

By: Giddings

H.B. No. 1319

A BILL TO BE ENTITLED

AN ACT

relating to business entities and associations.

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

SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (20-a) and by amending Subdivisions (29), (34), (50), and (89) to read as follows:

(20-a) "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.

(29) "Foreign filing entity" means a foreign entity, other than a foreign limited liability partnership, that registers or is required to register as a foreign entity under Chapter 9.

(34) "General partnership" means a partnership governed as a general partnership under Chapter 152. The term includes a general partnership registered as a limited liability partnership.

(50) "Limited partnership" means a partnership that is governed as a limited partnership under Title 4 and that has one or more general partners and one or more limited partners. The term

1 includes a limited partnership registered as a limited liability
2 limited partnership.

3 (89) "Writing" or "written" means an expression of
4 words, letters, characters, numbers, symbols, figures, or other
5 textual information that is inscribed on a tangible medium or that
6 is stored in an electronic or other medium that is retrievable in a
7 perceivable form. Unless the context requires otherwise, the term:

8 (A) includes stored or transmitted electronic
9 data, electronic [~~and~~] transmissions, and reproductions of
10 writings; and

11 (B) does not include sound or video recordings of
12 speech other than transcriptions that are otherwise writings.

13 SECTION 2. Section 1.006, Business Organizations Code, is
14 amended to read as follows:

15 Sec. 1.006. SYNONYMOUS TERMS. To the extent not
16 inconsistent with the provisions of the constitution and other
17 statutes or codes wherein such terms may be found, and as the
18 context requires, in this code or any other statute or code of this
19 state:

20 (1) a reference to "articles of incorporation,"
21 "articles of organization," "articles of association,"
22 "certificate of limited partnership," and "charter" includes a
23 "certificate of formation";

24 (2) a reference to "authorized capital stock" includes
25 "authorized shares";

26 (3) a reference to "capital stock" includes
27 "authorized and issued shares," "issued share," and "stated

1 capital";

2 (4) a reference to a "certificate of registration,"
3 "certificate of authority," and "permit to do business" includes
4 "registration";

5 (5) a reference to "stock" and "shares of stock"
6 includes "shares";

7 (6) a reference to "stockholder" includes
8 "shareholder";

9 (7) a reference to "no par stock" includes "shares
10 without par value"; ~~and~~

11 (8) a reference to "paid-up capital" includes "stated
12 capital~~[-]~~";

13 (9) a reference to "articles of merger" includes a
14 "certificate of merger";

15 (10) a reference to "articles of exchange" includes a
16 "certificate of exchange";

17 (11) a reference to "articles of conversion" includes
18 a "certificate of conversion";

19 (12) a reference to "articles of amendment" includes a
20 "certificate of amendment"; and

21 (13) a reference to "articles of dissolution" includes
22 a "certificate of termination."

23 SECTION 3. Section 1.007, Business Organizations Code, is
24 amended to read as follows:

25 Sec. 1.007. SIGNING OF DOCUMENT OR OTHER WRITING. For
26 purposes of this code, a writing has been signed by a person when
27 the writing includes, bears, or incorporates the person's

1 signature. A transmission or reproduction of a writing signed by a
2 person is considered signed by that person for purposes of this
3 code.

4 SECTION 4. Section 2.010, Business Organizations Code, is
5 amended to read as follows:

6 Sec. 2.010. PROHIBITED ACTIVITIES OF NONPROFIT
7 CORPORATION. A nonprofit corporation may not be organized or
8 registered under this code to conduct its affairs in this state to:

9 (1) engage in or operate as a group hospital service,
10 rural credit union, agricultural and livestock pool, mutual loan
11 corporation, cooperative association under Chapter 251,
12 cooperative credit association, farmers' cooperative society,
13 Co-operative Marketing Act corporation, rural electric cooperative
14 corporation, telephone cooperative corporation, or fraternal
15 organization operating under the lodge system and incorporated
16 under Subchapter C, Chapter 23; or

17 (2) engage in water supply or sewer service except as
18 an entity incorporated under Chapter 67, Water Code.

19 SECTION 5. Section 2.101, Business Organizations Code, is
20 amended to read as follows:

21 Sec. 2.101. GENERAL POWERS. Except as otherwise provided
22 by this code, a domestic entity has the same powers as an individual
23 to take action necessary or convenient to carry out its business and
24 affairs. Except as otherwise provided by this code, the powers of a
25 domestic entity include the power to:

26 (1) sue, be sued, and defend suit in the entity's
27 business name;

1 (2) have and alter a seal and use the seal or a
2 facsimile of it by impressing, affixing, or reproducing it;

3 (3) acquire, receive, own, hold, improve, use, and
4 deal in and with property or an interest in property;

5 (4) sell, convey, mortgage, pledge, lease, exchange,
6 and otherwise dispose of property;

7 (5) make contracts and guarantees;

8 (6) incur liabilities, borrow money, issue notes,
9 bonds, or other obligations, which may be convertible into, or
10 include the option to purchase, other securities or ownership
11 interests in the entity, and secure its obligations by mortgaging
12 or pledging its property, franchises, or income;

13 (7) lend money, invest its funds, and receive and hold
14 property as security for repayment if the loan or assistance
15 reasonably may be expected to benefit, directly or indirectly, the
16 entity;

17 (8) acquire its own bonds, debentures, or other
18 evidences of indebtedness or obligations;

19 (9) acquire its own ownership interests, regardless of
20 whether redeemable, and hold the ownership interests as treasury
21 ownership interests or cancel or dispose of the ownership
22 interests;

23 (10) be a promoter, organizer, owner, partner, member,
24 associate, or manager of an organization;

25 (11) acquire, receive, own, hold, vote, use, pledge,
26 and dispose of ownership interests in or securities issued by
27 another person;

1 (12) conduct its business, locate its offices, and
2 exercise the powers granted by this code to further its purposes, in
3 or out of this state;

4 (13) lend money to, and otherwise assist, its
5 managerial officials, owners, members, or employees as necessary or
6 appropriate;

7 (14) elect or appoint officers and agents of the
8 entity, establish the length of their terms, define their duties,
9 and fix their compensation;

10 (15) pay pensions and establish pension plans, pension
11 trusts, profit-sharing plans, bonus plans, and incentive plans for
12 managerial officials, owners, members, or employees or former
13 managerial officials, owners, members, or employees;

14 (16) indemnify and maintain liability insurance for
15 managerial officials, owners, members, employees, and agents of the
16 entity or the entity's affiliate;

17 (17) adopt and amend governing documents for managing
18 the affairs of the entity subject to applicable law;

19 (18) make donations for the public welfare or for a
20 charitable, scientific, or educational purpose;

21 (19) voluntarily wind up its business and activities
22 and terminate its existence;

23 (20) transact business or take action that will aid
24 governmental policy; ~~and~~

25 (21) renounce, in its certificate of formation or by
26 action of its governing authority, an interest or expectancy of the
27 entity in, or an interest or expectancy of the entity in being

1 offered an opportunity to participate in, specified business
2 opportunities or a specified class or category of business
3 opportunities presented to the entity or one or more of its
4 managerial officials or owners; and

5 (22) take other action necessary or appropriate to
6 further the purposes of the entity.

7 SECTION 6. Section 3.051(b), Business Organizations Code,
8 is amended to read as follows:

9 (b) An amended certificate of formation may contain only
10 provisions that:

11 (1) would be permitted at the time of the amendment if
12 the amended certificate of formation were a newly filed original
13 certificate of formation; or

14 (2) effect a change, exchange, reclassification,
15 subdivision, combination, or cancellation in the membership or
16 ownership interests or the rights of owners or members of the filing
17 entity.

18 SECTION 7. Section 3.054, Business Organizations Code, is
19 amended to read as follows:

20 Sec. 3.054. EXECUTION OF [~~SUPPLEMENTAL PROVISIONS FOR~~]
21 CERTIFICATE OF AMENDMENT OF FOR-PROFIT CORPORATION. [~~(a) In~~
22 ~~addition to the statements required by Section 3.053, a certificate~~
23 ~~of amendment for a for-profit corporation must state:~~

24 [~~(1) if the amendment provides for an exchange,~~
25 ~~reclassification, or cancellation of issued shares, the manner in~~
26 ~~which the exchange, reclassification, or cancellation of the issued~~
27 ~~shares will be effected if the manner is not specified in the~~

1 ~~amendment, and~~

2 ~~[(2) if the amendment effects a change in the amount of~~
3 ~~stated capital, the manner in which the change in the amount of~~
4 ~~stated capital is effected and the amount of stated capital~~
5 ~~expressed in dollar terms as changed by the amendment.]~~

6 ~~[(b)]~~ An officer shall sign the certificate of amendment on
7 behalf of the for-profit corporation. If shares of the for-profit
8 corporation have not been issued and the certificate of amendment
9 is adopted by the board of directors, a majority of the directors
10 may sign the certificate of amendment on behalf of the for-profit
11 corporation.

12 SECTION 8. Section 3.151(b), Business Organizations Code,
13 is amended to read as follows:

14 (b) The books, records, minutes, and ownership or
15 membership records of any filing entity, including those described
16 in Subsection (a)(4), may be in written paper form or another form
17 capable of being converted into written paper form within a
18 reasonable time.

19 SECTION 9. Section 4.002(a), Business Organizations Code,
20 is amended to read as follows:

21 (a) If the secretary of state finds that a filing instrument
22 delivered under Section 4.001 conforms to the provisions of this
23 code that apply to the entity and to applicable rules adopted under
24 Section 12.001 and that all required fees have been paid, the
25 secretary of state shall:

26 (1) file the instrument by accepting it into the
27 filing system adopted by the secretary of state and assigning the

1 instrument a date of filing; and

2 (2) deliver a written [~~or electronic~~] acknowledgment
3 of filing to the entity or its representative.

4 SECTION 10. Section 4.152, Business Organizations Code, is
5 amended to read as follows:

6 Sec. 4.152. FILING FEES: FOR-PROFIT CORPORATIONS. For a
7 filing by or for a for-profit corporation, the secretary of state
8 shall impose the following fees:

9 (1) for filing a certificate of formation, \$300;

10 (2) for filing a certificate of amendment, \$150;

11 (3) for filing an application of a foreign corporation
12 for registration to transact business in this state, \$750;

13 (4) for filing an application of a foreign corporation
14 for an amended registration to transact business in this state,
15 \$150;

16 (5) for filing a restated certificate of formation and
17 accompanying statement, \$300;

18 (6) for filing a statement of change of registered
19 office, registered agent, or both, \$15;

20 (7) for filing a statement of change of name or address
21 of a registered agent, \$15, except that the maximum fee for
22 simultaneous filings by a registered agent for more than one
23 corporation may not exceed \$750;

24 (8) for filing a statement of resolution establishing
25 one or more series of shares, \$15;

26 (9) for filing a certificate of [~~winding up and~~]
27 termination, \$40;

1 (10) for filing a certificate of withdrawal of a
2 foreign corporation, \$15;

3 (11) for filing a certificate from the home state of a
4 foreign corporation that the corporation no longer exists in that
5 state, \$15;

6 (12) for filing a bylaw or agreement restricting
7 transfer of shares or securities other than as an amendment to the
8 certificate of formation, \$15;

9 (13) for filing an application for reinstatement of a
10 certificate of formation or registration as a foreign corporation
11 following forfeiture under the Tax Code, \$75;

12 (14) for filing an application for reinstatement of a
13 corporation or registration as a foreign corporation after
14 involuntary dissolution or revocation, \$75; and

15 (15) for filing any instrument as provided by this
16 code for which this section does not expressly provide a fee, \$15.

