

By: Solomons

H.B. No. 1165

A BILL TO BE ENTITLED

AN ACT

relating to business corporations.

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

SECTION 1. Section A, Article 1.02, Texas Business Corporation Act, is amended by adding Subsection (30) to read as follows:

(30) "Electronic transmission" means a form of communication that:

(a) does not directly involve the physical transmission of paper;

(b) creates a record that may be retained, retrieved, and reviewed by the recipient; and

(c) may be directly reproduced in paper form by the recipient through an automated process.

SECTION 2. Section A, Article 2.02, Texas Business Corporation Act, is amended to read as follows:

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

(1) To have perpetual succession by its corporate name unless a limited period of duration is stated in its articles of incorporation. Notwithstanding the articles of incorporation, the period of duration for any corporation incorporated before September 6, 1955, is perpetual if all fees and franchise taxes have been paid as provided by law.

1           (2) To sue and be sued, complain and defend, in its  
2 corporate name.

3           (3) To have a corporate seal which may be altered at  
4 pleasure, and to use the same by causing it, or a facsimile thereof,  
5 to be impressed on, affixed to, or in any manner reproduced upon,  
6 instruments of any nature required to be executed by its proper  
7 officers.

8           (4) To purchase, receive, lease, or otherwise acquire,  
9 own, hold, improve, use and otherwise deal in and with, real or  
10 personal property, or any interest therein, wherever situated, as  
11 the purposes of the corporation shall require.

12           (5) To sell, convey, mortgage, pledge, lease,  
13 exchange, transfer and otherwise dispose of all or any part of its  
14 property and assets.

15           (6) To lend money to, and otherwise assist, its  
16 employees, officers, and directors if such a loan or assistance  
17 reasonably may be expected to benefit, directly or indirectly, the  
18 lending or assisting corporation.

19           (7) To purchase, receive, subscribe for, or otherwise  
20 acquire, own, hold, vote, use, employ, mortgage, lend, pledge, sell  
21 or otherwise dispose of, and otherwise use and deal in and with,  
22 shares or other interests in, or obligations of, other domestic or  
23 foreign corporations, associations, partnerships, or individuals,  
24 or direct or indirect obligations of the United States or of any  
25 other government, state, territory, government district, or  
26 municipality, or of any instrumentality thereof.

27           (8) To purchase or otherwise acquire its own bonds,

1 debentures, or other evidences of its indebtedness or obligations;  
2 to purchase or otherwise acquire its own unredeemable shares and  
3 hold those acquired shares as treasury shares or cancel or  
4 otherwise dispose of those acquired shares; and to redeem or  
5 purchase shares made redeemable by the provisions of its articles  
6 of incorporation.

7 (9) To make contracts and incur liabilities, borrow  
8 money at such rates of interest as the corporation may determine,  
9 issue its notes, bonds, and other obligations, and secure any of its  
10 obligations by mortgage or pledge of all or any of its property,  
11 franchises, and income.

12 (10) To lend money for its corporate purposes, invest  
13 and reinvest its funds, and take and hold real and personal property  
14 as security for the payment of funds so loaned or invested.

15 (11) To conduct its business, carry on its operations,  
16 and have offices and exercise the powers granted by this Act, within  
17 or without this State.

18 (12) To elect or appoint officers and agents of the  
19 corporation for such period of time as the corporation may  
20 determine, and define their duties and fix their compensation.

21 (13) To make and alter bylaws, not inconsistent with  
22 its articles of incorporation or with the laws of this State, for  
23 the administration and regulation of the affairs of the  
24 corporation.

25 (14) To make donations for the public welfare or for  
26 charitable, scientific, or educational purposes.

27 (15) To transact any lawful business which the board

1 of directors shall find will be in aid of government policy.

2 (16) To indemnify directors, officers, employees, and  
3 agents of the corporation and to purchase and maintain liability  
4 insurance for those persons.

5 (17) To pay pensions and establish pension plans,  
6 pension trusts, profit sharing plans, stock bonus plans, and other  
7 incentive plans for any or all of, or any class or classes of, its  
8 directors, officers, or employees.

9 (18) To be an organizer, partner, member, associate,  
10 or manager of any partnership, joint venture, or other enterprise,  
11 and to the extent permitted by [~~in~~] any other jurisdiction to be an  
12 incorporator of any other corporation of any type or kind.

13 (19) To cease its corporate activities and terminate  
14 its existence by voluntary dissolution.

15 (20) To renounce, in its articles of incorporation or  
16 by action of its board of directors, an interest or expectancy of  
17 the corporation in, or an interest or expectancy of the corporation  
18 in being offered an opportunity to participate in, specified  
19 business opportunities or specified classes or categories of  
20 business opportunities that are presented to the corporation or one  
21 or more of its officers, directors, or shareholders.

22 (21) Whether included in the foregoing or not, to have  
23 and exercise all powers necessary or appropriate to effect any or  
24 all of the purposes for which the corporation is organized.

25 SECTION 3. Sections F, K, and O, Article 2.02-1, Texas  
26 Business Corporation Act, are amended to read as follows:

27 F. A determination of indemnification under Section B of

1 this article must be made:

2 (1) by a majority vote of the ~~[a quorum consisting of]~~  
3 directors who at the time of the vote are not named defendants or  
4 respondents in the proceeding, regardless of whether the directors  
5 not named defendants or respondents constitute a quorum;

6 (2) ~~[if such a quorum cannot be obtained,]~~ by a  
7 majority vote of a committee of the board of directors, if:

8 (a) the committee is designated ~~[to act in the~~  
9 ~~matter]~~ by a majority vote of the ~~[all directors, consisting solely~~  
10 ~~of two or more]~~ directors who at the time of the vote are not named  
11 defendants or respondents in the proceeding, regardless of whether  
12 the directors not named defendants or respondents constitute a  
13 quorum; and

14 (b) the committee consists solely of one or more  
15 of the directors not named as defendants or respondents in the  
16 proceeding;

17 (3) by special legal counsel selected by the board of  
18 directors or a committee of the board by vote as set forth in  
19 Subsection (1) or (2) of this section~~[, or, if such a quorum cannot~~  
20 ~~be obtained and such a committee cannot be established, by a~~  
21 ~~majority vote of all directors]~~; or

22 (4) by the shareholders in a vote that excludes the  
23 shares held by directors who are named defendants or respondents in  
24 the proceeding.

25 K. Reasonable expenses incurred by a present director who  
26 was, is, or is threatened to be made a named defendant or respondent  
27 in a proceeding may be paid or reimbursed by the corporation, in

1 advance of the final disposition of the proceeding and without the  
 2 determination specified in Section F of this article or the  
 3 authorization or determination specified in Section G of this  
 4 article, after the corporation receives a written affirmation by  
 5 the director of his good faith belief that he has met the standard  
 6 of conduct necessary for indemnification under this article and a  
 7 written undertaking by or on behalf of the director to repay the  
 8 amount paid or reimbursed if it is ultimately determined that he has  
 9 not met that standard or if it is ultimately determined that  
 10 indemnification of the director against expenses incurred by him in  
 11 connection with that proceeding is prohibited by Section E of this  
 12 article. Notwithstanding any authorization or determination  
 13 specified in this article, reasonable expenses incurred by a former  
 14 director or officer, or a present or former employee or agent of the  
 15 corporation, who was, is, or is threatened to be made a named  
 16 defendant or respondent in a proceeding may be paid or reimbursed by  
 17 the corporation, in advance of the final disposition of the  
 18 proceeding, on any terms the corporation considers appropriate. A  
 19 provision contained in the articles of incorporation, the bylaws, a  
 20 resolution of shareholders or directors, or an agreement that makes  
 21 mandatory the payment or reimbursement permitted under this section  
 22 shall be deemed to constitute authorization of that payment or  
 23 reimbursement.

24 O. An officer of the corporation shall be indemnified as,  
 25 and to the same extent, provided by Sections H, I, and J of this  
 26 article for a director and is entitled to seek indemnification  
 27 under those sections to the same extent as a director. A

1 corporation may indemnify and advance expenses to an officer,  
2 employee, or agent of the corporation to the same extent that it may  
3 indemnify and advance expenses to directors under this article. A  
4 determination of indemnification for an employee or agent of the  
5 corporation is not required to be made in accordance with Section F  
6 of this article.

7 SECTION 4. Section A, Article 2.09, Texas Business  
8 Corporation Act, is amended to read as follows:

9 A. Each corporation shall have and continuously maintain in  
10 this State:

11 (1) A registered office which may be, but need not be,  
12 the same as its place of business.

13 (2) A registered agent, which agent may be either an  
14 individual resident in this State [~~whose business office is~~  
15 ~~identical with such registered office,~~] or a domestic corporation,  
16 or other entity organized under the laws of this state or [~~a foreign~~  
17 ~~corporation~~] authorized to transact business in this State that  
18 [which] has a business office identical with each such registered  
19 office that is generally open during normal business hours to  
20 accept service of process and otherwise perform the functions of a  
21 registered agent.

22 SECTION 5. Article 2.13, Texas Business Corporation Act, is  
23 amended by adding a new Section E and redesignating and amending  
24 existing Sections E and F as Sections F and G to read as follows:

25 E. If the articles of incorporation expressly authorize the  
26 board of directors to establish series of unissued shares of a class  
27 and if no shares of a series established by resolution of the board

of directors have been issued, the board of directors may amend the designations, preferences, limitations, and relative rights, including voting rights, of the series, unless otherwise provided in the articles of incorporation. To amend the designations, preferences, limitations, and relative rights of a series, the board of directors shall adopt a resolution amending the designations, preferences, limitations, and relative rights of the series. Before the issuance of any shares of the series, the corporation shall file with the secretary of state a statement setting forth:

(1) The name of the corporation.

(2) That no shares of the series have been issued.

(3) If the designation of the series is being changed, a statement of the original designation and the new designation.

(4) A copy of the resolution amending the designations, preferences, limitations, or relative rights of the series.

(5) The date of adoption of the resolution.

(6) That the resolution was adopted by all necessary action on the part of the corporation.

F. A [E.—Such] statement filed in accordance with Section D or E of this article shall be executed on behalf of the corporation by an officer. The original and a copy of the statement shall be delivered to the Secretary of State. If the Secretary of State finds that such statement conforms to law, he shall, when the appropriate filing fee is paid as prescribed by law:

(1) Endorse on the original and the copy the word



1 "Filed," and the month, day, and year of the filing thereof.

2 (2) File the original in his office.

3 (3) Return the copy to the corporation or its  
4 representative.

5 G [F]. Upon the filing of a [such] statement described in  
6 Section D or E of this article by the Secretary of State, the  
7 resolution establishing and designating the series and fixing and  
8 determining the preferences, limitations, and relative rights  
9 thereof, the resolution fixing the new number of shares of each  
10 series in which the number of shares is increased or decreased, ~~[or]~~  
11 the resolution eliminating a series and all references to such  
12 series from the articles of incorporation, or the resolution  
13 amending the preferences, limitations, and relative rights of the  
14 series, as appropriate, shall become an amendment of the articles  
15 of incorporation. The filing of the statement or the filing of a  
16 restated certificate of incorporation under Article 4.07 of this  
17 Act does not prohibit the board of directors from subsequently  
18 adopting a resolution as authorized by this article. An amendment  
19 of the articles of incorporation effected pursuant to this Article  
20 2.13 is not subject to the procedure to amend the articles of  
21 incorporation contained in Article 4.02 of this Act.

