

By: Solomons, et al. (Senate Sponsor - Janek) H.B. No. 1165  
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COMMITTEE SUBSTITUTE FOR H.B. No. 1165 By: Armbrister

A BILL TO BE ENTITLED  
AN ACT

relating to 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.

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

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

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

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

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

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

(8) To purchase or otherwise acquire its own bonds, debentures, or other evidences of its indebtedness or obligations; to purchase or otherwise acquire its own unredeemable shares and hold those acquired shares as treasury shares or cancel or otherwise dispose of those acquired shares; and to redeem or

purchase shares made redeemable by the provisions of its articles of incorporation.

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

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

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

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

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

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

(15) To transact any lawful business which the board of directors shall find will be in aid of government policy.

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

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

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

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

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

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

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

F. A determination of indemnification under Section B of this article must be made:

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

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

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

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

(3) by special legal counsel selected by the board of directors or a committee of the board by vote as set forth in Subsection (1) or (2) of this section[~~, or, if such a quorum cannot~~

be obtained and such a committee cannot be established, by a majority vote of all directors]; or

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

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

O. An officer of the corporation shall be indemnified as, and to the same extent, provided by Sections H, I, and J of this article for a director and is entitled to seek indemnification under those sections to the same extent as a director. A corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation to the same extent that it may indemnify and advance expenses to directors under this article. A determination of indemnification for an employee or agent of the corporation is not required to be made in accordance with Section F of this article.

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

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

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

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

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

E. If the articles of incorporation expressly authorize the board of directors to establish series of unissued shares of a class 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 "Filed," and the month, day, and year of the filing thereof.
- (2) File the original in his office.
- (3) Return the copy to the corporation or its representative.

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

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

C. Acceptance of a subscription ~~[In the case of an existing corporation, acceptance]~~ shall be effected by a resolution of acceptance by the board of directors or by a written memorandum of acceptance executed by one authorized by the board of directors and delivered to the subscriber or his assignee.

D. Subscriptions for shares, whether made before or after the organization of a corporation, shall be paid in full at such time, or in such installments and at such times, as shall be determined by the board of directors unless the payment terms are specified by the subscription. Unless otherwise specified by the subscription, a ~~[Any]~~ call made by the board of directors for payment on subscriptions shall be uniform as to all shares of the same class or as to all shares of the same series, as the case may be, as far as practicable. In case of default in the payment of any installment or call when such payment is due, the corporation may proceed to collect the amount due in the same manner as any debt due the corporation or declare the subscription forfeited if ~~[The bylaws may prescribe other penalties for failure to pay installments or calls that may become due, but no penalty working a forfeiture of a subscription, or of the amounts paid thereon, shall be declared against any subscriber unless]~~ the amount due remains ~~[thereon shall remain]~~ unpaid for a period of twenty (20) days after written demand has been made therefor to the subscriber. If mailed, such written demand shall be deemed to be made when deposited in the United States mail in a sealed envelope addressed to the subscriber

at his last post office address known to the corporation, with postage thereon prepaid. ~~[If the demand remains unsatisfied for a period of twenty (20) days, and if the corporation is solvent, the corporation may declare the subscription to be forfeited.]~~ The effect of such declaration of forfeiture shall be to terminate all the rights and obligations of the subscriber as such, but the corporation may retain any amount previously paid on the subscription.

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

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

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

B. The terms of rights or options may:

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

(a) a person who beneficially owns or offers to acquire a specified number or percentage of the outstanding common shares, voting power, or other securities of the corporation; or

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

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

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

(1) ~~[(a)]~~ in the case of rights or options, the terms upon which, the time or times within which, and any ~~[the]~~ consideration, including a formula by which the consideration may be determined, ~~[if any,]~~ for which~~[7]~~ such shares may be purchased or received from the corporation upon the exercise of any such right or option; ~~[7]~~ or

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

D. In the absence of fraud in the transaction, the judgment of the board of directors as to the adequacy of the consideration received for such rights, options, or indebtedness shall be conclusive; provided that rights or options may be issued by a corporation to its shareholders, employees, or directors without consideration if, in the judgment of the board of directors, the issuance of those rights or options is in the interests of the corporation. The consideration to be received for any shares having a par value, other than treasury shares, to be issued upon the exercise of such rights or options shall not be less than the par value thereof. No privilege of conversion shall be conferred upon, or altered in respect to, any indebtedness that would result in receipt by the corporation of less than the minimum consideration required to be received upon issuance of the shares. The consideration for shares issued upon the exercise of convertible indebtedness shall be that provided in Section E of Article 2.15 of this Act. The consideration for shares issued upon the exercise of rights or options shall be that provided in Section

F of Article 2.15 of this Act.

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

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

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

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

G. A resolution adopted under Section F of this article authorizing an officer of the corporation to designate recipients of rights or options shall specify the total number of rights or options the officer may award. The board of directors may not authorize an officer to designate himself or herself as a recipient of any rights or options.

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

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

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

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

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

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

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

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

(6) Obligates the holder of the restricted securities

to sell or transfer an amount of restricted securities to the corporation, to any other holders of securities of the corporation, or to any other person or combination of persons; or

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

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

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

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

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

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

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

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

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

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

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

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

(a) ~~[to acquire any]~~ shares issued or granted to a director, officer, agent, or employee of the corporation or a subsidiary or affiliate of the corporation ~~[to employees pursuant to approval by the affirmative vote of the holders of a majority of the shares entitled to vote thereon or when authorized by and consistent with a plan theretofore approved by such a vote of shareholders]; [or]~~

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

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

(d) ~~[to acquire any]~~ shares sold, issued, or granted by the corporation for consideration other than money

8-1 ~~[otherwise than for cash].~~

8-2 (3) ~~[(2)]~~ Holders of shares of any class or series  
8-3 without general voting rights but that is preferred ~~[or limited]~~ as  
8-4 to distributions ~~[dividends or assets]~~ shall not be entitled to any  
8-5 preemptive right.

