

1-1 By: Hancock S.B. No. 1203
1-2 (In the Senate - Filed March 9, 2021; March 18, 2021, read
1-3 first time and referred to Committee on Business & Commerce;
1-4 March 31, 2021, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; March 31, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to business entities.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Sections 1.002(33), (49), and (53), Business
1-22 Organizations Code, are amended to read as follows:

1-23 (33) "General partner" means:

1-24 (A) each partner in a general partnership; or

1-25 (B) a person who has become, and has not ceased to
1-26 be, ~~[is admitted to a limited partnership as]~~ a general partner in a
1-27 limited partnership in accordance with the governing documents of
1-28 the limited partnership or this code.

1-29 (49) "Limited partner" means a person who has become,
1-30 and has not ceased to be, ~~[been admitted to a limited partnership~~
1-31 ~~as]~~ a limited partner in a limited partnership in accordance with
1-32 the governing documents of the limited partnership or this code [as
1-33 provided by:

1-34 ~~[(A) in the case of a domestic limited~~
1-35 ~~partnership, Chapter 153, or~~

1-36 ~~[(B) in the case of a foreign limited partnership,~~
1-37 ~~the laws of its jurisdiction of formation].~~

1-38 (53) "Member" means:

1-39 (A) in the case of a limited liability company, a
1-40 person who ~~[is a member or]~~ has become, and has not ceased to be,
1-41 ~~[been admitted as]~~ a member in the limited liability company as
1-42 provided by [under] its governing documents or this code;

1-43 (B) in the case of a nonprofit corporation, a
1-44 person who has membership rights in the nonprofit corporation under
1-45 its governing documents;

1-46 (C) in the case of a cooperative association, a
1-47 member of a nonshare or share association;

1-48 (D) in the case of a nonprofit association, a
1-49 person who has membership rights in the nonprofit association under
1-50 its governing documents; or

1-51 (E) in the case of a professional association, a
1-52 person who has membership rights in the professional association
1-53 under its governing documents.

1-54 SECTION 2. Subchapter B, Chapter 2, Business Organizations
1-55 Code, is amended by adding Section 2.115 to read as follows:

1-56 Sec. 2.115. CHOICE OF FORUM PROVISIONS. (a) In this
1-57 section, "internal entity claim" means a claim of any nature,
1-58 including a derivative claim in the right of an entity, that is
1-59 based on, arises from, or relates to the internal affairs of the
1-60 entity, as defined by Section 1.105.

1-61 (b) The governing documents of a domestic entity may

2-1 require, consistent with applicable state and federal
 2-2 jurisdictional requirements, that any internal entity claims shall
 2-3 be brought only in a court in this state.

2-4 SECTION 3. Section 3.010, Business Organizations Code, is
 2-5 amended to read as follows:

2-6 Sec. 3.010. SUPPLEMENTAL PROVISIONS REQUIRED IN
 2-7 CERTIFICATE OF FORMATION OF LIMITED LIABILITY COMPANY. In addition
 2-8 to the information required by Section 3.005, the certificate of
 2-9 formation of a limited liability company must state:

2-10 (1) whether the limited liability company initially
 2-11 has [will] or does [will] not have managers;

2-12 (2) if the limited liability company initially has
 2-13 [will have] managers, the name and address of each initial manager
 2-14 of the limited liability company; and

2-15 (3) if the limited liability company does [will] not
 2-16 initially have managers, the name and address of each initial
 2-17 member of the limited liability company.

2-18 SECTION 4. Section 3.060(a), Business Organizations Code,
 2-19 is amended to read as follows:

2-20 (a) In addition to the provisions authorized or required by
 2-21 Section 3.059, a restated certificate of formation for a for-profit
 2-22 corporation or professional corporation may omit any prior
 2-23 statements regarding [update] the [current] number of directors and
 2-24 the names and addresses of the persons serving as directors and, at
 2-25 the corporation's election, may insert a statement regarding the
 2-26 current number of directors and the names and addresses of the
 2-27 persons currently serving as directors.

2-28 SECTION 5. Section 3.061(a), Business Organizations Code,
 2-29 is amended to read as follows:

2-30 (a) In addition to the provisions authorized or required by
 2-31 Section 3.059, a restated certificate of formation for a nonprofit
 2-32 corporation may omit any prior statements regarding [update] the
 2-33 [current] number of directors and the names and addresses of the
 2-34 persons serving as directors and, at the corporation's election,
 2-35 may insert a statement regarding the current number of directors
 2-36 and the names and addresses of the persons currently serving as
 2-37 directors.

