

BILL ANALYSIS

Senate Research Center
79R13 CLG-F

H.B. 1319
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Business & Commerce
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Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 1319 makes technical amendments to the Business Organizations Code (code) that serve the following functions: incorporates the changes that were made to the prior source laws by H.B. 1165, 1637, and 3213, and S.B. 280, which were also adopted by the 78th Legislature, 2003, and which made substantive changes to the prior laws so that they are no longer consistent with the code; corrects errors in the code; reflects the actual effective date of the code; simplifies filing procedures for certain types of transactions; clarifies certain provisions of the code; corrects inconsistent provisions of the code; fills gaps in coverage of certain provisions of the code; and clarifies the transition rules for application of the code's provisions versus the provisions of prior law.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Business Organizations Code, to define "electronic transmission" and redefine "foreign filing entity," "general partnership," "limited partnership," and "writing" or "written."

SECTION 2. Amends Section 1.006, Business Organizations Code, to add "articles of merger," "articles of exchange," "articles of conversion," "articles of amendment," and "articles of dissolution" to the list of synonymous terms.

SECTION 3. Amends Section 1.007, Business Organizations Code, to specify that a writing has been signed by a person when the writing includes, bears, or incorporates the person's signature.

SECTION 4. Amends Section 2.010, Business Organizations Code, to prohibit a nonprofit corporation from being organized or registered under this code to conduct its affairs in this state to engage in water supply or sewer service except as an entity incorporated under Chapter 67 (Nonprofit Water Supply or Sewer Service Corporations), Water Code.

SECTION 5. Amends Section 2.101, Business Organizations Code, to include the power to renounce, in its certificate of formation or by action of its governing authority, an interest or expectance of the entity in, or an interest or expectancy of the entity in being offered an opportunity to participate in, specified business opportunities or a specified class or category of business opportunities presented to the entity or one or more of its managerial officials or owners in the powers of a domestic entity. Makes nonsubstantive changes.

SECTION 6. Amends Section 3.051(b), Business Organizations Code, to authorize an amended certificate of formation to contain only provisions that effect a change, exchange, reclassification, subdivision, combination, or cancellation in the membership or ownership interests or the rights of owners or member of the filing entity.

SECTION 7. Amends Section 3.054, Business Organizations Code, as follows:

Sec. 3.054. New heading: EXECUTION OF CERTIFICATE OF AMENDMENT OF FOR-PROFIT CORPORATION. Deletes existing text requiring a certificate of amendment for a for-profit corporation to state certain provisions.

SECTION 8. Amends Section 3.151(b), Business Organizations Code, to specify that the books, records, minutes and ownership or membership records of any filing entity are authorized to be in written paper form, rather than written form, or another form capable of being converted into written paper form within a reasonable time.

SECTION 9. Amends Section 4.002(a), Business Organizations Code, to make a conforming change.

SECTION 10. Amends Section 4.152, Business Organizations Code, to require the secretary of state to impose a fee for filing a certificate of termination, rather than a certificate of winding up and termination, for a filing by or for a for-profit corporation.

SECTION 11. Amends Section 4.153, Business Organizations Code, to require the secretary of state to impose a fee for filing a certificate of termination, rather than dissolution, for a filing by or for a nonprofit corporation.

SECTION 12. Amends Section 4.155, Business Organizations Code, to require the secretary of state to impose a fee for filing a certificate of termination, rather than a certificate of winding up and termination, for a filing by or for a limited partnership.

SECTION 13. Amends Subchapter D, Chapter 4, Business Organizations Code, by adding Section 4.161, as follows:

Sec. 4.161. FILING FEES: COOPERATIVE ASSOCIATIONS. Requires the secretary of state to impose the same fee as the filing fee for a similar instrument under Section 4.153 (Filing Fees: Nonprofit Corporations) for a filing by or for a cooperative association.

SECTION 14. Amends Section 5.063(b), Business Organizations Code, to provide that a domestic or foreign limited liability partnership is not subject to Section 5.053 (Identical and Deceptively Similar Names Prohibited).

SECTION 15. Amends Subchapter C, Chapter 5, Business Organizations Code, by adding Section 5.1041, as follows:

Sec. 5.1041. PROHIBITION ON FEE FOR WITHDRAWAL OF RESERVATION OF NAME. Prohibits the secretary of state from imposing a fee for the filing of a written notice of withdrawal of a reservation of name.