22 SECTION 6. Article 2.14, Texas Business Corporation Act, is  
23 amended by amending Sections C and D and adding Section E to read as  
24 follows:

25 C. Acceptance of a subscription ~~[In the case of an existing~~  
26 ~~corporation, acceptance]~~ shall be effected by a resolution of  
27 acceptance by the board of directors or by a written memorandum of

1 acceptance executed by one authorized by the board of directors and  
2 delivered to the subscriber or his assignee.

3 D. Subscriptions for shares, whether made before or after  
4 the organization of a corporation, shall be paid in full at such  
5 time, or in such installments and at such times, as shall be  
6 determined by the board of directors unless the payment terms are  
7 specified by the subscription. Unless otherwise specified by the  
8 subscription, a [Any] call made by the board of directors for  
9 payment on subscriptions shall be uniform as to all shares of the  
10 same class or as to all shares of the same series, as the case may  
11 be, as far as practicable. In case of default in the payment of any  
12 installment or call when such payment is due, the corporation may  
13 proceed to collect the amount due in the same manner as any debt due  
14 the corporation or declare the subscription forfeited if [~~The~~  
15 ~~bylaws may prescribe other penalties for failure to pay~~  
16 ~~installments or calls that may become due, but no penalty working a~~  
17 ~~forfeiture of a subscription, or of the amounts paid thereon, shall~~  
18 ~~be declared against any subscriber unless~~] the amount due remains  
19 [thereon shall remain] unpaid for a period of twenty (20) days after  
20 written demand has been made therefor to the subscriber. If mailed,  
21 such written demand shall be deemed to be made when deposited in the  
22 United States mail in a sealed envelope addressed to the subscriber  
23 at his last post office address known to the corporation, with  
24 postage thereon prepaid. [~~If the demand remains unsatisfied for a~~  
25 ~~period of twenty (20) days, and if the corporation is solvent, the~~  
26 ~~corporation may declare the subscription to be forfeited.~~] The  
27 effect of such declaration of forfeiture shall be to terminate all

1 the rights and obligations of the subscriber as such, but the  
2 corporation may retain any amount previously paid on the  
3 subscription.

4 E. Before acquiring shares in a corporation, a person may  
5 commit to act in a specified manner with respect to the shares after  
6 the acquisition, including with respect to the voting of the shares  
7 or the retention or disposition of the shares. To be binding, the  
8 commitment must be in writing and be signed by the person acquiring  
9 the shares. A written commitment entered into under this section is  
10 a contract between the shareholder and the corporation.

11 SECTION 7. Article 2.14-1, Texas Business Corporation Act,  
12 is amended to read as follows:

13 Art. 2.14-1. STOCK RIGHTS, OPTIONS, AND CONVERTIBLE  
14 INDEBTEDNESS. A. Subject to any limitations in its articles of  
15 incorporation, a corporation may create and issue, whether or not  
16 in connection with the issuance and sale of any of its shares or  
17 other securities, (1) rights or options entitling the holders  
18 thereof to purchase or receive from the corporation any of its  
19 shares of any class, classes or series or other securities and (2)  
20 indebtedness convertible into any of its shares of any class,  
21 classes or series or other securities.

22 B. The terms of rights or options may:

23 (1) prohibit or limit the exercise, transfer, or  
24 receipt of the rights or options by certain persons or classes of  
25 persons, including:

26 (a) a person who beneficially owns or offers to  
27 acquire a specified number or percentage of the outstanding common

1 shares, voting power, or other securities of the corporation; or

2 (b) a transferee of a person described by  
3 Paragraph (a) of this subsection; or

4 (2) invalidate the rights or options held by a person  
5 or transferee described by Subsection (1) of this section.

6 C. Such rights, options or indebtedness shall be evidenced  
7 in such manner as the board of directors shall approve and, subject  
8 to the provisions of the articles of incorporation, shall set  
9 forth:

10 (1) ~~[(a)]~~ in the case of rights or options, the terms  
11 upon which, the time or times within which, and any ~~the~~  
12 consideration, including a formula by which the consideration may  
13 be determined, [if any] ~~for which~~ such shares may be purchased  
14 or received from the corporation upon the exercise of any such right  
15 or option; ~~or~~

16 (2) ~~[(b)]~~ in the case of convertible indebtedness, the  
17 terms and conditions upon which, the time or times within which, and  
18 the conversion ratio or ratios at which, such indebtedness may be  
19 converted into such shares.

20 D. In the absence of fraud in the transaction, the judgment  
21 of the board of directors as to the adequacy of the consideration  
22 received for such rights, options, or indebtedness shall be  
23 conclusive; provided that rights or options may be issued by a  
24 corporation to its shareholders, employees, or directors without  
25 consideration if, in the judgment of the board of directors, the  
26 issuance of those rights or options is in the interests of the  
27 corporation. The consideration to be received for any shares

1 having a par value, other than treasury shares, to be issued upon  
 2 the exercise of such rights or options shall not be less than the  
 3 par value thereof. No privilege of conversion shall be conferred  
 4 upon, or altered in respect to, any indebtedness that would result  
 5 in receipt by the corporation of less than the minimum  
 6 consideration required to be received upon issuance of the shares.  
 7 The consideration for shares issued upon the exercise of  
 8 convertible indebtedness shall be that provided in Section E of  
 9 Article 2.15 of this Act. The consideration for shares issued upon  
 10 the exercise of rights or options shall be that provided in Section  
 11 F of Article 2.15 of this Act.

12 E. Except as provided by Section F of this article, the  
 13 authority to grant, amend, redeem, extend, or replace the rights or  
 14 options on behalf of a corporation is vested exclusively in the  
 15 board of directors of the corporation. A bylaw may not require the  
 16 board to grant, amend, redeem, extend, or replace the rights or  
 17 options.

18 F. The terms of the rights or options or the agreement or  
 19 plan under which the rights or options are issued may provide that  
 20 the board of directors may by resolution authorize one or more  
 21 officers of the corporation to:

22 (1) designate officers and employees of the  
 23 corporation or of any of its subsidiaries to receive rights or  
 24 options created by the corporation; or

25 (2) determine the number of the rights or options to be  
 26 received by the officers and employees.

27 G. A resolution adopted under Section F of this article

1 authorizing an officer of the corporation to designate recipients  
2 of rights or options shall specify the total number of rights or  
3 options the officer may award. The board of directors may not  
4 authorize an officer to designate himself or herself as a recipient  
5 of any rights or options.

6 SECTION 8. Article 2.22, Texas Business Corporation Act, is  
7 amended by amending Sections B and D and adding Section H to read as  
8 follows:

9 B. A restriction on the transfer or registration of transfer  
10 of a security, or on the amount of the corporation's securities that  
11 may be owned by any person or group of persons, may be imposed by the  
12 articles of incorporation, or by-laws, or a written agreement among  
13 any number of the holders of such securities, or a written agreement  
14 among any number of the holders and the corporation provided a  
15 counterpart of such agreement shall be placed on file by the  
16 corporation at its principal place of business or its registered  
17 office and shall be subject to the same right of examination by a  
18 shareholder of the corporation, in person or by agent, attorney or  
19 accountant, as are the books and records of the corporation. No  
20 restriction so imposed shall be valid with respect to any security  
21 issued prior to the adoption of the restriction unless the holder of  
22 the security voted in favor of the restriction or is a party to the  
23 agreement imposing it.

24 D. In particular and without limiting the general power  
25 granted in Sections B and C of this Article to impose reasonable  
26 restrictions, a restriction on the transfer or registration of  
27 transfer of securities of a corporation shall be valid if it

1 reasonably:

2 (1) Obligates the holders of the restricted securities  
3 to offer to the corporation or to any other holders of securities of  
4 the corporation or to any other person or to any combination of the  
5 foregoing, a prior opportunity, to be exercised within a reasonable  
6 time, to acquire the restricted securities; or

7 (2) Obligates the corporation to the extent permitted  
8 by this Act or any holder of securities of the corporation or any  
9 other person, or any combination of the foregoing, to purchase the  
10 securities which are the subject of an agreement respecting the  
11 purchase and sale of the restricted securities; or

12 (3) Requires the corporation or the holders of any  
13 class of securities of the corporation to consent to any proposed  
14 transfer of the restricted securities or to approve the proposed  
15 transferee of the restricted securities for the purpose of  
16 preventing violations of federal or state laws; or

17 (4) Prohibits the transfer of the restricted  
18 securities to designated persons or classes of persons, and such  
19 designation is not manifestly unreasonable; or

20 (5) Maintains the status of the corporation as an  
21 electing small business corporation under Subchapter S of the  
22 United States Internal Revenue Code, maintains any other tax  
23 advantage to the corporation, or maintains the status of the  
24 corporation as a close corporation under Part Twelve of this Act; or

25 (6) Obligates the holder of the restricted securities  
26 to sell or transfer an amount of restricted securities to the  
27 corporation, to any other holders of securities of the corporation,

1 or to any other person or combination of persons; or

2 (7) Causes the automatic sale or transfer of an amount  
3 of restricted securities to the corporation, to any other holders  
4 of securities of the corporation, or to any other person or  
5 combination of persons.

6 H. A restriction on the transfer or the registration of a  
7 transfer of the securities of a corporation, the amount of  
8 securities of a corporation, or the amount of securities of a  
9 corporation that may be owned by a person or group of persons for  
10 any of the following purposes is conclusively presumed to be for a  
11 reasonable purpose:

12 (1) maintaining a local, state, federal, or foreign  
13 tax advantage to the corporation or its stockholders, including:

14 (a) maintaining the corporation's status as an  
15 electing small business corporation under Subchapter S of the  
16 Internal Revenue Code of 1986;

17 (b) maintaining or preserving any tax attribute,  
18 including net operating losses; or

19 (c) qualifying or maintaining the qualification  
20 of the corporation as a real estate investment trust under the  
21 Internal Revenue Code of 1986 or regulations adopted under the  
22 Internal Revenue Code of 1986; or

23 (2) maintaining a statutory or regulatory advantage or  
24 complying with a statutory or regulatory requirement under  
25 applicable local, state, federal, or foreign law.

26 SECTION 9. Article 2.22-1, Texas Business Corporation Act,  
27 is amended to read as follows:



1           Art. 2.22-1. SHAREHOLDERS' PREEMPTIVE RIGHTS. A. Except  
2 as provided by Section F of this article, the ~~[The]~~ shareholders of  
3 a corporation shall not have a preemptive right to acquire  
4 additional, unissued, or treasury shares of the corporation, or  
5 securities of the corporation convertible into or carrying a right  
6 to subscribe to or acquire shares, except to the extent provided  
7 ~~[limited or denied by this Article or]~~ by the articles of  
8 incorporation or by agreement.

9           B. The articles of incorporation may provide that the  
10 shareholders of a corporation shall have a preemptive right by  
11 including a statement that the corporation "elects to have a  
12 preemptive right" or a similar statement. Section C of this article  
13 applies to the shareholders' preemptive right except as otherwise  
14 provided by the articles of incorporation.