2-38 SECTION 6. Section 3.0611, Business Organizations Code, is
 2-39 amended to read as follows:

2-40 Sec. 3.0611. SUPPLEMENTAL PROVISIONS FOR RESTATED
 2-41 CERTIFICATE OF FORMATION FOR LIMITED LIABILITY COMPANY. In
 2-42 addition to the provisions authorized or required by Section 3.059,
 2-43 a restated certificate of formation for a limited liability company
 2-44 may omit any prior statements regarding whether the company has or
 2-45 does not have managers and the names and addresses of managers or
 2-46 members and, at the company's election, may insert a statement:

2-47 (1) regarding whether [if the company's certificate of
 2-48 formation states that] the company currently has or does not [will]
 2-49 have [one or more] managers[, update the names and addresses of the
 2-50 persons serving as managers]; [or]

2-51 (2) [if the certificate of formation states] that the
 2-52 company currently has [will not have] managers and[, update] the
 2-53 names and addresses of the persons currently serving as managers;
 2-54 or

2-55 (3) that the company currently does not have managers
 2-56 and the names and addresses of the current members of the company.

2-57 SECTION 7. Section 3.251, Business Organizations Code, is
 2-58 amended to read as follows:

2-59 Sec. 3.251. DEFINITIONS [EMERGENCY DEFINED]. In [For
 2-60 purposes of] this subchapter:

2-61 (1) "Emergency" means any of the following:

2-62 (A) an attack on the United States, a state, or a
 2-63 political subdivision of a state;

2-64 (B) a nuclear or atomic disaster;

2-65 (C) the occurrence of a catastrophic event,
 2-66 including:

2-67 (i) an epidemic or pandemic;

2-68 (ii) a hurricane, tropical storm, tornado,
 2-69 or other weather condition; or

- 3-1 (iii) a riot or civil disturbance;
- 3-2 (D) the declaration of a national emergency by
- 3-3 the United States government;
- 3-4 (E) the declaration of an emergency by a state or
- 3-5 a political subdivision of a state; or
- 3-6 (F) any other similar emergency situation.

3-7 (2) "Emergency action" means an action taken by
 3-8 majority vote of the governing persons present at a meeting of the
 3-9 governing authority of a domestic entity during an emergency
 3-10 period.

3-11 (3) "Emergency period" means any period during which
 3-12 the governing authority of a domestic entity, due to a condition
 3-13 that is a part of or results from an emergency, is unable to satisfy
 3-14 one or more requirements of the entity's governing documents or
 3-15 this code necessary for action by vote of the governing authority
 3-16 outside of an emergency period~~[, an emergency exists if a majority~~
 3-17 ~~of a domestic entity's governing persons cannot readily participate~~
 3-18 ~~in a meeting because of the occurrence of a catastrophic event].~~

3-19 SECTION 8. Section 3.252, Business Organizations Code, is
 3-20 amended to read as follows:

3-21 Sec. 3.252. PROVISIONS IN GOVERNING DOCUMENTS. (a) The
 3-22 ~~[Except as otherwise provided by the entity's governing documents,~~
 3-23 ~~the] governing persons and, if applicable, the owners~~~~[,]~~ or members
 3-24 of a domestic entity may adopt provisions in the domestic entity's
 3-25 governing documents regarding ~~[the management of the entity during~~
 3-26 ~~an] emergency actions, including provisions that apply only during~~
 3-27 an emergency period that authorize, limit, or prohibit:

3-28 (1) ~~[prescribing]~~ procedures for calling a meeting of
 3-29 the governing persons;

3-30 (2) the necessity of a quorum for action by vote at a
 3-31 meeting of the governing persons;

3-32 (3) ~~[establishing]~~ minimum requirements for
 3-33 participation at the meeting of the governing persons; and

3-34 (4) the designation of ~~[(3) designating]~~ additional
 3-35 or substitute governing persons.

3-36 (b) Any ~~[The emergency]~~ provisions in a domestic entity's
 3-37 governing documents that apply only during an emergency period must
 3-38 be adopted in accordance with:

3-39 (1) the requirements of the governing documents that
 3-40 apply outside of an emergency period; and

3-41 (2) the applicable provisions of this code that apply
 3-42 outside of an emergency period.

3-43 SECTION 9. Subchapter F, Chapter 3, Business Organizations
 3-44 Code, is amended by adding Section 3.2535 to read as follows:

3-45 Sec. 3.2535. ACTIONS DURING EMERGENCY PERIOD. (a) Except
 3-46 as otherwise limited or prohibited by the domestic entity's
 3-47 governing documents or except as provided by Subsection (b), the
 3-48 governing authority of a domestic entity may take an emergency
 3-49 action during an emergency period without satisfying the
 3-50 requirements of the entity's governing documents or this code that
 3-51 apply outside of an emergency period with respect to:

3-52 (1) procedures for calling a meeting of the governing
 3-53 persons;

3-54 (2) the necessity of a quorum for action by vote at a
 3-55 meeting of the governing persons;

3-56 (3) minimum requirements for participation at a
 3-57 meeting of the governing persons; and

3-58 (4) any other procedural requirements for action at a
 3-59 meeting of the governing persons.

