

BILL ANALYSIS

Senate Research Center
82R11734 CLG-F

C.S.S.B. 748
By: Carona
Business & Commerce
3/2/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Business Organizations Code became effective January 1, 2006, and codified the provisions of prior law found in the Texas Business Corporation Act, Texas Non-profit Corporation Act, Texas Miscellaneous Corporation Laws Act, Texas Limited Liability Company Act, Texas Revised Limited Partnership Act, Texas Real Estate Investment Trust Act, Texas Uniform Unincorporated Nonprofit Associations Act, Texas Professional Corporation Act, Texas Professional Associations Act, Texas Revised Partnership Act, and Cooperative Associations Act. These prior statutes were repealed as of January 1, 2010.

Since the time of its original drafting, a number of provisions within the Business Organizations Code have been cumbersome or problematic.

C.S.S.B. 748 revises the Business Organizations Code to address many of these provisions. Among other things, this bill makes the following amendments to the Business Organizations Code.

Under current law, when a judgment creditor files a judgment on a partner in a limited partnership (LP) or limited liability company (LLC), that creditor can obtain a lien on the partnership interest's income stream but cannot foreclose on the partnership interest of that partner. Such a provision does not currently exist for general partnerships. C.S.S.B. 748 expands current law to allow charging orders for general partnership interests.

Texas was the first state to implement a limited liability partnership (LLP) statute. The Texas statute has always included a requirement that LLPs obtain certain forms of insurance, while other states have since adopted similar statutes without these insurance requirements. C.S.S.B. 748 eliminates the antiquated insurance requirements for LLPs under Texas law, which put Texas at a competitive disadvantage against other states with respect to businesses seeking a state in which to headquarter.

The current Business Organizations Code is unclear as to the rights of an assignee of an LLC member's interest upon divorce or death of that member. However, this issue currently is addressed with respect to partnerships. C.S.S.B. 748 adds provisions clarifying how membership interests in an LLC are to be treated upon divorce or death of a member. More specifically, the bill states that a person who receives LLC membership through divorce or death of a member is only an assignee rather than a full member, meaning that other members are not forced to be co-members with a former member's spouse or children. Assignees are entitled to economic benefits and ownership rights but not voting rights.

The Business Organizations Code currently provides that, for an LLC, an informed board of directors, committee members, or shareholders may approve the LLC to enter into an agreement that involves a separate financial interest of one of the company's officers or directors. However, the Business Organizations Code does not specify that such an agreement will not be "void" or "voidable" once it is approved. C.S.S.B. 748 clarifies that where an informed board, committee, or stockholders approve what would be considered an interested transaction, that transaction does not become void or voidable through operation of the common law. Also, C.S.S.B. 748 clarifies that this section applies both to managers and directors as well as their affiliates and associates.

The Business Organizations Code provides that LLC members have the right to access and review the books and records of an LLC, generally without restriction. C.S.S.B. 748 provides more flexibility for LLCs company agreements, allowing reasonable restrictions on member access to books and records to protect trade secrets and intellectual property rights. Such restrictions would need to be specified in the company agreement.

Nonprofit corporations are generally required to hold annual shareholder meetings. Nothing under current law allows nonprofit corporations to adjust this requirement to accommodate the needs of the individual company. C.S.S.B. 748 provides nonprofit corporations with the ability to modify their annual meeting requirements for the benefit of their members. For example, the bill would allow a company to have a meeting biennially rather than annually, or allow the company to dispense with the annual meeting. Any such modification would need to be included in the certificate of formation, which is a public document filed with the secretary of state.

C.S.S.B. 748 amends current law relating to business entities and associations.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Business Organizations Code, by adding Subdivisions (55-a), (69-c), (69-d), and (69-e), and amending Subdivision (69-b), to define "national securities exchange," "plan of conversion," "plan of exchange," and "plan of merger" and to redefine "person."

SECTION 2. Amends Section 6.101(b), Business Organizations Code, to authorize the governing authority of the entity, subject to this code and the governing documents of a domestic entity, in advance, to provide a record date for determining the owners or members of the entity, except that the date may not be earlier than the 60th day before the date the action requiring the determination of owners or members is originally to be taken.

SECTION 3. Amends Section 6.205(a), Business Organizations Code, to delete existing text requiring that a reliable reproduction of a certain consent in writing, if being used instead of the original writing, is a complete reproduction of the entire original writing.

SECTION 4. Amends Sections 8.001(1) and (2), Business Organizations Code, to redefine "delegate" and "enterprise."

SECTION 5. Amends Section 8.103(d), Business Organizations Code, to define, for purposes of this subsection, "majority-in-interest."

SECTION 6. Amends Section 8.104(d), Business Organizations Code, to define, for purposes of this subsection, "majority-in-interest."

