

AN ACT

relating to corporations and fundamental business transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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.

SECTION 2. Section 3.054, Business Organizations Code, is amended to read as follows:

Sec. 3.054. EXECUTION OF CERTIFICATE OF AMENDMENT OF FOR-PROFIT CORPORATION. Except as provided by Title 2 or this section, an [An] officer shall 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, one or more [~~a majority~~] of

1 the directors may sign the certificate of amendment on behalf of the  
2 for-profit corporation.

3 SECTION 3. Section 3.060(b), Business Organizations Code,  
4 is amended to read as follows:

5 (b) Except as provided by Title 2 or this subsection, an  
6 ~~An~~ officer shall sign the restated certificate of formation on  
7 behalf of the corporation. If shares of the corporation have not  
8 been issued and the restated certificate of formation is adopted by  
9 the board of directors, one or more ~~the majority~~ of the directors  
10 may sign the restated certificate of formation on behalf of the  
11 corporation.

12 SECTION 4. Section 3.201(b), Business Organizations Code,  
13 is amended to read as follows:

14 (b) The ownership interests in a for-profit corporation,  
15 real estate investment trust, or professional corporation must be  
16 certificated, except to the extent a ~~unless the~~ governing  
17 document ~~documents~~ of the entity or a resolution adopted by the  
18 governing authority of the entity provides that some or all of the  
19 classes or series of ~~states that~~ the ownership interests are  
20 uncertificated or that some or all of the ownership interests in any  
21 class or series of the ownership interests are uncertificated. The  
22 entity may have outstanding both certificated and uncertificated  
23 ownership interests of the same class or series. If a domestic  
24 entity changes the form of its ownership interests from  
25 certificated to uncertificated, a certificated ownership interest  
26 subject to the change becomes an uncertificated ownership interest  
27 only after the certificate is surrendered to the domestic entity.

1 SECTION 5. Section 10.001(e), Business Organizations Code,  
2 is amended to read as follows:

3 (e) A domestic entity may not merge under this subchapter if  
4 an owner or member of that entity that is a party to the merger will,  
5 as a result of the merger, become subject to owner liability  
6 [~~personally liable~~], without that owner's or member's consent, for  
7 a liability or other obligation of any other person.

8 SECTION 6. Section 10.002, Business Organizations Code, is  
9 amended by amending Subsection (a) and adding Subsection (d) to  
10 read as follows:

- 11 (a) A plan of merger must be in writing and must include:
- 12 (1) the name of each organization that is a party to  
13 the merger;
  - 14 (2) the name of each organization that will survive  
15 the merger;
  - 16 (3) the name of each new organization that is to be  
17 created by the plan of merger;
  - 18 (4) a description of the organizational form of each  
19 organization that is a party to the merger or that is to be created  
20 by the plan of merger and its jurisdiction of formation;
  - 21 (5) the manner and basis, including use of a formula,  
22 of converting or exchanging any of the ownership or membership  
23 interests of each organization that is a party to the merger into:
    - 24 (A) ownership interests, membership interests,  
25 obligations, rights to purchase securities, or other securities of  
26 one or more of the surviving or new organizations;
    - 27 (B) cash;

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

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

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

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

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

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

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

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

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

21 (B) is an entity that is not:

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

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

27 (d) Any of the terms of the plan of merger may be made

1 dependent on facts ascertainable outside of the plan if the manner  
2 in which those facts will operate on the terms of the merger is  
3 clearly and expressly stated in the plan. In this subsection,  
4 "facts" includes the occurrence of any event, including a  
5 determination or action by any person.

6 SECTION 7. Section 10.004, Business Organizations Code, is  
7 amended to read as follows:

8 Sec. 10.004. PLAN OF MERGER: PERMISSIVE PROVISIONS. A plan  
9 of merger may include:

10 (1) amendments to, restatements of, or amendments and  
11 restatements of the governing documents of any surviving  
12 organization, including a certificate of amendment, a restated  
13 certificate of formation without amendment, or a restated  
14 certificate of formation containing amendments;

15 (2) provisions relating to an interest exchange,  
16 including a plan of exchange; and

17 (3) any other provisions relating to the merger that  
18 are not required by this chapter.

19 SECTION 8. Section 10.008(a), Business Organizations Code,  
20 is amended to read as follows:

21 (a) When a merger takes effect:

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

25 (2) all rights, title, and interests to all real  
26 estate and other property owned by each organization that is a party  
27 to the merger is allocated to and vested, subject to any existing

1 liens or other encumbrances on the property, in one or more of the  
2 surviving or new organizations as provided in the plan of merger  
3 without:

4 (A) reversion or impairment;

5 (B) any further act or deed; or

6 (C) any transfer or assignment having occurred;

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

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

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

1           (6) the governing documents of each surviving domestic  
2 entity are amended, restated, or amended and restated to the extent  
3 provided by the plan of merger, and a certificate of amendment, a  
4 restated certificate of formation without amendment, or a restated  
5 certificate of formation containing amendments of a surviving  
6 filing entity shall have the effect stated in Section 3.063;

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

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

27           (9) notwithstanding Subdivision (4), the surviving or

1 new organization named in the plan of merger as primarily obligated  
2 to pay the fair value of an ownership or membership interest under  
3 Section 10.003(2) is the primary obligor for that payment and all  
4 other surviving or new organizations are secondarily liable for  
5 that payment.

