

1-1 By: Schwertner S.B. No. 1514  
 1-2 (In the Senate - Filed March 3, 2023; March 16, 2023, read  
 1-3 first time and referred to Committee on Business & Commerce;  
 1-4 April 13, 2023, reported adversely, with favorable Committee  
 1-5 Substitute by the following vote: Yeas 11, Nays 0; April 13, 2023,  
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
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	X			
1-18	X			
1-19	X			

1-20 COMMITTEE SUBSTITUTE FOR S.B. No. 1514 By: Schwertner

1-21 A BILL TO BE ENTITLED  
 1-22 AN ACT

1-23 relating to business entities and nonprofit entities.  
 1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
 1-25 SECTION 1. Sections 71.002(2) and (7), Business & Commerce  
 1-26 Code, are amended to read as follows:  
 1-27 (2) "Assumed name" means:  
 1-28 (A) for an individual, a name that does not  
 1-29 include the surname of the individual;  
 1-30 (B) for a partnership, a name that does not  
 1-31 include the surname or other legal name of each joint venturer or  
 1-32 general partner;  
 1-33 (C) for an individual or a partnership, a name,  
 1-34 including a surname, that suggests the existence of additional  
 1-35 owners by including words such as "Company," "& Company," "& Son,"  
 1-36 "& Sons," "& Associates," "Brothers," and similar words, but not  
 1-37 words that merely describe the business being conducted or the  
 1-38 professional service being rendered;  
 1-39 (D) for a limited partnership, a name other than  
 1-40 the name stated in its certificate of formation;  
 1-41 (E) for a company, a name used by the company;  
 1-42 (F) for a corporation, a name other than the name  
 1-43 stated in its certificate of formation or a comparable document;  
 1-44 (G) for a limited liability partnership, a name  
 1-45 other than the name stated in its application filed with the office  
 1-46 of the secretary of state or a comparable document;  
 1-47 (H) for a limited liability company, a name other  
 1-48 than the name stated in its certificate of formation or a comparable  
 1-49 document, including the name of any protected series of the limited  
 1-50 liability company established by its company agreement if the name  
 1-51 of the protected series does not include the name of the limited  
 1-52 liability company stated in the limited liability company's  
 1-53 certificate of formation or a comparable document; and  
 1-54 (I) for a registered series of a domestic limited  
 1-55 liability company, a name other than the name stated in its  
 1-56 certificate of registered series.  
 1-57 (7) "Office" means, ~~[+]~~  
 1-58 ~~[(-)]~~ for a person that is not an individual ~~[or~~  
 1-59 ~~that is a corporation that is not required to or does not maintain a~~  
 1-60 ~~registered office in this state]~~, the person's ~~[+]~~

2-1                                   ~~[(i)] principal office in this state or~~  
 2-2 ~~outside of this state, as applicable~~~~[, and~~  
 2-3                                   ~~[(ii) principal place of business if not~~  
 2-4 ~~the same as the person's principal office, and~~  
 2-5                                   ~~[(B) for a corporation, limited partnership,~~  
 2-6 ~~limited liability partnership, limited liability company, or~~  
 2-7 ~~foreign filing entity that is required to maintain a registered~~  
 2-8 ~~office in this state, the entity's:~~  
 2-9                                   ~~[(i) registered office, and~~  
 2-10                                   ~~[(ii) principal office if not the same as~~  
 2-11 ~~the entity's registered office].~~

2-12           SECTION 2. Subchapter B, Chapter 1, Business Organizations  
 2-13 Code, is amended by adding Section 1.055 to read as follows:

2-14           Sec. 1.055. DOCTRINE OF INDEPENDENT LEGAL SIGNIFICANCE. An  
 2-15 action validly taken under a provision of this code may not be  
 2-16 considered invalid because the action is identical or similar in  
 2-17 substance to an action that could have been taken under another  
 2-18 provision of this code but fails to satisfy one or more requirements  
 2-19 prescribed by that other provision.

2-20           SECTION 3. Section 3.059(b), Business Organizations Code,  
 2-21 is amended to read as follows:

2-22           (b) A restated certificate of formation may omit:  
 2-23               (1) the name and address of each organizer other than  
 2-24 the name and address of each general partner of a limited  
 2-25 partnership or trust manager of a real estate investment trust;  
 2-26 ~~[and]~~  
 2-27               (2) the initial mailing address of the filing entity;  
 2-28 and  
 2-29               (3) any other information that may be omitted under  
 2-30 the provisions of this code applicable to the filing entity.

2-31           SECTION 4. Section 3.203, Business Organizations Code, is  
 2-32 amended to read as follows:

2-33           Sec. 3.203. SIGNATURE REQUIREMENT. (a) A certificate  
 2-34 representing an ownership interest in [The managerial official or  
 2-35 officials of] a domestic entity must contain the signature or  
 2-36 signatures of each managerial official of the entity that is  
 2-37 authorized by the governing documents of the entity to sign  
 2-38 certificated ownership interests of the entity [must sign any  
 2-39 certificate representing an ownership interest in the entity].

2-40           (b) A certificated ownership interest that contains the  
 2-41 ~~[manual or facsimile]~~ signature of a person who is no longer a  
 2-42 managerial official of a domestic entity when the certificate is  
 2-43 issued may be issued by the entity in the same manner and with the  
 2-44 same effect as if the person had remained a managerial official.

2-45           SECTION 5. Section 3.251(3), Business Organizations Code,  
 2-46 is amended to read as follows:

2-47           (3) "Emergency period" means any period during which  
 2-48 the governing authority of a domestic entity, due to a condition  
 2-49 that is a part of or results from an emergency, is unable to satisfy  
 2-50 one or more requirements of the entity's governing documents or  
 2-51 this code necessary for action by vote at a meeting of the governing  
 2-52 authority outside of an emergency period.

2-53           SECTION 6. Section 4.005, Business Organizations Code, is  
 2-54 amended by adding Subsection (f) to read as follows:

2-55           (f) Subject to any qualification stated in the certificate,  
 2-56 a certificate issued by the secretary of state stating that a  
 2-57 domestic registered series is in existence may be relied on as  
 2-58 conclusive evidence of the existence of the domestic registered  
 2-59 series.

2-60           SECTION 7. Section 5.051, Business Organizations Code, is  
 2-61 amended to read as follows:

2-62           Sec. 5.051. ASSUMED NAME. A domestic entity, a protected  
 2-63 series or registered series of a domestic limited liability  
 2-64 company, or a foreign entity having authority to transact business  
 2-65 in this state may transact business under an assumed name on  
 2-66 compliance [by filing an assumed name certificate in accordance]  
 2-67 with Chapter 71, Business & Commerce Code. The requirements of this  
 2-68 subchapter do not apply to an assumed name set forth in an assumed  
 2-69 name certificate filed under that chapter.

3-1 SECTION 8. Section 6.201(b-3), Business Organizations  
3-2 Code, is amended to read as follows:

3-3 (b-3) By a provision in the written consent or by a written  
3-4 instruction to an agent of the filing entity, a person signing a  
3-5 written consent may provide that the person's consent is to take  
3-6 effect at a future time, which must be not later than the 60th day  
3-7 after the date all persons entitled to vote on the action have  
3-8 signed the ~~[person's]~~ consent or consents. The [A] person's written  
3-9 consent is considered to have been given at the later of that future  
3-10 effective time or a later effective time determined under  
3-11 Subsection (b-1) or (b-2), so long as the person:

3-12 (1) is entitled to vote on the action subject to the  
3-13 consent, which is determined as of the applicable effective time  
3-14 or, if applicable, the record date established under Section 6.102;  
3-15 and

3-16 (2) did not revoke the consent before the applicable  
3-17 effective time.