17 SECTION 11. Section 4.153, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 4.153. FILING FEES: NONPROFIT CORPORATIONS. For a
20 filing by or for a nonprofit corporation, the secretary of state
21 shall impose the following fees:

22 (1) for filing a certificate of formation, \$25;

23 (2) for filing a certificate of amendment, \$25;

24 (3) for filing a certificate of merger, conversion, or
25 consolidation, without regard to whether the surviving or new
26 corporation is a domestic or foreign corporation, \$50;

27 (4) for filing a statement of change of a registered

1 office, registered agent, or both, \$5;

2 (5) for filing a certificate of termination
3 [~~dissolution~~], \$5;

4 (6) for filing an application of a foreign corporation
5 for registration to conduct affairs in this state, \$25;

6 (7) for filing an application of a foreign corporation
7 for an amended registration to conduct affairs in this state, \$25;

8 (8) for filing a certificate of withdrawal of a
9 foreign corporation, \$5;

10 (9) for filing a restated certificate of formation and
11 accompanying statement, \$50;

12 (10) for filing a statement of change of name or
13 address of a registered agent, \$15, except that the maximum fee for
14 simultaneous filings by a registered agent for more than one
15 corporation may not exceed \$250;

16 (11) for filing a report under Chapter 22, \$5;

17 (12) for filing a report under Chapter 22 to reinstate
18 a corporation's right to conduct affairs in this state, \$5, plus a
19 late fee in the amount of \$5 or in the amount of \$1 for each month or
20 part of a month that the report remains unfiled, whichever amount is
21 greater, except that the late fee may not exceed \$25;

22 (13) for filing a report under Chapter 22 to reinstate
23 a corporation or registration following involuntary termination or
24 revocation, \$25; and

25 (14) for filing any instrument of a domestic or
26 foreign corporation as provided by this code for which this section
27 does not expressly provide a fee, \$5.

1 SECTION 12. Section 4.155, Business Organizations Code, is
2 amended to read as follows:

3 Sec. 4.155. FILING FEES: LIMITED PARTNERSHIPS. For a
4 filing by or for a limited partnership, the secretary of state shall
5 impose the following fees:

6 (1) for filing a certificate of formation or an
7 application for registration as a foreign limited partnership,
8 \$750;

9 (2) for filing a certificate of amendment or an
10 amendment of registration of a foreign limited partnership, \$150;

11 (3) for filing a restated certificate of formation,
12 \$300;

13 (4) for filing a statement for change of registered
14 office, registered agent, or both, \$15;

15 (5) for filing a statement of change of name or address
16 of a registered agent, \$15, except that the maximum fee for
17 simultaneous filings by a registered agent for more than one
18 limited partnership may not exceed \$750;

19 (6) for filing a certificate of ~~[winding up and]~~
20 termination, \$40;

21 (7) for filing a certificate of withdrawal of a
22 foreign limited partnership, \$15;

23 (8) for filing a certificate of reinstatement of a
24 limited partnership or registration as a foreign limited
25 partnership after involuntary termination or revocation under
26 Chapter 11 or Chapter 9, \$75;

27 (9) for filing a periodic report required under

1 Chapter 153, \$50;

2 (10) for reviving a limited partnership's right to
3 transact business under Chapter 153, \$50 plus a late fee in an
4 amount equal to the lesser of:

5 (A) \$25 for each month or part of a month that
6 elapses after the date of the notice of forfeiture; or

7 (B) \$100;

8 (11) for reinstatement of a certificate of formation
9 or registration under Chapter 153, \$50 plus a late fee of \$100 and a
10 reinstatement fee of \$75;

11 (12) for filing any document required or permitted to
12 be filed for a limited liability partnership, the secretary of
13 state shall impose the same fee as the filing fee for a general
14 partnership under Section 4.158. For purposes of calculation of
15 the filing fee, all references to partners in Section 4.158 as
16 applied to limited partnerships mean general partners only; and

17 (13) for filing any instrument as provided by this
18 code for which this section does not expressly provide a fee, \$15.

19 SECTION 13. Subchapter D, Chapter 4, Business Organizations
20 Code, is amended by adding Section 4.161 to read as follows:

21 Sec. 4.161. FILING FEES: COOPERATIVE ASSOCIATIONS. For a
22 filing by or for a cooperative association, the secretary of state
23 shall impose the same fee as the filing fee for a similar instrument
24 under Section 4.153.

25 SECTION 14. Section 5.063(b), Business Organizations Code,
26 is amended to read as follows:

27 (b) A domestic or foreign limited liability partnership is

1 not subject to Section 5.053.

2 SECTION 15. Subchapter C, Chapter 5, Business Organizations
3 Code, is amended by adding Section 5.1041 to read as follows:

4 Sec. 5.1041. PROHIBITION ON FEE FOR WITHDRAWAL OF
5 RESERVATION OF NAME. The secretary of state may not impose a fee
6 for the filing of a written notice of withdrawal of a reservation of
7 name.

8 SECTION 16. Section 6.051(a), Business Organizations Code,
9 is amended to read as follows:

10 (a) Subject to this code and the governing documents of the
11 entity, notice of a meeting of the owners, members, or governing
12 persons of a domestic entity, or a committee of the owners, members,
13 or governing persons, must:

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

16 (2) state~~[+]~~
17 ~~[(A)]~~ the date and time of the meeting~~[+]~~ and:
18 (A) ~~[(B) the location of the meeting or,~~ if the
19 meeting is not held solely by using a conference telephone or other
20 communications system authorized by Section 6.002, the location of
21 the meeting; or

22 (B) if the meeting is held solely or in part by
23 using a conference telephone or other communications system
24 authorized by Section 6.002, the form of communications system to
25 be ~~[communication]~~ used for the meeting and the means of accessing
26 the communications system.

27 SECTION 17. Section 6.052, Business Organizations Code, is

1 amended by amending Subsection (b) and adding Subsection (c) to
2 read as follows:

3 (b) If a person entitled to notice of a meeting participates
4 in or attends the meeting, the person's participation or attendance
5 constitutes a waiver of notice of the meeting unless the person
6 participates in or attends the meeting solely to object to the
7 transaction of business at the meeting on the ground that the
8 meeting was not lawfully called or convened.

9 (c) Unless required by the certificate of formation or the
10 governing documents, the business to be transacted at a meeting of
11 the owners, members, or governing persons of a domestic entity, or
12 the members of a committee of the governing persons, or the purpose
13 of such a meeting, is not required to be specified in a written
14 waiver of notice of the meeting.

15 SECTION 18. Subchapter E, Chapter 6, Business Organizations
16 Code, is amended by adding Section 6.205 to read as follows:

17 Sec. 6.205. REPRODUCTION OF CONSENT. Any photographic,
18 photostatic, facsimile, or similarly reliable reproduction of a
19 consent in writing signed by an owner, member, or governing person
20 of a filing entity may be substituted or used instead of the
21 original writing for any purpose for which the original writing
22 could be used, if the reproduction is a complete reproduction of the
23 entire original writing.

24 SECTION 19. The heading to Subchapter G, Chapter 6,
25 Business Organizations Code, is amended to read as follows:

26 SUBCHAPTER G. APPLICABILITY OF CHAPTER [~~TO PARTNERSHIPS~~]

27 SECTION 20. Sections 8.001(1) and (9), Business

1 Organizations Code, are amended to read as follows:

2 (1) "Delegate" means a person who, while serving as a
3 governing person of an enterprise, is or was serving [~~or who has~~
4 ~~served~~] as a representative of the [~~an~~] enterprise at the request of
5 that enterprise at another enterprise or another organization or to
6 an employee benefit plan. A person is a delegate to an employee
7 benefit plan if the performance of the person's official duties to
8 the enterprise also imposes duties on or otherwise involves service
9 by the person to the plan or participants in or beneficiaries of the
10 plan.

11 (9) "Representative" means a person who is:

12 (A) serving as a partner, director, officer,
13 venturer, proprietor, trustee, employee, administrator, or agent
14 of an enterprise or other organization or of an employee benefit
15 plan; or

16 (B) serving a similar function for an enterprise
17 or other organization or for an employee benefit plan.

18 SECTION 21. Section 8.051, Business Organizations Code, is
19 amended to read as follows:

20 Sec. 8.051. MANDATORY INDEMNIFICATION. (a) An enterprise
21 shall indemnify a governing person, [or] former governing person,
22 or delegate against reasonable expenses actually incurred by the
23 person in connection with a proceeding in which the person is a
24 respondent because the person is or was a governing person or
25 delegate if the person is wholly successful, on the merits or
26 otherwise, in the defense of the proceeding.

27 (b) A court that determines, in a suit for indemnification,

1 that a governing person, former governing person, or delegate is
2 entitled to indemnification under this section shall order
3 indemnification and award to the person the expenses incurred in
4 securing the indemnification.

5 SECTION 22. Section 8.103(a), Business Organizations Code,
6 is amended to read as follows:

7 (a) Except as provided by Subsections (b) and (c), the
8 determinations required under Section 8.101(a) must be made by:

9 (1) a majority vote of [~~a quorum composed of~~] the
10 governing persons who at the time of the vote are disinterested and
11 independent, regardless of whether the governing persons who are
12 disinterested and independent constitute a quorum;

13 (2) [~~if a quorum described by Subdivision (1) cannot~~
14 ~~be obtained,~~] a majority vote of a committee of the governing
15 authority of the enterprise if the committee:

16 (A) is designated [~~to act in the matter~~] by a
17 majority vote of the governing persons who at the time of the vote
18 are disinterested and independent, regardless of whether the
19 governing persons who are disinterested and independent constitute
20 a quorum; and

21 (B) is composed solely of one or more governing
22 persons who [~~at the time of the vote~~] are disinterested and
23 independent;

24 (3) special legal counsel selected by the governing
25 authority of the enterprise, or selected by a committee of the board
26 of directors, by vote in accordance with Subdivision (1) or (2) [~~or,~~
27 ~~if a quorum described by Subdivision (1) cannot be obtained and a~~

1 ~~committee described by Subdivision (2) cannot be established, by a~~
2 ~~majority vote of the governing persons of the enterprise];~~

3 (4) the owners or members of the enterprise in a vote
4 that excludes the ownership or membership interests held by each
5 governing person who is not disinterested and independent; or

6 (5) a unanimous vote of the owners or members of the
7 enterprise.

8 SECTION 23. The heading to Section 8.104, Business
9 Organizations Code, is amended to read as follows:

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

12 SECTION 24. Section 8.104(a), Business Organizations Code,
13 is amended to read as follows:

14 (a) An enterprise may pay or reimburse reasonable expenses
15 incurred by a present governing person~~[, former governing person,~~
16 or delegate who was, is, or is threatened to be made a respondent in
17 a proceeding in advance of the final disposition of the proceeding
18 without making the determinations required under Section 8.101(a)
19 after the enterprise receives:

20 (1) a written affirmation by the person of the person's
21 good faith belief that the person has met the standard of conduct
22 necessary for indemnification under this chapter; and

23 (2) a written undertaking by or on behalf of the person
24 to repay the amount paid or reimbursed if the final determination is
25 that the person has not met that standard or that indemnification is
26 prohibited by Section 8.102.

27 SECTION 25. Section 8.105, Business Organizations Code, is

1 amended by amending Subsection (a) and adding Subsections (d) and
2 (e) to read as follows:

3 (a) Notwithstanding any other provision of this chapter but
4 subject to Section [~~Sections~~] 8.003 [~~and 8.004~~] and to the extent
5 consistent with other law, an enterprise may indemnify and advance
6 expenses to a person who is not a governing person, including an
7 officer, employee, or agent, [~~or delegate,~~] as provided by:

- 8 (1) the enterprise's governing documents;
9 (2) general or specific action of the enterprise's
10 governing authority;
11 (3) resolution of the enterprise's owners or members;
12 (4) contract; or
13 (5) common law.

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

21 (e) A determination of indemnification for a person who is
22 not a governing person of an enterprise, including an officer,
23 employee, or agent, is not required to be made in accordance with
24 Section 8.103.

25 SECTION 26. Section 9.007, Business Organizations Code, is
26 amended to read as follows:

27 Sec. 9.007. [~~SUPPLEMENTAL INFORMATION REQUIRED IN~~]

1 APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY
2 PARTNERSHIP. (a) A foreign limited liability partnership
3 registers by filing an application for registration under this
4 section as provided by Chapter 4.

5 (b) The [~~In addition to the information required by Section~~
6 ~~9.004, a foreign limited liability partnership's~~] application for
7 registration must state:

8 (1) the partnership's name [~~federal tax identification~~
9 ~~number of the partnership~~];

10 (2) the federal tax identification number of the [~~date~~
11 ~~of initial registration as a limited liability~~] partnership [~~under~~
12 ~~the laws of the state of formation~~];

13 (3) the partnership's jurisdiction of formation
14 [~~number of partners at the date of the statement~~]; [~~and~~]

15 (4) the date of initial registration as a limited
16 liability partnership under the laws of the state of formation;

17 (5) the date the foreign entity began or will begin to
18 transact business in this state;

19 (6) that the partnership exists as a valid limited
20 liability partnership under the laws of the state of its formation;

21 (7) the number of partners at the date of the
22 statement;

23 (8) each business or activity that the partnership
24 proposes to pursue in this state, which may be stated to be any
25 lawful business or activity under the laws of this state;

26 (9) the address of the principal office of the
27 partnership;

1 (10) the address of the initial registered office and
2 the name and address of the initial registered agent for service of
3 process required to be maintained under Section 152.904; and

4 (11) that the secretary of state is appointed the
5 agent of the partnership for service of process under the same
6 circumstances as set forth by Section 5.251 for a foreign filing
7 entity.