3-60 (b) Subsection (a) does not apply to an action by the
 3-61 governing authority of a domestic entity:

3-62 (1) to amend the entity's governing documents; or

3-63 (2) that must be approved by a separate vote of the
 3-64 owners or members of the entity in accordance with the requirements
 3-65 of the entity's governing documents or this code that apply outside
 3-66 of an emergency period.

3-67 SECTION 10. Section 3.255, Business Organizations Code, is
 3-68 amended to read as follows:

3-69 Sec. 3.255. EFFECT OF EMERGENCY ACTION ~~[TAKEN]~~. An

4-1 emergency action taken by the governing persons of a domestic
 4-2 entity in accordance with the entity's governing documents or
 4-3 Section 3.2535, if taken in good faith and based on the reasonable
 4-4 belief that the emergency action was in the entity's best interest
 4-5 [in accordance with the emergency provisions]:

4-6 (1) is binding on the entity; and

4-7 (2) may not be used to impose liability on a managerial
 4-8 official, employee, or agent of the entity.

4-9 SECTION 11. Section 6.201, Business Organizations Code, is
 4-10 amended by amending Subsection (b) and adding Subsections (b-1),
 4-11 (b-2), (b-3), (b-4), and (b-5) to read as follows:

4-12 (b) The owners or members or the governing authority of a
 4-13 filing entity, or a committee of the governing authority, may take
 4-14 action without holding a meeting, providing notice, or taking a
 4-15 vote if each person entitled to vote on the action signs a written
 4-16 consent or consents stating the action taken. Except as provided by
 4-17 this section, the written consent or consents take effect when
 4-18 signed by all persons entitled to vote on the action.

4-19 (b-1) By a provision in the written consent or consents or
 4-20 by a written instruction to an agent of the filing entity by one or
 4-21 more persons granting the written consent or consents, a written
 4-22 consent or consents may be made to take effect at a future time,
 4-23 which must be not later than the 60th day after the date all persons
 4-24 entitled to vote on the action have signed the consent or consents.
 4-25 If a written consent or consents described by this subsection are to
 4-26 take effect at a future time, all of the written consents take
 4-27 effect at that future effective time.

4-28 (b-2) If two or more of the written consents described by
 4-29 Subsection (b-1) have different future effective times, the latest
 4-30 future effective time of those consents applies to all of the
 4-31 consents. The written consent or consents are considered to have
 4-32 been given at the applicable effective time so long as all of the
 4-33 persons entitled to vote on the action, which is determined as of
 4-34 that effective time or, if applicable, the record date established
 4-35 under Section 6.102, have:

4-36 (1) signed the consent or consents; and

4-37 (2) not revoked their consent or consents before the
 4-38 applicable effective time.

4-39 (b-3) By a provision in the written consent or by a written
 4-40 instruction to an agent of the filing entity, a person signing a
 4-41 written consent may provide that the person's consent is to take
 4-42 effect at a future time, which must be not later than the 60th day
 4-43 after the date all persons entitled to vote on the action have
 4-44 signed the person's consent or consents. A person's written consent
 4-45 is considered to have been given at the later of that future
 4-46 effective time or a later effective time determined under
 4-47 Subsection (b-1) or (b-2), so long as the person:

4-48 (1) is entitled to vote on the action subject to the
 4-49 consent, which is determined as of the applicable effective time
 4-50 or, if applicable, the record date established under Section 6.102;
 4-51 and

4-52 (2) did not revoke the consent before the applicable
 4-53 effective time.

4-54 (b-4) A person signing a written consent may revoke the
 4-55 person's consent any time before the applicable effective time of
 4-56 the consent.

4-57 (b-5) For purposes of this section, a "future time" includes
 4-58 a time that is determined on the happening of an event.

4-59 SECTION 12. Section 6.202, Business Organizations Code, is
 4-60 amended by amending Subsection (c) and adding Subsections (c-1),
 4-61 (c-2), (c-3), (c-4), (e), and (f) to read as follows:

4-62 (c) A written consent or consents described by Subsection
 4-63 (b) must include:

4-64 (1) the date each owner or member signed the consent;
 4-65 and

4-66 (2) the date of signing of the latest dated consent
 4-67 satisfying the minimum number of owners or members necessary to
 4-68 approve the action that is the subject of the consent.

4-69 (c-1) The date described by Subsection (c)(2) must be [is

5-1 ~~effective to take the action that is the subject of the consent only~~
 5-2 ~~if the consent or consents are delivered to the entity]~~ not later
 5-3 than the 60th day after the date of the signing of the earliest
 5-4 dated consent of the owners or members signing the consent or
 5-5 consents. If a consent does not contain the date that an owner or
 5-6 member signed the consent, the date that the owner or member signed
 5-7 the consent is considered to be the date that the consent is
 5-8 received by the filing entity. A written consent or consents
 5-9 described by Subsection (b) that are not solicited by or on behalf
 5-10 of a filing entity or the filing entity's governing authority must
 5-11 be delivered to the entity as required by Section 6.203 to take
 5-12 effect [is delivered to the entity as required by Section 6.203].