3-18 SECTION 9. Sections 6.202(b) and (c-3), Business  
3-19 Organizations Code, are amended to read as follows:

3-20 (b) Except as provided by this code, the certificate of  
3-21 formation of a filing entity may authorize the owners or members of  
3-22 the entity to take action without holding a meeting, providing  
3-23 prior notice, or taking a vote if owners or members of the entity  
3-24 having at least the minimum number of votes that would be necessary  
3-25 to take the action that is the subject of the consent at a meeting,  
3-26 in which each owner or member entitled to vote on the action is  
3-27 present and votes, sign a written consent or consents stating the  
3-28 action taken.

3-29 (c-3) If two or more of the written consents described by  
3-30 Subsection (c-2) have different future effective times, the latest  
3-31 future effective time of those consents applies to all of the  
3-32 consents. The written consent or consents are considered to have  
3-33 been given for purposes of this section at the applicable effective  
3-34 time so long as owners or members satisfying the minimum  
3-35 requirements in Subsection (b):

3-36 (1) are determined to be owners or members, as  
3-37 applicable, as of:

3-38 (A) that effective time; or

3-39 (B) if applicable, the record date established  
3-40 under Section 6.102; and

3-41 (2) have signed and not revoked the ~~[the owner's or~~  
3-42 ~~member's]~~ consent or consents at any time before the applicable  
3-43 effective time of the consent or consents.

3-44 SECTION 10. Section 10.151(a), Business Organizations  
3-45 Code, is amended to read as follows:

3-46 (a) A ~~[After approval of a plan of merger or a plan of~~  
3-47 ~~exchange as provided by this code, a]~~ certificate of merger, which  
3-48 may also include an exchange, or a certificate of exchange, as  
3-49 applicable, must be filed for a merger or interest exchange to  
3-50 become effective if:

3-51 (1) for a merger:

3-52 (A) any domestic entity that is a party to the  
3-53 merger is a filing entity; or

3-54 (B) any domestic entity to be created under the  
3-55 plan of merger is a filing entity; or

3-56 (2) for an exchange, an ownership or membership  
3-57 interest in any filing entity is to be acquired in the interest  
3-58 exchange.

3-59 SECTION 11. Section 10.154(a), Business Organizations  
3-60 Code, is amended to read as follows:

3-61 (a) A ~~[After approval of a plan of conversion as provided by~~  
3-62 ~~this code, a]~~ certificate of conversion must be filed for the  
3-63 conversion to become effective if:

3-64 (1) any domestic entity that is a party to the  
3-65 conversion is a filing entity; or

3-66 (2) any domestic entity to be created under the plan of  
3-67 conversion is a filing entity.

3-68 SECTION 12. Section 10.355(c), Business Organizations  
3-69 Code, is amended to read as follows:

4-1 (c) A notice required to be provided under Subsection (a),  
 4-2 (b), or (b-1) must:

4-3 (1) be accompanied by:  
 4-4 (A) a copy of this subchapter; or  
 4-5 (B) information directing the owner to a publicly  
 4-6 available electronic resource at which this subchapter may be  
 4-7 accessed without subscription or cost; and

4-8 (2) advise the owner of the location of the  
 4-9 responsible organization's principal executive offices to which a  
 4-10 notice required under Section 10.356(b)(1) or a demand under  
 4-11 Section 10.356(b)(3), or both, may be provided.

4-12 SECTION 13. Section 10.364(d), Business Organizations  
 4-13 Code, is amended to read as follows:

4-14 (d) The responsible organization shall~~+~~  
 4-15 ~~[(1) immediately]~~ pay the amount of the judgment to  
 4-16 ~~the [a] holder of the [an uncertificated] ownership interest on the~~  
 4-17 ~~terms and conditions ordered by the court~~+, and~~~~

4-18 ~~[(2) pay the amount of the judgment to a holder of a~~  
 4-19 ~~certificated ownership interest immediately after the certificate~~  
 4-20 ~~holder surrenders to the responsible organization an endorsed~~  
 4-21 ~~certificate representing the ownership interest].~~

4-22 SECTION 14. Section 11.056, Business Organizations Code, is  
 4-23 amended by amending Subsection (a) and adding Subsection (c) to  
 4-24 read as follows:

4-25 (a) The termination of the continued membership of the last  
 4-26 remaining member of a domestic limited liability company is an  
 4-27 event requiring winding up under Section 11.051(4) unless, not  
 4-28 later than one year ~~[the 90th day]~~ after the date of the termination  
 4-29 or within the period of time provided by the company agreement:

4-30 (1) ~~[,]~~ the legal representative or successor of the  
 4-31 last remaining member agrees:

4-32 (A) ~~[(1)]~~ to continue the company; and

4-33 (B) ~~[(2)]~~ to become a member of the company  
 4-34 effective as of the date of the termination or to designate another  
 4-35 person who agrees to become a member of the company effective as of  
 4-36 the date of the termination; or

4-37 (2) a member is admitted to the company in the manner  
 4-38 provided by the company agreement, effective as of the occurrence  
 4-39 of the termination, under a provision of the company agreement that  
 4-40 specifically provides for the admission of a member to the company  
 4-41 after there is no longer a remaining member of the company.

4-42 (c) The company agreement may provide that the legal  
 4-43 representative or successor of the last remaining member is  
 4-44 obligated to agree to continue the company and to the admission of  
 4-45 the legal representative or successor, or the representative's or  
 4-46 successor's nominee or designee, as a member effective as of the  
 4-47 occurrence of the event that terminates the continued membership of  
 4-48 the last remaining member.

4-49 SECTION 15. Sections 11.202(a) and (c), Business  
 4-50 Organizations Code, are amended to read as follows:

4-51 (a) To the extent applicable, a terminated entity, to be  
 4-52 reinstated, must complete the requirements of this section ~~[not~~  
 4-53 ~~later than the third anniversary of the date the termination of the~~  
 4-54 ~~terminated entity's existence took effect].~~

4-55 (c) After approval of the reinstatement of a filing entity  
 4-56 that was terminated, ~~[and not later than the third anniversary of~~  
 4-57 ~~the date of the filing of the entity's certificate of termination,]~~  
 4-58 the filing entity shall file a certificate of reinstatement in  
 4-59 accordance with Chapter 4.

4-60 SECTION 16. Section 11.253, Business Organizations Code, is  
 4-61 amended by adding Subsection (e) to read as follows:

4-62 (e) The reinstatement of a terminated limited liability  
 4-63 company automatically reinstates any protected series or  
 4-64 registered series that terminated because of the termination of the  
 4-65 company.

4-66 SECTION 17. Section 11.254, Business Organizations Code, is  
 4-67 amended by adding Subsection (c) to read as follows:

4-68 (c) The reinstatement of a limited liability company's  
 4-69 certificate of formation after its forfeiture automatically

5-1 reinstates any protected series or registered series that  
 5-2 terminated because of the forfeiture.

5-3 SECTION 18. Subchapter F, Chapter 11, Business  
 5-4 Organizations Code, is amended by adding Section 11.255 to read as  
 5-5 follows:

5-6 Sec. 11.255. REINSTATEMENT OF CERTIFICATE OF FORMATION  
 5-7 FOLLOWING FAILURE TO REVIVE; REINSTATEMENT RETROACTIVE. (a) A  
 5-8 nonprofit corporation whose certificate of formation has been  
 5-9 terminated under Section 22.364 must follow the procedure required  
 5-10 by Section 22.365 to reinstate the nonprofit corporation's  
 5-11 certificate of formation. A nonprofit corporation whose  
 5-12 certificate of formation is reinstated under Section 22.365 is  
 5-13 considered to have continued in existence without interruption from  
 5-14 the date of termination.