8-6 (4) ~~[(3)]~~ Holders of shares of any class or series  
8-7 with general voting rights that is not preferred ~~[or limited]~~ as to  
8-8 distributions ~~[dividends or assets]~~ shall not be entitled to any  
8-9 preemptive right to shares of any class or series that is preferred  
8-10 ~~[or limited]~~ as to distributions ~~[dividends or assets]~~ or to any  
8-11 obligations, unless the shares with preferential rights or  
8-12 obligations are convertible into ~~[shares of such class or series~~  
8-13 ~~that is not preferred or limited]~~ or carry ~~[carrying]~~ a right to  
8-14 subscribe to or acquire shares without preferential rights ~~[of such~~  
8-15 ~~class or series]~~.

8-16 ~~[(4) Holders of shares without voting power shall have~~  
8-17 ~~no preemptive right to shares with voting power.]~~

8-18 (5) The preemptive right shall be only an opportunity  
8-19 to acquire shares or other securities under such uniform terms and  
8-20 conditions as the board of directors may fix for the purpose of  
8-21 providing a fair and reasonable opportunity for the exercise of  
8-22 such right.

8-23 (6) For a one-year period beginning on the date on  
8-24 which the shares are offered to shareholders, shares subject to  
8-25 preemptive rights that are not acquired by a shareholder may be  
8-26 issued to a person for consideration set by the corporation's board  
8-27 of directors that is not lower than the consideration set for the  
8-28 exercise of preemptive rights. An offer at a lower consideration or  
8-29 after the expiration of the period prescribed by this subsection is  
8-30 subject to the shareholders' preemptive rights.

8-31 D ~~[C]~~. An action may not be brought against the corporation,  
8-32 its directors, officers, or agents, any holder of shares or  
8-33 securities of the corporation, or any owner of any beneficial  
8-34 interest in shares or securities of the corporation on account of  
8-35 any violation of any preemptive right of a shareholder to acquire  
8-36 any shares of the corporation, or any securities of the corporation  
8-37 convertible into or carrying a right to subscribe to or acquire  
8-38 shares, unless such action is brought within the earlier of:

8-39 (1) One year after the date on which written notice is  
8-40 given to each shareholder whose preemptive right was violated by  
8-41 the issuance, sale, or other distribution of those shares or  
8-42 securities, which notice shall be mailed to the shareholder at the  
8-43 address of the shareholder as it appears on the share transfer  
8-44 records of the corporation and shall inform the shareholder that  
8-45 the issuance, sale, or other distribution of those shares or  
8-46 securities was in violation of the preemptive right of the  
8-47 shareholder; and

8-48 (2) Four years after the date on which the corporation  
8-49 issued, sold, or otherwise distributed those shares or securities  
8-50 or August 28, 1989 ~~[the effective date of this provision]~~,  
8-51 whichever is later.

8-52 E ~~[D]~~. In the event of a transfer or other disposition of  
8-53 shares by any shareholder of a corporation whose preemptive right  
8-54 to acquire shares of the corporation, or securities of the  
8-55 corporation convertible into or carrying a right to subscribe to or  
8-56 acquire shares, shall have been violated, the transferee or  
8-57 successor of the shareholder shall not acquire the preemptive  
8-58 right, or any right or claim based on that violation, unless the  
8-59 shareholder shall have assigned the preemptive right to the  
8-60 transferee or successor.

8-61 F. Subject to the articles of incorporation, shareholders  
8-62 of a corporation incorporated before September 1, 2003, have a  
8-63 preemptive right to acquire additional unissued or treasury shares  
8-64 of the corporation, or securities of the corporation convertible  
8-65 into or carrying a right to subscribe to or acquire shares, to the  
8-66 extent provided by Sections C, D, and E of this article. After  
8-67 September 1, 2003, a corporation may limit or deny the preemptive  
8-68 right of the shareholders of the corporation by amending the  
8-69 corporation's articles of incorporation.



9-1 G. A shareholder may waive a preemptive right granted to the  
 9-2 shareholder. A written waiver of a preemptive right is irrevocable  
 9-3 regardless of whether the waiver is supported by consideration.

9-4 SECTION 10. Sections A and B, Article 2.24, Texas Business  
 9-5 Corporation Act, are amended to read as follows:

9-6 A. Meetings of shareholders may be held at such place within  
 9-7 or without this State as may be stated in or fixed in accordance  
 9-8 with the bylaws. If no other place is so stated or fixed, the board  
 9-9 of directors of the corporation is not authorized to designate a  
 9-10 place, or the board of directors chooses not to designate a place,  
 9-11 meetings shall be held at the registered office of the corporation.

9-12 (1) If, under the articles of incorporation or the  
 9-13 bylaws, the board of directors is authorized to determine the place  
 9-14 of a meeting of shareholders, the board of directors may, in its  
 9-15 discretion, determine that the meeting may be held solely by means  
 9-16 of remote communication as provided by Subsection (2) of this  
 9-17 section.

9-18 (2) If authorized by the board of directors, and  
 9-19 subject to any guidelines and procedures adopted by the board of  
 9-20 directors, shareholders not physically present at a meeting of  
 9-21 shareholders, by means of remote communication:

9-22 (a) may participate in a meeting of shareholders;  
 9-23 and

9-24 (b) may be considered present in person and may  
 9-25 vote at a meeting of shareholders held at a designated place or held  
 9-26 solely by means of remote communication if:

9-27 (i) the corporation implements reasonable  
 9-28 measures to verify that each person considered present and  
 9-29 permitted to vote at the meeting by means of remote communication is  
 9-30 a shareholder;

9-31 (ii) the corporation implements reasonable  
 9-32 measures to provide the shareholders at the meeting by means of  
 9-33 remote communication a reasonable opportunity to participate in the  
 9-34 meeting and to vote on matters submitted to the shareholders,  
 9-35 including an opportunity to read or hear the proceedings of a  
 9-36 meeting substantially concurrently with the proceedings; and

9-37 (iii) the corporation maintains a record of  
 9-38 any shareholder vote or other action taken at the meeting by means  
 9-39 of remote communication.