6 SECTION 9. Section 10.051(f), Business Organizations Code,  
7 is amended to read as follows:

8 (f) A plan of exchange may not be effected if any owner or  
9 member of a domestic entity that is a party to the interest exchange  
10 will, as a result of the interest exchange, become subject to owner  
11 liability [~~personally liable~~], without the consent of the owner or  
12 member, for the liabilities or obligations of any other person or  
13 organization.

14 SECTION 10. Section 10.052, Business Organizations Code, is  
15 amended by amending Subsection (a) and adding Subsection (c) to  
16 read as follows:

17 (a) A plan of exchange must be in writing and must include:  
18 (1) the name of each domestic entity the ownership or  
19 membership interests of which are to be acquired;  
20 (2) the name of each acquiring organization;  
21 (3) if there is more than one acquiring organization,  
22 the ownership or membership interests to be acquired by each  
23 organization;  
24 (4) the terms and conditions of the exchange; and  
25 (5) the manner and basis, including use of a formula,  
26 of exchanging the ownership or membership interests to be acquired  
27 for:



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

5 (B) cash;

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

9 (D) any combination of those items.

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

16 SECTION 11. Section 10.101(f), Business Organizations  
17 Code, is amended to read as follows:

18 (f) A domestic entity may not convert under this section if  
19 an owner or member of the domestic entity, as a result of the  
20 conversion, becomes subject to owner liability [~~personally~~  
21 ~~liable~~], without the consent of the owner or member, for a liability  
22 or other obligation of the converted entity.

23 SECTION 12. Section 10.103, Business Organizations Code, is  
24 amended by amending Subsection (a) and adding Subsection (c) to  
25 read as follows:

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

- 1 (1) the name of the converting entity;
- 2 (2) the name of the converted entity;
- 3 (3) a statement that the converting entity is
- 4 continuing its existence in the organizational form of the
- 5 converted entity;
- 6 (4) a statement of the type of entity that the
- 7 converted entity is to be and the converted entity's jurisdiction
- 8 of formation;
- 9 (5) if Sections 10.1025 and 10.109 do not apply, the
- 10 manner and basis, including use of a formula, of converting the
- 11 ownership or membership interests of the converting entity into
- 12 ownership or membership interests of the converted entity;
- 13 (6) any certificate of formation required to be filed
- 14 under this code if the converted entity is a filing entity;
- 15 (7) the certificate of formation or similar
- 16 organizational document of the converted entity if the converted
- 17 entity is not a filing entity; and
- 18 (8) if Sections 10.1025 and 10.109 apply, a statement
- 19 that the converting entity is electing to continue its existence in
- 20 its current organizational form and jurisdiction of formation after
- 21 the conversion takes effect.

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

1 SECTION 13. Section 10.151, Business Organizations Code, is  
2 amended by amending Subsection (b) and adding Subsection (d) to  
3 read as follows:

4 (b) If a certificate of merger or exchange is required to be  
5 filed in connection with an interest exchange or a merger, other  
6 than a merger under Section 10.006, the certificate must be signed  
7 on behalf of each domestic entity and non-code organization that is  
8 a party to the merger or exchange by an officer or other authorized  
9 representative and must include:

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

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

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

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

21 (D) for a merger, the amendments or changes to  
22 the certificate of formation of any ~~each~~ filing entity that is a  
23 party to the merger, or a statement that amendments or changes are  
24 being made to the certificate of formation of any filing entity that  
25 is a party to the merger as set forth in a restated certificate of  
26 formation containing amendments or a certificate of amendment  
27 attached to the certificate of merger under Subsection (d) ~~if no~~

1 ~~amendments are desired to be effected by the merger, a statement to~~  
2 ~~that effect];~~

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

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

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

16 (H) [~~G~~] that a copy of the plan of merger or  
17 exchange will be on written request furnished without cost by each  
18 surviving, acquiring, or new domestic entity or non-code  
19 organization to any owner or member of any domestic entity that is a  
20 party to or created by the plan of merger or exchange and, for a  
21 merger with multiple surviving domestic entities or non-code  
22 organizations, to any creditor or obligee of the parties to the  
23 merger at the time of the merger if a liability or obligation is  
24 then outstanding;