5-13 (c-2) By a provision in the written consent or consents or
 5-14 by a written instruction to an agent of the filing entity from one
 5-15 or more persons granting the written consent or consents, a written
 5-16 consent or consents described by Subsection (b) may be made to take
 5-17 effect at a future time, which must be not later than the 60th day
 5-18 after the date the last of the minimum number of owners or members
 5-19 necessary to sign the consent or consents as required by Subsection
 5-20 (b) have signed the consent or consents. If the written consent or
 5-21 consents described by this subsection are to take effect at a future
 5-22 time, all of the written consent or consents take effect at that
 5-23 future effective time.

5-24 (c-3) If two or more of the written consents described by
 5-25 Subsection (c-2) have different future effective times, the latest
 5-26 future effective time of those consents applies to all of the
 5-27 consents. The written consent or consents are considered to have
 5-28 been given for purposes of this section at the applicable effective
 5-29 time so long as owners or members satisfying the minimum
 5-30 requirements in Subsection (b):

5-31 (1) are determined to be owners or members, as
 5-32 applicable, as of:

5-33 (A) that effective time; or
 5-34 (B) if applicable, the record date established
 5-35 under Section 6.102; and

5-36 (2) have signed and not revoked the owner's or member's
 5-37 consent or consents at any time before the applicable effective
 5-38 time of the consent.

5-39 (c-4) By a provision in the written consent or by a written
 5-40 instruction to an agent of the filing entity, an owner or member of
 5-41 a filing entity signing a written consent described by Subsection
 5-42 (b) may provide that the owner's or member's consent is to take
 5-43 effect at a future time, which must be not later than the 60th day
 5-44 after the date on which the consent is signed by the last of the
 5-45 minimum number of owners or members of the entity necessary to sign
 5-46 the consent or consents as required by Subsection (b). The owner's
 5-47 or member's consent is considered to have been given for purposes of
 5-48 this section at the later of that future effective time or a later
 5-49 effective time determined under Subsection (c-3) so long as:

5-50 (1) the person is an owner or member, as applicable, as
 5-51 of:

5-52 (A) the applicable effective time; or
 5-53 (B) if applicable, the record date established
 5-54 under Section 6.102; and

5-55 (2) the owner or member did not revoke the consent at
 5-56 any time before the applicable effective time of the consent.

5-57 (e) An owner or member of a filing entity signing a written
 5-58 consent may revoke the owner's or member's consent at any time
 5-59 before the applicable effective time of the consent.

5-60 (f) For purposes of this section, a "future time" includes a
 5-61 time that is determined on the happening of an event.

5-62 SECTION 13. Section 8.002(a), Business Organizations Code,
 5-63 is amended to read as follows:

5-64 (a) Except as provided by Subsection (b) and Section 8.005,
 5-65 this chapter does not apply to a:

5-66 (1) general partnership; or
 5-67 (2) limited liability company.

5-68 SECTION 14. Section 8.003, Business Organizations Code, is
 5-69 amended to read as follows:

6-1 Sec. 8.003. LIMITATIONS IN GOVERNING DOCUMENTS. A
6-2 governing document [~~(a) The certificate of formation~~] of an
6-3 enterprise may restrict the circumstances under which the
6-4 enterprise must or may indemnify or may advance expenses to a person
6-5 under this chapter.

6-6 ~~[(b) The written partnership agreement of a limited~~
6-7 ~~partnership may restrict the circumstances in the same manner as~~
6-8 ~~the certificate of formation under Subsection (a).]~~

6-9 SECTION 15. Subchapter A, Chapter 8, Business Organizations
6-10 Code, is amended by adding Section 8.005 to read as follows:

6-11 Sec. 8.005. INDEMNIFICATION AGAINST NEGLIGENCE. (a) This
6-12 section applies to:

6-13 (1) an enterprise subject to this chapter; and
6-14 (2) notwithstanding Section 8.002, a general
6-15 partnership or limited liability company.

6-16 (b) A requirement under the laws of this state that
6-17 indemnification or exculpation for negligence be expressly and
6-18 conspicuously stated does not apply to a provision in an
6-19 enterprise's governing documents that provides for indemnification
6-20 or exculpation.