SECTION 7. Amends Section 8.105(d), Business Organizations Code, as follows:

(d)Authorizes an enterprise, notwithstanding any authorization or determination specified in this chapter, to pay or reimburse, in advance of the final disposition of a proceeding and on terms the enterprise considers appropriate, reasonable expenses incurred by:

(1) a former governing person or delegate who was, is, or is threatened to be made a respondent in the proceeding, rather than a former managerial official or delegate; or

(2) a present or former employee, agent, or officer who is not a governing person of the enterprise and who was, is, or is threatened to made a respondent in the

proceeding, rather than a present or former employee or agent, of the enterprise who was, is, or is threatened to be made a respondent in the proceeding.

SECTION 8. Amends Section 8.151, Business Organizations Code, by adding Subsection (c-1), to provide that with respect to a limited partnership (LP), a vote of a majority-in-interest of the limited partners constitutes approval of the owners for purposes of Subsection (c) (relating to insurance and other arrangements).

SECTION 9. Amends Section 9.007(b), Business Organizations Code, to require that the application for registration state certain information, including the federal taxpayer identification number, rather than federal tax identification number of the partnership, the date of initial registration as a limited liability partnership (LLP) under the laws of the jurisdiction, rather than state, of formation; and that the partnership exists as a valid LLP under the laws of the jurisdiction, rather than state of its formation.

SECTION 10. Amends Section 10.002, Business Organizations Code, as follows:

Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS (a) Requires that a plan of merger be in writing and include certain required provisions, including the manner and basis of converting or exchanging any of the ownership or membership interests of each organization that is a party to the merger into certain interests, securities, cash, other property, or any combination of such conversions; and the identification of any of the ownership or membership interests of an organization that is party to the merger that are to be canceled rather than converted or exchanged. Makes nonsubstantive changes.

(b) Makes a conforming change.

(c) Authorizes a plan of merger to provide for cancellation of an ownership or membership interest while providing for the conversion or exchange of other ownership or membership interests of the same class or series as the ownership or membership interest to be canceled. Makes conforming changes.

SECTION 11. Amends Section 10.008(a), Business Organizations Code, to provide that when a merger takes effect, in addition to certain other provisions, the ownership or membership interests of each organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into the ownership or membership interests, obligations, rights to purchase securities, or other securities of one more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled, are converted, exchanged, or canceled as provided in the plan of a merger, and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to the rights provided by the plan of merger or, if applicable, any rights to receive the fair value for the ownership interests provided under Subchapter H (Rights of Dissenting Owners).

SECTION 12. Amends Section 10.052(a), Business Organizations Code, to require that a plan of exchange be in writing, and include certain information as set forth in this subsection.

SECTION 13. Amends Section 10.103(a), Business Organizations Code, to require that a plan of conversion be in writing, and include certain information as set forth in this subsection.

SECTION 14. Amends Section 10.354(b), Business Organizations Code, as follows:

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

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

(A) listed on a national securities exchange, rather than a national security exchange or similar system; or

(B) held of record by at least 2,000 owners.

Deletes existing text of Subdivisions (B) and (C) relating to a listing on the Nasdaq Stock Market or a successor quotation system or designated as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc, or a successor system. Makes nonsubstantive changes.

(2) Makes no changes to this subdivision.

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

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

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

(ii) held of record by at least 2,000 owners.

Deletes existing text of Subdivision (ii) relating to certain ownership interests or depository receipts being approved for quotation as a national market security on an interdealer quotation system by the National Association of Securities Dealers, Inc., or a successor entity. Makes nonsubstantive changes.

SECTION 15. Amends Sections 10.355(c) and (e), Business Organizations Code, as follows:

(c) Requires that a notice required to be provided under Subsection (a) (relating to notification of owner's rights) or (b) (relating to notification of owner's rights to a subsidiary organization) be accompanied by a copy of this subchapter, and advise the owner of the location of the responsible organization's principal executive offices to which notice is required under Section 10.356(b)(1) or (3), rather than Section 10.356(b)(2), may be provided.

(e) Requires the responsible organization, not later than the 10th day after the date an action described by Subsection (a)(1) (relating to an action submitted to a vote) takes effect, to give notice that the action has been effected to each owner who voted against the action and sent notice under Section 10.356(b)(1), rather than Section 10.356(b)(2).

SECTION 16. Amends Sections 10.356(b), (c), and (d), Business Organizations Code, as follows:

(b) Requires that, to perfect the owner's rights of dissent and appraisal under Section 10.354, an owner:

(1) if the proposed action is to be submitted to a vote of the owners at a meeting, must give to the domestic entity a written notice of objection to the action that is addressed to the entity's president and secretary; states that the owner's right to dissent will be exercised if the action takes effect; provides an address to which notice of effectiveness of the action should be delivered or mailed; and is delivered to the entity's principal executive offices before the meeting;

(2) with respect to the ownership interest for which the rights of dissent and appraisal are sought, must vote against the action if the owner is entitled to vote on the action and the action is approved at a meeting of the owners, and may not consent to the action if the action is approved at a meeting of the owners; and

(3) must give to the responsible organization a demand in writing that is not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(e) that the action has taken effect if the action was approved by a vote of the owner at a meeting; not later than the 20th day after the date the responsible organization sends to the owner the notice required by Section 10.355(d)(2) that the action has taken effect, if the action was approved by the written consent of the owners, rather than must give to the responsible organization a notice dissenting to the action that is before the action is considered for a approval if the action is to be submitted to a vote of the owners at a meeting; not later than the 20th day after the date the responsible organization sends to the owner a notice that the action was approved by the requisite vote of the owners if the action is to be undertaken on the written consent of the owners.