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

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

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

11           SECTION 14. Section 10.154(b), Business Organizations  
12 Code, is amended to read as follows:

13           (b) If a certificate of conversion is required to be filed  
14 in connection with a conversion, the certificate must be signed on  
15 behalf of the converting entity and must include:

16           (1) the plan of conversion or a statement certifying  
17 the following:

18                   (A) the name, organizational form, and  
19 jurisdiction of formation of the converting entity;

20                   (B) the name, organizational form, and  
21 jurisdiction of formation of the converted entity;

22                   (C) that a ~~signed~~ plan of conversion is on file  
23 at the principal place of business of the converting entity, and the  
24 address of the principal place of business;

25                   (D) that a ~~signed~~ plan of conversion will be on  
26 file after the conversion at the principal place of business of the  
27 converted entity, and the address of the principal place of

1 business; and

2 (E) that a copy of the plan of conversion will be  
3 on written request furnished without cost by the converting entity  
4 before the conversion or by the converted entity after the  
5 conversion to any owner or member of the converting entity or the  
6 converted entity; and

7 (2) a statement that the plan of conversion has been  
8 approved as required by the laws of the jurisdiction of formation  
9 and the governing documents of the converting entity.

10 SECTION 15. Sections 10.354(a) and (c), Business  
11 Organizations Code, are amended to read as follows:

12 (a) Subject to Subsection (b), an owner of an ownership  
13 interest in a domestic entity subject to dissenters' rights is  
14 entitled to:

15 (1) dissent from:

16 (A) a plan of merger to which the domestic entity  
17 is a party if owner approval is required by this code and the owner  
18 owns in the domestic entity an ownership interest that was entitled  
19 to vote on the plan of merger;

20 (B) a sale of all or substantially all of the  
21 assets of the domestic entity if owner approval is required by this  
22 code and the owner owns in the domestic entity an ownership interest  
23 that was entitled to vote on the sale;

24 (C) a plan of exchange in which the ownership  
25 interest of the owner is to be acquired;

26 (D) a plan of conversion in which the domestic  
27 entity is the converting entity if owner approval is required by

1 this code and the owner owns in the domestic entity an ownership  
2 interest that was entitled to vote on the plan of conversion; [~~or~~]

3 (E) a merger effected under Section 10.006 in  
4 which:

5 (i) the owner is entitled to vote on the  
6 merger; or

7 (ii) the ownership interest of the owner is  
8 converted or exchanged; or

9 (F) a merger effected under Section 21.459(c) in  
10 which the shares of the shareholders are converted or exchanged;  
11 and

12 (2) subject to compliance with the procedures set  
13 forth in this subchapter, obtain the fair value of that ownership  
14 interest through an appraisal.

15 (c) Subsection (b) shall not apply either to a domestic  
16 entity that is a subsidiary with respect to a merger under Section  
17 10.006 or to a corporation with respect to a merger under Section  
18 21.459(c).

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

22 (b-1) If a corporation effects a merger under Section  
23 21.459(c), the responsible organization shall notify the  
24 shareholders of that corporation who have a right to dissent to the  
25 plan of merger under Section 10.354 of their rights under this  
26 subchapter not later than the 10th day after the effective date of  
27 the merger. Notice required under this subsection that is given to

1 shareholders before the effective date of the merger may, but is not  
2 required to, contain a statement of the merger's effective date. If  
3 the notice is not given to the shareholders until on or after the  
4 effective date of the merger, the notice must contain a statement of  
5 the merger's effective date.

6 (c) A notice required to be provided under Subsection (a),  
7 ~~or~~ (b), or (b-1) must:

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

9 (2) advise the owner of the location of the  
10 responsible organization's principal executive offices to which a  
11 notice required under Section 10.356(b)(1) or a demand under  
12 Section 10.356(b)(3), or both, ~~(3)~~ may be provided.

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

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

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

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

21 (B) ~~[(2)]~~ each owner who is entitled to vote on  
22 the action and does not consent in writing to the action before the  
23 11th day after the date the action takes effect; and

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

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



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

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

15           SECTION 17. Section 10.356(b), Business Organizations  
16 Code, is amended to read as follows:

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

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

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

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

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

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

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

5 (A) must vote against the action if the owner is  
6 entitled to vote on the action and the action is approved at a  
7 meeting of the owners; and

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

10 (3) must give to the responsible organization a demand  
11 in writing that:

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

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

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

20 (D) states the number and class of the ownership  
21 interests of the domestic entity owned by the owner and the fair  
22 value of the ownership interests as estimated by the owner; and

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

25 (i) not later than the 20th day after the  
26 date the responsible organization sends to the owner the notice  
27 required by Section 10.355(e) that the action has taken effect, if

1 the action was approved by a vote of the owners at a meeting;

2 (ii) not later than the 20th day after the  
3 date the responsible organization sends to the owner the notice  
4 required by Section 10.355(d)(2) that the action has taken effect,  
5 if the action was approved by the written consent of the owners;  
6 ~~[or]~~

7 (iii) not later than the 20th day after the  
8 date the responsible organization sends to the owner a notice that  
9 the merger was effected, if the action is a merger effected under  
10 Section 10.006; or

11 (iv) not later than the 20th day after the  
12 date the responsible organization gives to the shareholder the  
13 notice required by Section 10.355(b-1) or the date of the  
14 consummation of the tender or exchange offer described by Section  
15 21.459(c)(2), whichever is later, if the action is a merger  
16 effected under Section 21.459(c).

