

By: Fraser

S.B. No. 854

A BILL TO BE ENTITLED

AN ACT

relating to business entities and associations.

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

SECTION 1. Section 1.002, Business Organizations Code, is amended by amending Subdivision (43) and adding Subdivisions (69-a) and (69-b) to read as follows:

(43) "Jurisdiction of formation" means:

(A) in the case of a domestic filing entity, this state;

(B) in the case of a foreign ~~[filing]~~ entity for which a certificate of formation or similar organizational instrument is filed in connection with its formation, the jurisdiction in which the entity's certificate of formation or similar organizational instrument is filed; or

(C) in the case of a ~~[foreign or]~~ domestic nonfiling entity or a foreign entity for which a certificate of formation or similar organizational instrument is not filed in connection with its formation:

(i) the jurisdiction the laws of which are chosen in the entity's governing documents to govern its internal affairs if that jurisdiction bears a reasonable relation to the owners or members or to the ~~[domestic or foreign nonfiling]~~ entity's business and affairs under the principles of this state that otherwise would apply to a contract among the owners or

1 members; or

2 (ii) if Subparagraph (i) does not apply,
3 the jurisdiction in which the entity has its chief executive
4 office.

5 (69-a) "Period of duration," in reference to when a
6 domestic entity is required to wind up its business and affairs:

7 (A) means:

8 (i) a specified term or period of time, such
9 as a specified number of months or years; or

10 (ii) a period that expires as of a specified
11 time or date; and

12 (B) does not include:

13 (i) a period that expires or whose
14 expiration is made contingent on the occurrence of a future event or
15 fact, other than the passage of time or the occurrence of a
16 specified time or date; or

17 (ii) a period specified to be perpetual.

18 (69-b) "Person" has the meaning assigned by Section
19 311.005, Government Code.

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

22 Sec. 1.006. SYNONYMOUS TERMS. To the extent not
23 inconsistent with the provisions of the constitution, ~~and~~ other
24 statutes or codes, and governing documents wherein such terms may
25 be found, and as the context requires, in this code, ~~or~~ any other
26 statute or code of this state, or any governing documents:

27 (1) a reference to "articles of incorporation,"

1 "articles of organization," "articles of association,"
2 "certificate of limited partnership," and "charter" includes a
3 "certificate of formation";

4 (2) a reference to "authorized capital stock" includes
5 "authorized shares";

6 (3) a reference to "capital stock" includes
7 "authorized and issued shares," "issued share," and "stated
8 capital";

9 (4) a reference to a "certificate of registration,"
10 "certificate of authority," and "permit to do business" includes
11 "registration";

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

14 (6) a reference to "stockholder" includes
15 "shareholder";

16 (7) a reference to "no par stock" includes "shares
17 without par value";

18 (8) a reference to "paid-up capital" includes "stated
19 capital";

20 (9) a reference to "articles of merger" includes a
21 "certificate of merger";

22 (10) a reference to "articles of exchange" includes a
23 "certificate of exchange";

24 (11) a reference to "articles of conversion" includes
25 a "certificate of conversion";

26 (12) a reference to "articles of amendment" includes a
27 "certificate of amendment"; [~~and~~]

1 (13) a reference to "articles of dissolution" or
2 "certificate of cancellation" includes a "certificate of
3 termination";

4 (14) a reference to "incorporator" includes an
5 "organizer";

6 (15) a reference to "certificate of authority to
7 transact business" includes a "registration to transact business";

8 (16) a reference to "regulations" in connection with a
9 limited liability company includes a "company agreement"; and

10 (17) a reference to "business corporation" includes a
11 "for-profit corporation." [~~termination."~~]

12 SECTION 3. Sections 1.008(g), (h), and (i), Business
13 Organizations Code, are amended to read as follows:

14 (g) The provisions of Chapters 151, 153, and 154 and the
15 provisions of Title 1 and Chapter 152 to the extent applicable to
16 limited partnerships may be cited as the "Texas Limited Partnership
17 Law."

18 (h) The provisions of Title 5 and the provisions of Title 1
19 and Chapters 20 and 21 to the extent applicable to real estate
20 investment trusts may be cited as the "Texas Real Estate Investment
21 Trust Law."

22 (i) The provisions of Chapter 251 and the provisions of
23 Title 1 and Chapters 20 and 22 to the extent applicable to
24 cooperative associations may be cited as the "Texas Cooperative
25 Association Law."

26 SECTION 4. Section 2.003, Business Organizations Code, is
27 amended to read as follows:

1 Sec. 2.003. GENERAL PROHIBITED PURPOSES. A domestic entity
2 may not:

3 (1) engage in a business or activity that:

4 (A) is expressly unlawful or prohibited by a law
5 of this state; or

6 (B) cannot lawfully be engaged in by that entity
7 under state law; or

8 ~~[(C) may not be engaged in by an entity without
9 first obtaining a license under the laws of this state to engage in
10 that business or activity and a license cannot lawfully be granted
11 to the entity; or]~~

12 (2) operate as a:

13 (A) bank;

14 (B) trust company;

15 (C) savings association;

16 (D) insurance company;

17 (E) railroad company;

18 (F) cemetery organization, except as authorized
19 by Chapter 711, 712, or 715, Health and Safety Code; or

20 (G) abstract or title company governed by Title
21 11, Insurance Code.

22 SECTION 5. Section 2.007, Business Organizations Code, is
23 amended to read as follows:

24 Sec. 2.007. ADDITIONAL PROHIBITED ACTIVITIES OF FOR-PROFIT
25 CORPORATION. A for-profit corporation may not:

26 (1) operate a cooperative association, limited
27 cooperative association, or labor union;

1 (2) transact a combination of the businesses of:

2 (A) raising cattle and owning land for the
3 raising of cattle, other than operating and owning feedlots and
4 feeding cattle; and

5 (B) operating stockyards and slaughtering,
6 refrigerating, canning, curing, or packing meat; ~~or~~

7 (3) engage in a combination of:

8 (A) the petroleum oil producing business in this
9 state; and

10 (B) the oil pipeline business in this state other
11 than through stock ownership in a for-profit corporation engaged in
12 the oil pipeline business and other than the ownership or operation
13 of private pipelines in and about the corporation's refineries,
14 fields, or stations; or

15 (4) engage in a business or activity that may not be
16 engaged in by a for-profit corporation without first obtaining a
17 license under the laws of this state and a license to engage in that
18 business or activity cannot lawfully be granted to the corporation.

19 SECTION 6. Section 2.010, Business Organizations Code, is
20 amended to read as follows:

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

24 (1) engage in or operate as a group hospital service,
25 rural credit union, agricultural and livestock pool, mutual loan
26 corporation, cooperative association under Chapter 251,
27 cooperative credit association, farmers' cooperative society,

1 Co-operative Marketing Act corporation, rural electric cooperative
2 corporation, telephone cooperative corporation, or fraternal
3 organization operating under the lodge system and incorporated
4 under Subchapter C, Chapter 23; ~~[or]~~

5 (2) engage in water supply or sewer service except as
6 an entity incorporated under Chapter 67, Water Code; or

7 (3) engage in a business or activity that may not be
8 engaged in by a nonprofit corporation without first obtaining a
9 license under the laws of this state and a license to engage in that
10 business or activity cannot lawfully be granted to the corporation.

11 SECTION 7. Section 2.101, Business Organizations Code, is
12 amended to read as follows:

13 Sec. 2.101. GENERAL POWERS. Except as otherwise provided
14 by this code, a domestic entity has the same powers as an individual
15 to take action necessary or convenient to carry out its business and
16 affairs. Except as otherwise provided by this code, the powers of a
17 domestic entity include the power to:

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

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

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

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

26 (5) make contracts and guarantees;

27 (6) incur liabilities, borrow money, issue notes,

1 bonds, or other obligations, which may be convertible into, or
2 include the option to purchase, other securities or ownership
3 interests in the entity, and secure its obligations by mortgaging
4 or pledging its property, franchises, or income;

5 (7) lend money, invest its funds, and receive and hold
6 property as security for repayment [~~if the loan or assistance~~
7 ~~reasonably may be expected to benefit, directly or indirectly, the~~
8 ~~entity~~];

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

11 (9) acquire its own ownership interests, regardless of
12 whether redeemable, and hold the ownership interests as treasury
13 ownership interests or cancel or dispose of the ownership
14 interests;

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

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

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

23 (13) lend money to, and otherwise assist, its
24 managerial officials, owners, members, or employees as necessary or
25 appropriate if the loan or assistance reasonably may be expected to
26 benefit, directly or indirectly, the entity;

27 (14) elect or appoint officers and agents of the

1 entity, establish the length of their terms, define their duties,
2 and fix their compensation;

3 (15) pay pensions and establish pension plans, pension
4 trusts, profit-sharing plans, bonus plans, and incentive plans for
5 managerial officials, owners, members, or employees or former
6 managerial officials, owners, members, or employees;

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

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

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

14 (19) voluntarily wind up its business and activities
15 and terminate its existence;

16 (20) transact business or take action that will aid
17 governmental policy;

18 (21) renounce, in its certificate of formation or by
19 action of its governing authority, an interest or expectancy of the
20 entity in, or an interest or expectancy of the entity in being
21 offered an opportunity to participate in, specified business
22 opportunities or a specified class or category of business
23 opportunities presented to the entity or one or more of its
24 managerial officials or owners; and

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

27 SECTION 8. Section 2.104(a), Business Organizations Code,

1 is amended to read as follows:

2 (a) In this section, "guaranty" means a guaranty, mortgage,
3 pledge, security agreement, or other agreement making the domestic
4 entity or its assets [~~secondarily~~] liable for another person's
5 contract, security, or other obligation.

6 SECTION 9. Section 3.005(a), Business Organizations Code,
7 is amended to read as follows:

8 (a) The certificate of formation must state:

9 (1) the name of the filing entity being formed;

10 (2) the type of filing entity being formed;

11 (3) for filing entities other than limited
12 partnerships, the purpose or purposes for which the filing entity
13 is formed, which may be stated to be or include any lawful purpose
14 for that type of entity;

15 (4) for filing entities other than limited
16 partnerships, the period of duration, if the entity is not formed to
17 exist perpetually and is intended to have a specific period of
18 duration;

19 (5) the street address of the initial registered
20 office of the filing entity and the name of the initial registered
21 agent of the filing entity at the office;

22 (6) the name and address of each:

23 (A) organizer for the filing entity, unless the
24 entity is formed under a plan of conversion or merger;

25 (B) general partner, if the filing entity is a
26 limited partnership; or

27 (C) trust manager, if the filing entity is a real

1 estate investment trust;

2 (7) if the filing entity is formed under a plan of
3 conversion or merger, a statement to that effect and, if formed
4 under a plan of conversion, the name, address, date of formation,
5 prior form of organization, and jurisdiction of formation of the
6 converting entity; and

7 (8) any other information required by this code to be
8 included in the certificate of formation for the filing entity.

9 SECTION 10. Section 3.007, Business Organizations Code, is
10 amended to read as follows:

11 Sec. 3.007. SUPPLEMENTAL PROVISIONS REQUIRED IN
12 CERTIFICATE OF FORMATION OF FOR-PROFIT OR PROFESSIONAL
13 CORPORATION. (a) In addition to the information required by
14 Section 3.005, the certificate of formation of a for-profit or
15 professional corporation must state:

16 (1) the aggregate number of shares the corporation is
17 authorized to issue;

18 (2) if the shares the corporation is authorized to
19 issue consist of one class of shares only, the par value of each
20 share or a statement that each share is without par value;

21 (3) if the corporation is to be managed by a board of
22 directors, the number of directors constituting the initial board
23 of directors and the name and address of each person who will serve
24 as director until the first annual meeting of shareholders and
25 until a successor is elected and qualified; and

26 (4) if the corporation is to be managed pursuant to a
27 shareholders' agreement in a manner other than by a board of

1 directors, the name and address of each person who will perform the
2 functions required by this code to be performed by the initial board
3 of directors.

4 (b) If the shares a for-profit or professional corporation
5 is authorized to issue consist of more than one class of shares, the
6 certificate of formation of the [~~for-profit~~] corporation must, with
7 respect to each class, state:

8 (1) the designation of the class;

9 (2) the aggregate number of shares in the class;

10 (3) the par value of each share or a statement that
11 each share is without par value;

12 (4) the preferences, limitations, and relative rights
13 of the shares; and

14 (5) if the shares in a class the corporation is
15 authorized to issue consist of more than one series, the following
16 with respect to each series:

17 (A) the designation of the series;

18 (B) the aggregate number of shares in the series;

19 (C) any preferences, limitations, and relative
20 rights of the shares to the extent provided in the certificate of
21 formation; and

22 (D) any authority vested in the board of
23 directors to establish the series and set and determine the
24 preferences, limitations, and relative rights of the series.

25 (c) If the shareholders of a for-profit or professional
26 corporation are to have a preemptive right or cumulative voting
27 right, the certificate of formation of the [~~for-profit~~] corporation

1 must comply with Section 21.203 or 21.360, as appropriate.

2 SECTION 11. Section 3.008(a), Business Organizations Code,
3 is amended to read as follows:

4 (a) In addition to a provision required or permitted to be
5 stated in the certificate of formation of a for-profit or
6 professional corporation under Section 3.007, the certificate of
7 formation of a close corporation, whether original, amended, or
8 restated, must include the sentence, "This corporation is a close
9 corporation."

10 SECTION 12. Section 3.015, Business Organizations Code, is
11 amended by amending Subsection (a) and adding Subsection (c) to
12 read as follows:

13 (a) In addition to containing the information required
14 under Sections 3.005 and 3.014, the certificate of formation of a
15 professional association must:

16 (1) be signed by each member of the association; and

17 (2) state:

18 (A) the name and address of each original member
19 of the association; ~~and~~

20 (B) whether the association is to be governed by
21 a board of directors or by an executive committee; and

22 (C) the name and address of each person serving
23 as an initial member of the board of directors or executive
24 committee ~~[that a member of the association may not dissolve the~~
25 ~~association independently of other members]~~ of the association.

26 (c) If the certificate of formation of a professional
27 association contains provisions regarding shares in the

1 association, the certificate of formation must also comply with
2 Section 3.007.

3 SECTION 13. The heading to Section 3.060, Business
4 Organizations Code, is amended to read as follows:

5 Sec. 3.060. SUPPLEMENTAL PROVISIONS FOR RESTATED
6 CERTIFICATE OF FORMATION FOR FOR-PROFIT CORPORATION OR
7 PROFESSIONAL CORPORATION.

8 SECTION 14. Section 3.060(a), Business Organizations Code,
9 is amended to read as follows:

10 (a) In addition to the provisions authorized or required by
11 Section 3.059, a restated certificate of formation for a for-profit
12 corporation or professional corporation may update the current
13 number of directors and the names and addresses of the persons
14 serving as directors.

15 SECTION 15. Subchapter B, Chapter 3, Business Organizations
16 Code, is amended by adding Section 3.0611 to read as follows:

17 Sec. 3.0611. SUPPLEMENTAL PROVISIONS FOR RESTATED
18 CERTIFICATE OF FORMATION FOR LIMITED LIABILITY COMPANY. In
19 addition to the provisions authorized or required by Section 3.059,
20 a restated certificate of formation for a limited liability company
21 may:

22 (1) if the company's certificate of formation states
23 that the company will have one or more managers, update the names
24 and addresses of the persons serving as managers; or

25 (2) if the certificate of formation states that the
26 company will not have managers, update the names and addresses of
27 the members of the company.

1 SECTION 16. Section 4.056(a), Business Organizations Code,
2 is amended to read as follows:

3 (a) If the effect of a filing instrument is conditioned on
4 the occurrence of a future event or fact, other than the passage of
5 time, and the statement required by Section 4.055 is not filed
6 before the expiration of the prescribed time, the filing instrument
7 does not take effect. This section does not preclude the filing of
8 a subsequent filing instrument required by this code to make the
9 action [~~event~~] or transaction evidenced by the original filing
10 instrument effective.

