

1-1 By: Carona S.B. No. 748
1-2 (In the Senate - Filed February 16, 2011;
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1-6 0; March 7, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 748 By: Carona

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to business entities and associations.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 1.002, Business Organizations Code, is
1-13 amended by adding Subdivisions (55-a), (69-c), (69-d), and (69-e)
1-14 and amending Subdivision (69-b) to read as follows:

1-15 (55-a) "National securities exchange" means an
1-16 exchange registered as a national securities exchange under Section
1-17 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f).

1-18 (69-b) "Person" means an individual or a corporation,
1-19 partnership, limited liability company, business trust, trust,
1-20 association, or other organization, estate, government or
1-21 governmental subdivision or agency, or other legal entity [has the
1-22 meaning assigned by Section 311.005, Government Code].

1-23 (69-c) "Plan of conversion" means a document that
1-24 conforms with the requirements of Section 10.103.

1-25 (69-d) "Plan of exchange" means a document that
1-26 conforms with the requirements of Section 10.052.

1-27 (69-e) "Plan of merger" means a document that conforms
1-28 with the requirements of Sections 10.002 and 10.003.

1-29 SECTION 2. Subsection (b), Section 6.101, Business
1-30 Organizations Code, is amended to read as follows:

1-31 (b) Subject to this code and the governing documents of a
1-32 domestic entity, the governing authority of the entity, in advance,
1-33 may provide a record date for determining the owners or members of
1-34 the entity, except that the date may not be earlier than the 60th
1-35 day before the date the action requiring the determination of
1-36 owners or members is originally to be taken.

1-37 SECTION 3. Subsection (a), Section 6.205, Business
1-38 Organizations Code, is amended to read as follows:

1-39 (a) Any photographic, photostatic, facsimile, or similarly
1-40 reliable reproduction of a consent in writing signed by an owner,
1-41 member, or governing person of a filing entity may be substituted or
1-42 used instead of the original writing for any purpose for which the
1-43 original writing could be used~~[, if the reproduction is a complete~~
1-44 ~~reproduction of the entire original writing]~~.

1-45 SECTION 4. Subdivision (1) and (2), Section 8.001, Business
1-46 Organizations Code, are amended to read as follows:

1-47 (1) "Delegate" means a person who, while serving as a
1-48 governing person of an enterprise, is or was serving ~~[as a~~
1-49 ~~representative of the enterprise]~~ at the request of that enterprise
1-50 as a representative of [at] another enterprise, [or] another
1-51 organization, or [to] an employee benefit plan. A person is a
1-52 delegate to an employee benefit plan if the performance of the
1-53 person's official duties to the enterprise also imposes duties on
1-54 or otherwise involves service by the person to the plan or
1-55 participants in or beneficiaries of the plan.

1-56 (2) "Enterprise" means a domestic entity or an
1-57 organization subject to this chapter. The term includes[
1-58 including] a predecessor enterprise [domestic entity or
1-59 organization].

1-60 SECTION 5. Subsection (d), Section 8.103, Business
1-61 Organizations Code, is amended to read as follows:

1-62 (d) With respect to a limited partnership, a vote of a
1-63 majority-in-interest of the limited partners in a vote that

2-1 excludes the interest held by each general partner who is not
 2-2 disinterested and independent constitutes a determination under
 2-3 Subsection (a)(4). For purposes of this subsection,
 2-4 "majority-in-interest" means, with respect to limited partners,
 2-5 limited partners who own more than 50 percent of the current
 2-6 percentage or other interest in the profits of the partnership that
 2-7 is owned by all of the limited partners.

2-8 SECTION 6. Subsection (d), Section 8.104, Business
 2-9 Organizations Code, is amended to read as follows:

2-10 (d) With respect to a limited partnership, a vote of a
 2-11 majority-in-interest of the limited partners in a vote that
 2-12 excludes the interest held by each general partner who is not
 2-13 disinterested and independent constitutes an authorization under
 2-14 Subsection (b). For purposes of this subsection,
 2-15 "majority-in-interest" means, with respect to limited partners,
 2-16 limited partners who own more than 50 percent of the current
 2-17 percentage or other interest in the profits of the partnership that
 2-18 is owned by all of the limited partners.

2-19 SECTION 7. Subsection (d), Section 8.105, Business
 2-20 Organizations Code, is amended to read as follows:

2-21 (d) Notwithstanding any authorization or determination
 2-22 specified in this chapter, an enterprise may pay or reimburse, in
 2-23 advance of the final disposition of a proceeding and on terms the
 2-24 enterprise considers appropriate, reasonable expenses incurred by:

2-25 (1) a former governing person ~~managerial official~~ or
 2-26 delegate who was, is, or is threatened to be made a respondent in
 2-27 the proceeding; [✓] or

2-28 (2) a present or former employee, ~~or~~ agent, or
 2-29 officer who is not a governing person of the enterprise and who was,
 2-30 is, or is threatened to be made a respondent in the proceeding.

2-31 SECTION 8. Section 8.151, Business Organizations Code, is
 2-32 amended by adding Subsection (c-1) to read as follows:

2-33 (c-1) With respect to a limited partnership, a vote of a
 2-34 majority-in-interest of the limited partners constitutes approval
 2-35 of the owners for purposes of Subsection (c).

2-36 SECTION 9. Subsection (b), Section 9.007, Business
 2-37 Organizations Code, is amended to read as follows:

2-38 (b) The application for registration must state:

2-39 (1) the partnership's name;
 2-40 (2) the federal taxpayer ~~tax~~ identification number
 2-41 of the partnership;

2-42 (3) the partnership's jurisdiction of formation;

2-43 (4) the date of initial registration as a limited
 2-44 liability partnership under the laws of the jurisdiction ~~state~~ of
 2-45 formation;

2-46 (5) the date the foreign entity began or will begin to
 2-47 transact business in this state;

2-48 (6) that the partnership exists as a valid limited
 2-49 liability partnership under the laws of the jurisdiction ~~state~~ of
 2-50 its formation;

2-51 (7) the number of partners at the date of the
 2-52 statement;

2-53 (8) each business or activity that the partnership
 2-54 proposes to pursue in this state, which may be stated to be any
 2-55 lawful business or activity under the laws of this state;

2-56 (9) the address of the principal office of the
 2-57 partnership;

2-58 (10) the address of the initial registered office and
 2-59 the name and address of the initial registered agent for service of
 2-60 process required to be maintained under Section 152.904; and

2-61 (11) that the secretary of state is appointed the
 2-62 agent of the partnership for service of process under the same
 2-63 circumstances as set forth by Section 5.251 for a foreign filing
 2-64 entity.

2-65 SECTION 10. Section 10.002, Business Organizations Code, is
 2-66 amended to read as follows:

2-67 Sec. 10.002. PLAN OF MERGER: REQUIRED PROVISIONS. (a) A
 2-68 plan of merger must be in writing and must include:

2-69 (1) the name of each organization that is a party to

3-1 the merger;

3-2 (2) the name of each organization that will survive

3-3 the merger;

3-4 (3) the name of each new organization that is to be

3-5 created by the plan of merger;

3-6 (4) a description of the organizational form of each

3-7 organization that is a party to the merger or that is to be created

3-8 by the plan of merger and its jurisdiction of formation;

3-9 (5) the manner and basis of converting or exchanging

3-10 any of the ownership or membership interests of each organization

3-11 that is a party to the merger into:

3-12 (A) ownership interests, membership interests,

3-13 obligations, rights to purchase securities, or other securities of

3-14 one or more of the surviving or new organizations;

3-15 (B) cash;

3-16 (C) other property, including ownership

3-17 interests, membership interests, obligations, rights to purchase

3-18 securities, or other securities of any other person or entity; or

3-19 (D) any combination of the items described by

3-20 Paragraphs (A)-(C);

3-21 (6) the identification of any of the ownership or

3-22 membership interests of an organization that is a party to the

3-23 merger that are to be canceled rather than converted or exchanged;

3-24 (7) the certificate of formation of each new domestic

3-25 filing entity to be created by the plan of merger;

3-26 (8) [~~(7)~~] the governing documents of each new domestic

3-27 nonfiling entity to be created by the plan of merger; and

3-28 (9) [~~(8)~~] the governing documents of each non-code

3-29 organization that:

3-30 (A) is to survive the merger or to be created by

3-31 the plan of merger; and

3-32 (B) is an entity that is not:

3-33 (i) organized under the laws of any state or

3-34 the United States; or

3-35 (ii) required to file its certificate of

3-36 formation or similar document under which the entity is organized

3-37 with the appropriate governmental authority.

3-38 (b) An item required by Subsections (a)(7)-(9) [~~(a)(6)-(8)~~]

3-39 may be included in the plan of merger by an attachment or exhibit to

3-40 the plan.

3-41 (c) If the plan of merger provides for a manner and basis of

3-42 converting or exchanging an ownership or membership interest that

3-43 may be converted or exchanged in a manner or basis different than

3-44 any other ownership or membership interest of the same class or

3-45 series of the ownership or membership interest, the manner and

3-46 basis of conversion or exchange must be included in the plan of

3-47 merger in the same manner as provided by Subsection (a)(5). A plan

3-48 of merger may provide for cancellation of an ownership or

3-49 membership interest while providing for the conversion or exchange

3-50 of other ownership or membership interests of the same class or

3-51 series as the ownership or membership interest to be canceled.