17 SECTION 18. Section 11.001(3), Business Organizations  
18 Code, is amended to read as follows:

19 (3) "Existing claim" with respect to an entity means:  
20 (A) a claim ~~[against the entity]~~ that existed  
21 before the entity's termination and is not barred by limitations;  
22 or  
23 (B) a contractual obligation incurred after  
24 termination.

25 SECTION 19. Section 20.001, Business Organizations Code, is  
26 amended to read as follows:

27 Sec. 20.001. SIGNATURE REQUIREMENTS FOR FILING INSTRUMENTS

1 ~~[REQUIREMENT THAT FILING INSTRUMENT BE SIGNED BY OFFICER]~~.

2 (a) Unless otherwise provided by Section 3.054 or 3.060(b) or this  
3 title, a filing instrument of a corporation must be signed by an  
4 officer of the corporation.

5 (b) A certificate of termination, a certificate of  
6 reinstatement, a certificate of amendment to cancel an event  
7 requiring winding up, or a restated certificate of formation that  
8 contains an amendment to cancel an event requiring winding up may be  
9 signed by:

10 (1) one of the organizers if the winding up, the  
11 reinstatement, or the cancellation of an event requiring winding up  
12 was authorized by the organizers under Section 21.502(2) or  
13 22.302(1)(B); or

14 (2) one of the directors if the winding up, the  
15 reinstatement, or the cancellation of an event requiring winding up  
16 was authorized by the board of directors under Section 21.502(2) or  
17 22.302(1)(B).

18 SECTION 20. Section 21.052, Business Organizations Code, is  
19 amended by adding Subsection (d) to read as follows:

20 (d) This section does not affect:

21 (1) the authority of the shareholders of a corporation  
22 to consent in writing to the cancellation of an event requiring  
23 winding up in accordance with Section 21.502(1); or

24 (2) the authority of the organizers of a corporation  
25 to adopt a resolution to cancel an event requiring winding up in  
26 accordance with Section 21.502(2).

27 SECTION 21. Section 21.053, Business Organizations Code, is

1 amended by amending Subsection (a) and adding Subsection (c) to  
2 read as follows:

3 (a) If a corporation does not have any issued and  
4 outstanding shares, or in the case of an amendment under Subsection  
5 (b) or (c), the board of directors may adopt a proposed amendment to  
6 the corporation's certificate of formation by resolution without  
7 shareholder approval.

8 (c) Notwithstanding Section 21.054 and except as otherwise  
9 provided by the certificate of formation, the board of directors of  
10 a corporation that has outstanding shares may, without shareholder  
11 approval, adopt an amendment to the corporation's certificate of  
12 formation to change the word or abbreviation in its corporate name  
13 as required by Section 5.054(a) to be a different word or  
14 abbreviation required by that section.

15 SECTION 22. Section 21.056(a), Business Organizations  
16 Code, is amended to read as follows:

17 (a) A corporation may adopt a restated certificate of  
18 formation as provided by Subchapter B, Chapter 3, by following the  
19 same procedures to amend its certificate of formation under  
20 Sections 21.052-21.055, except that:

21 (1) shareholder approval is not required if an  
22 amendment is not adopted; and

23 (2) the shareholders of a corporation may consent in  
24 writing, or the organizers of a corporation may adopt a resolution,  
25 to authorize a restated certificate of formation that contains an  
26 amendment to cancel an event requiring winding up in accordance  
27 with Section 21.502(1) or (2).

1 SECTION 23. Section 21.102, Business Organizations Code, is  
2 amended to read as follows:

3 Sec. 21.102. TERM OF AGREEMENT. Any limit on the term or  
4 duration of a shareholders' agreement under this subchapter must be  
5 set forth in the agreement. A shareholders' agreement under this  
6 subchapter that was in effect before September 1, 2015, remains in  
7 effect for 10 years, unless the agreement provides otherwise. [A  
8 ~~shareholders' agreement under this subchapter is valid for 10~~  
9 ~~years, unless the agreement provides otherwise.]~~

10 SECTION 24. Section 21.160, Business Organizations Code, is  
11 amended by adding Subsection (d) to read as follows:

12 (d) The amount of the consideration to be received for  
13 shares may be determined in accordance with Subsection (a) by the  
14 approval of a formula to determine that amount.