5-15 (b) A limited partnership whose certificate of formation  
 5-16 has been terminated under Section 153.311 must follow the procedure  
 5-17 required by Section 153.312 to reinstate the limited partnership's  
 5-18 certificate of formation. A limited partnership whose certificate  
 5-19 of formation is reinstated under Section 153.312 is considered to  
 5-20 have continued in existence without interruption from the date of  
 5-21 termination.

5-22 SECTION 19. Sections 11.356(a) and (b), Business  
 5-23 Organizations Code, are amended to read as follows:

5-24 (a) Notwithstanding the termination of a domestic filing  
 5-25 entity under this code or the Tax Code [~~chapter~~], the terminated  
 5-26 filing entity continues in existence until the third anniversary of  
 5-27 the effective date of the entity's termination only for purposes  
 5-28 of:

5-29 (1) prosecuting or defending in the terminated filing  
 5-30 entity's name an action or proceeding brought by or against the  
 5-31 terminated entity;

5-32 (2) permitting the survival of an existing claim by or  
 5-33 against the terminated filing entity;

5-34 (3) holding title to and liquidating property that  
 5-35 remained with the terminated filing entity at the time of  
 5-36 termination or property that is collected by the terminated filing  
 5-37 entity after termination;

5-38 (4) applying or distributing property, or its  
 5-39 proceeds, as provided by Section 11.053; and

5-40 (5) settling affairs not completed before  
 5-41 termination.

5-42 (b) A terminated filing entity may not continue its  
 5-43 existence for the purpose of continuing the business or affairs for  
 5-44 which the terminated filing entity was formed unless the terminated  
 5-45 filing entity is reinstated under this code or the Tax Code  
 5-46 [~~Subchapter E~~].

5-47 SECTION 20. Section 11.359(c), Business Organizations  
 5-48 Code, is amended to read as follows:

5-49 (c) Notwithstanding Subsections (a) and (b), the  
 5-50 extinguishment of an existing claim with respect to a terminated  
 5-51 filing entity as provided by this section is nullified if:

5-52 (1) the filing entity's termination is revoked with  
 5-53 retroactive effect under Section 11.153;

5-54 (2) the terminated filing entity is reinstated with  
 5-55 retroactive effect as provided by Section 11.206;

5-56 (3) the terminated filing entity is reinstated with  
 5-57 retroactive effect as provided by Section 11.253(d); [~~or~~]

5-58 (4) the terminated filing entity's certificate of  
 5-59 formation is reinstated under the Tax Code with retroactive effect  
 5-60 as provided by Section 11.254;

5-61 (5) the terminated filing entity's certificate of  
 5-62 formation is reinstated under Chapter 22 with retroactive effect as  
 5-63 provided by Section 11.255(a); or

5-64 (6) the terminated filing entity's certificate of  
 5-65 formation is reinstated under Chapter 153 with retroactive effect  
 5-66 as provided by Section 11.255(b).

5-67 SECTION 21. Section 20.002(c), Business Organizations  
 5-68 Code, is amended to read as follows:

5-69 (c) The fact that an act or transfer is beyond the scope of

6-1 the expressed purpose or purposes of the corporation or is  
 6-2 inconsistent with an expressed limitation on the authority of an  
 6-3 officer or director may be asserted in a proceeding:

6-4 (1) by a shareholder or member against the corporation  
 6-5 to enjoin the performance of an act or the transfer of property by  
 6-6 or to the corporation;

6-7 (2) by the corporation, acting directly or through a  
 6-8 receiver, trustee, or other legal representative, or through  
 6-9 members or shareholders in a representative suit, against an  
 6-10 officer or director or former officer or director of the  
 6-11 corporation for exceeding that person's authority; or

6-12 (3) by the attorney general to:

6-13 (A) terminate the corporation;

6-14 (B) enjoin the corporation from performing an  
 6-15 unauthorized act; or

6-16 (C) enforce divestment of real property acquired  
 6-17 or held contrary to the laws of this state.

6-18 SECTION 22. Section 21.157, Business Organizations Code, is  
 6-19 amended by amending Subsections (a) and (d) and adding Subsections  
 6-20 (e), (f), and (g) to read as follows:

6-21 (a) Except as provided by Section 21.158, a corporation may  
 6-22 issue shares for consideration if authorized by the board of  
 6-23 directors of the corporation. Shares may be issued in one or more  
 6-24 transactions in the number, at the time, and for the consideration  
 6-25 stated in or determined by the authorization of the board of  
 6-26 directors.

6-27 (d) An authorization of the board of directors may delegate  
 6-28 to a person or persons, in addition to the board of directors, the  
 6-29 authority to enter into one or more transactions to issue shares.  
 6-30 With respect to a transaction entered into by a person or persons to  
 6-31 whom authority was delegated under this subsection, shares may be  
 6-32 issued in the number, at the time, and for the consideration the  
 6-33 person or persons may determine [The authorization by the board of  
 6-34 directors for the issuance of shares may provide that any shares to  
 6-35 be issued under the authorization may be issued:

6-36 [(1) in one or more transactions in the numbers and at  
 6-37 the times as stated in or determined by the authorization; or

6-38 [(2) in the manner stated in the authorization, which  
 6-39 may include a determination or action by any person or persons,  
 6-40 including the corporation,] if that [the] authorization of the  
 6-41 board of directors:

6-42 (1) states:

6-43 (A) the maximum number of shares that may be  
 6-44 issued under the authorization;

6-45 (B) the period of time during which the shares  
 6-46 may be issued; and

6-47 (C) the minimum amount of consideration for which  
 6-48 the shares may be issued; and

6-49 (2) does not permit the person or persons to whom  
 6-50 authority was delegated to issue shares to that person or those  
 6-51 persons.

6-52 (e) A provision of an authorization provided under  
 6-53 Subsection (a) or (d) may depend on a fact ascertainable outside of  
 6-54 the authorization, if the manner in which the fact operates on the  
 6-55 authorization is clearly and expressly included in the  
 6-56 authorization. In this subsection, "fact" includes the occurrence  
 6-57 of any event, including a determination or action by any person or  
 6-58 persons.

6-59 (f) If the authorization of the board of directors delegates  
 6-60 to a person or persons the authority to enter into a transaction to  
 6-61 issue shares under Subsection (d), the provisions of the  
 6-62 authorization under Subsection (d)(1) may not depend on a  
 6-63 determination or action by the person or persons to whom authority  
 6-64 was delegated.

6-65 (g) In this section and notwithstanding Section 1.002,  
 6-66 "person" includes a committee of the board of directors.

6-67 SECTION 23. Section 21.160(a), Business Organizations  
 6-68 Code, is amended to read as follows:

6-69 (a) Subject to Subsection (b) and Section 21.157,

7-1 consideration to be received for shares must be determined:

7-2 (1) by the board of directors;

7-3 (2) by a plan of conversion, if the shares are to be  
7-4 issued by a converted corporation under the plan; or

7-5 (3) by a plan of merger, if the shares are to be issued  
7-6 under the plan by a corporation created under the plan.