SECTION 16. Amends Section 6.051(a), Business Organizations Code, as follows:

(a) Requires notice of a meeting of the owners, members, or governing persons of a domestic entity, or a committee of the owners, members, or governing persons, to:

(1) be given in the manner determined by the governing authority of the entity; and

(2) state the date and time of the meeting and:

(A) if the meeting is not held solely by using conference telephone or other communications system, the location of the meeting; or

(B) if the meeting is held solely or in part by using a conference telephone or other communications system, the form of communications system to be used for the meeting and the means of accessing the communications system.

SECTION 17. Amends Section 6.052, Business Organizations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Specifies that a person who attends the meeting is entitled to the same waiver of notice as a person who participates in the meeting.

(c) Provides that, unless required by the certificate of formation nor the governing documents, the business to be transacted at a meeting of the owners, members, or governing persons of a domestic entity, or the members of a committee of the governing persons, or the purpose of such a meeting, is not required to be specified in a written waiver of notice of the meeting.

SECTION 18. Amends Subchapter E, Chapter 6, Business Organizations Code, by adding Section 6.205, as follows:

Sec. 6.205. REPRODUCTION OF CONSENT. Authorizes any photographic, photostatic, facsimile, or similarly reliable reproduction of a consent in writing signed by an owner, member, or governing person of a filing entity to 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.

SECTION 19. Amends the heading to Subchapter G, Chapter 6, Business Organizations Code, to read as follows:

SUBCHAPTER G. APPLICABILITY OF CHAPTER

SECTION 20. Amends Sections 8.001(1) and (9), Business Organizations Code, to redefine "delegate" and "representative."

SECTION 21. Amends Section 8.051, Business Organizations Code, to include a delegate amongst the people an enterprise is required to indemnify. Makes conforming changes.

SECTION 22. Amends Section 8.103(a), Business Organizations Code, to modify requirements for making the determinations required under Section 8.101(a) (Permissive Indemnification).

SECTION 23. Amends the heading to Section 8.104, Business Organizations Code, to read as follows:

Sec. 8.104. ADVANCEMENT OF EXPENSES TO PRESENT GOVERNING PERSONS OR DELEGATES.

SECTION 24. Amends Section 8.104(a), Business Organizations Code, to delete an enterprise's authority to reimburse reasonable expenses incurred by a former governing person who is a respondent in a certain proceeding.

SECTION 25. Amends Section 8.105, Business Organizations Code, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Authorizes an enterprise, notwithstanding any other provision of this chapter but subject to Section 8.003, rather than Sections 8.003 and 8.004, and to the extent consistent with other law, to indemnify and advance expenses to a person who is not a governing person, including an officer, employee, or agent, as provided by certain authority. Deletes existing text including a delegate in indemnification.

(d) Authorizes an enterprise, notwithstanding any authorization or determination specified in this chapter, to pay or reimburse, in advance of the final disposition of a proceeding and on terms the enterprise considers appropriate, reasonable expenses incurred by a former managerial official or delegate, or a present or former employee or agent, of the enterprise who was, is, or is threatened to be made a respondent in the proceeding.

(e) Provides that a determination of indemnification for a person who is not a governing person of an enterprise, including an officer, employee, or agent, is not required to be made in accordance with Section 8.103 (Manner for Determining Permissive Indemnification).

SECTION 26. Amends Section 9.007, Business Organizations Code, as follows:

Sec. 9.007. New heading: APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY PARTNERSHIP. (a) Provides that a foreign limited liability partnership registers by filing an application for registration under this section as provided by Chapter 4 (Filings).

(b) Requires the application for registration to state certain modified information.

(c) Provides that Subchapter K (Foreign Limited Liability Partnerships), Chapter 152, governs the registration of a foreign limited liability partnership to transact business in this state.

SECTION 27. Amends Section 9.008, Business Organizations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Specifies that the registration of a foreign limited liability partnership is not effective when the registration application filed under Chapter 4 (Filings) takes effect.

(c) Provides that Subchapter K (Foreign Limited Liability Partnerships), Chapter 152, governs the effect of registration of a foreign limited liability partnership to transact business in this state.

SECTION 28. Amends Section 9.009, Business Organizations Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes a foreign filing entity to amend the entity's application for registration to disclose a change that results from certain events.

SECTION 29. Amends Section 9.010, Business Organizations Code, as follows:

Sec. 9.010. New heading: NAME CHANGE OF FOREIGN FILING ENTITY. Makes a conforming change.

SECTION 30. Amends Sections 9.011(a), (b), (d), (f), and (g), Business Organizations Code, as follows:

(a) Includes the authority of a foreign limited liability partnership registered in this state to withdraw the partnership's registration at any time by filing a certificate of withdrawal in the manner required by Chapter 4 (Filing).

(b), (d), (f), and (g) Makes conforming changes.