8 (c) Subchapter K, Chapter 152, governs the registration of a
9 foreign limited liability partnership to transact business in this
10 state.

11 SECTION 27. Section 9.008, Business Organizations Code, is
12 amended by amending Subsection (a) and adding Subsection (c) to
13 read as follows:

14 (a) The registration of a foreign entity other than a
15 foreign limited liability partnership is effective when the
16 application filed under Chapter 4 takes effect. The registration
17 remains in effect until the registration terminates, is withdrawn,
18 or is revoked.

19 (c) Subchapter K, Chapter 152, governs the effect of
20 registration of a foreign limited liability partnership to transact
21 business in this state.

22 SECTION 28. Section 9.009, Business Organizations Code, is
23 amended by adding Subsection (a-1) to read as follows:

24 (a-1) A foreign filing entity may amend the entity's
25 application for registration to disclose a change that results
26 from:

27 (1) a conversion from one type of foreign filing

1 entity to another type of foreign filing entity with the foreign
2 filing entity making the amendment succeeding to the registration
3 of the original foreign filing entity; or

4 (2) a merger into another foreign filing entity with
5 the foreign filing entity making the amendment succeeding to the
6 registration of the original foreign filing entity.

7 SECTION 29. Section 9.010, Business Organizations Code, is
8 amended to read as follows:

9 Sec. 9.010. NAME CHANGE OF FOREIGN FILING ENTITY. If a
10 foreign filing entity authorized to conduct affairs in this state
11 changes its name to a name that would cause the entity to be denied
12 an application for registration under this subchapter, the entity's
13 registration must be suspended. An entity the registration of
14 which has been suspended under this section may conduct affairs in
15 this state only after the entity:

16 (1) changes its name to a name that is available to it
17 under the laws of this state; or

18 (2) otherwise complies with this chapter.

19 SECTION 30. Sections 9.011(a), (b), (d), (f), and (g),
20 Business Organizations Code, are amended to read as follows:

21 (a) A foreign filing entity or foreign limited liability
22 partnership registered in this state may withdraw the entity's or
23 partnership's registration at any time by filing a certificate of
24 withdrawal in the manner required by Chapter 4.

25 (b) A certificate of withdrawal must state:

26 (1) the name of the foreign filing entity or foreign
27 limited liability partnership as registered in this state;

1 (2) the type of foreign filing entity and the entity's
2 or partnership's jurisdiction of formation;

3 (3) the address of the principal office of the foreign
4 filing entity or foreign limited liability partnership;

5 (4) that the foreign filing entity or foreign limited
6 liability partnership no longer is transacting business in this
7 state;

8 (5) that the foreign filing entity or foreign limited
9 liability partnership:

10 (A) revokes the authority of the entity's or
11 partnership's registered agent in this state to accept service of
12 process; and

13 (B) consents that service of process in any
14 action, suit, or proceeding stating a cause of action arising in
15 this state during the time the foreign filing entity or foreign
16 limited liability partnership was authorized to transact business
17 in this state may be made on the foreign filing entity or foreign
18 limited liability partnership by serving the secretary of state;

19 (6) an address to which the secretary of state may mail
20 a copy of any process against the foreign filing entity or foreign
21 limited liability partnership served on the secretary of state; and

22 (7) that any money due or accrued to the state has been
23 paid or that adequate provision has been made for the payment of
24 that money.

25 (d) If the existence or separate existence of a foreign
26 filing entity or foreign limited liability partnership registered
27 in this state terminates because of dissolution, termination,

1 merger, conversion, or other circumstances, a certificate by an
2 authorized governmental official of the entity's jurisdiction of
3 formation that evidences the termination shall be filed with the
4 secretary of state.

5 (f) If the address stated in a certificate of withdrawal
6 under Subsection (b)(6) changes, the foreign filing entity or
7 foreign limited liability partnership must promptly amend the
8 certificate of withdrawal to update the address.

9 (g) A certificate of withdrawal does not terminate the
10 authority of the secretary of state to accept service of process on
11 the foreign filing entity or foreign limited liability partnership
12 with respect to a cause of action arising out of business or
13 activity in this state.

14 SECTION 31. Subchapter D, Chapter 9, Business Organizations
15 Code, is amended by adding Section 9.162 to read as follows:

16 Sec. 9.162. APPLICABILITY OF SUBCHAPTER TO FOREIGN LIMITED
17 LIABILITY PARTNERSHIPS. This subchapter applies to a partnership
18 registered as a foreign limited liability partnership to the same
19 extent as it applies to a foreign filing entity.

20 SECTION 32. Section 9.204, Business Organizations Code, is
21 amended to read as follows:

22 Sec. 9.204. RIGHT OF FOREIGN [~~FILING~~] ENTITY TO PARTICIPATE
23 IN BUSINESS OF CERTAIN DOMESTIC ENTITIES. A vote cast or consent
24 provided by a foreign [~~filing~~] entity with respect to its ownership
25 or membership interest in a domestic entity of which the foreign
26 [~~filing~~] entity is a lawful owner or member, and the foreign
27 [~~filing~~] entity's participation in the management and control of

1 the business and affairs of the domestic entity to the extent of the
2 participation of other owners or members, are not invalidated if
3 the foreign [~~filing~~] entity does not register to transact business
4 in this state in accordance with this chapter, subject to all law
5 governing a domestic entity, including the antitrust law of this
6 state.

7 SECTION 33. Section 10.005, Business Organizations Code, is
8 amended to read as follows:

9 Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER. (a) In
10 this section:

11 (1) "Direct or indirect wholly owned subsidiary"
12 means, with respect to a domestic entity, another domestic entity,
13 all of the outstanding voting ownership or membership interests of
14 which are owned by the domestic entity or by one or more other
15 domestic entities or non-code organizations, all of the outstanding
16 voting ownership or membership interests of which are owned by the
17 domestic entity or one or more other wholly owned domestic entities
18 or non-code organizations.

19 (2) "Holding company" means a domestic entity that,
20 from its organization until a merger takes effect, was at all times
21 a direct or indirect wholly owned subsidiary of the merging
22 domestic entity and the ownership or membership interests of which
23 are issued to the members or owners of the merging domestic entity
24 in the merger.

25 (3) "Merging domestic entity" means the original
26 domestic entity that is a party to a merger that is intended to
27 create a holding company structure under a plan of merger that

1 satisfies the requirements of this section and whose members or
2 owners are not required to approve the plan of merger under
3 Subsection (b).

4 (4) "Surviving entity subsidiary" means the surviving
5 entity in a merger of a merging domestic entity and a direct or
6 indirect wholly owned subsidiary of the merging domestic entity,
7 which immediately following the merger is a direct or indirect
8 wholly owned subsidiary of the holding company.

9 (b) A domestic entity may, without owner approval and
10 pursuant to a plan of merger, restructure the ownership structure
11 of that entity to create a holding company structure under this
12 chapter and the provisions of this code under which the entity was
13 formed. The approval of the owners or members of a merging domestic
14 entity that is a party to a merger under ~~of~~ a plan of merger that
15 creates a holding company is not required if:

16 (1) the holding company is a domestic entity of the
17 same organizational form as the merging domestic entity;

18 (2) approval is not otherwise required by the
19 governing documents of the merging domestic entity;

20 (3) ~~(2)~~ the merging domestic entity merges with a
21 direct or indirect ~~domestic~~ wholly owned subsidiary ~~entity~~;

22 (4) ~~(3)~~ after the merger the merging domestic entity
23 or its successor is a direct or indirect wholly owned subsidiary
24 ~~entity~~ of a holding company;

25 (5) ~~(4)~~ the merging domestic entity and the direct
26 or indirect wholly owned subsidiary ~~entity~~ are the only parties
27 to the merger;

1 (6) [~~(5)~~] each ownership or membership interest of the
2 merging domestic entity that is outstanding preceding the merger is
3 converted in the merger into an ownership or membership interest of
4 the holding company having the same designations, preferences,
5 limitations, and relative rights and corresponding obligations in
6 respect of the ownership or membership interest as the ownership or
7 membership interest held by the owner or member in the merging
8 domestic entity;

9 ~~[(6) the holding company is a domestic entity of the~~
10 ~~same organizational form as the merging domestic entity,]~~

11 (7) except as provided by Subsection [~~Subsections~~] (c)
12 [~~and (d)~~], the [~~initial~~] governing documents of the holding company
13 immediately following the merger contain provisions substantively
14 identical to the governing documents of the merging domestic entity
15 immediately preceding the merger;

16 (8) except as provided by Subsections (c) and (d), the
17 [~~initial~~] governing documents of the surviving entity subsidiary
18 immediately following the merger contain provisions substantively
19 identical to the governing documents of the merging domestic entity
20 immediately preceding the merger;

21 (9) the governing persons of the merging domestic
22 entity become or remain the governing persons of the holding
23 company when the merger takes effect;

24 (10) the owners or members of the merging domestic
25 entity will not recognize gain or loss for United States federal
26 income tax purposes, the United States federal tax classification
27 of the holding company will be the same as that of the merging

1 domestic entity, and the merger will not result in the loss of ~~or~~
2 any ~~other~~ tax benefit or attribute of the merging domestic
3 entity, each as determined by the governing authority of the
4 merging domestic entity; and

5 (11) the governing authority of the merging domestic
6 entity adopts a resolution approving the plan of merger.

7 (c) Subsections (b)(7) and (8) do not require identical
8 provisions regarding the organizer ~~incorporator~~ or organizers
9 ~~incorporators~~, the entity name, the registered office and agent,
10 the initial governing persons, and the initial subscribers of
11 ownership interests and provisions contained in any amendment to
12 the governing documents ~~certificate~~ as were ~~are~~ necessary to
13 effect a change, exchange, reclassification, or cancellation of
14 ownership or membership interests, if the change, exchange,
15 reclassification, or cancellation was in effect preceding the
16 merger.

17 (d) Notwithstanding Subsection (b)(8):

18 (1) the governing documents of the surviving entity
19 subsidiary must require that an act or transaction by or involving
20 the surviving entity subsidiary, other than the election or removal
21 of the governing persons of the surviving entity subsidiary, that
22 requires for its approval under this code or the governing
23 documents of the surviving entity subsidiary the approval of the
24 owners or members of the surviving ~~merging domestic~~ entity
25 subsidiary must, by specific reference to this section, require the
26 approval of the owners or members of the holding company, or any
27 successor by merger, by the same vote as is required by this code

1 and the governing documents of the surviving entity subsidiary;
2 [~~and~~]

3 (2) if the surviving entity subsidiary is not of the
4 same organizational form as the merging domestic entity, the
5 governing documents of the surviving entity subsidiary may differ
6 from the governing documents of the merging domestic entity to the
7 minimum extent necessary to make a change that takes into account
8 the differences between the types of entities, including a change
9 in reference to the types of owners, members, ownership interests,
10 membership interests, governing persons, or governing authority,
11 each as determined by the governing authority of the merging
12 domestic entity;

13 (3) if the surviving entity subsidiary is not of the
14 same organizational form as the merging domestic entity, the
15 governing documents of the surviving entity subsidiary must require
16 that:

17 (A) the surviving entity subsidiary obtain the
18 approval of the owners or members of the holding company for any act
19 or transaction by or involving the surviving entity subsidiary,
20 other than the election or removal of the governing persons of the
21 surviving entity subsidiary, that would require the approval of the
22 owners or members of the surviving entity subsidiary if the
23 surviving entity subsidiary were of the same organizational form as
24 the merging domestic entity;

25 (B) any amendment to the governing documents of
26 the surviving entity subsidiary that would, if adopted by an entity
27 of the same organizational form as the merging domestic entity, be

1 required to be included in the certificate of formation of the
2 entity also require, by specific reference to this section, the
3 approval of the owners or members of the holding company, or any
4 successor by merger, by the same vote as is required by this code or
5 by the governing documents of the surviving entity subsidiary; and

6 (C) the business affairs of the surviving entity
7 subsidiary be managed by or under the direction of governing
8 persons who are:

9 (i) subject to the same fiduciary duties
10 applicable to the governing persons of an entity of the same
11 organizational form as the merging domestic entity subject to this
12 code; and

13 (ii) liable for the breach of any duties to
14 the same extent as governing persons of that form of entity;

15 (4) the governing documents of the surviving entity
16 subsidiary may change the classes and series of ownership or
17 membership interests and the number of ownership or membership
18 interests that the surviving entity subsidiary is authorized to
19 issue; and

20 (5) this subsection or a provision of a surviving
21 entity subsidiary's governing documents required by this
22 subsection may not be construed as requiring the approval of the
23 owners or members of the holding company to elect or remove
24 governing persons of the surviving entity subsidiary.

