

By: Meyer, Leach, Schofield, Anchía,
Longoria, et al.

H.B. No. 15

Substitute the following for H.B. No. 15:

By: Leach

C.S.H.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to the formation, governance, and internal management of
domestic entities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1.002(55-a), Business Organizations
Code, is amended to read as follows:

(55-a) "National securities exchange" means:

(A) an exchange registered as a national
securities exchange under Section 6, Securities Exchange Act of
1934 (15 U.S.C. Section 78f); or

(B) a stock exchange that:

(i) has its principal office in this state;
and

(ii) has received approval by the
securities commissioner under Subchapter C, Chapter 4005,
Government Code.

SECTION 2. Subchapter B, Chapter 1, Business Organizations
Code, is amended by adding Section 1.056 to read as follows:

Sec. 1.056. LAWS GOVERNING FORMATION, INTERNAL AFFAIRS, AND
GOVERNANCE OF DOMESTIC ENTITY. The managerial officials of a
domestic entity, in exercising their powers with respect to the
domestic entity, may consider the laws and judicial decisions of
other states and the practices observed by entities formed in those
other states. The failure or refusal of a managerial official to

1 consider, or to conform the exercise of the managerial official's
2 powers to, the laws, judicial decisions, or practices of another
3 state does not constitute or imply a breach of this code or of any
4 duty existing under the laws of this state.

5 SECTION 3. Section 2.115(b), Business Organizations Code,
6 is amended to read as follows:

7 (b) The governing documents of a domestic entity [~~may~~
8 ~~require~~], consistent with applicable state and federal
9 jurisdictional requirements, may require:

10 (1) that any internal entity claims shall be brought
11 only in a court in this state; and

12 (2) that one or more courts in this state having
13 jurisdiction shall serve as the exclusive forum and venue for any
14 internal entity claims.

15 SECTION 4. Subchapter B, Chapter 2, Business Organizations
16 Code, is amended by adding Section 2.116 to read as follows:

17 Sec. 2.116. WAIVER OF TRIAL BY JURY. (a) In this section,
18 "internal entity claim" has the meaning assigned by Section 2.115.

19 (b) The governing documents of a domestic entity may contain
20 a waiver of the right to a jury trial concerning any internal entity
21 claim.

22 (c) In a lawsuit asserting an internal entity claim, a
23 waiver of the right to a jury trial contained in the governing
24 documents of a domestic entity is enforceable, regardless of
25 whether the applicable governing document is signed by the members,
26 owners, officers, or governing persons.

27 (d) A person asserting an internal entity claim is

1 considered to have been informed of the waiver of the right to a
2 jury trial contained in the governing documents and to have
3 knowingly waived the right in the action if the person:

4 (1) voted for or affirmatively ratified the governing
5 document containing the waiver; or

6 (2) acquired an equity security of the domestic entity
7 or a predecessor to the entity at a time at which the waiver was
8 included in the governing documents of the domestic entity or a
9 predecessor to the entity, as applicable.

10 (e) Nothing in this section prevents an entity from showing
11 that a person asserting an internal entity claim knowingly and
12 informedly waived the right to a jury trial by any evidence
13 satisfactory to the court having jurisdiction, including by the
14 person's consent or acquiescence to the waiver contained in the
15 governing documents.

16 SECTION 5. Section 21.218, Business Organizations Code, is
17 amended by amending Subsection (b) and adding Subsections (b-2) and
18 (b-3) to read as follows:

19 (b) On written demand stating a proper purpose, a holder of
20 shares of a corporation for at least six months immediately
21 preceding the holder's demand, or a holder of at least five percent
22 of all of the outstanding shares of a corporation, is entitled to
23 examine and copy, at a reasonable time at the corporation's
24 principal place of business or other location approved by the
25 corporation and the holder, the corporation's books, records of
26 account, minutes, share transfer records, and other records,
27 whether in written or other tangible form, if the records are

1 ~~[record is]~~ reasonably related to and appropriate to examine and
2 copy for that proper purpose. For purposes of this subsection, the
3 records of the corporation shall not include e-mails, text messages
4 or similar electronic communications, or information from social
5 media accounts unless the particular e-mail, communication, or
6 social media information effectuates an action by the corporation.

