BILL ANALYSIS

C.S.H.B. 2142
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Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have expressed concerns regarding current law not reflecting best practices with regards to corporations and fundamental business transactions. The parties contend that the applicable laws need to be updated and clarified in order to ensure Texas remains a leader in providing businesses with a clear statutory framework reflective of updated corporate practices. C.S.H.B. 2142 seeks to address these concerns.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2142 amends the Business Organizations Code to revise statutory provisions relating to corporations and fundamental business transactions. The bill defines "owner liability," for purposes of the Business Organizations Code, as personal liability for a liability or other obligation of an organization that is imposed on a person by statute solely because of the person's status as an owner or member of the organization or by a governing document of an organization under a Business Organizations Code provision or the law of the organization's jurisdiction of formation that authorizes the governing document to make one or more specified owners or members of the organization liable in their capacity as owners or members for all or specified liabilities or other obligations of the organization. The bill revises the statutory prohibitions against a domestic entity's merger or conversion and against a plan of exchange being effected if the merger, conversion, or interest exchange results in certain liability for an owner or member of that entity without the owner's or member's consent to base the prohibitions on such an owner or member becoming subject to owner liability, rather than becoming personally liable, without the owner's or member's consent.

C.S.H.B. 2142 changes the signature authorization for execution of a for-profit corporation's certificate of amendment and of a professional or for-profit corporation's restated certificate of formation, if shares of the corporation have not been issued and the certificate of amendment or restated certificate of formation, as applicable, is adopted by the corporation's board of directors, to authorize the signature of one or more directors, rather than a majority of the directors, on the certificate.

C.S.H.B. 2142 revises the exemption to the requirement for the ownership interests in a for-profit corporation, real estate investment trust, or professional corporation to be certificated by

clarifying that such certification is not required except to the extent a governing document of the entity or a resolution adopted by the entity's governing authority provides that some or all of the classes or series of the ownership interests are uncertificated or provides that some or all of each of the classes or series of the ownership interests are uncertificated. The bill authorizes a for-profit corporation, real estate investment trust, or professional corporation to have outstanding both certificated and uncertificated ownership interests of the same class or series.

C.S.H.B. 2142 requires a plan of merger to include, among other required information, the identification of any of the ownership or membership interests of an organization that is a party to the merger that are to remain outstanding rather than converted or exchanged if the organization survives the merger. The bill authorizes any of the terms of a plan of merger, plan of exchange, or plan of conversion to be made dependent on facts ascertainable outside of the plan, as applicable, if the manner in which those facts will operate on the terms of the merger is clearly and expressly stated in the plan. The bill authorizes a plan of merger to include restatements of or amendments and restatements of the governing documents of any surviving organization, including a certificate of amendment or a restated certificate of formation with or without amendments, as applicable.

C.S.H.B. 2142 establishes that when a merger takes effect a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity will supersede the original certificate of formation and each prior amendment or restatement of the certificate of formation, with the restated certificate of formation becoming the effective certificate of formation, and establishes that the ownership or membership interests of each organization that is a party to the merger that are to remain outstanding will remain outstanding as provided in the plan of merger.

C.S.H.B. 2142 requires a certificate of merger, if such a certificate is required to be filed in connection with a merger other than a short form merger, to include as an alternative to the plan of merger or to a statement certifying the amendments or changes to the certificate of formation of any filing entity that is a party to the merger, a statement that amendments or changes are being made to the certificate of formation of any filing entity that is a party to the merger as set forth in a restated certificate of formation containing amendments or a certificate of amendment attached to the certificate of merger. The bill removes the specification of a signature on the plan of merger or exchange that may be certified by a statement included in a filed certificate of merger or exchange as being on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization. The bill authorizes a certificate of merger to include as an attachment a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments for any filing entity that is a party to the merger. The bill also removes the specification of a signature on the plan of conversion that may be certified by a statement in a filed certificate of conversion as being on file at the principal place of business of the converting entity or certified that it will be on file after the conversion at the principal place of business of the converted entity.

C.S.H.B. 2142 entitles an owner of an ownership interest in a domestic entity subject to dissenters' rights to dissent from a merger effected under a plan of merger that, under certain circumstances, does not require approval by the shareholders of the corporation if, in that merger, the shares of the shareholders are converted or exchanged. The bill excludes a corporation that is party to such a merger in which a plan of merger does not require shareholder approval from the application of the provision prohibiting an owner's dissent from a plan of merger or conversion in which there is a single surviving or new domestic entity or non-code organization, or from a plan of exchange, under certain conditions.

C.S.H.B. 2142 requires the responsible organization, if a corporation effects a merger under a plan of merger that does not require shareholder approval, to notify to those shareholders who have a right to dissent to the plan of merger of their rights not later than the 10th day after the merger's effective date and sets out related provisions for the content and delivery of such notice.

The bill adds as an alternative to the deadlines by which an owner, in order to perfect the owner's rights of dissent and appraisal, must give to the responsible organization a demand in writing for payment of the fair value of the ownership interests for which the rights of dissent and appraisal are sought, a deadline of not later than the 20th day after the date the responsible organization gives to the shareholder the required notice of the right of dissent and appraisal or the date of the consummation of the tender or exchange offer for all of the corporation's outstanding shares on the terms provided in the plan of merger that would be entitled to vote on the approval of the plan of merger, whichever is later, if the action is a merger effected under a plan of merger that does not required approval by the corporation's shareholders.

C.S.H.B. 2142 authorizes a certificate of termination, a certificate of reinstatement, a certificate of amendment to cancel an event requiring winding up, or a restated certificate of formation that contains an amendment to cancel an event requiring winding up to be signed by one of the organizers or one of the directors if the winding up, the reinstatement, or the cancellation of an event requiring winding up was authorized by the organizers or the board of directors, as applicable.

C.S.H.B. 2142 establishes that statutory provisions establishing procedures for adoption of an amendment to a certificate of formation do not affect the authority of a domestic for-profit corporation's shareholders to consent in writing to the cancellation of an event requiring winding up or the authority of the organizers of a domestic for-profit corporation to adopt a resolution to cancel such an event. The bill authorizes the board of directors of a domestic for-profit corporation that has outstanding shares to adopt without shareholder approval an amendment to the corporation's certificate of formation to change the word or abbreviation in its corporate name required by law to identify the type of entity to a different word or abbreviation as provided by law. The bill provides, as an alternative to the procedures for a domestic for-profit corporation's adoption of a restated certificate of formation, for the shareholders to give written consent, or for the organizers to adopt a resolution, to authorize a restated certificate of formation that contains an amendment to cancel an event requiring winding up.

C.S.H.B. 2142 requires any limit on the term or duration of a domestic for-profit corporation's shareholders' agreement to be set forth in the agreement, removes a provision establishing the validity of such a shareholders' agreement for a period of 10 years, and establishes that a shareholders' agreement that was in effect before September 1, 2015, remains in effect for 10 years, unless the agreement provides otherwise. The bill authorizes the amount of the consideration to be received for shares of a domestic for-profit corporation to be determined by the board of directors, a plan of conversion, or plan of merger, as applicable, by means of approval of a formula to determine that amount.