15           C. (1) If the shareholders of a corporation have a  
16 preemptive right under this article, the shareholders have a  
17 preemptive right to acquire proportional amounts of the  
18 corporation's additional unissued or treasury shares, or  
19 securities of the corporation convertible into or carrying a right  
20 to subscribe to or acquire shares on the decision of the  
21 corporation's board of directors to issue the shares.

22           (2) Unless otherwise provided in the articles of  
23 incorporation, no ~~[(1) No]~~ preemptive right shall exist with  
24 respect to:

25           (a) ~~[to acquire any]~~ shares issued or granted to  
26 a director, officer, agent, or employee of the corporation or a  
27 subsidiary or affiliate of the corporation ~~[to employees pursuant~~

1 ~~to approval by the affirmative vote of the holders of a majority of~~  
2 ~~the shares entitled to vote thereon or when authorized by and~~  
3 ~~consistent with a plan theretofore approved by such a vote of~~  
4 ~~shareholders]; [or]~~

5 (b) shares issued or granted to satisfy  
6 conversion or option rights created to provide compensation to a  
7 director, officer, agent, or employee of the corporation or a  
8 subsidiary or affiliate of the corporation;

9 (c) shares authorized in the corporation's  
10 articles of incorporation that are issued not later than the 180th  
11 day after the effective date of the corporation's formation; or

12 (d) ~~[to acquire any]~~ shares sold, issued, or  
13 granted by the corporation for consideration other than money  
14 ~~[otherwise than for cash].~~

15 (3) ~~[(2)]~~  Holders of shares of any class or series  
16 without general voting rights but that is preferred [or limited] as  
17 to distributions [dividends or assets] shall not be entitled to any  
18 preemptive right.

19 (4) ~~[(3)]~~  Holders of shares of any class or series  
20 with general voting rights that is not preferred [or limited] as to  
21 distributions [dividends or assets] shall not be entitled to any  
22 preemptive right to shares of any class or series that is preferred  
23 [or limited] as to distributions [dividends or assets] or to any  
24 obligations, unless the shares with preferential rights or  
25 obligations are convertible into [shares of such class or series  
26 ~~that is not preferred or limited]~~ or carry [carrying] a right to  
27 subscribe to or acquire shares without preferential rights [of such

1 ~~class or series]~~.

2 ~~[(4) Holders of shares without voting power shall have~~  
3 ~~no preemptive right to shares with voting power.]~~

4 (5) The preemptive right shall be only an opportunity  
5 to acquire shares or other securities under such uniform terms and  
6 conditions as the board of directors may fix for the purpose of  
7 providing a fair and reasonable opportunity for the exercise of  
8 such right.

9 (6) For a one-year period beginning on the date on  
10 which the shares are offered to shareholders, shares subject to  
11 preemptive rights that are not acquired by a shareholder may be  
12 issued to a person for consideration set by the corporation's board  
13 of directors that is not lower than the consideration set for the  
14 exercise of preemptive rights. An offer at a lower consideration or  
15 after the expiration of the period prescribed by this subsection is  
16 subject to the shareholders' preemptive rights.

17 D [E]. An action may not be brought against the corporation,  
18 its directors, officers, or agents, any holder of shares or  
19 securities of the corporation, or any owner of any beneficial  
20 interest in shares or securities of the corporation on account of  
21 any violation of any preemptive right of a shareholder to acquire  
22 any shares of the corporation, or any securities of the corporation  
23 convertible into or carrying a right to subscribe to or acquire  
24 shares, unless such action is brought within the earlier of:

25 (1) One year after the date on which written notice is  
26 given to each shareholder whose preemptive right was violated by  
27 the issuance, sale, or other distribution of those shares or

1 securities, which notice shall be mailed to the shareholder at the  
2 address of the shareholder as it appears on the share transfer  
3 records of the corporation and shall inform the shareholder that  
4 the issuance, sale, or other distribution of those shares or  
5 securities was in violation of the preemptive right of the  
6 shareholder; and

7 (2) Four years after the date on which the corporation  
8 issued, sold, or otherwise distributed those shares or securities  
9 or August 28, 1989 [~~the effective date of this provision~~],  
10 whichever is later.

11 E [~~D~~]. In the event of a transfer or other disposition of  
12 shares by any shareholder of a corporation whose preemptive right  
13 to acquire shares of the corporation, or securities of the  
14 corporation convertible into or carrying a right to subscribe to or  
15 acquire shares, shall have been violated, the transferee or  
16 successor of the shareholder shall not acquire the preemptive  
17 right, or any right or claim based on that violation, unless the  
18 shareholder shall have assigned the preemptive right to the  
19 transferee or successor.

20 F. Subject to the articles of incorporation, shareholders  
21 of a corporation incorporated before September 1, 2003, have a  
22 preemptive right to acquire additional unissued or treasury shares  
23 of the corporation, or securities of the corporation convertible  
24 into or carrying a right to subscribe to or acquire shares, to the  
25 extent provided by Sections C, D, and E of this article. After  
26 September 1, 2003, a corporation may limit or deny the preemptive  
27 right of the shareholders of the corporation by amending the

1 corporation's articles of incorporation.

2 G. A shareholder may waive a preemptive right granted to the  
3 shareholder. A written waiver of a preemptive right is irrevocable  
4 regardless of whether the waiver is supported by consideration.

5 SECTION 10. Sections A and B, Article 2.24, Texas Business  
6 Corporation Act, are amended to read as follows:

7 A. Meetings of shareholders may be held at such place within  
8 or without this State as may be stated in or fixed in accordance  
9 with the bylaws. If no other place is so stated or fixed, the board  
10 of directors of the corporation is not authorized to designate a  
11 place, or the board of directors chooses not to designate a place,  
12 meetings shall be held at the registered office of the corporation.

13 (1) If, under the articles of incorporation or the  
14 bylaws, the board of directors is authorized to determine the place  
15 of a meeting of shareholders, the board of directors may, in its  
16 discretion, determine that the meeting may be held solely by means  
17 of remote communication as provided by Subsection (2) of this  
18 section.

19 (2) If authorized by the board of directors, and  
20 subject to any guidelines and procedures adopted by the board of  
21 directors, shareholders not physically present at a meeting of  
22 shareholders, by means of remote communication:

23 (a) may participate in a meeting of shareholders;  
24 and

25 (b) may be considered present in person and may  
26 vote at a meeting of shareholders held at a designated place or held  
27 solely by means of remote communication if:

1                   (i) the corporation implements reasonable  
2 measures to verify that each person considered present and  
3 permitted to vote at the meeting by means of remote communication is  
4 a shareholder;

5                   (ii) the corporation implements reasonable  
6 measures to provide the shareholders at the meeting by means of  
7 remote communication a reasonable opportunity to participate in the  
8 meeting and to vote on matters submitted to the shareholders,  
9 including an opportunity to read or hear the proceedings of a  
10 meeting substantially concurrently with the proceedings; and

11                   (iii) the corporation maintains a record of  
12 any shareholder vote or other action taken at the meeting by means  
13 of remote communication.

14           B. An annual meeting of the shareholders shall be held at  
15 such time as may be stated in or fixed in accordance with the  
16 bylaws. If the annual meeting is not held within any 13-month  
17 period and written consent of shareholders has not been executed  
18 instead of the meeting, any court of competent jurisdiction in the  
19 county in which the principal office of the corporation is located  
20 may, on the application of any shareholder, summarily order a  
21 meeting to be held unless the meeting is not required to be held  
22 under Section D of this article. Failure to hold the annual meeting  
23 at the designated time shall not work a dissolution of the  
24 corporation.

25           SECTION 11. Article 2.25, Texas Business Corporation Act,  
26 is amended by amending Section A and adding Section C to read as  
27 follows:

1           A. Written or printed notice stating the place, day and hour  
 2 of the meeting, the means of any remote communications by which  
 3 shareholders may be considered present and may vote at the meeting,  
 4 and, in case of a special meeting, the purpose or purposes for which  
 5 the meeting is called, shall be delivered not less than ten (10)  
 6 days nor more than sixty (60) days before the date of the meeting,  
 7 either personally or by mail, by or at the direction of the  
 8 president, the secretary, or the officer or person calling the  
 9 meeting, to each shareholder entitled to vote at such meeting. If  
 10 mailed, such notice shall be deemed to be delivered when deposited  
 11 in the United States mail addressed to the shareholder at his  
 12 address as it appears on the share transfer records of the  
 13 corporation, with postage thereon prepaid.

14           C. The exception in Section B of this article to the  
 15 requirement that notice be given does not apply to a notice returned  
 16 as undeliverable if the notice was given by electronic  
 17 transmission.

18           SECTION 12. Sections A and C, Article 2.27, Texas Business  
 19 Corporation Act, are amended to read as follows:

20           A. The officer or agent having charge of the share transfer  
 21 records for shares of a corporation shall make, at least ten (10)  
 22 days before each meeting of shareholders, a complete list of the  
 23 shareholders entitled to vote at such meeting or any adjournment  
 24 thereof, arranged in alphabetical order, with the address of and  
 25 the number of shares held by each, which list, for a period of ten  
 26 (10) days prior to such meeting, shall be kept on file at the  
 27 registered office or principal place of business of the corporation

1 and shall be subject to inspection by any shareholder at any time  
2 during usual business hours. Alternatively, the list of the  
3 shareholders may be kept on a reasonably accessible electronic  
4 network, if the information required to gain access to the list is  
5 provided with the notice of the meeting. This article does not  
6 require the corporation to include any electronic contact  
7 information of any shareholder on the list. If the corporation  
8 elects to make the list available on an electronic network, the  
9 corporation shall take reasonable steps to ensure that the  
10 information is available only to shareholders of the corporation.  
11 Such list shall also be produced and kept open at the time and place  
12 of the meeting and shall be subject to the inspection of any  
13 shareholder during the whole time of the meeting. If the meeting is  
14 held by means of remote communication, the list must be open to the  
15 examination of any shareholder for the duration of the meeting on a  
16 reasonably accessible electronic network, and the information  
17 required to access the list must be provided to shareholders with  
18 the notice of the meeting. The original share transfer records  
19 shall be prima-facie evidence as to who are the shareholders  
20 entitled to examine such list or transfer records or to vote at any  
21 meeting of shareholders.

22 C. An officer or agent having charge of the share transfer  
23 records who shall fail to prepare the list of shareholders or keep  
24 the same accessible to shareholders electronically or physically on  
25 file at the principal place of business for a period of ten (10)  
26 days, or produce and keep it accessible ~~[open]~~ for inspection  
27 during ~~[at]~~ the meeting, as provided in this Article, shall be



1 liable to any shareholder suffering damages [~~damage~~] on account of  
 2 such failure, to the extent of such damage. In the event that such  
 3 officer or agent does not receive notice of the date of the [~~a~~]  
 4 meeting [~~of shareholders sufficiently in advance of the date of~~  
 5 ~~such meeting~~] reasonably to enable him to comply with the duties  
 6 prescribed by this Article, the corporation, [~~but~~] not such officer  
 7 or agent, shall be liable to any shareholder suffering damage on  
 8 account of such failure, to the extent of such damage.

