

1-1 By: Giddings (Senate Sponsor - Fraser) H.B. No. 1319  
1-2 (In the Senate - Received from the House March 31, 2005;  
1-3 April 5, 2005, read first time and referred to Committee on  
1-4 Business and Commerce; April 25, 2005, reported favorably by the  
1-5 following vote: Yeas 7, Nays 0; April 25, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to business entities and associations.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 1.002, Business Organizations Code, is  
1-11 amended by adding Subdivision (20-a) and by amending Subdivisions  
1-12 (29), (34), (50), and (89) to read as follows:

1-13 (20-a) "Electronic transmission" means a form of  
1-14 communication that:

1-15 (A) does not directly involve the physical  
1-16 transmission of paper;

1-17 (B) creates a record that may be retained,  
1-18 retrieved, and reviewed by the recipient; and

1-19 (C) may be directly reproduced in paper form by  
1-20 the recipient through an automated process.

1-21 (29) "Foreign filing entity" means a foreign entity,  
1-22 other than a foreign limited liability partnership, that registers  
1-23 or is required to register as a foreign entity under Chapter 9.

1-24 (34) "General partnership" means a partnership  
1-25 governed as a general partnership under Chapter 152. The term  
1-26 includes a general partnership registered as a limited liability  
1-27 partnership.

1-28 (50) "Limited partnership" means a partnership that is  
1-29 governed as a limited partnership under Title 4 and that has one or  
1-30 more general partners and one or more limited partners. The term  
1-31 includes a limited partnership registered as a limited liability  
1-32 limited partnership.

1-33 (89) "Writing" or "written" means an expression of  
1-34 words, letters, characters, numbers, symbols, figures, or other  
1-35 textual information that is inscribed on a tangible medium or that  
1-36 is stored in an electronic or other medium that is retrievable in a  
1-37 perceivable form. Unless the context requires otherwise, the term:

1-38 (A) includes stored or transmitted electronic  
1-39 data, ~~and~~ electronic [and] transmissions, and reproductions of  
1-40 writings; and

1-41 (B) does not include sound or video recordings of  
1-42 speech other than transcriptions that are otherwise writings.

1-43 SECTION 2. Section 1.006, Business Organizations Code, is  
1-44 amended to read as follows:

1-45 Sec. 1.006. SYNONYMOUS TERMS. To the extent not  
1-46 inconsistent with the provisions of the constitution and other  
1-47 statutes or codes wherein such terms may be found, and as the  
1-48 context requires, in this code or any other statute or code of this  
1-49 state:

1-50 (1) a reference to "articles of incorporation,"  
1-51 "articles of organization," "articles of association,"  
1-52 "certificate of limited partnership," and "charter" includes a  
1-53 "certificate of formation";

1-54 (2) a reference to "authorized capital stock" includes  
1-55 "authorized shares";

1-56 (3) a reference to "capital stock" includes  
1-57 "authorized and issued shares," "issued share," and "stated  
1-58 capital";

1-59 (4) a reference to a "certificate of registration,"  
1-60 "certificate of authority," and "permit to do business" includes  
1-61 "registration";

1-62 (5) a reference to "stock" and "shares of stock"  
1-63 includes "shares";

1-64 (6) a reference to "stockholder" includes

2-1 "shareholder";  
 2-2 (7) a reference to "no par stock" includes "shares  
 2-3 without par value"; ~~and~~  
 2-4 (8) a reference to "paid-up capital" includes "stated  
 2-5 capital[=]";  
 2-6 (9) a reference to "articles of merger" includes a  
 2-7 "certificate of merger";  
 2-8 (10) a reference to "articles of exchange" includes a  
 2-9 "certificate of exchange";  
 2-10 (11) a reference to "articles of conversion" includes  
 2-11 a "certificate of conversion";  
 2-12 (12) a reference to "articles of amendment" includes a  
 2-13 "certificate of amendment"; and  
 2-14 (13) a reference to "articles of dissolution" includes  
 2-15 a "certificate of termination."

2-16 SECTION 3. Section 1.007, Business Organizations Code, is  
 2-17 amended to read as follows:

2-18 Sec. 1.007. SIGNING OF DOCUMENT OR OTHER WRITING. For  
 2-19 purposes of this code, a writing has been signed by a person when  
 2-20 the writing includes, bears, or incorporates the person's  
 2-21 signature. A transmission or reproduction of a writing signed by a  
 2-22 person is considered signed by that person for purposes of this  
 2-23 code.

2-24 SECTION 4. Section 2.010, Business Organizations Code, is  
 2-25 amended to read as follows:

2-26 Sec. 2.010. PROHIBITED ACTIVITIES OF NONPROFIT  
 2-27 CORPORATION. A nonprofit corporation may not be organized or  
 2-28 registered under this code to conduct its affairs in this state to:

2-29 (1) engage in or operate as a group hospital service,  
 2-30 rural credit union, agricultural and livestock pool, mutual loan  
 2-31 corporation, cooperative association under Chapter 251,  
 2-32 cooperative credit association, farmers' cooperative society,  
 2-33 Co-operative Marketing Act corporation, rural electric cooperative  
 2-34 corporation, telephone cooperative corporation, or fraternal  
 2-35 organization operating under the lodge system and incorporated  
 2-36 under Subchapter C, Chapter 23; or

2-37 (2) engage in water supply or sewer service except as  
 2-38 an entity incorporated under Chapter 67, Water Code.

2-39 SECTION 5. Section 2.101, Business Organizations Code, is  
 2-40 amended to read as follows:

2-41 Sec. 2.101. GENERAL POWERS. Except as otherwise provided  
 2-42 by this code, a domestic entity has the same powers as an individual  
 2-43 to take action necessary or convenient to carry out its business and  
 2-44 affairs. Except as otherwise provided by this code, the powers of a  
 2-45 domestic entity include the power to:

2-46 (1) sue, be sued, and defend suit in the entity's  
 2-47 business name;

2-48 (2) have and alter a seal and use the seal or a  
 2-49 facsimile of it by impressing, affixing, or reproducing it;

2-50 (3) acquire, receive, own, hold, improve, use, and  
 2-51 deal in and with property or an interest in property;

2-52 (4) sell, convey, mortgage, pledge, lease, exchange,  
 2-53 and otherwise dispose of property;

2-54 (5) make contracts and guarantees;

2-55 (6) incur liabilities, borrow money, issue notes,  
 2-56 bonds, or other obligations, which may be convertible into, or  
 2-57 include the option to purchase, other securities or ownership  
 2-58 interests in the entity, and secure its obligations by mortgaging  
 2-59 or pledging its property, franchises, or income;

2-60 (7) lend money, invest its funds, and receive and hold  
 2-61 property as security for repayment if the loan or assistance  
 2-62 reasonably may be expected to benefit, directly or indirectly, the  
 2-63 entity;

2-64 (8) acquire its own bonds, debentures, or other  
 2-65 evidences of indebtedness or obligations;

2-66 (9) acquire its own ownership interests, regardless of  
 2-67 whether redeemable, and hold the ownership interests as treasury  
 2-68 ownership interests or cancel or dispose of the ownership  
 2-69 interests;

3-1 (10) be a promoter, organizer, owner, partner, member,  
3-2 associate, or manager of an organization;  
3-3 (11) acquire, receive, own, hold, vote, use, pledge,  
3-4 and dispose of ownership interests in or securities issued by  
3-5 another person;  
3-6 (12) conduct its business, locate its offices, and  
3-7 exercise the powers granted by this code to further its purposes, in  
3-8 or out of this state;  
3-9 (13) lend money to, and otherwise assist, its  
3-10 managerial officials, owners, members, or employees as necessary or  
3-11 appropriate;  
3-12 (14) elect or appoint officers and agents of the  
3-13 entity, establish the length of their terms, define their duties,  
3-14 and fix their compensation;  
3-15 (15) pay pensions and establish pension plans, pension  
3-16 trusts, profit-sharing plans, bonus plans, and incentive plans for  
3-17 managerial officials, owners, members, or employees or former  
3-18 managerial officials, owners, members, or employees;  
3-19 (16) indemnify and maintain liability insurance for  
3-20 managerial officials, owners, members, employees, and agents of the  
3-21 entity or the entity's affiliate;  
3-22 (17) adopt and amend governing documents for managing  
3-23 the affairs of the entity subject to applicable law;  
3-24 (18) make donations for the public welfare or for a  
3-25 charitable, scientific, or educational purpose;  
3-26 (19) voluntarily wind up its business and activities  
3-27 and terminate its existence;  
3-28 (20) transact business or take action that will aid  
3-29 governmental policy; ~~and~~  
3-30 (21) renounce, in its certificate of formation or by  
3-31 action of its governing authority, an interest or expectancy of the  
3-32 entity in, or an interest or expectancy of the entity in being  
3-33 offered an opportunity to participate in, specified business  
3-34 opportunities or a specified class or category of business  
3-35 opportunities presented to the entity or one or more of its  
3-36 managerial officials or owners; and  
3-37 (22) take other action necessary or appropriate to  
3-38 further the purposes of the entity.  
3-39 SECTION 6. Section 3.051(b), Business Organizations Code,  
3-40 is amended to read as follows:  
3-41 (b) An amended certificate of formation may contain only  
3-42 provisions that:  
3-43 (1) would be permitted at the time of the amendment if  
3-44 the amended certificate of formation were a newly filed original  
3-45 certificate of formation; or  
3-46 (2) effect a change, exchange, reclassification,  
3-47 subdivision, combination, or cancellation in the membership or  
3-48 ownership interests or the rights of owners or members of the filing  
3-49 entity.  
3-50 SECTION 7. Section 3.054, Business Organizations Code, is  
3-51 amended to read as follows:  
3-52 Sec. 3.054. EXECUTION OF [SUPPLEMENTAL PROVISIONS FOR]  
3-53 CERTIFICATE OF AMENDMENT OF FOR-PROFIT CORPORATION. [(a) In  
3-54 addition to the statements required by Section 3.053, a certificate  
3-55 of amendment for a for-profit corporation must state:  
3-56 [(1) if the amendment provides for an exchange,  
3-57 reclassification, or cancellation of issued shares, the manner in  
3-58 which the exchange, reclassification, or cancellation of the issued  
3-59 shares will be effected if the manner is not specified in the  
3-60 amendment, and  
3-61 [(2) if the amendment effects a change in the amount of  
3-62 stated capital, the manner in which the change in the amount of  
3-63 stated capital is effected and the amount of stated capital  
3-64 expressed in dollar terms as changed by the amendment.  
3-65 [(b)] An officer shall sign the certificate of amendment on  
3-66 behalf of the for-profit corporation. If shares of the for-profit  
3-67 corporation have not been issued and the certificate of amendment  
3-68 is adopted by the board of directors, a majority of the directors  
3-69 may sign the certificate of amendment on behalf of the for-profit

4-1 corporation.

4-2 SECTION 8. Section 3.151(b), Business Organizations Code,  
4-3 is amended to read as follows:

4-4 (b) The books, records, minutes, and ownership or  
4-5 membership records of any filing entity, including those described  
4-6 in Subsection (a)(4), may be in written paper form or another form  
4-7 capable of being converted into written paper form within a  
4-8 reasonable time.

4-9 SECTION 9. Section 4.002(a), Business Organizations Code,  
4-10 is amended to read as follows:

4-11 (a) If the secretary of state finds that a filing instrument  
4-12 delivered under Section 4.001 conforms to the provisions of this  
4-13 code that apply to the entity and to applicable rules adopted under  
4-14 Section 12.001 and that all required fees have been paid, the  
4-15 secretary of state shall:

4-16 (1) file the instrument by accepting it into the  
4-17 filing system adopted by the secretary of state and assigning the  
4-18 instrument a date of filing; and

4-19 (2) deliver a written [~~or electronic~~] acknowledgment  
4-20 of filing to the entity or its representative.

4-21 SECTION 10. Section 4.152, Business Organizations Code, is  
4-22 amended to read as follows:

4-23 Sec. 4.152. FILING FEES: FOR-PROFIT CORPORATIONS. For a  
4-24 filing by or for a for-profit corporation, the secretary of state  
4-25 shall impose the following fees:

4-26 (1) for filing a certificate of formation, \$300;

4-27 (2) for filing a certificate of amendment, \$150;

4-28 (3) for filing an application of a foreign corporation  
4-29 for registration to transact business in this state, \$750;

4-30 (4) for filing an application of a foreign corporation  
4-31 for an amended registration to transact business in this state,  
4-32 \$150;

4-33 (5) for filing a restated certificate of formation and  
4-34 accompanying statement, \$300;

4-35 (6) for filing a statement of change of registered  
4-36 office, registered agent, or both, \$15;

4-37 (7) for filing a statement of change of name or address  
4-38 of a registered agent, \$15, except that the maximum fee for  
4-39 simultaneous filings by a registered agent for more than one  
4-40 corporation may not exceed \$750;

4-41 (8) for filing a statement of resolution establishing  
4-42 one or more series of shares, \$15;

4-43 (9) for filing a certificate of [~~winding up and~~]  
4-44 termination, \$40;

4-45 (10) for filing a certificate of withdrawal of a  
4-46 foreign corporation, \$15;

4-47 (11) for filing a certificate from the home state of a  
4-48 foreign corporation that the corporation no longer exists in that  
4-49 state, \$15;

4-50 (12) for filing a bylaw or agreement restricting  
4-51 transfer of shares or securities other than as an amendment to the  
4-52 certificate of formation, \$15;

4-53 (13) for filing an application for reinstatement of a  
4-54 certificate of formation or registration as a foreign corporation  
4-55 following forfeiture under the Tax Code, \$75;

4-56 (14) for filing an application for reinstatement of a  
4-57 corporation or registration as a foreign corporation after  
4-58 involuntary dissolution or revocation, \$75; and

4-59 (15) for filing any instrument as provided by this  
4-60 code for which this section does not expressly provide a fee, \$15.

4-61 SECTION 11. Section 4.153, Business Organizations Code, is  
4-62 amended to read as follows:

4-63 Sec. 4.153. FILING FEES: NONPROFIT CORPORATIONS. For a  
4-64 filing by or for a nonprofit corporation, the secretary of state  
4-65 shall impose the following fees:

4-66 (1) for filing a certificate of formation, \$25;

4-67 (2) for filing a certificate of amendment, \$25;

4-68 (3) for filing a certificate of merger, conversion, or  
4-69 consolidation, without regard to whether the surviving or new

5-1 corporation is a domestic or foreign corporation, \$50;  
5-2 (4) for filing a statement of change of a registered  
5-3 office, registered agent, or both, \$5;  
5-4 (5) for filing a certificate of termination  
5-5 [~~dissolution~~], \$5;  
5-6 (6) for filing an application of a foreign corporation  
5-7 for registration to conduct affairs in this state, \$25;  
5-8 (7) for filing an application of a foreign corporation  
5-9 for an amended registration to conduct affairs in this state, \$25;  
5-10 (8) for filing a certificate of withdrawal of a  
5-11 foreign corporation, \$5;  
5-12 (9) for filing a restated certificate of formation and  
5-13 accompanying statement, \$50;  
5-14 (10) for filing a statement of change of name or  
5-15 address of a registered agent, \$15, except that the maximum fee for  
5-16 simultaneous filings by a registered agent for more than one  
5-17 corporation may not exceed \$250;  
5-18 (11) for filing a report under Chapter 22, \$5;  
5-19 (12) for filing a report under Chapter 22 to reinstate  
5-20 a corporation's right to conduct affairs in this state, \$5, plus a  
5-21 late fee in the amount of \$5 or in the amount of \$1 for each month or  
5-22 part of a month that the report remains unfiled, whichever amount is  
5-23 greater, except that the late fee may not exceed \$25;  
5-24 (13) for filing a report under Chapter 22 to reinstate  
5-25 a corporation or registration following involuntary termination or  
5-26 revocation, \$25; and  
5-27 (14) for filing any instrument of a domestic or  
5-28 foreign corporation as provided by this code for which this section  
5-29 does not expressly provide a fee, \$5.