SECTION 31. Amends Subchapter D, Chapter 9, Business Organizations Code, by adding Section 9.162, as follows:

Sec. 9.162. APPLICABILITY OF SUBCHAPTER TO FOREIGN LIMITED LIABILITY PARTNERSHIPS. Provides that this subchapter applies to a partnership registered as a foreign limited liability partnership to the same extent as it applies to a foreign filing entity.

SECTION 32. Amends Section 9.204, Business Organizations Code, as follows:

Sec. 9.204. New heading: RIGHT OF FOREIGN ENTITY TO PARTICIPATE IN BUSINESS OF CERTAIN DOMESTIC ENTITIES. Makes conforming changes.

SECTION 33. Amends Section 10.005, Business Organizations Code, as follows:

Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER. (a) Defines "merging domestic entity" and "surviving entity subsidiary." Redefines "holding company."

(b) Provides that the approval of the owners or members of a merging domestic entity that is a party to a merger under a plan of merger that creates a holding company is not required under certain modified circumstances.

(c) Provides that Subsections (b)(7) and (8) do not require identical provisions regarding the organizer, rather than incorporator, or organizers, the entity name, the registered office and agent, the initial governing persons, and the initial subscribers of ownership interests and provisions contained in any amendment to the governing documents, rather than certificate, as were necessary to effect a change, exchange, reclassification, or cancellation of ownership or membership interests, if the change, exchange, reclassification, or cancellation was in effect preceding the merger. Makes conforming changes.

(d) Sets forth certain procedural guidelines regarding the governing documents of a surviving entity subsidiary of merging domestic entity, notwithstanding Subsection (b)(8).

(e) Makes conforming changes.

(f) Makes conforming changes.

(g) Prohibits this section from applying to a merger of a partnership with or into a domestic entity without the approval of the owners or members of the partnership and domestic entity as provided by this code.

SECTION 34. Amends Section 10.006(i), Business Organizations Code, to prohibit this section from applying if a subsidiary organization that is a party to the merger is a domestic entity that has in its governing documents the provision required by Section 10.005(d)(1) and of which there are outstanding ownership or membership interests that would be entitled to vote on the merger absent this section.

SECTION 35. Amends Section 10.008(a), Business Organizations Code, to change the reference to the certificate of merger to the plan of merger.

SECTION 36. Amends Section 10.107(c), Business Organizations Code, to require a domestic partnership that is converting to approve the plan of conversion in the manner, rather than merger, provided in its partnership agreement.

SECTION 37. Amends Section 10.202, Business Organizations Code, to delete existing text relating to filing a certificate of abandonment.

SECTION 38. Amends Subchapter E, Chapter 10, Business Organizations Code, by adding Section 10.203, as follows:

Sec. 10.203. ABANDONMENT IF NO FILING REQUIRED. (a) Provides that, if no filing is required by this chapter for the abandonment of a merger, interest exchange, or conversion, the merger, interest exchange, or conversion is abandoned in a certain manner.

(b) Provides that a filing of a certificate of abandonment under Section 4.057 is not required for the abandonment of a merger, interest exchange, or conversion if no filing is required under Subchapter D to make the merger, interest exchange, or conversion effective.

SECTION 39. Amends Section 10.354(b), Business Organizations Code, as follows:

(b) Prohibits an owner, notwithstanding Subsection (a), subject to Subsection (c), from dissenting from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange if:

- (1) the ownership interest, or a depository receipt in respect of the ownership interest, held by the owner is part of a class or series of ownership interests, or depository receipts in respect of ownership interests, that are, on the record date set for purposes of determining which owners are entitled to vote on the plan of merger, conversion, or exchange, as appropriate, on certain records.
- (2) Remains unchanged.
- (3) Makes conforming changes.

SECTION 40. Amends Subchapter D, Chapter 11, Business Organizations Code, by adding Section 11.153, as follows:

Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION. Authorizes a court, notwithstanding any provision of this code to the contrary, to order the revocation of termination of an entity's existence that was terminated as a result of actual or constructive fraud. Provides that, in an action under this section, any limitation period provided by law is tolled in accordance with the discovery rule. Requires the secretary of state to take any action necessary to implement an order under this section.

SECTION 41. Amends Section 11.315, Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that, subject to Section 11.356 (Limited Survival After Termination), the existence of the filing entity ceases when the certified copy of the decree is filed in accordance with Chapter 4 (Filings).

SECTION 42. Amends Subchapter I, Chapter 11, Business Organizations Code, by adding Section 11.414, as follows:

Sec. 11.414. FILING OF DECREE OF INVOLUNTARY TERMINATION AGAINST FILING ENTITY. (a) Requires the clerk of a court that enters a decree terminating the existence of a filing entity under this subchapter to file a certified copy of the decree in accordance with Chapter 4 (Filings).