7 (b-2) This subsection applies only to a corporation that has
8 a class or series of voting shares listed on a national securities
9 exchange or that has made an affirmative election to be governed by
10 Section 21.419. For purposes of Subsection (b), a written demand
11 shall not be for a proper purpose if the corporation reasonably
12 determines that the demand is in connection with:

13 (1) an active or pending derivative proceeding in the
14 right of the corporation under Subchapter L that is or is expected
15 to be instituted or maintained by the holder or the holder's
16 affiliate; or

17 (2) an active or pending civil lawsuit to which the
18 corporation, or its affiliate, and the holder, or the holder's
19 affiliate, are or are expected to be adversarial named parties.

20 (b-3) Subsection (b-2) does not impair any rights of:

21 (1) the holder or the holder's affiliate to obtain
22 discovery of records from the corporation in:

23 (A) a civil lawsuit described by Subsection
24 (b-2)(2); or

25 (B) the derivative proceeding subject to Section
26 [21.556](#); or

27 (2) the holder to obtain a court order to compel

1 production of records of the corporation for examination by the
2 holder as provided by Subsection (c).

3 SECTION 6. Section 21.416, Business Organizations Code, is
4 amended by adding Subsection (g) to read as follows:

5 (g) This subsection applies only to a corporation that has a
6 class or series of voting shares listed on a national securities
7 exchange or that has made an affirmative election to be governed by
8 Section 21.419. The board of directors may adopt resolutions that
9 authorize the formation of a committee of independent and
10 disinterested directors to review and approve transactions,
11 whether or not contemplated at the time of the committee's
12 formation or a petition under Section 21.4161, involving the
13 corporation or any of its subsidiaries and a controlling
14 shareholder, director, or officer.

15 SECTION 7. Subchapter I, Chapter 21, Business Organizations
16 Code, is amended by adding Section 21.4161 to read as follows:

17 Sec. 21.4161. DETERMINATION OF INDEPENDENT AND
18 DISINTERESTED DIRECTORS. (a) A corporation that adopts a
19 resolution to authorize the formation of a committee of independent
20 and disinterested directors under Section 21.416(g) may petition a
21 court having jurisdiction to hold an evidentiary hearing to
22 determine whether the directors appointed to the committee are
23 independent and disinterested with respect to any transactions
24 involving the corporation or any of its subsidiaries and a
25 controlling shareholder, director, or officer.

26 (b) A petition under Subsection (a) shall be filed in the
27 business court unless the corporation's principal place of business

1 in this state is located in a county not contained within an
2 operating division of the business court, in which case the
3 petition may be filed in a district court in the county in which the
4 corporation's principal place of business in this state is located.

5 (c) In the petition, the corporation shall designate legal
6 counsel to act on behalf of the corporation and its shareholders,
7 other than the controlling shareholder, director, or officer
8 involved in the transaction.

9 (d) The corporation shall give notice to the corporation's
10 shareholders that:

11 (1) a petition has been filed under this section;

12 (2) identifies the court in which the petition is
13 filed and provides the case number for the proceeding;

14 (3) identifies counsel designated to act on behalf of
15 the corporation and its shareholders, other than the controlling
16 shareholder, director, or officer involved in the transaction; and

17 (4) the shareholders, other than the controlling
18 shareholder, director, or officer involved in the transaction, have
19 the right to participate in the proceeding in person or through
20 counsel.

21 (e) If the corporation has a class of its shares listed on a
22 national securities exchange, the notice required by Subsection (d)
23 may be provided through the filing of a current report with the
24 United States Securities and Exchange Commission in accordance with
25 the requirements of the Securities Exchange Act of 1934 (15 U.S.C.
26 Section 78a et seq.), and any rules promulgated under that Act.

