (not a post office box only) of the corporation's initial
5 registered office, and, if different, the street address (not a post office box only) of
6 the corporation's initial principal office;
7 (4) The name and street address (not a post office box only) of its initial
8 registered agent;
9 (5) Whether the corporation accepts, rejects, or limits (with a statement of
10 the limitations) the protection against liability of directors and officers that is
11 provided by Section 1-832; and
12 (6) The name and address of each incorporator.
13 B. The articles of incorporation may set forth:
14 (1) The names and addresses of the individuals who are to serve as the initial
15 directors;
16 (2) Provisions not inconsistent with law regarding:
17 (a) The purpose or purposes for which the corporation is organized;
18 (b) Managing the business and regulating the affairs of the corporation;
19 (c) Defining, limiting, and regulating the powers of the corporation, its board
20 of directors, and shareholders;
21 (d) A par value for authorized shares or classes of shares.
22 (3) Any provision that under this Act is required or permitted to be set forth
23 in the bylaws;
24 (4) A provision that limits, reduces, qualifies, or conditions the protection
25 against liability of directors and officers provided by Section 1-832;
26 (5) A provision permitting or making obligatory indemnification of a
27 director for liability (as defined in Paragraph 1-850(3)) to any person for any action
28 taken, or any failure to take any action, as a director, except liability for (a) a breach
29 of the duty of loyalty owed by the director or officer to the corporation or its

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1 shareholders, (b) an intentional infliction of harm on the corporation or its
2 shareholders, (c) a violation of Section 1-833, or (d) an intentional violation of
3 criminal law; and
4 (6) A provision that cash, property or share dividends, shares issuable to
5 shareholders in connection with a reclassification of stock, and the redemption price
6 of redeemed shares, that are not claimed by the shareholders entitled thereto within
7 a reasonable time (not less than one year in any event) after the dividend or
8 redemption price became payable or the shares became issuable, despite reasonable
9 efforts by the corporation to pay the dividend or redemption price or deliver the
10 certificates for the shares to such shareholders within such time, shall, at the
11 expiration of such time, revert in full ownership to the corporation, and the
12 corporation's obligation to pay such dividend or redemption price or issue such
13 shares, as the case may be, shall thereupon cease; provided that the board of directors
14 may, at any time, for any reason satisfactory to it, but need not, authorize (a)
15 payment of the amount of any cash or property dividend or redemption price or (b)
16 issuance of any shares, ownership of which has reverted to the corporation pursuant
17 to a provision of the articles authorized by this Section, to the person that would be
18 entitled thereto had such reversion not occurred.
19 C. The articles of incorporation need not set forth any of the corporate
20 powers enumerated in this Act.
21 D. Provisions of the articles of incorporation may be made dependent upon
22 facts objectively ascertainable outside the articles of incorporation in accordance
23 with Subsection 1-120(K) of this Act.
24 E. A written consent to appointment, signed by the initial registered agent,
25 shall be attached or appended to the articles of incorporation.
26 Source: MBCA §2.02; R.S. 12:24 (2012).
27 Comments - 2013 Revision
28 (a) The Model Act unifies the address of a corporation's registered agent with
29 that of its registered office. That approach was rejected in this Act in favor of the
30 traditional Louisiana approach of permitting the two addresses to be handled
31 independently of one another. The registered office of a Louisiana corporation may

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1 be relevant for purposes other than service of process on the registered agent.
2 Venue, for example, is proper in the parish in which a corporation's registered office
3 is located. See C.C.P. Art. 42 (2). A corporation may wish to appoint a registered
4 agent in a given parish without submitting itself to the treatment of that parish as a
5 parish of proper venue. The Model Act language was modified to permit that kind
6 of choice. The Model Act was also modified to add a requirement that the address
7 of the corporation's initial principal office, if different from its initial registered
8 office, be included in the articles of incorporation.

9 (b) Model Act Section 2.02(b)(2)(v), which would have permitted the articles
10 of incorporation to impose personal liability on shareholders for corporate debts, was
11 deleted from this Act because of the risks that it posed of subjecting shareholders to
12 personal liability without their knowledge. The deletion of the Model Act provision
13 does not affect the ability of shareholders to undertake personal liability through
14 their own personal guarantees.

15 (c) The Model Act permits the inclusion of a provision in the articles of
16 incorporation that exculpates corporate directors from personal liability for monetary
17 damages arising from a breach of fiduciary duty, subject to four exceptions for
18 serious forms of misconduct that are considered beyond the reach of private
19 agreements. Experience suggests that most parties who receive legal advice do
20 include the permitted exculpatory provision in their articles of incorporation, usually
21 "to the fullest extent allowed by law." Reflecting this strong preference for the
22 statutory form of exculpation, this Act makes the inclusion of statutory exculpation
23 the default rule. But because of the importance of the issue both to shareholders and
24 to management, the Act does not merely permit shareholders to opt out of the
25 statutory exculpation rules, it requires that an explicit choice be made on the subject
26 in the corporation's articles of incorporation. Paragraph (A)(5) requires that the
27 articles include a statement that selects one of three choices: to accept, to limit (with
28 a statement of the limitations), or to reject the default exculpation rules.

29 (d) Paragraph (A)(5) contemplates that most parties will make the simple
30 choice between accepting and rejecting the statutory exculpation rules in full. If the
31 parties wish to engage in the more difficult task of devising their own customized
32 exculpatory rules, the particular limitations they wish to place on the default
33 statutory rules must be stated in the articles of incorporation. Under Section 1-832,
34 if the articles choose the "accept with limitations" option, but fail to include the
35 limitations in the articles, the default statutory rules will apply in full. Conversely,
36 if statements of limitation are indeed included in the articles, but an inconsistent
37 choice is made under Paragraph (A)(5), the statement of limitations will control over
38 the inconsistent (A)(5) selection.

39 (e) Model Act Paragraph (b)(5) was modified to harmonize the limitations
40 on indemnity provisions with the limits of exculpation permitted under Section 1-832
41 of this Act.

42 (f) Former R.S. 12:24(C)(3), concerning the reversion to the corporation of
43 dividends and other similar distributions that remained unclaimed after a year, was
44 retained and added to this Act as Section 1-202(B)(6).

45 (g) A new Subsection (E) was added to the Model Act provision to retain the
46 substance of the requirement in prior law that a notarized affidavit of acceptance
47 from the corporation's initial registered agent be filed as part of the incorporation
48 process. Under this Act, the agent's acceptance need not be notarized, but must be
49 in writing and signed (as both terms are defined in Section 1-140) by the initial
50 registered agent.

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§1-203. Incorporation

A. Except as provided in Subsection C of this Section, the corporate existence begins, and the corporation is duly incorporated, when the articles of incorporation become effective under Section 1-123.

B. The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to incorporation and that the corporation is duly incorporated, except in a proceeding by the state to cancel or revoke the incorporation or involuntarily dissolve the corporation.

C. When immovable property is acquired by one or more persons acting in any capacity for and in the name of any corporation that is not duly incorporated, and the corporation is subsequently duly incorporated, the corporate existence shall be retroactive to the date of acquisition of an interest in the immovable property, but such retroactive existence shall be without prejudice to rights validly acquired by third persons in the interim between the date of acquisition and the date that the corporation is duly incorporated.

Source: MBCA §2.03, R.S. 12:25.1 (2012).

Comments - 2013 Revision

(a) Model Act Subsection (a) was modified to accommodate the grace periods provided by Section 1-123(B) for the delivery of original articles of incorporation to the secretary of state.

(b) The reference to a delayed effective date in Section 2.03 of the Model Act was deleted as redundant of the rules in Section 1-123(C) concerning delayed effective dates.

(c) Former R.S. 12:25.1 was retained and added as Subsection (C), to retain the retroactivity effects provided by prior law in connection with acquisitions of immovable property. An introductory reference to the rule in Subsection (C) was added to Subsection (A).

(d) A phrase was added to Subsections (A) and (B) to make the filing of articles of incorporation conclusive evidence that a corporation has been "duly incorporated," effective on the date established by Section 1-123. The phrase was added to harmonize Subsections (A) and (B) with the "duly incorporated" language added in Subsection (C) from former R.S. 12:25.1, and to support the traditional form of legal opinion that is commonly required in connection with a corporate transaction, to the effect that one or more of the corporations involved in the transaction is "duly incorporated."

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1 §1-204. Liability for preincorporation transactions

2 [Reserved.]

3 Comment - 2013 Revision

4 Section 9 of Louisiana's 1928 business corporation act imposed personal
5 liability on non-dissenting directors and participating officers for all debts and
6 liabilities of a corporation that arose from the transaction of corporate business
7 before the corporation's articles of incorporation were properly filed. 1928 La. Acts
8 No. 250, § 9. That rule was deliberately omitted from the 1968 statute "to permit full
9 application of the de facto-corporation and estoppel-to-deny-corporate existence
10 rules." Model Act Section 2.04 would have reinserted a modified version of the
11 older rule, imposing liability only if the participants in pre-incorporation transactions
12 acted while "knowing" that the corporation had not yet been formed. Like the 1968
13 statute, this Act rejects a mechanical liability rule, even the improved version offered
14 by the Model Act, in favor of the broader, more factually-sensitive approach taken
15 in de-facto-corporation and estoppel-to-deny-corporate-existence cases. See §§
16 9.03-.04 Glenn G. Morris and Wendell H. Holmes, Louisiana Business
17 Organizations, Vols. 7 & 8, Louisiana Civil Law Treatise Series (West Group 1999);
18 Fred S. McChesney, Doctrinal Analysis and Statistical Modeling in Law: The Case
19 of Defective Incorporation, 71 Wash. U.L.Q. 493 (1993).

20 §1-205. Organization of corporation

21 A. After incorporation:

22 (1) If initial directors are named in the articles of incorporation, the initial
23 directors shall hold an organizational meeting, at the call of a majority of the
24 directors, to complete the organization of the corporation by appointing officers and
25 carrying on any other business brought before the meeting;

26 (2) If initial directors are not named in the articles, the incorporator or
27 incorporators shall hold an organizational meeting at the call of a majority of the
28 incorporators to elect a board of directors who shall complete the organization of the
29 corporation.

30 B. The election by the incorporators of a board of directors may be
31 conducted without a meeting by means of one or more written consents signed by
32 each incorporator.

33 C. An organizational meeting may be held in or out of this state.

34 Source: MBCA §2.05.

35 Comment - 2013 Revision

36 The Model Act allows incorporators to engage in the post-incorporation acts
37 that are typically carried out to complete the organization of a corporation (such as
38 electing officers and issuing stock). This Act retains the approach taken under prior

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Louisiana law. It limits the role of incorporators to the signing and delivery of articles of incorporation for filing, and to the election of the corporation's first directors. Unless initial directors are named in the articles of incorporation, directors must be elected by the incorporators to complete the organization of the corporation.

§1-206. Bylaws

A. The board of directors of a corporation may adopt bylaws for the corporation.

B. The bylaws of a corporation may contain any provision for managing the business and regulating the affairs of the corporation that is not inconsistent with law or the articles of incorporation.

C. The bylaws may contain one or both of the following provisions:

(1) A requirement that if the corporation solicits proxies or consents with respect to an election of directors, the corporation include in its proxy statement and any form of its proxy or consent, to the extent and subject to such procedures or conditions as are provided in the bylaws, one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors; and

(2) A requirement that the corporation reimburse the expenses incurred by a shareholder in soliciting proxies or consents in connection with an election of directors, to the extent and subject to such procedures or conditions as are provided in the bylaws, provided that no bylaw so adopted shall apply to elections for which any record date precedes its adoption.

D. Notwithstanding Paragraph 1-1020(B)(2), the shareholders in amending, repealing, or adopting a bylaw described in Subsection C of this Section may not limit the authority of the board of directors to amend or repeal any condition or procedure set forth in or to add any procedure or condition to such a bylaw in order to provide for a reasonable, practicable, and orderly process.

Source: MBCA §2.06

Comment - 2013 Revision

Model Act Section 2.06 was modified in this Act: (1) to make the adoption of bylaws permissive rather than mandatory, and (2) not to grant authority to incorporators to adopt bylaws. Both changes were made to retain the existing Louisiana law on the subject.

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§1-207. Emergency bylaws

A. Unless the articles of incorporation provide otherwise, the board of directors of a corporation may adopt bylaws to be effective only in an emergency defined in Subsection D of this Section. The emergency bylaws, which are subject to amendment or repeal by the shareholders, may make all provisions necessary for managing the corporation during the emergency, including:

(1) Procedures for calling a meeting of the board of directors;

(2) Quorum requirements for the meeting; and

(3) Designation of additional or substitute directors.

B. All provisions of the regular bylaws consistent with the emergency bylaws remain effective during the emergency. The emergency bylaws are effective only during the emergency.

C. Corporate action taken in good faith in accordance with the emergency bylaws:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

D. An emergency exists for purposes of this Section if a catastrophic event makes it impracticable to attain a quorum of the corporation's directors when and as necessary to carry out the functions of the board of directors.

Source: MBCA §2.07

Comment - 2013 Revision

The definition of emergency in Section 1-207(D) has been modified to harmonize it with the Louisiana-modified definition of the same term in Section 1-303(D), for the reasons explained in the Louisiana Comments to that Section.

PART 3. PURPOSES AND POWERS

§1-301. Purposes

A. Every corporation incorporated under this Act has the purpose of engaging in any lawful business or activity unless a more limited purpose is set forth in the articles of incorporation.

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1 B. A corporation engaging in a business that is subject to regulation under
2 another statute of this state may incorporate under this Act only if permitted by, and
3 subject to all limitations of, the other statute.

4 Source: MBCA §3.01.

5 Comment - 2013 Revision

6 The phrase "or activity" was added to Subsection (A) to make it consistent
7 with former law (which had permitted a business corporation to engage in "any
8 lawful activity") and to make it clear that business corporations may used for
9 purposes other than the operation of a business in the usual sense of the term. This
10 Act also allows business corporations to be used, for example, to hold assets, to
11 facilitate financial transactions, and to provide services to affiliated operating
12 companies.

13 §1-302. General powers

14 Unless its articles of incorporation provide otherwise, every corporation has
15 perpetual duration and has the power to do all things necessary or convenient to carry
16 out its business and affairs, including without limitation power:

17 (1) To sue and be sued, complain and defend in its corporate name;

18 (2) To have a corporate seal, which may be altered at will, and to use it, or
19 a facsimile of it, by impressing or affixing it or in any other manner reproducing it;

20 (3) To make and amend bylaws, not inconsistent with its articles of
21 incorporation or with the laws of this state, for managing the business and regulating
22 the affairs of the corporation;

23 (4) To purchase, receive, lease, or otherwise acquire, and own, hold,
24 improve, use, and otherwise deal with, real or personal property, or any interest in
25 property, wherever located;

26 (5) To sell, convey, mortgage, pledge, lease, exchange, and otherwise
27 dispose of all or any part of its property;

28 (6) To purchase, receive, subscribe for, or otherwise acquire; own, hold,
29 vote, use, sell, mortgage, lend, pledge, or otherwise dispose of; and deal in and with
30 shares or other interests in, or obligations of, any other entity;

31 (7) To make contracts and guarantees, incur liabilities, borrow money, issue
32 its notes, bonds, and other obligations (which may be convertible into or include the

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1 option to purchase other securities of the corporation), and secure any obligation by
2 mortgage, pledge, or security interests of any kind in any of its property, franchises,
3 or income;
4 (8) To lend money, invest and reinvest its funds, and receive and hold real
5 and personal property as security for repayment;
6 (9) To be a promoter, partner, member, associate, or manager of any limited
7 liability company, partnership, joint venture, trust, or other entity;
8 (10) To conduct its business, locate offices, and exercise the powers granted
9 by this Act within or without this state;
10 (11) To elect directors and appoint officers, employees, and agents of the
11 corporation, define their duties, fix their compensation, and lend them money and
12 credit;
13 (12) To pay pensions and establish pension plans, pension trusts, profit
14 sharing plans, share bonus plans, share option plans, and benefit or incentive plans
15 for any or all of the current or former directors, officers, employees, and agents of
16 the corporation and its affiliated entities, and the dependents and families of those
17 individuals;
18 (13) To make donations for the public welfare or for charitable, scientific,
19 or educational purposes;
20 (14) To transact any lawful business that will aid governmental policy;
21 (15) To make payments or donations, or do any other act, not inconsistent
22 with law, that furthers the business and affairs of the corporation.
23 Source: MBCA §3.02.
24 Comments - 2013 Revision
25 (a) The introductory sentence of the Section was modified to eliminate the
26 Model Act statement that corporations hold powers coextensive with those of an
27 individual. While this Act does provide broad powers to business corporations,
28 corporations still may not do such uniquely human things as adopt children, vote or
29 hold political office.

30 (b) The Model Act refers to "real or personal" property in Paragraphs (4) and
31 (8), and to "legal or equitable" interests in Paragraph (4). This Act defines the terms
32 "real property" and "personal property" in Section 1-140 in a way that encompasses
33 both the common law meaning of the terms and the analogous civil law concepts of

1 "immovable" and "movable" things. That approach supports consistency between
2 the language in this Act and in the Model Act, and also allows the references to those
3 forms of property to apply as intended with respect to real and personal property
4 owned by Louisiana corporations in other states. However, the Model Act terms
5 "legal" and "equitable" interests in property, which appear only in this Section, were
6 omitted because they could not be reconciled with any classification scheme under
7 Louisiana law, and because they were not necessary to make the intended point of
8 the provision: that corporations have the power to deal with all forms of interest in
9 property. The Model Act makes the point by including the only two forms of interest
10 that are recognized in other states, while this Act makes the same point by removing
11 any words of limitation or qualification concerning the property interests that are
12 covered by the provision.

13 (c) The phrase "or security interests of any kind" was added to Paragraph (7)
14 of the Model Act to avoid any implication that the Subsection covered only the two
15 particular types of security interests, mortgages and pledges, that it listed. Paragraph
16 (7) was also modified to permit the corporation to provide security for "any
17 obligation" and not merely "its" obligations as provided in the Model Act.

18 (d) The phrase "limited liability company" was added to Paragraph (9) of the
19 Model Act to include explicit coverage for that widely-used form of business
20 organization.

21 (e) The coverage of Paragraph (12) was broadened to include the power to
22 provide pension and similar benefits for the families of the listed corporate workers
23 and to provide those benefits to the workers and worker families of affiliated entities
24 such as subsidiaries.

25 (f) Former law had included among a corporation's listed powers the power
26 to provide inter-corporate guarantees among a parent corporation and its
27 wholly-owned subsidiaries. See former R.S. 12:41(C). That provision was omitted
28 from this Act because it could have carried with it the unintended negative
29 implication that similar guarantees might be ultra vires among affiliates without a
30 common 100% parent. The issue of a corporation's power to issue inter-corporate
31 guarantees is covered fully by Paragraph (7). Subject only to contrary provisions in
32 a corporation's articles, Paragraph (7) states without qualification that a corporation
33 has the power to issue guarantees. Paragraph (7) does not attempt to address all of
34 the situations in which such guarantees may or may not be appropriate. Like other
35 transactions in which a corporation has the power to engage, the power to issue
36 guarantees may be exercised in many different factual contexts, either in accordance
37 with or in violation of the legal duties owed to and by the corporation. If the
38 guarantee power is exercised lawfully and properly, the resulting guarantee is
39 enforceable in the usual way, without any ultra vires obstacle, while if the guarantee
40 violates some legal duty owed to or by the corporation, the normal remedies for a
41 breach of the relevant duty are available. The fact that the inter-corporate
42 beneficiary of a guarantee is a 100% parent or affiliate may be relevant in evaluating
43 whether the legal duties owed in connection with the guarantee have been satisfied.
44 See, e.g., Trenwick America Litigation Trust v. Billet, 931 A.2d 438 (Del.2007) (en
45 banc), affirming and adopting the rationale of Trenwick American Litigation Trust
46 v. Ernst & Young, L.L.P., 906 A.2d 168 (Del. Ch. 2006). But the propriety of such
47 guarantees must be determined on the basis of those legal duties, not as an issue of
48 corporate power. As a matter strictly of corporate power, a corporation formed
49 under this Act may issue guarantees without limitation.

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are additions.

1 §1-303. Emergency powers

2 A. In anticipation of or during an emergency defined in Subsection D of this
3 Section, the board of directors of a corporation may:

4 (1) Modify lines of succession to accommodate the incapacity of any
5 director, officer, employee, or agent; and

6 (2) Relocate the principal office, designate alternative principal offices or
7 regional offices, or authorize the officers to do so.

8 B. During an emergency defined in Subsection D of this Section, unless
9 emergency bylaws provide otherwise:

10 (1) Notice of a meeting of the board of directors need be given only to those
11 directors whom it is practicable to reach and may be given in any practicable
12 manner, including by publication and radio;

13 (2) Any or all directors may participate in a regular or special meeting of the
14 board by, and the meeting may be conducted through the use of, any means of
15 communication by which all directors participating may simultaneously hear each
16 other during the meeting;

17 (3) A director participating in a meeting by the means authorized in
18 Paragraph (2) of this Subsection is deemed to be present in person at the meeting;

19 (4) Unless the application of Paragraphs (2) and (3) of this Subsection is
20 sufficient to attain a quorum of directors, a quorum of directors consists of the
21 number of directors who participate in a meeting if:

22 (a) Reasonable efforts have been made to provide actual knowledge of the
23 meeting to all directors; and

24 (b) All of the directors who have actual knowledge of the meeting, and who
25 could participate in the meeting lawfully and without undue hardship or risk of
26 injury, do participate in the meeting; and

27 (5) If business is conducted at a meeting of directors at which a quorum
28 would be present only by application of the rule in Paragraph (B)(4) of this Section,
29 a quorum of directors under Paragraph (B)(4) is presumed to be present.

C. Corporate action taken in good faith during an emergency under this Section to further the ordinary business affairs of the corporation:

(1) Binds the corporation; and

(2) May not be used to impose liability on a corporate director, officer, employee, or agent.

D. An emergency exists for purposes of this Section if a catastrophic event makes it impracticable (without applying the rules pursuant to Subsection B of this Section) to attain a quorum of the corporation's directors when and as necessary to carry out the functions of the board of directors.

Source: MBCA §3.03.

Comments - 2013 Revision

(a) The definition of emergency in Subsection (d) of the Model Act was modified in this Act to tie more closely together the extraordinary powers provided by this Section and the necessities that would justify the exercise of those powers. If the board is capable of achieving a quorum under its normal rules, without application of the rules in Subsection (B), then no emergency exists as that term is defined in Subsection (D).

(b) The functions of the board are described in Section 1-801. To the extent that no action of the board was required during or in the aftermath of a catastrophic event, no emergency would exist under this Section. A major hurricane, for example, might make it impossible to convene a quorum of directors for a period of several days. But that catastrophic event would not justify the exercise of corporate powers under this Section if no need existed for board action during the period in which a quorum could not be attained. If the required decisions fell within the normal authority of the corporation's officers, for example, or if the decisions could be delayed without significant harm to the corporation's interests for the few days needed to attain the needed quorum, emergency actions under this Section would not be authorized.

(c) Section 1-820(B) provides authority to a board of directors to permit participation in board meetings by communication devices that permit all participants in the meeting to hear each other simultaneously. Paragraphs (B)(2) and (B)(3) of this Section provide rules identical to those in Section 1-820(B), except that the rules in this Section are self-operative; they apply in the case of an emergency without regard to whether the board has taken action to approve of that form of participation. In many cases, the board will have taken action before a catastrophic event to permit this type of telephonic or other similar form of participation in a meeting. If so, the corporation may be able to attain a quorum of directors under its normal rules. In that event, the special quorum and participation rules of this Section would not be needed, so no "emergency" would exist within the meaning of Subsection (D).

(d) During an emergency, Model Act Section 3.03(b)(2) allows officers to be substituted for absent directors as needed to achieve a quorum of the directors.

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1 This Act does not permit that form of substitution. Instead, it deals with the
2 emergency by relaxing the quorum requirement itself.

3 (e) If a normal quorum can be achieved under the corporation's normal rules,
4 then no emergency exists, by definition, under Subsection (D). If a quorum could
5 be achieved by allowing telephonic or other similar forms of participation in the
6 meeting, and the board has yet to exercise its power to permit those forms of
7 participation under Section 1-820(B), then Paragraphs (B)(2) and (B)(3) of this
8 Section will operate to permit telephonic or similar participation during the
9 emergency. If application of those two Subsections is enough by itself to resolve the
10 quorum problem, then the number of directors required to attain a quorum is not
11 affected by Paragraph (B)(4). The special rule in (B)(4) does not apply in those
12 circumstances because the rule is designed to decrease, not increase, the number of
13 directors required to establish a quorum, and the number of directors able to
14 participate in a meeting under (B)(4) may actually exceed the number normally
15 required for a quorum. In that case, the normal number would control. In a typical
16 corporation, in which a majority of directors would constitute a quorum, the effect
17 of the rule in (B)(4) would be to set a quorum at a majority of directors (the normal
18 rule) or a smaller number equal to those who were able to participate in the meeting
19 lawfully and without undue hardship or risk of injury.

20 (f) The participation of a director in a meeting is excused, and does not count
21 in determining the quorum under Paragraph (B) (4), if two conditions are satisfied:
22 (1) the corporation has made reasonable efforts to give actual knowledge of the
23 meeting to all of its directors, and (2) all directors who know about the meeting, and
24 could participate in it lawfully and without undue hardship or risk of injury, do
25 participate. The reference to lawful participation in Paragraph (B)(4) is designed to
26 excuse participation that is made impracticable by reason of some rule, order or
27 instruction by a governmental agency, official or other actor who is exercising lawful
28 authority during the emergency. For example, if emergency road closures or
29 restrictions prevented a director from reaching the board meeting site, and downed
30 telephone lines and cellular towers prevented telephonic participation, that director
31 would not be able to participate in the meeting lawfully, i.e., without violating the
32 road closure or restriction orders. Under those circumstances, that director's
33 participation in the meeting would be excused, and would not count toward the
34 number needed to achieve a quorum, regardless of whether the closed roads were
35 passable enough to allow the director to reach the meeting.

36 (g) Paragraph (B)(5) creates a presumption that an emergency quorum under
37 Paragraph (B)(4) is present at any meeting at which the board conducts business
38 during an emergency. The presumption is designed to give the benefit of doubt to
39 directors who are doing their best to deal with emergency conditions, perhaps
40 without full documentation of the efforts they are making to notify all directors and
41 to arrange for their participation in the meeting. The presumption may be rebutted
42 by a preponderance of evidence to the contrary. But in the absence of such evidence,
43 the interests of the corporation are best served by attaching a presumption of
44 regularity, not usurpation, to the steps taken by directors during the emergency.

45 <u>§1-304. Ultra vires</u>

46 <u>A. Except as provided in Subsection B, the validity of corporate action may</u>

47 <u>not be challenged on the ground that the corporation lacks or lacked power to act.</u>

48 <u>B. A corporation's power to act may be challenged:</u>

49 <u>(1) In a proceeding by a shareholder against the corporation to enjoin the act;</u>

1 (2) In a proceeding by the corporation, directly, derivatively, or through a
2 receiver, trustee, or other legal representative, against a current or former director,
3 officer, employee, or agent of the corporation; or
4 (3) In a proceeding by the attorney general under Section 1-1430.
5 C. In a shareholder's proceeding under Paragraph (B)(1) of this Section to
6 enjoin an unauthorized corporate act, the court may enjoin or set aside the act if
7 equitable, and may award damages for loss (other than anticipated profits) suffered
8 by the corporation or another party to the proceeding because of enjoining the
9 unauthorized act. If an act to be enjoined in the proceeding is the performance of a
10 duty owed by the corporation under the terms of a contract to which the corporation
11 is a party, the court may enjoin the act only if the other parties to the contract are
12 joined in the proceeding.
13 Source: MBCA §3.04
14 Comments - 2013 Revision
15 The Model Act requires the joinder of "all affected persons" to a proceeding
16 to enjoin an ultra vires act. Because of concern about the potential breadth and
17 uncertainty of that requirement, this Act replaces it with the joinder requirement that
18 was imposed under the former Louisiana law. As modified, Subsection (C) requires
19 the joinder of a third person in an ultra vires proceeding only if the proceeding is
20 brought to enjoin the performance of a duty owed by the corporation under a contract
21 to which that person is a party.
22 PART 4. NAME
23 §1-401. Corporate name
24 A. A corporate name:
25 (1) May include words in any language but must be written in English letters
26 or characters;
27 (2) Must contain the word "corporation", "incorporated", "company", or
28 "limited," or the abbreviation, with or without punctuation, "corp.", "inc.", "co.", or
29 "ltd.";
30 (3) May not contain:
31 (a) Any language stating or implying that the corporation is organized for a
32 purpose other than that permitted by Section 1-301 and its articles of incorporation;

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are additions.

1 (b) The phrase "doing business as" or any abbreviation of that phrase, such
2 as "d/b/a";
3 (c) Any words that deceptively or falsely suggest a charitable or nonprofit
4 nature or that imply that the corporation is an administrative agency of this state or
5 any of its political subdivisions or of the United States;
6 (d) Except as indicated, any of the following quoted words or phrases in any
7 form:
8 (i) "Casualty," "redevelopment corporation," or "electrical cooperative";
9 (ii) Except for a bank holding company, "bank", "banker", "banking",
10 "savings", "safe deposit", "trust", "trustee", "building and loan", "homestead", or
11 "credit union";
12 (iii) Except for an independent insurance agency or brokerage corporation,
13 "insurance".
14 (4) A court having jurisdiction may, upon application of the state or of any
15 interested or affected person, enjoin a corporation from doing business under a name
16 that violates any part of Subparagraphs (A)(3)(c) or (d) of this Section.
17 B. Except as authorized by Subsections C and D of this Section, a corporate
18 name must be distinguishable from:
19 (1) The corporate name of a corporation or nonprofit corporation
20 incorporated in this state;
21 (2) A corporate name reserved or registered under Section 1-402 or 1-403;
22 (3) The name of a foreign corporation or foreign nonprofit corporation, as
23 stated in the certificate of authority to do business in this state issued to that
24 corporation under Chapter 3 of this Title;
25 (4) The name of a domestic limited liability company or the name of a
26 foreign limited liability company used in the foreign limited liability company's
27 certificate of authority to do business in this state;

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1 (5) The name of a partnership whose contract for partnership is filed for
2 registry with the secretary of state or the name of a duly registered foreign
3 partnership; and
4 (6) A trade name registered with the secretary of state.
5 C. A corporation may apply to the secretary of state for authorization to use
6 a name in its filings with the secretary of state that is not distinguishable from one
7 or more of the names described in Subsection B of this Section. The secretary of
8 state shall authorize the use of the name applied for if:
9 (1) The other registrant consents to the use in writing and submits an
10 undertaking in form satisfactory to the secretary of state to change its name to a
11 name that is distinguishable from the name of the applying corporation; or
12 (2) The applicant delivers to the secretary of state a certified copy of the final
13 judgment of a court of competent jurisdiction establishing the applicant's right to use
14 the name applied for in this state.
15 D. A corporation may use in its filings with the secretary of state a name that
16 is not distinguishable from one or more of the names described in Subsection B of
17 this Section if the registrant of the name is incorporated, organized, or authorized to
18 transact business in this state and the proposed user corporation:
19 (1) Has merged with the other registrant;
20 (2) Has been formed by reorganization of the other registrant; or
21 (3) Has acquired all or substantially all of the assets, including the name, of
22 the other registrant.
23 E. This Act does not control the use of fictitious, assumed, or trade names.
24 F. If the secretary of state receives for filing articles of incorporation that
25 include in the corporate name the word "bank", "banker", "banking", "savings", "safe
26 deposit", "trust", "trustee", "building and loan", "homestead", "credit union", or any
27 other word of similar import, the secretary of state shall not file the articles of
28 incorporation until the secretary of state receives satisfactory evidence that written

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1 notice of the proposed use of that name was delivered to the office of financial
2 institutions at least ten days earlier.
3 G. If the secretary of state receives for filing articles of incorporation that
4 include in the corporate name the word "engineer", "engineering", "surveyor", or
5 "surveying," the secretary of state shall not file the articles of incorporation until the
6 secretary of state receives:
7 (1) Satisfactory evidence that written notice of the proposed use of that name
8 was delivered to the Louisiana Professional Engineering and Land Surveying Board
9 at least ten days earlier; or
10 (2) A written waiver of the ten-day notice requirement, signed by the
11 executive secretary or any officer of the Louisiana Professional Engineering and
12 Land Surveying Board.
13 H. If the secretary of state receives for filing articles of incorporation that
14 include in the corporate name the word "architect", "architectural", or "architecture",
15 the secretary of state shall not file the articles of incorporation until the secretary of
16 state receives:
17 (1) Satisfactory evidence that written notice of the proposed use of that name
18 was delivered to the State Board of Architectural Examiners at least ten days earlier;
19 or
20 (2) A written waiver of the ten-day notice requirement, signed by the
21 executive director or any member of the State Board of Architectural Examiners.
22 I. The assumption or use of a name in violation of this Section does not
23 affect or vitiate the corporate existence.
24 Source: MBCA §4.01, R.S. 12:23 (2012).
25 Comments - 2013 Revision
26 (a) The Model Act includes periods as punctuations after the abbreviations
27 listed in Paragraph (A)(2). This Act adds the phrase "with or without punctuation"
28 to permit the abbreviations to be used with or without periods.
29 (b) Model Act Subsection (a) was modified to retain the substance of the
30 rules in former R.S. 12:23 that prohibited the use of certain words or phrases in
31 corporate names (see Subparagraphs (A)(3)(b) - (d)) and that required the corporate
32 name to be expressed in English letters or characters (see Paragraph (A)(1)).

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1 (c) The Model Act language in Paragraph (a)(2) would have permitted the
2 required designations of corporate status, such as "corporation" or "corp", to be
3 expressed in "words or abbreviations of like import in any language". That language
4 was omitted to require the use of the listed English words and abbreviations.

5 (d) Model Act Paragraph (b)(3) was modified in this Act to take account of
6 the retention of existing Chapter 3 of Title 12 (in place of Model Act Chapter 15) to
7 govern the qualification of foreign corporations to do business in this state.

8 (e) The Model Act standard for distinguishing corporate and other related
9 names, i.e., "distinguishable upon the records of the secretary of state", was
10 modified in this Act to retain the standard in prior law that the names be
11 "distinguishable", without any reference to the records of the secretary of state. That
12 standard falls between the early standard of "deceptive similarity", which both the
13 Model Act and this Act reject, and the purely linguistic, on-the-records standard used
14 in the Model Act. Except for a brief return to the deceptive similarity standard
15 between 1993 and 1997, distinguishability has been the name-difference standard in
16 Louisiana since 1988.

17 (f) Under the distinguishability standard, the secretary of state's office has
18 required that names be distinguishable not only in writing, upon the secretary's
19 records, but also in pronunciation. The name "B C Corporation", for example, would
20 not be treated as distinguishable from "Bee See Corporation". This Act retains the
21 distinguishability standard to allow the secretary of state to leave the distinguishable
22 pronunciation requirement in place. The required difference in the pronunciation of
23 names serves two functions: it helps the secretary of state's office avoid confusion
24 during telephone inquiries concerning corporate records, and it lets the secretary of
25 state withhold any form of perceived official sanction for the use of a name so
26 similar in sound that it is more likely than most to lead to name-use disputes. Still,
27 nothing in this Act precludes a person from doing business lawfully under an
28 assumed or trade name, even if that name has been declined for filing purposes
29 because it was considered insufficiently distinguishable from some other name
30 already on file. Similarly, nothing in this Act confers any form of presumption that
31 a name accepted for filing by the secretary of state may be used in business
32 operations, free of any competing claims by others who may hold superior rights to
33 the name. Rights in trade names are governed by trade name and unfair competition
34 law, not by this Act or by the filing decisions of the secretary of state under this Act.
35 See Subsection (E); Gulf Coast Bank v. Gulf Coast Bank & Trust Company, 652
36 So.2d 1306 (La. 1995) (explaining sources and requirements of trade name
37 protection). This Act rejects the rule in some reported cases that the filing decisions
38 of the secretary of state with respect to corporate names are entitled to "some weight"
39 or "great weight" in trade name disputes; they are entitled to no weight at all.

40 (g) The phrase "in its filings with the secretary of state" was added to
41 Subsections (C) and (D) to make it clear that the "use" of a corporation name under
42 those Sections meant strictly the use of a name in a corporation's filings with the
43 secretary of state, and not the more general use of a corporate or fictitious name in
44 the corporation's business operations.
45
46 (h) Former R.S. 12:23(F) provided that the assumption of an improper name
47 did not affect a corporation's legal existence, but could be the basis of an injunction
48 against continued use of the improper name. The former provision was divided and
49 placed into two different Subsections in this Act. The rule that protected a
50 corporation's legal existence, despite an improper name, was retained as a general
51 rule, in Subsection (I), applicable to all of the naming rules set forth in this Section.
52 But the injunctive relief rule was included as Paragraph (A)(4), and made to apply
53 only to those items in Paragraph (A)(3) that prohibit the use of words or language
54 in a corporate name that would imply a corporation was something other than an

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1 ordinary business corporation, such as a charity or governmental agency. The
2 injunctive relief rule was made inapplicable to the Section's provisions concerning
3 the distinguishability of corporate names because the distinguishability requirements
4 were designed to serve principally a recordkeeping function, not to provide grounds
5 for remedies in trade name or unfair competition disputes.

6 (i) Subsections (F) through (H) were added to the Model Act provision to
7 retain the rules in former R.S. 12:23(E) that required advance notice to the listed
8 regulatory or licensing agencies if certain words, such as "bank", "engineer", or
9 "architect", were included in a corporation's proposed corporate name. Changes
10 were in made in the terminology and style of the former rules to harmonize them
11 with those of the Model Act.

12 §1-402. Reserved name

13 A. A person may reserve the exclusive use of a corporate name in its filings
14 with the secretary of state, including a fictitious name for a foreign corporation
15 whose corporate name is not available, by delivering an application to the secretary
16 of state for filing. The application must set forth the name and address of the
17 applicant and the name proposed to be reserved. If the secretary of state finds that
18 the corporate name applied for is available, the secretary of state shall reserve the
19 name for the applicant's exclusive use for a nonrenewable period of one hundred and
20 twenty days.

21 B. The owner of a reserved corporate name may transfer the reservation to
22 another person by delivering to the secretary of state a signed notice of the transfer
23 that states the name and address of the transferee.

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

26 Source: MBCA §4.02

27 Comments - 2013 Revision

28 (a) The phrase "in its filings with the secretary of state" was added to the first
29 sentence of Subsection (A) to make it clear that the reservation of the name related
30 strictly to a corporation's filings with the secretary of state, and not to the right to use
31 the reserved name in business operations.

32 (b) The qualification of foreign corporations is governed by Title 12, Chapter
33 3. Nevertheless, the Model Act reference to a foreign corporation was retained in
34 this Section to allow a foreign corporation to reserve a name under which it intends
35 to do business in this state.

36 (c) This Acts adds a new Subsection C to the Model Act. The new
37 Subsection automatically reserves the name of a terminated corporation for a period
38 of three years after the effective date of the corporation's termination. This

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1 reservation causes the terminated corporation's name to be included among the
2 names from which a new corporate name must be distinguishable under Section 1-
3 401(B)(2), and so protects the name from adoption by another company during the
4 period in which Section 1-1444 allows the terminated corporation to be reinstated.

5 §1-403. Registered name

6 A. A foreign corporation may register its corporate name, or its corporate
7 name with any addition authorized by R.S. 12:303(A)(3), if the name is
8 distinguishable upon the records of the secretary of state from the corporate names
9 that are not available under Subsection 1-401(B) of this Act.

10 B. A foreign corporation registers its corporate name, or its corporate name
11 with any addition authorized by R.S. 12:303(A)(3), by delivering to the secretary of
12 state for filing an application:

13 (1) Setting forth its corporate name, or its corporate name with any addition
14 authorized by R.S. 12:303(A)(3), the state or country and date of its incorporation,
15 and a brief description of the nature of the business in which it is engaged; and

16 (2) Accompanied by a certificate of existence (or a document of similar
17 import) from the state or country of incorporation.

18 C. The name is registered for the applicant's exclusive use upon the effective
19 date of the application.

20 D. A foreign corporation whose registration is effective may renew it for
21 successive years by delivering to the secretary of state for filing a renewal
22 application, which complies with the requirements of Subsection B of this Section,
23 between October 1 and December 31 of the preceding year. The renewal application
24 when filed renews the registration for the following calendar year.

25 E. A foreign corporation whose registration is effective may thereafter
26 qualify as a foreign corporation under the registered name or consent in writing to
27 the use of that name by a corporation thereafter incorporated under this Act or by
28 another foreign corporation thereafter authorized to transact business in this state.
29 The registration terminates when the domestic corporation is incorporated or the

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1 foreign corporation qualifies or consents to the qualification of another foreign
2 corporation under the registered name.

3 Source: MBCA §4.03.

4 Comment - 2013 Revision

5 References in this Section to Model Act Section 15.06 were replaced by
6 references to the analogous provision in Title 12, Chapter 3, which was retained in
7 place of Model Act Chapter 15 to govern the qualification of foreign corporations
8 to do business in this state.

9 PART 5. OFFICE AND AGENT

10 §1-501. Registered office and registered agent

11 Each corporation must continuously maintain in this state:

12 (1) A registered office that may be the same as any of its places of business;
13 and

14 (2) A registered agent, who may be:

15 (a) An individual who resides in this state; or

16 (b) A domestic or foreign corporation or other eligible entity that
17 continuously maintains an office in this state and, in the case of a foreign corporation
18 or foreign eligible entity, is authorized to transact business in this state.

19 Source: MBCA §5.01

20 Comment - 2013 Revision

21 The Model Act requires a corporation's registered office to be located at the
22 street address of its registered agent. This Act permits a corporation to specify a
23 street address for its registered office different from that of its registered agent. See
24 Comment (a) to Section 1-202. This Section was modified to accommodate the
25 possible distinction between those two addresses.

26 §1-502. Change of registered office or registered agent

27 A. A corporation may change its registered office or the identity or address
28 of its registered agent by delivering to the secretary of state for filing a statement of
29 change that sets forth:

30 (1) The name of the corporation;

31 (2) The street address of its current registered office;

32 (3) If the current registered office is to be changed, the street address of the
33 new registered office;

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1 (4) The name and street address of its current registered agent;
2 (5) If the identity of the current registered agent is to be changed, the name
3 of the new registered agent and the new agent's signed written consent (either on the
4 statement or attached to it) to the appointment; and
5 (6) If the street address of the registered agent is to be changed, the new
6 street address of the registered agent.
7 B. A registered agent may change its street address on the records of the
8 secretary of state for all corporations for which it serves as registered agent by
9 delivering to the secretary of state a statement of change that sets forth:
10 (1) The name of the registered agent;
11 (2) Its current street address to be changed;
12 (3) Its new street address; and
13 (4) A certification that the registered agent has notified all of the
14 corporations for which it serves as registered agent of the change in its address to the
15 new street address specified in the statement of change.
16 Source: MBCA §5.02.
17 Comments - 2013 Revision
18 (a) The Model Act requires a corporation's registered office to be located at
19 the street address of its registered agent. This Act permits a corporation to specify
20 a street address for its registered office different from that of its registered agent.
21 See Comment (a) to Section 1-202. This Section was modified to accommodate the
22 possible distinction between those two addresses, and to delete the requirement in
23 Model Act Subsection (b) that the two addresses be the same.
24 (b) This Act replaces Model Act Subsection (b) with a new provision that
25 allows a registered agent to notify the secretary of state of a change in address by
26 utilizing a single statement for all of the corporations for which the agent is serving.
27 §1-503. Resignation of registered agent
28 A. A registered agent may resign the agent's appointment by signing and
29 delivering to the secretary of state for filing the signed original and two exact or
30 conformed copies of a statement of resignation. If the office of the registered agent
31 is also the registered office of the corporation, the statement may include a statement
32 that the registered office is also discontinued.

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1 B. After filing the statement the secretary of state shall mail one copy to the
2 registered office (if not discontinued) and the other copy to the corporation at its
3 principal office.
4 C. The agency appointment is terminated, and the registered office
5 discontinued if so provided, on the thirty-first day after the date on which the
6 statement was filed.
7 Source: MBCA §5.03.
8 Comment - 2013 Revision
9 The Model Act requires a corporation's registered office to be located at the
10 street address of its registered agent. This Act permits a corporation to specify a
11 street address for its registered office different from that of its registered agent. See
12 Comment (a) to Section 1-202. Subsection (A) was modified to limit the statement
13 about the discontinuation of a registered office upon resignation of the registered
14 agent to those situations in which the addresses of the registered office and registered
15 agent are the same.
16 §1-504. Service on corporation
17 A. A corporation's registered agent is the corporation's agent for service of
18 process, notice, or demand required or permitted by law to be served on the
19 corporation.
20 B. If a corporation has no registered agent, or the agent cannot with
21 reasonable diligence be served, the corporation may be served by registered or
22 certified mail, return receipt requested, addressed to the secretary of the corporation
23 at its principal office. Service is perfected under this Subsection at the earliest of:
24 (1) The date the corporation receives the mail;
25 (2) The date shown on the return receipt, if signed on behalf of the
26 corporation; or
27 (3) Five days after its deposit in the U.S. Mail, as evidenced by the postmark,
28 if mailed postpaid and correctly addressed.
29 C. This Section does not prescribe the only means, or necessarily the
30 required means of serving a corporation.
31 Source: MBCA §5.04.

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1 Comment - 2013 Revision

2 A corporation's principal office will ordinarily be stated in the corporation's
3 most recent annual report. See Section 1-1621(A)(4). If a corporation has not yet
4 filed an annual report, the initial principal office, if different from the registered
5 office, will be stated in the corporation's articles of incorporation. If no principal
6 office is identified in a corporation's annual report or articles of incorporation, the
7 corporation's principal office will be the same as its registered office. See Sections
8 1-140(17) and 1-202(A)(3).

9 PART 6. SHARES AND DISTRIBUTIONS

10 SUBPART A. SHARES

11 §1-601. Authorized shares

12 A. The articles of incorporation must set forth any classes of shares and
13 series of shares within a class, and the number of shares of each class and series, that
14 the corporation is authorized to issue. If more than one class or series of shares is
15 authorized, the articles of incorporation must prescribe a distinguishing designation
16 for each class or series and must describe, prior to the issuance of shares of a class
17 or series, the terms, including the preferences, rights, and limitations, of that class
18 or series. Except to the extent varied as permitted by this Section, all shares of a
19 class or series must have terms, including preferences, rights, and limitations that are
20 identical with those of other shares of the same class or series.

21 B. The articles of incorporation must authorize:

22 (1) One or more classes or series of shares that together have unlimited
23 voting rights, and

24 (2) One or more classes or series of shares (which may be the same class or
25 classes as those with voting rights) that together are entitled to receive the net assets
26 of the corporation upon dissolution.

27 C. The articles of incorporation may authorize one or more classes or series
28 of shares that:

29 (1) Have special, conditional, or limited voting rights, or no right to vote,
30 except to the extent otherwise provided by this Act;

31 (2) Are redeemable or convertible as specified in the articles of
32 incorporation;

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1 (a) At the option of the corporation, the shareholder, or another person or
2 upon the occurrence of a specified event;
3 (b) For cash, indebtedness, securities, or other property; and
4 (c) At prices and in amounts specified, or determined in accordance with a
5 formula;
6 (3) Entitle the holders to distributions calculated in any manner, including
7 dividends that may be cumulative, noncumulative, or partially cumulative; or
8 (4) Have preference over any other class or series of shares with respect to
9 distributions, including distributions upon the dissolution of the corporation.
10 D. Terms of shares may be made dependent upon facts objectively
11 ascertainable outside the articles of incorporation in accordance with Subsection
12 1-120(K) of this Act.
13 E . Any of the terms of shares may vary among holders of the same class or
14 series so long as such variations are expressly set forth in the articles of
15 incorporation.
16 F. The description of the preferences, rights and limitations of classes or
17 series of shares in Subsection C of this Section is not exhaustive.
18 Source: MBCA §6.01.
19 §1-602. Terms of class or series determined by board of directors
20 A. If the articles of incorporation so provide, the board of directors is
21 authorized, without shareholder approval, to:
22 (1) Classify any unissued shares into one or more classes or into one or more
23 series within a class,
24 (2) Reclassify any unissued shares of any class into one or more classes or
25 into one or more series within one or more classes, or
26 (3) Reclassify any unissued shares of any series of any class into one or more
27 classes or into one or more series within a class.

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1 B. If the board of directors acts pursuant to Subsection A of this Section, it
2 must determine the terms, including the preferences, rights and limitations, to the
3 same extent permitted under Section 1-601, of:
4 (1) Any class of shares before the issuance of any shares of that class, or
5 (2) Any series within a class before the issuance of any shares of that series.
6 C. Before issuing any shares of a class or series created under this Section,
7 the corporation must deliver to the secretary of state for filing articles of amendment
8 setting forth the terms determined under Subsection A of this Section.
9 Source: MBCA §6.02.
10 §1-603. Issued and outstanding shares
11 A. A corporation may issue the number of shares of each class or series
12 authorized by the articles of incorporation. Shares that are issued are outstanding
13 shares until they are reacquired, redeemed, converted, or cancelled.
14 B. The reacquisition, redemption, or conversion of outstanding shares is
15 subject to the limitations of Subsection C of this Section and to Section 1-640.
16 C. At all times that shares of the corporation are outstanding, one or more
17 shares that together have unlimited voting rights and one or more shares that together
18 are entitled to receive the net assets of the corporation upon dissolution must be
19 outstanding.
20 Source: MBCA § 6.03
21 §1-604. Fractional shares
22 A. A corporation may:
23 (1) Issue fractions of a share or pay in money the value of fractions of a
24 share;
25 (2) Arrange for disposition of fractional shares by the shareholders;
26 (3) Issue scrip in registered or bearer form entitling the holder to receive a
27 full share upon surrendering enough scrip to equal a full share.
28 B. Each certificate representing scrip must be conspicuously labeled "scrip"
29 and must contain the information required by Subsection 1-625(B) of this Act.

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C. The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

D. The board of directors may authorize the issuance of scrip subject to any condition considered desirable, including:

(1) That the scrip will become void if not exchanged for full shares before a specified date; and

(2) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders.

Source: MBCA §6.04.

SUBPART B. ISSUANCE OF SHARES

§1-620. Subscription for shares before incorporation

A. A subscription for shares entered into before incorporation is irrevocable for six months unless the subscription agreement provides a longer or shorter period or all the subscribers agree to revocation.

B. The board of directors may determine the payment terms of subscription for shares that were entered into before incorporation, unless the subscription agreement specifies them. A call for payment by the board of directors must be uniform so far as practicable as to all shares of the same class or series, unless the subscription agreement specifies otherwise.

C. Shares issued pursuant to subscriptions entered into before incorporation are fully paid and nonassessable when the corporation receives the consideration specified in the subscription agreement.

D. If a subscriber defaults in payment of money or property under a subscription agreement entered into before incorporation, the corporation may collect the amount owed as any other debt. Alternatively, unless the subscription agreement provides otherwise, the corporation may rescind the agreement and may

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1 sell the shares if the debt remains unpaid for more than twenty days after the
2 corporation sends written demand for payment to the subscriber.
3 E. A subscription agreement entered into after incorporation is a contract
4 between the subscriber and the corporation subject to Section 1-621.
5 Source: MBCA §6.20
6 §1-621. Issuance of shares
7 A. The powers granted in this Section to the board of directors may be
8 reserved to the shareholders by the articles of incorporation.
9 B. The board of directors may authorize shares to be issued for consideration
10 consisting of any tangible or intangible property or benefit to the corporation,
11 including cash, promissory notes, services performed, contracts for services to be
12 performed, or other securities of the corporation.
13 C. Before the corporation issues shares, the board of directors must
14 determine that the consideration received or to be received for shares to be issued is
15 adequate. That determination by the board of directors is conclusive insofar as the
16 adequacy of consideration for the issuance of shares relates to whether the shares are
17 validly issued, fully paid, and nonassessable.
18 D. When the corporation receives the consideration for which the board of
19 directors authorized the issuance of shares, the shares issued therefor are fully paid
20 and nonassessable.
21 E. The corporation may place in escrow shares issued for a contract for
22 future services or benefits or a promissory note, or make other arrangements to
23 restrict the transfer of the shares, and may credit distributions in respect of the shares
24 against their purchase price, until the services are performed, the note is paid, or the
25 benefits received. If the services are not performed, the note is not paid, or the
26 benefits are not received, the shares escrowed or restricted and the distributions
27 credited may be cancelled in whole or part.
28 F.(1) An issuance of shares or other securities convertible into or rights
29 exercisable for shares, in a transaction or a series of integrated transactions, requires

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1 approval of the shareholders, at a meeting at which a quorum consisting of at least
2 a majority of the votes entitled to be cast on the matter exists, if:
3 (a) The shares, other securities, or rights are issued for consideration other
4 than cash or cash equivalents, and
5 (b) The voting power of shares that are issued and issuable as a result of the
6 transaction or series of integrated transactions will comprise more than twenty
7 percent of the voting power of the shares of the corporation that were outstanding
8 immediately before the transaction.
9 (2) In this Subsection:
10 (a) For purposes of determining the voting power of shares issued and
11 issuable as a result of a transaction or series of integrated transactions, the voting
12 power of shares shall be the greater of (I) the voting power of the shares to be issued,
13 or (ii) the voting power of the shares that would be outstanding after giving effect to
14 the conversion of convertible shares and other securities and the exercise of rights
15 to be issued.
16 (b) A series of transactions is integrated if consummation of one transaction
17 is made contingent on consummation of one or more of the other transactions.
18 Source: MBCA §6.21.
19 Comment - 2013 Revision
20 Subsection (B) of the Model Act authorizes the issuance of shares for, among
21 other things, "tangible or intangible" property. Section 1-140 of this Act defines
22 "tangible property" to include "corporeal property" and "intangible property" to
23 include "incorporeal property" as those terms are understood under Louisiana law.
24 §1-622. Liability of shareholders
25 A. A purchaser from a corporation of its own shares is not liable to the
26 corporation or its creditors with respect to the shares except to pay the consideration
27 for which the shares were authorized to be issued (Section 1-621) or specified in the
28 subscription agreement (Section 1-620).
29 B. A shareholder of a corporation is not personally liable for the acts or debts
30 of the corporation.

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1 C. A shareholder who receives a distribution in excess of what may be
2 authorized and made pursuant to Subsection 1-640(A) of this Act shall be personally
3 liable to the corporation, or to creditors of the corporation, or both, for an amount not
4 exceeding, in the aggregate, the excess amount received by that shareholder.
5 D. A proceeding to enforce the liability of a shareholder under Subsection
6 C of this Section is subject to a peremption of two years measured from the relevant
7 date in Paragraph (1) or (2) of this Subsection:
8 (1) The date on which the effect of the distribution was to be measured under
9 Subsection1-640(E) or (G) of this Act, to the extent that the distribution is alleged
10 to have been unlawful under Subsection 1-640(C) of this Act; or
11 (2) The date as of which the distribution first violated a restriction in the
12 articles of incorporation, to the extent that the distribution is alleged to have been
13 unlawful because it violated a restriction in the articles of incorporation.
14 Source: MBCA §6.22
15 Comments - 2013 Revision
16 (a) Subsection (b) of the Model Act was modified by deleting the phrase,
17 "Unless otherwise provided in the articles of incorporation," at the beginning of the
18 sentence and the phrase, "except that he may become personally liable by reason of
19 his own acts or conduct," at the end of the sentence.

20 (b) The first phrase was included in the Model Act to make the provision
21 consistent with Model Act Section 2.02(b)(2)(v), which allowed provisions in the
22 articles of incorporation to impose personal liability on shareholders for the debts of
23 a corporation. That provision of the Model Act was deleted from this Act to avoid
24 the risk that such a provision might result in a shareholder's incurring personal
25 liability inadvertently. See Comment (b) to Section 1-202. The related phrase in
26 Subsection (B) of this Section was deleted because the underlying authority to
27 include such a provision in the articles had itself been deleted.

28 (c) The second phrase, concerning an exception for personal liability arising
29 out of personal conduct, was deleted from this Act because it could have been
30 interpreted to provide an independent basis for personal liability based simply on a
31 corporate actor's having engaged in some kind of personal conduct in connection
32 with the corporation's operations. It is true that liability may attach to a corporate
33 actor's personal conduct if, for example, the conduct is tortious or amounts to an
34 undertaking of personal contractual duties. But the grounds for such liability are
35 determined by other bodies of law, not corporation law, and they do not impose
36 liability on a corporate actor merely because the actor has engaged in personal
37 conduct on behalf of a corporation. If a corporate actor does bear personal liability
38 based on his personal acts or conduct in connection with the operation of the
39 corporation, the actor is being held liable for his own acts or debts, not those of the
40 corporation, so no need exists to state the exception contained in the Model Act.

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1 (d) The Model Act does not impose liability on a shareholder for a wrongful
2 distribution, except indirectly in an action under Section 8.33(b)(2) for recoupment
3 by a director held liable for the unlawful distribution. This Act adds a new
4 Subsection (C) to retain the existing Louisiana rule that a shareholder is liable to
5 return to the corporation any unlawful distributions received by that shareholder.
6 The liability imposed by Subsection (C) does not depend upon proof of any culpable
7 conduct by the receiving shareholder, but merely on proof that the shareholder
8 received a distribution that was unlawful. However, Subsection (C) imposes liability
9 on a shareholder to return only the unlawful portion of any distribution received by
10 that shareholder. The shareholder does not bear liability under Subsection (C) for
11 any part of the distribution made to other shareholders or for any part of the
12 distribution to him that was made lawfully.

13 (e) Subsection (D) was added to retain the prior law's two-year time limit on
14 actions to enforce a shareholder's liability for the receipt of an unlawful distribution.
15 However, unlike the earlier law, Subsection (D) explicitly makes the two-year period
16 peremptive rather than prescriptive. The two-year peremptive period begins on the
17 date on which lawfulness of the distribution would have been measured for purposes
18 of Section 1-640(C), to the extent that a violation of 1-640(C) is alleged as the basis
19 of recovery, or on the date on which the distribution first violated a restriction in the
20 articles of incorporation, to the extent that a violation of the articles is alleged as the
21 basis of recovery.

22 §1-623. Share dividends

23 A. Unless the articles of incorporation provide otherwise, shares may be
24 issued pro rata and without consideration to the corporation's shareholders or to the
25 shareholders of one or more classes or series. An issuance of shares under this
26 Subsection is a share dividend.

27 B. Shares of one class or series may not be issued as a share dividend in
28 respect of shares of another class or series unless (1) the articles of incorporation so
29 authorize, (2) a majority of the votes entitled to be cast by the class or series to be
30 issued approve the issue, or (3) there are no outstanding shares of the class or series
31 to be issued.

32 C. If the board of directors does not fix the record date for determining
33 shareholders entitled to a share dividend, it is the date the board of directors
34 authorizes the share dividend.