15 SECTION 25. Section 21.371, Business Organizations Code, is  
16 amended to read as follows:

17 Sec. 21.371. PROCEDURES IN BYLAWS RELATING TO PROXIES.  
18 (a) A corporation may establish in the corporation's bylaws  
19 procedures consistent with this code for determining the validity  
20 of proxies and determining whether shares that are held of record by  
21 a bank, broker, or other nominee are represented at a meeting of  
22 shareholders. The procedures may incorporate rules of and  
23 determinations made by a stock exchange or self-regulatory  
24 organization regulating the corporation or that bank, broker, or  
25 other nominee.

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

27 (1) a provision requiring that, when soliciting

1 proxies or consents with respect to an election of directors, the  
2 corporation include in both its proxy statement and any form of its  
3 proxy or consent, in addition to individuals nominated by the board  
4 of directors, one or more individuals nominated by a shareholder,  
5 subject to any procedures or conditions as may be provided in the  
6 bylaws; and

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

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

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

22                   (1) the plan of merger expressly:

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

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

1           (2) an organization consummates a tender or exchange  
2 offer for all of the outstanding shares of the corporation on the  
3 terms provided in the plan of merger that, absent this subsection,  
4 would be entitled to vote on the approval of the plan of merger,  
5 except that the offer may exclude shares of the corporation owned at  
6 the time of the commencement of the offer by:

7                   (A) the corporation;

8                   (B) the organization making the offer;

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

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

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

22                   (A) Section [21.457](#) and, if applicable, Section  
23 [21.458](#); and

24                   (B) the certificate of formation of the  
25 corporation;

26           (4) the organization consummating the offer described  
27 by Subdivision (2) merges with or into the corporation pursuant to



1 the plan of merger; and

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

10 (d) In Subsection (c) and this subsection and, as  
11 applicable, in Sections 10.355(d)(3)(B), 10.355(f), and  
12 10.356(b)(3)(E)(iv):

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

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

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

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

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

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

1           (a) A [~~The board of directors of a~~] corporation may adopt a  
2 restated certificate of formation as provided by Subchapter B,  
3 Chapter 3, by following the same procedure to amend its [~~the~~  
4 ~~corporation's~~] certificate of formation provided by Sections  
5 22.104-22.107, except that:

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

8           (2) the members may consent in writing, or the  
9 organizers of a corporation may adopt a resolution, to authorize a  
10 restated certificate of formation that contains an amendment to  
11 cancel an event requiring winding up in accordance with Section  
12 22.302(1)(B) or 22.302(2), as applicable.

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

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

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

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

27           (3) the affirmative vote of the majority of the

1 directors in office, if the corporation has no members or has no  
2 members with voting rights.

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

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

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

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

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

26 (B) does not hold any assets and has not  
27 solicited any assets or otherwise engaged in activities, a majority

1 of the organizers or the board of directors of the corporation must  
2 adopt a resolution to wind up, to reinstate, to cancel an event  
3 requiring winding up, to revoke a voluntary decision to wind up, or  
4 to effect the distribution plan by the vote required by Section  
5 22.164(d);

6 (2) if the management of the affairs of the  
7 corporation is vested in the corporation's members under Section  
8 22.202, the winding up, reinstatement, cancellation of event  
9 requiring winding up, revocation of voluntary decision to wind up,  
10 or distribution plan:

11 (A) must be submitted to a vote at an annual,  
12 regular, or special meeting of members; and

13 (B) must be approved by the members by the vote  
14 required by Section 22.164(b)(2) [~~22.164~~]; or

15 (3) if the corporation has members with voting rights:

16 (A) the corporation's board of directors must  
17 approve a resolution:

18 (i) recommending the winding up,  
19 reinstatement, cancellation of event requiring winding up,  
20 revocation of a voluntary decision to wind up, or distribution  
21 plan; and

22 (ii) directing that the winding up,  
23 reinstatement, cancellation of event requiring winding up,  
24 revocation of a voluntary decision to wind up, or distribution plan  
25 of the corporation be submitted to a vote at an annual or special  
26 meeting of members; and

27 (B) the members must approve the action described

1 by Paragraph (A) in accordance with Section [22.303](#).

2 SECTION 30. Chapter 21, Business Organizations Code, is  
3 amended by adding Subchapter R to read as follows:

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

5 PROCEEDINGS

6 Sec. 21.901. DEFINITIONS. In this subchapter:

7 (1) "Corporate statute," with respect to an action or  
8 filing, means this code, the former Texas Business Corporation Act,  
9 or any predecessor statute of this state that governed the action or  
10 the filing.

11 (2) "Defective corporate act" means:

12 (A) an overissue;

13 (B) an election or appointment of directors that  
14 is void or voidable due to a failure of authorization; or

15 (C) any act or transaction purportedly taken by  
16 or on behalf of the corporation that is, and at the time the act or  
17 transaction was purportedly taken would have been, within the power  
18 of a corporation to take under the corporate statute, but is void or  
19 voidable due to a failure of authorization.