7-7 SECTION 24. Section 21.168, Business Organizations Code, is  
7-8 amended by amending Subsections (c) and (d) and adding Subsections  
7-9 (e), (f), (g), and (h) to read as follows:

7-10 (c) Subject to the certificate of formation, a right or  
7-11 option described by this section must state the terms and  
7-12 conditions on which, the time within which, and any consideration,  
7-13 including a formula by which the consideration may be determined,  
7-14 for which the shares may be purchased or received from the  
7-15 corporation on the exercise of the right or option. [A formula by  
7-16 which the consideration may be determined may include or be made  
7-17 dependent on facts ascertainable outside the formula, if the manner  
7-18 in which those facts operate on the formula is clearly or expressly  
7-19 set forth in the formula or in the authorization approving the  
7-20 formula.]

7-21 (d) Subject to the certificate of formation, convertible  
7-22 indebtedness described by this section must state the terms and  
7-23 conditions on which, the time within which, and the conversion  
7-24 ratio, which may be stated as a formula by which the conversion  
7-25 ratio may be determined, at which the indebtedness may be converted  
7-26 into shares. The formula may include or be made dependent on facts  
7-27 ascertainable outside the formula, if the manner in which those  
7-28 facts operate on the formula is clearly or expressly provided by the  
7-29 formula or in the authorization approving the formula.

7-30 (e) An authorization of the board of directors may delegate  
7-31 to a person or persons, in addition to the board of directors, the  
7-32 authority to enter into one or more transactions to issue rights or  
7-33 options. For a transaction entered into by a person or persons to  
7-34 whom authority was delegated under this subsection, the rights or  
7-35 options may be issued in the number, at the time, and for the  
7-36 consideration as the person or persons may determine if that  
7-37 authorization of the board of directors:

7-38 (1) states:

7-39 (A) the maximum number of rights or options, and  
7-40 the maximum number of shares issuable on exercise of those rights or  
7-41 options, that may be issued under the authorization;

7-42 (B) the period of time during which the rights or  
7-43 options, and the shares issuable on exercise of those rights or  
7-44 options, may be issued; and

7-45 (C) the minimum amount of consideration:

7-46 (i) if any, for which the rights or options  
7-47 may be issued; and

7-48 (ii) for the shares issuable on exercise of  
7-49 the rights or options; and

7-50 (2) does not permit the person or persons to whom  
7-51 authority was delegated to issue rights, options, or shares to that  
7-52 person or those persons.

7-53 (f) A provision of a right or option or an authorization of a  
7-54 right or option under this section may depend on a fact  
7-55 ascertainable outside of the right, option, or authorization, if  
7-56 the manner in which the fact operates on the right, option, or  
7-57 authorization is clearly and expressly set forth in the right,  
7-58 option, or authorization. In this subsection, "fact" includes the  
7-59 occurrence of any event, including a determination or action by any  
7-60 person or persons.

7-61 (g) If the authorization of the board of directors delegates  
7-62 to a person or persons the authority to enter into a transaction to  
7-63 issue rights or options under Subsection (e), the provisions of the  
7-64 authorization under Subsection (e)(1) may not depend on a  
7-65 determination or action by the person or persons to whom authority  
7-66 was delegated.

7-67 (h) In this section and notwithstanding Section 1.002,  
7-68 "person" includes a committee of the board of directors.

7-69 SECTION 25. Section 21.169(c), Business Organizations

8-1 Code, is amended to read as follows:

8-2 (c) Except as provided by Section 21.168, unless ~~[Unless]~~  
 8-3 otherwise provided under the terms of rights or options or the  
 8-4 agreement or plan under which the rights or options are issued, the  
 8-5 authority to grant, amend, redeem, extend, or replace the rights or  
 8-6 options on behalf of a corporation is vested exclusively in the  
 8-7 board of directors of the corporation. A bylaw may not require the  
 8-8 board to grant, amend, redeem, extend, or replace the rights or  
 8-9 options.

8-10 SECTION 26. Section 21.218, Business Organizations Code, is  
 8-11 amended by amending Subsections (b) and (c) and adding Subsection  
 8-12 (b-1) to read as follows:

8-13 (b) On written demand stating a proper purpose, a holder of  
 8-14 shares of a corporation for at least six months immediately  
 8-15 preceding the holder's demand, or a holder of at least five percent  
 8-16 of all of the outstanding shares of a corporation, is entitled to  
 8-17 examine and copy, at a reasonable time at the corporation's  
 8-18 principal place of business or other location approved by the  
 8-19 corporation and the holder, the corporation's books, records of  
 8-20 account, minutes, [and] share transfer records, and other records,  
 8-21 whether in written or other tangible form, if the record is  
 8-22 reasonably related to and appropriate to examine and copy for that  
 8-23 proper [relating to the stated] purpose.

8-24 (b-1) The examination and copying may be conducted by the  
 8-25 holder of shares [in person] or through an agent, accountant, or  
 8-26 attorney. An agent, accountant, or attorney who conducts an  
 8-27 examination and copying under this section is subject to any  
 8-28 obligations of the shareholder with respect to the records made  
 8-29 available for examination and copying.

8-30 (c) This section does not impair the power of a court, on the  
 8-31 presentation of proof of proper purpose by a beneficial or record  
 8-32 holder of shares, to compel the production for examination by the  
 8-33 holder, at the holder's cost, of the books and records of account  
 8-34 [accounts], minutes, [and] share transfer records, and other  
 8-35 records, whether in written or other tangible form, of a  
 8-36 corporation, regardless of the period during which the holder was a  
 8-37 beneficial holder or record holder and regardless of the number of  
 8-38 shares held by the person.

8-39 SECTION 27. Section 21.220, Business Organizations Code, is  
 8-40 amended to read as follows:

8-41 Sec. 21.220. PENALTY FOR FAILURE TO PREPARE VOTING LIST. An  
 8-42 officer or agent of a corporation who is in charge of the  
 8-43 corporation's share transfer records and who does not prepare the  
 8-44 list of shareholders, keep the list on file for a 10-day period  
 8-45 before the annual meeting, or [produce and] keep the list available  
 8-46 for inspection [at the annual meeting] as required by Sections  
 8-47 21.354 and 21.372 is liable to a shareholder who suffers damages  
 8-48 because of the failure for the damage caused by the failure.

8-49 SECTION 28. Section 21.354(a), Business Organizations  
 8-50 Code, is amended to read as follows:

8-51 (a) The list of shareholders entitled to vote at the meeting  
 8-52 prepared under Section 21.372 shall be [+

8-53 ~~(1)]~~ subject to inspection by a shareholder during  
 8-54 regular business hours ~~[, and~~

8-55 ~~(2) produced and kept open at the meeting].~~

8-56 SECTION 29. Section 21.372(a-1), Business Organizations  
 8-57 Code, is amended to read as follows:

8-58 (a-1) Instead of being kept on file, the list required by  
 8-59 Subsection (a) may be kept on a reasonably accessible electronic  
 8-60 data system if the information required to gain access to the list  
 8-61 is provided with notice of the meeting. Section 21.353(c) ~~[, and~~  
 8-62 ~~Section 21.354(a-1),]~~ and this subsection may not be construed to  
 8-63 require a corporation to include any electronic contact information  
 8-64 of a shareholder on the list. A corporation that elects to make the  
 8-65 list available on an electronic data system must take reasonable  
 8-66 measures to ensure the information is available only to  
 8-67 shareholders of the corporation.