9 SECTION 13. Sections C and D, Article 2.29, Texas Business  
 10 Corporation Act, are amended to read as follows:

11 C. Any shareholder may vote either in person or by proxy  
 12 executed in writing by the shareholder. A telegram, telex,  
 13 cablegram, or other form of electronic [~~similar~~] transmission,  
 14 including telephone transmission, by the shareholder, or a  
 15 photographic, photostatic, facsimile, or similar reproduction of a  
 16 writing executed by the shareholder, shall be treated as an  
 17 execution in writing for purposes of this Section. Any electronic  
 18 transmission must contain or be accompanied by information from  
 19 which it can be determined that the transmission was authorized by  
 20 the shareholder. No proxy shall be valid after eleven (11) months  
 21 from the date of its execution unless otherwise provided in the  
 22 proxy. A proxy shall be revocable unless the proxy form  
 23 conspicuously states that the proxy is irrevocable and the proxy is  
 24 coupled with an interest. Proxies coupled with an interest include  
 25 the appointment as proxy of:

26 (1) a pledgee;

27 (2) a person who purchased or agreed to purchase, or

owns or holds an option to purchase, the shares;

(3) a creditor of the corporation who extended it credit under terms requiring the appointment;

(4) an employee of the corporation whose employment contract requires the appointment; or

(5) a party to a voting agreement created under Section B, Article 2.30, of this Act.

An irrevocable proxy, if noted conspicuously on the certificate representing the shares that are subject to the irrevocable proxy or, in the case of uncertificated shares, if notation of the irrevocable proxy is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the irrevocable proxy, shall be specifically enforceable against the holder of those shares or any successor or transferee of the holder. Unless noted conspicuously on the certificate representing the shares that are subject to the irrevocable proxy or, in the case of uncertificated shares, unless notation of the irrevocable proxy is contained in the notice sent pursuant to Section D of Article 2.19 of this Act with respect to the shares that are subject to the irrevocable proxy, an irrevocable proxy, even though otherwise enforceable, is ineffective against a transferee for value without actual knowledge of the existence of the irrevocable proxy at the time of the transfer or against any subsequent transferee (whether or not for value), but such an irrevocable proxy shall be specifically enforceable against any other person who is not a transferee for value from and after the time that the person acquires actual

1 knowledge of the existence of the irrevocable proxy.

2 D. (1) At each election for directors every shareholder  
3 entitled to vote at such election shall have the right (a) to vote  
4 the number of shares owned by him for as many persons as there are  
5 directors to be elected and for whose election he has a right to  
6 vote or (b) only if ~~[unless]~~ expressly permitted ~~[prohibited]~~ by  
7 the articles of incorporation (in general or with respect to a  
8 specified class or series of shares or group of classes or series of  
9 shares) and subject to subsection (2) of this Section D, to cumulate  
10 his votes by giving one candidate as many votes as the number of  
11 such directors multiplied by his shares shall equal, or by  
12 distributing such votes on the same principle among any number of  
13 such candidates.

14 (2) Cumulative voting shall not be allowed in an  
15 election of directors unless the articles of incorporation  
16 expressly grant that right, and a shareholder who intends to  
17 cumulate his votes as herein authorized shall have given written  
18 notice of such intention to the secretary of the corporation on or  
19 before the day preceding the election at which such shareholder  
20 intends to cumulate his votes. All shareholders entitled to vote  
21 cumulatively may cumulate their votes if any shareholder gives the  
22 written notice provided for herein.

23 (3) Except as provided by the articles of  
24 incorporation, a shareholder of a corporation incorporated before  
25 September 1, 2003, has the right to cumulatively vote the number of  
26 shares the shareholder owns in the election of directors to the  
27 extent permitted by this article. A corporation may limit or deny a

1 shareholder's right to cumulatively vote any time after September  
2 1, 2003, by amending its articles of incorporation.

3 SECTION 14. Article 2.32, Texas Business Corporation Act,  
4 is amended to read as follows:

5 Art. 2.32. NUMBER AND ELECTION OF DIRECTORS. A. The board  
6 of directors of a corporation shall consist of one or more members.  
7 The number of directors shall be fixed by, or in the manner provided  
8 in, the articles of incorporation or the bylaws, except as to the  
9 number constituting the initial board of directors, which number  
10 shall be fixed by the articles of incorporation. The number of  
11 directors may be increased or decreased from time to time by  
12 amendment to, or in the manner provided in, the articles of  
13 incorporation or the bylaws, but no decrease shall have the effect  
14 of shortening the term of any incumbent director. In the absence of  
15 a bylaw or a provision of the articles of incorporation fixing the  
16 number of directors or providing for the manner in which the number  
17 of directors shall be fixed, the number of directors shall be the  
18 same as the number constituting the initial board of directors as  
19 fixed by the articles of incorporation. The names and addresses of  
20 the members of the initial board of directors shall be stated in the  
21 articles of incorporation. Unless otherwise provided by the  
22 articles of incorporation or the bylaws, a director may resign at  
23 any time by giving notice in writing or by electronic transmission  
24 to the corporation. Absent resignation or removal ~~[removed]~~ in  
25 accordance with the provisions of the bylaws or the articles of  
26 incorporation, such persons shall hold office until the first  
27 annual meeting of shareholders, and until their successors shall

1 have been elected and qualified. At the first annual meeting of  
2 shareholders and at each annual meeting thereafter, the holders of  
3 shares entitled to vote in the election of directors shall elect  
4 directors to hold office until the next succeeding annual meeting,  
5 except in case of the classification of directors as permitted by  
6 this Act.

7 B. The articles of incorporation may provide that the  
8 holders of any class or series of shares or any group of classes or  
9 series of shares shall be entitled to elect one or more directors,  
10 who shall hold office for such terms as shall be stated in the  
11 articles of incorporation. The articles of incorporation may  
12 provide that any directors elected by the holders of any such class  
13 or series of shares or any such group shall be entitled to more or  
14 less than one vote on all or any specified matters, in which case  
15 every reference in this Act (or in the articles of incorporation or  
16 bylaws, unless expressly stated otherwise therein) to a specified  
17 portion of the directors shall mean such portion of the votes  
18 entitled to be cast by the directors to which such reference is  
19 applicable. Absent resignation or removal [~~Unless removed~~] in  
20 accordance with provisions of the bylaws or the articles of  
21 incorporation, each director shall hold office for the term for  
22 which he is elected and until his successor shall have been elected  
23 and qualified.

24 C. Except as otherwise provided in this Article, the bylaws,  
25 or the articles of incorporation, [~~may provide that~~] at any meeting  
26 of shareholders called expressly for that purpose, any director or  
27 the entire board of directors may be removed, with or without cause,

1 by a vote of the holders of a [~~specified portion, but not less than~~  
2 ~~a~~] majority[~~7~~] of the shares then entitled to vote at an election of  
3 the director or directors [~~, subject to any further restrictions on~~  
4 ~~removal that may be contained in the bylaws~~]. Whenever the holders  
5 of any class or series of shares or any such group are entitled to  
6 elect one or more directors by the provisions of the articles of  
7 incorporation, only the holders of shares of that class or series or  
8 group shall be entitled to vote for or against the removal of any  
9 director elected by the holders of shares of that class or series or  
10 group. In the case of a corporation having cumulative voting, if  
11 less than the entire board is to be removed, no one of the directors  
12 may be removed if the votes cast against his removal would be  
13 sufficient to elect him if then cumulatively voted at an election of  
14 the entire board of directors, or if there be classes of directors,  
15 at an election of the class of directors of which he is a part. In  
16 the case of a corporation whose directors have been classified as  
17 permitted by this Act, unless the articles of incorporation  
18 otherwise provide, a director may not be removed except for cause.

19 D. Notwithstanding Section B of this Article, a director of  
20 a corporation registered under the Investment Company Act, absent  
21 resignation or removal [~~unless removed~~] in accordance with the  
22 provisions of the articles of incorporation or bylaws, holds office  
23 for the term for which the director is elected and until the  
24 director's successor has been elected and qualified.

25 SECTION 15. Section A, Article 2.36, Texas Business  
26 Corporation Act, is amended to read as follows:

27 A. If the articles of incorporation or the bylaws so

1 provide, the board of directors~~[, by resolution adopted by a~~  
 2 ~~majority of the full board of directors,]~~ may designate from among  
 3 its members one or more committees, each of which shall be comprised  
 4 of one or more of its members, and may designate one or more of its  
 5 members as alternate members of any committee, who may, subject to  
 6 any limitations imposed by the board of directors, replace absent  
 7 or disqualified members at any meeting of that committee. Any such  
 8 committee, to the extent provided in the ~~[such]~~ resolution of the  
 9 board of directors or in the articles of incorporation or the  
 10 bylaws, shall have and may exercise all of the authority of the  
 11 board of directors, subject to the limitations set forth in  
 12 Sections B and C of this Article.

13 SECTION 16. Section A, Article 2.41, Texas Business  
 14 Corporation Act, is amended to read as follows:

15 A. In addition to any other liabilities imposed by law upon  
 16 directors of a corporation:

17 (1) Directors of a corporation who vote for or assent  
 18 to a distribution by the corporation that is not permitted by  
 19 Article 2.38 of this Act shall be jointly and severally liable to  
 20 the corporation for the amount by which the distributed amount  
 21 exceeds the amount permitted by Article 2.38 of this Act to be  
 22 distributed; provided that a director shall have no liability for  
 23 the excess amount, or any part of that excess, if on any date after  
 24 the date of the vote or assent authorizing the distribution, a  
 25 distribution of that excess or that part would have been permitted  
 26 by Article 2.38.

27 (2) ~~[If the corporation shall commence business before~~

~~it has received for the issuance of shares consideration of the value of at least One Thousand Dollars (\$1,000), consisting of money, labor done, or property actually received, the directors who assent thereto shall be jointly and severally liable to the corporation for such part of the required consideration as shall not have been received before commencing business, but such liability shall be terminated when the corporation has actually received the required consideration for the issuance of shares.~~

~~[(3)]~~ An action may not be brought against a director for liability imposed by this section after two years after the date on which the act alleged to give rise to the liability occurred.

SECTION 17. Section A, Article 2.44, Texas Business Corporation Act, is amended to read as follows:

A. Each corporation shall keep books and records of account and shall keep minutes of the proceedings of its shareholders, its board of directors, and each committee of its board of directors. Each corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of the original issuance of shares issued by the corporation and a record of each transfer of those shares that have been presented to the corporation for registration of transfer. Such records shall contain the names and addresses of all past and current shareholders of the corporation and the number and class or series of shares issued by the corporation held by each of them. Any books, records, minutes, and share transfer records may be in written form or in any other form capable of being converted into written paper form within a reasonable time. The principal place of



1 business of a corporation, or the office of its transfer agent or  
2 registrar, may be located outside the State of Texas.

