

By: Carona

S.B. No. 748

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 adding Subdivisions (55-a), (69-c), (69-d), and (69-e) and amending Subdivision (69-b) to read as follows:

(55-a) "National securities exchange" means an exchange registered as a national securities exchange under Section 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f).

(69-b) "Person" means an individual or a corporation, partnership, limited liability company, business trust, trust, association, or other organization, estate, government or governmental subdivision or agency, or other legal entity ~~[has the meaning assigned by Section 311.005, Government Code].~~

(69-c) "Plan of conversion" means a document that conforms with the requirements of Section 10.103.

(69-d) "Plan of exchange" means a document that conforms with the requirements of Section 10.052.

(69-e) "Plan of merger" means a document that conforms with the requirements of Sections 10.002 and 10.003.

SECTION 2. Subsection (b), Section 6.101, Business Organizations Code, is amended to read as follows:

(b) Subject to this code and the governing documents of a domestic entity, the governing authority of the entity, in advance,

1 may provide a record date for determining the owners or members of
2 the entity, except that the date may not be earlier than the 60th
3 day before the date the action requiring the determination of
4 owners or members is originally to be taken.

5 SECTION 3. Subsection (a), Section 6.205, Business
6 Organizations Code, is amended to read as follows:

7 (a) Any photographic, photostatic, facsimile, or similarly
8 reliable reproduction of a consent in writing signed by an owner,
9 member, or governing person of a filing entity may be substituted or
10 used instead of the original writing for any purpose for which the
11 original writing could be used[, ~~if the reproduction is a complete~~
12 ~~reproduction of the entire original writing~~].

13 SECTION 4. Subdivision (1) and (2), Section 8.001, Business
14 Organizations Code, are amended to read as follows:

15 (1) "Delegate" means a person who, while serving as a
16 governing person of an enterprise, is or was serving [~~as a~~
17 ~~representative of the enterprise~~] at the request of that enterprise
18 as a representative of [~~at~~] another enterprise, [~~or~~] another
19 organization, or [~~to~~] an employee benefit plan. A person is a
20 delegate to an employee benefit plan if the performance of the
21 person's official duties to the enterprise also imposes duties on
22 or otherwise involves service by the person to the plan or
23 participants in or beneficiaries of the plan.

24 (2) "Enterprise" means a domestic entity or an
25 organization subject to this chapter. The term includes [~~including~~
26 ~~including~~] a predecessor enterprise [~~domestic entity or~~
27 ~~organization~~].

1 SECTION 5. Subsection (d), Section 8.103, Business
2 Organizations Code, is amended to read as follows:

3 (d) With respect to a limited partnership, a vote of a
4 majority-in-interest of the limited partners in a vote that
5 excludes the interest held by each general partner who is not
6 disinterested and independent constitutes a determination under
7 Subsection (a)(4). For purposes of this subsection,
8 "majority-in-interest" means, with respect to limited partners,
9 limited partners who own more than 50 percent of the current
10 percentage or other interest in the profits of the partnership that
11 is owned by all of the limited partners.

12 SECTION 6. Subsection (d), Section 8.104, Business
13 Organizations Code, is amended 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). For purposes of this subsection,
19 "majority-in-interest" means, with respect to limited partners,
20 limited partners who own more than 50 percent of the current
21 percentage or other interest in the profits of the partnership that
22 is owned by all of the limited partners.

23 SECTION 7. Subsection (d), Section 8.105, Business
24 Organizations Code, is amended to read as follows:

25 (d) Notwithstanding any authorization or determination
26 specified in this chapter, an enterprise may pay or reimburse, in
27 advance of the final disposition of a proceeding and on terms the

1 enterprise considers appropriate, reasonable expenses incurred by:

2 (1) a former governing person [~~managerial official~~] or
3 delegate who was, is, or is threatened to be made a respondent in
4 the proceeding; [✓] or

5 (2) a present or former employee, [~~or~~] agent, or
6 officer who is not a governing person of the enterprise and who was,
7 is, or is threatened to be made a respondent in the proceeding.

8 SECTION 8. Section 8.151, Business Organizations Code, is
9 amended by adding Subsection (c-1) to read as follows:

10 (c-1) With respect to a limited partnership, a vote of a
11 majority-in-interest of the limited partners constitutes approval
12 of the owners for purposes of Subsection (c).

13 SECTION 9. Subsection (b), Section 9.007, Business
14 Organizations Code, is amended to read as follows:

15 (b) The application for registration must state:

16 (1) the partnership's name;

17 (2) the federal taxpayer [~~tax~~] identification number
18 of the partnership;

19 (3) the partnership's jurisdiction of formation;

20 (4) the date of initial registration as a limited
21 liability partnership under the laws of the jurisdiction [~~state~~] of
22 formation;

23 (5) the date the foreign entity began or will begin to
24 transact business in this state;

25 (6) that the partnership exists as a valid limited
26 liability partnership under the laws of the jurisdiction [~~state~~] of
27 its formation;

1 (7) the number of partners at the date of the
2 statement;

3 (8) each business or activity that the partnership
4 proposes to pursue in this state, which may be stated to be any
5 lawful business or activity under the laws of this state;

6 (9) the address of the principal office of the
7 partnership;

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

11 (11) that the secretary of state is appointed the
12 agent of the partnership for service of process under the same
13 circumstances as set forth by Section 5.251 for a foreign filing
14 entity.

15 SECTION 10. Section 10.002, Business Organizations Code, is
16 amended to read as follows:

17 Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS. (a) A
18 plan of merger must be in writing and must include:

19 (1) the name of each organization that is a party to
20 the merger;

21 (2) the name of each organization that will survive
22 the merger;

23 (3) the name of each new organization that is to be
24 created by the plan of merger;

25 (4) a description of the organizational form of each
26 organization that is a party to the merger or that is to be created
27 by the plan of merger and its jurisdiction of formation;

1 (5) the manner and basis of converting or exchanging
2 any of the ownership or membership interests of each organization
3 that is a party to the merger into:

4 (A) ownership interests, membership interests,
5 obligations, rights to purchase securities, or other securities of
6 one or more of the surviving or new organizations;

7 (B) cash;

8 (C) other property, including ownership
9 interests, membership interests, obligations, rights to purchase
10 securities, or other securities of any other person or entity; or

11 (D) any combination of the items described by
12 Paragraphs (A)-(C);

13 (6) the identification of any of the ownership or
14 membership interests of an organization that is a party to the
15 merger that are to be canceled rather than converted or exchanged;

16 (7) the certificate of formation of each new domestic
17 filing entity to be created by the plan of merger;

18 (8) [~~(7)~~] the governing documents of each new domestic
19 nonfiling entity to be created by the plan of merger; and

20 (9) [~~(8)~~] the governing documents of each non-code
21 organization that:

22 (A) is to survive the merger or to be created by
23 the plan of merger; and

24 (B) is an entity that is not:

25 (i) organized under the laws of any state or
26 the United States; or

27 (ii) required to file its certificate of

1 formation or similar document under which the entity is organized
2 with the appropriate governmental authority.

3 (b) An item required by Subsections (a)(7)-(9) [~~(a)(6)-(8)~~]
4 may be included in the plan of merger by an attachment or exhibit to
5 the plan.

6 (c) If the plan of merger provides for a manner and basis of
7 converting or exchanging an ownership or membership interest that
8 may be converted or exchanged in a manner or basis different than
9 any other ownership or membership interest of the same class or
10 series of the ownership or membership interest, the manner and
11 basis of conversion or exchange must be included in the plan of
12 merger in the same manner as provided by Subsection (a)(5). A plan
13 of merger may provide for cancellation of an ownership or
14 membership interest while providing for the conversion or exchange
15 of other ownership or membership interests of the same class or
16 series as the ownership or membership interest to be canceled.