8-68 SECTION 30. Section 22.220, Business Organizations Code, is  
 8-69 amended by amending Subsection (a) and adding Subsection (c) to



9-1 read as follows:

9-2 (a) The certificate of formation or bylaws of a corporation  
9-3 may provide that an action required by this chapter to be taken at a  
9-4 meeting of the corporation's directors or an action that may be  
9-5 taken at a meeting of the directors or a committee may be taken  
9-6 without holding a meeting, providing prior notice, or taking a vote  
9-7 if a written consent, stating the action to be taken, is signed by  
9-8 the number of directors or committee members necessary to take that  
9-9 action at a meeting at which all of the directors or committee  
9-10 members are present and voting. The consent must state the date of  
9-11 each director's or committee member's signature.

9-12 (c) Notwithstanding a provision of this code, advance  
9-13 notice is not required to be given to take an action by written  
9-14 consent as provided by this section.

9-15 SECTION 31. Section 22.230(e), Business Organizations  
9-16 Code, is amended to read as follows:

9-17 (e) If at least one of the conditions of Subsection (b) is  
9-18 satisfied, neither the corporation nor any of the corporation's  
9-19 members [shareholders] will have a cause of action against any of  
9-20 the persons described by Subsection (a) for breach of duty with  
9-21 respect to the making, authorization, or performance of the  
9-22 contract or transaction because the person had the relationship or  
9-23 interest described by Subsection (a) or took any of the actions  
9-24 authorized by Subsection (d).

9-25 SECTION 32. Section 101.001(1), Business Organizations  
9-26 Code, is amended to read as follows:

9-27 (1) "Company agreement" means any agreement, written,  
9-28 implied, or oral, of the members concerning the affairs or the  
9-29 conduct of the business of a limited liability company. A company  
9-30 agreement of a limited liability company having only one member is  
9-31 not unenforceable because only one person is a party to the company  
9-32 agreement. A written company agreement may consist of one or more  
9-33 agreements, instruments, or other writings and may include or  
9-34 incorporate one or more schedules, supplements, or other writings  
9-35 providing for the conduct of the business and affairs of the limited  
9-36 liability company or of a series of the limited liability company.

9-37 SECTION 33. Section 101.051, Business Organizations Code,  
9-38 is amended to read as follows:

9-39 Sec. 101.051. CERTAIN PROVISIONS CONTAINED IN CERTIFICATE  
9-40 OF FORMATION. (a) A provision that may be included [contained] in  
9-41 the company agreement of a limited liability company may  
9-42 [alternatively] be included in the certificate of formation of the  
9-43 company as provided by Section 3.005(b).

9-44 (b) A reference in this title to the company agreement of a  
9-45 limited liability company includes any provision contained in the  
9-46 company's certificate of formation to the extent that the provision  
9-47 reflects the agreement of each member concerning the affairs or the  
9-48 conduct of the business of the limited liability company [instead  
9-49 of the company agreement as provided by Subsection (a)].

9-50 SECTION 34. Section 101.052, Business Organizations Code,  
9-51 is amended by amending Subsection (f) and adding Subsection (g) to  
9-52 read as follows:

9-53 (f) A company agreement is enforceable by or against the  
9-54 limited liability company, including a protected series or  
9-55 registered series of the company, regardless of whether the  
9-56 company, or the protected series or registered series of the  
9-57 company, has signed or otherwise expressly adopted the agreement.

9-58 (g) A member or manager of a limited liability company, or  
9-59 an assignee of a membership interest of a limited liability  
9-60 company, is bound by the company agreement, regardless of whether  
9-61 the member, manager, or assignee signs the company agreement.

9-62 SECTION 35. Sections 101.054(a) and (e), Business  
9-63 Organizations Code, are amended to read as follows:

9-64 (a) Except as provided by this section, the following  
9-65 provisions may not be waived or modified in the company agreement of  
9-66 a limited liability company:

9-67 (1) this section;

9-68 (2) Section 101.101, 101.151, 101.206, 101.501, or  
9-69 Subchapter M of Chapter 101, except that Sections 101.601(d),

10-1 101.610, 101.611, 101.613(a), 101.616(2)(A) through (D), 101.618,  
10-2 or 101.619(b) may be waived or modified in the company agreement;

10-3 (3) Chapter 1, if the provision is used to interpret a  
10-4 provision or define a word or phrase contained in a section listed  
10-5 in this subsection;

10-6 (4) Chapter 2, except that Section 2.104(c)(2),  
10-7 2.104(c)(3), or 2.113 may be waived or modified in the company  
10-8 agreement;

10-9 (5) Chapter 3, except that Subchapters C and E may be  
10-10 waived or modified in the company agreement; or

10-11 (6) Chapter 4, 5, 10, 11, or 12 [~~other than Section~~  
10-12 ~~11.056~~].

10-13 (e) The company agreement may not unreasonably restrict a  
10-14 member's or assignee's rights [~~person's right of access to records~~  
10-15 ~~and information~~] under Section 101.502.

10-16 SECTION 36. Subchapter B, Chapter 101, Business  
10-17 Organizations Code, is amended by adding Section 101.056 to read as  
10-18 follows:

10-19 Sec. 101.056. RATIFICATION OF VOID OR VOIDABLE ACTS OR  
10-20 TRANSACTIONS. (a) Any act or transaction taken by or with respect  
10-21 to a limited liability company under this code or a company  
10-22 agreement that is void or voidable when taken may be ratified, and  
10-23 the failure to comply with any requirements of the company  
10-24 agreement which caused the act or transaction to be void or voidable  
10-25 may be waived, in accordance with this section.

10-26 (b) An act or transaction may be ratified or waived, as  
10-27 applicable, with the approval of the members, managers, or other  
10-28 persons whose approval would be required under the company  
10-29 agreement at the time of the ratification or waiver:

10-30 (1) for the void or voidable act or transaction to be  
10-31 validly taken; or

10-32 (2) to amend the company agreement in a manner that  
10-33 would permit the void or voidable act or transaction to be validly  
10-34 taken.

10-35 (c) If the void or voidable act or transaction was the  
10-36 issuance or assignment of any membership interests, the membership  
10-37 interests purportedly issued or assigned are deemed to have not  
10-38 been issued or assigned for purposes of determining whether the  
10-39 void or voidable act or transaction is ratified or waived under this  
10-40 section.

10-41 (d) Any act or transaction ratified or waived under this  
10-42 section is deemed validly taken at the time the act or transaction  
10-43 occurred.

10-44 (e) This section may not be construed to limit the  
10-45 accomplishment of a ratification or waiver of a void or voidable act  
10-46 or transaction by other lawful means.

10-47 SECTION 37. Section 101.206(e), Business Organizations  
10-48 Code, is amended to read as follows:

10-49 (e) This section may not be construed to affect the  
10-50 obligation of a member of a limited liability company to return a  
10-51 distribution to the company under the company agreement, another  
10-52 agreement, or other state or federal law.

10-53 SECTION 38. Section 101.252, Business Organizations Code,  
10-54 is amended to read as follows:

10-55 Sec. 101.252. MANAGEMENT BY GOVERNING AUTHORITY. The  
10-56 governing authority of a limited liability company shall direct the  
10-57 management of [~~manage~~] the business and affairs of the company and  
10-58 exercise or authorize the exercise of the powers of the company as  
10-59 provided by:

10-60 (1) the company agreement; and

10-61 (2) this title and the provisions of Title 1  
10-62 applicable to a limited liability company to the extent that the  
10-63 company agreement does not provide for the management of the  
10-64 company.