C.S.H.B. 2142 authorizes a domestic for-profit corporation's bylaws to require one or both of the following: that, when soliciting proxies or consents with respect to an election of directors, the corporation include in both its proxy statement and any form of its proxy or consent one or more individuals nominated by a shareholder in addition to individuals nominated by the board of directors or that the corporation reimburse expenses incurred by a shareholder in soliciting proxies or consents with respect to an election of directors so long as the reimbursement requirement does not apply to any election for which the record date precedes that requirement's adoption.

C.S.H.B. 2142 sets out conditions under which a plan of merger is not required to be approved by a corporation's shareholders, unless such approval is required by the corporation's certificate of formation, and specifies that these provisions apply only to a domestic for-profit corporation that is a party to the merger and whose shares are, immediately before the date its board of directors approves the plan of merger, either listed on a national securities exchange or held of record by at least 2,000 shareholders.

C.S.H.B. 2142 removes the specification that the authority to adopt a restated certificate of

formation is vested in a domestic nonprofit corporation's board of directors, instead vesting that authority in the domestic nonprofit corporation, and provides as an alternative to the procedures for a domestic nonprofit corporation's adoption of such a certificate for the corporation's members to give written consent, or for the corporation's organizers to adopt a resolution, to authorize a restated certificate of formation that contains an amendment to cancel an event requiring winding up.

C.S.H.B. 2142 establishes that, if a domestic nonprofit corporation has no members or has no members with voting rights and the corporation does not hold any assets and has not solicited any assets or otherwise engaged in activities, the vote required for approval of a fundamental action consisting of an amendment to the certificate of formation to cancel an event requiring winding up or for approval of certain other fundamental actions is the affirmative vote of a majority of either the organizers or of the directors in office.

C.S.H.B. 2142 makes the statutory requirement for a domestic nonprofit corporation with no members or with no members with voting rights to approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, a revocation of a voluntary decision to wind up, or a distribution plan by means of a resolution adopted by an affirmative vote of a majority of the corporation's board of directors applicable only to a corporation that holds any assets or has solicited any assets or otherwise engaged in activities. The bill sets out the corresponding requirement for approval of such actions by a corporation that does not hold any assets and has not solicited any assets or otherwise engaged in activities to require a majority of either the corporation's organizers or its board of directors to adopt such a resolution by an affirmative vote of that majority.

C.S.H.B. 2142 sets out provisions relating to the ratification of defective corporate acts or shares. The bill establishes that a defective corporate act or putative shares are not void or voidable solely as a result of a failure of authorization if the act or shares are ratified in accordance with these provisions or validated by the district court. The bill requires the board of directors of the domestic for-profit corporation, in order to ratify a defective corporate act, to adopt a resolution stating the defective corporate act to be ratified; the time of the defective corporate act; if the defective corporate act involved the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purportedly issued; the nature of the failure of authorization with respect to the defective corporate act to be ratified; and that the board of directors approves the ratification of the defective corporate act. The bill authorizes the resolution to also state that, notwithstanding the adoption of the resolution by the shareholders, the board of directors at any time before the validation effective time may abandon the resolution without further shareholder action.

C.S.H.B. 2142 sets out provisions establishing quorum and voting requirements for the adoption of such a resolution and provisions relating to the requirement for shareholder adoption of the resolution, notice requirements for a resolution submitted for shareholder approval, the shareholder meeting and its quorum and voting requirements, and requirements for the filing of a certificate of validation. The bill prohibits each defective corporate act set forth in the adopted resolution, unless determined otherwise in an action regarding the act's validity, on or after the validation effective time, from being considered void or voidable as a result of a failure of authorization identified in the resolution and requires the effect to be retroactive to the time of the defective corporate act. The bill prohibits each putative share or fraction of a putative share issued or purportedly issued pursuant to the defective corporate act and identified in the resolution, unless determined otherwise in an action regarding the act's validity, on or after the validation effective time, from being considered void or voidable as a result of a failure of authorization identified in the resolution and, in the absence of any failure of authorization not ratified, specifies that such shares or fractions are considered to be an identical share or fraction of a share outstanding as of the time it was purportedly issued. The bill requires shareholder notification regarding the resolution's adoption and applicable notice requirements.

C.S.H.B. 2142 establishes that, in the absence of actual fraud in the transaction, the judgment of the board of directors of a domestic for-profit corporation that shares of the corporation are valid shares or putative shares is conclusive, unless otherwise determined by the district court in a proceeding regarding the validity of defective corporate acts and shares. The bill prohibits ratification or validation of an act or transaction from being considered to be the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act or any issuance of putative shares or other shares. The bill establishes that the absence or failure of ratification or of validation of an act or transaction may not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any shares properly ratified under common law or otherwise and does not create a presumption that any such act or transaction is or was a defective corporate act or that those shares are void or voidable.

C.S.H.B. 2142 authorizes the corporation, any successor entity to the corporation, any member of the corporation's board of directors, and any record or beneficial holder of valid shares or putative shares of the corporation, any record or beneficial holder of valid shares or putative shares as of the time a defective corporate act was ratified, or any other person claiming to be substantially and adversely affected by a ratification to bring an action regarding the validity of defective corporate acts and shares. The bill provides exclusive jurisdiction to hear and determine any action brought under these provisions to the district court in the county in which the corporation's principal office in Texas is located or, if the corporation does not have a principal office in Texas, the county in which the corporation's registered office in Texas is located; sets out provisions relating to the proceedings; and establishes a statute of limitations prohibiting specified actions from being brought after the expiration of the 120th day of the validation effective time.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2142 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (63-a) to read as follows: (63-a) "Owner liability" means personal liability for a liability or other obligation of an organization that is imposed on a person: (A) by statute solely because of the person's status as an owner or member of the organization; or (B) by a governing document of an organization under a provision of this code or the laws of the organization's jurisdiction of formation that authorizes the governing document to make one or more specified owners or members of the organization liable in their capacity as owners or members for all or specified liabilities or	SECTION 1. Section 1.002, Business Organizations Code, is amended by adding Subdivision (63-a) to read as follows: (63-a) "Owner liability" means personal liability for a liability or other obligation of an organization that is imposed on a person: (A) by statute solely because of the person's status as an owner or member of the organization; or (B) by a governing document of an organization under a provision of this code or the law of the organization's jurisdiction of formation that authorizes the governing document to make one or more specified owners or members of the organization liable in their capacity as owners or members for all or specified liabilities or