3-52 SECTION 11. Subsection (a), Section 10.008, Business

3-53 Organizations Code, is amended to read as follows:

3-54 (a) When a merger takes effect:

3-55 (1) the separate existence of each domestic entity

3-56 that is a party to the merger, other than a surviving or new

3-57 domestic entity, ceases;

3-58 (2) all rights, title, and interests to all real

3-59 estate and other property owned by each organization that is a party

3-60 to the merger is allocated to and vested, subject to any existing

3-61 liens or other encumbrances on the property, in one or more of the

3-62 surviving or new organizations as provided in the plan of merger

3-63 without:

3-64 (A) reversion or impairment;

3-65 (B) any further act or deed; or

3-66 (C) any transfer or assignment having occurred;

3-67 (3) all liabilities and obligations of each

3-68 organization that is a party to the merger are allocated to one or

3-69 more of the surviving or new organizations in the manner provided by

4-1 the plan of merger;

4-2 (4) each surviving or new domestic organization to
 4-3 which a liability or obligation is allocated under the plan of
 4-4 merger is the primary obligor for the liability or obligation, and,
 4-5 except as otherwise provided by the plan of merger or by law or
 4-6 contract, no other party to the merger, other than a surviving
 4-7 domestic entity or non-code organization liable or otherwise
 4-8 obligated at the time of the merger, and no other new domestic
 4-9 entity or non-code organization created under the plan of merger is
 4-10 liable for the debt or other obligation;

4-11 (5) any proceeding pending by or against any domestic
 4-12 entity or by or against any non-code organization that is a party to
 4-13 the merger may be continued as if the merger did not occur, or the
 4-14 surviving or new domestic entity or entities or the surviving or new
 4-15 non-code organization or non-code organizations to which the
 4-16 liability, obligation, asset, or right associated with that
 4-17 proceeding is allocated to and vested in under the plan of merger
 4-18 may be substituted in the proceeding;

4-19 (6) the governing documents of each surviving domestic
 4-20 entity are amended to the extent provided by the plan of merger;

4-21 (7) each new filing entity whose certificate of
 4-22 formation is included in the plan of merger under this chapter, on
 4-23 meeting any additional requirements, if any, of this code for its
 4-24 formation, is formed as a domestic entity under this code as
 4-25 provided by the plan of merger;

4-26 (8) the ownership or membership interests of each
 4-27 organization that is a party to the merger and that are to be
 4-28 converted or exchanged, in whole or part, into ownership or
 4-29 membership interests, obligations, rights to purchase securities,
 4-30 or other securities of one or more of the surviving or new
 4-31 organizations, into cash or other property, including ownership or
 4-32 membership interests, obligations, rights to purchase securities,
 4-33 or other securities of any organization, or into any combination of
 4-34 these, or that are to be canceled, are converted, [and] exchanged,
 4-35 or canceled as provided in the plan of merger, and the former owners
 4-36 or members who held ownership or membership interests of each
 4-37 domestic entity that is a party to the merger are entitled only to
 4-38 the rights provided by the plan of merger or, if applicable, any
 4-39 rights to receive the fair value for the ownership interests
 4-40 provided under Subchapter H; and

4-41 (9) notwithstanding Subdivision (4), the surviving or
 4-42 new organization named in the plan of merger as primarily obligated
 4-43 to pay the fair value of an ownership or membership interest under
 4-44 Section 10.003(2) is the primary obligor for that payment and all
 4-45 other surviving or new organizations are secondarily liable for
 4-46 that payment.

4-47 SECTION 12. Subsection (a), Section 10.052, Business
 4-48 Organizations Code, is amended to read as follows:

4-49 (a) A plan of exchange must be in writing and must include:

4-50 (1) the name of each domestic entity the ownership or
 4-51 membership interests of which are to be acquired;

4-52 (2) the name of each acquiring organization;

4-53 (3) if there is more than one acquiring organization,
 4-54 the ownership or membership interests to be acquired by each
 4-55 organization;

4-56 (4) the terms and conditions of the exchange; and

4-57 (5) the manner and basis of exchanging the ownership
 4-58 or membership interests to be acquired for:

4-59 (A) ownership or membership interests,
 4-60 obligations, rights to purchase securities, or other securities of
 4-61 one or more of the acquiring organizations that is a party to the
 4-62 plan of exchange;

4-63 (B) cash;

4-64 (C) other property, including ownership or
 4-65 membership interests, obligations, rights to purchase securities,
 4-66 or other securities of any other person or entity; or

4-67 (D) any combination of those items.

4-68 SECTION 13. Subsection (a), Section 10.103, Business
 4-69 Organizations Code, is amended to read as follows:

5-1 (a) A plan of conversion must be in writing and must
5-2 include:

5-3 (1) the name of the converting entity;

5-4 (2) the name of the converted entity;

5-5 (3) a statement that the converting entity is
5-6 continuing its existence in the organizational form of the
5-7 converted entity;

5-8 (4) a statement of the type of entity that the
5-9 converted entity is to be and the converted entity's jurisdiction
5-10 of formation;

5-11 (5) if Sections 10.1025 and 10.109 do not apply, the
5-12 manner and basis of converting the ownership or membership
5-13 interests of the converting entity into ownership or membership
5-14 interests of the converted entity;

5-15 (6) any certificate of formation required to be filed
5-16 under this code if the converted entity is a filing entity;

5-17 (7) the certificate of formation or similar
5-18 organizational document of the converted entity if the converted
5-19 entity is not a filing entity; and

5-20 (8) if Sections 10.1025 and 10.109 apply, a statement
5-21 that the converting entity is electing to continue its existence in
5-22 its current organizational form and jurisdiction of formation after
5-23 the conversion takes effect.

5-24 SECTION 14. Subsection (b), Section 10.354, Business
5-25 Organizations Code, is amended to read as follows:

5-26 (b) Notwithstanding Subsection (a), subject to Subsection
5-27 (c), an owner may not dissent from a plan of merger or conversion in
5-28 which there is a single surviving or new domestic entity or non-code
5-29 organization, or from a plan of exchange, if:

5-30 (1) the ownership interest, or a depository receipt in
5-31 respect of the ownership interest, held by the owner is part of a
5-32 class or series of ownership interests, or depository receipts in
5-33 respect of ownership interests, that are, on the record date set for
5-34 purposes of determining which owners are entitled to vote on the
5-35 plan of merger, conversion, or exchange, as appropriate:

5-36 (A) listed on a national securities exchange [~~or~~
5-37 ~~a similar system~~]; or

5-38 (B) [~~listed on the Nasdaq Stock Market or a~~
5-39 ~~successor quotation system~~];

5-40 [~~(C) designated as a national market security on~~
5-41 ~~an interdealer quotation system by the National Association of~~
5-42 ~~Securities Dealers, Inc., or a successor system~~]; or

5-43 [~~(D)~~] held of record by at least 2,000 owners;

5-44 (2) the owner is not required by the terms of the plan
5-45 of merger, conversion, or exchange, as appropriate, to accept for
5-46 the owner's ownership interest any consideration that is different
5-47 from the consideration to be provided to any other holder of an
5-48 ownership interest of the same class or series as the ownership
5-49 interest held by the owner, other than cash instead of fractional
5-50 shares or interests the owner would otherwise be entitled to
5-51 receive; and

5-52 (3) the owner is not required by the terms of the plan
5-53 of merger, conversion, or exchange, as appropriate, to accept for
5-54 the owner's ownership interest any consideration other than:

5-55 (A) ownership interests, or depository receipts
5-56 in respect of ownership interests, of a domestic entity or non-code
5-57 organization of the same general organizational type that,
5-58 immediately after the effective date of the merger, conversion, or
5-59 exchange, as appropriate, will be part of a class or series of
5-60 ownership interests, or depository receipts in respect of ownership
5-61 interests, that are:

5-62 (i) listed on a national securities
5-63 exchange or authorized for listing on the exchange on official
5-64 notice of issuance; or

5-65 (ii) [~~approved for quotation as a national~~
5-66 ~~market security on an interdealer quotation system by the National~~
5-67 ~~Association of Securities Dealers, Inc., or a successor entity~~]; or

5-68 [~~(iii)~~] held of record by at least 2,000
5-69 owners;

6-1 (B) cash instead of fractional ownership
 6-2 interests the owner would otherwise be entitled to receive; or
 6-3 (C) any combination of the ownership interests
 6-4 and cash described by Paragraphs (A) and (B).

6-5 SECTION 15. Subsections (c) and (e), Section 10.355,
 6-6 Business Organizations Code, are amended to read as follows:

6-7 (c) A notice required to be provided under Subsection (a) or
 6-8 (b) must:

6-9 (1) be accompanied by a copy of this subchapter; and
 6-10 (2) advise the owner of the location of the
 6-11 responsible organization's principal executive offices to which a
 6-12 notice required under Section 10.356(b)(1) or (3) [~~10.356(b)(2)~~]
 6-13 may be provided.

6-14 (e) Not later than the 10th day after the date an action
 6-15 described by Subsection (a)(1) takes effect, the responsible
 6-16 organization shall give notice that the action has been effected to
 6-17 each owner who voted against the action and sent notice under
 6-18 Section 10.356(b)(1) [~~10.356(b)(2)~~].

6-19 SECTION 16. Subsections (b), (c), and (d), Section 10.356,
 6-20 Business Organizations Code, are amended to read as follows:

6-21 (b) To perfect the owner's rights of dissent and appraisal
 6-22 under Section 10.354, an owner:

6-23 (1) if the proposed action is to be submitted to a vote
 6-24 of the owners at a meeting, must give to the domestic entity a
 6-25 written notice of objection to the action that:

6-26 (A) is addressed to the entity's president and
 6-27 secretary;

6-28 (B) states that the owner's right to dissent will
 6-29 be exercised if the action takes effect;

6-30 (C) provides an address to which notice of
 6-31 effectiveness of the action should be delivered or mailed; and

6-32 (D) is delivered to the entity's principal
 6-33 executive offices before the meeting;

6-34 (2) with respect to the ownership interest for which
 6-35 the rights of dissent and appraisal are sought:

6-36 (A) must vote against the action if the owner is
 6-37 entitled to vote on the action and the action is approved at a
 6-38 meeting of the owners; and

6-39 (B) may not consent to the action if the action is
 6-40 approved by written consent; and

6-41 (3) [~~(2)~~] must give to the responsible organization a
 6-42 demand in writing [~~notice dissenting to the action~~] that:

6-43 (A) is addressed to the president and secretary
 6-44 of the responsible organization;

6-45 (B) demands payment of the fair value of the
 6-46 ownership interests for which the rights of dissent and appraisal
 6-47 are sought;

6-48 (C) provides to the responsible organization an
 6-49 address to which a notice relating to the dissent and appraisal
 6-50 procedures under this subchapter may be sent;

6-51 (D) states the number and class of the ownership
 6-52 interests of the domestic entity owned by the owner and the fair
 6-53 value of the ownership interests as estimated by the owner; and

6-54 (E) is delivered to the responsible organization
 6-55 at its principal executive offices at the following time:

6-56 (i) not later than the 20th day after the
 6-57 date the responsible organization sends to the owner the notice
 6-58 required by Section 10.355(e) that the action has taken effect
 6-59 [before the action is considered for approval], if the action was
 6-60 approved by [~~is to be submitted to~~] a vote of the owners at a
 6-61 meeting;

6-62 (ii) not later than the 20th day after the
 6-63 date the responsible organization sends to the owner the [a] notice
 6-64 required by Section 10.355(d)(2) that the action has taken effect
 6-65 [was approved by the requisite vote of the owners], if the action
 6-66 was approved by [~~is to be undertaken on~~] the written consent of the
 6-67 owners; or

6-68 (iii) not later than the 20th day after the
 6-69 date the responsible organization sends to the owner a notice that

7-1 the merger was effected, if the action is a merger effected under
7-2 Section 10.006.

