

BILL ANALYSIS

Senate Research Center
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S.B. 860
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 860 updates the Business Organization Code to reflect changes in business practices and correct newly identified ambiguities in Texas statutes governing corporations and fundamental business transactions.

Current law does not reflect best practices in corporations and fundamental business transactions law. S.B. 860 makes mostly technical changes to clarify the provisions and authorizations in the code relating to corporations and fundamental business transactions to ensure Texas remains a leader in providing businesses with clear statutory framework reflective of updated corporate practices.

As proposed, S.B. 860 amends current law relating to corporations and fundamental business transactions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1.002, Business Organizations Code, by adding Subdivision (63-a) to define "owner liability."

SECTION 2. Amends 3.054, Business Organizations Code, as follows:

Sec. 3.054. EXECUTION OF CERTIFICATE OF AMENDMENT OF FOR-PROFIT CORPORATION. Requires an officer to sign the certificate of amendment on behalf of the for-profit corporation, except as provided by Title 2 (Corporations) or this section. Authorizes one or more of the directors, rather than a majority, to sign the certificate of amendment on behalf of the for-profit corporation if shares of the for-profit corporation have not been issued and the certificate of amendment is adopted by the board of directors. Makes a nonsubstantive change.

SECTION 3. Amends Section 3.060(b), Business Organizations Code, as follows:

(b) Requires an officer to sign the restated certificate of formation on behalf of the corporation, except as provided by Title 2 or this subsection. Authorizes one or more of the directors, rather than the majority, to sign the restated certificate of formation on behalf of the corporation if shares of the corporation have not been issued and the restated certificate of formation is adopted by the board of directors. Makes a nonsubstantive change.

SECTION 4. Amends Section 3.201(b), Business Organizations Code, as follows:

(b) Requires the ownership interests in a for-profit corporation, real estate investment trust, or professional corporation to be certificated unless a governing document of the entity or a resolution adopted by the governing authority of the entity provides that some

of all of any of the classes or series of the ownership interests are uncertificated or that some or all of each of the classes or series of the ownership interests are uncertificated. Authorizes the entity to have both outstanding certificated and uncertificated ownership interests of the same class or series. Makes nonsubstantive changes.

SECTION 5. Amends Section 10.001(e), Business Organizations Code, as follows:

(e) Prohibits a domestic entity from merging under this subchapter if an owner or member of that entity that is a party to the merger will, as a result of the merger, become subject to owner liability, rather than become personally liable, without that owner's or member's consent, for a liability or other obligation of any other person.

SECTION 6. Amends Section 10.002(a), Business Organizations Code, as follows:

(a) Requires that a plan of merger be in writing and include:

(1)-(4) Makes no change to these subdivisions;

(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 certain enumerated items;

(6) the identification of any of the ownership or membership interests of an organization that is a party to the merger that are to be canceled rather than converted or exchanged, or to remain outstanding rather than converted or exchanged if the organization survives the merger;

(7)-(9) Makes no change to these subdivisions.

SECTION 7. Amends Section 10.004, Business Organizations Code, to authorize a plan of merger to certain provisions, including amendments to, restatements of, or amendments and restatements of the governing documents of any surviving organization, including a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments.

SECTION 8. Amends Section 10.008(a), Business Organizations Code, as follows:

(a) Provides that when a merger takes effect:

(1)-(5) Makes no change to these subdivisions;

(6) the governing documents of each surviving domestic entity are amended, restated, or amended and restated to the extent provided by the plan of merger, and a certificate of amendment, a restated certificate of formation without amendment, or a restated certificate of formation containing amendments of a surviving filing entity is required to have the effect stated in Section 3.063 (Effect of Filing of Restated Certificate of Formation);

(7) Makes no change to this subdivision;

(8) the ownership or membership interests of each organization that is a party to the merger and that are to be converted or exchanged, in whole or part, into ownership or membership interests, obligations, rights to purchase securities, or other securities of one or more of the surviving or new organizations, into cash or other property, including ownership or membership interests, obligations, rights to purchase securities, or other securities of any organization, or into any combination of these, or that are to be canceled or remain outstanding, are converted, exchanged, canceled, or remain outstanding as provided in the plan of merger, and the former owners or members who held ownership or membership interests of each domestic entity that is a party to the merger are entitled only to

the rights provided by the plan of merger or, if applicable, any rights to receive the fair value for the ownership interests provided under Subchapter H; and

(9) Makes no change to this subdivision.

