

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. Section 6.101(b), 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. Section 6.205(a), Business Organizations Code,  
6 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. Sections 8.001(1) and (2), 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 ~~a predecessor enterprise~~ [~~domestic entity or~~  
27 ~~organization~~].

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

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

SECTION 6. Section 8.104(d), Business Organizations Code, is amended to read as follows:

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

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

(d) Notwithstanding any authorization or determination specified in this chapter, an enterprise may 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 [~~managerial official~~] or delegate who was, is, or is threatened to be made a respondent in the proceeding; [~~7~~] or

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

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

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

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

(b) The application for registration must state:

(1) the partnership's name;

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

(3) the partnership's jurisdiction of formation;

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) a description of the organizational form of each organization that is a party to the merger or that is to be created 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

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

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

(c) If the plan of merger provides for a manner and basis of converting or exchanging an ownership or membership interest that may be converted or exchanged in a manner or basis different than any other ownership or membership interest of the same class or series of the ownership or membership interest, the manner and basis of conversion or exchange must be included in the plan of merger in the same manner as provided by Subsection (a)(5).

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

(a) When a merger takes effect:

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

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

(A) reversion or impairment;

(B) any further act or deed; or

(C) any transfer or assignment having occurred;

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

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

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

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

24           (7) each new filing entity whose certificate of  
25 formation is included in the plan of merger under this chapter, on  
26 meeting any additional requirements, if any, of this code for its  
27 formation, is formed as a domestic entity under this code as



1 provided by the plan of merger;

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

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

23 SECTION 12. Section 10.052(a), Business Organizations  
24 Code, is amended to read as follows:

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

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

(2) the name of each acquiring organization;

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

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

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

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

(B) cash;

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

(D) any combination of those items.

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

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

(1) the name of the converting entity;

(2) the name of the converted entity;

(3) a statement that the converting entity is continuing its existence in the organizational form of the converted entity;

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

1 of formation;

2 (5) if Sections 10.1025 and 10.109 do not apply, the  
3 manner and basis of converting the ownership or membership  
4 interests of the converting entity into ownership or membership  
5 interests of the converted entity;

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

8 (7) the certificate of formation or similar  
9 organizational document of the converted entity if the converted  
10 entity is not a filing entity; and

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

15 SECTION 14. Section 10.354(b), Business Organizations  
16 Code, is amended to read as follows:

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

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

27 (A) listed on a national securities exchange [~~or~~

1 ~~a similar system]; or~~

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

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

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

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

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

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

26 (i) listed on a national securities  
27 exchange or authorized for listing on the exchange on official

notice of issuance; or

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

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

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

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

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

(1) be accompanied by a copy of this subchapter; and  
(2) advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(1) or (3) ~~[10.356(b)(2)]~~ may be provided.

(e) Not later than the 10th day after the date an action described by Subsection (a)(1) takes effect, the responsible organization shall 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) ~~[10.356(b)(2)]~~.

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

(b) 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:

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

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

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

(D) 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:

(A) 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

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

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

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

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

(C) provides to the responsible organization an

1 address to which a notice relating to the dissent and appraisal  
2 procedures under this subchapter may be sent;

3 (D) states the number and class of the ownership  
4 interests of the domestic entity owned by the owner and the fair  
5 value of the ownership interests as estimated by the owner; and

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

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

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

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

24 (c) An owner who does not make a demand within the period  
25 required by Subsection (b)(3)(E) or, if Subsection (b)(1) is  
26 applicable, does not give the notice of objection before the  
27 meeting of the owners ~~[(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) Not later than the 20th day after the date an owner makes a demand under Subsection (b)(3) [~~this section~~], the owner must 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. An owner's failure to submit the certificates within the required period has the effect of terminating, at the option of the responsible organization, the owner's rights to dissent and appraisal under Section 10.354 unless a court, for good cause shown, directs otherwise.