7-3 (c) An owner who does not make a demand within the period
7-4 required by Subsection (b)(3)(E) or, if Subsection (b)(1) is
7-5 applicable, does not give the notice of objection before the
7-6 meeting of the owners [~~(b)(2)(E)~~] is bound by the action and is not
7-7 entitled to exercise the rights of dissent and appraisal under
7-8 Section 10.354.

7-9 (d) Not later than the 20th day after the date an owner makes
7-10 a demand under Subsection (b)(3) [~~this section~~], the owner must
7-11 submit to the responsible organization any certificates
7-12 representing the ownership interest to which the demand relates for
7-13 purposes of making a notation on the certificates that a demand for
7-14 the payment of the fair value of an ownership interest has been made
7-15 under this section. An owner's failure to submit the certificates
7-16 within the required period has the effect of terminating, at the
7-17 option of the responsible organization, the owner's rights to
7-18 dissent and appraisal under Section 10.354 unless a court, for good
7-19 cause shown, directs otherwise.

7-20 SECTION 17. Subsections (a), (d), and (e), Section 10.358,
7-21 Business Organizations Code, are amended to read as follows:

7-22 (a) Not later than the 20th day after the date a responsible
7-23 organization receives a demand for payment made by a dissenting
7-24 owner in accordance with Section 10.356(b)(3) [~~10.356~~], the
7-25 responsible organization shall respond to the dissenting owner in
7-26 writing by:

7-27 (1) accepting the amount claimed in the demand as the
7-28 fair value of the ownership interests specified in the notice; or

7-29 (2) rejecting the demand and including in the response
7-30 the requirements prescribed by Subsection (c).

7-31 (d) If the dissenting owner decides to accept the offer made
7-32 by the responsible organization under Subsection (c)(2), the owner
7-33 must provide to the responsible organization notice of the
7-34 acceptance of the offer not later than the 90th day after the date
7-35 the action that is the subject of the demand took effect [~~An offer~~
7-36 ~~made under Subsection (c)(2) must remain open for a period of at~~
7-37 ~~least 60 days from the date the offer is first delivered to the~~
7-38 ~~dissenting owner].~~

7-39 (e) If, not later than the 90th day after the date the action
7-40 that is the subject of the demand took effect, a dissenting owner
7-41 accepts an offer made by a responsible organization under
7-42 Subsection (c)(2) or [if] a dissenting owner and a responsible
7-43 organization reach an agreement on the fair value of the ownership
7-44 interests, the responsible organization shall pay the agreed amount
7-45 not later than the 120th [60th] day after the date the action that
7-46 is the subject of the demand took effect [~~the offer is accepted or~~
7-47 ~~the agreement is reached, as appropriate], if the dissenting owner
7-48 delivers to the responsible organization:~~

7-49 (1) endorsed certificates representing the ownership
7-50 interests if the ownership interests are certificated; or

7-51 (2) signed assignments of the ownership interests if
7-52 the ownership interests are uncertificated.

7-53 SECTION 18. Section 11.057, Business Organizations Code, is
7-54 amended by adding Subsection (f) to read as follows:

7-55 (f) "Majority-in-interest" means, with respect to all or a
7-56 specified group of partners, partners who own more than 50 percent
7-57 of the current percentage or other interest in the profits of the
7-58 partnership that is owned by all of the partners or by the partners
7-59 in the specified group, as appropriate.

7-60 SECTION 19. Section 11.402, Business Organizations Code, is
7-61 amended to read as follows:

7-62 Sec. 11.402. JURISDICTION TO APPOINT RECEIVER. (a) A
7-63 court that has subject matter jurisdiction over specific property
7-64 of a domestic or foreign entity that is located in this state and is
7-65 involved in litigation has jurisdiction to appoint a receiver for
7-66 that property as provided by Section 11.403.

7-67 (b) A district court in the county in which the registered
7-68 office or principal place of business of a domestic entity is
7-69 located has jurisdiction to:

8-1 (1) appoint a receiver for the property and business
8-2 of a domestic entity for the purpose of rehabilitating the entity as
8-3 provided by Section 11.404; or

8-4 (2) order the liquidation of the property and business
8-5 of a domestic entity and appoint a receiver to effect that
8-6 liquidation as provided by Section 11.405.

8-7 SECTION 20. Subsection (b), Section 11.404, Business
8-8 Organizations Code, is amended to read as follows:

8-9 (b) A court may appoint a receiver under Subsection (a) only
8-10 if:

8-11 (1) circumstances exist that are considered by the
8-12 court to necessitate the appointment of a receiver to conserve the
8-13 property and business of the domestic entity and avoid damage to
8-14 interested parties;

8-15 (2) all other requirements of law are complied with;
8-16 and

8-17 (3) the court determines that all other available
8-18 legal and equitable remedies, including the appointment of a
8-19 receiver for specific property of the domestic entity under Section
8-20 11.402(a) [11.402], are inadequate.

8-21 SECTION 21. Subsection (a), Section 21.109, Business
8-22 Organizations Code, is amended to read as follows:

8-23 (a) A shareholders' agreement authorized by this subchapter
8-24 ceases to be effective when shares of the corporation are:

8-25 (1) listed on a national securities exchange [~~or~~
8-26 ~~similar system]; or~~

8-27 (2) [~~quoted on an interdealer quotation system of a~~
8-28 ~~national securities association or successor system; or~~

8-29 [~~3~~] regularly traded in a market maintained by one
8-30 or more members of a national or affiliated securities association.

8-31 SECTION 22. Subchapter C, Chapter 21, Business
8-32 Organizations Code, is amended by adding Section 21.110 to read as
8-33 follows:

8-34 Sec. 21.110. OTHER SHAREHOLDER AGREEMENTS PERMITTED. This
8-35 subchapter does not prohibit or impair any agreement between two or
8-36 more shareholders, or between the corporation and one or more of the
8-37 corporation's shareholders, permitted by Title 1, this chapter, or
8-38 other law.

8-39 SECTION 23. Section 21.203, Business Organizations Code, is
8-40 amended by adding Subsection (c) to read as follows:

8-41 (c) This section and Sections 21.204 through 21.208 do not
8-42 invalidate or impair a corporation's right or power to grant an
8-43 enforceable nonstatutory preemptive right in:

8-44 (1) a contract between the corporation and a
8-45 shareholder or other person; or

8-46 (2) the governing documents of the corporation.

8-47 SECTION 24. Subsection (a), Section 21.206, Business
8-48 Organizations Code, is amended to read as follows:

8-49 (a) An action brought against a corporation, the board of
8-50 directors or an officer, shareholder, or agent of the corporation,
8-51 or an owner of a beneficial interest in shares of the corporation
8-52 for the violation of a preemptive right of a shareholder under
8-53 Sections 21.203 and 21.204 must be brought not later than the
8-54 earlier of:

8-55 (1) the first anniversary of the date written notice
8-56 is given to each shareholder whose preemptive right was violated;
8-57 or

8-58 (2) the fourth anniversary of the latest of:

8-59 (A) the date the corporation issued the shares,
8-60 securities, or rights;

8-61 (B) the date the corporation sold the shares,
8-62 securities, or rights; or

8-63 (C) the date the corporation otherwise
8-64 distributed the shares, securities, or rights.

8-65 SECTION 25. Subsection (b), Section 21.222, Business
8-66 Organizations Code, is amended to read as follows:

8-67 (b) It is a defense to an action brought under this section
8-68 that the person suing:

8-69 (1) has, within the two years preceding the date the

9-1 action is brought, sold or offered for sale a list of shareholders
 9-2 or of holders of voting trust certificates [~~in consideration~~] for
 9-3 shares of the corporation or any other corporation;

9-4 (2) has aided or abetted a person in procuring a list
 9-5 of shareholders or of holders of voting trust certificates for the
 9-6 purpose described by Subdivision (1);

9-7 (3) has improperly used information obtained through a
 9-8 prior examination of the books and account records, minutes, or
 9-9 share transfer records of the corporation or any other corporation;
 9-10 or

9-11 (4) was not acting in good faith or for a proper
 9-12 purpose in making the person's request for examination.

9-13 SECTION 26. Section 21.357, Business Organizations Code, is
 9-14 amended to read as follows:

9-15 Sec. 21.357. RECORD DATE FOR PURPOSE OF SHAREHOLDERS'
 9-16 MEETING [~~OTHER THAN WRITTEN CONSENT TO ACTION~~]. The record date for
 9-17 the purpose of determining shareholders entitled to notice of or to
 9-18 vote at a shareholders' meeting or any adjournment of the meeting,
 9-19 as provided by the directors in accordance with Section 6.101, must
 9-20 be at least 10 days before the date of the shareholders' meeting [~~on~~
 9-21 ~~which the particular action requiring the determination of~~
 9-22 ~~shareholders is to be taken~~].

9-23 SECTION 27. Subsection (a), Section 21.415, Business
 9-24 Organizations Code, is amended to read as follows:

9-25 (a) The act of a majority of the directors present at a
 9-26 meeting at which a quorum is present at the time of the act is the
 9-27 act of the board of directors of a corporation, unless the act of a
 9-28 greater number is required by the certificate of formation or
 9-29 bylaws of the corporation or by this code.