9-40 B. An annual meeting of the shareholders shall be held at  
 9-41 such time as may be stated in or fixed in accordance with the  
 9-42 bylaws. If the annual meeting is not held within any 13-month  
 9-43 period and a written consent of shareholders has not been executed  
 9-44 instead of the meeting, any court of competent jurisdiction in the  
 9-45 county in which the principal office of the corporation is located  
 9-46 may, on the application of any shareholder, summarily order a  
 9-47 meeting to be held unless the meeting is not required to be held  
 9-48 under Section D of this article. Failure to hold the annual meeting  
 9-49 at the designated time shall not work a dissolution of the  
 9-50 corporation.

9-51 SECTION 11. Section A, Article 2.25, Texas Business  
 9-52 Corporation Act, is amended to read as follows:

9-53 A. Written or printed notice stating the place, day and hour  
 9-54 of the meeting, the means of any remote communications by which  
 9-55 shareholders may be considered present and may vote at the meeting,  
 9-56 and, in case of a special meeting, the purpose or purposes for which  
 9-57 the meeting is called, shall be delivered not less than ten (10)  
 9-58 days nor more than sixty (60) days before the date of the meeting,  
 9-59 [either] personally, by electronic transmission, or by mail, by or  
 9-60 at the direction of the president, the secretary, or the officer or  
 9-61 person calling the meeting, to each shareholder entitled to vote at  
 9-62 such meeting. If mailed, such notice shall be deemed to be  
 9-63 delivered when deposited in the United States mail addressed to the  
 9-64 shareholder at his address as it appears on the share transfer  
 9-65 records of the corporation, with postage thereon prepaid.

9-66 SECTION 12. Sections A and C, Article 2.27, Texas Business  
 9-67 Corporation Act, are amended to read as follows:

9-68 A. The officer or agent having charge of the share transfer  
 9-69 records for shares of a corporation shall make, at least ten (10)

days before each meeting of shareholders, a complete list of the shareholders entitled to vote at such meeting or any adjournment thereof, arranged in alphabetical order, with the address of and the number of shares held by each, which list, for a period of ten (10) days prior to such meeting, shall be kept on file at the registered office or principal place of business of the corporation and shall be subject to inspection by any shareholder at any time during usual business hours. Alternatively, the list of the shareholders may be kept on a reasonably accessible electronic network, if the information required to gain access to the list is provided with the notice of the meeting. This article does not require the corporation to include any electronic contact information of any shareholder on the list. If the corporation elects to make the list available on an electronic network, the corporation shall take reasonable steps to ensure that the information is available only to shareholders of the corporation. Such list shall also be produced and kept open at the time and place of the meeting and shall be subject to the inspection of any shareholder during the whole time of the meeting. If the meeting is held by means of remote communication, the list must be open to the examination of any shareholder for the duration of the meeting on a reasonably accessible electronic network, and the information required to access the list must be provided to shareholders with the notice of the meeting. The original share transfer records shall be prima-facie evidence as to who are the shareholders entitled to examine such list or transfer records or to vote at any meeting of shareholders.

C. An officer or agent having charge of the share transfer records who shall fail to prepare the list of shareholders or keep the same accessible to shareholders electronically or physically on file at the principal place of business for a period of ten (10) days, or produce and keep it accessible ~~open~~ for inspection during ~~at~~ the meeting, as provided in this Article, shall be liable to any shareholder suffering damages ~~damage~~ on account of such failure, to the extent of such damage. In the event that such officer or agent does not receive notice of the date of the ~~a~~ meeting ~~[of shareholders sufficiently in advance of the date of such meeting]~~ reasonably to enable him to comply with the duties prescribed by this Article, the corporation, ~~but~~ not such officer or agent, shall be liable to any shareholder suffering damage on account of such failure, to the extent of such damage.

SECTION 13. Part Two, Texas Business Corporation Act, is amended by adding Article 2.25-1 to read as follows:

Art. 2.25-1. NOTICE BY ELECTRONIC TRANSMISSION. A. On consent of a shareholder, notice from a corporation under any provision of this Act, the articles of incorporation, or the bylaws may be given to the shareholder by electronic transmission. The shareholder may specify the form of electronic transmission to be used to communicate notice. The shareholder may revoke this consent by written notice to the corporation. The shareholder's consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the secretary, assistant secretary, or transfer agent of the corporation, or another person responsible for delivering notice on behalf of the corporation knows that delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of shareholder consent does not invalidate a meeting or other action.

B. Notice under this article is deemed given when the notice is:

- (1) transmitted to a facsimile number provided by the shareholder for the purpose of receiving notice;
- (2) transmitted to an electronic mail address provided by the shareholder for the purpose of receiving notice;
- (3) posted on an electronic network and a message is sent to the shareholder at the address provided by the shareholder for the purpose of alerting the shareholder of a posting; or
- (4) communicated to the shareholder by any other form of electronic transmission consented to by the shareholder.

11-1 C. An affidavit of the secretary, assistant secretary,  
 11-2 transfer agent, or other agent of the corporation that notice has  
 11-3 been given by electronic transmission is, in the absence of fraud,  
 11-4 prima facie evidence that the notice was given.