17 SECTION 11. Subsection (a), Section 10.008, Business
18 Organizations Code, is amended to read as follows:

19 (a) When a merger takes effect:

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

23 (2) all rights, title, and interests to all real
24 estate and other property owned by each organization that is a party
25 to the merger is allocated to and vested, subject to any existing
26 liens or other encumbrances on the property, in one or more of the
27 surviving or new organizations as provided in the plan of merger

1 without:

2 (A) reversion or impairment;

3 (B) any further act or deed; or

4 (C) any transfer or assignment having occurred;

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

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

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

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

1 (7) each new filing entity whose certificate of
2 formation is included in the plan of merger under this chapter, on
3 meeting any additional requirements, if any, of this code for its
4 formation, is formed as a domestic entity under this code as
5 provided by the plan of merger;

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

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

27 SECTION 12. Subsection (a), Section 10.052, Business

1 Organizations Code, is amended to read as follows:

2 (a) A plan of exchange must be in writing and must include:

3 (1) the name of each domestic entity the ownership or
4 membership interests of which are to be acquired;

5 (2) the name of each acquiring organization;

6 (3) if there is more than one acquiring organization,
7 the ownership or membership interests to be acquired by each
8 organization;

9 (4) the terms and conditions of the exchange; and

10 (5) the manner and basis of exchanging the ownership
11 or membership interests to be acquired for:

12 (A) ownership or membership interests,
13 obligations, rights to purchase securities, or other securities of
14 one or more of the acquiring organizations that is a party to the
15 plan of exchange;

16 (B) cash;

17 (C) other property, including ownership or
18 membership interests, obligations, rights to purchase securities,
19 or other securities of any other person or entity; or

20 (D) any combination of those items.

21 SECTION 13. Subsection (a), Section 10.103, Business
22 Organizations Code, is amended to read as follows:

23 (a) A plan of conversion must be in writing and must
24 include:

25 (1) the name of the converting entity;

26 (2) the name of the converted entity;

27 (3) a statement that the converting entity is

1 continuing its existence in the organizational form of the
2 converted entity;

3 (4) a statement of the type of entity that the
4 converted entity is to be and the converted entity's jurisdiction
5 of formation;

6 (5) if Sections 10.1025 and 10.109 do not apply, the
7 manner and basis of converting the ownership or membership
8 interests of the converting entity into ownership or membership
9 interests of the converted entity;

10 (6) any certificate of formation required to be filed
11 under this code if the converted entity is a filing entity;

12 (7) the certificate of formation or similar
13 organizational document of the converted entity if the converted
14 entity is not a filing entity; and

15 (8) if Sections 10.1025 and 10.109 apply, a statement
16 that the converting entity is electing to continue its existence in
17 its current organizational form and jurisdiction of formation after
18 the conversion takes effect.

19 SECTION 14. Subsection (b), Section 10.354, Business
20 Organizations Code, is amended to read as follows:

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

25 (1) the ownership interest, or a depository receipt in
26 respect of the ownership interest, held by the owner is part of a
27 class or series of ownership interests, or depository receipts in

1 respect of ownership interests, that are, on the record date set for
2 purposes of determining which owners are entitled to vote on the
3 plan of merger, conversion, or exchange, as appropriate:

4 (A) listed on a national securities exchange [~~or~~
5 ~~a similar system~~]; or

6 (B) [~~listed on the Nasdaq Stock Market or a~~
7 ~~successor quotation system;~~

8 [~~(C) designated as a national market security on~~
9 ~~an interdealer quotation system by the National Association of~~
10 ~~Securities Dealers, Inc., or a successor system;~~ or

11 [~~(D)~~] held of record by at least 2,000 owners;

12 (2) the owner is not required by the terms of the plan
13 of merger, conversion, or exchange, as appropriate, to accept for
14 the owner's ownership interest any consideration that is different
15 from the consideration to be provided to any other holder of an
16 ownership interest of the same class or series as the ownership
17 interest held by the owner, other than cash instead of fractional
18 shares or interests the owner would otherwise be entitled to
19 receive; and

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

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

1 ownership interests, or depository receipts in respect of ownership
2 interests, that are:

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

6 (ii) [~~approved for quotation as a national~~
7 ~~market security on an interdealer quotation system by the National~~
8 ~~Association of Securities Dealers, Inc., or a successor entity; or~~

9 [~~(iii)~~] held of record by at least 2,000
10 owners;

11 (B) cash instead of fractional ownership
12 interests the owner would otherwise be entitled to receive; or

13 (C) any combination of the ownership interests
14 and cash described by Paragraphs (A) and (B).

15 SECTION 15. Subsections (c) and (e), Section 10.355,
16 Business Organizations Code, are amended to read as follows:

17 (c) A notice required to be provided under Subsection (a) or
18 (b) must:

19 (1) be accompanied by a copy of this subchapter; and

20 (2) advise the owner of the location of the
21 responsible organization's principal executive offices to which a
22 notice required under Section 10.356(b)(1) or (3) [~~10.356(b)(2)~~]
23 may be provided.

24 (e) Not later than the 10th day after the date an action
25 described by Subsection (a)(1) takes effect, the responsible
26 organization shall give notice that the action has been effected to
27 each owner who voted against the action and sent notice under

1 Section 10.356(b)(1) [~~10.356(b)(2)~~].

2 SECTION 16. Subsections (b), (c), and (d), Section 10.356,
3 Business Organizations Code, are amended to read as follows:

4 (b) To perfect the owner's rights of dissent and appraisal
5 under Section 10.354, an owner:

6 (1) if the proposed action is to be submitted to a vote
7 of the owners at a meeting, must give to the domestic entity a
8 written notice of objection to the action that:

9 (A) is addressed to the entity's president and
10 secretary;

11 (B) states that the owner's right to dissent will
12 be exercised if the action takes effect;

13 (C) provides an address to which notice of
14 effectiveness of the action should be delivered or mailed; and

15 (D) is delivered to the entity's principal
16 executive offices before the meeting;

17 (2) with respect to the ownership interest for which
18 the rights of dissent and appraisal are sought:

19 (A) must vote against the action if the owner is
20 entitled to vote on the action and the action is approved at a
21 meeting of the owners; and

22 (B) may not consent to the action if the action is
23 approved by written consent; and

24 (3) [~~2~~] must give to the responsible organization a
25 demand in writing [~~notice dissenting to the action~~] that:

26 (A) is addressed to the president and secretary
27 of the responsible organization;

1 (B) demands payment of the fair value of the
2 ownership interests for which the rights of dissent and appraisal
3 are sought;

4 (C) provides to the responsible organization an
5 address to which a notice relating to the dissent and appraisal
6 procedures under this subchapter may be sent;

7 (D) states the number and class of the ownership
8 interests of the domestic entity owned by the owner and the fair
9 value of the ownership interests as estimated by the owner; and

10 (E) is delivered to the responsible organization
11 at its principal executive offices at the following time:

12 (i) not later than the 20th day after the
13 date the responsible organization sends to the owner the notice
14 required by Section 10.355(e) that the action has taken effect
15 ~~[before the action is considered for approval]~~, if the action was
16 approved by [is to be submitted to] a vote of the owners at a
17 meeting;

18 (ii) not later than the 20th day after the
19 date the responsible organization sends to the owner the [a] notice
20 required by Section 10.355(d)(2) that the action has taken effect
21 ~~[was approved by the requisite vote of the owners]~~, if the action
22 was approved by [is to be undertaken on] the written consent of the
23 owners; or

24 (iii) not later than the 20th day after the
25 date the responsible organization sends to the owner a notice that
26 the merger was effected, if the action is a merger effected under
27 Section 10.006.