9-30 SECTION 28. Section 21.418, Business Organizations Code, is
 9-31 amended by amending Subsections (a) and (b) and adding Subsections
 9-32 (d) and (e) to read as follows:

9-33 (a) This section applies [~~only~~] to a contract or transaction
 9-34 between a corporation and:

9-35 (1) one or more [~~of the corporation's~~] directors or
 9-36 officers, or one or more affiliates or associates of one or more
 9-37 directors or officers, of the corporation; or

9-38 (2) an entity or other organization in which one or
 9-39 more [~~of the corporation's~~] directors or officers, or one or more
 9-40 affiliates or associates of one or more directors or officers, of
 9-41 the corporation:

9-42 (A) is a managerial official; or

9-43 (B) has a financial interest.

9-44 (b) An otherwise valid and enforceable contract or
 9-45 transaction described by Subsection (a) is valid and enforceable,
 9-46 and is not void or voidable, notwithstanding any relationship or
 9-47 interest described by Subsection (a), if any one of the following
 9-48 conditions is satisfied [~~notwithstanding that the director or~~
 9-49 ~~officer having the relationship or interest described by Subsection~~
 9-50 ~~(a) is present at or participates in the meeting of the board of~~
 9-51 ~~directors, or of a committee of the board that authorizes the~~
 9-52 ~~contract or transaction, or votes or signs, in the person's~~
 9-53 ~~capacity as a director or committee member, a unanimous written~~
 9-54 ~~consent of directors or committee members to authorize the contract~~
 9-55 ~~or transaction, if~~]:

9-56 (1) the material facts as to the relationship or
 9-57 interest described by Subsection (a) and as to the contract or
 9-58 transaction are disclosed to or known by:

9-59 (A) the corporation's board of directors or a
 9-60 committee of the board of directors, and the board of directors or
 9-61 committee in good faith authorizes the contract or transaction by
 9-62 the approval of the majority of the disinterested directors or
 9-63 committee members, regardless of whether the disinterested
 9-64 directors or committee members constitute a quorum; or

9-65 (B) the shareholders entitled to vote on the
 9-66 authorization of the contract or transaction, and the contract or
 9-67 transaction is specifically approved in good faith by a vote of the
 9-68 shareholders; or

9-69 (2) the contract or transaction is fair to the

10-1 corporation when the contract or transaction is authorized,
 10-2 approved, or ratified by the board of directors, a committee of the
 10-3 board of directors, or the shareholders.

10-4 (d) A person who has the relationship or interest described
 10-5 by Subsection (a) may:

10-6 (1) be present at or participate in and, if the person
 10-7 is a director or committee member, may vote at a meeting of the
 10-8 board of directors or of a committee of the board that authorizes
 10-9 the contract or transaction; or

10-10 (2) sign, in the person's capacity as a director or
 10-11 committee member, a unanimous written consent of the directors or
 10-12 committee members to authorize the contract or transaction.

10-13 (e) If at least one of the conditions of Subsection (b) is
 10-14 satisfied, neither the corporation nor any of the corporation's
 10-15 shareholders will have a cause of action against any of the persons
 10-16 described by Subsection (a) for breach of duty with respect to the
 10-17 making, authorization, or performance of the contract or
 10-18 transaction because the person had the relationship or interest
 10-19 described by Subsection (a) or took any of the actions authorized by
 10-20 Subsection (d).

10-21 SECTION 29. Section 21.453, Business Organizations Code, is
 10-22 amended by adding Subsections (f) and (g) to read as follows:

10-23 (f) If after the adoption of a resolution under Subsection
 10-24 (b) the board of directors of the corporation determines that the
 10-25 plan of conversion is not advisable, the plan of conversion may be
 10-26 submitted to the shareholders of the corporation with a
 10-27 recommendation that the shareholders not approve the plan of
 10-28 conversion.

10-29 (g) A plan of conversion for a corporation may include a
 10-30 provision requiring that the plan of conversion be submitted to the
 10-31 shareholders of the corporation, regardless of whether the board of
 10-32 directors determines, after adopting a resolution or making a
 10-33 determination under this section, that the plan of conversion is
 10-34 not advisable and recommends that the shareholders not approve the
 10-35 plan of conversion.

10-36 SECTION 30. Subdivision (1), Section 21.601, Business
 10-37 Organizations Code, is amended to read as follows:

10-38 (1) "Issuing public corporation" means a domestic
 10-39 corporation that has:

10-40 (A) 100 or more shareholders of record as shown
 10-41 by the share transfer records of the corporation;

10-42 (B) a class or series of the corporation's voting
 10-43 shares registered under the Securities Exchange Act of 1934 (15
 10-44 U.S.C. Section 77b et seq.), as amended; or

10-45 (C) a class or series of the corporation's voting
 10-46 shares qualified for trading on ~~[in]~~ a national securities exchange
 10-47 ~~[market system].~~

10-48 SECTION 31. Section 21.603, Business Organizations Code, is
 10-49 amended to read as follows:

10-50 Sec. 21.603. BENEFICIAL OWNER OF SHARES OR OTHER ~~[SIMILAR]~~
 10-51 SECURITIES. (a) For purposes of this subchapter ~~[chapter]~~, a
 10-52 person is a beneficial owner of shares or other ~~[similar]~~
 10-53 securities if the person individually, or through an affiliate or
 10-54 associate, ~~[beneficially owns,]~~ directly or indirectly
 10-55 beneficially owns the shares or other securities or has the right ~~[7~~
 10-56 shares or similar securities.

10-57 ~~[(b) A beneficial owner of shares or similar securities is~~
 10-58 ~~entitled, individually or through an affiliate or associate,] to:~~

10-59 (1) acquire the shares or other ~~[similar]~~ securities
 10-60 ~~[that may be exercised]~~ immediately or after the passage ~~[of a~~
 10-61 ~~certain amount]~~ of time according to an oral or written agreement,
 10-62 arrangement, or understanding, or on the exercise of conversion
 10-63 rights, exchange rights, warrants, or options;

10-64 (2) vote the shares or other ~~[similar]~~ securities
 10-65 according to an oral or written agreement, arrangement, or
 10-66 understanding; or

10-67 (3) ~~[subject to Subsection (c),]~~ acquire, hold or
 10-68 dispose of, or vote the shares or other ~~[similar]~~ securities with
 10-69 another person who individually, or through an affiliate or

11-1 associate, beneficially owns, directly or indirectly, the shares or
 11-2 other [similar] securities.

11-3 (b) [~~(c)~~] A person, however, is not considered a beneficial
 11-4 owner of shares or other [similar] securities for purposes of this
 11-5 subchapter if:

11-6 (1) the shares or other [similar] securities are:

11-7 (A) tendered under a tender or exchange offer
 11-8 made by the person or an affiliate or associate of the person before
 11-9 the tendered shares or securities are accepted for purchase or
 11-10 exchange; or

11-11 (B) subject to an agreement, arrangement, or
 11-12 understanding that expressly conditions the acquisition or
 11-13 purchase of shares or securities on the approval of the acquisition
 11-14 or purchase under Section 21.606 if the person has no direct or
 11-15 indirect rights of ownership or voting with respect to the shares or
 11-16 other securities until the time the approval is obtained; or

11-17 (2) the agreement, arrangement, or understanding to
 11-18 vote the shares:

11-19 (A) arises solely from an immediately revocable
 11-20 proxy that authorizes the person named in the proxy to vote at a
 11-21 meeting of the shareholders that has been called when the proxy is
 11-22 delivered or at an adjournment of the meeting; and

11-23 (B) would [is] not be reportable on a Schedule
 11-24 13D under the Securities Exchange Act of 1934 (15 U.S.C. Section 77b
 11-25 et seq.), as amended, or a comparable or successor report.

11-26 SECTION 32. Subdivision (1), Section 21.701, Business
 11-27 Organizations Code, is amended to read as follows:

11-28 (1) "Close corporation" means a domestic corporation
 11-29 formed under this subchapter or governed by this subchapter because
 11-30 of Section 21.705, 21.706, or 21.707.

11-31 SECTION 33. Subsection (a), Section 22.153, Business
 11-32 Organizations Code, is amended to read as follows:

11-33 (a) Except as provided by Subsection (b) or by the
 11-34 corporation's certificate of formation, a corporation with members
 11-35 who have voting rights shall hold an annual meeting of the members
 11-36 at a time that is stated in or determined in accordance with the
 11-37 corporation's bylaws.

11-38 SECTION 34. Section 22.230, Business Organizations Code, is
 11-39 amended by amending Subsections (a) and (b) and adding Subsections
 11-40 (d) and (e) to read as follows:

11-41 (a) This section applies [~~only~~] to a contract or transaction
 11-42 between a corporation and:

11-43 (1) one or more [~~of the corporation's~~] directors,
 11-44 officers, or members, or one or more affiliates or associates of one
 11-45 or more directors, officers, or members, of the corporation; or

11-46 (2) an entity or other organization in which one or
 11-47 more [~~of the corporation's~~] directors, officers, or members, or one
 11-48 or more affiliates or associates of one or more directors,
 11-49 officers, or members, of the corporation:

11-50 (A) is a managerial official or a member; or

11-51 (B) has a financial interest.

11-52 (b) An otherwise valid and enforceable contract or
 11-53 transaction is valid and enforceable, and is not void or voidable,
 11-54 notwithstanding any relationship or interest described by
 11-55 Subsection (a), if any one of the following conditions is satisfied
 11-56 [notwithstanding that a director, officer, or member of the
 11-57 corporation is present at or participates in the meeting of the
 11-58 board of directors, of a committee of the board, or of the members
 11-59 that authorizes the contract or transaction, or votes to authorize
 11-60 the contract or transaction, if]:

11-61 (1) the material facts as to the relationship or
 11-62 interest and as to the contract or transaction are disclosed to or
 11-63 known by:

11-64 (A) the corporation's board of directors, a
 11-65 committee of the board of directors, or the members, and the board,
 11-66 the committee, or the members in good faith and with ordinary care
 11-67 authorize the contract or transaction by the affirmative vote of
 11-68 the majority of the disinterested directors, committee members or
 11-69 members, regardless of whether the disinterested directors,

12-1 committee members or members constitute a quorum; or

12-2 (B) the members entitled to vote on the
12-3 authorization of the contract or transaction, and the contract or
12-4 transaction is specifically approved in good faith and with
12-5 ordinary care by a vote of the members; or

12-6 (2) the contract or transaction is fair to the
12-7 corporation when the contract or transaction is authorized,
12-8 approved, or ratified by the board of directors, a committee of the
12-9 board of directors, or the members.