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

(a) Not later than the 20th day after the date a responsible organization receives a demand for payment made by a dissenting owner in accordance with Section 10.356(b)(3) [~~10.356~~], the responsible organization shall 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) If the dissenting owner decides to accept the offer made by the responsible organization under Subsection (c)(2), the owner must 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 was effected. ~~[An~~  
~~offer made under Subsection (c)(2) must remain open for a period of~~  
~~at least 60 days from the date the offer is first delivered to the~~  
~~dissenting owner.]~~

(e) If, not later than the 90th day after the date the action  
that is the subject of the demand was effected, a dissenting owner  
 accepts an offer made by a responsible organization under  
 Subsection (c)(2) or ~~[if]~~ a dissenting owner and a responsible  
 organization reach an agreement on the fair value of the ownership  
 interests, the responsible organization shall pay the agreed amount  
 not later than the 120th ~~[60th]~~ day after the date the action that  
is the subject of the demand was effected ~~[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 certificated; or

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

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

(f) "Majority-in-interest" means, with respect to all or a  
specified group of partners, partners who own more than 50 percent  
of the current percentage or other interest in the profits of the  
partnership that is owned by all of the partners or by the partners  
in the specified group, as appropriate.

SECTION 19. Section 11.402, Business Organizations Code, is

1 amended to read as follows:

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

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

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

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

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

18       (b) A court may appoint a receiver under Subsection (a) only  
19 if:

20           (1) circumstances exist that are considered by the  
21 court to necessitate the appointment of a receiver to conserve the  
22 property and business of the domestic entity and avoid damage to  
23 interested parties;

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

26           (3) the court determines that all other available  
27 legal and equitable remedies, including the appointment of a

1 receiver for specific property of the domestic entity under Section  
2 11.402(a) [~~11.402~~], are inadequate.

3 SECTION 21. Section 21.109(a), Business Organizations  
4 Code, is amended to read as follows:

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

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

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

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

13 SECTION 22. Subchapter C, Chapter 21, Business  
14 Organizations Code, is amended by adding Section 21.110 to read as  
15 follows:

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

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

23 (c) This section and Sections 21.204 through 21.208 do not  
24 invalidate or impair a corporation's right or power to grant an  
25 enforceable nonstatutory preemptive right in:

26 (1) a contract between the corporation and a  
27 shareholder or other person; or

1           (2) the governing documents of the corporation.

2           SECTION 24. Section 21.206(a), Business Organizations  
3 Code, is amended to read as follows:

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

10           (1) the first anniversary of the date written notice  
11 is given to each shareholder whose preemptive right was violated;  
12 or

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

14           (A) the date the corporation issued the shares,  
15 securities, or rights;

16           (B) the date the corporation sold the shares,  
17 securities, or rights; or

18           (C) the date the corporation otherwise  
19 distributed the shares, securities, or rights.

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

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

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

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

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

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

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

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

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

(a) 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 considered 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. Section 21.418, Business Organizations Code, is

amended by amending Subsections (a) and (b) and adding Subsections (d) and (e) to read as follows:

(a) This section applies only to a contract or transaction between a corporation and:

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

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

(A) is a managerial official; or

(B) has a financial interest.

(b) An otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable, and may not be void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of the following conditions is satisfied ~~[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]~~:

(1) the material facts as to the relationship or interest described by Subsection (a) and as to the contract or

1 transaction are disclosed to or known by:

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

8 (B) the shareholders entitled to vote on the  
9 authorization of the contract or transaction, and the contract or  
10 transaction is specifically approved in good faith by a vote of the  
11 shareholders; or

12 (2) the contract or transaction is fair to the  
13 corporation when the contract or transaction is authorized,  
14 approved, or ratified by the board of directors, a committee of the  
15 board of directors, or the shareholders.

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

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

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

25 (e) If at least one of the conditions of Subsection (b) is  
26 satisfied, neither the corporation nor any of the corporation's  
27 shareholders will have a cause of action against any of the persons

1 described by Subsection (a) for breach of duty with respect to the  
2 making, authorization, or performance of the contract or  
3 transaction because the person had the relationship or interest  
4 described by Subsection (a) or took any of the actions authorized by  
5 Subsection (d).

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

8 (f) If after the adoption of a resolution under Subsection  
9 (b) the corporation's board of directors determines that the plan  
10 of conversion is not advisable, the board may submit the plan of  
11 conversion to the corporation's shareholders with a recommendation  
12 that the shareholders not approve the plan of conversion.

13 (g) A corporation's plan of conversion may include a  
14 provision requiring that the plan of conversion be submitted to the  
15 corporation's shareholders, regardless of whether the board of  
16 directors determines, after adopting a resolution or making a  
17 determination under this section, that the plan of conversion is  
18 not advisable and recommends that the shareholders not approve the  
19 plan of conversion.