5-30 SECTION 12. Section 4.155, Business Organizations Code, is  
5-31 amended to read as follows:  
5-32 Sec. 4.155. FILING FEES: LIMITED PARTNERSHIPS. For a  
5-33 filing by or for a limited partnership, the secretary of state shall  
5-34 impose the following fees:  
5-35 (1) for filing a certificate of formation or an  
5-36 application for registration as a foreign limited partnership,  
5-37 \$750;  
5-38 (2) for filing a certificate of amendment or an  
5-39 amendment of registration of a foreign limited partnership, \$150;  
5-40 (3) for filing a restated certificate of formation,  
5-41 \$300;  
5-42 (4) for filing a statement for change of registered  
5-43 office, registered agent, or both, \$15;  
5-44 (5) for filing a statement of change of name or address  
5-45 of a registered agent, \$15, except that the maximum fee for  
5-46 simultaneous filings by a registered agent for more than one  
5-47 limited partnership may not exceed \$750;  
5-48 (6) for filing a certificate of [~~winding up and~~]  
5-49 termination, \$40;  
5-50 (7) for filing a certificate of withdrawal of a  
5-51 foreign limited partnership, \$15;  
5-52 (8) for filing a certificate of reinstatement of a  
5-53 limited partnership or registration as a foreign limited  
5-54 partnership after involuntary termination or revocation under  
5-55 Chapter 11 or Chapter 9, \$75;  
5-56 (9) for filing a periodic report required under  
5-57 Chapter 153, \$50;  
5-58 (10) for reviving a limited partnership's right to  
5-59 transact business under Chapter 153, \$50 plus a late fee in an  
5-60 amount equal to the lesser of:  
5-61 (A) \$25 for each month or part of a month that  
5-62 elapses after the date of the notice of forfeiture; or  
5-63 (B) \$100;  
5-64 (11) for reinstatement of a certificate of formation  
5-65 or registration under Chapter 153, \$50 plus a late fee of \$100 and a  
5-66 reinstatement fee of \$75;  
5-67 (12) for filing any document required or permitted to  
5-68 be filed for a limited liability partnership, the secretary of  
5-69 state shall impose the same fee as the filing fee for a general

6-1 partnership under Section 4.158. For purposes of calculation of  
 6-2 the filing fee, all references to partners in Section 4.158 as  
 6-3 applied to limited partnerships mean general partners only; and

6-4 (13) for filing any instrument as provided by this  
 6-5 code for which this section does not expressly provide a fee, \$15.

6-6 SECTION 13. Subchapter D, Chapter 4, Business Organizations  
 6-7 Code, is amended by adding Section 4.161 to read as follows:

6-8 Sec. 4.161. FILING FEES: COOPERATIVE ASSOCIATIONS. For a  
 6-9 filing by or for a cooperative association, the secretary of state  
 6-10 shall impose the same fee as the filing fee for a similar instrument  
 6-11 under Section 4.153.

6-12 SECTION 14. Section 5.063(b), Business Organizations Code,  
 6-13 is amended to read as follows:

6-14 (b) A domestic or foreign limited liability partnership is  
 6-15 not subject to Section 5.053.

6-16 SECTION 15. Subchapter C, Chapter 5, Business Organizations  
 6-17 Code, is amended by adding Section 5.1041 to read as follows:

6-18 Sec. 5.1041. PROHIBITION ON FEE FOR WITHDRAWAL OF  
 6-19 RESERVATION OF NAME. The secretary of state may not impose a fee  
 6-20 for the filing of a written notice of withdrawal of a reservation of  
 6-21 name.

6-22 SECTION 16. Section 6.051(a), Business Organizations Code,  
 6-23 is amended to read as follows:

6-24 (a) Subject to this code and the governing documents of the  
 6-25 entity, notice of a meeting of the owners, members, or governing  
 6-26 persons of a domestic entity, or a committee of the owners, members,  
 6-27 or governing persons, must:

6-28 (1) be given in the manner determined by the governing  
 6-29 authority of the entity; and

6-30 (2) state~~+~~  
 6-31 [~~(A)~~] the date and time of the meeting~~+~~ and:  
 6-32 (A) [~~(B)~~ the location of the meeting or,] if the  
 6-33 meeting is not held solely by using a conference telephone or other  
 6-34 communications system authorized by Section 6.002, the location of  
 6-35 the meeting; or

6-36 (B) if the meeting is held solely or in part by  
 6-37 using a conference telephone or other communications system  
 6-38 authorized by Section 6.002, the form of communications system to  
 6-39 be [communication] used for the meeting and the means of accessing  
 6-40 the communications system.

6-41 SECTION 17. Section 6.052, Business Organizations Code, is  
 6-42 amended by amending Subsection (b) and adding Subsection (c) to  
 6-43 read as follows:

6-44 (b) If a person entitled to notice of a meeting participates  
 6-45 in or attends the meeting, the person's participation or attendance  
 6-46 constitutes a waiver of notice of the meeting unless the person  
 6-47 participates in or attends the meeting solely to object to the  
 6-48 transaction of business at the meeting on the ground that the  
 6-49 meeting was not lawfully called or convened.

6-50 (c) Unless required by the certificate of formation or the  
 6-51 governing documents, the business to be transacted at a meeting of  
 6-52 the owners, members, or governing persons of a domestic entity, or  
 6-53 the members of a committee of the governing persons, or the purpose  
 6-54 of such a meeting, is not required to be specified in a written  
 6-55 waiver of notice of the meeting.

6-56 SECTION 18. Subchapter E, Chapter 6, Business Organizations  
 6-57 Code, is amended by adding Section 6.205 to read as follows:

6-58 Sec. 6.205. REPRODUCTION OF CONSENT. Any photographic,  
 6-59 photostatic, facsimile, or similarly reliable reproduction of a  
 6-60 consent in writing signed by an owner, member, or governing person  
 6-61 of a filing entity may be substituted or used instead of the  
 6-62 original writing for any purpose for which the original writing  
 6-63 could be used, if the reproduction is a complete reproduction of the  
 6-64 entire original writing.

6-65 SECTION 19. The heading to Subchapter G, Chapter 6,  
 6-66 Business Organizations Code, is amended to read as follows:

6-67 SUBCHAPTER G. APPLICABILITY OF CHAPTER ~~[TO PARTNERSHIPS]~~

6-68 SECTION 20. Sections 8.001(1) and (9), Business  
 6-69 Organizations Code, are amended to read as follows:

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

7-10 (9) "Representative" means a person who is:

7-11 (A) serving as a partner, director, officer,  
 7-12 venturer, proprietor, trustee, employee, administrator, or agent  
 7-13 of an enterprise or other organization or of an employee benefit  
 7-14 plan; or

7-15 (B) serving a similar function for an enterprise  
 7-16 or other organization or for an employee benefit plan.

7-17 SECTION 21. Section 8.051, Business Organizations Code, is  
 7-18 amended to read as follows:

7-19 Sec. 8.051. MANDATORY INDEMNIFICATION. (a) An enterprise  
 7-20 shall indemnify a governing person, ~~[or]~~ former governing person,  
 7-21 or delegate against reasonable expenses actually incurred by the  
 7-22 person in connection with a proceeding in which the person is a  
 7-23 respondent because the person is or was a governing person or  
 7-24 delegate if the person is wholly successful, on the merits or  
 7-25 otherwise, in the defense of the proceeding.

7-26 (b) A court that determines, in a suit for indemnification,  
 7-27 that a governing person, former governing person, or delegate is  
 7-28 entitled to indemnification under this section shall order  
 7-29 indemnification and award to the person the expenses incurred in  
 7-30 securing the indemnification.

7-31 SECTION 22. Section 8.103(a), Business Organizations Code,  
 7-32 is amended to read as follows:

7-33 (a) Except as provided by Subsections (b) and (c), the  
 7-34 determinations required under Section 8.101(a) must be made by:

7-35 (1) a majority vote of ~~[a quorum composed of]~~ the  
 7-36 governing persons who at the time of the vote are disinterested and  
 7-37 independent, regardless of whether the governing persons who are  
 7-38 disinterested and independent constitute a quorum;

7-39 (2) ~~[if a quorum described by Subdivision (1) cannot~~  
 7-40 ~~be obtained,]~~ a majority vote of a committee of the governing  
 7-41 authority of the enterprise if the committee:

7-42 (A) is designated ~~[to act in the matter]~~ by a  
 7-43 majority vote of the governing persons who at the time of the vote  
 7-44 are disinterested and independent, regardless of whether the  
 7-45 governing persons who are disinterested and independent constitute  
 7-46 a quorum; and

7-47 (B) is composed solely of one or more governing  
 7-48 persons who ~~[at the time of the vote]~~ are disinterested and  
 7-49 independent;

7-50 (3) special legal counsel selected by the governing  
 7-51 authority of the enterprise, or selected by a committee of the board  
 7-52 of directors, by vote in accordance with Subdivision (1) or (2) ~~[or,~~  
 7-53 ~~if a quorum described by Subdivision (1) cannot be obtained and a~~  
 7-54 ~~committee described by Subdivision (2) cannot be established, by a~~  
 7-55 ~~majority vote of the governing persons of the enterprise];~~

7-56 (4) the owners or members of the enterprise in a vote  
 7-57 that excludes the ownership or membership interests held by each  
 7-58 governing person who is not disinterested and independent; or

7-59 (5) a unanimous vote of the owners or members of the  
 7-60 enterprise.

7-61 SECTION 23. The heading to Section 8.104, Business  
 7-62 Organizations Code, is amended to read as follows:

7-63 Sec. 8.104. ADVANCEMENT OF EXPENSES TO PRESENT GOVERNING  
 7-64 PERSONS OR DELEGATES.

7-65 SECTION 24. Section 8.104(a), Business Organizations Code,  
 7-66 is amended to read as follows:

7-67 (a) An enterprise may pay or reimburse reasonable expenses  
 7-68 incurred by a present governing person ~~[, former governing person,]~~  
 7-69 or delegate who was, is, or is threatened to be made a respondent in

8-1 a proceeding in advance of the final disposition of the proceeding  
 8-2 without making the determinations required under Section 8.101(a)  
 8-3 after the enterprise receives:

8-4 (1) a written affirmation by the person of the person's  
 8-5 good faith belief that the person has met the standard of conduct  
 8-6 necessary for indemnification under this chapter; and

8-7 (2) a written undertaking by or on behalf of the person  
 8-8 to repay the amount paid or reimbursed if the final determination is  
 8-9 that the person has not met that standard or that indemnification is  
 8-10 prohibited by Section 8.102.

8-11 SECTION 25. Section 8.105, Business Organizations Code, is  
 8-12 amended by amending Subsection (a) and adding Subsections (d) and  
 8-13 (e) to read as follows:

8-14 (a) Notwithstanding any other provision of this chapter but  
 8-15 subject to Section [Sections] 8.003 [and 8.004] and to the extent  
 8-16 consistent with other law, an enterprise may indemnify and advance  
 8-17 expenses to a person who is not a governing person, including an  
 8-18 officer, employee, or agent, [or delegate,] as provided by:

8-19 (1) the enterprise's governing documents;

8-20 (2) general or specific action of the enterprise's  
 8-21 governing authority;

8-22 (3) resolution of the enterprise's owners or members;

8-23 (4) contract; or

8-24 (5) common law.

8-25 (d) Notwithstanding any authorization or determination  
 8-26 specified in this chapter, an enterprise may pay or reimburse, in  
 8-27 advance of the final disposition of a proceeding and on terms the  
 8-28 enterprise considers appropriate, reasonable expenses incurred by  
 8-29 a former managerial official or delegate, or a present or former  
 8-30 employee or agent, of the enterprise who was, is, or is threatened  
 8-31 to be made a respondent in the proceeding.

8-32 (e) A determination of indemnification for a person who is  
 8-33 not a governing person of an enterprise, including an officer,  
 8-34 employee, or agent, is not required to be made in accordance with  
 8-35 Section 8.103.

8-36 SECTION 26. Section 9.007, Business Organizations Code, is  
 8-37 amended to read as follows:

8-38 Sec. 9.007. ~~[SUPPLEMENTAL INFORMATION REQUIRED IN]~~  
 8-39 ~~APPLICATION FOR REGISTRATION OF FOREIGN LIMITED LIABILITY~~  
 8-40 ~~PARTNERSHIP. (a) A foreign limited liability partnership~~  
 8-41 ~~registers by filing an application for registration under this~~  
 8-42 ~~section as provided by Chapter 4.~~

8-43 ~~(b) The [In addition to the information required by Section~~  
 8-44 ~~9.004, a foreign limited liability partnership's] application for~~  
 8-45 ~~registration must state:~~

8-46 ~~(1) the partnership's name [federal tax identification~~  
 8-47 ~~number of the partnership];~~

8-48 ~~(2) the federal tax identification number of the [date~~  
 8-49 ~~of initial registration as a limited liability] partnership [under~~  
 8-50 ~~the laws of the state of formation];~~

8-51 ~~(3) the partnership's jurisdiction of formation~~  
 8-52 ~~[number of partners at the date of the statement]; [and]~~

8-53 ~~(4) the date of initial registration as a limited~~  
 8-54 ~~liability partnership under the laws of the state of formation;~~

8-55 ~~(5) the date the foreign entity began or will begin to~~  
 8-56 ~~transact business in this state;~~

8-57 ~~(6) that the partnership exists as a valid limited~~  
 8-58 ~~liability partnership under the laws of the state of its formation;~~

8-59 ~~(7) the number of partners at the date of the~~  
 8-60 ~~statement;~~

8-61 ~~(8) each business or activity that the partnership~~  
 8-62 ~~proposes to pursue in this state, which may be stated to be any~~  
 8-63 ~~lawful business or activity under the laws of this state;~~

8-64 ~~(9) the address of the principal office of the~~  
 8-65 ~~partnership;~~

8-66 ~~(10) the address of the initial registered office and~~  
 8-67 ~~the name and address of the initial registered agent for service of~~  
 8-68 ~~process required to be maintained under Section 152.904; and~~

8-69 ~~(11) that the secretary of state is appointed the~~



9-1 agent of the partnership for service of process under the same  
 9-2 circumstances as set forth by Section 5.251 for a foreign filing  
 9-3 entity.