27 (f) Not earlier than the 10th day after the date the notice

1 required under Subsection (d) is given, the court shall hold a
2 preliminary hearing to determine the appropriate legal counsel to
3 represent the corporation and its shareholders, other than the
4 controlling shareholder, director, or officer involved in the
5 transaction, whether or not the same as the legal counsel
6 identified in the petition. Any other legal counsel representing a
7 shareholder, other than the controlling shareholder, director, or
8 officer involved in the transaction, may participate in the hearing
9 to:

10 (1) object to counsel designated by the corporation in
11 the petition on the ground that the designated counsel is
12 insufficiently independent and disinterested; or

13 (2) request designation by the court as the
14 appropriate legal counsel.

15 (g) After the court determines the appropriate legal
16 counsel under Subsection (f), the court shall promptly hold an
17 evidentiary hearing as to whether the directors on the committee
18 are independent and disinterested with respect to transactions
19 involving the corporation or any of its subsidiaries and a
20 controlling shareholder, director, or officer. The appropriate
21 legal counsel determined under Subsection (f) and legal counsel for
22 the corporation may participate in the hearing. After hearing and
23 reviewing the evidence presented, the court shall make its
24 determination as to whether the directors on the committee are
25 independent and disinterested.

26 (h) The court's determination that the directors are
27 independent and disinterested under Subsection (g) shall be

dispositive in the absence of facts, not presented to the court,
constituting evidence sufficient to prove that one or more of those
directors is not independent and disinterested with respect to a
particular transaction involving the corporation or any of its
subsidiaries and a controlling shareholder, director, or officer.

SECTION 8. Section 21.418, Business Organizations Code, is amended by adding Subsection (f) to read as follows:

(f) This subsection applies only to a corporation that has a
class or series of voting shares listed on a national securities
exchange or has made an affirmative election to be governed by
Section 21.419. Regardless of whether the conditions of Subsection
(b) are satisfied, neither the corporation nor any of the
corporation's shareholders will have a cause of action against any
director or officer for breach of duty with respect to the making,
authorization, or performance of the contract or transaction
because the director or officer had the relationship or interest
described by Subsection (a) or took any of the actions authorized by
Subsection (d) unless the cause of action is permitted by Section
21.419.

SECTION 9. Subchapter I, Chapter 21, Business Organizations Code, is amended by adding Section 21.419 to read as follows:

Sec. 21.419. PRESUMPTIONS FOR DIRECTORS AND OFFICERS OF
CERTAIN CORPORATIONS. (a) This section applies only to a
corporation that has:

- (1) a class or series of voting shares listed on a
national securities exchange; or
- (2) included in its governing documents a statement

affirmatively electing to be governed by this section.

(b) In taking or declining to take any action on any matters of a corporation's business, a director or officer is presumed to act:

(1) in good faith;

(2) on an informed basis;

(3) in furtherance of the interests of the corporation; and

(4) in obedience to the law and the corporation's governing documents.

(c) Neither a corporation nor any of the corporation's shareholders has a cause of action against a director or officer of the corporation as a result of any act or omission in the person's capacity as a director or officer unless:

(1) the claimant rebuts one or more of the presumptions established by Subsection (b); and

(2) it is proven by the claimant that:

(A) the director's or officer's act or omission constituted a breach of one or more of the person's duties as a director or officer; and

(B) the breach involved fraud, intentional misconduct, an ultra vires act, or a knowing violation of law.

(d) The presumptions established by this section:

(1) are in addition to any legal presumption arising under common law or this code, in favor of any managerial official of a corporation to which this section applies; and

(2) do not abrogate, preempt, or lessen any other

defense, presumption, immunity, or privilege under other constitutional, statutory, case, or common law or rule provisions, in favor of any managerial official of any domestic entity, including any corporation to which this section does not apply.