1 (c) An owner who does not make a demand within the period
2 required by Subsection (b)(3)(E) or, if Subsection (b)(1) is
3 applicable, does not give the notice of objection before the
4 meeting of the owners [~~(b)(2)(E)~~] is bound by the action and is not
5 entitled to exercise the rights of dissent and appraisal under
6 Section 10.354.

7 (d) Not later than the 20th day after the date an owner makes
8 a demand under Subsection (b)(3) [~~this section~~], the owner must
9 submit to the responsible organization any certificates
10 representing the ownership interest to which the demand relates for
11 purposes of making a notation on the certificates that a demand for
12 the payment of the fair value of an ownership interest has been made
13 under this section. An owner's failure to submit the certificates
14 within the required period has the effect of terminating, at the
15 option of the responsible organization, the owner's rights to
16 dissent and appraisal under Section 10.354 unless a court, for good
17 cause shown, directs otherwise.

18 SECTION 17. Subsections (a), (d), and (e), Section 10.358,
19 Business Organizations Code, are amended to read as follows:

20 (a) Not later than the 20th day after the date a responsible
21 organization receives a demand for payment made by a dissenting
22 owner in accordance with Section 10.356(b)(3) [~~10.356~~], the
23 responsible organization shall respond to the dissenting owner in
24 writing by:

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

27 (2) rejecting the demand and including in the response

1 the requirements prescribed by Subsection (c).

2 (d) If the dissenting owner decides to accept the offer made
3 by the responsible organization under Subsection (c)(2), the owner
4 must provide to the responsible organization notice of the
5 acceptance of the offer not later than the 90th day after the date
6 the action that is the subject of the demand took effect [~~An offer~~
7 ~~made under Subsection (c)(2) must remain open for a period of at~~
8 ~~least 60 days from the date the offer is first delivered to the~~
9 ~~dissenting owner~~].

10 (e) If, not later than the 90th day after the date the action
11 that is the subject of the demand took effect, a dissenting owner
12 accepts an offer made by a responsible organization under
13 Subsection (c)(2) or [~~if~~] a dissenting owner and a responsible
14 organization reach an agreement on the fair value of the ownership
15 interests, the responsible organization shall pay the agreed amount
16 not later than the 120th [~~60th~~] day after the date the action that
17 is the subject of the demand took effect [~~the offer is accepted or~~
18 ~~the agreement is reached, as appropriate~~], if the dissenting owner
19 delivers to the responsible organization:

20 (1) endorsed certificates representing the ownership
21 interests if the ownership interests are certificated; or

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

24 SECTION 18. Section 11.057, Business Organizations Code, is
25 amended by adding Subsection (f) to read as follows:

26 (f) "Majority-in-interest" means, with respect to all or a
27 specified group of partners, partners who own more than 50 percent

1 of the current percentage or other interest in the profits of the
2 partnership that is owned by all of the partners or by the partners
3 in the specified group, as appropriate.

4 SECTION 19. Section 11.402, Business Organizations Code, is
5 amended to read as follows:

6 Sec. 11.402. JURISDICTION TO APPOINT RECEIVER. (a) A
7 court that has subject matter jurisdiction over specific property
8 of a domestic or foreign entity that is located in this state and is
9 involved in litigation has jurisdiction to appoint a receiver for
10 that property as provided by Section 11.403.

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

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

17 (2) order the liquidation of the property and business
18 of a domestic entity and appoint a receiver to effect that
19 liquidation as provided by Section 11.405.

20 SECTION 20. Subsection (b), Section 11.404, Business
21 Organizations Code, is amended to read as follows:

22 (b) A court may appoint a receiver under Subsection (a) only
23 if:

24 (1) circumstances exist that are considered by the
25 court to necessitate the appointment of a receiver to conserve the
26 property and business of the domestic entity and avoid damage to
27 interested parties;

1 (2) all other requirements of law are complied with;
2 and

3 (3) the court determines that all other available
4 legal and equitable remedies, including the appointment of a
5 receiver for specific property of the domestic entity under Section
6 11.402(a) [~~11.402~~], are inadequate.

7 SECTION 21. Subsection (a), Section 21.109, Business
8 Organizations Code, is amended to read as follows:

9 (a) A shareholders' agreement authorized by this subchapter
10 ceases to be effective when shares of the corporation are:

11 (1) listed on a national securities exchange [~~or~~
12 ~~similar system~~]; or

13 (2) [~~quoted on an interdealer quotation system of a~~
14 ~~national securities association or successor system; or~~

15 [~~(3)~~] regularly traded in a market maintained by one
16 or more members of a national or affiliated securities association.

17 SECTION 22. Subchapter C, Chapter 21, Business
18 Organizations Code, is amended by adding Section 21.110 to read as
19 follows:

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

25 SECTION 23. Section 21.203, Business Organizations Code, is
26 amended by adding Subsection (c) to read as follows:

27 (c) This section and Sections 21.204 through 21.208 do not

1 invalidate or impair a corporation's right or power to grant an
2 enforceable nonstatutory preemptive right in:

3 (1) a contract between the corporation and a
4 shareholder or other person; or

5 (2) the governing documents of the corporation.

6 SECTION 24. Subsection (a), Section 21.206, Business
7 Organizations Code, is amended to read as follows:

8 (a) An action brought against a corporation, the board of
9 directors or an officer, shareholder, or agent of the corporation,
10 or an owner of a beneficial interest in shares of the corporation
11 for the violation of a preemptive right of a shareholder under
12 Sections 21.203 and 21.204 must be brought not later than the
13 earlier of:

14 (1) the first anniversary of the date written notice
15 is given to each shareholder whose preemptive right was violated;
16 or

17 (2) the fourth anniversary of the latest of:

18 (A) the date the corporation issued the shares,
19 securities, or rights;

20 (B) the date the corporation sold the shares,
21 securities, or rights; or

22 (C) the date the corporation otherwise
23 distributed the shares, securities, or rights.

24 SECTION 25. Subsection (b), Section 21.222, Business
25 Organizations Code, is amended to read as follows:

26 (b) It is a defense to an action brought under this section
27 that the person suing:

1 (1) has, within the two years preceding the date the
2 action is brought, sold or offered for sale a list of shareholders
3 or of holders of voting trust certificates [~~in consideration~~] for
4 shares of the corporation or any other corporation;

5 (2) has aided or abetted a person in procuring a list
6 of shareholders or of holders of voting trust certificates for the
7 purpose described by Subdivision (1);

8 (3) has improperly used information obtained through a
9 prior examination of the books and account records, minutes, or
10 share transfer records of the corporation or any other corporation;
11 or

12 (4) was not acting in good faith or for a proper
13 purpose in making the person's request for examination.

14 SECTION 26. Section 21.357, Business Organizations Code, is
15 amended to read as follows:

16 Sec. 21.357. RECORD DATE FOR PURPOSE OF SHAREHOLDERS'
17 MEETING [~~OTHER THAN WRITTEN CONSENT TO ACTION~~]. The record date for
18 the purpose of determining shareholders entitled to notice of or to
19 vote at a shareholders' meeting or any adjournment of the meeting,
20 as provided by the directors in accordance with Section 6.101, must
21 be at least 10 days before the date of the shareholders' meeting [~~on~~
22 ~~which the particular action requiring the determination of~~
23 ~~shareholders is to be taken~~].

24 SECTION 27. Subsection (a), Section 21.415, Business
25 Organizations Code, is amended to read as follows:

26 (a) The act of a majority of the directors present at a
27 meeting at which a quorum is present at the time of the act is the

1 act of the board of directors of a corporation, unless the act of a
2 greater number is required by the certificate of formation or
3 bylaws of the corporation or by this code.

