

By: Hancock

S.B. No. 1969

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.