35 Source: MBCA §6.23.

36 §1-624. Share options

37 A. A corporation may issue rights, options, or warrants for the purchase of
38 shares or other securities of the corporation. The board of directors shall determine
39 (1) the terms upon which the rights, options, or warrants are issued and (2) the terms,

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1 including the consideration for which the shares or other securities are to be issued.
2 The authorization by the board of directors for the corporation to issue such rights,
3 options, or warrants constitutes authorization of the issuance of the shares or other
4 securities for which the rights, options or warrants are exercisable.
5 B. The terms and conditions of such rights, options or warrants, including
6 those outstanding on the effective date of this Section, may include, without
7 limitation, restrictions or conditions that:
8 (1) Preclude or limit the exercise, transfer or receipt of such rights, options
9 or warrants by any person or persons owning or offering to acquire a specified
10 number or percentage of the outstanding shares or other securities of the corporation
11 or by any transferee or transferees of any such person or persons, or
12 (2) Invalidate or void such rights, options, or warrants held by any such
13 person or persons or any such transferee or transferees.
14 Source: MBCA §6.24.
15 §1-625. Form and content of certificates
16 A. Shares shall be represented by share certificates unless the issuing
17 corporation is a participant in the Direct Registration System of the Depository Trust
18 & Clearing Corporation or of a similar book-entry system used in the trading of
19 shares of public corporations. If the issuing corporation is a participant in the Direct
20 Registration System or a similar book-entry system, shares may but need not be
21 represented by certificates. Unless this Act or another statute expressly provides
22 otherwise, the rights and obligations of shareholders are identical whether or not
23 their shares are represented by certificates.
24 B. At a minimum each share certificate must state on its face:
25 (1) The name of the issuing corporation and that it is organized under the law
26 of this state;
27 (2) The name of the person to whom issued; and
28 (3) The number and class of shares and the designation of the series, if any,
29 the certificate represents.

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1 C. If the issuing corporation is authorized to issue different classes of shares
2 or different series within a class, the designations, relative rights, preferences, and
3 limitations applicable to each class and the variations in rights, preferences, and
4 limitations determined for each series (and the authority of the board of directors to
5 determine variations for future series) must be summarized on the front or back of
6 each certificate. Alternatively, each certificate may state conspicuously on its front
7 or back that the corporation will furnish the shareholder this information on request
8 in writing and without charge.

9 D. Each share certificate (1) must be signed (either manually or in facsimile)
10 by the president and secretary or by two officers designated in the bylaws or by the
11 board of directors and (2) may bear the corporate seal or its facsimile.

12 E. If the person who signed (either manually or in facsimile) a share
13 certificate no longer holds office when the certificate is issued, the certificate is
14 nevertheless valid.

15 Source: MBCA §6.25.

16 Comments - 2013 Revision

17 (a) Subsection (a) of the Model Act allows all corporations to issue shares
18 with or without certificates. This Act adds language to Subsection (a) to retain
19 essentially the same limitation contained in prior law concerning the use of
20 uncertificated shares. Uncertificated shares may be issued only by a corporation that
21 is a participant in the Direct Registration System of the Depository Trust & Clearing
22 Corporation or some similar book-entry system for trading shares in public
23 corporations. The reference in this Act to a "similar book-entry system" replaces the
24 prior reference to a "successor" system because the allowance for uncertificated
25 shares should extend to other similar systems regardless of whether they are
26 successors to the current Depository Trust system.

27 (b) For corporations that do not participate in the DTCC Direct Registration
28 System (a system designed to facilitate the efficient execution through brokerage
29 firms of transactions in publicly-traded securities), share certificates provide a
30 convenient and reliable means of perfecting security interests in the underlying
31 shares and of notifying third parties of transfer restrictions.

32 (c) When applicable, the statutory requirement that shares be issued in
33 certificated form is a duty imposed by law on the corporation, not a defense that may
34 be asserted by the corporation against a person who genuinely owns shares for which
35 the corporation has failed to issue a certificate. A person may own shares without
36 possessing a certificate for the shares, even if the law requires the corporation to
37 issue its shares in certificated form. See, e.g., Mercer v. Mercer, 930 So.2d 348 (La.
38 App. 2d Cir. 2006); Age v. Age, 820 So.2d 1167 (La. App. 4th Cir. 2002);
39 International Stevedores, Inc., v. Hanlon, 499 So.2d 1183 (La. App. 5th Cir. 1986).

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1 (d) Subsection (d) of the Model Act was modified to supply a default rule
2 for the two officers (president and secretary) who are to sign a share certificate in the
3 event that the signing officers are not designated in the corporation's bylaws or by
4 its board of directors.

5 §1-626. Shares without certificates

6 A. If a corporation is eligible to issue shares without certificates, the board
7 of directors of the corporation may authorize the issue of some or all of the shares
8 of any or all of its classes or series without certificates, except to the extent that its
9 articles of incorporation or bylaws provide otherwise. The authorization does not
10 affect shares already represented by certificates until they are surrendered to the
11 corporation.

12 B. Within a reasonable time after the issue or transfer of shares without
13 certificates, the corporation shall send the shareholder a written statement of the
14 information required on certificates by Subsections 1-625(B) and (C) of this Act,
15 and, if applicable, Section 1-627.

16 Source: MBCA §6.26.

17 Comment - 2013 Revision

18 This Act limits the application of the rule in Subsection (A) to those
19 corporations that are eligible to issue uncertificated shares. Under Section 1-625(A),
20 a corporation is eligible to issue uncertificated shares only if the corporation is a
21 participant in the Direct Registration System of the Depository Trust & Clearing
22 Corporation or some similar system. Most Louisiana corporations are not
23 participants in that kind of system, and so would not be eligible either to issue
24 uncertificated shares or to utilize the rules in this Section.

25 §1-627. Restriction on transfer of shares and other securities

26 A. The articles of incorporation, bylaws, an agreement among shareholders,
27 or an agreement between shareholders and the corporation may impose restrictions
28 on the transfer or registration of transfer of shares of the corporation. A restriction
29 does not affect shares issued before the restriction was adopted unless the holders of
30 the shares are parties to the restriction agreement or voted in favor of the restriction.

31 B. A restriction on the transfer or registration of transfer of shares is valid
32 and enforceable against the holder or a transferee of the holder if the restriction is
33 authorized by this Section and its existence is noted conspicuously on the front or
34 back of the certificate or is contained in the information statement required by

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1 Subsection 1-626(B) of this Act. Unless so noted or contained, a restriction is not
2 enforceable against a person without knowledge of the restriction.
3 C. A restriction on the transfer or registration of transfer of shares is
4 authorized:
5 (1) To maintain the corporation's status when it is dependent on the number
6 or identity of its shareholders;
7 (2) To preserve exemptions under federal or state securities law;
8 (3) For any other reasonable purpose.
9 D. A restriction on the transfer or registration of transfer of shares may:
10 (1) Obligate the shareholder first to offer the corporation or other persons
11 (separately, consecutively, or simultaneously) an opportunity to acquire the restricted
12 shares;
13 (2) Obligate the corporation or other persons (separately, consecutively, or
14 simultaneously) to acquire the restricted shares;
15 (3) Require the corporation, the holders of any class of its shares, or another
16 person to approve the transfer of the restricted shares, if the requirement is not
17 manifestly unreasonable;
18 (4) Prohibit the transfer of the restricted shares to designated persons or
19 classes of persons, if the prohibition is not manifestly unreasonable.
20 E. For purposes of this Section, "shares" includes a security convertible into
21 or carrying a right to subscribe for or acquire shares.
22 Source: MBCA §6.27.
23 Comment - 2013 Revision
24 The rule in Subsection (B) is consistent with the rule in Article 8 of the
25 Uniform Commercial Code concerning the enforceability of transfer restrictions on
26 investment securities generally. Under both the UCC and this Act, a transfer
27 restriction that is not noted as required on the certificate of a certificated security, or
28 in a required notification statement for an uncertificated security, is unenforceable
29 except against a person with "knowledge" of the restriction. See R.S. 10:8-204. As
30 used in this Act and in the UCC, the term "knowledge" means actual knowledge.
31 The terms "knowledge" and "know" are defined in Section 1-140 of this Act in the
32 same way as in Section 10:1-202 of Louisiana's enactment of the UCC.

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1 §1-628. Expense of issue
2 A corporation may pay the expenses of selling or underwriting its shares, and
3 of organizing or reorganizing the corporation, from the consideration received for
4 shares.
5 Source: MBCA §6.28.
6 SUBPART C. SUBSEQUENT ACQUISITION OF SHARES BY SHAREHOLDERS
7 AND CORPORATION
8 §1-630. Shareholders' preemptive rights
9 A. The shareholders of a corporation do not have a preemptive right to
10 acquire the corporation's unissued shares except to the extent the articles of
11 incorporation so provide. The articles of incorporation of a corporation that was
12 incorporated before January 1, 1969, shall be deemed to contain a statement that "the
13 corporation elects to have preemptive rights," unless the articles of incorporation
14 contain a specific provision enlarging, limiting or denying preemptive rights.
15 B. A statement included in the articles of incorporation that "the corporation
16 elects to have preemptive rights" (or words of similar import) means that the
17 following principles apply except to the extent the articles of incorporation expressly
18 provide otherwise:
19 (1) The shareholders of the corporation have a preemptive right, granted on
20 uniform terms and conditions prescribed by the board of directors to provide a fair
21 and reasonable opportunity to exercise the right, to acquire proportional amounts of
22 the corporation's unisssued shares upon the decision of the board of directors to issue
23 them. Shareholders have a fair and reasonable opportunity to exercise the right to
24 acquire shares if they are given at least forty-five days to purchase the shares after
25 notice to them of that right, but shorter periods of time may be fair and reasonable
26 under the circumstances in which the shares are being issued.
27 (2) A shareholder may waive his preemptive right. A waiver evidenced by
28 a writing is irrevocable even though it is not supported by consideration.
29 (3) There is no preemptive right with respect to:

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1 (a) Shares issued as compensation to directors, officers, agents, or employees
2 of the corporation, its subsidiaries or affiliates:
3 (b) Shares issued to satisfy conversion or option rights created to provide
4 compensation to directors, officers, agents, or employees of the corporation, its
5 subsidiaries or affiliates;
6 (c) Shares authorized in articles of incorporation that are issued within six
7 months from the effective date of incorporation;
8 (d) Shares sold otherwise than for money.
9 (4) Holders of shares of any class without general voting rights but with
10 preferential rights to distributions or assets have no preemptive rights with respect
11 to shares of any class.
12 (5) Holders of shares of any class with general voting rights but without
13 preferential rights to distributions or assets have no preemptive rights with respect
14 to shares of any class with preferential rights to distributions or assets unless the
15 shares with preferential rights are convertible into or carry a right to subscribe for or
16 acquire shares without preferential rights.
17 (6) Shares subject to preemptive rights that are not acquired by shareholders
18 may be issued to any person for a period of one year after being offered to
19 shareholders at a consideration set by the board of directors that is not lower than the
20 consideration set for the exercise of preemptive rights. An offer at a lower
21 consideration or after the expiration of one year is subject to the shareholders'
22 preemptive rights.
23 C. For purposes of this Section, "shares" includes a security convertible into
24 or carrying a right to subscribe for or acquire shares.
25 D. On or after January 1, 2016, no action to enforce a preemptive right of a
26 shareholder shall be brought unless filed in a court of competent jurisdiction and
27 proper venue within one year of the date of the issuance of the share to which the
28 shareholder had the preemptive right, or within one year of the date that the issuance

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1 of the share is discovered or should have been discovered. Such an action is
2 perempted three years after the date of the issuance of the share.

3 Source: MBCA §6.30.

4 Comments - 2013 Revision

5 (a) Before January 1, 1969, the effective date of the 1968 business
6 corporation law, Louisiana provided an "opt out" form of preemptive rights; the
7 earlier corporation statute supplied preemptive rights automatically unless a
8 corporation's articles of incorporation provided otherwise. See former R.S. 12:28(B)
9 (1951, superseded). The 1968 statute reversed the rule, and made preemptive rights
10 "opt in;" shareholders did not have preemptive rights unless the articles affirmatively
11 approved them. See former R.S. 12:72(A) (1994, superseded). To prevent the
12 change in the default rule from eliminating preemptive rights in corporations whose
13 articles were silent on the subject, the 1968 statute contained a provision that
14 deemed the articles of pre-1969 corporations to contain a statement approving of
15 preemptive rights, except to the extent that the articles actually enlarged, limited or
16 denied those rights. See former R.S. 12:24(C)(1) (1994, superseded). Because this
17 Act retains the opt-in approach of the 1968 statute, and of the Model Act, some
18 pre-1969 corporations may still need the statutory transition rule that was provided
19 in the 1968 statute. That rule has been added to Subsection (A).

20 (b) Model Act Paragraph (b)(1) does not specify how much time the
21 shareholders must be given to exercise their preemptive rights, saying only that the
22 corporation must provide a "fair and reasonable opportunity" to exercise them. This
23 Act adds a sentence to Paragraph (B)(1) that establishes a safe harbor of forty-five
24 days for the preemptive period, measured from notice to the shareholders of their
25 opportunity to purchase the shares. (See Section 1-141 for the effective date of the
26 notice.) Shorter periods may also be fair and reasonable, based on the circumstances
27 of the transactions in question, but the corporation would bear the burden of proving
28 the fairness and reasonableness of a shorter period. Examples of factors that would
29 help justify a shorter period would be the corporation's need for funds before the
30 expiration of the forty-five-day period, advance knowledge and involvement by a
31 complaining shareholder in the decision to issue additional shares, and the ability of
32 a complaining shareholder to raise the required funds without financial hardship.

33 (c) This Act adds a new time limit for an action to enforce a preemptive
34 right. The new time limits are especially important to pre-1969 corporations, which
35 may inadvertently fail to afford the preemptive rights that their articles, if silent on
36 the point, are deemed to provide.

37 §1-631. Corporation's acquisition of its own shares

38 A. A corporation may acquire its own shares, and shares so acquired
39 constitute authorized but unissued shares.

40 B. If the articles of incorporation prohibit the reissue of the acquired shares,
41 the number of authorized shares is reduced by the number of shares acquired.

42 Source: MBCA §6.31.

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1 SUBPART D. DISTRIBUTIONS

2 §1-640. Distributions to shareholders

3 A. A board of directors may authorize and the corporation may make
4 distributions to its shareholders subject to restriction by the articles of incorporation
5 and the limitation in Subsection C of this Section.

6 B. If the board of directors does not fix the record date for determining
7 shareholders entitled to a distribution (other than one involving a purchase,
8 redemption, or other acquisition of the corporation's shares), it is the date the board
9 of directors authorizes the distribution.

10 C. No distribution may be made if, after giving it effect:

11 (1) The corporation would not be able to pay its debts as they become due
12 in the usual course of business; or

13 (2) The corporation's total assets would be less than the sum of its total
14 liabilities plus (unless the articles of incorporation permit otherwise) the amount that
15 would be needed, if the corporation were to be dissolved at the time of the
16 distribution, to satisfy the preferential rights upon dissolution of shareholders whose
17 preferential rights are superior to those receiving the distribution.

18 D. The board of directors may base a determination that a distribution is not
19 prohibited under Subsection C of this Section either on financial statements prepared
20 on the basis of accounting practices and principles that are reasonable in the
21 circumstances or on a fair valuation or other method that is reasonable in the
22 circumstances.

23 E. Except as provided in Subsection G of this Section, the effect of a
24 distribution under Subsection C of this Section is measured:

25 (1) In the case of distribution by purchase, redemption, or other acquisition
26 of the corporation's shares, as of the earlier of (a) the date money or other property
27 is transferred or debt incurred by the corporation or (b) the date the shareholder
28 ceases to be a shareholder with respect to the acquired shares;

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1 (2) In the case of any other distribution of indebtedness, as of the date the
2 indebtedness is distributed; and
3 (3) In all other cases, as of (a) the date the distribution is authorized if the
4 payment occurs within one hundred and twenty days after the date of authorization
5 or (b) the date the payment is made if it occurs more than one hundred and twenty
6 days after the date of authorization.
7 F. A corporation's indebtedness to a shareholder incurred by reason of a
8 distribution made in accordance with this Section is at parity with the corporation's
9 indebtedness to its general, unsecured creditors except to the extent subordinated by
10 agreement.
11 G. Indebtedness of a corporation, including indebtedness issued as a
12 distribution, is not considered a liability for purposes of determinations under
13 Subsection C of this Section if its terms provide that payment of principal and
14 interest are made only if and to the extent that payment of a distribution to
15 shareholders could then be made under this Section. If the indebtedness is issued as
16 a distribution, each payment of principal or interest is treated as a distribution, the
17 effect of which is measured on the date the payment is actually made.
18 H. This Section shall not apply to distributions in liquidation under Part 14
19 of this Chapter.
20 Source: MBCA §6.40.
21 PART 7. SHAREHOLDERS
22 SUBPART A. MEETINGS
23 §1-701. Annual meeting
24 A. Unless directors are elected by written consent in lieu of an annual
25 meeting as permitted by Section 1-704, a corporation shall hold a meeting of
26 shareholders annually at a time stated in or fixed in accordance with the bylaws or,
27 if not so stated or fixed, as stated or fixed in accordance with a resolution of the
28 board of directors. If a corporation's articles of incorporation authorize shareholders

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1 to cumulate their votes when electing directors pursuant to Section 1-728, directors
2 may not be elected by written consent unless the written consent is unanimous.
3 B. Annual shareholders' meetings may be held in or out of this state at the
4 place stated in or fixed in accordance with the bylaws or, if not so stated or fixed, as
5 stated or fixed in accordance with a resolution of the board of directors. If no place
6 is stated in or fixed in accordance with the bylaws, annual meetings shall be held at
7 the corporation's principal office.
8 C. The failure to hold an annual meeting at the time stated in or fixed in
9 accordance with Subsection A of this Section does not affect the validity of any
10 corporate action.
11 D. If no annual shareholders' meeting is held for a period of eighteen months,
12 and directors are not elected by written consent in lieu of an annual meeting during
13 that period, any shareholder may by notice to the secretary demand that the secretary
14 call such a meeting, to be held at the corporation's principal office (or, if none in this
15 state, at its registered office). The secretary shall call the meeting and shall provide
16 notice of the meeting as required by Section 1-705 within thirty days after the notice
17 to the secretary of the shareholder's demand for the meeting.
18 Source: MBCA §7.01.
19 Comments - 2013 Revision
20 (a) This Act adds language to Subsection (A) through (C) to accommodate
21 the rule, retained from prior law, that makes the adoption of bylaws optional. Under
22 the added language, the time and place of an annual meeting of shareholders may set
23 by or in accordance with a resolution of the board of directors if the corporation has
24 not adopted a bylaw that controls the matter.
25 (b) This Act changes the Model Act wording in the second sentence of
26 Subsection (a) to make it clear that the effect of cumulative voting on the election of
27 directors under Subsection (A) is to require the election of directors at a meeting, and
28 not through written consents in lieu of a meeting, unless the written consent is
29 unanimous. The Model Act language could have been interpreted to require
30 directors to be elected by unanimous consent whenever shareholders had the right
31 to vote cumulatively.
32 (c) This Act adds a new Subsection (D) to retain a modified version of the
33 provision in prior law that allowed any shareholder to call an annual meeting for the
34 election of directors if no such meeting had been held for a period of eighteen
35 months. As modified, the new Subsection (D) does not empower the shareholder
36 actually to call the meeting, but rather to demand that the secretary do so. The
37 secretary, unlike the shareholder, has the ability to arrange for the meeting and to

1 provide the notice of the meeting required by Section 1-705. Subsection (D) requires
2 both that the meeting be called and that the required notice be provided within 30
3 days of the notice to the secretary of the shareholder's demand for a meeting. The
4 secretary has the discretion, acting consistently with the secretary's fiduciary duties,
5 to choose the date of the meeting, provided that the date chosen permits the secretary
6 to provide notice of the meeting no fewer than ten and no more than sixty days
7 before the date of the meeting. The duties of the secretary under Subsection (D) are
8 subject to enforcement through a writ of mandamus. See C.C.P. Art. 3864.

9 §1-702. Special meeting

10 A. A corporation shall hold a special meeting of shareholders:

11 (1) On call of its board of directors or the person or persons authorized to do
12 so by the articles of incorporation or bylaws; or

13 (2) If the holders of at least ten percent of all the votes entitled to be cast on
14 an issue proposed to be considered at the proposed special meeting sign, date, and
15 deliver to the corporation one or more written demands for the meeting describing
16 the purpose or purposes for which it is to be held, provided that the articles of
17 incorporation may fix a lower percentage or a higher percentage not exceeding
18 twenty-five percent of all the votes entitled to be cast on any issue proposed to be
19 considered. Unless otherwise provided in the articles of incorporation, a written
20 demand for a special meeting may be revoked by a writing to that effect received by
21 the corporation prior to the receipt by the corporation of demands sufficient in
22 number to require the holding of a special meeting.

23 B. If not otherwise fixed under Section 1-703 or 1-707, the record date for
24 determining shareholders entitled to demand a special meeting is the date the first
25 shareholder signs the demand.

26 C. Special shareholders' meetings may be held in or out of this state at the
27 place stated in or fixed in accordance with the bylaws or, if not so stated or fixed, at
28 the place stated in or fixed in accordance with a resolution of the board of directors.
29 If no place is stated or fixed in accordance with the bylaws or a resolution of the
30 board of directors, special meetings shall be held at the corporation's principal office.

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1 D. Only business within the purpose or purposes described in the meeting
2 notice required by Subsection 1-705(C) may be conducted at a special shareholders'
3 meeting.

4 Source: MBCA §7.02.

5 Comment - 2013 Revision

6 Subsection (C) permits a special shareholders' meeting to be held at any
7 place, whether inside or outside Louisiana, fixed by or in accordance with the
8 corporation's bylaws. The power to choose the place for a shareholders' meeting,
9 like the power to determine other details concerning the meeting, must be exercised
10 in accordance with the fiduciary duties of the directors. The choice of the location
11 of the meeting cannot be designed to interfere with the ability of shareholders to
12 participate in the meeting or to exercise their voting power. Cf., Schnell v. Chris
13 Craft Industries, 285 A.2d 437 (Del. 1971) (management may not utilize its power
14 to fix the date of a shareholders' meeting for purposes of interfering with the right of
15 dissident shareholders to engage in a proxy contest against management); Blasius
16 Industries, Inc. v. Atlas Corp., 564 A.2d 651 (Del. Ch. 1988) (business judgment rule
17 does not apply to board actions taken with the primary purpose of interfering with
18 the shareholders' exercising their voting power, even if the action is taken advisedly
19 and in a good faith effort to thwart a transaction that the directors believe not to be
20 in the best interest of the corporation; such acts are not illegal per se but
21 management bears a heavy burden of demonstrating a compelling justification for
22 them); Aprahamian v. HBO & Co., 531 A.2d 1204, 1206-07 (Del. Ch. 1987) ("In the
23 interests of corporate democracy, those in charge of the election machinery of a
24 corporation must be held to the highest standards in providing for and conducting
25 corporate elections.").

26 §1-703. Court-ordered meeting

27 A. The district court of the parish where a corporation's principal office (or,
28 if none in this state, its registered office) is located may in a summary proceeding
29 order a meeting to be held:

30 (1) On application of any shareholder of the corporation entitled to
31 participate in an annual meeting if an annual meeting was not held or action by
32 written consent in lieu thereof did not become effective within the earlier of 6
33 months after the end of the corporation's fiscal year or fifteen months after its last
34 annual meeting; or

35 (2) On application of a shareholder who signed a demand for a special
36 meeting valid under Section 1-702, if:

37 (a) Notice of the special meeting was not given within 30 days after the date
38 the demand was delivered to the corporation's secretary; or

39 (b) The special meeting was not held in accordance with the notice.

1 B. The court may fix the time and place of the meeting, determine the shares
2 entitled to participate in the meeting, specify a record date for determining
3 shareholders entitled to notice of and to vote at the meeting, prescribe the form and
4 content of the meeting notice, fix the quorum required for specific matters to be
5 considered at the meeting (or direct that the votes represented at the meeting
6 constitute a quorum for action on those matters), and enter other orders necessary to
7 accomplish the purpose or purposes of the meeting.

8 Source: MBCA §7.03.

9 Comment - 2013 Revision

10 Subsection (B) authorizes a court to enter orders as necessary "to accomplish
11 the purpose or purposes of the meeting." As used in that Subsection the phrase
12 "purpose or purposes of the meeting" refers to the deliberation and voting for which
13 a meeting is being called, and not to the subsequent implementation of the votes that
14 may be taken at the meeting. The effects of the votes taken, and the remedies
15 available for their implementation, are issues that are governed by other principles
16 of law, not by this Section.

17 §1-704. Action without meeting

18 A. Action required or permitted by this Act to be taken at a shareholders'
19 meeting may be taken without a meeting if the action is taken by all the shareholders
20 entitled to vote on the action. The action must be evidenced by one or more written
21 consents bearing the date of signature and describing the action taken, signed by all
22 the shareholders entitled to vote on the action and delivered to the corporation for
23 inclusion in the minutes or filing with the corporate records.

24 B. The articles of incorporation may provide that any action required or
25 permitted by this Act to be taken at a shareholders' meeting may be taken without a
26 meeting, and without prior notice, if consents in writing setting forth the action so
27 taken are signed by the holders of outstanding shares having not less than the
28 minimum number of votes that would be required to authorize or take the action at
29 a meeting at which all shares entitled to vote on the action were present and voted.
30 The written consent shall bear the date of signature of the shareholder who signs the
31 consent and be delivered to the corporation for inclusion in the minutes or filing with
32 the corporate records.

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1 C. If an earlier date has not been fixed under Section 1-707 and if prior board
2 action is not required respecting the action to be taken without a meeting, the record
3 date for determining the shareholders entitled to take action without a meeting shall
4 be the first date on which a signed written consent is delivered to the corporation.
5 If not otherwise fixed under Section 1-707 and if prior board action is required
6 respecting the action to be taken without a meeting, the record date shall be the close
7 of business on the day the resolution of the board taking such prior action is adopted.
8 No written consent shall be effective to take the corporate action referred to therein
9 unless, within sixty days of the earliest date on which a consent delivered to the
10 corporation as required by this Section was signed, written consents signed by
11 sufficient shareholders to take the action have been delivered to the corporation. A
12 written consent may be revoked by a writing to that effect delivered to the
13 corporation before unrevoked written consents sufficient in number to take the
14 corporate action are delivered to the corporation.
15 D. A consent signed pursuant to the provisions of this Section has the effect
16 of a vote taken at a meeting and may be described as such in any document. Unless
17 the articles of incorporation, bylaws or a resolution of the board of directors provides
18 for a reasonable delay to permit tabulation of written consents, the action taken by
19 written consent shall be effective when written consents signed by sufficient
20 shareholders to take the action are delivered to the corporation.
21 E. If this Act requires that notice of a proposed action be given to nonvoting
22 shareholders and the action is to be taken by written consent of the voting
23 shareholders, the corporation must give its nonvoting shareholders written notice of
24 the action not more than ten days after (1) written consents sufficient to take the
25 action have been delivered to the corporation, or (2) such later date that tabulation
26 of consents is completed pursuant to an authorization under Subsection D of this
27 Section. The notice must reasonably describe the action taken and contain or be
28 accompanied by the same material that, under any provision of this Act, would have

1 been required to be sent to nonvoting shareholders in a notice of a meeting at which
2 the proposed action would have been submitted to the shareholders for action.
3 F. If action is taken by less than unanimous written consent of the voting
4 shareholders, the corporation must give its nonconsenting voting shareholders
5 written notice of the action not more than ten days after (1) written consents
6 sufficient to take the action have been delivered to the corporation, or (2) such later
7 date that tabulation of consents is completed pursuant to an authorization under
8 Subsection D of this Section. The notice must reasonably describe the action taken
9 and contain or be accompanied by the same material that, under any provision of this
10 Act, would have been required to be sent to voting shareholders in a notice of a
11 meeting at which the action would have been submitted to the shareholders for
12 action.
13 G. The notice requirements in Subsections E and F of this Section shall not
14 delay the effectiveness of actions taken by written consent, and a failure to comply
15 with such notice requirements shall not invalidate actions taken by written consent,
16 provided that this Subsection shall not be deemed to limit judicial power to fashion
17 any appropriate remedy in favor of a shareholder adversely affected by a failure to
18 give such notice within the required time period.
19 Source: MBCA §7.04.
20 Comment - 2013 Revision
21 Model Act Subsection (c) was modified in this Act to allow a record date
22 established under Section 1-707 to control over the date fixed by Subsection (C)
23 itself only if the Section 1-707 date is earlier than that established by Subsection (C).
24 Subsection (C) fixes the record date as the first date on which a signed shareholder's
25 consent is delivered to the corporation. If the board of directors of the corporation
26 were permitted to select a record date occurring after the Subsection (C) date, they
27 could invalidate written consents already delivered to the corporation. Under this
28 Act, the persons who are soliciting the shareholder's consents are entitled to rely
29 upon the date fixed in Subsection (C) unless an earlier record date has been
30 established under Section 1-707.
31 §1-705. Notice of meeting
32 A. A corporation shall notify shareholders of the date, time, and place of
33 each annual and special shareholders' meeting no fewer than ten nor more than sixty
34 days before the meeting date. Unless this Act or the articles of incorporation require

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1 otherwise, the corporation is required to give notice only to shareholders entitled to
2 vote at the meeting.
3 B. Unless this Act or the articles of incorporation require otherwise:
4 (1) Notice of an annual meeting need not include a description of the purpose
5 or purposes for which the meeting is called; and
6 (2) If a notice of an annual meeting does include a description of one or more
7 purposes, the meeting is not limited to those purposes.
8 C. Notice of a special meeting must include a description of the purpose or
9 purposes for which the meeting is called.
10 D. If not otherwise fixed under Section 1-703 or 1-707, the record date for
11 determining shareholders entitled to notice of and to vote at an annual or special
12 shareholders' meeting is the day before the first notice to shareholders is effective.
13 E. Unless the bylaws require otherwise, if an annual or special shareholders'
14 meeting is adjourned to a different date, time, or place, notice need not be given of
15 the new date, time, or place if the new date, time, or place is announced at the
16 meeting before adjournment. If a new record date for the adjourned meeting is or
17 must be fixed under Section 1-707, however, notice of the adjourned meeting must
18 be given under this Section to persons who are shareholders as of the new record
19 date.
20 Source: MBCA §7.05.
21 Comments - 2013 Revision
22 (a) The second sentence of Subsection (B) was added in this Act as a
23 corollary to the Model Act rule that no notice is required of the purpose of an annual
24 meeting.
25 (b) The default rule in Subsection (B) on fixing of the record date for the
26 meeting was modified in this Act to refer to the day on which the first notice to
27 shareholders is effective, rather than the day on which the first notice is delivered.
28 The "effective" standard was chosen over that of "delivery" to allow the corporation
29 to rely on the rules in Section 1-141 concerning the date on which a notice becomes
30 effective.
31 §1-706. Waiver of notice
32 A. A shareholder may waive any notice required by this Act, the articles of
33 incorporation, or bylaws before or after the date and time stated in the notice. The

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1 waiver must be in writing, be signed by the shareholder entitled to the notice, and be
2 delivered to the corporation for inclusion in the minutes or filing with the corporate
3 records.
4 B. A shareholder's attendance at a meeting:
5 (1) Waives objection to lack of notice or defective notice of the meeting,
6 unless the shareholder at the beginning of the meeting objects to holding the meeting
7 or transacting business at the meeting;
8 (2) Waives objection to consideration of a particular matter at the meeting
9 that is not within the purpose or purposes described in the meeting notice, unless the
10 shareholder objects to considering the matter when it is presented.
11 C. A shareholder attends a meeting if the shareholder is present at the
12 meeting in person or by proxy. If a shareholder attends a meeting by proxy, then for
13 purposes of Subsection B of this Section, an objection by the shareholder's proxy has
14 the same effect as an objection by the shareholder.
15 Source: MBCA §7.06.
16 Comment - 2013 Revision
17 A new Subsection (C) was added in this Act to provide support in the statute
18 itself for the statement in Official Comment 1 of the Model Act that the word
19 "attendance" means the presence of a shareholder in person or by proxy. The same
20 Subsection similarly treats an objection by the proxy as an objection by the
21 shareholder.
22 §1-707. Record date
23 A. The bylaws may fix or provide the manner of fixing the record date for
24 one or more voting groups in order to determine the shareholders entitled to notice
25 of a shareholders' meeting, to demand a special meeting, to vote, or to take any other
26 action. If the bylaws do not fix or provide for fixing a record date, the board of
27 directors of the corporation may fix a future date as the record date.
28 B. A record date fixed under this Section may not be more than seventy days
29 before the meeting or action requiring a determination of shareholders.
30 C. A determination of shareholders entitled to notice of or to vote at a
31 shareholders' meeting is effective for any adjournment of the meeting unless the

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1 board of directors fixes a new record date, which it must do if the meeting is
2 adjourned to a date more than one hundred and twenty days after the date fixed for
3 the original meeting.
4 D. If a court orders a meeting adjourned to a date more than one hundred and
5 twenty days after the date fixed for the original meeting, it may provide that the
6 original record date continues in effect or it may fix a new record date.
7 Source: MBCA §7.07.
8 §1-708. Conduct of the meeting
9 A. At each meeting of shareholders, a chair shall preside. The chair shall be
10 appointed as provided in the bylaws or, in the absence of such provision, by the
11 board.
12 B. The chair, unless the articles of incorporation or bylaws provide
13 otherwise, shall determine the order of business and shall have the authority to
14 establish rules for the conduct of the meeting.
15 C. Any rules adopted for, and the conduct of, the meeting shall be fair to
16 shareholders.
17 D. The chair of the meeting shall announce at the meeting when the polls
18 close for each matter voted upon. If no announcement is made, the polls shall be
19 deemed to have closed upon the final adjournment of the meeting. After the polls
20 close, no ballots, proxies or votes nor any revocations or changes thereto may be
21 accepted.
22 Source: MBCA §7.08.
23 SUBPART B. VOTING
24 §1-720. Shareholders' list for meeting
25 A. After fixing a record date for a meeting, a corporation shall prepare an
26 alphabetical list of the names of all its shareholders who are entitled to notice of a
27 shareholders' meeting. The list must be arranged by voting group (and within each
28 voting group by class or series of shares) and show the address of and number of
29 shares held by each shareholder.

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1 B. The shareholders' list must be available for inspection by any shareholder,
2 beginning two business days after notice of the meeting is given for which the list
3 was prepared and continuing through the meeting, at the corporation's principal
4 office or at a place identified in the meeting notice in the city where the meeting will
5 be held. A shareholder, or the shareholder's agent or attorney, is entitled on written
6 demand to inspect and, subject to the requirements of Subsection 1-1602(C) of this
7 Act, to copy the list, during regular business hours and at the shareholder's expense,
8 during the period it is available for inspection.
9 C. The corporation shall make the shareholders' list available at the meeting,
10 and any shareholder, or the shareholder's agent or attorney, is entitled to inspect the
11 list at any time during the meeting or any adjournment.
12 D. If the corporation refuses to allow a shareholder, or the shareholder's
13 agent or attorney, to inspect the shareholders' list before or at the meeting (or copy
14 the list as permitted by Subsection B of this Section), the court of the parish where
15 a corporation's principal office (or, if none in this state, its registered office) is
16 located, on application of the shareholder, may in a summary proceeding order the
17 inspection or copying at the corporation's expense and may postpone the meeting for
18 which the list was prepared until the inspection or copying is complete.
19 E. Refusal or failure to prepare or make available the shareholders' list does
20 not affect the validity of action taken at the meeting.
21 Source: MBCA §7.20.
22 §1-721. Voting entitlement of shares
23 A. Except as provided in Subsections B and D of this Section, or unless the
24 articles of incorporation provide otherwise, each outstanding share, regardless of
25 class, is entitled to one vote on each matter voted on at a shareholders' meeting.
26 Only shares are entitled to vote.
27 B. Absent special circumstances, the shares issued by a corporation are not
28 entitled to vote if they are owned, directly or indirectly, by a subsidiary.

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1 C. Subsection B of this Section does not limit the power of a corporation or
2 subsidiary to vote any shares, including its own shares, held by it in a fiduciary
3 capacity.
4 D. Redeemable shares are not entitled to vote after notice of redemption is
5 mailed to the holders and a sum sufficient to redeem the shares has been deposited
6 with a bank, trust company, or other financial institution under an irrevocable
7 obligation to pay the holders the redemption price on surrender of the shares.
8 E. For purposes of Subsections B and C of this Section:
9 (1) The term "subsidiary" means a domestic or foreign corporation, limited
10 liability company, partnership or other juridical person that is subject to at least
11 majority control by the issuer of the shares, but does not include the issuer itself; and
12 (2) "Majority control" means ownership, direct or indirect, of a majority of
13 (a) The shares entitled to vote for the directors of a corporation, or
14 (b) The membership, partnership or other interests in an unincorporated
15 entity that are entitled either to vote for those who hold the general managerial
16 authority in the unincorporated entity or to exercise that authority directly.
17 Source: MBCA §7.21.
18 Comments - 2013 Revision
19 (a) Model Act Subsection (b) provides an explicit statutory rule against
20 "circular" voting only where the circular voting is occurring through a subsidiary that
21 is organized as a corporation. The Model Act leaves other forms of circular voting
22 to common law principles, as noted in Model Act Comment 3. Because Louisiana
23 law does not include those common law principles, this Act extends the express
24 statutory rule against circular voting to all subsidiaries generally, whether
25 incorporated or unincorporated. Subsection (B) provides the rule against the voting
26 of shares held by a "subsidiary," and Subsection (E) provides the definition of that
27 term.

28 (b) The rule in this Section against circular voting prohibits only a
29 subsidiary's voting the shares that it owns in its direct or indirect parent companies,
30 something that might be pictured as "upstream voting." That kind of voting is
31 prohibited because it would allow the management of the parent company to exercise
32 voting control over the parent company itself, through management's directing the
33 votes of the subsidiary-owned shares in the parent. The rule in this Section against
34 circular voting does not affect the formation of holding companies or the exercise of
35 "downstream" voting power by a parent company over the shares that it owns in a
36 subsidiary.

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1 §1-722. Proxies
2 A. A shareholder may vote the shareholder's shares in person or by proxy.
3 B. A shareholder, or the shareholder's agent or attorney-in-fact, may appoint
4 a proxy to vote or otherwise act for the shareholder by signing an appointment form,
5 or by an electronic transmission. An electronic transmission must contain or be
6 accompanied by information from which one can determine that the shareholder, the
7 shareholder's agent, or the shareholder's attorney-in-fact authorized the transmission.
8 C. An appointment of a proxy is effective when a signed appointment form
9 or an electronic transmission of the appointment is received by the inspector of
10 election, the secretary, or other officer or agent of the corporation authorized to
11 tabulate votes. An appointment is valid for eleven months unless a longer period is
12 expressly provided in the appointment form.
13 D. An appointment of a proxy is revocable unless the appointment form or
14 electronic transmission states that it is irrevocable and the appointment is coupled
15 with an interest. Appointments coupled with an interest include the appointment of:
16 (1) A pledgee or other person having a security interest in the shares;
17 (2) A person who purchased or agreed to purchase the shares;
18 (3) A creditor of the corporation who extended it credit under terms
19 requiring the appointment;
20 (4) An employee of the corporation whose employment contract requires the
21 appointment; or
22 (5) A party to a voting agreement created under Section 1-731.
23 E. The revocation of a proxy appointment or the death or incapacity of the
24 shareholder appointing a proxy does not affect the right of the corporation to accept
25 the proxy's authority unless notice of the revocation, death or incapacity is received
26 by the secretary or other officer or agent authorized to tabulate votes before the
27 proxy exercises authority under the appointment.
28 F. An appointment made irrevocable under Subsection D of this Section is
29 revoked when the interest with which it is coupled is extinguished.

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1 G. A transferee for value of shares subject to an irrevocable appointment
2 may revoke the appointment if the transferee did not know of its existence when
3 acquiring the shares and the existence of the irrevocable appointment was not noted
4 conspicuously on the certificate representing the shares or on the information
5 statement for shares without certificates.
6 H. Subject to Section 1-724 and to any express limitation on the proxy's
7 authority stated in the appointment form or electronic transmission, a corporation is
8 entitled to accept the proxy's vote or other action as that of the shareholder making
9 the appointment.
10 Source: MBCA §7.22.
11 Comment - 2013 Revision
12 The authority granted to corporate officials by this Section must be exercised
13 in good faith. See the Comment to Section 1-702.
14 §1-723. Shares held by nominees
15 A. A corporation may establish a procedure by which the beneficial owner
16 of shares that are registered in the name of a nominee is recognized by the
17 corporation as the shareholder. The extent of this recognition may be determined in
18 the procedure.
19 B. The procedure may set forth:
20 (1) The types of nominees to which it applies;
21 (2) The rights or privileges that the corporation recognizes in a beneficial
22 owner;
23 (3) The manner in which the procedure is selected by the nominee;
24 (4) The information that must be provided when the procedure is selected;
25 (5) The period for which selection of the procedure is effective; and
26 (6) Other aspects of the rights and duties created.
27 Source: MBCA §7.23.
28 §1-724. Corporation's acceptance of votes
29 A. If the name signed on a vote, consent, waiver, or proxy appointment
30 corresponds to the name of a shareholder, the corporation if acting in good faith is

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1 entitled to accept the vote, consent, waiver, or proxy appointment and give it effect
2 as the act of the shareholder.
3 B. If the name signed on a vote, consent, waiver, or proxy appointment does
4 not correspond to the name of its shareholder, the corporation if acting in good faith
5 is nevertheless entitled to accept the vote, consent, waiver, or proxy appointment and
6 give it effect as the act of the shareholder if:
7 (1) The shareholder is an entity and the name signed purports to be that of
8 an officer or agent of the entity;
9 (2) The name signed purports to be that of an administrator, executor,
10 guardian, conservator, curator, tutor or judicially authorized representative of the
11 shareholder and, if the corporation requests, evidence of fiduciary status and
12 authority acceptable to the corporation has been presented with respect to the vote,
13 consent, waiver, or proxy appointment;
14 (3) The name signed purports to be that of a receiver or trustee in bankruptcy
15 of the shareholder and, if the corporation requests, evidence of this status acceptable
16 to the corporation has been presented with respect to the vote, consent, waiver, or
17 proxy appointment;
18 (4) The name signed purports to be that of a pledgee or other person having
19 a security interest in the shares, a beneficial owner, or an attorney-in-fact (or
20 representative through mandate or procuration) of the shareholder and, if the
21 corporation requests, evidence acceptable to the corporation of the signatory's
22 authority to sign for the shareholder has been presented with respect to the vote,
23 consent, waiver, or proxy appointment; or
24 (5) Two or more persons are the shareholder as co-owners, co-tenants, or
25 fiduciaries and the name signed purports to be the name of at least one of them and
26 the person signing appears to be acting on behalf of all of them.
27 C. The corporation is entitled to reject a vote, consent, waiver, or proxy
28 appointment if the secretary or other officer or agent authorized to tabulate votes,

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1 acting in good faith, has reasonable basis for doubt about the validity of the signature
2 on it or about the signatory's authority to sign for the shareholder.
3 D. The corporation and its officer or agent who accepts or rejects a vote,
4 consent, waiver, or proxy appointment in good faith and in accordance with the
5 standards of this Section or Subsection 1-722(B) of this Act are not liable in damages
6 to the shareholder for the consequences of the acceptance or rejection.
7 E. The corporation's acceptance or rejection of a vote, consent, waiver, or
8 proxy appointment under this Section is conclusive unless a shareholder objects
9 timely to the acceptance or rejection of the item and, if the corporation rejects the
10 objection, proves in a summary proceeding, commenced within ten days after the
11 corporation's notice to the shareholder that it has rejected the objection, that the
12 corporation's acceptance or rejection of the item was incorrect. A shareholder's
13 objection is timely under this Subsection only if the objection is made before the end
14 of the shareholders' meeting at which the acceptance or rejection of the item is given
15 effect or, if the item is relevant to an action taken by shareholders without a meeting
16 in accordance with Section 1-704, before the corporation incurs a legal obligation in
17 good faith reliance on its acceptance or rejection of the item.
18 Source: MBCA §7.24, R.S. 12:75 (2012).
19 Comments - 2013 Revision
20 (a) The phrase, "curator, tutor or judicially authorized representative" was
21 added to the list of fiduciaries in Paragraph (b)(2), and the parenthetical phrase "or
22 representative through mandate or procuration" was added to Paragraph (b)(4) to
23 reflect the appropriate Louisiana terminology. The phrase, "or another person having
24 a security interest in the shares" was added to Paragraph (b)(4) to reflect the fact that
25 security interests in shares are not limited to those held by a pledgee.
26 (b) The Official Comment to the Model Act states that the doctrine of laches
27 may bar a challenge to a corporate action that is not brought promptly. But
28 Louisiana law does not recognize the doctrine of laches. Fishbein v. State ex rel.
29 Louisiana State University Health Sciences Center, 898 So.2d 1260 (La. 2005).
30 Accordingly, Subsection (e) of the Model Act has been modified in this Act to
31 provide a statutory rule similar to laches, and similar to the rule in prior law that a
32 proxy regular on its face was valid unless it was challenged before it was exercised.
33 See former R.S. 12:75(C)(4). Under Subsection (E), a corporation's acceptance or
34 rejection of a vote or other similar item is treated as conclusive unless a shareholder
35 objects to the corporation's treatment of the item before the end of the meeting at
36 which the item is relevant or, if the action is being taken without a meeting, before
37 the corporation incurs a legal obligation in good faith reliance on that treatment. If
38 the shareholder's objection is timely, and the corporation rejects the objection, then

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1 the corporation's decision is conclusive unless the shareholder commences a
2 summary proceeding within ten days of the date that the corporation's notice to the
3 shareholder becomes effective under Section 1-141 and proves in that proceeding
4 that the corporation's decision concerning the validity of the challenged item was
5 incorrect.

6 §1-725. Quorum and voting requirements for voting groups

7 A. Shares entitled to vote as a separate voting group may take action on a
8 matter at a meeting only if a quorum of those shares exists with respect to that
9 matter. Unless the articles of incorporation provides otherwise, a majority of the
10 votes entitled to be cast on the matter by the voting group constitutes a quorum of
11 that voting group for action on that matter.

12 B. Once a share is represented for any purpose at a meeting, it is deemed
13 present for quorum purposes for the remainder of the meeting and for any
14 adjournment of that meeting unless a new record date is or must be set for that
15 adjourned meeting.

16 C. If a quorum exists, action on a matter (other than the election of directors)
17 by a voting group is approved if the votes cast within the voting group favoring the
18 action exceed the votes cast opposing the action, unless the articles of incorporation
19 require a greater number of affirmative votes.

20 D. An amendment of articles of incorporation adding, changing, or deleting
21 a quorum or voting requirement for a voting group greater than specified in
22 Subsection A or C of this Section is governed by Section 1-727.

23 E. The election of directors is governed by Section 1-728.

24 Source: MBCA §7.25.

25 §1-726. Action by single and multiple voting groups

26 A. If the articles of incorporation or this Act provide for voting by a single
27 voting group on a matter, action on that matter is taken when voted upon by that
28 voting group as provided in Section 1-725.

29 B. If the articles of incorporation or this act provide for voting by two or
30 more voting groups on a matter, action on that matter is taken only when voted upon
31 by each of those voting groups counted separately as provided in Section 1-725.

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1 Action may be taken by one voting group on a matter even though no action is taken
2 by another voting group entitled to vote on the matter.
3 Source: MBCA § 7.26.
4 §1-727. Greater quorum or voting requirements
5 A. The articles of incorporation may provide for a greater quorum or voting
6 requirement for shareholders (or voting groups of shareholders) than is provided for
7 by this Act.
8 B. An amendment to the articles of incorporation that adds, changes, or
9 deletes a greater quorum or voting requirement must meet the same quorum
10 requirement and be adopted by the same vote and voting groups required to take
11 action under the quorum and voting requirements then in effect or proposed to be
12 adopted, whichever is greater.
13 Source: MBCA §7.27.
14 §1-728. Voting for directors; cumulative voting
15 A. Unless otherwise provided in the articles of incorporation, directors are
16 elected by a plurality of the votes cast by the shares entitled to vote in the election
17 at a meeting at which a quorum is present.
18 B. Shareholders do not have a right to cumulate their votes for directors
19 unless the articles of incorporation so provide.
20 C. A statement included in the articles of incorporation that shareholders,
21 or a designated group of shareholders, "are entitled to cumulate their votes for
22 directors" (or words of similar import) means that the shareholders designated are
23 entitled to multiply the number of votes they are entitled to cast by the number of
24 directors for whom they are entitled to vote and cast the product for a single
25 candidate or distribute the product among two or more candidates.
26 Source: MBCA §7.28.
27 Comments - 2013 Revision
28 (a) This Act deleted Subsection (d) of the Model Act, and its related
29 comments, which would have conditioned the exercise of cumulative voting rights
30 on prior notice by the corporation, or by the shareholders wishing to exercise the
31 rights, that cumulative voting was to be exercised at a particular shareholders'

1 meeting. Under this Act, the availability of cumulative voting depends only on
2 whether that form of voting is authorized by the articles of incorporation. No
3 separate notice is required for each meeting at which cumulative voting may occur.

4 (b) If cumulative voting is authorized in the articles of incorporation, a
5 director may not be removed if the votes in opposition to the director's removal
6 would be sufficient under cumulative voting to elect the director. See Section
7 1-808(C).

8 §1-729. Inspectors of election

9 A. A public corporation shall, and any other corporation may, appoint one
10 or more inspectors to act at a meeting of shareholders and make a written report of
11 the inspectors' determinations. Each inspector shall take and sign an oath faithfully
12 to execute the duties of inspector with strict impartiality and according to the best of
13 the inspector's ability.

14 B. The inspectors shall:

15 (1) Ascertain the number of shares outstanding and the voting power of each;

16 (2) Determine the shares represented at a meeting;

17 (3) Determine the validity of proxies and ballots;

18 (4) Count all votes; and

19 (5) Determine the result.

20 C. An inspector may be an officer or employee of the corporation.

21 Source: MBCA §7.29.

22 SUBPART C. VOTING TRUSTS AND AGREEMENTS

23 §1-730. Voting trusts

24 A. One or more shareholders may create a voting trust, conferring on a
25 trustee the right to vote or otherwise act for them, by signing an agreement setting
26 out the provisions of the trust (which may include anything consistent with its
27 purpose) and transferring their shares to the trustee. When a voting trust agreement
28 is signed, the trustee shall prepare a list of the names and addresses of all owners of
29 beneficial interests in the trust, together with the number and class of shares each
30 transferred to the trust, and deliver copies of the list and agreement to the
31 corporation's principal office.

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1 B. A voting trust becomes effective on the date the first shares subject to the
2 trust are registered in the trustee's name. A voting trust is valid for not more than ten
3 years after its effective date unless extended under Subsection C of this Section.
4 C. All or some of the parties to a voting trust may extend it for additional
5 terms of not more than 10 years each by signing written consent to the extension.
6 An extension is valid for 10 years from the date the first shareholder signs the
7 extension agreement. The voting trustee must deliver copies of the extension
8 agreement and list of beneficial owners to the corporation's principal office. An
9 extension agreement binds only those parties signing it.
10 Source: MBCA §7.30.
11 §1-731. Voting agreements
12 A. Two or more shareholders may provide for the manner in which they will
13 vote their shares by signing an agreement for that purpose. A voting agreement
14 created under this Section is not subject to the provisions of Section 1-730.
15 B. A voting agreement created under this Section is specifically enforceable.
16 Source: MBCA §7.31.
17 §1-732. Unanimous governance agreements
18 A. The term "a unanimous governance agreement" means any written
19 agreement, other than the articles of incorporation or bylaws, that:
20 (1) Is approved in one or more writings signed by all persons who are
21 shareholders at the time of the agreement;
22 (2) Governs the exercise of the corporate powers or the management of the
23 business and affairs of the corporation or the relationship among the shareholders,
24 the directors and the corporation, or among any of them; and
25 (3) States that it is a unanimous governance agreement or that it is governed
26 by this Section.
27 B. A unanimous governance agreement is effective among the shareholders
28 and the corporation, and shall be interpreted and enforced among those persons in
29 accordance with the principle of freedom of contract, subject only to the limitations

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1 imposed by public policy. A unanimous governance agreement is enforceable among
2 the shareholders and the corporation even though it is inconsistent with one or more
3 other provisions of this Act in that it:
4 (1) Eliminates the board of directors or restricts the discretion or powers of
5 the board of directors;
6 (2) Governs the authorization or making of distributions whether or not in
7 proportion to ownership of shares, subject to the limitations in Section 1-640;
8 (3) Establishes who shall be directors or officers of the corporation, or their
9 terms of office or manner of selection or removal;
10 (4) Governs, in general or in regard to specific matters, the exercise or
11 division of voting power by or between the shareholders and directors or by or
12 among any of them, including use of weighted voting rights or director proxies;
13 (5) Establishes the terms and conditions of any agreement for the transfer or
14 use of property or the provision of services between the corporation and any
15 shareholder, director, officer or employee of the corporation or among any of them;
16 (6) Transfers to one or more shareholders or other persons all or part of the
17 authority to exercise the corporate powers or to manage the business and affairs of
18 the corporation, including the resolution of any issue about which there exists a
19 deadlock among directors or shareholders;
20 (7) Requires dissolution of the corporation at the request of one or more of
21 the shareholders or upon the occurrence of a specified event or contingency; or
22 (8) Otherwise changes, in a manner not contrary to public policy, the result
23 that would be reached under other provisions of this Act.
24 C. The existence of a unanimous governance agreement shall be noted
25 conspicuously on the front or back of each certificate for outstanding shares. If at
26 the time of the agreement the corporation has shares outstanding represented by
27 certificates, the corporation shall recall the outstanding certificates and issue
28 substitute certificates that comply with this Subsection. The failure to note the
29 existence of the agreement on the certificate shall not affect the validity of the

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1 agreement or any action taken pursuant to it. Any purchaser of shares who, at the
2 time of purchase, did not have knowledge of the existence of the agreement shall be
3 entitled to rescission of the purchase. A purchaser shall be deemed to have
4 knowledge of the existence of the agreement if its existence is noted on the
5 certificate for the shares in compliance with this Subsection. An action to enforce
6 the right of rescission authorized by this Subsection must be commenced within the
7 earlier of ninety days after discovery of the existence of the agreement or two years
8 after the time of purchase of the shares.
9 D. The provisions of a unanimous governance agreement shall cease to be
10 effective when the corporation becomes a public corporation. If the agreement
11 ceases to be effective for any reason, the board of directors may adopt an amendment
12 to the articles of incorporation or bylaws, without shareholder action, to delete any
13 references to it.
14 E. A unanimous governance agreement that limits the discretion or powers
15 of the board of directors shall relieve the directors of, and impose upon the person
16 or persons in whom such discretion or powers are vested, liability for acts or
17 omissions imposed by law on directors to the extent that the discretion or powers of
18 the directors are limited by the agreement. A person who is subjected to liability by
19 this Subsection may be held liable only to the extent that a director vested with the
20 same discretion or powers could be held liable, and is entitled to indemnity under
21 Sections 1-850 through 1-859, and to protection against liability under Section
22 1-832, to the same extent as a director vested with the same discretion or powers.
23 F. The existence or performance of a unanimous governance agreement shall
24 not be a ground for imposing personal liability on any shareholder for the acts or
25 debts of the corporation even if the agreement or its performance treats the
26 corporation as if it were a partnership or results in failure to observe the corporate
27 formalities otherwise applicable to the matters governed by the agreement.

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1 G. Incorporators or subscribers for shares may act as shareholders with
2 respect to a unanimous governance agreement if no shares have been issued when
3 the agreement is made.
4 H. If the shareholders have approved more than one unanimous governance
5 agreement, all of the agreements shall, to the extent reasonable, be construed
6 together as one agreement in which all provisions are given effect. To the extent that
7 conflicting provisions cannot be reconciled through that rule of construction, the
8 more recently-approved provision controls.
9 I. Except as otherwise provided in the agreement, a unanimous governance
10 agreement:
11 (1) Has an initial term of twenty years;
12 (2) May be renewed during the initial or any subsequent term for an
13 additional term of up to twenty years after the renewal is approved, by means of one
14 or more written consents to the renewal, signed by all persons who are shareholders
15 at the time of the renewal, and delivered to the corporation in accordance with
16 Subsection 1-704(C) of this Act;
17 (3) May be amended or terminated during its initial or any subsequent term
18 by means of one or more written consents to the amendment or termination, signed
19 by all persons who are shareholders at the time of the termination or amendment, and
20 delivered to the corporation in accordance with Subsection 1-704(C) of this Act; and
21 (4) Continues in effect even after the expiration of its term, as renewed, until
22 one or more written consents to its termination, signed by the shareholders of at least
23 twenty-five percent of the issued shares of any class are delivered to the corporation
24 in accordance with Subsection 1-704(C) of this Act.
25 J. The corporation shall send notice of any renewal, amendment, or
26 termination of a unanimous governance agreement to all shareholders within ten
27 days after the effective date of the renewal, amendment, or termination, but the
28 renewal, amendment, or termination is effective even if the notice is not sent.

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1 K. This Section does not affect the enforceability of any agreement among
2 shareholders that is not a unanimous governance agreement as defined in Subsection
3 A of this Section.

4 Source: MBCA §7.32.

5 Comments - 2013 Revision

6 (a) Model Act Section 7.32 is revised in this Act in several respects:

7 (1) A new term, "unanimous governance agreement," with definition, is
8 used in place of the Model Act phrases, "agreement among shareholders that
9 complies with this provision" and "agreement authorized by this Section;"

10 (2) Written consent is required to establish, renew, terminate early, or amend
11 a unanimous governance agreement;

12 (3) Articles of incorporation or bylaws may not operate as unanimous
13 governance agreements, and an otherwise qualifying written agreement may operate
14 as a unanimous governance agreement only if the agreement states that it is a
15 unanimous governance agreement or that it is governed by Section 1-732;

16 (4) A rule of construction is provided to deal with multiple unanimous
17 written operating agreements, requiring that the multiple agreements be interpreted
18 together as one document to the extent reasonable, and otherwise resolving
19 inconsistencies in provisions by allowing the more recent provision to control;

20 (5) The Model Act term of ten years is extended to an initial term of twenty,
21 subject to renewals, and the unanimous governance agreement remains in effect even
22 the after the expiration of its term until shareholders of at least twenty-five percent
23 of the issued shares of any class deliver to the corporation written consents to
24 termination of the agreement; and

25 (6) A new Subsection (K) is added as a savings provision to preserve the
26 contractual freedom that shareholders had before the enactment of Section 1-732.

27 (b) A unanimous governance agreement is not the only mechanism under
28 this Act through which shareholders may modify the governance rules for their
29 corporation. Many of the provisions in this Act concerning corporate governance are
30 subject to modification through appropriate provisions in the articles of incorporation
31 or bylaws, and shareholders may enter into lawful agreements with one another, such
32 as vote pooling agreements, that do not satisfy the requirements of a unanimous
33 governance agreement as defined in Subsection. What is distinctive about a
34 unanimous governance agreement is, first, that it may modify what would otherwise
35 be mandatory statutory rules concerning corporation governance, and, second, that
36 it is governed by the special rules in Section 1-732 concerning its creation,
37 disclosure, renewal, amendment and termination.

38 (c) This Act adds three rules to prevent the inadvertent triggering of the
39 special rules in Section 1-732, two in Subsection (A) and the one in Subsection(K).
40 Subsection (A) excludes the articles and bylaws as forms of unanimous governance
41 agreement, and also requires an otherwise qualifying agreement to state that it is a
42 unanimous governance agreement or that it is governed by Section 1-732.
43 Subsection (K) provides that Section 1-732 has no effect on the enforceability of a
44 shareholders' agreement that does not meet the requirements of Subsection (A).
45 Through a combination of the two Subsections, this Act preserves the freedom that

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1 shareholders had before the enactment of Section 1-732 to modify the governance
2 rules in their corporation by means of customized terms in the articles or bylaws, or
3 through contracts among the shareholders. The enforceability of those non-1-732
4 forms of agreement is governed by ordinary principles of corporation and contract
5 law, without regard to the special rules in Section 1-732.