20 SECTION 30. Section 21.601(1), Business Organizations  
21 Code, is amended to read as follows:

22 (1) "Issuing public corporation" means a domestic  
23 corporation that has:

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

26 (B) a class or series of the corporation's voting  
27 shares registered under the Securities Exchange Act of 1934 (15



U.S.C. Section 77b et seq.), as amended; or

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

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

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

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

(1) acquire the shares or other ~~[similar]~~ securities ~~[that may be exercised]~~ immediately or after the passage ~~[of a certain amount]~~ 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 ~~[similar]~~ securities according to an oral or written agreement, arrangement, or understanding; or

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

1 other [~~similar~~] securities.

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

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

6               (A) tendered under a tender or exchange offer  
7 made by the person or an affiliate or associate of the person before  
8 the tendered shares or securities are accepted for purchase or  
9 exchange; or

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

16           (2) the agreement, arrangement, or understanding to  
17 vote the shares:

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

22               (B) would [~~is~~] not be reportable on a Schedule  
23 13D under the Securities Exchange Act of 1934 (15 U.S.C. Section 77b  
24 et seq.), as amended, or a comparable or successor report.

25       SECTION 32. Section 21.701(1), Business Organizations  
26 Code, is amended to read as follows:

27           (1) "Close corporation" means a domestic corporation

1 formed under this subchapter or governed by this subchapter because  
2 of Section 21.705, 21.706, or 21.707.

3 SECTION 33. Section 22.153(a), Business Organizations  
4 Code, is amended to read as follows:

5 (a) Except as provided by Subsection (b) or by the  
6 corporation's certificate of formation, a corporation shall hold an  
7 annual meeting of the members at a time that is stated in or  
8 determined in accordance with the corporation's bylaws.

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

12 (a) This section applies only to a contract or transaction  
13 between a corporation and:

14 (1) one or more ~~[of the corporation's]~~ directors,  
15 officers, or members, or one or more affiliates or associates of one  
16 or more directors, officers, or members, of the corporation; or

17 (2) an entity or other organization in which one or  
18 more ~~[of the corporation's]~~ directors, officers, or members, or one  
19 or more affiliates or associates of one or more directors,  
20 officers, or members, of the corporation:

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

22 (B) has a financial interest.

23 (b) An otherwise valid and enforceable contract or  
24 transaction is valid and enforceable, and may not be void or  
25 voidable, notwithstanding any relationship or interest described  
26 by Subsection (a), if any one of the following conditions is  
27 satisfied ~~[notwithstanding that a director, officer, or member of~~

~~the corporation is present at or participates in the meeting of the board of directors, of a committee of the board, or of the members that authorizes the contract or transaction, or votes to authorize the contract or transaction, if]:~~

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

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

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

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

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

(1) be present at or participate in and, if the person is a director, member, or committee member, may 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

(2) 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) 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. Section 101.054, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

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

(1) this section;

(2) Section 101.101, 101.151, 101.206, 101.501, 101.602(b), or 101.613 [~~101.502~~];

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

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

1 agreement;

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

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

6 (e) The company agreement may not unreasonably restrict a  
7 person's right of access to records and information under Section  
8 101.502.

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

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

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

16 SECTION 37. Subchapter C, Chapter 101, Business  
17 Organizations Code, is amended by adding Section 101.1115 to read  
18 as follows:

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

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

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

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

6           (b) This chapter does not impair an agreement for the  
7 purchase or sale of a membership interest at any time, including a  
8 purchase or sale following the death or divorce of an owner of the  
9 membership interest.

10           SECTION 38. Section 101.254(a), Business Organizations  
11 Code, is amended to read as follows:

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

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

21           (a) This section applies only to a contract or transaction  
22 between a limited liability company and:

23                   (1) one or more ~~[of the company's]~~ governing persons or  
24 officers, or one or more affiliates or associates of one or more  
25 governing persons or officers, of the company; or

26                   (2) an entity or other organization in which one or  
27 more ~~[of the company's]~~ governing persons or officers, or one or

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

3 (A) is a managerial official; or

4 (B) has a financial interest.