other obligations of the organization.	other obligations of the organization.
SECTION 2. Section 3.054, Business Organizations Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 3.060(b), Business Organizations Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 3.201(b), Business Organizations Code, is amended to read as follows: (b) The ownership interests in a for-profit corporation, real estate investment trust, or professional corporation must be certificated unless a [~~the~~] governing document [~~documents~~] of the entity or a resolution adopted by the governing authority of the entity provides that some or all of any of the classes or series of [~~states that~~] the ownership interests are uncertificated or that some or all of each of the classes or series of the ownership interests are uncertificated. The entity may have both outstanding certificated and uncertificated ownership interests of the same class or series. If a domestic entity changes the form of its ownership interests from certificated to uncertificated, a certificated ownership interest subject to the change becomes an uncertificated ownership interest only after the certificate is surrendered to the domestic entity.	SECTION 4. Section 3.201(b), Business Organizations Code, is amended to read as follows: (b) The ownership interests in a for-profit corporation, real estate investment trust, or professional corporation must be certificated, except to the extent a [~~unless the~~] governing document [~~documents~~] of the entity or a resolution adopted by the governing authority of the entity provides that some or all of the classes or series of [~~states that~~] the ownership interests are uncertificated or that some or all of the ownership interests in any class or series of the ownership interests are uncertificated. The entity may have outstanding both certificated and uncertificated ownership interests of the same class or series. If a domestic entity changes the form of its ownership interests from certificated to uncertificated, a certificated ownership interest subject to the change becomes an uncertificated ownership interest only after the certificate is surrendered to the domestic entity.
SECTION 5. Section 10.001(e), Business Organizations Code, is amended.	SECTION 5. Same as introduced version.
SECTION 6. Section 10.002(a), Business Organizations Code, is amended to read as follows: (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	SECTION 6. Section 10.002, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows: (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;

(5) the manner and basis, including use of a formula, of converting or exchanging any of the ownership or membership interests of each organization that is a party to the merger into:

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

(B) cash;

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

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

(6) the identification of any of the ownership or membership interests of an organization that is a party to the merger that are:

(A) to be canceled rather than converted or exchanged; or

(B) to remain outstanding rather than converted or exchanged if the organization survives the merger;

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

(8) the governing documents of each new domestic nonfiling entity to be created by the plan of merger; and

(9) the governing documents of each non-code organization that:

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

(B) is an entity that is not:

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

(ii) required to file its certificate of formation or similar document under which the entity is organized with the appropriate governmental authority.

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;

(5) the manner and basis, including use of a formula, of converting or exchanging any of the ownership or membership interests of each organization that is a party to the merger into:

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

(B) cash;

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

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

(6) the identification of any of the ownership or membership interests of an organization that is a party to the merger that are:

(A) to be canceled rather than converted or exchanged; or

(B) to remain outstanding rather than converted or exchanged if the organization survives the merger;

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

(8) the governing documents of each new domestic nonfiling entity to be created by the plan of merger; and

(9) the governing documents of each non-code organization that:

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

(B) is an entity that is not:

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

(ii) required to file its certificate of formation or similar document under which the entity is organized with the appropriate governmental authority.

(d) Any of the terms of the plan of merger may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the merger is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

SECTION 7. Section 10.004, Business Organizations Code, is amended.	SECTION 7. Same as introduced version.
SECTION 8. Section 10.008(a), Business Organizations Code, is amended.	SECTION 8. Same as introduced version.
SECTION 9. Section 10.051(f), Business Organizations Code, is amended.	SECTION 9. Same as introduced version.
SECTION 10. Section 10.052(a), Business Organizations Code, is amended to read as follows: (a) A plan of exchange must be in writing and must include: (1) the name of each domestic entity the ownership or 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, including use of a formula, 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 10. Section 10.052, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows: (a) A plan of exchange must be in writing and must include: (1) the name of each domestic entity the ownership or 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, including use of a formula, 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. (c) Any of the terms of the plan of exchange may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the interest exchange is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.
SECTION 11. Section 10.101(f), Business	SECTION 11. Same as introduced version.

Organizations Code, is amended.

SECTION 12. 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 of formation;
(5) if Sections 10.1025 and 10.109 do not apply, the manner and basis, including use of a formula, of converting the ownership or membership interests of the converting entity into ownership or membership interests of the converted entity;
(6) any certificate of formation required to be filed under this code if the converted entity is a filing entity;
(7) the certificate of formation or similar organizational document of the converted entity if the converted entity is not a filing entity; and
(8) if Sections 10.1025 and 10.109 apply, a statement that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation after the conversion takes effect.

SECTION 12. Section 10.103, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (c) 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 of formation;
(5) if Sections 10.1025 and 10.109 do not apply, the manner and basis, including use of a formula, of converting the ownership or membership interests of the converting entity into ownership or membership interests of the converted entity;
(6) any certificate of formation required to be filed under this code if the converted entity is a filing entity;
(7) the certificate of formation or similar organizational document of the converted entity if the converted entity is not a filing entity; and
(8) if Sections 10.1025 and 10.109 apply, a statement that the converting entity is electing to continue its existence in its current organizational form and jurisdiction of formation after the conversion takes effect.
(c) Any of the terms of the plan of conversion may be made dependent on facts ascertainable outside of the plan if the manner in which those facts will operate on the terms of the conversion is clearly and expressly stated in the plan. In this subsection, "facts" includes the occurrence of any event, including a determination or action by any person.

SECTION 13. Section 10.151, Business Organizations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:
(b) If a certificate of merger or exchange is required to be filed in connection with an interest exchange or a merger, other than a merger under Section 10.006, the certificate

SECTION 13. Section 10.151, Business Organizations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:
(b) If a certificate of merger or exchange is required to be filed in connection with an interest exchange or a merger, other than a merger under Section 10.006, the certificate

must be signed on behalf of each domestic entity and non-code organization that is a party to the merger or exchange by an officer or other authorized representative and must include:

(1) the plan of merger or exchange or a statement certifying:

(A) the name and organizational form of each domestic entity or non-code organization that is a party to the merger or exchange;

(B) for a merger, the name and organizational form of each domestic entity or non-code organization that is to be created by the plan of merger;

(C) the name of the jurisdiction in which each domestic entity or non-code organization named under Paragraph (A) or (B) is incorporated or organized;

(D) for a merger, the amendments or changes to the certificate of formation of any [~~each~~] filing entity that is a party to the merger, or a statement that amendments or changes are being made to the certificate of formation of any filing entity that is a party to the merger as set forth in a restated certificate of formation containing amendments or a certificate of amendment attached to the certificate of merger under Subsection (d) [~~if no amendments are desired to be effected by the merger, a statement to that effect~~];

(E) for a merger, if no amendments or changes to the certificate of formation of a filing entity are made under Paragraph (D), a statement to that effect, which may include a reference to a restated certificate of formation attached to the certificate of merger under Subsection (d);

(F) for a merger, that the certificate of formation of each new filing entity to be created under the plan of merger is being filed with the certificate of merger;

(G) [~~(F)~~] that a [~~signed~~] plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization, and the address of each principal place of business; and