6 (d) Provisions concerning corporate governance usually remain in effect
7 indefinitely, until they are changed. Reflecting the usual understanding, and to
8 prevent the automatic and perhaps unexpected termination of governance terms with
9 which shareholders may continue to be satisfied, and on which they may be
10 continuing to rely, this Act provides that a unanimous governance agreement remains
11 in effect indefinitely even after the expiration of its term. Still, because of the
12 extraordinary power of a unanimous governance agreement to override statutory
13 provisions that would otherwise be considered mandatory, this Act does provide a
14 default term for a unanimous governance agreement and does allow the agreement
15 to be terminated by a substantial minority of shares - at least twenty-five percent -
16 after the term expires. The default term is twenty years, a period chosen to
17 correspond roughly with one generation of investors. As a new generation of
18 investors is introduced, they may wish to renegotiate or terminate the unanimous
19 governance agreement.

20 (e) If the shareholders wish for some of their agreed modifications to be
21 governed by the usual rules (e.g. to be subject to amendment by less than unanimous
22 consent, but to apply indefinitely until amended as required for the amendment of
23 the type of provision involved), but also wish to make some of them subject to the
24 powers and requirements of Section 1-732, they should place the ordinary
25 modifications in the usual place, in the articles or bylaws, for example, and place the
26 more extraordinary provisions, those that may be unenforceable in the absence of
27 1-732, into an agreement that meets the definition of a unanimous governance
28 agreement under Subsection (A).

29 SUBPART D. DERIVATIVE PROCEEDINGS

30 §1-740. Subpart definitions

31 In this Subpart:

32 (1) "Derivative proceeding" means a civil suit in the right of a domestic
33 corporation or, to the extent provided in Section 1-747, in the right of a foreign
34 corporation.

35 (2) "Shareholder" includes a beneficial owner whose shares are held in a
36 voting trust or held by a nominee on the beneficial owner's behalf.

37 Source: MBCA §7.40.

38 §1-741. Standing

39 A. A shareholder may not commence or maintain a derivative proceeding
40 unless the shareholder:

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1 (1) Was a shareholder of the corporation at the time of the act or omission
2 complained of or became a shareholder through transfer by operation of law from
3 one who was a shareholder at that time; and
4 (2) Fairly and adequately represents the interests of the corporation in
5 enforcing the right of the corporation.
6 B. A shareholder who meets the requirements of Subsection 1-741(A) of this
7 Act may file a derivative proceeding to enforce a right of the corporation, but only
8 after the shareholder satisfies the requirements of Section 1-742.
9 Source: MBCA §7.41.
10 Comment - 2013 Revision
11 This Act designated the original Model Act provision as Subsection (A) and
12 added a new Subsection (B). The new Subsection (B) states explicitly what the
13 Model Act provisions imply: that a shareholder may file a derivative proceeding to
14 enforce a right of the corporation if the shareholder complies with the requirements
15 of Sections 1-741 and 1-742. Prior law had stated a similar rule in Art. 611 of the
16 Code of Civil Procedure, but that article was amended in connection with the
17 adoption of this Act to exempt derivative proceedings governed by this Act from the
18 coverage of the class and derivative action provisions of the Code of Civil Procedure,
19 i.e., Chapter 5 of Book I, Title 2. Subsection (B) now provides an authorization of
20 derivative proceedings on behalf of business corporations that replaces the
21 authorization formerly provided by Art. 611.
22 §1-742. Demand
23 No shareholder may commence a derivative proceeding until:
24 (1) A written demand has been made upon the corporation to take suitable
25 action; and
26 (2) Ninety days have expired from the date the demand was made unless the
27 shareholder has earlier been notified that the demand has been rejected by the
28 corporation or unless irreparable injury to the corporation would result by waiting
29 for the expiration of the ninety-day period.
30 Source: MBCA §7.42.
31 Comments - 2013 Revision
32 This Act, like the Model Act, rejects the approach taken by the Delaware
33 courts to determining whether demand in a derivative action is required or, instead,
34 is excused as futile. The Delaware law on demand futility is expressed through a
35 complicated body of decisions that began in the 1984 decision of the Delaware
36 Supreme Court in Aronson v. Lewis, 473 A.2d 805 (Del. 1984). The Aronson
37 approach has been criticized on grounds that it requires a court to determine

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1 hypothetically - at the complaint stage of a case and without any of the evidence that
2 might be produced through discovery - whether the directors of a corporation are
3 facing enough prospect of personal liability in the case to disqualify them from
4 responding disinterestedly if the plaintiff, contrary to fact, were to make a demand
5 on them for corrective action.

6 This Act, like the Model Act, adopts what is known as a "universal demand"
7 requirement. Under this approach, demand is always required. A court is never
8 required to determine whether a board of directors or other corporate actors could
9 respond appropriately to a hypothetical demand that has not really been made.
10 Instead, because demand always must be made, the court is able to evaluate, in
11 accordance with Section 1-744, what the board or other appropriate corporate
12 officials have actually done in response to the required demand.

13 Before the adoption of this Act, Louisiana courts had rejected the Aronson
14 approach to demand, preferring instead the traditional, pre-Aronson rule that allowed
15 demand to be excused as futile in any case in which a majority of the corporation's
16 directors were themselves named as defendants in the suit. Smith v. Wembley
17 Industries, Inc., 490 So.2d 1107 (La. App. 4th Cir. 1986); Robinson v. Snell's Limbs
18 and Braces of New Orleans, Inc., 538 So.2d 1045 (La. App. 4th Cir. 1989). While
19 this traditional rule avoided the problems posed by Aronson, it posed a serious
20 problem of its own: it gave a plaintiff virtually unfettered power to evade the demand
21 rule, simply by naming a majority of the directors as defendants.

22 This Act abrogates the demand and demand-futility rules in Smith and
23 Robinson. Demand is always required, and so never excused as futile. But the
24 making of demand under this Act does not mean that unfettered control over the suit
25 is being turned over to the defendants. Rather, the suit may be dismissed as against
26 the best interests of the corporation only if the persons rejecting the demand, or
27 recommending dismissal of the suit, are sufficiently disinterested to be "qualified"
28 as defined in Section 1-143, and only if those qualified persons have conducted the
29 inquiry and made their decisions in accordance with the standards of Section 1-744.

30 §1-742.1. Petition in derivative proceeding

31 The petition in a derivative proceeding shall:

32 (1) Allege that the plaintiff meets the standing requirements of Section
33 1-741;

34 (2) Allege either that the plaintiff made demand upon the corporation at least
35 ninety days before the filing of the petition as required by Section 1-742 or that the
36 plaintiff made the demand and, for reasons alleged in the petition, the filing of the
37 petition before the expiration of the ninety-day period complies with Section 1-742;

38 (3) Join as a defendants the corporation and the obligor on the obligation
39 sought to be enforced;

40 (4) Include a prayer for judgment in favor of the corporation and against the
41 obligor on the obligation sought to be enforced; and

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1 (5) Be verified by the affidavit of the plaintiff or his counsel.

2 Source: MBCA §7.42.1.

3 Comments - 2013 Revision

4 (a) This Section is not part of the Model Act. It was added to this Act to
5 retain the pleading requirements formerly imposed on derivative actions by Art. 615
6 of the Code of Civil Procedure, modified as necessary to harmonize them with the
7 Model Act provisions on derivative proceedings.

8 (b) As applied to derivative proceedings on behalf of business corporations,
9 this Act eliminates the distinction drawn by the Code of Civil Procedure between
10 derivative suits that are treated as class actions and those that require the joinder of
11 all shareholders as parties to the suit. The rules that apply to derivative actions are
12 provided directly by this Act, based on the Model Act, and not by making some of
13 the class action rules apply to some derivative suits.

14 §1-743. Stay of proceedings

15 If the corporation commences an inquiry into the allegations made in the
16 demand or complaint, the court may stay any derivative proceeding for such period
17 as the court deems appropriate.

18 Source: MBCA §7.43.

19 §1-744. Dismissal

20 A. A derivative proceeding shall be dismissed by the court on motion by the
21 corporation if one of the groups specified in Subsection B or Subsection E of this
22 Section has determined in good faith, after conducting a reasonable inquiry upon
23 which its conclusions are based, that the maintenance of the derivative proceeding
24 is not in the best interests of the corporation.

25 B. Unless a panel is appointed pursuant to Subsection E of this Section, the
26 determination in Subsection A of this Section shall be made by:

27 (1) A majority vote of qualified directors present at a meeting of the board
28 of directors if the qualified directors constitute a quorum; or

29 (2) A majority vote of a committee consisting of two or more qualified
30 directors appointed by majority vote of qualified directors present at a meeting of the
31 board of directors, regardless of whether such qualified directors constitute a
32 quorum.

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1 C. If a derivative proceeding is commenced after a determination has been
2 made rejecting a demand by a shareholder, the complaint shall allege with
3 particularity facts establishing either (1) that a majority of the board of directors did
4 not consist of qualified directors at the time the determination was made or (2) that
5 the requirements of Subsection A of this Section have not been met.

6 D. If a majority of the board of directors consisted of qualified directors at
7 the time the determination was made, the plaintiff shall have the burden of proving
8 that the requirements of Subsection A of this Section have not been met; if not, the
9 corporation shall have the burden of proving that the requirements of Subsection A
10 of this Section have been met.

11 E. Upon motion by the corporation, the court may appoint a panel of one or
12 more individuals to make a determination whether the maintenance of the derivative
13 proceeding is in the best interests of the corporation. In such case, the plaintiff shall
14 have the burden of proving that the requirements of Subsection A of this Section
15 have not been met.

16 Source: MBCA §7.44.

17 Comment - 2013 Revision

18 The Official Comments to this Section of the Model Act explain that the
19 word "inquiry" is used in Subsection (a), rather than the word "investigation," to
20 make it clear the nature of the procedure used to consider the allegations made in the
21 demand or complaint depend on the nature of those allegations and the knowledge
22 of the persons who conduct the inquiry. In some cases, the Comment suggests, the
23 issues may be simple enough, and the knowledge of those conducting the inquiry so
24 extensive, that little additional effort will be required to satisfy the statutory standard
25 that the inquiry be conducted in good faith. This Act does not disagree with the
26 Model Act or the official comments on that issue. Nevertheless, in the case of
27 serious allegations of misconduct against the management of a corporation, a good
28 faith inquiry ordinarily will require the preparation of a written report, with the
29 assistance of independent legal counsel, in support of a recommendation either to
30 reject demand or to dismiss the suit.

31 §1-745. Discontinuance or settlement

32 Unless approved unanimously by the shareholders of the corporation, a
33 derivative proceeding may not be discontinued or settled without the court's
34 approval. If the court determines that a proposed discontinuance or settlement will
35 substantially affect the interests of the corporation's shareholders or a class of

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1 shareholders, the court shall direct that notice be given to the shareholders affected.
2 This Section does not affect the plaintiff's right under Article 1671 of the Code of
3 Civil Procedure to obtain a judgment of dismissal without prejudice if the application
4 for dismissal is made before any defendant, including the corporation in its capacity
5 as a defendant, makes any appearance of record in the proceeding.

6 Source: MBCA §7.45.

7 Comments - 2013 Revision

8 (a) This Act adds a provision that permits a derivative action to be settled or
9 discontinued without court approval if the settlement or discontinuation is approved
10 unanimously by the shareholders of the corporation. The rule that requires judicial
11 approval of the settlement of derivative suits is based on the risk that the named
12 plaintiff in the suit may agree to settlement terms that are satisfactory to the parties
13 who are participating in the settlement negotiations - the defendants, the named
14 plaintiff and the named plaintiff's lawyers - but that produce little or no benefit for
15 the shareholders of the corporation, whose interests the named plaintiff is supposed
16 to be representing. But if all shareholders actually agree to the settlement, a realistic
17 possibility only in closely-held corporations, each shareholder is able to decide
18 personally whether the settlement is acceptable. Under those circumstances, the
19 parties should be free to settle the case on the terms they consider appropriate.

20 (b) This Act also adds a sentence to make it clear that this Section does not
21 affect a plaintiff's ability to obtain a judgment of dismissal without prejudice as
22 provided in Art. 1671 of the Code of Civil Procedure. The plaintiff is entitled to that
23 form of judgment only if he pays all costs of the proceeding and if he applies for the
24 dismissal before the defendant makes any appearance of record in the proceeding.
25 Id. Because the corporation in a derivative action participates in the suit both as a
26 plaintiff, represented by the plaintiff shareholder, and as a defendant, represented by
27 management-authorized agents, the last sentence of this Section makes the point that
28 the plaintiff's right to a dismissal without prejudice under Art. 1671 is cut off by the
29 corporation's appearance in the suit only if the corporation is appearing of record in
30 its capacity as a defendant. The requirement in Art. 1671 that the plaintiff pay the
31 costs of the proceeding as a condition to the dismissal applies in the normal way.

32 §1-746. Payment of expenses

33 On termination of the derivative proceeding the court may:

34 (1) Order the corporation to pay the plaintiff's expenses incurred in the
35 proceeding if it finds that the proceeding has resulted in a substantial benefit to the
36 corporation;

37 (2) Order the plaintiff to pay any defendant's expenses incurred in defending
38 the proceeding if it finds that the proceeding was commenced or maintained without
39 reasonable cause or for an improper purpose; or

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1 (3) Order a party to pay an opposing party's expenses incurred because of the
2 filing of a pleading, motion or other paper, if it finds that the pleading, motion or
3 other paper was not well grounded in fact, after reasonable inquiry, or warranted by
4 existing law or a good faith argument for the extension, modification or reversal of
5 existing law and was interposed for an improper purpose, such as to harass or cause
6 unnecessary delay or needless increase in the cost of litigation.
7 Source: MBCA §7.46.
8 §1-747. Applicability to foreign corporations
9 In any derivative proceeding in the right of a foreign corporation, the matters
10 covered by this Subpart shall be governed by the laws of the jurisdiction of
11 incorporation of the foreign corporation except for Sections 1-743, 1-745, and 1-746.
12 Source: MBCA §7.47.
13 SUBPART E. PROCEEDING TO APPOINT RECEIVER
14 §1-748. Shareholder action to appoint receiver
15 A. The district court of the parish in which the registered office of the
16 corporation is located may appoint one or more to be receivers, of and for a
17 corporation in a proceeding by a shareholder where it is established that:
18 (1) The directors are deadlocked in the management of the corporate affairs,
19 the shareholders are unable to break the deadlock, and irreparable injury to the
20 corporation is threatened or being suffered; or
21 (2) The directors or those in control of the corporation are acting
22 fraudulently and irreparable injury to the corporation is threatened or being suffered.
23 B. The court
24 (1) May issue injunctions, appoint a temporary receiver with all the powers
25 and duties the court directs, take other action to preserve the corporate assets
26 wherever located, and carry on the business of the corporation until a full hearing is
27 held;
28 (2) Shall hold a full hearing, after notifying all parties to the proceeding and
29 any interested persons designated by the court, before appointing a receiver; and

1 (3) Has jurisdiction over the corporation and all of its property, wherever
2 located.
3 C. The court may appoint an individual or domestic or foreign corporation
4 (authorized to transact business in this state) as a receiver and may require the
5 receiver to post bond, with or without sureties, in an amount the court directs.
6 D. The court shall describe the powers and duties of the receiver in its
7 appointing order, which may be amended from time to time. Among other powers,
8 a receiver may:
9 (1) Exercise all of the powers of the corporation, through or in place of its
10 board of directors, to the extent necessary to manage the business and affairs of the
11 corporation;
12 (2) Dispose of all or any part of the assets of the corporation wherever
13 located, at a public or private sale, if authorized by the court; and
14 (3) Sue and defend in the receiver's own name as receiver in all courts of this
15 state.
16 E. The court from time to time during the receivership may order
17 compensation paid and expense disbursements or reimbursements made to the
18 receiver from the assets of the corporation or proceeds from the sale of its assets.
19 Source: MBCA §7.48.
20 Comment - 2013 Revision
21 The Model Act distinction between the appointment of custodians for solvent
22 companies and receivers for insolvent ones is omitted from this Act to retain the
23 prior law that authorized the appointment of receivers for both solvent and insolvent
24 companies. Model Act Subsection (e), which authorized a court to redesignate a
25 custodian as a receiver and a receiver as a custodian, was omitted as irrelevant to the
26 receiver-only scheme adopted in this Section.
27 PART 8. DIRECTORS AND OFFICERS
28 SUBPART A. BOARD OF DIRECTORS
29 §1-801. Requirement for and functions of board of directors
30 A. Except as provided in Section 1-732, each corporation must have a board
31 of directors.

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1 B. All corporate powers shall be exercised by or under the authority of the
2 board of directors of the corporation, and the business and affairs of the corporation
3 shall be managed by or under the direction, and subject to the oversight, of its board
4 of directors, subject to any limitation set forth in the articles of incorporation or in
5 an agreement authorized under Section 1-732.
6 C. In the case of a public corporation, the board's oversight responsibilities
7 include attention to:
8 (1) Business performance and plans;
9 (2) Major risks to which the corporation is or may be exposed;
10 (3) The performance and compensation of senior officers;
11 (4) Policies and practices to foster the corporation's compliance with law and
12 ethical conduct;
13 (5) Preparation of the corporation's financial statements;
14 (6) The effectiveness of the corporation's internal controls;
15 (7) Arrangements for providing adequate and timely information to directors;
16 and
17 (8) The composition of the board and its committees, taking into account the
18 important role of independent directors.
19 Source: MBCA §8.01.
20 §1-802. Qualifications of directors
21 The articles of incorporation or bylaws may prescribe qualifications for
22 directors. A director need not be a resident of this state or a shareholder of the
23 corporation unless the articles of incorporation or bylaws so prescribe.
24 Source: MBCA §8.02.
25 §1-803. Number and election of directors
26 A. A board of directors must consist of one or more individuals. The
27 number of directors shall be fixed by or in accordance with the articles of
28 incorporation or, if not so fixed, shall be the number fixed by or in accordance with
29 the bylaws. If not fixed by or in accordance with the articles or the bylaws, the

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1 number of directors shall be the number elected from time to time by the
2 shareholders and, if directors have not been elected by the shareholders, the number
3 of directors shall be number of directors named as initial directors in the articles of
4 incorporation.
5 B. The number of directors may be increased or decreased from time to time
6 by amendment to, or in the manner provided in, the articles of incorporation or the
7 bylaws.
8 C. Directors are elected at the first annual shareholders' meeting and at each
9 annual meeting thereafter unless their terms are staggered under Section 1-806.
10 Source: MBCA §8.03.
11 Comments - 2013 Revision
12 (a) This Act modifies the language of Model Act Subsection (a) to retain the
13 former Louisiana law concerning the determination of the number of directors to be
14 elected.
15 (b) Former R.S. 12:81(A) provided that an incumbent director's term could
16 not be shortened by means of an amendment to the articles or bylaws that reduced
17 the number of directors. The substance of that rule is retained in Section 1-805(C)
18 of this Act.
19 §1-804. Election of directors by certain classes of shareholders
20 If the articles of incorporation authorize dividing the shares into classes, the
21 articles may also authorize the election of all or a specified number of directors by
22 the holders of one or more authorized classes of shares. A class (or classes) of shares
23 entitled to elect one or more directors is a separate voting group for purposes of the
24 election of directors.
25 Source: MBCA §8.04.
26 §1-805. Terms of directors generally
27 A. The terms of the initial directors of a corporation expire at the first
28 shareholders' meeting at which directors are elected.
29 B. The terms of all other directors expire at the next, or if their terms are
30 staggered in accordance with Section 1-806, at the applicable second or third, annual
31 shareholders' meeting following their election, except to the extent (1) provided in
32 Section 1-1022 if a bylaw electing to be governed by that Section is in effect or (2)

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1 a shorter term is specified in the articles of incorporation in the event of a director
2 nominee failing to receive a specified vote for election.
3 C. A decrease in the number of directors does not shorten an incumbent
4 director's term.
5 D. The term of a director elected to fill a vacancy expires when the term of
6 that director's predecessor in office would have expired had the vacancy not
7 occurred.
8 E. Except to the extent otherwise provided in the articles of incorporation or
9 under Section 1-1022 if a bylaw electing to be governed by that Section is in effect,
10 despite the expiration of a director's term, the director continues to serve until the
11 director's successor is elected and qualifies or there is a decrease in the number of
12 directors.
13 Source: MBCA §8.05.
14 Comment - 2013 Revision
15 Model Act Subsection (d) provides that the term of a director elected to fill
16 a vacancy expires at the next shareholders' meeting at which directors are elected.
17 The Official Comment to that Subsection explains that the rule is to apply even when
18 directors are elected to staggered terms as permitted under Section 8.06, and
19 acknowledges that this approach may cause the staggered terms not to operate in the
20 normal way. This Act modifies Subsection (d) to preserve staggered terms in the
21 event of a vacancy. Under Subsection (D) of this Act, the term of a director who is
22 elected to fill a vacancy expires at the same time that the term of the director's
23 predecessor in office would have expired had the vacancy not occurred.
24 §1-806. Staggered terms for directors
25 The articles of incorporation may provide for staggering the terms of
26 directors by dividing the total number of directors into two or three groups, with each
27 group containing one-half or one-third of the total, as near as may be practicable. In
28 that event, the terms of directors in the first group expire at the first annual
29 shareholders' meeting after their election, the terms of the second group expire at the
30 second annual shareholders' meeting after their election, and the terms of the third
31 group, if any, expire at the third annual shareholders' meeting after their election. At
32 each annual shareholders' meeting held thereafter, directors shall be chosen for a

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1 term of two years or three years, as the case may be, to succeed those whose terms
2 expire.
3 Source: MBCA §8.06.
4 §1-807. Resignation of directors
5 A. A director may resign at any time by delivering a written resignation to
6 the board of directors, or its chair, or to the secretary of the corporation.
7 B. A resignation is effective when the resignation is delivered unless the
8 resignation specifies a later effective date or an effective date determined upon the
9 happening of an event or events. A resignation that is conditioned upon failing to
10 receive a specified vote for election as a director may provide that it is irrevocable.
11 Source: MBCA §8.07.
12 §1-808. Removal of directors by shareholders
13 A. The shareholders may remove one or more directors with or without
14 cause unless the articles of incorporation provide that directors may be removed only
15 for cause.
16 B. If a director is elected by a voting group of shareholders, only the
17 shareholders of that voting group may participate in the vote to remove that director.
18 C. If cumulative voting is authorized, a director may not be removed if the
19 number of votes sufficient to elect the director under cumulative voting is voted
20 against removal. If cumulative voting is not authorized, a director may be removed
21 only if the number of votes cast to remove is a majority of the number of votes
22 entitled to be cast in an election of directors.
23 D. A director may be removed by the shareholders only at a meeting called
24 for the purpose of removing the director and the meeting notice must state that the
25 purpose, or one of the purposes, of the meeting is removal of the director.
26 Source: MBCA §8.08.
27 Comment - 2013 Revision
28 Subject to exceptions for cumulative voting and for directors elected by
29 particular voting groups, the Model Act permits the removal of a director by a
30 majority of the votes cast on the issue. This Act requires the removal to be approved
31 by a majority of the votes entitled to be cast in an election of directors.

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1 §1-809. [Reserved]
2 §1-810. Vacancy on board
3 A. Unless the articles of incorporation or bylaws provide otherwise, if a
4 vacancy occurs on a board of directors, including a vacancy resulting from an
5 increase in the number of directors:
6 (1) The shareholders may fill the vacancy;
7 (2) The board of directors may fill the vacancy; or
8 (3) If the directors remaining in office constitute fewer than a quorum of the
9 board, they may fill the vacancy by the affirmative vote of a majority of all the
10 directors remaining in office.
11 B. If the vacant office was held by a director elected by a voting group of
12 shareholders, only the holders of shares of that voting group are entitled to vote to
13 fill the vacancy if it is filled by the shareholders, and only the directors elected by
14 that voting group are entitled to fill the vacancy if it is filled by the directors.
15 C. A vacancy that will occur at a specific later date (by reason of a
16 resignation effective at a later date under Subsection 1-807(B) of this Act or
17 otherwise) may be filled before the vacancy occurs but the new director may not take
18 office until the vacancy occurs.
19 Source: MBCA §8.10.
20 Comment - 2013 Revision
21 This Act adds the phrase "or bylaws" to Model Act Subsection (a).
22 §1-811. Compensation of directors
23 Unless the articles of incorporation or bylaws provide otherwise, the board
24 of directors may fix the compensation of directors.
25 Source: MBCA §8.11.
26 §1-812. Director proxies
27 A. A director may vote by proxy at a meeting of the board of directors or of
28 a committee of the board only if the articles of incorporation so provide.

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1 B. A director may appoint as proxy only another director, and the
2 appointment may be made only by means of a signed writing, that is delivered to the
3 person who is presiding at the meeting at which the proxy seeks to cast the absent
4 director's vote. The writing may contain instructions, general or special, concerning
5 the proxy's authority.
6 C. Except as otherwise provided in the articles of incorporation, a separate
7 appointment of a proxy is required for each meeting, and the proxy's authority under
8 any appointment terminates at the conclusion of the meeting for which the
9 appointment was made.
10 D. The proxy shall cast the votes of the absent director consistently with any
11 instructions that the proxy receives from the absent director, but otherwise may cast
12 votes on behalf of the absent director in accordance with the proxy's own discretion.
13 Comments - 2013 Revision
14 (a) This Act adds a new Section 1-812, which is not part of the Model Act,
15 to retain the "opt in" rule in prior law concerning proxy voting by directors. This
16 Section governs only those votes cast by a director in the capacity of director. A
17 director who is also a shareholder may vote by proxy as a shareholder in accordance
18 with Section 1-722, on shareholder proxies.
19 (b) This Section uses the term "proxy" in the same way it is used in Section
20 1-722, to refer to the person who is authorized to exercise the appointing person's
21 voting power. Only another director may be appointed as proxy and the appointment
22 may be made only through a signed writing that is delivered to the person who is
23 presiding at the relevant meeting.
24 (c) Subsection (C) requires a separate proxy appointment for each meeting
25 at which a proxy is to vote for an absent director. The purpose of the limited term
26 is to discourage the routine use of proxies or the use of long-term proxies as a means
27 of granting one director what is effectively the voting power of two or more
28 directors.
29 (d) Subsection (D) gives to a director's proxy the same discretion, and the
30 same obligation to follow the appointing director's voting instructions, as apply in
31 the case of a shareholder's proxy.
32 SUBPART B. MEETINGS AND ACTION OF THE BOARD
33 §1-820. Meetings
34 A. The board of directors may hold regular or special meetings in or out of
35 this state.

1 B. Unless the articles of incorporation or bylaws provide otherwise, the
2 board of directors may permit any or all directors to participate in a regular or special
3 meeting by, or conduct the meeting through the use of, any means of communication
4 by which all directors participating may simultaneously hear each other during the
5 meeting. A director participating in a meeting by this means is deemed to be present
6 in person at the meeting.
7 C. A meeting of the board of directors may be called by the board chair, by
8 the chief executive officer, regardless of the title used by the corporation to designate
9 that officer, or by a majority of the directors.
10 Source: MBCA §8.20.
11 Comment - 2013 Revision
12 This Act adds a new Subsection (C) to the Model Act to retain the prior law
13 concerning the persons entitled to call a meeting of the board of directors, while
14 updating the titles used in prior law. As used in the new Subsection, the term "chief
15 executive officer" is used descriptively, not as a title, to refer to the highest ranking
16 executive officer in the corporation. In many corporations, that officer will be
17 indeed be called the chief executive officer or CEO, but it is the nature of the office,
18 not the title, that is controlling for purposes of Subsection (C). A corporation that
19 used more traditional titles for its officers, for example, might call this person the
20 "president."
21 §1-821. Action without meeting
22 A. Except to the extent that the articles of incorporation or bylaws require
23 that action by the board of directors be taken at a meeting, action required or
24 permitted by this Act to be taken by the board of directors may be taken without a
25 meeting if each director signs a consent describing the action to be taken and delivers
26 it to the corporation.
27 B. Action taken under this Section is the act of the board of directors when
28 one or more consents signed by all the directors are delivered to the corporation. The
29 consent may specify the time at which the action taken thereunder is to be effective.
30 A director's consent may be withdrawn by a revocation signed by the director and
31 delivered to the corporation prior to delivery to the corporation of unrevoked written
32 consents signed by all the directors.

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1 C. A consent signed under this Section has the effect of action taken at a
2 meeting of the board of directors and may be described as such in any document.
3 Source: MBCA §8.21.
4 §1-822. Notice of meeting
5 A. Unless the articles of incorporation or bylaws provide otherwise, regular
6 meetings of the board of directors may be held without notice of the date, time,
7 place, or purpose of the meeting.
8 B. Unless the articles of incorporation or bylaws provide for a longer or
9 shorter period, special meetings of the board of directors must be preceded by at least
10 forty-eight hours' notice of the date, time, and place of the meeting. Except as
11 otherwise provided in the articles of incorporation or bylaws, the notice shall
12 describe the purpose or purposes of the special meeting.
13 Source: MBCA §8.22.
14 Comments - 2013 Revision
15 (a) This Act modifies Model Act Subsection (b) to require notice of at least
16 forty eight hours (rather than two days) for a special meeting, and to change the
17 default rule concerning a statement of purpose in the notice from one that requires
18 no such statement to one that does require a statement of purpose.
19 (b) This Act rejects the rule in Model Act Section 1.41(a) that a notice
20 required by this Act may be oral if reasonable under the circumstances.
21 Accordingly, it also rejects the statement in the Model Act's Official Comment to
22 this Section that notice of a board meeting may be provided orally; all notices
23 required by this Act must be in "writing," as that term is defined in Section 1-140.
24 Absent a proper objection, however, a director's attendance at a meeting of the board
25 operates as a waiver of notice by the director under Section 1-823(B). So, as a
26 practical matter, oral notice that results in actual attendance at a meeting by all
27 directors (something that is fairly easy to accomplish in many closely-held
28 companies) will be effective in satisfying the notice requirement ? not by
29 legally-sufficient notice, but by waiver.
30 §1-823. Waiver of notice
31 A. A director may waive any notice required by this Act, the articles of
32 incorporation, or bylaws before or after the date and time stated in the notice. Except
33 as provided by Subsection B of this Section, the waiver must be in writing, signed
34 by the director entitled to the notice, and filed with the minutes or corporate records.
35 B. A director's attendance at or participation in a meeting waives any
36 required notice to the director of the meeting unless:

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(1) The director at the beginning of the meeting (or promptly upon arrival) objects to holding the meeting or transacting business at the meeting; or

(2) The objection is to the consideration of an item of business outside the scope of the purposes stated in the notice of the meeting and the director objects to the consideration of that item promptly after the item is first raised for consideration at the meeting.

C. A director who objects in accordance with Subsection B of this Section, but who then participates in the meeting or votes for or assents to one or more actions at the meeting, does not waive the objection except with respect to those actions at the meeting that the director votes to approve.

Source: MBCA §8.23.

Comments - 2013 Revision

(a) This Act modifies Model Act Subsection (b) to take account of the modification made by this Act in Model Act Section 8.22(b). Subject to contrary provisions in the articles of incorporation or bylaws, that Section requires a notice of a special meeting of the board of directors to include a description of the purpose or purposes of the meeting. As a result, a notice that meets the requirements of this Act concerning the time and location of the meeting may be deficient in failing to describe the purposes of the meeting. That kind of deficiency may not be evident until after the meeting has begun, when an item falling outside the described purposes is first raised for consideration. To deal with that problem, this Act divides Model Act Subsection (b) into Paragraphs and adds a new Paragraph (2) to deal with purpose-related objections that may occur after the normal deadline for an objection under Paragraph (1) has already passed. If an objection is made as provided under Paragraph (1), then the objection is preserved without any need to resort to Paragraph (2). But if the deadline in Paragraph (1) is missed, and the objection concerns the purposes described in the notice, Paragraph (2) provides a second, more liberal deadline for the objection: promptly after the objectionable item is first raised at the meeting for consideration.

(b) Model Act Subsection (b) provides that a director who is present at a meeting waives any objection concerning notice if the director votes for or assents to any action taken at the meeting after the director's initial objection. That approach treats an objection to inadequate notice as an always-universal objection, unrelated to the nature of the particular actions that actually may be causing the director to object. In many cases, a director may be perfectly willing to cooperate with other directors in approving obviously beneficial or appropriate agenda items, even without the required notice, while still wishing to preserve his notice-related objection concerning the items that the director considers more difficult or controversial. The Model Act rule fails to acknowledge the possibility of that kind of legitimate, but limited, objection. Hence, the rule may cause a director who does not know the consequences of cooperating in routine business items to waive a legitimate objection inadvertently, and require a director who does know about the rule to obstruct action even on routine items that no one objects to taking up. To avoid results of that kind, this Act reverses the Model Act rule. Under new Subsection (C), a director's participation in a meeting after an earlier objection of

1 inadequate notice does not waive the objection except with respect to those actions
2 at the meeting that the director votes to approve.

3 §1-824. Quorum and voting

4 A. Unless the articles of incorporation or bylaws require a greater number
5 or unless otherwise specifically provided in this Act, a quorum of a board of
6 directors consists of a majority of the number of directors determined in accordance
7 with Section 1-803.

8 B. The articles of incorporation or bylaws may authorize a quorum of a
9 board of directors to consist of no fewer than one-third of the number of directors
10 determined in accordance with Section 1-803.

11 C. If a quorum is present when a vote is taken, the affirmative vote of the
12 required majority of directors is the act of the board of directors. The required
13 majority of directors is a majority of the directors present, or the number of directors
14 whose votes are required by the articles of incorporation or bylaws for the board to
15 take the relevant action, whichever number is greater. If a quorum is present when
16 a meeting is convened, but the quorum is lost through the withdrawal from the
17 meeting of one or more directors, the affirmative vote of the required majority of
18 directors is the act of the board of directors provided that the number of affirmative
19 votes is not fewer than the number that would have been required had the quorum
20 not been lost.

21 D. A director who is present at a meeting of the board of directors or a
22 committee of the board of directors when corporate action is taken is deemed to have
23 assented to the action taken unless: (1) the director objects at the beginning of the
24 meeting (or promptly upon arrival) to holding it or transacting business at the
25 meeting; (2) the dissent or abstention from the action taken is entered in the minutes
26 of the meeting; or (3) the director delivers written notice of the director's dissent or
27 abstention to the presiding officer of the meeting before its adjournment or to the
28 corporation immediately after adjournment of the meeting. The right of dissent or
29 abstention is not available to a director who votes in favor of the action taken.

30 Source: MBCA §8.24.

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1 Comments - 2013 Revision

2 (a) This Act simplifies Model Act Subsection (a) by deleting its references
3 to a variable range size board, and by defining a quorum by reference to the number
4 of directors established under Section 1-803. A similar change was made in Model
5 Act Subsection (b), linking it to Section 1-803 rather than to the formerly more
6 complex rules in Subsection (a).

7 (b) This Act modifies Model Act Subsection (c) by introducing a new
8 defined term, "required majority of directors" to facilitate the statement of the
9 minimum number of affirmative votes required to establish an act of the board of
10 directors. Ordinarily, assuming that the quorum requirement is satisfied, the required
11 majority of directors is a majority of the directors present at the meeting. But that
12 figure may be increased in the articles of incorporation or bylaws, and that greater
13 number controls over the statutory minimum.

14 (c) Subsection (c) also is modified to retain the rule in prior law that a board
15 of directors may in some cases continue to conduct business at a meeting that has
16 lost its initial quorum. The rule is designed to preclude minority directors from
17 blocking action by the majority through a withdrawal from the meeting that causes
18 the quorum to be lost. But, at the same time, the rule respects the basic purpose of
19 the quorum and majority approval rules; it applies only when a meeting was
20 convened with a quorum, and it recognizes as acts of the board only those acts that
21 are supported by the number of directors that would have been required to approve
22 the action had the quorum not been lost.

23 (d) As an example of the operation of the anti-quorum-loss rule in
24 Subsection (C), consider a corporation with a nine-member board of directors.
25 Under the default statutory rules, the presence of five of those directors at a meeting
26 would be required to establish a quorum, and the affirmative votes of a majority of
27 the five directors present, three, would required to establish an act of the board. In
28 the absence of the anti-quorum-loss rule in modified Subsection (C), any one director
29 present at a meeting with a quorum of five could block action by the remaining 80%
30 of the directors present simply by walking out of the meeting; that would cause the
31 quorum to be lost by reducing the number directors present from five to four. But
32 under the rule in modified Section (C), the affirmative votes of at least a majority of
33 the remaining four directors would remain sufficient to constitute an act of the board
34 of directors because a majority of four is three, and the majority vote required at a
35 meeting with a minimal quorum of five (i.e., a meeting at which a quorum had not
36 been lost) would also be three. If, on the other hand, two directors withdrew from
37 the meeting, the affirmative vote of a bare majority of the three directors still present
38 would not constitute an act of the board of directors because two votes is not a
39 majority of the minimal quorum of five. If only three directors remained at the
40 meeting, they could take action only by unanimous vote. If fewer than three
41 remained, no further action could be taken at the meeting.

42 §1-825. Committees

43 A. Unless this Act, the articles of incorporation or the bylaws provide
44 otherwise, the board of directors may create one or more committees and appoint one
45 or more members of the board of directors to serve on any such committee. If the
46 board of directors appoints to a committee a person who is not a director, that person
47 may serve only in an advisory capacity and shall not be a member of the committee

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1 for purposes of any reference by this Act to a committee or to one or more members
2 of a committee.
3 B. Unless this Act otherwise provides, the creation of a committee and
4 appointment of members to it must be approved by the greater of (1) a majority of
5 all the directors in office when the action is taken or (2) the number of directors
6 required by the articles of incorporation or bylaws to take action under Section
7 1-824.
8 C. Sections 1-820 through 1-824 apply both to committees of the board and
9 to their members.
10 D. To the extent specified by the board of directors or in the articles of
11 incorporation or bylaws, each committee may exercise the powers of the board of
12 directors under Section 1-801.
13 E. A committee may not, however:
14 (1) Authorize or approve distributions, except according to a formula or
15 method, or within limits, prescribed by the board of directors;
16 (2) Approve or propose to shareholders action that this Act requires be
17 approved by shareholders;
18 (3) Fill vacancies on the board of directors or, subject to Subsection G of
19 this Section, on any of its committees; or
20 (4) Adopt, amend, or repeal bylaws.
21 F. The creation of, delegation of authority to, or action by a committee does
22 not alone constitute compliance by a director with the standards of conduct described
23 in Section 1-830.
24 G. The board of directors may appoint one or more directors as alternate
25 members of any committee to replace any absent or disqualified member during the
26 member's absence or disqualification. Unless the articles of incorporation or the
27 bylaws or the resolution creating the committee provide otherwise, in the event of
28 the absence or disqualification of a member of a committee, the member or members

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1 present at any meeting and not disqualified from voting, unanimously, may appoint
2 another director to act in place of the absent or disqualified member.

3 Source: MBCA §8.25.

4 Comment - 2013 Revision

5 This Act adds a second sentence to Model Act Subsection (a) to address the
6 question whether the membership of a committee of the board of directors may
7 include persons who are not members of the board itself. In some cases, the board
8 of directors may wish to appoint one or more non-director staff members who have
9 knowledge or experience that would be helpful to the committee's work. The added
10 sentence recognizes that possibility, but permits the non-director appointees to the
11 committee to act only in an advisory capacity. Appointees of that kind are not
12 considered members of the committee for purposes of any of the statutory rules
13 concerning committees or members of committees. So, for example, the rules
14 concerning the required quorum and vote for committee action would apply only
15 with respect to the directors who were members of the committee. If a committee
16 consisted of three directors and five non-director staff members, a quorum of the
17 committee could be established only if a majority of the three directors were present
18 at a meeting, and only the vote of a majority of the directors present at the committee
19 meeting would constitute the act of the committee.

20 §1-826. Submission of matters for shareholder vote

21 A corporation may agree to submit a matter to a vote of its shareholders even
22 if, after approving the matter, the board of directors determines it no longer
23 recommends the matter.

24 Source: MBCA §8.26.

25 SUBPART C. DIRECTORS

26 §1-830. Standards of conduct for directors

27 A. Each member of the board of directors, when discharging the duties of a
28 director, shall act: (1) in good faith, and (2) in a manner the director reasonably
29 believes to be in the best interests of the corporation.

30 B. The members of the board of directors or a committee of the board, when
31 becoming informed in connection with their decision-making function or devoting
32 attention to their oversight function, shall discharge their duties with the care that a
33 person in a like position would reasonably believe appropriate under similar
34 circumstances.

35 C. In discharging board or committee duties a director shall disclose, or
36 cause to be disclosed, to the other board or committee members information not

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1 already known by them but known by the director to be material to the discharge of
2 their decision-making or oversight functions, except that disclosure is not required
3 to the extent that the director reasonably believes that doing so would violate a duty
4 imposed under law, a legally enforceable obligation of confidentiality, or a
5 professional ethics rule.

6 D. In discharging board or committee duties a director who does not have
7 knowledge that makes reliance unwarranted is entitled to rely on the performance by
8 any of the persons specified in Paragraph (F)(1) or Paragraph (F)(3) of this Section
9 to whom the board may have delegated, formally or informally by course of conduct,
10 the authority or duty to perform one or more of the board's functions that are
11 delegable under applicable law.

12 E. In discharging board or committee duties a director who does not have
13 knowledge that makes reliance unwarranted is entitled to rely on information,
14 opinions, reports or statements, including financial statements and other financial
15 data, prepared or presented by any of the persons specified in Subsection F of this
16 Section.

17 F. A director is entitled to rely, in accordance with Subsection D or E of this
18 Section, on:

19 (1) One or more officers or employees of the corporation whom the director
20 reasonably believes to be reliable and competent in the functions performed or the
21 information, opinions, reports or statements provided;

22 (2) Legal counsel, public accountants, or other persons retained by the
23 corporation as to matters involving skills or expertise the director reasonably
24 believes are matters (a) within the particular person's professional or expert
25 competence or (b) as to which the particular person merits confidence; or

26 (3) A committee of the board of directors of which the director is not a
27 member if the director reasonably believes the committee merits confidence.

28 Source: MBCA §8.30.

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1 §1-831. Standards of liability for directors
2 A. A director shall not be liable to the corporation or its shareholders for any
3 decision to take or not to take action, or any failure to take any action, as a director,
4 unless the party asserting liability in a proceeding establishes that:
5 (1) No defense interposed by the director based on (a) Section 1-832 or (b)
6 the protection afforded by Section 1-861 (for action taken in compliance with
7 Section 1-862 or Section 1-863), or (c) the protection afforded by Section 1-870,
8 precludes liability; and
9 (2) the challenged conduct consisted or was the result of:
10 (a) Action not in good faith; or
11 (b) A decision
12 (i) Which the director did not reasonably believe to be in the best interests
13 of the corporation, or
14 (ii) As to which the director was not informed to an extent the director
15 reasonably believed appropriate in the circumstances; or
16 (c) A lack of objectivity due to the director's familial, financial or business
17 relationship with, or a lack of independence due to the director's domination or
18 control by, another person having a material interest in the challenged conduct
19 (i) Which relationship or which domination or control could reasonably be
20 expected to have affected the director's judgment respecting the challenged conduct
21 in a manner adverse to the corporation, and
22 (ii) After a reasonable expectation to such effect has been established, the
23 director shall not have established that the challenged conduct was reasonably
24 believed by the director to be in the best interests of the corporation; or
25 (d) A sustained failure of the director to devote attention to ongoing
26 oversight of the business and affairs of the corporation, or a failure to devote timely
27 attention, by making (or causing to be made) appropriate inquiry, when particular
28 facts and circumstances of significant concern materialize that would alert a
29 reasonably attentive director to the need therefore; or

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are additions.

1 (e) Receipt of a financial benefit to which the director was not entitled or any
2 other breach of the director's duties to deal fairly with the corporation and its
3 shareholders that is actionable under applicable law.
4 B. The party seeking to hold the director liable:
5 (1) For money damages, shall also have the burden of establishing that:
6 (a) Harm to the corporation or its shareholders has been suffered, and
7 (b) The harm suffered was proximately caused by the director's challenged
8 conduct; or
9 (2) For other money payment under a legal remedy, such as compensation
10 for the unauthorized use of corporate assets, shall also have whatever persuasion
11 burden may be called for to establish that the payment sought is appropriate in the
12 circumstances; or
13 (3) For other money payment under an equitable remedy, such as profit
14 recovery by or disgorgement to the corporation, shall also have whatever persuasion
15 burden may be called for to establish that the equitable remedy sought is appropriate
16 in the circumstances.
17 C. Nothing contained in this Section shall (1) in any instance where fairness
18 is at issue, such as consideration of the fairness of a transaction to the corporation
19 under Subsection 1-861(B)(3) of this Act, alter the burden of proving the fact or lack
20 of fairness otherwise applicable, (2) alter the fact or lack of liability of a director
21 under another Section of this Act, such as the provisions governing the consequences
22 of an unlawful distribution under Section 1-833 or a transactional interest under
23 Section 1-861, or (3) affect any rights to which the corporation or a shareholder may
24 be entitled under another statute of this state or the United States.
25 Source: MBCA §8.31.
26 Comments - 2013 Revision
27 (a) The Model Act language in Subparagraph (A)(1)(a) was modified to
28 substitute the default exculpation provision in this Act, Section 1-832, for the
29 reference to the Model Act's optional exculpation provision. Under the Model Act,
30 exculpation is an opt-in provision that may be placed in the articles of incorporation.
31 Under this Act, exculpation is provided by statute except to the extent that it is
32 rejected or limited by the articles of incorporation.

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1 (b) If Section 1-832 protects a director or officer against liability for the
2 conduct that is being challenged in a lawsuit, that Section and Subparagraph
3 (A)(1)(a) of this Section preclude the imposition of liability regardless of whether
4 the plaintiff can satisfy the remainder of the requirements imposed by Section 1-831.

5 §1-832. Protection against monetary liability

6 A. Except to the extent that the articles of incorporation limit or reject the
7 protection against liability provided by this Section, no director or officer shall be
8 liable to the corporation or its shareholders for money damages for any action taken,
9 or any failure to take action, as a director or officer, except for:

10 (1) A breach of the director's or officer's duty of loyalty to the corporation
11 or the shareholders;

12 (2) An intentional infliction of harm on the corporation or the shareholders;

13 (3) A violation of Section 1-833; or

14 (4) An intentional violation of criminal law.

15 B. The liability of a director or officer for conduct described in Paragraphs
16 (1) through (4) of Subsection A of this Section may not be limited or eliminated, but
17 the corporation may purchase insurance against that liability as provided in Section
18 1-857.

19 C. For purposes of this Section, the duty of loyalty does not include any duty
20 to act with any degree of care in the exercise of the director's or officer's
21 responsibilities to the corporation or its shareholders.

22 Comments - 2013 Revision

23 (a) Section 2.04(b)(4) of the Model Act authorizes the exculpation of
24 directors against liability to the corporation or its shareholders through an optional
25 provision in a corporation's articles of incorporation. Because articles that are
26 prepared with the benefit of legal advice nearly always provide exculpation "to the
27 fullest extent allowed by law," this Section reflects the normal preference for
28 exculpation by making it the default rule. To prevent unfair surprise, Section
29 1-202(A)(5) requires the articles of incorporation to state whether the corporation
30 accepts, rejects or limits the default rule under this Section.

31 (b) If the articles of incorporation contain a statement to the effect that the
32 protection against liability provided by Subsection (A) is rejected, the liability of a
33 director or officer is not affected by Subsection (A). If the articles of incorporation
34 contain a limitation on the protection against liability provided by Subsection (A),
35 the stated limitation applies even if the articles of incorporation do not otherwise say
36 that they limit the protection. If the articles of incorporation contain a statement to
37 the effect that they limit the protection against liability provided by Subsection (A),

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1 but fail to state the nature of the limitation, the protection against liability provided
2 by Subsection (A) applies without limitation.

3 (c) The limitations on exculpation provided by this Section are the same as
4 those provided by Model Act Section 2.02(b)(4), with one exception. This Section
5 prohibits the exculpation of a director from liability for damages caused by the
6 director's breaching the duty of loyalty owed by the director to the corporation or its
7 shareholders. The comparable Model Act provision is narrower, prohibiting
8 exculpation only for the amount of an improper financial benefit received by a
9 director. The broader exception was adopted in Louisiana to avoid the exculpation
10 of a director who caused more harm to the corporation through disloyalty than the
11 director received in the form of a personal financial benefit. Under the broader
12 Louisiana exception, for example, a director who received a kickback of only a
13 portion of a corporate overpayment for supplies would be at risk for the entire
14 amount of the overpayment, not merely the amount of the kickback.

15 (d) This Section does not provide or permit the exculpation of a director or
16 officer from liability for disloyalty. But it does provide protection against liability
17 for carelessness. Delaware courts have suggested that some egregious forms of
18 carelessness may be tantamount to disloyalty, and so be nonexculpable under a
19 "breach of loyalty" exception like the one in this Section. See, e.g., Stone v. Ritter,
20 911 A.2d 362 (Del. 2006). Subsection (c) rejects that view. No level of carelessness
21 may be treated as a breach of the duty of loyalty for purposes of the default form of
22 exculpation provided by this Section. If shareholders wish to adopt the Delaware
23 approach, or any other limitation on the exculpation provided by this Section, they
24 may do so by adding appropriate language to the articles of incorporation.

25 §1-833. Directors' liability for unlawful distributions

26 A. A director who votes for or assents to a distribution in excess of what may
27 be authorized and made pursuant to Subsection 1-640(A) or 1-1409(A) of this Act
28 is personally liable to the corporation for the amount of the distribution that exceeds
29 what could have been distributed without violating Subsection 1-640(A) or
30 1-1409(A) of this Act if the party asserting liability establishes that when taking the
31 action the director did not comply with Section 1-830.

32 B. A director held liable under Subsection A of this Section for an unlawful
33 distribution is entitled to:

34 (1) Contribution from every other director who could be held liable under
35 Subsection A of this Section for the unlawful distribution; and

36 (2) Indemnity from each shareholder, for the pro-rata portion of the amount
37 of the unlawful distribution the shareholder received.

38 C. A proceeding to enforce:

39 (1) The liability of a director under Subsection A of this Section is barred
40 unless it is commenced within two years after the date:

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1 (a) On which the effect of the distribution was measured under Subsection
2 1-640(E) or (G) of this Act;
3 (b) As of which the violation of Subsection 1-640(A) of this Act occurred
4 as the consequence of disregard of a restriction in the articles of incorporation; or
5 (c) On which the distribution of assets to shareholders under Subsection
6 1-1409(A) of this Act was made; or
7 (2) Contribution or indemnity under Subsection B of this Section is barred
8 unless it is commenced within one year after the liability of the claimant has been
9 finally adjudicated under Subsection A of this Section.
10 D. The time limits provided in Subsection C of this Section are peremptive.
11 Source: MBCA §8.33.
12 Comments - 2013 Revision
13 (a) Model Act Subsection (b)(2) is modified in this Act to make it consistent
14 with the rule in Section 1-622(C), also added by this Act, that makes a shareholder
15 liable without fault to return the amount of an unlawful distribution received by the
16 shareholder.
17 (b) The Model Act reference to recoupment was replaced in this Act by a
18 reference to indemnity, to retain the prior law on the subject.
19 (c) This Act adds a new Subsection (D) to the Model Act to make it clear
20 that the time periods provided in Subsection (C) are peremptive.
21 SUBPART D. OFFICERS
22 §1-840. Officers
23 A. A corporation shall have a secretary and such other officers as described
24 in its bylaws or appointed by the board of directors in a manner not inconsistent with
25 any bylaws.
26 B. The board of directors may elect individuals to fill one or more offices of
27 the corporation. An officer may appoint one or more officers if authorized by the
28 bylaws or the board of directors.
29 C. The secretary shall have the authority and responsibility for preparing the
30 minutes of the directors' and shareholders' meetings and for maintaining and
31 authenticating the records of the corporation required to be kept under Subsections
32 1-1601(A) and 1-1601(E) of this Act.

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1 D. The same individual may simultaneously hold more than one office in a
2 corporation.

3 Source: MBCA §8.40.

4 Comments - 2013 Version

5 (a) The Model Act does not require the appointment of an officer called the
6 "secretary," but it does require the corporation to appoint an officer who is given a
7 secretary's responsibilities. See Model Act Section 8.40(c). The Model Act also uses
8 the term "secretary" as a defined term that means the person who is given a
9 secretary's usual recordkeeping responsibilities under Section 7.40(c) (see Model Act
10 Section 1.40(20)). It also names the secretary in several places as the appropriate
11 recipient on the corporation's behalf of some legally-relevant notification. See, e.g.,
12 Sections 7.03 (shareholder demand for shareholder meeting), 7.04 (delivery of
13 shareholder written consents), 8.07 (resignation of a director), and 8.63 (notice of a
14 director's conflicting interest).

15 (b) This Act requires a corporation to appoint an officer with the title,
16 "secretary," and then gives to that named officer the responsibility for preparing the
17 corporation's minutes and for maintaining and authenticating the corporation's
18 records as provided in Section 1-840(C). The required use of the usual "secretary"
19 terminology is designed to facilitate the efforts of shareholders and third parties, who
20 may be unaware of a particular corporation's preferences concerning officer titles,
21 to contact the person who has the authority provided by this Act to the corporation's
22 secretary. The person designated as secretary may hold other offices and titles in
23 addition to that of secretary.

24 (c) This Act changes the reference to "the" bylaws in Subsection (A) to
25 "any" bylaws, to reflect the optional nature of bylaws under this Act. Nevertheless,
26 if the corporation has adopted bylaws concerning the appointment of officers, the
27 board of directors must comply with those bylaws. Although the board of directors
28 ordinarily has the power to adopt, amend and repeal bylaws, the shareholders of the
29 corporation do have the power under Section 1-1020(B) to adopt a bylaw that may
30 not be amended or repealed by the board of directors. Moreover, even if the board
31 of directors does have the power to amend or repeal a relevant bylaw, the board must
32 comply with the bylaw until the amendment or repeal takes effect. The board is not
33 entitled to ignore a bylaw in lieu of amending or repealing it.

34 §1-841. Functions of officers

35 In addition to the secretary's authority under Section 1-840, each officer has
36 the authority and shall perform the functions set forth in the bylaws or, to the extent
37 consistent with any bylaws, the authority and functions prescribed by the board of
38 directors or by direction of an officer authorized by the board of directors to
39 prescribe the authority and functions of other officers.

40 Source: MBCA §8.41.

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Comment - 2013 Revision

This Act modifies the Model Act Section in three respects: (1) it adds a reference to the statutory authority conferred by Section 1-840 of this Act on the corporation's secretary; (2) it requires the conferral of authority by the board of directors or by an appropriate officer to be consistent with "any" bylaws (rather than "the" bylaws), to reflect the optional nature of bylaws under this Act; and (3) it uses the phrase "authority and functions" consistently throughout the provision to describe the matters that may be addressed in the bylaws or by the board of directors or an appropriate officer.

§1-842. Standards of conduct for officers

A. An officer, when performing in such capacity, has the duty to act:

(1) In good faith;

(2) With the care that a person in a like position would reasonably exercise under similar circumstances; and

(3) In a manner the officer reasonably believes to be in the best interests of the corporation.

B. [Reserved.]

C. In discharging his or her duties, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on:

(1) The performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated; or

(2) Information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or by legal counsel, public accountants, or other persons retained by the corporation as to matters involving skills or expertise the officer reasonably believes are matters (a) within the particular person's professional or expert competence or (b) as to which the particular person merits confidence.

D. An officer shall not be liable to the corporation or its shareholders for any decision to take or not to take action, or any failure to take any action, as an officer, if the duties of the office are performed in compliance with this Section. Whether an officer who does not comply with this Section shall have liability will depend in such

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1 instance on applicable law, including those principles of Section 1-831 that have
2 relevance.
3 Source: MBCA §8.42.
4 Comment - 2013 Revision
5 Model Act Subsection (b) states that an officer's duty includes the obligation
6 to inform the officer's superiors or other appropriate persons of certain information,
7 and of any actual or probable material violation of law or breach of duty to the
8 corporation that the officer believes has occurred or is likely to occur. This Act
9 deletes Model Act Subsection (b) as being ill-suited to many of the
10 informally-managed, closely-held corporations that are common in Louisiana
11 corporate practice. The deletion of Subsection (b) does not mean that an officer
12 never owes the duties described in Subsection (b), but rather that the extent of an
13 officer's duty to inform others of information in the officer's possession should be
14 judged based on the standards stated in subsection (a).
15 §1-843. Resignation and removal of officers
16 A. A. An officer may resign at any time by delivering notice to the
17 corporation. A resignation is effective when the notice is effective unless the notice
18 specifies a later effective time. If a resignation is made effective at a later time and
19 the board or the appointing officer accepts the future effective time, the board or the
20 appointing officer may fill the pending vacancy before the effective time if the board
21 or the appointing officer provides that the successor does not take office until the
22 effective time.
23 B. An officer may be removed at any time with or without cause by: (1) the
24 board of directors; (2) the officer who appointed such officer, unless the bylaws or
25 the board of directors provide otherwise; or (3) any other officer if authorized by the
26 bylaws or the board of directors.
27 C. In this Section, "appointing officer" means the officer (including any
28 successor to that officer) who appointed the officer resigning or being removed.
29 Source: MBCA §8.43.
30 §1-844. Contract rights of officers
31 A. The appointment of an officer does not itself create contract rights.

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1 B. An officer's removal does not affect the officer's contract rights, if any,
2 with the corporation. An officer's resignation does not affect the corporation's
3 contract rights, if any, with the officer.
4 Source: MBCA §8.44.
5 SUBPART E. INDEMNIFICATION AND ADVANCE FOR EXPENSES
6 §1-850. Subpart definitions
7 In this Subpart:
8 (1) "Corporation" includes any domestic or foreign predecessor entity of a
9 corporation in a merger.
10 (2) "Director" or "officer" means an individual who is or was a director or
11 officer, respectively, of a corporation or who, while a director or officer of the
12 corporation, is or was serving at the corporation's request as a director, officer,
13 manager, partner, trustee, employee, or agent of another entity or employee benefit
14 plan. A director or officer is considered to be serving an employee benefit plan at
15 the corporation's request if the individual's duties to the corporation also impose
16 duties on, or otherwise involve services by, the individual to the plan or to
17 participants in or beneficiaries of the plan. "Director" or "officer" includes, unless
18 the context requires otherwise, the estate or personal representative of a director or
19 officer.
20 (3) "Liability" means the obligation to pay a judgment, settlement, penalty,
21 fine (including an excise tax assessed with respect to an employee benefit plan), or
22 reasonable expenses incurred with respect to a proceeding.
23 (4) "Official capacity" means: (a) when used with respect to a director, the
24 office of director in a corporation; and (b) when used with respect to an officer, as
25 contemplated in Section 1-856, the office in a corporation held by the officer.
26 "Official capacity" does not include service for any other domestic or foreign
27 corporation or any partnership, joint venture, trust, employee benefit plan, or other
28 entity.