(b) Prohibits a fee from being charged for the filing of a decree under this section.

(c) Provides that, subject to Section 11.356 (Limited Survival After Termination), the existence of the filing entity ceases when the certified copy of the decree is filed in accordance with Chapter 4.

SECTION 43. Amends Section 21.052, Business Organizations Code, by adding Subsection (b-1), as follows:

(b-1) Authorizes the resolution [to adopt an amendment to the certificate of formation of a corporation] to provide that at any time before the filing of a certificate of amendment takes effect as provided by Subchapter B (Amendments and Reinstatements of Certificate of Formation), Chapter 3, the board of directors is authorized to abandon the proposed amendment to the certificate of formation without further action by the shareholders of the corporation, notwithstanding authorization of the proposed amendment by the shareholders.

SECTION 44. Amends Section 21.053, Business Organizations Code, as follows:

Sec. 21.053. ADOPTION OF AMENDMENT BY BOARD OF DIRECTORS. (a) Creates subsection from existing text.

(b) Authorizes the board of directors, notwithstanding Section 21.054 (Adoption of Amendment by Shareholders), to adopt a proposed amendment without shareholder approval in the manner provided by Section 21.155 (Series of Shares Established by Board of Directors) if the amendment to the corporation's certificate of formation relates to a series of shares established by the board under authority granted to the board in the certificate of formation.

SECTION 45. Amends Section 21.168(c), Business Organizations Code, to require a formula by which a consideration may be determined for which the shares may be purchased or received from the corporation on the exercise of the right or option to be included in a right or option.

SECTION 46. Amends Section 21.169, Business Organizations Code, by adding Subsections (d) and (e), as follows:

(d) Authorizes the terms of rights or options or the agreement or plan under which the rights or options are issued to provide that the board of directors by resolution may authorize one or more officers of the corporation to take certain actions.

(e) Requires a resolution adopted under Subsection (d)(1) to specify the total number of rights or options the authorized officer or officers are authorized to award. Prohibits an officer from being designated as a recipient of any rights or options that the officer is authorized to award under Subsection (d)(1).

SECTION 47. Amends Section 21.208, Business Organizations Code, to make nonsubstantive changes.

SECTION 48. Amends Section 21.210(a), Business Organizations Code, to authorize a restriction on the transfer or registration of transfer of a security, or on the amount of a corporation's securities authorized to be owned by a person or group of persons, to be imposed by certain methods.

SECTION 49. Amends Section 21.211, Business Organizations Code, as follows:

Sec. 21.211. VALID RESTRICTIONS ON TRANSFER. (a) Creates subsection from existing text. Provides that a restriction placed on the transfer or registration of transfer of a security of a corporation is valid if the restriction reasonably meets certain modified requirements.

(b) Provides that a restriction placed on the transfer or registration of transfer of a security of a corporation, on the amount of the corporation's securities, or on the amount of the corporation's securities that are authorized to be owned by a person or group of persons is conclusively presumed to be for a reasonable purpose if the restriction meets certain requirements.

SECTION 50. Amends the heading to Subchapter H, Chapter 21, Business Organizations Code, to read as follows:

SUBCHAPTER H. SHAREHOLDERS' MEETINGS; NOTICE TO SHAREHOLDERS;
VOTING AND QUORUM

SECTION 51. Amends Section 21.353, Business Organizations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Makes a conforming change.

(c) Requires the notice of the meeting to include information on how to access the list of shareholders entitled to vote at the meeting if a meeting is held by means of remote communication.

SECTION 52. Amends Subchapter H, Chapter 21, Business Organizations Code, by adding Section 21.3531, as follows:

Sec. 21.3531. NOTICE BY ELECTRONIC TRANSMISSION. (a) Authorizes notice from a corporation under this code, the certificate of formation, or the bylaws to be provided to the shareholder by electronic transmission on consent of a shareholder. Authorizes the shareholder to specify the form of electronic transmission to be used to communicate notice.

(b) Sets forth requirements for notice to be considered provided under this section.

(c) Authorizes a shareholder to revoke the shareholder's consent to receive notice by electronic transmission by provided written to the corporation. Sets forth guidelines for determining that the shareholder's consent has been revoked.

(d) Provides that an affidavit of the secretary, assistant secretary, transfer agent, or other agent of a corporation stating that notice has been provided to a shareholder of the corporation by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was provided.