(c) Provides that an owner who does not make a demand within the period required by Subsection (b)(3)(E) or, if Subsection (b)(1) is applicable, does not give the notice of objection before the meeting of the owners, rather than within the period required by Subsection (b)(2)(E), is bound by the action and is not entitled to exercise the rights of dissent and appraisal under Section 10.354.

(d) Requires the owner, not later than the 20th day after the date an owner makes a demand under Subsection (b)(3), rather than this section, to submit to the responsible organization any certificates representing the ownership interest to which the demand relates for purposes of making a notation on the certificates that a demand for the payment of the fair value of an ownership interest has been made under this section.

SECTION 17. Amends Sections 10.358(a), (d), and (e), Business Organizations Code, as follows:

(a) Requires the responsible organization, not later than the 20th day after the date a responsible organization receives a demand for a payment made by a dissenting owner in accordance with Section 10.356(b)(3), rather than Section 10.356, to respond to the dissenting owner in writing by:

(1) accepting the amount claimed in the demand as the fair value of the ownership interests specified in the notice; or

(2) rejecting the demand and including in the response the requirements prescribed by Subsection (c)

(d) Requires the owner, if the dissenting owner decides to accept the offer made by the responsible organization under Subsection (c)(2), to provide to the responsible organization notice of the acceptance of the offer not later than the 90th day after the date the action that is the subject of the demand took effect. Deletes existing text requiring that an offer made under Subsection (c)(2) remain open for a period of at least 60 days from the date the offer is first delivered to the dissenting owner.

(e) Requires the responsible organization, if, not later than the 90th day after the date the action that is the subject to the demand took effect, a dissenting owner accepts an offer made by a responsible organization under Subsection (c)(2) or a dissenting owner and a responsible owner organization reach an agreement on the fair value of the ownership interests, to pay the agreed amount not later than the 120th day, rather than 60th day, after the date the action that is subject of the demand took effect, rather than the date the offer is accepted or the agreement is reached as appropriate, if the dissenting owner delivers to the responsible organization:

(1) endorsed certificates representing the ownership interests if the ownership interests are certified; or

(2) signed assignments of the ownership interests if the ownership interests are uncertificated.

SECTION 18. Amends Section 11.057, Business Organizations Code, by adding Subsection (f), to define "majority-in-interest."

SECTION 19. Amends Section 11.402, Business Organizations Code, as follows:

Sec. 11.402. JURISDICTION TO APPOINT RECEIVER. (a) Provides that a court that has subject matter jurisdiction over specific property of a domestic or foreign entity that is located in this state and is involved in litigation has jurisdiction to appoint a receiver for that property as provided by Section 11.403 (Appointment of Receiver For Specific Property).

(b) Provides that a district court in the county in which the registered office or principal place of business of a domestic entity is located has jurisdiction to:

(1) appoint a receiver for the property and business of a domestic entity for the purpose of rehabilitating the entity as provided by Section 11.404; or

(2) order the liquidation of the property and business of a domestic entity and appoint a receiver to effect that liquidation as provided by Section 11.405 (Appointment of Receiver to Liquidate Domestic Entity Liquidation).

SECTION 20. Amends Section 11.404(b), Business Organizations Code, to authorize a court to appoint a receiver under Subsection (a) only if, among certain conditions, the court determines that all other available legal and equitable remedies, including the appointment of a receiver for specific property of the domestic entity under Section 11.402(a), rather than Section 11.402, are inadequate.

SECTION 21. Amends Section 21.109(a), Business Organizations Code, as follows:

(a) Provides that a shareholder's agreement authorized by this subchapter ceases to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, rather than listed on a national securities exchange or similar system quoted on an interdealer quotation system of a national securities association or successor system. Makes nonsubstantive changes.

SECTION 22. Amends Subchapter C, Chapter 21, Business Organizations Code, by adding Section 21.110, as follows:

Sec. 21.110. OTHER SHAREHOLDER AGREEMENTS PERMITTED. Provides that this subchapter does not prohibit or impair any agreement between two or more shareholders, or between the corporation and one or more of the corporation's shareholders, permitted by Title 1, this chapter, or other law.

SECTION 23. Amends Section 21.203, Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that this section and Sections 21.204 (Statutory Preemptive Rights), 21. 205 (Waiver of Preemptive Right), 21.206 (Limitation on Action to Enforce Preemptive Right), 21.207 (Disposition of Shares Having Preemptive Rights), and 21.208 (Preemptive Right in Existing Corporation) do not invalidate or impair a corporation's right or power to grant an enforceable nonstatutory preemptive right in a contract between the corporation and a shareholder or other person; or the governing documents of the corporation.