20 (3) "District court" means a district court in:

21 (A) the county in which the corporation's  
22 principal office in this state is located; or

23 (B) the county in which the corporation's  
24 registered office in this state is located, if the corporation does  
25 not have a principal office in this state.

26 (4) "Failure of authorization" means the failure to  
27 authorize or effect an act or transaction in compliance with the

1 provisions of the corporate statute, the governing documents of the  
2 corporation, or any plan or agreement to which the corporation is a  
3 party, if and to the extent the failure would render the act or  
4 transaction void or voidable.

5 (5) "Overissue" means the purported issuance of:

6 (A) shares of a class or series in excess of the  
7 number of shares of that class or series that the corporation has  
8 the power to issue under the corporate statute at the time of  
9 issuance; or

10 (B) shares of any class or series that are not at  
11 the time authorized for issuance by the governing documents of the  
12 corporation.

13 (6) "Putative shares" means the shares of any class or  
14 series of the corporation, including shares issued on exercise of  
15 options, rights, warrants, or other securities convertible into  
16 shares of the corporation, or interests with respect to the shares  
17 that were created or issued pursuant to a defective corporate act,  
18 that:

19 (A) would constitute valid shares, if not for a  
20 failure of authorization; or

21 (B) cannot be determined by the board of  
22 directors to be valid shares.

23 (7) "Time of the defective corporate act" means the  
24 date and time the defective corporate act was purported to have been  
25 taken.

26 (8) "Validation effective time" or "effective time of  
27 the validation," with respect to any defective corporate act

1 ratified under this subchapter, means the later of:

2 (A) the time at which the resolution submitted to  
3 the shareholders for adoption under Section 21.905 is adopted by  
4 the shareholders or, if no shareholder approval is required for  
5 adoption, the time at which the notice required by Section 21.911 is  
6 given; or

7 (B) the time at which any certificate of  
8 validation filed under Section 21.908 takes effect in accordance  
9 with Chapter 4.

10 (9) "Valid shares" means the shares of any class or  
11 series of the corporation that have been authorized and validly  
12 issued in accordance with the corporate statute.

13 Sec. 21.902. RATIFICATION OF DEFECTIVE CORPORATE ACT AND  
14 PUTATIVE SHARES. Subject to Section 21.909 or 21.910, a defective  
15 corporate act or putative shares are not void or voidable solely as  
16 a result of a failure of authorization if the act or shares are:

17 (1) ratified in accordance with this subchapter; or

18 (2) validated by the district court in a proceeding  
19 brought under Section 21.914.

20 Sec. 21.903. RATIFICATION OF DEFECTIVE CORPORATE ACT;  
21 ADOPTION OF RESOLUTION. (a) To ratify a defective corporate act,  
22 the board of directors of the corporation shall adopt a resolution  
23 stating:

24 (1) the defective corporate act to be ratified;

25 (2) the time of the defective corporate act;

26 (3) if the defective corporate act involved the  
27 issuance of putative shares, the number and type of putative shares

1 issued and the date or dates on which the putative shares were  
2 purportedly issued;

3 (4) the nature of the failure of authorization with  
4 respect to the defective corporate act to be ratified; and

5 (5) that the board of directors approves the  
6 ratification of the defective corporate act.

7 (b) The resolution may also state that, notwithstanding the  
8 adoption of the resolution by the shareholders, the board of  
9 directors may, at any time before the validation effective time,  
10 abandon the resolution without further shareholder action.

11 Sec. 21.904. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF  
12 RESOLUTION. (a) The quorum and voting requirements applicable to  
13 the adoption of a resolution under Section 21.903 are the same as  
14 the quorum and voting requirements applicable at the time of the  
15 adoption of a resolution for the type of defective corporate act  
16 proposed to be ratified.

17 (b) Notwithstanding Subsection (a) and except as provided  
18 by Subsection (c), if in order for a quorum to be present or to  
19 approve the defective corporate act, the presence or approval of a  
20 larger number or portion of directors or of specified directors  
21 would have been required by the governing documents of the  
22 corporation, any plan or agreement to which the corporation was a  
23 party, or any provision of the corporate statute, each as in effect  
24 at the time of the defective corporate act, then the presence or  
25 approval of the larger number or portion of such directors or of  
26 such specified directors must be required for a quorum to be present  
27 or to adopt the resolution, as applicable.



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

6       Sec. 21.905. SHAREHOLDER ADOPTION OF RESOLUTION REQUIRED.

7 The resolution adopted under Section 21.903 must be submitted to  
8 shareholders for adoption as provided by Sections 21.906 and  
9 21.907, unless:

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

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

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

26       (b) Notice under this section shall be given to each holder  
27 of record of valid shares and putative shares, regardless of

1 whether the shares are voting or nonvoting, as of the time of the  
2 defective corporate act, except that notice is not required to be  
3 given to a holder whose identity or address cannot be ascertained  
4 from the corporation's records.

