

By: Eltife

S.B. No. 860

A BILL TO BE ENTITLED

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 laws of the organization's jurisdiction of formation that authorizes the governing document to make one or more specified owners or members of the organization liable in their capacity as owners or members for all or specified liabilities or 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 unless a ~~[the]~~ governing document ~~[documents]~~ of the
17 entity or a resolution adopted by the governing authority of the
18 entity provides that some or all of any of the classes or series of
19 ~~[states that]~~ the ownership interests are uncertificated or that
20 some or all of each of the classes or series of the ownership
21 interests are uncertificated. The entity may have both outstanding
22 certificated and uncertificated ownership interests of the same
23 class or series. If a domestic entity changes the form of its
24 ownership interests from certificated to uncertificated, a
25 certificated ownership interest subject to the change becomes an
26 uncertificated ownership interest only after the certificate is
27 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(a), Business Organizations Code,
9 is amended to read as follows:

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

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

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

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

17 (4) a description of the organizational form of each
18 organization that is a party to the merger or that is to be created
19 by the plan of merger and its jurisdiction of formation;

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

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

26 (B) cash;

27 (C) other property, including ownership

1 interests, membership interests, obligations, rights to purchase
2 securities, or other securities of any other person or entity; or

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

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

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

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

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

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

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

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

20 (B) is an entity that is not:

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

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

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

1 Sec. 10.004. PLAN OF MERGER: PERMISSIVE PROVISIONS. A plan
2 of merger may include:

3 (1) amendments to, restatements of, or amendments and
4 restatements of the governing documents of any surviving
5 organization, including a certificate of amendment, a restated
6 certificate of formation without amendment, or a restated
7 certificate of formation containing amendments;

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

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

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

14 (a) When a merger takes effect:

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

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

24 (A) reversion or impairment;

25 (B) any further act or deed; or

26 (C) any transfer or assignment having occurred;

27 (3) all liabilities and obligations of each

1 organization that is a party to the merger are allocated to one or
2 more of the surviving or new organizations in the manner provided by
3 the plan of merger;

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

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

21 (6) the governing documents of each surviving domestic
22 entity are amended, restated, or amended and restated to the extent
23 provided by the plan of merger, and a certificate of amendment, a
24 restated certificate of formation without amendment, or a restated
25 certificate of formation containing amendments of a surviving
26 filing entity shall have the effect stated in Section 3.063;

27 (7) each new filing entity whose certificate of

1 formation is included in the plan of merger under this chapter, on
2 meeting any additional requirements, if any, of this code for its
3 formation, is formed as a domestic entity under this code as
4 provided by the plan of merger;

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

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

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

1 (f) A plan of exchange may not be effected if any owner or
2 member of a domestic entity that is a party to the interest exchange
3 will, as a result of the interest exchange, become subject to owner
4 liability [~~personally liable~~], without the consent of the owner or
5 member, for the liabilities or obligations of any other person or
6 organization.

7 SECTION 10. Section 10.052(a), Business Organizations
8 Code, is amended to read as follows:

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

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

12 (2) the name of each acquiring organization;

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

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

17 (5) the manner and basis, including use of a formula,
18 of exchanging the ownership or membership interests to be acquired
19 for:

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

24 (B) cash;

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

1 (D) any combination of those items.

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

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

9 SECTION 12. Section 10.103(a), Business Organizations
10 Code, is amended to read as follows:

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

13 (1) the name of the converting entity;

14 (2) the name of the converted entity;

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

18 (4) a statement of the type of entity that the
19 converted entity is to be and the converted entity's jurisdiction
20 of formation;

21 (5) if Sections 10.1025 and 10.109 do not apply, the
22 manner and basis, including use of a formula, of converting the
23 ownership or membership interests of the converting entity into
24 ownership or membership interests of the converted entity;

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

27 (7) the certificate of formation or similar

1 organizational document of the converted entity if the converted
2 entity is not a filing entity; and

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

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

10 (b) If a certificate of merger or exchange is required to be
11 filed in connection with an interest exchange or a merger, other
12 than a merger under Section 10.006, the certificate must be signed
13 on behalf of each domestic entity and non-code organization that is
14 a party to the merger or exchange by an officer or other authorized
15 representative and must include:

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

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

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

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

27 (D) for a merger, the amendments or changes to

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

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

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

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

22 (H) [~~(G)~~] that a copy of the plan of merger or
23 exchange will be on written request furnished without cost by each
24 surviving, acquiring, or new domestic entity or non-code
25 organization to any owner or member of any domestic entity that is a
26 party to or created by the plan of merger or exchange and, for a
27 merger with multiple surviving domestic entities or non-code

1 organizations, to any creditor or obligee of the parties to the
2 merger at the time of the merger if a liability or obligation is
3 then outstanding;

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

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

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

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

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

22 (1) the plan of conversion or a statement certifying
23 the following:

24 (A) the name, organizational form, and
25 jurisdiction of formation of the converting entity;

26 (B) the name, organizational form, and
27 jurisdiction of formation of the converted entity;

1 (C) that a [~~signed~~] plan of conversion is on file
2 at the principal place of business of the converting entity, and the
3 address of the principal place of business;

4 (D) that a [~~signed~~] plan of conversion will be on
5 file after the conversion at the principal place of business of the
6 converted entity, and the address of the principal place of
7 business; and

8 (E) that a copy of the plan of conversion will be
9 on written request furnished without cost by the converting entity
10 before the conversion or by the converted entity after the
11 conversion to any owner or member of the converting entity or the
12 converted entity; and

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

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

18 (a) Subject to Subsection (b), an owner of an ownership
19 interest in a domestic entity subject to dissenters' rights is
20 entitled to:

21 (1) dissent from:

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

26 (B) a sale of all or substantially all of the
27 assets of the domestic entity if owner approval is required by this

1 code and the owner owns in the domestic entity an ownership interest
2 that was entitled to vote on the sale;

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

5 (D) a plan of conversion in which the domestic
6 entity is the converting entity if owner approval is required by
7 this code and the owner owns in the domestic entity an ownership
8 interest that was entitled to vote on the plan of conversion; [~~or~~]

9 (E) a merger effected under Section 10.006 in
10 which:

11 (i) the owner is entitled to vote on the
12 merger; or

13 (ii) the ownership interest of the owner is
14 converted or exchanged; or

15 (F) a merger effected under Section 21.459(c) in
16 which the shares of the shareholders are converted or exchanged;
17 and

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

21 (c) Subsection (b) shall not apply either to a domestic
22 entity that is a subsidiary with respect to a merger under Section
23 10.006 or to a corporation with respect to a merger under Section
24 21.459(c).

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

1 (b-1) If a corporation effects a merger under Section
 2 21.459(c), the responsible organization shall provide to the
 3 shareholders of that corporation who have a right to dissent to a
 4 plan of merger under Section 10.354 notice of their rights under
 5 this subchapter not later than the 10th day after the effective date
 6 of the merger. Notice required under this subsection that is given
 7 to shareholders before the effective date of the merger may, but is
 8 not required to, contain a reference to that date. If the notice is
 9 not given to the shareholders until on or after the effective date
 10 of the merger, the notice must contain a reference to that date.

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

13 (1) be accompanied by a copy of this subchapter; and
 14 (2) advise the owner of the location of the
 15 responsible organization's principal executive offices to which a
 16 notice required under Section 10.356(b)(1) or a demand under
 17 Section 10.356(b)(3), or both, ~~(3)~~ may be provided.

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

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

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

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

26 (B) [~~(2)~~] each owner who is entitled to vote on
 27 the action and does not consent in writing to the action before the

1 11th day after the date the action takes effect; and

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

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

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

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

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

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

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

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

1 secretary;

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

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

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

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

10 (A) must vote against the action if the owner is
11 entitled to vote on the action and the action is approved at a
12 meeting of the owners; and

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

15 (3) must give to the responsible organization a demand
16 in writing that:

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

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

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

25 (D) states the number and class of the ownership
26 interests of the domestic entity owned by the owner and the fair
27 value of the ownership interests as estimated by the owner; and

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

3 (i) not later than the 20th day after the
4 date the responsible organization sends to the owner the notice
5 required by Section 10.355(e) that the action has taken effect, if
6 the action was approved by a vote of the owners at a meeting;

7 (ii) not later than the 20th day after the
8 date the responsible organization sends to the owner the notice
9 required by Section 10.355(d)(2) that the action has taken effect,
10 if the action was approved by the written consent of the owners;

11 ~~[or]~~

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

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

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

24 (3) "Existing claim" with respect to an entity means:

25 (A) a claim ~~[against the entity]~~ that existed
26 before the entity's termination and is not barred by limitations;

27 or

1 (B) a contractual obligation incurred after
2 termination.