3 SECTION 18. Section A, Article 3.02, Texas Business  
4 Corporation Act, is amended to read as follows:

5 A. The articles of incorporation shall set forth:

6 (1) The name of the corporation;

7 (2) The period of duration, which may be perpetual;

8 (3) The purpose or purposes for which the corporation  
9 is organized which may be stated to be, or to include, the  
10 transaction of any or all lawful business for which corporations  
11 may be incorporated under this Act;

12 (4) The aggregate number of shares which the  
13 corporation shall have authority to issue; if such shares are to  
14 consist of one class only, the par value of each of such shares, or a  
15 statement that all of such shares are without par value; or, if such  
16 shares are to be divided into classes, the number of shares of each  
17 class, and a statement of the par value of the shares of each class  
18 or that such shares are to be without par value;

19 (5) If the shares are to be divided into classes, the  
20 designation of each class and statement of the preferences,  
21 limitations, and relative rights in respect of the shares of each  
22 class;

23 (6) If the corporation is to issue the shares of any  
24 class in series, then the designation of each series and a statement  
25 of the variations in the preferences, limitations and relative  
26 rights as between series insofar as the same are to be fixed in the  
27 articles of incorporation, and a statement of any authority to be

1 vested in the board of directors to establish series and fix and  
2 determine the preferences, limitations and relative rights of each  
3 series;

4 (7) ~~[A statement that the corporation will not~~  
5 ~~commence business until it has received for the issuance of shares~~  
6 ~~consideration of the value of a stated sum which shall be at least~~  
7 ~~One Thousand Dollars (\$1,000.00);~~

8 ~~[(8)]~~ Any provision limiting or denying to  
9 shareholders the preemptive right to acquire additional or treasury  
10 shares of the corporation;

11 (8) ~~[(9)]~~ If a corporation elects to become a close  
12 corporation in conformance with Part Twelve of this Act, any  
13 provision (a) required or permitted by this Act to be stated in the  
14 articles of incorporation of a close corporation, but not in the  
15 articles of incorporation of an ordinary corporation, (b) contained  
16 or permitted to be contained in a shareholders' agreement in  
17 conformance with Part Twelve of this Act which the incorporators  
18 elect to set forth in articles of incorporation, or (c) that makes a  
19 shareholders' agreement in conformance with Part Twelve of this Act  
20 part of the articles of incorporation of a close corporation in the  
21 manner prescribed in Section F, Article 2.22 of this Act, but any  
22 such provision, other than the statement required by Section A,  
23 Article 12.11 of this Act, shall be preceded by a statement that the  
24 provision shall be subject to the corporation remaining a close  
25 corporation in conformance with Part Twelve of this Act;

26 (9) ~~[(10)]~~ Any provision, not inconsistent with law,  
27 including any provision which under this Act is required or

1 permitted to be set forth in the bylaws or which is permitted to be  
2 included pursuant to Article 2.30-1 of this Act, providing for the  
3 regulation of the internal affairs of the corporation;

4       (10) [~~(11)~~] The street address of its initial  
5 registered office and the name of its initial registered agent at  
6 such address;

7       (11) [~~(12)~~] Subject to Article 2.30-1 of this Act, the  
8 number of directors constituting the initial board of directors and  
9 the names and addresses of the person or persons who are to serve as  
10 directors until the first annual meeting of shareholders or until  
11 their successors be elected and qualify, or, in the case of a close  
12 corporation that, in conformance with Part Twelve of this Act, is to  
13 be managed in some other manner pursuant to a shareholders'  
14 agreement by the shareholders or by the persons empowered by the  
15 agreement to manage its business and affairs, the names and  
16 addresses of the person or persons who, pursuant to the  
17 shareholders' agreement, will perform the functions of the initial  
18 board of directors provided for by this Act;

19       (12) [~~(13)~~] The name and address of each incorporator,  
20 unless the corporation is being incorporated pursuant to a plan of  
21 conversion or a plan of merger, in which case the articles need not  
22 include such information; and

23       (13) [~~(14)~~] If the corporation is being incorporated  
24 pursuant to a plan of conversion or a plan of merger, a statement to  
25 that effect, and in the case of a plan of conversion, the name,  
26 address, date of formation, and prior form of organization and  
27 jurisdiction of incorporation or organization of the converting

1 entity.

2 SECTION 19. Section A, Article 4.01, Texas Business  
3 Corporation Act, is amended to read as follows:

4 A. A corporation may amend its articles of incorporation,  
5 from time to time, in any and as many respects as may be desired, so  
6 long as its articles of incorporation as amended contain only such  
7 provisions as might be lawfully contained in original articles of  
8 incorporation at the time of making such amendment, and, if a change  
9 in shares or the rights of shareholders, or an exchange,  
10 reclassification, subdivision, combination, or cancellation of  
11 shares or rights of shareholders is to be made, such provisions as  
12 may be necessary to effect such change, exchange, reclassification,  
13 subdivision, combination, or cancellation.

14 SECTION 20. Section A, Article 4.02, Texas Business  
15 Corporation Act, is amended to read as follows:

16 A. The articles of incorporation may be amended in the  
17 following manner:

18 (1) The board of directors shall adopt a resolution  
19 setting forth the proposed amendment and, unless the amendment is  
20 undertaken under authority granted to the board of directors in the  
21 articles of incorporation in accordance with Article 2.13 of this  
22 Act, if shares have been issued, directing that it be submitted to a  
23 vote at a meeting of shareholders, which may be either an annual or  
24 a special meeting. If no shares have been issued, the amendment  
25 shall be adopted by resolution of the board of directors and the  
26 provisions for adoption by shareholders shall not apply. The  
27 resolution may incorporate the proposed amendment in restated

1 articles of incorporation which contain a statement that except for  
2 the designated amendment the restated articles of incorporation  
3 correctly set forth without change the corresponding provisions of  
4 the articles of incorporation as heretofore amended, and that the  
5 restated articles of incorporation together with the designated  
6 amendment supersede the original articles of incorporation and all  
7 amendments thereto.

8 (2) Written or printed notice setting forth the  
9 proposed amendment or a summary of the changes to be effected  
10 thereby shall be given to each shareholder of record entitled to  
11 vote thereon within the time and in the manner provided in this Act  
12 for the giving of notice of meetings of shareholders. If the  
13 meeting be an annual meeting, the proposed amendment or such  
14 summary may be included in the notice of such annual meeting.

15 (3) At such meeting a vote of the shareholders  
16 entitled to vote thereon shall be taken on the proposed amendment.  
17 The proposed amendment shall be adopted upon receiving the  
18 affirmative vote of the holders of at least two-thirds of the  
19 outstanding shares entitled to vote thereon, unless any class or  
20 series of shares is entitled to vote thereon as a class, in which  
21 event the proposed amendment shall be adopted upon receiving the  
22 affirmative vote of the holders of at least two-thirds of the shares  
23 within each class or series of outstanding shares entitled to vote  
24 thereon as a class and of at least two-thirds of the total  
25 outstanding shares entitled to vote thereon.

26 (4) The resolution authorizing a proposed amendment to  
27 the articles of incorporation may provide that at any time before

1 the filing of the amendment with the secretary of state is  
2 effective, notwithstanding authorization of the proposed amendment  
3 by the shareholders of the corporation, the board of directors may  
4 abandon the proposed amendment without further action by the  
5 shareholders.

6 SECTION 21. Section B, Article 4.04, Texas Business  
7 Corporation Act, is amended to read as follows:

8 B. The articles of amendment shall set forth:

9 (1) The name of the corporation.

10 (2) If the amendment alters any provision of the  
11 original or amended articles of incorporation, an identification by  
12 reference or description of the altered provision and a statement  
13 of its text as it is amended to read. If the amendment is an  
14 addition to the original or amended articles of incorporation, a  
15 statement of that fact and the full text of each provision added.

16 (3) The date of the adoption of the amendment by the  
17 shareholders, or by the board of directors where no shares have been  
18 issued.

19 (4) A statement that the amendment has been approved  
20 in the manner required by this Act and the constituent documents of  
21 the corporation. ~~[The number of shares outstanding, and the number~~  
22 ~~of shares entitled to vote on the amendment, and if the shares of~~  
23 ~~any class or series are entitled to vote thereon as a class, the~~  
24 ~~designation and number of outstanding shares entitled to vote~~  
25 ~~thereon of each such class or series.~~

26 ~~[(5) The number of shares voted for and against the~~  
27 ~~amendment, respectively, and, if the shares of any class are~~

1 ~~entitled to vote thereon as a class or series, the number of shares~~  
2 ~~of each such class or series voted for and against the amendment,~~  
3 ~~respectively, or if no shares have been issued a statement to that~~  
4 ~~effect.~~

5 ~~[(6) If the amendment provides for an exchange,~~  
6 ~~reclassification or cancellation of issued shares, and if the~~  
7 ~~manner in which the same shall be effected is not set forth in the~~  
8 ~~amendment, then a statement of the manner in which the same shall be~~  
9 ~~effected.~~

10 ~~[(7) If the amendment effects a change in the amount of~~  
11 ~~stated capital, then a statement of the manner in which the same is~~  
12 ~~effected and a statement, expressed in dollars, of the amount of~~  
13 ~~stated capital as changed by the amendment.]~~

14 SECTION 22. Sections A and D, Article 4.10, Texas Business  
15 Corporation Act, are amended to read as follows:

16 A. When redeemable shares of a corporation are redeemed or  
17 purchased by the corporation, the redemption or purchase shall  
18 effect a cancellation of such shares~~[, and a statement of~~  
19 ~~cancellation shall be filed as provided in this Article]~~.  
20 Thereupon such shares shall be restored to the status of authorized  
21 but unissued shares, unless the articles of incorporation provide  
22 that such shares when redeemed or purchased shall not be reissued,  
23 in which case the ~~[filing of the statement of cancellation shall~~  
24 ~~operate as an amendment to the articles of incorporation and shall~~  
25 ~~reduce the]~~ number of shares of the class so cancelled which the  
26 corporation is authorized to issue shall be reduced by the number of  
27 shares so cancelled. If the shares so redeemed and purchased

1 constitute all the outstanding shares of any particular class of  
2 shares and if the articles of incorporation provide that the shares  
3 of such class when redeemed and repurchased shall not be reissued,  
4 the corporation may not issue any additional shares of the [~~filing~~  
5 ~~of the statement of cancellation shall operate as an amendment to~~  
6 ~~the articles of incorporation by eliminating therefrom all~~  
7 ~~reference to such~~] class of shares [~~and shall reduce the classes of~~  
8 ~~shares which the corporation is authorized to issue accordingly~~].

9 D. The [~~filing of the statement of~~] cancellation of shares  
10 under this article shall effect a reduction of the stated capital of  
11 the corporation by an amount equal to that part of the stated  
12 capital which was, at the time of the cancellation, represented by  
13 the shares so cancelled.

14 SECTION 23. Sections A and D, Article 4.11, Texas Business  
15 Corporation Act, are amended to read as follows:

16 A. A corporation may, at any time, by resolution of its  
17 board of directors, cancel all or any part of its treasury shares[~~7~~  
18 ~~and in such event a statement of cancellation shall be filed as~~  
19 ~~provided in this Article~~].

20 D. Upon the [~~filing of such statement of~~] cancellation of  
21 the treasury shares, the stated capital of the corporation shall be  
22 deemed to be reduced by that part of the stated capital which was,  
23 at the time of such cancellation, represented by the shares so  
24 cancelled, and the shares so cancelled shall be restored to the  
25 status of authorized but unissued shares.

26 SECTION 24. Section D, Article 4.12, Texas Business  
27 Corporation Act, is amended to read as follows:



1           D. Upon the approval [~~filing~~] of such resolution by the  
2 shareholders [~~statement~~], the stated capital of the corporation  
3 shall be reduced as therein set forth.