4 SECTION 28. Section 21.418, Business Organizations Code, is
5 amended by amending Subsections (a) and (b) and adding Subsections
6 (d) and (e) to read as follows:

7 (a) This section applies [~~only~~] to a contract or transaction
8 between a corporation and:

9 (1) one or more [~~of the corporation's~~] directors or
10 officers, or one or more affiliates or associates of one or more
11 directors or officers, of the corporation; or

12 (2) an entity or other organization in which one or
13 more [~~of the corporation's~~] directors or officers, or one or more
14 affiliates or associates of one or more directors or officers, of
15 the corporation:

16 (A) is a managerial official; or

17 (B) has a financial interest.

18 (b) An otherwise valid and enforceable contract or
19 transaction described by Subsection (a) is valid and enforceable,
20 and is not void or voidable, notwithstanding any relationship or
21 interest described by Subsection (a), if any one of the following
22 conditions is satisfied [~~notwithstanding that the director or~~
23 ~~officer having the relationship or interest described by Subsection~~
24 ~~(a) is present at or participates in the meeting of the board of~~
25 ~~directors, or of a committee of the board that authorizes the~~
26 ~~contract or transaction, or votes or signs, in the person's~~
27 ~~capacity as a director or committee member, a unanimous written~~

1 ~~consent of directors or committee members to authorize the contract~~
2 ~~or transaction, if]~~:

3 (1) the material facts as to the relationship or
4 interest described by Subsection (a) and as to the contract or
5 transaction are disclosed to or known by:

6 (A) the corporation's board of directors or a
7 committee of the board of directors, and the board of directors or
8 committee in good faith authorizes the contract or transaction by
9 the approval of the majority of the disinterested directors or
10 committee members, regardless of whether the disinterested
11 directors or committee members constitute a quorum; or

12 (B) the shareholders entitled to vote on the
13 authorization of the contract or transaction, and the contract or
14 transaction is specifically approved in good faith by a vote of the
15 shareholders; or

16 (2) the contract or transaction is fair to the
17 corporation when the contract or transaction is authorized,
18 approved, or ratified by the board of directors, a committee of the
19 board of directors, or the shareholders.

20 (d) A person who has the relationship or interest described
21 by Subsection (a) may:

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

26 (2) sign, in the person's capacity as a director or
27 committee member, a unanimous written consent of the directors or

1 committee members to authorize the contract or transaction.

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

10 SECTION 29. Section 21.453, Business Organizations Code, is
11 amended by adding Subsections (f) and (g) to read as follows:

12 (f) If after the adoption of a resolution under Subsection
13 (b) the board of directors of the corporation determines that the
14 plan of conversion is not advisable, the plan of conversion may be
15 submitted to the shareholders of the corporation with a
16 recommendation that the shareholders not approve the plan of
17 conversion.

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

25 SECTION 30. Subdivision (1), Section 21.601, Business
26 Organizations Code, is amended to read as follows:

27 (1) "Issuing public corporation" means a domestic

1 corporation that has:

2 (A) 100 or more shareholders of record as shown
3 by the share transfer records of the corporation;

4 (B) a class or series of the corporation's voting
5 shares registered under the Securities Exchange Act of 1934 (15
6 U.S.C. Section 77b et seq.), as amended; or

7 (C) a class or series of the corporation's voting
8 shares qualified for trading on [~~in~~] a national securities exchange
9 [~~market system~~].

10 SECTION 31. Section 21.603, Business Organizations Code, is
11 amended to read as follows:

12 Sec. 21.603. BENEFICIAL OWNER OF SHARES OR OTHER [~~SIMILAR~~]
13 SECURITIES. (a) For purposes of this subchapter [~~chapter~~], a
14 person is a beneficial owner of shares or other [~~similar~~]
15 securities if the person individually, or through an affiliate or
16 associate, [~~beneficially owns,~~] directly or indirectly
17 beneficially owns the shares or other securities or has the right [~~to~~]
18 acquire the shares or other securities [~~to acquire the shares or similar securities~~].

19 [~~(b) A beneficial owner of shares or similar securities is~~
20 ~~entitled, individually or through an affiliate or associate,~~] to:

21 (1) acquire the shares or other [~~similar~~] securities
22 [~~that may be exercised~~] immediately or after the passage [~~of a~~
23 ~~certain amount~~] of time according to an oral or written agreement,
24 arrangement, or understanding, or on the exercise of conversion
25 rights, exchange rights, warrants, or options;

26 (2) vote the shares or other [~~similar~~] securities
27 according to an oral or written agreement, arrangement, or

1 understanding; or

2 (3) [~~subject to Subsection (c),~~] acquire, hold or
3 dispose of, or vote the shares or other [~~similar~~] securities with
4 another person who individually, or through an affiliate or
5 associate, beneficially owns, directly or indirectly, the shares or
6 other [~~similar~~] securities.

7 (b) [~~(c)~~] A person, however, is not considered a beneficial
8 owner of shares or other [~~similar~~] securities for purposes of this
9 subchapter if:

10 (1) the shares or other [~~similar~~] securities are:

11 (A) tendered under a tender or exchange offer
12 made by the person or an affiliate or associate of the person before
13 the tendered shares or securities are accepted for purchase or
14 exchange; or

15 (B) subject to an agreement, arrangement, or
16 understanding that expressly conditions the acquisition or
17 purchase of shares or securities on the approval of the acquisition
18 or purchase under Section 21.606 if the person has no direct or
19 indirect rights of ownership or voting with respect to the shares or
20 other securities until the time the approval is obtained; or

21 (2) the agreement, arrangement, or understanding to
22 vote the shares:

23 (A) arises solely from an immediately revocable
24 proxy that authorizes the person named in the proxy to vote at a
25 meeting of the shareholders that has been called when the proxy is
26 delivered or at an adjournment of the meeting; and

27 (B) would [~~is~~] not be reportable on a Schedule

1 13D under the Securities Exchange Act of 1934 (15 U.S.C. Section 77b
2 et seq.), as amended, or a comparable or successor report.

3 SECTION 32. Subdivision (1), Section 21.701, Business
4 Organizations Code, is amended to read as follows:

5 (1) "Close corporation" means a domestic corporation
6 formed under this subchapter or governed by this subchapter because
7 of Section 21.705, 21.706, or 21.707.

8 SECTION 33. Subsection (a), Section 22.153, Business
9 Organizations Code, is amended to read as follows:

10 (a) Except as provided by Subsection (b) or by the
11 corporation's certificate of formation, a corporation with members
12 who have voting rights shall hold an annual meeting of the members
13 at a time that is stated in or determined in accordance with the
14 corporation's bylaws.

15 SECTION 34. Section 22.230, Business Organizations Code, is
16 amended by amending Subsections (a) and (b) and adding Subsections
17 (d) and (e) to read as follows:

18 (a) This section applies [~~only~~] to a contract or transaction
19 between a corporation and:

20 (1) one or more [~~of the corporation's~~] directors,
21 officers, or members, or one or more affiliates or associates of one
22 or more directors, officers, or members, of the corporation; or

23 (2) an entity or other organization in which one or
24 more [~~of the corporation's~~] directors, officers, or members, or one
25 or more affiliates or associates of one or more directors,
26 officers, or members, of the corporation:

27 (A) is a managerial official or a member; or

1 (B) has a financial interest.