11-5 SECTION 14. Sections C and D, Article 2.29, Texas Business  
 11-6 Corporation Act, are amended to read as follows:

11-7 C. Any shareholder may vote either in person or by proxy  
 11-8 executed in writing by the shareholder. A telegram, telex,  
 11-9 cablegram, or other form of electronic ~~[similar]~~ transmission,  
 11-10 including telephone transmission, by the shareholder, or a  
 11-11 photographic, photostatic, facsimile, or similar reproduction of a  
 11-12 writing executed by the shareholder, shall be treated as an  
 11-13 execution in writing for purposes of this Section. Any electronic  
 11-14 transmission must contain or be accompanied by information from  
 11-15 which it can be determined that the transmission was authorized by  
 11-16 the shareholder. No proxy shall be valid after eleven (11) months  
 11-17 from the date of its execution unless otherwise provided in the  
 11-18 proxy. A proxy shall be revocable unless the proxy form  
 11-19 conspicuously states that the proxy is irrevocable and the proxy is  
 11-20 coupled with an interest. Proxies coupled with an interest include  
 11-21 the appointment as proxy of:

- 11-22 (1) a pledgee;
- 11-23 (2) a person who purchased or agreed to purchase, or
- 11-24 owns or holds an option to purchase, the shares;
- 11-25 (3) a creditor of the corporation who extended it
- 11-26 credit under terms requiring the appointment;
- 11-27 (4) an employee of the corporation whose employment
- 11-28 contract requires the appointment; or
- 11-29 (5) a party to a voting agreement created under
- 11-30 Section B, Article 2.30, of this Act.

11-31 An irrevocable proxy, if noted conspicuously on the  
 11-32 certificate representing the shares that are subject to the  
 11-33 irrevocable proxy or, in the case of uncertificated shares, if  
 11-34 notation of the irrevocable proxy is contained in the notice sent  
 11-35 pursuant to Section D of Article 2.19 of this Act with respect to  
 11-36 the shares that are subject to the irrevocable proxy, shall be  
 11-37 specifically enforceable against the holder of those shares or any  
 11-38 successor or transferee of the holder. Unless noted conspicuously  
 11-39 on the certificate representing the shares that are subject to the  
 11-40 irrevocable proxy or, in the case of uncertificated shares, unless  
 11-41 notation of the irrevocable proxy is contained in the notice sent  
 11-42 pursuant to Section D of Article 2.19 of this Act with respect to  
 11-43 the shares that are subject to the irrevocable proxy, an  
 11-44 irrevocable proxy, even though otherwise enforceable, is  
 11-45 ineffective against a transferee for value without actual knowledge  
 11-46 of the existence of the irrevocable proxy at the time of the  
 11-47 transfer or against any subsequent transferee (whether or not for  
 11-48 value), but such an irrevocable proxy shall be specifically  
 11-49 enforceable against any other person who is not a transferee for  
 11-50 value from and after the time that the person acquires actual  
 11-51 knowledge of the existence of the irrevocable proxy.

11-52 D. (1) At each election for directors every shareholder  
 11-53 entitled to vote at such election shall have the right (a) to vote  
 11-54 the number of shares owned by him for as many persons as there are  
 11-55 directors to be elected and for whose election he has a right to  
 11-56 vote or (b) only if ~~[unless]~~ expressly permitted ~~[prohibited]~~  
 11-57 by the articles of incorporation (in general or with respect to a  
 11-58 specified class or series of shares or group of classes or series of  
 11-59 shares) and subject to subsection (2) of this Section D, to cumulate  
 11-60 his votes by giving one candidate as many votes as the number of  
 11-61 such directors multiplied by his shares shall equal, or by  
 11-62 distributing such votes on the same principle among any number of  
 11-63 such candidates.

11-64 (2) Cumulative voting shall not be allowed in an  
 11-65 election of directors unless the articles of incorporation  
 11-66 expressly grant that right, and a shareholder who intends to  
 11-67 cumulate his votes as herein authorized shall have given written  
 11-68 notice of such intention to the secretary of the corporation on or  
 11-69 before the day preceding the election at which such shareholder

intends to cumulate his votes. All shareholders entitled to vote cumulatively may cumulate their votes if any shareholder gives the written notice provided for herein.

(3) Except as provided by the articles of incorporation, a shareholder of a corporation incorporated before September 1, 2003, has the right to cumulatively vote the number of shares the shareholder owns in the election of directors to the extent permitted by this article. A corporation may limit or deny a shareholder's right to cumulatively vote any time after September 1, 2003, by amending its articles of incorporation.

SECTION 15. Article 2.32, Texas Business Corporation Act, is amended to read as follows:

Art. 2.32. NUMBER AND ELECTION OF DIRECTORS. A. The board of directors of a corporation shall consist of one or more members. The number of directors shall be fixed by, or in the manner provided in, the articles of incorporation or the bylaws, except as to the number constituting the initial board of directors, which number shall be fixed by the articles of incorporation. The number of directors may be increased or decreased from time to time by amendment to, or in the manner provided in, the articles of incorporation or the bylaws, but no decrease shall have the effect of shortening the term of any incumbent director. In the absence of a bylaw or a provision of the articles of incorporation fixing the number of directors or providing for the manner in which the number of directors shall be fixed, the number of directors shall be the same as the number constituting the initial board of directors as fixed by the articles of incorporation. The names and addresses of the members of the initial board of directors shall be stated in the articles of incorporation. Unless otherwise provided by the articles of incorporation or the bylaws, a director may resign at any time by giving notice in writing or by electronic transmission to the corporation. ~~Absent resignation or removal [removed]~~ in accordance with the provisions of the bylaws or the articles of incorporation, such persons shall hold office until the first annual meeting of shareholders, and until their successors shall have been elected and qualified. At the first annual meeting of shareholders and at each annual meeting thereafter, the holders of shares entitled to vote in the election of directors shall elect directors to hold office until the next succeeding annual meeting, except in case of the classification of directors as permitted by this Act.