25 (e) To the extent the provisions contained in Section 21.606
26 apply to a merging domestic entity and its owners or members when a
27 merger takes effect under this section, those provisions continue

1 to apply to the holding company and its owners or members
2 immediately after the merger takes effect as though the holding
3 company were the merging domestic entity. All ownership or
4 membership interests of the holding company acquired in the merger,
5 for purposes of Section 21.606, are considered to have been
6 acquired at the time the ownership or membership interest of the
7 merging domestic entity converted in the merger was acquired. Any
8 owner or member who, preceding the merger, was not an affiliated
9 owner or member as described by Section 21.606 does not solely by
10 reason of the merger become an affiliated owner or member of the
11 holding company.

12 (f) If the name of a holding company immediately following
13 the effectiveness of a merger under this section is the same as the
14 name of the merging domestic entity preceding the merger, the
15 ownership or membership interests of the holding company into which
16 the ownership or membership interests of the merging domestic
17 entity are converted pursuant to the merger will be ~~[merged are]~~
18 represented by the certificates, if any, that previously
19 represented the ownership or membership interests in the merging
20 domestic entity.

21 (g) This section shall not apply to a merger of a
22 partnership with or into a domestic entity without the approval of
23 the owners or members of the partnership and domestic entity as
24 provided by this code ~~[partnerships]~~.

25 SECTION 34. Section 10.006(i), Business Organizations
26 Code, is amended to read as follows:

27 (i) This section shall not apply if a subsidiary

1 organization that is a party to the merger is:

2 (1) a partnership; or

3 (2) a domestic entity that has in its governing
4 documents the provision required by Section 10.005(d)(1) and of
5 which there are outstanding ownership or membership interests that
6 would be entitled to vote on the merger absent this section.

7 SECTION 35. Section 10.008(a), Business Organizations
8 Code, is amended to read as follows:

9 (a) When a merger takes effect:

10 (1) the separate existence of each domestic entity
11 that is a party to the merger, other than a surviving or new
12 domestic entity, ceases;

13 (2) all rights, title, and interests to all real
14 estate and other property owned by each organization that is a party
15 to the merger is allocated to and vested, subject to any existing
16 liens or other encumbrances on the property, in one or more of the
17 surviving or new organizations as provided in the plan of merger
18 without:

19 (A) reversion or impairment;

20 (B) any further act or deed; or

21 (C) any transfer or assignment having occurred;

22 (3) all liabilities and obligations of each
23 organization that is a party to the merger are allocated to one or
24 more of the surviving or new organizations in the manner provided by
25 the plan of merger;

26 (4) each surviving or new domestic organization to
27 which a liability or obligation is allocated under the plan of

1 merger is the primary obligor for the liability or obligation, and,
2 except as otherwise provided by the plan of merger or by law or
3 contract, no other party to the merger, other than a surviving
4 domestic entity or non-code organization liable or otherwise
5 obligated at the time of the merger, and no other new domestic
6 entity or non-code organization created under the plan of merger is
7 liable for the debt or other obligation;

8 (5) any proceeding pending by or against any domestic
9 entity or by or against any non-code organization that is a party to
10 the merger may be continued as if the merger did not occur, or the
11 surviving or new domestic entity or entities or the surviving or new
12 non-code organization or non-code organizations to which the
13 liability, obligation, asset, or right associated with that
14 proceeding is allocated to and vested in under the plan of merger
15 may be substituted in the proceeding;

16 (6) the governing documents of each surviving domestic
17 entity are amended to the extent provided by the plan of merger;

18 (7) each new filing entity whose certificate of
19 formation is included in the plan of merger under this chapter, on
20 meeting any additional requirements, if any, of this code for its
21 formation, is formed as a domestic entity under this code as
22 provided by the plan of merger;

23 (8) the ownership or membership interests of each
24 organization that is a party to the merger and that are to be
25 converted or exchanged, in whole or part, into ownership or
26 membership interests, obligations, rights to purchase securities,
27 or other securities of one or more of the surviving or new

1 organizations, into cash or other property, including ownership or
2 membership interests, obligations, rights to purchase securities,
3 or other securities of any organization, or into any combination of
4 these are converted and exchanged and the former owners or members
5 who held ownership or membership interests of each domestic entity
6 that is a party to the merger are entitled only to the rights
7 provided by the plan [~~certificate~~] of merger or, if applicable, any
8 rights to receive the fair value for the ownership or membership
9 interests previously held by them provided under this code; and

10 (9) notwithstanding Subdivision (4), the surviving or
11 new organization named in the plan of merger as primarily obligated
12 to pay the fair value of an ownership or membership interest under
13 Section 10.003(2) is the primary obligor for that payment and all
14 other surviving or new organizations are secondarily liable for
15 that payment.

16 SECTION 36. Section 10.107(c), Business Organizations
17 Code, is amended to read as follows:

18 (c) A domestic partnership that is converting must approve
19 the plan of conversion in the manner [~~merger~~] provided in its
20 partnership agreement.

21 SECTION 37. Section 10.202, Business Organizations Code, is
22 amended to read as follows:

23 Sec. 10.202. ABANDONMENT AFTER FILING. [~~(a)~~] If a
24 certificate of merger, exchange, or conversion has been filed, the
25 merger, interest exchange, or conversion may be abandoned before
26 its effectiveness in accordance with Sections 4.057 and 10.201.

27 [~~(b) A filing of a certificate of abandonment under Section~~]

1 ~~4.057 is not required for the abandonment of a merger, interest~~
2 ~~exchange, or conversion if no filing is required under Subchapter D~~
3 ~~to make the merger, interest exchange, or conversion effective.]~~

4 SECTION 38. Subchapter E, Chapter 10, Business
5 Organizations Code, is amended by adding Section 10.203 to read as
6 follows:

7 Sec. 10.203. ABANDONMENT IF NO FILING REQUIRED. (a) If no
8 filing is required by this chapter for the abandonment of a merger,
9 interest exchange, or conversion, the merger, interest exchange, or
10 conversion is abandoned:

11 (1) as provided by the procedures in the plan of
12 merger, exchange, or conversion; or

13 (2) if no abandonment procedures are provided by the
14 plan, in the manner determined by the governing authority of the
15 abandoning entity.

16 (b) A filing of a certificate of abandonment under Section
17 4.057 is not required for the abandonment of a merger, interest
18 exchange, or conversion if no filing is required under Subchapter D
19 to make the merger, interest exchange, or conversion effective.

20 SECTION 39. Section 10.354(b), Business Organizations
21 Code, is amended to read as follows:

22 (b) Notwithstanding Subsection (a), subject to Subsection
23 (c), an owner may not dissent from a plan of merger or conversion in
24 which there is a single surviving or new domestic entity or non-code
25 organization, or from a plan of exchange, if:

26 (1) the ownership interest, or a depository receipt in
27 respect of the ownership interest, held by the owner is part of a

1 class or series of ownership interests, or depository receipts in
2 respect of ownership interests, that are, on the record date set for
3 purposes of determining which owners are entitled to vote on the
4 plan of merger, conversion, or exchange, as appropriate:

5 (A) listed on a national securities exchange or a
6 similar system;

7 (B) listed on the Nasdaq Stock Market or a
8 successor quotation system;

9 (C) designated as a national market security on
10 an interdealer quotation system by the National Association of
11 Securities Dealers, Inc., or a successor system; or

12 (D) held of record by at least 2,000 owners;

13 (2) the owner is not required by the terms of the plan
14 of merger, conversion, or exchange, as appropriate, to accept for
15 the owner's ownership interest any consideration that is different
16 from the consideration to be provided to any other holder of an
17 ownership interest of the same class or series as the ownership
18 interest held by the owner, other than cash instead of fractional
19 shares or interests the owner would otherwise be entitled to
20 receive; and

21 (3) the owner is not required by the terms of the plan
22 of merger, conversion, or exchange, as appropriate, to accept for
23 the owner's ownership interest any consideration other than:

24 (A) ownership interests, or depository receipts
25 in respect of ownership interests, of a domestic entity or non-code
26 organization of the same general organizational type that,
27 immediately after the effective date of the merger, conversion, or

1 exchange, as appropriate, will be part of a class or series of
2 ownership interests, or depository receipts in respect of ownership
3 interests, that are:

4 (i) listed on a national securities
5 exchange or authorized for listing on the exchange on official
6 notice of issuance;

7 (ii) approved for quotation as a national
8 market security on an interdealer quotation system by the National
9 Association of Securities Dealers, Inc., or a successor entity; or

10 (iii) held of record by at least 2,000
11 owners;

12 (B) cash instead of fractional ownership
13 interests the owner would otherwise be entitled to receive; or

14 (C) any combination of the ownership interests
15 and cash described by Paragraphs (A) and (B).

16 SECTION 40. Subchapter D, Chapter 11, Business
17 Organizations Code, is amended by adding Section 11.153 to read as
18 follows:

19 Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION.
20 Notwithstanding any provision of this code to the contrary, a court
21 may order the revocation of termination of an entity's existence
22 that was terminated as a result of actual or constructive fraud. In
23 an action under this section, any limitation period provided by law
24 is tolled in accordance with the discovery rule. The secretary of
25 state shall take any action necessary to implement an order under
26 this section.

27 SECTION 41. Section 11.315, Business Organizations Code, is

1 amended by adding Subsection (c) to read as follows:

2 (c) Subject to Section 11.356, the existence of the filing
3 entity ceases when the certified copy of the decree is filed in
4 accordance with Chapter 4.

5 SECTION 42. Subchapter I, Chapter 11, Business
6 Organizations Code, is amended by adding Section 11.414 to read as
7 follows:

8 Sec. 11.414. FILING OF DECREE OF INVOLUNTARY TERMINATION
9 AGAINST FILING ENTITY. (a) The clerk of a court that enters a
10 decree terminating the existence of a filing entity under this
11 subchapter shall file a certified copy of the decree in accordance
12 with Chapter 4.

13 (b) A fee may not be charged for the filing of a decree under
14 this section.

15 (c) Subject to Section 11.356, the existence of the filing
16 entity ceases when the certified copy of the decree is filed in
17 accordance with Chapter 4.

18 SECTION 43. Section 21.052, Business Organizations Code, is
19 amended by adding Subsection (b-1) to read as follows:

20 (b-1) The resolution may provide that at any time before the
21 filing of a certificate of amendment takes effect as provided by
22 Subchapter B, Chapter 3, the board of directors may abandon the
23 proposed amendment to the certificate of formation without further
24 action by the shareholders of the corporation, notwithstanding
25 authorization of the proposed amendment by the shareholders.

26 SECTION 44. Section 21.053, Business Organizations Code, is
27 amended to read as follows:

1 Sec. 21.053. ADOPTION OF AMENDMENT BY BOARD OF DIRECTORS.

2 (a) If a corporation does not have any issued and outstanding
3 shares, the board of directors may adopt a proposed amendment to the
4 corporation's certificate of formation by resolution without
5 shareholder approval.

6 (b) Notwithstanding Section 21.054, the board of directors
7 may adopt a proposed amendment without shareholder approval in the
8 manner provided by Section 21.155 if the amendment to the
9 corporation's certificate of formation relates to a series of
10 shares established by the board under authority granted to the
11 board in the certificate of formation as provided by Section
12 21.155.

13 SECTION 45. Section 21.168(c), Business Organizations
14 Code, is amended to read as follows:

15 (c) Subject to the certificate of formation, a right or
16 option described by this section must state the terms on which, the
17 time within which, and any consideration, including a formula by
18 which the consideration may be determined, for which the shares may
19 be purchased or received from the corporation on the exercise of the
20 right or option.