2 (b) An otherwise valid and enforceable contract or
3 transaction is valid and enforceable, and is not void or voidable,
4 notwithstanding any relationship or interest described by
5 Subsection (a), if any one of the following conditions is satisfied
6 ~~[notwithstanding that a director, officer, or member of the~~
7 ~~corporation is present at or participates in the meeting of the~~
8 ~~board of directors, of a committee of the board, or of the members~~
9 ~~that authorizes the contract or transaction, or votes to authorize~~
10 ~~the contract or transaction, if]:~~

11 (1) the material facts as to the relationship or
12 interest and as to the contract or transaction are disclosed to or
13 known by:

14 (A) the corporation's board of directors, a
15 committee of the board of directors, or the members, and the board,
16 the committee, or the members in good faith and with ordinary care
17 authorize the contract or transaction by the affirmative vote of
18 the majority of the disinterested directors, committee members or
19 members, regardless of whether the disinterested directors,
20 committee members or members constitute a quorum; or

21 (B) the members entitled to vote on the
22 authorization of the contract or transaction, and the contract or
23 transaction is specifically approved in good faith and with
24 ordinary care by a vote of the members; or

25 (2) the contract or transaction is fair to the
26 corporation when the contract or transaction is authorized,
27 approved, or ratified by the board of directors, a committee of the

1 board of directors, or the members.

2 (d) A person who has the relationship or interest described
3 by Subsection (a) may:

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

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

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

20 SECTION 35. Section 101.054, Business Organizations Code,
21 is amended by amending Subsection (a) and adding Subsection (e) to
22 read as follows:

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

26 (1) this section;

27 (2) Section 101.101, 101.151, 101.206, 101.501,

1 101.602(b), or 101.613 [~~101.502~~];

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

5 (4) Chapter 2, except that Section 2.104(c)(2),
6 2.104(c)(3), or 2.113 may be waived or modified in the company
7 agreement;

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

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

12 (e) The company agreement may not unreasonably restrict a
13 person's right of access to records and information under Section
14 101.502.

15 SECTION 36. Section 101.106, Business Organizations Code,
16 is amended by adding Subsections (a-1) and (a-2) to read as follows:

17 (a-1) A membership interest may be community property under
18 applicable law.

19 (a-2) A member's right to participate in the management and
20 conduct of the business of the limited liability company is not
21 community property.

22 SECTION 37. Subchapter C, Chapter 101, Business
23 Organizations Code, is amended by adding Section 101.1115 to read
24 as follows:

25 Sec. 101.1115. EFFECT OF DEATH OR DIVORCE ON MEMBERSHIP
26 INTEREST. (a) For purposes of this code:

27 (1) on the divorce of a member, the member's spouse, to

1 the extent of the spouse's membership interest, if any, is an
2 assignee of the membership interest;

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

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

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

14 SECTION 38. Subsection (a), Section 101.254, Business
15 Organizations Code, is amended to read as follows:

16 (a) Except as provided by this title and Title 1, each
17 governing person of a limited liability company and each officer
18 [~~or agent~~] of a limited liability company vested with actual or
19 apparent authority by the governing authority of the company is an
20 agent of the company for purposes of carrying out the company's
21 business.

22 SECTION 39. Section 101.255, Business Organizations Code,
23 is amended by amending Subsections (a) and (b) and adding
24 Subsections (d) and (e) to read as follows:

25 (a) This section applies [~~only~~] to a contract or transaction
26 between a limited liability company and:

27 (1) one or more [~~of the company's~~] governing persons or

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

3 (2) an entity or other organization in which one or
4 more ~~[of the company's]~~ governing persons or officers, or one or
5 more affiliates or associates of one or more governing persons or
6 officers, of the company:

7 (A) is a managerial official; or

8 (B) has a financial interest.

9 (b) An otherwise valid and enforceable contract or
10 transaction described by Subsection (a) is valid and enforceable,
11 and is not void or voidable, notwithstanding any relationship or
12 interest described by Subsection (a), if any one of the following
13 conditions is satisfied ~~[notwithstanding that the governing person~~
14 ~~or officer having the relationship or interest described by~~
15 ~~Subsection (a) is present at or participates in the meeting of the~~
16 ~~governing authority, or of a committee of the governing authority,~~
17 ~~that authorizes the contract or transaction or votes or signs, in~~
18 ~~the person's capacity as a governing person or committee member, a~~
19 ~~written consent of governing persons or committee members to~~
20 ~~authorize the contract or transaction, if]:~~

21 (1) the material facts as to the relationship or
22 interest described by Subsection (a) and as to the contract or
23 transaction are disclosed to or known by:

24 (A) the company's governing authority or a
25 committee of the governing authority and the governing authority or
26 committee in good faith authorizes the contract or transaction by
27 the approval of the majority of the disinterested governing persons

1 or committee members, regardless of whether the disinterested
2 governing persons or committee members constitute a quorum; or

3 (B) the members of the company, and the members
4 in good faith approve the contract or transaction by vote of the
5 members; or

6 (2) the contract or transaction is fair to the company
7 when the contract or transaction is authorized, approved, or
8 ratified by the governing authority, a committee of the governing
9 authority, or the members of the company.

10 (d) A person who has the relationship or interest described
11 by Subsection (a) may:

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

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

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

1 SECTION 40. Subsection (b), Section 101.357, Business
2 Organizations Code, is amended to read as follows:

3 (b) A manager or committee member of a limited liability
4 company [~~, if authorized by the company agreement,~~] may vote:

5 (1) in person; or

6 (2) if authorized by the company agreement, by a proxy
7 executed in writing by the manager or committee member, as
8 appropriate.

9 SECTION 41. Subsection (b), Section 101.611, Business
10 Organizations Code, is amended to read as follows:

11 (b) Section 101.206 [~~101.207~~] does not apply to a
12 distribution with respect to the series.

13 SECTION 42. Subsection (d), Section 151.003, Business
14 Organizations Code, is amended to read as follows:

15 (d) Receipt of notice by a general partner of a fact
16 relating to the partnership is effective immediately as notice to
17 the partnership unless fraud against the partnership is committed
18 by or with the consent of the partner receiving the notice.

19 SECTION 43. Subsection (a), Section 152.304, Business
20 Organizations Code, is amended to read as follows:

21 (a) Except as provided by Subsection (b) or Section
22 152.801(a), all partners are [~~liable~~] jointly and severally liable
23 for all obligations [~~a debt or obligation~~] of the partnership
24 unless otherwise:

25 (1) agreed by the claimant; or

26 (2) provided by law.

27 SECTION 44. Subchapter E, Chapter 152, Business

1 Organizations Code, is amended by adding Section 152.308 to read as
2 follows:

3 Sec. 152.308. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO
4 CHARGING ORDER. (a) On application by a judgment creditor of a
5 partner or of any other owner of a partnership interest, a court
6 having jurisdiction may charge the partnership interest of the
7 judgment debtor to satisfy the judgment.

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

13 (c) A charging order constitutes a lien on the judgment
14 debtor's partnership interest. The charging order lien may not be
15 foreclosed on under this code or any other law.

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

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

23 (f) A creditor of a partner or of any other owner of a
24 partnership interest does not have the right to obtain possession
25 of, or otherwise exercise legal or equitable remedies with respect
26 to, the property of the limited partnership.

27 SECTION 45. Subsections (a) and (c), Section 152.406,

1 Business Organizations Code, are amended to read as follows:

2 (a) For purposes of this code:

3 (1) on the divorce of a partner, the partner's spouse,
4 to the extent of the spouse's partnership interest, if any, is a
5 transferee of the partnership interest [~~from the partner~~];

6 (2) on the death of a partner:

7 (A) if the partnership interest of the deceased
8 partner is subject to redemption under Subchapter H, the partner's
9 surviving spouse, if any, and an heir, devisee, personal
10 representative, or other successor of the partner, to the extent of
11 their respective right to the redemption price, are creditors of
12 the partnership until the redemption price is paid; or

13 (B) if the partnership interest of the deceased
14 partner is not subject to redemption under Subchapter H, the
15 partner's surviving spouse, if any, and an heir, devisee, personal
16 representative, or other successor of the partner, to the extent of
17 their respective partnership interest, are transferees of the
18 partnership interest [~~, the partner's surviving spouse, if any, and~~
19 ~~an heir, legatee, or personal representative of the partner, to the~~
20 ~~extent of their respective partnership interest, is a transferee of~~
21 ~~the partnership interest from the partner~~]; and

22 (3) on the death of a partner's spouse, an heir,
23 devisee [~~legatee~~], [~~or~~] personal representative, or other
24 successor of the spouse, other than the partner, to the extent of
25 their respective partnership interest, if any, is a transferee of
26 the partnership interest [~~from the partner~~].