11 SECTION 17. Section 4.151, Business Organizations Code, is
12 amended to read as follows:

13 Sec. 4.151. FILING FEES: ALL ENTITIES. The secretary of
14 state shall impose the following fees:

- 15 (1) for filing a certificate of correction, \$15;
- 16 (2) for filing an application for reservation or
17 registration of a name, \$40;
- 18 (3) for filing a notice of transfer of a name
19 reservation [~~or registration~~], \$15;
- 20 (4) for filing an application for renewal of
21 registration of a name, \$40;
- 22 (5) for filing a certificate of merger or conversion,
23 other than a filing on behalf of a nonprofit corporation, \$300 plus,
24 with respect to a merger, any fee imposed for filing a certificate
25 of formation for each newly created filing entity or, with respect
26 to a conversion, the fee imposed for filing a certificate of
27 formation for the converted entity;

1 (6) for filing a certificate of exchange, \$300; and

2 (7) for preclearance of a filing instrument, \$50.

3 SECTION 18. Section 4.152, Business Organizations Code, is
4 amended to read as follows:

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

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

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

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

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

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

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

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

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

25 (9) for filing a certificate of termination, \$40;

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

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

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

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

10 (14) for filing an application for reinstatement of a
11 corporation or registration as a foreign corporation after
12 involuntary termination [~~dissolution~~] or revocation, \$75; and

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

15 SECTION 19. Section 4.158, Business Organizations Code, is
16 amended to read as follows:

17 Sec. 4.158. FILING FEES: GENERAL PARTNERSHIPS. For a
18 filing by or for a general partnership, the secretary of state shall
19 impose the following fees:

20 (1) for filing a limited liability partnership
21 application, \$200 for each partner;

22 (2) for filing a limited liability partnership renewal
23 application, \$200 for each partner on the date of renewal;

24 (3) for filing an application for registration [~~a~~
25 ~~statement of foreign qualification~~] by a foreign limited liability
26 partnership, \$200 for each partner in this state, except that the
27 maximum fee may not exceed \$750;

1 (4) for filing a renewal of registration by a foreign
2 limited liability partnership, \$200 for each partner in this state,
3 except that the maximum fee may not exceed \$750;

4 (5) for filing a certificate of amendment for a
5 domestic limited liability partnership, \$10, plus \$200 for each
6 partner added by the amendment;

7 (6) for filing a certificate of amendment for a
8 foreign limited liability partnership, \$10, plus \$200 for each
9 partner in this state added by amendment not to exceed \$750; and

10 (7) for filing any other filing instrument, the filing
11 fee imposed for a similar instrument under Section 4.155.

12 SECTION 20. The heading to Section 5.054, Business
13 Organizations Code, is amended to read as follows:

14 Sec. 5.054. NAME OF CORPORATION, FOREIGN CORPORATION, [~~OR~~]
15 PROFESSIONAL CORPORATION, OR FOREIGN PROFESSIONAL CORPORATION.

16 SECTION 21. Section 5.054(c), Business Organizations Code,
17 is amended to read as follows:

18 (c) Instead of a word or abbreviation required by Subsection
19 (a), the name of a professional corporation or foreign professional
20 corporation may contain the phrase "professional corporation" or an
21 abbreviation of the phrase.

22 SECTION 22. Section 5.055, Business Organizations Code, is
23 amended by amending Subsection (b) and adding Subsection (c) to
24 read as follows:

25 (b) The name of a domestic or foreign limited partnership
26 that is a limited liability limited partnership must also contain[+]

27 [~~(1)~~] the phrase "limited liability partnership" or

1 ~~["limited liability limited partnership", or~~
2 ~~(2)]~~ an abbreviation of that phrase ~~[one of those~~
3 ~~phrases]~~.

4 (c) The name of a domestic or foreign limited partnership
5 that is a limited liability limited partnership complies with the
6 requirements of Subsections (a) and (b) if the name of the limited
7 partnership contains the phrase "limited liability limited
8 partnership" or an abbreviation of that phrase.

9 SECTION 23. The heading to Section 5.057, Business
10 Organizations Code, is amended to read as follows:

11 Sec. 5.057. NAME OF COOPERATIVE ASSOCIATION OR FOREIGN
12 COOPERATIVE ASSOCIATION.

13 SECTION 24. Section 5.057(a), Business Organizations Code,
14 is amended to read as follows:

15 (a) The name of a cooperative association or foreign
16 cooperative association must contain:

17 (1) the word "cooperative"; or

18 (2) an abbreviation of that word.

19 SECTION 25. Section 5.058, Business Organizations Code, is
20 amended to read as follows:

21 Sec. 5.058. NAME OF PROFESSIONAL ASSOCIATION OR FOREIGN
22 PROFESSIONAL ASSOCIATION. The name of a professional association
23 or foreign professional association must contain:

24 (1) the word "associated," "associates," or
25 "association";

26 (2) the phrase "professional association"; or

27 (3) an abbreviation of one of those words or that

1 phrase.

2 SECTION 26. Section 5.059, Business Organizations Code, is
3 amended to read as follows:

4 Sec. 5.059. NAME OF PROFESSIONAL LIMITED LIABILITY COMPANY
5 OR FOREIGN PROFESSIONAL LIMITED LIABILITY COMPANY. (a) The name of
6 a professional limited liability company or foreign professional
7 limited liability company must contain:

8 (1) the phrase "professional limited liability
9 company"; or

10 (2) an abbreviation of that phrase.

11 (b) A professional limited liability company or foreign
12 professional limited liability company formed before September 1,
13 1993, the name of which complied with the laws of this state on the
14 date of formation but does not comply with this section, is not
15 required to change its name.

16 SECTION 27. Section 5.060, Business Organizations Code, is
17 amended to read as follows:

18 Sec. 5.060. NAME OF PROFESSIONAL ENTITY OR FOREIGN
19 PROFESSIONAL ENTITY; CONFLICTS WITH OTHER LAW OR ETHICAL RULE. The
20 name of a professional entity or foreign professional entity must
21 not be contrary to a statute or regulation of this state that
22 governs a person who provides a professional service through the
23 professional entity or foreign professional entity, including a
24 rule of professional ethics.

25 SECTION 28. Section 5.201(b), Business Organizations Code,
26 is amended to read as follows:

27 (b) The registered agent:

1 (1) is an agent of the entity on whom may be served any
2 process, notice, or demand required or permitted by law to be served
3 on the entity;

4 (2) may be:

5 (A) an individual who is a resident of this
6 state; or

7 (B) an organization [~~a domestic entity or a~~
8 ~~foreign entity~~] that is registered or authorized to do business in
9 this state; and

10 (3) must maintain a business office at the same
11 address as the entity's registered office.

12 SECTION 29. The heading to Chapter 6, Business
13 Organizations Code, is amended to read as follows:

14 CHAPTER 6. MEETINGS AND VOTING FOR DOMESTIC ENTITIES

15 SECTION 30. Section 6.051(b), Business Organizations Code,
16 is amended to read as follows:

17 (b) Subject to this code and the governing documents of a
18 domestic entity, notice of a meeting that is:

19 (1) mailed is considered to be given [~~delivered~~] on
20 the date notice is deposited in the United States mail with postage
21 paid in an envelope addressed to the person at the person's address
22 as it appears on the ownership or membership records of the entity;
23 and

24 (2) transmitted by facsimile or electronic message is
25 considered to be given [~~delivered~~] when the facsimile or electronic
26 message is [~~successfully~~] transmitted to a facsimile number or an
27 electronic message address provided by the person, or to which the

1 person consents, for the purpose of receiving notice.

2 SECTION 31. Sections 6.053(d) and (e), Business
3 Organizations Code, are amended to read as follows:

4 (d) A certificate or other document filed with the filing
5 officer [~~secretary of state~~] as a result of a meeting held or an
6 action taken by a filing entity without giving notice of the meeting
7 or action to a person not entitled to notice under this section may
8 state that notice of the meeting or action was given to each person
9 entitled to notice.

10 (e) Notice of a meeting must be given to a person not
11 entitled to notice of the meeting under this section if the person
12 delivers to the filing entity a written notice of the person's
13 address.

14 SECTION 32. Section 6.101(d), Business Organizations Code,
15 is amended to read as follows:

16 (d) If the owners or members of a domestic [~~an~~] entity are
17 not otherwise determined under this section, the record date for
18 determining the owners or members of a domestic [~~an~~] entity is the
19 date on which:

20 (1) notice of the meeting is given [~~mailed~~] to the
21 owners or members entitled to notice of the meeting; or

22 (2) with respect to a distribution, other than a
23 distribution involving a purchase or redemption by the domestic
24 entity of any of its own securities, the governing authority adopts
25 the resolution declaring the distribution.

26 SECTION 33. Section 6.102, Business Organizations Code, is
27 amended to read as follows:

1 Sec. 6.102. RECORD DATE FOR WRITTEN CONSENT TO ACTION. (a)
2 Subject to this code and the governing documents of a domestic [~~an~~]
3 entity, the governing authority of the domestic entity may provide
4 the record date for determining the owners or members of the
5 domestic entity entitled to written consent to action without a
6 meeting of the owners or members unless a record date is provided
7 under Section 6.101 for that action. The record date may not be
8 earlier than the date the governing authority adopts the resolution
9 providing for the record date.

10 (b) Subject to this code and the governing documents of a
11 domestic [~~an~~] entity, the record date for determining the owners or
12 members of the domestic entity entitled to written consent to
13 action without a meeting of the owners or members is the date a
14 signed written consent to action stating the action taken or
15 proposed to be taken is first delivered to the domestic entity if:

16 (1) the governing authority of the domestic entity
17 does not provide a record date under Subsection (a); and

18 (2) prior action by the governing authority is not
19 required under this code.

20 (c) Subject to this code or the governing documents of a
21 domestic [~~an~~] entity, the record date for determining the owners or
22 members of the domestic entity entitled to written consent to
23 action without a meeting of the owners or members is at the close of
24 business on the date the governing authority of the domestic entity
25 adopts a resolution taking prior action if:

26 (1) the governing authority does not provide a record
27 date under Subsection (a); and

1 (2) prior action by the governing authority is
2 required by this code.

3 SECTION 34. Section 6.152(a), Business Organizations Code,
4 is amended to read as follows:

5 (a) Except as provided by Subsection (b), an ownership
6 interest owned by the domestic entity that is the issuer of the
7 interest, or by its direct or indirect subsidiary, may not be:

8 (1) directly or indirectly voted at a meeting; or

9 (2) included in determining at any time the total
10 number of outstanding ownership interests of the domestic entity.

11 SECTION 35. Section 6.153, Business Organizations Code, is
12 amended to read as follows:

13 Sec. 6.153. VOTING OF INTERESTS OWNED BY ANOTHER ENTITY. An
14 ownership interest in a domestic [~~an~~] entity owned by another
15 entity, whether a domestic or foreign entity, may be voted by the
16 officer, agent, or proxy as authorized by:

17 (1) the governing documents of the entity that owns
18 the interest; or

19 (2) the governing authority of the entity that owns
20 the interest, if the governing documents do not provide for the
21 manner of voting.

22 SECTION 36. Section 6.154(a), Business Organizations Code,
23 is amended to read as follows:

24 (a) An administrator, executor, guardian, or conservator of
25 an estate who holds an ownership interest as part of the estate may
26 vote the interest, in person or by proxy, without transferring the
27 interest into the person's name.

1 SECTION 37. Section 6.204, Business Organizations Code, is
2 amended to read as follows:

3 Sec. 6.204. ADVANCE NOTICE NOT REQUIRED. Any advance
4 ~~[Advance]~~ notice required by this code for an action to be taken at
5 a meeting is not required to be given to take the ~~[an]~~ action by
6 written consent as provided by this subchapter.

7 SECTION 38. Sections 6.251(a) and (c), Business
8 Organizations Code, are amended to read as follows:

9 (a) Except as provided by this code or the governing
10 documents, any number of owners of a domestic ~~[an]~~ entity may enter
11 into a written voting trust agreement to confer on a trustee the
12 right to vote or otherwise represent ownership or membership
13 interests of the domestic entity.

14 (c) A copy of a voting trust agreement described by
15 Subsection (a) shall be deposited with the domestic entity at the
16 domestic entity's principal executive office or registered office
17 and is subject to examination by:

18 (1) an owner, whether in person or by the owner's agent
19 or attorney, in the same manner as the owner is entitled to examine
20 the books and records of the domestic entity; and

21 (2) a holder of a beneficial interest in the voting
22 trust, whether in person or by the holder's agent or attorney, at
23 any reasonable time for any proper purpose.

24 SECTION 39. Sections 6.252(a), (b), and (c), Business
25 Organizations Code, are amended to read as follows:

26 (a) Except as provided by this code or the governing
27 documents, any number of owners of a domestic ~~[an]~~ entity, or any

1 number of owners of the domestic entity and the domestic entity
2 itself, may enter into a written voting agreement to provide the
3 manner of voting of the ownership interests of the domestic entity.
4 A voting agreement entered into under this subsection is not part of
5 the governing documents of the domestic entity.

6 (b) A copy of a voting agreement entered into under
7 Subsection (a):

8 (1) shall be deposited with the domestic entity at the
9 domestic entity's principal executive office or registered office;
10 and

11 (2) is subject to examination by an owner, whether in
12 person or by the owner's agent or attorney, in the same manner as
13 the owner is entitled to examine the books and records of the
14 domestic entity.

15 (c) A voting agreement entered into under Subsection (a) is
16 specifically enforceable against the holder of an ownership
17 interest that is the subject of the agreement, and any successor or
18 transferee of the holder, if:

19 (1) the voting agreement is noted conspicuously on the
20 certificate representing the ownership interests; or

21 (2) a notation of the voting agreement is contained in
22 a notice sent by or on behalf of the domestic entity in accordance
23 with Section 3.205, if the ownership interest is not represented by
24 a certificate.

25 SECTION 40. Section 8.002(b), Business Organizations Code,
26 is amended to read as follows:

27 (b) The governing documents of a general partnership or

1 limited liability company may adopt provisions of this chapter or
2 may contain other [~~enforceable~~] provisions, which will be
3 enforceable, relating to:

- 4 (1) indemnification;
5 (2) advancement of expenses; or
6 (3) insurance or another arrangement to indemnify or
7 hold harmless a governing person.

8 SECTION 41. Section 8.103, Business Organizations Code, is
9 amended by amending Subsection (a) and adding Subsection (d) to
10 read as follows:

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

13 (1) a majority vote of the governing persons who at the
14 time of the vote are disinterested and independent, regardless of
15 whether the governing persons who are disinterested and independent
16 constitute a quorum;

17 (2) a majority vote of a committee of the governing
18 authority of the enterprise if the committee:

19 (A) is designated by a majority vote of the
20 governing persons who at the time of the vote are disinterested and
21 independent, regardless of whether the governing persons who are
22 disinterested and independent constitute a quorum; and

23 (B) is composed solely of one or more governing
24 persons who are disinterested and independent;

25 (3) special legal counsel selected by the governing
26 authority of the enterprise, or selected by a committee of the
27 governing authority [~~board of directors~~], by vote in accordance

1 with Subdivision (1) or (2);

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

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

7 (d) With respect to a limited partnership, a vote of a
8 majority-in-interest of the limited partners in a vote that
9 excludes the interest held by each general partner who is not
10 disinterested and independent constitutes a determination under
11 Subsection (a)(4).

12 SECTION 42. Section 8.104, Business Organizations Code, is
13 amended by adding Subsection (d) to read as follows:

14 (d) With respect to a limited partnership, a vote of a
15 majority-in-interest of the limited partners in a vote that
16 excludes the interest held by each general partner who is not
17 disinterested and independent constitutes an authorization under
18 Subsection (b).

19 SECTION 43. Section 8.105(b), Business Organizations Code,
20 is amended to read as follows:

21 (b) An enterprise shall indemnify [~~and advance expenses to~~]
22 an officer to the same extent that indemnification [~~or advancement~~
23 ~~of expenses~~] is required under this chapter for a governing person.

