

1-1 By: Solomons (Senate Sponsor - Fraser) H.B. No. 1507
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 the regulation of corporations; providing a penalty.

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

1-10 SECTION 1. Section A, Article 2.05, Texas Business
1-11 Corporation Act, is amended to read as follows:

1-12 A. The Corporate name shall conform to the following
1-13 requirements:

1-14 (1) It shall contain the word "corporation,"
1-15 "company," ~~or~~ "incorporated," or "limited," or shall contain an
1-16 abbreviation of one of such words, and shall contain such
1-17 additional words as may be required by law.

1-18 (2) It shall not contain any word or phrase which
1-19 indicates or implies that it is organized for any purpose other than
1-20 one or more of the purposes contained in its articles of
1-21 incorporation.

1-22 (3) It shall not be the same as, or deceptively similar
1-23 to, the name of any domestic corporation, limited partnership, or
1-24 limited liability company existing under the laws of this State, or
1-25 the name of any foreign corporation, non-profit corporation,
1-26 limited partnership, or limited liability company authorized to
1-27 transact business in this State, or a name the exclusive right to
1-28 which is, at the time, reserved in the manner provided in this Act
1-29 or any other statute providing for reservation of names by a limited
1-30 partnership or limited liability company, or the name of a
1-31 corporation, limited partnership, or limited liability company
1-32 which has in effect a registration of its company name as provided
1-33 in this Act or any other applicable law; provided that a name may be
1-34 similar if written consent is obtained from the existing
1-35 corporation, limited partnership, or limited liability company
1-36 having the name deemed to be similar or the person for whom the name
1-37 deemed to be similar is reserved in the office of the Secretary of
1-38 State.

1-39 (4) It shall not contain the word "lottery."

1-40 SECTION 2. Sections A and B, Article 2.06, Texas Business
1-41 Corporation Act, are amended to read as follows:

1-42 A. The exclusive right to the use of a corporate name may be
1-43 reserved by any person~~+~~

1-44 ~~[(1) Any person intending to organize a corporation~~
1-45 ~~under this Act.~~

1-46 ~~[(2) Any domestic corporation intending to change its~~
1-47 ~~name.~~

1-48 ~~[(3) Any foreign corporation intending to make~~
1-49 ~~application for a certificate of authority to transact business in~~
1-50 ~~this State.~~

1-51 ~~[(4) Any foreign corporation authorized to transact~~
1-52 ~~business in this State and intending to change its name.~~

1-53 ~~[(5) Any person intending to organize a foreign~~
1-54 ~~corporation and intending to have such corporation make application~~
1-55 ~~for a certificate of authority to transact business in this State].~~

1-56 B. The reservation shall be made by filing with the
1-57 Secretary of State an application to reserve a specified corporate
1-58 name, executed by the applicant or the attorney or agent thereof.
1-59 If the Secretary of State finds that the name is available for
1-60 corporate use, he shall reserve the same for the exclusive use of
1-61 the applicant for a period of one hundred and twenty (120) days. A
1-62 person may renew the person's reservation of a name under this part
1-63 for successive 120-day periods if, during the 30-day period
1-64 preceding the expiration of that reservation, the person:

- 2-1 (1) files a new application to reserve the name; and
- 2-2 (2) pays the required filing fee.

2-3 SECTION 3. Section B, Article 2.07, Texas Business
2-4 Corporation Act, is amended to read as follows:

2-5 B. Such registration shall be made by:

- 2-6 (1) Filing with the Secretary of State an[+]

2-7 [~~(a) An~~] application for registration executed
2-8 by the corporation by an officer thereof, setting forth the name of
2-9 the corporation, the state or territory under the laws of which it
2-10 is incorporated, the date of its incorporation, a statement that
2-11 the corporation validly exists and [~~it~~] is carrying on or doing
2-12 business, and a brief statement of the business in which it is
2-13 engaged; [~~7~~] and

2-14 [~~(b) A certificate setting forth that such~~
2-15 ~~corporation is in good standing under the laws of the state or~~
2-16 ~~territory wherein it is organized, executed by the Secretary of~~
2-17 ~~State of such state or territory or by such other official as may~~
2-18 ~~have custody of the records pertaining to corporations, and]~~

- 2-19 (2) Paying to the Secretary of State the required
2-20 registration fee.