27 (c) This chapter does not impair an agreement for the

1 purchase or sale of a partnership interest at any time, including on
2 the death or divorce of an owner of the partnership interest.

3 SECTION 46. Subsection (b), Section 152.707, Business
4 Organizations Code, is amended to read as follows:

5 (b) In settling accounts among the partners, the
6 partnership interest of a withdrawn partner that is ~~[not]~~ redeemed
7 under Section 152.610 ~~[Subchapter H]~~ is credited with a share of any
8 profits for the period after the partner's withdrawal but is
9 charged with a share of losses for that period only to the extent of
10 profits credited for that period.

11 SECTION 47. Section 152.801, Business Organizations Code,
12 is amended to read as follows:

13 Sec. 152.801. LIABILITY OF PARTNER. (a) Except as
14 provided by ~~[Subsection (b) or]~~ the partnership agreement, a
15 partner ~~[in a limited liability partnership]~~ is not personally
16 liable to any person, including a partner, directly or indirectly,
17 by contribution, indemnity, or otherwise, for any ~~[a debt or]~~
18 obligation of the partnership incurred while the partnership is a
19 limited liability partnership.

20 (b) ~~[A partner in a limited liability partnership is not~~
21 ~~personally liable for a debt or obligation of the partnership~~
22 ~~arising from an error, omission, negligence, incompetence, or~~
23 ~~malfeasance committed by another partner or representative of the~~
24 ~~partnership while the partnership is a limited liability~~
25 ~~partnership and in the course of the partnership business unless~~
26 ~~the first partner:~~

27 ~~[(1) was supervising or directing the other partner or~~

1 ~~representative when the error, omission, negligence, incompetence,~~
2 ~~or malfeasance was committed by the other partner or~~
3 ~~representative,~~

4 ~~[(2) was directly involved in the specific activity in~~
5 ~~which the error, omission, negligence, incompetence, or~~
6 ~~malfeasance was committed by the other partner or representative,~~
7 ~~or~~

8 ~~[(3) had notice or knowledge of the error, omission,~~
9 ~~negligence, incompetence, or malfeasance by the other partner or~~
10 ~~representative at the time of the occurrence and then failed to take~~
11 ~~reasonable action to prevent or cure the error, omission,~~
12 ~~negligence, incompetence, or malfeasance.~~

13 ~~[(e)]~~ Sections 2.101(1), 152.305, and 152.306 do not limit
14 the effect of Subsection (a) in a limited liability partnership.

15 (c) For purposes of this section, ~~[(d) In this section,~~
16 ~~"representative" includes]~~ an obligation is incurred while a
17 partnership is [agent, servant, or employee of] a limited liability
18 partnership if:

19 (1) the obligation relates to an action or omission
20 occurring while the partnership is a limited liability partnership;
21 or

22 (2) the obligation arises under a contract or
23 commitment entered into while the partnership is a limited
24 liability partnership.

25 (d) Subsection ~~[(e) Subsections]~~ (a) does ~~[and (b) do]~~ not
26 affect:

27 (1) the liability of a partnership to pay its ~~debts~~

1 ~~and~~] obligations from partnership property;

2 (2) the liability of a partner, if any, imposed by law
3 or contract independently of the partner's status as a partner; or

4 (3) the manner in which service of citation or other
5 civil process may be served in an action against a partnership.

6 (e) [~~f~~] This section controls over the other parts of this
7 chapter and the other partnership provisions regarding the
8 liability of partners of a limited liability partnership, the
9 chargeability of the partners for the [~~debts and~~] obligations of
10 the partnership, and the obligations of the partners regarding
11 contributions and indemnity.

12 SECTION 48. Subsections (a), (f), and (j), Section 152.802,
13 Business Organizations Code, are amended to read as follows:

14 (a) In addition to complying with Section [~~Sections~~]
15 152.803 [~~and 152.804~~], a partnership, to become a limited liability
16 partnership, must file an application with the secretary of state
17 in accordance with Chapter 4 and this section. The application
18 must:

19 (1) set out:

20 (A) the name of the partnership;

21 (B) the federal taxpayer [~~tax~~] identification
22 number of the partnership;

23 (C) the street address of the partnership's
24 principal office in this state or outside of this state, as
25 applicable; and

26 (D) the number of partners at the date of
27 application; and

1 (2) contain a brief statement of the partnership's
2 business.

3 (f) A registration may be withdrawn by filing a withdrawal
4 notice with the secretary of state in accordance with Chapter 4. A
5 certificate from the comptroller stating that all taxes
6 administered by the comptroller under Title 2, Tax Code, have been
7 paid must be filed with the notice of withdrawal. A withdrawal
8 notice terminates the status of the partnership as a limited
9 liability partnership from the date on which the notice is filed or
10 a later date specified in the notice, but not later than the
11 expiration date under Subsection (e). A withdrawal notice must:

12 (1) contain:

13 (A) the name of the partnership;

14 (B) the federal taxpayer [~~tax~~] identification
15 number of the partnership;

16 (C) the date of registration of the partnership's
17 last application under this subchapter; and

18 (D) the current street address of the
19 partnership's principal office in this state and outside this
20 state, if applicable; and

21 (2) be signed by:

22 (A) a majority-in-interest of the partners; or

23 (B) one or more partners authorized by a
24 majority-in-interest of the partners.

25 (j) A document filed under this subchapter may be amended by
26 filing an application for amendment of registration with the
27 secretary of state in accordance with Chapter 4 and this

1 subsection. The application for amendment must:

2 (1) contain:

3 (A) the name of the partnership;

4 (B) the taxpayer [~~tax~~] identification number of
5 the partnership;

6 (C) the identity of the document being amended;

7 (D) the date on which the document being amended
8 was filed;

9 (E) a reference to the part of the document being
10 amended; and

11 (F) the amendment or correction; and

12 (2) be signed by:

13 (A) a majority-in-interest of the partners; or

14 (B) one or more partners authorized by a
15 majority-in-interest of the partners.

16 SECTION 49. Subsection (b), Section 152.906, Business
17 Organizations Code, is amended to read as follows:

18 (b) In addition to the information required by Section
19 9.011, the certificate of withdrawal must:

20 (1) contain:

21 (A) the federal taxpayer [~~tax~~] identification
22 number of the partnership; and

23 (B) the date of effectiveness of the
24 partnership's last application for registration under this
25 subchapter; and

26 (2) be signed by:

27 (A) a majority-in-interest of the partners; or

1 (B) one or more partners authorized by a
2 majority-in-interest of the partners.

3 SECTION 50. Subsection (b), Section 152.910, Business
4 Organizations Code, is amended to read as follows:

5 (b) A partner of a foreign limited liability partnership is
6 not liable for an [~~a debt or~~] obligation of the partnership solely
7 because the partnership transacted business in this state without
8 being registered.

9 SECTION 51. Subsection (b), Section 152.911, Business
10 Organizations Code, is amended to read as follows:

11 (b) The application for amendment must contain:

12 (1) the name of the partnership;

13 (2) the taxpayer [~~tax~~] identification number of the
14 partnership;

15 (3) the identity of the document being amended;

16 (4) a reference to the date on which the document being
17 amended was filed;

18 (5) the part of the document being amended; and

19 (6) the amendment or correction.