24 SECTION 44. Section 8.152(b), Business Organizations Code,
25 is amended to read as follows:

26 (b) Subject to Subsection (c), the report must be made with
27 or before:

1 (1) the notice or waiver of notice of the next meeting
2 of the owners or members of the enterprise; or

3 (2) [~~and before~~] the next submission to the owners or
4 members of a consent to action without a meeting.

5 SECTION 45. Section 9.010, Business Organizations Code, is
6 amended to read as follows:

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

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

17 (2) otherwise complies with this chapter.

18 SECTION 46. Section 9.054, Business Organizations Code, is
19 amended to read as follows:

20 Sec. 9.054. LATE FILING FEE. (a) The secretary of state
21 may collect from a foreign filing entity a late filing fee [~~equal to~~
22 ~~the registration fee for the entity for each year of delinquency~~] if
23 the entity has transacted business in this state for more than 90
24 days without registering under this chapter. The secretary may
25 condition the effectiveness of a registration after the 90-day
26 period on the payment of the late filing fee.

27 (b) The amount of the late filing fee is an amount equal to

1 the product of the amount of the registration fee for the foreign
2 filing entity multiplied by the number of calendar years that the
3 entity transacted business in this state without being registered.
4 For purposes of computing the fee, a partial calendar year is
5 counted as a full calendar year.

6 SECTION 47. Section 9.101(b), Business Organizations Code,
7 is amended to read as follows:

8 (b) The secretary of state may revoke a foreign filing
9 entity's registration if the secretary of state finds that:

10 (1) the entity has failed to, and, before the 91st day
11 after the date notice was mailed, has not corrected the entity's
12 failure to:

13 (A) [~~(1)~~] file a report within the period
14 required by law or pay a fee or penalty prescribed by law when due
15 and payable;

16 (B) [~~(2)~~] maintain a registered agent or
17 registered office in this state as required by law; or

18 (C) [~~(3)~~] amend its registration when required
19 by law; or

20 (2) the entity has failed to, and, before the 16th day
21 after the date notice was mailed, has not corrected the entity's
22 failure to [~~(4)~~] pay a fee required in connection with the
23 application for registration [~~a filing~~], or payment of the fee was
24 dishonored when presented by the state for payment.

25 SECTION 48. Section 9.201, Business Organizations Code, is
26 amended to read as follows:

27 Sec. 9.201. BUSINESS OF FOREIGN ENTITY. (a) Except as

1 provided by Subsection (b), a [A] foreign entity may not conduct in
2 this state a business or activity that is not permitted by this code
3 to be transacted by the domestic entity to which it most closely
4 corresponds, unless other law of this state authorizes the entity
5 to conduct the business or activity.

6 (b) A foreign business trust may engage in a business or
7 activity permitted by this code to be transacted by a limited
8 liability company.

9 SECTION 49. Sections 10.005(b) and (c), Business
10 Organizations Code, are amended to read as follows:

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

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

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

22 (3) the merging domestic entity merges with a direct
23 or indirect wholly owned subsidiary;

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

27 (5) the merging domestic entity and the direct or

1 indirect wholly owned subsidiary are the only parties to the
2 merger;

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

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

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

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

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

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

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

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

16 SECTION 50. Section 10.008(a), Business Organizations
17 Code, is amended to read as follows:

18 (a) When a merger takes effect:

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

22 (2) all rights, title, and interests to all real
23 estate and other property owned by each organization that is a party
24 to the merger is allocated to and vested, subject to any existing
25 liens or other encumbrances on the property, in one or more of the
26 surviving or new organizations as provided in the plan of merger
27 without:

1 (A) reversion or impairment;

2 (B) any further act or deed; or

3 (C) any transfer or assignment having occurred;

4 (3) all liabilities and obligations of each
5 organization that is a party to the merger are allocated to one or
6 more of the surviving or new organizations in the manner provided by
7 the plan of merger;

8 (4) each surviving or new domestic organization to
9 which a liability or obligation is allocated under the plan of
10 merger is the primary obligor for the liability or obligation, and,
11 except as otherwise provided by the plan of merger or by law or
12 contract, no other party to the merger, other than a surviving
13 domestic entity or non-code organization liable or otherwise
14 obligated at the time of the merger, and no other new domestic
15 entity or non-code organization created under the plan of merger is
16 liable for the debt or other obligation;

17 (5) any proceeding pending by or against any domestic
18 entity or by or against any non-code organization that is a party to
19 the merger may be continued as if the merger did not occur, or the
20 surviving or new domestic entity or entities or the surviving or new
21 non-code organization or non-code organizations to which the
22 liability, obligation, asset, or right associated with that
23 proceeding is allocated to and vested in under the plan of merger
24 may be substituted in the proceeding;

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

27 (7) each new filing entity whose certificate of

1 formation is included in the plan of merger under this chapter, on
2 meeting any additional requirements, if any, of this code for its
3 formation, is formed as a domestic entity under this code as
4 provided by the plan of merger;

5 (8) the ownership or membership interests of each
6 organization that is a party to the merger and that are to be
7 converted or exchanged, in whole or part, into ownership or
8 membership interests, obligations, rights to purchase securities,
9 or other securities of one or more of the surviving or new
10 organizations, into cash or other property, including ownership or
11 membership interests, obligations, rights to purchase securities,
12 or other securities of any organization, or into any combination of
13 these are converted and exchanged and the former owners or members
14 who held ownership or membership interests of each domestic entity
15 that is a party to the merger are entitled only to the rights
16 provided by the plan of merger or, if applicable, any rights to
17 receive the fair value for the ownership [~~or membership~~] interests
18 [~~previously held by them~~] provided under Subchapter H [~~this code~~];
19 and

20 (9) notwithstanding Subdivision (4), the surviving or
21 new organization named in the plan of merger as primarily obligated
22 to pay the fair value of an ownership or membership interest under
23 Section 10.003(2) is the primary obligor for that payment and all
24 other surviving or new organizations are secondarily liable for
25 that payment.

26 SECTION 51. Section 10.055, Business Organizations Code, is
27 amended to read as follows:

1 Sec. 10.055. GENERAL EFFECT OF INTEREST EXCHANGE. When an
2 interest exchange takes effect:

3 (1) the ownership or membership interest of each
4 acquired organization is exchanged as provided in the plan of
5 exchange, and the former owners or members whose interests are
6 exchanged under the plan of exchange are entitled only to the rights
7 provided in the plan [~~certificate~~] of exchange or, if applicable, a
8 right to receive the fair value for the ownership [~~or membership~~]
9 interests provided under Subchapter H; and

10 (2) the acquiring organization has all rights, title,
11 and interests with respect to the ownership or membership interest
12 to be acquired by it subject to the provisions of the plan
13 [~~certificate~~] of exchange.

14 SECTION 52. Section 10.101(e), Business Organizations
15 Code, is amended to read as follows:

16 (e) At the time a conversion takes effect, each owner or
17 member of the converting entity, other than those who receive
18 payment of their ownership or membership interest under any
19 applicable provisions of this code relating to dissent and
20 appraisal, has, unless otherwise agreed to by that owner or member,
21 an ownership or membership interest in, and is the owner or member
22 of, the converted entity.

23 SECTION 53. Section 10.151(b), Business Organizations
24 Code, is amended to read as follows:

25 (b) If a certificate of merger or exchange is required to be
26 filed in connection with an interest exchange or a merger, other
27 than a merger under Section 10.006, the certificate must be signed

1 on behalf of each domestic entity and non-code organization that is
2 a party to the merger or exchange by an officer or other authorized
3 representative and must include:

4 (1) the plan of merger or exchange or a statement
5 certifying:

6 (A) the name and organizational form of each
7 domestic entity or non-code organization that is a party to the
8 merger or exchange;

9 (B) for a merger, the name and organizational
10 form of each domestic entity or non-code organization that is to be
11 created by the plan of merger [~~or exchange~~];

12 (C) the name of the jurisdiction in which each
13 domestic entity or non-code organization named under Paragraph (A)
14 or (B) is incorporated or organized;

15 (D) for a merger, the amendments or changes to
16 the certificate of formation of each filing entity that is a party
17 to the merger, or if no amendments are desired to be effected by the
18 merger, a statement to that effect;

19 (E) for a merger, that the certificate of
20 formation of each new filing entity to be created under the plan of
21 merger [~~or exchange~~] is being filed with the certificate of merger
22 [~~or exchange~~];

23 (F) that a signed plan of merger or exchange is on
24 file at the principal place of business of each surviving,
25 acquiring, or new domestic entity or non-code organization, and the
26 address of each principal place of business; and

27 (G) that a copy of the plan of merger or exchange

1 will be on written request furnished without cost by each
2 surviving, acquiring, or new domestic entity or non-code
3 organization to any owner or member of any domestic entity that is a
4 party to or created by the plan of merger or exchange and, for a
5 merger with multiple surviving domestic entities or non-code
6 organizations, to any creditor or obligee of the parties to the
7 merger at the time of the merger if a liability or obligation is
8 then outstanding;

9 (2) if approval of the owners or members of any
10 domestic entity that was a party to the plan of merger or exchange
11 is not required by this code, a statement to that effect; and

12 (3) a statement that the plan of merger or exchange has
13 been approved as required by the laws of the jurisdiction of
14 formation of each organization that is a party to the merger or
15 exchange and by the governing documents of those organizations.

16 SECTION 54. Section 10.154(b), Business Organizations
17 Code, is amended to read as follows:

18 (b) If a certificate of conversion is required to be filed
19 in connection with a conversion, the certificate must be signed on
20 behalf of the converting entity and must include:

21 (1) the plan of conversion or a statement certifying
22 the following:

23 (A) the name, organizational form, and
24 jurisdiction of formation [~~organization~~] of the converting entity;

25 (B) the name, organizational form, and
26 jurisdiction of formation of the converted [~~converting~~] entity;

27 (C) that a signed plan of conversion is on file at

1 the principal place of business of the converting entity, and the
2 address of the principal place of business;

3 (D) that a signed plan of conversion will be on
4 file after the conversion at the principal place of business of the
5 converted entity, and the address of the principal place of
6 business; and

7 (E) that a copy of the plan of conversion will be
8 on written request furnished without cost by the converting entity
9 before the conversion or by the converted entity after the
10 conversion to any owner or member of the converting entity or the
11 converted entity; and

12 (2) a statement that the plan of conversion has been
13 approved as required by the laws of the jurisdiction of formation
14 and the governing documents of the converting entity.

15 SECTION 55. Section 10.254(b), Business Organizations
16 Code, is amended to read as follows:

17 (b) Except as otherwise expressly provided by another
18 statute [~~law~~], a person acquiring property described by this
19 section may not be held responsible or liable for a liability or
20 obligation of the transferring domestic entity that is not
21 expressly assumed by the person.

22 SECTION 56. Section 10.351(c), Business Organizations
23 Code, is amended to read as follows:

24 (c) The governing documents of a partnership or a limited
25 liability company may provide that its owners are entitled to the
26 rights of dissent and appraisal provided by this subchapter,
27 subject to any modification to those rights as provided by the

1 entity's governing documents.

2 SECTION 57. Section 10.362(b), Business Organizations
3 Code, is amended to read as follows:

4 (b) In computing the fair value of an ownership interest
5 under this subchapter, consideration must be given to the value of
6 the domestic entity [organization] as a going concern without
7 including in the computation of value any control premium, any
8 minority ownership discount, or any discount for lack of
9 marketability. If the domestic entity has different classes or
10 series of ownership interests, the relative rights and preferences
11 of and limitations placed on the class or series of ownership
12 interests, other than relative voting rights, held by the
13 dissenting owner must be taken into account in the computation of
14 value[+]

15 [~~(1) payment for a control premium or minority~~
16 ~~discount other than a discount attributable to the type of~~
17 ~~ownership interests held by the dissenting owner, and~~

18 [~~(2) limitation placed on the rights and preferences~~
19 ~~of those ownership interests]~~.

20 SECTION 58. Section 10.367(b), Business Organizations
21 Code, is amended to read as follows:

22 (b) On termination of the right of dissent under this
23 section:

24 (1) the dissenting owner and all persons claiming a
25 right under the owner are conclusively presumed to have approved
26 and ratified the action to which the owner dissented and are bound
27 by that action;

1 (2) the owner's right to be paid the fair value of the
2 owner's ownership interests ceases and the owner's status as an
3 owner of those ownership interests is restored without prejudice to
4 [~~in~~] any interim proceeding if the owner's ownership interests were
5 not canceled, converted, or exchanged as a result of the action or a
6 subsequent fundamental business transaction; and

7 (3) the dissenting owner is entitled to receive
8 dividends or other distributions made in the interim to owners of
9 the same class and series of ownership interests held by the owner
10 as if a demand for the payment of the ownership interests had not
11 been made under Section 10.356, subject to any change in or
12 adjustment to ownership interests because of the cancellation or
13 exchange of the ownership interests after the date a demand under
14 Section 10.356 was made pursuant to a fundamental business
15 transaction.

16 SECTION 59. Section 10.368, Business Organizations Code, is
17 amended to read as follows:

18 Sec. 10.368. EXCLUSIVITY OF REMEDY OF DISSENT AND
19 APPRAISAL. In the absence of fraud in the transaction, any right of
20 an owner of an ownership interest to dissent from an action and
21 obtain the fair value of the ownership interest under this
22 subchapter is the exclusive remedy for recovery of:

23 (1) the value of the ownership interest; or

24 (2) money damages to the owner with respect to the
25 action [~~ownership interest, and~~

26 ~~[(2) the owner's right in the organization with~~
27 ~~respect to a fundamental business transaction].~~

1 SECTION 60. Sections 11.001(2) and (6), Business
2 Organizations Code, are amended to read as follows:

3 (2) "Event requiring a winding up" or "event requiring
4 winding up" means an event specified by Section 11.051.

5 (6) "Voluntary decision to wind up" means the
6 determination to wind up a domestic entity made by the domestic
7 entity or the owners, members, or governing authority of the
8 domestic entity in the manner specified by:

9 (A) the title of this code governing the domestic
10 entity; or

11 (B) if applicable to the domestic entity, Section
12 11.057(a) or (b) or 11.058(a).

13 SECTION 61. Section 11.051, Business Organizations Code, is
14 amended to read as follows:

15 Sec. 11.051. EVENT REQUIRING WINDING UP OF DOMESTIC ENTITY.
16 Winding up of a domestic entity is required on:

17 (1) the expiration of any [~~the domestic entity's~~]
18 period of duration specified in the domestic entity's governing
19 documents [~~, if not perpetual~~];

20 (2) a voluntary decision to wind up the domestic
21 entity;

22 (3) an event specified in the governing documents of
23 the domestic entity requiring the winding up, dissolution, or
24 termination of the domestic entity, other than an event specified
25 in another subdivision of this section;

26 (4) an event specified in other sections of this code
27 requiring the winding up or termination of the domestic entity,

1 other than an event specified in another subdivision of this
2 section; or

3 (5) a decree by a court requiring the winding up, ~~[or]~~
4 dissolution, or termination of the domestic entity, rendered under
5 this code or other law.

6 SECTION 62. Section 11.056, Business Organizations Code, is
7 amended to read as follows:

8 Sec. 11.056. SUPPLEMENTAL PROVISIONS FOR ~~[EVENT REQUIRING~~
9 ~~WINDING UP OF]~~ LIMITED LIABILITY COMPANY. (a) The ~~[In addition to~~
10 ~~an event listed under Section 11.051, the]~~ termination of the
11 continued membership of the last remaining member of a domestic
12 limited liability company is an event requiring ~~[a]~~ winding up
13 under Section 11.051(4) unless, not later than the 90th day after
14 the date of the termination, the legal representative or successor
15 of the last remaining member agrees:

16 (1) to continue the company; and

17 (2) to become a member of the company effective as of
18 the date of the termination or to designate another person who
19 agrees to become a member of the company effective as of the date of
20 the termination.

21 (b) The event requiring winding up specified in Subsection
22 (a) may be canceled in accordance with Sections 11.152(a) and
23 101.552(c).