2-21 SECTION 4. Section A, Article 2.10, Texas Business
2-22 Corporation Act, is amended to read as follows:

2-23 A. A corporation may change its registered office or change
2-24 its registered agent, or both, upon filing in the office of the
2-25 Secretary of State a statement setting forth:

- 2-26 (1) The name of the corporation.

- 2-27 (2) The street [~~post-office~~] address of its then
2-28 registered office.

- 2-29 (3) If the street [~~post-office~~] address of its
2-30 registered office is to be changed, the street [~~post-office~~]
2-31 address to which the registered office is to be changed.

- 2-32 (4) The name of its then registered agent.

- 2-33 (5) If its registered agent is to be changed, the name
2-34 of its successor registered agent.

- 2-35 (6) That the street [~~post-office~~] address of its
2-36 registered office and the street [~~post-office~~] address of the
2-37 business office of its registered agent, as changed, will be
2-38 identical.

- 2-39 (7) That such change was authorized by its Board of
2-40 Directors or by an officer of the corporation so authorized by the
2-41 Board of Directors.

2-42 SECTION 5. Section B, Article 2.19, Texas Business
2-43 Corporation Act, is amended to read as follows:

2-44 B. In the event a corporation is authorized to issue shares
2-45 of more than one class or series, each certificate representing
2-46 shares issued by such corporation (1) shall conspicuously set forth
2-47 on the face or back of the certificate a full statement of all the
2-48 designations, preferences, limitations, and relative rights of the
2-49 shares of each class or series to the extent they have been fixed
2-50 and determined and the authority of the board of directors to fix
2-51 and determine the designations, preferences, limitations, and
2-52 relative rights of subsequent series; or (2) shall conspicuously
2-53 state on the face or back of the certificate that (a) such a
2-54 statement is set forth in the articles of incorporation on file in
2-55 the office of the Secretary of State and (b) the corporation will
2-56 furnish a copy of such statement to the record holder of the
2-57 certificate without charge on written request to the corporation at
2-58 its principal place of business or registered office. [~~In the event~~
2-59 ~~a corporation has by its articles of incorporation limited or~~
2-60 ~~denied the preemptive right of shareholders to acquire unissued or~~
2-61 ~~treasury shares of the corporation, each certificate representing~~
2-62 ~~shares issued by such corporation (1) shall conspicuously set forth~~
2-63 ~~on the face or back of the certificate a full statement of the~~
2-64 ~~limitation or denial of preemptive rights contained in the articles~~
2-65 ~~of incorporation, or (2) shall conspicuously state on the face or~~
2-66 ~~back of the certificate that (a) such a statement is set forth in~~
2-67 ~~the articles of incorporation on file in the office of the Secretary~~
2-68 ~~of State and (b) the corporation will furnish a copy of such~~
2-69 ~~statement to the record holder of the certificate without charge on~~

3-1 ~~request to the corporation at its principal place of business or~~
3-2 ~~registered office.]~~

3-3 SECTION 6. Section B, Article 2.24, Texas Business
3-4 Corporation Act, is amended to read as follows:

3-5 B. An annual meeting of the shareholders shall be held at
3-6 such time as may be stated in or fixed in accordance with the
3-7 bylaws. If the annual meeting is not held within any 13-month
3-8 period and a written consent of shareholders has not been executed
3-9 instead of the meeting, any court of competent jurisdiction in the
3-10 county in which the principal office of the corporation is located
3-11 may, on the application of any shareholder who has previously
3-12 submitted a written request to the corporation that an annual
3-13 meeting be held, summarily order a meeting to be held unless the
3-14 meeting is not required to be held under Section D of this article.
3-15 Failure to hold the annual meeting at the designated time shall not
3-16 work a dissolution of the corporation.