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1 (5) "Party" means an individual who was, is, or is threatened to be made, a
2 defendant or respondent in a proceeding.
3 (6) "Proceeding" means any threatened, pending, or completed action, suit,
4 or proceeding, whether civil, criminal, administrative, arbitrative, or investigative
5 and whether formal or informal.
6 Source: MBCA §8.50.
7 §1-851. Permissible indemnification
8 A. Except as otherwise provided in this Section, a corporation may
9 indemnify an individual who is a party to a proceeding because the individual is a
10 director against liability incurred in the proceeding if:
11 (1)(a) The director conducted himself or herself in good faith; and
12 (b) Reasonably believed:
13 (i) In the case of conduct in an official capacity, that his or her conduct was
14 in the best interests of the corporation; and
15 (ii) In all other cases, that the director's conduct was at least not opposed to
16 the best interests of the corporation; and
17 (c) In the case of any criminal proceeding, the director had no reasonable
18 cause to believe his or her conduct was unlawful; or
19 (2) The director engaged in conduct for which broader indemnification has
20 been made permissible or obligatory under a provision of the articles of
21 incorporation (as authorized by Paragraph 1-202(B)(5) of this Act) for which liability
22 has been eliminated under Section 1-832.
23 B. A director's conduct with respect to an employee benefit plan for a
24 purpose the director reasonably believed to be in the interests of the participants in,
25 and the beneficiaries of, the plan is conduct that satisfies the requirement of Item
26 (A)(1)(b)(ii) of this Section.
27 C. The termination of a proceeding by judgment, order, settlement, or
28 conviction, or upon a plea of nolo contendere or its equivalent, is not, of itself,

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1 determinative that the director did not meet the relevant standard of conduct
2 described in this Section.
3 D. Unless ordered by a court under Paragraph 1-854(A)(3) of this Act, a
4 corporation may not indemnify a director:
5 (1) In connection with a proceeding by or in the right of the corporation,
6 except for expenses incurred in connection with the proceeding if it is determined
7 that the director has met the relevant standard of conduct under Subsection A of this
8 Section; or
9 (2) In connection with any proceeding with respect to conduct for which the
10 director was adjudged liable on the basis of receiving a financial benefit to which he
11 or she was not entitled, whether or not involving action in the director's official
12 capacity.
13 Source: MBCA §8.51.
14 Comment - 2013 Revision
15 The Model Act language in Paragraph (A)(2) was modified to add a reference
16 to the exculpation provided by Section 1-832. Under this Act, a corporation may
17 indemnify a director for any liability that arises from conduct for which the director
18 is exculpated under Section 1-832. Of course, if the director is exculpated then no
19 "liability" in the usual sense of that term should be imposed on the director. But the
20 term "liability" as defined for indemnity purposes in Section 1-850(3) includes
21 litigation expenses. The exculpable conduct language is included in this provision
22 to make it clear that litigation expenses of that kind are subject to permissive
23 indemnification under this Section.
24 §1-852. Mandatory indemnification
25 A corporation shall indemnify a director who was wholly successful, on the
26 merits or otherwise, in the defense of any proceeding to which the director was a
27 party because he or she was a director of the corporation against expenses incurred
28 by the director in connection with the proceeding.
29 Source: MBCA §8.52.
30 Comment - 2013 Revision
31 This Act, like the Model Act, covers the indemnification of directors
32 separately from the indemnification of officers because a decision by directors
33 concerning their own indemnification poses conflicting interest problems that are not
34 present in the case of non-director officers. This Section provides for mandatory
35 indemnification only of directors simply because it is one of the director-indemnity
36 provisions. However, officers actually are covered by this Section through one of

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1 the officer-indemnity provisions, Section 1-856(C), which provides that an officer
2 is entitled, among other things, to mandatory indemnification to the same extent as
3 a director.

4 §1-853. Advance for expenses

5 A. A corporation may, before final disposition of a proceeding, advance
6 funds to pay for or reimburse expenses incurred in connection with the proceeding
7 by an individual who is a party to the proceeding because that individual is a member
8 of the board of directors if the director delivers to the corporation:

9 (1) A written affirmation of the director's good faith belief that the relevant
10 standard of conduct described in Section 1-851 has been met by the director or that
11 the proceeding involves conduct for which liability has been eliminated under
12 Section 1-832; and

13 (2) A written undertaking of the director to repay any funds advanced if the
14 director is not entitled to mandatory indemnification under Section 1-852 and it is
15 ultimately determined under Section 1-854 or Section 1-855 that the director has not
16 met the relevant standard of conduct described in Section 1-851.

17 B. The undertaking required by Paragraph (A)(2) of this Section must be an
18 unlimited general obligation of the director but need not be secured and may be
19 accepted without reference to the financial ability of the director to make repayment.

20 C. Authorizations under this Section shall be made:

21 (1) By the board of directors:

22 (a) If there are two or more qualified directors, by a majority vote of all the
23 qualified directors (a majority of whom shall for such purpose constitute a quorum)
24 or by a majority of the members of a committee of two or more qualified directors
25 appointed by such a vote; or

26 (b) If there are fewer than two qualified directors, by the vote necessary for
27 action by the board in accordance with Subsection 1-824(C) of this Act, in which
28 authorization directors who are not qualified directors may participate; or

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(2) By the shareholders, but shares owned by or voted under the control of a director who at the time is not a qualified director may not be voted on the authorization.

Source: MBCA §8.53.

Comment - 2013 Revision

The Model Act language in Subsection (a)(1) was modified to substitute the reference to Section 1-832 for the Model Act's optional exculpatory provision.

§1-854. Court-ordered indemnification and advance for expenses

A. A director who is a party to a proceeding because he or she is a director may petition the court conducting the proceeding for indemnification or an advance for expenses or, if the indemnification or advance for expenses is beyond the scope of the proceeding or of the jurisdiction of the court or other forum for the proceeding, may petition another court of competent jurisdiction. After ordering any notice it considers necessary, the court shall hear the petition by summary proceeding and shall:

(1) Order indemnification if the court determines that the director is entitled to mandatory indemnification under Section 1-852;

(2) Order indemnification or advance for expenses if the court determines that the director is entitled to indemnification or advance for expenses pursuant to a provision authorized by Subsection 1-858(A) of this Act; or

(3) Order indemnification or advance for expenses if the court determines, in view of all the relevant circumstances, that it is fair and reasonable

(a) To indemnify the director, or

(b) To advance expenses to the director, even if he or she has not met the relevant standard of conduct set forth in Subsection 1-851(A) of this Act, failed to comply with Section 1-853 or was adjudged liable in a proceeding referred to in Paragraphs (D)(1) or (D)(2) of Section 1-851 of this Act, but if the director was adjudged so liable indemnification shall be limited to expenses incurred in connection with the proceeding.

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1 B. If the court determines that the director is entitled to indemnification
2 under Paragraph (A)(1) of this Section or to indemnification or advance for expenses
3 under Paragraph (A)(2) of this Section, it shall also order the corporation to pay the
4 director's expenses incurred in connection with obtaining court-ordered
5 indemnification or advance for expenses. If the court determines that the director is
6 entitled to indemnification or advance for expenses under Paragraph (A)(3) of this
7 Section, it may also order the corporation to pay the director's expenses to obtain
8 court-ordered indemnification or advance for expenses.

9 Source: MBCA §8.54.

10 Comments - 2013 Revision

11 (a) Model Act Subsection (a) permits a director to make application for
12 indemnification or an advance of expenses either to the court conducting the
13 proceeding in which the relevant expenses are incurred or to another court of
14 competent jurisdiction. This Act uses the Louisiana term "petition" in place of the
15 Model Act term "application" and specifies that the petition is to be heard by
16 summary proceeding.

17 (b) This Act also modifies Model Act Subsection (a) to allow resort to
18 another court only if the court or other forum that is conducting the proceeding in
19 which the relevant expenses are being incurred cannot itself consider the petition.

20 §1-855. Determination and authorization of indemnification

21 A. A corporation may not indemnify a director under Section 1-851 unless
22 authorized for a specific proceeding after a determination has been made that
23 indemnification is permissible because the director has met the relevant standard of
24 conduct set forth in Section 1-851.

25 B. The determination shall be made:

26 (1) If there are two or more qualified directors, by the board of directors by
27 a majority vote of all the qualified directors (a majority of whom shall for such
28 purpose constitute a quorum), or by a majority of the members of a committee of two
29 or more qualified directors appointed by such a vote;

30 (2) By special legal counsel:

31 (a) Selected in the manner prescribed in Paragraph (1); or

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1 (b) if there are fewer than two qualified directors, selected by the board of
2 directors (in which selection directors who are not qualified directors may
3 participate); or
4 (3) By the shareholders, but shares owned by or voted under the control of
5 a director who at the time is not a qualified director may not be voted on the
6 determination.
7 C. Authorization of indemnification shall be made in the same manner as the
8 determination that indemnification is permissible except that if there are fewer than
9 two qualified directors, or if the determination is made by special legal counsel,
10 authorization of indemnification shall be made by those entitled to select special
11 legal counsel under Subparagraph (B)(2)(b) of this Section.
12 Source: MBCA §8.55.
13 §1-856. Indemnification of officers
14 A. A corporation may indemnify and advance expenses under this Subpart
15 to an officer of the corporation who is a party to a proceeding because he or she is
16 an officer of the corporation
17 (1) To the same extent as a director; and
18 (2) If he or she is an officer but not a director, to such further extent as may
19 be provided by the articles of incorporation, the bylaws, a resolution of the board of
20 directors, or contract except for
21 (a) Liability in connection with a proceeding by or in the right of the
22 corporation other than for expenses incurred in connection with the proceeding or
23 (b) Liability arising out of conduct that constitutes
24 (i) A breach of the officer's duty of loyalty to the corporation or its
25 shareholders,
26 (ii) An intentional infliction of harm on the corporation or the shareholders,
27 or
28 (iii) An intentional violation of criminal law.
29 B. [Reserved.]

1 C. An officer of a corporation is entitled to mandatory indemnification under
2 Section 1-852, and may apply to a court under Section 1-854 for indemnification or
3 an advance for expenses, in each case to the same extent to which a director may be
4 entitled to indemnification or advance for expenses under those provisions.
5 Source: MBCA §8.56.
6 Comments - 2013 Revision
7 (a) Model Act Subsection (a)(2)(B)(I) was changed to make it consistent
8 with the change made to the source language for the exculpation of directors from
9 liability under Section 1-832. This Act does not permit either the exculpation from
10 liability or the indemnification of an officer or director for conduct that violates the
11 officer or director's duty of loyalty to the corporation.
12 (b) Model Act Subsection (b) was omitted from this Act. The omitted
13 Subsection would have permitted officers who were also directors to be indemnified
14 under the more liberal rules applicable to officers if the conduct that was the subject
15 of the litigation had been carried out in the indemnitee's capacity as an officer rather
16 than as a director. But, as the comments to the Model Act indicate, the purpose of
17 the stricter rules in the indemnification of directors is to minimize the effects of the
18 conflicts of interests faced by directors in voting for their own or a fellow board
19 member's indemnification. Because those conflicts of interest arise from the
20 indemnitee's status as a director, and not from the nature of the conduct that is being
21 challenged in the litigation, this Act rejects the Model Act's approval of more liberal
22 indemnity rules in the case of officer-capacity conduct by directors.
23 (c) This Act eliminates a phrase in Model Act Subsection (c) which could
24 have been interpreted to limit the effects of the Subsection to an officer "who [was]
25 not a director." As modified, Subsection (B) extends the described indemnity and
26 court-ordered payment rights to officers without regard to whether they are also
27 directors.
28 §1-857. Insurance
29 A corporation may purchase and maintain insurance on behalf of an
30 individual who is a director or officer of the corporation, or who, while a director or
31 officer of the corporation, serves at the corporation's request as a director, officer,
32 partner, trustee, employee, or agent of another domestic or foreign corporation,
33 partnership, joint venture, trust, employee benefit plan, or other entity, against
34 liability asserted against or incurred by the individual in that capacity or arising from
35 his or her status as a director or officer, whether or not the individual could be
36 protected against the same liability under Section 1-832 and whether or not the

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1 corporation would have power to indemnify or advance expenses to the individual
2 against the same liability under this Subpart.
3 Source: MBCA §8.57.
4 Comments - 2013 Revision

5 (a) A reference to Section 1-832 was added to the Model Act language to
6 permit the corporation to purchase insurance against liability even if that liability
7 could not be the subject of exculpation under Section 1-832. The rationale for
8 allowing a corporation to purchase insurance to cover liability that it could not
9 exculpate is the same as that for insuring against a liability that could not
10 indemnified. The insurer will provide an outside source of funds to cover the
11 liability, and will have the incentive to exclude from coverage the types of
12 non-accidental risks of loss that pose serious risks of moral hazard.

13 (b) Under former R.S. 12:83(F), a corporation could "self insure" liability
14 that could not be indemnified. This Act has repealed that rule. Corporations may still
15 purchase insurance from true insurance companies, licensed and regulated by the
16 appropriate jurisdictions, even if they are affiliated companies. And self-insurance
17 may still be used to fund a corporation's indemnity and advance-of-expense
18 payments. But self-insurance, not purchased from a regulated insurance company,
19 may not be used to avoid the limitations imposed by this Act on indemnification and
20 exculpation.

21 §1-858. Variation by corporate action; application of Subpart
22 A. A corporation may, by a provision in its articles of incorporation or
23 bylaws or in a resolution adopted or a contract approved by its board of directors or
24 shareholders, obligate itself in advance of the act or omission giving rise to a
25 proceeding to provide indemnification in accordance with Section 1-851 or advance
26 funds to pay for or reimburse expenses in accordance with Section 1-853. Any such
27 obligatory provision shall be deemed to satisfy the requirements for authorization
28 referred to in Subsection 1-853(C) and in Subsection 1-855(C) of this Act. Any such
29 provision that obligates the corporation to provide indemnification to the fullest
30 extent permitted by law shall be deemed to obligate the corporation to advance funds
31 to pay for or reimburse expenses in accordance with Section 1-853 to the fullest
32 extent permitted by law, unless the provision specifically provides otherwise.
33 B. Any provision pursuant to Subsection A of this Section shall not obligate
34 the corporation to indemnify or advance expenses to a director of a predecessor of
35 the corporation, pertaining to conduct with respect to the predecessor, unless
36 otherwise specifically provided. Any provision for indemnification or advance for

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1 expenses in the articles of incorporation, bylaws, or a resolution of the board of
2 directors or shareholders of a predecessor of the corporation in a merger or in a
3 contract to which the predecessor is a party, existing at the time the merger takes
4 effect, shall be governed by Paragraph 1-1107(A)(4) of this Act.

5 C. A corporation may, by a provision in its articles of incorporation, limit
6 any of the rights to indemnification or advance for expenses created by or pursuant
7 to this Subpart.

8 D. This Subpart does not limit a corporation's power to pay or reimburse
9 expenses incurred by a director or an officer in connection with appearing as a
10 witness in a proceeding at a time when he or she is not a party.

11 E. This Subpart does not limit a corporation's power to indemnify, advance
12 expenses to or provide or maintain insurance on behalf of an employee or agent.

13 Source: MBCA §8.58.

14 Comment - 2013 Revision

15 Under Section 1-851(A)(1), a corporation may indemnify any liability that
16 may be made the subject of exculpation under Section 1-832. As a result, under this
17 Section, a corporation that obligates itself in advance to indemnify a director or
18 officer "to the fullest extent permitted by law" also obligates itself both to indemnify
19 and to advance expenses for any liability that is exculpated under Section 1-832.
20 However, unlike Section 1-832 itself, which provides exculpation by statute except
21 as limited in the articles of incorporation, this Section does not by itself obligate a
22 corporation to indemnify or to advance expenses for conduct that is covered by
23 Section 1-832. A corporation is permitted in such cases to provide indemnification
24 under Section 1-851 and to advance expenses under Section 1-853. But in the
25 absence of an advance obligation under this Section, a corporation is required to
26 make indemnity or expense payments in connection with litigation over exculpated
27 liability only if the prospective indemnitee actually succeeds in the defense of the
28 suit, thus triggering his right to indemnity under Section 1-852, or if he convinces
29 a court to order indemnification or expense payments under the "fair and equitable"
30 standards of Section 1-854.

31 §1-859. Exclusivity of Subpart

32 A corporation may provide indemnification or advance expenses to a director
33 or an officer only as permitted by this Subpart.

34 Source: MBCA § 8.59.

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are additions.

1 SUBPART F. DIRECTORS' CONFLICTING INTEREST TRANSACTIONS
2 §1-860. Subpart definitions
3 In this Subpart:
4 (1) "Director's conflicting interest transaction" means a transaction effected
5 or proposed to be effected by the corporation (or by an entity controlled by the
6 corporation)
7 (a) To which, at the relevant time, the director is a party; or
8 (b) Respecting which, at the relevant time, the director had knowledge and
9 a material financial interest known to the director; or
10 (c) Respecting which, at the relevant time, the director knew that a related
11 person was a party or had a material financial interest.
12 (2) "Control" (including the term "controlled by") means (a) having the
13 power, directly or indirectly, to elect or remove a majority of the members of the
14 board of directors or other governing body of an entity, whether through the
15 ownership of voting shares or interests, by contract, or otherwise, or (b) being subject
16 to a majority of the risk of loss from the entity's activities or entitled to receive a
17 majority of the entity's residual returns.
18 (3) "Relevant time" means (a) the time at which directors' action respecting
19 the transaction is taken in compliance with Section 1-862, or (b) if the transaction is
20 not brought before the board of directors of the corporation (or its committee) for
21 action under Section 1-862, at the time the corporation (or an entity controlled by the
22 corporation) becomes legally obligated to consummate the transaction.
23 (4) "Material financial interest" means a financial interest in a transaction
24 that would reasonably be expected to impair the objectivity of the director's
25 judgment when participating in action on the authorization of the transaction.
26 (5) "Related person" means, at the relevant time:
27 (a) The director's spouse;

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1 (b) A child, stepchild, grandchild, parent, step parent, grandparent, sibling,
2 step sibling, half sibling, aunt, uncle, niece or nephew (or spouse of any thereof) of
3 the director or of the director's spouse;
4 (c) An individual living in the same home as the director;
5 (d) An entity (other than the corporation or an entity controlled by the
6 corporation) controlled by the director or any person specified above in this
7 Paragraph (5);
8 (e) A domestic or foreign (I) business or nonprofit corporation (other than
9 the corporation or an entity controlled by the corporation) of which the director is a
10 director, (ii) unincorporated entity of which the director is a general partner or a
11 member of the governing body, or (iii) individual, trust or estate for whom or of
12 which the director is a trustee, guardian, personal representative or like fiduciary;
13 (f) A person that is, or an entity that is controlled by, an employer of the
14 director; or
15 (g) A person with whom the director has a material relationship.
16 (6) "Fair to the corporation" means, for purposes of Paragraph 1-861(B)(3)
17 of this Act, that the transaction as a whole was beneficial to the corporation, taking
18 into appropriate account whether it was (a) fair in terms of the director's dealings
19 with the corporation, and (b) comparable to what might have been obtainable in an
20 arm's length transaction, given the consideration paid or received by the corporation.
21 (7) "Required disclosure" means disclosure of (a) the existence and nature
22 of the director's conflicting interest, and (b) all facts known to the director respecting
23 the subject matter of the transaction that a director free of such conflicting interest
24 would reasonably believe to be material in deciding whether to proceed with the
25 transaction.
26 Source: MBCA §8.60.
27 Comments - 2013 Revision
28 (a) This Act modifies the Model Act definition of "related person" in Section
29 8.60(5) to add as a new Subparagraph (5)(g) the phrase, "person with whom the
30 director has a material relationship." The purpose of the added language is to
31 broaden the description of the persons whose financial interests in a transaction

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1 would cause the transaction to be treated as a conflicting interest transaction for a
2 director.

3 (b) The Model Act definition of "related persons" does capture the more
4 common kinds of relationships, such as those among spouses and immediate family
5 members, that would cause a reasonable person to perceive a serious conflict of
6 interest on the part of a director. But left out of the list are other types of
7 relationships, such one between a director and someone with whom the director was
8 having an adulterous affair, that would cause a reasonable person to question the
9 objectivity of the director's judgment in approving a transaction. Those types of
10 relationships would be covered by Subparagraph (5)(g)'s reference to a "material
11 relationship," which is defined in Section 1-143 to mean any form of relationship
12 "that would reasonably be expected to impair the objectivity of the director's
13 judgment when participating in the action to be taken." Section 1-143 (B)(1).

14 (c) This Act also adds the phrase "at the relevant time" to the introductory
15 clause in Section 1-860(5). The relationships listed in Section 1-860(5) are to be
16 determined as of the "relevant time" as defined in Section 1-860(3). A transaction
17 would not fit the definition of a director's conflicting interest transaction if the listed
18 relationship arose only after the relevant time, or had been terminated before the
19 relevant time.

20 §1-861. Judicial action

21 A. A transaction effected or proposed to be effected by the corporation (or
22 by an entity controlled by the corporation) may not be the subject of any form of
23 relief, or give rise to an award of damages or other sanctions against a director of the
24 corporation, in a proceeding by a shareholder or by or in the right of the corporation,
25 on the ground that the director has an interest respecting the transaction, if it is not
26 a director's conflicting interest transaction.

27 B. A director's conflicting interest transaction may not be the subject of
28 equitable relief, or give rise to an award of damages or other sanctions against a
29 director of the corporation, in a proceeding by a shareholder or by or in the right of
30 the corporation, on the ground that the director has an interest respecting the
31 transaction, if:

32 (1) Directors' action respecting the transaction was taken in compliance with
33 Section 1-862 at any time; or

34 (2) Shareholders' action respecting the transaction was taken in compliance
35 with Section 1-863 at any time; or

(3) The transaction, judged according to the circumstances at the relevant time, is established to have been fair to the corporation.

Source: MBCA §8.61.

Comments - 2013 Revision

(a) As the Model Act Official Comments explain, the current Model Act protects a transaction between a corporation and a director from any form of judicial remedy based on the director's conflicting interest in the transaction unless the transaction first fits the statutory definition of a "director's conflicting interest transaction" and then, if it does so, also fails to satisfy any one of the three statutory grounds for upholding the transaction against any challenge that is based on the conflicting interest. The current approach differs sharply from that taken in earlier versions of the Model Act (those before 1989) and under prior Louisiana law. Under the earlier approach, compliance with the statutory rules concerning what were then called self-dealing transactions did not wholly protect a transaction from a challenge based on the conflicting interest, it merely prevented application of the early corporation law rule that a self-dealing transaction was automatically voidable by the corporation without regard to the fairness of the transaction. See former R.S. 12:84.

(b) This Act adopts the Model Act approach. This Act differs from the Model Act in one respect, however. It adds a residual category of relationship, called a "material relationship," to the definition of "related person" in Section 1-860(5). The effect of that addition is to broaden the types of relationships between a director and another person that could cause the other person's financial interest in the transaction to be treated as a conflicting interest in the transaction on the part of the director.

§1-862. Directors' action

A. Directors' action respecting a director's conflicting interest transaction is effective for purposes of Paragraph 1-861(B)(l) of this Act if the transaction has been authorized by the affirmative vote of a majority (but no fewer than two) of the qualified directors who voted on the transaction, after required disclosure by the conflicted director of information not already known by such qualified directors, or after modified disclosure in compliance with Subsection B of this Section, provided that:

(1) The qualified directors have deliberated and voted outside the presence of and without the participation by any other director; and

(2) Where the action has been taken by a committee, all members of the committee were qualified directors, and either (a) the committee was composed of all the qualified directors on the board of directors or (b) the members of the

1 committee were appointed by the affirmative vote of a majority of the qualified
2 directors on the board.
3 B. Notwithstanding Subsection A of this Section, when a transaction is a
4 director's conflicting interest transaction only because a related person described in
5 Subparagraph (e), Subparagraph (f), or Subparagraph (g) of Paragraph 1-860(5) of
6 this Act is a party to or has a material financial interest in the transaction, the
7 conflicted director is not obligated to make required disclosure to the extent that the
8 director reasonably believes that doing so would violate a duty imposed under law,
9 a legally enforceable obligation of confidentiality, or a professional ethics rule,
10 provided that the conflicted director discloses to the qualified directors voting on the
11 transaction:
12 (1) All information required to be disclosed that is not so violative,
13 (2) The existence and nature of the director's conflicting interest, and
14 (3) The nature of the conflicted director's duty not to disclose the
15 confidential information.
16 C. A majority (but no fewer than two) of all the qualified directors on the
17 board of directors, or on the committee, constitutes a quorum for purposes of action
18 that complies with this Section.
19 D. Where directors' action under this Section does not satisfy a quorum or
20 voting requirement applicable to the authorization of the transaction by reason of the
21 articles of incorporation, the bylaws or a provision of law, independent action to
22 satisfy those authorization requirements must be taken by the board of directors or
23 a committee, in which action directors who are not qualified directors may
24 participate.
25 Source: MBCA §8.62.
26 §1-863. Shareholders' action
27 A. Shareholders' action respecting a director's conflicting interest transaction
28 is effective for purposes of Paragraph 1-861(B)(2) of this Act if a majority of the
29 votes cast by the holders of all qualified shares are in favor of the transaction after

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1 (1) notice to shareholders describing the action to be taken respecting the transaction,
2 (2) provision to the corporation of the information referred to in Subsection B of this
3 Section, and (3) communication to the shareholders entitled to vote on the
4 transaction of the information that is the subject of required disclosure, to the extent
5 the information is not known by them.
6 B. A director who has a conflicting interest respecting the transaction shall,
7 before the shareholders' vote, inform the secretary or other officer or agent of the
8 corporation authorized to tabulate votes, in writing, of the number of shares that the
9 director knows are not qualified shares under Subsection C of this Section, and the
10 identity of the holders of those shares.
11 C. For purposes of this Section: (1) "holder" means and "held by" refers to
12 shares held by both a record shareholder (as defined in Paragraph 1-1301(7) of this
13 Act) and a beneficial shareholder (as defined in Paragraph 1-1301(2) of this Act);
14 and (2) "qualified shares" means all shares entitled to be voted with respect to the
15 transaction except for shares that the secretary or other officer or agent of the
16 corporation authorized to tabulate votes either knows, or under Subsection B of this
17 Section is notified, are held by (a) a director who has a conflicting interest respecting
18 the transaction or (b) a related person of the director (excluding a person described
19 in Subparagraph (f) of Paragraph 1-860(5) of this Act).
20 D. A majority of the votes entitled to be cast by the holders of all qualified
21 shares constitutes a quorum for purposes of compliance with this Section. Subject
22 to the provisions of Subsection E of this Section, shareholders' action that otherwise
23 complies with this Section is not affected by the presence of holders, or by the
24 voting, of shares that are not qualified shares.
25 E. If a shareholders' vote does not comply with Subsection A of this Section
26 solely because of a director's failure to comply with Subsection B of this Section, and
27 if the director establishes that the failure was not intended to influence and did not
28 in fact determine the outcome of the vote, the court may take such action respecting

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1 the transcription and the director, and may give such effect, if any, to the shareholders'
2 vote, as the court considers appropriate in the circumstances.
3 F. Where shareholders' action under this Section does not satisfy a quorum
4 or voting requirement applicable to the authorization of the transaction by reason of
5 the articles of incorporation, the bylaws or a provision of law, independent action to
6 satisfy those authorization requirements must be taken by the shareholders, in which
7 action shares that are not qualified shares may participate.
8 Source: MBCA §8.63.
9 SUBPART G. BUSINESS OPPORTUNITIES
10 §1-870. Business opportunities
11 A. A director's taking advantage, directly or indirectly, of a business
12 opportunity may not be the subject of any form of relief, or give rise to an award of
13 damages or other sanctions against the director, in a proceeding by or in the right of
14 the corporation on the ground that such opportunity should have first been offered
15 to the corporation, if before becoming legally obligated respecting the opportunity
16 the director brings it to the attention of the corporation and:
17 (1) Action by qualified directors disclaiming the corporation's interest in the
18 opportunity is taken in compliance with the procedures set forth in Section 1-862, as
19 if the decision being made concerned a director's conflicting interest transaction, or
20 (2) Shareholders' action disclaiming the corporation's interest in the
21 opportunity is taken in compliance with the procedures set forth in Section 1-863, as
22 if the decision being made concerned a director's conflicting interest transaction;
23 except that, rather than making "required disclosure" as defined in Section 1-860, in
24 each case the director shall have made prior disclosure to those acting on behalf of
25 the corporation of all material facts concerning the business opportunity that are then
26 known to the director.
27 B. In any proceeding seeking equitable relief or other remedies based upon
28 an alleged improper taking advantage of a business opportunity by a director, the fact
29 that the director did not employ the procedure described in Subsection A of this

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1 Section before taking advantage of the opportunity shall not create an inference that
2 the opportunity should have been first presented to the corporation or alter the
3 burden of proof otherwise applicable to establish that the director breached a duty
4 to the corporation in the circumstances.
5 Source: MBCA §8.70.
6 PART 9. DOMESTICATION AND CONVERSION
7 SUBPART A. PRELIMINARY PROVISIONS
8 §1-901. Excluded transactions
9 A. This Part may not be used to effect a transaction that causes an eligible
10 entity or domestic or foreign corporation to hold any right, privilege, license or
11 franchise under the laws of this state that it is ineligible to hold.
12 B. Property received through a conditional donation, grant, or devise, or held
13 in trust or for charitable purposes under the laws of this state by a party to a
14 transaction under this Part shall not be diverted by that transaction from the objects
15 for which it was donated, granted or devised, except to the extent authorized by a
16 court judgment based upon principles of cy pres or approximation.
17 C. A person who is a member, interest holder, or an affiliate of an eligible
18 entity with a charitable purpose may not receive a direct or indirect financial benefit
19 in connection with a transaction under this Part to which the eligible entity is a party
20 unless the person is itself an eligible entity with a charitable purpose. This
21 Subsection does not apply to the receipt of reasonable compensation for services
22 rendered.
23 Source: MBCA §9.01.
24 Comments - 2013 Revision
25 (a) Louisiana law does not permit the use of an ordinary business corporation
26 for the operation of an insurance company, bank or other financial institution.
27 Separate statutes govern the creation and operation of those forms of corporation.
28 See Title 6 on Banks and Banking and Title 22 on Insurance. This Act does not
29 purport to authorize domestications or conversions involving those special forms of
30 corporation, so the optional provisions of the Model Act concerning those forms of
31 corporation are not needed in this Section. Instead, this Act uses the Section to state
32 a rule for conversions and domestications similar to the rule in Section 1-1107
33 concerning mergers: that the transactions authorized by this Part cannot cause a

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1 domestic or foreign corporation or eligible entity to hold any right or license under
2 the laws of this state that the corporation or entity is ineligible to hold.

3 (b) This Act adds a new Subsection (B), based on optional Model Act
4 Section 9.02 (b), to impose the same limitations on transactions available under this
5 Part as apply to mergers under Section 1-1102(F).

6 §1-902. Required approvals

7 [Reserved.]

8 Comment - 2013 Revision

9 Subsection (a) of this optional Model Act provision was deleted as
10 unnecessary for the reasons explained in Comment (a) to Section 1-901. Subsection
11 (b) of this Section was moved to Section 1-901(B), making a separate Section 1-902
12 unnecessary.

13 SUBPART B. DOMESTICATION

14 §1-920. Domestication

15 A. A foreign business corporation may become a domestic business
16 corporation only if the domestication is permitted by the organic law of the foreign
17 corporation.

18 B. A domestic business corporation may become a foreign business
19 corporation if the domestication is permitted by the laws of the foreign jurisdiction.
20 Regardless of whether the laws of the foreign jurisdiction require the adoption of a
21 plan of domestication, the domestication shall be approved by the adoption by the
22 corporation of a plan of domestication in the manner provided in this Subpart.

23 C. The plan of domestication must include:

24 (1) A statement of the jurisdiction in which the corporation is to be
25 domesticated;

26 (2) The terms and conditions of the domestication;

27 (3) The manner and basis of reclassifying the shares of the corporation
28 following its domestication into shares or other securities, obligations, rights to
29 acquire shares or other securities, or into cash, other property, or any combination
30 of the foregoing; and

31 (4) Any desired amendments to the articles of incorporation of the
32 corporation following its domestication.

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1 D. The plan of domestication may also include a provision that the plan may
2 be amended prior to filing the document required by the laws of this state or the other
3 jurisdiction to consummate the domestication, except that subsequent to approval of
4 the plan by the shareholders the plan may not be amended to change:
5 (1) The amount or kind of shares or other securities, obligations, rights to
6 acquire shares or other securities, or the cash or other property to be received by the
7 shareholders under the plan;
8 (2) The articles of incorporation as they will be in effect immediately
9 following the domestication, except for changes permitted by Section 1-1005 or by
10 comparable provisions of the laws of the other jurisdiction; or
11 (3) Any of the other terms or conditions of the plan if the change would
12 adversely affect any of the shareholders in any material respect.
13 E. Terms of a plan of domestication may be made dependent upon facts
14 objectively ascertainable outside the plan in accordance with Subsection 1-120(K)
15 of this Act.
16 F. If any debt security, note or similar evidence of indebtedness for money
17 borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred
18 or signed by a domestic business corporation before January 1, 2015, contains a
19 provision applying to a merger of the corporation and the document does not refer
20 to a domestication of the corporation, the provision shall be deemed to apply to a
21 domestication of the corporation until such time as the provision is amended
22 subsequent to that date.
23 Source: MBCA §9.20.
24 §1-921. Action on a plan of domestication
25 In the case of a domestication of a domestic business corporation in a foreign
26 jurisdiction:
27 (1) The plan of domestication must be adopted by the board of directors.
28 (2) After adopting the plan of domestication, the board of directors must
29 submit the plan to the shareholders for their approval. The board of directors must

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1 also transmit to the shareholders a recommendation that the shareholders approve the
2 plan, unless (a) the board of directors makes a determination that because of conflicts
3 of interest or other special circumstances it should not make such a recommendation
4 or (b) Section 1-826 applies. If (a) or (b) applies, the board of directors must
5 transmit to the shareholders the basis for so proceeding.
6 (3) The board of directors may condition its submission of the plan of
7 domestication to the shareholders on any basis.
8 (4) If the approval of the shareholders is to be given at a meeting, the
9 corporation must notify each shareholder, whether or not entitled to vote, of the
10 meeting of shareholders at which the plan of domestication is to be submitted for
11 approval. The notice must state that the purpose, or one of the purposes, of the
12 meeting is to consider the plan and must contain or be accompanied by a copy or
13 summary of the plan. The notice shall include or be accompanied by a copy of the
14 articles of incorporation as they will be in effect immediately after the domestication.
15 (5) Unless the articles of incorporation, or the board of directors acting
16 pursuant to Paragraph (3) of this Subsection, requires a greater vote, approval of the
17 plan of domestication requires the approval of at least a majority of the votes entitled
18 to be cast on the plan, and, if any class or series of shares is entitled to vote as a
19 separate group on the plan, the approval of each such separate voting group by at
20 least a majority of the votes entitled to be cast on the domestication by that voting
21 group.
22 (6) Separate voting by voting groups is required by each class or series of
23 shares that:
24 (a) Are to be reclassified under the plan of domestication into other
25 securities, obligations, rights to acquire shares or other securities, or into cash, other
26 property, or any combination of the foregoing;
27 (b) Would be entitled to vote as a separate group on a provision of the plan
28 that, if contained in a proposed amendment to articles of incorporation, would
29 require action by separate voting groups under Section 1-1004; or

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1 (c) Is entitled under the articles of incorporation to vote as a voting group to
2 approve an amendment of the articles.
3 (7) If any provision of the articles of incorporation, bylaws or an agreement
4 to which any of the directors or shareholders are parties, adopted or entered into
5 before January 1, 2015, applies to a merger of the corporation and that document
6 does not refer to a domestication of the corporation, the provision shall be deemed
7 to apply to a domestication of the corporation until such time as the provision is
8 amended subsequent to that date.
9 Source: MBCA §9.21.
10 Comment - 2013 Revision
11 This Act changes Model Act Subsection (5) to require that a plan of
12 domestication be approved by a majority of the votes entitled to be cast on the plan
13 and, if applicable, a majority of the votes of each class or series of shares entitled to
14 vote as a separate group on the plan. The Model Act would have permitted a plan
15 to be approved by each voting group by a majority of votes cast at a meeting at
16 which a majority quorum existed.
17 §1-922. Articles of domestication
18 A. After the domestication of a foreign business corporation has been
19 authorized as required by the laws of the foreign jurisdiction, articles of
20 domestication shall be signed by any officer or other duly authorized representative.
21 The articles shall set forth:
22 (1) The name of the corporation immediately before the filing of the articles
23 of domestication and, if that name is unavailable for use in this state or the
24 corporation desires to change its name in connection with the domestication, a name
25 that satisfies the requirements of Section 1-401;
26 (2) The jurisdiction of incorporation of the corporation immediately before
27 the filing of the articles of domestication and the date the corporation was
28 incorporated in that jurisdiction; and
29 (3) A statement that the domestication of the corporation in this state was
30 duly authorized as required by the laws of the jurisdiction in which the corporation
31 was incorporated immediately before its domestication in this state.

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1 B. The articles of domestication shall either contain all of the provisions that
2 Subsection 1-202(A) of this Act requires to be set forth in articles of incorporation
3 and any other desired provisions that Subsection 1-202(B) of this Act permits to be
4 included in articles of incorporation, or shall have attached articles of incorporation.
5 In either case, provisions that would not be required to be included in restated
6 articles of incorporation may be omitted.
7 C. The articles of domestication shall be delivered to the secretary of state
8 for filing, and shall take effect at the effective time provided in Section 1-123.
9 D. If the foreign corporation is authorized to transact business in this state
10 under Chapter 3 of Title 12, its certificate of authority shall be cancelled
11 automatically on the effective date of its domestication.
12 E. Within thirty days after the date that articles of domestication take effect,
13 a duplicate original or certified copy of the articles shall be filed in the conveyance
14 records of each parish in this state in which the corporation owns immovable
15 property.
16 Source: MBCA §9.22.
17 Comment - 2013 Revision
18 This Act adds a new Subsection (E), which requires the filing of a multiple
19 original or certified copy of the articles of domestication in any parish in which the
20 domesticated corporation owns immovable property.
21 §1-923. Surrender of charter upon domestication
22 A. Whenever a domestic business corporation has adopted and approved, in
23 the manner required by this Subpart, a plan of domestication providing for the
24 corporation to be domesticated in a foreign jurisdiction, articles of charter surrender
25 shall be signed on behalf of the corporation by any officer or other duly authorized
26 representative. The articles of charter surrender shall set forth:
27 (1) The name of the corporation;
28 (2) A statement that the articles of charter surrender are being filed in
29 connection with the domestication of the corporation in a foreign jurisdiction;

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1 (3) A statement that the domestication was duly approved by the
2 shareholders and, if voting by any separate voting group was required, by each such
3 separate voting group, in the manner required by this Act and the articles of
4 incorporation;
5 (4) The corporation's new jurisdiction of incorporation.
6 B. The articles of charter surrender shall be delivered by the corporation to
7 the secretary of state for filing. The articles of charter surrender shall take effect on
8 the effective time provided in Section 1-123.
9 Source: MBCA §9.23.
10 §1-924. Effect of domestication
11 A. When a domestication becomes effective:
12 (1) The title to all real and personal property, both tangible and intangible,
13 of the corporation remains in the corporation without any transfer, assignment,
14 reversion or impairment;
15 (2) The liabilities of the corporation remain the liabilities of the corporation;
16 (3) An action or proceeding pending against the corporation continues
17 against the corporation as if the domestication had not occurred;
18 (4) The articles of domestication, or the articles of incorporation attached to
19 the articles of domestication, constitute the articles of incorporation of a foreign
20 corporation domesticating in this state;
21 (5) The shares of the corporation are reclassified into shares, other securities,
22 obligations, rights to acquire shares or other securities, or into cash or other property
23 in accordance with the terms of the domestication, and the shareholders are entitled
24 only to the rights provided by those terms and to any appraisal rights they may have
25 under the organic law of the domesticating corporation; and
26 (6) The corporation is deemed to:
27 (a) Be incorporated under and subject to the organic law of the domesticated
28 corporation for all purposes;

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1 (b) Be the same corporation without interruption as the domesticating
2 corporation; and
3 (c) Have been incorporated on the date the domesticating corporation was
4 originally incorporated.
5 B. When a domestication of a domestic business corporation in a foreign
6 jurisdiction becomes effective, the foreign business corporation remains:
7 (1) Obligated under the laws of this state to pay promptly the amount, if any,
8 to which shareholders who exercise appraisal rights in connection with the
9 domestication are entitled under Part 13 of this Act; and
10 (2) Subject to the personal jurisdiction of the courts of this state in
11 accordance with R.S. 13:3201, and to service of process in accordance with law.
12 C. The owner liability of a shareholder in a foreign corporation that is
13 domesticated in this state shall be as follows:
14 (1) The domestication does not discharge any owner liability under the laws
15 of the foreign jurisdiction to the extent any such owner liability arose before the
16 effective time of the articles of domestication.
17 (2) The shareholder shall not have owner liability under the laws of the
18 foreign jurisdiction for any debt, obligation or liability of the corporation that arises
19 after the effective time of the articles of domestication.
20 (3) The provisions of the laws of the foreign jurisdiction shall continue to
21 apply to the collection or discharge of any owner liability preserved by Paragraph (1)
22 of this Subsection, as if the domestication had not occurred.
23 (4) The shareholder shall have whatever rights of contribution from other
24 shareholders are provided by the laws of the foreign jurisdiction with respect to any
25 owner liability preserved by Paragraph (1), as if the domestication had not occurred.
26 Source: MBCA §9.24.
27 Comments - 2013 Revision
28 (a) Model Act Subsection (b) uses legal fictions to state the legal obligations
29 of an "outbound" domesticating corporation, deeming the corporation to "agree" to
30 pay appraisal rights and to appoint the secretary of state as its agent for service of
31 process in connection with appraisal rights suits. This Act modifies Subsection (b)

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1 to state the outbound corporation's legal obligations in a more straightforward
2 fashion. The corporation remains liable under the laws of this state to pay any
3 appraisal rights when due, not because it agrees to make the payments but because
4 the law requires it to do so. Similarly, the corporation remains subject to the
5 personal jurisdiction of the courts of this state not because the corporation has made
6 the secretary of state its agent for service of process, but because this state asserts the
7 personal jurisdiction of its courts to the full extent constitutionally permissible, and
8 provides by law for appropriate forms of service of process.

9 (b) This Act omits Model Act Subsection (d), which deals with transition
10 issues associated with a shareholder's becoming subject to owner liability as a result
11 of a domestication of that corporation in Louisiana. Those issues cannot arise under
12 this Act because this Act omits the Model Act provision under which owner liability,
13 as defined in Section 1-140(15C), could be imposed. See Comment (b) to Section
14 1-202.

15 §1-925. Abandonment of a domestication

16 A. Unless otherwise provided in a plan of domestication of a domestic
17 business corporation, after the plan has been adopted and approved as required by
18 this Subpart, and at any time before the domestication has become effective, it may
19 be abandoned by the board of directors without action by the shareholders.

20 B. If a domestication is abandoned under Subsection A of this Section after
21 articles of charter surrender have been filed with the secretary of state but before the
22 domestication has become effective, a statement that the domestication has been
23 abandoned in accordance with this Section, signed by an officer or other duly
24 authorized representative, shall be delivered to the secretary of state for filing prior
25 to the effective date of the domestication. The statement shall take effect upon filing
26 and the domestication shall be deemed abandoned and shall not become effective.

27 C. If the domestication of a foreign business corporation in this state is
28 abandoned in accordance with the laws of the foreign jurisdiction after articles of
29 domestication have been filed with the secretary of state, a statement that the
30 domestication has been abandoned, signed by an officer or other duly authorized
31 representative, shall be delivered to the secretary of state for filing. The statement
32 shall take effect upon filing and the domestication shall be deemed abandoned and
33 shall not become effective.

34 Source: MBCA §9.25.

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1 SUBPART C. NONPROFIT CONVERSION

2 §1-930. Nonprofit conversion

3 A. A domestic business corporation may become a domestic nonprofit
4 corporation pursuant to a plan of nonprofit conversion.

5 B. A domestic business corporation may become a foreign nonprofit
6 corporation if the nonprofit conversion is permitted by the laws of the foreign
7 jurisdiction. Regardless of whether the laws of the foreign jurisdiction require the
8 adoption of a plan of nonprofit conversion, the foreign nonprofit conversion shall be
9 approved by the adoption by the domestic business corporation of a plan of nonprofit
10 conversion in the manner provided in this Subpart.

11 C. The plan of nonprofit conversion must include:

12 (1) The terms and conditions of the conversion;

13 (2) The manner and basis of reclassifying the shares of the corporation
14 following its conversion into memberships, if any, or securities, obligations, rights
15 to acquire memberships or securities, or into cash, other property, or any
16 combination of the foregoing;

17 (3) Any desired amendments to the articles of incorporation of the
18 corporation following its conversion; and

19 (4) If the domestic business corporation is to be converted to a foreign
20 nonprofit corporation, a statement of the jurisdiction in which the corporation will
21 be incorporated after the conversion.

22 D. The plan of nonprofit conversion may also include a provision that the
23 plan may be amended prior to filing articles of nonprofit conversion, except that
24 subsequent to approval of the plan by the shareholders the plan may not be amended
25 to change:

26 (1) The amount or kind of memberships or securities, obligations, rights to
27 acquire memberships or securities, or the cash or other property to be received by the
28 shareholders under the plan;

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1 (2) The articles of incorporation as they will be in effect immediately
2 following the conversion, except for changes permitted by Section 1-1005; or
3 (3) Any of the other terms or conditions of the plan if the change would
4 adversely affect any of the shareholders in any material respect.
5 E. Terms of a plan of nonprofit conversion may be made dependent upon
6 facts objectively ascertainable outside the plan in accordance with Subsection
7 1-120(K) of this Act.
8 F. If any debt security, note or similar evidence of indebtedness for money
9 borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred
10 or signed by a domestic business corporation before January 1, 2015, contains a
11 provision applying to a merger of the corporation and the document does not refer
12 to a nonprofit conversion of the corporation, the provision shall be deemed to apply
13 to a nonprofit conversion of the corporation until such time as the provision is
14 amended subsequent to that date.
15 Source: MBCA §9.30.
16 §1-931. Action on a plan of nonprofit conversion
17 In the case of a conversion of a domestic business corporation to a domestic
18 or foreign nonprofit corporation:
19 (1) The plan of nonprofit conversion must be adopted by the board of
20 directors.
21 (2) After adopting the plan of nonprofit conversion, the board of directors
22 must submit the plan to the shareholders for their approval. The board of directors
23 must also transmit to the shareholders a recommendation that the shareholders
24 approve the plan, unless (a) the board of directors makes a determination that
25 because of conflicts of interest or other special circumstances it should not make
26 such a recommendation, or (b) Section 1-826 applies. If (a) or (b) applies, the board
27 must transmit to the shareholders the basis for so proceeding.
28 (3) The board of directors may condition its submission of the plan of
29 nonprofit conversion to the shareholders on any basis.

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1 (4) If the approval of the shareholders is to be given at a meeting, the
2 corporation must notify each shareholder of the meeting of shareholders at which the
3 plan of nonprofit conversion is to be submitted for approval. The notice must state
4 that the purpose, or one of the purposes, of the meeting is to consider the plan and
5 must contain or be accompanied by a copy or summary of the plan. The notice shall
6 include or be accompanied by a copy of the articles of incorporation as they will be
7 in effect immediately after the nonprofit conversion.

8 (5) Unless the articles of incorporation, or the board of directors acting
9 pursuant to Paragraph (3) of this Subsection, requires a greater vote, approval of the
10 plan of nonprofit conversion requires the approval of each class or series of shares
11 of the corporation voting as a separate voting group by at least a majority of the votes
12 entitled to be cast on the nonprofit conversion by that voting group.

13 (6) If any provision of the articles of incorporation, bylaws or an agreement
14 to which any of the directors or shareholders are parties, adopted or entered into
15 before January 1, 2015, applies to a merger of the corporation and the document does
16 not refer to a nonprofit conversion of the corporation, the provision shall be deemed
17 to apply to a nonprofit conversion of the corporation until such time as the provision
18 is amended subsequent to that date.

19 Source: MBCA §9.31.

20 Comments - 2013 Revision

21 This Act changes Model Act Paragraph (5) to require that a plan of nonprofit
22 conversion be approved by a majority of the votes entitled to be cast on the plan and,
23 if applicable, a majority of the votes of each class or series of shares entitled to vote
24 as a separate group on the plan. The Model Act would have permitted a plan to be
25 approved by each voting group by a majority of votes cast at a meeting at which a
26 majority quorum existed.

27 §1-932. Articles of nonprofit conversion

28 A. After a plan of nonprofit conversion providing for the conversion of a
29 domestic business corporation to a domestic nonprofit corporation has been adopted
30 and approved as required by this Act, articles of nonprofit conversion shall be signed
31 on behalf of the corporation by any officer or other duly authorized representative.

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1 The articles shall set forth:
2 (1) The name of the corporation immediately before the filing of the articles
3 of nonprofit conversion and if that name does not satisfy the requirements of the
4 Nonprofit Corporation Law, or the corporation desires to change its name in
5 connection with the conversion, a name that satisfies the requirements of the
6 Nonprofit Corporation Law;
7 (2) A statement that the plan of nonprofit conversion was duly approved by
8 the shareholders in the manner required by this Act and the articles of incorporation.
9 B. The articles of nonprofit conversion shall either contain all of the
10 provisions that the Nonprofit Corporation Law requires to be set forth in articles of
11 incorporation of a domestic nonprofit corporation and any other desired provisions
12 permitted by the Nonprofit Corporation Law, or shall have attached articles of
13 incorporation that satisfy the requirements of the Nonprofit Corporation Law. In
14 either case, provisions that would not be required to be included in restated articles
15 of incorporation of a domestic nonprofit corporation may be omitted.
16 C. The articles of nonprofit conversion shall be delivered to the secretary of
17 state for filing, and shall take effect at the effective time provided in Section 1-123.
18 Source: MBCA §9.32.
19 §1-933. Surrender of charter upon foreign nonprofit conversion
20 A. Whenever a domestic business corporation has adopted and approved, in
21 the manner required by this Subpart, a plan of nonprofit conversion providing for the
22 corporation to be converted to a foreign nonprofit corporation, articles of charter
23 surrender shall be signed on behalf of the corporation by any officer or other duly
24 authorized representative. The articles of charter surrender shall set forth:
25 (1) The name of the corporation;
26 (2) A statement that the articles of charter surrender are being filed in
27 connection with the conversion of the corporation to a foreign nonprofit corporation;
28 (3) A statement that the foreign nonprofit conversion was duly approved by
29 the shareholders in the manner required by this Act and the articles of incorporation;

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1 (4) The corporation's new jurisdiction of incorporation.
2 B. The articles of charter surrender shall be delivered by the corporation to
3 the secretary of state for filing. The articles of charter surrender shall take effect on
4 the effective time provided in Section 1-123.
5 Source: MBCA §9.33.
6 §1-934. Effect of nonprofit conversion
7 A. When a conversion of a domestic business corporation to a domestic
8 nonprofit corporation becomes effective:
9 (1) The title to all real and personal property, both tangible and intangible,
10 of the corporation remains in the corporation without any transfer, assignment,
11 reversion or impairment;
12 (2) The liabilities of the corporation remain the liabilities of the corporation;
13 (3) An action or proceeding pending against the corporation continues
14 against the corporation as if the conversion had not occurred;
15 (4) The articles of incorporation of the domestic or foreign nonprofit
16 corporation become effective;
17 (5) The shares of the corporation are reclassified into memberships,
18 securities, obligations, rights to acquire memberships or securities, or into cash or
19 other property in accordance with the plan of conversion, and the shareholders are
20 entitled only to the rights provided in the plan of nonprofit conversion or to any
21 rights they may have under Part 13; and
22 (6) The corporation is deemed to:
23 (a) Be a domestic nonprofit corporation for all purposes;
24 (b) Be the same corporation without interruption as the corporation that
25 existed prior to the conversion; and
26 (c) Have been incorporated on the date that it was originally incorporated as
27 a domestic business corporation.
28 B. When a conversion of a domestic business corporation to a foreign
29 nonprofit corporation becomes effective, the foreign nonprofit corporation remains:

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1 (1) Obligated under the laws of this state to pay promptly the amount, if any,
2 to which shareholders who exercise appraisal rights in connection with the
3 conversion are entitled under Part 13; and
4 (2) Subject to the personal jurisdiction of the courts of this state in
5 accordance with R.S. 13:3201, and to service of process in accordance with law.
6 C. [Reserved.]
7 D. A shareholder who becomes subject to owner liability for some or all of
8 the debts, obligations or liabilities of the nonprofit corporation shall have owner
9 liability only for those debts, obligations or liabilities of the nonprofit corporation
10 that arise after the effective time of the articles of nonprofit conversion.
11 Source: MBCA §9.34.
12 Comments - 2013 Revision
13 (a) Model Act Subsection (b) uses legal fictions to state the legal obligations
14 of the "outbound" corporation in a conversion of a domestic business corporation
15 into a foreign nonprofit corporation, deeming that the resulting foreign corporation
16 has agreed to pay appraisal rights and to appoint the secretary of state as its agent for
17 service of process in connection with appraisal rights suits. This Act modifies
18 Subsection (b) to state the outbound corporation's legal obligations in a more
19 straightforward fashion. The corporation remains liable under the laws of this state
20 to pay any appraisal rights when due, not because it agrees to make the payments but
21 because the law requires it to do so. Similarly, the corporation remains subject to
22 the personal jurisdiction of the courts of this state not because the corporation has
23 made the secretary of state its agent for service of process, but because this state
24 asserts the personal jurisdiction of its courts to the full extent constitutionally
25 permissible, and provides by law for appropriate forms of service of process.
26 (b) Model Act Subsection (c) was omitted from this Act because it deals with
27 transition issues associated with the nonprofit conversion of a domestic business
28 corporation in which a shareholder is made subject to owner liability, as defined in
29 Section 1-140(15C). Transition issues of that kind cannot arise under this Act
30 because the form of liability addressed by Subsection (c) is not imposed by this Act.
31 Subsection (c) was omitted to avoid the implication that the form of liability
32 addressed by the Subsection could exist. This Act retained Model Act Subsection
33 (d), which addresses a similar transition issue for owner liability arising under the
34 law governing a post-conversion nonprofit corporation, because it is possible for the
35 nonprofit corporation law of another state to permit the imposition of owner liability.
36 Louisiana's Nonprofit Corporation Law does not impose owner liability.
37 §1-935. Abandonment of a nonprofit conversion
38 A. Unless otherwise provided in a plan of nonprofit conversion of a domestic
39 business corporation, after the plan has been adopted and approved as required by

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1 this Subpart, and at any time before the nonprofit conversion has become effective,
2 it may be abandoned by the board of directors without action by the shareholders.
3 B. If a nonprofit conversion is abandoned under Subsection A of this Section
4 after articles of nonprofit conversion or articles of charter surrender have been filed
5 with the secretary of state but before the nonprofit conversion has become effective,
6 a statement that the nonprofit conversion has been abandoned in accordance with this
7 Section, signed by an officer or other duly authorized representative, shall be
8 delivered to the secretary of state for filing prior to the effective date of the nonprofit
9 conversion. The statement shall take effect upon filing and the nonprofit conversion
10 shall be deemed abandoned and shall not become effective.
11 Source: MBCA §9.35.
12 SUBPART D. FOREIGN NONPROFIT DOMESTICATION AND CONVERSION
13 §1-940. Foreign nonprofit domestication and conversion
14 A foreign nonprofit corporation may become a domestic business corporation
15 if the domestication and conversion is permitted by the organic law of the foreign
16 nonprofit corporation.
17 Source: MBCA §9.40.
18 §1-941. Articles of domestication and conversion
19 A. After the conversion of a foreign nonprofit corporation to a domestic
20 business corporation has been authorized as required by the laws of the foreign
21 jurisdiction, articles of domestication and conversion shall be signed by any officer
22 or other duly authorized representative. The articles shall set forth:
23 (1) The name of the corporation immediately before the filing of the articles
24 of domestication and conversion and, if that name is unavailable for use in this state
25 or the corporation desires to change its name in connection with the domestication
26 and conversion, a name that satisfies the requirements of Section 1-401;
27 (2) The jurisdiction of incorporation of the corporation immediately before
28 the filing of the articles of domestication and conversion and the date the corporation
29 was incorporated in that jurisdiction; and

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1 (3) A statement that the domestication and conversion of the corporation in
2 this state was duly authorized as required by the laws of the jurisdiction in which the
3 corporation was incorporated immediately before its domestication and conversion
4 in this state.
5 B. The articles of domestication and conversion shall either contain all of the
6 provisions that Subsection 1-202(A) of this Act requires to be set forth in articles of
7 incorporation and any other desired provisions that Section 1-202(B) of this Act
8 permits to be included in articles of incorporation, or shall have attached articles of
9 incorporation. In either case, provisions that would not be required to be included
10 in restated articles of incorporation may be omitted.
11 C. The articles of domestication and conversion shall be delivered to the
12 secretary of state for filing, and shall take effect at the effective time provided in
13 Section 1-123.
14 D. If the foreign nonprofit corporation is authorized to transact business in
15 this state under Chapter 3 of Title 12, its certificate of authority shall be cancelled
16 automatically on the effective date of its domestication and conversion.
17 Source: MBCA §9.41.
18 §1-942. Effect of foreign nonprofit domestication and conversion
19 A. When a domestication and conversion of a foreign nonprofit corporation
20 to a domestic business corporation becomes effective:
21 (1) The title to all real and personal property, both tangible and intangible,
22 of the corporation remains in the corporation without any transfer, assignment,
23 reversion or impairment;
24 (2) The liabilities of the corporation remain the liabilities of the corporation;
25 (3) An action or proceeding pending against the corporation continues
26 against the corporation as if the domestication and conversion had not occurred;
27 (4) The articles of domestication and conversion, or the articles of
28 incorporation attached to the articles of domestication and conversion, constitute the
29 articles of incorporation of the corporation;

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1 (5) Shares, other securities, obligations, rights to acquire shares or other
2 securities of the corporation, or cash or other property shall be issued or paid as
3 provided pursuant to the laws of the foreign jurisdiction, so long as at least one share
4 is outstanding immediately after the effective time; and
5 (6) The corporation is deemed to:
6 (a) Be a domestic corporation for all purposes;
7 (b) Be the same corporation without interruption as the foreign nonprofit
8 corporation; and
9 (c) Have been incorporated on the date the foreign nonprofit corporation was
10 originally incorporated.
11 B. The owner liability of a member of a foreign nonprofit corporation that
12 domesticates and converts to a domestic business corporation shall be as follows:
13 (1) The domestication and conversion does not discharge any owner liability
14 under the laws of the foreign jurisdiction to the extent any such owner liability arose
15 before the effective time of the articles of domestication and conversion.
16 (2) The member shall not have owner liability under the laws of the foreign
17 jurisdiction for any debt, obligation or liability of the corporation that arises after the
18 effective time of the articles of domestication and conversion.
19 (3) The provisions of the laws of the foreign jurisdiction shall continue to
20 apply to the collection or discharge of any owner liability preserved by Paragraph (1)
21 of this Subsection, as if the domestication and conversion had not occurred.
22 (4) The member shall have whatever rights of contribution from other
23 members are provided by the laws of the foreign jurisdiction with respect to any
24 owner liability preserved by Paragraph (1) of this Subsection, as if the domestication
25 and conversion had not occurred.
26 Source: MBCA §9.42.
27 Comment - 2013 Revision
28 Model Act Subsection (c), which deals with the transition issues associated
29 with the conversion of a foreign nonprofit corporation into a domestic business
30 corporation in which the shareholders are subject to owner liability as defined in
31 Section 1-140(15C), was omitted from this Act because this Act does not permit the

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1 form of owner liability that made the transition provision necessary. See Comment
2 (b) to Section 1-202. Subsection (b), which deals with similar transition issues in
3 connection with the conversion into a Louisiana business corporation of a foreign
4 nonprofit corporation, was retained because it is possible that the laws of the foreign
5 jurisdiction would allow the imposition of this form of liability.