(H) [~~(G)~~] that a copy of the plan of merger or exchange will be on written request furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or

must be signed on behalf of each domestic entity and non-code organization that is a party to the merger or exchange by an officer or other authorized representative and must include:

(1) the plan of merger or exchange or a statement certifying:

(A) the name and organizational form of each domestic entity or non-code organization that is a party to the merger or exchange;

(B) for a merger, the name and organizational form of each domestic entity or non-code organization that is to be created by the plan of merger;

(C) the name of the jurisdiction in which each domestic entity or non-code organization named under Paragraph (A) or (B) is incorporated or organized;

(D) for a merger, the amendments or changes to the certificate of formation of any [~~each~~] filing entity that is a party to the merger, or a statement that amendments or changes are being made to the certificate of formation of any filing entity that is a party to the merger as set forth in a restated certificate of formation containing amendments or a certificate of amendment attached to the certificate of merger under Subsection (d) [~~if no amendments are desired to be effected by the merger, a statement to that effect~~];

(E) for a merger, if no amendments or changes to the certificate of formation of a filing entity are made under Paragraph (D), a statement to that effect, which may also refer to a restated certificate of formation attached to the certificate of merger under Subsection (d);

(F) for a merger, that the certificate of formation of each new filing entity to be created under the plan of merger is being filed with the certificate of merger;

(G) [~~(F)~~] that a [~~signed~~] plan of merger or exchange is on file at the principal place of business of each surviving, acquiring, or new domestic entity or non-code organization, and the address of each principal place of business; and

(H) [~~(G)~~] that a copy of the plan of merger or exchange will be on written request furnished without cost by each surviving, acquiring, or new domestic entity or non-code organization to any owner or member of any domestic entity that is a party to or

created by the plan of merger or exchange and, for a merger with multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

(2) if approval of the owners or members of any domestic entity that was a party to the plan of merger or exchange is not required by this code, a statement to that effect; and

(3) a statement that the plan of merger or exchange has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger or exchange and by the governing documents of those organizations.

(d) As provided by Subsections (b)(1)(D) and (E), a certificate of merger filed under this section may include as an attachment a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments for any filing entity that is a party to the merger.

SECTION 14. Section 10.154(b), Business Organizations Code, is amended.

SECTION 15. Sections 10.354(a) and (c), Business Organizations Code, are amended.

SECTION 16. Section 10.355, Business Organizations Code, is amended by adding Subsections (b-1) and (f) and amending Subsections (c) and (d) to read as follows:

(b-1) If a corporation effects a merger under Section 21.459(c), the responsible organization shall provide to the shareholders of that corporation who have a right to dissent to a plan of merger under Section 10.354 notice of their rights under this subchapter not later than the 10th day after the effective date of the merger. Notice required under this subsection that is given to shareholders before the effective date of the merger may, but is not required to, contain a reference to that date. If the notice is not given to the shareholders until on or after the effective date of the merger, the notice must contain a reference to that date.

(c) A notice required to be provided under

created by the plan of merger or exchange and, for a merger with multiple surviving domestic entities or non-code organizations, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

(2) if approval of the owners or members of any domestic entity that was a party to the plan of merger or exchange is not required by this code, a statement to that effect; and

(3) a statement that the plan of merger or exchange has been approved as required by the laws of the jurisdiction of formation of each organization that is a party to the merger or exchange and by the governing documents of those organizations.

(d) As provided by Subsections (b)(1)(D) and (E), a certificate of merger filed under this section may include as an attachment a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments for any filing entity that is a party to the merger.

SECTION 14. Same as introduced version.

SECTION 15. Same as introduced version.

SECTION 16. Section 10.355, Business Organizations Code, is amended by adding Subsections (b-1) and (f) and amending Subsections (c) and (d) to read as follows:

(b-1) If a corporation effects a merger under Section 21.459(c), the responsible organization shall notify the shareholders of that corporation who have a right to dissent to the plan of merger under Section 10.354 of their rights under this subchapter not later than the 10th day after the effective date of the merger. Notice required under this subsection that is given to shareholders before the effective date of the merger may, but is not required to, contain a statement of the merger's effective date. If the notice is not given to the shareholders until on or after the effective date of the merger, the notice must contain a statement of the merger's effective date.

(c) A notice required to be provided under

Subsection (a), [~~or~~] (b), or (b-1) 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 a demand under Section 10.356(b)(3), or both, [~~(3)~~] may be provided.

(d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided:

(1) under Subsection (a)(1) must accompany the notice of the meeting to consider the action;

(2) [~~, and a notice required~~] under Subsection (a)(2) must be provided to:

(A) [~~(1)~~] each owner who consents in writing to the action before the owner delivers the written consent; and

(B) [~~(2)~~] each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect; and

(3) under Subsection (b-1) must be provided:

(A) if given before the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder to whom that offer is made; or

(B) if given after the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder who did not tender the shareholder's shares in that offer.

(f) If the notice given under Subsection (b-1) did not include a reference to the effective date of the merger, the responsible organization shall, not later than the 10th day after that date, give a second notice to the shareholders notifying them of the merger's effective date. If the second notice is given after the later of the date on which the tender or exchange offer described by Section 21.459(c)(2) is consummated or the 20th day after the date notice under Subsection (b-1) is given, then the second notice is required to be given to only those shareholders who have made a demand under Section 10.356(b)(3).

SECTION 17. Section 10.356(b), Business Organizations Code, is amended.

Subsection (a), [~~or~~] (b), or (b-1) 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 a demand under Section 10.356(b)(3), or both, [~~(3)~~] may be provided.

(d) In addition to the requirements prescribed by Subsection (c), a notice required to be provided:

(1) under Subsection (a)(1) must accompany the notice of the meeting to consider the action;

(2) [~~, and a notice required~~] under Subsection (a)(2) must be provided to:

(A) [~~(1)~~] each owner who consents in writing to the action before the owner delivers the written consent; and

(B) [~~(2)~~] each owner who is entitled to vote on the action and does not consent in writing to the action before the 11th day after the date the action takes effect; and

(3) under Subsection (b-1) must be provided:

(A) if given before the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder to whom that offer is made; or

(B) if given after the consummation of the tender or exchange offer described by Section 21.459(c)(2), to each shareholder who did not tender the shareholder's shares in that offer.

(f) If the notice given under Subsection (b-1) did not include a statement of the effective date of the merger, the responsible organization shall, not later than the 10th day after the effective date, give a second notice to the shareholders notifying them of the merger's effective date. If the second notice is given after the later of the date on which the tender or exchange offer described by Section 21.459(c)(2) is consummated or the 20th day after the date notice under Subsection (b-1) is given, then the second notice is required to be given to only those shareholders who have made a demand under Section 10.356(b)(3).

SECTION 17. Same as introduced version.