3-17 SECTION 7. Section A, Article 3.02, Texas Business
3-18 Corporation Act, is amended to read as follows:

3-19 A. The articles of incorporation shall set forth:

3-20 (1) The name of the corporation;
3-21 (2) The period of duration, which may be perpetual;
3-22 (3) The purpose or purposes for which the corporation
3-23 is organized which may be stated to be, or to include, the
3-24 transaction of any or all lawful business for which corporations
3-25 may be incorporated under this Act;

3-26 (4) The aggregate number of shares which the
3-27 corporation shall have authority to issue; if such shares are to
3-28 consist of one class only, the par value of each of such shares, or a
3-29 statement that all of such shares are without par value; or, if such
3-30 shares are to be divided into classes, the number of shares of each
3-31 class, and a statement of the par value of the shares of each class
3-32 or that such shares are to be without par value;

3-33 (5) If the shares are to be divided into classes, the
3-34 designation of each class and statement of the preferences,
3-35 limitations, and relative rights in respect of the shares of each
3-36 class;

3-37 (6) If the corporation is to issue the shares of any
3-38 class in series, then the designation of each series and a statement
3-39 of the variations in the preferences, limitations and relative
3-40 rights as between series insofar as the same are to be fixed in the
3-41 articles of incorporation, and a statement of any authority to be
3-42 vested in the board of directors to establish series and fix and
3-43 determine the preferences, limitations and relative rights of each
3-44 series;

3-45 (7) If the [Any provision limiting or denying to]
3-46 shareholders of a corporation are to have the preemptive right to
3-47 acquire additional or treasury shares of the corporation, a
3-48 provision complying with the requirements of Article 2.22-1 of this
3-49 Act;

3-50 (7-a) If the shareholders of a corporation are to have
3-51 a cumulative voting right at the election of directors, a provision
3-52 complying with the requirements of Section D, Article 2.29, of this
3-53 Act;

3-54 (8) If a corporation elects to become a close
3-55 corporation in conformance with Part Twelve of this Act, any
3-56 provision (a) required or permitted by this Act to be stated in the
3-57 articles of incorporation of a close corporation, but not in the
3-58 articles of incorporation of an ordinary corporation, (b) contained
3-59 or permitted to be contained in a shareholders' agreement in
3-60 conformance with Part Twelve of this Act which the incorporators
3-61 elect to set forth in articles of incorporation, or (c) that makes a
3-62 shareholders' agreement in conformance with Part Twelve of this Act
3-63 part of the articles of incorporation of a close corporation in the
3-64 manner prescribed in Section F, Article 2.22 of this Act, but any
3-65 such provision, other than the statement required by Section A,
3-66 Article 12.11 of this Act, shall be preceded by a statement that the
3-67 provision shall be subject to the corporation remaining a close
3-68 corporation in conformance with Part Twelve of this Act;

3-69 (9) Any provision, not inconsistent with law,

4-1 including any provision which under this Act is required or
 4-2 permitted to be set forth in the bylaws or which is permitted to be
 4-3 included pursuant to Article 2.30-1 of this Act, providing for the
 4-4 regulation of the internal affairs of the corporation;

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

4-7 (11) Subject to Article 2.30-1 of this Act, the number
 4-8 of directors constituting the initial board of directors and the
 4-9 names and addresses of the person or persons who are to serve as
 4-10 directors until the first annual meeting of shareholders or until
 4-11 their successors be elected and qualify, or, in the case of a close
 4-12 corporation that, in conformance with Part Twelve of this Act, is to
 4-13 be managed in some other manner pursuant to a shareholders'
 4-14 agreement by the shareholders or by the persons empowered by the
 4-15 agreement to manage its business and affairs, the names and
 4-16 addresses of the person or persons who, pursuant to the
 4-17 shareholders' agreement, will perform the functions of the initial
 4-18 board of directors provided for by this Act;

4-19 (12) The name and address of each incorporator, unless
 4-20 the corporation is being incorporated pursuant to a plan of
 4-21 conversion or a plan of merger, in which case the articles need not
 4-22 include such information; and

4-23 (13) If the corporation is being incorporated pursuant
 4-24 to a plan of conversion or a plan of merger, a statement to that
 4-25 effect, and in the case of a plan of conversion, the name, address,
 4-26 date of formation, and prior form of organization and jurisdiction
 4-27 of incorporation or organization of the converting entity.