(e) In alleging fraud, intentional misconduct, an ultra vires act, or a knowing violation of the law under Subsection (c)(2)(B), a party must state with particularity the circumstances constituting the fraud, intentional misconduct, ultra vires act, or knowing violation of law.

(f) This section does not limit the effectiveness or applicability of a provision contained in the certificate of formation or similar instrument of a corporation limiting monetary liability of a governing person.

SECTION 10. Section 21.551(2), Business Organizations Code, is amended to read as follows:

(2) "Shareholder" includes:

(A) a shareholder as defined by Section 1.002;

(B) ~~or~~ a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf;
or

(C) two or more shareholders acting in concert under an informal or formal agreement or understanding with respect to a derivative proceeding.

SECTION 11. Section 21.552(a), Business Organizations Code, is amended to read as follows:

(a) Subject to Subsection (b), a shareholder may not institute or maintain a derivative proceeding unless:

(1) the shareholder:

(A) was a shareholder of the corporation at the time of the act or omission complained of; or

(B) became a shareholder by operation of law originating from a person that was a shareholder at the time of the act or omission complained of; ~~and~~

(2) the shareholder fairly and adequately represents the interests of the corporation in enforcing the right of the corporation; and

(3) for a corporation with common shares listed on a national securities exchange or a corporation that has made an affirmative election to be governed by Section 21.419 and has 500 or more shareholders, at the time the derivative proceeding is instituted, the shareholder beneficially owns a number of the common shares sufficient to meet the required ownership threshold to institute a derivative proceeding in the right of the corporation identified in the corporation's certificate of formation or bylaws, provided that the required ownership threshold does not exceed three percent of the outstanding shares of the corporation.

SECTION 12. Section 21.554, Business Organizations Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), (f), (g), (h), and (i) to read as follows:

(b) The court shall appoint a panel under Subsection (a)(3) if the court finds that the individuals recommended by the corporation are independent and disinterested and are otherwise qualified with respect to expertise, experience, independent

1 judgment, and other factors considered appropriate by the court
2 under the circumstances to make the determinations. An individual
3 appointed by the court to a panel under this section may be a
4 director. An individual appointed by the court to a panel under
5 this section may not be held liable to the corporation or the
6 corporation's shareholders for an action taken or omission made by
7 the individual in that capacity, except for an act or omission
8 constituting fraud or wilful misconduct.

9 (c) Before the corporation's determination of how to
10 proceed on the allegations under Subsection (a), the corporation
11 may petition the court having jurisdiction to make a finding as to
12 whether the directors identified or appointed under Subsection
13 (a)(1) or (2) are independent and disinterested with respect to the
14 allegations made in the demand.

15 (d) If a derivative proceeding has been instituted, a
16 petition under Subsection (c) shall be filed in the court in which
17 the proceeding was instituted. If no derivative proceeding has
18 been instituted, a petition under Subsection (c) shall be filed in
19 the business court unless the corporation's principal place of
20 business in this state is located in a county not contained within
21 an operating division of the business court, in which case the
22 petition may be filed in a district court in the county in which the
23 corporation's principal place of business in this state is located.

24 (e) The corporation must serve a copy of the petition on the
25 shareholder filing the derivative proceeding or making the demand.

26 (f) Unless extended for good cause, a court in which a
27 petition under Subsection (c) is filed must conduct an evidentiary

1 hearing on the petition on or before the 45th day after the date the
2 petition is filed.

3 (g) A shareholder on whom a petition is served under
4 Subsection (e) is entitled to be served with all notices and papers
5 filed in the action and to intervene in the action to challenge the
6 petition. Unless good cause is shown, a shareholder who is not
7 already a party to the action must intervene not later than the
8 seventh day before the date the petition is heard by the court.

9 (h) Unless extended for good cause, not later than the 75th
10 day after the date the petition is filed, the court shall sign an
11 order stating whether the directors are independent and
12 disinterested.