9-4 (c) Subchapter K, Chapter 152, governs the registration of a  
 9-5 foreign limited liability partnership to transact business in this  
 9-6 state.

9-7 SECTION 27. Section 9.008, Business Organizations Code, is  
 9-8 amended by amending Subsection (a) and adding Subsection (c) to  
 9-9 read as follows:

9-10 (a) The registration of a foreign entity other than a  
 9-11 foreign limited liability partnership is effective when the  
 9-12 application filed under Chapter 4 takes effect. The registration  
 9-13 remains in effect until the registration terminates, is withdrawn,  
 9-14 or is revoked.

9-15 (c) Subchapter K, Chapter 152, governs the effect of  
 9-16 registration of a foreign limited liability partnership to transact  
 9-17 business in this state.

9-18 SECTION 28. Section 9.009, Business Organizations Code, is  
 9-19 amended by adding Subsection (a-1) to read as follows:

9-20 (a-1) A foreign filing entity may amend the entity's  
 9-21 application for registration to disclose a change that results  
 9-22 from:

9-23 (1) a conversion from one type of foreign filing  
 9-24 entity to another type of foreign filing entity with the foreign  
 9-25 filing entity making the amendment succeeding to the registration  
 9-26 of the original foreign filing entity; or

9-27 (2) a merger into another foreign filing entity with  
 9-28 the foreign filing entity making the amendment succeeding to the  
 9-29 registration of the original foreign filing entity.

9-30 SECTION 29. Section 9.010, Business Organizations Code, is  
 9-31 amended to read as follows:

9-32 Sec. 9.010. NAME CHANGE OF FOREIGN FILING ENTITY. If a  
 9-33 foreign filing entity authorized to conduct affairs in this state  
 9-34 changes its name to a name that would cause the entity to be denied  
 9-35 an application for registration under this subchapter, the entity's  
 9-36 registration must be suspended. An entity the registration of  
 9-37 which has been suspended under this section may conduct affairs in  
 9-38 this state only after the entity:

9-39 (1) changes its name to a name that is available to it  
 9-40 under the laws of this state; or

9-41 (2) otherwise complies with this chapter.

9-42 SECTION 30. Sections 9.011(a), (b), (d), (f), and (g),  
 9-43 Business Organizations Code, are amended to read as follows:

9-44 (a) A foreign filing entity or foreign limited liability  
 9-45 partnership registered in this state may withdraw the entity's or  
 9-46 partnership's registration at any time by filing a certificate of  
 9-47 withdrawal in the manner required by Chapter 4.

9-48 (b) A certificate of withdrawal must state:

9-49 (1) the name of the foreign filing entity or foreign  
 9-50 limited liability partnership as registered in this state;

9-51 (2) the type of foreign filing entity and the entity's  
 9-52 or partnership's jurisdiction of formation;

9-53 (3) the address of the principal office of the foreign  
 9-54 filing entity or foreign limited liability partnership;

9-55 (4) that the foreign filing entity or foreign limited  
 9-56 liability partnership no longer is transacting business in this  
 9-57 state;

9-58 (5) that the foreign filing entity or foreign limited  
 9-59 liability partnership:

9-60 (A) revokes the authority of the entity's or  
 9-61 partnership's registered agent in this state to accept service of  
 9-62 process; and

9-63 (B) consents that service of process in any  
 9-64 action, suit, or proceeding stating a cause of action arising in  
 9-65 this state during the time the foreign filing entity or foreign  
 9-66 limited liability partnership was authorized to transact business  
 9-67 in this state may be made on the foreign filing entity or foreign  
 9-68 limited liability partnership by serving the secretary of state;

9-69 (6) an address to which the secretary of state may mail

10-1 a copy of any process against the foreign filing entity or foreign  
 10-2 limited liability partnership served on the secretary of state; and

10-3 (7) that any money due or accrued to the state has been  
 10-4 paid or that adequate provision has been made for the payment of  
 10-5 that money.

10-6 (d) If the existence or separate existence of a foreign  
 10-7 filing entity or foreign limited liability partnership registered  
 10-8 in this state terminates because of dissolution, termination,  
 10-9 merger, conversion, or other circumstances, a certificate by an  
 10-10 authorized governmental official of the entity's jurisdiction of  
 10-11 formation that evidences the termination shall be filed with the  
 10-12 secretary of state.

10-13 (f) If the address stated in a certificate of withdrawal  
 10-14 under Subsection (b)(6) changes, the foreign filing entity or  
 10-15 foreign limited liability partnership must promptly amend the  
 10-16 certificate of withdrawal to update the address.

10-17 (g) A certificate of withdrawal does not terminate the  
 10-18 authority of the secretary of state to accept service of process on  
 10-19 the foreign filing entity or foreign limited liability partnership  
 10-20 with respect to a cause of action arising out of business or  
 10-21 activity in this state.

10-22 SECTION 31. Subchapter D, Chapter 9, Business Organizations  
 10-23 Code, is amended by adding Section 9.162 to read as follows:

10-24 Sec. 9.162. APPLICABILITY OF SUBCHAPTER TO FOREIGN LIMITED  
 10-25 LIABILITY PARTNERSHIPS. This subchapter applies to a partnership  
 10-26 registered as a foreign limited liability partnership to the same  
 10-27 extent as it applies to a foreign filing entity.

10-28 SECTION 32. Section 9.204, Business Organizations Code, is  
 10-29 amended to read as follows:

10-30 Sec. 9.204. RIGHT OF FOREIGN [~~FILING~~] ENTITY TO PARTICIPATE  
 10-31 IN BUSINESS OF CERTAIN DOMESTIC ENTITIES. A vote cast or consent  
 10-32 provided by a foreign [~~filing~~] entity with respect to its ownership  
 10-33 or membership interest in a domestic entity of which the foreign  
 10-34 [~~filing~~] entity is a lawful owner or member, and the foreign  
 10-35 [~~filing~~] entity's participation in the management and control of  
 10-36 the business and affairs of the domestic entity to the extent of the  
 10-37 participation of other owners or members, are not invalidated if  
 10-38 the foreign [~~filing~~] entity does not register to transact business  
 10-39 in this state in accordance with this chapter, subject to all law  
 10-40 governing a domestic entity, including the antitrust law of this  
 10-41 state.

10-42 SECTION 33. Section 10.005, Business Organizations Code, is  
 10-43 amended to read as follows:

10-44 Sec. 10.005. CREATION OF HOLDING COMPANY BY MERGER.

10-45 (a) In this section:

10-46 (1) "Direct or indirect wholly owned subsidiary"  
 10-47 means, with respect to a domestic entity, another domestic entity,  
 10-48 all of the outstanding voting ownership or membership interests of  
 10-49 which are owned by the domestic entity or by one or more other  
 10-50 domestic entities or non-code organizations, all of the outstanding  
 10-51 voting ownership or membership interests of which are owned by the  
 10-52 domestic entity or one or more other wholly owned domestic entities  
 10-53 or non-code organizations.

10-54 (2) "Holding company" means a domestic entity that,  
 10-55 from its organization until a merger takes effect, was at all times  
 10-56 a direct or indirect wholly owned subsidiary of the merging  
 10-57 domestic entity and the ownership or membership interests of which  
 10-58 are issued to the members or owners of the merging domestic entity  
 10-59 in the merger.

10-60 (3) "Merging domestic entity" means the original  
 10-61 domestic entity that is a party to a merger that is intended to  
 10-62 create a holding company structure under a plan of merger that  
 10-63 satisfies the requirements of this section and whose members or  
 10-64 owners are not required to approve the plan of merger under  
 10-65 Subsection (b).

10-66 (4) "Surviving entity subsidiary" means the surviving  
 10-67 entity in a merger of a merging domestic entity and a direct or  
 10-68 indirect wholly owned subsidiary of the merging domestic entity,  
 10-69 which immediately following the merger is a direct or indirect

11-1 wholly owned subsidiary of the holding company.

11-2 (b) A domestic entity may, without owner approval and  
 11-3 pursuant to a plan of merger, restructure the ownership structure  
 11-4 of that entity to create a holding company structure under this  
 11-5 chapter and the provisions of this code under which the entity was  
 11-6 formed. The approval of the owners or members of a merging domestic  
 11-7 entity that is a party to a merger under ~~of~~ a plan of merger that  
 11-8 creates a holding company is not required if:

11-9 (1) the holding company is a domestic entity of the  
 11-10 same organizational form as the merging domestic entity;

11-11 (2) approval is not otherwise required by the  
 11-12 governing documents of the merging domestic entity;

11-13 (3) ~~[(2)]~~ the merging domestic entity merges with a  
 11-14 direct or indirect ~~domestic~~ wholly owned subsidiary ~~entity~~;

11-15 (4) ~~[(3)]~~ after the merger the merging domestic entity  
 11-16 or its successor is a direct or indirect wholly owned subsidiary  
 11-17 [entity] of a holding company;

11-18 (5) ~~[(4)]~~ the merging domestic entity and the direct  
 11-19 or indirect wholly owned subsidiary [entity] are the only parties  
 11-20 to the merger;

11-21 (6) ~~[(5)]~~ each ownership or membership interest of the  
 11-22 merging domestic entity that is outstanding preceding the merger is  
 11-23 converted in the merger into an ownership or membership interest of  
 11-24 the holding company having the same designations, preferences,  
 11-25 limitations, and relative rights and corresponding obligations in  
 11-26 respect of the ownership or membership interest as the ownership or  
 11-27 membership interest held by the owner or member in the merging  
 11-28 domestic entity;

11-29 ~~[(6) the holding company is a domestic entity of the~~  
 11-30 ~~same organizational form as the merging domestic entity;]~~

11-31 (7) except as provided by Subsection [Subsections] (c)  
 11-32 [and (d)], the [initial] governing documents of the holding company  
 11-33 immediately following the merger contain provisions substantively  
 11-34 identical to the governing documents of the merging domestic entity  
 11-35 immediately preceding the merger;

11-36 (8) except as provided by Subsections (c) and (d), the  
 11-37 [initial] governing documents of the surviving entity subsidiary  
 11-38 immediately following the merger contain provisions substantively  
 11-39 identical to the governing documents of the merging domestic entity  
 11-40 immediately preceding the merger;

11-41 (9) the governing persons of the merging domestic  
 11-42 entity become or remain the governing persons of the holding  
 11-43 company when the merger takes effect;

11-44 (10) the owners or members of the merging domestic  
 11-45 entity will not recognize gain or loss for United States federal  
 11-46 income tax purposes, the United States federal tax classification  
 11-47 of the holding company will be the same as that of the merging  
 11-48 domestic entity, and the merger will not result in the loss of ~~of~~  
 11-49 any ~~other~~ tax benefit or attribute of the merging domestic  
 11-50 entity, each as determined by the governing authority of the  
 11-51 merging domestic entity; and

11-52 (11) the governing authority of the merging domestic  
 11-53 entity adopts a resolution approving the plan of merger.

11-54 (c) Subsections (b)(7) and (8) do not require identical  
 11-55 provisions regarding the organizer ~~incorporator~~ or organizers  
 11-56 [incorporators], the entity name, the registered office and agent,  
 11-57 the initial governing persons, and the initial subscribers of  
 11-58 ownership interests and provisions contained in any amendment to  
 11-59 the governing documents ~~certificate~~ as were ~~are~~ necessary to  
 11-60 effect a change, exchange, reclassification, or cancellation of  
 11-61 ownership or membership interests, if the change, exchange,  
 11-62 reclassification, or cancellation was in effect preceding the  
 11-63 merger.

11-64 (d) Notwithstanding Subsection (b)(8):

11-65 (1) the governing documents of the surviving entity  
 11-66 subsidiary must require that an act or transaction by or involving  
 11-67 the surviving entity subsidiary, other than the election or removal  
 11-68 of the governing persons of the surviving entity subsidiary, that  
 11-69 requires for its approval under this code or the governing

12-1 documents of the surviving entity subsidiary the approval of the  
 12-2 owners or members of the surviving [~~merging domestic~~] entity  
 12-3 subsidiary must, by specific reference to this section, require the  
 12-4 approval of the owners or members of the holding company, or any  
 12-5 successor by merger, by the same vote as is required by this code  
 12-6 and the governing documents of the surviving entity subsidiary;  
 12-7 [and]

12-8 (2) if the surviving entity subsidiary is not of the  
 12-9 same organizational form as the merging domestic entity, the  
 12-10 governing documents of the surviving entity subsidiary may differ  
 12-11 from the governing documents of the merging domestic entity to the  
 12-12 minimum extent necessary to make a change that takes into account  
 12-13 the differences between the types of entities, including a change  
 12-14 in reference to the types of owners, members, ownership interests,  
 12-15 membership interests, governing persons, or governing authority,  
 12-16 each as determined by the governing authority of the merging  
 12-17 domestic entity;

12-18 (3) if the surviving entity subsidiary is not of the  
 12-19 same organizational form as the merging domestic entity, the  
 12-20 governing documents of the surviving entity subsidiary must require  
 12-21 that:

12-22 (A) the surviving entity subsidiary obtain the  
 12-23 approval of the owners or members of the holding company for any act  
 12-24 or transaction by or involving the surviving entity subsidiary,  
 12-25 other than the election or removal of the governing persons of the  
 12-26 surviving entity subsidiary, that would require the approval of the  
 12-27 owners or members of the surviving entity subsidiary if the  
 12-28 surviving entity subsidiary were of the same organizational form as  
 12-29 the merging domestic entity;

12-30 (B) any amendment to the governing documents of  
 12-31 the surviving entity subsidiary that would, if adopted by an entity  
 12-32 of the same organizational form as the merging domestic entity, be  
 12-33 required to be included in the certificate of formation of the  
 12-34 entity also require, by specific reference to this section, the  
 12-35 approval of the owners or members of the holding company, or any  
 12-36 successor by merger, by the same vote as is required by this code or  
 12-37 by the governing documents of the surviving entity subsidiary; and

12-38 (C) the business affairs of the surviving entity  
 12-39 subsidiary be managed by or under the direction of governing  
 12-40 persons who are:

12-41 (i) subject to the same fiduciary duties  
 12-42 applicable to the governing persons of an entity of the same  
 12-43 organizational form as the merging domestic entity subject to this  
 12-44 code; and

12-45 (ii) liable for the breach of any duties to  
 12-46 the same extent as governing persons of that form of entity;

12-47 (4) the governing documents of the surviving entity  
 12-48 subsidiary may change the classes and series of ownership or  
 12-49 membership interests and the number of ownership or membership  
 12-50 interests that the surviving entity subsidiary is authorized to  
 12-51 issue; and

12-52 (5) this subsection or a provision of a surviving  
 12-53 entity subsidiary's governing documents required by this  
 12-54 subsection may not be construed as requiring the approval of the  
 12-55 owners or members of the holding company to elect or remove  
 12-56 governing persons of the surviving entity subsidiary.