4-28 SECTION 8. Section B, Article 4.04, Texas Business
 4-29 Corporation Act, is amended to read as follows:

4-30 B. The articles of amendment shall set forth:

4-31 (1) The name of the corporation.

4-32 (2) If the amendment alters any provision of the
 4-33 original or amended articles of incorporation, an identification by
 4-34 reference or description of the altered provision and a statement
 4-35 of its text as it is amended to read. If the amendment is an
 4-36 addition to the original or amended articles of incorporation, a
 4-37 statement of that fact and the full text of each provision added.

4-38 (3) ~~[The date of the adoption of the amendment by the~~
 4-39 ~~shareholders, or by the board of directors where no shares have been~~
 4-40 ~~issued.~~

4-41 ~~[(4)]~~ A statement that the amendment has been approved
 4-42 in the manner required by this Act and the constituent documents of
 4-43 the corporation.

4-44 SECTION 9. Section B, Article 5.01, Texas Business
 4-45 Corporation Act, is amended to read as follows:

4-46 B. A plan of merger shall set forth:

4-47 (1) the name, type of entity, and jurisdiction of
 4-48 formation of each domestic or foreign corporation or other entity
 4-49 that is a party to the merger and the name of each domestic or
 4-50 foreign corporation or other entity, if any, that shall survive the
 4-51 merger, which may be one or more of the domestic or foreign
 4-52 corporations or other entities party to the merger, and the name,
 4-53 type of entity, and jurisdiction of formation of each new domestic
 4-54 or foreign corporation or other entity, if any, that may be created
 4-55 by the terms of the plan of merger;

4-56 (2) the terms and conditions of the merger including,
 4-57 if more than one domestic or foreign corporation or other entity is
 4-58 to survive or to be created by the terms of the plan of merger, (a)
 4-59 the manner and basis of allocating and vesting the real estate and
 4-60 other property of each domestic or foreign corporation and of each
 4-61 other entity that is a party to the merger among one or more of the
 4-62 surviving or new domestic or foreign corporations and other
 4-63 entities, (b) the name of the surviving or new domestic or foreign
 4-64 corporation or other entity that is to be obligated for the payment
 4-65 of the fair value of any shares held by a shareholder of any
 4-66 domestic corporation that is a party to the merger who has complied
 4-67 with the requirements of Article 5.12 of this Act for the recovery
 4-68 of the fair value of his shares, and (c) the manner and basis of
 4-69 allocating all other liabilities and obligations of each domestic

5-1 or foreign corporation and other entity that is a party to the
 5-2 merger (or making adequate provision for the payment and discharge
 5-3 thereof) among one or more of the surviving or new domestic or
 5-4 foreign corporations and other entities;

5-5 (3) the manner and basis of converting any of the
 5-6 shares or other evidences of ownership of each domestic or foreign
 5-7 corporation and other entity that is a party to the merger into
 5-8 shares, obligations, evidences of ownership, rights to purchase
 5-9 securities or other securities of one or more of the surviving or
 5-10 new domestic or foreign corporations or other entities, into cash
 5-11 or other property, including shares, obligations, evidences of
 5-12 ownership, rights to purchase securities or other securities of any
 5-13 other person or entity, or into any combination of the foregoing,
 5-14 and if any shares or other evidences of ownership of any holder of a
 5-15 class or series of shares or other evidence of ownership is to be
 5-16 converted in a manner or basis different than any other holder of
 5-17 shares of such class or series or other evidence of ownership, the
 5-18 manner and basis applicable to such holder;

5-19 (4) as an exhibit or attachment, the articles of
 5-20 incorporation of any new domestic corporation to be created by the
 5-21 terms of the plan of merger and the articles of incorporation or
 5-22 other organizational documents of any other new domestic entity to
 5-23 be created by the terms of the plan of merger; and

5-24 (5) the articles of incorporation or other
 5-25 organizational documents of each other entity that is a party to the
 5-26 merger and that is to survive the merger or is to be created by the
 5-27 terms of the plan of merger if it is an entity that is not organized
 5-28 under the laws of any state of the United States or is not required
 5-29 to file its articles of incorporation or other organizational
 5-30 documents with the appropriate governmental authority.