4           SECTION 25. Section C, Article 5.01, Texas Business  
5 Corporation Act, is amended to read as follows:

6           C. The plan of merger may set forth:

7               (1) any amendments to the articles of incorporation of  
8 any surviving corporation;

9               (2) provisions relating to a share exchange; and

10              (3) any other provisions relating to the merger,  
11 including a provision requiring that the plan of merger be  
12 submitted to shareholders regardless of whether the board of  
13 directors determines after adopting the resolution or making the  
14 determination required by Section B, Article 5.03 of this Act, that  
15 the plan of merger is not advisable and recommends that the  
16 shareholders reject it.

17           SECTION 26. Section C, Article 5.02, Texas Business  
18 Corporation Act, is amended to read as follows:

19           C. The plan of exchange may set forth any other provisions  
20 relating to the exchange and may be contained in and be a part of a  
21 plan of merger, including a provision requiring that the plan of  
22 exchange be submitted to shareholders regardless of whether the  
23 board of directors determines after adopting the resolution or  
24 making the determination required by Section B, Article 5.03 of  
25 this Act, that the plan of exchange is not advisable and recommends  
26 that the shareholders reject it.

27           SECTION 27. Article 5.03, Texas Business Corporation Act,

1 is amended by amending Sections A, C, and H and adding Sections H-1  
2 and M to read as follows:

3       A. Except as provided by Sections G and H of this Article,  
4 after acting on a plan of merger or exchange in the manner  
5 prescribed by Subsection (1) of Section B of this Article, the board  
6 of directors of each domestic corporation that is a party to the  
7 merger, and the board of directors of each domestic corporation  
8 whose shares are to be acquired in the share exchange, shall submit  
9 the plan of merger or exchange for approval by its shareholders.  
10 The terms of the agreement may require that the agreement be  
11 submitted to the stockholders regardless of whether the board of  
12 directors determines after declaring its advisability that the  
13 agreement is no longer advisable and recommends that the  
14 stockholders reject it. Unless the articles of incorporation  
15 otherwise require, no approval by shareholders of a plan of merger  
16 is required under this Article for any corporation that is a party  
17 to the plan of merger unless that corporation is also a party to the  
18 merger.

19       C. The board of directors may condition its submission to  
20 shareholders of a plan of merger or exchange on any basis. If,  
21 after the adoption of a resolution recommending that the plan of  
22 merger or exchange be approved or after a determination by the board  
23 of directors that a recommendation should not be made, the board of  
24 directors determines that the plan of merger or exchange is not  
25 advisable, the plan of merger or exchange may be submitted to the  
26 shareholders with a recommendation that the shareholders not  
27 approve the plan of merger or exchange.

1           H. Unless the articles of incorporation otherwise require,  
2 approval by the shareholders of a corporation of a plan of merger  
3 shall not be required and Sections A, B, C, D, E, and F of this  
4 Article do not apply if:

5           (1) the merger is a merger of the corporation with or  
6 into a direct or indirect wholly owned subsidiary of the  
7 corporation and after the merger the corporation or its successor  
8 is a direct or indirect wholly owned subsidiary of a holding  
9 company;

10           (2) the corporation and the direct or indirect wholly  
11 owned subsidiary of the corporation are the only parties to the  
12 merger;

13           (3) each share or a fraction of a share of stock of the  
14 corporation outstanding immediately prior to the effectiveness of  
15 the merger is converted in the merger into a share or fraction of  
16 share of capital stock of the holding company having the same  
17 designations, preferences, limitations, and relative rights as a  
18 share of stock of the corporation being converted in the merger;

19           (4) the holding company and the corporation are  
20 domestic corporations and the direct or indirect wholly owned  
21 subsidiary that is the other party to the merger is a domestic  
22 corporation or domestic limited liability company;

23           (5) the articles of incorporation and bylaws of the  
24 holding company immediately following the effective time of the  
25 merger contain provisions identical to the articles of  
26 incorporation and bylaws of the corporation immediately prior to  
27 the effective time of the merger (other than provisions, if any,

1 regarding the incorporator or incorporators, the corporate name,  
 2 the registered office and agent, the initial board of directors,  
 3 and the initial subscribers of shares and such provisions contained  
 4 in any amendment to the certificate as were necessary to effect a  
 5 change, exchange, reclassification, or cancellation of shares, if  
 6 such change, exchange, reclassification, or cancellation has  
 7 become effective);

8 (6) the organizational documents [~~articles of~~  
 9 ~~incorporation~~] and bylaws of the surviving entity [~~corporation~~]  
 10 immediately following the effective time of the merger contain  
 11 provisions identical to the organizational documents [~~articles of~~  
 12 ~~incorporation~~] and bylaws of the corporation immediately prior to  
 13 the effective time of the merger (other than provisions, if any,  
 14 regarding the incorporator or incorporators, the corporate or  
 15 entity name, the registered office and agent, the initial board of  
 16 directors, and the initial subscribers of shares, references to  
 17 members rather than shareholders, references to interests, units,  
 18 or similar property rather than stock or shares, references to  
 19 managers, managing members, or other members of the governing body  
 20 rather than directors, and such provisions contained in any  
 21 amendment to the certificate as were necessary to effect a change,  
 22 exchange, reclassification, or cancellation of shares, if such  
 23 change, exchange, reclassification, or cancellation has become  
 24 effective); provided, however, that:

25 (a) if the organizational documents [~~articles of~~  
 26 ~~incorporation~~] of the surviving entity do not contain the following  
 27 provisions, they [~~corporation~~] shall be amended in the merger to

1 contain provisions [~~a provision~~] requiring that:

2 (i) any act or transaction by or involving a  
 3 surviving entity [~~corporation~~], other than the election or removal  
 4 of directors or managers, managing members, or other members of the  
 5 governing body of the surviving entity, that requires for its  
 6 approval under this Act or its organizational documents [~~the~~  
 7 ~~corporation's articles of incorporation~~] the approval of  
 8 shareholders or members of the surviving entity [~~corporation~~]  
 9 shall, by specific reference to this section, require the approval  
 10 of the shareholders of the holding company (or any successor by  
 11 merger) by the same vote as is required by this Act or by [~~and~~] the  
 12 organizational documents [~~articles of incorporation~~] of the  
 13 surviving entity;

14 (ii) a surviving entity that is not a  
 15 corporation obtain the approval of the shareholders of the holding  
 16 company for any act or transaction by or involving the surviving  
 17 entity, other than the election or removal of directors or  
 18 managers, managing members, or other members of the governing body  
 19 of the surviving entity, that would require the approval of the  
 20 shareholders of the surviving entity if the surviving entity were a  
 21 corporation subject to this Act;

22 (iii) any amendment of the organizational  
 23 documents of a surviving entity that is not a corporation, that  
 24 would, if adopted by a corporation subject to this Act, be required  
 25 to be included in the articles of incorporation of the corporation,  
 26 shall also require, by specific reference to this section, the  
 27 approval of the shareholders of the holding company, or any

1 successor by merger, by the same vote as is required by this Act or  
2 by the organizational documents of the surviving entity; and

3 (iv) the business affairs of a surviving  
4 entity that is not a corporation shall be managed by or under the  
5 direction of a board of directors, board of managers, or other  
6 governing body consisting of individuals who are subject to the  
7 same fiduciary duties applicable to directors of a corporation  
8 subject to this Act, and who are liable for breach of the duties to  
9 the same extent as directors of a corporation subject to this Act  
10 [corporation]; [and]

11 (b) the organizational documents [articles of  
12 incorporation] of the surviving entity [corporation] may be amended  
13 in the merger to change the classes and series of shares and the  
14 number of shares that the surviving entity [corporation] is  
15 authorized to issue; and

16 (c) Subsection (6)(a) of this section or a  
17 provision of a surviving entity's organizational documents  
18 required by Subdivision (a) may not be construed as requiring  
19 approval of the shareholders of the holding company to elect or  
20 remove directors, managers, managing members, or other members of  
21 the governing body of the surviving entity.

22 H-1. The term "organizational documents," as used in  
23 Section H(6) of this article, means:

24 (1) in reference to a corporation, the articles of  
25 incorporation of the corporation; or

26 (2) in reference to a limited liability company, the  
27 limited liability company agreement of the limited liability

1 company.

2 M. To the extent a shareholder of a corporation has standing  
3 to institute or maintain derivative litigation on behalf of the  
4 corporation immediately before a merger, nothing in this article  
5 may be construed to limit or extinguish the shareholder's standing.

6 SECTION 28. Section A, Article 5.06, Texas Business  
7 Corporation Act, is amended to read as follows:

8 A. When a merger takes effect:

9 (1) the separate existence of every domestic  
10 corporation that is a party to the merger, except any surviving or  
11 new domestic corporation, shall cease;

12 (2) all rights, title and interests to all real estate  
13 and other property owned by each domestic or foreign corporation  
14 and by each other entity that is a party to the merger shall be  
15 allocated to and vested in one or more of the surviving or new  
16 domestic or foreign corporations and other entities as provided in  
17 the plan of merger without reversion or impairment, without further  
18 act or deed, and without any transfer or assignment having  
19 occurred, but subject to any existing liens or other encumbrances  
20 thereon;

21 (3) all liabilities and obligations of each domestic  
22 or foreign corporation and other entity that is a party to the  
23 merger shall be allocated to one or more of the surviving or new  
24 domestic or foreign corporations and other entities in the manner  
25 set forth in the plan of merger, and each surviving or new domestic  
26 or foreign corporation, and each surviving or new other entity to  
27 which a liability or obligation shall have been allocated pursuant

1 to the plan of merger, shall be the primary obligor therefor and,  
2 except as otherwise set forth in the plan of merger or as otherwise  
3 provided by law or contract, no other party to the merger, other  
4 than a surviving domestic or foreign corporation or other entity  
5 liable thereon at the time of the merger and no other new domestic  
6 or foreign corporation or other entity created thereby, shall be  
7 liable therefor;

8 (4) a proceeding pending by or against any domestic or  
9 foreign corporation or by or against any other entity that is a  
10 party to the merger may be continued as if the merger did not occur,  
11 or the surviving or new domestic or foreign corporation or  
12 corporations or the surviving or new other entity or other entities  
13 to which the liability, obligation, asset or right associated with  
14 such proceeding is allocated to and vested in pursuant to the plan  
15 of merger may be substituted in the proceeding;

16 (5) the articles of incorporation of each surviving  
17 corporation shall be amended to the extent provided in the plan of  
18 merger;

19 (6) each new domestic corporation, the articles of  
20 incorporation of which are set forth in the plan of merger pursuant  
21 to Article 5.01 of this Act, shall be incorporated as a corporation  
22 under this Act; and each other entity to be incorporated or  
23 organized under the laws of this State, the organizational  
24 documents of which are set forth in the plan of merger[7] shall,  
25 upon an executed copy of the articles of merger being delivered to  
26 or filed with any required governmental entity with which  
27 organizational documents of such other entity are required to be



delivered or filed, and upon meeting such additional requirements, if any, of law for its incorporation or organization, shall be incorporated or organized as provided in the plan of merger; and

(7) the shares of each domestic or foreign corporation and the shares or evidences of ownership in each other entity that is a party to the merger that are to be converted or exchanged, in whole or part, into shares, obligations, evidences of ownership, rights to purchase securities or other securities of one or more of the surviving or new domestic or foreign corporations or other entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities or other securities of any other person or entity, or into any combination of the foregoing, shall be so converted and exchanged and the former holders of the shares of each domestic corporation that is a party to the merger shall be entitled only to the rights provided in the plan [~~articles~~] of merger or to their rights under Article 5.11 of this Act.