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

C. Except as otherwise provided in this Article, the bylaws, or the articles of incorporation, ~~[may provide that]~~ at any meeting of shareholders called expressly for that purpose, any director or the entire board of directors may be removed, with or without cause, by a vote of the holders of a ~~[specified portion, but not less than a]~~ majority ~~[7]~~ of the shares then entitled to vote at an election of the director or directors ~~[, subject to any further restrictions on removal that may be contained in the bylaws]~~. Whenever the holders of any class or series of shares or any such group are entitled to elect one or more directors by the provisions of the articles of incorporation, only the holders of shares of that class or series or

group shall be entitled to vote for or against the removal of any director elected by the holders of shares of that class or series or group. In the case of a corporation having cumulative voting, if less than the entire board is to be removed, no one of the directors may be removed if the votes cast against his removal would be sufficient to elect him if then cumulatively voted at an election of the entire board of directors, or if there be classes of directors, at an election of the class of directors of which he is a part. In the case of a corporation whose directors have been classified as permitted by this Act, unless the articles of incorporation otherwise provide, a director may not be removed except for cause.

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

SECTION 16. Section A, Article 2.36, Texas Business Corporation Act, is amended to read as follows:

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

SECTION 17. Article 2.37, Texas Business Corporation Act, is amended by adding Section C to read as follows:

C. On consent of a director, notice of the date, time, place, or purpose of a regular or special meeting of the board of directors may be given to the director by electronic transmission. The director may specify the form of electronic transmission to be used to communicate notice. The director may revoke this consent by written notice to the corporation. The director's consent is deemed to be revoked if the corporation is unable to deliver by electronic transmission two consecutive notices, and the secretary of the corporation or other person responsible for delivering the notice on behalf of the corporation knows that the delivery of these two electronic transmissions was unsuccessful. The inadvertent failure to treat the unsuccessful transmissions as a revocation of the director's consent does not invalidate a meeting or other action. An affidavit of the secretary or other agent of the corporation that notice has been given by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was given. Notice under this section is deemed given when the notice is:

(1) transmitted to a facsimile number provided by the director for the purpose of receiving notice;

(2) transmitted to an electronic mail address provided by the director for the purpose of receiving notice;

(3) posted on an electronic network and a message is sent to the director at the address provided by the director for the purpose of alerting the director of a posting; or

(4) communicated to the director by any other form of electronic transmission consented to by the director.

SECTION 18. Section A, Article 2.41, Texas Business Corporation Act, is amended to read as follows:

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

(1) Directors of a corporation who vote for or assent to a distribution by the corporation that is not permitted by Article 2.38 of this Act shall be jointly and severally liable to the corporation for the amount by which the distributed amount

exceeds the amount permitted by Article 2.38 of this Act to be distributed; provided that a director shall have no liability for the excess amount, or any part of that excess, if on any date after the date of the vote or assent authorizing the distribution, a distribution of that excess or that part would have been permitted by Article 2.38.

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

SECTION 20. Section A, Article 3.02, Texas Business Corporation Act, is amended to read as follows:

A. The articles of incorporation shall set forth:

(1) The name of the corporation;  
 (2) The period of duration, which may be perpetual;  
 (3) The purpose or purposes for which the corporation is organized which may be stated to be, or to include, the transaction of any or all lawful business for which corporations may be incorporated under this Act;

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

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

(6) If the corporation is to issue the shares of any class in series, then the designation of each series and a statement of the variations in the preferences, limitations and relative rights as between series insofar as the same are to be fixed in the articles of incorporation, and a statement of any authority to be vested in the board of directors to establish series and fix and determine the preferences, limitations and relative rights of each series;

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

~~[(8)]~~ Any provision limiting or denying to

shareholders the preemptive right to acquire additional or treasury shares of the corporation;

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

(9) ~~[(10)]~~ Any provision, not inconsistent with law, including any provision which under this Act is required or permitted to be set forth in the bylaws or which is permitted to be included pursuant to Article 2.30-1 of this Act, providing for the regulation of the internal affairs of the corporation;

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

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

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

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

SECTION 21. Section A, Article 4.01, Texas Business Corporation Act, is amended to read as follows:

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

SECTION 22. Section A, Article 4.02, Texas Business Corporation Act, is amended to read as follows:

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

(1) The board of directors shall adopt a resolution setting forth the proposed amendment and, unless the amendment is undertaken under authority granted to the board of directors in the articles of incorporation in accordance with Article 2.13 of this Act, if shares have been issued, directing that it be submitted to a vote at a meeting of shareholders, which may be either an annual or

a special meeting. If no shares have been issued, the amendment shall be adopted by resolution of the board of directors and the provisions for adoption by shareholders shall not apply. The resolution may incorporate the proposed amendment in restated articles of incorporation which contain a statement that except for the designated amendment the restated articles of incorporation correctly set forth without change the corresponding provisions of the articles of incorporation as heretofore amended, and that the restated articles of incorporation together with the designated amendment supersede the original articles of incorporation and all amendments thereto.

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

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

(4) The resolution authorizing a proposed amendment to the articles of incorporation may provide that at any time before the filing of the amendment with the secretary of state is effective, notwithstanding authorization of the proposed amendment by the shareholders of the corporation, the board of directors may abandon the proposed amendment without further action by the shareholders.

SECTION 23. Section B, Article 4.04, Texas Business Corporation Act, is amended to read as follows:

B. The articles of amendment shall set forth:

(1) The name of the corporation.

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

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

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

[(5) The number of shares voted for and against the amendment, respectively, and, if the shares of any class are entitled to vote thereon as a class or series, the number of shares of each such class or series voted for and against the amendment, respectively, or if no shares have been issued a statement to that effect.]