21 SECTION 46. Section 21.169, Business Organizations Code, is
22 amended by adding Subsections (d) and (e) to read as follows:

23 (d) The terms of rights or options or the agreement or plan
24 under which the rights or options are issued may provide that the
25 board of directors by resolution may authorize one or more officers
26 of the corporation to:

27 (1) designate officers and employees of the

1 corporation or of any subsidiary of the corporation to receive
2 rights or options created by the corporation; or

3 (2) determine the number of rights or options to be
4 received under Subdivision (1).

5 (e) A resolution adopted under Subsection (d)(1) must
6 specify the total number of rights or options the authorized
7 officer or officers may award. An officer may not be designated as
8 a recipient of any rights or options that the officer is authorized
9 to award under Subsection (d)(1).

10 SECTION 47. Section 21.208, Business Organizations Code, is
11 amended to read as follows:

12 Sec. 21.208. PREEMPTIVE RIGHT IN EXISTING CORPORATION.
13 Subject to the certificate of formation, a shareholder of a
14 corporation incorporated before September 1, 2003, [~~the effective~~
15 ~~date of this code~~] has a preemptive right to acquire unissued or
16 treasury shares of the corporation to the extent provided by
17 Sections 21.204, 21.206, and 21.207. After September 1, 2003 [~~the~~
18 ~~effective date of this code~~], a corporation may limit or deny the
19 preemptive right of the shareholders of the corporation by amending
20 the corporation's certificate of formation.

21 SECTION 48. Section 21.210(a), Business Organizations
22 Code, is amended to read as follows:

23 (a) A restriction on the transfer or registration of
24 transfer of a security, or on the amount of a corporation's
25 securities that may be owned by a person or group of persons, may be
26 imposed by:

27 (1) the corporation's certificate of formation;

1 (2) the corporation's bylaws;

2 (3) a written agreement among two or more holders of
3 the securities; or

4 (4) a written agreement among one or more holders of
5 the securities and the corporation if:

6 (A) the corporation files a copy of the agreement
7 at the principal place of business or registered office of the
8 corporation; and

9 (B) the copy of the agreement is subject to the
10 same right of examination by a shareholder of the corporation, in
11 person or by agent, attorney, or accountant, as the books and
12 records of the corporation.

13 SECTION 49. Section 21.211, Business Organizations Code, is
14 amended to read as follows:

15 Sec. 21.211. VALID RESTRICTIONS ON TRANSFER. (a)
16 Notwithstanding Sections 21.210 and 21.213, a restriction placed on
17 the transfer or registration of transfer of a security of a
18 corporation is valid if the restriction reasonably:

19 (1) obligates the holder of the restricted security to
20 offer a person, including the corporation or other holders of
21 securities of the corporation, an opportunity to acquire the
22 restricted security within a reasonable time before the transfer;

23 (2) obligates the corporation, to the extent provided
24 by this code, or another person to purchase securities that are the
25 subject of an agreement relating to the purchase and sale of the
26 restricted security;

27 (3) requires the corporation or the holders of a class

1 of the corporation's securities to consent to a proposed transfer
2 of the restricted security or to approve the proposed transferee of
3 the restricted security for the purpose of preventing a violation
4 of law;

5 (4) prohibits the transfer of the restricted security
6 to a designated person or group of persons and the designation is
7 not manifestly unreasonable;

8 (5) maintains the status of the corporation as an
9 electing small business corporation under Subchapter S of the
10 Internal Revenue Code;

11 (6) maintains a tax advantage to the corporation; [~~or~~]

12 (7) maintains the status of the corporation as a close
13 corporation under Subchapter O;

14 (8) obligates the holder of the restricted securities
15 to sell or transfer an amount of restricted securities to a person
16 or group of persons, including the corporation or other holders of
17 securities of the corporation; or

18 (9) causes or results in the automatic sale or
19 transfer of an amount of restricted securities to a person or group
20 of persons, including the corporation or other holders of
21 securities of the corporation.

22 (b) A restriction placed on the transfer or registration of
23 transfer of a security of a corporation, on the amount of the
24 corporation's securities, or on the amount of the corporation's
25 securities that may be owned by a person or group of persons is
26 conclusively presumed to be for a reasonable purpose if the
27 restriction:

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

3 (A) maintaining the corporation's status as an
4 electing small business corporation under Subchapter S of the
5 Internal Revenue Code;

6 (B) maintaining or preserving any tax attribute,
7 including net operating losses; or

8 (C) qualifying or maintaining the qualification
9 of the corporation as a real estate investment trust under the
10 Internal Revenue Code or regulations adopted under the Internal
11 Revenue Code; or

12 (2) maintains a statutory or regulatory advantage or
13 complies with a statutory or regulatory requirement under
14 applicable local, state, federal, or foreign law.

15 SECTION 50. The heading to Subchapter H, Chapter 21,
16 Business Organizations Code, is amended to read as follows:

17 SUBCHAPTER H. SHAREHOLDERS' MEETINGS; NOTICE TO SHAREHOLDERS;

18 VOTING AND QUORUM

19 SECTION 51. Section 21.353, Business Organizations Code, is
20 amended by amending Subsection (a) and adding Subsection (c) to
21 read as follows:

22 (a) Except as provided by Section 21.456 and subject to
23 Section 21.3531, written notice of a meeting in accordance with
24 Section 6.051 shall be given to each shareholder entitled to vote at
25 the meeting not later than the 10th day and not earlier than the
26 60th day before the date of the meeting. Notice shall be given at
27 the direction of the president, secretary, or other person calling

1 the meeting.

2 (c) If a meeting is held by means of remote communication,
3 the notice of the meeting must include information on how to access
4 the list of shareholders entitled to vote at the meeting required by
5 Section 21.372.

6 SECTION 52. Subchapter H, Chapter 21, Business
7 Organizations Code, is amended by adding Section 21.3531 to read as
8 follows:

9 Sec. 21.3531. NOTICE BY ELECTRONIC TRANSMISSION. (a) On
10 consent of a shareholder, notice from a corporation under this
11 code, the certificate of formation, or the bylaws may be provided to
12 the shareholder by electronic transmission. The shareholder may
13 specify the form of electronic transmission to be used to
14 communicate notice.

15 (b) Notice is considered provided under this section when
16 the notice is:

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

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

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

24 (4) communicated to the shareholder by any other form
25 of electronic transmission consented to by the shareholder.

26 (c) A shareholder may revoke the shareholder's consent to
27 receive notice by electronic transmission by providing written

1 notice to the corporation. The shareholder's consent is considered
2 revoked for purposes of Subsection (a) if the corporation is unable
3 to deliver by electronic transmission two consecutive notices, and
4 the secretary, assistant secretary, or transfer agent of the
5 corporation, or another person responsible for delivering notice on
6 behalf of the corporation, knows that delivery of those two
7 electronic transmissions was unsuccessful. Inadvertent failure to
8 treat the unsuccessful transmissions as a revocation of the
9 shareholder's consent does not affect the validity of a meeting or
10 other action.

11 (d) An affidavit of the secretary, assistant secretary,
12 transfer agent, or other agent of a corporation stating that notice
13 has been provided to a shareholder of the corporation by electronic
14 transmission is, in the absence of fraud, prima facie evidence that
15 the notice was provided under this section.

16 SECTION 53. Section 21.354, Business Organizations Code, is
17 amended by adding Subsection (a-1) to read as follows:

18 (a-1) If a meeting of the shareholders is held by means of
19 remote communication, the list must be open to inspection by a
20 shareholder during the meeting on a reasonably accessible
21 electronic network.

22 SECTION 54. Section 21.362, Business Organizations Code, is
23 amended to read as follows:

24 Sec. 21.362. CUMULATIVE VOTING RIGHT IN CERTAIN
25 CORPORATIONS. Except as provided by the corporation's certificate
26 of formation, a shareholder of a corporation incorporated before
27 September 1, 2003, [~~the effective date of this code~~] has the right

1 to cumulatively vote the number of shares the shareholder owns in
2 the election of directors to the extent permitted and in the manner
3 provided by Section 21.361. A corporation may limit or deny a
4 shareholder's right to cumulatively vote shares at any time after
5 September 1, 2003, [the effective date of this code] by amending its
6 certificate of formation.

7 SECTION 55. Section 21.372, Business Organizations Code, is
8 amended by adding Subsection (a-1) to read as follows:

9 (a-1) Instead of being kept on file, the list required by
10 Subsection (a) may be kept on a reasonably accessible electronic
11 network if the information required to gain access to the list is
12 provided with notice of the meeting. Section 21.353(c), Section
13 21.354(a-1), and this subsection may not be construed to require a
14 corporation to include any electronic contact information of a
15 shareholder on the list. A corporation that elects to make the list
16 available on an electronic network must take reasonable measures to
17 ensure the information is available only to shareholders of the
18 corporation.

19 SECTION 56. Section 21.407, Business Organizations Code, is
20 amended to read as follows:

21 Sec. 21.407. TERM OF OFFICE. Except as [Unless] otherwise
22 provided by this subchapter [~~or removed in accordance with Section~~
23 ~~21.409~~], the term of office of a director extends from the date the
24 director is elected and qualified or named in the corporation's
25 certificate of formation until the next annual meeting of
26 shareholders and until the director's successor is elected and
27 qualified.

1 SECTION 57. Section 21.409(a), Business Organizations
2 Code, is amended to read as follows:

3 (a) Except as otherwise provided by the certificate of
4 formation or bylaws of a corporation or this subchapter, the
5 shareholders of the corporation may remove a director or the entire
6 board of directors of the corporation, with or without cause, at a
7 meeting called for that purpose, by a vote of the holders of a
8 ~~[specified portion, but not less than the]~~ majority~~[,]~~ of the
9 shares entitled to vote at an election of the director or directors.

10 SECTION 58. Subchapter I, Chapter 21, Business
11 Organizations Code, is amended by adding Section 21.4091 to read as
12 follows:

13 Sec. 21.4091. RESIGNATION OF DIRECTORS. Except as
14 otherwise provided by the certificate of formation or bylaws, a
15 director of a corporation may resign at any time by providing
16 written notice to the corporation.

17 SECTION 59. Section 21.411, Business Organizations Code, is
18 amended by adding Subsections (d), (e), (f), and (g) to read as
19 follows:

20 (d) Notice of the date, time, place, or purpose of a regular
21 or special meeting of the board of directors may be provided to a
22 director by electronic transmission on consent of the director.
23 The director may specify the form of electronic transmission to be
24 used to communicate notice.

25 (e) Notice is considered provided under Subsection (d) when
26 the notice is:

27 (1) transmitted to a facsimile number provided by the

1 director for the purpose of receiving notice;

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

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

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

9 (f) A director may revoke the director's consent to receive
10 notice by electronic transmission by providing written notice to
11 the corporation. The director's consent is considered revoked for
12 purposes of Subsection (d) if the corporation is unable to deliver
13 by electronic transmission two consecutive notices, and the
14 secretary, assistant secretary, or transfer agent of the
15 corporation, or another person responsible for delivering notice on
16 behalf of the corporation, knows that delivery of those two
17 electronic transmissions was unsuccessful. Inadvertent failure to
18 treat the unsuccessful transmissions as a revocation of the
19 director's consent does not affect the validity of a meeting or
20 other action.

21 (g) An affidavit of the secretary, assistant secretary,
22 transfer agent, or other agent of a corporation stating that notice
23 has been provided to a director of the corporation by electronic
24 transmission is, in the absence of fraud, prima facie evidence that
25 notice was provided under Subsections (d) and (e).

26 SECTION 60. Sections 21.416(a) and (b), Business
27 Organizations Code, are amended to read as follows:

1 (a) If authorized by the certificate of formation or bylaws
2 of a corporation, the board of directors of the corporation[~~, by~~
3 ~~resolution adopted by the majority of the entire board of~~
4 ~~directors,~~] may designate:

5 (1) committees composed of one or more directors; or

6 (2) directors as alternate members of committees to
7 replace absent or disqualified committee members at a committee
8 meeting, subject to any limitations imposed by the board of
9 directors.

10 (b) To the extent provided by a [the] resolution of the
11 board of directors designating a committee or by the certificate of
12 formation or bylaws and subject to Subsection (c), the committee
13 has the authority of the board of directors.