Makes a nonsubstantive change.

SECTION 9. Amends Section 10.051(f), Business Organizations Code, to prohibit a plan of exchange from being effected if any owner or member of a domestic entity that is a party to the interest exchange will, as a result of the interest exchange, become subject to owner liability, rather than become personally liable, without the consent of the owner or member, for the liabilities or obligations of any other person or organization.

SECTION 10. Amends Section 10.052(a), Business Organizations Code, to require that a plan of exchange be in writing and include certain information, including the manner and basis, including use of a formula, of exchanging the ownership or membership interests to be acquired for certain enumerated items.

SECTION 11. Amends Section 10.101(f), Business Organizations Code, to prohibit a domestic entity from converting under this section if an owner or member of the domestic entity, as a result of the conversion, becomes subject to owner liability, rather than becomes personally liable, without the consent of the owner or member, for a liability or other obligation of the converted entity.

SECTION 12. Amends Section 10.103(a), Business Organizations Code, to require that a plan of conversion be in writing and include certain information, including, if Sections 10.1025 (Conversion and Continuance) and 10.109 (Special Provisions Applying to Conversion and Continuance) do not apply, the manner and basis, including use of a formula, of converting the ownership and membership interests of the converting entity into ownership or membership interests of the converted entity.

SECTION 13. Amends Section 10.151, Business Organizations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the certificate, 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 (Short Form Merger), to 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 to include:

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

(A)-(C) Makes no change to these subdivisions;

(D) for a merger, the amendments or changes to the certificate of formation of any 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);

(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 is authorized to include a reference to a restated certificate of formation attached to the certificate of merger under Subsection (d);

(F) Redesignates existing Paragraph (E) as (F);

(G) Redesignates existing Paragraph (F) as (G) and changes a reference to signed plan of merger to plan of merger; and

(H) Redesignates existing Paragraph (G) as (H) and makes no further change to this paragraph.

Deletes existing text from Paragraph (D) providing that for a merger, the amendments or changes or the certificate of formation of each filing entity that is a party to the merger, or if no amendments are desired to be effected by the merger, a statement to that effect.

Makes nonsubstantive changes.

(2)-(3) Makes no change to these subdivisions.

(d) Authorizes a certificate of merger filed under this section, as provided by Subsections (b)(1)(D) and (E), 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.

SECTION 14. Section 10.154(b), Business Organizations Code, to change references to a signed plan of conversion to a plan of conversion.

SECTION 15. Amends Sections 10.354(a) and (c), Business Organizations Code, as follows:

(a) Entitles an owner of an ownership interest in a domestic entity subject to dissenter's rights, subject to Subsection (b), to dissent from certain plans, sales, or mergers, including a merger effected under Section 21.459(c) in which the shares of the shareholders are converted or exchanged.

(c) Prohibits Subsection (b) from applying either to a domestic entity that is a subsidiary with respect to a merger under Section 10.006 or to a corporation with respect to a merger under 21.459(c).

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

(b-1) Requires the responsible organization, if a corporation effects a merger under Section 21.459(c), to 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. Authorizes, but does not require, notice required under this subsection that is given to shareholders before the effective date of the merger to contain a reference to that date. Requires that the notice 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.

(c) Requires that a notice required to be provided under Subsection (a), (b), or (b-1), rather than Subsection (a) or (b), to 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) (relating to an owner's right to dissent and appraisal of an action to be submitted to a vote of the owners at a meeting and the necessary procedures regarding the notice of objection given to the domestic entity) or a demand under Section 10.356(b)(3) (relating to an owner's right to dissent and appraisal and the necessary procedures regarding the demand in writing to be given to the responsible organization), or both, may be provided. Makes nonsubstantive changes.

(d) Requires that a notice required under Subsection (b-1), in addition to the requirements prescribed by Subsection (c), be provided 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 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. Makes nonsubstantive changes.

(f) Requires the responsible organization, if the notice given under Subsection (b-1) did not include a reference to the effective date of the merger, to, not later than the 10th day after that date, give a second notice to the shareholders notifying them of the merger's effective date. Requires that the second notice be given to only those shareholders who have made a demand under Section 10.356(b)(3) 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.

