

By: Martinez Fischer

H.B. No. 3606

A BILL TO BE ENTITLED

AN ACT

relating to ratification of defective corporate acts of nonprofit corporations.

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

SECTION 1. Chapter 22, Business Organizations Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. RATIFICATION OF DEFECTIVE CORPORATE ACTS;

PROCEEDINGS

Sec. 22.501. DEFINITIONS. In this subchapter:

(1) "Corporate statute," with respect to an action or filing, means this code, the former Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), or any predecessor statute of this state that governed the action or the filing.

(2) "Defective corporate act" means:

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

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

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

(A) the county in which the corporation's

1 principal office in this state is located; or

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

5 (4) "Failure of authorization" means:

6 (A) the failure to authorize or effect an act or
7 transaction in compliance with the provisions of the corporate
8 statute, the governing documents of the corporation, a corporate
9 resolution, or any plan or agreement to which the corporation is a
10 party, if and to the extent the failure would render the act or
11 transaction void or voidable; or

12 (B) the failure of the board of directors or an
13 officer of the corporation to authorize or approve an act or
14 transaction taken by or on behalf of the corporation that required
15 the prior authorization or approval of the board of directors or the
16 officer.

17 (5) "Time of the defective corporate act" means the
18 date and time the defective corporate act was purported to have been
19 taken or the approximate date and time, if the exact date is
20 unknown.

21 (6) "Validation effective time" or "effective time of
22 the validation," with respect to any defective corporate act
23 ratified under this subchapter, means the latest of:

24 (A) the time at which the defective corporate act
25 submitted to the members for approval under Section 22.505 is
26 approved by the members or, if the corporation has no members or
27 has no members with voting rights or if no member approval is

1 required, the time at which the board of directors adopts the
2 resolutions required by Section 22.503;

3 (B) if a certificate of validation is not
4 required to be filed under Section 22.508, the time, if any,
5 specified by the board of directors or the members in the
6 resolutions adopted under Section 22.503, which may not precede the
7 time at which the resolutions are adopted; or

8 (C) the time at which any certificate of
9 validation filed under Section 22.508 takes effect in accordance
10 with Chapter 4.

11 Sec. 22.502. RATIFICATION OF DEFECTIVE CORPORATE
12 ACT. Subject to Section 22.509, a defective corporate act is not
13 void or voidable solely as a result of a failure of authorization if
14 the act is:

- 15 (1) ratified in accordance with this subchapter; or
16 (2) validated by the district court in a proceeding
17 brought under Section 22.512.

18 Sec. 22.503. RATIFICATION OF DEFECTIVE CORPORATE ACT;
19 ADOPTION OF RESOLUTIONS. (a) To ratify one or more defective
20 corporate acts, the board of directors of the corporation shall
21 adopt resolutions stating:

22 (1) the defective corporate act or acts to be
23 ratified;

24 (2) the date of each defective corporate act;

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

27 (4) that the board of directors approves the

1 ratification of the defective corporate act or acts.

2 (b) If the corporation has members with voting rights, a
3 resolution may also state that, notwithstanding member approval of
4 the ratification of a defective corporate act that is a subject of
5 the resolution, the board of directors may, with respect to the
6 defective corporate act, abandon the ratification of the defective
7 corporate act at any time before the validation effective time
8 without further member action.

9 (c) If the management of the affairs of the corporation is
10 vested in its members under Section 22.202, the members of the
11 corporation shall adopt resolutions stating:

12 (1) the defective corporate act or acts to be
13 ratified;

14 (2) the date of each defective corporate act;

15 (3) the nature of the failure of authorization with
16 respect to each corporate act to be ratified; and

17 (4) that the members approve the ratification of the
18 defective corporate act or acts.

19 Sec. 22.504. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF
20 RESOLUTIONS. (a) The quorum and voting requirements applicable to
21 the adoption of the resolutions to ratify a defective corporate act
22 under Section 22.503 are the same as the quorum and voting
23 requirements applicable at the time of the adoption of the
24 resolutions for the type of defective corporate act proposed to be
25 ratified.