6-21 SECTION 16. Section 9.251, Business Organizations Code, is
6-22 amended to read as follows:

6-23 Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING
6-24 BUSINESS IN THIS STATE. For purposes of this chapter, activities
6-25 that do not constitute transaction of business in this state
6-26 include:

6-27 (1) maintaining or defending an action or suit or an
6-28 administrative or arbitration proceeding, or effecting the
6-29 settlement of:

6-30 (A) such an action, suit, or proceeding; or
6-31 (B) a claim or dispute to which the entity is a
6-32 party;

6-33 (2) holding a meeting of the entity's managerial
6-34 officials, owners, or members or carrying on another activity
6-35 concerning the entity's internal affairs;

6-36 (3) maintaining a bank account;

6-37 (4) maintaining an office or agency for:
6-38 (A) transferring, exchanging, or registering
6-39 securities the entity issues; or

6-40 (B) appointing or maintaining a trustee or
6-41 depository related to the entity's securities;

6-42 (5) voting the interest of an entity the foreign
6-43 entity has acquired;

6-44 (6) effecting a sale through an independent
6-45 contractor;

6-46 (7) creating, as borrower or lender, or acquiring
6-47 indebtedness or a mortgage or other security interest in real or
6-48 personal property;

6-49 (8) securing or collecting a debt due the entity or
6-50 enforcing a right in property that secures a debt due the entity;

6-51 (9) transacting business in interstate commerce;

6-52 (10) conducting an isolated transaction that:

6-53 (A) is completed within a period of 30 days; and
6-54 (B) is not in the course of a number of repeated,
6-55 similar transactions;

6-56 (11) in a case that does not involve an activity that
6-57 would constitute the transaction of business in this state if the
6-58 activity were one of a foreign entity acting in its own right:

6-59 (A) exercising a power of executor or
6-60 administrator of the estate of a nonresident decedent under
6-61 ancillary letters issued by a court of this state; or

6-62 (B) exercising a power of a trustee under the
6-63 will of a nonresident decedent, or under a trust created by one or
6-64 more nonresidents of this state, or by one or more foreign entities;

6-65 (12) regarding a debt secured by a mortgage or lien on
6-66 real or personal property in this state:

6-67 (A) acquiring the debt in a transaction outside
6-68 this state or in interstate commerce;

6-69 (B) collecting or adjusting a principal or

7-1 interest payment on the debt;
 7-2 (C) enforcing or adjusting a right or property
 7-3 securing the debt;
 7-4 (D) taking an action necessary to preserve and
 7-5 protect the interest of the mortgagee in the security; or
 7-6 (E) engaging in any combination of transactions
 7-7 described by this subdivision;
 7-8 (13) investing in or acquiring, in a transaction
 7-9 outside of this state, a royalty or other nonoperating mineral
 7-10 interest;
 7-11 (14) executing a division order, contract of sale, or
 7-12 other instrument incidental to ownership of a nonoperating mineral
 7-13 interest; [~~or~~]
 7-14 (15) owning, without more, real or personal property
 7-15 in this state; or
 7-16 (16) acting as a governing person of a domestic or
 7-17 foreign entity that is registered to transact business in this
 7-18 state.

7-19 SECTION 17. Section 11.001(3), Business Organizations
 7-20 Code, is amended to read as follows:

7-21 (3) "Existing claim" with respect to an entity means:

7-22 (A) a claim that existed before the entity's
 7-23 termination and is not barred by limitations; or

7-24 (B) a claim that exists after the entity's
 7-25 termination and before the third anniversary of the date of the
 7-26 entity's termination and is not barred by limitations, including a
 7-27 claim under a contractual or other obligation incurred after
 7-28 termination.

7-29 SECTION 18. Section 11.153, Business Organizations Code, is
 7-30 amended to read as follows:

7-31 Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION.

7-32 (a) Notwithstanding any provision of this code to the contrary, a
 7-33 court may order the revocation of termination of an entity's
 7-34 existence that was terminated as a result of actual or constructive
 7-35 fraud. In an action under this section, any limitation period
 7-36 provided by law is tolled in accordance with the discovery
 7-37 rule. The secretary of state shall take any action necessary to
 7-38 implement an order under this section.

7-39 (b) If the termination of an entity's existence is revoked
 7-40 under Subsection (a):

7-41 (1) the revocation relates back to the effective date
 7-42 of the termination and takes effect as of that date; and

7-43 (2) the entity's status as an entity continues in
 7-44 effect as if the termination of the entity's existence had never
 7-45 occurred.

7-46 SECTION 19. Section 11.254, Business Organizations Code, is
 7-47 amended to read as follows:

7-48 Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION
 7-49 FOLLOWING TAX FORFEITURE. (a) A filing entity whose certificate of
 7-50 formation has been forfeited under the provisions of the Tax Code
 7-51 must follow the procedures in the Tax Code to reinstate its
 7-52 certificate of formation. A filing entity whose certificate of
 7-53 formation is reinstated under the provisions of the Tax Code is
 7-54 considered to have continued in existence without interruption from
 7-55 the date of forfeiture.