13 (i) A court's finding that the directors or individuals are
14 independent and disinterested under this section shall be
15 dispositive in the absence of discovery of facts, not presented to
16 the court, constituting evidence sufficient to prove that one or
17 more of those directors or individuals are not independent and
18 disinterested.

19 SECTION 13. Section 21.561, Business Organizations Code, is
20 amended by adding Subsection (c) to read as follows:

21 (c) For purposes of Subsection (b), a substantial benefit to
22 the corporation does not include additional or amended disclosures
23 made to the shareholders, regardless of materiality.

24 SECTION 14. Section 21.562(a), Business Organizations
25 Code, is amended to read as follows:

26 (a) In a derivative proceeding brought in the right of a
27 foreign corporation, the matters covered by this subchapter are

governed by the laws of the jurisdiction of formation of the foreign corporation, except for Sections 21.555, 21.560, and 21.561, which with respect to foreign corporations are procedural provisions and do not relate to the internal affairs of the foreign corporation, unless applying the laws of the jurisdiction of formation of the foreign corporation requires otherwise with respect to Section 21.555.

SECTION 15. Subchapter F, Chapter 101, Business Organizations Code, is amended by adding Section 101.256 to read as follows:

Sec. 101.256. PRESUMPTIONS FOR GOVERNING PERSONS OF CERTAIN LIMITED LIABILITY COMPANIES. (a) This section applies only to a limited liability company that has:

(1) a class or series of voting membership interests listed on a national securities exchange; or

(2) included in its company agreement a statement affirmatively electing to be governed by this section.

(b) In taking or declining to take any action on any matters of a limited liability company's business, a governing person or officer, and each affiliate or associate of a governing person or officer, is presumed to act:

(1) in good faith;

(2) on an informed basis;

(3) in furtherance of the interests of the limited liability company; and

(4) in obedience to the law and the limited liability company's company agreement.

1 (c) Neither a limited liability company nor any of the
2 company's members has a cause of action against a governing person
3 or officer or any affiliate or associate of a governing person or
4 officer of the company as a result of any act or omission in the
5 person's capacity as a governing person or officer of the company
6 unless:

7 (1) the claimant rebuts one or more of the
8 presumptions established by Subsection (b); and

9 (2) it is proven by the claimant that:

10 (A) the act or omission of the governing person
11 or officer or affiliate or associate of a governing person or
12 officer constituted a breach of one or more of the person's duties
13 as a governing person or officer; and

14 (B) the breach involved fraud, intentional
15 misconduct, an ultra vires act, or a knowing violation of law.

16 (d) The presumptions established by this section:

17 (1) are in addition to any legal presumption arising
18 under common law or this code, in favor of any governing person or
19 officer to which this section applies; and

20 (2) do not abrogate, preempt, or lessen any other
21 defense, presumption, immunity, or privilege under other
22 constitutional, statutory, case, or common law or rule provisions,
23 in favor of any governing person or officer of any domestic entity,
24 including any limited liability company to which this section does
25 not apply.

26 (e) In alleging fraud, intentional misconduct, an ultra
27 vires act, or a knowing violation of the law under Subsection

1 (c)(2)(B), a party must state with particularity the circumstances
2 constituting the fraud, intentional misconduct, ultra vires act, or
3 knowing violation of law.

4 (f) This section does not limit the effectiveness or
5 applicability of a provision contained in the certificate of
6 formation or company agreement or similar instrument of a limited
7 liability company limiting monetary liability of a governing person
8 or officer.

9 SECTION 16. Section 101.401, Business Organizations Code,
10 is amended to read as follows:

11 Sec. 101.401. EXPANSION, ~~[OR]~~ RESTRICTION, OR ELIMINATION
12 OF DUTIES AND LIABILITIES. The company agreement of a limited
13 liability company may expand, ~~[or]~~ restrict, or eliminate any
14 duties, including fiduciary duties, and related liabilities that a
15 member, manager, officer, or other person has to the company or to a
16 member or manager of the company.