10-65 SECTION 39. Section 101.358(b), Business Organizations  
10-66 Code, is amended to read as follows:

10-67 (b) Notwithstanding Sections 6.201 and 6.202, an action may  
10-68 be taken without holding a meeting, providing prior or subsequent  
10-69 notice, or taking a vote if a written consent or consents stating

11-1 the action to be taken is signed by the number of governing persons,  
 11-2 members, or committee members of a limited liability company, as  
 11-3 appropriate, necessary to have at least the minimum number of votes  
 11-4 that would be necessary to take the action at a meeting at which  
 11-5 each governing person, member, or committee member, as appropriate,  
 11-6 entitled to vote on the action is present and votes.

11-7 SECTION 40. Section 101.457, Business Organizations Code,  
 11-8 is amended to read as follows:

11-9 Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written  
 11-10 demand filed with the limited liability company under Section  
 11-11 101.453 tolls the statute of limitations on the claim on which  
 11-12 demand is made until the later of:

11-13 (1) the 31st day after the expiration of any waiting  
 11-14 period under Section 101.453 [~~101.453(a)~~]; or

11-15 (2) the 31st day after the expiration of any stay  
 11-16 granted under Section 101.455, including all continuations of the  
 11-17 stay.

11-18 SECTION 41. Section 101.502, Business Organizations Code,  
 11-19 is amended to read as follows:

11-20 Sec. 101.502. RIGHT TO EXAMINE RECORDS [~~AND CERTAIN OTHER~~  
 11-21 ~~INFORMATION~~]. (a) A member of a limited liability company or an  
 11-22 assignee of a membership interest in a limited liability company,  
 11-23 [~~or a representative of the member or assignee,~~] on written demand  
 11-24 stating [~~request and for~~] a proper purpose, is entitled to [~~may~~]  
 11-25 examine and copy at a [~~any~~] reasonable time at the limited liability  
 11-26 company's principal office identified under Section 101.501(c) or  
 11-27 another location approved by the limited liability company and the  
 11-28 member or assignee, any records of the limited liability company,  
 11-29 whether in written or other tangible form, which are reasonably  
 11-30 related to and appropriate to examine and copy for that proper  
 11-31 purpose [~~and at the member's or assignee's expense.~~

11-32 [~~(1) records required under Sections 3.151 and~~  
 11-33 ~~101.501, and~~

11-34 [~~(2) other information regarding the business,~~  
 11-35 ~~affairs, and financial condition of the company that is reasonable~~  
 11-36 ~~for the person to examine and copy].~~

11-37 (b) The examination and copying under Subsection (a) may be  
 11-38 conducted [A limited liability company shall provide to a member of  
 11-39 the company or an assignee of a membership interest in the company,  
 11-40 on written request] by the member or assignee or through an agent,  
 11-41 accountant, or attorney. An agent, accountant, or attorney who  
 11-42 conducts an examination and copying under this section is subject  
 11-43 to any obligations of the member or assignee with respect to the  
 11-44 records made available for examination and copying. [sent to the  
 11-45 company's principal office in the United States or, if different,  
 11-46 the person and address designated in the company agreement, a free  
 11-47 copy of.]

11-48 (c) On written request of a member or an assignee of a  
 11-49 membership interest, the limited liability company shall provide to  
 11-50 the requesting member or assignee without charge copies of:

11-51 (1) the company's certificate of formation, including  
 11-52 any amendments to or restatements of the certificate of formation;

11-53 (2) if in writing, the company agreement, including  
 11-54 any amendments to or restatements of the company agreement; and

11-55 (3) any tax returns described by Section  
 11-56 101.501(a)(2).

11-57 (d) A demand or request made by a member or assignee under  
 11-58 Subsection (a) or (c) must be made to:

11-59 (1) the person who is designated to receive the demand  
 11-60 or request in the company agreement at the address designated in the  
 11-61 company agreement; or

11-62 (2) if there is no designation, a manager or managing  
 11-63 member at the limited liability company's principal office in the  
 11-64 United States.

11-65 SECTION 42. Section 101.601(c), Business Organizations  
 11-66 Code, is amended to read as follows:

11-67 (c) Nothing in this subchapter shall be construed to limit  
 11-68 the application of the principle of freedom of [~~to~~] contract to a  
 11-69 series that is not a protected series or a registered series.

12-1 Except as otherwise provided by Sections 101.627 through 101.636, a  
 12-2 series may not merge or convert.

12-3 SECTION 43. Section 101.623(b), Business Organizations  
 12-4 Code, is amended to read as follows:

12-5 (b) A certificate of registered series must state:  
 12-6 (1) the name of the limited liability company;  
 12-7 (2) the name of the registered series being formed,  
 12-8 which must conform with the requirements of Section 5.0561  
 12-9 [~~5.056(c)~~]; and

12-10 (3) if the registered series is formed under a plan of  
 12-11 conversion or merger, a statement to that effect.

12-12 SECTION 44. Section 101.624(d), Business Organizations  
 12-13 Code, is amended to read as follows:

12-14 (d) A manager associated with a registered series or, if  
 12-15 there is no manager, any member associated with the registered  
 12-16 series who becomes aware that any statement in a certificate of  
 12-17 registered series filed with respect to the registered series was  
 12-18 false when made, or that any provision in the certificate of  
 12-19 registered series has changed making the certificate of registered  
 12-20 series false in any material respect, or that the name of the  
 12-21 registered series does not comply with Section 101.626, shall  
 12-22 promptly amend the certificate of registered series.

12-23 SECTION 45. Section 101.625(b), Business Organizations  
 12-24 Code, is amended to read as follows:

12-25 (b) The certificate of termination must contain:  
 12-26 (1) the name of the limited liability company;  
 12-27 (2) the name of the registered series;  
 12-28 (3) the registered series' filing number assigned by  
 12-29 the secretary of state;

12-30 (4) the nature of the event requiring winding up of the  
 12-31 registered series;

12-32 (5) a statement that the registered series has  
 12-33 complied with the provisions of this code governing the series'  
 12-34 winding up; and

12-35 (6) any other information the person filing the  
 12-36 certificate of termination determines.

12-37 SECTION 46. Section 101.627(a), Business Organizations  
 12-38 Code, is amended to read as follows:

12-39 (a) Upon compliance with Section 101.628, a registered  
 12-40 series of a domestic limited liability company may convert to a  
 12-41 protected series of the domestic limited liability company by  
 12-42 filing a certificate of conversion that complies with Section  
 12-43 101.631 with the secretary of state in accordance with~~[7]~~ and  
 12-44 taking effect as a filing instrument as specified~~[7]~~ by Chapter 4.

12-45 SECTION 47. Section 101.628(g), Business Organizations  
 12-46 Code, is amended to read as follows:

12-47 (g) Any of the terms of the plan of conversion may be made  
 12-48 dependent on a fact ascertainable outside of the plan if the manner  
 12-49 in which the fact [~~those facts~~] will operate on the terms of the  
 12-50 conversion is clearly and expressly stated in the plan. In this  
 12-51 subsection, "fact" [~~"facts"~~] includes the occurrence of any event,  
 12-52 including a determination or action by any person.