24 SECTION 63. Section 11.057, Business Organizations Code, is
25 amended to read as follows:

26 Sec. 11.057. SUPPLEMENTAL PROVISIONS FOR DOMESTIC ~~[EVENTS~~
27 ~~REQUIRING WINDING UP OF]~~ GENERAL PARTNERSHIP. (a) Unless

1 otherwise provided by the partnership agreement, a voluntary
2 decision to wind up a domestic general partnership, other than a
3 partnership described by Subsection (b), requires the express will
4 of a majority-in-interest of the partners who have not assigned
5 their interests. A voluntary decision to wind up a partnership
6 under this subsection may be revoked in accordance with Sections
7 11.151 and 152.709(e).

8 (b) Unless otherwise provided by the partnership agreement,
9 a voluntary decision to wind up a domestic general partnership that
10 has a period of duration or is for a particular undertaking, or in
11 which the partnership agreement provides for the winding up of the
12 partnership on occurrence of a specified event, requires the
13 express will of all of the partners. A voluntary decision to wind
14 up a partnership under this subsection may be revoked in accordance
15 with Sections 11.151 and 152.709(d).

16 (c) An event requiring the winding up of a domestic general
17 partnership under Section 11.051(4) includes the following:

18 (1) in a general partnership for a particular
19 undertaking, the completion of the undertaking, unless otherwise
20 provided by the partnership agreement;

21 (2) [~~An event requiring winding up of a general~~
22 ~~partnership includes, in addition to any event specified in Section~~
23 ~~11.051, the following:~~

24 [~~(1) in a general partnership that is not for a~~
25 ~~definite term or for a particular undertaking or in which the~~
26 ~~partnership agreement does not provide for winding up the~~
27 ~~partnership business on a specified event, the express will of a~~

1 ~~majority-in-interest of the partners who have not assigned their~~
2 ~~interests;~~

3 ~~[(2) in a general partnership for a definite term or~~
4 ~~for a particular undertaking, on:~~

5 ~~[(A) the express will of all of the partners; or~~

6 ~~[(B) the expiration of the term or the completion~~
7 ~~of the undertaking, unless otherwise continued under Section~~
8 ~~152.709;~~

9 ~~[(3) in a general partnership in which the partnership~~
10 ~~agreement provides for the winding up of the partnership business~~
11 ~~on a specified event, upon:~~

12 ~~[(A) the express will of all of the partners; or~~

13 ~~[(B) the occurrence of the specified event,~~
14 ~~unless otherwise continued under Section 152.709;~~

15 ~~[(4)]~~ an event that makes it illegal for all or
16 substantially all of the partnership business to be continued, but
17 a cure of illegality before the 91st day after the date of notice to
18 the general partnership of the event is effective retroactively to
19 the date of the event for purposes of this subsection; and

20 (3) [(5)] the sale of all or substantially all of the
21 property of the general partnership outside the ordinary course of
22 business, unless otherwise provided by the partnership agreement.

23 (d) In addition to the events specified by Subsection (c),
24 unless otherwise provided by the partnership agreement, [~~and~~

25 ~~[(6)]~~ if a domestic general partnership does [~~is~~] not
26 have a period of duration, is not for a [~~definite term or a~~]
27 particular undertaking, and is not required under its partnership

1 agreement to wind up [~~does not provide for a specified event~~
2 ~~requiring a winding up of~~] the partnership on occurrence of a
3 specified event, an event requiring [~~business, a request for~~]
4 winding up of the partnership under Section 11.051(4) occurs on the
5 60th day [~~business from a partner, other than a partner who has~~
6 ~~agreed not to withdraw.~~

7 [~~(b) An event described by Subsection (a)(6) requires the~~
8 ~~winding up of a general partnership 60 days~~] after the date on which
9 the [~~general~~] partnership receives notice of a [~~the~~] request for
10 winding up the partnership from a partner, other than a partner who
11 has agreed not to withdraw, or [~~at~~] a later date as specified by the
12 request [~~notice~~], unless a majority-in-interest of the partners
13 deny the request for winding up or agree to continue the [~~general~~]
14 partnership. The continuation of the business by the other
15 partners or by those who habitually acted in the business before the
16 request, other than the partner making the request, without any
17 settlement or liquidation of the partnership business, is prima
18 facie evidence of an agreement to continue the partnership under
19 this subsection.

20 (e) An event requiring winding up specified in Subsection
21 (c)(1), (c)(3), or (d) may be canceled in accordance with Sections
22 11.152 and 152.709.

23 SECTION 64. Section 11.058, Business Organizations Code, is
24 amended to read as follows:

25 Sec. 11.058. SUPPLEMENTAL PROVISION FOR [~~EVENTS REQUIRING~~
26 ~~WINDING UP OF~~] LIMITED PARTNERSHIP. (a) A voluntary decision to
27 wind up a domestic limited partnership requires the written consent

1 of all partners in the limited partnership unless otherwise
2 provided by the partnership agreement. The voluntary decision to
3 wind up may be revoked in accordance with Sections 11.151 and
4 153.501(d).

5 (b) ~~An [event requiring the winding up of a limited~~
6 ~~partnership includes, in addition to any event specified in Section~~
7 ~~11.051, the following:~~

8 ~~[(1) written consent of all partners to the winding up~~
9 ~~and termination of the limited partnership; and~~

10 ~~[(2) an] event of withdrawal of a general partner of a~~
11 domestic limited partnership is an event requiring winding up under
12 Section 11.051(4) unless otherwise provided by the partnership
13 agreement. The event requiring winding up specified in this
14 subsection may be canceled in accordance with Sections 11.152(a)
15 and 153.501(b).

16 (c) An event requiring winding up of a limited partnership
17 under Section 11.051(4) includes when there are no limited partners
18 in the limited partnership. The event requiring winding up
19 specified in this subsection may be canceled in accordance with
20 Sections 11.152(a) and 153.501(e).

21 SECTION 65. Section 11.059, Business Organizations Code, is
22 amended to read as follows:

23 Sec. 11.059. SUPPLEMENTAL PROVISIONS FOR
24 CORPORATIONS. For purposes of Section 11.051(3), the event
25 requiring the winding up, dissolution, or termination of a domestic
26 corporation must be specified [~~specific~~] in:

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

1 or

2 (2) a bylaw [~~bylaws~~] of the corporation adopted by the
3 owners or members of the corporation in the same manner as an
4 amendment to the certificate of formation of the corporation.

5 SECTION 66. Section 11.104, Business Organizations Code, is
6 amended to read as follows:

7 Sec. 11.104. ACTION BY SECRETARY OF STATE. The secretary of
8 state shall remove from its active records a domestic filing entity
9 whose period of duration specified in its certificate of formation
10 has expired when the secretary of state determines that:

11 (1) the entity has failed to file a certificate of
12 termination in accordance with Section 11.101; and

13 (2) the entity has failed to file an amendment to
14 extend its period of duration [~~existence~~] in accordance with
15 Section 11.152.

16 SECTION 67. Section 11.152(b), Business Organizations
17 Code, is amended to read as follows:

18 (b) A domestic entity whose specified period of duration has
19 expired [~~to which an event requiring winding up as specified in~~
20 ~~Section 11.051(1) occurs~~] may cancel that [~~the~~] event requiring
21 winding up by amending its governing documents in the manner
22 provided by this code, not later than the third anniversary of the
23 date the period expired [~~of the event requiring winding up~~] or an
24 earlier date prescribed by the title of this code governing the
25 domestic entity, to extend its [~~the~~] period of [~~its~~] duration. The
26 expiration of its [~~the~~] period of [~~its~~] duration does not by itself
27 create a vested right on the part of an owner, member, or creditor

1 of the entity to prevent the extension of that period [~~its~~
 2 ~~existence~~]. An act undertaken or a contract entered into by the
 3 domestic [~~a terminated~~] entity during a period in which the entity
 4 could have extended its period of duration as provided by this
 5 subsection [~~existence under this section~~] is not invalidated by the
 6 expiration of that [~~the~~] period [~~of the entity's duration~~],
 7 regardless of whether the entity has taken any action to extend its
 8 period of duration [~~existence~~].

9 SECTION 68. Section 11.251(b), Business Organizations
 10 Code, is amended to read as follows:

11 (b) The secretary of state may terminate a filing entity's
 12 existence if the secretary finds that:

13 (1) the entity has failed to, and, before the 91st day
 14 after the date notice was mailed has not corrected the entity's
 15 failure to:

16 (A) [~~(1)~~] file a report within the period
 17 required by law or [~~to~~] pay a fee or penalty prescribed by law when
 18 due and payable; or

19 (B) [~~(2)~~] maintain a registered agent or
 20 registered office in this state as required by law; or

21 (2) the entity has failed to, and, before the 16th day
 22 after the date notice was mailed has not corrected the entity's
 23 failure to, pay a fee required in connection with the filing of its
 24 certificate of formation [~~(3) pay a fee required in connection with~~
 25 ~~a filing~~], or payment of the fee was dishonored when presented by
 26 the state for payment.

27 SECTION 69. Section 11.412, Business Organizations Code, is

1 amended to read as follows:

2 Sec. 11.412. DECREE OF INVOLUNTARY TERMINATION. In an
3 action in which the court has ordered the liquidation of [~~to~~
4 ~~liquidate~~] the property and business of a domestic entity in
5 accordance with other provisions of this code, the court shall
6 enter a decree terminating the [~~entity and the~~] existence of the
7 entity [~~shall cease~~]:

8 (1) when the costs and expenses of the action and all
9 obligations and liabilities of the domestic entity have been paid
10 and discharged or adequately provided for and all of the entity's
11 remaining property has been distributed to its owners and members;
12 or

13 (2) if the entity's property is not sufficient to
14 discharge the costs and other expenses of the action and all
15 obligations and liabilities of the entity, when all the property of
16 the entity has been applied toward their payment.

17 SECTION 70. Section 12.260, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 12.260. ABATEMENT OF SUIT. An action or cause of
20 action for a fine, penalty, or forfeiture that this state has or may
21 have against a filing entity or foreign filing entity does not abate
22 because the entity winds up [~~dissolves~~], voluntarily or otherwise,
23 or the entity's certificate of formation is terminated or the
24 entity's registration is revoked.

25 SECTION 71. Section 21.211(a), Business Organizations
26 Code, is amended to read as follows:

27 (a) Without limiting the general powers granted by

1 ~~[Notwithstanding]~~ Sections 21.210 and 21.213 to impose and enforce
2 reasonable restrictions, a restriction placed on the transfer or
3 registration of transfer of a security of a corporation is valid if
4 the restriction reasonably:

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

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

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

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

21 (5) maintains the status of the corporation as an
22 electing small business corporation under Subchapter S of the
23 Internal Revenue Code;

24 (6) maintains a tax advantage to the corporation;

25 (7) maintains the status of the corporation as a close
26 corporation under Subchapter O;

27 (8) obligates the holder of the restricted securities

1 to sell or transfer an amount of restricted securities to a person
2 or group of persons, including the corporation or other holders of
3 securities of the corporation; or

4 (9) causes or results in the automatic sale or
5 transfer of an amount of restricted securities to a person or group
6 of persons, including the corporation or other holders of
7 securities of the corporation.

8 SECTION 72. Section 21.220, Business Organizations Code, is
9 amended to read as follows:

10 Sec. 21.220. PENALTY FOR FAILURE TO PREPARE VOTING
11 LIST. An officer or agent of a corporation who is in charge of the
12 corporation's share transfer records and who does not prepare the
13 list of shareholders [~~owners~~], keep the list on file for a 10-day
14 period, or produce and keep the list available for inspection at the
15 annual meeting as required by Sections 21.354 and 21.372 is liable
16 to a shareholder [~~an owner~~] who suffers damages because of the
17 failure for the damage caused by the failure.

18 SECTION 73. Section 21.221, Business Organizations Code, is
19 amended to read as follows:

20 Sec. 21.221. PENALTY FOR FAILURE TO PROVIDE NOTICE OF
21 MEETING. If an officer or agent of a corporation is unable to
22 comply with the duties prescribed by Sections 21.354 and 21.372
23 because the officer or agent did not receive notice of a meeting of
24 shareholders [~~owners~~] within a sufficient time before the date of
25 the meeting, the corporation, rather than the officer or agent, is
26 liable to a shareholder [~~an owner~~] who suffers damages because of
27 the failure for the extent of the damage caused by the failure.

1 SECTION 74. Section 21.223(a), Business Organizations
2 Code, is amended to read as follows:

3 (a) A holder of shares, an owner of any beneficial interest
4 in shares, or a subscriber for shares whose subscription has been
5 accepted, or any affiliate of such a holder, owner, or subscriber or
6 of the corporation, may not be held liable to the corporation or its
7 obligees with respect to:

8 (1) the shares, other than the obligation to pay to the
9 corporation the full amount of consideration, fixed in compliance
10 with Sections 21.157-21.162, for which the shares were or are to be
11 issued;

12 (2) any contractual obligation of the corporation or
13 any matter relating to or arising from the obligation on the basis
14 that the holder, beneficial owner, subscriber, or affiliate is or
15 was the alter ego of the corporation or on the basis of actual or
16 constructive fraud, a sham to perpetrate a fraud, or other similar
17 theory; or

18 (3) any obligation of the corporation on the basis of
19 the failure of the corporation to observe any corporate formality,
20 including the failure to:

21 (A) comply with this code or the certificate of
22 formation [~~articles of incorporation~~] or bylaws of the corporation;
23 or

24 (B) observe any requirement prescribed by this
25 code or the certificate of formation [~~articles of incorporation~~] or
26 bylaws of the corporation for acts to be taken by the corporation or
27 its directors or shareholders.

1 SECTION 75. Sections 21.364(a) and (b), Business
2 Organizations Code, are amended to read as follows:

3 (a) In this section, a "fundamental action" means:

4 (1) an amendment of a certificate of formation,
5 including an amendment required for cancellation of an event
6 requiring winding up in accordance with Section 11.152(b);

7 (2) a voluntary winding up under Chapter 11;

8 (3) a revocation of a voluntary decision to wind up
9 under Section 11.151;

10 (4) a cancellation of an event requiring winding up
11 under Section 11.152(a) [~~11.152~~]; or

12 (5) a reinstatement under Section 11.202.

13 (b) Except as otherwise provided by this code or the
14 certificate of formation [~~or bylaws~~] of a corporation in accordance
15 with Section 21.365 [~~21.363~~], the vote required for approval of a
16 fundamental action by the shareholders is the affirmative vote of
17 the holders of at least two-thirds of the outstanding shares
18 entitled to vote on the fundamental action.

19 SECTION 76. Section 21.372(a), Business Organizations
20 Code, is amended to read as follows:

21 (a) Not later than the 11th day before the date of each
22 meeting of the shareholders of a corporation, an officer or agent of
23 the corporation who is in charge of the corporation's share
24 transfer [~~shareholder~~] records shall prepare an alphabetical list
25 of the shareholders entitled to vote at the meeting or at any
26 adjournment of the meeting. The list of shareholders must:

27 (1) state:

- 1 (A) the address of each shareholder;
- 2 (B) the type of shares held by each shareholder;
- 3 (C) the number of shares held by each
- 4 shareholder; and
- 5 (D) the number of votes that each shareholder is
- 6 entitled to if the number of votes is different from the number of
- 7 shares stated under Paragraph (C); and

8 (2) be kept on file at the registered office or

9 principal executive office of the corporation for at least 10 days

10 before the date of the meeting.

11 SECTION 77. Section 21.408(b), Business Organizations

12 Code, is amended to read as follows:

13 (b) The terms of office of the initial directors

14 constituting the first class expire at the first annual meeting of

15 shareholders after the election of those directors. The terms of

16 office of the initial directors constituting the second class

17 expire at the second annual meeting of shareholders after election

18 of those directors. The terms of office of the initial directors

19 constituting the third class, if any, expire at the third annual

20 meeting of shareholders after election of those directors. In each

21 case, the term of office of an initial director is extended until

22 the director's successor is elected and has qualified.