20 SECTION 52. Subsection (a), Section 153.004, Business
21 Organizations Code, is amended to read as follows:

22 (a) Except as provided by this section, the following
23 provisions of Title 1 may not be waived or modified in the
24 partnership agreement of a limited partnership:

25 (1) Chapter 1, if the provision is used to interpret a
26 provision or define a word or phrase contained in a section listed
27 in this subsection;

1 (2) Chapter 2, other than Section 2.104(c)(2),
2 2.104(c)(3), or 2.113;

3 (3) Chapter 3, other than Subchapters C and E of that
4 chapter and Section 3.151 (provided, that in all events a
5 partnership agreement may not validly waive or modify Section
6 ~~[Sections]~~ 153.551 or unreasonably restrict a partner's right of
7 access to books and records under Section [and] 153.552); or

8 (4) Chapter 4, 5, 10, 11, or 12, other than Section
9 11.058.

10 SECTION 53. Section 153.103, Business Organizations Code,
11 is amended to read as follows:

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

18 (1) acting as:

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

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

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

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

27 (E) a member or manager of a limited liability

1 company that is a general partner of the limited partnership;

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

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

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

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

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

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

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

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

22 (A) the winding up or termination of the limited
23 partnership;

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

26 (C) the sale, exchange, lease, mortgage,
27 assignment, pledge, or other transfer of, or granting of a security

1 interest in, an asset of the limited partnership;

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

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

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

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

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

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

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

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

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

25 (iii) approving an auditor; and

26 (iv) acting on another matter that that Act
27 requires to be approved by the holders of beneficial interests in

1 the investment company;

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

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

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

9 (N) the merger, ~~or~~ conversion, or interest
10 exchange with respect to ~~of~~ a limited partnership.

11 SECTION 54. Subsection (b), Section 153.158, Business
12 Organizations Code, is amended to read as follows:

13 (b) Until an action described by Subsection (a) is taken,
14 the owner of the partnership interest of the withdrawn general
15 partner has the status of an assignee under Subchapter F [~~Section~~
16 ~~153.113, and Section 153.555~~].

17 SECTION 55. Subsection (b), Section 153.501, Business
18 Organizations Code, is amended to read as follows:

19 (b) The limited partnership may cancel under Section 11.152
20 an event requiring winding up arising from an event of withdrawal of
21 a general partner as specified in Section 11.058(b) if:

22 (1) there remains at least one general partner and the
23 partnership agreement permits the business of the limited
24 partnership to be carried on by the remaining general partners and
25 those remaining general partners carry on the business; or

26 (2) not later than one year after the event, all
27 remaining partners, or another group or percentage of partners

1 specified in the partnership agreement:

2 (A) agree in writing to continue the business of
3 the limited partnership [~~in writing~~]; and

4 (B) to the extent that they desire or if there are
5 no remaining general partners, agree to the appointment of one or
6 more new general partners.

7 SECTION 56. Section 153.504, Business Organizations Code,
8 is amended to read as follows:

9 Sec. 153.504. DISPOSITION OF ASSETS. On the winding up of a
10 limited partnership, its assets shall be paid or transferred as
11 follows:

12 (1) to the extent otherwise permitted by law, to
13 creditors, including partners who are creditors other than solely
14 because of the application of Section 153.207, for the payment or
15 the making of reasonable provision for payment to satisfy the
16 liabilities of the limited partnership;

17 (2) unless otherwise provided by the partnership
18 agreement, to partners and former partners to satisfy the
19 partnership's liability for distributions under Section 153.111 or
20 153.209; and

21 (3) unless otherwise provided by the partnership
22 agreement, to partners first for the return of their capital and
23 second with respect to their partnership interests, in the
24 proportions provided by Sections 153.208(a) and (b).

25 SECTION 57. Subsection (a), Section 153.551, Business
26 Organizations Code, is amended to read as follows:

27 (a) A domestic limited partnership shall maintain the

1 following records in its principal office in the United States or
2 make the records available in that office not later than the fifth
3 day after the date on which a written request under Section
4 153.552(a) is received:

5 (1) a current list that states:

6 (A) the name and mailing address of each partner,
7 separately identifying in alphabetical order the general partners
8 and the limited partners;

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

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

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

16 (2) a copy of:

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

20 (B) the partnership agreement and certificate of
21 formation; and

22 (C) all amendments or restatements;

23 (3) copies of any document that creates, in the manner
24 provided by the partnership agreement, classes or groups of
25 partners;

26 (4) an executed copy of any powers of attorney under
27 which the partnership agreement, certificate of formation, and all

1 amendments or restatements to the agreement and certificate have
2 been executed;

3 (5) unless contained in the written partnership
4 agreement, a written statement of:

5 (A) the amount of the cash contribution and a
6 description and statement of the agreed value of any other
7 contribution made by each partner;

8 (B) the amount of the cash contribution and a
9 description and statement of the agreed value of any other
10 contribution that the partner has agreed to make in the future as an
11 additional contribution;

12 (C) ~~[the date on which additional contributions~~
13 ~~are to be made or]~~ the ~~[date of]~~ events requiring additional
14 contributions to be made or the date on which additional
15 contributions are to be made;

16 (D) the events requiring the winding up of the
17 limited partnership; and

18 (E) the date on which each partner in the limited
19 partnership became a partner; and

20 (6) books and records of the accounts of the limited
21 partnership.

22 SECTION 58. Section 200.317, Business Organizations Code,
23 is amended by amending Subsections (a) and (b) and adding
24 Subsections (d) and (e) to read as follows:

25 (a) This section applies ~~[only]~~ to a contract or transaction
26 between a real estate investment trust and:

27 (1) one or more ~~[of the trust's]~~ trust managers or

1 officers, or one or more affiliates or associates of one or more
2 directors or officers, of the trust; or

3 (2) an entity or other organization in which one or
4 more ~~[of the trust's]~~ trust managers or officers, or one or more
5 affiliates or associates of one or more directors or officers, of
6 the trust:

7 (A) is a managerial official; or

8 (B) has a financial interest.

9 (b) An otherwise valid and enforceable contract or
10 transaction described by Subsection (a) is valid and enforceable,
11 and is not void or voidable, notwithstanding any relationship or
12 interest described by Subsection (a), if any one of the following
13 conditions is satisfied ~~[notwithstanding that the trust manager or~~
14 ~~officer having the relationship or interest described by Subsection~~
15 ~~(a) is present at or participates in the meeting of the trust~~
16 ~~managers or of a committee of the trust managers that authorizes the~~
17 ~~contract or transaction, or votes or signs, in the person's~~
18 ~~capacity as a trust manager or committee member, a unanimous~~
19 ~~written consent of trust managers or committee members to authorize~~
20 ~~the contract or transaction, if]:~~

21 (1) the material facts as to the relationship or
22 interest described by Subsection (a) and as to the contract or
23 transaction are disclosed to or known by:

24 (A) the trust managers or a committee of the
25 trust managers, and the trust managers or committee of the trust
26 managers in good faith authorize the contract or transaction by the
27 approval of the majority of disinterested trust managers or

1 committee members, regardless of whether the disinterested trust
2 managers or committee members constitute a quorum; or

3 (B) the shareholders entitled to vote on the
4 authorization of the contract or transaction, and the contract or
5 transaction is specifically approved in good faith by a vote of the
6 shareholders; or

7 (2) the contract or transaction is fair to the real
8 estate investment trust when the contract or transaction is
9 authorized, approved, or ratified by the trust managers, a
10 committee of the trust managers, or the shareholders.