12-57 (e) To the extent the provisions contained in Section 21.606  
 12-58 apply to a merging domestic entity and its owners or members when a  
 12-59 merger takes effect under this section, those provisions continue  
 12-60 to apply to the holding company and its owners or members  
 12-61 immediately after the merger takes effect as though the holding  
 12-62 company were the merging domestic entity. All ownership or  
 12-63 membership interests of the holding company acquired in the merger,  
 12-64 for purposes of Section 21.606, are considered to have been  
 12-65 acquired at the time the ownership or membership interest of the  
 12-66 merging domestic entity converted in the merger was acquired. Any  
 12-67 owner or member who, preceding the merger, was not an affiliated  
 12-68 owner or member as described by Section 21.606 does not solely by  
 12-69 reason of the merger become an affiliated owner or member of the

13-1 holding company.

13-2 (f) If the name of a holding company immediately following  
13-3 the effectiveness of a merger under this section is the same as the  
13-4 name of the merging domestic entity preceding the merger, the  
13-5 ownership or membership interests of the holding company into which  
13-6 the ownership or membership interests of the merging domestic  
13-7 entity are converted pursuant to the merger will be ~~[merged are]~~  
13-8 represented by the certificates, if any, that previously  
13-9 represented the ownership or membership interests in the merging  
13-10 domestic entity.

13-11 (g) This section shall not apply to a merger of a  
13-12 partnership with or into a domestic entity without the approval of  
13-13 the owners or members of the partnership and domestic entity as  
13-14 provided by this code ~~[partnerships]~~.

13-15 SECTION 34. Section 10.006(i), Business Organizations  
13-16 Code, is amended to read as follows:

13-17 (i) This section shall not apply if a subsidiary  
13-18 organization that is a party to the merger is:

13-19 (1) a partnership; or  
13-20 (2) a domestic entity that has in its governing  
13-21 documents the provision required by Section 10.005(d)(1) and of  
13-22 which there are outstanding ownership or membership interests that  
13-23 would be entitled to vote on the merger absent this section.

13-24 SECTION 35. Section 10.008(a), Business Organizations  
13-25 Code, is amended to read as follows:

13-26 (a) When a merger takes effect:

13-27 (1) the separate existence of each domestic entity  
13-28 that is a party to the merger, other than a surviving or new  
13-29 domestic entity, ceases;

13-30 (2) all rights, title, and interests to all real  
13-31 estate and other property owned by each organization that is a party  
13-32 to the merger is allocated to and vested, subject to any existing  
13-33 liens or other encumbrances on the property, in one or more of the  
13-34 surviving or new organizations as provided in the plan of merger  
13-35 without:

13-36 (A) reversion or impairment;  
13-37 (B) any further act or deed; or  
13-38 (C) any transfer or assignment having occurred;  
13-39 (3) all liabilities and obligations of each  
13-40 organization that is a party to the merger are allocated to one or  
13-41 more of the surviving or new organizations in the manner provided by  
13-42 the plan of merger;

13-43 (4) each surviving or new domestic organization to  
13-44 which a liability or obligation is allocated under the plan of  
13-45 merger is the primary obligor for the liability or obligation, and,  
13-46 except as otherwise provided by the plan of merger or by law or  
13-47 contract, no other party to the merger, other than a surviving  
13-48 domestic entity or non-code organization liable or otherwise  
13-49 obligated at the time of the merger, and no other new domestic  
13-50 entity or non-code organization created under the plan of merger is  
13-51 liable for the debt or other obligation;

13-52 (5) any proceeding pending by or against any domestic  
13-53 entity or by or against any non-code organization that is a party to  
13-54 the merger may be continued as if the merger did not occur, or the  
13-55 surviving or new domestic entity or entities or the surviving or new  
13-56 non-code organization or non-code organizations to which the  
13-57 liability, obligation, asset, or right associated with that  
13-58 proceeding is allocated to and vested in under the plan of merger  
13-59 may be substituted in the proceeding;

13-60 (6) the governing documents of each surviving domestic  
13-61 entity are amended to the extent provided by the plan of merger;

13-62 (7) each new filing entity whose certificate of  
13-63 formation is included in the plan of merger under this chapter, on  
13-64 meeting any additional requirements, if any, of this code for its  
13-65 formation, is formed as a domestic entity under this code as  
13-66 provided by the plan of merger;

13-67 (8) the ownership or membership interests of each  
13-68 organization that is a party to the merger and that are to be  
13-69 converted or exchanged, in whole or part, into ownership or

14-1 membership interests, obligations, rights to purchase securities,  
 14-2 or other securities of one or more of the surviving or new  
 14-3 organizations, into cash or other property, including ownership or  
 14-4 membership interests, obligations, rights to purchase securities,  
 14-5 or other securities of any organization, or into any combination of  
 14-6 these are converted and exchanged and the former owners or members  
 14-7 who held ownership or membership interests of each domestic entity  
 14-8 that is a party to the merger are entitled only to the rights  
 14-9 provided by the plan [~~certificate~~] of merger or, if applicable, any  
 14-10 rights to receive the fair value for the ownership or membership  
 14-11 interests previously held by them provided under this code; and

14-12 (9) notwithstanding Subdivision (4), the surviving or  
 14-13 new organization named in the plan of merger as primarily obligated  
 14-14 to pay the fair value of an ownership or membership interest under  
 14-15 Section 10.003(2) is the primary obligor for that payment and all  
 14-16 other surviving or new organizations are secondarily liable for  
 14-17 that payment.

14-18 SECTION 36. Section 10.107(c), Business Organizations  
 14-19 Code, is amended to read as follows:

14-20 (c) A domestic partnership that is converting must approve  
 14-21 the plan of conversion in the manner [~~merger~~] provided in its  
 14-22 partnership agreement.

14-23 SECTION 37. Section 10.202, Business Organizations Code, is  
 14-24 amended to read as follows:

14-25 Sec. 10.202. ABANDONMENT AFTER FILING. [~~(a)~~] If a  
 14-26 certificate of merger, exchange, or conversion has been filed, the  
 14-27 merger, interest exchange, or conversion may be abandoned before  
 14-28 its effectiveness in accordance with Sections 4.057 and 10.201.

14-29 [~~(b) A filing of a certificate of abandonment under Section~~  
 14-30 ~~4.057 is not required for the abandonment of a merger, interest~~  
 14-31 ~~exchange, or conversion if no filing is required under Subchapter D~~  
 14-32 ~~to make the merger, interest exchange, or conversion effective.]~~

14-33 SECTION 38. Subchapter E, Chapter 10, Business  
 14-34 Organizations Code, is amended by adding Section 10.203 to read as  
 14-35 follows:

14-36 Sec. 10.203. ABANDONMENT IF NO FILING REQUIRED. (a) If no  
 14-37 filing is required by this chapter for the abandonment of a merger,  
 14-38 interest exchange, or conversion, the merger, interest exchange, or  
 14-39 conversion is abandoned:

14-40 (1) as provided by the procedures in the plan of  
 14-41 merger, exchange, or conversion; or

14-42 (2) if no abandonment procedures are provided by the  
 14-43 plan, in the manner determined by the governing authority of the  
 14-44 abandoning entity.

14-45 (b) A filing of a certificate of abandonment under Section  
 14-46 4.057 is not required for the abandonment of a merger, interest  
 14-47 exchange, or conversion if no filing is required under Subchapter D  
 14-48 to make the merger, interest exchange, or conversion effective.

14-49 SECTION 39. Section 10.354(b), Business Organizations  
 14-50 Code, is amended to read as follows:

14-51 (b) Notwithstanding Subsection (a), subject to Subsection  
 14-52 (c), an owner may not dissent from a plan of merger or conversion in  
 14-53 which there is a single surviving or new domestic entity or non-code  
 14-54 organization, or from a plan of exchange, if:

14-55 (1) the ownership interest, or a depository receipt in  
 14-56 respect of the ownership interest, held by the owner is part of a  
 14-57 class or series of ownership interests, or depository receipts in  
 14-58 respect of ownership interests, that are, on the record date set for  
 14-59 purposes of determining which owners are entitled to vote on the  
 14-60 plan of merger, conversion, or exchange, as appropriate:

14-61 (A) listed on a national securities exchange or a  
 14-62 similar system;

14-63 (B) listed on the Nasdaq Stock Market or a  
 14-64 successor quotation system;

14-65 (C) designated as a national market security on  
 14-66 an interdealer quotation system by the National Association of  
 14-67 Securities Dealers, Inc., or a successor system; or

14-68 (D) held of record by at least 2,000 owners;

14-69 (2) the owner is not required by the terms of the plan

15-1 of merger, conversion, or exchange, as appropriate, to accept for  
 15-2 the owner's ownership interest any consideration that is different  
 15-3 from the consideration to be provided to any other holder of an  
 15-4 ownership interest of the same class or series as the ownership  
 15-5 interest held by the owner, other than cash instead of fractional  
 15-6 shares or interests the owner would otherwise be entitled to  
 15-7 receive; and

15-8 (3) the owner is not required by the terms of the plan  
 15-9 of merger, conversion, or exchange, as appropriate, to accept for  
 15-10 the owner's ownership interest any consideration other than:

15-11 (A) ownership interests, or depository receipts  
 15-12 in respect of ownership interests, of a domestic entity or non-code  
 15-13 organization of the same general organizational type that,  
 15-14 immediately after the effective date of the merger, conversion, or  
 15-15 exchange, as appropriate, will be part of a class or series of  
 15-16 ownership interests, or depository receipts in respect of ownership  
 15-17 interests, that are:

15-18 (i) listed on a national securities  
 15-19 exchange or authorized for listing on the exchange on official  
 15-20 notice of issuance;

15-21 (ii) approved for quotation as a national  
 15-22 market security on an interdealer quotation system by the National  
 15-23 Association of Securities Dealers, Inc., or a successor entity; or

15-24 (iii) held of record by at least 2,000  
 15-25 owners;

15-26 (B) cash instead of fractional ownership  
 15-27 interests the owner would otherwise be entitled to receive; or

15-28 (C) any combination of the ownership interests  
 15-29 and cash described by Paragraphs (A) and (B).

15-30 SECTION 40. Subchapter D, Chapter 11, Business  
 15-31 Organizations Code, is amended by adding Section 11.153 to read as  
 15-32 follows:

15-33 Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION.  
 15-34 Notwithstanding any provision of this code to the contrary, a court  
 15-35 may order the revocation of termination of an entity's existence  
 15-36 that was terminated as a result of actual or constructive fraud. In  
 15-37 an action under this section, any limitation period provided by law  
 15-38 is tolled in accordance with the discovery rule. The secretary of  
 15-39 state shall take any action necessary to implement an order under  
 15-40 this section.

15-41 SECTION 41. Section 11.315, Business Organizations Code, is  
 15-42 amended by adding Subsection (c) to read as follows:

15-43 (c) Subject to Section 11.356, the existence of the filing  
 15-44 entity ceases when the certified copy of the decree is filed in  
 15-45 accordance with Chapter 4.

15-46 SECTION 42. Subchapter I, Chapter 11, Business  
 15-47 Organizations Code, is amended by adding Section 11.414 to read as  
 15-48 follows:

15-49 Sec. 11.414. FILING OF DECREE OF INVOLUNTARY TERMINATION  
 15-50 AGAINST FILING ENTITY. (a) The clerk of a court that enters a  
 15-51 decree terminating the existence of a filing entity under this  
 15-52 subchapter shall file a certified copy of the decree in accordance  
 15-53 with Chapter 4.

15-54 (b) A fee may not be charged for the filing of a decree under  
 15-55 this section.

15-56 (c) Subject to Section 11.356, the existence of the filing  
 15-57 entity ceases when the certified copy of the decree is filed in  
 15-58 accordance with Chapter 4.

15-59 SECTION 43. Section 21.052, Business Organizations Code, is  
 15-60 amended by adding Subsection (b-1) to read as follows:

15-61 (b-1) The resolution may provide that at any time before the  
 15-62 filing of a certificate of amendment takes effect as provided by  
 15-63 Subchapter B, Chapter 3, the board of directors may abandon the  
 15-64 proposed amendment to the certificate of formation without further  
 15-65 action by the shareholders of the corporation, notwithstanding  
 15-66 authorization of the proposed amendment by the shareholders.

15-67 SECTION 44. Section 21.053, Business Organizations Code, is  
 15-68 amended to read as follows:

15-69 Sec. 21.053. ADOPTION OF AMENDMENT BY BOARD OF DIRECTORS.

16-1 (a) If a corporation does not have any issued and outstanding  
 16-2 shares, the board of directors may adopt a proposed amendment to the  
 16-3 corporation's certificate of formation by resolution without  
 16-4 shareholder approval.

16-5 (b) Notwithstanding Section 21.054, the board of directors  
 16-6 may adopt a proposed amendment without shareholder approval in the  
 16-7 manner provided by Section 21.155 if the amendment to the  
 16-8 corporation's certificate of formation relates to a series of  
 16-9 shares established by the board under authority granted to the  
 16-10 board in the certificate of formation as provided by Section  
 16-11 21.155.

16-12 SECTION 45. Section 21.168(c), Business Organizations  
 16-13 Code, is amended to read as follows:

16-14 (c) Subject to the certificate of formation, a right or  
 16-15 option described by this section must state the terms on which, the  
 16-16 time within which, and any consideration, including a formula by  
 16-17 which the consideration may be determined, for which the shares may  
 16-18 be purchased or received from the corporation on the exercise of the  
 16-19 right or option.

16-20 SECTION 46. Section 21.169, Business Organizations Code, is  
 16-21 amended by adding Subsections (d) and (e) to read as follows:

16-22 (d) The terms of rights or options or the agreement or plan  
 16-23 under which the rights or options are issued may provide that the  
 16-24 board of directors by resolution may authorize one or more officers  
 16-25 of the corporation to:

16-26 (1) designate officers and employees of the  
 16-27 corporation or of any subsidiary of the corporation to receive  
 16-28 rights or options created by the corporation; or

16-29 (2) determine the number of rights or options to be  
 16-30 received under Subdivision (1).

16-31 (e) A resolution adopted under Subsection (d)(1) must  
 16-32 specify the total number of rights or options the authorized  
 16-33 officer or officers may award. An officer may not be designated as  
 16-34 a recipient of any rights or options that the officer is authorized  
 16-35 to award under Subsection (d)(1).

16-36 SECTION 47. Section 21.208, Business Organizations Code, is  
 16-37 amended to read as follows:

16-38 Sec. 21.208. PREEMPTIVE RIGHT IN EXISTING CORPORATION.  
 16-39 Subject to the certificate of formation, a shareholder of a  
 16-40 corporation incorporated before September 1, 2003, [~~the effective~~  
 16-41 ~~date of this code]~~ has a preemptive right to acquire unissued or  
 16-42 treasury shares of the corporation to the extent provided by  
 16-43 Sections 21.204, 21.206, and 21.207. After September 1, 2003 [~~the~~  
 16-44 ~~effective date of this code]~~, a corporation may limit or deny the  
 16-45 preemptive right of the shareholders of the corporation by amending  
 16-46 the corporation's certificate of formation.