6 §1-943. Abandonment of a foreign nonprofit domestication and conversion

7 If the domestication and conversion of a foreign nonprofit corporation to a
8 domestic business corporation is abandoned in accordance with the laws of the
9 foreign jurisdiction after articles of domestication and conversion have been filed
10 with the secretary of state, a statement that the domestication and conversion has
11 been abandoned, signed by an officer or other duly authorized representative, shall
12 be delivered to the secretary of state for filing. The statement shall take effect upon
13 filing and the domestication and conversion shall be deemed abandoned and shall not
14 become effective.

15 Source: MBCA §9.43.

16 SUBPART E. ENTITY CONVERSION

17 §1-950. Entity conversion authorized; definitions

18 A. A domestic business corporation may become a domestic unincorporated
19 entity pursuant to a plan of entity conversion.

20 B. A domestic business corporation may become a foreign unincorporated
21 entity if the entity conversion is permitted by the laws of the foreign jurisdiction.

22 C. A domestic unincorporated entity may become a domestic business
23 corporation or another form of domestic unincorporated entity. If the organic law
24 of a domestic unincorporated entity does not provide procedures for the approval of
25 an entity conversion, the conversion shall be adopted and approved, and the entity
26 conversion effectuated, in the same manner as a merger of the unincorporated entity.

27 D. A foreign unincorporated entity may become a domestic business
28 corporation if the organic law of the foreign unincorporated entity authorizes it to
29 become a corporation in another jurisdiction.

30 E. If any debt security, note or similar evidence of indebtedness for money
31 borrowed, whether secured or unsecured, or a contract of any kind, issued, incurred

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1 or signed by a domestic business corporation before January 1, 2015, applies to a
2 merger of the corporation and the document does not refer to an entity conversion
3 of the corporation, the provision shall be deemed to apply to an entity conversion of
4 the corporation until such time as the provision is amended subsequent to that date.
5 F. As used in this Subpart:
6 (1) "Converting entity" means the domestic business corporation or domestic
7 unincorporated entity that adopts a plan of entity conversion or the foreign
8 unincorporated entity converting to a domestic business corporation.
9 (2) "Surviving entity" means the corporation or unincorporated entity that
10 is in existence immediately after consummation of an entity conversion pursuant to
11 this Subpart.
12 Source: MBCA §9.50.
13 Comments - 2013 Revision
14 (a) This Act broadens the scope of Model Act Subsection (c) to cover
15 conversions of one form of domestic unincorporated entity into another. The
16 procedures in this Chapter replace those formerly provided in Chapter 25 of Title 12
17 for that form of transaction. Chapter 25 continues to provide rules concerning
18 licensing and taxing issues relating to the surviving entity in an entity conversion,
19 regardless of whether the surviving entity is incorporated or unincorporated. See
20 R.S. 12:1603-04.
21 (b) The provisions in Model Act Subsection (c) that govern the procedures
22 for approval of an entity conversion in an entity whose organic law does not provide
23 procedures for either an entity conversion or merger were deleted from this Act as
24 unnecessary. Louisiana law does provide procedures for the merger of its
25 unincorporated business organizations. The merger of limited liability companies
26 is governed by R.S. 12:1357-62. The merger of partnerships (including partnerships
27 in commendam and registered limited liability partnerships) is governed by R.S.
28 9:3441-47.
29 §1-951. Plan of entity conversion
30 A. A plan of entity conversion must include:
31 (1) A statement of the type of entity the surviving entity will be and, if it
32 will be a foreign entity, its jurisdiction of organization;
33 (2) The terms and conditions of the conversion;
34 (3) If the converting entity is a domestic business corporation, the manner
35 and basis of converting the shares of the corporation following its conversion into

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1 interests or other securities, obligations, rights to acquire interests or other securities,
2 or into cash, other property, or any combination of the foregoing;
3 (4) If the converting entity is an unincorporated entity, the manner and basis
4 of converting the interests in the entity into shares, interests or other securities,
5 obligations, rights to acquire shares, interests or other securities, or into cash, other
6 property, or any combination of the foregoing; and
7 (5) The full text, as they will be in effect immediately after consummation
8 of the conversion, of the organic documents of the surviving entity.
9 B. The plan of entity conversion may also include a provision that the plan
10 may be amended prior to filing articles of entity conversion, except that subsequent
11 to approval of the plan by the shareholders the plan may not be amended to change:
12 (1) The amount or kind of shares or other securities, interests, obligations,
13 rights to acquire shares, other securities or interests, or the cash, or other property to
14 be received under the plan by the shareholders;
15 (2) The organic documents that will be in effect immediately following the
16 conversion, except for changes permitted by a provision of the organic law of the
17 surviving entity comparable to Section 1-1005; or
18 (3) Any of the other terms or conditions of the plan if the change would
19 adversely affect any of the shareholders in any material respect.
20 C. Terms of a plan of entity conversion may be made dependent upon facts
21 objectively ascertainable outside the plan in accordance with Subsection 1-120(K)
22 of this Act.
23 Source: MBCA §9.51.
24 Comments - 2013 Revision
25 (a) This Act changes the references in Model Act Paragraph (a)(1) to an
26 "other entity" to "entity." The term "other entity" was a defined term in earlier
27 versions of the Model Act that has since been eliminated as a defined term. The term
28 "entity" is used in this Section to refer to whatever form of entity survives an entity
29 conversion. Because the survivor of an entity conversion must be either a domestic
30 corporation or a domestic or foreign unincorporated entity, the term "entity" in
31 Subsection (A) is limited in meaning to one of those forms of entity.

32 (b) This Act adds a new Paragraph (A)(4), and modifies Model Act
33 Paragraph (a)(3), to take account of conversions not only of domestic corporations

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1 into unincorporated entities but also of unincorporated entities into domestic
2 corporations or other forms of domestic unincorporated entities.

3 §1-952. Action on a plan of entity conversion

4 In the case of an entity conversion of a domestic business corporation to a
5 domestic or foreign unincorporated entity:

6 (1) The plan of entity conversion must be adopted by the board of directors.

7 (2) After adopting the plan of entity conversion, the board of directors must
8 submit the plan to the shareholders for their approval. The board of directors must
9 also transmit to the shareholders a recommendation that the shareholders approve the
10 plan, unless (a) the board of directors makes a determination that because of conflicts
11 of interest or other special circumstances it should not make such a recommendation
12 or (b) Section 1-826 applies. If (a) or (b) applies, the board must transmit to the
13 shareholders the basis for so proceeding.

14 (3) The board of directors may condition its submission of the plan of entity
15 conversion to the shareholders on any basis.

16 (4) If the approval of the shareholders is to be given at a meeting, the
17 corporation must notify each shareholder, whether or not entitled to vote, of the
18 meeting of shareholders at which the plan of entity conversion is to be submitted for
19 approval. The notice must state that the purpose, or one of the purposes, of the
20 meeting is to consider the plan and must contain or be accompanied by a copy or
21 summary of the plan. The notice shall include or be accompanied by a copy of the
22 organic documents as they will be in effect immediately after the entity conversion.

23 (5) Unless the articles of incorporation, or the board of directors acting
24 pursuant to Paragraph (3) of this Subsection, requires a greater vote, approval of the
25 plan of entity conversion requires the approval of each class or series of shares of the
26 corporation voting as a separate voting group by at least a majority of the votes
27 entitled to be cast on the conversion by that voting group.

28 (6) If any provision of the articles of incorporation, bylaws or an agreement
29 to which any of the directors or shareholders are parties, adopted or entered into
30 before January 1, 2015, applies to a merger of the corporation and the document does

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1 not refer to an entity conversion of the corporation, the provision shall be deemed to
2 apply to an entity conversion of the corporation until such time as the provision is
3 subsequently amended.
4 (7) If as a result of the conversion one or more shareholders of the
5 corporation would become subject to owner liability for the debts, obligations or
6 liabilities of any other person or entity, approval of the plan of conversion shall
7 require the signing, by each such shareholder, of a separate written consent to
8 become subject to such owner liability.
9 Source: MBCA §9.52.
10 Comment - 2013 Revision
11 This Act modifies Model Act Paragraph (5) to require shareholder approval
12 of an entity conversion by a majority of the votes entitled to be case in each relevant
13 voting group. The Model Act requires approval from each group by only a majority
14 of the votes cast at a meeting at which a majority quorum exists.
15 §1-953. Articles of entity conversion
16 A. After the conversion of a domestic business corporation to a domestic
17 unincorporated entity has been adopted and approved as required by this Act, articles
18 of entity conversion shall be signed on behalf of the corporation by any officer or
19 other duly authorized representative. The articles shall:
20 (1) Set forth the name of the corporation immediately before the filing of the
21 articles of entity conversion and the name to which the name of the corporation is to
22 be changed, which shall be a name that satisfies the organic law of the surviving
23 entity;
24 (2) State the type of unincorporated entity that the surviving entity will be;
25 (3) Set forth a statement that the plan of entity conversion was duly approved
26 by the shareholders in the manner required by this Act and the articles of
27 incorporation;
28 (4) If the surviving entity is a filing entity, either contain all of the provisions
29 required to be set forth in its public organic document and any other desired
30 provisions that are permitted, or have attached such a public organic document;

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1 except that, in either case, provisions that would not be required to be included in a
2 restated public organic document may be omitted.
3 B. After the conversion of a domestic unincorporated entity to a domestic
4 business corporation or to another form of domestic unincorporated entity has been
5 adopted and approved as required by the organic law of the converting entity, articles
6 of entity conversion shall be signed on behalf of the converting entity by an officer
7 or other duly authorized partner, member, manager or other representative. The
8 articles shall:
9 (1) Set forth the name of the converting entity immediately before the filing
10 of the articles of entity conversion and the name to which the name of the converting
11 entity is to be changed, which shall be a name that satisfies the requirements of the
12 organic law of the surviving entity;
13 (2) Set forth a statement that the plan of entity conversion was duly approved
14 in accordance with the organic law of the converting entity;
15 (3) Satisfy one of the following requirements concerning the provisions
16 required by law to be included in the organic document of the surviving entity and,
17 if required, in its initial report:
18 (a) If the surviving entity is a domestic business corporation, the articles of
19 entity conversion shall either contain all of the provisions that Subsection 1-202(A)
20 of this Act requires to be set forth in articles of incorporation and any other desired
21 provisions that Subsection 1-202(B) of this Act permits to be included in articles of
22 incorporation, or have attached articles of incorporation; except that, in either case,
23 provisions that would not be required to be included in restated articles of
24 incorporation of a domestic business corporation may be omitted;
25 (b) If the surviving entity is a domestic filing entity, either contain all of the
26 provisions required to be set forth in its public organic document and any other
27 desired provisions that are permitted, or have attached such a public organic
28 document; except that, in either case, provisions that would not be required to be
29 included in a restated public organic document may be omitted.

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1 C. After the conversion of a foreign unincorporated entity to a domestic
2 business corporation has been authorized as required by the laws of the foreign
3 jurisdiction, articles of entity conversion shall be signed on behalf of the foreign
4 unincorporated entity by any officer or other duly authorized representative. The
5 articles shall:
6 (1) Set forth the name of the unincorporated entity immediately before the
7 filing of the articles of entity conversion and the name to which the name of the
8 unincorporated entity is to be changed, which shall be a name that satisfies the
9 requirements of Section 1-401;
10 (2) Set forth the jurisdiction under the laws of which the unincorporated
11 entity was organized immediately before the filing of the articles of entity conversion
12 and the date on which the unincorporated entity was organized in that jurisdiction;
13 (3) Set forth a statement that the conversion of the unincorporated entity was
14 duly approved in the manner required by its organic law; and
15 (4) Either contain all of the provisions that Subsection 1-202(A) of this Act
16 requires to be set forth in articles of incorporation and any other desired provisions
17 that Subsection 1-202(B) of this Act permits to be included in articles of
18 incorporation, or have attached articles of incorporation; except that, in either case,
19 provisions that would not be required to be included in restated articles of
20 incorporation of a domestic business corporation may be omitted.
21 D. The articles of entity conversion shall be delivered to the secretary of
22 state for filing, and shall take effect at the effective time provided in Section 1-123.
23 Articles of entity conversion under Subsection 1-953(A) or (B) of this Act may be
24 combined with any required conversion filing under the organic law of the domestic
25 unincorporated entity if the combined filing satisfies the requirements of both this
26 Section and the other organic law.
27 E. If the converting entity is a foreign unincorporated entity that is
28 authorized to transact business in this state under a provision of law similar to

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1 Chapter 3 of Title 12, its certificate of authority or other type of foreign qualification
2 shall be cancelled automatically on the effective date of its conversion.
3 F. Within thirty days after the date that the articles of entity conversion are
4 delivered for filing to the secretary of state, a duplicate original of the articles shall
5 be filed in the conveyance records of each parish in this state in which the converting
6 entity owns immovable property.
7 Source: MBCA §9.53.
8 Comments - 2013 Revision
9 (a) Model Act Subsection (b) covers only the conversion of a domestic
10 unincorporated entity into a domestic business corporation. This Act broadens Model
11 Act Subsection (b) to also cover a conversion of one form of domestic
12 unincorporated entity into another.
13 (b) The terms "filing entity" and "public organic document" are defined in
14 Section 1-140. Under those definitions, limited liability companies and partnerships
15 (including partnerships in commendam and registered limited liability partnerships)
16 are "filing entities." If a limited liability company or partnership is the surviving
17 entity in an entity conversion, the items required in a public organic document for
18 that form of entity must be included either in the articles of conversion or in a public
19 organic document that is attached to the articles of entity conversion. In the case of
20 a limited liability company, the public organic document consists of both the articles
21 of organization and the initial report, as both must be filed to create an LLC. See
22 Section 1-140(17B); R.S. 12:1304. This Act utilizes the singular term "document"
23 to refer to both LLC documents, together, in accordance with the general
24 interpretational rule in R.S. 1:7 that the singular includes the plural.
25 (c) This Act adds a new Subsection (F) to harmonize the parish filing
26 requirements in an entity conversion with those in a merger or domestication.
27 §1-954. Surrender of charter upon conversion
28 A. Whenever a domestic business corporation has adopted and approved, in
29 the manner required by this Subpart, a plan of entity conversion providing for the
30 corporation to be converted to a foreign unincorporated entity, articles of charter
31 surrender shall be signed on behalf of the corporation by any officer or other duly
32 authorized representative. The articles of charter surrender shall set forth:
33 (1) The name of the corporation;
34 (2) A statement that the articles of charter surrender are being filed in
35 connection with the conversion of the corporation to a foreign unincorporated entity;

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1 (3) A statement that the conversion was duly approved by the shareholders
2 in the manner required by this Act and the articles of incorporation;
3 (4) The jurisdiction under the laws of which the surviving entity will be
4 organized;
5 (5) If the surviving entity will be a nonfiling entity, the address of its
6 executive office immediately after the conversion.
7 B. The articles of charter surrender shall be delivered by the corporation to
8 the secretary of state for filing. The articles of charter surrender shall take effect on
9 the effective time provided in Section 1-123.
10 Source: MBCA §9.54.
11 §1-955. Effect of entity conversion
12 A. When a conversion under this Subpart becomes effective:
13 (1) The title to all real and personal property, both tangible and intangible,
14 of the converting entity remains in the surviving entity without transfer, assignment,
15 reversion or impairment;
16 (2) The liabilities of the converting entity remain the liabilities of the
17 surviving entity;
18 (3) A pending action or proceeding by or against the converting entity
19 continues by or against the surviving entity as if the conversion had not occurred
20 without any need for substitution of parties;
21 (4) The provisions included in or attached to the articles of entity conversion
22 in accordance with Paragraph 1-953(B)(3) of this Act become effective as the articles
23 of incorporation, articles of organization, initial report, registered contract of
24 partnership, or registered application for registry of a registered limited liability
25 partnership, as appropriate for the surviving entity;
26 (5) In the case of a surviving entity that is a nonfiling entity, its private
27 organic document becomes effective;
28 (6) The shares or interests of the converting entity are reclassified into
29 shares, interests, other securities, obligations, rights to acquire shares, interests or

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1 other securities, or into cash or other property in accordance with the plan of
2 conversion; and the shareholders or interest holders of the converting entity are
3 entitled only to the rights provided to them under the terms of the conversion and to
4 any appraisal rights they may have under the organic law of the converting entity;
5 and
6 (7) The surviving entity is deemed to:
7 (a) Be incorporated or organized under and subject to the organic law of the
8 surviving entity for all purposes;
9 (b) Be the same corporation or unincorporated entity without interruption as
10 the converting entity; and
11 (c) Have been incorporated or otherwise organized on the date that the
12 converting entity was originally incorporated or organized.
13 B. When a conversion of a domestic business corporation to a foreign
14 unincorporated entity becomes effective, the surviving entity remains:
15 (1) Obligated under the laws of this state to pay promptly the amount, if any,
16 to which shareholders who exercise appraisal rights in connection with the
17 conversion are entitled under Part 13 of this Act; and
18 (2) Subject to the personal jurisdiction of the courts of this state in
19 accordance with R.S. 13:3201, and to service of process in accordance with law.
20 C. A shareholder who becomes subject to owner liability for some or all of
21 the debts, obligations or liabilities of the surviving entity shall be personally liable
22 only for those debts, obligations or liabilities of the surviving entity that arise after
23 the effective time of the articles of entity conversion.
24 D. The owner liability of an interest holder in an unincorporated entity that
25 converts to another form of domestic unincorporated entity or to a domestic business
26 corporation shall be as follows:
27 (1) The conversion does not discharge any owner liability under the organic
28 law of the converting entity to the extent any such owner liability arose before the
29 effective time of the articles of entity conversion.

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are additions.

1 (2) The interest holder shall not have owner liability under the organic law
2 of the converting entity for any debt, obligation or liability of the corporation that
3 arises after the effective time of the articles of entity conversion.
4 (3) The provisions of the organic law of the converting entity shall continue
5 to apply to the collection or discharge of any owner liability preserved by Paragraph
6 (1) of this Subsection, as if the conversion had not occurred.
7 (4) The interest holder shall have whatever rights of contribution from other
8 interest holders are provided by the organic law of the converting entity with respect
9 to any owner liability preserved by Paragraph (1) of this Subsection, as if the
10 conversion had not occurred.
11 E. The provisions of R.S. 12:1603 and 12:1604, concerning tax filing
12 requirements and professional licenses, apply in the case of an entity conversion:
13 (1) By a domestic business corporation to a domestic unincorporated entity;
14 or
15 (2) By a domestic unincorporated entity to a domestic business corporation
16 or to another form of domestic unincorporated entity.
17 Source: MBCA §9.55.
18 Comments - 2013 Revision
19 (a) This Act modifies Model Act (a)(4) to name the particular forms of
20 public organic documents most likely to be relevant in an entity conversion
21 transaction.

22 (b) Model Act Subsection (b) uses legal fictions to state the legal obligations
23 of an "outbound" surviving entity in an entity conversion, deeming the surviving
24 entity to "agree" to pay appraisal rights and to appoint the secretary of state as its
25 agent for service of process in connection with appraisal rights suits. This Act
26 modifies Subsection (b) to state the surviving entity's legal obligations in a more
27 straightforward fashion. The surviving entity remains liable under the laws of this
28 state to pay any appraisal rights when due, not because it agrees to make the
29 payments but because the law requires it to do so. Similarly, the surviving entity
30 remains subject to the personal jurisdiction of the courts of this state not because the
31 entity has made the secretary of state its agent for service of process, but because this
32 state asserts the personal jurisdiction of its courts to the full extent constitutionally
33 permissible, and provides by law for appropriate forms of service of process.

34 (c) This Act adds a new Subsection (E) to retain the substance of prior law
35 concerning the filing of short-period tax returns by the converting entity and the
36 continuation of licensing with respect to a surviving entity that is a domestic business
37 corporation or domestic unincorporated entity.

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1 §1-956. Abandonment of an entity conversion

2 A. Unless otherwise provided in a plan of entity conversion of a domestic
3 business corporation, after the plan has been adopted and approved as required by
4 this Subpart, and at any time before the entity conversion has become effective, it
5 may be abandoned by the board of directors without action by the shareholders.

6 B. If an entity conversion is abandoned after articles of entity conversion or
7 articles of charter surrender have been filed with the secretary of state but before the
8 entity conversion has become effective, a statement that the entity conversion has
9 been abandoned in accordance with this Section, signed by an officer or other duly
10 authorized representative, shall be delivered to the secretary of state for filing prior
11 to the effective date of the entity conversion. Upon filing, the statement shall take
12 effect and the entity conversion shall be deemed abandoned and shall not become
13 effective.

14 Source: MBCA §9.56.

15 PART 10. AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

16 SUBPART A. AMENDMENT OF ARTICLES OF INCORPORATION

17 §1-1001. Authority to amend

18 A. A corporation may amend its articles of incorporation at any time to add
19 or change a provision that is required or permitted in the articles of incorporation as
20 of the effective date of the amendment or to delete a provision that is not required
21 to be contained in the articles of incorporation.

22 B. A shareholder of the corporation does not have a vested property right
23 resulting from any provision in the articles of incorporation, including provisions
24 relating to management, control, capital structure, dividend entitlement, or purpose
25 or duration of the corporation.

26 C. An amendment that extends the duration of a corporation may be adopted
27 even after that duration expires unless:

28 (1) Articles of termination or a certificate of termination has been filed and
29 the existence of the corporation has not been reinstated;

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1 (2) Articles of dissolution have been delivered to the secretary of state and
2 have not been revoked; or
3 (3) A judgment ordering dissolution has become final.
4 D. If the duration of a corporation has expired and the adoption of an
5 amendment extending that duration is permissible under Subsection C of this
6 Section:
7 (1) The amendment may be adopted in the same manner as if the
8 corporation's duration had not expired; and
9 (2) The amendment has the same effect as if it had been adopted before the
10 duration expired.
11 Source: MBCA §10.01, R.S. 12:31 (2012).
12 Comments - 2013 Revision
13 (a) The authority of a business corporation to amend its articles of
14 incorporation in accordance with Subsection (A) is not limited by the principles that
15 were applied to an amendment of the articles of a charitable, nonprofit corporation
16 in New Orleans Opera Ass'n, Inc. v. Southern Regional Opera Endowment Fund, 993
17 So.2d 791(La. App. 4th Cir. 8/27/08), writ denied, 996 So.2d 1114 (11/21/08).
18 (b) Subsections (C) and (D) were added by this Act to the Model Act
19 provision to retain the effect of former R.S. 12:31(D). Under the former provision,
20 the duration of a corporation could be extended through an amendment to its articles
21 that was adopted even after the expiration of the corporation's duration, but before
22 liquidation procedures had begun, and the amendment was given retroactive effect.
23 This Act retains the rule against duration-extending amendments while a dissolution
24 process is ongoing through Paragraph (C)(2). But it adds a new Paragraph (C)(1) to
25 take account of the availability of reinstatement for a terminated corporation under
26 Section 1-1444.
27 §1-1002. Amendment before issuance of shares
28 If a corporation has not yet issued shares, its board of directors, or its
29 incorporators if it has no board of directors, may adopt one or more amendments to
30 the corporation's articles of incorporation.
31 Source: MBCA §10.02.
32 §1-1003. Amendment by board of directors and shareholders
33 A. If a corporation has issued shares, but is not a public corporation, an
34 amendment to the articles of incorporation shall be adopted in the following manner:

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1 (1) Except as provided in Sections 1-1005, 1-1007, and 1-1008, the
2 amendment must be approved by the shareholders.
3 (2) If the approval is to be given at a meeting, the corporation must notify
4 each shareholder, whether or not entitled to vote, of the meeting of shareholders at
5 which the amendment is to be submitted for approval. The notice must state that the
6 purpose, or one of the purposes, of the meeting is to consider the amendment and
7 must contain or be accompanied by a copy of the amendment. If Paragraph (A)(3)
8 of this Subsection requires the approval of one or more separate voting groups, in
9 addition to the approval of all shareholders entitled to vote on the amendment, the
10 notice must also identify each class or series of shares that the corporation plans to
11 treat as part of each separate voting group.
12 (3) Unless the articles of incorporation require a greater vote, approval of the
13 amendment by the shareholders requires the approval of at least a majority of the
14 votes entitled to be cast on the amendment, and, if any class or series of shares is
15 entitled to vote as a separate group on the amendment, except as provided in
16 Subsection 1-1004(C) of this Act, the approval of at least a majority of the votes
17 entitled to be cast on the amendment by each such separate voting group.
18 B. An amendment to the articles of incorporation of a public corporation
19 shall be adopted in the following manner:
20 (1) The proposed amendment must be adopted by the board of directors.
21 (2) Except as provided in Sections 1-1005, 1-1007, and 1-1008, after
22 adopting the proposed amendment the board of directors must submit the amendment
23 to the shareholders for their approval. The board of directors must also transmit to
24 the shareholders a recommendation that the shareholders approve the amendment,
25 unless the board of directors makes a determination that because of conflicts of
26 interest or other special circumstances it should not make such a recommendation,
27 in which case the board of directors must transmit to the shareholders the basis for
28 that determination.

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1 (3) The board of directors may condition its submission of the amendment
2 to the shareholders on any basis.
3 (4) If the amendment is required to be approved by the shareholders, and the
4 approval is to be given at a meeting, the corporation must notify each shareholder,
5 whether or not entitled to vote, of the meeting of shareholders at which the
6 amendment is to be submitted for approval. The notice must state that the purpose,
7 or one of the purposes, of the meeting is to consider the amendment and must contain
8 or be accompanied by a copy of the amendment. If Paragraph (B)(5) of this
9 Subsection requires the approval of one or more separate voting groups, in addition
10 to the approval of all shareholders entitled to vote on the amendment, the notice must
11 also identify each class or series of shares that the corporation plans to treat as part
12 of each separate voting group.
13 (5) Unless the articles of incorporation, or the board of directors acting
14 pursuant to Paragraph (B)(3) of this Subsection, requires a greater vote, approval of
15 the amendment by the shareholders requires the approval of at least a majority of the
16 votes entitled to be cast on the amendment, and, if any class or series of shares is
17 entitled to vote as a separate group on the amendment, except as provided in
18 Subsection 1-1004(C) of this Act, the approval of at least a majority of the votes
19 entitled to be cast on the amendment by each such separate voting group.
20 Source: MBCA §10.03.
21 Comments - 2013 Revision
22 (a) The Model Act provides a single set of rules for the adoption of an
23 amendment to the articles of incorporation. Two features of those rules seem
24 better-suited to public corporations than to the closely-held, often one-shareholder
25 corporations that dominate corporate practice in Louisiana. Those two features are:
26 (1) that shareholders be unable to amend the articles without board approval; and (2)
27 that the board, after adopting an amendment, also make an affirmative
28 recommendation to shareholders of approval, or provide an acceptable explanation
29 of why the board is unable to make such a recommendation.
30 (b) This Act provides two separate procedures for the adoption of an
31 amendment to the articles of incorporation, one for public corporations, as defined
32 in Section 1-140, and another for nonpublic corporations. The nonpublic corporation
33 rules are provided in Subsection (A). They eliminate the requirements of prior board
34 adoption and recommendation of an amendment. The public corporation rules are
35 provided in Subsection (B). They track the Model Act, except that: (1) they add a
36 requirement that the notice of the meeting include an identification of any voting

1 group that is eligible to vote separately on the amendment; and (2) require an
2 amendment to be approved by at least a majority of the votes entitled to be cast on
3 the amendment, and by a majority of the votes of any class of shares entitled to vote
4 separately on the amendment as a class.

5 §1-1004. Voting on amendments by voting groups

6 A. If a corporation has more than one class of shares outstanding, the holders
7 of the outstanding shares of a class are entitled to vote as a separate voting group (if
8 shareholder voting is otherwise required by this Act) on a proposed amendment to
9 the articles of incorporation if the amendment would:

10 (1) Effect an exchange or reclassification of all or part of the shares of the
11 class into shares of another class;

12 (2) Effect an exchange or reclassification, or create the right of exchange, of
13 all or part of the shares of another class into shares of the class;

14 (3) Change the rights, preferences, or limitations of all or part of the shares
15 of the class;

16 (4) Change the shares of all or part of the class into a different number of
17 shares of the same class;

18 (5) Create a new class of shares having rights or preferences with respect to
19 distributions or to dissolution that are prior or superior to the shares of the class;

20 (6) Increase the rights, preferences, or number of authorized shares of any
21 class that, after giving effect to the amendment, have rights or preferences with
22 respect to distributions or to dissolution that are prior or superior to the shares of the
23 class;

24 (7) Limit or deny an existing preemptive right of all or part of the shares of
25 the class; or

26 (8) Cancel or otherwise affect rights to distributions that have accumulated
27 but not yet been authorized on all or part of the shares of the class.

28 B. If a proposed amendment would affect a series of a class of shares in one
29 or more of the ways described in Subsection A of this Section, the holders of shares
30 of that series are entitled to vote as a separate voting group on the proposed
31 amendment.

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1 C. If a proposed amendment that entitles the holders of two or more classes
2 or series of shares to vote as separate voting groups under this Section would affect
3 those two or more classes or series in the same or a substantially similar way, the
4 holders of shares of all the classes or series so affected must vote together as a single
5 voting group on the proposed amendment, unless otherwise provided in the articles
6 of incorporation or required by the board of directors.
7 D. A class or series of shares is entitled to the voting rights granted by this
8 Section although the articles of incorporation provide that the shares are nonvoting
9 shares.
10 Source: MBCA §10.04.
11 Comments - 2013 Revision
12 (a) The Model Act provides a single set of rules for the adoption of an
13 amendment to the articles of incorporation. Three features of those rules seem
14 better-suited to public corporations than to the types of closely-held, often
15 one-shareholder corporations that dominate corporate practice in Louisiana. Those
16 three features are: (1) that shareholders be unable to amend the articles without board
17 approval; (2) that the board, after adopting an amendment, also make an affirmative
18 recommendation to shareholders of approval, or provide an acceptable explanation
19 of why the board is unable to make such a recommendation; and (3) that the
20 amendment be subject to approval by a vote of a majority of the votes cast at a
21 meeting at which a majority quorum exists.
22 (b) This Act provides two separate procedures for the adoption of an
23 amendment to the articles of incorporation, one for public corporations, as defined
24 in Section 1-140, and another for nonpublic corporations. The nonpublic corporation
25 rules are provided in Subsection (A). They eliminate the requirements of prior board
26 adoption and recommendation of an amendment, and they require that amendments
27 be approved by at least a majority of the votes entitled to be cast on the amendment
28 and a majority of the votes entitled to be cast by any voting group entitled to vote
29 separately as a group on the amendment. The public corporation rules are provided
30 in Subsection (B). They track the Model Act, except for adding a requirement that
31 the notice of the meeting include an identification of any voting group that is eligible
32 to vote separately on the amendment and requiring approval by a majority of the
33 voting power of the relevant voting groups.
34 §1-1005. Amendment by board of directors
35 Unless the articles of incorporation provide otherwise, a corporation's board
36 of directors may adopt amendments to the corporation's articles of incorporation
37 without shareholder approval:
38 (1) To extend the duration of the corporation if it was incorporated at a time
39 when limited duration was required by law;

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1 (2) To delete the names and addresses of the initial directors;
2 (3) To delete the name and address of the initial registered agent or
3 registered office, if a statement of change is on file with the secretary of state, or to
4 delete the address of the initial principal office if the corporation has provided the
5 address of its principal office in an annual report on file with the secretary of state;
6 (4) If the corporation has only one class of shares outstanding:
7 (a) To change each issued and unissued authorized share of the class into a
8 greater number of whole shares of that class; or
9 (b) To increase the number of authorized shares of the class to the extent
10 necessary to permit the issuance of shares as a share dividend;
11 (5) To change the corporate name by substituting the word "corporation",
12 "incorporated", "company", "limited", or the abbreviation, with or without
13 punctuation, "corp", "inc", "co", or "ltd", for a similar word or abbreviation in the
14 name, or by adding, deleting, or changing a geographical attribution for the name;
15 (6) Reflect a reduction in authorized shares, as a result of the operation of
16 Subsection 1-631(B) of this Section, when the corporation has acquired its own
17 shares and the articles of incorporation prohibit the reissue of the acquired shares;
18 (7) To delete a class of shares from the articles of incorporation, as a result
19 of the operation of Subsection 1-631(B) of this Section, when there are no remaining
20 shares of the class because the corporation has acquired all shares of the class and
21 the articles of incorporation prohibit the reissue of the acquired shares; or
22 (8) To make any change expressly permitted by Subsection 1-602(A) or (B)
23 of this Section to be made without shareholder approval.
24 Source: MBCA §10.05.
25 §1-1006. Articles of amendment
26 After an amendment to the articles of incorporation has been adopted and
27 approved in the manner required by this Act and by the articles of incorporation, the
28 corporation shall deliver to the secretary of state, for filing, articles of amendment,
29 which shall set forth:

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are additions.

1 (1) The name of the corporation;
2 (2) The text of each amendment adopted, or the information required by
3 Paragraph 1-120(K)(5) of this Act;
4 (3) If an amendment provides for an exchange, reclassification, or
5 cancellation of issued shares, provisions for implementing the amendment if not
6 contained in the amendment itself, (which may be made dependent upon facts
7 objectively ascertainable outside the articles of amendment in accordance with
8 Paragraph 1-120(K)(5) of this Act);
9 (4) The date of each amendment's adoption; and
10 (5) If an amendment:
11 (a) Was adopted by the incorporators or board of directors without
12 shareholder approval, a statement that the amendment was duly approved by the
13 incorporators or by the board of directors, as the case may be, and that shareholder
14 approval was not required;
15 (b) Required approval by the shareholders, a statement that the amendment
16 was duly approved by the shareholders in the manner required by this Act and by the
17 articles of incorporation; or
18 (c) Is being filed pursuant to Paragraph 1-120(K)(5) of this Act, a statement
19 to that effect.
20 Source: MBCA §10.06.
21 §1-1007. Restated articles of incorporation
22 A. A corporation's board of directors may restate its articles of incorporation
23 at any time, with or without shareholder approval, to consolidate all amendments into
24 a single document.
25 B. If the restated articles include one or more new amendments that require
26 shareholder approval, the amendments must be adopted and approved as provided
27 in Section 1-1003.
28 C. A corporation that restates its articles of incorporation shall deliver to the
29 secretary of state for filing articles of restatement setting forth the name of the

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1 corporation and the text of the restated articles of incorporation together with a
2 certificate which states that the restated articles consolidate all amendments into a
3 single document and, if a new amendment is included in the restated articles, which
4 also includes the statements required under Section 1-1006.
5 D. Duly adopted restated articles of incorporation supersede the original
6 articles of incorporation and all amendments thereto.
7 E. The secretary of state may certify restated articles of incorporation as the
8 articles of incorporation currently in effect, without including the certificate
9 information required by Subsection C of this Section.
10 Source: MBCA §10.07.
11 §1-1008. Amendment pursuant to reorganization
12 A. A corporation's articles of incorporation may be amended without action
13 by the board of directors or shareholders to carry out a plan of reorganization ordered
14 or decreed by a court of competent jurisdiction under the authority of a law of the
15 United States.
16 B. The individual or individuals designated by the court shall deliver to the
17 secretary of state for filing articles of amendment setting forth:
18 (1) The name of the corporation;
19 (2) The text of each amendment approved by the court;
20 (3) The date of the court's order or decree approving the articles of
21 amendment;
22 (4) The title of the reorganization proceeding in which the order or decree
23 was entered; and
24 (5) A statement that the court had jurisdiction of the proceeding under
25 federal statute.
26 C. This Section does not apply after entry of a final decree in the
27 reorganization proceeding even though the court retains jurisdiction of the

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1 proceeding for limited purposes unrelated to consummation of the reorganization
2 plan.
3 Source: MBCA §10.08.
4 §1-1009. Effect of amendment
5 An amendment to the articles of incorporation does not affect a cause of
6 action existing against or in favor of the corporation, a proceeding to which the
7 corporation is a party, or the existing rights of persons other than shareholders of the
8 corporation. An amendment changing a corporation's name does not abate a
9 proceeding brought by or against the corporation in its former name.
10 Source: MBCA §10.09.
11 SUBPART B. AMENDMENT OF BYLAWS
12 §1-1020. Amendment by board of directors or shareholders
13 A. A corporation's shareholders may amend or repeal the corporation's
14 bylaws.
15 B. A corporation's board of directors may adopt, amend or repeal the
16 corporation's bylaws, unless:
17 (1) The articles of incorporation, Section 1-1021 or, if applicable, Section
18 1-1022 reserve that power exclusively to the shareholders in whole or part; or
19 (2) The shareholders in amending, repealing, or adopting a bylaw expressly
20 provide that the board of directors may not amend, repeal, or reinstate that bylaw.
21 Source: MBCA §10.20.
22 §1-1021. Bylaw increasing quorum or voting requirement for directors
23 A. A bylaw that increases a quorum or voting requirement for the board of
24 directors may be amended or repealed:
25 (1) If originally adopted by the shareholders, only by the shareholders, unless
26 the bylaw otherwise provides;
27 (2) If adopted by the board of directors, either by the shareholders or by the
28 board of directors.

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1 B. A bylaw adopted or amended by the shareholders that increases a quorum
2 or voting requirement for the board of directors may provide that it can be amended
3 or repealed only by a specified vote of either the shareholders or the board of
4 directors.
5 C. Action by the board of directors under Subsection A of this Section to
6 amend or repeal a bylaw that changes the quorum or voting requirement for the
7 board of directors must meet the same quorum requirement and be adopted by the
8 same vote required to take action under the quorum and voting requirement then in
9 effect or proposed to be adopted, whichever is greater.
10 Source: MBCA §10.21.
11 §1-1022. Public corporation bylaw provisions relating to the election of directors
12 A. Unless the articles of incorporation (1) specifically prohibit the adoption
13 of a bylaw pursuant to this Section, (2) alter the vote specified in Subsection
14 1-728(A) of this Act, or (3) provide for cumulative voting, a public corporation may
15 elect in its bylaws to be governed in the election of directors as follows:
16 (1) Each vote entitled to be cast may be voted for or against up to that
17 number of candidates that is equal to the number of directors to be elected, or a
18 shareholder may indicate an abstention, but without cumulating the votes;
19 (2) To be elected, a nominee must have received a plurality of the votes cast
20 by holders of shares entitled to vote in the election at a meeting at which a quorum
21 is present, provided that a nominee who is elected but receives more votes against
22 than for election shall serve as a director for a term that shall terminate on the date
23 that is the earlier of (a) ninety days from the date on which the voting results are
24 determined pursuant to Paragraph 1-729(B)(5) of this Act or (b) the date on which
25 an individual is selected by the board of directors to fill the office held by such
26 director, which selection shall be deemed to constitute the filling of a vacancy by the
27 board to which Section 1-810 applies. Subject to Paragraph (3) of this Subsection,
28 a nominee who is elected but receives more votes against than for election shall not
29 serve as a director beyond the ninety-day period referenced above; and

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1 (3) The board of directors may select any qualified individual to fill the
2 office held by a director who received more votes against than for election.
3 B. Subsection A of this Section does not apply to an election of directors by
4 a voting group if (1) at the expiration of the time fixed under a provision requiring
5 advance notification of director candidates, or (2) absent such a provision, at a time
6 fixed by the board of directors which is not more than fourteen days before notice
7 is given of the meeting at which the election is to occur, there are more candidates
8 for election by the voting group than the number of directors to be elected, one or
9 more of whom are properly proposed by shareholders. An individual shall not be
10 considered a candidate for purposes of this Subsection if the board of directors
11 determines before the notice of meeting is given that such individual's candidacy
12 does not create a bona fide election contest.
13 C. A bylaw electing to be governed by this Section may be repealed:
14 (1) If originally adopted by the shareholders, only by the shareholders, unless
15 the bylaw otherwise provides;
16 (2) If adopted by the board of directors, by the board of directors or the
17 shareholders.
18 Source: MBCA §10.22.
19 PART 11. MERGERS AND SHARE EXCHANGES
20 §1-1101. Definitions
21 As used in this Part:
22 A. "Merger" means a business combination pursuant to Section 1-1102.
23 B. "Party to a merger" or "party to a share exchange" means any domestic
24 or foreign corporation or eligible entity that will:
25 (1) Merge under a plan of merger;
26 (2) Acquire shares or eligible interests of another corporation or an eligible
27 entity in a share exchange; or
28 (3) Have all of its shares or eligible interests or all of one or more classes or
29 series of its shares or eligible interests acquired in a share exchange.

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1 C. "Share exchange" means a business combination pursuant to Section
2 1-1103.
3 D. "Survivor" in a merger means the corporation or eligible entity into which
4 one or more other corporations or eligible entities are merged. A survivor of a
5 merger may preexist the merger or be created by the merger.
6 Source: MBCA §11.01.
7 Comment - 2013 Revision
8 Model Act Comment 4, concerning the meaning of the term "other entity" is
9 irrelevant under this Act. Comment 4 covered a defined term in an earlier draft of
10 Model Act Section 11.01 that was changed before final adoption. Compare, 56
11 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final
12 adoption). As adopted in its final form, the term used in the Model Act to express
13 the "other entity" concept is "eligible entity." See Section 1.40 (7D). At the time
14 that this Act was enacted, the Model Act used the older term in some provisions and
15 the newer terms in other provisions. This Act uses the term "eligible entity"
16 consistently throughout its provisions to identify the types of entities that may enter
17 with a business corporation into a merger, share exchange, domestication, nonprofit
18 conversion, or entity conversion transaction.
19 §1-1102. Merger
20 A. One or more domestic business corporations may merge with one or
21 more domestic or foreign business corporations or eligible entities pursuant to a plan
22 of merger, or two or more eligible entities or foreign business corporations may
23 merge into a new domestic business corporation to be created in the merger in the
24 manner provided in this Part.
25 B. A foreign business corporation, or a foreign eligible entity, may be a party
26 to a merger with a domestic business corporation, or may be created by the terms of
27 the plan of merger, only if the merger is permitted by the organic law governing the
28 foreign business corporation or foreign eligible entity, and only if the requirements
29 of that law concerning the merger have been satisfied. A domestic eligible entity
30 must approve the merger in accordance with the organic law applicable to it.
31 C. The plan of merger must include:
32 (1) The name of each domestic or foreign business corporation or eligible
33 entity that will merge and the name of the domestic or foreign business corporation
34 or eligible entity that will be the survivor of the merger;

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1 (2) The terms and conditions of the merger;
2 (3) The manner and basis of converting the shares of each merging domestic
3 or foreign business corporation and eligible interests of each merging eligible entity
4 into shares or other securities, eligible interests, obligations, rights to acquire shares,
5 other securities or eligible interests, or into cash, other property, or any combination
6 of the foregoing;
7 (4) The articles of incorporation of any domestic or foreign business or
8 nonprofit corporation, or the organic documents of any domestic or foreign
9 unincorporated entity, to be created by the merger, or if a new domestic or foreign
10 business or nonprofit corporation or unincorporated entity is not to be created by the
11 merger, any amendments to the survivor's articles of incorporation or organic
12 documents; and
13 (5) Any other provisions required by the laws under which any party to the
14 merger is organized or by which it is governed, or by the articles of incorporation or
15 organic document of any such party.
16 D. Terms of a plan of merger may be made dependent on facts objectively
17 ascertainable outside the plan in accordance with Subsection 1-120(K) of this Act.
18 E. The plan of merger may also include a provision that the plan may be
19 amended prior to filing articles of merger, but if the shareholders of a domestic
20 corporation that is a party to the merger are required or permitted to vote on the plan,
21 the plan must provide that subsequent to approval of the plan by such shareholders
22 the plan may not be amended to change:
23 (1) The amount or kind of shares or other securities, eligible interests,
24 obligations, rights to acquire shares, other securities or eligible interests, or the cash
25 or other property to be received under the plan by the shareholders of or owners of
26 eligible interests in any party to the merger;
27 (2) The articles of incorporation of any corporation, or the organic
28 documents of any unincorporated entity, that will survive or be created as a result of
29 the merger, except for changes permitted by Section 1-1005 or by comparable

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1 provisions of the organic laws of any such foreign corporation or domestic or foreign
2 unincorporated entity; or
3 (3) Any of the other terms or conditions of the plan if the change would
4 adversely affect such shareholders in any material respect.
5 F. Property received through a conditional donation, grant, or devise, or held
6 in trust or for charitable purposes under the laws of this state by an eligible entity
7 shall not be diverted by a merger from the object for which it was donated, granted
8 or devised, except to the extent authorized by a court judgment based upon principles
9 of cy pres or approximation.
10 G. A person who is a member, interest holder, or an affiliate of an eligible
11 entity with a charitable purpose shall not receive a direct or indirect financial benefit
12 in connection with a merger to which the eligible entity is a party unless the person
13 is itself a charitable corporation or unincorporated entity with a charitable purpose.
14 This Subsection does not apply to the receipt of reasonable compensation for
15 services rendered.
16 Source: MBCA §11.02.
17 Comments - 2013 Revision
18 (a) Subsection (b) of the Model Act appears to contain an editorial error. It
19 allows a merger with a foreign business corporation or eligible entity if the foreign
20 corporation or entity itself permits the merger. This Act corrects the apparent error
21 by adding a phrase that refers not to the foreign corporation or entity itself, but rather
22 to the organic law that governs it. This Act also adds the requirement that the
23 foreign organization actually comply with the foreign law that permits its
24 participation in a merger, thus making explicit what was merely implicit in the
25 Model Act.

26 (b) The Model Act contains an optional Paragraph (b)(1) that provides rules
27 analogous to the corporate law rules for mergers involving unincorporated business
28 organizations. This Act replaces the optional provision with the sentence at the end
29 of Subsection (B), which requires the domestic eligible entity, i.e., a partnership,
30 partnership in commendam or LLC, to comply with the organic law applicable to it.
31 The organic law governing the merger of a partnership or partnership in commendam
32 is set forth in R.S. 9:3441-3447, while that governing LLC mergers is set forth in
33 R.S. 12:1357-1362.

34 (c) This Act modifies the anti-diversion rule in Model Act Subsection (f)
35 slightly by replacing its reference to a particular cy pres or anti-diversion statute with
36 a reference to the legal principles of cy pres more generally, whether those principles
37 are expressed in particular statutes, such as R.S. 9:2331, or the civil law doctrine of
38 approximation. See, e.g., Succession of Mizell, 468 So.2d 1371 (La. App. 1st Cir.
39 1985), rev'd on other grounds, 475 So.2d 765 (1985); Ada C. Pollock-Blundon Ass'n,

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1 Inc. v. Evans' Heirs, 273 So.2d 552 (La. App. 1st Cir. 1973). Because Subsection
2 (D) is designed merely to include cy pres principles by reference, and not to state any
3 independent or fixed understanding of those principles, the Subsection does not limit
4 itself to any particular statutory or jurisprudential formulation of the controlling
5 rules.
6 (d) Subsection (G) is based on Section 9.03 of the Model Nonprofit
7 Corporation Act and was added to this Act as a complement to Subsection (F) to
8 prevent the misuse of assets held for charitable purposes. The term "charitable"
9 means the same thing in Subsection (F) as it does under federal income tax law.

10 (e) The Model Act Official Comment to Section 11.02 contains several
11 references to an "other entity," a term used in an earlier draft of the Model Act that
12 was changed before final adoption to the term "eligible entity." Compare, 56
13 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final
14 adoption). The Model Act sometimes uses the older term and sometimes the newer
15 term. This Act consistently uses the newer term "eligible entity" in place of the older
16 one. Also, because the term "eligible entity," unlike the term it replaced, includes
17 both domestic and foreign forms of entity, Model Act references to "domestic or
18 foreign eligible entities" have been corrected to eliminate the redundancy.
19 References to "foreign eligible entities" or "domestic eligible entities" have been
20 retained where appropriate to indicate the narrower category of eligible entity
21 intended.

22 §1-1103. Share exchange

23 A. Through a share exchange:

24 (1) A domestic corporation may acquire all of the shares of one or more
25 classes or series of shares of another domestic or foreign corporation, or all of the
26 interests of one or more classes or series of interests of an eligible entity, in exchange
27 for shares or other securities, eligible interests, obligations, rights to acquire shares,
28 or other securities, or for cash, other property, or any combination of the foregoing,
29 pursuant to a plan of share exchange, or

30 (2) All of the shares of one or more classes or series of shares of a domestic
31 corporation may be acquired by another domestic or foreign corporation or eligible
32 entity, in exchange for shares or other securities, eligible interests, obligations, rights
33 to acquire shares or other securities, or for cash, other property, or any combination
34 of the foregoing, pursuant to a plan of share exchange.

35 B. A foreign corporation or foreign eligible entity may be a party to a share
36 exchange only if the share exchange is permitted by the organic law governing the
37 foreign corporation or foreign eligible entity and only if the requirements of that law
38 concerning the share exchange have been satisfied.

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1 C. The plan of share exchange must include:
2 (1) The name of each corporation or eligible entity whose shares or interests
3 will be acquired and the name of the corporation or eligible entity that will acquire
4 those shares or interests;
5 (2) The terms and conditions of the share exchange;
6 (3) The manner and basis of exchanging shares of a corporation or interests
7 in an eligible entity whose shares or interests will be acquired under the share
8 exchange into shares or other securities, eligible interests, obligations, rights to
9 acquire shares or other securities, or into cash, other property, or any combination
10 of the foregoing; and
11 (4) Any other provisions required by the laws under which any party to the
12 share exchange is organized or by the articles of incorporation or organic document
13 of any such party.
14 D. Terms of a plan of share exchange may be made dependent on facts
15 objectively ascertainable outside the plan in accordance with Subsection 1-120(K)
16 of this Act.
17 E. The plan of share exchange may also include a provision that the plan
18 may be amended prior to filing articles of share exchange, but if the shareholders of
19 a domestic corporation that is a party to the share exchange are required or permitted
20 to vote on the plan, the plan must provide that subsequent to approval of the plan by
21 such shareholders the plan may not be amended to change:
22 (1) The amount or kind of shares or other securities, interests, obligations,
23 rights to acquire shares, other securities or interests, or the cash or other property, to
24 be issued by the corporation or to be received under the plan by the shareholders of
25 or owners of interests in any party to the share exchange; or
26 (2) Any of the other terms or conditions of the plan if the change would
27 adversely affect such shareholders in any material respect.

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1 F. Section 1-1103 does not limit the power of any person to acquire shares
2 of another corporation or interests in an eligible entity in a transaction other than a
3 share exchange.

4 Source: MBCA §11.03.

5 Comments - 2013 Revision

6 (a) In an apparent error of terminology, the Model Act uses the term "other
7 entity" (instead of "eligible entity") in this Section and its comments to refer to
8 unincorporated business organizations and nonprofit corporations. The error appears
9 due to a change in terminology between the text originally proposed and that finally
10 adopted in dealing with such entities in Sections 11.01 and 11.02. Compare, 56
11 Bus.Law. 1633 (2001) (proposed amendments) with 58 Bus.Law. 219 (2002) (final
12 adoption). Reflecting the final terminology, this Act substitutes the term "eligible
13 entity," defined in Section 1-140(7B), for "other entity" throughout Section 1-1104
14 and its Official Comments. Also, because the term "eligible entity" includes both
15 domestic and foreign forms of entity, Model Act references to "domestic and foreign
16 other entities" have been corrected to eliminate the redundancy. References to
17 "foreign eligible entities" or "domestic eligible entities" have been retained where
18 appropriate to indicate the narrower category of eligible entity intended.

19 (b) Subsection (b) of the Model Act appears to contain an editorial error. It
20 allows a share exchange with a foreign business corporation or eligible entity if the
21 foreign corporation or entity itself permits the share exchange. This Act corrects the
22 apparent error by adding a phrase that refers not to the foreign corporation or entity
23 itself, but rather to the organic law that governs it. This Act also adds the
24 requirement that the foreign organization actually comply with the foreign law that
25 permits its participation in a share exchange, thus making explicit what was merely
26 implicit in the Model Act.

27 (c) The Model Act provides in Subsection (f) that Section 11.03 does not
28 affect the power of a domestic corporation to acquire shares or interests outside of
29 a share exchange. The limitation of the statement to domestic corporations is likely
30 due to the limited scope of Section 11.03 itself, which reaches only share exchanges
31 that involve a domestic corporation. Nevertheless, to avoid the unintended negative
32 implication that Section 11.03 might affect acquisitions by persons other than a
33 domestic corporation, this Act broadens the statement in Subsection (f) to make it
34 applicable to acquisitions outside a share exchange by any person.

35 §1-1104. Action on a plan of merger or share exchange

36 In the case of a domestic corporation that is a party to a merger or share
37 exchange:

38 A. The plan of merger or share exchange must be adopted by the board of
39 directors.

40 B. Except as provided in Subsection G of this Section and in Section 1-1105,
41 after adopting the plan of merger or share exchange the board of directors must
42 submit the plan to the shareholders for their approval. The board of directors must

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1 also transmit to the shareholders a recommendation that the shareholders approve the
2 plan, unless (1) the board of directors makes a determination that because of
3 conflicts of interest or other special circumstances it should not make such a
4 recommendation or (2) Section 1-826 applies. If either (1) or (2) apply, the board
5 must transmit to the shareholders the basis for so proceeding.

6 C. The board of directors may condition its submission of the plan of merger
7 or share exchange to the shareholders on any basis.

8 D. If the plan of merger or share exchange is required to be approved by the
9 shareholders, and if the approval is to be given at a meeting, the corporation must
10 notify each shareholder, whether or not entitled to vote, of the meeting of
11 shareholders at which the plan is to be submitted for approval. The notice must state
12 that the purpose, or one of the purposes, of the meeting is to consider the plan and
13 must contain or be accompanied by a copy or summary of the plan. If the
14 corporation is to be merged into an existing corporation or eligible entity, the notice
15 shall also include or be accompanied by a copy or summary of the articles of
16 incorporation or organizational documents of that corporation or eligible entity. If
17 the corporation is to be merged into a corporation or eligible entity that is to be
18 created pursuant to the merger, the notice shall include or be accompanied by a copy
19 or a summary of the articles of incorporation or organizational documents of the new
20 corporation or eligible entity.

21 E. Unless the articles of incorporation, or the board of directors acting
22 pursuant to Subsection C of this Section, requires a greater vote, approval of the plan
23 of merger or share exchange requires the approval of at least a majority of the votes
24 entitled to be cast on the plan, and, if any class or series of shares is entitled to vote
25 as a separate group on the plan of merger or share exchange, the approval of each
26 such separate voting group at a meeting by at least a majority of the votes entitled
27 to be cast on the merger or share exchange by that voting group.

28 F. Separate voting by voting groups is required:

29 (1) On a plan of merger, by each class or series of shares that:

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1 (a) Are to be converted under the plan of merger into other securities,
2 interests, obligations, rights to acquire shares, other securities or interests, or into
3 cash, other property, or any combination of the foregoing; or
4 (b) Would be entitled to vote as a separate group on a provision in the plan
5 that, if contained in a proposed amendment to articles of incorporation, would
6 require action by separate voting groups under Section 1-1004;
7 (2) On a plan of share exchange, by each class or series of shares included
8 in the exchange, with each class or series constituting a separate voting group; and
9 (3) On a plan of merger or share exchange, if the voting group is entitled
10 under the articles of incorporation to vote as a voting group to approve a plan of
11 merger or share exchange.
12 G. Unless the articles of incorporation otherwise provide, approval by the
13 corporation's shareholders of a plan of merger or share exchange is not required if:
14 (1) The corporation will survive the merger or is the acquiring corporation
15 in a share exchange;
16 (2) Except for amendments permitted by Section 1-1005, its articles of
17 incorporation will not be changed;
18 (3) Each shareholder of the corporation whose shares were outstanding
19 immediately before the effective date of the merger or share exchange will hold the
20 same number of shares, with identical preferences, limitations, and relative rights,
21 immediately after the effective date of change; and
22 (4) The issuance in the merger or share exchange of shares or other securities
23 convertible into or rights exercisable for shares does not require a vote under
24 Subsection 1-621(F) of this Act.
25 H. If as a result of a merger or share exchange one or more shareholders of
26 a domestic corporation would become subject to owner liability for the debts,
27 obligations or liabilities of any other person or entity, approval of the plan of merger

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1 or share exchange shall require the execution, by each such shareholder, of a separate
2 written consent to become subject to such owner liability.
3 Source: MBCA §11.04.
4 Comment - 2013 Revision
5 Model Act Subsection (f) requires that shareholders approve a plan of merger
6 or share exchange by a majority of votes cast at a meeting at which at which at least
7 a majority of the votes entitled to be cast on the plan is present in person or by proxy,
8 plus separate approvals by voting groups that are entitled to vote separately on the
9 plan using the same quorum and majority-of-votes-cast standards. This Act
10 increases the vote required for approval of a plan of merger from a majority of votes
11 cast to a majority of the shares entitled to vote. Because the higher voting standard
12 can be achieved only if the quorum requirement of the Model Act is also satisfied,
13 the Model Act's separate reference to a required quorum is eliminated.
14 §1-1105. Merger between parent and subsidiary or between subsidiaries
15 A. A domestic parent corporation that owns shares of a domestic or foreign
16 subsidiary corporation that carry at least ninety percent of the voting power of each
17 class and series of the outstanding shares of the subsidiary that have voting power
18 may merge the subsidiary into itself or into another such subsidiary, or merge itself
19 into the subsidiary, without the approval of the board of directors or shareholders of
20 the subsidiary, unless the articles of incorporation of any of the corporations
21 otherwise provide, or unless, in the case of a foreign subsidiary, approval by the
22 subsidiary's board of directors or shareholders is required by the laws under which
23 the subsidiary is organized.
24 B. If under Subsection A of this Section approval of a merger by the
25 subsidiary's shareholders is not required, the parent corporation shall, within ten days
26 after the effective date of the merger, notify each of the subsidiary's shareholders that
27 the merger has become effective.
28 C. Except as provided in Subsections A and B of this Section, a merger
29 between a parent and a subsidiary shall be governed by the provisions of Part 11 of
30 this Act applicable to mergers generally.
31 Source: MBCA §11.05.

1 §1-1106. Articles of merger or share exchange
2 A. After a plan of merger or share exchange has been adopted and approved
3 as required by this Act, articles of merger or share exchange shall be signed on
4 behalf of each party to the merger or share exchange by any officer or other duly
5 authorized representative. The articles shall set forth:
6 (1) The names of the parties to the merger or share exchange;
7 (2) If the articles of incorporation of the survivor of a merger are amended,
8 or if a new corporation is created as a result of a merger, the amendments to the
9 survivor's articles of incorporation or the articles of incorporation of the new
10 corporation;
11 (3) If the plan of merger or share exchange required approval by the
12 shareholders of a domestic corporation that was a party to the merger or share
13 exchange, a statement that the plan was duly approved by the shareholders and, if
14 voting by any separate voting group was required, by each such separate voting
15 group, in the manner required by this Act and the articles of incorporation;
16 (4) If the plan of merger or share exchange did not require approval by the
17 shareholders of a domestic corporation that was a party to the merger or share
18 exchange, a statement to that effect; and
19 (5) As to each eligible entity or foreign corporation that was a party to the
20 merger or share exchange, a statement that the participation of the eligible entity or
21 foreign corporation was duly authorized as required by the organic law of the eligible
22 entity or corporation.
23 B. Articles of merger or share exchange shall be delivered to the secretary
24 of state for filing by the survivor of the merger or the acquiring corporation in a
25 share exchange, and shall take effect at the effective time provided in Section 1-123.
26 Articles of merger or share exchange filed under this Section may be combined with
27 any filing required under the organic law of any domestic eligible entity involved in
28 the transaction if the combined filing satisfies the requirements of both this Section
29 and the other organic law.