SECTION 17. Amends Section 10.356(b), Business Organizations Code, as follows:

(b) Requires an owner, to perfect the owner's rights of dissent and appraisal under Section 10.354, to follow certain criteria, including to give to the responsible organization a demand in writing that is delivered to the responsible organization at its principal executive offices at the following time not later than the 20th day after the date the responsible organization gives to the shareholder the notice required by Section 10.355(b-1) or the date of the consummation of the tender or exchange offer described by Section 21.459(c)(2), whichever is later, if the action is a merger effected under Section 21.459(c). Makes a nonsubstantive change.

SECTION 18. Amends Section 11.001(3), Business Organizations Code, to redefine "existing claim."

SECTION 19. Amends Section 20.001, Business Organizations Code, as follows:

Sec. 20.001. New heading: SIGNATURE REQUIREMENTS FOR FILING INSTRUMENTS. (a) Creates this subsection from existing text. Requires that a filing instrument of a corporation, unless otherwise provided by Section 3.054 or 3.060(b) or this title, be signed by an officer of the corporation.

(b) 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:

(1) one of the organizers if the winding up, the reinstatement, or the cancellation of an event requiring winding up was authorized by the organizers under Section 21.502(2) (relating to the consent in writing a corporation is required to have in order to approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, or a revocation of a voluntary decision to wind up) or 22.302(1)(B) ; or

(2) one of the directors if the winding up, the reinstatement, or the cancellation of an event requiring winding up was authorized by the board of directors under Section 21.502(2) or 22.302(1)(B).

SECTION 20. Amends Section 21.052, Business Organizations Code, by adding Subsection (d), to provide that this section does not affect 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) (relating to the required resolution adopted by a majority of the organizers or the board of directors of the corporation to wind up, to reinstate, to cancel an event requiring winding up, or to revoke a voluntary decision to wind up if the corporation has not commenced business and has not issued any shares) or (2), or 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 21. Amends Section 21.053, Business Organizations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Authorizes the board of directors, if a corporation does not have any issued and outstanding shares, or in the case of an amendment under Subsection (b) (relating to authorizing a board to adopt a proposed amendment without shareholder approval if the amendment to the corporation's certification of formation relates to a series of shares established by the board under authority granted to the board in the certificate of formation) or (c), to adopt a proposed amendment to the corporation's certificate of formation by resolution without shareholder approval.

(c) Authorizes the board of directors of a corporation that has outstanding shares, notwithstanding Section 21.054 (Adoption of Amendment by Shareholders) and except as otherwise provided by the certificate of formation, to, without shareholder approval, adopt an amendment to the corporation's certificate of formation to change the word or abbreviation in its corporate name as required by Section 5.054(a) (relating to requirements for a name of a corporation or foreign corporation) to be a different word or abbreviation required by that section.

SECTION 22. Amends Section 21.056(a), Business Organizations Code, to provide that a corporation is authorized to adopt a restated certificate of formation as provided by Subchapter B (Amendments and Restatements of Certificate of Formation), Chapter 3, by following the same procedures to amend its certificate of formation under Sections 21.052, 21.053, 21.054, and 21.055 (Notice of and Meeting to Consider Proposed Amendment), except that the shareholders of a corporation are authorized to consent in writing, or the organizers of a corporation are authorized to 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 21.502(1) or (2).

SECTION 23. Amends Section 21.102, Business Organizations Code, as follows:

Sec. 21.102. TERM OF AGREEMENT. Requires any limit on the term or duration of a shareholders' agreement under this subchapter to be set forth in the agreement. Provides that a shareholders' agreement under this subchapter that was in effect before September 1, 2015, remains in effect for 10 years, unless the agreement provides otherwise.

Deletes existing text providing that a shareholders' agreement under this subchapter is valid for 10 years, unless the agreement provides otherwise.

SECTION 24. Amends 21.160, Business Organizations Code, by adding Subsection (d), to authorize the amount of the consideration to be received for shares to be determined in accordance with Subsection (a) by the approval of a formula to determine that amount.

SECTION 25. Amends 21.371, Business Organizations Code, as follows:

(a) Creates this subsection from existing text and makes no further change to this subsection.