14 SECTION 61. Section 21.452, Business Organizations Code, is
15 amended by adding Subsections (f) and (g) to read as follows:

16 (f) If after adoption of a resolution under Subsection
17 (b)(2) the board of directors of the corporation determines that
18 the plan of merger is not advisable, the plan of merger may be
19 submitted to the shareholders of the corporation with a
20 recommendation that the shareholders not approve the plan of
21 merger.

22 (g) A plan of merger for a corporation may include a
23 provision requiring that the plan of merger be submitted to the
24 shareholders of the corporation regardless of whether the board of
25 directors determines, after adopting a resolution or making a
26 determination under this section, that the plan of merger is not
27 advisable and recommends that the shareholders not approve the plan

1 of merger.

2 SECTION 62. Section 21.454, Business Organizations Code, is
3 amended by adding Subsections (f) and (g) to read as follows:

4 (f) If after the adoption of a resolution under Subsection
5 (b)(2) the board of directors of the corporation determines that
6 the plan of exchange is not advisable, the plan of exchange may be
7 submitted to the shareholders of the corporation with a
8 recommendation that the shareholders not approve the plan of
9 exchange.

10 (g) A plan of exchange for a corporation may include a
11 provision requiring that the plan of exchange be submitted to the
12 shareholders of the corporation regardless of whether the board of
13 directors determines, after adopting a resolution or making a
14 determination under this section, that the plan of exchange is not
15 advisable and recommends that the shareholders not approve the plan
16 of exchange.

17 SECTION 63. Section 21.552, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 21.552. STANDING TO BRING PROCEEDING. (a) A
20 shareholder may not institute or maintain a derivative proceeding
21 unless:

22 (1) the shareholder:

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

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

1 (2) the shareholder fairly and adequately represents
2 the interests of the corporation in enforcing the right of the
3 corporation.

4 (b) To the extent a shareholder of a corporation has
5 standing to institute or maintain a derivative proceeding on behalf
6 of the corporation immediately before a merger, Subchapter J or
7 Chapter 10 may not be construed to limit or terminate the
8 shareholder's standing after the merger.

9 SECTION 64. Section 21.604, Business Organizations Code, is
10 amended to read as follows:

11 Sec. 21.604. BUSINESS COMBINATION. A business combination
12 is:

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

15 (A) an affiliated shareholder;

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

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

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

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

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

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

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

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

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

1 regardless of whether in writing, with an affiliated shareholder or
2 an affiliate or associate of the affiliated shareholder;

3 (5) a reclassification of securities, including a
4 reverse share split or a share split-up, share dividend, or other
5 distribution of shares, a recapitalization of the issuing public
6 corporation, a merger of the issuing public corporation with a
7 subsidiary or pursuant to which the assets and liabilities of the
8 issuing public corporation are allocated among two or more
9 surviving or new domestic or foreign corporations or other
10 entities, or any other transaction proposed by or under an
11 agreement, arrangement, or understanding, regardless of whether in
12 writing, with an affiliated shareholder or an affiliate or
13 associate of the affiliated shareholder that has the effect,
14 directly or indirectly, of increasing the proportionate ownership
15 percentage of the outstanding shares of a class or series of voting
16 shares or securities convertible into voting shares of the issuing
17 public corporation that is beneficially owned by the affiliated
18 shareholder or an affiliate or associate of the affiliated
19 shareholder, except as a result of immaterial changes due to
20 fractional share adjustments; or

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

27 SECTION 65. Section 21.654, Business Organizations Code, is

1 amended to read as follows:

2 Sec. 21.654. TERM OF OFFICE OF DIRECTORS. Unless the
3 director resigns or is removed in accordance with the certificate
4 of formation or bylaws of the investment company, a director of an
5 investment company shall serve as director for the term for which
6 the director is elected and holds office until a successor is
7 elected and qualifies.

8 SECTION 66. Sections 22.104(a) and (c), Business
9 Organizations Code, are amended to read as follows:

10 (a) After the certificate of formation is filed, the board
11 of directors named in the certificate of formation of a corporation
12 shall hold an organization meeting of the board, either in or out of
13 this state, at the call of the organizers [~~incorporators~~] or a
14 majority of the directors to adopt bylaws and elect officers and for
15 other purposes determined by the board at the meeting. The
16 organizers [~~incorporators~~] or directors calling the meeting shall
17 send notice of the time and place of the meeting to each director
18 named in the certificate of formation not later than the third day
19 before the date of the meeting.

20 (c) If the management of a corporation is vested in the
21 corporation's members, the members shall hold the organization
22 meeting on the call of an organizer [~~incorporator~~]. An organizer
23 [~~incorporator~~] who calls the meeting shall:

24 (1) send notice of the time and place of the meeting to
25 each member not later than the third day before the date of the
26 meeting;

27 (2) if the corporation is a church, make an oral

1 announcement of the time and place of the meeting at a regularly
2 scheduled worship service before the meeting; or

3 (3) send notice of the meeting in the manner provided
4 by the certificate of formation.

5 SECTION 67. Subchapter C, Chapter 22, Business
6 Organizations Code, is amended by adding Section 22.109 to read as
7 follows:

8 Sec. 22.109. RESTATED CERTIFICATE OF FORMATION. (a) The
9 board of directors of a corporation may adopt a restated
10 certificate of formation as provided by Subchapter B, Chapter 3, by
11 following the same procedure to amend the corporation's certificate
12 of formation provided by Sections 22.104-22.107, except that member
13 approval is required only if the restated certificate of formation
14 contains an amendment.

15 (b) A person shall file a restated certificate of formation
16 as provided by Chapter 4, and the restated certificate of formation
17 takes effect as provided by Subchapter B, Chapter 3.

18 SECTION 68. Section 22.208(a), Business Organizations
19 Code, is amended to read as follows:

20 (a) Unless the director resigns or is removed, a [A]
21 director on the initial board of directors of a corporation holds
22 office until the first annual election of directors or for the
23 period specified in the certificate of formation or bylaws of the
24 corporation. Directors other than the initial directors are
25 elected, appointed, or designated for the terms provided by the
26 certificate of formation or bylaws.

27 SECTION 69. Subchapter E, Chapter 22, Business

1 Organizations Code, is amended by adding Section 22.2111 to read as
2 follows:

3 Sec. 22.2111. RESIGNATION OF DIRECTOR. Except as provided
4 by the certificate of formation or bylaws, a director of a
5 corporation may resign at any time by providing written notice to
6 the corporation.

7 SECTION 70. Section 22.355, Business Organizations Code, is
8 amended to read as follows:

9 Sec. 22.355. EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING
10 TO FINANCIAL RECORDS AND ANNUAL REPORTS. Sections 22.352, 22.353,
11 and 22.354 do not apply to:

12 (1) a corporation that solicits funds only from
13 members of the corporation;

14 (2) a corporation that does not intend to solicit and
15 receive and does not actually raise or receive during a fiscal year
16 contributions in an amount exceeding \$10,000 from a source other
17 than its own membership;

18 (3) a private or independent institution of higher
19 education described by Section 61.003[~~(15)~~], Education Code,
20 accredited by a recognized accrediting agency as defined by Section
21 61.003[~~(13)~~], Education Code, a postsecondary educational
22 institution [~~or~~] authorized to grant degrees under a certificate of
23 authority issued by the Texas Higher Education Coordinating Board
24 or a foundation chartered for the benefit of the institution or any
25 component part of the institution, a career [~~proprietary~~] school or
26 college that has received a certificate of approval from the Texas
27 Workforce Commission [~~commissioner of education~~], a public

1 institution of higher education or a foundation chartered for the
2 benefit of the institution or any component part of the
3 institution, or an elementary or secondary school;

4 (4) a religious institution that is a church, an
5 ecclesiastical or denominational organization, or another
6 established physical place for worship at which religious services
7 are the primary activity and are regularly conducted;

8 (5) a trade association or professional society the
9 income of which is principally derived from membership dues and
10 assessments, sales, or services;

11 (6) an insurer licensed and regulated by the Texas
12 Department of Insurance; or

13 (7) ~~[an organization the charitable activities of
14 which relate to public concern in the conservation and protection
15 of wildlife, fisheries, and allied natural resources; or~~

16 ~~[(8)]~~ an alumni association of a public or private
17 institution of higher education in this state that is recognized
18 and acknowledged as the official alumni association by the
19 institution.

20 SECTION 71. Section 101.102, Business Organizations Code,
21 is amended by adding Subsection (c) to read as follows:

22 (c) If one or more persons own a membership interest in a
23 limited liability company, the company agreement may provide for a
24 person to be admitted to the company as a member without acquiring a
25 membership interest in the company.

26 SECTION 72. Section 101.103, Business Organizations Code,
27 is amended to read as follows:

1 Sec. 101.103. EFFECTIVE DATE OF MEMBERSHIP. (a) In
2 connection with the formation of a company, a [A] person [who
3 acquires a membership interest in a limited liability company in
4 connection with the formation of the company] becomes a member of
5 the company on the date the company is formed if the person is named
6 as an initial member in the company's certificate of formation.

7 (b) In connection with the formation of a company, a [A]
8 person being admitted as a member of the company but [who acquires a
9 membership interest in a limited liability company during the
10 formation of the company but who is] not named as an initial member
11 in the company's certificate of formation becomes a member of the
12 company on the latest of:

13 (1) the date the company is formed;

14 (2) the date stated in the company's records as the
15 date the person becomes a member of the company; or

16 (3) if the company's records do not state a date
17 described by Subdivision (2), the date the person's admission to
18 the company is first reflected in the company's records.

19 (c) A person who, after the formation of a limited liability
20 company, acquires directly or is assigned a membership interest in
21 the company or is admitted as a member of the company without
22 acquiring a membership interest becomes a member of the company on
23 approval or consent of all of the company's members.

24 SECTION 73. Section 101.201, Business Organizations Code,
25 is amended to read as follows:

26 Sec. 101.201. ALLOCATION OF PROFITS AND LOSSES. The
27 profits and losses of a limited liability company shall be

1 allocated to each member of the company on the basis of the agreed
2 value of the contributions made by each member, [~~in accordance with~~
3 ~~the member's percentage or other interest in the company on the date~~
4 ~~of the allocation~~] as stated in the company's records required
5 under Section [~~Sections 3.151 and~~] 101.501.

6 SECTION 74. Section 101.356, Business Organizations Code,
7 is amended by amending Subsection (d) and adding Subsection (f) to
8 read as follows:

9 (d) Except as provided by Subsection (e) or any other
10 section of this title, the company's members must approve by an
11 affirmative vote of all the members:

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

14 (2) a restated certificate of formation that contains
15 an amendment to the certificate of formation of a limited liability
16 company [~~must be approved by the affirmative vote of all of the~~
17 ~~company's members~~].

18 (f) Approval of a restated certificate of formation by a
19 limited liability company's members is required only if the
20 restated certificate contains an amendment.

21 SECTION 75. Subchapter H, Chapter 101, Business
22 Organizations Code, is amended by adding Section 101.359 to read as
23 follows:

24 Sec. 101.359. EFFECTIVE ACTION BY MEMBERS OR MANAGERS WITH
25 OR WITHOUT MEETING. Members or managers of a limited liability
26 company may take action at a meeting of the members or managers or
27 without a meeting in any manner permitted by this title, Title 1, or

1 the governing documents of the company. Unless otherwise provided
2 by the governing documents, an action is effective if it is taken:

3 (1) by an affirmative vote of those persons having at
4 least the minimum number of votes that would be necessary to take
5 the action at a meeting at which each member or manager, as
6 appropriate, entitled to vote on the action is present and votes; or

7 (2) with the consent of each member of the limited
8 liability company, which may be established by:

9 (A) the member's failure to object to the action
10 in a timely manner, if the member has full knowledge of the action;

11 (B) consent to the action in writing signed by
12 the member; or

13 (C) any other means reasonably evidencing
14 consent.

15 SECTION 76. Section 151.001, Business Organizations Code,
16 is amended to read as follows:

17 Sec. 151.001. DEFINITIONS. In this title:

18 (1) "Capital account" means the amount computed by:

19 (A) adding the amount of a partner's original and
20 additional contributions of cash to a partnership, the agreed value
21 of any other property that that partner originally or additionally
22 contributed to the partnership, and allocations of partnership
23 profits to that partner; and

24 (B) subtracting the amount of distributions to
25 that partner and allocations of partnership losses to that partner.