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

5 Sec. 20.001. SIGNATURE REQUIREMENTS FOR FILING INSTRUMENTS
6 ~~[REQUIREMENT THAT FILING INSTRUMENT BE SIGNED BY OFFICER]~~. (a)
7 Unless otherwise provided by Section 3.054 or 3.060(b) or this
8 title, a filing instrument of a corporation must be signed by an
9 officer of the corporation.

10 (b) A certificate of termination, a certificate of
11 reinstatement, a certificate of amendment to cancel an event
12 requiring winding up, or a restated certificate of formation that
13 contains an amendment to cancel an event requiring winding up may be
14 signed by:

15 (1) one of the organizers if the winding up, the
16 reinstatement, or the cancellation of an event requiring winding up
17 was authorized by the organizers under Section 21.502(2) or
18 22.302(1)(B); or

19 (2) one of the directors if the winding up, the
20 reinstatement, or the cancellation of an event requiring winding up
21 was authorized by the board of directors under Section 21.502(2) or
22 22.302(1)(B).

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

25 (d) This section does not affect:

26 (1) the authority of the shareholders of a corporation
27 to consent in writing to the cancellation of an event requiring

1 winding up in accordance with Section 21.502(1) or (2); or
2 (2) the authority of the organizers of a corporation
3 to adopt a resolution to cancel an event requiring winding up in
4 accordance with Section 21.502(1) or (2).

5 SECTION 21. Section 21.053, Business Organizations Code, is
6 amended by amending Subsection (a) and adding Subsection (c) to
7 read as follows:

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

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

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

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

26 (1) shareholder approval is not required if an
27 amendment is not adopted; and

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

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

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

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

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

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

22 Sec. 21.371. PROCEDURES IN BYLAWS RELATING TO PROXIES. (a)
23 A corporation may establish in the corporation's bylaws procedures
24 consistent with this code for determining the validity of proxies
25 and determining whether shares that are held of record by a bank,
26 broker, or other nominee are represented at a meeting of
27 shareholders. The procedures may incorporate rules of and

1 determinations made by a stock exchange or self-regulatory
2 organization regulating the corporation or that bank, broker, or
3 other nominee.

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

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

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

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

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

27 (1) the plan of merger expressly:

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

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

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

12 (A) the corporation;

13 (B) the organization making the offer;

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

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

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

27 (A) Section [21.457](#) and, if applicable, Section

1 21.458; and

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

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

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

15 (d) In Subsection (c) and this subsection and, as
16 applicable, in Sections 10.355(d)(3)(B), 10.355(f), and
17 10.356(b)(3)(E)(iv):

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

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

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

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

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

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

6 (a) A [~~The board of directors of a~~] corporation may adopt a
7 restated certificate of formation as provided by Subchapter B,
8 Chapter 3, by following the same procedure to amend its [~~the~~
9 ~~corporation's~~] certificate of formation provided by Sections
10 22.104-22.107, except that:

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

13 (2) the members may consent in writing, or the
14 organizers of a corporation may adopt a resolution, to authorize a
15 restated certificate of formation that contains an amendment to
16 cancel an event requiring winding up in accordance with Section
17 22.302(1)(B) or 22.302(2).

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

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

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

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

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

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

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

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

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

24 (A) has engaged in any nonprofit activities, the
25 corporation's board of directors must adopt a resolution to wind
26 up, to reinstate, to cancel the event requiring winding up, to
27 revoke a voluntary decision to wind up, or to effect the

1 distribution plan by the vote of directors required by Section
2 [22.164\(b\)\(3\)](#) [~~22.164~~]; or

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

9 (2) if the management of the affairs of the
10 corporation is vested in the corporation's members under Section
11 [22.202](#), the winding up, reinstatement, cancellation of event
12 requiring winding up, revocation of voluntary decision to wind up,
13 or distribution plan:

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

16 (B) must be approved by the members by the vote
17 required by Section [22.164](#); or

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

19 (A) the corporation's board of directors must
20 approve a resolution:

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

25 (ii) directing that the winding up,
26 reinstatement, cancellation of event requiring winding up,
27 revocation of a voluntary decision to wind up, or distribution plan

1 of the corporation be submitted to a vote at an annual or special
2 meeting of members; and

3 (B) the members must approve the action described
4 by Paragraph (A) in accordance with Section 22.303.