SECTION 18. Section 11.001(3), Business Organizations Code, is amended.	SECTION 18. Same as introduced version.
SECTION 19. Section 20.001, Business Organizations Code, is amended.	SECTION 19. Same as introduced version.
SECTION 20. Section 21.052, Business Organizations Code, is amended by adding Subsection (d) to read as follows: (d) This section does not affect: (1) the authority of the shareholders of a corporation to consent in writing to the cancellation of an event requiring winding up in accordance with Section 21.502(1) or (2); or (2) the authority of the organizers of a corporation to adopt a resolution to cancel an event requiring winding up in accordance with Section 21.502(1) or (2).	SECTION 20. Section 21.052, Business Organizations Code, is amended by adding Subsection (d) to read as follows: (d) This section does not affect: (1) the authority of the shareholders of a corporation to consent in writing to the cancellation of an event requiring winding up in accordance with Section 21.502(1); or (2) the authority of the organizers of a corporation to adopt a resolution to cancel an event requiring winding up in accordance with Section 21.502(2).
SECTION 21. Section 21.053, Business Organizations Code, is amended.	SECTION 21. Same as introduced version.
SECTION 22. Section 21.056(a), Business Organizations Code, is amended.	SECTION 22. Same as introduced version.
SECTION 23. Section 21.102, Business Organizations Code, is amended.	SECTION 23. Same as introduced version.
SECTION 24. Section 21.160, Business Organizations Code, is amended.	SECTION 24. Same as introduced version.
SECTION 25. Section 21.371, Business Organizations Code, is amended to read as follows: Sec. 21.371. PROCEDURES IN BYLAWS RELATING TO PROXIES. (a) A corporation may establish in the corporation's bylaws procedures consistent with this code for determining the validity of proxies and determining whether shares that are held of record by a bank, broker, or other nominee are represented at a meeting of shareholders. The procedures may incorporate rules of and determinations made by a stock exchange or self-regulatory organization regulating the corporation or that bank, broker, or other nominee.	SECTION 25. Section 21.371, Business Organizations Code, is amended to read as follows: Sec. 21.371. PROCEDURES IN BYLAWS RELATING TO PROXIES. (a) A corporation may establish in the corporation's bylaws procedures consistent with this code for determining the validity of proxies and determining whether shares that are held of record by a bank, broker, or other nominee are represented at a meeting of shareholders. The procedures may incorporate rules of and determinations made by a stock exchange or self-regulatory organization regulating the corporation or that bank, broker, or other nominee.

(b) Subject to any procedures or conditions as may be provided in the bylaws, the bylaws may contain one or both of the following:

(1) a provision requiring that, when soliciting proxies or consents with respect to an election of directors, the corporation include in both its proxy statement and any form of its proxy or consent, in addition to individuals nominated by the board of directors, one or more individuals nominated by a shareholder; or

(2) a provision requiring that the corporation reimburse expenses incurred by a shareholder in soliciting proxies or consents with respect to an election of directors so long as the provision does not apply to any election for which the record date precedes the adoption of the bylaw provision.

(b) The bylaws may contain one or both of the following:

(1) a provision requiring that, when soliciting proxies or consents with respect to an election of directors, the corporation include in both its proxy statement and any form of its proxy or consent, in addition to individuals nominated by the board of directors, one or more individuals nominated by a shareholder, subject to any procedures or conditions as may be provided in the bylaws; and

(2) a provision requiring that the corporation reimburse expenses incurred by a shareholder in soliciting proxies or consents with respect to an election of directors so long as the provision does not apply to any election for which the record date precedes the adoption of the bylaw provision, but subject to any procedures or conditions as may be provided in the bylaws.

SECTION 26. Section 21.459, Business Organizations Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) This subsection applies only to a corporation that is a party to the merger and whose shares are, immediately before the date its board of directors approves the plan of merger, either listed on a national securities exchange or held of record by at least 2,000 shareholders. Unless required by the corporation's certificate of formation, a plan of merger is not required to be approved by the shareholders of the corporation if:

(1) the plan of merger expressly:

(A) permits or requires the merger to be effected under this subsection; and

(B) provides that any merger effected under this subsection shall be effected as soon as practicable following the consummation of the offer described by Subdivision (2);

(2) an organization consummates a tender or exchange offer for all of the outstanding shares of the corporation on the terms provided in the plan of merger that, absent this subsection, would be entitled to vote on the approval of the plan of merger, except that the offer may exclude shares of the

SECTION 26. Section 21.459, Business Organizations Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) This subsection applies only to a corporation that is a party to the merger and whose shares are, immediately before the date its board of directors approves the plan of merger, either listed on a national securities exchange or held of record by at least 2,000 shareholders. Unless required by the corporation's certificate of formation, a plan of merger is not required to be approved by the shareholders of the corporation if:

(1) the plan of merger expressly:

(A) permits or requires the merger to be effected under this subsection; and

(B) provides that any merger effected under this subsection shall be effected as soon as practicable following the consummation of the offer described by Subdivision (2);

(2) an organization consummates a tender or exchange offer for all of the outstanding shares of the corporation on the terms provided in the plan of merger that, absent this subsection, would be entitled to vote on the approval of the plan of merger, except that the offer may exclude shares of the

corporation owned at the time of the commencement of the offer by:

(A) the corporation;

(B) the organization making the offer;

(C) any person who owns, directly or indirectly, all of the ownership interests in the organization making the offer; or

(D) any direct or indirect wholly owned subsidiary of a person described by Paragraph (A), (B), or (C);

(3) shares that are irrevocably accepted for purchase or exchange pursuant to the consummation of the offer described by Subdivision (2) and that are received by the depository before the expiration of the offer in addition to the shares that are otherwise owned by the consummating organization equal at least the percentage of the shares, and of each class or series of those shares, of the corporation that, absent this subsection, would be required by:

(A) Section 21.457 and, if applicable, Section 21.458; and

(B) the certificate of formation of the corporation to approve the plan of merger;

(4) the organization consummating the offer described by Subdivision (2) merges with or into the corporation pursuant to the plan of merger; and

(5) each outstanding share of each class or series of the corporation that is the subject of and not irrevocably accepted for purchase or exchange in the offer described by Subdivision (2) is to be converted or exchanged in the merger into, or into the right to receive, the same amount and kind of consideration, as described by Section 10.002(a)(5), as to be paid or delivered for shares of such class or series of the corporation irrevocably accepted for purchase or exchange in the offer.

(d) In Subsection (c) and this subsection and, as applicable, in Sections 10.355(d)(3)(B), 10.355(f), and 10.356(b)(3)(E)(iv):

(1) "Consummates," "consummation," or "consummating" means irrevocably accepts for purchase or exchange shares tendered pursuant to a tender or exchange offer.

(2) "Depository" means an agent appointed to facilitate consummation of the offer described by Subsection (c)(2).