5-31 SECTION 10. Section H-1, Article 5.03, Texas Business
 5-32 Corporation Act, is amended to read as follows:

5-33 H-1. The term "organizational documents," as used in
 5-34 Section H(6) of this article, means:

5-35 (1) in reference to a corporation, the articles of
 5-36 incorporation of the corporation; or

5-37 (2) in reference to a limited liability company, the
 5-38 articles of organization and regulations [~~limited liability~~
 5-39 ~~company agreement~~] of the limited liability company.

5-40 SECTION 11. Section I(1), Article 5.03, Texas Business
 5-41 Corporation Act, is amended to read as follows:

5-42 (1) "Direct or indirect wholly owned subsidiary"
 5-43 means, with respect to any corporation, another corporation or a
 5-44 limited liability company[7] all of the outstanding voting stock or
 5-45 interests, as applicable, of which is owned by the corporation or by
 5-46 one or more other domestic or foreign corporations or other
 5-47 entities, all of the outstanding voting stock or interests of which
 5-48 is owned by the corporation or one or more of such other wholly
 5-49 owned domestic or foreign corporations or other entities.

5-50 SECTION 12. Section A, Article 5.06, Texas Business
 5-51 Corporation Act, is amended to read as follows:

5-52 A. When a merger takes effect:

5-53 (1) the separate existence of every domestic
 5-54 corporation that is a party to the merger, except any surviving or
 5-55 new domestic corporation, shall cease;

5-56 (2) all rights, title and interests to all real estate
 5-57 and other property owned by each domestic or foreign corporation
 5-58 and by each other entity that is a party to the merger shall be
 5-59 allocated to and vested in one or more of the surviving or new
 5-60 domestic or foreign corporations and other entities as provided in
 5-61 the plan of merger without reversion or impairment, without further
 5-62 act or deed, and without any transfer or assignment having
 5-63 occurred, but subject to any existing liens or other encumbrances
 5-64 thereon;

5-65 (3) all liabilities and obligations of each domestic
 5-66 or foreign corporation and other entity that is a party to the
 5-67 merger shall be allocated to one or more of the surviving or new
 5-68 domestic or foreign corporations and other entities in the manner
 5-69 set forth in the plan of merger, and each surviving or new domestic

6-1 or foreign corporation, and each surviving or new other entity to
 6-2 which a liability or obligation shall have been allocated pursuant
 6-3 to the plan of merger, shall be the primary obligor therefor and,
 6-4 except as otherwise set forth in the plan of merger or as otherwise
 6-5 provided by law or contract, no other party to the merger, other
 6-6 than a surviving domestic or foreign corporation or other entity
 6-7 liable thereon at the time of the merger and no other new domestic
 6-8 or foreign corporation or other entity created thereby, shall be
 6-9 liable therefor;

6-10 (4) a proceeding pending by or against any domestic or
 6-11 foreign corporation or by or against any other entity that is a
 6-12 party to the merger may be continued as if the merger did not occur,
 6-13 or the surviving or new domestic or foreign corporation or
 6-14 corporations or the surviving or new other entity or other entities
 6-15 to which the liability, obligation, asset or right associated with
 6-16 such proceeding is allocated to and vested in pursuant to the plan
 6-17 of merger may be substituted in the proceeding;

6-18 (5) the articles of incorporation of each surviving
 6-19 corporation shall be amended to the extent provided in the plan of
 6-20 merger;

6-21 (6) each new domestic corporation, the articles of
 6-22 incorporation of which are set forth in the plan of merger pursuant
 6-23 to Article 5.01 of this Act, shall be incorporated as a corporation
 6-24 under this Act; and each other entity to be incorporated or
 6-25 organized under the laws of this State, the organizational
 6-26 documents of which are set forth in the plan of merger shall, upon
 6-27 an executed copy of the articles of merger being delivered to or
 6-28 filed with any required governmental entity with which
 6-29 organizational documents of such other entity are required to be
 6-30 delivered or filed, and upon meeting such additional requirements,
 6-31 if any, of law for its incorporation or organization, shall be
 6-32 incorporated or organized as provided in the plan of merger; ~~and~~