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1 C. Within thirty days of the date that articles of merger take effect, a
2 duplicate original or certified copy of the articles shall be filed in the conveyance
3 records of each parish in this state in which any of the parties to the merger has
4 immovable property.
5 Source: MBCA §11.06.
6 Comments - 2013 Revision
7 (a) This Act adds a new Subsection (C) to the Model Act provision, to retain
8 the rule in prior law that required a parish-level filing of merger documents in those
9 parishes in which one or more parties to the merger owned immovable property. The
10 earlier requirement that the merger documents also be filed in any parish in which
11 any of the merger parties had its registered office has been eliminated.
12 (b) The duplicate filing requirement in Subsection (C) does not apply to
13 articles of share exchange because a share exchange does not change the ownership
14 of immovable property by the parties to the share exchange.
15 (c) Under Civil Code Art. 3347, an instrument is "filed with the recorder"
16 when the recorder accepts it for filing in his office.
17 §1-1107. Effect of merger or share exchange
18 A. When a merger becomes effective:
19 (1) The corporation or eligible entity that is designated in the plan of merger
20 as the survivor continues or comes into existence, as the case may be;
21 (2) The separate existence of every corporation or eligible entity that is
22 merged into the survivor ceases;
23 (3) All property owned by, and every contract right possessed by, each
24 corporation or eligible entity that merges into the survivor is vested in the survivor
25 without any transfer, assignment, reversion or impairment;
26 (4) All liabilities of each corporation or eligible entity that is merged into the
27 survivor are vested in the survivor;
28 (5) The name of the survivor may, but need not be, substituted in any
29 pending proceeding for the name of any party to the merger whose separate existence
30 ceased in the merger;
31 (6) The articles of incorporation or organic documents of the survivor are
32 amended to the extent provided in the plan of merger;

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1 (7) The articles of incorporation or organic documents of a survivor that is
2 created by the merger become effective;
3 (8) The shares of each corporation that is a party to the merger, and the
4 interests in an eligible entity that is a party to a merger, that are to be converted
5 under the plan of merger into shares, eligible interests, obligations, rights to acquire
6 securities, other securities, or eligible interests, or into cash, other property, or any
7 combination of the foregoing, are converted, and the former holders of such shares
8 or eligible interests are entitled only to the rights provided to them in the plan of
9 merger or to any rights they may have under Part 13 of this Act or the organic law
10 of the eligible entity; and
11 (9) The survivor possesses all the rights, licenses, privileges, and franchises
12 possessed by each of the parties to the merger, except that the survivor does not
13 possess any right, license, privilege, or franchise that:
14 (a) The survivor is ineligible to possess or to exercise; or
15 (b) Does not survive a merger because of a provision to that effect in the law
16 or administrative rules under which the right, license, privilege, or franchise is held
17 at the time of the merger.
18 B. When a share exchange becomes effective, the shares of each domestic
19 corporation that are to be exchanged for shares or other securities, eligible interests,
20 obligations, rights to acquire shares, other securities or eligible interests, or for cash,
21 other property, or any combination of the foregoing, are entitled only to the rights
22 provided to them in the plan of share exchange or to any rights they may have under
23 Part 13 of this Act.
24 C. A person who becomes subject to owner liability for some or all of the
25 debts, obligations or liabilities of any entity as a result of a merger or share exchange
26 shall have owner liability only to the extent provided in the organic law of the entity
27 and only for those debts, obligations and liabilities that arise after the effective time
28 of the articles of merger or share exchange.

1 D. Upon a merger becoming effective, a foreign corporation, or a foreign
2 eligible entity, that is the survivor of the merger remains:
3 (1) Obligated under the laws of this state to pay promptly the amount, if any,
4 to which shareholders of each domestic corporation who exercise appraisal rights are
5 entitled under Part 13 of this Act; and
6 (2) Subject to the personal jurisdiction of the courts of this state in
7 accordance with R.S. 13:3201, and to service of process in accordance with law.
8 E. The effect of a merger or share exchange on the owner liability of a
9 person who had owner liability for some or all of the debts, obligations or liabilities
10 of a party to the merger or share exchange shall be as follows:
11 (1) The merger or share exchange does not discharge any owner liability
12 under the organic law of the entity in which the person was a shareholder or interest
13 holder to the extent any such owner liability arose before the effective time of the
14 articles of merger or share exchange.
15 (2) The person shall not have owner liability under the organic law of the
16 entity in which the person was a shareholder or interest holder prior to the merger or
17 share exchange for any debt, obligation or liability that arises after the effective time
18 of the articles of merger or share exchange.
19 (3) The provisions of the organic law of any entity for which the person had
20 owner liability before the merger or share exchange shall continue to apply to the
21 collection or discharge of any owner liability preserved by Paragraph (1) of this
22 Subsection, as if the merger or share exchange had not occurred.
23 (4) The person shall have whatever rights of contribution from other persons
24 are provided by the organic law of the entity for which the person had owner liability
25 with respect to any owner liability preserved by Paragraph (1) of this Subsection, as
26 if the merger or share exchange had not occurred.
27 F. For purposes of service of process under Paragraph (D)(2) of this
28 Subsection, a foreign eligible entity that is a survivor of a merger may be served in

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1 accordance with the rules applicable to service of process on a foreign corporation,
2 as if:
3 (1) The survivor were a foreign corporation; and
4 (2) Each of following persons were a director of that corporation:
5 (a) A general partner if the survivor is a partnership of any kind;
6 (b) A member if the survivor is a member-managed limited liability
7 company;
8 (c) A manager if the survivor is a manager-managed limited liability
9 company; and
10 (d) A person holding managerial authority in the survivor, regardless of the
11 form of the surviving entity, that is similar to that of an officer or director of a
12 domestic business corporation.
13 Source: MBCA §11.07.
14 Comments - 2013 Revision
15 (a) This Act adds a new Paragraph (9) to Subsection (a), to retain the rule in
16 prior law that the survivor of a merger holds all of the rights, privileges and
17 franchises held by each of the parties to the merger. Prior law restricted the
18 operation of the rule to those objects or functions for which a domestic business
19 corporation could be formed. Because the survivor of a merger under this Act may
20 be something other than a domestic corporation, and because the prior limitation did
21 not yield even to contrary provision in the controlling licensing laws, the limitation
22 of the rule in Paragraph (A)(9) has been broadened in this Act from that in prior law.
23 Under the broader limitation, the survivor does not possess the rights and licenses
24 of the merging parties under two circumstances: (1) the survivor would be ineligible
25 to hold the right or license or (2) the licensing or regulatory law applicable to the
26 activity or business in question precludes the right or license from surviving a
27 merger. Hence, as a general matter, Paragraph (A)(9) is designed to let the survivor
28 of a merger continue to operate all of the businesses that were engaged in by the
29 merging parties before the merger, without triggering the need for new license
30 applications or approvals merely because the licensing or regulatory body may deem
31 the survivor of the merger not to be the same legal person as the merged company.
32 A survivor becomes a licensee through a merger with a licensed party not by means
33 of transfer but by operation of law, subject only to the exceptions stated in (A)(9).
34 The exceptions in (A)(9) are designed not to permit a merger party that would be
35 ineligible for a particular form of license or franchise to acquire one through a
36 merger (as in a merger between a bank and an ordinary business corporation in
37 which the business corporation survived and claimed the right to operate a bank), and
38 to yield to more specific provisions on the subject that may exist in a given licensing
39 or regulatory scheme.
40 (b) Model Act Paragraph (d)(1) provides that a foreign survivor of a merger
41 is deemed to appoint the secretary of state as its agent for service of process in a
42 proceeding to enforce the appraisal rights of shareholders of any domestic
43 corporations that were parties to the merger. Because service on the secretary of

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1 state is a last-resort mechanism for serving foreign entities under Louisiana law, this
2 Act modifies (d)(1) to say simply that service of process may be carried out in
3 accordance with law. The Code of Civil Procedure (supplemented by reference to
4 provisions of the long arm statute, R.S. 13:3201-3207) provides the rules for service
5 of process. The rules for domestic and foreign corporations are stated in Arts. 1261
6 and 1262, for partnerships in Art. 1263, for unincorporated associations in Art. 1264,
7 and for domestic and foreign limited liability companies in Arts. 1266 and 1267.

8 (c) The rules in the Code of Civil Procedure for service of process on foreign
9 entities are well-developed and similar with respect to corporations and LLCs. The
10 partnership and unincorporated association rules, however, are more abbreviated and
11 may not apply or work as well as the corporate rules would work in dealing with
12 foreign partnerships and other foreign entities that do not fit well into any of the
13 listed categories of organizations. This Act addresses those problems in the context
14 of appraisal rights suits by adding a new Subsection (F). Subsection (F) provides
15 that, for purposes of service under Paragraph (D)(1), all foreign eligible entities are
16 treated as foreign corporations, and those who hold managerial authority in a foreign
17 eligible entity comparable to that of a corporate officer or director are treated as
18 directors. Combining the rules in Subsection (F) with those in Code of Civil
19 Procedure Arts. 1261 and 1262, all forms of foreign eligible entities may be served
20 process in a suit to enforce appraisal rights through personal service on a registered
21 agent of the entity or, if no registered agent can be served, then by personal service
22 on any of the directors or director-like participants in the organization or on an entity
23 employee of suitable age and discretion at any place where the foreign eligible entity
24 regularly does business, or by service (typically by registered or certified mail) in
25 accordance with the long arm statute or, finally, failing all those other efforts, by
26 service on the secretary of state.

27 §1-1108. Abandonment of a merger or share exchange

28 A. Unless otherwise provided in a plan of merger or share exchange or in the
29 laws under which an eligible entity or foreign business corporation that is a party to
30 a merger or a share exchange is organized or by which it is governed, after the plan
31 has been adopted and approved as required by this Part, and at any time before the
32 merger or share exchange has become effective, it may be abandoned by a domestic
33 business corporation that is a party thereto without action by its shareholders in
34 accordance with any procedures set forth in the plan of merger or share exchange or,
35 if no such procedures are set forth in the plan, in the manner determined by the board
36 of directors, subject to any contractual rights of other parties to the merger or share
37 exchange.

38 B. If a merger or share exchange is abandoned under Subsection A of this
39 Section after articles of merger or share exchange have been filed with the secretary
40 of state but before the merger or share exchange has become effective, a statement
41 that the merger or share exchange has been abandoned in accordance with this

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1 Section, signed on behalf of a party to the merger or share exchange by an officer or
2 other duly authorized representative, shall be delivered to the secretary of state for
3 filing prior to the effective date of the merger or share exchange. Upon filing, the
4 statement shall take effect and the merger or share exchange shall be deemed
5 abandoned and shall not become effective.

6 Source: MBCA §11.08.

7 PART 12. DISPOSITION OF ASSETS

8 §1-1201. Disposition of assets not requiring shareholder approval

9 No approval of the shareholders of a corporation is required, unless the
10 articles of incorporation otherwise provide:

11 (1) To sell, lease, exchange, or otherwise dispose of any or all of the
12 corporation's assets in the usual and regular course of business;

13 (2) To mortgage, pledge, dedicate to the repayment of indebtedness (whether
14 with or without recourse), or otherwise encumber any or all of the corporation's
15 assets, whether or not in the usual and regular course of business;

16 (3) To transfer any or all of the corporation's assets to one or more
17 corporations or other entities all of the shares or interests of which are owned by the
18 corporation; or

19 (4) To distribute assets pro rata to the holders of one or more classes or series
20 of the corporation's shares, provided that the distribution does not violate the rights
21 of any class or series of shares.

22 Source: MBCA §12.01.

23 Comment - 2013 Revision

24 This Act adds a requirement to the rule in Model Act Paragraph (4) that the
25 distribution be made without violating the rights of any class or series of shares.

26 §1-1202. Shareholder approval of certain dispositions

27 A. A sale, lease, exchange, or other disposition of assets, other than a
28 disposition described in Section 1-1201, requires approval of the corporation's
29 shareholders if the disposition would leave the corporation without a significant
30 continuing business activity. If a corporation retains a business activity that

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1 represented at least twenty-five percent of total assets at the end of the most recently
2 completed fiscal year, and twenty-five percent of either income from continuing
3 operations before taxes or revenues from continuing operations for that fiscal year,
4 in each case of the corporation and its subsidiaries on a consolidated basis, the
5 corporation will conclusively be deemed to have retained a significant continuing
6 business activity.

7 B. A disposition that requires approval of the shareholders under Subsection
8 A of this Section shall be initiated by a resolution by the board of directors
9 authorizing the disposition. After adoption of such a resolution, the board of
10 directors shall submit the proposed disposition to the shareholders for their approval.
11 The board of directors shall also transmit to the shareholders a recommendation that
12 the shareholders approve the proposed disposition, unless (1) the board of directors
13 makes a determination that because of conflicts of interest or other special
14 circumstances it should not make such a recommendation, or (2) Section 1-826
15 applies. If either (1) or (2) applies, the board of directors shall transmit to the
16 shareholders the basis for so proceeding.

17 C. The board of directors may condition its submission of a disposition to
18 the shareholders under Subsection B of this Section on any basis.

19 D. If a disposition is required to be approved by the shareholders under
20 Subsection A of this Section, and if the approval is to be given at a meeting, the
21 corporation shall notify each shareholder, whether or not entitled to vote, of the
22 meeting of shareholders at which the disposition is to be submitted for approval. The
23 notice shall state that the purpose, or one of the purposes, of the meeting is to
24 consider the disposition and shall contain a description of the disposition, including
25 the terms and conditions thereof and the consideration to be received by the
26 corporation.

27 E. Unless the articles of incorporation or the board of directors acting
28 pursuant to Subsection C of this Section requires a greater vote, the approval of a

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1 disposition by the shareholders shall require the approval of at least a majority of the
2 votes entitled to be cast on the disposition.
3 F. After a disposition has been approved by the shareholders under
4 Subsection B of this Section, and at any time before the disposition has been
5 consummated, it may be abandoned by the corporation without action by the
6 shareholders, subject to any contractual rights of other parties to the disposition.
7 G. A disposition of assets in the course of dissolution under Part 14 of this
8 Act is not governed by this Section.
9 H. The assets of a direct or indirect consolidated subsidiary shall be deemed
10 the assets of the parent corporation for the purposes of this Section.
11 Source: MBCA §12.02.
12 Comment - 2013 Revision
13 This Act modifies Model Act Subsection (e) to increase the vote required to
14 approve a covered disposition of assets from a majority of the votes cast at a meeting
15 with at least a majority quorum, to a majority of all votes entitled to be cast.
16 PART 13. APPRAISAL RIGHTS
17 SUBPART A. RIGHT TO APPRAISAL AND PAYMENT FOR SHARES
18 §1-1301. Definitions
19 In this Part:
20 (1) "Affiliate" means a person that directly or indirectly through one or more
21 intermediaries controls, is controlled by, or is under common control with another
22 person or is a senior executive thereof. For purposes of Subsection 1-1302(B)(4) of
23 this Act, an entity is deemed to be an affiliate of its senior executives.
24 (2) "Beneficial shareholder" means a person who is the beneficial owner of
25 shares held in a voting trust or by a nominee on the beneficial owner's behalf.
26 (3) "Corporation" means the issuer of the shares held by a shareholder
27 demanding appraisal and, for matters covered in Sections 1-1322 through 1-1331,
28 includes the surviving entity in a merger.
29 (4) "Fair value" means the value of the corporation's shares determined:

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1 (a) Immediately before the effectuation of the corporate action to which the
2 shareholder objects;
3 (b) Using customary and current valuation concepts and techniques generally
4 employed for similar businesses in the context of the transaction requiring appraisal;
5 and
6 (c) Without discounting for lack of marketability or minority status except,
7 if appropriate, for amendments to the articles pursuant to Subsection 1-1302(A)(5)
8 of this Act.
9 (5) "Interest" means interest from the effective date of the corporate action
10 until the date of payment, at the rate of judicial interest.
11 (5.1) "Interested transaction" means a corporate action described in
12 Subsection 1-1302(A) of this Act involving an interested person in which any of the
13 shares or assets of the corporation are being acquired or converted. As used in this
14 Section:
15 (a) "Interested person" means a person, or an affiliate of a person, who at any
16 time during the one-year period immediately preceding approval by the board of
17 directors of the corporate action:
18 (i) Was the beneficial owner of twenty percent or more of the voting power
19 of the corporation, other than as owner of excluded shares;
20 (ii) Had the power, contractually or otherwise, other than as owner of
21 excluded shares, to cause the appointment or election of twenty-five percent or more
22 of the directors to the board of directors of the corporation; or
23 (iii) Was a senior executive or director of the corporation or a senior
24 executive of any affiliate thereof, and that senior executive or director will receive,
25 as a result of the corporate action, a financial benefit not generally available to other
26 shareholders as such, other than:
27 (A) Employment, consulting, retirement, or similar benefits established
28 separately and not as part of or in contemplation of the corporate action; or

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1 (B) Employment, consulting, retirement, or similar benefits established in
2 contemplation of, or as part of, the corporate action that are not more favorable than
3 those existing before the corporate action or, if more favorable, that have been
4 approved on behalf of the corporation in the same manner as is provided in Section
5 1-862; or

6 (C) In the case of a director of the corporation who will, in the corporate
7 action, become a director of the acquiring entity in the corporate action or one of its
8 affiliates, rights and benefits as a director that are provided on the same basis as
9 those afforded by the acquiring entity generally to other directors of such entity or
10 such affiliate.

11 (b) "Beneficial owner" means any person who, directly or indirectly, through
12 any contract, arrangement, or understanding, other than a revocable proxy, has or
13 shares the power to vote, or to direct the voting of, shares; except that a member of
14 a national securities exchange is not deemed to be a beneficial owner of securities
15 held directly or indirectly by it on behalf of another person solely because the
16 member is the record holder of the securities if the member is precluded by the rules
17 of the exchange from voting without instruction on contested matters or matters that
18 may affect substantially the rights or privileges of the holders of the securities to be
19 voted. When two or more persons agree to act together for the purpose of voting
20 their shares of the corporation, each member of the group formed thereby is deemed
21 to have acquired beneficial ownership, as of the date of the agreement, of all voting
22 shares of the corporation beneficially owned by any member of the group.

23 (c) "Excluded shares" means shares acquired pursuant to an offer for all
24 shares having voting power if the offer was made within one year prior to the
25 corporate action for consideration of the same kind and of a value equal to or less
26 than that paid in connection with the corporate action;

27 (6) "Preferred shares" means a class or series of shares whose holders have
28 preference over any other class or series with respect to distributions.

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1 (7) "Record shareholder" means the person in whose name shares are
2 registered in the records of the corporation or the beneficial owner of shares to the
3 extent of the rights granted by a nominee certificate on file with the corporation.
4 (8) "Senior executive" means the chief executive officer, chief operating
5 officer, chief financial officer, and anyone in charge of a principal business unit or
6 function.
7 (9) "Shareholder" means both a record shareholder and a beneficial
8 shareholder.
9 Source: MBCA §13.01
10 Comment - 2013 Revision
11 The Model Act excludes so-called "short form mergers" from its definition
12 of "interested transaction" in Paragraph (5.1). A short form merger is a merger that
13 is carried out between a ninety percent or greater parent company and one or more
14 of its subsidiaries, or among one or more ninety-percent-or-greater subsidiaries of
15 the same parent. See Section 11.05 (a). (The merger is called "short form" because
16 it may be carried out without the approval of either the board or shareholders of the
17 subsidiary. Id.) The purpose of the "interested transaction" definition is to prevent
18 the defined transaction from qualifying for the so-called "market out" exception that
19 makes appraisal rights unavailable in transactions in which they would otherwise be
20 provided.

21 This Act removes the exclusion of short form mergers from the definition of
22 "interested transaction" so that short form mergers may be treated as "interested
23 transactions" in the same way as ordinary mergers if they otherwise fit the definition
24 in Paragraph (5.1). The effect is to make appraisal rights available, and the market
25 out exception unavailable, in a short form mergers that qualifies as an interested
26 transaction.

27 The Model Act's removal of short form mergers from the definition of an
28 interested transaction is puzzling because a short form merger is one of the clearest
29 examples imaginable of a conflicting-interest transaction. It allows a parent
30 company to dictate unilaterally to a ninety-percent subsidiary the terms under which
31 a merger with the subsidiary will occur, without even the formality of an approving
32 vote by the subsidiary's board or shareholders.

33 The only setting in which a market-out exception for a short-term merger (or,
34 indeed, for any parent-subsidiary merger) is justified is in a two-step cash (or
35 public-shares) transaction in which the terms are set by market forces in the first
36 step, and then carried through to the second step short-form merger as well. A
37 typical example would be an unrelated acquirer making an all-shares cash tender
38 offer that resulted in the acquisition of at least a majority of the target's shares,
39 followed soon thereafter by a second-step merger at the same price, paid in cash, as
40 that provided in the tender offer. In that kind of transaction, the usual justifications
41 for the market out exception, i.e., liquidity and a market-set price, are met.

42 But the Model Act deals with that form of transaction elsewhere, through
43 more narrowly-tailored provisions. In general, without the exception for short form
44 mergers that this Act rejects, a parent company is an interested person because it

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1 owns twenty percent or more of the subsidiary's shares. See Section
2 13.01(5.1)(i)(A). However, in calculating the percentage of shares owned by the
3 parent, so-called "excluded shares" are not counted. Excluded shares are shares that
4 are acquired in an all-shares offer within one year of the date of a merger, as long as
5 the merger terms provide at least the same price, paid in the same form, as offered
6 in the first-step deal. See Subparagraph (5.1)(iii). Hence, a bidder that acquired
7 control of a target through a first-stage cash tender offer would not be treated as an
8 interested person in a second-stage merger (whether short form or ordinary), as long
9 as the merger occurred within a year and on the same terms as the tender offer.
10 (Note, however, that two-step management buyout could not use the excluded share
11 concept to avoid being treated as an "interested transaction." Another provision,
12 Clause (5.1)(i)(C), would independently cause that kind of transaction to be treated
13 as an "interested transaction" if the transaction otherwise fit the terms of that
14 provision.)

15 Because the "excluded shares" definition deals appropriately with the kinds
16 of mergers in which the market out exception should apply, this Act rejects the
17 general exception for short form mergers provided by the Model Act in Subsection
18 (5.1).

19 §1-1302. Right to appraisal

20 A. A shareholder is entitled to appraisal rights, and to obtain payment of the
21 fair value of that shareholder's shares, in the event of any of the following corporate
22 actions:

23 (1) Consummation of a merger to which the corporation is a party (a) if
24 shareholder approval is required for the merger by Section 1-1104, except that
25 appraisal rights shall not be available to any shareholder of the corporation with
26 respect to shares of any class or series that remain outstanding after consummation
27 of the merger or (b) if the corporation is a subsidiary and the merger is governed by
28 Section 1-1105;

29 (2) Consummation of a share exchange to which the corporation is a party
30 as the corporation whose shares will be acquired, except that appraisal rights shall
31 not be available to any shareholder of the corporation with respect to any class or
32 series of shares of the corporation that is not exchanged;

33 (3) Consummation of a disposition of assets pursuant to Section 1-1202
34 except that appraisal rights shall not be available to any shareholder of the
35 corporation with respect to shares of any class or series if (a) under the terms of the
36 corporate action approved by the shareholders there is to be distributed to
37 shareholders in cash its net assets, in excess of a reasonable amount reserved to meet

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1 claims of the type described in Sections 1-1406 and 1-1407, (i) within one year after
2 the shareholders' approval of the action and (ii) in accordance with their respective
3 interests determined at the time of distribution, and (b) the disposition of assets is not
4 an interested transaction;
5 (4) An amendment of the articles of incorporation with respect to a class or
6 series of shares that reduces the number of shares of a class or series owned by the
7 shareholder to a fraction of a share if the corporation has the obligation or right to
8 repurchase the fractional share so created;
9 (5) Any other amendment to the articles of incorporation, merger, share
10 exchange or disposition of assets to the extent provided by the articles of
11 incorporation, bylaws or a resolution of the board of directors;
12 (6) Consummation of a domestication if the shareholder does not receive
13 shares in the foreign corporation resulting from the domestication that have terms as
14 favorable to the shareholder in all material respects, and represent at least the same
15 percentage interest of the total voting rights of the outstanding shares of the
16 corporation, as the shares held by the shareholder before the domestication;
17 (7) Consummation of a conversion of the corporation to nonprofit status
18 pursuant to Subpart 9C of this Act; or
19 (8) Consummation of a conversion of the corporation to an unincorporated
20 entity pursuant to Subpart 9E of this Act.
21 B. Notwithstanding Subsection A of this Section, the availability of appraisal
22 rights under Paragraphs (A)(1), (2), (3), (4), (6) and (8) of this Subsection shall be
23 limited in accordance with the following provisions:
24 (1) Appraisal rights shall not be available for the holders of shares of any
25 class or series of shares which is:
26 (a) A covered security under Section 18(b)(1)(A) or (B) of the Securities Act
27 of 1933, as amended; or
28 (b) Traded in an organized market and has at least two thousand shareholders
29 and a market value of at least twenty million dollars (exclusive of the value of such

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1 shares held by the corporation's subsidiaries, senior executives, directors and
2 beneficial shareholders owning more than ten percent of such shares); or
3 (c) Issued by an open end management investment company registered with
4 the Securities and Exchange Commission under the Investment Company Act of
5 1940 and may be redeemed at the option of the holder at net asset value.
6 (2) The applicability of Paragraph (B)(1) of this Subsection shall be
7 determined as of:
8 (a) The record date fixed to determine the shareholders entitled to receive
9 notice of the meeting of shareholders to act upon the corporate action requiring
10 appraisal rights; or
11 (b) The day before the effective date of such corporate action if there is no
12 meeting of shareholders.
13 (3) Paragraph (B)(1) of this Subsection shall not be applicable and appraisal
14 rights shall be available pursuant to Subsection A of this Section for the holders of
15 any class or series of shares (a) who are required by the terms of the corporate action
16 requiring appraisal rights to accept for such shares anything other than cash or shares
17 of any class or any series of shares of any corporation, or any other proprietary
18 interest of any other entity, that satisfies the standards set forth in Paragraph (B)(1)
19 of this Subsection at the time the corporate action becomes effective or (b) in the
20 case of the consummation of a disposition of assets pursuant to Section 1-1202,
21 unless such cash, shares or proprietary interests are, under the terms of the corporate
22 action approved by the shareholders, to be distributed to the shareholders, as part of
23 a distribution to shareholders of the net assets of the corporation in excess of a
24 reasonable amount to meet claims of the type described in Sections 1-1406 and
25 1-1407, (i) within one year after the shareholders' approval of the action, and (ii) in
26 accordance with their respective interests determined at the time of the distribution.
27 (4) Paragraph (B)(1) of this Subsection shall not be applicable and appraisal
28 rights shall be available pursuant to Subsection A of this Section for the holders of
29 any class or series of shares where the corporate action is an interested transaction.

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1 C. Notwithstanding any other provision of Section 1-1302, the articles of
2 incorporation as originally filed or any amendment thereto may limit or eliminate
3 appraisal rights for any class or series of preferred shares, except that (1) no such
4 limitation or elimination shall be effective if the class or series does not have the
5 right to vote separately as a voting group (alone or as part of a group) on the action
6 or if the action is a nonprofit conversion under Subpart 9C of this Act or a
7 conversion to an unincorporated entity under Subpart 9E of this Act, or a merger
8 having a similar effect, and (2) any such limitation or elimination contained in an
9 amendment to the articles of incorporation that limits or eliminates appraisal rights
10 for any of such shares that are outstanding immediately prior to the effective date of
11 such amendment or that the corporation is or may be required to issue or sell
12 thereafter pursuant to any conversion, exchange or other right existing immediately
13 before the effective date of such amendment shall not apply to any corporate action
14 that becomes effective within one year of that date if such action would otherwise
15 afford appraisal rights.
16 Source: MBCA §13.02.
17 §1-1303. Assertion of rights by nominees and beneficial owners
18 A. A record shareholder may assert appraisal rights as to fewer than all the
19 shares registered in the record shareholder's name but owned by a beneficial
20 shareholder only if the record shareholder objects with respect to all shares of the
21 class or series owned by the beneficial shareholder and notifies the corporation in
22 writing of the name and address of each beneficial shareholder on whose behalf
23 appraisal rights are being asserted. The rights of a record shareholder who asserts
24 appraisal rights for only part of the shares held of record in the record shareholder's
25 name under this Subsection shall be determined as if the shares as to which the
26 record shareholder objects and the record shareholder's other shares were registered
27 in the names of different record shareholders.
28 B. A beneficial shareholder may assert appraisal rights as to shares of any
29 class or series held on behalf of the shareholder only if such shareholder:

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1 (1) Submits to the corporation the record shareholder's written consent to the
2 assertion of such rights no later than the date referred to in Subparagraph
3 1-1322(B)(2)(b) of this Act ; and
4 (2) Does so with respect to all shares of the class or series that are
5 beneficially owned by the beneficial shareholder.
6 Source: MBCA §13.03.
7 SUBPART B. PROCEDURE FOR EXERCISE OF APPRAISAL RIGHTS
8 §1-1320. Notice of appraisal rights
9 A. Where any corporate action specified in Subsection 1-1302(A) of this Act
10 is to be submitted to a vote at a shareholders' meeting, the meeting notice must state
11 that the corporation has concluded that the shareholders are, are not or may be
12 entitled to assert appraisal rights under this Part. If the corporation concludes that
13 appraisal rights are or may be available, the following statement shall be included
14 in the meeting notice sent to those record shareholders entitled to exercise appraisal
15 rights:
16 Appraisal rights allow a shareholder to avoid the effects of the proposed
17 corporate action described in this notice by selling the shareholder's shares
18 to the corporation at their fair value, paid in cash. To retain the right to assert
19 appraisal rights, a shareholder is required by law: (1) to deliver to the
20 corporation, before the vote is taken on the action described in this notice, a
21 written notice of the shareholder's intent to demand appraisal if the corporate
22 action proposed in this notice takes effect, and (2) not to vote, or cause or
23 permit to be voted, in favor of the proposed corporate action any shares of
24 the class or series for which the shareholder intends to assert appraisal rights.
25 If a shareholder complies with those requirements, and the action proposed
26 in this notice takes effect, the law requires the corporation to send to the
27 shareholder an appraisal form that the shareholder must complete and return,
28 and a copy of Part 13 of the Business Corporation Act, governing appraisal
29 rights.
30 B. In a merger pursuant to Section 1-1105, the parent corporation must
31 notify in writing all record shareholders of the subsidiary who are entitled to assert
32 appraisal rights that the corporate action became effective. Such notice must be sent
33 within ten days after the corporate action became effective and include the materials
34 described in Section 1-1322.
35 C. Where any corporate action specified in Subsection 1-1302(A) of this Act
36 is to be approved by written consent of the shareholders pursuant to Section 1-704:

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1 (1) Written notice that appraisal rights are, are not or may be available must
2 be sent to each record shareholder from whom a consent is solicited at the time
3 consent of such shareholder is first solicited and, if the corporation has concluded
4 that appraisal rights are or may be available, the following statement must be
5 included in the notice:

6 Appraisal rights allow a shareholder to avoid the effects of the proposed
7 corporate action described in this notice by selling the shareholder's shares
8 to the corporation at their fair value, paid in cash. To retain the right to assert
9 appraisal rights, a shareholder is required by law not to sign any consent in
10 favor of the proposed corporate action with respect to any shares of the class
11 or series for which the shareholder intends to assert appraisal rights. If a
12 shareholder complies with this requirement, and the corporate action
13 proposed in this notice takes effect, the law requires the corporation to send
14 to the shareholder an appraisal form that the shareholder must complete and
15 return, and a copy of Part 13 of the Business Corporation Act, governing
16 appraisal rights.

17 (2) Written notice that appraisal rights are, are not or may be available must
18 be delivered together with the notice to nonconsenting and nonvoting shareholders
19 required by Subsections 1-704(E) and (F) of this Act, may include the materials
20 described in Section 1-1322 and, if the corporation has concluded that appraisal
21 rights are or may be available, must be accompanied by a copy of this Part and the
22 following statement:

23 Appraisal rights allow a shareholder to avoid the effects of the corporate
24 action described in this notice by selling the shareholder's shares to the
25 corporation at their fair value, paid in cash. A shareholder may obtain
26 appraisal rights only by completing and returning an appraisal form that the
27 law requires the corporation to send to the shareholder, and by complying
28 with all other requirements of Part 13 of the Business Corporation Act, a
29 copy of which is enclosed.

30 D. Where corporate action described in Subsection 1-1302(A) of this Act is
31 proposed, or a merger pursuant to Section 1-1105 is effected, the notice referred to
32 in Subsection A or C of this Section, if the corporation concludes that appraisal
33 rights are or may be available, and in Subsection B of this Section shall be
34 accompanied by:

35 (1) The annual financial statements specified in Subsection 1-1620(B) of this
36 Act of the corporation that issued the shares that may be subject to appraisal, which
37 shall be as of a date ending not more than sixteen months before the date of the

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1 notice and shall comply with Subsection 1-1620(B) of this Act; provided that, if such
2 annual financial statements are not reasonably available, the corporation shall
3 provide reasonably equivalent financial information; and
4 (2) The latest available quarterly financial statements of such corporation,
5 if any.
6 E. The right to receive the information described in Subsection D of this
7 Section may be waived in writing by a shareholder before or after the corporate
8 action. If the information described in Subsection D of this Section is not publicly
9 available, the shareholder who receives it owes a duty to the corporation to use and
10 disclose the information only for purposes of deciding whether to exercise appraisal
11 rights and for other proper purposes.
12 Source: MBCA §13.20.
13 Comments - 2013 Revision
14 (a) The Model Act requires the corporation to send a copy of Chapter 13
15 along with the initial notice of a meeting or other shareholder action that may give
16 rise to appraisal rights. This Act replaces that requirement with a shorter,
17 statutorily-specified form of notice that apprises the shareholders of the information
18 most relevant to the stage of the transaction at which they receive the notice. This
19 Act requires the sending of the complete Part only when the corporation sends the
20 appraisal form under Section 1-1322 or when it is sending a notice to nonconsenting
21 and nonvoting shareholders under Section 1-704 that an appraisal-triggering action
22 has already been approved by the written consent of shareholders. See Sections
23 1-1322(B)(3); 1-1320 (C)(2).
24 (b) This Act adds a sentence to Subsection (E) that imposes a duty on a
25 shareholder who receives the financial information specified in Subsection (D) to use
26 that information for proper purposes only.
27 §1-1321. Notice of intent to demand appraisal and consequences of voting or
28 consenting
29 A. If a corporate action specified in Subsection 1-1302(A) of this Act is
30 submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert
31 appraisal rights with respect to any class or series of shares:
32 (1) Must deliver to the corporation, before the vote is taken, written notice
33 of the shareholder's intent to demand appraisal if the proposed action is effectuated;
34 and

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1 (2) Must not vote, or cause or permit to be voted, any shares of such class
2 or series in favor of the proposed action.
3 B. If a corporate action specified in Subsection 1-1302(A) of this Act is to
4 be approved by written consent, a shareholder may assert appraisal rights with
5 respect to a class or series of shares only if the shareholder does not sign a consent
6 in favor of the proposed action with respect to that class or series of shares.
7 C. A shareholder who fails to satisfy the requirements of Subsection A or B
8 of this Section is not entitled to appraisal under this Part.
9 Source: MBCA §13.21.
10 Comments - 2013 Revision
11 (a) The Model Act references to "payment" in the caption of this Section and
12 in Subsections (A)(1) and (C) have been replaced with the term "appraisal" to avoid
13 possible confusion between the payment that may be available through appraisal
14 rights and the payment being offered under the terms of the transaction with respect
15 to which the appraisal rights are being asserted.
16 (b) This Act modifies the Model Act language in Subsection (B) to make it
17 clear that a shareholder is not entitled to exercise appraisal rights with respect to a
18 class or series of shares if the shareholder has signed a consent with respect to the
19 relevant shares in a transaction that is approved by the written consent of
20 shareholders.
21 §1-1322. Appraisal notice and form
22 A. If a corporate action requiring appraisal rights under Subsection
23 1-1302(A) of this Act becomes effective, the corporation must send a written
24 appraisal notice and the form required by Paragraph (B)(1) of this Subsection to all
25 shareholders who satisfy the requirements of Section 1-1321(A) or Section
26 1-1321(B) of this Act. In the case of a merger under Section 1-1105, the parent must
27 deliver an appraisal notice and form to all record shareholders who may be entitled
28 to assert appraisal rights.
29 B. The appraisal notice must be delivered no earlier than the date the
30 corporate action specified in Subsection 1-1302(A) of this Act became effective, and
31 no later than ten days after such date, and must:
32 (1) Supply a form that requires the shareholder asserting appraisal rights to
33 certify that such shareholder did not vote for or consent to the transaction;

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1 (2) State:
2 (a) Where the form must be sent and where certificates for certificated shares
3 must be deposited and the date by which those certificates must be deposited, which
4 date may not be earlier than the date for receiving the required form under
5 Subparagraph (2)(b) of this Paragraph;
6 (b) A date by which the corporation must receive the form, which date may
7 not be fewer than forty nor more than sixty days after the date the Subsection A of
8 this Section appraisal notice is sent, and state that the shareholder shall have waived
9 the right to demand appraisal with respect to the shares unless the form is received
10 by the corporation by such specified date;
11 (c) The corporation's estimate of the fair value of the shares;
12 (d) That, if requested in writing, the corporation will provide, to the
13 shareholder so requesting, within ten days after the date specified in Subparagraph
14 (2)(b) the number of shareholders who return the forms by the specified date and the
15 total number of shares owned by them; and
16 (e) The date by which the notice to withdraw under Section 1-1323 must be
17 received, which date must be at least twenty days after the date specified in
18 Subparagraph (2)(b) of this Paragraph; and
19 (3) Be accompanied by a copy of this Part.
20 C. A corporation may elect to withhold payment as permitted by Section
21 1-1325 only if the form required by Subsection B of this Section:
22 (1) Specifies the first date of any announcement to shareholders made prior
23 to the date the corporate action became effective of the principal terms of the
24 proposed corporate action, and
25 (2) If such announcement was made, requires the shareholder asserting
26 appraisal rights to certify whether beneficial ownership of those shares for which
27 appraisal rights are asserted was acquired before that date.
28 Source: MBCA §13.22.

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1 Comment - 2013 Revision

2 Model Act Paragraph (b)(1) requires all notices of appraisal to include
3 "announcement date" information concerning the transaction with respect to which
4 a shareholder is demanding appraisal rights, and to require certifications from the
5 shareholder that the relevant shares were acquired before that date. Those items are
6 relevant only where the corporation wishes to exercise its right not to make an
7 immediate payment for so-called "after acquired" shares under Sections 13.24 and
8 13.25. Because the after-acquired shares issue is irrelevant to most closely-held
9 corporations, this Act moves the announcement and acquisition date items from the
10 general rules in Paragraph (B)(1) to a new Subsection (C). The notice required by
11 Subsection (B) need not include the items covered by new Subsection (C) unless the
12 corporation wishes to preserve its right to withhold an immediate payment for
13 after-acquired shares, something that is likely to be relevant only where an active
14 trading market exists for the corporation's shares.

15 §1-1323. Perfection of rights and right to withdraw

16 A. A shareholder who receives notice pursuant to Section 1-1322 and who
17 wishes to exercise appraisal rights must sign and return the form sent by the
18 corporation and, in the case of certificated shares, deposit the shareholder's
19 certificates in accordance with the terms of the notice by the date referred to in the
20 notice pursuant to Subparagraph 1-1322(B)(2)(b) of this Act. In addition, if
21 applicable, the shareholder must certify on the form whether the beneficial owner of
22 such shares acquired beneficial ownership of the shares before the date required to
23 be set forth in the notice pursuant to Paragraph 1-1322(B)(1) of this Act. If a
24 shareholder fails to make this certification, the corporation may elect to treat the
25 shareholder's shares as after-acquired shares under Section 1-1325. Once a
26 shareholder deposits that shareholder's certificates or, in the case of uncertificated
27 shares, returns the signed forms, that shareholder loses all rights as a shareholder,
28 unless the shareholder withdraws pursuant to Subsection B of this Section.

29 B. A shareholder who has complied with Subsection A of this Section may
30 nevertheless decline to exercise appraisal rights and withdraw from the appraisal
31 process by so notifying the corporation in writing by the date set forth in the
32 appraisal notice pursuant to Subparagraph 1-1322(B)(2)(e) of this Act. A
33 shareholder who fails to so withdraw from the appraisal process may not thereafter
34 withdraw without the corporation's written consent.

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1 C. A shareholder who does not sign and return the form and, in the case of
2 certificated shares, deposit that shareholder's share certificates where required, each
3 by the date set forth in the notice described in Subsection 1-1322(B) of this Act, shall
4 not be entitled to payment under this Part.
5 Source: MBCA §13.23.
6 §1-1324. Payment
7 A. Except as provided in Section 1-1325, within thirty days after the form
8 required by Subparagraph 1-1322(B)(2)(b) of this Act is due, the corporation shall
9 pay in cash to those shareholders who complied with Subsection 1-1323(A) of this
10 Act the amount the corporation estimates to be the fair value of their shares, plus
11 interest.
12 B. Except as provided in Subsection C of this Section, the payment to each
13 shareholder pursuant to Subsection A of this Section must be accompanied by:
14 (1)(a) The annual financial statements specified in Subsection 1-1620(B) of
15 this Act of the corporation that issued the shares to be appraised, which shall be of
16 a date ending not more than sixteen months before the date of payment and shall
17 comply with Subsection 1-1620(B) of this Act; provided that, if such annual
18 financial statements are not reasonably available, the corporation shall provide
19 reasonably equivalent financial information, and (b) the latest available quarterly
20 financial statements of such corporation, if any;
21 (2) A statement of the corporation's estimate of the fair value of the shares,
22 which estimate must equal or exceed the corporation's estimate given pursuant to
23 Subparagraph 1-1322(B)(2)(c) of this Act;
24 (3) A statement that shareholders described in Subsection A of this Section
25 have the right to demand further payment under Section 1-1326 and that if any such
26 shareholder does not do so within the time period specified therein, such shareholder
27 shall be deemed to have accepted such payment in full satisfaction of the
28 corporation's obligations under this Part.

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1 C. The financial information described in Paragraph (B)(1) of this Section
2 need not accompany the corporation's payment under Subsection A of this Section
3 if the corporation has earlier delivered to the shareholder financial information that
4 meets the requirements of Paragraph (B) (1) of this Section as of the time of the
5 payment.

6 Source: MBCA §13.24.

7 Comments - 2013 Revision

8 This Act adds a new Subsection (C) that allows a corporation to avoid
9 duplicative deliveries of financial information. Section 1-1320(D) requires the
10 notice of appraisal rights to be accompanied by the same financial statements as
11 those required under Subsection (B) of this Section in connection with the
12 corporation's payment of the amount it estimates as the fair value of the shares.
13 Under new Subsection (C), the second delivery of financial statements is excused if
14 the statements sent earlier still meet the requirements of Subsection (B). A second
15 delivery of annual financial statements or their equivalents would be required only
16 if enough time had passed between the notice of appraisal under Section 1-1320 and
17 the payment under this Section to cause the earlier-delivered financial statements no
18 longer to meet the requirement that they be stated as of a date ending not more than
19 sixteen months before the date of the payment. The elimination of the duplicate
20 delivery requirement does not affect the discovery rights of a shareholder in an
21 action to enforce the shareholder's appraisal rights.

22 §1-1325. After-acquired shares

23 A. A corporation may elect to withhold payment required by Section 1-1324
24 from any shareholder who was required to, but did not certify that beneficial
25 ownership of all of the shareholder's shares for which appraisal rights are asserted
26 was acquired before the date specified in the appraisal notice sent in accordance with
27 Subsections 1-1322(B)(1) and (C) of this Act.

28 B. If the corporation elects to withhold payment under Subsection A of this
29 Section, it must, within 30 days after the form required by Subparagraph
30 1-1322(B)(2)(b) of this Act is due, notify all shareholders who are described in
31 Subsection A of this Section:

32 (1) Of the information required by Paragraph 1-1324(B)(1) of this Act;

33 (2) Of the corporation's estimate of fair value pursuant to Paragraph
34 1-1324(B)(2) of this Act;

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1 (3) That they may accept the corporation's estimate of fair value, plus
2 interest, in full satisfaction of their demands or demand appraisal under Section
3 1-1326;
4 (4) That those shareholders who wish to accept such offer must so notify the
5 corporation of their acceptance of the corporation's offer within thirty days after
6 receiving the offer; and
7 (5) That those shareholders who do not satisfy the requirements for
8 demanding appraisal under Section 1-1326 shall be deemed to have accepted the
9 corporation's offer.
10 C. Within ten days after receiving the shareholder's acceptance pursuant to
11 Subsection (B), the corporation must pay in cash the amount it offered under
12 Paragraph (B)(2) to each shareholder who agreed to accept the corporation's offer in
13 full satisfaction of the shareholder's demand.
14 D. Within forty days after sending the notice described in Subsection B of
15 this Section, the corporation must pay in cash the amount it offered to pay under
16 Paragraph (B)(2) of this Section to each shareholder described in Paragraph (B)(5)
17 of this Section.
18 Source: MBCA §13.25.
19 §1-1326. Procedure if shareholder dissatisfied with payment or offer
20 A. A shareholder paid pursuant to Section 1-1324 who is dissatisfied with
21 the amount of the payment must notify the corporation in writing of that
22 shareholder's estimate of the fair value of the shares and demand payment of that
23 estimate plus interest (less any payment under Section 1-1324). A shareholder
24 offered payment under Section 1-1325 who is dissatisfied with that offer must reject
25 the offer and demand payment of the shareholder's stated estimate of the fair value
26 of the shares plus interest.
27 B. A shareholder who fails to notify the corporation in writing of that
28 shareholder's demand to be paid the shareholder's stated estimate of the fair value
29 plus interest under Subsection A of this Section within thirty days after receiving the

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1 corporation's payment or offer of payment under Section 1-1324 or Section 1-1325,
2 respectively, waives the right to demand payment under this Section and shall be
3 entitled only to the payment made or offered pursuant to those respective Sections.
4 Source: MBCA §13.26.
5 SUBPART C. JUDICIAL APPRAISAL OF SHARES
6 §1-1330. Court action
7 A. If a shareholder makes demand for payment under Section 1-1326 which
8 remains unsettled, the corporation shall commence a summary proceeding within
9 sixty days after receiving the payment demand and petition the court to determine
10 the fair value of the shares and accrued interest. If the corporation does not
11 commence the proceeding within the sixty-day period, it shall pay in cash to each
12 shareholder the amount the shareholder demanded pursuant to Section 1-1326, plus
13 interest, within ten days after the expiration of the sixty-day period.
14 B. The corporation shall commence the proceeding in the district court of the
15 parish where the corporation's principal office (or, if none, its registered office) in
16 this state is located. If the corporation is a foreign corporation without a registered
17 office in this state, it shall commence the proceeding in the parish in this state where
18 the principal office or registered office of the domestic corporation merged with the
19 foreign corporation was located at the time of the transaction.
20 C. The corporation shall make all shareholders (whether or not residents of
21 this state) whose demands remain unsettled parties to the proceeding, and all parties
22 must be served with a copy of the petition. Nonresidents may be served as provided
23 by law.
24 D. The jurisdiction of the court in which the proceeding is commenced under
25 Subsection B of this Section is exclusive. The court may appoint an appraiser to file
26 a written report with the court on the question of fair value. The appraiser shall have
27 the powers described in the appointing order, or in any amendment to it. The
28 shareholders demanding appraisal rights are entitled to the same discovery rights as
29 parties in other civil proceedings. If the court appoints an appraiser, the appraiser's

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1 written report shall be treated as the report of an expert witness, and the corporation
2 and shareholders demanding appraisal shall be entitled to depose and to examine and
3 cross-examine the appraiser as an expert witness.
4 E. Each shareholder made a party to the proceeding is entitled to judgment
5 (1) for the amount, if any, by which the court finds the fair value of the shareholder's
6 shares, plus interest, exceeds the amount paid by the corporation to the shareholder
7 for such shares or (2) for the fair value, plus interest, of the shareholder's shares for
8 which the corporation elected to withhold payment under Section 1-1325.
9 Source: MBCA §13.30.
10 Comments - 2013 Revision
11 (a) This Act modifies Model Act Subsection (a) to state that the proceeding
12 to be commenced by the corporation is to be a summary proceeding. Because a jury
13 is unavailable in a summary proceeding, the Model Act rule against a jury trial in
14 Subsection (d) was deleted as redundant.
15 (b) This Act also adds a date by which the corporation must pay the amount
16 demanded by a shareholder if the corporation fails to commence the appraisal
17 proceeding within the sixty-day period specified in Subsection (A). The peremptive
18 period for the enforcement of this payment obligation, which is provided in Section
19 1-1331 (D), is measured from that date.
20 (c) Model Act Subsection (d) provides that a court-appointed appraiser may
21 "receive evidence and a recommend a decision" in the appraisal proceeding. This
22 Act modifies Subsection (d) to treat the appraiser as a court-appointed expert
23 witness.
24 §1-1331. Court costs and expenses
25 A. The court in an appraisal proceeding commenced under Section 1-1330
26 shall determine all court costs of the proceeding, including the reasonable
27 compensation and expenses of appraisers appointed by the court. The court shall
28 assess the court costs against the corporation, except that the court may assess court
29 costs against all or some of the shareholders demanding appraisal, in amounts which
30 the court finds equitable, to the extent the court finds such shareholders acted
31 arbitrarily, vexatiously, or not in good faith with respect to the rights provided by
32 this Part.
33 B. The court in an appraisal proceeding may also assess the expenses of the
34 respective parties in amounts the court finds equitable:

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1 (1) Against the corporation and in favor of any or all shareholders
2 demanding appraisal if the court finds the corporation did not substantially comply
3 with the requirements of Sections 1-1320, 1-1322, 1-1324, or 1-1325; or
4 (2) Against either the corporation or a shareholder demanding appraisal, in
5 favor of any other party, if the court finds the party against whom expenses are
6 assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights
7 provided by this Part.
8 C. If the court in an appraisal proceeding finds that the expenses incurred by
9 any shareholder were of substantial benefit to other shareholders similarly situated
10 and that such expenses should not be assessed against the corporation, the court may
11 direct that such expenses be paid out of the amounts awarded the shareholders who
12 were benefited.
13 D. To the extent the corporation fails to make a required payment pursuant
14 to Sections 1-1324, 1-1325, 1-1326, or 1-1330(A), the shareholder may sue directly
15 for the amount owed, and to the extent successful, shall be entitled to recover from
16 the corporation all expenses of the suit. The shareholder's right to enforce the
17 corporation's payment obligation under this Subsection is perempted five years after
18 the date that the payment by the corporation becomes due under the relevant
19 provision.
20 Source: MBCA §13.31.
21 Comments - 2013 Revision
22 (a) This Act adds Section 1-1330(A) to the list of Sections under which a
23 corporation's payment obligation may provide a cause of action under Subsection
24 (D).
25 (b) This Act also adds a five year peremptive period for the actions
26 authorized by Subsection (D), measured from the date that the payment from the
27 corporation becomes due under the relevant provision.
28 SUBPART D. OTHER REMEDIES
29 §1-1340. Other remedies limited
30 A. The legality of a proposed or completed corporate action described in
31 Subsection 1-1302(A) of this Act may not be contested, nor may the corporate action

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1 be enjoined, set aside or rescinded, in any proceeding commenced by a shareholder
2 after the shareholders have approved the corporate action.
3 B. Subsection A of this Section does not apply to a corporate action that:
4 (1) Was not authorized and approved in accordance with the applicable
5 provisions of:
6 (a) Part 9, 10, 11, or 12 of this Act,
7 (b) The articles of incorporation or bylaws, or
8 (c) The resolution of the board of directors authorizing the corporate action;
9 or
10 (2) [Reserved.]
11 (3) [Reserved.]
12 (4) Is approved by less than unanimous consent of the voting shareholders
13 pursuant to Section 1-704 if:
14 (a) The challenge to the corporate action is brought by a shareholder who did
15 not consent and as to whom notice of the approval of the corporate action was not
16 effective at least ten days before the corporate action was effected; and
17 (b) The proceeding challenging the corporate action is commenced within
18 ten days after notice of the approval of the corporate action is effective as to the
19 shareholder bringing the proceeding.
20 Source: MBCA §13.40.
21 Comment - 2013 Revision
22 Model Act Paragraphs (b)(2) and (3) provide exceptions to the operation of
23 Subsection (A) for a corporate action that was an "interested transaction," if not
24 approved as provided in Sections 1-862 and 1-863, or one that was procured as a
25 result of a material mistake, misrepresentation or omission. This Act deletes those
26 Subsections because of the potential they create of negating the effects of Subsection
27 (A) almost entirely.
28 PART 14. DISSOLUTION
29 SUBPART A. VOLUNTARY DISSOLUTION
30 §1-1401. [Reserved.]

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1 Comment - 2013 Revision

2 The substance of the simplified dissolution mechanism provided by Model
3 Act Section 14.01 has been incorporated into Section 1-1441 of this Act, concerning
4 a simplified form of termination.

5 §1-1402. Dissolution by board of directors and shareholders

6 A. A corporation's board of directors may propose dissolution for submission
7 to the shareholders.

8 B. For a proposal to dissolve to be adopted:

9 (1) The board of directors must recommend dissolution to the shareholders
10 unless the board of directors determines that because of conflict of interest or other
11 special circumstances it should make no recommendation and communicates the
12 basis for its determination to the shareholders; and

13 (2) The shareholders entitled to vote must approve the proposal to dissolve
14 as provided in Subsection E of this Section.

15 C. The board of directors may condition its submission of the proposal for
16 dissolution on any basis.

17 D. The corporation shall notify each shareholder, whether or not entitled to
18 vote, of the proposed shareholders' meeting. The notice must also state that the
19 purpose, or one of the purposes, of the meeting is to consider dissolving the
20 corporation.

21 E. Unless the articles of incorporation or the board of directors acting
22 pursuant to Subsection C of this Section require a greater vote or a vote by voting
23 groups, adoption of the proposal to dissolve shall require the approval of at least a
24 majority of the votes entitled to be cast.

25 Source: MBCA §14.02.

26 §1-1403. Articles of dissolution

27 A. At any time after dissolution is authorized, the corporation may dissolve
28 by delivering to the secretary of state for filing articles of dissolution setting forth:

29 (1) The name of the corporation;

30 (2) The date dissolution was authorized; and

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(3) If dissolution was approved by the shareholders, a statement that the proposal to dissolve was duly approved by the shareholders in the manner required by this Act and by the articles of incorporation.

B. A corporation is dissolved upon the effective date of its articles of dissolution.

C. For purposes of this Subpart, "dissolved corporation" means a corporation whose articles of dissolution have become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to its liabilities for purposes of liquidation.

D. The secretary of state shall deliver a notice of the filing of the articles of dissolution to:

(1) The secretary of the Department of Revenue;

(2) The secretary of the Department of Environmental Quality; and

(3) The administrator of the Louisiana Employment Security Law.

Source: MBCA §14.03, R.S. 12:148 (2012).

Comments - 2013 Revision

(a) The rules in this Section concerning the content of a corporation's articles of dissolution are supplemented by the general rules in Section 1-120 for the filing of documents under this Act. The effective date of the articles is governed by Section 1-123(A), and the duty of the secretary of state to file the articles, if they meet the requirements for filing, is provided by Section 1-125(A).

(b) Subsection (D) is not part of the Model Act. It was added to this Act to retain a modified version of former R.S. 12:148(B). That Section conditioned the obligation of the secretary of state to file a corporation's final articles of dissolution (declaring its liquidation to be complete) on the filing of a certificate from each of the three listed agencies, to the effect that the already-liquidated corporation owed no unpaid debts to the agency or to the funds that the agency administered. The former approach was not retained unchanged in this Act because it imposed indefinite delays on the completion of the dissolution process, while providing the required notices only when they were too late to do much good, after the corporation had already liquidated and distributed all its assets.

(c) As adopted in this Act, Subsection (D) requires the secretary of state to notify the listed agencies of the filing of articles of dissolution under this Section. Because articles of dissolution are filed at the beginning of a corporation's liquidation process, the notice is provided when it is still useful, before the corporation has already paid its other debts and distributed its residual value to its shareholders. And because the agencies are relieved of any obligation to take some affirmative position on whether a debt is owed, they are free to pursue the enforcement strategies they consider most efficient with respect to dissolved corporations, without delaying the completion of all corporate dissolutions for the

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1 indefinite time required to make the affirmative certifications required by the prior
2 law.

3 §1-1404. Revocation of dissolution

4 A. A corporation that is not terminated may revoke its dissolution within one
5 hundred and twenty days of its effective date.

6 B. Revocation of dissolution must be authorized in the same manner as the
7 dissolution was authorized unless that authorization permitted revocation by action
8 of the board of directors alone, in which event the board of directors may revoke the
9 dissolution without shareholder action.

10 C. After the revocation of dissolution is authorized, the corporation may
11 revoke the dissolution by delivering to the secretary of state for filing articles of
12 revocation of dissolution that set forth:

13 (1) The name of the corporation;

14 (2) The effective date of the dissolution that was revoked;

15 (3) The date that the revocation of dissolution was authorized;

16 (4) If the corporation's board of directors (or incorporators) revoked the
17 dissolution, a statement to that effect;

18 (5) If the corporation's board of directors revoked a dissolution authorized
19 by the shareholders, a statement that revocation was permitted by action by the board
20 of directors alone pursuant to that authorization; and

21 (6) If shareholder action was required to revoke the dissolution, the
22 information required by Paragraph 1-1403(A)(3) of this Act.

23 D. Revocation of dissolution is effective upon the effective date of the
24 articles of revocation of dissolution.

25 E. When the revocation of dissolution is effective, it relates back to and takes
26 effect as of the effective date of the dissolution and the corporation resumes carrying
27 on its business as if dissolution had never occurred.

28 F . A dissolution under Section 1-1438 is not revocable.

29 Source: MBCA §14.04.

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are additions.

1 Comments - 2013 Revision

2 (a) Unlike the Model Act, this Act distinguishes between a corporation that
3 has been dissolved and one that has been terminated. A corporation may revoke its
4 dissolution under Subsection (A) only if the corporation is not already terminated.
5 If the corporation is terminated, it may seek reinstatement as provided in Section
6 1-1444.

7 (b) This Act adds a new Subsection (F) to provide that a dissolution under
8 Section 1-1438 is not revocable. Section 1-1438 permits a corporation to dissolve
9 in lieu of carrying out a court-ordered buyout of an oppressed shareholder. A
10 revocation of dissolution under those circumstances is prohibited to prevent the
11 majority shareholders of the corporation from circumventing the effects of the
12 remedy, either a buyout or dissolution, that this Act makes available to an oppressed
13 shareholder.

14 §1-1405. Effect of dissolution

15 A. A dissolved corporation continues its corporate existence but may not
16 carry on any business except that appropriate to wind up and liquidate its business
17 and affairs, including:

18 (1) Collecting its assets;

19 (2) Disposing of its properties that will not be distributed in kind to its
20 shareholders;

21 (3) Discharging or making reasonable provision for discharging its
22 liabilities;

23 (4) Distributing its remaining property among its shareholders according to
24 their interests; and

25 (5) Doing every other act necessary to wind up and liquidate its business and
26 affairs.