7-56 (b) The reinstatement of a filing entity's certificate of
 7-57 formation after its forfeiture has no effect on any issue of the
 7-58 personal liability of the governing persons, officers, or agents of
 7-59 the filing entity during the period between forfeiture and
 7-60 reinstatement of the certificate of formation.

7-61 SECTION 20. Section 11.359, Business Organizations Code, is
 7-62 amended by adding Subsection (c) to read as follows:

7-63 (c) Notwithstanding Subsections (a) and (b), the
 7-64 extinguishment of an existing claim with respect to a terminated
 7-65 filing entity as provided by this section is nullified if:

7-66 (1) the filing entity's termination is revoked with
 7-67 retroactive effect under Section 11.153;

7-68 (2) the terminated filing entity is reinstated with
 7-69 retroactive effect as provided by Section 11.206;

8-1 (3) the terminated filing entity is reinstated with
 8-2 retroactive effect as provided by Section 11.253(d); or

8-3 (4) the terminated filing entity's certificate of
 8-4 formation is reinstated under the Tax Code with retroactive effect
 8-5 as provided by Section 11.254.

8-6 SECTION 21. Section 21.314(a), Business Organizations
 8-7 Code, is amended to read as follows:

8-8 (a) For purposes of this subchapter, the determination of
 8-9 whether a corporation is or would be insolvent and the
 8-10 determination of the amount ~~[value]~~ of a corporation's ~~[net~~
 8-11 ~~assets,]~~ stated capital~~[r]~~ or surplus, the value of the
 8-12 corporation's net assets, and the amount or value of any component
 8-13 of the corporation's stated capital, surplus, or net assets, [each
 8-14 of the components of net assets, stated capital, or surplus] may be
 8-15 based on:

8-16 (1) financial statements of the corporation, which may
 8-17 include financial statements of subsidiary entities or other
 8-18 entities accounted for on a consolidated basis or on the equity
 8-19 method of accounting, [including financial statements] that:

8-20 (A) ~~[include subsidiary corporations or other~~
 8-21 ~~corporations accounted for on a consolidated basis or on the equity~~
 8-22 ~~method of accounting; or~~

8-23 ~~[(B)]~~ present the financial condition of the
 8-24 corporation, and any subsidiary or other entities included in those
 8-25 financial statements, in accordance with generally accepted
 8-26 accounting principles or international financial reporting
 8-27 standards; or

8-28 (B) have been ~~[(2) financial statements]~~
 8-29 prepared using the method of accounting used to file the
 8-30 corporation's federal income tax return or using any other
 8-31 accounting practices and principles that are reasonable under the
 8-32 circumstances;

8-33 (2) ~~[(3)]~~ financial information, including condensed
 8-34 or summary financial statements, that is prepared on the same basis
 8-35 as financial statements described by Subdivision (1) ~~[or (2)]~~;

8-36 (3) ~~[(4)]~~ a projection, a forecast, or other
 8-37 forward-looking information relating to the future economic
 8-38 performance, financial condition, or liquidity of the corporation
 8-39 that is reasonable under the circumstances;

8-40 (4) ~~[(5)]~~ a fair valuation or information from any
 8-41 other method that is reasonable under the circumstances; or

8-42 (5) ~~[(6)]~~ a combination of a statement, a valuation,
 8-43 or information authorized by this section.

8-44 SECTION 22. Subchapter H, Chapter 21, Business
 8-45 Organizations Code, is amended by adding Section 21.3521 to read as
 8-46 follows:

8-47 Sec. 21.3521. SHAREHOLDER MEETINGS BY REMOTE
 8-48 COMMUNICATION. Except for any limitation or other requirements in
 8-49 the governing documents of the corporation, if a meeting of a
 8-50 corporation's shareholders under Section 21.351 or 21.352 is held
 8-51 by means of a telephone conference or other communication system
 8-52 authorized by Section 6.002, the meeting is considered to have
 8-53 satisfied the requirement of Section 6.002(a) that shareholders
 8-54 participating in the meeting be able to communicate with all other
 8-55 persons participating in the meeting if the corporation implements
 8-56 reasonable measures to provide each shareholder entitled to vote at
 8-57 the meeting, or the shareholder's proxyholder, a reasonable
 8-58 opportunity to:

8-59 (1) vote on matters submitted to the shareholders; and
 8-60 (2) read or hear the proceedings of the meeting
 8-61 substantially concurrently with those proceedings.

8-62 SECTION 23. Section 21.551(2), Business Organizations
 8-63 Code, is amended to read as follows:

8-64 (2) "Shareholder" includes [means] a shareholder as
 8-65 defined by Section 1.002 or a beneficial owner whose shares are held
 8-66 in a voting trust or by a nominee on the beneficial owner's behalf.