26 (b) Notwithstanding Subsection (a) and except as provided
27 by Subsection (c), if in order for a quorum to be present or to

1 approve the defective corporate act, the presence or approval of a
2 larger number or portion of the governing authority would have been
3 required by the governing documents of the corporation, any plan or
4 agreement to which the corporation was a party, or any provision of
5 the corporate statute, each as in effect at the time of the
6 defective corporate act, then the presence or approval of the
7 larger number or portion of such governing authority must be
8 required for a quorum to be present or to adopt the resolutions to
9 ratify the defective corporate act, as applicable.

10 (c) If the corporation has members with voting rights or if
11 the corporation had members with voting rights at the time of the
12 taking of the defective corporate act, the presence or approval of
13 any director elected, appointed, or nominated by a class of members
14 that no longer exists, or by any person that is no longer a member,
15 shall not be required for a quorum to be present or to adopt the
16 resolutions.

17 Sec. 22.505. APPROVAL OF RATIFIED DEFECTIVE CORPORATE ACT
18 BY MEMBERS WITH VOTING RIGHTS REQUIRED; EXCEPTION. If the
19 corporation has members with voting rights, each defective
20 corporate act ratified under Section 22.503(a) must be submitted to
21 such members of the corporation for approval as provided by
22 Sections 22.506 and 22.507, unless no other provision of the
23 corporate statute, no provision of the corporation's governing
24 documents, and no provision of any plan or agreement to which the
25 corporation is a party would have required approval by such members
26 of:

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

1 time of that defective corporate act; or

2 (2) the type of defective corporate act to be ratified
3 at the time the board of directors adopts the resolutions ratifying
4 that defective corporate act under Section 22.503.

5 Sec. 22.506. NOTICE REQUIREMENTS FOR RATIFIED DEFECTIVE
6 CORPORATE ACT SUBMITTED FOR APPROVAL OF MEMBERS WITH VOTING RIGHTS.

7 (a) If a corporation has members with voting rights and if the
8 ratification of a defective corporate act is required to be
9 submitted to such members for approval under Section 22.505, notice
10 of the time, place, if any, and purpose of the meeting shall be
11 given at least 20 days before the date of the meeting to:

12 (1) each member with voting rights as of the record
13 date of the meeting, at the address of the member as it appears or
14 most recently appeared, as appropriate, on the corporation's
15 records; and

16 (2) each member with voting rights as of the time of
17 the defective corporate act, except that notice is not required to
18 be given to a member whose identity or address cannot be ascertained
19 from the corporation's records.

20 (b) The notice must contain:

21 (1) copies of the resolutions adopted by the board of
22 directors under Section 22.503 or the information required by
23 Sections 22.503(a)(1)-(4); and

24 (2) a statement that, on member approval of the
25 ratification of the defective corporate act made in accordance with
26 this subchapter, the member's right to challenge the defective
27 corporate act is limited to an action claiming that a court of

1 appropriate jurisdiction, in its discretion, should declare:

2 (A) that the ratification not take effect or that
3 it take effect only on certain conditions, if that action is filed
4 with the court not later than the 120th day after the applicable
5 validation effective time; or

6 (B) that the ratification was not accomplished in
7 accordance with this subchapter.

8 Sec. 22.507. QUORUM AND VOTING FOR APPROVAL OF RATIFIED
9 DEFECTIVE CORPORATE ACT AT MEETING OF MEMBERS WITH VOTING RIGHTS.

10 (a) If the corporation has members with voting rights, at the
11 meeting of such members, the quorum and voting requirements
12 applicable to the approval of the ratification of a defective
13 corporate act under Section 22.505 are the same as the quorum and
14 voting requirements applicable at the time of the approval by the
15 members of the ratification for the type of ratified defective
16 corporate act proposed to be approved, except as provided by this
17 section.