23 SECTION 78. Section 21.4091, Business Organizations Code,

24 is amended to read as follows:

25 Sec. 21.4091. RESIGNATION OF DIRECTORS. (a) Except as

26 otherwise provided by the certificate of formation or bylaws, a

27 director of a corporation may resign at any time by providing

1 written notice to the corporation.

2 (b) The director's resignation takes effect on the date the
3 notice is received by the corporation, unless the notice prescribes
4 a later effective date or states that the resignation takes effect
5 on the occurrence of a future event, such as the director's failure
6 to receive a specified vote for reelection as a director.

7 (c) If the director's resignation is to take effect on a
8 later date or on the occurrence of a future event, the resignation
9 takes effect on the later date or when the event occurs.

10 (d) The director's resignation is irrevocable when it takes
11 effect. The director's resignation is revocable before it takes
12 effect unless the notice of resignation expressly states it is
13 irrevocable.

14 SECTION 79. Sections 21.410(a) and (b), Business
15 Organizations Code, are amended to read as follows:

16 (a) A vacancy occurring in the initial board of directors
17 before the issuance of shares may be filled by the affirmative vote
18 or written consent of the majority of the organizers or by the
19 affirmative vote of the majority of the remaining directors, even
20 if ~~[the majority of]~~ the remaining directors constitute
21 ~~[constitutes]~~ less than a quorum of the board of directors.

22 (b) Except as provided by Subsection (e), a vacancy
23 occurring in the board of directors after the issuance of shares may
24 be filled by election at an annual or special meeting of
25 shareholders called for that purpose or by the affirmative vote of
26 the majority of the remaining directors, even if the remaining
27 ~~[majority of]~~ directors constitute ~~[constitutes]~~ less than a quorum

1 of the board of directors.

2 SECTION 80. Section 21.452(e), Business Organizations
3 Code, is amended to read as follows:

4 (e) Except as provided by Chapter 10 or Sections 21.457 and
5 21.459 [~~21.457-21.459~~], the shareholders of the corporation shall
6 approve the plan of merger as provided by this subchapter.

7 SECTION 81. Section 21.453(e), Business Organizations
8 Code, is amended to read as follows:

9 (e) Except as provided by Section 21.457 [~~Sections~~
10 ~~21.457-21.459~~], the shareholders of the corporation shall approve
11 the plan of conversion as provided by this subchapter.

12 SECTION 82. Section 21.454(e), Business Organizations
13 Code, is amended to read as follows:

14 (e) Except as provided by Section 21.457 [~~Sections~~
15 ~~21.457-21.459~~], the shareholders of the corporation shall approve
16 the plan of exchange as provided by this subchapter.

17 SECTION 83. Section 21.501, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 21.501. APPROVAL OF VOLUNTARY WINDING UP,
20 REINSTATEMENT, OR REVOCATION OF VOLUNTARY WINDING UP. A
21 corporation must approve a voluntary winding up in accordance with
22 Chapter 11, a reinstatement in accordance with Section 11.202, a
23 cancellation of an event requiring winding up under Section
24 11.152(a) [~~11.152~~], or revocation of a voluntary decision to wind
25 up in accordance with Section 11.151 by complying with one of the
26 procedures prescribed by this subchapter.

27 SECTION 84. Section 21.563(b), Business Organizations

1 Code, is amended to read as follows:

2 (b) [~~Subject to Subsection (c),~~] Sections 21.552-21.559 do
3 not apply to a closely held corporation.

4 SECTION 85. Section 21.604, Business Organizations Code, is
5 amended to read as follows:

6 Sec. 21.604. BUSINESS COMBINATION. A business combination
7 is:

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

10 (A) an affiliated shareholder;

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

15 (C) another domestic or foreign corporation or
16 other entity, if the merger, share exchange, or conversion is
17 caused by an affiliated shareholder, or an affiliate or associate
18 of an affiliated shareholder, and as a result of the merger, share
19 exchange, or conversion this subchapter does not apply to the
20 surviving corporation or other entity;

21 (2) a sale, lease, exchange, mortgage, pledge,
22 transfer, or other disposition, in one transaction or a series of
23 transactions, including an allocation of assets under a merger, to
24 or with the affiliated shareholder, or an affiliate or associate of
25 the affiliated shareholder, of assets of the issuing public
26 corporation or a subsidiary that:

27 (A) has an aggregate market value equal to 10

1 percent or more of the aggregate market value of all of the assets,
2 determined on a consolidated basis, of the issuing public
3 corporation;

4 (B) has an aggregate market value equal to 10
5 percent or more of the aggregate market value of all of the
6 outstanding voting shares of the issuing public corporation; or

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

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

19 (4) the adoption of a plan or proposal for the
20 liquidation, winding up, or dissolution of an issuing public
21 corporation proposed by or under any agreement, arrangement, or
22 understanding, regardless of whether in writing, with an affiliated
23 shareholder or an affiliate or associate of the affiliated
24 shareholder;

25 (5) a reclassification of securities, including a
26 reverse share split or a share split-up, share dividend, or other
27 distribution of shares, a recapitalization of the issuing public

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

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

22 SECTION 86. Section 21.707, Business Organizations Code, is
23 amended by amending Subsections (a), (b), (d), and (e) and adding
24 Subsection (f) to read as follows:

25 (a) This section applies to an existing corporation that
26 elected to become a close corporation before the mandatory
27 application [~~effective~~] date of this code and has not terminated

1 that status.

2 (b) A close corporation existing before the mandatory
3 application [~~effective~~] date of this code is considered to be a
4 close corporation under this code.

5 (d) An agreement among the shareholders of a close
6 corporation in conformance with former law and Sections
7 21.714-21.725 before the mandatory application [~~effective~~] date of
8 this code is considered to be a shareholders' agreement.

9 (e) A certificate representing the shares issued or
10 delivered by the close corporation after the mandatory application
11 [~~effective~~] date of this code, whether in connection with the
12 original issue of shares or a transfer of shares, must conform with
13 Section 21.732.

14 (f) In this section, "mandatory application date" has the
15 meaning assigned by Section 401.001.

16 SECTION 87. Section 22.153(a), Business Organizations
17 Code, is amended to read as follows:

18 (a) Except as provided by Subsection (b) or in the
19 certificate of formation, a corporation having members entitled to
20 vote at an election of directors shall hold an annual meeting of the
21 members at a time that is stated in or determined in accordance with
22 the corporation's bylaws.

23 SECTION 88. Section 22.154, Business Organizations Code, is
24 amended to read as follows:

25 Sec. 22.154. FAILURE TO CALL ANNUAL MEETING. (a) If the
26 board of directors of a corporation fails to call the annual meeting
27 of members when required [~~at the designated time~~], a member of the

1 corporation may demand that the meeting be held within a reasonable
2 time. The demand must be made in writing and sent to an officer of
3 the corporation by registered mail.

4 (b) If a required ~~[the]~~ annual meeting is not called before
5 the 61st day after the date of demand, a member of the corporation
6 may compel the holding of the meeting by legal action directed
7 against the board of directors, and each of the extraordinary writs
8 of common law and of courts of equity are available to the member to
9 compel the holding of the meeting. Each member has a justiciable
10 interest sufficient to enable the member to institute and prosecute
11 the legal proceedings.

12 (c) Failure to hold a required ~~[the]~~ annual meeting at the
13 designated time does not result in the winding up and termination of
14 the corporation.

15 SECTION 89. Section 22.163(c), Business Organizations
16 Code, is amended to read as follows:

17 (c) The record date for the determination of members
18 entitled ~~[board of directors of a corporation may set a new date for~~
19 ~~determining the right]~~ to notice of or to vote at a meeting is
20 effective for an ~~[any]~~ adjournment of the ~~[a members']~~ meeting
21 unless the board of directors of a corporation sets a new date for
22 determining the right to notice of or to vote at the adjournment.
23 ~~[The board shall set a new date if the meeting is adjourned to a date~~
24 ~~more than 90 days after the record date for determining members~~
25 ~~entitled to notice of the original meeting.]~~

26 SECTION 90. Section 22.164(a), Business Organizations
27 Code, is amended to read as follows:

1 (a) In this section, "fundamental action" means:

2 (1) an amendment of a certificate of formation,
3 including an amendment required for the cancellation of an event
4 requiring winding up in accordance with Section 11.152(b);

5 (2) a voluntary winding up under Chapter 11;

6 (3) a revocation of a voluntary decision to wind up
7 under Section 11.151;

8 (4) a cancellation of an event requiring winding up
9 under Section 11.152(a) [~~11.152~~];

10 (5) a reinstatement under Section 11.202;

11 (6) a distribution plan under Section 22.305;

12 (7) a plan of merger under Subchapter F;

13 (8) a sale of all or substantially all of the assets of
14 a corporation under Subchapter F;

15 (9) a plan of conversion under Subchapter F; or

16 (10) a plan of exchange under Subchapter F.

17 SECTION 91. Section 22.220, Business Organizations Code, is
18 amended to read as follows:

19 Sec. 22.220. ACTION WITHOUT MEETING OF DIRECTORS OR
20 COMMITTEE. (a) The certificate of formation or bylaws of a
21 corporation may provide that an action required by this chapter to
22 be taken at a meeting of the corporation's directors or an action
23 that may be taken at a meeting of the directors or a committee may be
24 taken without a meeting if a written consent, stating the action to
25 be taken, is signed by the number of directors or committee members
26 necessary to take that action at a meeting at which all of the
27 directors or committee members are present and voting. The consent

1 must state the date of each director's or committee member's
2 signature.

3 (b) ~~[A written consent signed by less than all of the~~
4 ~~directors or committee members is not effective to take the action~~
5 ~~that is the subject of the consent unless, not later than the 60th~~
6 ~~day after the date of the earliest dated consent delivered to the~~
7 ~~corporation in the manner required by this section, a consent or~~
8 ~~consents signed by the required number of directors or committee~~
9 ~~members are delivered to the corporation:]~~

10 ~~[(1) at the registered office or principal place of~~
11 ~~business of the corporation; or~~

12 ~~[(2) through the corporation's registered agent,~~
13 ~~transfer agent, registrar, or exchange agent or an officer or agent~~
14 ~~of the corporation having custody of the books in which proceedings~~
15 ~~of meetings of directors or committees are recorded.]~~

16 ~~[(c) Delivery under Subsection (b) must be by hand or by~~
17 ~~certified or registered mail, return receipt requested. Delivery~~
18 ~~to the corporation's principal place of business must be addressed~~
19 ~~to the president or principal executive officer of the corporation.]~~

20 ~~[(d)]~~ Prompt notice of the taking of an action by directors
21 or a committee without a meeting by less than unanimous written
22 consent shall be given to each director or committee member who did
23 not consent in writing to the action.

24 SECTION 92. Section 22.222, Business Organizations Code, is
25 amended to read as follows:

26 Sec. 22.222. RELIGIOUS CORPORATION DIRECTOR'S GOOD FAITH
27 RELIANCE ON CERTAIN INFORMATION. A director of a religious

1 corporation, in the discharge of a duty imposed or power conferred
2 on the director, including a duty imposed or power conferred as a
3 committee member, may rely in good faith on information or on an
4 opinion, report, or statement, including a financial statement or
5 other financial data, concerning the corporation or another person
6 that was prepared or presented by:

- 7 (1) a religious authority; or
8 (2) a minister, priest, rabbi, or other person whose
9 position or duties in the religious organization [~~corporation~~] the
10 director believes justify reliance and confidence and whom the
11 director believes to be reliable and competent in the matters
12 presented.

13 SECTION 93. Section 22.234, Business Organizations Code, is
14 amended to read as follows:

15 Sec. 22.234. RELIGIOUS CORPORATION OFFICER'S GOOD FAITH
16 RELIANCE ON CERTAIN INFORMATION. An officer of a religious
17 corporation, in the discharge of a duty imposed or power conferred
18 on the officer, may rely in good faith and with ordinary care on
19 information or on an opinion, report, or statement, including a
20 financial statement or other financial data, concerning the
21 corporation or another person that was prepared or presented by:

22 (1) a religious authority [~~or another religious~~
23 ~~corporation~~]; or

24 (2) a minister, priest, rabbi, or other person whose
25 position or duties in the [~~religious authority or~~] religious
26 organization [~~corporation~~] the officer believes justify reliance
27 and confidence and whom the officer believes to be reliable and

1 competent in the matters presented.

2 SECTION 94. Section 22.301, Business Organizations Code, is
3 amended to read as follows:

4 Sec. 22.301. APPROVAL OF VOLUNTARY WINDING UP,
5 REINSTATEMENT, REVOCATION OF VOLUNTARY WINDING UP, OR DISTRIBUTION
6 PLAN. A corporation must approve a voluntary winding up in
7 accordance with Chapter 11, a reinstatement in accordance with
8 Section 11.202, a cancellation of an event requiring winding up
9 under Section 11.152(a) [~~11.152~~], a revocation of a voluntary
10 decision to wind up in accordance with Section 11.151, or a
11 distribution plan in accordance with Section 22.305 by complying
12 with the procedures prescribed by this subchapter.

13 SECTION 95. Section 23.053(b), Business Organizations
14 Code, is amended to read as follows:

15 (b) In accordance with Section 3.005(a)(3), the certificate
16 of formation of a [The] business development corporation must state
17 that the purposes of the corporation are [be organized] to:

18 (1) promote, stimulate, develop, and advance the
19 business prosperity and economic welfare of this state and the
20 residents of this state;

21 (2) encourage and assist, through loans, investments,
22 or other business transactions, new business and industry in this
23 state;

24 (3) rehabilitate and assist existing industry in this
25 state;

26 (4) stimulate and assist in the expansion of business
27 activity that will tend to promote the business development and

1 maintain the economic stability of this state, provide maximum
2 opportunities for employment, encourage thrift, and improve the
3 standard of living of the residents of this state;

4 (5) cooperate and act in conjunction with other public
5 or private organizations in the promotion and advancement of
6 industrial, commercial, agricultural, and recreational
7 developments in this state; and ~~[or]~~

8 (6) provide financing for the promotion, development,
9 and conduct of business activity in this state.

10 SECTION 96. Section 23.058(a), Business Organizations
11 Code, is amended to read as follows:

12 (a) The organizers ~~[incorporators]~~ of a corporation shall
13 name the directors constituting the initial board of directors of
14 the corporation. Directors other than the initial directors shall
15 be elected at each annual meeting of the corporation. If an annual
16 meeting is not held at the time designated by the bylaws of the
17 corporation, the directors shall be elected at a special meeting
18 held in lieu of the annual meeting.

19 SECTION 97. Subchapter B, Chapter 101, Business
20 Organizations Code, is amended by adding Section 101.0515 to read
21 as follows:

22 Sec. 101.0515. EXECUTION OF FILINGS. Unless otherwise
23 provided by this title, a filing instrument of a limited liability
24 company must be signed by an authorized officer, manager, or member
25 of the limited liability company.

26 SECTION 98. Section 101.054(a), Business Organizations
27 Code, is amended to read as follows:

1 (a) Except as provided by this section, the following
2 provisions may not be waived or modified in the company agreement of
3 a limited liability company:

4 (1) this section;

5 (2) Section 101.101(b), 101.151, 101.206, 101.501, or
6 101.502;

7 (3) Chapter 1, if the provision is used to interpret a
8 provision or define a word or phrase contained in a section listed
9 in this subsection;

10 (4) Chapter 2, except that Section 2.104(c)(2),
11 2.104(c)(3), or 2.113 may be waived or modified in the company
12 agreement;

13 (5) Chapter 3, except that Subchapters C and E may be
14 waived or modified in the company agreement; or

15 (6) Chapter 4, 5, 7, 10, 11, or 12, other than Section
16 11.056.

17 SECTION 99. Section 101.352(b), Business Organizations
18 Code, is amended to read as follows:

19 (b) If the members of a limited liability company do not
20 constitute the governing authority of the company, notice of a
21 meeting of members required by Subsection (a) shall be given by or
22 at the direction of the governing authority not later than the 10th
23 day or earlier than the 60th day before the date of the meeting.
24 Notice of a meeting required under this subsection must state the
25 business to be transacted at the meeting or the purpose of the
26 meeting if:

27 (1) the meeting is a special meeting; or

1 (2) a purpose of the meeting is to consider a matter
2 described by Section 101.356.