SECTION 24. Amends Section 21.206(a), Business Organizations Code, to require that an action brought against a corporation, the board of directors or an officer, shareholder, or agent of the corporation, or an owner of a beneficial interest in shares of the corporation for the violation of a preemptive right of a shareholder under Sections 21.203 and 21.204 be brought not later than the earlier of certain anniversaries of certain dates.

SECTION 25. Amends Section 21.222(b), Business Organizations Code, to provide that it is a defense to an action brought under this section that the person suing has taken certain actions, including that the person has within two years preceding the date the action is brought, sold or offered for sale a list of shareholders or of holder of voting trust certificates for share of the corporation or any other corporation, rather than trust certificates in consideration for shares of this corporation or any other corporation.

SECTION 26. Amends Section 21.357, Business Organizations Code, as follows:

Sec. 21.357. New heading: RECORD DATE FOR PURPOSE OF SHAREHOLDERS' MEETING. Requires that the record date for the purpose of determining shareholders entitled to notice of or to vote at a shareholders' meeting or any adjournment of the meeting, as provided by the directors in accordance with Section 6.101, be at least 10 days before the date of the shareholders' meeting, rather than be at least 10 days before the date on which the particular action requiring the determination of shareholders is to be taken.

SECTION 27. Amends Section 21.415(a), Business Organizations Code, to provide that the act of a majority of the directors present at a meeting at which a quorum is present at the time of the act is the act of the board of directors of a corporation, unless the act of a greater number is required by the certificate of formation or bylaws of the corporation or by this code.

SECTION 28. Amends Section 21.418, Business Organizations Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that this section applies to a contract or transaction between a corporation and:

- (1) one or more directors or officers, or one or more affiliates or associates of one or more directors or officers, of the corporation;
- (2) an entity or other organization in which one or more directors or officers, or one or more affiliates or associates of one or more directors or officers, of the corporation is a managerial official, or has a financial interest.

Makes nonsubstantive changes.

(b) Provides that an otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable, and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of certain conditions is satisfied. Deletes existing text providing that an otherwise valid contract or transaction described by Subsection (a) is valid, notwithstanding that the director or officer having

the relationship or interest described by Subsection (a) is present at or participates in the meeting of the board of directors, or of a committee of the board that authorizes the contract or transaction, or votes or signs, in the person's capacity as a director or committee member, a unanimous written consent of directors or committee members to authorize the contract or transaction if certain conditions are satisfied.

(d) Authorizes a person who has the relationship or interest described by Subsection (a) to:

(1) be present at or participate in and, if the person is a director or committee member, to vote at a meeting of the board of directors or of a committee of the board that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a director or committee member, a unanimous written consent of the directors or committee members to authorize the contract or transaction.

(e) Provides that if at least one of the conditions of Subsection (b) is satisfied, neither the corporation nor any of the corporation's shareholders will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

SECTION 29. Amends Section 21.453, Business Organizations Code, by adding Subsections (f) and (g), as follows:

(f) Authorizes the board of directors of the corporation, if after the adoption of a resolution under Subsection (b) the board of directors of the corporation determines that the plan of conversion is not advisable, to submit the plan of conversion to the corporation's shareholders with a recommendation that the shareholders not approve the plan of conversion.

(g) Authorizes a plan of conversion for a corporation to include a provision requiring that the plan of conversion be submitted to the shareholders of the corporation, regardless of whether the board of directors determines, after adopting a resolution or making a determination under this section, that the plan of conversion is not advisable and recommends that the shareholders not approve the plan of conversion.

SECTION 30. Amends Section 21.601(1), Business Organizations Code, to redefine "issuing public corporation."

SECTION 31. Amends Section 21.603, Business Organizations Code, as follows:

Sec. 21.603. New heading: **BENEFICIAL OWNER OF SHARES OR OTHER SECURITIES.** (a) Creates this subsection from existing text of Subsections (a) and (b). Provides that for purposes of this subchapter, rather than chapter, a person is a beneficial owner of shares or other securities, rather than shares or similar securities, if the person individually, or through an affiliate or associate, directly or indirectly beneficially owns the shares or other securities or has the right to:

(1) acquire the shares or other securities immediately or after the passage of time according to an oral or written agreement, arrangement, or understanding, or on the exercise of conversion rights, exchange rights, warrants, or options;

(2) vote the shares or other securities according to an oral or written agreement, arrangement, or understanding; or

(3) acquire, hold or dispose of, or vote the shares or other securities, rather than subject to Subsection (c), acquire, hold or dispose of, or vote shares or similar

securities, with another person who individually, or through an affiliate or associate beneficially owns, directly or indirectly, the shares or other securities. Makes conforming and nonsubstantive changes.

(b) Redesignates existing Subsection (c) as Subsection (b). Provides that a person, however, is not considered a beneficial owner of share or other securities for purposes of this subchapter if certain conditions apply. Makes conforming and nonsubstantive changes.

SECTION 32. Amends Section 21.701(1), Business Organizations Code, to redefine "close corporation."

SECTION 33. Amends Section 22.153(a), Business Organizations Code, to require a corporation with members who have voting rights, except as provided by Subsection (b) or by the corporation's certificate of formation, to hold an annual meeting of the members at a time that is stated in or determined in accordance with the corporation's bylaws.