5 (c) The notice must contain:

6 (1) a copy of the resolution; and

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

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

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

16 Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING.

17 (a) At the shareholder meeting, the quorum and voting requirements  
18 applicable to the adoption of the resolution under Section 21.905  
19 shall be the same as the quorum and voting requirements applicable  
20 at the time of such adoption by the shareholders for the type of  
21 defective corporate act to be ratified, except as provided by this  
22 section.

23 (b) If the presence or approval of a larger number or  
24 portion of shares or of any class or series of shares or of  
25 specified shareholders would have been required for a quorum to be  
26 present or to approve the defective corporate act, as applicable,  
27 by the corporation's governing documents, any plan or agreement to

1 which the corporation was a party, or any provision of the corporate  
2 statute, each as in effect at the time of the defective corporate  
3 act, then the presence or approval of the larger number or portion  
4 of shares or of the class or series of shares or of such specified  
5 shareholders shall be required for a quorum to be present or to  
6 adopt the resolution, as applicable, except that the presence or  
7 approval of shares of any class or series of which no shares are  
8 then outstanding, or of any person that is no longer a shareholder,  
9 shall not be required.

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

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

22 Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If the  
23 defective corporate act ratified under this subchapter would have  
24 required under any other provision of the corporate statute the  
25 filing of a filing instrument or other document with the filing  
26 officer, the corporation, instead of filing the filing instrument  
27 or other document otherwise required by this code, shall file a

1 certificate of validation in accordance with Chapter 4, regardless  
2 of whether a filing instrument or other document was previously  
3 filed with respect to the defective corporate act.

4 (b) The certificate of validation must set forth:

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

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

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

19 Sec. 21.909. ADOPTION OF RESOLUTION; EFFECT ON DEFECTIVE  
20 CORPORATE ACT. On or after the validation effective time, unless  
21 determined otherwise in an action brought under Section 21.914,  
22 each defective corporate act set forth in the resolution adopted  
23 under Sections 21.903 and 21.904 may not be considered void or  
24 voidable as a result of a failure of authorization identified in the  
25 resolution, and the effect shall be retroactive to the time of the  
26 defective corporate act.

27 Sec. 21.910. ADOPTION OF RESOLUTION; EFFECT ON PUTATIVE

1 SHARES. On or after the validation effective time, unless  
2 determined otherwise in an action brought under Section 21.914,  
3 each putative share or fraction of a putative share issued or  
4 purportedly issued pursuant to the defective corporate act and  
5 identified in the resolution adopted under Sections 21.903 and  
6 21.904 may not be considered void or voidable as a result of a  
7 failure of authorization identified in the resolution and, in the  
8 absence of any failure of authorization not ratified, is considered  
9 to be an identical share or fraction of a share outstanding as of  
10 the time it was purportedly issued.

11 Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING ADOPTION OF  
12 RESOLUTION. (a) Notice of the adoption of a resolution under this  
13 subchapter shall be given promptly to:

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

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

21 (b) Notice under this section shall be sent to the address  
22 of a holder of shares described by Subsection (a)(1) or (a)(2) as  
23 the address appears or most recently appeared, as appropriate, on  
24 the records of the corporation.

25 (c) Notice under this section shall also be given to each  
26 holder of record of valid shares and putative shares, regardless of  
27 whether the shares are voting or nonvoting, as of the time of the

1 defective corporate act, except that notice is not required to be  
2 given to a holder whose identity or address cannot be ascertained  
3 from the corporation's records.

4 (d) The notice must contain:

5 (1) a copy of the resolution; and

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

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

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

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

18 (f) For purposes of Section 21.906 and this section, notice  
19 to holders of putative shares and notice to holders of valid shares  
20 and putative shares as of the time of the defective corporate act  
21 shall be treated as notice to holders of valid shares for purposes  
22 of Sections 6.051, 6.052, 6.053, 21.353, and 21.3531.

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

1 Section 21.914.

2 Sec. 21.913. RATIFICATION PROCEDURES OR COURT PROCEEDINGS  
3 CONCERNING VALIDATION NOT EXCLUSIVE. (a) Ratification of an act  
4 or transaction under this subchapter or validation of an act or  
5 transaction as provided by Sections 21.914 through 21.917 is not  
6 the exclusive means of ratifying or validating any act or  
7 transaction taken by or on behalf of the corporation, including any  
8 defective corporate act or any issuance of putative shares or other  
9 shares.