3 SECTION 100. Section 101.463(b), Business Organizations
4 Code, is amended to read as follows:

5 (b) [~~Subject to Subsection (c),~~] Sections 101.452-101.459
6 do not apply to a closely held limited liability company.

7 SECTION 101. Sections 101.501(a) and (b), Business
8 Organizations Code, are amended to read as follows:

9 (a) In addition to the books and records required to be kept
10 under Section 3.151, a limited liability company shall keep at its
11 principal office in the United States, or make available to a person
12 at its principal office in the United States not later than the
13 fifth day after the date the person submits a written request to
14 examine the books and records of the company under Section 3.152(a)
15 or 101.502:

16 (1) a current list that states:

17 (A) the percentage or other interest in the
18 limited liability company owned by each member; and

19 (B) if one or more classes or groups of
20 membership interests are established in or under the certificate of
21 formation or company agreement, the names of the members of each
22 specified [~~of each member of a~~] class or group [~~of membership~~
23 ~~interests in the company~~];

24 (2) a copy of the company's federal, state, and local
25 tax information or income tax returns for each of the six preceding
26 tax years;

27 (3) a copy of the company's certificate of formation,

1 including any amendments to or restatements of the certificate of
2 formation;

3 (4) if the company agreement is in writing, a copy of
4 the company agreement, including any amendments to or restatements
5 of the company agreement;

6 (5) an executed copy of any powers of attorney;

7 (6) a copy of any document that establishes a class or
8 group of members of the company as provided by the company
9 agreement; and

10 (7) except as provided by Subsection (b), a written
11 statement of:

12 (A) the amount of a cash contribution and a
13 description and statement of the agreed value of any other
14 contribution made or agreed to be made by each member;

15 (B) the dates any additional contributions are to
16 be made by a member;

17 (C) any event the occurrence of which requires a
18 member to make additional contributions;

19 (D) any event the occurrence of which requires
20 the winding up of the company; and

21 (E) the date each member became a member of the
22 company.

23 (b) A limited liability company is not required to keep or
24 make available at its principal office in the United States a
25 written statement of the information required by Subsection (a)(7)
26 if that information is stated in a written ~~the~~ company agreement.

27 SECTION 102. Section 101.552, Business Organizations Code,

1 is amended to read as follows:

2 Sec. 101.552. APPROVAL OF VOLUNTARY WINDING UP, REVOCATION,
3 CANCELLATION, OR REINSTATEMENT. (a) A majority vote of all of the
4 ~~[governing]~~ members of a limited liability company or, if the
5 limited liability company has no members, a majority vote of all of
6 the managers of the company is required to approve:

7 (1) a voluntary winding up of the company under
8 Chapter 11;

9 (2) a revocation of a voluntary decision to wind up the
10 company under Section 11.151; or

11 (3) ~~[a cancellation of an event requiring the winding~~
12 ~~up of the company under Section 11.152; or~~

13 ~~[(4)]~~ a reinstatement of a terminated company under
14 Section 11.202.

15 (b) The consent of all of the members of the limited
16 liability company is required to approve a cancellation under
17 Section 11.152 of an event requiring winding up specified in
18 Section 11.051(1) or (3).

19 (c) An event requiring winding up specified in Section
20 11.056 may be canceled in accordance with Section 11.152(a) if the
21 legal representative or successor of the last remaining member of
22 the domestic limited liability company agrees to:

23 (1) cancel the event requiring winding up and continue
24 the company; and

25 (2) become a member of the company effective as of the
26 date of termination of the membership of the last remaining member
27 of the company, or designate another person who agrees to become a

1 member of the company effective as of the date of the termination.

2 SECTION 103. Section 151.001(2), Business Organizations
3 Code, is amended to read as follows:

4 (2) "Distribution" means a transfer of property,
5 including cash, from a partnership to[+]

6 [~~(A)~~] a partner in the partner's capacity as a
7 partner or the[+or]

8 [~~(B)~~a] partner's transferee.

9 SECTION 104. Section 152.002(b), Business Organizations
10 Code, is amended to read as follows:

11 (b) A partnership agreement or the partners may not:

12 (1) unreasonably restrict a partner's right of access
13 to books and records under Section 152.212;

14 (2) eliminate the duty of loyalty under Section
15 152.205, except that the partners by agreement may identify
16 specific types of activities or categories of activities that do
17 not violate the duty of loyalty if the types or categories are not
18 manifestly unreasonable;

19 (3) eliminate the duty of care under Section 152.206,
20 except that the partners by agreement may determine the standards
21 by which the performance of the obligation is to be measured if the
22 standards are not manifestly unreasonable;

23 (4) eliminate the obligation of good faith under
24 Section 152.204(b), except that the partners by agreement may
25 determine the standards by which the performance of the obligation
26 is to be measured if the standards are not manifestly unreasonable;

27 (5) vary the power to withdraw as a partner under

1 Section 152.501(b)(1), (7), or (8), except for the requirement that
2 notice be in writing;

3 (6) vary the right to expel a partner by a court in an
4 event specified by Section 152.501(b)(5);

5 (7) restrict rights of a third party under this
6 chapter or the other partnership provisions, except for a
7 limitation on an individual partner's liability in a limited
8 liability partnership as provided by this chapter;

9 (8) select a governing law not permitted under
10 Sections 1.103 and 1.002(43)(C); or

11 (9) except as provided in Subsections (c) and (d),
12 waive or modify the following provisions of Title 1:

13 (A) Chapter 1, if the provision is used to
14 interpret a provision or to define a word or phrase contained in a
15 section listed in this subsection;

16 (B) Chapter 2, other than Sections 2.104(c)(2),
17 2.104(c)(3), and 2.113;

18 (C) Chapter 3, other than Subchapters C and E of
19 that chapter; or

20 (D) Chapters 4, 5, 10, 11, and 12, other than
21 Sections 11.057(a), (b), (c)(1), (c)(3), and (d) [~~11.057(a)(1),~~
22 ~~(2), (5), and (6) and 11.057(b)~~].

23 SECTION 105. Section 152.302(c), Business Organizations
24 Code, is amended to read as follows:

25 (c) A conveyance of real property by a partner on behalf of
26 the partnership not otherwise binding on the partnership binds the
27 partnership if the property has been conveyed by the grantee or a

1 person claiming through the grantee to [~~be~~] a holder for value
2 without knowledge that the partner exceeded that partner's
3 authority in making the conveyance.

4 SECTION 106. Section 152.304(a), Business Organizations
5 Code, is amended to read as follows:

6 (a) Except as provided by Subsection (b) or Section
7 152.801(a) [~~152.801(b)~~], all partners are liable jointly and
8 severally for a debt or obligation of the partnership unless
9 otherwise:

- 10 (1) agreed by the claimant; or
11 (2) provided by law.

12 SECTION 107. Section 152.501(b), Business Organizations
13 Code, is amended to read as follows:

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

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

- 17 (A) the date on which the notice is received; or
18 (B) a later date specified by the notice;

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

21 (3) the partner's expulsion as provided by the
22 partnership agreement;

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

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

27 (B) there has been a transfer of all or

1 substantially all of that partner's partnership interest, other
2 than:

3 (i) a transfer for security purposes that
4 has not been foreclosed; or

5 (ii) the substitution of a successor
6 trustee or successor personal representative;

7 (C) not later than the 90th day after the date on
8 which the partnership notifies an entity partner, other than a
9 nonfiling entity or foreign nonfiling entity partner, that it will
10 be expelled because it has filed a certificate of termination or the
11 equivalent, its existence has been involuntarily terminated or its
12 charter has been revoked, or its right to conduct business has been
13 terminated or suspended by the jurisdiction of its formation, if
14 the certificate of termination or the equivalent is not revoked or
15 its existence, charter, or right to conduct business is not
16 reinstated; or

17 (D) an event requiring a winding up has occurred
18 with respect to a nonfiling entity or foreign nonfiling entity that
19 is a partner;

20 (5) the partner's expulsion by judicial decree, on
21 application by the partnership or another partner, if the judicial
22 decree determines that the partner:

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

25 (B) wilfully or persistently committed a
26 material breach of:

27 (i) the partnership agreement; or

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

3 (C) engaged in conduct relating to the
4 partnership business that made it not reasonably practicable to
5 carry on the business in partnership with that partner;

6 (6) the partner's:

7 (A) becoming a debtor in bankruptcy;

8 (B) executing an assignment for the benefit of a
9 creditor;

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

13 (D) failing, not later than the 90th day after
14 the appointment, to have vacated or stayed the appointment of a
15 trustee, receiver, or liquidator of the partner or of all or
16 substantially all of the partner's property obtained without the
17 partner's consent or acquiescence, or not later than the 90th day
18 after the date of expiration of a stay, failing to have the
19 appointment vacated;

20 (7) if a partner is an individual:

21 (A) the partner's death;

22 (B) the appointment of a guardian or general
23 conservator for the partner; or

24 (C) a judicial determination that the partner has
25 otherwise become incapable of performing the partner's duties under
26 the partnership agreement;

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

1 (9) if a partner has transferred all of the partner's
2 partnership interest, redemption of the transferee's interest
3 under Section 152.611; or

4 (10) an agreement to continue the partnership under
5 Section 11.057(d) [~~11.057(b)~~] if the partnership has received a
6 notice from the partner under Section 11.057(d) [~~11.057(a)(6)~~]
7 requesting that the partnership be wound up [~~;~~ ~~or~~

8 [~~(11) a conversion of the partnership if the partner:~~
9 [~~(A) did not consent to the conversion; and~~
10 [~~(B) failed to notify the partnership in writing~~
11 ~~of the partner's desire not to withdraw within 60 days after the~~
12 ~~later of:~~

13 [~~(i) the effective date of the conversion;~~
14 ~~or~~

15 [~~(ii) the date the partner receives actual~~
16 ~~notice of the conversion].~~

17 SECTION 108. Section 152.503(b), Business Organizations
18 Code, is amended to read as follows:

19 (b) A partner's withdrawal is wrongful only if:

20 (1) the withdrawal breaches an express provision of
21 the partnership agreement;

22 (2) in the case of a partnership that has a period of
23 duration, is for a [~~definite term or~~] particular undertaking, or is
24 required under its [~~for which the~~] partnership agreement to wind up
25 the partnership [~~provides for winding up~~] on occurrence of a
26 specified event, before the expiration of the period of duration
27 [~~term~~], the completion of the undertaking, or the occurrence of the

1 event, as appropriate:

2 (A) the partner withdraws by express will;

3 (B) the partner withdraws by becoming a debtor in
4 bankruptcy; or

5 (C) in the case of a partner that is not an
6 individual, a trust other than a business trust, or an estate, the
7 partner is expelled or otherwise withdraws because the partner
8 wilfully dissolved or terminated; or

9 (3) the partner is expelled by judicial decree under
10 Section 152.501(b)(5).

11 SECTION 109. Section 152.602(b), Business Organizations
12 Code, is amended to read as follows:

13 (b) The redemption price of the partnership interest of a
14 partner who wrongfully withdraws before the expiration of the
15 partnership's period of duration [~~a definite term~~], the completion
16 of a particular undertaking, or the occurrence of a specified event
17 requiring a winding up of partnership business is the lesser of:

18 (1) the fair value of the withdrawn partner's
19 partnership interest on the date of withdrawal; or

20 (2) the amount that the withdrawn partner would have
21 received if an event requiring a winding up of partnership business
22 had occurred at the time of the partner's withdrawal.

23 SECTION 110. Section 152.608(a), Business Organizations
24 Code, is amended to read as follows:

25 (a) A partner who wrongfully withdraws before the
26 expiration of the partnership's period of duration [~~a definite~~
27 ~~term~~], the completion of a particular undertaking, or the

1 occurrence of a specified event requiring a winding up of
2 partnership business is not entitled to receive any portion of the
3 redemption price until the expiration of the period [~~term~~], the
4 completion of the undertaking, or the occurrence of the specified
5 event, as appropriate, unless the partner establishes to the
6 satisfaction of a court that earlier payment will not cause undue
7 hardship to the partnership.

8 SECTION 111. Section 152.611(a), Business Organizations
9 Code, is amended to read as follows:

10 (a) A partnership must redeem the partnership interest of a
11 transferee for its fair value if:

12 (1) the interest was transferred when:

13 (A) the partnership had a period of duration that
14 had [~~was for a definite term~~] not yet expired;

15 (B) the partnership was for a particular
16 undertaking not yet completed; or

17 (C) the partnership agreement provided for
18 winding up of the partnership business on a specified event that had
19 not yet occurred;

20 (2) the partnership's period of duration [~~definite~~
21 ~~term of the partnership~~] has expired, the particular undertaking
22 has been completed, or the specified event has occurred; and

23 (3) the transferee makes a written demand for
24 redemption.

25 SECTION 112. Section 152.709, Business Organizations Code,
26 is amended to read as follows:

27 Sec. 152.709. CANCELLATION OR REVOCATION OF EVENT REQUIRING

1 WINDING UP; CONTINUATION OF PARTNERSHIP. (a) If a partnership has
2 a period of duration, is for a particular undertaking, or is
3 required under its partnership agreement to wind up the partnership
4 on occurrence of a specified event, all of the partners in the
5 partnership may cancel under Section 11.152 an event requiring a
6 winding up specified in Section 11.051(1) or (3), or Section
7 11.057(c)(1), by agreeing [~~all the partners in a partnership for a~~
8 ~~definite term or for a particular undertaking or for which the~~
9 ~~partnership agreement provides for winding up on a specified event~~
10 ~~agree~~] to continue the partnership business notwithstanding the
11 expiration of the partnership's period of duration [~~term~~], the
12 completion of the undertaking, or the occurrence of the event, as
13 appropriate, other than the withdrawal of a partner. On reaching
14 that agreement, the event requiring a winding up is canceled, the
15 partnership is continued, and the partnership agreement is
16 considered amended to provide that the expiration, the completion,
17 or the occurrence of the event did not result in an event requiring
18 [~~the~~] winding up of the partnership [~~business~~].

19 (b) A continuation of the business for 90 days by the
20 partners or those who habitually acted in the business during the
21 partnership's period of duration [~~term~~] or the undertaking or
22 preceding the event, without a settlement or liquidation of the
23 partnership business and without objection from a partner, is prima
24 facie evidence of agreement by all partners to continue the
25 business under Subsection (a).

26 (c) All of the partners of a partnership, by agreeing to
27 continue the partnership, may cancel under Section 11.152 an event

1 requiring winding up specified in Section 11.057(d) that arises
2 from a request to wind up from a partner. [~~The continuation of the~~
3 ~~business by the other partners or by those who habitually acted in~~
4 ~~the business before the notice under Section 11.057(b), other than~~
5 ~~the partner giving the notice, without any settlement or~~
6 ~~liquidation of the partnership business, is prima facie evidence of~~
7 ~~an agreement to continue the partnership under Section 11.057(b).~~]

8 (d) To approve a revocation under Section 11.151 by a
9 partnership of a voluntary decision to wind up pursuant to the
10 express will of all the partners as specified in Section 11.057(b)
11 [~~11.057(a)(2) or (3)~~], prior to completion of the winding up
12 process, all the partners must agree in writing to revoke the
13 voluntary decision to wind up and to continue the business of the
14 partnership.

15 (e) To approve a revocation under Section 11.151 by a
16 partnership of a voluntary decision to wind up pursuant to the
17 express will of a majority-in-interest of the partners as specified
18 in Section 11.057(a) [~~11.057(a)(1)~~], prior to completion of the
19 winding up process, a majority-in-interest of the partners must
20 agree in writing to revoke the voluntary decision to wind up and to
21 continue the business of the partnership.

22 (f) All of the partners of a partnership, by agreeing to
23 continue the partnership, may cancel under Section 11.152 an event
24 requiring winding up specified in Section 11.057(c)(3) that arises
25 from the sale of all or substantially all of the property of the
26 partnership.