6-33 (7) the shares of each domestic or foreign corporation
 6-34 and the shares or evidences of ownership in each other entity that
 6-35 is a party to the merger that are to be converted or exchanged, in
 6-36 whole or part, into shares, obligations, evidences of ownership,
 6-37 rights to purchase securities or other securities of one or more of
 6-38 the surviving or new domestic or foreign corporations or other
 6-39 entities, into cash or other property, including shares,
 6-40 obligations, evidences of ownership, rights to purchase securities
 6-41 or other securities of any other person or entity, or into any
 6-42 combination of the foregoing, shall be so converted and exchanged
 6-43 and the former holders of the shares of each domestic corporation
 6-44 that is a party to the merger shall be entitled only to the rights
 6-45 provided in the plan of merger or to their rights under Article 5.11
 6-46 of this Act; and

6-47 (8) notwithstanding Subdivision (3) of this section,
 6-48 the surviving or new corporation or other entity named in the plan
 6-49 of merger as primarily obligated to pay the fair value of any shares
 6-50 under Section B(2), Article 5.01, of this Act is the primary obligor
 6-51 for that payment and all other surviving or new organizations are
 6-52 secondarily liable for that payment.

6-53 SECTION 13. Section A, Article 5.12, Texas Business
 6-54 Corporation Act, is amended to read as follows:

6-55 A. Any shareholder of any domestic corporation who has the
 6-56 right to dissent from any of the corporate actions referred to in
 6-57 Article 5.11 of this Act may exercise that right to dissent only by
 6-58 complying with the following procedures:

6-59 (1)(a) With respect to proposed corporate action that
 6-60 is submitted to a vote of shareholders at a meeting, the shareholder
 6-61 shall file with the corporation, prior to the meeting, a written
 6-62 objection to the action, setting out that the shareholder's right
 6-63 to dissent will be exercised if the action is effective and giving
 6-64 the shareholder's address, to which notice thereof shall be
 6-65 delivered or mailed in that event. If the action is effected and
 6-66 the shareholder shall not have voted in favor of the action, the
 6-67 corporation, in the case of action other than a merger, or the
 6-68 surviving or new corporation (foreign or domestic) or other entity
 6-69 that is liable to discharge the shareholder's right of dissent, in

7-1 the case of a merger, shall, within ten (10) days after the action
 7-2 is effected, deliver or mail to the shareholder written notice that
 7-3 the action has been effected, and the shareholder may, within ten
 7-4 (10) days from the delivery or mailing of the notice, make written
 7-5 demand on the existing, surviving, or new corporation (foreign or
 7-6 domestic) or other entity, as the case may be, for payment of the
 7-7 fair value of the shareholder's shares. The fair value of the
 7-8 shares shall be the value thereof as of the day immediately
 7-9 preceding the meeting, excluding any appreciation or depreciation
 7-10 in anticipation of the proposed action. In computing the fair value
 7-11 of the shares under this article, consideration must be given to the
 7-12 value of the corporation as a going concern without including in the
 7-13 computation of value any payment for a control premium or minority
 7-14 discount other than a discount attributable to the type of share
 7-15 held by the dissenting shareholder and any limitation placed on the
 7-16 rights and preference of those shares. The demand shall state the
 7-17 number and class of the shares owned by the shareholder and the fair
 7-18 value of the shares as estimated by the shareholder. Any
 7-19 shareholder failing to make demand within the ten (10) day period
 7-20 shall be bound by the action.