SECTION 53. Amends Section 21.354, Business Organizations Code, by adding Subsection (a-1), to require the list to be open to inspection by a shareholder during the meeting on a reasonably accessible electronic network if a meeting of the shareholders is held by means of remote communication.

SECTION 54. Amends Section 21.362, Business Organizations Code, to make nonsubstantive changes.

SECTION 55. Amends Section 21.372, Business Organizations Code, by adding Subsection (a-1), as follows:

(a-1) Authorizes the list required by Subsection (a), instead of being kept on file, to be kept on a reasonably accessible electronic network if the information required to gain access to the list is provided with notice of meeting. Prohibits Section 21.353(c), Section 21.354(a-1), and this subsection from being construed to require a corporation to include any electronic contact information of a shareholder on the list. Requires a corporation that elects to make the list available on an electronic network to take reasonable measures to ensure the information is available only to shareholders of the corporation.

SECTION 56. Amends Section 21.407, Business Organizations Code, to delete existing text relating to the term of a director removed in accordance with Section 21.409 (Removal of Directors). Makes a nonsubstantive change.

SECTION 57. Amends Section 21.409(a), Business Organizations Code, to delete existing text requiring a vote of a specified proportion, but not less than the majority, to be cast in order to remove a director or directors.

SECTION 58. Amends Subchapter I, Chapter 21, Business Organizations Code, by adding Section 21.4091, as follows:

Sec. 21.4091. RESIGNATION OF DIRECTORS. Authorizes a director of a corporation to resign at any time providing written notice to the corporation, except as otherwise provided by the certificate of formation or bylaws.

SECTION 59. Amends Section 21.411, Business Organizations Code, by adding Subsections (d), (e), (f), and (g), as follows:

(d) Authorizes notice of the date, time, place, or purpose of a regular or special meeting of the board of directors to be provided to a director by electronic transmission on consent of the director. Authorizes the director to specify the form of electronic transmission to be used to communicate notice.

(e) Sets forth requirements for notice to be considered provided under this section.

(f) Authorizes a director to revoke the director's consent to receive notice by electronic transmission by providing written notice to the corporation. Sets forth guidelines for determining that the director's consent has been revoked.

(g) Provides that an affidavit of the secretary, assistant secretary, transfer agent, or other agent of a corporation stating that notice has been provided to a director of the corporation by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was provided.

SECTION 60. Amends Sections 21.416(a) and (b), Business Organizations Code, as follows:

(a) Deletes existing text requiring certain designations regarding committees to be adopted by the majority vote of the entire board of directors.

(b) Provides that, to the extent provided by a resolution of the board of directors designating a committee or by the certificate of formation or bylaws and subject to Subsection (c), the committee has the authority of the board of directors.

SECTION 61. Amends Section 21.452, Business Organizations Code, by adding Subsections (f) and (g), as follows:

(f) Authorizes the plan of merger to be submitted to the shareholders of the corporation with a recommendation that the shareholders not approve the plan of the merger if, after adoption of a resolution under Subsection (b)(2), the board of directors of the corporation determines that the plan of merger is not advisable.

(g) Authorizes a plan of merger to include a provision requiring that the plan of merger be submitted to the shareholders regardless of whether the board of directors determines that it is advisable.

SECTION 62. Amends Section 21.454, Business Organizations Code, by adding Subsections (f) and (g), as follows:

(f) Authorizes the plan of exchange to be submitted to the shareholders of the corporation with a recommendation that the shareholders not approve the plan of the merger if, after adoption of a resolution under Subsection (b)(2), the board of directors of the corporation determines that the plan of merger is not advisable.

(g) Authorizes a plan of exchange for a corporation to include a provision requiring that the plan of exchange be submitted to the shareholders regardless of whether or not the board of directors determines that it is advisable.

SECTION 63. Amends Section 21.552, Business Organizations Code, as follows:

Sec. 21.552. STANDING TO BRING PROCEEDING. (a) Creates subsection from existing text.

(b) Prohibits Subchapter J (Fundamental Business Transactions) or Chapter 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets) from being construed to limit or terminate a shareholder's standing after a merger, to the extent the shareholder of a corporation has standing to institute or maintain a derivative proceeding on behalf of the corporation immediately before the merger.

SECTION 64. Amends Section 21.604, Business Organizations Code, to change the reference from "common stock" to "voting shares."

SECTION 65. Amends Section 21.654, Business Organizations Code, to provide the term of a director, unless the director resigns or is removed.

SECTION 66. Amends Sections 22.104(a) and (c), Business Organizations Code, to change references to "incorporators" to "organizers."