12-53 SECTION 48. Section 101.631(a), Business Organizations  
 12-54 Code, is amended to read as follows:

12-55 (a) ~~A [After adoption of a plan of conversion as provided by~~  
 12-56 ~~Section 101.628, a]~~ certificate of conversion must be signed by the  
 12-57 converting series and must include a statement certifying the  
 12-58 following:

12-59 (1) the name of the limited liability company and, if  
 12-60 it has been changed, the name under which the company's certificate  
 12-61 of formation was originally filed;

12-62 (2) the filing number of the limited liability company  
 12-63 assigned by the secretary of state;

12-64 (3) the name of the converting series and, if it is a  
 12-65 registered series and its name has been changed, the name under  
 12-66 which its certificate of registered series was originally filed;

12-67 (4) if the converting series is a registered series,  
 12-68 the filing number of the registered series assigned by the  
 12-69 secretary of state;

13-1 (5) that a plan of conversion is on file at the  
 13-2 principal place of business of the converting series, and the  
 13-3 address of the principal place of business;

13-4 (6) that a plan of conversion will be on file after the  
 13-5 conversion at the principal place of business of the converted  
 13-6 series, and the address of the principal place of business;

13-7 (7) that a copy of the plan of conversion will be on  
 13-8 written request furnished without cost by the converting series  
 13-9 before the conversion or by the converted series after the  
 13-10 conversion to any owner or member of the converting series or the  
 13-11 converted series; and

13-12 (8) that the plan of conversion has been adopted as  
 13-13 required by the company agreement of the limited liability company  
 13-14 and Section 101.628.

13-15 SECTION 49. Section 101.633(a)(1), Business Organizations  
 13-16 Code, is amended to read as follows:

13-17 (1) "Merger" means:

13-18 (A) the division of a merging series into:

13-19 (i) two or more new protected series or  
 13-20 [~~and~~] registered series; or

13-21 (ii) a surviving merging series and one or  
 13-22 more new protected series or registered series; or

13-23 (B) the combination of one or more merging series  
 13-24 with one or more merging series resulting in:

13-25 (i) one or more surviving merging series;

13-26 (ii) the creation of one or more new  
 13-27 protected series or registered series; or

13-28 (iii) one or more surviving merging series  
 13-29 and the creation of one or more new protected series or registered  
 13-30 series.

13-31 SECTION 50. Sections 101.633(b) and (e), Business  
 13-32 Organizations Code, are amended to read as follows:

13-33 (b) One or more merging series of the same limited liability  
 13-34 company may effect [~~affect~~] a merger as provided by a plan of merger  
 13-35 that is approved in accordance with this section and that complies  
 13-36 with Sections 101.634 through 101.636. The plan of merger shall  
 13-37 provide for one or more surviving or new protected series or  
 13-38 registered series of the same limited liability company.

13-39 (e) An item required by Subsection [~~Subsections~~] (d)(6),  
 13-40 (7), or [~~and~~] (8) may be included in the plan of merger by an  
 13-41 attachment or exhibit to the plan.

13-42 SECTION 51. Sections 101.634(a), (d), and (e), Business  
 13-43 Organizations Code, are amended to read as follows:

13-44 (a) If [~~After approval of a plan of merger as provided by~~  
 13-45 ~~Section 101.633, if~~] a registered series is a party to the merger or  
 13-46 if a new registered series is to be created by the merger, a  
 13-47 certificate of merger must be signed by each merging series that is  
 13-48 a party to the merger and must include a statement certifying the  
 13-49 following:

13-50 (1) the name of each merging series that is a party to  
 13-51 the merger and the name of the limited liability company that formed  
 13-52 that merging series;

13-53 (2) that a plan of merger has been approved and  
 13-54 executed by or on behalf of each merging series that is to merge;

13-55 (3) the name of each merging series that survives the  
 13-56 merger and each new registered series or protected series that is  
 13-57 created by the merger;

13-58 (4) any amendment to the certificate of registered  
 13-59 series of any registered series that is a surviving merging series,  
 13-60 including a change in the name of the surviving registered series,  
 13-61 to be effected by the merger or a statement that amendments are  
 13-62 being made to the certificate of registered series of any  
 13-63 registered series that is a surviving merging series under a  
 13-64 certificate of amendment attached to the certificate of merger  
 13-65 under Subsection (d);

13-66 (5) the certificate of registered series for each new  
 13-67 registered series that is to be created by the merger is being filed  
 13-68 with the certificate of merger;

13-69 (6) that the plan of merger is on file at a place of

14-1 business of each surviving or new registered series or the limited  
 14-2 liability company that formed the registered series, and the  
 14-3 address of that place of business;

14-4 (7) that a copy of the plan of merger will be on  
 14-5 written request furnished without cost by each surviving merging  
 14-6 series or new registered series or protected series to any member of  
 14-7 any merging series that is a party to the merger or any registered  
 14-8 series or protected series created by the plan of merger and, for a  
 14-9 merger with multiple surviving or new series, to any creditor or  
 14-10 obligee of the parties to the merger at the time of the merger if a  
 14-11 liability or obligation is then outstanding;

14-12 (8) if approval of the members of any merging series  
 14-13 that was a party to the plan of merger is not required by this code  
 14-14 or the company agreement, a statement to that effect; and

14-15 (9) a statement that the plan of merger has been  
 14-16 approved as required by this code and by the company agreement.

14-17 (d) The certificate of merger must be filed with the  
 14-18 secretary of state in accordance with[7] and take effect as a filing  
 14-19 instrument as specified by Chapter 4. If a new registered series is  
 14-20 to be created by the merger, a certificate of registered series for  
 14-21 the new registered series that complies with Section 101.623 must  
 14-22 be simultaneously filed with the certificate of merger in  
 14-23 accordance with Chapter 4 as a filing instrument and must take  
 14-24 effect simultaneously with the effectiveness of the certificate of  
 14-25 merger.

14-26 (e) Whenever this section requires the filing of a  
 14-27 certificate of merger, that requirement may be ~~is~~ satisfied by  
 14-28 the filing of the plan of merger containing the information  
 14-29 required to be included in the certificate of merger as provided by  
 14-30 this section.

14-31 SECTION 52. Section 101.636, Business Organizations Code,  
 14-32 is amended to read as follows:

14-33 Sec. 101.636. PROHIBITION ON MERGER PERMITTED. A company  
 14-34 agreement may provide that a protected series or registered series  
 14-35 ~~[company]~~ does not have the power to merge under Section 101.633.

14-36 SECTION 53. Section 151.001(5), Business Organizations  
 14-37 Code, is amended to read as follows:

14-38 (5) "Partnership agreement" means any agreement,  
 14-39 written, implied, or oral, of the partners concerning a partnership  
 14-40 and the partnership's affairs or business, and includes amendments  
 14-41 to the partnership agreement. A partnership is not required to sign  
 14-42 its partnership agreement. A partnership is bound by its  
 14-43 partnership agreement whether or not the partnership signs the  
 14-44 partnership agreement. A partnership agreement may provide rights  
 14-45 to any person, including a person who is not a party to the  
 14-46 partnership agreement, to the extent contained in the partnership  
 14-47 agreement. A partner of a partnership or a transferee or assignee  
 14-48 of a partnership interest is bound by the partnership agreement  
 14-49 whether or not the partner, transferee, or assignee signs the  
 14-50 partnership agreement. A written partnership agreement may consist  
 14-51 of one or more agreements, instruments, or other writings and may  
 14-52 include or incorporate one or more schedules, supplements, or other  
 14-53 writings providing for the conduct of the business and affairs of  
 14-54 the partnership.