18 (b) If the presence or approval of a larger number of
19 members or of any class of members would have been required for a
20 quorum to be present or to approve the defective corporate act, as
21 applicable, by the corporation's governing documents, any plan or
22 agreement to which the corporation was a party, or any provision of
23 the corporate statute, each as in effect at the time of the
24 defective corporate act, then the presence or approval of the
25 larger number of members or of the class of members shall be
26 required for a quorum to be present or to approve the ratification
27 of the defective corporate act, as applicable, except that the

1 presence or approval of any class that is no longer in existence or
2 has no members, or of any person that is no longer a member with
3 voting rights, is not required.

4 (c) The approval by the members with voting rights of the
5 ratification of the election of a director requires the affirmative
6 vote of the majority of members present at the meeting and entitled
7 to vote on the election of the director at the time of the approval,
8 unless the governing documents of the corporation then in effect or
9 in effect at the time of the defective election require or required
10 a larger number of members with voting rights or of any class of
11 members with voting rights to elect the director, in which case the
12 affirmative vote of the larger number of members or of the class of
13 members is required to ratify the election of the director, except
14 that the presence or approval of any class that is no longer in
15 existence or has no members, or of any person that is no longer a
16 member with voting rights, is not required.

17 Sec. 22.508. CERTIFICATE OF VALIDATION. (a) If a defective
18 corporate act ratified under this subchapter would have required
19 under any other provision of the corporate statute the filing of a
20 filing instrument or other document with the filing officer, the
21 corporation shall file a certificate of validation with respect to
22 the defective corporate act in accordance with Chapter 4,
23 regardless of whether a filing instrument or other document was
24 previously filed with respect to the defective corporate act. The
25 filing of another filing instrument or document is not required.

26 (b) A separate certificate of validation is required for
27 each defective corporate act for which a certificate of validation

1 is required under this section, except that two or more defective
2 corporate acts may be included in a single certificate of
3 validation if the corporation filed, or to comply with the
4 applicable provisions of this code could have filed, a single
5 filing instrument or other document under another provision of this
6 code to effect the acts.

7 (c) The certificate of validation must include:

8 (1) each defective corporate act that is a subject of
9 the certificate of validation, including:

10 (A) the date of the defective corporate act; and

11 (B) the nature of the failure of authorization
12 with respect to the defective corporate act;

13 (2) a statement that each defective corporate act was
14 ratified in accordance with this subchapter, including:

15 (A) the date on which the board of directors
16 ratified each defective corporate act; and

17 (B) if the corporation has members with voting
18 rights, the date, if any, on which the members approved the
19 ratification of each defective corporate act or, if the management
20 of the affairs of the corporation is vested in its members under
21 Section 22.202, the date on which the members ratified each
22 defective corporate act; and

23 (3) as appropriate:

24 (A) if a filing instrument was previously filed
25 with a filing officer under the corporate statute with respect to
26 the defective corporate act and no change to the filing instrument
27 is required to give effect to the defective corporate act as

1 ratified in accordance with this subchapter:

2 (i) the name, title, and filing date of the
3 previously filed filing instrument and of any certificate of
4 correction to the filing instrument; and

5 (ii) a statement that a copy of the
6 previously filed filing instrument, together with any certificate
7 of correction to the filing instrument, is attached as an exhibit to
8 the certificate of validation;

9 (B) if a filing instrument was previously filed
10 with a filing officer under the corporate statute with respect to
11 the defective corporate act and the filing instrument requires any
12 change to give effect to the defective corporate act as ratified in
13 accordance with this subchapter, including a change to the date and
14 time of the effectiveness of the filing instrument:

15 (i) the name, title, and filing date of the
16 previously filed filing instrument and of any certificate of
17 correction to the filing instrument;

18 (ii) a statement that a filing instrument
19 containing all the information required to be included under the
20 applicable provisions of this code to give effect to the ratified
21 defective corporate act is attached as an exhibit to the
22 certificate of validation; and

23 (iii) the date and time that the attached
24 filing instrument is considered to have become effective under this
25 subchapter; or

26 (C) if a filing instrument was not previously
27 filed with a filing officer under the corporate statute with

1 respect to the defective corporate act and the defective corporate
2 act as ratified under this subchapter would have required under the
3 other applicable provisions of this code the filing of a filing
4 instrument in accordance with Chapter 4, if the defective corporate
5 act had occurred when this code was in effect:

6 (i) a statement that a filing instrument
7 containing all the information required to be included under the
8 applicable provisions of this code to give effect to the defective
9 corporate act, as if the defective corporate act had occurred when
10 this code was in effect, is attached as an exhibit to the
11 certificate of validation; and

12 (ii) the date and time that the attached
13 filing instrument is considered to have become effective under this
14 subchapter.