27 SECTION 113. Section 152.901(b), Business Organizations

1 Code, is amended to read as follows:

2 (b) A foreign limited liability partnership may not be
3 denied registration because of a difference between the laws of the
4 jurisdiction [~~state~~] under which the partnership is formed and the
5 laws of this state.

6 SECTION 114. Section 152.902, Business Organizations Code,
7 is amended to read as follows:

8 Sec. 152.902. NAME. The name of a foreign limited
9 liability partnership must:

10 (1) satisfy the requirements of the jurisdiction
11 [~~state~~] of formation; and

12 (2) comply with Section 5.063.

13 SECTION 115. The heading to Section 152.905, Business
14 Organizations Code, is amended to read as follows:

15 Sec. 152.905. REGISTRATION PROCEDURE [~~STATEMENT OF FOREIGN~~
16 ~~QUALIFICATION~~].

17 SECTION 116. Sections 152.905(c) and (e), Business
18 Organizations Code, are amended to read as follows:

19 (c) A partnership is registered as a foreign limited
20 liability partnership on:

21 (1) the date on which a completed initial or renewal
22 application for registration [~~statement of foreign qualification~~]
23 is filed with the secretary of state in accordance with Chapter 4;
24 or

25 (2) a later date specified in the application
26 [~~statement~~].

27 (e) The registration of a foreign limited liability

1 partnership is effective until the first anniversary of the date
2 after the date of registration or a later effective date, unless the
3 registration [~~statement~~] is:

- 4 (1) withdrawn or revoked at an earlier time; or
- 5 (2) renewed in accordance with Section 152.908.

6 SECTION 117. Section 152.908(b), Business Organizations
7 Code, is amended to read as follows:

8 (b) The renewal application must contain:

- 9 (1) current information required for an initial
10 application for registration [~~statement of qualification~~]; and
- 11 (2) the most recent date of registration of the
12 partnership.

13 SECTION 118. The heading to Section 152.910, Business
14 Organizations Code, is amended to read as follows:

15 Sec. 152.910. EFFECT OF FAILURE TO REGISTER [~~QUALIFY~~].

16 SECTION 119. Section 152.914(b), Business Organizations
17 Code, is amended to read as follows:

18 (b) If it appears to the secretary of state that, with
19 respect to a foreign limited liability partnership, a circumstance
20 described by Subsection (a) exists, the secretary of state shall
21 provide notice to the partnership in the same manner and to the same
22 extent as notice is required to be provided to a foreign filing
23 entity under Sections 9.101 [~~9.101(a)~~] and 9.102 [~~9.102(a)~~].

24 SECTION 120. Section 153.052(b), Business Organizations
25 Code, is amended to read as follows:

26 (b) A certificate of formation may be amended to state the
27 name, mailing address, and street address of the business or

1 residence of each person winding up the limited partnership's
2 affairs if, after an event requiring the winding up of a limited
3 partnership but before the limited partnership is reconstituted or
4 a certificate of termination is filed as provided by Section 11.101
5 [~~153.451~~]:

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

8 (2) a person who is not shown on the certificate of
9 formation as a general partner is carrying out the winding up of a
10 limited partnership's affairs.

11 SECTION 121. Section 153.103, Business Organizations Code,
12 is amended to read as follows:

13 Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN
14 BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and
15 Sections 153.102, 153.104, and 153.105, a limited partner does not
16 participate in the control of the business because the limited
17 partner has or has acted in one or more of the following capacities
18 or possesses or exercises one or more of the following powers:

19 (1) acting as:

20 (A) a contractor for or an agent or employee of
21 the limited partnership;

22 (B) a contractor for or an agent or employee of a
23 general partner;

24 (C) an officer, director, or stockholder of a
25 corporate general partner;

26 (D) a partner of a partnership that is a general
27 partner of the limited partnership; or

1 (E) a member or manager of a limited liability
2 company that is a general partner of the limited partnership;

3 (2) acting in a capacity similar to that described in
4 Subdivision (1) with any other person that is a general partner of
5 the limited partnership;

6 (3) consulting with or advising a general partner on
7 any matter, including the business of the limited partnership;

8 (4) acting as surety, guarantor, or endorser for the
9 limited partnership, guaranteeing or assuming one or more specific
10 obligations of the limited partnership, or providing collateral for
11 borrowings of the limited partnership;

12 (5) calling, requesting, attending, or participating
13 in a meeting of the partners or the limited partners;

14 (6) winding up the business of a limited partnership
15 under Chapter 11 and Subchapter K of this chapter;

16 (7) taking an action required or permitted by law to
17 bring, pursue, settle, or otherwise terminate a derivative action
18 in the right of the limited partnership;

19 (8) serving on a committee of the limited partnership
20 or the limited partners; or

21 (9) proposing, approving, or disapproving, by vote or
22 otherwise, one or more of the following matters:

23 (A) the [~~dissolution~~—~~or~~] winding up or
24 termination of the limited partnership;

25 (B) an election to reconstitute the limited
26 partnership or continue the business of the limited partnership;

27 (C) the sale, exchange, lease, mortgage,

1 assignment, pledge, or other transfer of, or granting of a security
2 interest in, an asset of the limited partnership;

3 (D) the incurring, renewal, refinancing, or
4 payment or other discharge of indebtedness by the limited
5 partnership;

6 (E) a change in the nature of the business of the
7 limited partnership;

8 (F) the admission, removal, or retention of a
9 general partner;

10 (G) the admission, removal, or retention of a
11 limited partner;

12 (H) a transaction or other matter involving an
13 actual or potential conflict of interest;

14 (I) an amendment to the partnership agreement or
15 certificate of formation;

16 (J) if the limited partnership is qualified as an
17 investment company under the federal Investment Company Act of 1940
18 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required
19 by that Act or the rules and regulations of the Securities and
20 Exchange Commission under that Act, to be approved by the holders of
21 beneficial interests in an investment company, including:

22 (i) electing directors or trustees of the
23 investment company;

24 (ii) approving or terminating an investment
25 advisory or underwriting contract;

26 (iii) approving an auditor; and

27 (iv) acting on another matter that that Act

1 requires to be approved by the holders of beneficial interests in
2 the investment company;

3 (K) indemnification of a general partner under
4 Chapter 8 or otherwise;

5 (L) any other matter stated in the partnership
6 agreement;

7 (M) the exercising of a right or power granted or
8 permitted to limited partners under this code and not specifically
9 enumerated in this section; or

10 (N) the merger or conversion of a limited
11 partnership.

12 SECTION 122. Section 153.155(a), Business Organizations
13 Code, is amended to read as follows:

14 (a) A person ceases to be a general partner of a limited
15 partnership on the occurrence of one or more of the following events
16 of withdrawal:

17 (1) the general partner withdraws as a general partner
18 from the limited partnership as provided by Subsection (b);

19 (2) the general partner ceases to be a general partner
20 of the limited partnership as provided by Section 153.252(b);

21 (3) the general partner is removed as a general
22 partner in accordance with the partnership agreement;

23 (4) unless otherwise provided by a written partnership
24 agreement, or with the written consent of all partners, the general
25 partner:

26 (A) makes a general assignment for the benefit of
27 creditors;

1 (B) files a voluntary bankruptcy petition;

2 (C) becomes the subject of an order for relief or
3 is declared insolvent in a federal or state bankruptcy or
4 insolvency proceeding;

5 (D) files a petition or answer seeking for the
6 general partner a reorganization, arrangement, composition,
7 readjustment, liquidation, winding up, termination, dissolution,
8 or similar relief under law;

9 (E) files a pleading admitting or failing to
10 contest the material allegations of a petition filed against the
11 general partner in a proceeding of the type described by Paragraphs
12 (A)-(D); or

13 (F) seeks, consents to, or acquiesces in the
14 appointment of a trustee, receiver, or liquidator of the general
15 partner or of all or a substantial part of the general partner's
16 properties;

17 (5) unless otherwise provided by a written partnership
18 agreement or with the written consent of all partners, the
19 expiration of:

20 (A) 120 days after the date of the commencement
21 of a proceeding against the general partner seeking reorganization,
22 arrangement, composition, readjustment, liquidation, dissolution,
23 or similar relief under law if the proceeding has not been
24 previously dismissed;

25 (B) 90 days after the date of the appointment,
26 without the general partner's consent, of a trustee, receiver, or
27 liquidator of the general partner or of all or a substantial part of

1 the general partner's properties if the appointment has not
2 previously been vacated or stayed; or

3 (C) 90 days after the date of expiration of a
4 stay, if the appointment has not previously been vacated;

5 (6) the death of a general partner;

6 (7) a court adjudicating a general partner who is an
7 individual mentally incompetent to manage the general partner's
8 person or property;

9 (8) unless otherwise provided by a written partnership
10 agreement or with the written consent of all partners, the
11 commencement of winding up activities intended to conclude in the
12 termination of a trust that is a general partner, but not merely the
13 substitution of a new trustee;

14 (9) unless otherwise provided by a written partnership
15 agreement or with the written consent of all partners, the
16 commencement of winding up activities of a separate partnership
17 that is a general partner;

18 (10) unless otherwise provided by a written
19 partnership agreement or with the written consent of all partners,
20 the:

21 (A) filing of a certificate of termination or its
22 equivalent for an entity, other than a nonfiling entity or a foreign
23 nonfiling entity, that is a general partner; or

24 (B) termination or revocation of the certificate
25 of formation or its equivalent of an entity, other than a nonfiling
26 entity or a foreign nonfiling entity, that is a general partner and
27 the expiration of 90 days after the date of notice to the entity of

1 termination or revocation without a reinstatement of its
2 certificate of formation or its equivalent; or

3 (11) the distribution by the fiduciary of an estate
4 that is a general partner of the estate's entire interest in the
5 limited partnership.

6 SECTION 123. Section 153.157, Business Organizations Code,
7 is amended to read as follows:

8 Sec. 153.157. WITHDRAWAL OF GENERAL PARTNER IN VIOLATION OF
9 PARTNERSHIP AGREEMENT. Unless otherwise provided by the
10 partnership agreement, a withdrawal by a general partner of a
11 partnership having a period of duration [~~for a definite term~~] or for
12 a particular undertaking before the expiration of that period
13 [~~term~~] or completion of that undertaking is a breach of the
14 partnership agreement.

15 SECTION 124. Section 153.251(b), Business Organizations
16 Code, is amended to read as follows:

17 (b) Except as otherwise provided by the partnership
18 agreement, an assignment of a partnership interest:

19 (1) does not require the winding up of [~~dissolve~~] a
20 limited partnership;

21 (2) does not entitle the assignee to become, or to
22 exercise rights or powers of, a partner; and

23 (3) entitles the assignee to be allocated income,
24 gain, loss, deduction, credit, or similar items and to receive
25 distributions to which the assignor was entitled to the extent
26 those items are assigned.

27 SECTION 125. Section 153.501, Business Organizations Code,

1 is amended to read as follows:

2 Sec. 153.501. CANCELLATION OR REVOCATION OF EVENT REQUIRING
3 WINDING UP; CONTINUATION OF BUSINESS [~~WITHOUT WINDING UP~~]. (a)
4 The limited partnership may cancel under Section 11.152 an event
5 requiring winding up arising from the expiration of its period of
6 duration as specified in Section 11.051(1) or from the occurrence
7 of an event specified in its governing documents as specified in
8 Section 11.051(3) [~~11.051(1) or (3)~~] if, not later than the 90th day
9 after the event, all remaining partners, or another group or
10 percentage of partners as specified by the partnership agreement,
11 agree in writing to continue the business of the limited
12 partnership.

13 (b) The limited partnership may cancel under Section 11.152
14 [~~revoke~~] an event requiring winding up arising from an event of
15 withdrawal of a general partner as specified in Section 11.058(b)
16 [~~11.058(2)~~] if:

17 (1) there remains at least one general partner and the
18 partnership agreement permits the business of the limited
19 partnership to be carried on by the remaining general partners and
20 those remaining general partners carry on the business; or

21 (2) not later than one year after the event, all
22 remaining partners, or another group or percentage of partners
23 specified in the partnership agreement:

24 (A) agree in writing to continue the business of
25 the limited partnership in writing; and

26 (B) to the extent that they desire or if there are
27 no remaining general partners, agree to the appointment of one or

1 more new general partners.

2 (c) The appointment of one or more new general partners
3 under Subsection (b)(2)(B) is effective from the date of
4 withdrawal.

5 (d) To approve a revocation under Section 11.151 by a
6 limited partnership of a voluntary decision to wind up as specified
7 in Section 11.058(a) [~~11.058(1)~~], prior to filing the certificate
8 of termination required by Section 11.101 [~~153.451~~], all remaining
9 partners, or another group or percentage of partners as specified
10 by the partnership agreement, must agree in writing to revoke the
11 voluntary decision to wind up and continue the business of the
12 limited partnership.

13 (e) The limited partnership may cancel under Section 11.152
14 an event requiring winding up arising when there are no limited
15 partners in the limited partnership, as specified in Section
16 11.058(c), if, not later than the first anniversary of the date of
17 the event requiring winding up:

18 (1) the legal representative or successor of the last
19 remaining limited partner and all of the general partners agree to:

20 (A) continue the business of the limited
21 partnership; and

22 (B) admit the legal representative or successor
23 of the last remaining limited partner, or the person's nominee or
24 designee, to the limited partnership as a limited partner,
25 effective as of the date the event that caused the last remaining
26 limited partner to cease to be a limited partner occurred; or

27 (2) a limited partner is admitted to the limited

1 partnership in the manner provided by the partnership agreement,
2 effective as of the date the event that caused the last remaining
3 limited partner to cease to be a limited partner occurred.

4 SECTION 126. Section 153.503(a), Business Organizations
5 Code, is amended to read as follows:

6 (a) After the occurrence of an event requiring [~~the~~] winding
7 up of a limited partnership and until the filing of a certificate of
8 termination as provided by Section 11.101 [~~Sections 153.451 and~~
9 ~~153.452~~], unless a written partnership agreement provides
10 otherwise, a person winding up the limited partnership's business
11 in the name of and on behalf of the limited partnership may take the
12 actions specified in Sections 11.052 and 11.053.

13 SECTION 127. Subchapter K, Chapter 153, Business
14 Organizations Code, is amended by adding Section 153.505 to read as
15 follows:

16 Sec. 153.505. APPROVAL OF REINSTATEMENT. To approve a
17 reinstatement of a limited partnership under Section 11.202, all of
18 the remaining partners, or another group or percentage of partners
19 as specified by the partnership agreement, must agree in writing to
20 reinstate and continue the business of the limited partnership.

21 SECTION 128. Section 153.551(a), Business Organizations
22 Code, is amended to read as follows:

23 (a) A domestic limited partnership shall maintain the
24 following records in its principal office in the United States or
25 make the records available in that office not later than the fifth
26 day after the date on which a written request under Section
27 153.552(a) is received:

1 (1) a current list that states:

2 (A) the name and mailing address of each partner,
3 separately identifying in alphabetical order the general partners
4 and the limited partners;

5 (B) the last known street address of the business
6 or residence of each general partner;

7 (C) the percentage or other interest in the
8 partnership owned by each partner; and

9 (D) if one or more classes or groups are
10 established under the partnership agreement, the names of the
11 partners who are members of each specified class or group;

12 (2) a copy of:

13 (A) the limited partnership's federal, state,
14 and local information or income tax returns for each of the
15 partnership's six most recent tax years;

16 (B) the partnership agreement and certificate of
17 formation; and

18 (C) all amendments or restatements;

19 (3) copies of any document that creates, in the manner
20 provided by the partnership agreement, classes or groups of
21 partners;

22 (4) an executed copy of any powers of attorney under
23 which the partnership agreement, certificate of formation, and all
24 amendments or restatements to the agreement and certificate have
25 been executed;

26 (5) unless contained in the written partnership
27 agreement, a written statement of:

1 (A) the amount of the cash contribution and a
2 description and statement of the agreed value of any other
3 contribution made by each partner;

4 (B) the amount of the cash contribution and a
5 description and statement of the agreed value of any other
6 contribution that the partner has agreed to make in the future as an
7 additional contribution;

8 (C) the date on which additional contributions
9 are to be made or the date of events requiring additional
10 contributions to be made;

11 (D) the events requiring the winding up of the
12 limited partnership [~~to be dissolved and its affairs wound up~~]; and

13 (E) the date on which each partner in the limited
14 partnership became a partner; and

15 (6) books and records of the accounts of the limited
16 partnership.