12-10 (d) A person who has the relationship or interest described
12-11 by Subsection (a) may:

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

12-16 (2) sign, in the person's capacity as a director,
12-17 member, or committee member, a written consent of the directors,
12-18 members, or committee members to authorize the contract or
12-19 transaction.

12-20 (e) If at least one of the conditions of Subsection (b) is
12-21 satisfied, neither the corporation nor any of the corporation's
12-22 shareholders will have a cause of action against any of the persons
12-23 described by Subsection (a) for breach of duty with respect to the
12-24 making, authorization, or performance of the contract or
12-25 transaction because the person had the relationship or interest
12-26 described by Subsection (a) or took any of the actions authorized by
12-27 Subsection (d).

12-28 SECTION 35. Section 101.054, Business Organizations Code,
12-29 is amended by amending Subsection (a) and adding Subsection (e) to
12-30 read as follows:

12-31 (a) Except as provided by this section, the following
12-32 provisions may not be waived or modified in the company agreement of
12-33 a limited liability company:

12-34 (1) this section;

12-35 (2) Section 101.101, 101.151, 101.206, 101.501,
12-36 101.602(b), or 101.613 [~~101.502~~];

12-37 (3) Chapter 1, if the provision is used to interpret a
12-38 provision or define a word or phrase contained in a section listed
12-39 in this subsection;

12-40 (4) Chapter 2, except that Section 2.104(c)(2),
12-41 2.104(c)(3), or 2.113 may be waived or modified in the company
12-42 agreement;

12-43 (5) Chapter 3, except that Subchapters C and E may be
12-44 waived or modified in the company agreement; or

12-45 (6) Chapter 4, 5, 7, 10, 11, or 12, other than Section
12-46 11.056.

12-47 (e) The company agreement may not unreasonably restrict a
12-48 person's right of access to records and information under Section
12-49 101.502.

12-50 SECTION 36. Section 101.106, Business Organizations Code,
12-51 is amended by adding Subsections (a-1) and (a-2) to read as follows:

12-52 (a-1) A membership interest may be community property under
12-53 applicable law.

12-54 (a-2) A member's right to participate in the management and
12-55 conduct of the business of the limited liability company is not
12-56 community property.

12-57 SECTION 37. Subchapter C, Chapter 101, Business
12-58 Organizations Code, is amended by adding Section 101.1115 to read
12-59 as follows:

12-60 Sec. 101.1115. EFFECT OF DEATH OR DIVORCE ON MEMBERSHIP
12-61 INTEREST. (a) For purposes of this code:

12-62 (1) on the divorce of a member, the member's spouse, to
12-63 the extent of the spouse's membership interest, if any, is an
12-64 assignee of the membership interest;

12-65 (2) on the death of a member, the member's surviving
12-66 spouse, if any, and an heir, devisee, personal representative, or
12-67 other successor of the member, to the extent of their respective
12-68 membership interest, are assignees of the membership interest; and

12-69 (3) on the death of a member's spouse, an heir,

13-1 devisee, personal representative, or other successor of the spouse,
 13-2 other than the member, to the extent of their respective membership
 13-3 interest, if any, is an assignee of the membership interest.

13-4 (b) This chapter does not impair an agreement for the
 13-5 purchase or sale of a membership interest at any time, including on
 13-6 the death or divorce of an owner of the membership interest.

13-7 SECTION 38. Subsection (a), Section 101.254, Business
 13-8 Organizations Code, is amended to read as follows:

13-9 (a) Except as provided by this title and Title 1, each
 13-10 governing person of a limited liability company and each officer
 13-11 ~~[or agent]~~ of a limited liability company vested with actual or
 13-12 apparent authority by the governing authority of the company is an
 13-13 agent of the company for purposes of carrying out the company's
 13-14 business.

13-15 SECTION 39. Section 101.255, Business Organizations Code,
 13-16 is amended by amending Subsections (a) and (b) and adding
 13-17 Subsections (d) and (e) to read as follows:

13-18 (a) This section applies ~~[only]~~ to a contract or transaction
 13-19 between a limited liability company and:

13-20 (1) one or more ~~[of the company's]~~ governing persons or
 13-21 officers, or one or more affiliates or associates of one or more
 13-22 governing persons or officers, of the company; or

13-23 (2) an entity or other organization in which one or
 13-24 more ~~[of the company's]~~ governing persons or officers, or one or
 13-25 more affiliates or associates of one or more governing persons or
 13-26 officers, of the company:

13-27 (A) is a managerial official; or

13-28 (B) has a financial interest.

13-29 (b) An otherwise valid and enforceable contract or
 13-30 transaction described by Subsection (a) is valid and enforceable,
 13-31 and is not void or voidable, notwithstanding any relationship or
 13-32 interest described by Subsection (a), if any one of the following
 13-33 conditions is satisfied ~~[notwithstanding that the governing person~~
 13-34 or ~~officer having the relationship or interest described by~~
 13-35 Subsection (a) is present at or participates in the meeting of the
 13-36 governing authority, or of a committee of the governing authority,
 13-37 that authorizes the contract or transaction or votes or signs, in
 13-38 the person's capacity as a governing person or committee member, a
 13-39 written consent of governing persons or committee members to
 13-40 authorize the contract or transaction, if]:

13-41 (1) the material facts as to the relationship or
 13-42 interest described by Subsection (a) and as to the contract or
 13-43 transaction are disclosed to or known by:

13-44 (A) the company's governing authority or a
 13-45 committee of the governing authority and the governing authority or
 13-46 committee in good faith authorizes the contract or transaction by
 13-47 the approval of the majority of the disinterested governing persons
 13-48 or committee members, regardless of whether the disinterested
 13-49 governing persons or committee members constitute a quorum; or

13-50 (B) the members of the company, and the members
 13-51 in good faith approve the contract or transaction by vote of the
 13-52 members; or

13-53 (2) the contract or transaction is fair to the company
 13-54 when the contract or transaction is authorized, approved, or
 13-55 ratified by the governing authority, a committee of the governing
 13-56 authority, or the members of the company.

13-57 (d) A person who has the relationship or interest described
 13-58 by Subsection (a) may:

13-59 (1) be present at or participate in and, if the person
 13-60 is a governing person or committee member, may vote at a meeting of
 13-61 the governing authority or of a committee of the governing
 13-62 authority that authorizes the contract or transaction; or

13-63 (2) sign, in the person's capacity as a governing
 13-64 person or committee member, a written consent of the governing
 13-65 persons or committee members to authorize the contract or
 13-66 transaction.

13-67 (e) If at least one of the conditions of Subsection (b) is
 13-68 satisfied, neither the company nor any of the company's members
 13-69 will have a cause of action against any of the persons described by

14-1 Subsection (a) for breach of duty with respect to the making,
 14-2 authorization, or performance of the contract or transaction
 14-3 because the person had the relationship or interest described by
 14-4 Subsection (a) or took any of the actions authorized by Subsection
 14-5 (d).

14-6 SECTION 40. Subsection (b), Section 101.357, Business
 14-7 Organizations Code, is amended to read as follows:

14-8 (b) A manager or committee member of a limited liability
 14-9 company [~~, if authorized by the company agreement,~~] may vote:

14-10 (1) in person; or

14-11 (2) if authorized by the company agreement, by a proxy
 14-12 executed in writing by the manager or committee member, as
 14-13 appropriate.

14-14 SECTION 41. Subsection (b), Section 101.611, Business
 14-15 Organizations Code, is amended to read as follows:

14-16 (b) Section 101.206 [~~101.207~~] does not apply to a
 14-17 distribution with respect to the series.

14-18 SECTION 42. Subsection (d), Section 151.003, Business
 14-19 Organizations Code, is amended to read as follows:

14-20 (d) Receipt of notice by a general partner of a fact
 14-21 relating to the partnership is effective immediately as notice to
 14-22 the partnership unless fraud against the partnership is committed
 14-23 by or with the consent of the partner receiving the notice.

14-24 SECTION 43. Subsection (a), Section 152.304, Business
 14-25 Organizations Code, is amended to read as follows:

14-26 (a) Except as provided by Subsection (b) or Section
 14-27 152.801(a), all partners are [~~liable~~] jointly and severally liable
 14-28 for all obligations [~~a debt or obligation~~] of the partnership
 14-29 unless otherwise:

14-30 (1) agreed by the claimant; or

14-31 (2) provided by law.

14-32 SECTION 44. Subchapter E, Chapter 152, Business
 14-33 Organizations Code, is amended by adding Section 152.308 to read as
 14-34 follows:

14-35 Sec. 152.308. PARTNER'S PARTNERSHIP INTEREST SUBJECT TO
 14-36 CHARGING ORDER. (a) On application by a judgment creditor of a
 14-37 partner or of any other owner of a partnership interest, a court
 14-38 having jurisdiction may charge the partnership interest of the
 14-39 judgment debtor to satisfy the judgment.

14-40 (b) To the extent that the partnership interest is charged
 14-41 in the manner provided by Subsection (a), the judgment creditor has
 14-42 only the right to receive any distribution to which the judgment
 14-43 debtor would otherwise be entitled in respect of the partnership
 14-44 interest.

14-45 (c) A charging order constitutes a lien on the judgment
 14-46 debtor's partnership interest. The charging order lien may not be
 14-47 foreclosed on under this code or any other law.

14-48 (d) The entry of a charging order is the exclusive remedy by
 14-49 which a judgment creditor of a partner or of any other owner of a
 14-50 partnership interest may satisfy a judgment out of the judgment
 14-51 debtor's partnership interest.

14-52 (e) This section does not deprive a partner or other owner
 14-53 of a partnership interest of a right under exemption laws with
 14-54 respect to the judgment debtor's partnership interest.

14-55 (f) A creditor of a partner or of any other owner of a
 14-56 partnership interest does not have the right to obtain possession
 14-57 of, or otherwise exercise legal or equitable remedies with respect
 14-58 to, the property of the limited partnership.

