

BILL ANALYSIS

Senate Research Center

S.B. 1568
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Business & Commerce
8/4/2011
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Section 21.552(b), Business Organizations Code, has caused confusion in the Texas legal community about whether a shareholder has standing to institute or maintain a derivative proceeding after a corporation's shares are converted into cash or securities of another entity pursuant to a merger. This provision appears to conflict with Section 21.552(a), Business Organizations Code, which emphasizes continuity of shareholder status during a derivative proceeding. In *Somers v. Crane*, 295 S.W.3d 5, 13 (Tex. App.–Houston [1st Dist.] Mar. 26, 2009), a Texas appellate court clarified that "a shareholder must own stock at the time of filing a derivative suit and continuously through the completion of the suit to have derivative standing."

S.B. 1568 amends current law relating to shareholder standing after a merger.

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 21.552, Business Organizations Code, as follows:

Sec. 21.552. STANDING TO BRING PROCEEDING. Deletes existing Subsection (a) designation. Makes no further changes.

Deletes existing Subsection (b) prohibiting Subchapter J (Fundamental Business Transactions) or Chapter 10 (Mergers, Interest Exchanges, Conversions, and Sales of Assets), to the extent a shareholder of a corporation has standing to institute or maintain a derivative proceeding on behalf of the corporation immediately before a merger, from being construed to limit or terminate the shareholder's standing after the merger.

SECTION 2. Effective date: September 1, 2011.