(e) For purposes of Subsection (c)(3), "received," with respect to shares, means:

corporation owned at the time of the commencement of the offer by:

(A) the corporation;

(B) the organization making the offer;

(C) any person who owns, directly or indirectly, all of the ownership interests in the organization making the offer; or

(D) any direct or indirect wholly owned subsidiary of a person described by Paragraph (A), (B), or (C);

(3) shares that are irrevocably accepted for purchase or exchange pursuant to the consummation of the offer described by Subdivision (2) and that are received by the depository before the expiration of the offer in addition to the shares that are otherwise owned by the consummating organization equal at least the percentage of the shares, and of each class or series of those shares, of the corporation that, absent this subsection, would be required to approve the plan of merger by:

(A) Section 21.457 and, if applicable, Section 21.458; and

(B) the certificate of formation of the corporation;

(4) the organization consummating the offer described by Subdivision (2) merges with or into the corporation pursuant to the plan of merger; and

(5) each outstanding share of each class or series of the corporation that is the subject of and not irrevocably accepted for purchase or exchange in the offer described by Subdivision (2) is to be converted or exchanged in the merger into, or into the right to receive, the same amount and kind of consideration, as described by Section 10.002(a)(5), as to be paid or delivered for shares of such class or series of the corporation irrevocably accepted for purchase or exchange in the offer.

(d) In Subsection (c) and this subsection and, as applicable, in Sections 10.355(d)(3)(B), 10.355(f), and 10.356(b)(3)(E)(iv):

(1) "Consummates," "consummation," or "consummating" means irrevocably accepts for purchase or exchange shares tendered pursuant to a tender or exchange offer.

(2) "Depository" means an agent appointed to facilitate consummation of the offer described by Subsection (c)(2).

(e) For purposes of Subsection (c)(3), "received," with respect to shares, means:

(1) physical receipt of a certificate representing shares, in the case of certificated shares; and

(2) transfer into the depository's account or an agent's message being received by the depository, in the case of uncertificated shares.

SECTION 27. Section 22.109(a), Business Organizations Code, is amended to read as follows:

(a) A [~~The board of directors of a~~] corporation may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedure to amend its [~~the corporation's~~] certificate of formation provided by Sections 22.104-22.107, except that:

(1) member approval is required only if the restated certificate of formation contains an amendment; and

(2) the members may consent in writing, or the organizers of a corporation may adopt a resolution, to authorize a restated certificate of formation that contains an amendment to cancel an event requiring winding up in accordance with Section 22.302(1)(B) or 22.302(2).

SECTION 28. Section 22.164, Business Organizations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Except as otherwise provided by Subsection (c) or (d), or the certificate of formation in accordance with Section 22.162, the vote required for approval of a fundamental action is:

(1) at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote, if the corporation has members with voting rights;

(2) at least two-thirds of the votes of members present at the meeting at which the action is submitted for a vote, if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202; or

(3) the affirmative vote of the majority of the directors in office, if the corporation has no members or has no members with voting rights.

(1) physical receipt of a certificate representing shares, in the case of certificated shares; and

(2) transfer into the depository's account or an agent's message being received by the depository, in the case of uncertificated shares.

SECTION 27. Section 22.109(a), Business Organizations Code, is amended to read as follows:

(a) A [~~The board of directors of a~~] corporation may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedure to amend its [~~the corporation's~~] certificate of formation provided by Sections 22.104-22.107, except that:

(1) member approval is required only if the restated certificate of formation contains an amendment; and

(2) the members may consent in writing, or the organizers of a corporation may adopt a resolution, to authorize a restated certificate of formation that contains an amendment to cancel an event requiring winding up in accordance with Section 22.302(1)(B) or 22.302(2), as applicable.

SECTION 28. Section 22.164, Business Organizations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b) Except as otherwise provided by Subsection (c) or (d) or the certificate of formation in accordance with Section 22.162, the vote required for approval of a fundamental action is:

(1) at least two-thirds of the votes that members present in person or by proxy are entitled to cast at the meeting at which the action is submitted for a vote, if the corporation has members with voting rights;

(2) at least two-thirds of the votes of members present at the meeting at which the action is submitted for a vote, if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202; or

(3) the affirmative vote of the majority of the directors in office, if the corporation has no members or has no members with voting rights.

(d) If the corporation has no members or has no members with voting rights and the corporation has not commenced its nonprofit activities, the vote required for approval of a fundamental action consisting of an amendment to the certificate of formation to cancel an event requiring winding up or any of the actions described by Subsections (a)(2) through (a)(6) is the affirmative vote of a majority of the organizers or a majority of the directors in office.

(d) If the corporation has no members or has no members with voting rights and the corporation does not hold any assets and has not solicited any assets or otherwise engaged in activities, the vote required for approval of a fundamental action consisting of an amendment to the certificate of formation to cancel an event requiring winding up or any of the actions described by Subsections (a)(2) through (a)(6) is the affirmative vote of a majority of the organizers or a majority of the directors in office.

SECTION 29. Section 22.302, Business Organizations Code, is amended to read as follows:

Sec. 22.302. CERTAIN PROCEDURES FOR APPROVAL. To approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, a revocation of a voluntary decision to wind up, or a distribution plan, a corporation must follow the following procedures:

(1) if the corporation has no members or has no members with voting rights and the corporation:

(A) has engaged in any nonprofit activities, the corporation's board of directors must adopt a resolution to wind up, to reinstate, to cancel the event requiring winding up, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote of directors required by Section 22.164(b)(3) [~~22.164~~]; or

(B) has not commenced its nonprofit activities, a majority of the organizers or the board of directors of the corporation must adopt a resolution to wind up, to reinstate, to cancel an event requiring winding up, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote required by Section 22.164(d);

(2) if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202, the winding up, reinstatement, cancellation of event requiring winding up, revocation of voluntary decision to wind up, or distribution plan:

(A) must be submitted to a vote at an annual, regular, or special meeting of

SECTION 29. Section 22.302, Business Organizations Code, is amended to read as follows:

Sec. 22.302. CERTAIN PROCEDURES FOR APPROVAL. To approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, a revocation of a voluntary decision to wind up, or a distribution plan, a corporation must follow the following procedures:

(1) if the corporation has no members or has no members with voting rights and the corporation:

(A) holds any assets or has solicited any assets or otherwise engaged in activities, the corporation's board of directors must adopt a resolution to wind up, to reinstate, to cancel the event requiring winding up, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote of directors required by Section 22.164(b)(3) [~~22.164~~]; or

(B) does not hold any assets and has not solicited any assets or otherwise engaged in activities, a majority of the organizers or the board of directors of the corporation must adopt a resolution to wind up, to reinstate, to cancel an event requiring winding up, to revoke a voluntary decision to wind up, or to effect the distribution plan by the vote required by Section 22.164(d);

(2) if the management of the affairs of the corporation is vested in the corporation's members under Section 22.202, the winding up, reinstatement, cancellation of event requiring winding up, revocation of voluntary decision to wind up, or distribution plan:

(A) must be submitted to a vote at an annual, regular, or special meeting of

members; and
(B) must be approved by the members by the vote required by Section 22.164; or

(3) if the corporation has members with voting rights:
(A) the corporation's board of directors must approve a resolution:
(i) recommending the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan; and
(ii) directing that the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan of the corporation be submitted to a vote at an annual or special meeting of members; and
(B) the members must approve the action described by Paragraph (A) in accordance with Section 22.303.