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

17 (1) the material facts as to the relationship or  
18 interest described by Subsection (a) and as to the contract or  
19 transaction are disclosed to or known by:

20 (A) the company's governing authority or a  
21 committee of the governing authority and the governing authority or  
22 committee in good faith authorizes the contract or transaction by  
23 the approval of the majority of the disinterested governing persons  
24 or committee members, regardless of whether the disinterested  
25 governing persons or committee members constitute a quorum; or

26 (B) the members of the company, and the members  
27 in good faith approve the contract or transaction by vote of the



1 members; or

2 (2) the contract or transaction is fair to the company  
3 when the contract or transaction is authorized, approved, or  
4 ratified by the governing authority, a committee of the governing  
5 authority, or the members of the company.

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

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

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

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

24 SECTION 40. Section 101.357(b), Business Organizations  
25 Code, is amended to read as follows:

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

(1) in person; or

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

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

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

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

(d) 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. Section 152.304(a), Business Organizations Code, is amended to read as follows:

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

(1) agreed by the claimant; or

(2) provided by law.

SECTION 44. Subchapter E, Chapter 152, Business Organizations Code, is amended by adding Section 152.308 to read as follows:

Sec. 152.308. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO CHARGING ORDER. (a) On application by a judgment creditor of a

1 partner or of any other owner of a partnership interest, a court  
2 having jurisdiction may charge the partnership interest of the  
3 judgment debtor to satisfy the judgment.

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

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

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

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

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

23 SECTION 45. Sections 152.406(a) and (c), Business  
24 Organizations Code, are amended to read as follows:

25 (a) For purposes of this code:

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

transferee of the partnership interest [~~from the partner~~];

(2) on the death of a partner:

(A) if the partnership interest of the deceased partner is 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 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 [~~, 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~~]; and

(3) on the death of a partner's spouse, an heir, devisee [~~legatee~~], [~~or~~] 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 [~~from the partner~~].

(c) 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. Section 152.707(b), Business Organizations Code, is amended to read as follows:

(b) In settling accounts among the partners, the partnership interest of a withdrawn partner that is ~~[not]~~ redeemed under Section 152.610 ~~[Subchapter H]~~ 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. Section 152.801, Business Organizations Code, is amended to read as follows:

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

~~(b) [A partner in a limited liability partnership 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 a limited liability partnership and in the course of the partnership business unless the first partner:~~

~~[(1) 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,~~

~~[(2) was directly involved in the specific activity in~~

~~which the error, omission, negligence, incompetence, or malfeasance was committed by the other partner or representative, or~~

~~[(3) had 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.]~~

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

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

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

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

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

(1) the liability of a partnership to pay its ~~[debts and]~~ obligations from partnership property;

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

(3) the manner in which service of citation or other

civil process may be served in an action against a partnership.

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

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

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

(1) set out:

(A) the name of the partnership;

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

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

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

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

(f) A registration may be withdrawn by filing a withdrawal notice with the secretary of state in accordance with Chapter 4. A

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

8 (1) contain:

9 (A) the name of the partnership;

10 (B) the federal taxpayer [~~tax~~] identification  
11 number of the partnership;

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

14 (D) the current street address of the  
15 partnership's principal office in this state and outside this  
16 state, if applicable; and

17 (2) be signed by:

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

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

21 (j) A document filed under this subchapter may be amended by  
22 filing an application for amendment of registration with the  
23 secretary of state in accordance with Chapter 4 and this  
24 subsection. The application for amendment must:

25 (1) contain:

26 (A) the name of the partnership;

27 (B) the taxpayer [~~tax~~] identification number of



1 the partnership;

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

3 (D) the date on which the document being amended  
4 was filed;

5 (E) a reference to the part of the document being  
6 amended; and

7 (F) the amendment or correction; and

8 (2) be signed by:

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

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

12 SECTION 49. Section 152.906(b), Business Organizations  
13 Code, is amended to read as follows:

14 (b) In addition to the information required by Section  
15 9.011, the certificate of withdrawal must:

16 (1) contain:

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

19 (B) the date of effectiveness of the  
20 partnership's last application for registration under this  
21 subchapter; and

22 (2) be signed by:

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

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

26 SECTION 50. Section 152.910(b), Business Organizations  
27 Code, is amended to read as follows:

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

5 SECTION 51. Section 152.911(b), Business Organizations  
6 Code, is amended to read as follows:

7 (b) The application for amendment must contain:

- 8 (1) the name of the partnership;  
9 (2) the taxpayer [~~tax~~] identification number of the  
10 partnership;  
11 (3) the identity of the document being amended;  
12 (4) a reference to the date on which the document being  
13 amended was filed;  
14 (5) the part of the document being amended; and  
15 (6) the amendment or correction.