26 (2) "Distribution" means a transfer of property,
27 including cash, from a partnership to:

1 (A) a partner in the partner's capacity as a
2 partner; or

3 (B) a partner's transferee.

4 (3) "Foreign limited partnership" means a partnership
5 formed under the laws of another state that has one or more general
6 partners and one or more limited partners.

7 (4) [~~(3)~~] "Majority-in-interest," with respect to all
8 or a specified group of partners, means partners who own more than
9 50 percent of the current percentage or other interest in the
10 profits of the partnership that is owned by all of the partners or
11 by the partners in the specified group, as appropriate.

12 (5) [~~(4)~~] "Partnership agreement" means any
13 agreement, written or oral, of the partners concerning a
14 partnership.

15 SECTION 77. Section 152.204(a), Business Organizations
16 Code, is amended to read as follows:

17 (a) A partner owes to the partnership, ~~and~~ the other
18 partners, and a transferee of a deceased partner's partnership
19 interest as designated in Section 152.406(a)(2):

20 (1) a duty of loyalty; and

21 (2) a duty of care.

22 SECTION 78. Section 152.501(b), Business Organizations
23 Code, is amended to read as follows:

24 (b) An event of withdrawal of a partner occurs on:

25 (1) receipt by the partnership of notice of the
26 partner's express will to withdraw as a partner on:

27 (A) the date on which the notice is received; or

1 (B) a later date specified by the notice;

2 (2) an event specified in the partnership agreement as
3 causing the partner's withdrawal;

4 (3) the partner's expulsion as provided by the
5 partnership agreement;

6 (4) the partner's expulsion by vote of a
7 majority-in-interest of the other partners if:

8 (A) it is unlawful to carry on the partnership
9 business with that partner;

10 (B) there has been a transfer of all or
11 substantially all of that partner's partnership interest, other
12 than:

13 (i) a transfer for security purposes that
14 has not been foreclosed; or

15 (ii) the substitution of a successor
16 trustee or successor personal representative;

17 (C) not later than the 90th day after the date on
18 which the partnership notifies an entity partner, other than a
19 nonfiling entity or foreign nonfiling entity partner, that it will
20 be expelled because it has filed a certificate of termination or the
21 equivalent, its existence has been involuntarily terminated or its
22 charter has been revoked, or its right to conduct business has been
23 terminated or suspended by the jurisdiction of its formation, if
24 the certificate of termination or the equivalent is not revoked or
25 its existence, charter, or right to conduct business is not
26 reinstated; or

27 (D) an event requiring a winding up has occurred

1 with respect to a nonfiling entity or foreign nonfiling entity that
2 is a partner;

3 (5) the partner's expulsion by judicial decree, on
4 application by the partnership or another partner, if the judicial
5 decree determines that [~~for the partner's expulsion by judicial~~
6 ~~decree because~~] the partner:

7 (A) engaged in wrongful conduct that adversely
8 and materially affected the partnership business;

9 (B) wilfully or persistently committed a
10 material breach of:

11 (i) the partnership agreement; or

12 (ii) a duty owed to the partnership or the
13 other partners under Sections 152.204-152.206; or

14 (C) engaged in conduct relating to the
15 partnership business that made it not reasonably practicable to
16 carry on the business in partnership with that partner;

17 (6) the partner's:

18 (A) becoming a debtor in bankruptcy;

19 (B) executing an assignment for the benefit of a
20 creditor;

21 (C) seeking, consenting to, or acquiescing in the
22 appointment of a trustee, receiver, or liquidator of that partner
23 or of all or substantially all of that partner's property; or

24 (D) failing, not later than the 90th day after
25 the appointment, to have vacated or stayed the appointment of a
26 trustee, receiver, or liquidator of the partner or of all or
27 substantially all of the partner's property obtained without the

1 partner's consent or acquiescence, or not later than the 90th day
2 after the date of expiration of a stay, failing to have the
3 appointment vacated;

4 (7) if a partner is an individual:

5 (A) the partner's death;

6 (B) the appointment of a guardian or general
7 conservator for the partner; or

8 (C) a judicial determination that the partner has
9 otherwise become incapable of performing the partner's duties under
10 the partnership agreement;

11 (8) termination of a partner's existence;

12 (9) if a partner has transferred all of the partner's
13 partnership interest, redemption of the transferee's interest
14 under Section 152.611;

15 (10) an agreement to continue the partnership under
16 Section 11.057(b) if the partnership has received a notice from the
17 partner under Section 11.057(a)(6) requesting that the partnership
18 be wound up; or

19 (11) a conversion of the partnership if the partner:

20 (A) did not consent to the conversion; and

21 (B) failed to notify the partnership in writing
22 of the partner's desire not to withdraw within 60 days after the
23 later of:

24 (i) the effective date of the conversion;

25 or

26 (ii) the date the partner receives actual
27 notice of the conversion.

1 SECTION 79. Section 152.904, Business Organizations Code,
2 is amended to read as follows:

3 Sec. 152.904. REGISTERED AGENT AND REGISTERED OFFICE. A
4 foreign limited liability partnership subject to this chapter shall
5 maintain a registered office and registered agent in this state in
6 the same manner and to the same extent as if the partnership were a
7 foreign filing entity. Subchapters E and F, Chapter 5, apply to a
8 foreign limited liability partnership to the same extent those
9 subchapters apply to a foreign filing entity [~~accordance with~~
10 ~~Chapter 5~~].

11 SECTION 80. Section 152.906, Business Organizations Code,
12 is amended to read as follows:

13 Sec. 152.906. WITHDRAWAL [~~CANCELLATION~~] OF REGISTRATION.
14 (a) A registration may be voluntarily withdrawn [~~cancelled~~] by
15 filing a certificate of withdrawal in accordance with this section
16 and Section 9.011 [~~cancellation~~].

17 (b) In addition to the information required by Section
18 9.011, the [~~The~~] certificate of withdrawal [~~cancellation~~] must:

19 (1) contain:

20 (A) the federal tax identification number of the
21 partnership; and

22 (B) the date of effectiveness of the
23 partnership's last application for registration under this
24 subchapter; and

25 (2) be signed by:

26 (A) a majority-in-interest of the partners; or

27 (B) one or more partners authorized by a

1 majority-in-interest of the partners.

2 SECTION 81. Section 152.907, Business Organizations Code,
3 is amended to read as follows:

4 Sec. 152.907. EFFECT OF CERTIFICATE OF WITHDRAWAL
5 [~~CANCELLATION~~]. A certificate of withdrawal [~~cancellation~~]
6 terminates the registration of the partnership as a foreign limited
7 liability partnership as of the date on which the notice is filed or
8 a later date specified in the notice, but not later than the
9 expiration date under Section 152.905(e).

10 SECTION 82. Section 152.910(a), Business Organizations
11 Code, is amended to read as follows:

12 (a) A foreign limited liability partnership that transacts
13 business in this state without being registered is subject to
14 Subchapter B, Chapter 9, to the same extent as a foreign filing
15 entity.

16 SECTION 83. Section 152.911(a), Business Organizations
17 Code, is amended to read as follows:

18 (a) A document filed under this subchapter or an application
19 for registration filed under Section 9.007 may be amended by filing
20 with the secretary of state an application for amendment of
21 registration in accordance with Chapter 4.

22 SECTION 84. Subchapter K, Chapter 152, Business
23 Organizations Code, is amended by adding Section 152.914 to read as
24 follows:

25 Sec. 152.914. REVOCATION OF REGISTRATION BY SECRETARY OF
26 STATE. (a) The secretary of state may revoke the registration of a
27 foreign limited liability partnership for the partnership's

1 failure to:

2 (1) file a report within the period required by law or
3 pay a fee or penalty prescribed by law when due and payable;

4 (2) maintain a registered agent or registered office
5 address in this state as required by law; or

6 (3) pay a fee required in connection with a filing, or
7 payment of the fee was dishonored when presented by the state for
8 payment.

9 (b) If it appears to the secretary of state that, with
10 respect to a foreign limited liability partnership, a circumstance
11 described by Subsection (a) exists, the secretary of state shall
12 provide notice to the partnership in the same manner and to the same
13 extent as notice is required to be provided to a foreign filing
14 entity under Sections 9.101(a) and 9.102(a).

15 (c) The secretary of state shall reinstate the registration
16 of a foreign limited liability partnership if the partnership files
17 an application for reinstatement in accordance with Subsection (e),
18 accompanied by each amendment of the partnership's registration
19 that is required by intervening events, and:

20 (1) the foreign limited liability partnership has
21 corrected the circumstances that led to the revocation and any
22 other circumstances described by Subsection (a) that may exist,
23 including the payment of fees, interest, or penalties; or

24 (2) the secretary of state finds that the
25 circumstances that led to the revocation did not exist at the time
26 of revocation.

27 (d) A foreign limited liability partnership, to have its

1 registration reinstated, must comply with the requirements of this
2 section not later than the date the registration would have expired
3 under Section 152.905(e) had the registration not been revoked
4 under this section.

5 (e) The foreign limited liability partnership shall file a
6 certificate of reinstatement in accordance with Chapter 4. The
7 certificate of reinstatement must contain:

8 (1) the name of the partnership;

9 (2) the filing number assigned by the filing officer
10 to the partnership;

11 (3) the effective date of the revocation of the
12 partnership's registration; and

13 (4) the name of the partnership's registered agent and
14 the address of the partnership's registered office.

15 SECTION 85. Section 153.052(b), Business Organizations
16 Code, is amended to read as follows:

17 (b) A certificate of formation may be amended to state the
18 name, mailing address, and street address of the business or
19 residence of each person winding up the limited partnership's
20 affairs if, after an event requiring the winding up of a limited
21 partnership but before the limited partnership is reconstituted or
22 a certificate of termination [~~cancellation~~] is filed as provided by
23 Section 153.451:

24 (1) the certificate of formation has been amended to
25 reflect the withdrawal of all general partners; or

26 (2) a person who is not shown on the certificate of
27 formation as a general partner is carrying out the winding up of a

1 limited partnership's affairs.

2 SECTION 86. Subchapter B, Chapter 153, Business
3 Organizations Code, is amended by adding Section 153.053 to read as
4 follows:

5 Sec. 153.053. RESTATED CERTIFICATE OF FORMATION. (a) The
6 general partners may adopt at any time a restated certificate of
7 formation that does not contain an amendment to the certificate of
8 formation.

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

12 SECTION 87. The heading to Section 153.151, Business
13 Organizations Code, is amended to read as follows:

14 Sec. 153.151. ADMISSION OF [~~ADDITIONAL~~] GENERAL PARTNERS.

15 SECTION 88. Section 153.151, Business Organizations Code,
16 is amended by adding Subsections (c), (d), and (e) to read as
17 follows:

18 (c) A written partnership agreement may provide that a
19 person may be admitted as a general partner in a limited
20 partnership, including as a sole general partner, and may acquire a
21 partnership interest in the limited partnership without:

22 (1) making a contribution to the limited partnership;

23 or

24 (2) assuming an obligation to make a contribution to
25 the limited partnership.

26 (d) A written partnership agreement may provide that a
27 person may be admitted as a general partner in a limited

1 partnership, including as the sole general partner, without
2 acquiring a partnership interest in the limited partnership.

3 (e) This section is not a limitation of or does not
4 otherwise affect Section 153.152.

5 SECTION 89. Section 153.201, Business Organizations Code,
6 is amended to read as follows:

7 Sec. 153.201. FORM OF CONTRIBUTION. The contribution of a
8 [~~limited~~] partner may consist of a tangible or intangible benefit
9 to the limited partnership or other property of any kind or nature,
10 including:

- 11 (1) cash;
- 12 (2) a promissory note;
- 13 (3) services performed;
- 14 (4) a contract for services to be performed; and
- 15 (5) another interest in or security of the limited
16 partnership, another domestic or foreign limited partnership, or
17 other entity.

18 SECTION 90. The heading to Section 153.451, Business
19 Organizations Code, is amended to read as follows:

20 Sec. 153.451. CERTIFICATE OF TERMINATION [~~CANCELLATION~~].

21 SECTION 91. Section 153.451(a), Business Organizations
22 Code, is amended to read as follows:

23 (a) A certificate of formation shall be canceled by filing a
24 certificate of termination [~~cancellation~~] with the secretary of
25 state in accordance with Chapter 4:

- 26 (1) on the completion of the winding up of the
27 partnership business;

- 1 (2) when there are no limited partners; or
2 (3) subject to Subsection (b), on a merger or
3 conversion as provided by Chapter 10.