SECTION 67. Amends Subchapter C, Chapter 22, Business Organizations Code, by adding Section 22.109, as follows:

Sec. 22.109. RESTATED CERTIFICATE OF FORMATION. (a) Authorizes the board of directors to adopt a restated certificate of formation as provided by Subchapter B (Amendments and Reinstatements of Certificate of Formation), Chapter 3, by following certain procedures to amend the corporation's certificate of formation, except that member approval is required only if the restated certificate of formation contains an amendment.

(b) Requires a person to file a restated certificate of formation as provided by Chapter 4 (Filings), and the restated certificate of formation takes effect as provided by Subchapter B (Amendments and Reinstatements of Certificate of Formation), Chapter 3.

SECTION 68. Amends Section 22.208(a), Business Organizations Code, to set forth the term of office of a director on the initial board of directors, unless the director resigns or is removed.

SECTION 69. Amends Subchapter E, Chapter 22, Business Organizations Code, by adding Section 22.2111, as follows:

Sec. 22.2111. RESIGNATION OF DIRECTOR. Authorizes a director of a corporation to resign at any time by providing written notice to the corporation to resign at any time by providing written notice to the corporation, except as provided by the certificate of formation or bylaws.

SECTION 70. Amends Section 22.355, Business Organizations Code, to modify the exemptions from certain requirements relating to financial records and annual reports by including postsecondary educational institutions and a career school or college that has received a certificate of approval from the Texas Workforce Commission and by excluding charitable organizations whose activities relate to the conservation and protection of wildlife, fisheries, and allied natural resources. Makes nonsubstantive changes.

SECTION 71. Amends Section 101.102, Business Organizations Code, by adding Subsection (c), to authorize a company agreement to provide for a person to be admitted to the company as a member without acquiring a membership interest in the company if one or more persons own a membership interest in the limited liability company.

SECTION 72. Amends Section 101.103, Business Organizations Code, to make conforming and nonsubstantive changes.

SECTION 73. Amends Section 101.201, Business Organizations Code, to delete existing text relating to a company's records as required under Section 3.151 (Books and Records for All Filing Entities). Makes nonsubstantive changes.

SECTION 74. Amends Section 101.356, Business Organizations Code, by amending Subsection (d) and adding Subsection (f), as follows:

(d) Requires the company's members, except as provided by Subsection (e) or any other section of this title, to approve by an affirmative vote of all the members:

(1) an amendment to the certificate of formation of a limited liability company;
or

(2) a restated certificate of formation that contains an amendment to the certificate of formation of a limited liability company.

(f) Provides that approval of a restated certificate of formation by a limited liability company's members is required only if the restated certificate contains an amendment.

SECTION 75. Amends Subchapter H, Chapter 101, Business Organizations Code, by adding Section 101.359, as follows:

Sec. 101.359. **EFFECTIVE ACTION BY MEMBERS OR MANAGERS WITH OR WITHOUT MEETING.** Authorizes members or managers of a limited liability company to take action at a meeting of the members or managers or without a meeting in any manner permitted by this title, Title 1, or the governing documents of the company. Sets forth guidelines for determining an action effective.

SECTION 76. Amends Section 151.001, Business Organizations Code, to define "distribution."

SECTION 77. Amends Section 152.204(a), Business Organizations Code, to provide that a partner owes a duty of loyalty and a duty of care to the partnership, the other partners, and a transferee of a deceased partner's partnership interest as designated in Section 152.406(a)(2) (relating to the death of a partner).

SECTION 78. Amends Section 152.501(b), Business Organizations Code, to include the provision that an event of withdrawal of a partner occurs on the partner's expulsion by judicial decree, on application by the partnership or another partner, if the judicial decree determines that the partner engaged in certain offenses.

SECTION 79. Amends Section 152.904, Business Organizations Code, as follows:

Sec. 152.904. New heading: **REGISTERED AGENT AND REGISTERED OFFICE.** Requires a foreign limited liability partnership subject to this chapter to maintain a registered office and a registered agent in this state in the same manner and to the same extent as if the partnership were a foreign filing entity. Provides that Subchapters E (Registered Agents and Registered Offices) and F (Service of Process), Chapter 5, apply to a foreign limited liability partnership to the same extent those subchapters apply to a foreign filing entity.

SECTION 80. Amends Section 152.906, Business Organization Code, as follows:

Sec. 152.906. New heading: **WITHDRAWAL OF REGISTRATION.** (a) Authorizes a registration to be voluntarily withdrawn, rather than cancelled, by filing a certification of withdrawal, rather than cancellation, in accordance with this section and Section 9.011 (Voluntary Withdrawal of Registration).

(b) Makes conforming changes.