SECTION 29. Section B, Article 5.11, Texas Business Corporation Act, is amended to read as follows:

B. Notwithstanding the provisions of Section A of this Article, a shareholder shall not have the right to dissent from any plan of merger in which there is a single surviving or new domestic or foreign corporation, or from any plan of exchange, if:

(1) the shares, or depository receipts in respect of the shares, held by the shareholder are part of a class or series, shares, or depository receipts in respect of the shares, of which are on the record date fixed to determine the shareholders entitled

1 to vote on the plan of merger or plan of exchange:

2 (a) listed on a national securities exchange;

3 (b) listed on the Nasdaq Stock Market (or  
4 successor quotation system) or designated as a national market  
5 security on an interdealer quotation system by the National  
6 Association of Securities Dealers, Inc., or successor entity; or

7 (c) held of record by not less than 2,000  
8 holders;

9 (2) the shareholder is not required by the terms of the  
10 plan of merger or plan of exchange to accept for the shareholder's  
11 shares any consideration that is different than the consideration  
12 (other than cash in lieu of fractional shares that the shareholder  
13 would otherwise be entitled to receive) to be provided to any other  
14 holder of shares of the same class or series of shares held by such  
15 shareholder; and

16 (3) the shareholder is not required by the terms of the  
17 plan of merger or the plan of exchange to accept for the  
18 shareholder's shares any consideration other than:

19 (a) shares, or depository receipts in respect of  
20 the shares, of a domestic or foreign corporation that, immediately  
21 after the effective time of the merger or exchange, will be part of  
22 a class or series, shares, or depository receipts in respect of the  
23 shares, of which are:

24 (i) listed, or authorized for listing upon  
25 official notice of issuance, on a national securities exchange;

26 (ii) approved for quotation as a national  
27 market security on an interdealer quotation system by the National

1 Association of Securities Dealers, Inc., or successor entity; or

2 (iii) held of record by not less than 2,000  
3 holders;

4 (b) cash in lieu of fractional shares otherwise  
5 entitled to be received; or

6 (c) any combination of the securities and cash  
7 described in Subdivisions (a) and (b) of this subsection.

8 SECTION 30. Section A, Article 5.16, Texas Business  
9 Corporation Act, is amended to read as follows:

10 A. In any case in which at least ninety (90%) per cent of the  
11 outstanding shares of each class and series of shares, membership  
12 interests, or other ownership interests of one or more domestic or  
13 foreign corporations or other entities, other than a corporation  
14 that has in its articles of incorporation the provision required by  
15 Article 5.03(H)(6)(a) of this Act, of which there are outstanding  
16 shares that would be entitled to vote on the merger absent this  
17 section, is owned by another domestic or foreign corporation or  
18 other entity, and at least one of the parent or subsidiary entities  
19 is a domestic corporation and the other or others are domestic  
20 corporations, foreign corporations, or other entities organized  
21 under the laws of a jurisdiction that permit such a merger or whose  
22 organizational documents or other constituent documents not  
23 inconsistent with those laws permit such a merger, the corporation  
24 or other entity [~~having such share ownership~~] may enter into a  
25 merger [~~(1) merge such other domestic or foreign corporation or~~  
26 ~~corporations or other entities into itself, (2) merge itself into~~  
27 ~~any one or more of such other corporations or other entities, or (3)~~

1 ~~merge itself and any one or more of such entities or corporations~~  
2 ~~into one or more of the other entities]:~~

3 (a) in the event that the corporation or other  
4 entity having at least 90 percent ownership will be a surviving  
5 entity in the merger, by executing and filing articles of merger in  
6 accordance with Section B of this Article; or

7 (b) in the event that the corporation or other  
8 entity having at least 90 percent ownership will not be a surviving  
9 entity in the merger, by the entity having such ownership adopting a  
10 plan of merger in the manner required by the laws of its  
11 jurisdiction of organization or formation and its organizational or  
12 other constituent documents, except that no action under Section  
13 5.03 shall be required to be taken by the corporation or  
14 corporations whose shares are so owned, and executing and filing  
15 articles of merger in accordance with Section B of this Article.

16 SECTION 31. Section A, Article 6.04, Texas Business  
17 Corporation Act, is amended to read as follows:

18 A. Before filing articles of dissolution:

19 (1) The corporation shall cease to carry on its  
20 business, except insofar as may be necessary for the winding up  
21 thereof.

22 (2) The corporation shall cause written notice by  
23 registered or certified mail of its intention to dissolve to be  
24 mailed to each known claimant against the corporation.

25 (3) The directors of the corporation shall manage the  
26 process of winding up the business or affairs of the corporation.

27 The corporation shall proceed to collect its assets, dispose of

1 such of its properties as are not to be distributed in kind to its  
 2 shareholders, pay, satisfy, or discharge all its debts,  
 3 liabilities, and obligations, or make adequate provision for  
 4 payment, satisfaction, or discharge thereof, and do all other acts  
 5 required to liquidate its business and affairs, except that if the  
 6 properties and assets of the corporation are not sufficient to pay,  
 7 satisfy, or discharge all the corporation's debts, liabilities, and  
 8 obligations, the corporation shall apply its properties and assets  
 9 so far as they will go to the just and equitable payment,  
 10 satisfaction, or discharge of its debts, liabilities, and  
 11 obligations or shall make adequate provision for such application.  
 12 After paying, satisfying, or discharging all its debts,  
 13 liabilities, and obligations, or making adequate provision for  
 14 payment, satisfaction, or discharge thereof, the corporation shall  
 15 then distribute the remainder of its properties and assets, either  
 16 in cash or in kind, to its shareholders according to their  
 17 respective rights and interests.

18 (4) The corporation, at any time during the  
 19 liquidation of its business and affairs, may make application to  
 20 any district court of this State in the county in which the  
 21 registered office of the corporation is situated to have the  
 22 liquidation continued under the supervision of such court as  
 23 provided in this Act.

24 SECTION 32. Section A, Article 8.05, Texas Business  
 25 Corporation Act, is amended to read as follows:

26 A. In order to procure a certificate of authority to  
 27 transact business in this State, a foreign corporation shall make

1 application therefor to the Secretary of State, which application  
2 shall set forth:

3 (1) The name of the corporation and the State or  
4 country under the laws of which it is incorporated.

5 (2) If the name of the corporation does not contain the  
6 word "corporation," "company," "incorporated," or "limited," and  
7 does not contain an abbreviation of one (1) of such words, then the  
8 name of the corporation with the word or abbreviation which it  
9 elects to add thereto for use in this State; if the corporation is  
10 required to qualify under a name other than its corporate name, then  
11 the name under which the corporation is to be qualified.

12 (3) The date of incorporation and the period of  
13 duration of the corporation.

14 (4) The address of the principal office of the  
15 corporation in the state or country under the laws of which it is  
16 incorporated.

17 (5) The address of the registered office of the  
18 corporation in this State, and the name of its registered agent in  
19 this State at such address.

20 (6) The purpose or purposes of the corporation which  
21 it proposes to pursue in the transaction of business in this State  
22 and a statement that it is authorized to pursue such purpose or  
23 purposes in the state or country under the laws of which it is  
24 incorporated.

25 (7) The names and respective addresses of the  
26 directors and officers of the corporation.

27 (8) A statement that the corporation exists as a valid

1 corporation under the laws of the corporation's jurisdiction of  
2 formation [~~of the aggregate number of shares which the corporation~~  
3 ~~has authority to issue, itemized by classes, par value of shares,~~  
4 ~~shares without par value, and series, if any, within a class].~~

5 [~~(9) A statement of the aggregate number of issued~~  
6 ~~shares itemized by classes, par value of shares, shares without par~~  
7 ~~value, and series, if any, within a class.~~

8 [~~(10) A statement, expressed in dollars, of the amount~~  
9 ~~of stated capital of the corporation, as defined in this Act.~~

10 [~~(11) A statement that consideration of the value of~~  
11 ~~at least One Thousand Dollars (\$1,000) has been paid for the~~  
12 ~~issuance of shares.]~~

13 SECTION 33. Section A, Article 8.06, Texas Business  
14 Corporation Act, is amended to read as follows:

15 A. The original and a copy of the application of the  
16 corporation for a certificate of authority shall be delivered to  
17 the Secretary of State[, ~~together with a certificate issued by an~~  
18 ~~authorized officer of the jurisdiction of the corporation's~~  
19 ~~incorporation evidencing its corporate existence. If the~~  
20 ~~certificate is in a language other than English, a translation of~~  
21 ~~the certificate, under the oath of the translator, must be attached~~  
22 ~~to the certificate. The certificate must be dated after the 91st~~  
23 ~~day preceding the date on which the application is filed]. If the~~  
24 Secretary of State finds that the application conforms to law, he  
25 shall, when the appropriate filing fee is paid as required by law:

26 (1) Endorse on the original and the copy the word  
27 "Filed," and the month, day, and year of the filing thereof.

1           (2) File in his office the original [~~and the~~  
2 ~~certificate evidencing corporate existence~~].

3           (3) Issue a certificate of authority to transact  
4 business in this State to which he shall affix the copy.

5           SECTION 34. Article 9.09, Texas Business Corporation Act,  
6 is amended to read as follows:

7           Art. 9.09. WAIVER OF NOTICE. [~~A.~~] Whenever any notice is  
8 required to be given to any shareholder or director of a corporation  
9 under the provisions of this Act or under the provisions of the  
10 articles of incorporation or bylaws of the corporation, a waiver  
11 thereof in writing signed by the person or persons entitled to such  
12 notice, or a waiver by electronic transmission by the person  
13 entitled to notice, whether before or after the time stated  
14 therein, shall be equivalent to the giving of such notice. The  
15 business to be transacted at a regular or special meeting of the  
16 shareholders, directors, or members of a committee of directors or  
17 the purpose of a meeting is not required to be specified in a  
18 written waiver of notice or a waiver by electronic transmission  
19 unless required by the articles of incorporation or the bylaws.

20           SECTION 35. Sections A and B, Article 9.10, Texas Business  
21 Corporation Act, are amended to read as follows:

22           A.(1) Any action required by this Act to be taken at any  
23 annual or special meeting of shareholders, or any action which may  
24 be taken at any annual or special meeting of shareholders, may be  
25 taken without a meeting, without prior notice, and without a vote,  
26 if a consent or consents in writing, setting forth the action so  
27 taken, shall have been signed by the holder or holders of all the



1 shares entitled to vote with respect to the action that is the  
2 subject of the consent. The articles of incorporation may provide  
3 that any action required by this Act to be taken at any annual or  
4 special meeting of shareholders, or any action which may be taken at  
5 any annual or special meeting of shareholders, may be taken without  
6 a meeting, without prior notice, and without a vote, if a consent or  
7 consents in writing, setting forth the action so taken, shall be  
8 signed by the holder or holders of ~~or~~ shares having not less than  
9 the minimum number of votes that would be necessary to take such  
10 action at a meeting at which ~~the~~ holders of all shares entitled to  
11 vote on the action were present and voted.