SECTION 34. Amends Section 22.230, Business Organizations Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that this section applies to a contract or transaction between a corporation and one or more directors, officers, or members, or one or more affiliates or associations of one or more directors, officers, or members, of the corporation, or an entity or other organization in which one or more directors, officers, or members, or one or more affiliates or associates of one or more directors, officers, or members, of the corporation, is a managerial official or a member, or has a financial interest. Makes conforming changes.

(b) Provides that an otherwise valid and enforceable contract or transaction that is valid and enforceable, and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of the certain conditions is satisfied. Deletes existing text providing that an otherwise valid contract or transaction is valid, notwithstanding that a director, officer, or member of the corporation is present at or participate in the meeting of the board of directors, of a committee of the board, or of the members that authorize the contract or transaction, or votes to authorize the contract or transaction, if any one of certain conditions is satisfied.

(d) Authorizes a person who has the relationship or interest described by Subsection (a) to be present at or participate in and, if the person is a director, member, or committee member, to vote at a meeting of the board of directors, of the members, or of a committee of the board that authorizes the contract or transaction, or to sign, in the person's capacity as a director, member, or committee member, a written consent of directors, members, or committee members to authorize the contract or transaction.

(e) Provides that if at least one of the conditions of Subsection (b) is satisfied, neither the corporation nor any of the corporation's shareholders will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

SECTION 35. Amends Section 101.054, Business Organizations Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Includes among certain provisions that may not be waived or modified in the company agreement of a limited liability company (LLC) Sections 101.602(b) (relating to the enforceability of obligations and expenses of series against assets) and 101.613 (Distributions), and deletes Section 101.502 (Right to Examine Records and Other Certain Information).

(e) Prohibits the company agreement from unreasonably restricting a person's right of access to records and information under Section 101.502

SECTION 36. Amends Section 101.106, Business Organizations Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Authorizes a membership interest to be community property under applicable law.

(a-2) Provides that a member's right to participate in the management and conduct of the business of the LLC is not community property.

SECTION 37. Amends Subchapter C, Chapter 101, Business Organizations Code, by adding Section 101.1115, as follows:

Sec. 101.1115. EFFECT OF DEATH OR DIVORCE ON MEMBERSHIP INTEREST.

(a) Provides that for purposes of this code:

(1) on the divorce of a member, the member's spouse, to the extent of the spouse's membership interest, if any, is an assignee of the membership interest;

(2) on the death of a member, the member's surviving spouse, if any, and an heir, devisee, personal representative, or other successor of the member, to the extent of their respective membership interest, are assignees of the membership interest; and

(3) on the death of a member's spouse while the member is alive, an heir, devisee, personal representative, or other successor of the spouse, other than the member, to the extent of their respective membership interest, if any, is an assignee of the membership interest.

(b) Provides that this chapter does not impair an agreement for the purchase or sale of a membership interest at any time, including on the death or divorce of an owner of the membership interest.

SECTION 38. Amends Section 101.254(a), Business Organizations Code, to provide that, except as provided by this title and Title 1, each governing person of a LLC and each officer, rather than each officer or agent, of an LLC vested with actual or apparent authority by the governing authority of the company is an agent of the company for purposes of carrying out the company's business.

SECTION 39. Amends Section 101.255, Business Organizations Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that this section applies to a contract or transaction between an LLC and:

(1) one or more governing persons or officers, or one or more affiliates or associates of one or more governing persons or officers of the company; or

(2) an entity or other organization in which one or more governing persons or officers, or one or more affiliates or associations of one or more governing persons or officers, of the company is a managerial official, or has a financial interest.

Makes conforming and nonsubstantive changes.

(b) Provides that an otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of certain conditions is met. Deletes existing text providing that an otherwise valid contract or transaction

described by Subsection (a) is valid, notwithstanding that the governing person or officer having the relationship or interest described by Subsection (a) is present at or participates in the meeting of the governing authority, or of a committee of the governing authority, that authorizes the contract or transaction or votes or signs, in the person's capacity as a governing person or committee member, a written consent of governing persons or committee members to authorize the contract or transaction, if any one of certain conditions is met.

(d) Authorizes a person who has the relationship or interest described by Subsection (a) to:

(1) be present at or participate in and, if the person is a governing person or committee member, to vote at a meeting of the governing authority or of a committee of the governing authority that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a governing person or committee member, a written consent of the governing persons or committee members to authorize the contract or transaction.

(e) Provides that if at least one of the conditions of Subsection (b) is satisfied, neither the company nor any of the company's members will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

SECTION 40. Amends Section 101.357(b), Business Organizations Code, to authorize a manager or committee member of an LLC, to vote, in person, or if authorized by the company agreement, by a proxy executed in writing by the manager or committee member, as appropriate, rather than to authorize a manager or committee member if authorized by the company agreement.

SECTION 41. Amends Section 101.611(b), Business Organizations Code, to provide that Section 101.206, rather than Section 101.207, does not apply to a distribution with respect to the series.