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

[(7) If the amendment effects a change in the amount of stated capital, then a statement of the manner in which the same is



17-1 ~~effected and a statement, expressed in dollars, of the amount of~~  
 17-2 ~~stated capital as changed by the amendment.]~~

17-3 SECTION 24. Sections A and D, Article 4.10, Texas Business  
 17-4 Corporation Act, are amended to read as follows:

17-5 A. When redeemable shares of a corporation are redeemed or  
 17-6 purchased by the corporation, the redemption or purchase shall  
 17-7 effect a cancellation of such shares~~[, and a statement of~~  
 17-8 ~~cancellation shall be filed as provided in this Article]~~.  
 17-9 Thereupon such shares shall be restored to the status of authorized  
 17-10 but unissued shares, unless the articles of incorporation provide  
 17-11 that such shares when redeemed or purchased shall not be reissued,  
 17-12 in which case the ~~[filing of the statement of cancellation shall~~  
 17-13 ~~operate as an amendment to the articles of incorporation and shall~~  
 17-14 ~~reduce the]~~ number of shares of the class so cancelled which the  
 17-15 corporation is authorized to issue shall be reduced by the number of  
 17-16 shares so cancelled. If the shares so redeemed and purchased  
 17-17 constitute all the outstanding shares of any particular class of  
 17-18 shares and if the articles of incorporation provide that the shares  
 17-19 of such class when redeemed and repurchased shall not be reissued,  
 17-20 the corporation may not issue any additional shares of the ~~[filing~~  
 17-21 ~~of the statement of cancellation shall operate as an amendment to~~  
 17-22 ~~the articles of incorporation by eliminating therefrom all~~  
 17-23 ~~reference to such]~~ class of shares ~~[and shall reduce the classes of~~  
 17-24 ~~shares which the corporation is authorized to issue accordingly]~~.

17-25 D. The ~~[filing of the statement of]~~ cancellation of shares  
 17-26 under this article shall effect a reduction of the stated capital of  
 17-27 the corporation by an amount equal to that part of the stated  
 17-28 capital which was, at the time of the cancellation, represented by  
 17-29 the shares so cancelled.

17-30 SECTION 25. Sections A and D, Article 4.11, Texas Business  
 17-31 Corporation Act, are amended to read as follows:

17-32 A. A corporation may, at any time, by resolution of its  
 17-33 board of directors, cancel all or any part of its treasury shares~~[,~~  
 17-34 ~~and in such event a statement of cancellation shall be filed as~~  
 17-35 ~~provided in this Article]~~.

17-36 D. Upon the ~~[filing of such statement of]~~ cancellation of  
 17-37 the treasury shares, the stated capital of the corporation shall be  
 17-38 deemed to be reduced by that part of the stated capital which was,  
 17-39 at the time of such cancellation, represented by the shares so  
 17-40 cancelled, and the shares so cancelled shall be restored to the  
 17-41 status of authorized but unissued shares.

17-42 SECTION 26. Section D, Article 4.12, Texas Business  
 17-43 Corporation Act, is amended to read as follows:

17-44 D. Upon the approval [filing] of such resolution by the  
 17-45 shareholders [statement], the stated capital of the corporation  
 17-46 shall be reduced as therein set forth.

17-47 SECTION 27. Section C, Article 5.01, Texas Business  
 17-48 Corporation Act, is amended to read as follows:

17-49 C. The plan of merger may set forth:

17-50 (1) any amendments to the articles of incorporation of  
 17-51 any surviving corporation;

17-52 (2) provisions relating to a share exchange; and

17-53 (3) any other provisions relating to the merger,  
 17-54 including a provision requiring that the plan of merger be  
 17-55 submitted to shareholders regardless of whether the board of  
 17-56 directors determines after adopting the resolution or making the  
 17-57 determination required by Section B, Article 5.03 of this Act, that  
 17-58 the plan of merger is not advisable and recommends that the  
 17-59 shareholders reject it.

17-60 SECTION 28. Section C, Article 5.02, Texas Business  
 17-61 Corporation Act, is amended to read as follows:

17-62 C. The plan of exchange may set forth any other provisions  
 17-63 relating to the exchange and may be contained in and be a part of a  
 17-64 plan of merger, including a provision requiring that the plan of  
 17-65 exchange be submitted to shareholders regardless of whether the  
 17-66 board of directors determines after adopting the resolution or  
 17-67 making the determination required by Section B, Article 5.03 of  
 17-68 this Act, that the plan of exchange is not advisable and recommends  
 17-69 that the shareholders reject it.

SECTION 29. Article 5.03, Texas Business Corporation Act, is amended by amending Sections C and H and adding Sections H-1 and M to read as follows:

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

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

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

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

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

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

(5) the articles of incorporation and bylaws of the holding company immediately following the effective time of the merger contain provisions identical to the articles of incorporation and bylaws of the corporation immediately prior to the effective time of the merger (other than provisions, if any, regarding the incorporator or incorporators, the corporate name, the registered office and agent, the initial board of directors, and the initial subscribers of shares and such provisions contained in any amendment to the certificate as were necessary to effect a change, exchange, reclassification, or cancellation of shares, if such change, exchange, reclassification, or cancellation has become effective);

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

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

(i) any act or transaction by or involving a

surviving entity, other than the election or removal of directors or managers, managing members, or other members of the governing body of the surviving entity, ~~[corporation]~~ that requires for its approval under this Act or its organizational documents ~~[the corporation's articles of incorporation]~~ the approval of shareholders or members of the surviving entity ~~[corporation]~~ shall, by specific reference to this section, require the approval of the shareholders of the holding company (or any successor by merger) by the same vote as is required by this Act or by ~~[and]~~ the organizational documents ~~[articles of incorporation]~~ of the surviving entity;

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

(iii) any amendment of the organizational documents of a surviving entity that is not a corporation, that would, if adopted by a corporation subject to this Act, be required to be included in the articles of incorporation of the corporation, shall also require, by specific reference to this section, the approval of the shareholders of the holding company, or any successor by merger, by the same vote as is required by this Act or by the organizational documents of the surviving entity; and

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

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

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

(7) the directors of the corporation become or remain directors of the holding company on the effective time of the merger;

(8) the shareholders of the corporation will not recognize gain or loss for United States federal income tax purposes as determined by the board of directors of the corporation; and

(9) the board of directors of the corporation adopts a resolution approving the plan of merger.