17 SECTION 129. The heading to Section 153.553, Business
18 Organizations Code, is amended to read as follows:

19 Sec. 153.553. EXECUTION OF [~~CERTAIN~~] FILINGS.

20 SECTION 130. Section 153.553, Business Organizations Code,
21 is amended by amending Subsection (a) and adding Subsection (a-1)
22 to read as follows:

23 (a) Except as provided by Subsection (a-1), a filing
24 instrument [~~Each certificate~~] required by this code to be filed by a
25 limited partnership with the secretary of state must be signed by at
26 least one general partner.

27 (a-1) The following certificates shall be executed as

1 follows:

2 (1) an initial certificate of formation must be signed
3 as provided in Section 3.004(b)(1) [~~, except for an initial~~
4 ~~certificate of formation signed by a person under Section~~
5 ~~153.106(1)];~~

6 (2) a certificate of amendment or restated certificate
7 of formation must be signed by at least one general partner and by
8 each other general partner designated in the certificate of
9 amendment as a new general partner, unless signed and filed by a
10 person under Section 153.052(b) or (c), [~~153.052(c), or~~
11 ~~153.106(1)] but the certificate of amendment need not be signed by
12 a withdrawing general partner;~~

13 (3) a certificate of termination must be signed by all
14 general partners participating in the winding up of the limited
15 partnership's business or, if no general partners are winding up
16 the limited partnership's business, by all nonpartner liquidators
17 or, if the limited partners are winding up the limited
18 partnership's business, by a majority-in-interest of the limited
19 partners;

20 (4) a certificate of merger, conversion, or exchange
21 filed on behalf of a domestic limited partnership must be signed as
22 provided by Chapter 10; and

23 (5) a certificate filed under Subchapter G, Chapter
24 10, [~~Section 10.251~~] must be signed by the person designated by the
25 court [~~, and~~

26 [~~(6) a certificate of correction must be signed by at~~
27 ~~least one general partner].~~

1 SECTION 131. Section 200.261(a), Business Organizations
2 Code, is amended to read as follows:

3 (a) In this section, a "fundamental action" means:

4 (1) an amendment of a certificate of formation,
5 including an amendment required for cancellation of an event
6 requiring winding up in accordance with Section 11.152(b);

7 (2) a voluntary winding up under Chapter 11;

8 (3) a revocation of a voluntary decision to wind up
9 under Section 11.151;

10 (4) a cancellation of an event requiring winding up
11 under Section 11.152(a) [~~11.152~~]; or

12 (5) a reinstatement under Section 11.202.

13 SECTION 132. Section 251.403, Business Organizations Code,
14 is amended to read as follows:

15 Sec. 251.403. DISTRIBUTION OF ASSETS. Subject to Sections
16 11.052 and 11.053(a), the trustees designated under Section 251.401
17 shall distribute the cooperative association's assets in the
18 following order:

19 (1) by returning the par value of the investors'
20 capital to investors;

21 (2) by returning the amounts paid on subscriptions to
22 subscribers for invested capital;

23 (3) by returning the amount of patronage dividends
24 credited to patrons' accounts to the patrons;

25 (4) by returning to members their membership capital;
26 and

27 (5) by distributing any surplus in the manner provided

1 by the certificate of formation:

2 (A) among the patrons who have been members or
3 subscribers of the cooperative association during the six years
4 preceding the date of termination [~~dissolution~~], on the basis of
5 patronage during that period;

6 (B) as a gift to any cooperative association or
7 other nonprofit enterprise designated in the certificate of
8 formation; or

9 (C) by a combination of both methods of
10 distribution.

11 SECTION 133. Section 301.001(c), Business Organizations
12 Code, is amended to read as follows:

13 (c) This title does not apply to a partnership, including a
14 [~~partnerships or~~] limited liability partnership [~~partnerships~~].

15 SECTION 134. Section 301.003(3), Business Organizations
16 Code, is amended to read as follows:

17 (3) "Professional corporation" means a corporation
18 that is:

19 (A) formed for the purpose of providing a
20 professional service, other than the practice of medicine by
21 physicians, surgeons, or other doctors of medicine, that by law a
22 corporation governed by Title 2 is prohibited from rendering; and

23 (B) governed as a professional entity under this
24 title.

25 SECTION 135. Section 301.006(b), Business Organizations
26 Code, is amended to read as follows:

27 (b) A professional entity or foreign professional entity,

1 other than a professional association or foreign professional
2 association, may provide a professional service in this state only
3 through owners, managerial officials, employees, or agents, each of
4 whom is an authorized person.

5 SECTION 136. Section 303.006, Business Organizations Code,
6 is amended to read as follows:

7 Sec. 303.006. EXECUTION OF CERTIFICATE OF TERMINATION
8 [WINDING UP AND TERMINATION OF PROFESSIONAL CORPORATION]. (a)
9 Except as provided by Subsection (b), a certificate of termination
10 filed in accordance with Chapter 11 must be executed by an officer
11 of the professional corporation on behalf of the corporation.

12 (b) If a professional corporation does not have any living
13 officer, the certificate of termination must be executed by a
14 director of the corporation. If the professional corporation does
15 not have any living director, the certificate of termination must
16 be executed by the legal representative of the last living
17 director [~~A shareholder of a professional corporation may not wind~~
18 ~~up the affairs of and terminate the corporation independently of~~
19 ~~other shareholders]~~ of the corporation.

20 SECTION 137. Section 402.001(a), Business Organizations
21 Code, is amended to read as follows:

22 (a) On or after the effective date of this code, this code
23 applies to:

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

26 (2) a domestic entity that is a converted entity
27 resulting from a conversion that takes effect on or after the

1 effective date of this code;

2 (3) a foreign filing entity, or other foreign entity,
3 that is not registered with the secretary of state to transact
4 business in this state before the effective date of this code; and

5 (4) ~~(3)~~ a foreign nonfiling entity, including a
6 foreign limited liability partnership.

7 SECTION 138. Section 402.003, Business Organizations Code,
8 is amended to read as follows:

9 Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC
10 ENTITY. ~~(a)~~ A domestic entity formed before the effective date
11 of this code may voluntarily elect to adopt and become subject to
12 this code by:

13 (1) adopting the code by complying with the procedures
14 for approval, under prior law and ~~to amend~~ its governing
15 documents, of an amendment to:

16 (A) its articles of incorporation, with respect
17 to a corporation or cooperative association;

18 (B) its regulations, with respect to a limited
19 liability company;

20 (C) its articles of association, with respect to
21 a professional association;

22 (D) its declaration of trust, with respect to a
23 real estate investment trust;

24 (E) its partnership agreement, with respect to a
25 partnership; or

26 (F) its primary governing document, with respect
27 to another type of domestic entity;

1 (2) if any of its governing documents, including its
2 certificate of formation, do not comply with this code, complying
3 with the procedures, under prior law and ~~[adopt this code and, if~~
4 ~~necessary, to cause]~~ its governing documents, to amend the
5 noncomplying governing documents to comply with this code,
6 including filing with the filing officer in accordance with Chapter
7 4 a certificate of amendment to cause its certificate of formation
8 to comply with this code; and

9 (3) ~~[(2)]~~ if the domestic entity is a filing entity,
10 filing with the filing officer ~~[secretary of state]~~ in accordance
11 with Chapter 4~~+~~

12 ~~[(A)]~~ a statement that the filing entity is
13 electing to adopt this code~~+, and~~

14 ~~[(B) if necessary, a certificate of amendment~~
15 ~~that would cause its certificate of formation to comply with this~~
16 ~~code.~~

17 ~~[(b) If amendments to the governing documents of a domestic~~
18 ~~entity that are necessary to conform the governing documents to~~
19 ~~this code would not require, under prior law, the vote or consent of~~
20 ~~the owners or members of the entity, this code and any amendment to~~
21 ~~the governing documents required by this section may be adopted by~~
22 ~~the governing authority only in the manner provided for an~~
23 ~~amendment of the particular governing document].~~

24 SECTION 139. Article 2.32, Texas Business Corporation Act,
25 is amended by amending Section A and adding Section E to read as
26 follows:

27 A. The board of directors of a corporation shall consist of

1 one or more members. The number of directors shall be fixed by, or
2 in the manner provided in, the articles of incorporation or the
3 bylaws, except as to the number constituting the initial board of
4 directors, which number shall be fixed by the articles of
5 incorporation. The number of directors may be increased or
6 decreased from time to time by amendment to, or in the manner
7 provided in, the articles of incorporation or the bylaws, but no
8 decrease shall have the effect of shortening the term of any
9 incumbent director. In the absence of a bylaw or a provision of the
10 articles of incorporation fixing the number of directors or
11 providing for the manner in which the number of directors shall be
12 fixed, the number of directors shall be the same as the number
13 constituting the initial board of directors as fixed by the
14 articles of incorporation. The names and addresses of the members
15 of the initial board of directors shall be stated in the articles of
16 incorporation. [~~Unless otherwise provided by the articles of
17 incorporation or the bylaws, a director may resign at any time by
18 giving notice in writing or by electronic transmission to the
19 corporation.~~] Absent resignation or removal in accordance with the
20 provisions of the bylaws or the articles of incorporation, such
21 persons shall hold office until the first annual meeting of
22 shareholders, and until their successors shall have been elected
23 and qualified. At the first annual meeting of shareholders and at
24 each annual meeting thereafter, the holders of shares entitled to
25 vote in the election of directors shall elect directors to hold
26 office until the next succeeding annual meeting, except in case of
27 the classification of directors as permitted by this Act.

1 E. Unless otherwise provided by the articles of
2 incorporation or the bylaws, a director may resign at any time by
3 giving notice in writing or by electronic transmission to the
4 corporation. The director's resignation takes effect on the date
5 the notice is received by the corporation, unless the notice
6 prescribes a later effective date or states that the resignation
7 takes effect on the occurrence of a future event, such as the
8 director's failure to receive a specified vote for reelection as a
9 director. If the director's resignation is to take effect on a
10 later date or on the occurrence of a future event, the resignation
11 takes effect on the later date or when the event occurs. The
12 director's resignation is irrevocable when it takes effect. The
13 director's resignation is revocable before it takes effect unless
14 the notice of resignation expressly states that it is irrevocable.

15 SECTION 140. Section A, Article 5.12, Texas Business
16 Corporation Act, is amended to read as follows:

17 A. Any shareholder of any domestic corporation who has the
18 right to dissent from any of the corporate actions referred to in
19 Article 5.11 of this Act may exercise that right to dissent only by
20 complying with the following procedures:

21 (1)(a) With respect to proposed corporate action that
22 is submitted to a vote of shareholders at a meeting, the shareholder
23 shall file with the corporation, prior to the meeting, a written
24 objection to the action, setting out that the shareholder's right
25 to dissent will be exercised if the action is effective and giving
26 the shareholder's address, to which notice thereof shall be
27 delivered or mailed in that event. If the action is effected and

1 the shareholder shall not have voted in favor of the action, the
2 corporation, in the case of action other than a merger, or the
3 surviving or new corporation (foreign or domestic) or other entity
4 that is liable to discharge the shareholder's right of dissent, in
5 the case of a merger, shall, within ten (10) days after the action
6 is effected, deliver or mail to the shareholder written notice that
7 the action has been effected, and the shareholder may, within ten
8 (10) days from the delivery or mailing of the notice, make written
9 demand on the existing, surviving, or new corporation (foreign or
10 domestic) or other entity, as the case may be, for payment of the
11 fair value of the shareholder's shares. The fair value of the
12 shares shall be the value thereof as of the day immediately
13 preceding the meeting, excluding any appreciation or depreciation
14 in anticipation of the proposed action. In computing the fair value
15 of the shares under this article, consideration must be given to the
16 value of the corporation as a going concern without including in the
17 computation of value any ~~[payment for a]~~ control premium, any ~~[or]~~
18 minority discount, or any discount for lack of marketability. If
19 the corporation has different classes or series of shares, the
20 relative rights and preferences of and limitations placed on the
21 class or series of shares, other than relative voting rights, held
22 by the dissenting shareholder must be taken into account in the
23 computation of value ~~[other than a discount attributable to the~~
24 ~~type of share held by the dissenting shareholder and any limitation~~
25 ~~placed on the rights and preference of those shares]~~. The demand
26 shall state the number and class of the shares owned by the
27 shareholder and the fair value of the shares as estimated by the

1 shareholder. Any shareholder failing to make demand within the ten
2 (10) day period shall be bound by the action.

3 (b) With respect to proposed corporate action that is
4 approved pursuant to Section A of Article 9.10 of this Act, the
5 corporation, in the case of action other than a merger, and the
6 surviving or new corporation (foreign or domestic) or other entity
7 that is liable to discharge the shareholder's right of dissent, in
8 the case of a merger, shall, within ten (10) days after the date the
9 action is effected, mail to each shareholder of record as of the
10 effective date of the action notice of the fact and date of the
11 action and that the shareholder may exercise the shareholder's
12 right to dissent from the action. The notice shall be accompanied
13 by a copy of this Article and any articles or documents filed by the
14 corporation with the Secretary of State to effect the action. If
15 the shareholder shall not have consented to the taking of the
16 action, the shareholder may, within twenty (20) days after the
17 mailing of the notice, make written demand on the existing,
18 surviving, or new corporation (foreign or domestic) or other
19 entity, as the case may be, for payment of the fair value of the
20 shareholder's shares. The fair value of the shares shall be the
21 value thereof as of the date the written consent authorizing the
22 action was delivered to the corporation pursuant to Section A of
23 Article 9.10 of this Act, excluding any appreciation or
24 depreciation in anticipation of the action. The demand shall state
25 the number and class of shares owned by the dissenting shareholder
26 and the fair value of the shares as estimated by the shareholder.
27 Any shareholder failing to make demand within the twenty (20) day

1 period shall be bound by the action.

2 (2) Within twenty (20) days after receipt by the
3 existing, surviving, or new corporation (foreign or domestic) or
4 other entity, as the case may be, of a demand for payment made by a
5 dissenting shareholder in accordance with Subsection (1) of this
6 Section, the corporation (foreign or domestic) or other entity
7 shall deliver or mail to the shareholder a written notice that shall
8 either set out that the corporation (foreign or domestic) or other
9 entity accepts the amount claimed in the demand and agrees to pay
10 that amount within ninety (90) days after the date on which the
11 action was effected, and, in the case of shares represented by
12 certificates, upon the surrender of the certificates duly endorsed,
13 or shall contain an estimate by the corporation (foreign or
14 domestic) or other entity of the fair value of the shares, together
15 with an offer to pay the amount of that estimate within ninety (90)
16 days after the date on which the action was effected, upon receipt
17 of notice within sixty (60) days after that date from the
18 shareholder that the shareholder agrees to accept that amount and,
19 in the case of shares represented by certificates, upon the
20 surrender of the certificates duly endorsed.

21 (3) If, within sixty (60) days after the date on which
22 the corporate action was effected, the value of the shares is agreed
23 upon between the shareholder and the existing, surviving, or new
24 corporation (foreign or domestic) or other entity, as the case may
25 be, payment for the shares shall be made within ninety (90) days
26 after the date on which the action was effected and, in the case of
27 shares represented by certificates, upon surrender of the

1 certificates duly endorsed. Upon payment of the agreed value, the
2 shareholder shall cease to have any interest in the shares or in the
3 corporation.

4 SECTION 141. The following are repealed:

5 (1) Section 22.306, Business Organizations Code;

6 (2) Section 152.501(c), Business Organizations Code;

7 and

8 (3) Subchapter J, Chapter 153, Business Organizations
9 Code.

10 SECTION 142. This Act takes effect September 1, 2007.