16 SECTION 52. Section 153.004(a), Business Organizations  
17 Code, is amended to read as follows:

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

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

24 (2) Chapter 2, other than Section 2.104(c)(2),  
25 2.104(c)(3), or 2.113;

26 (3) Chapter 3, other than Subchapters C and E of that  
27 chapter and Section 3.151 (provided, that in all events a

partnership agreement may not validly waive or modify Section  
[~~Sections~~] 153.551 or unreasonably restrict a partner's right of  
access to books and records under Section [~~and~~] 153.552); or

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

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

Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN  
BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and  
Sections 153.102, 153.104, and 153.105, 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 the following capacities  
or possesses or exercises one or more of the following powers:

(1) acting as:

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

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

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

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

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

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

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

3           (4) acting as surety, guarantor, or endorser for the  
4 limited partnership, guaranteeing or assuming one or more specific  
5 obligations of the limited partnership, or providing collateral for  
6 borrowings of the limited partnership;

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

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

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

14           (8) serving on a committee of the limited partnership  
15 or the limited partners; or

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

18                   (A) the winding up or termination of the limited  
19 partnership;

20                   (B) an election to reconstitute the limited  
21 partnership or continue the business of the limited partnership;

22                   (C) the sale, exchange, lease, mortgage,  
23 assignment, pledge, or other transfer of, or granting of a security  
24 interest in, an asset of the limited partnership;

25                   (D) the incurring, renewal, refinancing, or  
26 payment or other discharge of indebtedness by the limited  
27 partnership;

1                   (E) a change in the nature of the business of the  
2 limited partnership;

3                   (F) the admission, removal, or retention of a  
4 general partner;

5                   (G) the admission, removal, or retention of a  
6 limited partner;

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

9                   (I) an amendment to the partnership agreement or  
10 certificate of formation;

11                   (J) if the limited partnership is qualified as an  
12 investment company under the federal Investment Company Act of 1940  
13 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required  
14 by that Act or the rules and regulations of the Securities and  
15 Exchange Commission under that Act, to be approved by the holders of  
16 beneficial interests in an investment company, including:

17                   (i) electing directors or trustees of the  
18 investment company;

19                   (ii) approving or terminating an investment  
20 advisory or underwriting contract;

21                   (iii) approving an auditor; and

22                   (iv) acting on another matter that that Act  
23 requires to be approved by the holders of beneficial interests in  
24 the investment company;

25                   (K) indemnification of a general partner under  
26 Chapter 8 or otherwise;

27                   (L) any other matter stated in the partnership

1 agreement;

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

5 (N) the merger, ~~[or]~~ conversion, or interest  
6 exchange with respect to ~~[of]~~ a limited partnership.

7 SECTION 54. Section 153.158(b), Business Organizations  
8 Code, is amended to read as follows:

9 (b) Until an action described by Subsection (a) is taken,  
10 the owner of the partnership interest of the withdrawn general  
11 partner has the status of an assignee under Subchapter F~~[, Section~~  
12 ~~153.113, and Section 153.555]~~.

13 SECTION 55. Section 153.501(b), Business Organizations  
14 Code, is amended to read as follows:

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

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

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

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

27 (B) to the extent that they desire or if there are

1 no remaining general partners, agree to the appointment of one or  
2 more new general partners.

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

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

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

13 (2) unless otherwise provided by the partnership  
14 agreement, to partners and former partners to satisfy the  
15 partnership's liability for distributions under Section 153.111 or  
16 153.209; and

17 (3) unless otherwise provided by the partnership  
18 agreement, to partners first for the return of their capital and  
19 second with respect to their partnership interests, in the  
20 proportions provided by Sections 153.208(a) and (b).

21 SECTION 57. Section 153.551(a), Business Organizations  
22 Code, is amended to read as follows:

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

(1) a current list that states:

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

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

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

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

(2) a copy of:

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

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

(C) all amendments or restatements;

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

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

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



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

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

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

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

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

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

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

(a) This section applies only to a contract or transaction between a real estate investment trust and:

(1) one or more ~~[of the trust's]~~ trust managers or officers, or one or more affiliates or associates of one or more directors or officers, of the trust; or

(2) an entity or other organization in which one or more ~~[of the trust's]~~ trust managers or officers, or one or more

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

3 (A) is a managerial official; or

4 (B) has a financial interest.