14-59 SECTION 45. Subsections (a) and (c), Section 152.406,
 14-60 Business Organizations Code, are amended to read as follows:

14-61 (a) For purposes of this code:

14-62 (1) on the divorce of a partner, the partner's spouse,
 14-63 to the extent of the spouse's partnership interest, if any, is a
 14-64 transferee of the partnership interest [~~from the partner~~];

14-65 (2) on the death of a partner:

14-66 (A) if the partnership interest of the deceased
 14-67 partner is subject to redemption under Subchapter H, the partner's
 14-68 surviving spouse, if any, and an heir, devisee, personal
 14-69 representative, or other successor of the partner, to the extent of

15-1 their respective right to the redemption price, are creditors of
 15-2 the partnership until the redemption price is paid; or

15-3 (B) if the partnership interest of the deceased
 15-4 partner is not subject to redemption under Subchapter H, the
 15-5 partner's surviving spouse, if any, and an heir, devisee, personal
 15-6 representative, or other successor of the partner, to the extent of
 15-7 their respective partnership interest, are transferees of the
 15-8 partnership interest~~[, the partner's surviving spouse, if any, and~~
 15-9 ~~an heir, legatee, or personal representative of the partner, to the~~
 15-10 ~~extent of their respective partnership interest, is a transferee of~~
 15-11 ~~the partnership interest from the partner]; and~~

15-12 (3) on the death of a partner's spouse, an heir,
 15-13 devisee ~~[legatee],~~ ~~[or]~~ personal representative, or other
 15-14 successor of the spouse, other than the partner, to the extent of
 15-15 their respective partnership interest, if any, is a transferee of
 15-16 the partnership interest ~~[from the partner].~~

15-17 (c) This chapter does not impair an agreement for the
 15-18 purchase or sale of a partnership interest at any time, including on
 15-19 the death or divorce of an owner of the partnership interest.

15-20 SECTION 46. Subsection (b), Section 152.707, Business
 15-21 Organizations Code, is amended to read as follows:

15-22 (b) In settling accounts among the partners, the
 15-23 partnership interest of a withdrawn partner that is ~~[not]~~ redeemed
 15-24 under Section 152.610 ~~[Subchapter H]~~ is credited with a share of any
 15-25 profits for the period after the partner's withdrawal but is
 15-26 charged with a share of losses for that period only to the extent of
 15-27 profits credited for that period.

15-28 SECTION 47. Section 152.801, Business Organizations Code,
 15-29 is amended to read as follows:

15-30 Sec. 152.801. LIABILITY OF PARTNER. (a) Except as
 15-31 provided by ~~[Subsection (b) or]~~ the partnership agreement, a
 15-32 partner ~~[in a limited liability partnership]~~ is not personally
 15-33 liable to any person, including a partner, directly or indirectly,
 15-34 by contribution, indemnity, or otherwise, for any ~~[a debt or]~~
 15-35 obligation of the partnership incurred while the partnership is a
 15-36 limited liability partnership.

15-37 ~~(b) [A partner in a limited liability partnership is not~~
 15-38 ~~personally liable for a debt or obligation of the partnership~~
 15-39 ~~arising from an error, omission, negligence, incompetence, or~~
 15-40 ~~malfeasance committed by another partner or representative of the~~
 15-41 ~~partnership while the partnership is a limited liability~~
 15-42 ~~partnership and in the course of the partnership business unless~~
 15-43 ~~the first partner:~~

15-44 ~~[(1) was supervising or directing the other partner or~~
 15-45 ~~representative when the error, omission, negligence, incompetence,~~
 15-46 ~~or malfeasance was committed by the other partner or~~
 15-47 ~~representative;~~

15-48 ~~[(2) was directly involved in the specific activity in~~
 15-49 ~~which the error, omission, negligence, incompetence, or~~
 15-50 ~~malfeasance was committed by the other partner or representative;~~
 15-51 ~~or~~

15-52 ~~[(3) had notice or knowledge of the error, omission,~~
 15-53 ~~negligence, incompetence, or malfeasance by the other partner or~~
 15-54 ~~representative at the time of the occurrence and then failed to take~~
 15-55 ~~reasonable action to prevent or cure the error, omission,~~
 15-56 ~~negligence, incompetence, or malfeasance.~~

15-57 ~~[(c)]~~ Sections 2.101(1), 152.305, and 152.306 do not limit
 15-58 the effect of Subsection (a) in a limited liability partnership.

15-59 (c) For purposes of this section, ~~[(d) In this section,~~
 15-60 ~~"representative" includes]~~ an obligation is incurred while a
 15-61 partnership is ~~[agent, servant, or employee of]~~ a limited liability
 15-62 partnership if:

15-63 (1) the obligation relates to an action or omission
 15-64 occurring while the partnership is a limited liability partnership;
 15-65 or

15-66 (2) the obligation arises under a contract or
 15-67 commitment entered into while the partnership is a limited
 15-68 liability partnership.

15-69 (d) Subsection ~~[(c) Subsections]~~ (a) does ~~[and (b) do]~~ not

16-1 affect:

16-2 (1) the liability of a partnership to pay its [~~debts~~
16-3 ~~and~~] obligations from partnership property;

16-4 (2) the liability of a partner, if any, imposed by law
16-5 or contract independently of the partner's status as a partner; or

16-6 (3) the manner in which service of citation or other
16-7 civil process may be served in an action against a partnership.

16-8 (e) [~~(f)~~] This section controls over the other parts of this
16-9 chapter and the other partnership provisions regarding the
16-10 liability of partners of a limited liability partnership, the
16-11 chargeability of the partners for the [~~debts and~~] obligations of
16-12 the partnership, and the obligations of the partners regarding
16-13 contributions and indemnity.

16-14 SECTION 48. Subsections (a), (f), and (j), Section 152.802,
16-15 (f), and (j), Business Organizations Code, are amended to read as
16-16 follows:

16-17 (a) In addition to complying with Section [~~Sections~~]
16-18 152.803 [~~and 152.804~~], a partnership, to become a limited liability
16-19 partnership, must file an application with the secretary of state
16-20 in accordance with Chapter 4 and this section. The application
16-21 must:

16-22 (1) set out:

16-23 (A) the name of the partnership;

16-24 (B) the federal taxpayer [~~tax~~] identification
16-25 number of the partnership;

16-26 (C) the street address of the partnership's
16-27 principal office in this state or outside of this state, as
16-28 applicable; and

16-29 (D) the number of partners at the date of
16-30 application; and

16-31 (2) contain a brief statement of the partnership's
16-32 business.

16-33 (f) A registration may be withdrawn by filing a withdrawal
16-34 notice with the secretary of state in accordance with Chapter 4. A
16-35 certificate from the comptroller stating that all taxes
16-36 administered by the comptroller under Title 2, Tax Code, have been
16-37 paid must be filed with the notice of withdrawal. A withdrawal
16-38 notice terminates the status of the partnership as a limited
16-39 liability partnership from the date on which the notice is filed or
16-40 a later date specified in the notice, but not later than the
16-41 expiration date under Subsection (e). A withdrawal notice must:

16-42 (1) contain:

16-43 (A) the name of the partnership;

16-44 (B) the federal taxpayer [~~tax~~] identification
16-45 number of the partnership;

16-46 (C) the date of registration of the partnership's
16-47 last application under this subchapter; and

16-48 (D) the current street address of the
16-49 partnership's principal office in this state and outside this
16-50 state, if applicable; and

16-51 (2) be signed by:

16-52 (A) a majority-in-interest of the partners; or

16-53 (B) one or more partners authorized by a
16-54 majority-in-interest of the partners.

16-55 (j) A document filed under this subchapter may be amended by
16-56 filing an application for amendment of registration with the
16-57 secretary of state in accordance with Chapter 4 and this
16-58 subsection. The application for amendment must:

16-59 (1) contain:

16-60 (A) the name of the partnership;

16-61 (B) the taxpayer [~~tax~~] identification number of
16-62 the partnership;

16-63 (C) the identity of the document being amended;

16-64 (D) the date on which the document being amended
16-65 was filed;

16-66 (E) a reference to the part of the document being
16-67 amended; and

16-68 (F) the amendment or correction; and

16-69 (2) be signed by:

- 17-1 (A) a majority-in-interest of the partners; or
- 17-2 (B) one or more partners authorized by a
- 17-3 majority-in-interest of the partners.

17-4 SECTION 49. Subsection (b), Section 152.906, Business
17-5 Organizations Code, is amended to read as follows:

17-6 (b) In addition to the information required by Section
17-7 9.011, the certificate of withdrawal must:

17-8 (1) contain:

17-9 (A) the federal taxpayer [~~tax~~] identification
17-10 number of the partnership; and

17-11 (B) the date of effectiveness of the
17-12 partnership's last application for registration under this
17-13 subchapter; and

17-14 (2) be signed by:

17-15 (A) a majority-in-interest of the partners; or
17-16 (B) one or more partners authorized by a
17-17 majority-in-interest of the partners.

17-18 SECTION 50. Subsection (b), Section 152.910, Business
17-19 Organizations Code, is amended to read as follows:

17-20 (b) A partner of a foreign limited liability partnership is
17-21 not liable for an [a debt or] obligation of the partnership solely
17-22 because the partnership transacted business in this state without
17-23 being registered.

17-24 SECTION 51. Subsection (b), Section 152.911, Business
17-25 Organizations Code, is amended to read as follows:

17-26 (b) The application for amendment must contain:

17-27 (1) the name of the partnership;

17-28 (2) the taxpayer [~~tax~~] identification number of the
17-29 partnership;

17-30 (3) the identity of the document being amended;

17-31 (4) a reference to the date on which the document being
17-32 amended was filed;

17-33 (5) the part of the document being amended; and

17-34 (6) the amendment or correction.

17-35 SECTION 52. Subsection (a), Section 153.004, Business
17-36 Organizations Code, is amended to read as follows:

17-37 (a) Except as provided by this section, the following
17-38 provisions of Title 1 may not be waived or modified in the
17-39 partnership agreement of a limited partnership:

17-40 (1) Chapter 1, if the provision is used to interpret a
17-41 provision or define a word or phrase contained in a section listed
17-42 in this subsection;

17-43 (2) Chapter 2, other than Section 2.104(c)(2),
17-44 2.104(c)(3), or 2.113;

17-45 (3) Chapter 3, other than Subchapters C and E of that
17-46 chapter and Section 3.151 (provided, that in all events a
17-47 partnership agreement may not validly waive or modify Section
17-48 [Sections] 153.551 or unreasonably restrict a partner's right of
17-49 access to books and records under Section [and] 153.552); or

17-50 (4) Chapter 4, 5, 10, 11, or 12, other than Section
17-51 11.058.