SECTION 42. Amends Section 151.003(d), Business Organizations Code, to provide that receipt of notice by a general partner of a fact relating to the partnership is effective immediately as notice to the partnership unless fraud against the partnership is committed by or with the consent of the partner receiving the notice.

SECTION 43. Amends Section 152.304(a), Business Organizations Code, to provide that, except as provided by Subsection (b) (relating to a person's liability) or Section 152.801(a), all partners are jointly and severally liable for all obligations, rather than for a debt or obligation, of the partnership unless otherwise agreed by the claimant, or provided by law. Makes a nonsubstantive change.

SECTION 44. Amends Subchapter E, Chapter 152, Business Organizations Code, by adding Section 152.308, as follows:

Sec. 152.308. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) Authorizes a court having jurisdiction, on an application by a judgment creditor of a partner or any other owner of a partnership interest, to charge the partnership interest of the judgment debtor to satisfy the judgment.

(b) Provides that to the extent that the partnership interest is charged in the manner provided by Subsection (a), the judgment creditor has only the right to receive any distribution to which the judgment debtor would otherwise be entitled in respect of the partnership interest.

(c) Provides that a charging order constitutes a lien on the judgment debtor's partnership interest. Prohibits the charging order lien from being foreclosed on under this code or any other law.

(d) Provides that the entry of a charging order is the exclusive remedy by which a judgment creditor of a partner or of any other owner of a partnership interest may satisfy a judgment out of the judgment debtor's partnership interest.

(e) Provides that this section does not deprive a partner or other owner of a partnership interest of a right under exemption laws with respect to the judgment debtor's partnership interest.

(f) Provides that a creditor of a partner or of any other owner of a partnership interest does not have the right to obtain possession of, or otherwise exercise legal or equitable remedies with respect to, the property of the LP.

SECTION 45. Amends Sections 152.406(a) and (c), Business Organizations Code, as follows:

(a) Provides that, for purposes of this code:

(1) on the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, if any, is a transferee of the partnership interest;

(2) on the death of a partner:

(A) if the partnership interest of the deceased partner is subject to redemption under Subchapter H (Redemption of Withdrawing Partner's or Transferee's Interest), the partner's surviving spouse, if any, and an heir, devisee, personal representative, or other successor of the partner, to the extent of their respective right to the redemption price, are creditors of the partnership until the redemption price is paid; or

(B) if the partnership interest of the deceased partner is not subject to redemption under Subchapter H, the partner's surviving spouse, if any, and an heir, devisee, personal representative, or other successor of the partner, to the extent of their respective partnership interest, are transferees of the partnership interest; and

(3) on the death of a partner's spouse, an heir, devisee, personal representative, or other successor of the spouse, other than the partner, to the extent of their respective partnership interest, if any, is a transferee of the partnership interest.

Deletes existing text of Subdivision (2) providing that, for the purposes of this code, on the divorce of a partner, the partner's spouse, to the extent of the spouse's partnership interest, is a transferee of the partnership interest from the partner. Deletes existing text of Subdivision (3) providing that on the death of a partner, the partner's surviving spouse, if any, and an heir, legatee, or personal representative of the partner, to the extent of their respective partnership interest, is a transferee of the partnership interest from the partner.

(c) Provides that this chapter does not impair an agreement for the purchase or sale of a partnership interest at any time, including on the death or divorce of an owner of the partnership interest.

SECTION 46. Amends Section 152.707(b), Business Organizations Code, to provide that in settling accounts among the partners, the partnership interest of a withdrawn partner that is redeemed, under Section 152.610, rather than is not redeemed under Subchapter H (Redemption of Withdrawing Partner's or Transferee's Interest), is credited with a share of any profits for the

period after the partner's withdrawal but is charged with a share of losses for that period only to the extent of profits credited for that period.

SECTION 47. Amends Section 152.801, Business Organizations Code, as follows:

Sec. 152.801. LIABILITY OF PARTNER. (a) Provides that, except as provided by the partnership agreement, a partner is not personally liable to any person, including a partner, directly or indirectly, by contribution, indemnity, or otherwise, for any obligation of the partnership incurred while the partnership is an LLP. Deletes existing text providing that, except as provided by Subsection (b) or the partnership agreement, a partner in an LLP is not personally liable to any person, including a partner, directly or indirectly, by contribution, indemnity, or otherwise for a debt or obligation of the partnership incurred while the partnership is an LLP.

(b) Deletes existing text of Subsection (b) providing that a partner in an LLP is not personally liable for a debt or obligation of the partnership arising from an error, omission, negligence, incompetence, or malfeasance committed by another partner or representative of the partnership while the partnership is an LLP and in the course of the partnership unless the first partner was supervising or directing the other partner or representative when the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative; was directly involved in a specific activity in which the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative; or has notice or knowledge of the error, omission, negligence, incompetence, or malfeasance by the other partner or representative at the time of the occurrence and then failed to take reasonable action to prevent or cure the error, omission, negligence, incompetence, or malfeasance.

Redesignates existing Subsection (c) as Subsection (b). Provides that Sections 2.101(1) (relating to general powers), 152.305 (Remedy), and 152.306 (Enforcement of Remedy) do not limit the effect of Subsection (a) in an LLP.