7-21 (b) With respect to proposed corporate action
 7-22 that is approved pursuant to Section A of Article 9.10 of this Act,
 7-23 the corporation, in the case of action other than a merger, and the
 7-24 surviving or new corporation (foreign or domestic) or other entity
 7-25 that is liable to discharge the shareholder's right of dissent, in
 7-26 the case of a merger, shall, within ten (10) days after the date the
 7-27 action is effected, mail to each shareholder of record as of the
 7-28 effective date of the action notice of the fact and date of the
 7-29 action and that the shareholder may exercise the shareholder's
 7-30 right to dissent from the action. The notice shall be accompanied
 7-31 by a copy of this Article and any articles or documents filed by the
 7-32 corporation with the Secretary of State to effect the action. If
 7-33 the shareholder shall not have consented to the taking of the
 7-34 action, the shareholder may, within twenty (20) days after the
 7-35 mailing of the notice, make written demand on the existing,
 7-36 surviving, or new corporation (foreign or domestic) or other
 7-37 entity, as the case may be, for payment of the fair value of the
 7-38 shareholder's shares. The fair value of the shares shall be the
 7-39 value thereof as of the date the written consent authorizing the
 7-40 action was delivered to the corporation pursuant to Section A of
 7-41 Article 9.10 of this Act, excluding any appreciation or
 7-42 depreciation in anticipation of the action. The demand shall state
 7-43 the number and class of shares owned by the dissenting shareholder
 7-44 and the fair value of the shares as estimated by the shareholder.
 7-45 Any shareholder failing to make demand within the twenty (20) day
 7-46 period shall be bound by the action.

7-47 (2) Within twenty (20) days after receipt by the
 7-48 existing, surviving, or new corporation (foreign or domestic) or
 7-49 other entity, as the case may be, of a demand for payment made by a
 7-50 dissenting shareholder in accordance with Subsection (1) of this
 7-51 Section, the corporation (foreign or domestic) or other entity
 7-52 shall deliver or mail to the shareholder a written notice that shall
 7-53 either set out that the corporation (foreign or domestic) or other
 7-54 entity accepts the amount claimed in the demand and agrees to pay
 7-55 that amount within ninety (90) days after the date on which the
 7-56 action was effected, and, in the case of shares represented by
 7-57 certificates, upon the surrender of the certificates duly endorsed,
 7-58 or shall contain an estimate by the corporation (foreign or
 7-59 domestic) or other entity of the fair value of the shares, together
 7-60 with an offer to pay the amount of that estimate within ninety (90)
 7-61 days after the date on which the action was effected, upon receipt
 7-62 of notice within sixty (60) days after that date from the
 7-63 shareholder that the shareholder agrees to accept that amount and,
 7-64 in the case of shares represented by certificates, upon the
 7-65 surrender of the certificates duly endorsed.

7-66 (3) If, within sixty (60) days after the date on which
 7-67 the corporate action was effected, the value of the shares is agreed
 7-68 upon between the shareholder and the existing, surviving, or new
 7-69 corporation (foreign or domestic) or other entity, as the case may

8-1 be, payment for the shares shall be made within ninety (90) days
8-2 after the date on which the action was effected and, in the case of
8-3 shares represented by certificates, upon surrender of the
8-4 certificates duly endorsed. Upon payment of the agreed value, the
8-5 shareholder shall cease to have any interest in the shares or in the
8-6 corporation.

8-7 SECTION 14. Article 6.04, Texas Business Corporation Act,
8-8 is amended by adding Section B to read as follows:

8-9 B. The corporation may continue its business wholly or
8-10 partly, including delaying the disposition of property of the
8-11 corporation, for the period necessary to avoid unreasonable loss of
8-12 the corporation's property or business.

8-13 SECTION 15. Section A, Article 7.07, Texas Business
8-14 Corporation Act, is amended to read as follows:

8-15 A. No receiver shall be appointed for any corporation to
8-16 which this Act applies or for any of its assets or for its business
8-17 except as provided for and on the conditions set forth in this Act.
8-18 A receiver shall in all cases be a citizen of the United States or a
8-19 corporation or other entity authorized to act as receiver, which
8-20 corporation may be a domestic corporation or a foreign corporation
8-21 authorized to transact business in this State, and shall in all
8-22 cases give such bond as the court may direct with such sureties as
8-23 the court may require.