16-47 SECTION 48. Section 21.210(a), Business Organizations  
 16-48 Code, is amended to read as follows:

16-49 (a) A restriction on the transfer or registration of  
 16-50 transfer of a security, or on the amount of a corporation's  
 16-51 securities that may be owned by a person or group of persons, may be  
 16-52 imposed by:

16-53 (1) the corporation's certificate of formation;

16-54 (2) the corporation's bylaws;

16-55 (3) a written agreement among two or more holders of  
 16-56 the securities; or

16-57 (4) a written agreement among one or more holders of  
 16-58 the securities and the corporation if:

16-59 (A) the corporation files a copy of the agreement  
 16-60 at the principal place of business or registered office of the  
 16-61 corporation; and

16-62 (B) the copy of the agreement is subject to the  
 16-63 same right of examination by a shareholder of the corporation, in  
 16-64 person or by agent, attorney, or accountant, as the books and  
 16-65 records of the corporation.

16-66 SECTION 49. Section 21.211, Business Organizations Code, is  
 16-67 amended to read as follows:

16-68 Sec. 21.211. VALID RESTRICTIONS ON TRANSFER. (a)  
 16-69 Notwithstanding Sections 21.210 and 21.213, a restriction placed on



17-1 the transfer or registration of transfer of a security of a  
17-2 corporation is valid if the restriction reasonably:

17-3 (1) obligates the holder of the restricted security to  
17-4 offer a person, including the corporation or other holders of  
17-5 securities of the corporation, an opportunity to acquire the  
17-6 restricted security within a reasonable time before the transfer;

17-7 (2) obligates the corporation, to the extent provided  
17-8 by this code, or another person to purchase securities that are the  
17-9 subject of an agreement relating to the purchase and sale of the  
17-10 restricted security;

17-11 (3) requires the corporation or the holders of a class  
17-12 of the corporation's securities to consent to a proposed transfer  
17-13 of the restricted security or to approve the proposed transferee of  
17-14 the restricted security for the purpose of preventing a violation  
17-15 of law;

17-16 (4) prohibits the transfer of the restricted security  
17-17 to a designated person or group of persons and the designation is  
17-18 not manifestly unreasonable;

17-19 (5) maintains the status of the corporation as an  
17-20 electing small business corporation under Subchapter S of the  
17-21 Internal Revenue Code;

17-22 (6) maintains a tax advantage to the corporation; [~~or~~]

17-23 (7) maintains the status of the corporation as a close  
17-24 corporation under Subchapter O;

17-25 (8) obligates the holder of the restricted securities  
17-26 to sell or transfer an amount of restricted securities to a person  
17-27 or group of persons, including the corporation or other holders of  
17-28 securities of the corporation; or

17-29 (9) causes or results in the automatic sale or  
17-30 transfer of an amount of restricted securities to a person or group  
17-31 of persons, including the corporation or other holders of  
17-32 securities of the corporation.

17-33 (b) A restriction placed on the transfer or registration of  
17-34 transfer of a security of a corporation, on the amount of the  
17-35 corporation's securities, or on the amount of the corporation's  
17-36 securities that may be owned by a person or group of persons is  
17-37 conclusively presumed to be for a reasonable purpose if the  
17-38 restriction:

17-39 (1) maintains a local, state, federal, or foreign tax  
17-40 advantage to the corporation or its shareholders, including:

17-41 (A) maintaining the corporation's status as an  
17-42 electing small business corporation under Subchapter S of the  
17-43 Internal Revenue Code;

17-44 (B) maintaining or preserving any tax attribute,  
17-45 including net operating losses; or

17-46 (C) qualifying or maintaining the qualification  
17-47 of the corporation as a real estate investment trust under the  
17-48 Internal Revenue Code or regulations adopted under the Internal  
17-49 Revenue Code; or

17-50 (2) maintains a statutory or regulatory advantage or  
17-51 complies with a statutory or regulatory requirement under  
17-52 applicable local, state, federal, or foreign law.

17-53 SECTION 50. The heading to Subchapter H, Chapter 21,  
17-54 Business Organizations Code, is amended to read as follows:

17-55 SUBCHAPTER H. SHAREHOLDERS' MEETINGS; NOTICE TO SHAREHOLDERS;  
17-56 VOTING AND QUORUM

17-57 SECTION 51. Section 21.353, Business Organizations Code, is  
17-58 amended by amending Subsection (a) and adding Subsection (c) to  
17-59 read as follows:

17-60 (a) Except as provided by Section 21.456 and subject to  
17-61 Section 21.3531, written notice of a meeting in accordance with  
17-62 Section 6.051 shall be given to each shareholder entitled to vote at  
17-63 the meeting not later than the 10th day and not earlier than the  
17-64 60th day before the date of the meeting. Notice shall be given at  
17-65 the direction of the president, secretary, or other person calling  
17-66 the meeting.

17-67 (c) If a meeting is held by means of remote communication,  
17-68 the notice of the meeting must include information on how to access  
17-69 the list of shareholders entitled to vote at the meeting required by

18-1 Section 21.372.

18-2 SECTION 52. Subchapter H, Chapter 21, Business  
 18-3 Organizations Code, is amended by adding Section 21.3531 to read as  
 18-4 follows:

18-5 Sec. 21.3531. NOTICE BY ELECTRONIC TRANSMISSION. (a) On  
 18-6 consent of a shareholder, notice from a corporation under this  
 18-7 code, the certificate of formation, or the bylaws may be provided to  
 18-8 the shareholder by electronic transmission. The shareholder may  
 18-9 specify the form of electronic transmission to be used to  
 18-10 communicate notice.

18-11 (b) Notice is considered provided under this section when  
 18-12 the notice is:

18-13 (1) transmitted to a facsimile number provided by the  
 18-14 shareholder for the purpose of receiving notice;

18-15 (2) transmitted to an electronic mail address provided  
 18-16 by the shareholder for the purpose of receiving notice;

18-17 (3) posted on an electronic network and a message is  
 18-18 sent to the shareholder at the address provided by the shareholder  
 18-19 for the purpose of alerting the shareholder of a posting; or

18-20 (4) communicated to the shareholder by any other form  
 18-21 of electronic transmission consented to by the shareholder.

18-22 (c) A shareholder may revoke the shareholder's consent to  
 18-23 receive notice by electronic transmission by providing written  
 18-24 notice to the corporation. The shareholder's consent is considered  
 18-25 revoked for purposes of Subsection (a) if the corporation is unable  
 18-26 to deliver by electronic transmission two consecutive notices, and  
 18-27 the secretary, assistant secretary, or transfer agent of the  
 18-28 corporation, or another person responsible for delivering notice on  
 18-29 behalf of the corporation, knows that delivery of those two  
 18-30 electronic transmissions was unsuccessful. Inadvertent failure to  
 18-31 treat the unsuccessful transmissions as a revocation of the  
 18-32 shareholder's consent does not affect the validity of a meeting or  
 18-33 other action.

18-34 (d) An affidavit of the secretary, assistant secretary,  
 18-35 transfer agent, or other agent of a corporation stating that notice  
 18-36 has been provided to a shareholder of the corporation by electronic  
 18-37 transmission is, in the absence of fraud, prima facie evidence that  
 18-38 the notice was provided under this section.

18-39 SECTION 53. Section 21.354, Business Organizations Code, is  
 18-40 amended by adding Subsection (a-1) to read as follows:

18-41 (a-1) If a meeting of the shareholders is held by means of  
 18-42 remote communication, the list must be open to inspection by a  
 18-43 shareholder during the meeting on a reasonably accessible  
 18-44 electronic network.

18-45 SECTION 54. Section 21.362, Business Organizations Code, is  
 18-46 amended to read as follows:

18-47 Sec. 21.362. CUMULATIVE VOTING RIGHT IN CERTAIN  
 18-48 CORPORATIONS. Except as provided by the corporation's certificate  
 18-49 of formation, a shareholder of a corporation incorporated before  
 18-50 September 1, 2003, [~~the effective date of this code~~] has the right  
 18-51 to cumulatively vote the number of shares the shareholder owns in  
 18-52 the election of directors to the extent permitted and in the manner  
 18-53 provided by Section 21.361. A corporation may limit or deny a  
 18-54 shareholder's right to cumulatively vote shares at any time after  
 18-55 September 1, 2003, [~~the effective date of this code~~] by amending its  
 18-56 certificate of formation.

18-57 SECTION 55. Section 21.372, Business Organizations Code, is  
 18-58 amended by adding Subsection (a-1) to read as follows:

18-59 (a-1) Instead of being kept on file, the list required by  
 18-60 Subsection (a) may be kept on a reasonably accessible electronic  
 18-61 network if the information required to gain access to the list is  
 18-62 provided with notice of the meeting. Section 21.353(c), Section  
 18-63 21.354(a-1), and this subsection may not be construed to require a  
 18-64 corporation to include any electronic contact information of a  
 18-65 shareholder on the list. A corporation that elects to make the list  
 18-66 available on an electronic network must take reasonable measures to  
 18-67 ensure the information is available only to shareholders of the  
 18-68 corporation.

18-69 SECTION 56. Section 21.407, Business Organizations Code, is

19-1 amended to read as follows:

19-2 Sec. 21.407. TERM OF OFFICE. Except as [Unless] otherwise  
 19-3 provided by this subchapter [or removed in accordance with Section  
 19-4 21.409], the term of office of a director extends from the date the  
 19-5 director is elected and qualified or named in the corporation's  
 19-6 certificate of formation until the next annual meeting of  
 19-7 shareholders and until the director's successor is elected and  
 19-8 qualified.

19-9 SECTION 57. Section 21.409(a), Business Organizations  
 19-10 Code, is amended to read as follows:

19-11 (a) Except as otherwise provided by the certificate of  
 19-12 formation or bylaws of a corporation or this subchapter, the  
 19-13 shareholders of the corporation may remove a director or the entire  
 19-14 board of directors of the corporation, with or without cause, at a  
 19-15 meeting called for that purpose, by a vote of the holders of a  
 19-16 [~~specified portion, but not less than the~~] majority[~~7~~] of the  
 19-17 shares entitled to vote at an election of the director or directors.

19-18 SECTION 58. Subchapter I, Chapter 21, Business  
 19-19 Organizations Code, is amended by adding Section 21.4091 to read as  
 19-20 follows:

19-21 Sec. 21.4091. RESIGNATION OF DIRECTORS. Except as  
 19-22 otherwise provided by the certificate of formation or bylaws, a  
 19-23 director of a corporation may resign at any time by providing  
 19-24 written notice to the corporation.

19-25 SECTION 59. Section 21.411, Business Organizations Code, is  
 19-26 amended by adding Subsections (d), (e), (f), and (g) to read as  
 19-27 follows:

19-28 (d) Notice of the date, time, place, or purpose of a regular  
 19-29 or special meeting of the board of directors may be provided to a  
 19-30 director by electronic transmission on consent of the director.  
 19-31 The director may specify the form of electronic transmission to be  
 19-32 used to communicate notice.

19-33 (e) Notice is considered provided under Subsection (d) when  
 19-34 the notice is:

19-35 (1) transmitted to a facsimile number provided by the  
 19-36 director for the purpose of receiving notice;

19-37 (2) transmitted to an electronic mail address provided  
 19-38 by the director for the purpose of receiving notice;

19-39 (3) posted on an electronic network and a message is  
 19-40 sent to the director at the address provided by the director for the  
 19-41 purpose of alerting the director of a posting; or

19-42 (4) communicated to the director by any other form of  
 19-43 electronic transmission consented to by the director.

19-44 (f) A director may revoke the director's consent to receive  
 19-45 notice by electronic transmission by providing written notice to  
 19-46 the corporation. The director's consent is considered revoked for  
 19-47 purposes of Subsection (d) if the corporation is unable to deliver  
 19-48 by electronic transmission two consecutive notices, and the  
 19-49 secretary, assistant secretary, or transfer agent of the  
 19-50 corporation, or another person responsible for delivering notice on  
 19-51 behalf of the corporation, knows that delivery of those two  
 19-52 electronic transmissions was unsuccessful. Inadvertent failure to  
 19-53 treat the unsuccessful transmissions as a revocation of the  
 19-54 director's consent does not affect the validity of a meeting or  
 19-55 other action.

19-56 (g) An affidavit of the secretary, assistant secretary,  
 19-57 transfer agent, or other agent of a corporation stating that notice  
 19-58 has been provided to a director of the corporation by electronic  
 19-59 transmission is, in the absence of fraud, prima facie evidence that  
 19-60 notice was provided under Subsections (d) and (e).

19-61 SECTION 60. Sections 21.416(a) and (b), Business  
 19-62 Organizations Code, are amended to read as follows:

19-63 (a) If authorized by the certificate of formation or bylaws  
 19-64 of a corporation, the board of directors of the corporation[~~, by~~  
 19-65 ~~resolution adopted by the majority of the entire board of~~  
 19-66 ~~directors,~~] may designate:

19-67 (1) committees composed of one or more directors; or

19-68 (2) directors as alternate members of committees to  
 19-69 replace absent or disqualified committee members at a committee

20-1 meeting, subject to any limitations imposed by the board of  
20-2 directors.

20-3 (b) To the extent provided by a ~~[the]~~ resolution of the  
20-4 board of directors designating a committee or by the certificate of  
20-5 formation or bylaws and subject to Subsection (c), the committee  
20-6 has the authority of the board of directors.

20-7 SECTION 61. Section 21.452, Business Organizations Code, is  
20-8 amended by adding Subsections (f) and (g) to read as follows:

20-9 (f) If after adoption of a resolution under Subsection  
20-10 (b)(2) the board of directors of the corporation determines that  
20-11 the plan of merger is not advisable, the plan of merger may be  
20-12 submitted to the shareholders of the corporation with a  
20-13 recommendation that the shareholders not approve the plan of  
20-14 merger.

20-15 (g) A plan of merger for a corporation may include a  
20-16 provision requiring that the plan of merger be submitted to the  
20-17 shareholders of the corporation regardless of whether the board of  
20-18 directors determines, after adopting a resolution or making a  
20-19 determination under this section, that the plan of merger is not  
20-20 advisable and recommends that the shareholders not approve the plan  
20-21 of merger.

20-22 SECTION 62. Section 21.454, Business Organizations Code, is  
20-23 amended by adding Subsections (f) and (g) to read as follows:

20-24 (f) If after the adoption of a resolution under Subsection  
20-25 (b)(2) the board of directors of the corporation determines that  
20-26 the plan of exchange is not advisable, the plan of exchange may be  
20-27 submitted to the shareholders of the corporation with a  
20-28 recommendation that the shareholders not approve the plan of  
20-29 exchange.

20-30 (g) A plan of exchange for a corporation may include a  
20-31 provision requiring that the plan of exchange be submitted to the  
20-32 shareholders of the corporation regardless of whether the board of  
20-33 directors determines, after adopting a resolution or making a  
20-34 determination under this section, that the plan of exchange is not  
20-35 advisable and recommends that the shareholders not approve the plan  
20-36 of exchange.