17-52 SECTION 53. Section 153.103, Business Organizations Code,
17-53 is amended to read as follows:

17-54 Sec. 153.103. ACTIONS NOT CONSTITUTING PARTICIPATION IN
17-55 BUSINESS FOR LIABILITY PURPOSES. For purposes of this section and
17-56 Sections 153.102, 153.104, and 153.105, a limited partner does not
17-57 participate in the control of the business because the limited
17-58 partner has or has acted in one or more of the following capacities
17-59 or possesses or exercises one or more of the following powers:

17-60 (1) acting as:

17-61 (A) a contractor for or an officer or other agent
17-62 or employee of the limited partnership;

17-63 (B) a contractor for or an agent or employee of a
17-64 general partner;

17-65 (C) an officer, director, or stockholder of a
17-66 corporate general partner;

17-67 (D) a partner of a partnership that is a general
17-68 partner of the limited partnership; or

17-69 (E) a member or manager of a limited liability

18-1 company that is a general partner of the limited partnership;
18-2 (2) acting in a capacity similar to that described in
18-3 Subdivision (1) with any other person that is a general partner of
18-4 the limited partnership;
18-5 (3) consulting with or advising a general partner on
18-6 any matter, including the business of the limited partnership;
18-7 (4) acting as surety, guarantor, or endorser for the
18-8 limited partnership, guaranteeing or assuming one or more specific
18-9 obligations of the limited partnership, or providing collateral for
18-10 borrowings of the limited partnership;
18-11 (5) calling, requesting, attending, or participating
18-12 in a meeting of the partners or the limited partners;
18-13 (6) winding up the business of a limited partnership
18-14 under Chapter 11 and Subchapter K of this chapter;
18-15 (7) taking an action required or permitted by law to
18-16 bring, pursue, settle, or otherwise terminate a derivative action
18-17 in the right of the limited partnership;
18-18 (8) serving on a committee of the limited partnership
18-19 or the limited partners; or
18-20 (9) proposing, approving, or disapproving, by vote or
18-21 otherwise, one or more of the following matters:
18-22 (A) the winding up or termination of the limited
18-23 partnership;
18-24 (B) an election to reconstitute the limited
18-25 partnership or continue the business of the limited partnership;
18-26 (C) the sale, exchange, lease, mortgage,
18-27 assignment, pledge, or other transfer of, or granting of a security
18-28 interest in, an asset of the limited partnership;
18-29 (D) the incurring, renewal, refinancing, or
18-30 payment or other discharge of indebtedness by the limited
18-31 partnership;
18-32 (E) a change in the nature of the business of the
18-33 limited partnership;
18-34 (F) the admission, removal, or retention of a
18-35 general partner;
18-36 (G) the admission, removal, or retention of a
18-37 limited partner;
18-38 (H) a transaction or other matter involving an
18-39 actual or potential conflict of interest;
18-40 (I) an amendment to the partnership agreement or
18-41 certificate of formation;
18-42 (J) if the limited partnership is qualified as an
18-43 investment company under the federal Investment Company Act of 1940
18-44 (15 U.S.C. Section 80a-1 et seq.), as amended, any matter required
18-45 by that Act or the rules and regulations of the Securities and
18-46 Exchange Commission under that Act, to be approved by the holders of
18-47 beneficial interests in an investment company, including:
18-48 (i) electing directors or trustees of the
18-49 investment company;
18-50 (ii) approving or terminating an investment
18-51 advisory or underwriting contract;
18-52 (iii) approving an auditor; and
18-53 (iv) acting on another matter that that Act
18-54 requires to be approved by the holders of beneficial interests in
18-55 the investment company;
18-56 (K) indemnification of a general partner under
18-57 Chapter 8 or otherwise;
18-58 (L) any other matter stated in the partnership
18-59 agreement;
18-60 (M) the exercising of a right or power granted or
18-61 permitted to limited partners under this code and not specifically
18-62 enumerated in this section; or
18-63 (N) the merger, ~~or~~ conversion, or interest
18-64 exchange with respect to ~~of~~ a limited partnership.
18-65 SECTION 54. Subsection (b), Section 153.158, Business
18-66 Organizations Code, is amended to read as follows:
18-67 (b) Until an action described by Subsection (a) is taken,
18-68 the owner of the partnership interest of the withdrawn general
18-69 partner has the status of an assignee under Subchapter F~~, Section~~

19-1 ~~153.113, and Section 153.555].~~

19-2 SECTION 55. Subsection (b), Section 153.501, Business
19-3 Organizations Code, is amended to read as follows:

19-4 (b) The limited partnership may cancel under Section 11.152
19-5 an event requiring winding up arising from an event of withdrawal of
19-6 a general partner as specified in Section 11.058(b) if:

19-7 (1) there remains at least one general partner and the
19-8 partnership agreement permits the business of the limited
19-9 partnership to be carried on by the remaining general partners and
19-10 those remaining general partners carry on the business; or

19-11 (2) not later than one year after the event, all
19-12 remaining partners, or another group or percentage of partners
19-13 specified in the partnership agreement:

19-14 (A) agree in writing to continue the business of
19-15 the limited partnership [~~in writing~~]; and

19-16 (B) to the extent that they desire or if there are
19-17 no remaining general partners, agree to the appointment of one or
19-18 more new general partners.

19-19 SECTION 56. Section 153.504, Business Organizations Code,
19-20 is amended to read as follows:

19-21 Sec. 153.504. DISPOSITION OF ASSETS. On the winding up of a
19-22 limited partnership, its assets shall be paid or transferred as
19-23 follows:

19-24 (1) to the extent otherwise permitted by law, to
19-25 creditors, including partners who are creditors other than solely
19-26 because of the application of Section 153.207, for the payment or
19-27 the making of reasonable provision for payment to satisfy the
19-28 liabilities of the limited partnership;

19-29 (2) unless otherwise provided by the partnership
19-30 agreement, to partners and former partners to satisfy the
19-31 partnership's liability for distributions under Section 153.111 or
19-32 153.209; and

19-33 (3) unless otherwise provided by the partnership
19-34 agreement, to partners first for the return of their capital and
19-35 second with respect to their partnership interests, in the
19-36 proportions provided by Sections 153.208(a) and (b).

19-37 SECTION 57. Subsection (a), Section 153.551, Business
19-38 Organizations Code, is amended to read as follows:

19-39 (a) A domestic limited partnership shall maintain the
19-40 following records in its principal office in the United States or
19-41 make the records available in that office not later than the fifth
19-42 day after the date on which a written request under Section
19-43 153.552(a) is received:

19-44 (1) a current list that states:

19-45 (A) the name and mailing address of each partner,
19-46 separately identifying in alphabetical order the general partners
19-47 and the limited partners;

19-48 (B) the last known street address of the business
19-49 or residence of each general partner;

19-50 (C) the percentage or other interest in the
19-51 partnership owned by each partner; and

19-52 (D) if one or more classes or groups are
19-53 established under the partnership agreement, the names of the
19-54 partners who are members of each specified class or group;

19-55 (2) a copy of:

19-56 (A) the limited partnership's federal, state,
19-57 and local information or income tax returns for each of the
19-58 partnership's six most recent tax years;

19-59 (B) the partnership agreement and certificate of
19-60 formation; and

19-61 (C) all amendments or restatements;

19-62 (3) copies of any document that creates, in the manner
19-63 provided by the partnership agreement, classes or groups of
19-64 partners;

19-65 (4) an executed copy of any powers of attorney under
19-66 which the partnership agreement, certificate of formation, and all
19-67 amendments or restatements to the agreement and certificate have
19-68 been executed;

19-69 (5) unless contained in the written partnership

20-1 agreement, a written statement of:

20-2 (A) the amount of the cash contribution and a
20-3 description and statement of the agreed value of any other
20-4 contribution made by each partner;

20-5 (B) the amount of the cash contribution and a
20-6 description and statement of the agreed value of any other
20-7 contribution that the partner has agreed to make in the future as an
20-8 additional contribution;

20-9 (C) ~~[the date on which additional contributions~~
20-10 ~~are to be made or]~~ the ~~[date of]~~ events requiring additional
20-11 contributions to be made or the date on which additional
20-12 contributions are to be made;

20-13 (D) the events requiring the winding up of the
20-14 limited partnership; and

20-15 (E) the date on which each partner in the limited
20-16 partnership became a partner; and

20-17 (6) books and records of the accounts of the limited
20-18 partnership.

20-19 SECTION 58. Section 200.317, Business Organizations Code,
20-20 is amended by amending Subsections (a) and (b) and adding
20-21 Subsections (d) and (e) to read as follows:

20-22 (a) This section applies ~~[only]~~ to a contract or transaction
20-23 between a real estate investment trust and:

20-24 (1) one or more ~~[of the trust's]~~ trust managers or
20-25 officers, or one or more affiliates or associates of one or more
20-26 directors or officers, of the trust; or

20-27 (2) an entity or other organization in which one or
20-28 more ~~[of the trust's]~~ trust managers or officers, or one or more
20-29 affiliates or associates of one or more directors or officers, of
20-30 the trust:

20-31 (A) is a managerial official; or

20-32 (B) has a financial interest.

20-33 (b) An otherwise valid and enforceable contract or
20-34 transaction described by Subsection (a) is valid and enforceable,
20-35 and is not void or voidable, notwithstanding any relationship or
20-36 interest described by Subsection (a), if any one of the following
20-37 conditions is satisfied [notwithstanding that the trust manager or
20-38 officer having the relationship or interest described by Subsection
20-39 (a) is present at or participates in the meeting of the trust
20-40 managers or of a committee of the trust managers that authorizes the
20-41 contract or transaction, or votes or signs, in the person's
20-42 capacity as a trust manager or committee member, a unanimous
20-43 written consent of trust managers or committee members to authorize
20-44 the contract or transaction, if]:

20-45 (1) the material facts as to the relationship or
20-46 interest described by Subsection (a) and as to the contract or
20-47 transaction are disclosed to or known by:

20-48 (A) the trust managers or a committee of the
20-49 trust managers, and the trust managers or committee of the trust
20-50 managers in good faith authorize the contract or transaction by the
20-51 approval of the majority of disinterested trust managers or
20-52 committee members, regardless of whether the disinterested trust
20-53 managers or committee members constitute a quorum; or

20-54 (B) the shareholders entitled to vote on the
20-55 authorization of the contract or transaction, and the contract or
20-56 transaction is specifically approved in good faith by a vote of the
20-57 shareholders; or

20-58 (2) the contract or transaction is fair to the real
20-59 estate investment trust when the contract or transaction is
20-60 authorized, approved, or ratified by the trust managers, a
20-61 committee of the trust managers, or the shareholders.