(b) Authorizes the bylaws, subject to any procedures or conditions as may be provided in the bylaws, to 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.

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

(c) Provides that 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. Provides that 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 (General Vote Requirement for Approval of Fundamental Business Transaction) and, if applicable, Section 21.458 (Class Voting Requirements for Certain Fundamental Business Transactions); 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) Defines "consummates," "consummation," "consummating," and "depository" 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).

(e) Defines "received," with respect to shares, for purposes of Subsection (c)(3).

SECTION 27. Amends Section 22.109(a), Business Organizations Code, as follows:

(a) Authorizes a corporation, rather than the board of directors of a corporation, to adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedure to amend its certificate of formation provided by Sections 22.104 (Organization Meeting), 22.105 (Procedures to Adopt Amendment to Certificate of Formation by Members Having Voting Rights), 22.106 (Procedures to Adopt Amendment to Certificate of Formation by Managing Members), and 22.107 (Procedures to Adopt Amendment to Certificate of Formation by Board of Directors), except that the members are authorized to consent in writing, or the organizers of a corporation are authorized to 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). Makes nonsubstantive changes.

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

(b) Creates an exception under Subsection (c) or (d).

(d) Provides that 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.

SECTION 29. Amends Section 22.302, Business Organizations Code, as follows:

Sec. 22.302. CERTAIN PROCEDURES FOR APPROVAL. Requires a corporation, 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, to follow certain 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 is required to 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), rather than Section 22.164; or

(B) has not commenced its nonprofit activities, a majority of the organizers or the board of directors of the corporation is required to 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) and (3) Makes no change to these subdivisions.

SECTION 30. Amends Chapter 21, Business Organizations Code, by adding Subchapter R, as follows:

SUBCHAPTER R. RATIFICATION OF DEFECTIVE CORPORATE ACTS OR
SHARES; PROCEEDINGS

Sec. 21.901. DEFINITIONS. Defines "corporate statute," "defective corporate act," "district court," "failure of authorization," "overissue," "putative shares," "time of the defective corporate act," "validation effective time" or "effective time of the validation," and "valid shares" in this subchapter.

Sec. 21.902. RATIFICATION OF DEFECTIVE CORPORATE ACT AND PUTATIVE SHARES. Provides that, subject to Section 21.909 or 21.910, 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:

- (1) ratified in accordance with this subchapter; or
- (2) validated by the district court in a proceeding brought under Section 21.914.

Sec. 21.903. RATIFICATION OF DEFECTIVE CORPORATE ACT; ADOPTION OF RESOLUTION. (a) Requires the board of directors of the corporation, in order to ratify a defective corporate act, to adopt a resolution stating:

- (1) the defective corporate act to be ratified;
- (2) the time of the defective corporate act;
- (3) 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;
- (4) the nature of the failure of authorization with respect to the defective corporate act to be ratified; and
- (5) that the board of directors approves the ratification of the defective corporate act.

(b) 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.

Sec. 21.904. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF RESOLUTION. (a) Provides that 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) Provides that, 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 is required to be required for a quorum to be present or the presence of such directors must be required to adopt the resolution, as applicable.

(c) Prohibits 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, from being required for a quorum to be present or to adopt the resolution.

Sec. 21.905. SHAREHOLDER APPROVAL OF RESOLUTION REQUIRED. Requires that the resolution adopted under Section 21.903 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 (Affiliated Business Combinations).

Sec. 21.906. NOTICE REQUIREMENTS FOR RESOLUTION SUBMITTED FOR SHAREHOLDER APPROVAL. (a) Requires that notice of the time, place, if any, and purpose of the meeting be given at least 20 days before the date of the meeting to each holder of valid shares and putative shares, whether voting or nonvoting, at the address of the holder as it appears or most recently appeared, as appropriate, on the corporation's records if Section 21.905 requires that the resolution be submitted to the shareholders for approval.

(b) Requires that notice under this section be given to each holder of record of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of the time of the defective corporate act, except that notice is not required to be given to a holder whose identity or address cannot be ascertained from the corporation's records.