20-37 SECTION 63. Section 21.552, Business Organizations Code, is  
20-38 amended to read as follows:

20-39 Sec. 21.552. STANDING TO BRING PROCEEDING. (a) A  
20-40 shareholder may not institute or maintain a derivative proceeding  
20-41 unless:

20-42 (1) the shareholder:

20-43 (A) was a shareholder of the corporation at the  
20-44 time of the act or omission complained of; or

20-45 (B) became a shareholder by operation of law from  
20-46 a person that was a shareholder at the time of the act or omission  
20-47 complained of; and

20-48 (2) the shareholder fairly and adequately represents  
20-49 the interests of the corporation in enforcing the right of the  
20-50 corporation.

20-51 (b) To the extent a shareholder of a corporation has  
20-52 standing to institute or maintain a derivative proceeding on behalf  
20-53 of the corporation immediately before a merger, Subchapter J or  
20-54 Chapter 10 may not be construed to limit or terminate the  
20-55 shareholder's standing after the merger.

20-56 SECTION 64. Section 21.604, Business Organizations Code, is  
20-57 amended to read as follows:

20-58 Sec. 21.604. BUSINESS COMBINATION. A business combination  
20-59 is:

20-60 (1) a merger, share exchange, or conversion of an  
20-61 issuing public corporation or a subsidiary with:

20-62 (A) an affiliated shareholder;

20-63 (B) a foreign or domestic corporation or other  
20-64 entity that is, or after the merger, share exchange, or conversion  
20-65 would be, an affiliate or associate of the affiliated shareholder;  
20-66 or

20-67 (C) another domestic or foreign corporation or  
20-68 other entity, if the merger, share exchange, or conversion is  
20-69 caused by an affiliated shareholder, or an affiliate or associate

21-1 of an affiliated shareholder, and as a result of the merger, share  
 21-2 exchange, or conversion this subchapter does not apply to the  
 21-3 surviving corporation or other entity;

21-4 (2) a sale, lease, exchange, mortgage, pledge,  
 21-5 transfer, or other disposition, in one transaction or a series of  
 21-6 transactions, including an allocation of assets under a merger, to  
 21-7 or with the affiliated shareholder, or an affiliate or associate of  
 21-8 the affiliated shareholder, of assets of the issuing public  
 21-9 corporation or a subsidiary that:

21-10 (A) has an aggregate market value equal to 10  
 21-11 percent or more of the aggregate market value of all of the assets,  
 21-12 determined on a consolidated basis, of the issuing public  
 21-13 corporation;

21-14 (B) has an aggregate market value equal to 10  
 21-15 percent or more of the aggregate market value of all of the  
 21-16 outstanding voting shares [~~common stock~~] of the issuing public  
 21-17 corporation; or

21-18 (C) represents 10 percent or more of the earning  
 21-19 power or net income, determined on a consolidated basis, of the  
 21-20 issuing public corporation;

21-21 (3) the issuance or transfer by an issuing public  
 21-22 corporation or a subsidiary to an affiliated shareholder or an  
 21-23 affiliate or associate of the affiliated shareholder, in one  
 21-24 transaction or a series of transactions, of shares of the issuing  
 21-25 public corporation or a subsidiary, except by the exercise of  
 21-26 warrants or rights to purchase shares of the issuing public  
 21-27 corporation offered, or a share dividend paid, pro rata to all  
 21-28 shareholders of the issuing public corporation after the affiliated  
 21-29 shareholder's share acquisition date;

21-30 (4) the adoption of a plan or proposal for the  
 21-31 liquidation or dissolution of an issuing public corporation  
 21-32 proposed by or under any agreement, arrangement, or understanding,  
 21-33 regardless of whether in writing, with an affiliated shareholder or  
 21-34 an affiliate or associate of the affiliated shareholder;

21-35 (5) a reclassification of securities, including a  
 21-36 reverse share split or a share split-up, share dividend, or other  
 21-37 distribution of shares, a recapitalization of the issuing public  
 21-38 corporation, a merger of the issuing public corporation with a  
 21-39 subsidiary or pursuant to which the assets and liabilities of the  
 21-40 issuing public corporation are allocated among two or more  
 21-41 surviving or new domestic or foreign corporations or other  
 21-42 entities, or any other transaction proposed by or under an  
 21-43 agreement, arrangement, or understanding, regardless of whether in  
 21-44 writing, with an affiliated shareholder or an affiliate or  
 21-45 associate of the affiliated shareholder that has the effect,  
 21-46 directly or indirectly, of increasing the proportionate ownership  
 21-47 percentage of the outstanding shares of a class or series of voting  
 21-48 shares or securities convertible into voting shares of the issuing  
 21-49 public corporation that is beneficially owned by the affiliated  
 21-50 shareholder or an affiliate or associate of the affiliated  
 21-51 shareholder, except as a result of immaterial changes due to  
 21-52 fractional share adjustments; or

21-53 (6) the direct or indirect receipt by an affiliated  
 21-54 shareholder or an affiliate or associate of the affiliated  
 21-55 shareholder of the benefit of a loan, advance, guarantee, pledge,  
 21-56 or other financial assistance or a tax credit or other tax advantage  
 21-57 provided by or through the issuing public corporation, except  
 21-58 proportionately as a shareholder of the issuing public corporation.

21-59 SECTION 65. Section 21.654, Business Organizations Code, is  
 21-60 amended to read as follows:

21-61 Sec. 21.654. TERM OF OFFICE OF DIRECTORS. Unless the  
 21-62 director resigns or is removed in accordance with the certificate  
 21-63 of formation or bylaws of the investment company, a director of an  
 21-64 investment company shall serve as director for the term for which  
 21-65 the director is elected and holds office until a successor is  
 21-66 elected and qualifies.

21-67 SECTION 66. Sections 22.104(a) and (c), Business  
 21-68 Organizations Code, are amended to read as follows:

21-69 (a) After the certificate of formation is filed, the board

22-1 of directors named in the certificate of formation of a corporation  
 22-2 shall hold an organization meeting of the board, either in or out of  
 22-3 this state, at the call of the organizers [~~incorporators~~] or a  
 22-4 majority of the directors to adopt bylaws and elect officers and for  
 22-5 other purposes determined by the board at the meeting. The  
 22-6 organizers [~~incorporators~~] or directors calling the meeting shall  
 22-7 send notice of the time and place of the meeting to each director  
 22-8 named in the certificate of formation not later than the third day  
 22-9 before the date of the meeting.

22-10 (c) If the management of a corporation is vested in the  
 22-11 corporation's members, the members shall hold the organization  
 22-12 meeting on the call of an organizer [~~incorporator~~]. An organizer  
 22-13 [~~incorporator~~] who calls the meeting shall:

22-14 (1) send notice of the time and place of the meeting to  
 22-15 each member not later than the third day before the date of the  
 22-16 meeting;

22-17 (2) if the corporation is a church, make an oral  
 22-18 announcement of the time and place of the meeting at a regularly  
 22-19 scheduled worship service before the meeting; or

22-20 (3) send notice of the meeting in the manner provided  
 22-21 by the certificate of formation.

22-22 SECTION 67. Subchapter C, Chapter 22, Business  
 22-23 Organizations Code, is amended by adding Section 22.109 to read as  
 22-24 follows:

22-25 Sec. 22.109. RESTATED CERTIFICATE OF FORMATION. (a) The  
 22-26 board of directors of a corporation may adopt a restated  
 22-27 certificate of formation as provided by Subchapter B, Chapter 3, by  
 22-28 following the same procedure to amend the corporation's certificate  
 22-29 of formation provided by Sections 22.104-22.107, except that member  
 22-30 approval is required only if the restated certificate of formation  
 22-31 contains an amendment.

22-32 (b) A person shall file a restated certificate of formation  
 22-33 as provided by Chapter 4, and the restated certificate of formation  
 22-34 takes effect as provided by Subchapter B, Chapter 3.

22-35 SECTION 68. Section 22.208(a), Business Organizations  
 22-36 Code, is amended to read as follows:

22-37 (a) Unless the director resigns or is removed, a [A]  
 22-38 director on the initial board of directors of a corporation holds  
 22-39 office until the first annual election of directors or for the  
 22-40 period specified in the certificate of formation or bylaws of the  
 22-41 corporation. Directors other than the initial directors are  
 22-42 elected, appointed, or designated for the terms provided by the  
 22-43 certificate of formation or bylaws.

22-44 SECTION 69. Subchapter E, Chapter 22, Business  
 22-45 Organizations Code, is amended by adding Section 22.2111 to read as  
 22-46 follows:

22-47 Sec. 22.2111. RESIGNATION OF DIRECTOR. Except as provided  
 22-48 by the certificate of formation or bylaws, a director of a  
 22-49 corporation may resign at any time by providing written notice to  
 22-50 the corporation.

22-51 SECTION 70. Section 22.355, Business Organizations Code, is  
 22-52 amended to read as follows:

22-53 Sec. 22.355. EXEMPTIONS FROM CERTAIN REQUIREMENTS RELATING  
 22-54 TO FINANCIAL RECORDS AND ANNUAL REPORTS. Sections 22.352, 22.353,  
 22-55 and 22.354 do not apply to:

22-56 (1) a corporation that solicits funds only from  
 22-57 members of the corporation;

22-58 (2) a corporation that does not intend to solicit and  
 22-59 receive and does not actually raise or receive during a fiscal year  
 22-60 contributions in an amount exceeding \$10,000 from a source other  
 22-61 than its own membership;

22-62 (3) a private or independent institution of higher  
 22-63 education described by Section 61.003[~~(15)~~], Education Code,  
 22-64 accredited by a recognized accrediting agency as defined by Section  
 22-65 61.003[~~(13)~~], Education Code, a postsecondary educational  
 22-66 institution [~~or~~] authorized to grant degrees under a certificate of  
 22-67 authority issued by the Texas Higher Education Coordinating Board  
 22-68 or a foundation chartered for the benefit of the institution or any  
 22-69 component part of the institution, a career [~~proprietary~~] school or

23-1 college that has received a certificate of approval from the Texas  
 23-2 Workforce Commission [~~commissioner of education~~], a public  
 23-3 institution of higher education or a foundation chartered for the  
 23-4 benefit of the institution or any component part of the  
 23-5 institution, or an elementary or secondary school;

23-6 (4) a religious institution that is a church, an  
 23-7 ecclesiastical or denominational organization, or another  
 23-8 established physical place for worship at which religious services  
 23-9 are the primary activity and are regularly conducted;

23-10 (5) a trade association or professional society the  
 23-11 income of which is principally derived from membership dues and  
 23-12 assessments, sales, or services;

23-13 (6) an insurer licensed and regulated by the Texas  
 23-14 Department of Insurance; or

23-15 (7) [~~an organization the charitable activities of~~  
 23-16 ~~which relate to public concern in the conservation and protection~~  
 23-17 ~~of wildlife, fisheries, and allied natural resources; or~~

23-18 [~~8~~] an alumni association of a public or private  
 23-19 institution of higher education in this state that is recognized  
 23-20 and acknowledged as the official alumni association by the  
 23-21 institution.

23-22 SECTION 71. Section 101.102, Business Organizations Code,  
 23-23 is amended by adding Subsection (c) to read as follows:

23-24 (c) If one or more persons own a membership interest in a  
 23-25 limited liability company, the company agreement may provide for a  
 23-26 person to be admitted to the company as a member without acquiring a  
 23-27 membership interest in the company.

23-28 SECTION 72. Section 101.103, Business Organizations Code,  
 23-29 is amended to read as follows:

23-30 Sec. 101.103. EFFECTIVE DATE OF MEMBERSHIP. (a) In  
 23-31 connection with the formation of a company, a [A] person [who  
 23-32 acquires a membership interest in a limited liability company in  
 23-33 connection with the formation of the company] becomes a member of  
 23-34 the company on the date the company is formed if the person is named  
 23-35 as an initial member in the company's certificate of formation.

23-36 (b) In connection with the formation of a company, a [A]  
 23-37 person being admitted as a member of the company but [who acquires a  
 23-38 membership interest in a limited liability company during the  
 23-39 formation of the company but who is] not named as an initial member  
 23-40 in the company's certificate of formation becomes a member of the  
 23-41 company on the latest of:

23-42 (1) the date the company is formed;

23-43 (2) the date stated in the company's records as the  
 23-44 date the person becomes a member of the company; or

23-45 (3) if the company's records do not state a date  
 23-46 described by Subdivision (2), the date the person's admission to  
 23-47 the company is first reflected in the company's records.

23-48 (c) A person who, after the formation of a limited liability  
 23-49 company, acquires directly or is assigned a membership interest in  
 23-50 the company or is admitted as a member of the company without  
 23-51 acquiring a membership interest becomes a member of the company on  
 23-52 approval or consent of all of the company's members.

23-53 SECTION 73. Section 101.201, Business Organizations Code,  
 23-54 is amended to read as follows:

23-55 Sec. 101.201. ALLOCATION OF PROFITS AND LOSSES. The  
 23-56 profits and losses of a limited liability company shall be  
 23-57 allocated to each member of the company on the basis of the agreed  
 23-58 value of the contributions made by each member, [in accordance with  
 23-59 the member's percentage or other interest in the company on the date  
 23-60 of the allocation] as stated in the company's records required  
 23-61 under Section [Sections 3.151 and] 101.501.

23-62 SECTION 74. Section 101.356, Business Organizations Code,  
 23-63 is amended by amending Subsection (d) and adding Subsection (f) to  
 23-64 read as follows:

23-65 (d) Except as provided by Subsection (e) or any other  
 23-66 section of this title, the company's members must approve by an  
 23-67 affirmative vote of all the members:

23-68 (1) an amendment to the certificate of formation of a  
 23-69 limited liability company; or

24-1 (2) a restated certificate of formation that contains  
 24-2 an amendment to the certificate of formation of a limited liability  
 24-3 company [must be approved by the affirmative vote of all of the  
 24-4 company's members].

24-5 (f) Approval of a restated certificate of formation by a  
 24-6 limited liability company's members is required only if the  
 24-7 restated certificate contains an amendment.

24-8 SECTION 75. Subchapter H, Chapter 101, Business  
 24-9 Organizations Code, is amended by adding Section 101.359 to read as  
 24-10 follows:

24-11 Sec. 101.359. EFFECTIVE ACTION BY MEMBERS OR MANAGERS WITH  
 24-12 OR WITHOUT MEETING. Members or managers of a limited liability  
 24-13 company may take action at a meeting of the members or managers or  
 24-14 without a meeting in any manner permitted by this title, Title 1, or  
 24-15 the governing documents of the company. Unless otherwise provided  
 24-16 by the governing documents, an action is effective if it is taken:

24-17 (1) by an affirmative vote of those persons having at  
 24-18 least the minimum number of votes that would be necessary to take  
 24-19 the action at a meeting at which each member or manager, as  
 24-20 appropriate, entitled to vote on the action is present and votes; or

24-21 (2) with the consent of each member of the limited  
 24-22 liability company, which may be established by:

24-23 (A) the member's failure to object to the action  
 24-24 in a timely manner, if the member has full knowledge of the action;

24-25 (B) consent to the action in writing signed by  
 24-26 the member; or

24-27 (C) any other means reasonably evidencing  
 24-28 consent.