17 SECTION 17. Section 101.451(3), Business Organizations
18 Code, is amended to read as follows:

19 (3) "Member" includes:

20 (A) a person who is a member or is an assignee of
21 a membership interest or a person who beneficially owns a
22 membership interest through a voting trust or a nominee on the
23 person's behalf; and

24 (B) two or more members described by Paragraph
25 (A) acting in concert under an informal or formal agreement or
26 understanding with respect to a derivative proceeding.

27 SECTION 18. Section 101.452(a), Business Organizations

Code, is amended to read as follows:

(a) Subject to Subsection (b), a member may not institute or maintain a derivative proceeding unless:

(1) the member:

(A) was a member of the limited liability company at the time of the act or omission complained of; or

(B) became a member by operation of law originating from a person that was a member at the time of the act or omission complained of; ~~and~~

(2) the member fairly and adequately represents the interests of the limited liability company in enforcing the right of the limited liability company; and

(3) for a limited liability company with membership interests listed on a national securities exchange or that has made an affirmative election to be governed by Section 101.256 and has 500 or more members, at the time the derivative proceeding is instituted, the member beneficially owns a number of the membership interests sufficient to meet the required ownership threshold to institute a derivative proceeding in the right of the limited liability company identified in the limited liability company's certificate of formation or company agreement, provided that the required ownership threshold does not exceed three percent of the outstanding membership interests of the limited liability company.

SECTION 19. Section 101.461, Business Organizations Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of Subsection (b), a substantial benefit to the limited liability company does not include additional or

1 amended disclosures made to the members, regardless of materiality.

2 SECTION 20. Section 101.502, Business Organizations Code,
3 is amended by amending Subsection (a) and adding Subsections (a-1),
4 (a-2), and (a-3) to read as follows:

5 (a) Unless otherwise provided by the governing documents of
6 a limited liability company, a [A] member of a limited liability
7 company or an assignee of a membership interest in a limited
8 liability company, on written demand stating a proper purpose, is
9 entitled to examine and copy at a reasonable time at the limited
10 liability company's principal office identified under Section
11 101.501(c) or another location approved by the limited liability
12 company and the member or assignee, any records of the limited
13 liability company, whether in written or other tangible form, which
14 are reasonably related to and appropriate to examine and copy for
15 that proper purpose. For purposes of this subsection, the records
16 of the limited liability company shall not include e-mails, text
17 messages or similar electronic communications, or information from
18 social media accounts unless the particular e-mail, communication,
19 or social media information effectuates an action by the limited
20 liability company.

21 (a-1) This subsection applies only to a limited liability
22 company that has a class or series of voting membership interests
23 listed on a national securities exchange or that has made an
24 affirmative election to be governed by Section 101.256. For
25 purposes of Subsection (a), a written demand may be made only by a
26 member or an assignee that has held the membership interest for at
27 least six months immediately preceding the member's or assignee's

1 demand.

2 (a-2) This subsection applies only to a limited liability
3 company that has a class or series of voting membership interests
4 listed on a national securities exchange or that has made an
5 affirmative election to be governed by Section 101.256. For
6 purposes of Subsection (a), a written demand shall not be for a
7 proper purpose if the limited liability company reasonably
8 determines that the demand is in connection with:

9 (1) an active or pending derivative proceeding in the
10 right of the limited liability company under Subchapter J that is or
11 is expected to be instituted or maintained by the member or assignee
12 or the member's or assignee's affiliate; or

13 (2) an active or pending civil lawsuit to which the
14 company, or its affiliate, and the member or assignee, or the
15 member's or assignee's affiliate, are or are expected to be
16 adversarial named parties.

17 (a-3) Subsection (a-2) does not impair any rights of the
18 member or assignee or the member's or assignee's affiliate to obtain
19 discovery of records from the limited liability company in:

20 (1) a civil lawsuit described by Subsection (a-2)(2);
21 or

22 (2) the derivative proceeding subject to Section
23 [101.456](#).