(c) Requires that the notice contain:

(1) a copy of the resolution; and

(2) a statement that the following must be brought not later than the 120th day of the validation effective time:

(A) any claim that the defective corporate act or putative shares ratified under this subchapter are void or voidable due to the identified failure of authorization; or

(B) any claim that the district court, in its discretion, should declare that a ratification made in accordance with this subchapter not take effect or that it take effect only on certain conditions.

Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING. (a) Requires the quorum and voting requirements applicable to the adoption of the resolution under Section 21.905, at the shareholder meeting, to 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) Provides that if the approval of a larger number or 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 is required to 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) Provides that 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) Requires the ratification of the defective corporate act, if a failure of authorization results from the failure to comply with Subchapter M, to require the vote set forth by Section 21.606(2) (relating to the approval by affirmative vote of the holders of at least two-thirds of the outstanding voting shares of an issuing public corporation that is considering entering into or engaging in a business combination with an affiliated shareholder, or any affiliate or associate of an affiliated shareholder, during the three-year period immediately following the affiliated shareholder's share acquisition date), regardless of whether that vote would have otherwise been required.

Sec. 21.908. CERTIFICATE OF VALIDATION. (a) Requires the corporation, instead of filing the filing instrument or other document otherwise required by this code, to file a certificate of validation in accordance with Chapter 4 (Filings), regardless of whether a filing instrument or other document was previously filed with respect to the defective corporate act 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.

(b) Requires that the certificate of validation 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. Prohibits each defective corporate act set forth in the resolution adopted under Sections 21.903 and 21.904 from being considered void or voidable as a result of a failure of authorization identified in the resolution on or after the validation effective time, unless determined otherwise in an action brought under Section 21.914, and requires that the effect be retroactive to the time of the defective corporate act.

Sec. 21.910. ADOPTION OF RESOLUTION; EFFECT ON PUTATIVE SHARES. 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 required by Sections 21.903 and 21.904 from being considered void or voidable as a result of a failure of authorization identified in the resolution and provides that such putative shares or fractions of a putative share issued or purportedly issued, 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 on or after the validation effective time, unless determined otherwise in an action brought under Section 21.914.

Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING ADOPTION OF RESOLUTION. (a) Requires that notice of the adoption of a resolution under this subchapter be given promptly to:

(1) each holder of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of the date the board of directors adopted the resolution; and

(2) each holder of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of a date not later than the 60th day after the date on which the resolution is adopted, as established by the board of directors.

(b) Requires that notice under this section be sent to the address of a holder of shares described by Subsection (a)(1) or (a)(2) as the address appears or most recently appeared, as appropriate, on the records of the corporation.

(c) Requires that notice under this section also be given to each holder of record of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of the time of the defective corporate act, except that notice is not required to be given to a holder whose identity or address cannot be ascertained from the corporation's records.

(d) Requires that the notice contain:

(1) a copy of the resolution; and

(2) a statement that the following must be brought not later than the 120th day of the validation effective time:

(A) any claim that the defective corporate act or putative shares ratified under this subchapter are void or voidable due to the identified failure of authorization; or

(B) any claim that the district court, in its discretion, should declare that a ratification made in accordance with this subchapter not take effect or that it take effect only on certain conditions.

(e) Provides that, notwithstanding Subsections (a)-(d), notice is not required to be given under this section if notice of the resolution is given in accordance with Section 21.906.

(f) Requires that notice to holders of putative shares and notice to holders of valid shares and putative shares as of the time of the defective corporate act, for purposes of Section 21.906 and this section, be treated as notice to holders of valid shares for purposes of Sections 6.051 (General Notice Requirements), 6.052 (Waiver of Notice), 6.053 (Exception), 21.353 (Notice of Meeting), and 21.3531 (Notice by Electronic Transmission).

Sec. 21.912. VALID SHARES OR PUTATIVE SHARES. Provides that in the absence of actual fraud in the transaction, the judgment of the board of directors of a corporation that shares of the corporation are valid shares or putative shares is conclusive, unless otherwise determined by the district court in a proceeding brought under Section 21.914.

Sec. 21.913. RATIFICATION PROCEDURES OR COURT PROCEEDINGS CONCERNING VALIDATION NOT EXCLUSIVE. (a) Prohibits 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 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.