24-29 SECTION 76. Section 151.001, Business Organizations Code,  
 24-30 is amended to read as follows:

24-31 Sec. 151.001. DEFINITIONS. In this title:

24-32 (1) "Capital account" means the amount computed by:

24-33 (A) adding the amount of a partner's original and  
 24-34 additional contributions of cash to a partnership, the agreed value  
 24-35 of any other property that that partner originally or additionally  
 24-36 contributed to the partnership, and allocations of partnership  
 24-37 profits to that partner; and

24-38 (B) subtracting the amount of distributions to  
 24-39 that partner and allocations of partnership losses to that partner.

24-40 (2) "Distribution" means a transfer of property,  
 24-41 including cash, from a partnership to:

24-42 (A) a partner in the partner's capacity as a  
 24-43 partner; or

24-44 (B) a partner's transferee.

24-45 (3) "Foreign limited partnership" means a partnership  
 24-46 formed under the laws of another state that has one or more general  
 24-47 partners and one or more limited partners.

24-48 (4) [~~3~~] "Majority-in-interest," with respect to all  
 24-49 or a specified group of partners, means partners who own more than  
 24-50 50 percent of the current percentage or other interest in the  
 24-51 profits of the partnership that is owned by all of the partners or  
 24-52 by the partners in the specified group, as appropriate.

24-53 (5) [~~4~~] "Partnership agreement" means any  
 24-54 agreement, written or oral, of the partners concerning a  
 24-55 partnership.

24-56 SECTION 77. Section 152.204(a), Business Organizations  
 24-57 Code, is amended to read as follows:

24-58 (a) A partner owes to the partnership, ~~and~~ the other  
 24-59 partners, and a transferee of a deceased partner's partnership  
 24-60 interest as designated in Section 152.406(a)(2):

24-61 (1) a duty of loyalty; and

24-62 (2) a duty of care.

24-63 SECTION 78. Section 152.501(b), Business Organizations  
 24-64 Code, is amended to read as follows:

24-65 (b) An event of withdrawal of a partner occurs on:

24-66 (1) receipt by the partnership of notice of the  
 24-67 partner's express will to withdraw as a partner on:

24-68 (A) the date on which the notice is received; or

24-69 (B) a later date specified by the notice;



25-1 (2) an event specified in the partnership agreement as  
 25-2 causing the partner's withdrawal;

25-3 (3) the partner's expulsion as provided by the  
 25-4 partnership agreement;

25-5 (4) the partner's expulsion by vote of a  
 25-6 majority-in-interest of the other partners if:

25-7 (A) it is unlawful to carry on the partnership  
 25-8 business with that partner;

25-9 (B) there has been a transfer of all or  
 25-10 substantially all of that partner's partnership interest, other  
 25-11 than:

25-12 (i) a transfer for security purposes that  
 25-13 has not been foreclosed; or

25-14 (ii) the substitution of a successor  
 25-15 trustee or successor personal representative;

25-16 (C) not later than the 90th day after the date on  
 25-17 which the partnership notifies an entity partner, other than a  
 25-18 nonfiling entity or foreign nonfiling entity partner, that it will  
 25-19 be expelled because it has filed a certificate of termination or the  
 25-20 equivalent, its existence has been involuntarily terminated or its  
 25-21 charter has been revoked, or its right to conduct business has been  
 25-22 terminated or suspended by the jurisdiction of its formation, if  
 25-23 the certificate of termination or the equivalent is not revoked or  
 25-24 its existence, charter, or right to conduct business is not  
 25-25 reinstated; or

25-26 (D) an event requiring a winding up has occurred  
 25-27 with respect to a nonfiling entity or foreign nonfiling entity that  
 25-28 is a partner;

25-29 (5) the partner's expulsion by judicial decree, on  
 25-30 application by the partnership or another partner, if the judicial  
 25-31 decree determines that [for the partner's expulsion by judicial  
 25-32 decree because] the partner:

25-33 (A) engaged in wrongful conduct that adversely  
 25-34 and materially affected the partnership business;

25-35 (B) wilfully or persistently committed a  
 25-36 material breach of:

25-37 (i) the partnership agreement; or  
 25-38 (ii) a duty owed to the partnership or the  
 25-39 other partners under Sections 152.204-152.206; or

25-40 (C) engaged in conduct relating to the  
 25-41 partnership business that made it not reasonably practicable to  
 25-42 carry on the business in partnership with that partner;

25-43 (6) the partner's:  
 25-44 (A) becoming a debtor in bankruptcy;  
 25-45 (B) executing an assignment for the benefit of a  
 25-46 creditor;

25-47 (C) seeking, consenting to, or acquiescing in the  
 25-48 appointment of a trustee, receiver, or liquidator of that partner  
 25-49 or of all or substantially all of that partner's property; or

25-50 (D) failing, not later than the 90th day after  
 25-51 the appointment, to have vacated or stayed the appointment of a  
 25-52 trustee, receiver, or liquidator of the partner or of all or  
 25-53 substantially all of the partner's property obtained without the  
 25-54 partner's consent or acquiescence, or not later than the 90th day  
 25-55 after the date of expiration of a stay, failing to have the  
 25-56 appointment vacated;

25-57 (7) if a partner is an individual:  
 25-58 (A) the partner's death;  
 25-59 (B) the appointment of a guardian or general  
 25-60 conservator for the partner; or

25-61 (C) a judicial determination that the partner has  
 25-62 otherwise become incapable of performing the partner's duties under  
 25-63 the partnership agreement;

25-64 (8) termination of a partner's existence;

25-65 (9) if a partner has transferred all of the partner's  
 25-66 partnership interest, redemption of the transferee's interest  
 25-67 under Section 152.611;

25-68 (10) an agreement to continue the partnership under  
 25-69 Section 11.057(b) if the partnership has received a notice from the

26-1 partner under Section 11.057(a)(6) requesting that the partnership  
26-2 be wound up; or

26-3 (11) a conversion of the partnership if the partner:  
26-4 (A) did not consent to the conversion; and  
26-5 (B) failed to notify the partnership in writing  
26-6 of the partner's desire not to withdraw within 60 days after the  
26-7 later of:

26-8 (i) the effective date of the conversion;  
26-9 or

26-10 (ii) the date the partner receives actual  
26-11 notice of the conversion.

26-12 SECTION 79. Section 152.904, Business Organizations Code,  
26-13 is amended to read as follows:

26-14 Sec. 152.904. REGISTERED AGENT AND REGISTERED OFFICE. A  
26-15 foreign limited liability partnership subject to this chapter shall  
26-16 maintain a registered office and registered agent in this state in  
26-17 the same manner and to the same extent as if the partnership were a  
26-18 foreign filing entity. Subchapters E and F, Chapter 5, apply to a  
26-19 foreign limited liability partnership to the same extent those  
26-20 subchapters apply to a foreign filing entity [~~accordance with~~  
26-21 ~~Chapter 5~~].

26-22 SECTION 80. Section 152.906, Business Organizations Code,  
26-23 is amended to read as follows:

26-24 Sec. 152.906. WITHDRAWAL [~~CANCELLATION~~] OF REGISTRATION.  
26-25 (a) A registration may be voluntarily withdrawn [~~cancelled~~] by  
26-26 filing a certificate of withdrawal in accordance with this section  
26-27 and Section 9.011 [~~cancellation~~].

26-28 (b) In addition to the information required by Section  
26-29 9.011, the [~~The~~] certificate of withdrawal [~~cancellation~~] must:

26-30 (1) contain:  
26-31 (A) the federal tax identification number of the  
26-32 partnership; and

26-33 (B) the date of effectiveness of the  
26-34 partnership's last application for registration under this  
26-35 subchapter; and

26-36 (2) be signed by:  
26-37 (A) a majority-in-interest of the partners; or  
26-38 (B) one or more partners authorized by a  
26-39 majority-in-interest of the partners.

26-40 SECTION 81. Section 152.907, Business Organizations Code,  
26-41 is amended to read as follows:

26-42 Sec. 152.907. EFFECT OF CERTIFICATE OF WITHDRAWAL  
26-43 [~~CANCELLATION~~]. A certificate of withdrawal [~~cancellation~~]  
26-44 terminates the registration of the partnership as a foreign limited  
26-45 liability partnership as of the date on which the notice is filed or  
26-46 a later date specified in the notice, but not later than the  
26-47 expiration date under Section 152.905(e).

26-48 SECTION 82. Section 152.910(a), Business Organizations  
26-49 Code, is amended to read as follows:

26-50 (a) A foreign limited liability partnership that transacts  
26-51 business in this state without being registered is subject to  
26-52 Subchapter B, Chapter 9, to the same extent as a foreign filing  
26-53 entity.

26-54 SECTION 83. Section 152.911(a), Business Organizations  
26-55 Code, is amended to read as follows:

26-56 (a) A document filed under this subchapter or an application  
26-57 for registration filed under Section 9.007 may be amended by filing  
26-58 with the secretary of state an application for amendment of  
26-59 registration in accordance with Chapter 4.

26-60 SECTION 84. Subchapter K, Chapter 152, Business  
26-61 Organizations Code, is amended by adding Section 152.914 to read as  
26-62 follows:

26-63 Sec. 152.914. REVOCATION OF REGISTRATION BY SECRETARY OF  
26-64 STATE. (a) The secretary of state may revoke the registration of a  
26-65 foreign limited liability partnership for the partnership's  
26-66 failure to:

26-67 (1) file a report within the period required by law or  
26-68 pay a fee or penalty prescribed by law when due and payable;

26-69 (2) maintain a registered agent or registered office

27-1 address in this state as required by law; or

27-2 (3) pay a fee required in connection with a filing, or  
 27-3 payment of the fee was dishonored when presented by the state for  
 27-4 payment.

27-5 (b) If it appears to the secretary of state that, with  
 27-6 respect to a foreign limited liability partnership, a circumstance  
 27-7 described by Subsection (a) exists, the secretary of state shall  
 27-8 provide notice to the partnership in the same manner and to the same  
 27-9 extent as notice is required to be provided to a foreign filing  
 27-10 entity under Sections 9.101(a) and 9.102(a).

27-11 (c) The secretary of state shall reinstate the registration  
 27-12 of a foreign limited liability partnership if the partnership files  
 27-13 an application for reinstatement in accordance with Subsection (e),  
 27-14 accompanied by each amendment of the partnership's registration  
 27-15 that is required by intervening events, and:

27-16 (1) the foreign limited liability partnership has  
 27-17 corrected the circumstances that led to the revocation and any  
 27-18 other circumstances described by Subsection (a) that may exist,  
 27-19 including the payment of fees, interest, or penalties; or

27-20 (2) the secretary of state finds that the  
 27-21 circumstances that led to the revocation did not exist at the time  
 27-22 of revocation.

27-23 (d) A foreign limited liability partnership, to have its  
 27-24 registration reinstated, must comply with the requirements of this  
 27-25 section not later than the date the registration would have expired  
 27-26 under Section 152.905(e) had the registration not been revoked  
 27-27 under this section.

27-28 (e) The foreign limited liability partnership shall file a  
 27-29 certificate of reinstatement in accordance with Chapter 4. The  
 27-30 certificate of reinstatement must contain:

27-31 (1) the name of the partnership;

27-32 (2) the filing number assigned by the filing officer  
 27-33 to the partnership;

27-34 (3) the effective date of the revocation of the  
 27-35 partnership's registration; and

27-36 (4) the name of the partnership's registered agent and  
 27-37 the address of the partnership's registered office.

27-38 SECTION 85. Section 153.052(b), Business Organizations  
 27-39 Code, is amended to read as follows:

27-40 (b) A certificate of formation may be amended to state the  
 27-41 name, mailing address, and street address of the business or  
 27-42 residence of each person winding up the limited partnership's  
 27-43 affairs if, after an event requiring the winding up of a limited  
 27-44 partnership but before the limited partnership is reconstituted or  
 27-45 a certificate of termination [~~cancellation~~] is filed as provided by  
 27-46 Section 153.451:

27-47 (1) the certificate of formation has been amended to  
 27-48 reflect the withdrawal of all general partners; or

27-49 (2) a person who is not shown on the certificate of  
 27-50 formation as a general partner is carrying out the winding up of a  
 27-51 limited partnership's affairs.

27-52 SECTION 86. Subchapter B, Chapter 153, Business  
 27-53 Organizations Code, is amended by adding Section 153.053 to read as  
 27-54 follows:

27-55 Sec. 153.053. RESTATED CERTIFICATE OF FORMATION. (a) The  
 27-56 general partners may adopt at any time a restated certificate of  
 27-57 formation that does not contain an amendment to the certificate of  
 27-58 formation.

27-59 (b) A restated certificate of formation that contains an  
 27-60 amendment to the certificate of formation may be adopted at any time  
 27-61 for a proper purpose as determined by the general partners.

27-62 SECTION 87. The heading to Section 153.151, Business  
 27-63 Organizations Code, is amended to read as follows:

27-64 Sec. 153.151. ADMISSION OF [ADDITIONAL] GENERAL PARTNERS.

27-65 SECTION 88. Section 153.151, Business Organizations Code,  
 27-66 is amended by adding Subsections (c), (d), and (e) to read as  
 27-67 follows:

27-68 (c) A written partnership agreement may provide that a  
 27-69 person may be admitted as a general partner in a limited

28-1 partnership, including as a sole general partner, and may acquire a  
 28-2 partnership interest in the limited partnership without:

28-3 (1) making a contribution to the limited partnership;  
 28-4 or  
 28-5 (2) assuming an obligation to make a contribution to  
 28-6 the limited partnership.

28-7 (d) A written partnership agreement may provide that a  
 28-8 person may be admitted as a general partner in a limited  
 28-9 partnership, including as the sole general partner, without  
 28-10 acquiring a partnership interest in the limited partnership.

28-11 (e) This section is not a limitation of or does not  
 28-12 otherwise affect Section 153.152.

28-13 SECTION 89. Section 153.201, Business Organizations Code,  
 28-14 is amended to read as follows:

28-15 Sec. 153.201. FORM OF CONTRIBUTION. The contribution of a  
 28-16 [~~limited~~] partner may consist of a tangible or intangible benefit  
 28-17 to the limited partnership or other property of any kind or nature,  
 28-18 including:

28-19 (1) cash;  
 28-20 (2) a promissory note;  
 28-21 (3) services performed;  
 28-22 (4) a contract for services to be performed; and  
 28-23 (5) another interest in or security of the limited  
 28-24 partnership, another domestic or foreign limited partnership, or  
 28-25 other entity.

28-26 SECTION 90. The heading to Section 153.451, Business  
 28-27 Organizations Code, is amended to read as follows:

28-28 Sec. 153.451. CERTIFICATE OF TERMINATION [~~CANCELLATION~~].