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

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

9 Sec. 21.901. DEFINITIONS. In this subchapter:

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

14 (2) "Defective corporate act" means:

15 (A) an overissue;

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

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

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

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

26 (B) the county in which the corporation's
27 registered office in this state is located, if the corporation does

1 not have a principal office in this state.

2 (4) "Failure of authorization" means the failure to
3 authorize or effect an act or transaction in compliance with the
4 provisions of the corporate statute, the governing documents of the
5 corporation, or any plan or agreement to which the corporation is a
6 party, if and to the extent the failure would render the act or
7 transaction void or voidable.

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

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

13 (B) shares of any class or series that are not at
14 the time authorized for issuance by the governing documents of the
15 corporation.

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

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

24 (B) cannot be determined by the board of
25 directors to be valid shares.

26 (7) "Time of the defective corporate act" means the
27 date and time the defective corporate act was purported to have been

1 taken.

2 (8) "Validation effective time" or "effective time of
3 the validation," with respect to any defective corporate act
4 ratified under this subchapter, means the later of:

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

10 (B) the time at which any certificate of
11 validation filed under Section 21.908 takes effect in accordance
12 with Chapter 4.

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

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

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

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

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

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

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

2 (3) if the defective corporate act involved the
3 issuance of putative shares, the number and type of putative shares
4 issued and the date or dates on which the putative shares were
5 purportedly issued;

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

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

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

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

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

1 such directors must be required for a quorum to be present or the
2 presence of such directors must be required to adopt the
3 resolution, as applicable.

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

9 Sec. 21.905. SHAREHOLDER APPROVAL OF RESOLUTION REQUIRED.

10 The resolution adopted under Section 21.903 must be submitted to
11 shareholders for adoption as provided by Sections 21.906 and
12 21.907, unless:

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

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

21 Sec. 21.906. NOTICE REQUIREMENTS FOR RESOLUTION SUBMITTED

22 FOR SHAREHOLDER APPROVAL. (a) If Section 21.905 requires that the
23 resolution be submitted to the shareholders for approval, notice of
24 the time, place, if any, and purpose of the meeting shall be given
25 at least 20 days before the date of the meeting to each holder of
26 valid shares and putative shares, whether voting or nonvoting, at
27 the address of the holder as it appears or most recently appeared,

1 as appropriate, on the corporation's records.

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

8 (c) The notice must contain:

9 (1) a copy of the resolution; and

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

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

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

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

26 (b) If the approval of a larger number or portion of shares
27 or of any class or series of shares or the presence of specified

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

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

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

24 Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If the
25 defective corporate act ratified under this subchapter would have
26 required under any other provision of the corporate statute the
27 filing of a filing instrument or other document with the filing

1 officer, the corporation, instead of filing the filing instrument
2 or other document otherwise required by this code, shall file a
3 certificate of validation in accordance with Chapter 4, regardless
4 of whether a filing instrument or other document was previously
5 filed with respect to the defective corporate act.

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

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

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

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

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

1 defective corporate act.

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

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

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

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

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

27 (c) Notice under this section shall also be given to each

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

6 (d) The notice must contain:

7 (1) a copy of the resolution; and

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

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

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

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

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

25 Sec. 21.912. VALID SHARES OR PUTATIVE SHARES. In the
26 absence of actual fraud in the transaction, the judgment of the
27 board of directors of a corporation that shares of the corporation

1 are valid shares or putative shares is conclusive, unless otherwise
2 determined by the district court in a proceeding brought under
3 Section 21.914.

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

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

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

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

1 putative shares of the corporation;

2 (5) any record or beneficial holder of valid shares or
3 putative shares as of the time a defective corporate act was
4 ratified in accordance with this subchapter; or

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

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

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

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

15 (3) determine the validity and effectiveness of:

16 (A) any defective corporate act not ratified
17 under this subchapter; or

18 (B) any defective corporate act not ratified
19 effectively under this subchapter;

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

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

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

27 (1) declare that a ratification in accordance with and

1 pursuant to this subchapter is not effective or that the
2 ratification may be effective only at a time or on conditions as
3 specified by the district court;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 Sec. 21.915. EXCLUSIVE JURISDICTION. The district court

1 has exclusive jurisdiction to hear and determine any action brought
2 under Section 21.914.

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

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

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

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

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

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

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

25 (2) an action asserting that the district court, in
26 its discretion, should declare that a ratification in accordance
27 with this subchapter not take effect or that the ratification take

1 effect only on certain conditions.

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