27 B. Dissolution of a corporation does not:

28 (1) Transfer title to the corporation's property;

29 (2) Prevent transfer of its shares or securities, although the authorization to
30 dissolve may provide for closing the corporation's share transfer records;

31 (3) Subject its directors or officers to standards of conduct different from
32 those prescribed in Part 8 of this Act;

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1 (4) Change quorum or voting requirements for its board of directors or
2 shareholders; change provisions for selection, resignation, or removal of its directors
3 or officers or both; or change provisions for amending its bylaws;
4 (5) Prevent commencement of a proceeding by or against the corporation in
5 its corporate name;
6 (6) Abate or suspend a proceeding pending by or against the corporation on
7 the effective date of dissolution; or
8 (7) Terminate the authority of the registered agent of the corporation.
9 C. The limitation imposed by Subsection A of this Section on the business
10 to be conducted by a dissolved corporation does not:
11 (1) Require the corporation to discontinue operations in any part of its
12 business that the corporation plans to sell as a going concern in connection with the
13 winding up and liquidation of the corporation's affairs; or
14 (2) Affect any right acquired by a third person before the third person knows
15 or has reason to know that the corporation is dissolved.
16 D. The filing of articles of dissolution by a corporation does not by itself
17 give a third person knowledge or reason to know that the corporation is dissolved.
18 E. The provisions of Code of Civil Procedure Articles 692 and 740 do not
19 apply to a dissolved corporation that has not been terminated. A dissolved and
20 unterminated corporation continues to be the proper party plaintiff under Code of
21 Civil Procedure Article 690 and the proper party defendant under Code of Civil
22 Procedure Article 739. An action by or against a terminated corporation is governed
23 by Section 1-1443.
24 Source: MBCA §14.05.
25 Comments - 2013 Revision
26 (a) This Act adds a new Subsection (C) to make it clear that the limitation
27 on the business of a dissolved corporation imposed by Subsection (A) does not
28 interfere with the ability of a dissolved corporation to sell all or part of its business
29 as a going concern, or affect any right acquired by a third party without knowledge
30 or reason to know of the dissolution. A new Subsection (D) rejects the view that the
31 simple filing of articles of dissolution is enough by itself to put a third party on
32 notice of the dissolution.

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(b) This Act adds a new Subsection (E) to confirm the continued procedural capacity of a dissolved corporation that has not been terminated. If the corporation has been terminated, its procedural capacity is governed by Section 1-1443.

§1-1406. Known claims against dissolved corporation

A. A dissolved corporation may dispose of the known claims against it by notifying its known claimants in writing of the dissolution at any time after its effective date.

B. The written notice must:

(1) Describe information that must be included in a claim;

(2) Provide a mailing address where a claim may be sent;

(3) State the deadline, which may not be fewer than one hundred and twenty days from the effective date of the written notice, by which the dissolved corporation must receive the claim; and

(4) State that the claim will be extinguished by peremption if not received by the deadline.

C. A claim against the dissolved corporation is perempted:

(1) If a claimant who was given written notice under Subsection B of this Section does not deliver the claim to the dissolved corporation by the deadline; or

(2) If a claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim by the deadline stated in the rejection notice for the commencement of an enforcement proceeding, which may not be fewer than ninety days after the effective date of the rejection notice.

D. For purposes of this Section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

Source: MBCA §14.06.

Comments - 2013 Revision

(a) This Act changes the word "barred" in Subsection (C) to "perempted" to make it clear that the time limitation in Subsection (C) is peremptive rather than prescriptive. Reflecting that change in terminology, the language of the notice in Paragraph (B)(4) is modified to use the phrase "extinguished by peremption." That phrase is used in the notice both because it is technically correct and because the word "extinguished" is likely to convey to a layperson the critical idea that the affected claim will be terminated or eliminated in some fashion if the deadline stated in the notice is missed.

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1 (b) The Model Act deadline in Paragraph (C)(2) for the commencement of
2 an enforcement proceeding on a rejected claim is ninety days after the effective date
3 of the corporation's notice to the claimant that the corporation has rejected the claim.
4 Unlike the initial notice to the claimant under Paragraph (B)(3), the Model Act
5 rejection notice is not required to state the deadline that applies. This Act modifies
6 Paragraph (C)(2) to require a statement of the deadline in the rejection notice similar
7 to that required in the initial notice. As modified, the deadline for the
8 commencement of a proceeding to enforce a rejected claim under Paragraph (C)(2)
9 is the deadline stated in the rejection notice, and that deadline must be at least 90
10 days after the effective date of the rejection notice.

11 §1-1407. Other claims against dissolved corporation

12 A. A dissolved corporation may also publish notice of its dissolution and
13 request that persons with claims against the dissolved corporation present them in
14 accordance with the notice.

15 B. The notice must:

16 (1) Be published one time in a newspaper of general circulation in the parish
17 where the dissolved corporation's principal office (or, if none in this state, its
18 registered office) is or was last located;

19 (2) Describe the information that must be included in a claim and provide a
20 mailing address where the claim may be sent; and

21 (3) State that a claim against the dissolved corporation will be extinguished
22 by peremption unless a proceeding to enforce the claim is commenced within three
23 years after the publication of the notice.

24 C. If the dissolved corporation publishes a newspaper notice in accordance
25 with Subsection B of this Section, any claim not earlier perempted by Subsection
26 1-1406(C) of this Act is perempted unless the claimant commences a proceeding to
27 enforce the claim against the dissolved corporation within three years after the
28 publication date of the newspaper notice.

29 D. A claim that is not perempted by Subsection 1-1406(C) or Subsection
30 1-1407(C) of this Act may be enforced:

31 (1) Against the dissolved corporation, to the extent of its undistributed
32 assets; or

33 (2) Except as provided in Subsection 1-1408(D) of this Act, if the assets
34 have been distributed in liquidation, against a shareholder of the dissolved

1 corporation to the extent of the shareholder's pro rata share of the claim or the
2 corporate assets distributed to the shareholder in liquidation, whichever is less, but
3 a shareholder's total liability for all claims under this Section may not exceed the
4 total amount of assets distributed to the shareholder.
5 E. A proceeding to enforce the liability of a shareholder under Paragraph
6 (D)(2) of this Section is perempted unless it is commenced within two years after the
7 date that the assets were distributed to the shareholder.
8 Source: MBCA §14.07.
9 Comments - 2013 Revision
10 (a) This Act changes the Model Act word "barred" to the Louisiana term
11 "perempted" throughout the Section, except in Paragraph (B)(3), concerning notice,
12 where the phrase "extinguished by peremption" is used. The longer phrase is
13 required in the notice both because it is technically correct, and because the word
14 "extinguished" is likely to convey to a layperson the critical idea that the affected
15 claim will be terminated or eliminated in some fashion if the deadline stated in the
16 notice is missed.

17 (b) This Act simplifies the Model Act description in Subsection (c) of the
18 parties whose claims are perempted by that Subsection. The Model Act lists the
19 three types of claimants affected, but in so doing obscures the point that the
20 peremption in Subsection (c) applies to all persons whose claims are not already
21 perempted by Section 14.06(c). This Act makes the connection between the two
22 provisions more explicit.

23 (c) This Act corrects an apparently erroneous cross reference in Model Act
24 Subsection (d) to Section 14.06 (b). Section 14.06 (c) is the provision likely
25 intended in the Model Act, and it is the correct provision under this Act.

26 (d) The peremption of claims provided by Sections 1-1406(C) and 1-1407(C)
27 does not extend any prescriptive or peremptive period that otherwise applies to a
28 claim. A prescribed or perempted claim may not be enforced against the corporation
29 even if the claim is made, or the suit is filed, within the peremptive periods specified
30 in Sections 1-1406(C) and 1-1407(C).

31 (e) This Act adds a new Subsection (E) to retain the two-year limitation
32 period from prior law on claims brought against shareholders for excess
33 distributions, but modifies the former rule to make it clear that the period is
34 peremptive. Unlike the three-year bar provided by Subsection (C), the two-year
35 period in Subsection (E) applies without regard to whether the corporation publishes
36 a newspaper notice in accordance with Subsection (C).

37 (f) The effect of adding the two-year bar in Subsection (E), when combined
38 with a similar two-year bar for claims against directors under Section 1-833, is to
39 make the three-year bar in Subsection (C) relevant only to claims against the
40 corporation itself, recoverable under this Section only from undistributed assets of
41 the corporation. Because the corporation is unlikely to hold any undistributed assets
42 other than those unknown to the corporation itself or already dedicated to the
43 payment of contingent and post-dissolution claims, the three-year bar is unlikely to
44 protect the corporation itself from the adverse effects of a late-arising claim. Still,

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1 the three-year bar remains important for two other reasons. First, where the
2 corporation has made provision for the post-dissolution payment of claimants, it
3 allows that class to be closed and payments to be made as provided. Second, it bars
4 successor liability claims that might otherwise be made against a firm that purchased
5 substantially all of the assets of the dissolved corporation, or of one of its divisions
6 or product lines. Both of those effects are consistent with the balance struck by the
7 Model Act between the competing goals of compensating injured plaintiffs and of
8 protecting asset transferees against liability for the dissolved corporation's contingent
9 claims.

10 (g) This Act adds a new Subsection (F) to make it clear that the contingent
11 and post-dissolution claims that are excluded from the effects of Section 1-1406
12 through the special definition of "claim" in Subsection (D) of that Section are not
13 excluded from the meaning of that term in this Section. This Section applies to all
14 claims of any kind, including those not affected by Section 1-1406.

15 §1-1408. Court proceedings

16 A. A dissolved corporation that has published a notice under Section 1-1407
17 may file an application with the district court of the parish where the dissolved
18 corporation's principal office (or, if none in this state, its registered office) is located
19 for a determination of the amount and form of security to be provided for payment
20 of claims that are contingent or have not been made known to the dissolved
21 corporation or that are based on an event occurring after the effective date of
22 dissolution but that, based on the facts known to the dissolved corporation, are
23 reasonably estimated to arise after the effective date of dissolution. Provision need
24 not be made for any claim that is or is reasonably anticipated to be barred under
25 Subsection 1-1407(C) of this Act.

26 B. Within ten days after the filing of the application, notice of the proceeding
27 shall be given by the dissolved corporation to each claimant holding a contingent
28 claim whose contingent claim is shown on the records of the dissolved corporation.

29 C. The court shall appoint an attorney-at-law to represent all claimants
30 whose identities or whereabouts are unknown in any proceeding brought under this
31 Section, as if those claimants were absentee defendants under Code of Civil
32 Procedure Article 5091. The reasonable fees and expenses of the appointed attorney,
33 including all reasonable expert witness fees, shall be paid by the dissolved
34 corporation.

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1 D. Provision by the dissolved corporation for security in the amount and the
2 form ordered by the court under Subsection 1-1408(A) of this Act shall satisfy the
3 dissolved corporation's obligations with respect to claims that are contingent, have
4 not been made known to the dissolved corporation or are based on an event occurring
5 after the effective date of dissolution, and such claims may not be enforced against
6 a shareholder who received assets in liquidation.

7 Source: MBCA §14.08.

8 Comment - 2013 Revision

9 Subsection (C) authorizes a court to appoint an attorney under Art. 5091 of
10 the Code of Civil Procedure to perform the functions assigned by Subsection (c) of
11 the Model Act to a guardian ad litem.

12 §1-1409. Responsibility of the board of directors

13 A. The board of directors of a dissolved corporation is responsible for
14 winding up and liquidating the business and affairs of the corporation as
15 contemplated by Subsection 1-1405 (A) of this Act. The board of directors may
16 authorize a distribution to shareholders only after the corporation pays, or makes
17 reasonable provision to pay, all obligations owed by the corporation as contemplated
18 by Subsection 1-1405(A) of this Act.

19 B. Directors of a dissolved corporation which has disposed of claims under
20 Sections 1-1406, 1-1407, or 1-1408 shall not be liable for breach of Subsection A of
21 this Section with respect to claims against the dissolved corporation that are barred
22 or satisfied under Sections 1-1406, 1-1407, or 1-1408.

23 Comments - 2013 Revision

24 (a) Model Act Subsection (a) has been redrafted to avoid the inadvertent
25 suggestion in the model language that individual directors owe a personal duty to
26 cause a dissolved corporation to pay claims, even if the corporation is insolvent. As
27 redrafted, Section 1-1409(A) of this Act:

28 (1) More clearly places responsibility for the winding up of the corporation's
29 business and affairs on the board of directors, not on directors individually;

30 (2) Incorporates by reference the board's responsibilities under Section
31 1-1405; and

32 (3) Makes the payment or provision for payment of claims not an absolute
33 duty of the board, but rather a condition of the board's authority to distribute the
34 remaining corporate assets to the corporation's shareholders.

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1 (b) The liability of a director for distributions made in violation of
2 Subsection (A) is governed by Section 1-833, not by Subsection (A) itself.

3 §1-1410. Certain sections in subpart a applicable to all dissolved corporations

4 Sections 1-1405 through 1-1409 of this Act apply to a dissolved corporation

5 regardless of whether the dissolution is voluntary or judicial.

6 Comment - 2013 Revision

7 This Act adds a new Section 1-1410 to make it clear that the provisions in
8 Subpart A of Part 14, which provide the rules for winding up the affairs of a
9 dissolved corporation, apply even if the dissolution is judicial, and so occurs under
10 Subpart C rather than Subpart A.

11 SUBPART B. ADMINISTRATIVE DISSOLUTION

12 [Reserved.]

13 Comment - 2013 Revision

14 Chapter B of the Model Act, concerning administrative dissolution, has been
15 omitted from this Act. In place of those provisions, this Act adds two new
16 provisions on administrative termination and reinstatement, Sections 1-1442 and
17 1-1444, which are similar in substance to the charter revocation and reinstatement
18 provisions in prior law.

19 SUBPART C. JUDICIAL DISSOLUTION

20 §1-1430. Grounds for judicial dissolution

21 A district court may dissolve a corporation:

22 A.(1) In a proceeding by the attorney general if it is established that:

23 (a) The corporation obtained its articles of incorporation through fraud; or

24 (b) The corporation has continued to exceed or abuse the authority conferred

25 upon it by law;

26 (2) In a proceeding by a shareholder if it is established that:

27 (a) The directors are deadlocked in the management of the corporate affairs,

28 the shareholders are unable to break the deadlock, and irreparable injury to the

29 corporation is threatened or being suffered, or the business and affairs of the

30 corporation can no longer be conducted to the advantage of the shareholders

31 generally, because of the deadlock; or

32 (b) [Reserved.]

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1 (c) The shareholders are deadlocked in voting power and have failed, for a
2 period that includes at least two consecutive annual meeting dates, to elect
3 successors to directors whose terms have expired;
4 (d) [Reserved.]
5 (3) In a proceeding by a creditor if it is established that:
6 (a) The creditor's claim has been reduced to judgment, the execution on the
7 judgment returned unsatisfied, and the corporation is insolvent; or
8 (b) The corporation is insolvent and has admitted in writing that the
9 creditor's claim is due and owing;
10 (4) In a proceeding by the corporation, or by shareholders of shares with at
11 least twenty-five percent of the voting power in the corporation, to have its voluntary
12 dissolution continued under court supervision; or
13 (5) In a proceeding by a shareholder if the corporation has abandoned its
14 business and has failed within a reasonable time to liquidate and distribute its assets
15 and dissolve.
16 B. Paragraph 1-1430(A)(2) of this Act shall not apply in the case of a
17 corporation that, on the date of the filing of the proceeding, has shares which are
18 listed on the New York Stock Exchange, the American Stock Exchange or on any
19 exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted
20 on a system owned or operated by the National Association of Securities Dealers,
21 Inc.
22 Source: MBCA §14.30.
23 Comments - 2013 Revision
24 (a) For reasons explained in the comments to Section 1-1435, this Act omits
25 Model Subparagraphs (a)(2)(ii) and (iv).
26 (b) This Act changes the wording of Model Subparagraph (a)(3)(ii) to make
27 it clear that an insolvent corporation need not admit its insolvency in writing to allow
28 a creditor to obtain dissolution under that Subsection, but need only admit in writing
29 that the creditor's claim is due and owing.
30 (c) This Act adds language to Paragraph (a)(4) to retain the rule in prior law
31 that holders of twenty-five percent or more of the voting power in a corporation
32 could obtain court supervision of a voluntary dissolution.

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1 (d) This Act modifies Subsection (b) to limit the exception provided in that
2 Section to a corporation that has shares listed or quoted on the stated exchanges or
3 trading systems. It deletes the alternative means of qualification for the exception
4 based on the number of beneficial shareholders and market value of its shares, and
5 the associated rule in Subsection (c) concerning the meaning of the term "beneficial
6 shareholders" for purposes of Subsection (b).

7 §1-1431. Procedure for judicial dissolution

8 A. Venue for a proceeding by the attorney general to dissolve a corporation
9 lies in East Baton Rouge Parish. Venue for a proceeding brought by any other party
10 named in Subsection 1-1430(A) of this Act lies in the parish where the corporation's
11 principal office (or, if none in this state, its registered office) is or was last located.

12 B. It is not necessary to make shareholders parties to a proceeding to
13 dissolve a corporation unless relief is sought against them individually.

14 C. A court in a proceeding brought to dissolve a corporation or to continue
15 a dissolution under court supervision may issue injunctions, appoint a receiver or
16 liquidator with all powers and duties the court directs, take other action required to
17 preserve the corporate assets wherever located, and carry on the business of the
18 corporation until a full hearing can be held.

19 D. Within ten days of the commencement of a proceeding to dissolve a
20 corporation under Paragraph 1-1430(A)(2) of this Act, the corporation must send to
21 all shareholders, other than the petitioner, a notice stating that the shareholders are
22 entitled to avoid the dissolution of the corporation by electing to purchase the
23 petitioner's shares under Section 1-1434 and accompanied by a copy of Section
24 1-1434.

25 Source: MBCA §14.31.

26 Comment - 2013 Revision

27 This Act adds language to Model Act Subsection (c) to make it clear that the
28 court has the same power to appoint a liquidator or receiver in a proceeding to obtain
29 court supervision of a voluntary dissolution as in an action for involuntary
30 dissolution.

31 §1-1432. Appointment of receiver or liquidator

32 A. Unless an election to purchase has been filed under Section 1-1434, a
33 court in a judicial proceeding brought to dissolve a corporation or to continue a

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1 dissolution under court supervision may appoint one or more liquidators to wind up
2 and liquidate, or one or more receivers to manage, the business and affairs of the
3 corporation. The court shall hold a hearing, after notifying all parties to the
4 proceeding and any interested persons designated by the court, before appointing a
5 receiver or liquidator. The court appointing a receiver or liquidator has jurisdiction
6 over the corporation and all of its property wherever located.
7 B. The court may appoint an individual or a domestic or foreign corporation
8 (authorized to transact business in this state) as a receiver or liquidator. The court
9 may require the receiver or liquidator to post bond, with or without sureties, in an
10 amount the court directs.
11 C. The court shall describe the powers and duties of the receiver or liquidator
12 in its appointing order, which may be amended from time to time and may require
13 the receiver or liquidator to file interim and final reports with the court as the court
14 considers appropriate. Except as limited by the court:
15 (1) The liquidator may exercise all of the powers of the corporation, through
16 or in place of its board of directors, to the extent necessary to wind up the business
17 and affairs of the corporation as contemplated by Section 1-1405;
18 (2) The receiver may exercise all of the powers of the corporation, through
19 or in place of its board of directors, to the extent necessary to manage the affairs of
20 the corporation in the best interests of its shareholders and creditors.
21 D. The court may redesignate the receiver a liquidator, and may redesignate
22 the liquidator a receiver, if doing so is in the best interests of the corporation, its
23 shareholders, and creditors.
24 E. The court from time to time may order compensation paid and expenses
25 paid or reimbursed to the receiver or liquidator from the assets of the corporation or
26 proceeds from the sale of the assets.
27 F. If a court appoints a receiver or liquidator under this Section, then during
28 the period of the appointment the receiver or liquidator assumes the responsibility
29 and authority of the board of directors, except to the extent the appointing order

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1 provides otherwise, and the board of directors is relieved of that responsibility and
2 authority. The receiver or liquidator is liable for a breach of duty as receiver or
3 liquidator to the same extent that a director holding the same authority and
4 responsibility would be liable.

5 Source: MBCA §14.32.

6 Comments - 2013 Revision

7 (a) This Act changes the titles of the persons who may be appointed by a
8 court under this Section to make the titles consistent with those used under prior law.
9 What the Model Act calls a "receiver" this Act calls a "liquidator," and what the
10 Model Act calls a "custodian" this Act calls a "receiver."

11 (b) This Act adds language to Model Act Subsection (a) to make it clear that
12 the court has the same power to appoint a liquidator or receiver in a proceeding to
13 obtain court supervision of a voluntary dissolution as in an action for involuntary
14 dissolution. It also adds language to Subsection (c) to authorize the court to require
15 the filing of interim and final reports by a liquidator or receiver.

16 (c) Subsection (F) addresses the effects of the appointment of a receiver or
17 liquidator on the duties of the corporation's board of directors. To the extent that an
18 appointing order confers authority on a receiver or liquidator, the receiver or
19 liquidator assumes the board's normal authority and responsibilities, and the board
20 is relieved of those responsibilities. In most cases, the receiver or liquidator will
21 assume the full responsibility of the board to operate or liquidate the corporation.
22 But in some cases, a court may confer a more limited form of authority on an
23 appointed receiver or liquidator, and in that event the board's authority is supplanted
24 only as provided in the appointing order.

25 §1-1433. Judgment of dissolution

26 A. If after a hearing the court determines that one or more grounds for
27 judicial dissolution described in Section 1-1430 exist, it may enter a judgment
28 dissolving the corporation and specifying the effective date of the dissolution, and
29 the clerk of the court shall deliver a certified copy of the judgment to the secretary
30 of state, who shall file it.

31 B. After entering the judgment of dissolution, the court shall direct the
32 winding up and liquidation of the corporation's business and affairs in accordance
33 with Section 1-1405 and the notification of claimants in accordance with Sections
34 1-1406 and 1-1407.

35 Source: MBCA §14.33.

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1 §1-1434. Election to purchase in lieu of dissolution
2 A. In a proceeding under Paragraph 1-1430(A)(2) of this Act to dissolve a
3 corporation, the corporation may elect or, if it fails to elect, one or more shareholders
4 may elect to purchase all shares owned by the petitioning shareholder at the fair
5 value of the shares. An election pursuant to this Section shall be irrevocable unless
6 the court determines that it is equitable to set aside or modify the election.
7 B. An election to purchase pursuant to this Section may be filed with the
8 court at any time within ninety days after the filing of the petition under Paragraph
9 1-1430(A)(2) of this Act or at such later time as the court in its discretion may allow
10 or as all shareholders of the corporation may agree. If the election to purchase is
11 filed by one or more shareholders, the corporation shall, within ten days thereafter,
12 give written notice to all shareholders, other than the petitioner. The notice must state
13 the name and number of shares owned by the petitioner and the name and number
14 of shares owned by each electing shareholder and must advise the recipients of their
15 right to join in the election to purchase shares in accordance with this Section.
16 Shareholders who wish to participate must file notice of their intention to join in the
17 purchase no later than thirty days after the effective date of the notice to them. All
18 shareholders who have filed an election or notice of their intention to participate in
19 the election to purchase thereby become parties to the proceeding and shall
20 participate in the purchase in proportion to their ownership of shares as of the date
21 the first election was filed, unless they otherwise agree or the court otherwise directs.
22 After an election has been filed by the corporation or one or more shareholders, the
23 proceeding under Paragraph 1-1430(A)(2) of this Act may not be discontinued or
24 settled, nor may the petitioning shareholder sell or otherwise dispose of his or her
25 shares, unless the court determines that it would be equitable to the corporation and
26 the shareholders, other than the petitioner, to permit such discontinuance, settlement,
27 sale, or other disposition. If an election to purchase is filed by the corporation within
28 ninety days after the filing of the petition under Paragraph 1-1430(A)(2) of this Act,
29 the corporation's election shall be given precedence over any shareholder election

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1 filed within the same period, even if the shareholder's election is filed before that of
2 the corporation. If the court allows both the corporation and one or more
3 shareholders to file an election after the expiration of the ninety-day period, the court
4 shall direct how the purchase of shares is to be allocated among the electing parties.
5 C. If, within sixty days of the filing of the first election, the parties reach
6 agreement as to the fair value and terms of purchase of the petitioner's shares, the
7 court shall enter an order directing the purchase of petitioner's shares upon the terms
8 and conditions agreed to by the parties.
9 D. If the parties are unable to reach an agreement as provided for in
10 Subsection C of this Section, the court, upon application of any party, shall stay the
11 Paragraph 1-1430(A)(2) proceedings and determine the fair value of the petitioner's
12 shares as of the day before the date on which the petition under Paragraph
13 1-1430(A)(2) of this Act was filed or as of such other date as the court deems
14 appropriate under the circumstances.
15 E. Upon determining the fair value of the shares, the court shall enter an
16 order directing the purchase upon such terms and conditions as the court deems
17 appropriate, which may include payment of the purchase price in installments, where
18 necessary in the interests of equity, provision for security to assure payment of the
19 purchase price and any additional expenses as may have been awarded, and, if the
20 shares are to be purchased by shareholders, the allocation of shares among them. In
21 allocating petitioner's shares among holders of different classes of shares, the court
22 shall attempt to preserve the existing distribution of voting rights among holders of
23 different classes insofar as practicable and may direct that holders of a specific class
24 or classes shall not participate in the purchase. Interest may be allowed at the rate
25 and from the date determined by the court to be equitable, but if the court finds that
26 the refusal of the petitioning shareholder to accept an offer of payment was arbitrary
27 or otherwise not in good faith, no interest shall be allowed.
28 F. Upon entry of an order under Subsections C or E of this Section, the court
29 shall dismiss the petition to dissolve the corporation under Paragraph 1-1430(A)(2)

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1 of this Act, and the petitioning shareholder shall no longer have any rights or status
2 as a shareholder of the corporation, except the right to receive the amounts awarded
3 by the order of the court which shall be enforceable in the same manner as any other
4 judgment.
5 G. The purchase ordered pursuant to Subsection E of this Section shall be
6 made within ten days after the date the order becomes final unless before that time
7 the corporation files with the court a notice of its intention to adopt articles of
8 dissolution pursuant to Sections 1-1402 and 1-1403, which articles must then be
9 adopted and filed within fifty days thereafter. Upon filing of such articles of
10 dissolution, the corporation shall be dissolved in accordance with the provisions of
11 Sections 1-1405 through 1-1407, and the order entered pursuant to Subsection E of
12 this Section shall no longer be of any force or effect, except that the petitioner may
13 continue to pursue any claims previously asserted on behalf of the corporation.
14 H. Any payment by the corporation pursuant to an order under Subsections
15 C or E of this Section is subject to the provisions of Section 1-640.
16 Source: MBCA §14.34.
17 §1-1435. Oppressed shareholder's right to withdraw
18 A. If a corporation engages in oppression of a shareholder, the shareholder
19 may withdraw from the corporation and require the corporation to buy all of the
20 shareholder's shares at their fair value.
21 B. A corporation engages in oppression of a shareholder if the corporation's
22 distribution, compensation, governance, and other practices, considered as a whole
23 over an appropriate period of time, are plainly incompatible with a genuine effort on
24 the part of the corporation to deal fairly and in good faith with the shareholder.
25 Conduct that is consistent with the good faith performance of an agreement among
26 all shareholders is presumed not to be oppressive. The following factors are relevant
27 in assessing the fairness and good faith of the corporation's practices:
28 (1) The conduct of the shareholder alleging oppression; and

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1 (2) The treatment that a reasonable shareholder would consider fair under the
2 circumstances, considering the reasonable expectations of all shareholders in the
3 corporation.
4 C. The term "fair value" has the same meaning in this Section and in Section
5 1-1436 as it does in Paragraph 1-1301(4) concerning appraisal rights, except that the
6 value of a withdrawing shareholder's shares under this Section and Section 1-1436
7 is to be determined as of the effective date of the notice of withdrawal under
8 Subsection D of this Section.
9 D. A shareholder may assert a right to withdraw under this Section by giving
10 written notice to the corporation that the shareholder is withdrawing from the
11 corporation on grounds of oppression. When the notice becomes effective it operates
12 as an offer by the shareholder, irrevocable for sixty days, to sell to the corporation
13 at fair value the entirety of the shareholder's shares in the corporation. The notice
14 need not specify the price that the withdrawing shareholder proposes as the fair value
15 of the shares, but if the notice does specify a price, the price is part of the offer to sell
16 made by the shareholder.
17 E. The corporation may accept the offer to sell made in the shareholder's
18 notice of withdrawal by giving the withdrawing shareholder written notice of its
19 acceptance during the sixty days that the offer is irrevocable. If the shareholder's
20 notice of withdrawal specifies a price for the shares, the corporation's notice of
21 acceptance operates as an acceptance of both the offer to sell and the proposed price
22 unless the notice states that the corporation is accepting the offer to sell, but not the
23 price; in that case the notice of acceptance operates only as an acceptance of the
24 shareholder's offer to sell the shares at their fair value. The corporation's acceptance
25 of the shareholder's offer does not operate as an admission or as evidence that the
26 corporation has engaged in oppression of the shareholder.
27 F. A notice of acceptance that operates as an acceptance of both the
28 shareholder's offer to sell and the shareholder's proposed price forms a contract of
29 sale of the shares at that price, payable in cash. The contract includes the warranties

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1 of a seller of investment securities under the Uniform Commercial Code and imposes
2 a duty on the selling shareholder to deliver any certificates issued by the corporation
3 for the withdrawing shareholder's shares or, if a certificate has been lost, stolen or
4 destroyed, an affidavit to that effect. Either party may file an action to enforce the
5 contract at the specified price if the contract is not fully performed within thirty days
6 after the effective date of the notice of acceptance. If a withdrawing shareholder
7 fails to deliver the certificate for a share purchased by the corporation under a
8 contract formed under this Subsection, the shareholder owes the same indemnity
9 obligation as a shareholder who sells shares as described in Subsection 1-1436(F) of
10 this Act.
11 G. If the corporation does not accept the withdrawing shareholder's offer as
12 provided in Subsection E of this Section, the shareholder may file an ordinary
13 proceeding against the corporation in to enforce the shareholder's right to withdraw.
14 A judgment in the action that recognizes the right of the shareholder to withdraw on
15 grounds of oppression is a partial judgment under Code of Civil Procedure Art.
16 1915(B). The trial on the valuation of the shares is governed by Section 1-1436.
17 H. Venue for an action filed under Subsection F or G of this Section lies in
18 the district court of the parish where the corporation's principal office (or, if none in
19 this state, its registered office) is located.
20 I. A corporation's purchase of a withdrawing shareholder's shares is subject
21 to the rules on a corporation's acquisition of its own shares provided in Section 1-631
22 and to the limitations on distribution imposed by Section 1-640.
23 J. The shareholders of a corporation may waive the right to withdraw under
24 this Section by unanimous written consent, provided in accordance with Section
25 1-704, stating that the shareholders are waiving the right provided by law to
26 withdraw from the corporation on grounds of oppression. The waiver takes effect
27 when the last consent required to make the consent effective under Section 1-704 is
28 delivered to the corporation, and the corporation shall send written notice to the
29 shareholders of that date promptly after it is known. The waiver remains in effect

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1 for fifteen years from the date that it becomes effective, or for any shorter period
2 stated in the waiver to which the shareholders consent. The existence of the waiver
3 shall be noted on each share certificate in the same way that the existence of a
4 unanimous governance agreement is required to be noted under Subsection 1-732(C)
5 of this Act, and the failure to note the existence of the waiver on a share certificate
6 has the same effect with respect to the waiver as a failure to note a unanimous
7 governance agreement has with respect to that agreement. Except as stated in this
8 Subsection and in Subsection K of this Section, the right of an oppressed shareholder
9 to withdraw from a corporation under this Section may not be diminished.
10 K. This Section shall not apply in the case of a corporation that, on the
11 effective date of the withdrawal notice under Subsection C of this Section, has shares
12 that are listed on the New York Stock Exchange, the American Stock Exchange or
13 on any exchange owned or operated by the NASDAQ Stock Market LLC, or listed
14 or quoted on a system owned or operated by the National Association of Securities
15 Dealers, Inc.
16 L. Without limiting any remedy available on other grounds, the right to
17 withdraw in accordance with this Section and Section 1-1436 is the exclusive remedy
18 for oppression. An allegation of oppression, as such, does not provide an
19 independent or additional basis for an action by a shareholder to recover damages
20 from the corporation or its directors, officers, employees, agents, or controlling
21 persons.
22 Comments - 2013 Revision
23 (a) Model Act Section 14.34 provides a mechanism under which the
24 corporation or its shareholders may elect to buy out the interests of a shareholder
25 who is seeking to have the corporation dissolved under Model Act Section
26 14.30(a)(2). This Act retains the Model Act approach with respect to dissolution on
27 grounds of deadlock under Section 1-1430(A)(2)(a) and (c). But, with respect to
28 other grounds for dissolution under Section 1-1430(A)(2), this Act replaces the
29 Model Act scheme with four entirely new Sections, 1-1435 through 1-1438. As
30 explained in Comment (c), below, the four new Sections provide remedies for a
31 claim under 1-1430(A)(2) only on grounds of oppression. But the main effect of the
32 four new Sections is to reverse the order of the remedies provided by the Model Act
33 for oppression, from dissolution unless the corporation or its shareholders choose
34 quickly to buy out the plaintiff shareholder, to a buyout of the plaintiff shareholder
35 unless the corporation chooses to dissolve before final judgment in the suit is
36 rendered.

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1 (b) This change in the order of remedies is designed to do two things: allow
2 the corporation to contest the plaintiff shareholder's allegations of oppression without
3 risking an involuntary dissolution of the entire company, and align the statutory
4 remedies for oppression more closely with those that have been provided in most of
5 the reported American cases on the subject.

6 (c) This Act narrows the grounds for withdrawal from those provided in the
7 Model Act for dissolution. Under the Model Act, a shareholder may seek dissolution
8 on grounds of deadlock, illegality, fraud, waste or oppression. This Act retains the
9 Model Act approach to deadlock. However, this Act provides a withdrawal remedy
10 only for oppression, and not for illegality, fraud or waste. The elimination of the
11 other grounds for relief does not mean that illegality, fraud or waste, even if directed
12 toward the complaining shareholder, are irrelevant in determining whether
13 oppression has occurred; they may highly relevant. Rather, illegality, fraud and
14 waste are omitted as independent grounds for withdrawal to avoid the implication
15 that simple occurrences of illegal, fraudulent, or wasteful behavior in some aspect
16 of the corporation's operations may be enough by themselves to justify withdrawal.
17 While illegal, fraudulent or wasteful acts are likely to justify some form of penalty
18 or remedy in favor of an appropriate person, they do not justify the remedy of
19 withdrawal unless, taken as a whole and in context, they amount to oppression of the
20 complaining shareholder.

21 (d) The Model Act does not define the term "oppression." This Act defines
22 the term in Subsection (B) in a way that combines the two leading tests of oppression
23 used in the case law of other states, the "reasonable expectations" test and the
24 "departure from standards of fair dealing" test. Those two tests have been
25 incorporated into this Act to permit comparisons between cases arising under this
26 Act and those in other jurisdictions in which oppressive behavior has been
27 considered as grounds for relief in favor of a minority shareholder. However, the
28 statutory definition in this Act differs in five respects from at least some versions of
29 the oppression tests articulated by courts in other states:

30 (1) The failure to satisfy reasonable expectations is not itself the direct test
31 for oppressive conduct. Rather, those expectations are to be considered in
32 determining whether the directors or others in control have behaved in a way that is
33 incompatible with a genuine effort to be fair to the complaining shareholder. This
34 formulation is designed to provide a generous range of discretion to the majority
35 owners in designing corporate policies and operations that are fair. Withdrawal is
36 not justified on grounds of oppression merely because the business has not been as
37 successful as hoped, or because the minority's reasonable expectations have been
38 disappointed in some way, or even because some instances of unfairness can be
39 shown to have occurred. Rather, to justify withdrawal under the definition of
40 oppression in Subsection (D), the plaintiff must prove that the majority's behavior,
41 taken as a whole over an appropriate period of time, is plainly incompatible with a
42 genuine effort on the part of the majority to be fair to the shareholders. And the
43 effort to be fair is to be evaluated in light of expectations that it would be reasonable
44 for the shareholders to hold under the circumstances.

45 (2) In determining fairness, the interests of all shareholders, not just those
46 of the complaining shareholder, must be considered. The majority shareholders are
47 entitled to control the business through the exercise of their voting power, and they
48 are entitled as much as the minority shareholders to have their reasonable
49 expectations respected. The evaluation of challenged conduct as "oppressive" should
50 be guided by principles appropriate to the interpretation of a contract that calls for
51 cooperation and fair dealing from all parties in the operation of a business that entails
52 uncertainty and risk. A failure by the majority over an extended period of time to
53 provide a minority investor with any reasonable participation in the benefits of a
54 successful business will be difficult in most cases to reconcile with a genuine effort

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on the part of the majority to be fair to all shareholders. However, the majority shareholders owe no duty to sacrifice their own legitimate interests as majority owners of the business, or to make payments or provide benefits to the minority investor that are out of proportion to the value of the contributions to the business by the minority investor or his predecessor in interest.

(3) The conduct of the complaining shareholder is to be taken into account in deciding whether withdrawal on grounds of oppression is warranted. While the shareholders of a closely-held corporation are commonly compensated largely through their employment by the corporation - making continued employment a reasonable expectation in many cases - shareholders are not entitled to keep their jobs regardless of the quality of their job performance. Incompetence, dishonesty or disloyalty on the part of an employee shareholder may justify the shareholder's termination as a corporate employee, and a justified termination would not by itself amount to oppression. Still, a minority shareholder does not forfeit all right to any economic benefit from his shares merely because his job performance may justify his termination as an employee. A complete freezeout of a shareholder from any participation in the benefits of ownership in the corporation could be considered oppression even if the shareholder's termination as an employee was itself justified. See, Gimpel v. Bolstein, 477 N.Y.S.2d 1014 (Sup. 1984).

(4) A leading case concerning "reasonable expectations" requires the plaintiff in an oppression case to prove that the conduct of the controlling shareholders has substantially defeated expectations that "objectively viewed, were both reasonable under the circumstances and were central to the petitioner's decision to join the venture." Matter of Kemp & Beatley, Inc., 473 N.E.2d 1173 (N.Y. 1984). This Act embraces the "objectively reasonable under the circumstances" part of the test, but for the reasons explained in the next comment, it drops the requirement that the plaintiff prove that the expectations in question actually played some role in the plaintiff's own decision to join the corporation as a shareholder.

(5) Among the original investors, actual expectations will be highly relevant to what a shareholder would be reasonable in considering fair under the circumstances. But disputes within closely-held corporations commonly arise among the children of the founding shareholders, making it unlikely that the litigating shareholders' expectations will have played any role in the investment decisions that were made when the inherited shares were first purchased. The arrangements made and practices followed by the founding shareholders could play some role in shaping what a person succeeding to the founders' shares would be reasonable in expecting. But a reasonable person should expect some adjustment in those practices to occur as a result of the passing of the shares from one generation to another. The personalities, interests and skills of the second generation of shareholders may differ substantially from those that shaped the expectations and practices of the original investors. This Act allows those changed factors to be taken into account in determining the expectations that it would be reasonable for a shareholder in the plaintiff's position to hold.

(e) In contrast with the Model Act's focus on wrongful conduct by "the directors or those in control of a corporation," this Act defines oppression by reference to the corporation's treatment of the complaining shareholder. Although a corporation's oppression of a shareholder is unlikely to occur without the complicity of its directors or controlling shareholders, this Act does not require the complaining shareholder to prove that any particular participant in corporate management is responsible for the oppression that occurs.

(f) The second sentence of Subsection (B) creates a presumption that conduct is not oppressive if it is consistent with the good faith performance of an agreement among all shareholders. A unanimous governance agreement under Section 1-732

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1 is included among the unanimous agreements contemplated by the presumption, but
2 the presumption is not limited to that particular form of agreement. It applies with
3 respect to all unanimous agreements among the shareholders.

4 (g) Conduct that is consistent with the good faith performance of a
5 unanimous shareholders' agreement should be considered oppressive only rarely.
6 The fact that an agreement operates imperfectly, and even unexpectedly in some
7 respects, is not sufficient to rebut the presumption created in Subsection (B).
8 Conduct that qualifies for the presumption in Subsection (B) should be treated as
9 oppressive only if (1) it would be considered oppressive but for the presumption and
10 (2) the identities of the shareholders, the nature of the corporation's affairs or other
11 relevant circumstances have changed so profoundly since the signing of the
12 agreement that the fact finder is justified in concluding that parties to the agreement
13 could not have intended to approve as fair, in context, the conduct being challenged
14 as oppressive.

15 (h) The definition of "fair value" in Subsection (C) is not affected by the
16 terms of any agreement among the shareholders or in the articles or bylaws of the
17 company that state the value of the shares or state how the value is to be determined.
18 But the definition in Subsection (B) applies only in the context of a shareholder's
19 withdrawal on grounds of oppression. It does not affect the valuation of a
20 withdrawing shareholder's shares under other agreements or governance documents,
21 which often deliberately impose some form of discount as a means of discouraging
22 the kind of withdrawal contemplated by the pertinent provision. A corporation's
23 adherence to an agreed value or valuation methodology in connection with a
24 shareholder's withdrawal on grounds other than oppression does not itself constitute
25 oppression under Subsection (B) or violate the rule in Subsection (J) against the
26 diminution of a shareholder's right to withdraw from the corporation on grounds of
27 oppression.

28 (i) Subsection (D) treats a notice of withdrawal as an offer of sale by the
29 withdrawing shareholder, and Subsection (E) treats the corporation's notice of
30 acceptance as an acceptance of that offer of sale. But that process creates a contract
31 of sale only if the offer includes a price for the offered shares as provided in
32 Subsection (D) and if the corporation accepts that price as provided in Subsection
33 (F). Otherwise, the corporation's acceptance of the shareholder's offer to sell triggers
34 only the right to file an action under Section 1-1436(A) to obtain a court-ordered sale
35 at a fair price set by the court.

36 (j) If a contract of sale is created as provided in Subsection (F), ownership
37 of the offered shares is transferred from the withdrawing shareholder to the
38 corporation when the contract comes into existence, which occurs when the
39 corporation's notice of acceptance becomes effective under the rules stated in Section
40 1-141. After that point, the rights of the corporation and former shareholder with
41 respect to the relevant shares are limited to their contract rights against one another
42 under the Subsection (F) contract. Because ownership of the shares will be
43 transferred immediately and by operation of law, the only items left to be performed
44 under the contract are (1) the corporation's obligation to pay for the shares and (2)
45 the shareholder's obligation with respect to any certificates issued by the corporation
46 for the shares.

47 (k) If the exchange of offer and acceptance does not create a contract of sale
48 under Subsection (F), but only the right to pursue a court-ordered purchase and sale,
49 the shareholder remains a shareholder in the company until the court-ordered
50 transaction is consummated as provided in Section 1-1436(C) or until the shares are
51 transferred in some other fashion.

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1 (l) In some states, courts have used a fiduciary duty theory to protect
2 minority shareholders in a closely held corporation against conduct of the kind
3 defined as oppression in Subsection (B). Subsection (L) rejects the treatment of
4 oppression as a breach of fiduciary duty that may justify an action for damages
5 against the corporation, the directors or others in control. Instead, it provides the
6 dissolution and buyout remedies that are set forth in this Section and in Section
7 1-1436. Subsection (L) does not affect any of the remedies that are available on
8 grounds other than oppression, including the remedies that were available before the
9 special remedy provided by this Act for oppression became effective.

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

12 A. If a shareholder's right to withdraw from a corporation is recognized by
13 means of a notice of acceptance under Subsection 1-1435(E) of this Act, but the
14 notice does not create a contract under Subsection 1-1435(F) of this Act, the
15 corporation and shareholder shall have sixty days from the effective date of the
16 notice of acceptance to negotiate the fair value of the shareholder's shares and the
17 terms under which the corporation is to purchase the shares. Within one year after
18 the expiration of the sixty-day period, either party may file an action against the
19 other to determine the fair value of the shares and the terms for the purchase of the
20 shares. Venue for the action lies in the district court of the parish where the
21 corporation's principal office (or, if none in this state, its registered office) is located.
22 If neither party files an action to establish the fair value of the shares within the time
23 period provided in this Subsection, then subject to the terms of any settlement
24 reached between the parties, the effects of the earlier notices of withdrawal and
25 acceptance under Section 1-1435 are terminated. The termination of the effects of
26 the earlier notices does not affect the right of the shareholder to reassert the
27 shareholder's right to withdraw through the filing of a new notice of withdrawal in
28 accordance with Subsection 1-1435(D) of this Act.

29 B. If a shareholder's right to withdraw from a corporation is recognized by
30 a judgment in an action under Subsection 1-1435(G) of this Act, the court shall stay
31 the proceeding for a period of at least sixty days from the date that the judgment is
32 rendered to allow the corporation and shareholder to negotiate the fair value and
33 purchase terms for the withdrawing shareholder's shares, or other terms for the

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1 settlement of their dispute. After the stay expires or is lifted, either party may file
2 a motion to have the court determine the fair value and terms for the purchase of the
3 shares.

4 C. The court shall conduct the trial of the action under Subsection A of this
5 Section or the motion under Subsection B of this Section by summary proceeding.

6 D. Except as provided in Subsection E of this Section, at the conclusion of
7 the trial the court shall render final judgment:

8 (1) In favor of the shareholder and against the corporation for the fair value
9 of the shareholder's shares; and

10 (2) In favor of the corporation and against the shareholder:

11 (a) Terminating the shareholder's ownership of shares in the corporation and

12 (b) Ordering the shareholder to deliver to the corporation within thirty days
13 of the date of the judgment any certificate issued by the corporation for the shares
14 or an affidavit by shareholder that the certificate has been lost, stolen or destroyed.

15 E. If at the conclusion of the trial the court finds that the corporation has
16 proved that a full payment in cash of the fair value of the withdrawing shareholder's
17 shares would violate the provisions of Section 1-640 or cause undue harm to the
18 corporation or its creditors, the court shall not render the judgment specified in
19 Subsection D of this Section, but shall instead render final judgment:

20 (1) Ordering the corporation to issue and deliver to the shareholder within
21 thirty days of the date of the judgment an unsecured negotiable promissory note of
22 the corporation:

23 (a) Payable to the order of the shareholder;

24 (b) In a principal amount equal to the fair value of the withdrawing
25 shareholder's shares;

26 (c) Bearing simple interest on the unpaid balance of the note at a floating rate
27 equal to the judicial rate of interest;

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1 (d) Having a term up to ten years, as specified by the court in its judgment
2 as necessary to prevent a violation of Section 1-640 or undue harm to the corporation
3 or its creditors; and
4 (e) Containing such other terms, customary in negotiable promissory notes
5 issued in commercial transactions, as the court may order; and
6 (2) Terminating the shareholder's ownership of shares in the corporation
7 upon delivery to the shareholder of the note required by the judgment under
8 Paragraph (E)(1) of this Section, and ordering the shareholder to deliver to the
9 corporation, within ten days of the delivery of the note, any certificate issued by the
10 corporation for the shares or an affidavit by shareholder that the certificate has been
11 lost, stolen or destroyed.
12 F. If a withdrawing shareholder fails to deliver the certificate for a share
13 covered by a judgment rendered under Subsection C or D of this Section, and a third
14 person presents the certificate to the corporation after the shareholder's ownership
15 of the share is terminated by the judgment, the shareholder shall indemnify the
16 corporation for any dilution in value imposed on other shareholders as a result of the
17 corporation's obligations to recognize the person presenting the certificate as the
18 owner of the shares represented by the certificate.
19 §1-1437. Stay of duplicative proceedings
20 A. On motion by the corporation, a court shall stay a duplicative proceeding
21 by a shareholder who has given a notice of withdrawal to the corporation as provided
22 in Subsection 1-1435(D) of this Act. The court shall lift the stay on motion by the
23 shareholder when a judgment denying the shareholder's right to withdraw becomes
24 final and definitive.
25 B. For purposes of this Section, a "duplicative proceeding" is any
26 proceeding in which a shareholder, on his own behalf or as a representative of the
27 corporation, alleges a cause of action against the corporation, or against a director,
28 officer, agent, employee or controlling person of the corporation, on grounds of a

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1 breach of duty owed by that person to the corporation or to the shareholder in the
2 shareholder's capacity as shareholder.

3 Comments - 2013 Revision

4 (a) A shareholder's filing of a notice of withdrawal under Section 1-1435(D)
5 begins a process under which the corporation may be required to purchase the
6 entirety of the withdrawing shareholder's shares in the corporation at the fair value
7 of the shares. The continuation of other shareholder litigation while the complaining
8 shareholder is attempting to withdraw under Section 1-1435 imposes litigation
9 expenses that will not be justified if the withdrawal remedy is granted, either
10 voluntarily or by virtue of a judgment in an action to enforce the withdrawal remedy.
11 This Section allows the corporation to avoid the potentially wasteful litigation
12 expenses by obtaining a stay of the action until the outcome of the withdrawal effort
13 by the complaining shareholder is known.

14 (b) If all of the complaining shareholder's shares are purchased, the
15 shareholder's right to pursue any action that is available only to shareholders of a
16 corporation would be terminated, and any action stayed by this provision would then
17 be subject to dismissal on an exception of no right of action.

18 §1-1438. Conversion of oppression proceeding into court-supervised dissolution

19 A. A corporation may by contradictory motion convert a withdrawal or
20 valuation proceeding under Section 1-1435 or 1-1436 into a proceeding for a
21 court-supervised dissolution of the corporation if the dissolution is approved as
22 provided in Section 1-1402. If the court finds after the hearing on the conversion
23 motion that the dissolution was approved as provided in Section 1-1402, it shall:

24 (1) Render a judgment dissolving the corporation as provided in Section
25 1-1433;

26 (2) Dismiss the withdrawal or valuation cause of action;

27 (3) Make the complaining shareholder in the dismissed cause of action a
28 party to the court-supervised dissolution proceeding; and

29 (4) Appoint a liquidator in accordance with Section 1-1432, or order the
30 corporation to submit to the court for its approval a plan of liquidation and such
31 interim and final reports on the liquidation as the court may consider necessary to
32 protect the interests of the complaining shareholder.

33 B. A motion under Subsection A of this Section may be filed at any time
34 before final judgment.

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1 C. If a corporation dissolves or terminates while a withdrawal or valuation
2 proceeding under Section 1-1435 or 1-1436 is pending, but does not file a motion to
3 convert the proceeding as provided in Subsection A of this Section, the complaining
4 shareholder in the proceeding may by contradictory motion seek to convert the
5 proceeding into one for a court-supervised dissolution of the corporation. If the court
6 finds that the conversion is necessary to protect the interests of the shareholder, it
7 shall grant the motion and take the actions contemplated by Subsection A of this
8 Section for the conversion of a proceeding to a court-supervised dissolution.

9 SUBPART D. TERMINATION AND REINSTATEMENT

10 Introductory Comments to Subpart D

11 (a) This Act omits Model Act Section 14.40, which would have allowed a
12 dissolved corporation that is unable to find a creditor, claimant or shareholder to
13 deposit any funds owed to the missing payee with the state treasurer, in a manner
14 similar to that provided by the Uniform Unclaimed Property Act, R.S. 9:151-88. The
15 Section was omitted to allow the state treasurer to deal with the unclaimed funds of
16 a dissolved corporation in the same way as other unclaimed property, as provided in
17 the Unclaimed Property Act.

18 (b) Because Section 14.40 was the only provision contained in Subchapter
19 D of Model Act Chapter 14, the omission of the Section made the Subsection
20 available for other purposes. This Act utilizes Subpart D to deal with the termination
21 and reinstatement of a corporation's existence. The Model Act does not deal with
22 those topics because the Model Act does not terminate the existence of a dissolved
23 corporation; even a dissolved corporation continues to exist perpetually. Subpart D
24 of this Act adopts an approach to corporate dissolution that is similar to that taken
25 under prior Louisiana law, which provided a mechanism for terminating the
26 existence of a dissolved corporation.

27 (c) Under prior Louisiana law, a corporation was dissolved in four steps. In
28 the first step, the dissolution process was begun, either through the filing of articles
29 of dissolution or through a court order of dissolution. The first step resulted in the
30 transfer of managerial power over the corporation from the board of directors to a
31 liquidator. The liquidator was then responsible for the second step, that of winding
32 up and liquidating the business and affairs of the corporation (in some cases subject
33 to court supervision). When the liquidation was completed, the statute required the
34 liquidator to take the third step in the process, that of filing what were confusingly
35 called "articles of dissolution" (also the name for the document that began, rather
36 than ended, a liquidation) or, if the dissolution was judicially supervised, an order
37 of dissolution. Finally, in the fourth step, if the order or articles of liquidation met
38 the requirements of law and certain listed state agencies certified that the corporation
39 owed no unpaid obligations to them, the secretary of state was required to issue a
40 "certificate of dissolution," which caused the corporation to be dissolved in the sense
41 that its existence was terminated as of the effective date of the certificate. The law
42 dealt with any late-discovered assets or claims by vesting the assets in the liquidator
43 and empowering the liquidator to take any action required to preserve the interests
44 of the corporation, its creditors or shareholders. If the liquidator died or was
45 unwilling or unable to serve, the statute allowed the appointment of a new liquidator
46 "for any proper purpose."

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(d) Under the Model Act, the dissolution of a corporation involves only two steps: (1) the dissolution is triggered by articles or an order of dissolution and (2) the board of directors (or a liquidator if one is judicially-appointed) conducts or supervises the winding up and liquidation of the corporation's business and affairs. At no point does the Model Act require (or permit) the filing of the documents contemplated by steps three and four of prior Louisiana law, those declaring the liquidation to be complete and the existence of the corporation to be terminated. Instead, a dissolved corporation continues to exist forever under the Model Act scheme, but only for purposes of winding up and liquidating its affairs. Section 14.05 of the Model Act provides a single set of rules to govern a dissolved corporation, both during the period in which the corporation is engaged in winding up its affairs and during the perpetual period that follows the completion of that process. In effect, Section 14.05 provides that all of the normal corporate governance rules continue to apply forever to a dissolved corporation, except for the change in the object of corporate operations from normal business to liquidation, even after the corporation has been fully liquidated and its operations - for any purpose - fully shut down.

(e) This Act adopts the Model Act approach to the continued existence of a dissolved corporation while the corporation is still engaged in the process of winding up its affairs. It also adopts the Model Act concept that a dissolved corporation continues to exist perpetually for purposes of identifying the persons (ie. the corporation) that own any undistributed corporate assets and owe any undischarged corporate debts. But this Act rejects the Model Act view that a dissolved corporation may continue to be governed by the same Section 14.05 rules both during its active liquidation phase and during the infinitely longer period after the completion of its liquidation. After the active liquidation of the corporation is completed, the corporation continues to exist only to help conceptualize how to deal with items missed during its liquidation. This Act provides a mechanism similar to that provided under prior law under which the existence of an already-liquidated corporation may be terminated for all other purposes.

(f) This Act differs from prior law by eliminating the theoretical vesting of undiscovered assets in a liquidator. Instead, the corporation itself, even after its termination, will continue to hold any undistributed assets and to owe any undischarged debts. The continuation of the corporation for this limited purpose may be viewed either as an exception to the termination of the corporation's existence for other purposes or as a legal fiction that helps conceptualize properly the nature of the interests in any undistributed assets held by various types of claimants or shareholders of the terminated corporation. The practical question posed by the terminated corporation's continuing role with respect to undistributed assets or undischarged debts is how to deal with those items on the corporation's behalf. Those issues are addressed by Section 1-1444, which for a three-year period permits a terminated corporation to be reinstated fully and retroactively, and by Section 1-1445, which permits a court to appoint a liquidator for the terminated corporation.

§1-1440. Articles of termination

A. When the board of directors, or the liquidator acting during the liquidator's appointment, determines that the corporation has completed the winding up and liquidation of its business and affairs, the board of directors or liquidator may cause the corporation to deliver to the secretary of state for filing articles of termination.

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1 B. The articles of termination shall state:
2 (1) The name of the corporation;
3 (2) The date of its dissolution;
4 (3) Whether its dissolution was voluntary or judicial;
5 (4) That the corporation has paid or made reasonable provision for the
6 payment of all of its liabilities; and
7 (5) That the net assets of the corporation remaining after winding up have
8 been distributed to the shareholders.
9 C. If the articles of termination are signed by a liquidator, the secretary of
10 state shall not file the articles unless the articles have attached or appended to them
11 a certified copy of the court order that authorizes the liquidator to wind up the affairs
12 of the corporation.

13 Comments - 2013 Revision

14 (a) This Section provides a means by which the board of directors or a
15 court-appointed liquidator may declare the liquidation of a dissolved corporation to
16 be complete and to obtain a termination of the corporation's existence for all
17 purposes other than holding any undistributed assets or owing any undischarged
18 corporate debts.

19 (b) The corporation's existence is terminated when the secretary of state files
20 the articles of dissolution. See Section 1-1443.

21 §1-1441. Simplified termination procedure for certain corporations

22 A. The existence of a corporation may be terminated as provided in this
23 Section if the corporation:
24 (1) Does not owe any debts;
25 (2) Does not own any immovable property; and
26 (3) Has not issued shares or is not doing business.
27 B. If the corporation has not issued shares, a termination under this Section
28 may be authorized by a majority of the initial directors or, if no initial directors are
29 named in the articles of incorporation, by a majority of the incorporators. If the
30 corporation has issued shares the termination may be authorized as provided in
31 Section 1-1402 or by the unanimous written consent of the shareholders.

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1 C. After the termination is authorized, the corporation may deliver to the
2 secretary of state for filing articles of termination that set forth:
3 (1) The name of the corporation
4 (2) That no debt of the corporation remains unpaid;
5 (3) That the corporation owns no immovable property;
6 (4) That the corporation :
7 (a) Has not issued shares; or
8 (b) Is not doing business;
9 (5) That the net assets of the corporation remaining after winding up have
10 been distributed to the shareholders, if shares were issued; and
11 (6) That the termination was authorized as required by Subsection 1-1441(B)
12 of this Act.
13 Source: MBCA §14.01, R.S. 12:142.1 (2012).
14 Comments - 2013 Revision
15 (a) This Section combines features of Model Act Section 14.01, which
16 provides a simplified dissolution mechanism for a corporation that has not issued
17 shares or has not begun business, with those of former R.S. 12:142.1, which
18 permitted a corporation to dissolve by affidavit if it owed no debts and owned no
19 immovable property. As used in the Model Act provision, dissolution would not
20 terminate a corporation's existence; even dissolved corporations would continue to
21 exist perpetually under the Model Act. As used in the former Louisiana provision,
22 dissolution referred to the termination of the corporation's existence. This Section
23 avoids the possible confusion between the two different meanings of dissolution by
24 providing that the procedure authorized in this Section results in a termination of the
25 corporation's existence, and not a mere dissolution in the Model Act sense of the
26 term.
27 (b) This Section rejects the rule in former R.S. 12:142.1 that imposed
28 personal liability for corporate debts on shareholders who utilized that Section's
29 simplified mechanism for terminating the existence of their corporation. The former
30 rule encouraged shareholders who wished to shut down corporate operations to do
31 so without any formal dissolution process, and then simply to stop filing annual
32 reports. The failure to file annual reports for a period of three years triggered a
33 requirement that the secretary of state revoke the non-filing corporation's charter.
34 The charter revocation accomplished the same result as the dissolution-by-affidavit,
35 but without the statutory imposition of personal liability on shareholders for the
36 revoked corporation's debts. Indeed, if the corporation's existence was terminated
37 by revocation rather than affidavit, the shareholders could reinstate their corporation
38 during the first three years following the revocation, with retroactive effect, by filing
39 a simple form with the secretary of state's office and paying a small filing fee. Given
40 the choice between liability-imposing dissolution and cost-free, no-risk charter
41 revocation, most well-advised shareholders opted for charter revocation. This Act
42 eliminates the strong incentive created by the former liability rule to dissolve by
43 violating, rather than by complying with, the requirements of the corporation statute.