28-29 SECTION 91. Section 153.451(a), Business Organizations  
 28-30 Code, is amended to read as follows:

28-31 (a) A certificate of formation shall be canceled by filing a  
 28-32 certificate of termination [~~cancellation~~] with the secretary of  
 28-33 state in accordance with Chapter 4:

28-34 (1) on the completion of the winding up of the  
 28-35 partnership business;  
 28-36 (2) when there are no limited partners; or  
 28-37 (3) subject to Subsection (b), on a merger or  
 28-38 conversion as provided by Chapter 10.

28-39 SECTION 92. Section 153.452, Business Organizations Code,  
 28-40 is amended to read as follows:

28-41 Sec. 153.452. CONTENTS OF CERTIFICATE OF TERMINATION  
 28-42 [~~CANCELLATION~~]. A certificate of termination [~~cancellation~~] must  
 28-43 contain:

28-44 (1) the name of the limited partnership;  
 28-45 (2) the date of the filing of the partnership's  
 28-46 certificate of formation;  
 28-47 (3) the reason for filing the certificate of  
 28-48 termination [~~cancellation~~];  
 28-49 (4) the future effective date or a certain time of  
 28-50 termination [~~cancellation~~] if termination [~~cancellation~~] is not  
 28-51 effective on the filing of the certificate; and

28-52 (5) other proper information as determined by the  
 28-53 person filing the certificate of termination [~~cancellation~~].

28-54 SECTION 93. Section 153.501(d), Business Organizations  
 28-55 Code, is amended to read as follows:

28-56 (d) To approve a revocation under Section 11.151 by a  
 28-57 limited partnership of a voluntary decision to wind up as specified  
 28-58 in Section 11.058(1), prior to filing the certificate of  
 28-59 termination [~~cancellation~~] required by Section 153.451, all  
 28-60 remaining partners, or another group or percentage of partners as  
 28-61 specified by the partnership agreement, must agree in writing to  
 28-62 revoke the voluntary decision to wind up and continue the business  
 28-63 of the limited partnership.

28-64 SECTION 94. Section 153.503(a), Business Organizations  
 28-65 Code, is amended to read as follows:

28-66 (a) After an event requiring the winding up of a limited  
 28-67 partnership and until the filing of a certificate of termination  
 28-68 [~~cancellation~~] as provided by Sections 153.451 and 153.452, unless  
 28-69 a written partnership agreement provides otherwise, a person

29-1 winding up the limited partnership's business in the name of and on  
 29-2 behalf of the limited partnership may take the actions specified in  
 29-3 Sections 11.052 and 11.053.

29-4 SECTION 95. Section 153.553(a), Business Organizations  
 29-5 Code, is amended to read as follows:

29-6 (a) Each certificate required by this code to be filed by a  
 29-7 limited partnership with the secretary of state shall be executed  
 29-8 as follows:

29-9 (1) an initial certificate of formation must be signed  
 29-10 as provided in Section 3.004(b)(1), except for an initial  
 29-11 certificate of formation signed by a person under Section  
 29-12 153.106(1);

29-13 (2) a certificate of amendment or restated certificate  
 29-14 of formation must be signed by at least one general partner and by  
 29-15 each other general partner designated in the certificate of  
 29-16 amendment as a new general partner, unless signed and filed by a  
 29-17 person under Section 153.052(b), 153.052(c), or 153.106(1), but the  
 29-18 certificate of amendment need not be signed by a withdrawing  
 29-19 general partner;

29-20 (3) a certificate of termination [~~cancellation~~] must  
 29-21 be signed by all general partners participating in the winding up of  
 29-22 the limited partnership's business or, if no general partners are  
 29-23 winding up the limited partnership's business, by all nonpartner  
 29-24 liquidators or, if the limited partners are winding up the limited  
 29-25 partnership's business, by a majority-in-interest of the limited  
 29-26 partners;

29-27 (4) a certificate of merger filed on behalf of a  
 29-28 domestic limited partnership must be signed as provided by Chapter  
 29-29 10;

29-30 (5) a certificate filed under Section 10.251 must be  
 29-31 signed by the person designated by the court; and

29-32 (6) a certificate of correction must be signed by at  
 29-33 least one general partner.

29-34 SECTION 96. Subchapter B, Chapter 251, Business  
 29-35 Organizations Code, is amended by adding Section 251.054 to read as  
 29-36 follows:

29-37 Sec. 251.054. RESTATED CERTIFICATE OF FORMATION. (a) The  
 29-38 board of directors of a cooperative association may adopt a  
 29-39 restated certificate of formation as provided by Subchapter B,  
 29-40 Chapter 3, by following the procedure to amend the association's  
 29-41 certificate of formation provided by Section 251.052, except that  
 29-42 member approval is required if the restated certificate of  
 29-43 formation contains an amendment.

29-44 (b) A person shall file a restated certificate of formation  
 29-45 as provided by Chapter 4, and the restated certificate of formation  
 29-46 takes effect as provided by Subchapter B, Chapter 3.

29-47 SECTION 97. Section 301.003(2), Business Organizations  
 29-48 Code, is amended to read as follows:

29-49 (2) "Professional association" means an association,  
 29-50 as distinguished from either a partnership or a corporation, that  
 29-51 is:

29-52 (A) formed for the purpose of providing the  
 29-53 professional service rendered by a doctor of medicine, doctor of  
 29-54 osteopathy, doctor of podiatry, dentist, chiropractor,  
 29-55 optometrist, therapeutic optometrist, veterinarian, or licensed  
 29-56 mental health professional; and

29-57 (B) governed as a professional entity under this  
 29-58 title.

29-59 SECTION 98. Section 301.006(d), Business Organizations  
 29-60 Code, is amended to read as follows:

29-61 (d) This section may not be construed to prohibit a  
 29-62 professional entity or foreign professional entity from employing  
 29-63 nurses or from employing individuals who do not, according to  
 29-64 general custom and practice, ordinarily provide a professional  
 29-65 service, including clerks, secretaries, bookkeepers, technicians,  
 29-66 [~~nurses~~] or assistants. To the extent this subsection conflicts  
 29-67 with any other law, this subsection controls.

29-68 SECTION 99. Section 302.003(a), Business Organizations  
 29-69 Code, is amended to read as follows:

30-1 (a) A professional association may amend the association's  
30-2 certificate of formation as provided by Chapter 3 and:

30-3 (1) by [Chapter 3,  
30-4 ~~[(2)]~~ the procedure for amendment stated in the  
30-5 certificate of formation; or

30-6 (2) ~~[(3)]~~ if the certificate of formation does not  
30-7 provide a procedure for amending the certificate, by a two-thirds  
30-8 vote of the association's members.

30-9 SECTION 100. Section 402.001, Business Organizations Code,  
30-10 is amended to read as follows:

30-11 Sec. 402.001. APPLICABILITY UPON EFFECTIVE DATE. (a) On  
30-12 or after ~~[At]~~ the effective date of this code, this code applies to:

30-13 (1) a domestic entity formed on or after the effective  
30-14 date of this code;

30-15 (2) a foreign filing entity, or other foreign entity,  
30-16 that is ~~[has]~~ not registered with the secretary of state to transact  
30-17 business in this state before the effective date of this code; and

30-18 (3) a foreign nonfiling entity, including a foreign  
30-19 limited liability partnership.

30-20 (b) The registration of a domestic limited liability  
30-21 partnership or foreign limited liability partnership under prior  
30-22 law and in effect on the effective date of this code continues to be  
30-23 governed by the prior law until expiration of the current term of  
30-24 registration, unless earlier withdrawn or revoked.

30-25 (c) Notwithstanding Subsections (a) and (b), after the  
30-26 effective date of this code, Sections 152.802 and 152.803, instead  
30-27 of prior law, govern a renewal of registration or other filing with  
30-28 the secretary of state made on behalf of a domestic limited  
30-29 liability partnership registered under prior law.

30-30 (d) Notwithstanding Subsection (a), a domestic partnership  
30-31 that files an initial application for registration as a limited  
30-32 liability partnership after the effective date of this code is  
30-33 governed by Subchapter J, Chapter 152.

30-34 (e) Except as provided by Subsection (b), on or after the  
30-35 effective date of this code, Subchapter K, Chapter 152, applies to  
30-36 the registration of a foreign limited liability partnership  
30-37 registered under prior law.

30-38 SECTION 101. The heading to Section 402.004, Business  
30-39 Organizations Code, is amended to read as follows:

30-40 Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN  
30-41 FILING ENTITY.

30-42 SECTION 102. Section 402.005, Business Organizations Code,  
30-43 is amended to read as follows:

30-44 Sec. 402.005. APPLICABILITY TO EXISTING ENTITIES ~~[ON~~  
30-45 ~~MANDATORY APPLICATION DATE]~~. (a) On or after January 1, 2010,  
30-46 if a domestic ~~[filing]~~ entity formed before January 1, 2006, ~~[the~~  
30-47 ~~effective date of this code]~~ or a foreign filing entity registered  
30-48 with the secretary of state to transact business in this state  
30-49 before January 1, 2006, ~~[the effective date of this code]~~ has not  
30-50 taken the actions specified by Section 402.003(a) or 402.004 to  
30-51 elect to adopt this code:

30-52 (1) this code applies to the entity and all actions  
30-53 taken by the managerial officials, owners, or members of the  
30-54 entity, except as otherwise expressly provided by this title;

30-55 (2) if the entity is a domestic or foreign filing  
30-56 entity, the entity is not considered to have failed to comply with  
30-57 this code if the entity's certificate of formation or application  
30-58 for registration, as appropriate, does not comply with this code;

30-59 (3) if the entity is a domestic filing entity, the  
30-60 entity shall conform its certificate of formation to the  
30-61 requirements of this code when it next files an amendment to its  
30-62 certificate of formation; and

30-63 (4) if the entity is a foreign filing entity, the  
30-64 entity shall conform its application for registration to the  
30-65 requirements of this code when it next files an amendment to its  
30-66 application for registration.

30-67 (b) On or after January 1, 2010, and to the extent provided  
30-68 in Subchapter A, Chapter 23, this code applies to a corporation  
30-69 created under a special statute of this state outside this code

31-1 before January 1, 2006. The corporation, if its certificate of  
 31-2 formation, or equivalent governing document, is filed with the  
 31-3 secretary of state, may elect for this code to apply to the  
 31-4 corporation at any time on or after January 1, 2006, and prior to  
 31-5 January 1, 2010, to the extent provided in Subchapter A, Chapter 23,  
 31-6 by filing a statement and taking other actions in a manner similar  
 31-7 to a domestic filing entity under Section 402.003.

31-8 SECTION 103. Section 402.006, Business Organizations Code,  
 31-9 is amended to read as follows:

31-10 Sec. 402.006. APPLICABILITY TO CERTAIN ACTS, CONTRACTS, AND  
 31-11 TRANSACTIONS. ~~[(a)]~~ Except as otherwise expressly provided by  
 31-12 this title, all of the provisions of this code govern acts,  
 31-13 contracts, or other transactions by an entity subject to this code  
 31-14 or its managerial officials, owners, or members that occur on or  
 31-15 after the mandatory application date. The prior law governs the  
 31-16 acts, contracts, or transactions of the entity or its managerial  
 31-17 officials, owners, or members that occur before the mandatory  
 31-18 application date.

31-19 ~~[(b) No requirement under Subchapter E, Chapter 3, with  
 31-20 respect to matters to be set forth on certificates evidencing  
 31-21 ownership interests of partnerships shall apply to or affect  
 31-22 certificates outstanding when the requirement first becomes  
 31-23 applicable to the certificates, but the requirement applies to all  
 31-24 subsequently issued certificates whether in connection with an  
 31-25 original issue of ownership interests, a transfer of ownership  
 31-26 interests, or otherwise.]~~

31-27 SECTION 104. Section 402.007, Business Organizations Code,  
 31-28 is amended to read as follows:

31-29 Sec. 402.007. INDEMNIFICATION. Chapter 8 governs any  
 31-30 proposed indemnification by a domestic entity after the mandatory  
 31-31 application date, regardless of whether the events on which the  
 31-32 indemnification is based occurred before or after the mandatory  
 31-33 application date. In a case in which indemnification is permitted  
 31-34 but not required under Chapter 8, a provision [A statement]  
 31-35 relating to indemnification contained in the governing documents of  
 31-36 a domestic entity on the mandatory application date that would  
 31-37 otherwise have the effect of limiting the nature or type of  
 31-38 indemnification permitted by Chapter 8 may not be construed after  
 31-39 the mandatory application date as limiting the indemnification  
 31-40 authorized by Chapter 8 unless the provision is intended to limit or  
 31-41 restrict permissive indemnification under applicable law [it  
 31-42 expressly states that is the intent].

31-43 SECTION 105. Section 402.013, Business Organizations Code,  
 31-44 is amended to read as follows:

31-45 Sec. 402.013. REINSTATEMENT OF ENTITIES CANCELED, REVOKED,  
 31-46 INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER [SUSPENSION  
 31-47 FOR NONFILING OF REQUIRED REPORTS OR PAYMENT OF TAXES,  
 31-48 APPLICABILITY OF] PRIOR LAW. (a) On or after January 1, 2006, and  
 31-49 before January 1, 2010, [If the rights, privileges, and powers of] a  
 31-50 domestic filing entity whose certificate of formation or equivalent  
 31-51 governing document has been canceled, revoked, involuntarily  
 31-52 dissolved, [have been] suspended, or forfeited [and are still  
 31-53 suspended immediately before the mandatory application date] under  
 31-54 [the] prior law may reinstate its certificate of formation or  
 31-55 equivalent governing document in accordance with:

31-56 (1) prior law; or

31-57 (2) [7] this code if it also complies with Section  
 31-58 402.003 [applies to the entity on the mandatory application date].

31-59 (b) On or after January 1, 2006, and before January 1, 2010,  
 31-60 a foreign filing entity whose registration to do business has been  
 31-61 canceled, revoked, involuntarily dissolved, suspended, or  
 31-62 forfeited under prior law may reinstate its registration in  
 31-63 accordance with:

31-64 (1) prior law; or

31-65 (2) this code if it also complies with Section  
 31-66 402.004.

31-67 (c) If the certificate of formation [rights, privileges,  
 31-68 and powers] of a domestic filing entity or the registration to do  
 31-69 business of a foreign filing entity is forfeited [have been

32-1 ~~suspended and are still suspended]~~ under the Tax Code, the entity  
32-2 must revive the certificate of formation or registration in  
32-3 accordance with ~~[immediately before the mandatory application~~  
32-4 ~~date, the suspension continues to apply to the entity until the~~  
32-5 ~~rights, privileges, and powers are restored by the secretary of~~  
32-6 ~~state under]~~ that code.

32-7 SECTION 106. Section 9.005, Business Organizations Code, as  
32-8 enacted by Chapter 182, Acts of the 78th Legislature, Regular  
32-9 Session, 2003, is repealed.

32-10 SECTION 107. This Act takes effect January 1, 2006.

32-11 \* \* \* \* \*