10 (b) The absence or failure of ratification of an act or  
11 transaction in accordance with this subchapter or of validation of  
12 an act or transaction as provided by Sections 21.914 through 21.917  
13 does not, of itself, affect the validity or effectiveness of any act  
14 or transaction or the issuance of any shares properly ratified  
15 under common law or otherwise, nor does it create a presumption that  
16 any such act or transaction is or was a defective corporate act or  
17 that those shares are void or voidable.

18 Sec. 21.914. PROCEEDING REGARDING VALIDITY OF DEFECTIVE  
19 CORPORATE ACTS AND SHARES. (a) The following may bring an action  
20 under this section:

- 21 (1) the corporation;  
22 (2) any successor entity to the corporation;  
23 (3) any member of the corporation's board of  
24 directors;  
25 (4) any record or beneficial holder of valid shares or  
26 putative shares of the corporation;  
27 (5) any record or beneficial holder of valid shares or

1 putative shares as of the time a defective corporate act was  
2 ratified in accordance with this subchapter; or

3 (6) any other person claiming to be substantially and  
4 adversely affected by a ratification under this subchapter.

5 (b) Subject to Section 21.917, the district court, on  
6 application by a person described by Subsection (a), may:

7 (1) determine the validity and effectiveness of any  
8 defective corporate act ratified in accordance with this  
9 subchapter;

10 (2) determine the validity and effectiveness of the  
11 ratification of any defective corporate act in accordance with this  
12 subchapter;

13 (3) determine the validity and effectiveness of:

14 (A) any defective corporate act not ratified  
15 under this subchapter; or

16 (B) any defective corporate act not ratified  
17 effectively under this subchapter;

18 (4) determine the validity of any corporate act or  
19 transaction and of any shares, rights, or options to acquire  
20 shares; and

21 (5) modify or waive any of the procedures set forth in  
22 Sections 21.901 through 21.913 to ratify a defective corporate act.

23 (c) In connection with an action brought under this section,  
24 the district court may:

25 (1) declare that a ratification in accordance with and  
26 pursuant to this subchapter is not effective or that the  
27 ratification is effective only at a time or on conditions as



- 1 specified by the district court;
- 2 (2) validate and declare effective any defective  
3 corporate act or putative shares and impose conditions on such a  
4 validation;
- 5 (3) require measures to remedy or avoid harm to any  
6 person substantially and adversely affected by a ratification under  
7 this subchapter or from any order of the district court pursuant to  
8 this section, excluding any harm that would have resulted had the  
9 defective corporate act been valid when approved or effectuated;
- 10 (4) order the filing officer to accept for filing an  
11 instrument with an effective date and time as specified by the  
12 court, which may be before or subsequent to the time of the order;
- 13 (5) approve share records for the corporation that  
14 include any shares ratified in accordance with this subchapter or  
15 validated in accordance with this section and Sections 21.915  
16 through 21.917;
- 17 (6) declare that putative shares are valid shares or  
18 require a corporation to issue and deliver valid shares in place of  
19 any putative shares;
- 20 (7) order that a meeting of holders of valid shares or  
21 putative shares be held and determine the right and power of persons  
22 to vote at the meeting;
- 23 (8) declare that a defective corporate act validated  
24 by the court is effective as of the time of the defective corporate  
25 act or at such other time as determined by the court;
- 26 (9) declare that putative shares validated by the  
27 district court are considered to be an identical valid share or a

1 fraction of a valid share as of the time the shares were originally  
2 or purportedly issued or at such other time as determined by the  
3 district court; and

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

6 (d) In connection with the resolution of matters under  
7 Subsections (b) and (c), the district court may consider:

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

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

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

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

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

25 Sec. 21.915. EXCLUSIVE JURISDICTION. The district court  
26 has exclusive jurisdiction to hear and determine any action brought  
27 under Section 21.914.

1       Sec. 21.916. SERVICE. (a) Service of an application filed  
2 under Section 21.914 on the registered agent of a corporation or in  
3 any other manner permitted by applicable law is considered to be  
4 service on the corporation, and no other party need be joined in  
5 order for the district court to adjudicate the matter.

6       (b) If an action is brought by a corporation under Section  
7 21.914, the district court may require that notice of the action be  
8 provided to other persons identified by the court and permit those  
9 other persons to intervene in the action.

10       Sec. 21.917. STATUTE OF LIMITATIONS. (a) This section  
11 does not apply to:

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

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

16       (b) Notwithstanding any other provision of this subchapter,  
17 the following may not be brought after the expiration of the 120th  
18 day of the validation effective time:

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

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

27       SECTION 31. This Act takes effect September 1, 2015.

S.B. No. 860

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I hereby certify that S.B. No. 860 passed the Senate on April 9, 2015, by the following vote: Yeas 31, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

I hereby certify that S.B. No. 860 passed the House on May 4, 2015, by the following vote: Yeas 135, Nays 0, two present not voting.

\_\_\_\_\_  
Chief Clerk of the House

Approved:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Governor