15 (d) A filing instrument attached to a certificate of
16 validation under Subsection (c)(3)(B) or (C) does not need to be
17 executed separately and does not need to include any statement
18 required by any other provision of this code that the instrument has
19 been approved and adopted in accordance with that provision.

20 Sec. 22.509. ADOPTION OF RESOLUTIONS; EFFECT ON DEFECTIVE
21 CORPORATE ACT. On or after the validation effective time, unless
22 determined otherwise in an action brought under Section 22.512,
23 each defective corporate act ratified in accordance with this
24 subchapter may not be considered void or voidable as a result of the
25 failure of authorization described by the resolutions adopted under
26 Sections 22.503 and 22.504, and the effect shall be retroactive to
27 the time of the defective corporate act.

1 Sec. 22.510. NOTICE TO MEMBERS FOLLOWING RATIFICATION OF
2 DEFECTIVE CORPORATE ACT. (a) If the management of the affairs of
3 a corporation is vested in its members under Section 22.202 or if a
4 corporation has members with voting rights, for each defective
5 corporate act ratified by the governing authority under Sections
6 22.503 and 22.504, notice of the ratification shall be given
7 promptly to:

8 (1) each member having voting rights as of the date the
9 governing authority adopted the resolutions ratifying the
10 defective corporate act; or

11 (2) each member having voting rights as of a date not
12 later than the 60th day after the date of adoption, as established
13 by the governing authority.

14 (b) Notice under this section shall be sent to the address
15 of a member described by Subsection (a)(1) or (a)(2) as the address
16 appears or most recently appeared, as appropriate, on the records
17 of the corporation.

18 (c) Notice under this section shall also be given to each
19 member having voting rights as of the time of the defective
20 corporate act, except that notice is not required to be given to a
21 member whose identity or address cannot be ascertained from the
22 corporation's records.

23 (d) The notice must contain:

24 (1) copies of the resolutions adopted by the governing
25 authority under Section 22.503 or the information required by
26 Section 22.503(a)(1)-(4) or 22.503(c)(1)-(4), as applicable; and

27 (2) a statement that, on ratification of the defective

1 corporate act made in accordance with this subchapter, the member's
2 right to challenge the defective corporate act is limited to an
3 action claiming that a court of appropriate jurisdiction, in its
4 discretion, should declare:

5 (A) that the ratification not take effect or that
6 it take effect only on certain conditions, if the action is filed
7 not later than the 120th day after the later of the applicable
8 validation effective time or the time at which the notice required
9 by this section is given; or

10 (B) that the ratification was not accomplished in
11 accordance with this subchapter.

12 (e) Notwithstanding Subsections (a)-(d), notice is not
13 required to be given under this section to a person if notice of the
14 ratification of the defective corporate act is given to that person
15 in accordance with Section 22.506.

16 (f) For purposes of Sections 22.505, 22.506, and 22.507 and
17 this section, notice to members with voting rights as of the time of
18 the defective corporate act shall be treated as notice to such
19 members for purposes of Sections 6.051, 6.052, 6.053, 6.201, 6.202,
20 6.203, 6.204, 6.205, and 22.156.

21 (g) If the ratification of a defective corporate act has
22 been approved by the members acting under Section 6.202, the notice
23 required by this section may be included in any notice required to
24 be given under Section 6.202(d) and, if included:

25 (1) shall be sent to the members entitled to the notice
26 under Section 6.202(d) and all other members otherwise entitled to
27 the notice under Subsection (a); and

1 (2) is not required to be sent to members who signed a
2 consent described by Section 6.202(b).