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

17 (1) the material facts as to the relationship or  
18 interest described by Subsection (a) and as to the contract or  
19 transaction are disclosed to or known by:

20 (A) the trust managers or a committee of the  
21 trust managers, and the trust managers or committee of the trust  
22 managers in good faith authorize the contract or transaction by the  
23 approval of the majority of disinterested trust managers or  
24 committee members, regardless of whether the disinterested trust  
25 managers or committee members constitute a quorum; or

26 (B) the shareholders entitled to vote on the  
27 authorization of the contract or transaction, and the contract or

transaction is specifically approved in good faith by a vote of the shareholders; or

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

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

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

(2) 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) 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. Sections 252.011(b) and (f), Business Organizations Code, are amended to read as follows:

(b) A statement appointing an agent must contain:

(1) the name of the nonprofit association;

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

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

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

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

(1) the name of the nonprofit association;

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

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

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

SECTION 60. Section 402.003, Business Organizations Code, is amended to read as follows:

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

1 code by:

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

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

7 (B) its regulations, with respect to a limited  
8 liability company;

9 (C) its articles of association, with respect to  
10 a professional association;

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

13 (E) its partnership agreement, with respect to a  
14 partnership; or

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

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

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

27 (b) 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:

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

(2) a circumstance described by Section 402.0051 applies.

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

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

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

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

(b) 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:

(1) the application for registration or any amendment to the registration:

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

(B) does not include the appointment of the secretary of state as agent for service of process under the

1 circumstances provided by Section 5.251; or

2 (2) a circumstance described by Section 402.0051  
3 applies.

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

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

8 (1) the certificate of formation does not state the  
9 type of entity formed;

10 (2) the application for registration or any amendment  
11 to the registration:

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

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

16 (3) a circumstance described by Section 402.0051  
17 applies.

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

20 Sec. 402.0051. EFFECT OF REFERENCES TO PRIOR LAW AND USE OF  
21 SYNONYMOUS TERMS. (a) A governing document or a filing instrument,  
22 including a certificate of formation or application for  
23 registration, is not considered to have failed to conform to this  
24 code if the governing document or filing instrument:

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

27 (2) contains a provision that was authorized by prior

1 law at the time of its filing or adoption;

2 (3) includes a term or phrase described by Section  
3 1.006 of this code; or

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

6 (b) A reference in a governing document or filing instrument  
7 to a statute or provision of a statute in effect before January 1,  
8 2010, that was repealed by this code is considered to be a reference  
9 to the provision or provisions of this code that correspond to the  
10 repealed statute or provision unless the governing document or  
11 filing instrument expressly provides otherwise.

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

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

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

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

23 SECTION 65. Section 402.013, Business Organizations Code,  
24 is amended by adding Subsections (b-1) and (b-2) to read as follows:

25 (b-1) On or after January 1, 2010, a domestic filing entity  
26 whose certificate of formation or equivalent governing document has  
27 been canceled, revoked, voluntarily dissolved, involuntarily



1 dissolved, suspended, or forfeited under prior law may reinstate  
2 the entity's certificate of formation or equivalent governing  
3 document in accordance with this code.

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

8 SECTION 66. (a) In this section:

9 (1) "Governing document" has the meaning assigned by  
10 Section 1.002(36), Business Organizations Code.

11 (2) "Prior law" has the meaning assigned by Section  
12 401.001, Business Organizations Code.

13 (b) This section applies only to a domestic entity whose  
14 certificate of formation or equivalent governing document was  
15 voluntarily dissolved under prior law.

16 (c) The reinstatement of a domestic filing entity that was  
17 filed in accordance with Chapter 11 and Section 402.003, Business  
18 Organizations Code, after December 31, 2005, and before January 1,  
19 2010, is validated in all respects as of the date on which the  
20 reinstatement occurred.

21 SECTION 67. The following sections of the Business  
22 Organizations Code are repealed:

- 23 (1) Section 21.001;  
24 (2) Section 152.802(i); and  
25 (3) Section 152.804.

26 SECTION 68. This Act takes effect September 1, 2011.