11 (d) A person who has the relationship or interest described
12 by Subsection (a) may:

13 (1) be present at or participate in and, if the person
14 is a trust manager or committee member, may vote at a meeting of the
15 trust managers, or of a committee of the trust managers, that
16 authorizes the contract or transaction; or

17 (2) sign, in the person's capacity as a trust manager
18 or committee member, a unanimous written consent of the trust
19 managers or committee members to authorize the contract or
20 transaction.

21 (e) If at least one of the conditions of Subsection (b) is
22 satisfied, neither the trust nor any of the trust's shareholders
23 will have a cause of action against any of the persons described by
24 Subsection (a) for breach of duty with respect to the making,
25 authorization, or performance of the contract or transaction
26 because the person had the relationship or interest described by
27 Subsection (a) or took any of the actions authorized by Subsection

1 (d).

2 SECTION 59. Subsections (b) and (f), Section 252.011,
3 Business Organizations Code, are amended to read as follows:

4 (b) A statement appointing an agent must contain:

5 (1) the name of the nonprofit association;

6 (2) the federal taxpayer [~~tax~~] identification number
7 of the nonprofit association, if applicable;

8 (3) the address in this state, including the street
9 address, if any, of the nonprofit association or, if the nonprofit
10 association does not have an address in this state, its address out
11 of state; and

12 (4) the name of the person in this state authorized to
13 receive service of process and the person's address, including the
14 street address, in this state.

15 (f) A statement appointing an agent may be canceled by
16 filing with the secretary of state a written notice of cancellation
17 executed by a person authorized to manage the affairs of the
18 nonprofit association. A notice of cancellation must contain:

19 (1) the name of the nonprofit association;

20 (2) the federal taxpayer [~~tax~~] identification number
21 of the nonprofit association, if applicable;

22 (3) the date of filing of the nonprofit association's
23 statement appointing the agent; and

24 (4) a current street address, if any, of the nonprofit
25 association in this state or, if the nonprofit association does not
26 have an address in this state, its address out of state.

27 SECTION 60. Section 402.003, Business Organizations Code,

1 is amended to read as follows:

2 Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC
3 ENTITY. (a) A domestic entity formed before the effective date of
4 this code may voluntarily elect to adopt and become subject to this
5 code by:

6 (1) adopting the code by complying with the procedures
7 for approval, under prior law and its governing documents, of an
8 amendment to:

9 (A) its articles of incorporation, with respect
10 to a corporation or cooperative association;

11 (B) its regulations, with respect to a limited
12 liability company;

13 (C) its articles of association, with respect to
14 a professional association;

15 (D) its declaration of trust, with respect to a
16 real estate investment trust;

17 (E) its partnership agreement, with respect to a
18 partnership; or

19 (F) its primary governing document, with respect
20 to another type of domestic entity;

21 (2) if any of its governing documents, including its
22 certificate of formation, do not comply with this code, complying
23 with the procedures, under prior law and its governing documents,
24 to amend the noncomplying governing documents to comply with this
25 code, including filing with the filing officer in accordance with
26 Chapter 4 a certificate of amendment to cause its certificate of
27 formation to comply with this code; and

1 (3) if the domestic entity is a filing entity, filing
2 with the filing officer in accordance with Chapter 4 a statement
3 that the filing entity is electing to adopt this code.

4 (b) A domestic entity that elected to adopt and become
5 subject to this code as provided by Subsection (a) is not considered
6 to have failed to comply with Subsection (a)(2) because:

7 (1) the entity's governing documents do not state the
8 type of entity formed; or

9 (2) a circumstance described by Section 402.0051
10 applies.

11 SECTION 61. Section 402.004, Business Organizations Code,
12 is amended to read as follows:

13 Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN
14 FILING ENTITY. (a) A foreign filing entity registered with the
15 secretary of state to transact business in this state before the
16 effective date of this code may voluntarily elect to adopt and
17 become subject to this code by filing with the secretary of state in
18 accordance with Chapter 4:

19 (1) a statement that the foreign filing entity is
20 electing to adopt this code; and

21 (2) an amendment to its application for registration
22 that would cause its application for registration to comply with
23 this code.

24 (b) A foreign filing entity that elected to adopt and become
25 subject to this code as provided by Subsection (a) is not considered
26 to have failed to comply with Subsection (a)(2) because:

27 (1) the application for registration or any amendment

1 to the registration:

2 (A) does not state the entity's type; or

3 (B) does not include the appointment of the
4 secretary of state as agent for service of process under the
5 circumstances provided by Section 5.251; or

6 (2) a circumstance described by Section 402.0051
7 applies.

8 SECTION 62. Section 402.005, Business Organizations Code,
9 is amended by adding Subsection (c) to read as follows:

10 (c) A domestic or foreign filing entity is not considered to
11 have failed to comply with Subsection (a)(3) or (4) because:

12 (1) the certificate of formation does not state the
13 type of entity formed;

14 (2) the application for registration or any amendment
15 to the registration:

16 (A) does not state the entity's type; or

17 (B) does not include the appointment of the
18 secretary of state as agent for service of process, notice, or
19 demand under the circumstances provided by Section 5.251; or

20 (3) a circumstance described by Section 402.0051
21 applies.

22 SECTION 63. Chapter 402, Business Organizations Code, is
23 amended by adding Section 402.0051 to read as follows:

24 Sec. 402.0051. EFFECT OF REFERENCES TO PRIOR LAW AND USE OF
25 SYNONYMOUS TERMS. (a) A governing document or a filing
26 instrument, including a certificate of formation or application for
27 registration, is not considered to have failed to conform to this

1 code if the governing document or filing instrument:

2 (1) contains a reference to prior law that was
3 applicable at the time of its filing or adoption;

4 (2) contains a provision that was authorized by prior
5 law at the time of its filing or adoption;

6 (3) includes a term or phrase described by Section
7 1.006; or

8 (4) includes a term or phrase from prior law that is
9 different from the corresponding term or phrase used in this code.

10 (b) A reference in a governing document or filing instrument
11 to a statute or provision of a statute in effect before January 1,
12 2010, that was repealed by this code is considered to be a reference
13 to the provision or provisions of this code that correspond to the
14 repealed statute or provision unless the governing document or
15 filing instrument expressly provides otherwise.

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

20 (d) For purposes of this section, prior law includes a
21 predecessor statute to the prior law.

22 SECTION 64. The heading to Section 402.013, Business
23 Organizations Code, is amended to read as follows:

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

27 SECTION 65. Section 402.013, Business Organizations Code,

1 is amended by adding Subsections (b-1) and (b-2) to read as follows:

2 (b-1) On or after January 1, 2010, a domestic filing entity
3 whose existence has been voluntarily dissolved or involuntarily
4 dissolved under prior law or whose certificate of formation or
5 equivalent governing document has been canceled, revoked,
6 suspended, or forfeited under prior law may reinstate the entity in
7 accordance with this code.

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

12 SECTION 66. (a) In this section:

13 (1) "Governing document" has the meaning assigned by
14 Subdivision (36), Section 1.002, Business Organizations Code.

15 (2) "Prior law" has the meaning assigned by Section
16 401.001, Business Organizations Code.

17 (b) This section applies only to a domestic entity whose
18 existence has been voluntarily dissolved under prior law or whose
19 certificate of formation or equivalent governing document has been
20 canceled under prior law.

21 (c) The reinstatement of a domestic filing entity that was
22 filed in accordance with Chapter 11 and Section 402.003, Business
23 Organizations Code, after December 31, 2005, and before January 1,
24 2010, is validated in all respects as of the date on which the
25 reinstatement occurred.

26 SECTION 67. The following provisions of the Business
27 Organizations Code are repealed:

- 1 (1) Section 21.001;
 - 2 (2) Subsection (i), Section 152.802; and
 - 3 (3) Section 152.804.
- 4 SECTION 68. This Act takes effect September 1, 2011.