14-55 SECTION 54. Section 152.002(b), Business Organizations  
 14-56 Code, is amended to read as follows:

14-57 (b) A partnership agreement or the partners may not:

14-58 (1) unreasonably restrict a partner's or former  
 14-59 partner's right of access to books and records under Section  
 14-60 152.212;

14-61 (2) eliminate the duty of loyalty under Section  
 14-62 152.205, except that the partners by agreement may identify  
 14-63 specific types of activities or categories of activities that do  
 14-64 not violate the duty of loyalty if the types or categories are not  
 14-65 manifestly unreasonable;

14-66 (3) eliminate the duty of care under Section 152.206,  
 14-67 except that the partners by agreement may determine the standards  
 14-68 by which the performance of the obligation is to be measured if the  
 14-69 standards are not manifestly unreasonable;

15-1 (4) eliminate the obligation of good faith under  
15-2 Section 152.204(b), except that the partners by agreement may  
15-3 determine the standards by which the performance of the obligation  
15-4 is to be measured if the standards are not manifestly unreasonable;  
15-5 (5) vary the power to withdraw as a partner under  
15-6 Section 152.501(b)(1), (7), or (8), except for the requirement that  
15-7 notice be in writing;  
15-8 (6) vary the right to expel a partner by a court in an  
15-9 event specified by Section 152.501(b)(5);  
15-10 (7) restrict rights of a third party under this  
15-11 chapter or the other partnership provisions, except for a  
15-12 limitation on an individual partner's liability in a limited  
15-13 liability partnership as provided by this chapter;  
15-14 (8) select a governing law not permitted under  
15-15 Sections 1.103 and 1.002(43)(C); or  
15-16 (9) except as provided in Subsections (c) and (d),  
15-17 waive or modify the following provisions of Title 1:  
15-18 (A) Chapter 1, if the provision is used to  
15-19 interpret a provision or to define a word or phrase contained in a  
15-20 section listed in this subsection;  
15-21 (B) Chapter 2, other than Sections 2.104(c)(2),  
15-22 2.104(c)(3), and 2.113;  
15-23 (C) Chapter 3, other than Subchapters C and E of  
15-24 that chapter; or  
15-25 (D) Chapters 4, 5, 10, 11, and 12, other than  
15-26 Sections 11.057(a), (b), (c)(1), (c)(3), (d), and (f).  
15-27 SECTION 55. Section 153.004(a), Business Organizations  
15-28 Code, is amended to read as follows:  
15-29 (a) Except as provided by this section, the following  
15-30 provisions of Title 1 may not be waived or modified in the  
15-31 partnership agreement of a limited partnership:  
15-32 (1) Chapter 1, if the provision is used to interpret a  
15-33 provision or define a word or phrase contained in a section listed  
15-34 in this subsection;  
15-35 (2) Chapter 2, other than Section 2.104(c)(2),  
15-36 2.104(c)(3), or 2.113;  
15-37 (3) Chapter 3, other than Subchapters C and E of that  
15-38 chapter and Section 3.151 (provided, that in all events a  
15-39 partnership agreement may not validly waive or modify Section  
15-40 153.551 or unreasonably restrict a partner's or assignee's rights  
15-41 [~~right of access to books and records~~] under Section 153.552); or  
15-42 (4) Chapter 4, 5, 10, 11, or 12, other than Section  
15-43 11.058.  
15-44 SECTION 56. Section 153.112, Business Organizations Code,  
15-45 is amended to read as follows:  
15-46 Sec. 153.112. RECEIPT OF WRONGFUL DISTRIBUTION. A limited  
15-47 partner who receives a distribution that is not permitted under  
15-48 Section 153.210 is not required to return the distribution unless  
15-49 the limited partner knew that the distribution violated the  
15-50 prohibition of Section 153.210. This section does not affect an  
15-51 obligation of the limited partner under the partnership agreement,  
15-52 another agreement, or other applicable law to return the  
15-53 distribution.  
15-54 SECTION 57. Section 153.552, Business Organizations Code,  
15-55 is amended to read as follows:  
15-56 Sec. 153.552. EXAMINATION OF RECORDS [~~AND INFORMATION~~].  
15-57 (a) On written demand [~~request~~] stating a proper purpose, a partner  
15-58 or an assignee of a partnership interest in a limited partnership is  
15-59 entitled [~~may examine and copy, in person or through a~~  
15-60 ~~representative, records required to be kept under Section 153.551~~  
15-61 ~~and other information regarding the business, affairs, and~~  
15-62 ~~financial condition of the limited partnership as is just and~~  
15-63 ~~reasonable for the person~~] to examine and copy, at a reasonable time  
15-64 at the partnership's principal office identified under Section  
15-65 153.551 or other location approved by the partnership and the  
15-66 partner or assignee, any records of the partnership, whether in  
15-67 written or other tangible form, which are reasonably related to and  
15-68 appropriate to examine and copy for that proper purpose.  
15-69 (b) The examination and copying [~~records requested~~] under

16-1 Subsection (a) may be conducted by the partner or assignee or  
16-2 through an agent, accountant, or attorney. An agent, accountant,  
16-3 or attorney who conducts an examination and copying under this  
16-4 section is subject to any obligations of the partner or assignee  
16-5 with respect to the records made available for examination and  
16-6 copying [examined and copied at a reasonable time and at the  
16-7 partner's sole expense].

16-8 (c) On written request by a partner or an assignee of a  
16-9 partnership interest, the partnership shall provide to the  
16-10 requesting partner or assignee without charge copies of:

16-11 (1) the partnership agreement and certificate of  
16-12 formation and all amendments or restatements; and

16-13 (2) any tax return described by Section 153.551(a)(2).

16-14 (d) A demand or request made by a partner or assignee under  
16-15 Subsection (a) or (c) must be made to:

16-16 (1) the person who is designated to receive the demand  
16-17 or request in the partnership agreement at the address designated  
16-18 in the partnership agreement; or

16-19 (2) if there is no designation, a general partner at  
16-20 the partnership's principal office in the United States.

16-21 SECTION 58. Subchapter C, Chapter 154, Business  
16-22 Organizations Code, is amended by adding Section 154.205 to read as  
16-23 follows:

16-24 Sec. 154.205. RATIFICATION OF VOID OR VOIDABLE ACTS OR  
16-25 TRANSACTIONS. (a) Any act or transaction taken by or with respect  
16-26 to a partnership under this code or a partnership agreement that is  
16-27 void or voidable when taken may be ratified, and the failure to  
16-28 comply with any requirements of the partnership agreement which  
16-29 caused the act or transaction to be void or voidable may be waived,  
16-30 in accordance with this section.

16-31 (b) An act or transaction may be ratified or waived, as  
16-32 applicable, with the approval of the partners or other persons  
16-33 whose approval would be required under the partnership agreement at  
16-34 the time of the ratification or waiver:

16-35 (1) for the void or voidable act or transaction to be  
16-36 validly taken; or

16-37 (2) to amend the partnership agreement in a manner  
16-38 that would permit the void or voidable act or transaction to be  
16-39 validly taken.

16-40 (c) If the void or voidable act or transaction was the  
16-41 issuance or assignment of any partnership interests, the  
16-42 partnership interests purportedly issued or assigned are deemed to  
16-43 have not been issued or assigned for purposes of determining  
16-44 whether the void or voidable act or transaction is ratified or  
16-45 waived under Subsection (b).

16-46 (d) Any act or transaction ratified or waived under this  
16-47 section is deemed validly taken at the time the act or transaction  
16-48 occurred.

16-49 (e) This section may not be construed to limit the  
16-50 accomplishment of a ratification or waiver of a void or voidable act  
16-51 or transaction by other lawful means.

16-52 SECTION 59. The following provisions of the Business  
16-53 Organizations Code are repealed:

- 16-54 (1) Section 21.160(d);
- 16-55 (2) Sections 21.169(d) and (e);
- 16-56 (3) Section 21.354(a-1); and
- 16-57 (4) Section 22.158(d).

16-58 SECTION 60. This Act takes effect September 1, 2023.

16-59 \* \* \* \* \*