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

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

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

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

SECTION 30. Section A, Article 5.06, Texas Business Corporation Act, is amended to read as follows:

A. When a merger takes effect:

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

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

(3) all liabilities and obligations of each domestic or foreign corporation and other entity that is a party to the merger shall be allocated to one or more of the surviving or new domestic or foreign corporations and other entities in the manner set forth in the plan of merger, and each surviving or new domestic or foreign corporation, and each surviving or new other entity to which a liability or obligation shall have been allocated pursuant to the plan of merger, shall be the primary obligor therefor and, except as otherwise set forth in the plan of merger or as otherwise provided by law or contract, no other party to the merger, other than a surviving domestic or foreign corporation or other entity liable thereon at the time of the merger and no other new domestic or foreign corporation or other entity created thereby, shall be liable therefor;

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

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

(6) each new domestic corporation, the articles of incorporation of which are set forth in the plan of merger pursuant to Article 5.01 of this Act, shall be incorporated as a corporation under this Act; and each other entity to be incorporated or organized under the laws of this State, the organizational documents of which are set forth in the plan of merger~~[7]~~ shall, upon an executed copy of the articles of merger being delivered to or filed with any required governmental entity with which 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 31. 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 to vote on the plan of merger or plan of exchange:

- (a) listed on a national securities exchange;
- (b) listed on the Nasdaq Stock Market (or successor quotation system) or designated as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or
- (c) held of record by not less than 2,000 holders;

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

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

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

- (i) listed, or authorized for listing upon official notice of issuance, on a national securities exchange;
- (ii) approved for quotation as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or successor entity; or
- (iii) held of record by not less than 2,000 holders;

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

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

SECTION 32. Section A, Article 5.16, Texas Business Corporation Act, is amended to read as follows:

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

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

(b) in the event that the corporation or other entity having at least 90 percent ownership will not be a surviving entity in the merger, by the entity having such ownership adopting a plan of merger in the manner required by the laws of its jurisdiction of organization or formation and its organizational or

other constituent documents, except that no action under Section 5.03 shall be required to be taken by the corporation or corporations whose shares are so owned, and executing and filing articles of merger in accordance with Section B of this Article.

SECTION 33. Section A, Article 6.04, Texas Business Corporation Act, is amended to read as follows:

A. Before filing articles of dissolution:

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

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

(3) The directors of the corporation shall manage the process of winding up the business or affairs of the corporation. The corporation shall proceed to collect its assets, dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, or discharge all its debts, liabilities, and obligations, or make adequate provision for payment, satisfaction, or discharge thereof, and do all other acts required to liquidate its business and affairs, except that if the properties and assets of the corporation are not sufficient to pay, satisfy, or discharge all the corporation's debts, liabilities, and obligations, the corporation shall apply its properties and assets so far as they will go to the just and equitable payment, satisfaction, or discharge of its debts, liabilities, and obligations or shall make adequate provision for such application. After paying, satisfying, or discharging all its debts, liabilities, and obligations, or making adequate provision for payment, satisfaction, or discharge thereof, the corporation shall then distribute the remainder of its properties and assets, either in cash or in kind, to its shareholders according to their respective rights and interests.

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

SECTION 34. Part Six, Texas Business Corporation Act, is amended by adding Article 6.08 to read as follows:

Art. 6.08. FRAUDULENT TERMINATION. A. Notwithstanding any other provision of this Act, a court may order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. In an action under this Article, any limitation period provided by law is tolled in accordance with the discovery rule.

B. The Secretary of State shall take any action necessary to implement an order under this Article.

SECTION 35. Section A, Article 8.05, Texas Business Corporation Act, is amended to read as follows:

A. In order to procure a certificate of authority to transact business in this State, a foreign corporation shall make application therefor to the Secretary of State, which application shall set forth:

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

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

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

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

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

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

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

(8) A statement that the corporation exists as a valid corporation under the laws of the corporation's jurisdiction of formation ~~[of the aggregate number of shares which the corporation has authority to issue, itemized by classes, par value of shares, shares without par value, and series, if any, within a class].~~

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

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

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

SECTION 36. Section A, Article 8.06, Texas Business Corporation Act, is amended to read as follows:

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

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

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

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

SECTION 37. Article 9.09, Texas Business Corporation Act, is amended to read as follows:

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

SECTION 38. Sections A and B, Article 9.10, Texas Business Corporation Act, are amended to read as follows:

A.(1) Any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall have been signed by the holder or holders of all the shares entitled to vote with respect to the action that is the subject of the consent. The articles of incorporation may provide that any action required by this Act to be taken at any annual or special meeting of shareholders, or any action which may be taken at

any annual or special meeting of shareholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holder or holders of ~~or~~ shares having not less than the minimum number of votes that would be necessary to take such action at a meeting at which ~~the~~ holders of all shares entitled to vote on the action were present and voted.