8-67 SECTION 24. Section 21.908(a), Business Organizations
 8-68 Code, is amended to read as follows:

8-69 (a) If a defective corporate act ratified under this

9-1 subchapter would have required under any other provision of the
 9-2 corporate statute the filing of a filing instrument or other
 9-3 document with the filing officer, the corporation shall file a
 9-4 certificate of validation with respect to the defective corporate
 9-5 act in accordance with Chapter 4, regardless of whether a filing
 9-6 instrument or other document was previously filed with respect to
 9-7 the defective corporate act. ~~[The filing of another filing
 9-8 instrument or document is not required.]~~

9-9 SECTION 25. Section 22.508(a), Business Organizations
 9-10 Code, is amended to read as follows:

9-11 (a) If a defective corporate act ratified under this
 9-12 subchapter would have required under any other provision of the
 9-13 corporate statute the filing of a filing instrument or other
 9-14 document with the filing officer, the corporation shall file a
 9-15 certificate of validation with respect to the defective corporate
 9-16 act in accordance with Chapter 4, regardless of whether a filing
 9-17 instrument or other document was previously filed with respect to
 9-18 the defective corporate act. ~~[The filing of another filing
 9-19 instrument or document is not required.]~~

9-20 SECTION 26. Section 101.052(d), Business Organizations
 9-21 Code, is amended to read as follows:

9-22 (d) The company agreement may contain any provisions for the
 9-23 regulation and management of the affairs of the limited liability
 9-24 company not inconsistent with law ~~[or the certificate of
 9-25 formation].~~

9-26 SECTION 27. Section 101.206, Business Organizations Code,
 9-27 is amended by adding Subsections (c-1), (c-2), and (g) to read as
 9-28 follows:

9-29 (c-1) For purposes of this section, the determination of the
 9-30 amount of a limited liability company's liabilities or the value of
 9-31 a company's assets may be based on:

9-32 (1) financial statements of the company, which may
 9-33 include the financial statements of subsidiary entities or other
 9-34 entities accounted for on a consolidated basis or on the equity
 9-35 method of accounting, that:

9-36 (A) present the financial condition of the
 9-37 company and any subsidiary or other entities included in those
 9-38 financial statements, in accordance with generally accepted
 9-39 accounting principles or international financial reporting
 9-40 standards; or

9-41 (B) have been prepared using the method of
 9-42 accounting used to file the company's federal income tax return or
 9-43 using any other accounting practices and principles that are
 9-44 reasonable under the circumstances;

9-45 (2) financial information, including condensed or
 9-46 summary financial statements, that is prepared on the same basis as
 9-47 financial statements described by Subdivision (1);

9-48 (3) projections, forecasts, or other forward-looking
 9-49 information relating to the future economic performance, financial
 9-50 condition, or liquidity of the company that is reasonable under the
 9-51 circumstances;

9-52 (4) a fair valuation or information from any other
 9-53 method that is reasonable under the circumstances; or

9-54 (5) a combination of a statement, valuation, or
 9-55 information authorized by this subsection.

9-56 (c-2) Subsection (c-1) does not apply to the computation of
 9-57 the franchise tax or any other tax imposed on a limited liability
 9-58 company under the laws of this state.

9-59 (g) An action alleging a distribution is made in violation
 9-60 of this section must be commenced not later than the second
 9-61 anniversary of the date of the distribution.

9-62 SECTION 28. Section 101.251, Business Organizations Code,
 9-63 is amended to read as follows:

9-64 Sec. 101.251. GOVERNING AUTHORITY. (a) The governing
 9-65 authority of a limited liability company consists of:

9-66 (1) the managers of the company, if the company
 9-67 agreement provides ~~[company's certificate of formation states]~~
 9-68 that the company is managed by ~~[will have]~~ one or more managers; or

9-69 (2) the members of the company, if the company

10-1 agreement provides [company's certificate of formation states]
 10-2 that the company is managed by the members [will not have managers].

10-3 (b) If the company agreement does not provide otherwise, the
 10-4 governing authority of a limited liability company consists of:

10-5 (1) the managers of the company, if the company's
 10-6 certificate of formation states that the company has managers; or

10-7 (2) the members of the company, if the company's
 10-8 certificate of formation does not state that the company has
 10-9 managers.

10-10 SECTION 29. Section 101.451(3), Business Organizations
 10-11 Code, is amended to read as follows:

10-12 (3) "Member" includes [means] a person who is a member
 10-13 or is an assignee of a membership interest or a person who
 10-14 beneficially owns a membership interest through a voting trust or a
 10-15 nominee on the person's behalf.

10-16 SECTION 30. Section 101.457, Business Organizations Code,
 10-17 is amended to read as follows:

10-18 Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written
 10-19 demand filed with the limited liability company under Section
 10-20 101.453 tolls the statute of limitations on the claim on which
 10-21 demand is made until the later of:

10-22 (1) the 31st day after the expiration of any waiting
 10-23 period under Section 101.453(a) [~~153.403~~]; or

10-24 (2) the 31st day after the expiration of any stay
 10-25 granted under Section 101.455 [~~153.405~~], including all
 10-26 continuations of the stay.