SECTION 30. Chapter 21, Business Organizations Code, is amended by adding Subchapter R to read as follows:
SUBCHAPTER R. RATIFICATION OF DEFECTIVE CORPORATE ACTS OR SHARES; PROCEEDINGS

Sec. 21.901. DEFINITIONS.

Sec. 21.902. RATIFICATION OF DEFECTIVE CORPORATE ACT AND PUTATIVE SHARES.

Sec. 21.903. RATIFICATION OF DEFECTIVE CORPORATE ACT; ADOPTION OF RESOLUTION.

Sec. 21.904. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF RESOLUTION. (a) The quorum and voting requirements applicable to the adoption of a resolution under Section 21.903 are the same as the quorum and voting requirements applicable at the time of the adoption of a resolution for the type of defective corporate act proposed to be ratified.
(b) Notwithstanding Subsection (a) and except as provided by Subsection (c), if in order for a quorum to be present or to

members; and
(B) must be approved by the members by the vote required by Section 22.164(b)(2) [~~22.164~~]; or
(3) if the corporation has members with voting rights:
(A) the corporation's board of directors must approve a resolution:
(i) recommending the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan; and
(ii) directing that the winding up, reinstatement, cancellation of event requiring winding up, revocation of a voluntary decision to wind up, or distribution plan of the corporation be submitted to a vote at an annual or special meeting of members; and
(B) the members must approve the action described by Paragraph (A) in accordance with Section 22.303.

SECTION 30. Chapter 21, Business Organizations Code, is amended by adding Subchapter R to read as follows:
SUBCHAPTER R. RATIFICATION OF DEFECTIVE CORPORATE ACTS OR SHARES; PROCEEDINGS

Sec. 21.901. DEFINITIONS.

Sec. 21.902. RATIFICATION OF DEFECTIVE CORPORATE ACT AND PUTATIVE SHARES.

Sec. 21.903. RATIFICATION OF DEFECTIVE CORPORATE ACT; ADOPTION OF RESOLUTION.

Sec. 21.904. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF RESOLUTION. (a) The quorum and voting requirements applicable to the adoption of a resolution under Section 21.903 are the same as the quorum and voting requirements applicable at the time of the adoption of a resolution for the type of defective corporate act proposed to be ratified.
(b) Notwithstanding Subsection (a) and except as provided by Subsection (c), if in order for a quorum to be present or to

approve the defective corporate act, a larger number or portion of directors or the presence of specified directors would have been required by the governing documents of the corporation, any plan or agreement to which the corporation was a party, or any provision of the corporate statute, each of which are in effect at the time of the defective corporate act, then the larger number or portion of such directors must be required for a quorum to be present or the presence of such directors must be required to adopt the resolution, as applicable.

(c) The presence or approval of any director elected, appointed, or nominated by holders of any class or series of which no shares are then outstanding, or by any person that is no longer a shareholder, may not be required for a quorum to be present or to adopt the resolution.

Sec. 21.905. SHAREHOLDER APPROVAL OF RESOLUTION REQUIRED. The resolution adopted under Section 21.903 must be submitted to shareholders for adoption as provided by Sections 21.906 and 21.907, unless:

(1) no other provision of the corporate statute, no provision of the corporation's governing documents, and no provision of any plan or agreement to which the corporation is a party would require shareholder approval of the defective corporate act to be ratified, either at the time of the act or at the time when the resolution required by Section 21.903 is adopted; and

(2) the defective corporate act to be ratified did not result from a failure to comply with Subchapter M.

Sec. 21.906. NOTICE REQUIREMENTS FOR RESOLUTION SUBMITTED FOR SHAREHOLDER APPROVAL.

Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING. (a) At the shareholder meeting, the quorum and voting requirements applicable to the adoption of the resolution under Section 21.905 shall be the same as the quorum and voting requirements applicable at the time of such adoption by the shareholders for the type of defective corporate act to be ratified, except as provided by this section.

(b) If the approval of a larger number or

approve the defective corporate act, the presence or approval of a larger number or portion of directors or of specified directors would have been required by the governing documents of the corporation, any plan or agreement to which the corporation was a party, or any provision of the corporate statute, each as in effect at the time of the defective corporate act, then the presence or approval of the larger number or portion of such directors or of such specified directors must be required for a quorum to be present or to adopt the resolution, as applicable.

(c) The presence or approval of any director elected, appointed, or nominated by holders of any class or series of which no shares are then outstanding, or by any person that is no longer a shareholder, shall not be required for a quorum to be present or to adopt the resolution.

Sec. 21.905. SHAREHOLDER ADOPTION OF RESOLUTION REQUIRED. The resolution adopted under Section 21.903 must be submitted to shareholders for adoption as provided by Sections 21.906 and 21.907, unless:

(1) no other provision of the corporate statute, no provision of the corporation's governing documents, and no provision of any plan or agreement to which the corporation is a party would have required shareholder approval of the defective corporate act to be ratified, either at the time of the act or at the time when the resolution required by Section 21.903 is adopted; and

(2) the defective corporate act to be ratified did not result from a failure to comply with Subchapter M.

Sec. 21.906. NOTICE REQUIREMENTS FOR RESOLUTION SUBMITTED FOR SHAREHOLDER APPROVAL.

Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING. (a) At the shareholder meeting, the quorum and voting requirements applicable to the adoption of the resolution under Section 21.905 shall be the same as the quorum and voting requirements applicable at the time of such adoption by the shareholders for the type of defective corporate act to be ratified, except as provided by this section.

(b) If the presence or approval of a larger

portion of shares or of any class or series of shares or the presence of specified shareholders for a quorum to be present or to approve the defective corporate act would have been required by the corporation's governing documents, any plan or agreement to which the corporation was a party, or any provision of the corporate statute in effect as of the time of the defective corporate act, then the approval of the larger number or portion of shares or of the class or series of shares or the presence of such specified shareholders shall be required for a quorum to be present or to adopt the resolution, as applicable, except that approval of shares of any class or series of which no shares are then outstanding, or the presence of any person that is no longer a shareholder, may not be required.

(c) The adoption of a resolution to ratify the election of a director requires the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of the director, unless the governing documents of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of shares to elect the director, in which case the affirmative vote of the larger number or portion of shares is required to ratify the election of the director.

(d) If a failure of authorization results from the failure to comply with Subchapter M, the ratification of the defective corporate act must require the vote set forth by Section 21.606(2), regardless of whether that vote would have otherwise been required.

Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If the defective corporate act ratified under this subchapter would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, the corporation, instead of filing the filing instrument or other document otherwise required by this code, shall file a certificate of validation in accordance with Chapter 4, regardless of whether a filing instrument or other document was previously filed with respect to the defective corporate act.

(b) The certificate of validation must set

number or portion of shares or of any class or series of shares or of specified shareholders would have been required for a quorum to be present or to approve the defective corporate act, as applicable, by the corporation's governing documents, any plan or agreement to which the corporation was a party, or any provision of the corporate statute, each as in effect at the time of the defective corporate act, then the presence or approval of the larger number or portion of shares or of the class or series of shares or of such specified shareholders shall be required for a quorum to be present or to adopt the resolution, as applicable, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a shareholder, shall not be required.

(c) The adoption of a resolution to ratify the election of a director requires the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of the director, unless the governing documents of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of shares to elect the director, in which case the affirmative vote of the larger number or portion of shares is required to ratify the election of the director.

(d) If a failure of authorization results from the failure to comply with Subchapter M, the ratification of the defective corporate act requires the vote set forth by Section 21.606(2), regardless of whether that vote would have otherwise been required.

Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If the defective corporate act ratified under this subchapter would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, the corporation, instead of filing the filing instrument or other document otherwise required by this code, shall file a certificate of validation in accordance with Chapter 4, regardless of whether a filing instrument or other document was previously filed with respect to the defective corporate act.

(b) The certificate of validation must set

forth:

(1) a copy of the resolution adopted in accordance with Sections 21.903 and 21.904, the date of adoption of the resolution by the board of directors and, if applicable, by the shareholders, and a statement that the resolution was adopted in accordance with this subchapter;

(2) if a filing instrument or document was previously filed with a filing officer under the corporate statute in respect of the defective corporate act, the title and date of filing of the prior filing instrument or document and any articles or certificate of correction to the filing instrument; and

(3) the provisions that would be required under any other section of this code to be included in the filing instrument that otherwise would have been required to be filed with respect to the defective corporate act under this code.

Sec. 21.909. ADOPTION OF RESOLUTION; EFFECT ON DEFECTIVE CORPORATE ACT.

Sec. 21.910. ADOPTION OF RESOLUTION; EFFECT ON PUTATIVE SHARES. On or after the validation effective time, unless determined otherwise in an action brought under Section 21.914, each putative share or fraction of a putative share issued or purportedly issued pursuant to the defective corporate act and identified in the resolution required by Sections 21.903 and 21.904 may not be considered void or voidable as a result of a failure of authorization identified in the resolution and, in the absence of any failure of authorization not ratified, is considered to be an identical share or fraction of a share outstanding as of the time it was purportedly issued.

Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING ADOPTION OF RESOLUTION

Sec. 21.912. VALID SHARES OR PUTATIVE SHARES.

Sec. 21.913. RATIFICATION PROCEDURES OR COURT PROCEEDINGS CONCERNING

forth:

(1) a copy of the resolution adopted in accordance with Sections 21.903 and 21.904, the date of adoption of the resolution by the board of directors and, if applicable, the date of adoption by the shareholders, and a statement that the resolution was adopted in accordance with this subchapter;

(2) if a filing instrument or document was previously filed with a filing officer under the corporate statute in respect of the defective corporate act, the title and date of filing of the prior filing instrument or document and any articles or certificate of correction to the filing instrument; and

(3) the provisions that would be required under any other section of this code to be included in the filing instrument that otherwise would have been required to be filed with respect to the defective corporate act under this code.

Sec. 21.909. ADOPTION OF RESOLUTION; EFFECT ON DEFECTIVE CORPORATE ACT.

Sec. 21.910. ADOPTION OF RESOLUTION; EFFECT ON PUTATIVE SHARES. On or after the validation effective time, unless determined otherwise in an action brought under Section 21.914, each putative share or fraction of a putative share issued or purportedly issued pursuant to the defective corporate act and identified in the resolution adopted under Sections 21.903 and 21.904 may not be considered void or voidable as a result of a failure of authorization identified in the resolution and, in the absence of any failure of authorization not ratified, is considered to be an identical share or fraction of a share outstanding as of the time it was purportedly issued.

Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING ADOPTION OF RESOLUTION.

Sec. 21.912. VALID SHARES OR PUTATIVE SHARES.

Sec. 21.913. RATIFICATION PROCEDURES OR COURT PROCEEDINGS CONCERNING

VALIDATION NOT EXCLUSIVE. (a) Ratification of an act or transaction under this subchapter or validation of an act or transaction as provided by Sections 21.914 through 21.917 may not be considered to be the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act or any issuance of putative shares or other shares.	VALIDATION NOT EXCLUSIVE. (a) Ratification of an act or transaction under this subchapter or validation of an act or transaction as provided by Sections 21.914 through 21.917 is not the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act or any issuance of putative shares or other shares.
(b) The absence or failure of ratification of an act or transaction in accordance with this subchapter or of validation of an act or transaction as provided by Sections 21.914 through 21.917 may not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any shares properly ratified under common law or otherwise, nor shall it create a presumption that any such act or transaction is or was a defective corporate act or that those shares are void or voidable.	(b) The absence or failure of ratification of an act or transaction in accordance with this subchapter or of validation of an act or transaction as provided by Sections 21.914 through 21.917 does not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any shares properly ratified under common law or otherwise, nor does it create a presumption that any such act or transaction is or was a defective corporate act or that those shares are void or voidable.
Sec. 21.914. PROCEEDING REGARDING VALIDITY OF DEFECTIVE CORPORATE ACTS AND SHARES.	Sec. 21.914. PROCEEDING REGARDING VALIDITY OF DEFECTIVE CORPORATE ACTS AND SHARES.
Sec. 21.915. EXCLUSIVE JURISDICTION.	Sec. 21.915. EXCLUSIVE JURISDICTION.
Sec. 21.916. SERVICE. (a) Service of an application filed under Section 21.914 on the registered agent of a corporation or in any other manner permitted by applicable law is considered to be service on the corporation, and no other party need be joined in order for the district court to adjudicate the matter.	Sec. 21.916. SERVICE. (a) Service of an application filed under Section 21.914 on the registered agent of a corporation or in any other manner permitted by applicable law is considered to be service on the corporation, and no other party need be joined in order for the district court to adjudicate the matter.
(b) If an action is brought by a corporation under this section, the district court may require that notice of the action be provided to other persons identified by the court and permit those other persons to intervene in the action.	(b) If an action is brought by a corporation under Section 21.914, the district court may require that notice of the action be provided to other persons identified by the court and permit those other persons to intervene in the action.
Sec. 21.917. STATUTE OF LIMITATIONS.	Sec. 21.917. STATUTE OF LIMITATIONS.
SECTION 31. This Act takes effect September 1, 2015.	SECTION 31. Same as introduced version.