(c) Creates a new Subsection (c) from text of existing Subsection (d). Provides that, for purposes of this section, an obligation is incurred while a partnership is an LLP if:

(1) the obligation relates to an action or omission occurring while the partnership is an LLP; or

(2) the obligation arises under a contract or commitment entered into while the partnership is an LLP.

Deletes existing text of Subsection (d) defining "representative."

(d) Redesignates existing Subsection (e) as Subsection (d). Provides that Subsection (a) does not affect certain liabilities and actions, including the liability of a partnership to pay its obligations from partnership property, rather than that Subsections (a) and (b) do not affect certain liabilities and actions, including liability of a partnership to pay its debts and obligations.

(e) Redesignates existing Subsection (f) as Subsection (e). Makes a conforming change.

SECTION 48. Amends Sections 152.802(a), (f), and (j), Business Organizations Code, as follows:

(a) Requires a partnership, to become an LLP, in addition to complying with Section 152.803, rather than Sections 152.803 (Name) and 152.804 (Insurance or Financial Responsibility), to file an application with the secretary of state in accordance with Chapter 4 (Filings) and this section. Makes a conforming change.

(f) and (j) Makes a conforming change.

SECTION 49. Amends Section 152.906(b), Business Organizations Code, to make a conforming change.

SECTION 50. Amends Section 152.910(b), Business Organizations Code, to provide that a partner of a foreign LLP is not liable for an obligation, rather than a debt or obligation, of the partnership solely because the partnership transacted business in this state without being registered.

SECTION 51. Amends Section 152.911(b), Business Organizations Code, to make a conforming change.

SECTION 52. Amends Section 153.004(a), Business Organizations Code, as follows:

(a) Prohibits the following provisions of Title 1, except as provided by this section, from being waived or modified in the partnership agreement of an LP:

(1)-(2) Makes no changes to these subdivisions;

(3) Chapter 3, other than Subchapter C (Governing Persons and Officers) and E (Certificates Representing Ownership Interest) of that chapter and Section 3.151 (Books and Records for All Filing Entities) (provided, that in all events a partnership agreement may not validly wave or modify Section 153.551 or unreasonably restrict a partner's right of access to books and records under Section 153.552 (Examination of Records and Information), rather than Sections 153.551 (Records) and 153.552; or

(4) Makes no change to this subdivision.

SECTION 53. Amends Section 153.103, Business Organizations Code, as follows:

Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN BUSINESS FOR LIABILITY PURPOSES. Provides that for purposes of this section and Sections 153.102 (Liability to Third Parties), 153.104 (Enumeration of Actions Not Exclusive), and 153.105 (Creation of Rights), a limited partner does not participate in the control of the business because the limited partner has or has acted in one or more of certain capacities or possesses or exercises one or more of certain powers, including:

(1)-(8) Makes no changes to these subdivisions.

(9) proposing, approving, or disapproving, by vote or otherwise, one or more of certain matters, including the merger, conversion, or interest exchange with respect to an LP, rather than the merger or conversion of an LP.

SECTION 54. Amends Section 153.158(b), Business Organizations Code, to provide that the owner of a partnership interest of the withdrawn general partner has the status of an assignee under Subchapter F (Partnership Interests), rather than under Subchapter F, Section 115.113, and Section 153.555.

SECTION 55. Amends Section 153.501(b), Business Organizations Code, to make a nonsubstantive change.

SECTION 56. Amends Section 153.504, Business Organizations Code, to make a nonsubstantive change.

SECTION 57. Amends Section 153.551(a), Business Organizations Code, to require that a domestic LP maintain the certain records in its principal office in the United States or make the records available in that office not later than the fifth day after the date on which a written

request under Section 153.552(a) (relating to the examination of records) is received, including, unless contained in the written partnership agreement, certain written statements including, a written statement of the events requiring additional contributions to be made or the date on which additional contributions are to be made, rather than the date on which additional contributions are to be made or the date of events requiring additional contributions to be made.

SECTION 58. Amends Section 200.317, Business Organizations Code, by amending Subsections (a) and (b) and adding Subsections (d) and (e), as follows:

(a) Provides that this section applies to a contract or transaction between a real estate investment trust and:

(1) one or more trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust, rather than one or more of the trust's trust managers or officers: or

(2) an entity or other organization in which one or more trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust, is a managerial official, or has a financial interest.

Makes conforming and nonsubstantive changes.

(b) Provides that an otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of the certain conditions is satisfied.

Deletes existing text providing that an otherwise valid contract or transaction described by Subsection (a) is valid, notwithstanding that the trust manager or officer having the relationship or interest described by Subsection (a) is present at or participates in the meeting of the trust managers, or of a committee of the trust managers that authorizes the contract or transaction or votes or signs, in the person's capacity as a trust manager or committee member, a unanimous written consent of trust managers or committee members to authorize the contract or transaction, if certain conditions are met.