24 SECTION 21. Section [152.002](#), Business Organizations Code,
25 is amended by adding Subsection (e) to read as follows:

26 (e) This subsection applies only to a limited partnership
27 that has a class or series of voting limited partnership interests

1 listed on a national securities exchange or that has made an
2 affirmative election to be governed by Section 153.163.
3 Notwithstanding Subsection (b)(2), (3), or (4), a partnership
4 agreement may eliminate the duty of loyalty under Section 152.205,
5 the duty of care under Section 152.206, and the obligation of good
6 faith under Section 152.204(b), to the extent the governing
7 documents of the partnership include a statement affirmatively
8 electing to do so under this subsection.

9 SECTION 22. Subchapter D, Chapter 153, Business
10 Organizations Code, is amended by adding Section 153.163 to read as
11 follows:

12 Sec. 153.163. PRESUMPTIONS FOR GENERAL PARTNERS AND
13 OFFICERS OF CERTAIN LIMITED PARTNERSHIPS. (a) This section
14 applies only to a limited partnership that has:

15 (1) a class or series of voting limited partnership
16 interests listed on a national securities exchange; or

17 (2) included in its governing documents a statement
18 affirmatively electing to be governed by this section.

19 (b) In taking or declining to take any action on any matters
20 of a limited partnership's business, any general partner of the
21 limited partnership, including any director, officer, member, or
22 other affiliate of the general partner, is presumed to act:

23 (1) in good faith;

24 (2) on an informed basis;

25 (3) in furtherance of the interests of the limited
26 partnership; and

27 (4) in obedience to the law and the limited

1 partnership's partnership agreement.

2 (c) Neither a limited partnership nor any of the limited
3 partnership's partners has a cause of action against a general
4 partner of the limited partnership, including any director,
5 officer, member, or other affiliate of the general partner, as a
6 result of any act or omission in the person's capacity as a general
7 partner or as an officer or director of the general partner unless:

8 (1) the claimant rebuts one or more of the
9 presumptions established by Subsection (b); and

10 (2) it is proven by the claimant that:

11 (A) the general partner's or any director,
12 officer, member, or other affiliate of the general partner's act or
13 omission constituted a breach of one or more of the person's duties
14 as a general partner, director, or officer; and

15 (B) the breach involved fraud, intentional
16 misconduct, an ultra vires act, or a knowing violation of law.

17 (d) The presumptions established by this section:

18 (1) are in addition to any legal presumption arising
19 under common law or this code, in favor of any general partner or
20 member or managerial official of a general partner to which this
21 section applies; and

22 (2) do not abrogate, preempt, or lessen any other
23 defense, presumption, immunity, or privilege under other
24 constitutional, statutory, case, or common law or rule provisions,
25 in favor of any managerial official of any domestic entity,
26 including any limited partnership to which this section does not
27 apply.

1 (e) In alleging fraud, intentional misconduct, an ultra
2 vires act, or a knowing violation of the law under Subsection
3 (c)(2)(B), a party must state with particularity the circumstances
4 constituting the fraud, intentional misconduct, ultra vires act, or
5 knowing violation of law.

6 (f) This section does not limit the effectiveness or
7 applicability of a provision contained in the certificate of
8 formation or partnership agreement or similar instrument of a
9 partnership limiting monetary liability of a governing person.

10 SECTION 23. Section 153.401(2), Business Organizations
11 Code, is amended to read as follows:

12 (2) "Limited partner" means:

13 (A) a person who is a limited partner or is an
14 assignee of a partnership interest, including the partnership
15 interest of a general partner; and

16 (B) two or more limited partners described by
17 Paragraph (A) acting in concert under an informal or formal
18 agreement or understanding with respect to a derivative proceeding.