(b) Prohibits 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 from, of itself, affecting the validity or effectiveness of any act or transaction or the issuance of any shares properly ratified under common law or otherwise, and from creating 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. (a) Authorizes the following to bring an action under this section:

- (1) the corporation;
- (2) any successor entity to the corporation;
- (3) any member of the corporation's board of directors;
- (4) any record or beneficial holder of valid shares or putative shares of the corporation;
- (5) any record or beneficial holder of valid shares or putative shares as of the time a defective corporate act was ratified in accordance with this subchapter; or
- (6) any other person claiming to be substantially and adversely affected by a ratification under this subchapter.

(b) Authorizes, subject to Section 21.917, the district court, on application by a person described by Subsection (a), to:

- (1) determine the validity and effectiveness of any defective corporate act ratified in accordance with this subchapter;
- (2) determine the validity and effectiveness of the ratification of any defective corporate act in accordance with this subchapter;
- (3) determine the validity and effectiveness of:
 - (A) any defective corporate act not ratified under this subchapter; or
 - (B) any defective corporate act not ratified effectively under this subchapter;
- (4) determine the validity of any corporate act or transaction and of any shares, rights, or options to acquire shares; and
- (5) modify or waive any of the procedures set forth in Sections 21.901 through 21.913 to ratify a defective corporate act.

(c) Authorizes the district court, in connection with an action brought under this section, to:

- (1) declare that a ratification in accordance with and pursuant to this subchapter is not effective or that the ratification may be effective only at a time or on conditions as specified by the district court;

(2) validate and declare effective any defective corporate act or putative shares and impose conditions on such a validation;

(3) require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification under this subchapter or from any order of the district court pursuant to this section, excluding any harm that would have resulted had the defective corporate act been valid when approved or effectuated;

(4) order the filing officer to accept for filing an instrument with an effective date and time as specified by the court, which may be before or subsequent to the time of the order;

(5) approve share records for the corporation that include any shares ratified in accordance with this subchapter or validated in accordance with this section and Sections 21.915 through 21.917;

(6) declare that putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares;

(7) order that a meeting of holders of valid shares or putative shares be held and determine the right and power of persons to vote at the meeting;

(8) declare that a defective corporate act validated by the court is effective as of the time of the defective corporate act or at such other time as determined by the court;

(9) declare that putative shares validated by the district court are considered to be an identical valid share or a fraction of a valid share as of the time the shares were originally or purportedly issued or at such other time as determined by the district court; and

(10) make any other order regarding such matters as the court considers appropriate under the circumstances.

(d) Authorizes the district court, in connection with the resolution of matters under Subsections (b) and (c), to consider:

(1) whether the defective corporate act was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of the corporate statute or the governing documents of the corporation;

(2) whether the corporation and the corporation's board of directors have treated the defective corporate act as a valid act or transaction and whether any person has acted in reliance on the public record that the defective corporate act was valid;

(3) whether any person will be or was harmed by the ratification or validation of the defective corporate act, excluding any harm that would have resulted had the defective corporate act been valid when approved or took effect;

(4) whether any person will be harmed by the failure to ratify or validate the defective corporate act; and

(5) any other factors or considerations the district court considers just and equitable.

Sec. 21.915. EXCLUSIVE JURISDICTION. Provides that the district court has exclusive jurisdiction to hear and determine any action brought under Section 21.914.

Sec. 21.916. SERVICE. (a) Provides that 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) Authorizes the district court to require that notice of an action be provided to other persons identified by the court and permit those other persons to intervene in the action if the action is brought by a corporation under this section.

Sec. 21.917. STATUTE OF LIMITATIONS. (a) Provides that this section does not apply to:

(1) an action asserting that a ratification was not accomplished in accordance with this subchapter; or

(2) any person to whom notice of the ratification was not given as required by Sections 21.906 and 21.911.

(b) Prohibits the following from being brought after the expiration of the 120th day of the validation effective time, notwithstanding any other provision of this subchapter:

(1) an action asserting that a defective corporate act or putative shares ratified in accordance with this subchapter are void or voidable due to a failure of authorization identified in the resolution adopted in accordance with Section 21.903; or

(2) an action asserting that the district court, in its discretion, should declare that a ratification in accordance with this subchapter not take effect or that the ratification take effect only on certain conditions.

SECTION 31. Effective date: September 1, 2015.