SECTION 81. Amends Section 152.907, Business Organizations Code, to make conforming changes.

SECTION 82. Amends Section 152.910(a), Business Organizations Code, to provide that a foreign limited liability partnership that transacts business in this state without being registered is subject to Subchapter B (Failure to Register), Chapter 9, to the same extent as a foreign filing entity.

SECTION 83. Amends Section 152.911(a), Business Organizations Code, to authorize an application for registration filed under Section 9.007 (Supplemental Information Required in Application for Registration of Foreign Limited Liability Partnership) to be amended by filing with the secretary of state an application for amendment of registration in accordance with Chapter 4 (Filings).

SECTION 84. Amends Subchapter K, Chapter 152, Business Organizations Code, by adding Section 152.914, as follows:

Sec. 152.914. **REVOCATION OF REGISTRATION BY SECRETARY OF STATE.** (a) Authorizes the secretary of state to revoke the registration of a foreign limited liability partnership for certain failures on the part of the partnership.

(b) Requires the secretary of state to provide notice to a partnership in the same manner and to the same extent as notice is required to be provided to a foreign filing entity if it appears to the secretary of state that, with respect to the foreign limited liability partnership, a circumstance described by Subsection (a) exists.

(c) Requires the secretary of state to reinstate the registration of a foreign limited liability partnership under certain circumstances.

(d) Requires a foreign limited liability partnership, to have its registration reinstated, to comply with the requirements of this section not later than the date the registration would have expired under Section 152.905(e) had the registration not been revoked.

(e) Requires the foreign limited liability partnership to file a certificate of reinstatement in accordance with Chapter 4 (Filings). Sets forth requirements for the contents of the certificate of reinstatement.

SECTION 85. Amends Section 153.052(b), Business Organizations Code, to change the reference to a "certificate of cancellation" to "certificate of termination."

SECTION 86. Amends Subchapter B, Chapter 153, Business Organizations Code, by adding Section 153.053, as follows:

Sec. 153.053. **RESTATED CERTIFICATE OF FORMATION.** (a) Authorizes the general partners to adopt at any time a restated certificate of formation that does not contain an amendment to the certificate of formation.

(b) Authorizes a restated certificate of formation that contains an amendment to the certificate of formation to be adopted at any time for a proper purpose as determined by the general partners.

SECTION 87. Amends the heading to Section 153.151, Business Organizations Code, to read as follows:

Sec. 153.151. **ADMISSION OF GENERAL PARTNERS.**

SECTION 88. Amends Section 153.151, Business Organizations Code, by adding Subsections (c), (d), and (e), as follows:

(c) Authorizes a written partnership agreement to provide that a person is authorized to be admitted as a general partner in a limited partnership, including as a sole general partner, and is authorized to acquire a partnership interest in the limited liability partnership without making a contribution to the partnership or assuming an obligation to make a contribution to the partnership.

(d) Authorizes a written partnership agreement to provide that a person is authorized to be admitted as a general partner in a limited partnership, including as the sole general partner, without acquiring a partnership interest in the limited partnership.

(e) Provides that this section is not a limitation of or does not otherwise affect Section 153.152 (General Powers and Liabilities of General Partner).

SECTION 89. Amends Section 153.201, Business Organizations Code, to authorize the contribution of a partner, rather than a limited partner, to consist of a tangible or intangible benefit to the limited partnership or other property of any kind or nature.

SECTION 90. Amends the heading to Section 153.451, Business Organizations Code, to read as follows:

Sec. 153.451. **CERTIFICATE OF TERMINATION.**

SECTION 91. Amends Section 153.451(a), Business Organizations Code, to make a conforming change.

SECTION 92. Amends Section 153.452, Business Organizations Code, to make conforming changes.

SECTION 93. Amends Section 153.501(d), Business Organizations Code, to make a conforming change.

SECTION 94. Amends Section 153.503(a), Business Organizations Code, to make a conforming change.

SECTION 95. Amends Section 153.553(a), Business Organizations Code, to make a conforming change.

SECTION 96. Amends Subchapter B, Chapter 251, Business Organizations Code, by adding Section 251.054, as follows:

Sec. 251.054. RESTATED CERTIFICATE OF FORMATION. (a) Authorizes the board of directors of a cooperative association to adopt a restated certificate of formation as provided by Subchapter B (Amendments and Reinstatements of Certificate of Formation), Chapter 3, by following the procedure to amend the association's certificate of formation, except that member approval is required if the restated certificate of formation contains an amendment.

(b) Requires a person to file a restated certificate of formation as provided by Chapter 4 (Filings), and the restated certificate of formation takes effect as provided by Subchapter B (Amendments and Reinstatements of Certificate of Formation), Chapter 3.