4 SECTION 92. Section 153.452, Business Organizations Code,
5 is amended to read as follows:

6 Sec. 153.452. CONTENTS OF CERTIFICATE OF TERMINATION
7 [~~CANCELLATION~~]. A certificate of termination [~~cancellation~~] must
8 contain:

- 9 (1) the name of the limited partnership;
10 (2) the date of the filing of the partnership's
11 certificate of formation;
12 (3) the reason for filing the certificate of
13 termination [~~cancellation~~];
14 (4) the future effective date or a certain time of
15 termination [~~cancellation~~] if termination [~~cancellation~~] is not
16 effective on the filing of the certificate; and
17 (5) other proper information as determined by the
18 person filing the certificate of termination [~~cancellation~~].

19 SECTION 93. Section 153.501(d), Business Organizations
20 Code, is amended to read as follows:

- 21 (d) To approve a revocation under Section 11.151 by a
22 limited partnership of a voluntary decision to wind up as specified
23 in Section 11.058(1), prior to filing the certificate of
24 termination [~~cancellation~~] required by Section 153.451, all
25 remaining partners, or another group or percentage of partners as
26 specified by the partnership agreement, must agree in writing to
27 revoke the voluntary decision to wind up and continue the business

1 of the limited partnership.

2 SECTION 94. Section 153.503(a), Business Organizations
3 Code, is amended to read as follows:

4 (a) After an event requiring the winding up of a limited
5 partnership and until the filing of a certificate of termination
6 [~~cancellation~~] as provided by Sections 153.451 and 153.452, unless
7 a written partnership agreement provides otherwise, a person
8 winding up the limited partnership's business in the name of and on
9 behalf of the limited partnership may take the actions specified in
10 Sections 11.052 and 11.053.

11 SECTION 95. Section 153.553(a), Business Organizations
12 Code, is amended to read as follows:

13 (a) Each certificate required by this code to be filed by a
14 limited partnership with the secretary of state shall be executed
15 as follows:

16 (1) an initial certificate of formation must be signed
17 as provided in Section 3.004(b)(1), except for an initial
18 certificate of formation signed by a person under Section
19 153.106(1);

20 (2) a certificate of amendment or restated certificate
21 of formation must be signed by at least one general partner and by
22 each other general partner designated in the certificate of
23 amendment as a new general partner, unless signed and filed by a
24 person under Section 153.052(b), 153.052(c), or 153.106(1), but the
25 certificate of amendment need not be signed by a withdrawing
26 general partner;

27 (3) a certificate of termination [~~cancellation~~] must

1 be signed by all general partners participating in the winding up of
2 the limited partnership's business or, if no general partners are
3 winding up the limited partnership's business, by all nonpartner
4 liquidators or, if the limited partners are winding up the limited
5 partnership's business, by a majority-in-interest of the limited
6 partners;

7 (4) a certificate of merger filed on behalf of a
8 domestic limited partnership must be signed as provided by Chapter
9 10;

10 (5) a certificate filed under Section 10.251 must be
11 signed by the person designated by the court; and

12 (6) a certificate of correction must be signed by at
13 least one general partner.

14 SECTION 96. Subchapter B, Chapter 251, Business
15 Organizations Code, is amended by adding Section 251.054 to read as
16 follows:

17 Sec. 251.054. RESTATED CERTIFICATE OF FORMATION. (a) The
18 board of directors of a cooperative association may adopt a
19 restated certificate of formation as provided by Subchapter B,
20 Chapter 3, by following the procedure to amend the association's
21 certificate of formation provided by Section 251.052, except that
22 member approval is required if the restated certificate of
23 formation contains an amendment.

24 (b) A person shall file a restated certificate of formation
25 as provided by Chapter 4, and the restated certificate of formation
26 takes effect as provided by Subchapter B, Chapter 3.

27 SECTION 97. Section 301.003(2), Business Organizations

1 Code, is amended to read as follows:

2 (2) "Professional association" means an association,
3 as distinguished from either a partnership or a corporation, that
4 is:

5 (A) formed for the purpose of providing the
6 professional service rendered by a doctor of medicine, doctor of
7 osteopathy, doctor of podiatry, dentist, chiropractor,
8 optometrist, therapeutic optometrist, veterinarian, or licensed
9 mental health professional; and

10 (B) governed as a professional entity under this
11 title.

12 SECTION 98. Section 301.006(d), Business Organizations
13 Code, is amended to read as follows:

14 (d) This section may not be construed to prohibit a
15 professional entity or foreign professional entity from employing
16 nurses or from employing individuals who do not, according to
17 general custom and practice, ordinarily provide a professional
18 service, including clerks, secretaries, bookkeepers, technicians,
19 [~~nurses~~] or assistants. To the extent this subsection conflicts
20 with any other law, this subsection controls.

21 SECTION 99. Section 302.003(a), Business Organizations
22 Code, is amended to read as follows:

23 (a) A professional association may amend the association's
24 certificate of formation as provided by Chapter 3 and:

25 (1) by [~~Chapter 3,~~

26 [~~2~~] the procedure for amendment stated in the
27 certificate of formation; or

1 (2) [~~(3)~~] if the certificate of formation does not
2 provide a procedure for amending the certificate, by a two-thirds
3 vote of the association's members.

4 SECTION 100. Section 402.001, Business Organizations Code,
5 is amended to read as follows:

6 Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. (a) On
7 or after [~~At~~] the effective date of this code, this code applies to:

8 (1) a domestic entity formed on or after the effective
9 date of this code;

10 (2) a foreign filing entity, or other foreign entity,
11 that is [~~has~~] not registered with the secretary of state to transact
12 business in this state before the effective date of this code; and

13 (3) a foreign nonfiling entity, including a foreign
14 limited liability partnership.

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

20 (c) Notwithstanding Subsections (a) and (b), after the
21 effective date of this code, Sections 152.802 and 152.803, instead
22 of prior law, govern a renewal of registration or other filing with
23 the secretary of state made on behalf of a domestic limited
24 liability partnership registered under prior law.

25 (d) Notwithstanding Subsection (a), a domestic partnership
26 that files an initial application for registration as a limited
27 liability partnership after the effective date of this code is

1 governed by Subchapter J, Chapter 152.

2 (e) Except as provided by Subsection (b), on or after the
3 effective date of this code, Subchapter K, Chapter 152, applies to
4 the registration of a foreign limited liability partnership
5 registered under prior law.

6 SECTION 101. The heading to Section 402.004, Business
7 Organizations Code, is amended to read as follows:

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

10 SECTION 102. Section 402.005, Business Organizations Code,
11 is amended to read as follows:

12 Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES [~~ON~~
13 ~~MANDATORY APPLICATION DATE~~]. (a) On or after January 1, 2010, if a
14 domestic [~~filing~~] entity formed before January 1, 2006, [~~the~~
15 ~~effective date of this code~~] or a foreign filing entity registered
16 with the secretary of state to transact business in this state
17 before January 1, 2006, [~~the effective date of this code~~] has not
18 taken the actions specified by Section 402.003(a) or 402.004 to
19 elect to adopt this code:

20 (1) this code applies to the entity and all actions
21 taken by the managerial officials, owners, or members of the
22 entity, except as otherwise expressly provided by this title;

23 (2) if the entity is a domestic or foreign filing
24 entity, the entity is not considered to have failed to comply with
25 this code if the entity's certificate of formation or application
26 for registration, as appropriate, does not comply with this code;

27 (3) if the entity is a domestic filing entity, the

1 entity shall conform its certificate of formation to the
2 requirements of this code when it next files an amendment to its
3 certificate of formation; and

4 (4) if the entity is a foreign filing entity, the
5 entity shall conform its application for registration to the
6 requirements of this code when it next files an amendment to its
7 application for registration.

8 (b) On or after January 1, 2010, and to the extent provided
9 in Subchapter A, Chapter 23, this code applies to a corporation
10 created under a special statute of this state outside this code
11 before January 1, 2006. The corporation, if its certificate of
12 formation, or equivalent governing document, is filed with the
13 secretary of state, may elect for this code to apply to the
14 corporation at any time on or after January 1, 2006, and prior to
15 January 1, 2010, to the extent provided in Subchapter A, Chapter 23,
16 by filing a statement and taking other actions in a manner similar
17 to a domestic filing entity under Section 402.003.

18 SECTION 103. Section 402.006, Business Organizations Code,
19 is amended to read as follows:

20 Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND
21 TRANSACTIONS. [~~a~~] Except as otherwise expressly provided by
22 this title, all of the provisions of this code govern acts,
23 contracts, or other transactions by an entity subject to this code
24 or its managerial officials, owners, or members that occur on or
25 after the mandatory application date. The prior law governs the
26 acts, contracts, or transactions of the entity or its managerial
27 officials, owners, or members that occur before the mandatory

1 application date.

2 ~~[(b) No requirement under Subchapter E, Chapter 3, with~~
3 ~~respect to matters to be set forth on certificates evidencing~~
4 ~~ownership interests of partnerships shall apply to or affect~~
5 ~~certificates outstanding when the requirement first becomes~~
6 ~~applicable to the certificates, but the requirement applies to all~~
7 ~~subsequently issued certificates whether in connection with an~~
8 ~~original issue of ownership interests, a transfer of ownership~~
9 ~~interests, or otherwise.]~~

10 SECTION 104. Section 402.007, Business Organizations Code,
11 is amended to read as follows:

12 Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any
13 proposed indemnification by a domestic entity after the mandatory
14 application date, regardless of whether the events on which the
15 indemnification is based occurred before or after the mandatory
16 application date. In a case in which indemnification is permitted
17 but not required under Chapter 8, a provision [A statement]
18 relating to indemnification contained in the governing documents of
19 a domestic entity on the mandatory application date that would
20 otherwise have the effect of limiting the nature or type of
21 indemnification permitted by Chapter 8 may not be construed after
22 the mandatory application date as limiting the indemnification
23 authorized by Chapter 8 unless the provision is intended to limit or
24 restrict permissive indemnification under applicable law [it
25 expressly states that is the intent].

26 SECTION 105. Section 402.013, Business Organizations Code,
27 is amended to read as follows:

1 Sec. 402.013. REINSTATEMENT OF ENTITIES CANCELED, REVOKED,
 2 INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER [~~SUSPENSION~~
 3 ~~FOR NONFILING OF REQUIRED REPORTS OR PAYMENT OF TAXES,~~
 4 ~~APPLICABILITY OF~~] PRIOR LAW. (a) On or after January 1, 2006, and
 5 before January 1, 2010, [~~If the rights, privileges, and powers of~~] a
 6 domestic filing entity whose certificate of formation or equivalent
 7 governing document has been canceled, revoked, involuntarily
 8 dissolved, [~~have been~~] suspended, or forfeited [~~and are still~~
 9 ~~suspended immediately before the mandatory application date~~] under
 10 [~~the~~] prior law may reinstate its certificate of formation or
 11 equivalent governing document in accordance with:

- 12 (1) prior law; or
 13 (2) [~~r~~] this code if it also complies with Section
 14 402.003 [~~applies to the entity on the mandatory application date~~].

15 (b) On or after January 1, 2006, and before January 1, 2010,
 16 a foreign filing entity whose registration to do business has been
 17 canceled, revoked, involuntarily dissolved, suspended, or
 18 forfeited under prior law may reinstate its registration in
 19 accordance with:

- 20 (1) prior law; or
 21 (2) this code if it also complies with Section
 22 402.004.

23 (c) If the certificate of formation [~~rights, privileges,~~
 24 ~~and powers~~] of a domestic filing entity or the registration to do
 25 business of a foreign filing entity is forfeited [~~have been~~
 26 ~~suspended and are still suspended~~] under the Tax Code, the entity
 27 must revive the certificate of formation or registration in

1 accordance with [~~immediately before the mandatory application~~
2 ~~date, the suspension continues to apply to the entity until the~~
3 ~~rights, privileges, and powers are restored by the secretary of~~
4 ~~state under~~] that code.

5 SECTION 106. Section 9.005, Business Organizations Code, as
6 enacted by Chapter 182, Acts of the 78th Legislature, Regular
7 Session, 2003, is repealed.

8 SECTION 107. This Act takes effect January 1, 2006.