3 Sec. 22.511. RATIFICATION PROCEDURES OR COURT PROCEEDINGS
4 CONCERNING VALIDATION NOT EXCLUSIVE. (a) Ratification of an act or
5 transaction under this subchapter or validation of an act or
6 transaction as provided by Sections 22.512 through 22.515 is not
7 the exclusive means of ratifying or validating any act or
8 transaction taken by or on behalf of the corporation, including any
9 defective corporate act, or of adopting or endorsing any act or
10 transaction taken by or in the name of the corporation before the
11 corporation exists.

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 22.512 through 22.515
15 does not, of itself, affect the validity or effectiveness of any act
16 or transaction properly ratified under common law or otherwise, nor
17 does it create a presumption that any such act or transaction is or
18 was a defective corporate act.

19 Sec. 22.512. PROCEEDING REGARDING VALIDITY OF DEFECTIVE
20 CORPORATE ACTS. (a) The following may bring an action under this
21 section:

- 22 (1) the corporation;
23 (2) any successor entity to the corporation;
24 (3) any member of the corporation's board of
25 directors;
26 (4) any member with voting rights;
27 (5) any record member with voting rights as of the time

1 a defective corporate act was ratified in accordance with this
2 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 22.515, 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

20 (5) modify or waive any of the procedures set forth in
21 Sections 22.501 through 22.511 to ratify a defective corporate act.

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

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

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

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

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

11 (5) if the corporation has members with voting rights,
12 order that a meeting of such members be held and determine the right
13 and power of persons to vote at the meeting;

14 (6) declare that a defective corporate act validated
15 by the court is effective as of the time of the defective corporate
16 act or at such other time as determined by the court; and

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

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

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

25 (2) whether the corporation and the corporation's
26 board of directors have treated the defective corporate act as a
27 valid act or transaction and whether any person has acted in

1 reliance on the public record that the defective corporate act was
2 valid;

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

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

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

11 Sec. 22.513. EXCLUSIVE JURISDICTION. The district court
12 has exclusive jurisdiction to hear and determine any action brought
13 under Section 22.512.

14 Sec. 22.514. SERVICE. (a) Service of an application filed
15 under Section 22.512 on the registered agent of a corporation or in
16 any other manner permitted by applicable law is considered to be
17 service on the corporation, and no other party need be joined in
18 order for the district court to adjudicate the matter.

19 (b) If an action is brought by a corporation under Section
20 22.512, the district court may require that notice of the action be
21 provided to other persons identified by the court and permit those
22 other persons to intervene in the action.

23 Sec. 22.515. STATUTE OF LIMITATIONS. (a) This section does
24 not apply to:

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

27 (2) any person to whom notice of the ratification was

1 not given as required by Sections 22.506 and 22.510.

2 (b) Notwithstanding any other provision of this subchapter:

3 (1) an action claiming that a defective corporate act
4 is void or voidable due to a failure of authorization identified in
5 the resolutions adopted in accordance with Section 22.503 may not
6 be filed in or must be dismissed by any court after the applicable
7 validation effective time; and

8 (2) an action claiming that a court of appropriate
9 jurisdiction, in its discretion, should declare that a ratification
10 in accordance with this subchapter not take effect or that the
11 ratification take effect only on certain conditions may not be
12 filed with the court after the expiration of the 120th day after the
13 later of the validation effective time or the time that any notice
14 required to be given under Section 22.510 is given with respect to
15 the ratification.

16 (c) Except as otherwise provided by a corporation's
17 governing documents, for purposes of this section, notice under
18 Section 22.510 that is:

19 (1) mailed is considered to be given on the date the
20 notice is deposited in the United States mail with postage paid in
21 an envelope addressed to the member at the member's address
22 appearing or most recently appearing, as appropriate, in the
23 records of the corporation; and

24 (2) transmitted by facsimile or electronic message is
25 considered to be given when the facsimile or electronic message is
26 transmitted to a facsimile number or an electronic message address
27 provided by the member, or to which the member consents, for the

1 purpose of receiving notice.

2 SECTION 2. This Act takes effect September 1, 2019.