8-24 SECTION 16. Article 7.09, Texas Business Corporation Act,
8-25 is amended to read as follows:

8-26 Art. 7.09. DECREE OF INVOLUNTARY DISSOLUTION. A. In
8-27 proceedings to liquidate the assets and business of a corporation,
8-28 when the costs and expenses of such proceedings and all debts,
8-29 obligations, and liabilities of the corporation shall have been
8-30 paid and discharged, or adequate provision shall have been made
8-31 therefor, and all of its remaining property and assets distributed
8-32 to its shareholders, or, in case its property and assets are not
8-33 sufficient to satisfy and discharge such costs, expenses, debts,
8-34 and obligations, when all the property and assets have been applied
8-35 so far as they will go to their payment, the court shall enter a
8-36 decree dissolving the corporation~~[, whereupon the existence of the~~
8-37 ~~corporation shall cease].~~ The existence of the corporation shall
8-38 cease when a certified copy of the decree is filed with the
8-39 Secretary of State as provided by Article 7.10.

8-40 SECTION 17. Article 7.10, Texas Business Corporation Act,
8-41 is amended by adding Section B to read as follows:

8-42 B. The existence of the corporation shall cease on the
8-43 filing of the certified copy of the decree of dissolution with the
8-44 Secretary of State.

8-45 SECTION 18. Section A, Article 8.13, Texas Business
8-46 Corporation Act, is amended to read as follows:

8-47 A. If a foreign corporation authorized to transact business
8-48 in this State shall change its corporate name, or if such
8-49 corporation desires to pursue in this State purposes other than, or
8-50 in addition to, those authorized by its existing certificate of
8-51 authority, it shall procure an amended certificate of authority by
8-52 making application therefor to the Secretary of State. The
8-53 application for amendment must be filed before the 91st day after
8-54 the date of the change of name.

8-55 SECTION 19. Section B, Article 8.16, Texas Business
8-56 Corporation Act, is amended to read as follows:

8-57 B. The certificate of authority of a foreign corporation to
8-58 transact business in this state may be revoked by order of the
8-59 Secretary of State when it is established that it is in default in
8-60 any of the following particulars:

8-61 (1) The corporation has failed to file any report
8-62 within the time required by law, or has failed to pay any fees,
8-63 franchise taxes, or penalties prescribed by law when the same have
8-64 become due and payable; or

8-65 (2) The corporation has failed to maintain a
8-66 registered agent in this state as required by law; or

8-67 (3) The corporation has changed its corporate name or
8-68 has changed or added to the corporation purposes other than those
8-69 authorized in its existing certificate of authority, and has failed

9-1 to file with the Secretary of State before the 91st day [~~within~~
9-2 ~~thirty days~~] after such change of name or change or addition to
9-3 purposes authorized in its existing certificate of authority became
9-4 effective, an application for an amended certificate of authority,
9-5 or that the corporation has changed its corporate name and that the
9-6 newly adopted name is not available for use in this state; or

9-7 (4) The corporation has failed to pay the filing fee
9-8 for the corporation's certificate of authority or the initial
9-9 franchise tax deposit, or the fee or tax was paid by an instrument
9-10 that was dishonored when presented by the state for payment.

9-11 SECTION 20. Part 8, Texas Business Corporation Act, is
9-12 amended by adding Article 8.19 to read as follows:

9-13 Art. 8.19. VENUE. In addition to any other venue authorized
9-14 by law, a suit under Article 8.18 of this Act may be brought in
9-15 Travis County.

9-16 SECTION 21. Section B, Article 10.02, Texas Business
9-17 Corporation Act, is amended to read as follows:

9-18 B. An offense under this article is a Class A misdemeanor
9-19 unless the actor's intent is to defraud or harm another, in which
9-20 event the offense is a state jail felony.

9-21 SECTION 22. (a) The change in law made by this Act applies
9-22 only to an offense committed on or after the effective date of this
9-23 Act. For purposes of this section, an offense is committed before
9-24 the effective date of this Act if any element of the offense occurs
9-25 before that date.

9-26 (b) An offense committed before the effective date of this
9-27 Act is covered by the law in effect when the offense was committed,
9-28 and the former law is continued in effect for that purpose.

9-29 SECTION 23. This Act takes effect September 1, 2005.

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