20-62 (d) A person who has the relationship or interest described
20-63 by Subsection (a) may:

20-64 (1) be present at or participate in and, if the person
20-65 is a trust manager or committee member, may vote at a meeting of the
20-66 trust managers, or of a committee of the trust managers, that
20-67 authorizes the contract or transaction; or

20-68 (2) sign, in the person's capacity as a trust manager
20-69 or committee member, a unanimous written consent of the trust

21-1 managers or committee members to authorize the contract or
 21-2 transaction.

21-3 (e) If at least one of the conditions of Subsection (b) is
 21-4 satisfied, neither the trust nor any of the trust's shareholders
 21-5 will have a cause of action against any of the persons described by
 21-6 Subsection (a) for breach of duty with respect to the making,
 21-7 authorization, or performance of the contract or transaction
 21-8 because the person had the relationship or interest described by
 21-9 Subsection (a) or took any of the actions authorized by Subsection
 21-10 (d).

21-11 SECTION 59. Subsections (b) and (f), Section 252.011,
 21-12 Business Organizations Code, are amended to read as follows:

21-13 (b) A statement appointing an agent must contain:

21-14 (1) the name of the nonprofit association;

21-15 (2) the federal taxpayer [~~tax~~] identification number
 21-16 of the nonprofit association, if applicable;

21-17 (3) the address in this state, including the street
 21-18 address, if any, of the nonprofit association or, if the nonprofit
 21-19 association does not have an address in this state, its address out
 21-20 of state; and

21-21 (4) the name of the person in this state authorized to
 21-22 receive service of process and the person's address, including the
 21-23 street address, in this state.

21-24 (f) A statement appointing an agent may be canceled by
 21-25 filing with the secretary of state a written notice of cancellation
 21-26 executed by a person authorized to manage the affairs of the
 21-27 nonprofit association. A notice of cancellation must contain:

21-28 (1) the name of the nonprofit association;

21-29 (2) the federal taxpayer [~~tax~~] identification number
 21-30 of the nonprofit association, if applicable;

21-31 (3) the date of filing of the nonprofit association's
 21-32 statement appointing the agent; and

21-33 (4) a current street address, if any, of the nonprofit
 21-34 association in this state or, if the nonprofit association does not
 21-35 have an address in this state, its address out of state.

21-36 SECTION 60. Section 402.003, Business Organizations Code,
 21-37 is amended to read as follows:

21-38 Sec. 402.003. EARLY ADOPTION OF CODE BY EXISTING DOMESTIC
 21-39 ENTITY. (a) A domestic entity formed before the effective date of
 21-40 this code may voluntarily elect to adopt and become subject to this
 21-41 code by:

21-42 (1) adopting the code by complying with the procedures
 21-43 for approval, under prior law and its governing documents, of an
 21-44 amendment to:

21-45 (A) its articles of incorporation, with respect
 21-46 to a corporation or cooperative association;

21-47 (B) its regulations, with respect to a limited
 21-48 liability company;

21-49 (C) its articles of association, with respect to
 21-50 a professional association;

21-51 (D) its declaration of trust, with respect to a
 21-52 real estate investment trust;

21-53 (E) its partnership agreement, with respect to a
 21-54 partnership; or

21-55 (F) its primary governing document, with respect
 21-56 to another type of domestic entity;

21-57 (2) if any of its governing documents, including its
 21-58 certificate of formation, do not comply with this code, complying
 21-59 with the procedures, under prior law and its governing documents,
 21-60 to amend the noncomplying governing documents to comply with this
 21-61 code, including filing with the filing officer in accordance with
 21-62 Chapter 4 a certificate of amendment to cause its certificate of
 21-63 formation to comply with this code; and

21-64 (3) if the domestic entity is a filing entity, filing
 21-65 with the filing officer in accordance with Chapter 4 a statement
 21-66 that the filing entity is electing to adopt this code.

21-67 (b) A domestic entity that elected to adopt and become
 21-68 subject to this code as provided by Subsection (a) is not considered
 21-69 to have failed to comply with Subsection (a)(2) because:

22-1 (1) the entity's governing documents do not state the
22-2 type of entity formed; or
22-3 (2) a circumstance described by Section 402.0051
22-4 applies.

22-5 SECTION 61. Section 402.004, Business Organizations Code,
22-6 is amended to read as follows:

22-7 Sec. 402.004. EARLY ADOPTION OF CODE BY REGISTERED FOREIGN
22-8 FILING ENTITY. (a) A foreign filing entity registered with the
22-9 secretary of state to transact business in this state before the
22-10 effective date of this code may voluntarily elect to adopt and
22-11 become subject to this code by filing with the secretary of state in
22-12 accordance with Chapter 4:

22-13 (1) a statement that the foreign filing entity is
22-14 electing to adopt this code; and

22-15 (2) an amendment to its application for registration
22-16 that would cause its application for registration to comply with
22-17 this code.

22-18 (b) A foreign filing entity that elected to adopt and become
22-19 subject to this code as provided by Subsection (a) is not considered
22-20 to have failed to comply with Subsection (a)(2) because:

22-21 (1) the application for registration or any amendment
22-22 to the registration:

22-23 (A) does not state the entity's type; or
22-24 (B) does not include the appointment of the
22-25 secretary of state as agent for service of process under the
22-26 circumstances provided by Section 5.251; or

22-27 (2) a circumstance described by Section 402.0051
22-28 applies.

22-29 SECTION 62. Section 402.005, Business Organizations Code,
22-30 is amended by adding Subsection (c) to read as follows:

22-31 (c) A domestic or foreign filing entity is not considered to
22-32 have failed to comply with Subsection (a)(3) or (4) because:

22-33 (1) the certificate of formation does not state the
22-34 type of entity formed;

22-35 (2) the application for registration or any amendment
22-36 to the registration:

22-37 (A) does not state the entity's type; or
22-38 (B) does not include the appointment of the
22-39 secretary of state as agent for service of process, notice, or
22-40 demand under the circumstances provided by Section 5.251; or

22-41 (3) a circumstance described by Section 402.0051
22-42 applies.

22-43 SECTION 63. Chapter 402, Business Organizations Code, is
22-44 amended by adding Section 402.0051 to read as follows:

22-45 Sec. 402.0051. EFFECT OF REFERENCES TO PRIOR LAW AND USE OF
22-46 SYNONYMOUS TERMS. (a) A governing document or a filing
22-47 instrument, including a certificate of formation or application for
22-48 registration, is not considered to have failed to conform to this
22-49 code if the governing document or filing instrument:

22-50 (1) contains a reference to prior law that was
22-51 applicable at the time of its filing or adoption;

22-52 (2) contains a provision that was authorized by prior
22-53 law at the time of its filing or adoption;

22-54 (3) includes a term or phrase described by Section
22-55 1.006; or

22-56 (4) includes a term or phrase from prior law that is
22-57 different from the corresponding term or phrase used in this code.

22-58 (b) A reference in a governing document or filing instrument
22-59 to a statute or provision of a statute in effect before January 1,
22-60 2010, that was repealed by this code is considered to be a reference
22-61 to the provision or provisions of this code that correspond to the
22-62 repealed statute or provision unless the governing document or
22-63 filing instrument expressly provides otherwise.

22-64 (c) An entity is not considered to have failed to comply
22-65 with this code if a governing document or filing instrument makes a
22-66 reference to prior law rather than to the corresponding provisions
22-67 of the prior law in this code.

22-68 (d) For purposes of this section, prior law includes a
22-69 predecessor statute to the prior law.

23-1 SECTION 64. The heading to Section 402.013, Business
23-2 Organizations Code, is amended to read as follows:

23-3 Sec. 402.013. REINSTATEMENT OF ENTITIES CANCELED, REVOKED,
23-4 DISSOLVED, INVOLUNTARILY DISSOLVED, SUSPENDED, OR FORFEITED UNDER
23-5 PRIOR LAW.

23-6 SECTION 65. Section 402.013, Business Organizations Code,
23-7 is amended by adding Subsections (b-1) and (b-2) to read as follows:

23-8 (b-1) On or after January 1, 2010, a domestic filing entity
23-9 whose existence has been voluntarily dissolved or involuntarily
23-10 dissolved under prior law or whose certificate of formation or
23-11 equivalent governing document has been canceled, revoked,
23-12 suspended, or forfeited under prior law may reinstate the entity in
23-13 accordance with this code.

23-14 (b-2) On or after January 1, 2010, a foreign filing entity
23-15 whose registration to do business has been canceled, revoked,
23-16 suspended, or forfeited under prior law may reinstate its
23-17 registration in accordance with this code.

23-18 SECTION 66. (a) In this section:

23-19 (1) "Governing document" has the meaning assigned by
23-20 Subdivision (36), Section 1.002, Business Organizations Code.

23-21 (2) "Prior law" has the meaning assigned by Section
23-22 401.001, Business Organizations Code.

23-23 (b) This section applies only to a domestic entity whose
23-24 existence has been voluntarily dissolved under prior law or whose
23-25 certificate of formation or equivalent governing document has been
23-26 canceled under prior law.

23-27 (c) The reinstatement of a domestic filing entity that was
23-28 filed in accordance with Chapter 11 and Section 402.003, Business
23-29 Organizations Code, after December 31, 2005, and before January 1,
23-30 2010, is validated in all respects as of the date on which the
23-31 reinstatement occurred.

23-32 SECTION 67. The following provisions of the Business
23-33 Organizations Code are repealed:

- 23-34 (1) Section 21.001;
- 23-35 (2) Subsection (i), Section 152.802; and
- 23-36 (3) Section 152.804.

23-37 SECTION 68. This Act takes effect September 1, 2011.

23-38 * * * * *