SECTION 97. Amends Section 301.003(2), Business Organizations Code, to redefine "professional association."

SECTION 98. Amends Section 301.006(d), Business Organizations Code, to include the provision that, to the extent this subsection conflicts with any other law, this subsection controls. Makes a nonsubstantive change.

SECTION 99. Amends Section 302.003(a), Business Organizations Code, to make nonsubstantive changes.

SECTION 100. Amends Section 402.001, Business Organizations Code, as follows:

Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. (a) Provides that on or after the effective date of this code, this code applies to certain entities, including a foreign limited liability partnership.

(b) Provides that the registration of a domestic limited liability partnership or foreign limited liability partnership under prior law and in effect on the effective date of this code continues to be governed by the prior law until expiration of the current term of registration, unless earlier withdrawn or revoked.

(c) Provides that, notwithstanding Subsections (a) and (b), after the effective date of this code, Sections 152.802 (Registration) and 152.803 (Name), instead of prior law, govern a renewal of registration or other filing with the secretary of state made on behalf of a domestic limited liability partnership registered under prior law.

(d) Provides that, notwithstanding Subsection (a), a domestic partnership that files an initial application for registration as a limited liability partnership after the effective date of this code is governed by Subchapter J (Redemption of Withdrawing Partner's or Transferee's Interest), Chapter 152.

(e) Provides that, except as provided by Subsection (b), on or after the effective date of this code, Subchapter K (Foreign Limited Liability Partnerships), Chapter 152, applies to the registration of a foreign limited liability partnership registered under prior law.

SECTION 101. Amends the heading to Section 402.004, Business Organizations Code, to read as follows:

Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN FILING ENTITY.

SECTION 102. Amends Section 402.005, Business Organizations Code, as follows:

Sec. 402.005. New heading: APPLICABILITY TO EXISTING ENTITIES. (a) Creates subsection from existing text. Makes conforming and nonsubstantive changes.

(b) Provides that, on or after January 1, 2010, and to the extent provided in Subchapter A (General Provisions), Chapter 23, this code applies to a corporation created under a special statute of this state outside this code before January 1, 2006. Authorizes the corporation, if its certificate of formation, or equivalent governing document, is filed with the secretary of state, to elect for this code to apply to the corporation at any time on or after January 1, 2006, and prior to January 1, 2010, to the extent provided in Subchapter A, Chapter 23, by filing a statement and taking other actions in a manner similar to a domestic filing entity under Section 402.003 (Early Adoption of Code by Existing Domestic Entity).

SECTION 103. Amends Section 402.006, Business Organizations Code, to delete text relating to requirements that apply to outstanding certificates.

SECTION 104. Amends Section 402.007, Business Organizations Code, to prohibit a provision, rather than a statement, relating to indemnification contained in the governing documents of a domestic entity on the mandatory application date that would otherwise have the effect of limiting the nature or type of indemnification permitted by Chapter 8, in a case in which indemnification is permitted but not required, from being construed after the mandatory application date as limiting the indemnification authorized by Chapter 8 unless the provision is intended to limit or restrict permissive indemnification under applicable law.

SECTION 105. Amends Section 402.013, Business Organizations Code, as follows:

Sec. 402.013. New heading: REINSTATEMENT OF ENTITIES CANCELED, REVOKED, INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER PRIOR LAW. (a) Authorizes a domestic filing entity whose certificate of formation or equivalent governing document has been canceled, revoked, involuntarily dissolved, suspended, or forfeited under prior law, on or after January 1, 2006, and before January 1, 2010, to reinstate its certificate of formation or equivalent governing document in accordance with prior law or this code if it also complies with Section 402.003.

(b) Authorizes a foreign filing entity whose registration to do business has been canceled, revoked, involuntarily dissolved, suspended, or forfeited under prior law, on or after January 1, 2006, and before January 1, 2010, to reinstate its registration in accordance with prior law or this code if it also complies with Section 402.003.

(c) Creates subsection from existing text. Requires an entity, if the certificate of formation, rather than the rights, privileges, and powers, of a domestic filing entity or the registration to do business of a foreign filing entity is forfeited under the Tax Code, to revive the certificate of formation or registration in accordance with that code. Deletes existing text relating to a restoration of rights, privileges, and powers by the secretary of state.

SECTION 106. Repealer: Section 9.005 (Supplemental Information Required in Application for Registration of Foreign For-Profit Corporation), Business Organizations Code, as enacted by Chapter 182, Acts of the 78th Legislature, Regular Session, 2003.

SECTION 107. Effective date: January 1, 2006.