(d) Authorizes a person who has the relationship or interest described by Subsection (a) to be present at or participate in and, if the person is a trust manager, or committee member, vote at a meeting of the trust managers, or of a committee of the trust managers, that authorize the contract or transaction, or sign, in the person's capacity as a trust manager or committee member, a unanimous written consent of the trust managers or committee members to authorize the contract or transaction.

(e) Provides that if at least one of the conditions of Subsection (b) is satisfied, neither the trust nor any of the trust's shareholders will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

SECTION 59. Amends Sections 252.011(b) and (f), Business Organizations Code, to make conforming changes.

SECTION 60. Amends Section 402.003, Business Organizations Code, as follows:

Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC ENTITY.

(a) Creates this subsection from existing text. Authorizes a domestic entity formed before the effective date of this code to voluntarily elect to adopt and become subject to this code by taking certain actions.

(b) Provides that a domestic entity that elected to adopt and become subject to this code as provided by Subsection (a) is not considered to have failed to comply with Subsection (a)(2) because the entity's governing documents do not state the type of entity formed, or because a circumstance described by Section 402.0051 applies.

SECTION 61. Amends Section 402.004, Business Organizations Code, as follows:

Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN FILING ENTITY. (a) Creates this subsection from existing text. Makes no further changes.

(b) Provides that a foreign filing entity that elected to adopt and become subject to this code as provided by Subsection (a) is not considered to have failed to comply with Subsection (a)(2) because the application for registration or any amendment to the registration does not state the entity's type, or does not include the appointment of the secretary of state as agent for service of process under the circumstances provided by Section 5.251 (Failure to Designate Registered Agent), or because a circumstance described by Section 402.0051 applies.

SECTION 62. Amends Section 402.005, Business Organizations Code, by adding Subsection (c), as follows:

(c) Provides that a domestic or foreign filing entity is not considered to have failed to comply with Subsection (a)(3) or (4) because the certificate of formation does not state the type of entity formed; because the application for registration or any amendment to the registration does not state the entity's type, or does not include the appointment of the secretary of state as agent for service of process, notice, or demand under the circumstances provided by Section 5.251; or because a circumstance described by Section 402.0051 applies.

SECTION 63. Amends Chapter 402, Business Organizations Code, by adding Section 402.0051, as follows:

Sec. 402.0051. EFFECT OF REFERENCES TO PRIOR LAW AND USE OF SYNONYMOUS TERMS. (a) Provides that a governing document or a filing instrument, including a certificate of formation or application for registration, is not considered to have failed to conform to this code if the governing document or filing instrument contains a reference to prior law that was applicable at the time of its filing or adoption; contains a provision that was authorized by prior law at the time of its filing or adoption; includes a term or phrase described by Section 1.006 (Synonymous Terms); or includes a term or phrase from prior law that is different from the corresponding term or phrase used in this code.

(b) Provides that a reference in a governing document or filing instrument to a statute or provision of a statute in effect before January 1, 2010, that was repealed by this code is considered to be a reference to the provision or provisions of this code that correspond to the repealed statute or provision unless the governing document or filing instrument expressly provides otherwise.

(c) Provides that an entity is not considered to have failed to comply with this code if a governing document or filing instrument makes a reference to prior law rather than to the corresponding provisions of the prior law in this code.

(d) Provides that for purposes of this section, prior law includes a predecessor statute to the prior law.

SECTION 64. Amends the heading to Section 402.013, Business Organizations Code, to read as follows:

Sec. 402.013. REINSTATEMENT OF ENTITIES CANCELED, REVOKED, DISSOLVED, INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER PRIOR LAW.

SECTION 65. Amends Section 402.013, Business Organizations Code, by adding Subsections (b-1) and (b-2), as follows:

(b-1) Authorizes a domestic filing entity whose existence has been voluntarily dissolved or involuntarily dissolved under prior law or whose certificate of formation or equivalent governing document has been canceled, revoked, suspended, or forfeited under prior law, on or after January 1, 2010, to reinstate the entity in accordance with this code.

(b-2) Authorizes a foreign filing entity whose registration to do business has been canceled, revoked, suspended, or forfeited under prior law, on or after January 1, 2010, to reinstate its registration in accordance with this code.

SECTION 66. (a) Provides that in this section "governing document" has the meaning assigned by Section 1.002(36) (relating to defining governing documents), Business Organizations Code. Provides that in this section "prior law" has the meaning assigned by Section 401.001 (Definitions), Business Organizations Code.

(b) Provides that in this section applies only to a domestic entity whose existence has been voluntarily dissolved under prior law or whose certificate of formation or equivalent governing document has been canceled under prior law.

(c) Provides that the reinstatement of a domestic filing entity that was filed in accordance with Chapter 11 (Winding Up and Termination of Domestic Entity) and Section 402.003, Business Organizations Code, after December 31, 2005, and before January 1, 2010, is validated in all respects as of the date on which the reinstatement occurred.

SECTION 67. Repealers: Sections 21.001 (Applicability of Chapter), 152.802(i) (relating to compliance of a partnership), and 152.804 (Insurance or Financial Responsibility), Business Organizations Code.

SECTION 68. Effective date: September 1, 2011.