10-27 SECTION 31. Section 153.151, Business Organizations Code,
 10-28 is amended by adding Subsection (a-1) to read as follows:

10-29 (a-1) On formation of a limited partnership, a person
 10-30 becomes a general partner if the person:

10-31 (1) has entered into the partnership agreement as a
 10-32 general partner; and

10-33 (2) is named as a general partner in the certificate of
 10-34 formation of the limited partnership.

10-35 SECTION 32. Section 153.210, Business Organizations Code,
 10-36 is amended by adding Subsections (c), (d), and (e) to read as
 10-37 follows:

10-38 (c) For purposes of this section, the determination of the
 10-39 amount of a limited partnership's liabilities or the value of a
 10-40 limited partnership's assets may be based on:

10-41 (1) financial statements of the limited partnership,
 10-42 which may include the financial statements of subsidiary entities
 10-43 or other entities accounted for on a consolidated basis or on the
 10-44 equity method of accounting, that:

10-45 (A) present the financial condition of the
 10-46 limited partnership and any subsidiary or other entities included
 10-47 in those financial statements in accordance with generally accepted
 10-48 accounting principles or international financial reporting
 10-49 standards; or

10-50 (B) have been prepared using the method of
 10-51 accounting used to file the partnership's federal income tax return
 10-52 or using any other accounting practices and principles that are
 10-53 reasonable under the circumstances;

10-54 (2) financial information, including condensed or
 10-55 summary financial statements, that are prepared on the same basis
 10-56 as financial statements described by Subdivision (1);

10-57 (3) projections, forecasts, or other forward-looking
 10-58 information relating to the future economic performance, financial
 10-59 condition, or liquidity of the limited partnership that is
 10-60 reasonable under the circumstances;

10-61 (4) a fair valuation or information from any other
 10-62 method that is reasonable under the circumstances; or

10-63 (5) a combination of a statement, valuation, or
 10-64 information authorized by this subsection.

10-65 (d) Subsection (c) does not apply to the computation of the
 10-66 franchise tax or any other tax imposed on a limited partnership
 10-67 under the laws of this state.

10-68 (e) An action alleging a distribution is made in violation
 10-69 of this section must be commenced not later than the second

11-1 anniversary of the date of the distribution.

11-2 SECTION 33. Section 200.209, Business Organizations Code,
11-3 is amended to read as follows:

11-4 Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED
11-5 CAPITAL, AND SURPLUS. (a) The determination of whether a real
11-6 estate investment trust is or would be insolvent and the
11-7 determination of the amount [value] of a real estate investment
11-8 trust's [~~net assets,~~] stated capital[~~,~~] or surplus or any component
11-9 of the trust's stated capital or surplus, or the value of the real
11-10 estate investment trust's net assets or any component of the trust's
11-11 net assets, [and each of the components of net assets, stated
11-12 capital, or surplus] may be based on:

11-13 (1) financial statements of the real estate investment
11-14 trust that present the financial condition of the real estate
11-15 investment trust in accordance with generally accepted accounting
11-16 principles or international financial reporting standards,
11-17 including financial statements that include subsidiary entities or
11-18 other entities accounted for on a consolidated basis or on the
11-19 equity method of accounting;

11-20 (2) financial statements prepared using the method of
11-21 accounting used to file the real estate investment trust's federal
11-22 income tax return or using any other accounting practices and
11-23 principles that are reasonable under the circumstances;

11-24 (3) financial information, including condensed or
11-25 summary financial statements, that is prepared on the same basis as
11-26 financial statements described by Subdivision (1) or (2);

11-27 (4) a projection, a forecast, or other forward-looking
11-28 information relating to the future economic performance, financial
11-29 condition, or liquidity of the real estate investment trust that is
11-30 reasonable under the circumstances;

11-31 (5) a fair valuation or information from any other
11-32 method that is reasonable under the circumstances; or

11-33 (6) a combination of a statement, a valuation, or
11-34 information authorized by this section.

11-35 (b) Subsection (a) does not apply to the computation of the
11-36 franchise tax or any other tax imposed on a real estate investment
11-37 trust under the laws of this state.

11-38 SECTION 34. The following provisions of the Business
11-39 Organizations Code are repealed:

11-40 (1) Section 3.253; and

11-41 (2) Section 3.254.

11-42 SECTION 35. Sections 101.206 and 153.210, Business
11-43 Organizations Code, as amended by this Act, apply only to a
11-44 distribution made on or after the effective date of this Act. A
11-45 distribution made before the effective date of this Act is governed
11-46 by the law in effect on the date the distribution was made, and the
11-47 former law is continued in effect for that purpose.

11-48 SECTION 36. This Act takes effect September 1, 2021.

11-49 * * * * *