19 SECTION 24. Section 153.402(a), Business Organizations
20 Code, is amended to read as follows:

21 (a) Subject to Subsection (b), a limited partner may not
22 institute or maintain a derivative proceeding unless:

23 (1) the limited partner:

24 (A) was a limited partner of the limited
25 partnership at the time of the act or omission complained of; or

26 (B) became a limited partner by operation of law
27 originating from a person that was a limited partner or general

partner at the time of the act or omission complained of; ~~and~~

(2) the limited partner fairly and adequately represents the interests of the limited partnership in enforcing the right of the limited partnership; and

(3) for a limited partnership with limited partnership interests listed on a national securities exchange or that has made an affirmative election to be governed by Section 153.163 and has 500 or more limited partners, at the time the derivative proceeding is instituted, the partner beneficially owns a number of limited partnership interests sufficient to meet the required ownership threshold to institute a derivative proceeding in the right of the limited partnership identified in the limited partnership's certificate of formation or partnership agreement, provided that the required ownership threshold does not exceed three percent of the outstanding limited partnership interests of the limited partnership.

SECTION 25. Section 153.411, Business Organizations Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of Subsection (b), a substantial benefit to the limited partnership does not include additional or amended disclosures made to the limited partners, regardless of materiality.

SECTION 26. Section 153.552, Business Organizations Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Unless otherwise provided by the governing documents of a limited partnership, on ~~On~~ written demand stating a proper

1 purpose, a partner or an assignee of a partnership interest in a
2 limited partnership is entitled to examine and copy, at a
3 reasonable time at the partnership's principal office identified
4 under Section 153.551 or other location approved by the partnership
5 and the partner or assignee, any records of the partnership,
6 whether in written or other tangible form, which are reasonably
7 related to and appropriate to examine and copy for that proper
8 purpose. For purposes of this subsection, the records of the
9 limited partnership shall not include e-mails, text messages or
10 similar electronic communications, or information from social
11 media accounts unless the particular e-mail, communication, or
12 social media information effectuates an action by the limited
13 partnership.

14 (a-1) This subsection applies only to a limited partnership
15 that has a class or series of voting limited partnership interests
16 listed on a national securities exchange or that has made an
17 affirmative election to be governed by Section 153.163. For
18 purposes of Subsection (a), a written demand:

19 (1) may be made only by a limited partner or an
20 assignee that has held the limited partnership interest for at
21 least six months immediately preceding the limited partner's or
22 assignee's demand; and

23 (2) shall not be for a proper purpose if the limited
24 partnership reasonably determines that the demand is in connection
25 with:

26 (A) an active or pending derivative proceeding in
27 the right of the limited partnership under Subchapter I that is or

1 is expected to be instituted or maintained by the limited partner or
2 assignee or the limited partner's or assignee's affiliate; or

3 (B) an active or pending civil lawsuit to which
4 the partnership, or its affiliate, and the limited partner or
5 assignee, or the limited partner's or assignee's affiliate, are or
6 are expected to be adversarial named parties.

7 (a-2) Subsection (a-1) does not impair any rights of the
8 limited partner or assignee or the limited partner's or assignee's
9 affiliate to obtain discovery of records from the limited
10 partnership in:

11 (1) a civil lawsuit described by Subsection
12 (a-1)(2)(B); or

13 (2) the derivative proceeding subject to Section
14 153.406.

15 SECTION 27. Sections 21.552(a), 21.561, 101.452(a),
16 101.461, 153.402(a), and 153.411, Business Organizations Code, as
17 amended by this Act, apply only to a derivative proceeding
18 instituted on or after the effective date of this Act. A derivative
19 proceeding instituted before the effective date of this Act is
20 governed by the law in effect on the date the proceeding was
21 instituted, and the former law is continued in effect for that
22 purpose.

23 SECTION 28. This Act takes effect immediately if it
24 receives a vote of two-thirds of all the members elected to each
25 house, as provided by Section 39, Article III, Texas Constitution.
26 If this Act does not receive the vote necessary for immediate
27 effect, this Act takes effect September 1, 2025.