12 (2) Every written consent signed by the holders of  
13 less than all the shares entitled to vote with respect to the action  
14 that is the subject of the consent shall bear the date of signature  
15 of each shareholder who signs the consent. No written consent  
16 signed by the holder ~~holders~~ of less than all the shares entitled  
17 to vote with respect to the action that is the subject of the  
18 consent shall be effective to take the action that is the subject of  
19 the consent unless, within 60 days after the date of the earliest  
20 dated consent delivered to the corporation in a ~~the~~ manner  
21 required by this Article, a consent or consents signed by the holder  
22 or holders of shares having not less than the minimum number of  
23 votes that would be necessary to take the action that is the subject  
24 of the consent are delivered to the corporation by delivery to its  
25 registered office, registered agent, principal place of business,  
26 transfer agent, registrar, exchange agent or an officer or agent of  
27 the corporation having custody of the books in which proceedings of

meetings of shareholders are recorded. Delivery shall be by hand or certified or registered mail, return receipt requested. Delivery to the corporation's principal place of business shall be addressed to the president or principal executive officer of the corporation.

(3) A telegram, telex, cablegram, or other electronic ~~[similar]~~ transmission by a shareholder consenting to an action to be taken is considered to be written, signed, and dated for the purposes of this article if the transmission sets forth or is delivered with information from which the corporation can determine that the transmission was transmitted by the shareholder and the date on which the shareholder transmitted the transmission. The date of transmission is the date on which the consent was signed. Consent given by telegram, telex, cablegram, or other electronic transmission may not be considered delivered until the consent is reproduced in paper form and the paper form is delivered to the corporation at its registered office in this state or its principal place of business, or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded. Notwithstanding Subsection (2) of this section, consent given by telegram, telex, cablegram, or other electronic transmission may be delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of shareholder meetings are recorded to the extent and in the manner provided by resolution of the board of directors of the corporation.

(4) Any~~[or a]~~ photographic, photostatic, facsimile,

1 or similarly reliable [~~similar~~] reproduction of a consent in  
2 writing signed by a shareholder may be substituted or used instead  
3 of the original writing for any purpose for which the original  
4 writing could be used, if the reproduction is a complete  
5 reproduction of the entire original writing [~~, shall be regarded as~~  
6 ~~signed by the shareholder for purposes of this Section~~].

7 (5) [~~(4)~~] Prompt notice of the taking of any action by  
8 shareholders without a meeting by less than unanimous written  
9 consent shall be given to those shareholders who did not consent in  
10 writing to the action.

11 (6) [~~(5)~~] If any action by shareholders is taken by  
12 written consent, any articles or documents filed with the Secretary  
13 of State as a result of the taking of the action shall state, in lieu  
14 of any statement required by the [~~this~~] Act concerning the number of  
15 shares outstanding and entitled to vote on the action or concerning  
16 any vote of shareholders, that written consent has been given in  
17 accordance with the provisions of this Article and that any written  
18 notice required by this Article has been given.

19 B. Unless otherwise restricted by the articles of  
20 incorporation or bylaws [~~by-laws~~], any action required or permitted  
21 to be taken at a meeting of the board of directors or any committee  
22 may be taken without a meeting if a consent in writing, setting  
23 forth the action so taken, is signed by all the members of the board  
24 of directors or committee, as the case may be. A telegram, telex,  
25 cablegram, or other electronic transmission by a director  
26 consenting to an action to be taken and transmitted by a director is  
27 considered written, signed, and dated for the purposes of this

1 article if the transmission sets forth or is delivered with  
 2 information from which the corporation can determine that the  
 3 transmission was transmitted by the director and the date on which  
 4 the director transmitted the transmission. Such consent shall have  
 5 the same force and effect as a unanimous vote at a meeting, and may  
 6 be stated as such in any document or instrument filed with the  
 7 Secretary of State.

8 SECTION 36. Section A, Article 9.14, Texas Business  
 9 Corporation Act, is amended to read as follows:

10 A. This Act applies to each domestic corporation and to each  
 11 foreign corporation that is transacting business in this state,  
 12 regardless of whether the foreign corporation is registered to  
 13 transact business in this state. This Act does not apply to  
 14 domestic corporations organized under any statute other than this  
 15 Act or to any foreign corporations granted authority to transact  
 16 business within this State under any statute other than this Act;  
 17 provided, however, that if any domestic corporation was heretofore  
 18 or is hereafter organized under or is governed by a statute other  
 19 than this Act or the Texas Non-Profit Corporation Act (Article  
 20 1396-1.01 et seq., Vernon's Texas Civil Statutes) that contains no  
 21 provisions in regard to some of the matters provided for in this  
 22 Act, or any foreign corporation was heretofore or is hereafter  
 23 granted authority to transact business within this State under a  
 24 statute other than this Act or the Texas Non-Profit Corporation Act  
 25 that contains no provisions in regard to some of the matters  
 26 provided for in this Act in respect of foreign corporations, or if  
 27 such a statute specifically provides that the general laws for

1 incorporation or for the granting of a certificate of authority to  
2 transact business in this State, as the case may be, shall  
3 supplement the provisions of such statute, then the provisions of  
4 this Act shall apply to the extent that they are not inconsistent  
5 with the provisions of such other statute; provided further,  
6 however, that this Act shall not apply to any domestic corporation  
7 organized under or governed by the Texas Non-Profit Corporation Act  
8 or any foreign corporation granted authority to transact business  
9 within this State under the Texas Non-Profit Corporation Act.

10 SECTION 37. Section A(4), Article 13.02, Texas Business  
11 Corporation Act, is amended to read as follows:

12 (4) "Business combination" means:

13 (a) any merger, share exchange, or conversion of  
14 an issuing public corporation or a subsidiary with:

15 (i) an affiliated shareholder;

16 (ii) a foreign or domestic corporation or  
17 other entity that is, or after the merger, share exchange, or  
18 conversion would be, an affiliate or associate of the affiliated  
19 shareholder; or

20 (iii) another domestic or foreign  
21 corporation or other entity, if the merger, share exchange, or  
22 conversion is caused by an affiliated shareholder, or an affiliate  
23 or associate of an affiliated shareholder, and as a result of the  
24 merger, share exchange, or conversion this part does not apply to  
25 the surviving corporation or other entity;

26 (b) a sale, lease, exchange, mortgage, pledge,  
27 transfer, or other disposition, in one transaction or a series of

1 transactions, including an allocation of assets pursuant to a  
2 merger, to or with the affiliated shareholder, or an affiliate or  
3 associate of the affiliated shareholder, of assets of the issuing  
4 public corporation or any subsidiary that:

5 (i) have an aggregate market value equal to  
6 10 percent or more of the aggregate market value of all the assets,  
7 determined on a consolidated basis, of the issuing public  
8 corporation;

9 (ii) have an aggregate market value equal  
10 to 10 percent or more of the aggregate market value of all the  
11 outstanding voting shares [~~common stock~~] of the issuing public  
12 corporation; or

13 (iii) represent 10 percent or more of the  
14 earning power or net income, determined on a consolidated basis, of  
15 the issuing public corporation;

16 (c) the issuance or transfer by an issuing public  
17 corporation or a subsidiary to an affiliated shareholder or an  
18 affiliate or associate of the affiliated shareholder, in one  
19 transaction or a series of transactions, of shares of the issuing  
20 public corporation or a subsidiary, except by the exercise of  
21 warrants or rights to purchase shares of the issuing public  
22 corporation offered, or a share dividend paid, pro rata to all  
23 shareholders of the issuing public corporation after the affiliated  
24 shareholder's share acquisition date;

25 (d) the adoption of a plan or proposal for the  
26 liquidation or dissolution of an issuing public corporation  
27 proposed by, or pursuant to any agreement, arrangement, or

1 understanding, whether or not in writing, with an affiliated  
2 shareholder or an affiliate or associate of the affiliated  
3 shareholder;

4 (e) a reclassification of securities, including  
5 a reverse share split or a share split-up, share dividend, or other  
6 distribution of shares, a recapitalization of the issuing public  
7 corporation, a merger of the issuing public corporation with a  
8 subsidiary or pursuant to which the assets and liabilities of the  
9 issuing public corporation are allocated among two or more  
10 surviving or new domestic or foreign corporations or other  
11 entities, or any other transaction, whether or not with, into, or  
12 otherwise involving the affiliated shareholder, proposed by, or  
13 pursuant to an agreement, arrangement, or understanding, whether or  
14 not in writing, with an affiliated shareholder or an affiliate or  
15 associate of the affiliated shareholder that has the effect,  
16 directly or indirectly, of increasing the proportionate ownership  
17 percentage of the outstanding shares of a class or series of voting  
18 shares or securities convertible into voting shares of the issuing  
19 public corporation that is beneficially owned by the affiliated  
20 shareholder or an affiliate or associate of the affiliated  
21 shareholder, except as a result of immaterial changes due to  
22 fractional share adjustments; or

23 (f) the direct or indirect receipt by an  
24 affiliated shareholder or an affiliate or associate of the  
25 affiliated shareholder of the benefit of a loan, advance,  
26 guarantee, pledge, or other financial assistance or a tax credit or  
27 other tax advantage provided by or through the issuing public

1 corporation, except proportionately as a shareholder of the issuing  
2 public corporation.

3 SECTION 38. Section B, Article 13.07, Texas Business  
4 Corporation Act, is amended to read as follows:

5 B. The affirmative vote or concurrence of shareholders  
6 required for approval of an action required or permitted to be  
7 submitted for shareholder vote under Part 13 of this Act may be  
8 increased, but not decreased, under Article 2.28 of this Act.

9 SECTION 39. The following laws are repealed:

10 (1) Section B, Article 2.14, Texas Business  
11 Corporation Act;

12 (2) Article 3.05, Texas Business Corporation Act;

13 (3) Sections B and C, Article 4.10, Texas Business  
14 Corporation Act;

15 (4) Sections B and C, Article 4.11, Texas Business  
16 Corporation Act;

17 (5) Sections B and C, Article 4.12, Texas Business  
18 Corporation Act;

19 (6) Article 2.01, Texas Miscellaneous Corporation  
20 Laws Act (Article 1302-2.01, Vernon's Texas Civil Statutes);

21 (7) Article 2.02, Texas Miscellaneous Corporation  
22 Laws Act (Article 1302-2.02, Vernon's Texas Civil Statutes);

23 (8) Article 2.03, Texas Miscellaneous Corporation  
24 Laws Act (Article 1302-2.03, Vernon's Texas Civil Statutes);

25 (9) Article 2.04, Texas Miscellaneous Corporation  
26 Laws Act (Article 1302-2.04, Vernon's Texas Civil Statutes);

27 (10) Article 2.09, Texas Miscellaneous Corporation



1 Laws Act (Article 1302-2.09, Vernon's Texas Civil Statutes);

2 (11) Article 2.09A, Texas Miscellaneous Corporation

3 Laws Act (Article 1302-2.02.09A, Vernon's Texas Civil Statutes);

4 (12) Article 2.10, Texas Miscellaneous Corporation

5 Laws Act (Article 1302-2.10, Vernon's Texas Civil Statutes);

6 (13) Article 3.02, Texas Miscellaneous Corporation

7 Laws Act (Article 1302-3.02, Vernon's Texas Civil Statutes); and

8 (14) Article 3.03, Texas Miscellaneous Corporation

9 Laws Act (Article 1302-3.03, Vernon's Texas Civil Statutes).

10 SECTION 40. This Act takes effect September 1, 2003.