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1 (c) Shareholders who use the simplified form of dissolution authorized by
2 this Section do not receive the benefits of the claims-barring and claims-discharging
3 rules of Sections 1-1406 through 1-1408. Those rules are available only if the more
4 formalized dissolution procedure required by those provisions is utilized. But, unlike
5 prior law, this Act does not impose personal liability on shareholders who utilize a
6 simplified form of dissolution. Regardless of the form of dissolution that is used,
7 shareholders bear liability only for unlawful distributions from the corporation.
8 They do not bear personal liability for the corporation's debts.

9 §1-1442. Administrative termination

10 A. Subject to Subsection B of this Section, the secretary of state shall
11 terminate the existence of a corporation if, according to the records of the secretary
12 of state, the corporation has failed for ninety consecutive days:

13 (1) To comply with the requirements imposed by Section 1-501 concerning
14 the continuous maintenance in this state of a registered office and registered agent;
15 or

16 (2) To file an annual report as required by Section 1-1621.

17 B. The secretary of state shall give the corporation at least thirty days'
18 written notice of the secretary's intention to terminate the corporation's existence
19 under Subsection A of this Section. If the corporation eliminates the grounds for its
20 termination before the end of the thirty-day notice period, the secretary of state shall
21 not terminate the existence of the corporation.

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

26 Source: R.S. 12:163.

27 Comment - 2013 Revision

28 This Section is not part of the Model Act. It is based on former R.S. 12:163,
29 which required the secretary of state to revoke the charter of a corporation that failed
30 to file annual reports or failed to maintain a registered office or registered agent.
31 This Act reduces the grace period for the filing of the annual report from three years
32 to ninety days, to discourage the practice of filing the annual report (and paying the
33 required filing fee) only every third year, after receiving the notice of pending
34 revocation from the secretary of state.

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1 §1-1443. Effective date and effects of termination
2 A. The filing by the secretary of state of a corporation's articles of
3 termination under Section 1-1440 or 1-1441 or a certificate of termination under
4 Section 1-1442 causes the existence of the corporation to terminate on the effective
5 date of the articles or certificate of termination. The effects of the filing of the
6 articles or certificate of termination are not affected by any error in the articles or
7 certificate, but the error may justify reinstatement of the corporation as provided in
8 Section 1-1444 or the appointment of a liquidator as provided in Section 1-1445.
9 B. When the existence of the corporation terminates, the corporation's
10 juridical personality ends except for purposes of:
11 (1) Reserving the corporation's name as provided in Section 1-402(C);
12 (2) Concluding any proceeding to which the corporation is a party at the time
13 of the termination; and
14 (3) Continuing to own any undistributed corporate assets and to owe any
15 undischarged corporate obligations or liabilities.
16 C. The termination does not:
17 (1) Extinguish any claim against the corporation;
18 (2) Abate any proceeding to which the corporation is a party;
19 (3) Cause any obligation or liability owed by the corporation to become the
20 obligation or liability of any of the corporation's current or former shareholders,
21 directors, officers, employees, or agents; or
22 (4) Cause any undistributed asset of the corporation to become the property
23 of any of the corporation's current or former shareholders, directors, officers,
24 employees, or agents.
25 D. A terminated corporation's juridical personality, and the authority of a
26 person acting on the corporation's behalf as its legal counsel or managerial
27 representative, continues for purposes of Subparagraph (B)(2)(a) of this Section as
28 if the termination had not occurred, but subject to the power of an authorized
29 representative of a reinstated corporation, or of a liquidator appointed in accordance

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1 with Section 1-1445, to change the identity or authority of the legal counsel or
2 managerial representative.
3 E. The existence of a terminated corporation may be reinstated as provided
4 in Section 1-1444, and a liquidator may be appointed as provided in Section 1-1445
5 for any proper purpose. Unless a terminated corporation is reinstated, any action that
6 is commenced by or against the corporation after the effective date of its termination
7 shall be brought by or against a liquidator that is appointed in accordance with
8 Section 1-1445.

9 Comments - 2013 Revision

10 (a) This Section is not part of the Model Act. It was added to this Act to
11 retain a mechanism for terminating the existence of a corporation for all purposes
12 other than owning any undistributed corporate assets or owing any undischarged
13 corporate debts. The termination of a corporation under this provision makes its
14 name available for use by others and terminates the applicability of the rules of
15 corporate governance that would otherwise continue to apply even to a dissolved
16 corporation under Section 1-1405.

17 (b) As provided in Paragraph (C)(3), the termination of the corporation's
18 existence does not cause any of its former directors, officers or shareholders to
19 become personally liable for the terminated corporation's debts. The rule in
20 Paragraph (C)(3) does not protect the former shareholders against liability for
21 improper distributions from the terminated corporation, or for post-termination
22 business transactions carried out by them without the protection against personal
23 liability provided by an existing corporation. But corporate shareholders do not
24 become substitute obligors on a corporation's debts merely because the corporation's
25 separate juridical personality is terminated.

26 (c) Similarly, as provided in Paragraph (C)(4), corporate shareholders do not
27 become substitute owners of the corporation's assets merely because the existence
28 of the corporation is terminated. A terminated corporation continues to own its
29 undistributed assets and to owe its unpaid debts as provided in Subparagraph
30 (B)(2)(b).

31 (d) If a termination is administrative, the terminated corporation may or may
32 not owe unpaid debts or own undistributed assets, depending on whether the
33 administrative termination is triggered inadvertently or deliberately. If the
34 administrative termination occurs unexpectedly, in an ongoing business in which the
35 corporation's annual filing obligations have simply been overlooked, the terminated
36 corporation is very likely to own assets and to owe debts when it is terminated. In
37 that case, the rule in Subparagraph (B)(2)(b) preserves the corporation's position in
38 relation to its assets and liabilities during the period between its termination under
39 Section 1-1442 and its likely reinstatement under Section 1-1444. If, on the other
40 hand, the owners of a corporation have already shut down its operations and wound
41 up its affairs, they may choose deliberately to stop filing their corporation's annual
42 reports as a means of causing the secretary of state to terminate their corporation's
43 existence. In that case, the rule in Subparagraph (B)(2)(b) will apply only to the
44 extent that it is needed to deal with assets or liabilities that were undiscovered or
45 overlooked in the informal winding up of the corporation's affairs.

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1 (e) If a termination is voluntary, then all of the terminated corporation's
2 assets ordinarily will have been paid out or distributed as part of the pre-termination
3 winding up of the corporation's affairs. If some assets remain undistributed after a
4 voluntary termination, then one (or both) of two explanations is likely to account for
5 that fact: some assets were undiscovered or overlooked during the winding up, or the
6 existence of the corporation was deliberately terminated while the corporation still
7 owned assets and owed debts, in a misguided effort to eliminate the corporation's
8 debts by eliminating the corporate debtor. In both circumstances, Subparagraph
9 (B)(2)(b) continues to treat the corporation as the debtor on corporate liabilities and
10 the owner of corporate assets, to preserve both the existence and priority of the
11 various forms of claims and interests in the undistributed assets.

12 (f) Any transfer of undistributed assets from the terminated corporation to
13 a creditor or shareholder would require the proper exercise of managerial authority
14 on behalf of the corporation. That managerial authority could be obtained through
15 the appointment of a liquidator under Section 1-1445 or, if the requirements for
16 reinstatement could be satisfied, through a reinstatement of the corporation under
17 Section 1-1444. The reinstatement would not itself create managerial authority, but
18 it would return the corporation to the position it was in before the termination
19 occurred. Hence, the board of directors, officers and agents of the corporation would
20 hold the same authority after the reinstatement as they would have held had no
21 termination occurred.

22 (g) Subsection (D) is designed to prevent the disruption of pending litigation
23 by preserving the authority of a corporation's legal and managerial representatives
24 in the litigation. However, the authorized representatives of a reinstated corporation,
25 or a liquidator who is appointed in accordance with Section 1-1445 and who holds
26 the appropriate authority, may make changes in the identity or authority of the
27 corporation's legal counsel or managerial representatives.

28 (h) Although Subsection (B) allows a pending proceeding by or against a
29 terminated corporation to continue, any recovery by the corporation in the litigation
30 will become an undistributed asset of the corporation, and any monetary judgment
31 against the corporation will be collectible only from the corporation's undistributed
32 assets, or through unlawful distribution claims against its former directors or
33 shareholders.

34 §1-1444. Reinstatement of terminated corporation

35 A. A terminated corporation may be reinstated if the corporation:

36 (1) Was not dissolved by a judgment of dissolution; and

37 (2) Requests reinstatement in accordance with this Section no later than three

38 years after the effective date of its articles or certificate of termination.

39 B. If the corporation was terminated administratively under Section 1-1442,

40 the articles of reinstatement shall be approved by:

41 (1) A director or officer listed in the corporation's last annual report before

42 its termination; or

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1 (2) A director of the corporation elected by the shareholders of the
2 corporation after the last annual report, regardless of whether the director was elected
3 before or after the administrative termination.
4 C. If the corporation was terminated after its dissolution or termination was
5 authorized by a vote of shareholders:
6 (1) The reinstatement of the corporation shall be approved by the same vote
7 that was required to approve the dissolution or termination, by the persons who were
8 shareholders at the time that the dissolution or termination was approved by the
9 shareholders;
10 (2) The persons entitled to vote on the reinstatement shall elect a board of
11 directors for the reinstated corporation; and
12 (3) The board of directors elected in accordance with Paragraph (2) of this
13 Subsection shall elect officers for the reinstated corporation.
14 D. A corporation may request reinstatement by delivering to the secretary
15 of state for filing articles of reinstatement and an annual report. The articles of
16 reinstatement and the annual report shall be signed by an officer or director of the
17 corporation who is entitled to approve the articles under Subsection B of this Section
18 or, in the case of a reinstatement authorized in accordance with Subsection C of this
19 Section, by a director or officer elected in accordance with that Subsection. The
20 annual report shall be accompanied by a written consent to appointment signed by
21 the registered agent named in the annual report.
22 E. The articles of reinstatement shall state:
23 (1) The name of the corporation;
24 (2) That the reinstatement was approved
25 (a) In accordance with Subsection 1-1444(B) of this Act; or
26 (b) In accordance with Subsection 1-1444(C) of this Act, and that the
27 directors and officers listed in the annual report accompanying the articles of
28 reinstatement were elected in accordance with that Subsection; and

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1 (3) That the corporation is reinstated, effective retroactively as if the
2 corporation had never been terminated.
3 F. The secretary of state shall file the articles of reinstatement only if:
4 (1) The articles are delivered for filing to the secretary of state within three
5 years after the effective date of the articles or certificate of termination for the
6 corporation; and
7 (2) The fee is paid for the filing of an annual report for each year between
8 the corporation's last annual report and the year in which corporation is reinstated.
9 G. In addition to the reinstatement authorized by Subsections A through F
10 of this Section, if the administrative termination of a corporation occurred because
11 of an error in the records of the secretary of state not caused by the corporation, the
12 secretary of state shall file a certificate of reinstatement that states that the certificate
13 of termination was filed in error, and that the corporation is reinstated, with
14 retroactive effect as if the termination had never occurred.
15 H. When the secretary of state files a certificate or articles of reinstatement,
16 the existence of the terminated corporation is reinstated retroactively, and the
17 corporation continues to exist as if the termination had never occurred.
18 Source: R.S. 12:163 (2012).
19 Comments - 2013 Revision
20 (a) This Section is not part of the Model Act. It is based on former R.S.
21 12:163(E), which permitted the reinstatement of a corporate charter that had been
22 revoked by the secretary of state on grounds that the corporation had failed to file
23 annual reports, or had failed to maintain a registered agent and registered office as
24 required by law. This Act broadens the scope of the former provision by making
25 reinstatement available not only to corporations terminated administratively, but also
26 to those terminated voluntarily under Section 1-1440 or 1-1441.

27 (b) The broadening of the reinstatement option to include
28 voluntarily-terminated corporations is designed to deal with similar cases in similar
29 ways. Shareholders who choose to terminate their corporations voluntarily and
30 formally, but then regret having done so because of some overlooked matter, should
31 have the same opportunity to fix the problem as those who regret an administrative
32 termination for a similar reason. Unlike the former law, this Act does not restrict the
33 reinstatement privilege to those who have triggered a termination through a failure
34 to comply with the corporation statute.

35 (c) The prior law's three-year time limit on reinstatements was retained in
36 this Act. A three-year period is long enough to cover most of the post-termination
37 issues that are likely to arise, yet short enough to make it likely that the

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1 pre-termination arrangements within the corporation can be reinstituted without the
2 need for judicial review. If it is not possible to obtain the vote required for
3 reinstatement, or if the three-year period allowed for reinstatement has expired, a
4 liquidator may be appointed under Section 1-1445 to deal with any undistributed
5 assets or undischarged claims of a terminated corporation.

6 (d) Articles of reinstatement may be filed by the secretary of state only if
7 they meet the general requirements of Section 1-120 for the filing of a document
8 under this Act. Subsection (F) of this Section imposes requirements that must be
9 satisfied in addition to those provided in Section 1-120.

10 §1-1445. Appointment of liquidator for terminated corporation

11 On application of any interested party, a district court may, ex parte or on
12 such notice as the court may order, appoint a liquidator to act on behalf of a
13 terminated corporation with respect to any of its undistributed assets or undischarged
14 claims or interests. The court's appointment of a liquidator under this Section is
15 governed by the provisions of Section 1-1432, as if the liquidator were being
16 appointed to conduct a dissolution of the corporation under court supervision. The
17 costs and expenses of the liquidator and of the appointment of the liquidator under
18 this Section shall be paid by the party seeking the appointment, subject to
19 reimbursement from any undistributed assets of the corporation or the proceeds of
20 their disposition.

21 Comments - 2013 Revision

22 (a) Under the Model Act, a dissolved corporation continues to exist
23 indefinitely after its dissolution. The dissolution simply marks the point at which the
24 object of corporation changes from the operation of its business to the winding up
25 an liquidation of its affairs. Hence, in theory, the Model Act deals with any
26 late-discovered assets or claims of an already-liquidated corporation in the same way
27 it deals with the assets and claims that were actually taken into account during the
28 active phase of the liquidation process: it empowers the board of directors to collect
29 the assets and to pay the claims.

30 (b) But, in fact, if the assets or claims are discovered ten or twenty years
31 after the liquidation of the corporation is thought to have been completed, then no
32 board of directors will exist in any realistic sense. Nor will it be possible in most
33 such cases for anyone to call a meeting of the shareholders, or to have the
34 shareholders act by written consent, for the election of a new board. Hence, even if
35 the law does recognize the dissolved or terminated corporation's continuing role as
36 owner or obligor of the late discovered items - as both the Model Act and this Act
37 do - the practical problem posed by the late-discovered items is how identify an
38 appropriate person with authority to deal with those items.

39 (c) This Act addresses that problem, first, by authorizing reinstatement of the
40 corporation for a three-year period following its termination, and, second, by
41 authorizing the appointment by a court of a liquidator for the terminated corporation.

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The reinstatement is governed by Section 1-1444. The appointment of a liquidator is governed by Section 1-1445.

(d) Any interested person may seek the appointment of a liquidator for a terminated corporation under Section 1-1445. The person seeking the appointment bears the costs and expenses of the appointment proceeding, and of the liquidator, subject to reimbursement from the undistributed assets of the corporation, or their proceeds.

(e) A corporation that dissolves and completes its liquidation process is unlikely to avoid termination under this Act for more than one additional year. Once the liquidation is completed, the corporation is likely either to terminate voluntarily under Section 1-1440 or 1-1441 or to discontinue the filing of its annual report, which will cause the corporation to be terminated administratively under Section 1-1442. If the corporation does avoid termination, then the corporation will be naming in its annual reports the persons whom the corporation claims to possess the authority to deal with late-discovered assets or liabilities. Whether those persons actually possess the authority to deal with the assets or liabilities on the corporation's behalf is a question that would be governed by the normal rules for the election of directors and officers, and, if their terms have expired, for the authority of holdover officials. Any shareholder would continue to hold the power under Section 1-701(D) to demand a meeting of shareholders for the election of directors if an election of directors had not been conducted for eighteen months or more, and the owners of shares representing at least twenty-five percent of the voting power in the corporation would be entitled to seek court supervision of the dissolution under Section 1-1430(A)(4). In any case, because the corporation is dissolved, the board would be required to deal with the assets or claims as contemplated by Section 1-1405.

PART 15. FOREIGN CORPORATIONS

[Reserved]

Comment - 2013 Revision

Chapter 15 of the Model Business Corporation Act deals with the qualification of foreign business corporations to do business in a state. A separate model act, the Model Nonprofit Corporation Act, deals with the qualification of foreign nonprofit corporations. Because existing Chapter 3 of Title 12 of the Revised Statutes covers the qualification of both forms of foreign corporation, the existing Chapter was retained, and Chapter 15 of the Model Act was omitted from this Act.

PART. 16. RECORDS AND REPORTS

SUBPART A. RECORDS

§1-1601. Corporate records

A. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

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1 B. A corporation shall maintain appropriate accounting records.

2 C. A corporation or its agent shall maintain a record of its shareholders, in
3 a form that permits preparation of a list of the names and addresses of all
4 shareholders, in alphabetical order by class of shares showing the number and class
5 of shares held by each.

6 D. A corporation shall maintain its records in the form of a document,
7 including an electronic record, or in another form capable of conversion into paper
8 form within a reasonable time.

9 E. A corporation shall keep a copy of the following records at its principal
10 office:

11 (1) Its articles or restated articles of incorporation, all amendments to them
12 currently in effect, and any notices to shareholders referred to in Paragraph
13 1-120(K)(5) of this Act regarding facts on which a filed document is dependent;

14 (2) Its bylaws or restated bylaws and all amendments to them currently in
15 effect;

16 (3) Resolutions adopted by its board of directors creating one or more classes
17 or series of shares, and fixing their relative rights, preferences, and limitations, if
18 shares issued pursuant to those resolutions are outstanding;

19 (4) The minutes of all shareholders' meetings, and records of all action taken
20 by shareholders without a meeting, for the past three years;

21 (5) All written communications to shareholders generally within the past
22 three years, including the financial statements furnished for the past three years
23 under Section 1-1620;

24 (6) A list of the names and business addresses of its current directors and
25 officers;

26 (7) Its most recent annual report delivered to the secretary of state under
27 Section 1-1621 and

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1 (8) Any unanimous governance agreement, as defined in Section 1-732, then
2 in effect.
3 Source: MBCA §16.01.
4 Comment - 2013 Revision
5 This Act adds a new Paragraph (E)(8) that includes unanimous governance
6 agreements among the records that must be kept at the corporation's principal office
7 under Section 1-1601, and be available for inspection under Section 1-1602(A). The
8 new Subsection does not require a corporation to create or maintain a unanimous
9 governance agreement, but only to keep a copy of it, and to allow its inspection, if
10 one is in effect. If a corporation does have a unanimous governance agreement in
11 effect, the agreement is one of the basic documents of corporate governance that
12 must be available for inspection by the corporation's shareholders.
13 §1-1602. Inspection of records by shareholders
14 A. A shareholder of a corporation is entitled to inspect and copy, during
15 regular business hours at the corporation's principal office, any of the records of the
16 corporation described in Subsection 1-1601(E) of this Act if the shareholder gives
17 the corporation a signed written notice of the shareholder's demand at least five
18 business days before the date on which the shareholder wishes to inspect and copy.
19 B. For any meeting of shareholders for which the record date for determining
20 shareholders entitled to vote at the meeting is different than the record date for notice
21 of the meeting, any person who becomes a shareholder subsequent to the record date
22 for notice of the meeting and is entitled to vote at the meeting is entitled to obtain
23 from the corporation upon request the notice and any other information provided by
24 the corporation to shareholders in connection with the meeting, unless the
25 corporation has made such information generally available to shareholders by
26 posting it on its website or by other generally recognized means. Failure of a
27 corporation to provide such information does not affect the validity of action taken
28 at the meeting.
29 C. A shareholder of at least five percent of any class of the issued shares of
30 a corporation for at least the preceding six months is entitled to inspect and copy,
31 during regular business hours at a reasonable location specified by the corporation,
32 any and all of the records of the corporation if the shareholder meets the
33 requirements of Subsection D of this Section and gives the corporation a signed

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1 written notice of the shareholder's demand at least five business days before the date
2 on which the shareholder wishes to inspect and copy the records. A shareholder of
3 less than five percent of a corporation's issued shares may exercise the rights
4 provided in this Subsection if the shareholder delivers to the corporation, either
5 before or along with the written notice of demand, written consents to the demand
6 by other shareholders who, in the aggregate with the shareholder making the
7 demand, own the required percentage of shares for the required period.
8 D. A shareholder may inspect and copy the records described in Subsection
9 B of this Section only if:
10 (1) The shareholder's demand is made in good faith and for a proper purpose;
11 (2) The shareholder describes with reasonable particularity the shareholder's
12 purpose and the records the shareholder desires to inspect; and
13 (3) The records are directly connected with the shareholder's purpose.
14 E. The right of inspection granted by this Section may not be abolished or
15 limited by a corporation's articles of incorporation, bylaws, unanimous governance
16 agreement, or any other agreement.
17 F. This Section does not affect:
18 (1) The right of a shareholder to inspect records under Section 1-720 or, if
19 the shareholder is in litigation with the corporation, to the same extent as any other
20 litigant; or
21 (2) The power of a court to deny the right of inspection as to confidential
22 matters, or to place restrictions on the use or distribution of records as provided in
23 Subsection 1-1604(D) of this Act.
24 G. For purposes of this Section, "shareholder" includes a beneficial owner
25 whose shares are held in a voting trust or by a nominee on the shareholder's behalf.
26 Source: MBCA §16.02.
27 Comments - 2013 Revision
28 (a) This Act amends Model Act Subsection (c) to retain the rule in prior law
29 that limited inspection rights to shareholders who, by themselves or together with
30 other cooperating shareholders, owned at least five percent of a class of the
31 corporation's shares for at least six months. The prior law's reference to

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"outstanding" shares has been replaced in this Section with a reference to "issued" shares because "issued" shares is the correct term under this Act for what prior law called "outstanding" shares. Under prior law, an issued share that was owned by a third party was called an "outstanding" share, to distinguish it from an issued share that had been reacquired by the corporation (and not canceled), which was called a "treasury" share. Under Section 1-631, shares that are reacquired by the issuing corporation do not retain their issued status as treasury shares. Rather, they return to the status of unissued shares.

(b) This Act drops the separate and higher percentage ownership requirement, twenty-five percent, that was imposed under prior law on shareholders who were competitors of the corporation. A higher percentage requirement could interfere arbitrarily with the legitimate inspection rights of shareholders who happen to be competitors, while still failing to protect the corporation adequately against the inspection of records for improper purposes by competitors who happen to own the required percentage of shares. This Act deals with inspections by competitors in two ways. First, all inspections under Subsection (C) are subject to the requirements of Subsection (C), which include the requirement that the demand for inspection be made in good faith and for a proper purpose. Second, the court is given the power under Subsection (F) to deny the inspection of records concerning confidential matters.

(c) This Act also changes the rule in prior law that multiple shareholders could "jointly" exercise an inspection, to avoid any suggestion that jointly-held inspection rights might somehow have to be exercised differently from those held by just one shareholder. This Act does not require that the inspections themselves be conducted jointly, but only that a group of shareholders owning the required percentage of shares for the required period consent to the inspecting shareholder's demand for inspection.

(d) This Act retains the rule in prior law that allowed a shareholder to inspect "any and all" records of the corporation, and not merely those records specifically listed in Model Act Subsection (c). It omits the reference in prior law to "accounts" because accounting records are included in the records that may be inspected under this Section.

(e) This Act deletes Model Act Paragraph (f)(2), which preserved the power of a court to compel the production of corporate records independently of the Act. The statement was deleted as unnecessary to preserve any such power and to eliminate the risk that the statement of preservation could itself be construed as an implicit recognition of some unspecified additional authority.

(f) This Act uses Paragraph (F)(2) to retain the rule from prior law that permits a court to deny inspection rights as to confidential matters. The court's power to deny inspection exists in addition to its authority to restrict the use or distribution of inspected items under Section 1-1604(D). A court should deny the inspection of confidential items only if it concludes that the restrictions that the court may impose on the use or distribution of the inspected records under Section 1-1604(D) are not sufficient to protect the corporation's interests in the confidentiality of the records.

§1-1603. Scope of inspection right

A. A shareholder's agent or attorney has the same inspection and copying rights as the shareholder represented.

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1 B. The right to copy records under Section 1-1602 includes, if reasonable,
2 the right to receive copies by xerographic or other means, including copies through
3 an electronic transmission if electronic transmission is available and requested by the
4 shareholder.
5 C. The corporation may comply at its expense with a shareholder's demand
6 to inspect the record of shareholders by providing the shareholder with a list of
7 shareholders that was compiled no earlier than the date of the shareholder's demand.
8 D. The corporation may impose a reasonable charge, covering the costs of
9 labor and material, for copies of any documents requested by the shareholder. The
10 charge may not exceed the estimated cost of production, reproduction or
11 transmission of the records.
12 Source: MBCA §16.03.
13 §1-1604. Court-ordered inspection
14 A. If a corporation does not within a reasonable time allow a shareholder
15 who complies with the applicable provisions of Section 1-1602 to inspect and copy
16 any records required by that Section to be available for inspection the district court
17 of the parish where the corporation's principal office (or, if none in this state, its
18 registered office) is located may by summary proceeding order inspection and
19 copying of the records demanded. If the court determines that the shareholder was
20 entitled to inspect and copy the demanded records under Subsection 1-1602(A) of
21 this Act, then the court shall order the corporation to provide copies of the demanded
22 records at the corporation's expense.
23 B. [Reserved.]
24 C. If the court orders inspection and copying of the records demanded, it
25 shall also order the corporation to pay the shareholder's expenses incurred to obtain
26 the order unless the corporation proves that it refused inspection in good faith
27 because it had a reasonable basis for doubt about the right of the shareholder to
28 inspect the records demanded.

1 D. If the court orders inspection and copying of the records demanded, it
2 may impose reasonable restrictions on the use or distribution of the records by the
3 demanding shareholder.
4 Source: MBCA §16.04.
5 Comment - 2013 Revision
6 This Act combines the two separate enforcement provisions in Model Act
7 Subsections (a) and (b) into a single unified Subsection (A) and reserves Subsection
8 (B) for future use.
9 §1-1605. Inspection of records by directors
10 A. A director of a corporation is entitled to inspect and copy the books,
11 records and documents of the corporation at any reasonable time to the extent
12 reasonably related to the performance of the director's duties as a director, including
13 duties as a member of a committee, but not for any other purpose or in any manner
14 that would violate any duty to the corporation.
15 B. The district court of the parish where the corporation's principal office (or
16 if none in this state, its registered office) is located may order inspection and copying
17 of the books, records and documents at the corporation's expense, upon petition of
18 a director who has been refused such inspection rights, unless the corporation
19 establishes that the director is not entitled to such inspection rights. The court shall
20 dispose of a petition under this Subsection by summary proceeding.
21 C. If an order is issued, the court may include provisions protecting the
22 corporation from undue burden or expense, and prohibiting the director from using
23 information obtained upon exercise of the inspection rights in a manner that would
24 violate a duty to the corporation, and may also order the corporation to reimburse the
25 director for the director's expenses incurred in connection with the proceeding under
26 Subsection B of this Section. In addition to a director's rights under this Section, a
27 director is also entitled to the corporation's payment of expenses, and to the
28 corporation's provision of copies at the corporation's expense, on the same basis as

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1 a shareholder under Section 1-1604, regardless of whether the director is a
2 shareholder or holds the percentage of shares specified in Section 1-1602.

3 Source: MBCA §16.05.

4 Comments -2013 Revision

5 (a) This Act modifies the procedural terminology in Model Act Subsection
6 (b) to make it consistent with the Code of Civil Procedure.

7 (b) This Act also adds a second sentence to Subsection (b) to extend to a
8 director the same expense-reimbursement and free-copy rights as a shareholder under
9 Section 1-1604, regardless of whether the director owns the shares required to obtain
10 those rights in his or her capacity as a shareholder.

11 §1-1606. Exception to notice requirement

12 A. Whenever notice would otherwise be required to be given under any
13 provision of this Act to a shareholder, such notice need not be given if:

14 (1) Notices to the shareholders of two consecutive annual meetings, and all
15 notices of meetings during the period between such two consecutive annual
16 meetings, have been sent to such shareholder at such shareholder's address as shown
17 on the records of the corporation and have been returned undeliverable or could not
18 be delivered; or

19 (2) All, but not less than two, payments of dividends on securities during a
20 twelve-month period, or two consecutive payments of dividends on securities during
21 a period of more than twelve months, have been sent to such shareholder at such
22 shareholder's address as shown on the records of the corporation and have been
23 returned undeliverable or could not be delivered.

24 B. If any such shareholder shall deliver to the corporation a written notice
25 setting forth such shareholder's then-current address, the requirement that notice be
26 given to such shareholder shall be reinstated.

27 Source: MBCA §16.06.

28 SUBPART B. REPORTS

29 §1-1620. Financial statements for shareholders

30 A. Once each calendar year a shareholder may obtain a report of financial
31 information from the corporation. To obtain the report, a shareholder shall give a

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1 written notice of the request for the report to the corporation. The notice shall
2 specify a postal mailing address, and if desired an electronic mailing address, to
3 which the report should be delivered. Promptly after receiving the shareholder's
4 notice, the corporation shall deliver to the shareholder, at one of the specified
5 addresses, a report that complies with the requirements of Subsections B and C of
6 this Section.

7 B. A report of financial information shall contain the following financial
8 statements, which may be consolidated or combined statements of the corporation
9 and one or more of its subsidiaries, as appropriate, for the last fiscal year ended at
10 least four months before the effective date of the shareholder's notice:

11 (1) A balance sheet;

12 (2) An income statement;

13 (3) A statement of changes in shareholders' equity unless that information
14 appears elsewhere in the financial statements provided; and

15 (4) If ordinarily prepared by the corporation, a statement of cash flows.

16 C. If the corporation's financial statements are prepared for the corporation
17 on the basis of generally accepted accounting principles, the statements in the report
18 of financial information listed in Subsection B of this Section must also be prepared
19 on that basis. If those statements are reported upon by a public accountant, the
20 accountant's report shall be delivered as part of the report of financial information
21 described in Subsection B of this Section.

22 D. A public corporation may fulfill its responsibilities under this Section by
23 delivering the financial statements listed in Subsection B of this Section, or
24 otherwise making them available, in any manner permitted by the applicable rules
25 and regulations of the United States Securities Exchange Commission. A
26 corporation that complies with this Subsection is not required to deliver a report of
27 financial information as provided in Subsection A of this Section.

28 Source: MBCA §16.20.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Comment - 2013 Revision

This Act modifies the Model Act to retain the rule in prior law that a corporation is required to provide financial reports to its shareholders only annually and only when requested. This Act adopts the substance of the Model Act rules concerning the nature of the financial statements to be provided, and the entitlement of public companies to satisfy their reporting obligations through their securities law filings.

§1-1621. Annual report for secretary of state

A. Each corporation shall deliver to the secretary of state for filing an annual report that sets forth:

(1) The name of the corporation;

(2) The address of its registered office;

(3) The name and address of its registered agent;

(4) The address of its principal office;

(5) Names and business addresses of its directors and principal officers; and

(6) The total number of issued shares, itemized by class and series, if any, within each class.

B. Information in the annual report must be current as of the date the annual report is signed on behalf of the corporation.

C. A corporation's annual report shall be delivered to the secretary of state each year on or before the anniversary of the date that the corporation was incorporated.

D. If an annual report does not contain the information required by this Section, the secretary of state shall promptly notify the corporation in writing and return the report to it for correction. If the report is corrected to contain the information required by this Section and delivered to the secretary of state within 30 days after the effective date of notice, it is deemed to be timely filed.

E. A dissolved corporation shall continue to file annual reports under this Section until the existence of the corporation is terminated.

Source: MBCA §16.21.

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Comments - 2013 Revision

(a) This Act deletes the Model Act references to annual reports by foreign corporations because those are governed by Chapter 3 of this Title. As a result of those deletions, this Section applies only to corporations incorporated under the provisions of this Act, making the Model Act references to "domestic" corporations, as distinguished from foreign corporations, unnecessary. This Section applies to a "corporation," a term that means the same thing as "domestic corporation" when it is used without any other descriptive words. See Section 1-140 (4).

(b) This Act deletes two of the items that the Model Act requires to be included in an annual report: a description of the business of the corporation and a statement of the number of authorized shares. It also modifies the required statements concerning a corporation's registered office and registered agent to reflect the rejection by this Act of the Model Act rule that the address of a registered agent has to be the same as the address of the corporation's registered office. See Section 1-501.

(c) This Act replaces the Model Act rule that annual reports be filed in the first quarter of each year with the rule from prior law that reports be filed on or before the anniversary of each corporation's date of incorporation.

(d) This Act adds a new Subsection (E) that requires a dissolved corporation to continue filing its annual reports until the corporation's existence is terminated. A dissolved, non-terminated corporation continues to exist, continues to be subject to management by or under the supervision of its board of directors, and continues to be subject to claims by creditors. Under those circumstances, the information provided by an annual report should continue to be publicly available. A dissolved corporation that fails to file its annual reports is subject to administrative termination in the same way as any other corporation.

§1-1622. Reporting obligation of corporation that contracts with the state

A. A corporation that contracts with the state shall deliver for filing to the secretary of state a statement that acknowledges the contract. The statement shall include the names and addresses of all persons or entities who hold an ownership interest of five percent or more in the corporation or who hold by proxy the voting power of five percent or more in the corporation and, if anyone holds stock in his own name that actually belongs to another, the name of the person for whom held, including stock held pursuant to a counterletter. The statement shall be duly acknowledged, or executed by authentic act.

B. This Subsection does not apply to:

(1) Any agreement entered between the state and a corporation for electric or gas service.

(2) Publicly traded corporations.

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(3) State-chartered banks.

Source: MBCA §16.22.

Comment - 2013 Revision

This provision is not part of the Model Act. It was added to this Act to retain the substance of former R.S. 12:25(E). In prior law, the reporting requirement was included as part of the provision that described the requirements for incorporating a business. The requirement was moved to the reporting provisions of this Act because the duty to file the required statement is triggered by a contract between the corporation and the state, and not by the act of incorporating a new company.

PART 17. TRANSITION PROVISIONS

§1-1701. Application to existing domestic corporations

This Act applies to all domestic corporations in existence on its effective date that were incorporated under the laws of this state for a purpose or purposes for which a corporation might be formed under this Act.

Source: MBCA §17.01.

Comment - 2013 Revision

Under Model Act Section 17.01, this Act would apply to all corporations for profit formed under a general statute of this state providing for the incorporation of a corporation for profit. This Act modifies the description of the existing corporations to which it applies to those corporations formed for a purpose for which a corporation could be formed under this Part. The narrower description is designed to prevent the application of this Act to special forms of for-profit corporations, such as banking and insurance corporations, which are governed by separate statutes.

§1-1702. Limited applicability to foreign corporations

Except where express reference is made to foreign corporations, this Act does not apply to foreign corporations.

Source: R.S. 12:75 (2012).

Comments - 2013 Revision

(a) Because this Act omits Model Act Chapter 15, concerning the qualification of foreign corporations to do business in this state, it also omits Model Act Section 17.02, concerning the transition rules applicable to already-qualified foreign corporations. Chapter 3 of Title 12 continues to govern the qualification of foreign corporations in this state, without any change by this Act.

(b) This Act utilizes Section 1-1702 to retain the substance of former R.S. 12:175, which rendered the predecessor statute generally inapplicable to foreign corporations. Section 1-1702 of this Act states that the Act does not apply to foreign corporations except where it makes an express reference to foreign corporations. Examples of express references to foreign corporations include the reference to the names of qualified foreign corporations in Section 1-401(b) and the references to foreign corporations in Parts 9 and 11.

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§1-1703. Saving provisions

A. Except as provided in Subsection B of this Section, the repeal of a statute by this Act does not affect:

(1) The operation of the statute or any action taken under it, before its repeal;

(2) Any ratification, right, remedy, privilege, obligation, or liability acquired, accrued, or incurred under the statute, before its repeal;

(3) Any violation of the statute, or any penalty, forfeiture, or punishment incurred because of the violation, before its repeal;

(4) Any proceeding, reorganization, or dissolution commenced under the statute before its repeal, and the proceeding, reorganization, or dissolution may be completed in accordance with the statute as if it had not been repealed.

B. If a penalty or punishment imposed for violation of a statute repealed by this Act is reduced by this Act, the penalty or punishment if not already imposed shall be imposed in accordance with this Act.

C. In the event that any provisions of this Act are deemed to modify, limit, or supersede the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., the provisions of this Act shall control to the maximum extent permitted by Section 102(a)(2) of that federal act.

Source: MBCA §17.03.

§1-1704. [Reserved.]

Comment - 2013 Revision

Model Act Section 17.04, which provides for severability, is omitted from this Act. A general rule of severability is provided in R.S. 24:175 for all acts of the Legislature. A separate severability rule in this Act would either be repetitious of or inconsistent with the general rule.

* * *

§1501. Applicability

The provisions of this Chapter shall be applicable to all business organizations defined in R.S. 12:1502(B)~~, except as provided in R.S. 12:92(D), 93(D), or 1328(C)~~.

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1 §1502. Actions against persons who control business organizations

2 A. The provisions of this Section shall apply to all business organizations
3 formed under the laws of this state and shall be applicable to actions against any
4 officer, director, shareholder, member, manager, general partner, limited partner,
5 managing partner, or other person similarly situated. The provisions of this Section
6 shall not apply to actions governed by R.S. 12:1-622, 1-833, 1-1407 or 1328(C).

7 * * *

8 §1601. ~~Definitions~~ Conversion of domestic business entities

9 ~~As used in this Chapter, the following terms and phrases shall have the~~
10 ~~meaning ascribed to them in this Section, unless the context clearly indicates~~
11 ~~otherwise:~~

12 ~~(1) "Conversion" means the continuance of a domestic entity of one type as~~
13 ~~a domestic entity of another type.~~

14 ~~(2) "Converted entity" means an entity resulting from a conversion.~~

15 ~~(3) "Converting entity" means an entity as the entity existed before the~~
16 ~~entity's conversion.~~

17 One form of domestic business entity may convert to another form of
18 domestic business entity as provided in the Business Corporation Act. This
19 authorization of domestic entity conversions does not limit the other forms of
20 transaction authorized by the Business Corporation Act.

21 Comments - 2013 Revision

22 (a) The original version of Chapter 25 of Title 12 was enacted in 2006 to
23 authorize the conversion of one form of domestic unincorporated business entity into
24 another. In 2013, the Chapter was revised extensively in connection with the
25 adoption in Louisiana of the Model Business Corporation Act, now Chapter 1 of
26 Title 12, which contains its own provisions on entity conversion.

27 (b) Although the basic concept of entity conversion was similar under the
28 Model Act and former Chapter 25, the two approaches differed in several respects:

29 (1) The Model Act applied only to conversions in which a domestic business
30 corporation was either a converting or surviving entity, but permitted conversions
31 that included as parties foreign corporations and domestic and foreign
32 unincorporated entities, such as partnerships and limited liability companies.
33 Chapter 25, in contrast, applied only to conversions in which both the converting and
34 surviving entities were domestic, but was not limited to conversions that included
35 domestic business corporations as parties.

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1 (2) The Model Act rules on the content, execution and filing of the relevant
2 documents were part of a larger model structure, widely adopted in other states. The
3 analogous Louisiana rules were designed to work within the older structure
4 established by Louisiana's 1968 business corporation statute.

5 (3) Chapter 25 addressed two issues on which the Model Act was silent: the
6 need to file "short period" tax returns for the converting entity and the treatment of
7 government-issued licenses held by the converting entity.

8 (c) The two approaches to entity conversion were reconciled in three ways:

9 (1) The scope of the Model Act conversion provisions was expanded to
10 include the types of non-corporate conversions covered by former Chapter 25.

11 (2) The provisions of former Chapter 25 concerning the content, execution
12 and filing of the required conversion documents were repealed and replaced by a
13 cross reference to the Model Act provisions on conversion.

14 (3) The substance of the tax-return and government licensing rules in
15 Chapter 25 was retained.

16 (d) Neither this Chapter nor the Business Corporation Act authorizes the
17 conversion of a nonprofit corporation into a business corporation. Former R.S.
18 12:165, which permitted a nonprofit corporation to "reincorporate" as a business
19 corporation if the provisions of the Nonprofit Corporation Law "no longer appl[ied],"
20 was not retained as part of the current Business Corporation Act. It was not clear
21 how the former reincorporation provision could ever be satisfied, as it required the
22 Nonprofit Corporation Law "no longer [to] apply" to an existing nonprofit
23 corporation. And if the former provision could indeed be satisfied, it appeared to
24 provide an unjustified means of circumventing the prohibition in the Nonprofit
25 Corporation Law against the distribution of profits. See R.S. 12:210(F). The
26 Nonprofit Corporation Law does permit a nonprofit corporation to merge or
27 consolidate with a business corporation. R.S. 12:242(A). But a nonprofit
28 corporation that is not permitted to distribute its net assets to its members upon
29 dissolution may be merged only with another corporation that is subject to the same
30 limitation. R.S. 12:242(C).

31 §1602. ~~Conversion of domestic entities~~ <u>Definitions</u>

32 ~~A. Any domestic limited liability company, business corporation, partnership~~
33 ~~in commendam, or partnership may convert to another type of domestic business~~
34 ~~entity by submitting a conversion application to the secretary of state. The owners~~
35 ~~or members of the converting entity must approve the conversion in the same manner~~
36 ~~provided for by law and by the document, instrument, agreement, or other writing~~
37 ~~governing the internal affairs of the converting entity and the conduct of its business.~~

38 ~~B. An entity may not convert under this Chapter if an owner or member of~~
39 ~~the entity, as a result of the conversion, becomes personally liable, without the~~
40 ~~consent of the owner or member, for a liability or other obligation of the converted~~
41 ~~entity.~~

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Terms that are defined in the Business Corporation Act have the same meaning in this Chapter as in that act. As used in this Chapter:

(1) "Allowed update rule" means a rule of a licensing body allowed by R.S.12:1604(B) or (C).

(2) "Business entity" means any of the following business organizations: business corporation, limited liability company, partnership, partnership in commendam, and registered limited liability partnership.

(3) "Converting entity" means a domestic business corporation or domestic unincorporated entity as it exists before the effective date of an entity conversion under the Business Corporation Act.

(4) "Domestic business entity" means a business entity that is incorporated, organized, or formed under the laws of this state.

(5) "License" means any license, permit or certificate issued by any board, commission, or agency of the state or any of its political subdivisions.

(6) "Licensing body" means the board, commission, or agency of the state or any of its political subdivisions that issues a license.

(7) "Publicly traded entity" means a business entity that is the issuer of shares, ownership interests, or other securities that are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national securities association.

(8) "Surviving entity" means a domestic business corporation or domestic unincorporated entity as it exists immediately after the consummation of an entity conversion under the Business Corporation Act.

§1603. ~~Conversion application~~ Tax filing requirements

~~A. The application shall set forth the following:~~

~~(1) The name of the converting entity and the converted entity.~~

~~(2) A statement of the type of the resulting converted entity.~~

~~(3) A statement that the converting entity is continuing its existence in the organizational form of the converted entity.~~

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1 ~~(4) The manner and basis of converting the ownership or membership~~
2 ~~interests of the converting entity into ownership or membership interests of the~~
3 ~~converted entity.~~
4 ~~(5) The fact that the conversion has been authorized and approved in~~
5 ~~accordance with this Section.~~
6 ~~(6)(a) The information required in the articles of organization if the~~
7 ~~converted entity is a limited liability company, along with an attached initial report.~~
8 ~~(b) The information required in the articles of incorporation if the converted~~
9 ~~entity is a corporation along with an attached initial report.~~
10 ~~(c) The information required in a contract of partnership if the converted~~
11 ~~entity is a partnership or a partnership in commendam.~~
12 ~~B. The application shall be signed on behalf of the converting entity in the~~
13 ~~following manner:~~
14 ~~(1) In the case of a limited liability company, by any member if management~~
15 ~~is reserved to the members or by any manager if management is vested in one or~~
16 ~~more managers pursuant to R.S. 12:1312.~~
17 ~~(2) In the case of a corporation, by any officer.~~
18 ~~(3) In the case of a partnership or partnership in commendam, by any general~~
19 ~~partner.~~
20 Short period tax returns shall be filed for the converting entity if the surviving
21 entity's tax classification is different than the converting entity's tax classification.
22 All items of income, gain, loss, deduction, and credit shall be reported on the short
23 return in accordance with the converting entity's tax classification during the short
24 period.
25 Comment - 2013 Revision
26 This Section is identical in substance to provision it replaced, former R.S.
27 12:1606.

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§1604. ~~Filing and recording conversion application; issuance and effect of certificate of conversion~~ Continuation and updating of professional or other license

A. ~~The conversion application, and initial report if applicable, shall be filed with the secretary of state and may be delivered in advance, for filing as of any specified date, within thirty days after the date of delivery.~~ A converting entity that holds a license immediately before a nonprofit conversion or entity conversion continues to hold the license as a surviving entity unless the surviving entity fails to comply with an allowed update rule, or is not a form of business entity that may hold that kind of license. The continued holding of a license under this Subsection does not affect the expiration date or any of the terms or conditions of the license. The license continues to be held, and may be suspended, restricted or revoked, as if the conversion had not occurred.

B. ~~If the secretary of state finds that the application and initial report, if applicable, are in compliance with the provisions of this Chapter, and after all fees have been paid as required by law, the secretary of state shall record the application and initial report, if applicable, in his office, endorse on each the date of filing thereof with him, and issue a certificate of conversion that shall show the date of filing of the application with him and the effective date of the conversion. A duplicate certificate of conversion issued by the secretary of state shall, within thirty days after issuance of the certificate, be filed for record in the conveyance records of each parish in this state in which the entity has immovable property, title to which will be transferred as a result of the conversion.~~ The rules of a licensing body may require a surviving entity to update its licensing information by delivering a copy of any of the following documents to the licensing body within ninety days after the effective date of the conversion, or by a later date set by those rules:

(1) The articles of entity conversion, acknowledged as filed by the secretary of state as provided in the Business Corporation Act.

(2) The license being updated.

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1 (3) A bond or certificate of insurance in the name of the surviving entity for
2 any coverage required for the issuance of the kind of license being updated.
3 (4) An amendment or amended version of any contract or other agreement
4 required for the issuance of the kind of license being updated, naming the surviving
5 entity as a party to the required contract or agreement.
6 C. ~~A conversion shall be effective when the application has been recorded~~
7 ~~by the secretary of state. However, if the application was filed within five days,~~
8 ~~exclusive of legal holidays, after signing thereof, the conversion shall be effective~~
9 ~~as of the time of such signing, unless the application specifies that the effective date~~
10 ~~shall be the date filed by the secretary of state.~~ The rules of a licensing body may
11 require the surviving entity to pay a fee of up to twenty-five dollars to update the
12 license.
13 D. An updated license shall be issued by the licensing body within thirty
14 days of its receipt of the documents and fee required by its allowed update rules, but
15 if a surviving entity has complied with the allowed update rules of the licensing
16 body, a failure by the licensing body to issue an updated license does not affect the
17 continued holding of the license as provided in Subsection A of this Section.
18 E. A license held by a converting entity terminates on the effective date of
19 the conversion if the surviving entity in the conversion is a form of business entity
20 that may not hold the license.
21 F. If a surviving entity fails to comply with an allowed update rule
22 concerning a license, the license terminates at the end of the ninetieth day after the
23 effective date of the conversion or, if a later date for compliance is set by the allowed
24 update rule, at the end of the later date.
25 G. Except for publicly traded entities, the provisions of this Section shall not
26 apply to a surviving entity seeking an updated license that has any change in
27 ownership interests or has changed ownership by including an individual or entity
28 that did not have an ownership interest in the surviving entity immediately prior to
29 the conversion.

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1 Comments - 2013 Revision

2 (a) This Section retains the substance of former R.S. 12:1607, but has been
3 modified to clarify the meaning of the Section and to address issues left open by the
4 earlier provision.

5 (b) The former provision required an agency to "recognize" a surviving
6 entity's license, but also conferred power on the agency to require the converted
7 licensee to "update" its license and to submit any insurance policies and contracts
8 required of the licensee in the new name of the converted entity. If the updated
9 license was issued, it was given retroactive effect to the date of the entity conversion,
10 leaving open the question of how to reconcile the agency's obligation to recognize
11 a continuing license, while withholding an updated license that would have
12 retroactive effect only if issued. The former language also allowed the agency to
13 refuse to issue an updated license if the entity (presumably either before or after the
14 conversion) owed any unpaid fees or had been "cited or charged" with a violation of
15 the law that the agency was empowered to enforce. This power to withhold an
16 updated license based merely on a charged or cited violation of law, or for any
17 unpaid fee, suggested that the licensing agency could revoke an entity's license in
18 practical effect on grounds that would not have supported license revocation under
19 normal revocation procedures.

20 (c) As modified, this Section does not merely instruct the licensing body to
21 recognize a surviving entity's license. Rather, it continues the license by operation
22 of law, as if the conversion had not occurred, subject to two limitations: (a) the
23 license terminates immediately on conversion if the surviving entity in the
24 conversion is not the kind of entity that may hold that kind of license, and (b) the
25 license terminates at the end of an "update" period of at least 90 days if the surviving
26 entity fails to comply by the end of the update period with any update rules permitted
27 this chapter and adopted by the agency. Otherwise, subject to any enforcement
28 actions that may be pending or that could be initiated against the licensee in the
29 absence of the conversion, the license of the surviving entity in the conversion
30 continues for any period remaining in the term of the continued license.

31 * * *

32 §1702. Electronic mail addresses and short message service numbers;
33 confidentiality

34 Any electronic mail address or short message service number submitted to
35 or captured by the secretary of state pursuant to the provision of this Title shall be
36 confidential and shall not be disclosed by the secretary of state or any employee or
37 official of the Department of State.

38 §1703. Electronic notification of status changes

39 The secretary of state shall notify any person who subscribes to the secretary
40 of state's electronic mail or short message notification service and who is an officer
41 of a corporation, member or manager of a limited liability company, or partner in a
42 partnership, or any agent thereof, when a filing has occurred that may have removed

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that person's name from documents and records of that entity held by the secretary of state.

Section 2. R.S. 44:4.1(B)(5) is hereby amended and reenacted to read as follows:

§4.1. Exceptions

* * *

B. The legislature further recognizes that there exist exceptions, exemptions, and limitations to the laws pertaining to public records throughout the revised statutes and codes of this state. Therefore, the following exceptions, exemptions, and limitations are hereby continued in effect by incorporation into this Chapter by citation:

* * *

(5) ~~R.S. 12:2.1~~ R.S. 12:1702

* * *

Section 3. R.S. 49:222(B)(1) and (6) are hereby amended and reenacted to read as follows:

§222. Fees chargeable by secretary of state

* * *

B. The secretary of state is authorized to collect the following fees:

(1) Domestic corporations and limited liability companies.

(a) Twenty-five dollars for reserving a corporate name or limited liability company name, transferring a reserved corporate name, registering a corporate name, renewing a registered corporate name, or applying for use of an indistinguishable name by a corporation.

(b) Sixty dollars for filing and recording corporation articles of incorporation, ~~amended articles of incorporation, dissolution proceedings, termination of dissolution proceedings,~~ articles of amendment, articles of restatement, articles of domestication, articles of charter surrender, articles of nonprofit conversion, articles of domestication and conversion, articles of dissolution, articles of revocation of dissolution, articles of reinstatement

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~~proceedings~~, articles of merger or share exchange ~~proceedings~~, and ~~certificates~~ articles of correction.

(c) Seventy-five dollars for filing and recording limited liability company articles of organization, amended articles of organization, dissolution proceedings, termination of dissolution proceedings, reinstatement proceedings, merger proceedings, and certificates of correction.

(d) Twenty dollars for filing any other document or issuing and sealing any other certificate required or permitted by the ~~Louisiana business corporation law~~ Business Corporation Act, ~~R.S. 12:1 et seq.~~ R.S. 12:1-101 et seq., or the limited liability companies law, R.S. 12:1301 et seq.

(e) Twenty-five dollars for a corporation's statement of change of registered agent or registered office, or both, the resignation of an agent or officer; appointment of a registered agent; change of domicile; appointment of new officers, directors, members, or managers; and change of address for agents, officers, directors, members, or managers.

(f) Twenty-five dollars for a supplemental initial report.

(g) Twenty-five dollars for annual reports.

* * *

(6) ~~Business~~ Articles of entity conversions.

(a) Seventy-five dollars for conversion from or to a limited liability company.

(b) One hundred dollars for conversion from or to a partnership.

(c) ~~Seventy-five dollars for conversion of a corporation to or from a limited liability company.~~ For a conversion of a partnership from or to a limited liability company, the fee stated in Subsection B of this Section.

~~(d) One hundred dollars for conversion of a corporation to or from a partnership.~~

* * *

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1 Section 4. Code of Civil Procedure Article 611 is hereby amended and reenacted to
2 read as follows:

3 Art. 611. Derivative actions; prerequisites

4 A. When a corporation or unincorporated association refuses to enforce a
5 right of the corporation or unincorporated association, a shareholder, partner, or
6 member thereof may bring a derivative action to enforce the right on behalf of the
7 corporation or unincorporated association. A derivative action may be maintained
8 as a class action when the persons constituting the class are so numerous as to make
9 it impracticable for all of them to join or be joined as parties. In the case of a
10 derivative class action, Articles 594 and 595 shall apply.

11 B. If a derivative action is a "derivative proceeding" as defined in the
12 Business Corporation Act, the action is exempt from the provisions of this Chapter
13 other than this Subsection, and is subject instead to the provisions of the Business
14 Corporation Act concerning derivative proceedings.

15 Comment - 2013

16 The last sentence of Article 611 was added in connection with Louisiana's
17 adoption in 2013 of the Business Corporation Act. The added language causes a
18 derivative action that is filed on behalf of a Louisiana business corporation (or, to the
19 limited extent provided in Section 1-747 of the Act, on behalf of a foreign
20 corporation) to be governed by the derivative proceeding provisions of the Business
21 Corporation Act instead of the class and derivative actions chapter of the Code of
22 Civil Procedure. See R.S. 12:1-740(1). A derivative proceeding that is governed by
23 the Business Corporation Act is exempted only from this Chapter, however, and
24 otherwise remains subject to the provisions of the Code of Civil Procedure.

25 Section 5. R.S. 12:1 through 178 and 1605 through 1607 are hereby repealed in their
26 entirety.

27 Section 6. In the event that the Act that originated as House Bill No. 430 of this 2013
28 Regular Session of the Louisiana Legislature is enacted into law, provisions of that Act
29 amending fee amounts provided in R.S. 49:222 shall supersede and replace fee amounts
30 provided in this Act. The Louisiana State Law Institute is hereby directed to redesignate the
31 provisions of that Act in a manner consistent with this Act.

32 Section 7. The Louisiana State Law Institute, as the official advisory law revision
33 commission of the state of Louisiana, shall direct and supervise the continuous revision,

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1 clarification, and coordination of Chapter 1 of Title 12 of the Louisiana Revised Statutes of
2 1950, relative to business corporations.
3 Section 8. The provisions of this Act shall become effective on January 1, 2015.

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)]

Foil HB No. 408

Abstract: Enacts the "Business Corporation Act".

Present law (R.S. 12:1-178) provides with regard to the Business Corporation Law.

Proposed law repeals present law.

Proposed law enacts the "Business Corporations Act", modeled after the Model Business Corporations Act.

Present law (R.S. 12:1501) provides for the applicability of Chapter 24 of Title 12 of the La. Revised Statutes of 1950 to all business organizations defined in R.S. 12:1502(B), except as provided in R.S. 12:92(D), 93(D), or 1328(C).

Proposed law repeals present law.

Present law (R.S. 12:1502(A)) provides for the applicability of present law to business organizations formed under the laws of the state and to actions against officers, directors, shareholders, members, managers, general partners, limited partners, managing partners, or other persons similarly situated.

Proposed law provides an exception for actions governed by R.S. 12:1-622, 1-833, 1-1407, or 12:1328(C).

Present law (R.S. 12:1601) provides definitions applicable to Chapter 25 of Title 12 of the Louisiana Revised Statutes of 1950.

Proposed law repeals present law and provides for the conversion of domestic business entities.

Present law (R.S. 12:1602) provides for the conversion of domestic entities.

Proposed law repeals present law and provides definitions applicable to Chapter 25 of Title 12. Proposed law further provides that terms defined in the Business Corporation Act have the same meaning in Chapter 25 of Title 12.

Present law (R.S. 12:1603) sets forth the conversion application requirements for business organizations.

Proposed law repeals present law and provides tax filing requirements for converting entities.

Present law (R.S. 12:1604) provides for the filing and recording of a conversion application and the issuance and effect of a certificate of conversion.

Proposed law repeals present law and provides for the continuation and updating of a professional or other license.

Present law (R.S. 12:1605) provides for the effect of conversion.

Proposed law repeals present law.

Present law (R.S. 12:1606) provides for tax filing requirements for converting business organizations.

Proposed law repeals present law.

Present law (R.S. 12:1607) provides for the recognition of conversion and updating of a professional license.

Proposed law repeals present law.

Proposed law (R.S. 12:1702 and 1703) provides for confidentiality of electronic mail addresses and electronic notification of state changes.

Present law (R.S. 44:4.1(B)(5)) provides for public records exceptions.

Proposed law provides for a public records exception for electronic email addresses submitted or captured by the secretary of state as provided in proposed law.

Present law (R.S. 49:222(B)(1)) provides for fees chargeable by the secretary of state for domestic corporations and limited liability companies.

Proposed law amends the provision to authorize the secretary of state to collect fees and documents permitted to be filed under the Business Corporation Act.

Present law (C.C.P. Art 611) provides for derivative actions.

Proposed law maintains present law and provides that a "derivative proceeding" as defined in the Business Corporation Act is exempt from the provisions of Chapter 5 of Title II of the Code of Civil Procedure and subject to the relevant provisions of the Business Corporations Act.

Effective January 1, 2015.

(Amends R.S. 12:1501, 1502(A), and 1601-1604, R.S. 44:4.1(B)(5), R.S. 49:222(B)(1) and (6), and C.C.P. Art. 611; Adds R.S. 12:1-101through 1-1704, 1702, and 1703; Repeals R.S. 12:1-178 and 1605-1607)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Provided relative to the termination of a corporation's name.

2. Provided for confidentiality of electronic mail addresses and electronic notification of changes.

3. Provided for a public records exception for electronic email addresses submitted or captured by the secretary of state with regard to corporations and as provided in proposed law.

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