(2) Every written consent signed by the holders of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall bear the date of signature of each shareholder who signs the consent. No written consent signed by the holder ~~holders~~ of less than all the shares entitled to vote with respect to the action that is the subject of the consent shall be effective to take the action that is the subject of the consent unless, within 60 days after the date of the earliest dated consent delivered to the corporation in a ~~the~~ manner required by this Article, a consent or consents signed by the holder or holders of shares having not less than the minimum number of votes that would be necessary to take the action that is the subject of the consent are delivered to the corporation by delivery to its registered office, registered agent, principal place of business, transfer agent, registrar, exchange agent or an officer or agent of 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, or similarly reliable ~~similar~~ reproduction of a consent in writing signed by a shareholder may be substituted or used instead of the original writing for any purpose for which the original writing could be used, if the reproduction is a complete reproduction of the entire original writing ~~[, shall be regarded as signed by the shareholder for purposes of this Section].~~

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

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

B. Unless otherwise restricted by the articles of



incorporation or bylaws [~~by-laws~~], any action required or permitted to be taken at a meeting of the board of directors or any committee may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members of the board of directors or committee, as the case may be. A telegram, telex, cablegram, or other electronic transmission by a director consenting to an action to be taken and transmitted by a director is considered 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 director and the date on which the director transmitted the transmission. Such consent shall have the same force and effect as a unanimous vote at a meeting, and may be stated as such in any document or instrument filed with the Secretary of State.

SECTION 39. Section A, Article 9.14, Texas Business Corporation Act, is amended to read as follows:

A. This Act applies to each domestic corporation and to each foreign corporation that is transacting business in this state, regardless of whether the foreign corporation is registered to transact business in this State. This Act does not apply to domestic corporations organized under any statute other than this Act or to any foreign corporations granted authority to transact business within this State under any statute other than this Act; provided, however, that if any domestic corporation was heretofore or is hereafter organized under or is governed by a statute other than this Act or the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) that contains no provisions in regard to some of the matters provided for in this Act, or any foreign corporation was heretofore or is hereafter granted authority to transact business within this State under a statute other than this Act or the Texas Non-Profit Corporation Act that contains no provisions in regard to some of the matters provided for in this Act in respect of foreign corporations, or if such a statute specifically provides that the general laws for incorporation or for the granting of a certificate of authority to transact business in this State, as the case may be, shall supplement the provisions of such statute, then the provisions of this Act shall apply to the extent that they are not inconsistent with the provisions of such other statute; provided further, however, that this Act shall not apply to any domestic corporation organized under or governed by the Texas Non-Profit Corporation Act or any foreign corporation granted authority to transact business within this State under the Texas Non-Profit Corporation Act.

SECTION 40. Section A(4), Article 13.02, Texas Business Corporation Act, is amended to read as follows:

(4) "Business combination" means:

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

(i) an affiliated shareholder;

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

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

(b) a sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, including an allocation of assets pursuant to a merger, to or with the affiliated shareholder, or an affiliate or associate of the affiliated shareholder, of assets of the issuing public corporation or any subsidiary that:

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

corporation;

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

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

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

(d) the adoption of a plan or proposal for the liquidation or dissolution of an issuing public corporation proposed by, or pursuant to any agreement, arrangement, or understanding, whether or not in writing, with an affiliated shareholder or an affiliate or associate of the affiliated shareholder;

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

(f) the direct or indirect receipt by an affiliated shareholder or an affiliate or associate of the affiliated shareholder of the benefit of a loan, advance, guarantee, pledge, or other financial assistance or a tax credit or other tax advantage provided by or through the issuing public corporation, except proportionately as a shareholder of the issuing public corporation.

SECTION 41. Section B, Article 13.07, Texas Business Corporation Act, is amended to read as follows:

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

SECTION 42. The Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) is amended by adding Article 6.07 to read as follows:

Art. 6.07. FRAUDULENT TERMINATION. A. Notwithstanding any other provision of this Act, a court may order the revocation of dissolution of a corporation that was dissolved as a result of actual or constructive fraud. In an action under this Article, any limitation period provided by law is tolled in accordance with the discovery rule.

B. The Secretary of State shall take any action necessary to implement an order under this Article.

SECTION 43. The following laws are repealed:

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

27-1 (2) Article 3.05, Texas Business Corporation Act;  
27-2 (3) Sections B and C, Article 4.10, Texas Business  
27-3 Corporation Act;  
27-4 (4) Sections B and C, Article 4.11, Texas Business  
27-5 Corporation Act;  
27-6 (5) Sections B and C, Article 4.12, Texas Business  
27-7 Corporation Act;  
27-8 (6) Article 2.01, Texas Miscellaneous Corporation  
27-9 Laws Act (Article 1302-2.01, Vernon's Texas Civil Statutes);  
27-10 (7) Article 2.02, Texas Miscellaneous Corporation  
27-11 Laws Act (Article 1302-2.02, Vernon's Texas Civil Statutes);  
27-12 (8) Article 2.03, Texas Miscellaneous Corporation  
27-13 Laws Act (Article 1302-2.03, Vernon's Texas Civil Statutes);  
27-14 (9) Article 2.04, Texas Miscellaneous Corporation  
27-15 Laws Act (Article 1302-2.04, Vernon's Texas Civil Statutes);  
27-16 (10) Article 2.09, Texas Miscellaneous Corporation  
27-17 Laws Act (Article 1302-2.09, Vernon's Texas Civil Statutes);  
27-18 (11) Article 2.09A, Texas Miscellaneous Corporation  
27-19 Laws Act (Article 1302-2.02.09A, Vernon's Texas Civil Statutes);  
27-20 (12) Article 2.10, Texas Miscellaneous Corporation  
27-21 Laws Act (Article 1302-2.10, Vernon's Texas Civil Statutes);  
27-22 (13) Article 3.02, Texas Miscellaneous Corporation  
27-23 Laws Act (Article 1302-3.02, Vernon's Texas Civil Statutes); and  
27-24 (14) Article 3.03, Texas Miscellaneous Corporation  
27-25 Laws Act (Article 1302-3.03, Vernon's Texas Civil Statutes).  
27-26 SECTION 44. This Act takes effect September 1, 2003.

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