

By: Turner of Tarrant

H.B. No. 3364

A BILL TO BE ENTITLED

AN ACT

relating to business entities.

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

SECTION 1. Sections 1.002(33), (49), and (53), Business Organizations Code, are amended to read as follows:

(33) "General partner" means:

(A) each partner in a general partnership; or

(B) a person who has become, and has not ceased to be, ~~[is admitted to a limited partnership as]~~ a general partner in a limited partnership in accordance with the governing documents of the limited partnership or this code.

(49) "Limited partner" means a person who has become, and has not ceased to be, ~~[been admitted to a limited partnership as]~~ a limited partner in a limited partnership in accordance with the governing documents of the limited partnership or this code ~~[as provided by:~~

~~[(A) in the case of a domestic limited partnership, Chapter 153, or~~

~~[(B) in the case of a foreign limited partnership, the laws of its jurisdiction of formation].~~

(53) "Member" means:

(A) in the case of a limited liability company, a person who ~~[is a member or]~~ has become, and has not ceased to be, ~~[been admitted as]~~ a member in the limited liability company as

1 provided by [~~under~~] its governing documents or this code;

2 (B) in the case of a nonprofit corporation, a
3 person who has membership rights in the nonprofit corporation under
4 its governing documents;

5 (C) in the case of a cooperative association, a
6 member of a nonshare or share association;

7 (D) in the case of a nonprofit association, a
8 person who has membership rights in the nonprofit association under
9 its governing documents; or

10 (E) in the case of a professional association, a
11 person who has membership rights in the professional association
12 under its governing documents.

13 SECTION 2. Subchapter B, Chapter 2, Business Organizations
14 Code, is amended by adding Section 2.115 to read as follows:

15 Sec. 2.115. CHOICE OF FORUM PROVISIONS. (a) In this
16 section, "internal entity claim" means a claim of any nature,
17 including a derivative claim in the right of an entity, that is
18 based on, arises from, or relates to the internal affairs of the
19 entity, as defined by Section 1.105.

20 (b) The governing documents of a domestic entity may
21 require, consistent with applicable state and federal
22 jurisdictional requirements, that any internal entity claims shall
23 be brought only in a court in this state.

24 SECTION 3. Section 3.010, Business Organizations Code, is
25 amended to read as follows:

26 Sec. 3.010. SUPPLEMENTAL PROVISIONS REQUIRED IN
27 CERTIFICATE OF FORMATION OF LIMITED LIABILITY COMPANY. In addition

1 to the information required by Section 3.005, the certificate of
2 formation of a limited liability company must state:

3 (1) whether the limited liability company initially
4 has [~~will~~] or does [~~will~~] not have managers;

5 (2) if the limited liability company initially has
6 [~~will have~~] managers, the name and address of each initial manager
7 of the limited liability company; and

8 (3) if the limited liability company does [~~will~~] not
9 initially have managers, the name and address of each initial
10 member of the limited liability company.

11 SECTION 4. Section 3.060(a), Business Organizations Code,
12 is amended to read as follows:

13 (a) In addition to the provisions authorized or required by
14 Section 3.059, a restated certificate of formation for a for-profit
15 corporation or professional corporation may omit any prior
16 statements regarding [~~update~~] the [~~current~~] number of directors and
17 the names and addresses of the persons serving as directors and, at
18 the corporation's election, may insert a statement regarding the
19 current number of directors and the names and addresses of the
20 persons currently serving as directors.

21 SECTION 5. Section 3.061(a), Business Organizations Code,
22 is amended to read as follows:

23 (a) In addition to the provisions authorized or required by
24 Section 3.059, a restated certificate of formation for a nonprofit
25 corporation may omit any prior statements regarding [~~update~~] the
26 [~~current~~] number of directors and the names and addresses of the
27 persons serving as directors and, at the corporation's election,

1 may insert a statement regarding the current number of directors
2 and the names and addresses of the persons currently serving as
3 directors.

4 SECTION 6. Section 3.0611, Business Organizations Code, is
5 amended to read as follows:

6 Sec. 3.0611. SUPPLEMENTAL PROVISIONS FOR RESTATED
7 CERTIFICATE OF FORMATION FOR LIMITED LIABILITY COMPANY. In
8 addition to the provisions authorized or required by Section 3.059,
9 a restated certificate of formation for a limited liability company
10 may omit any prior statements regarding whether the company has or
11 does not have managers and the names and addresses of managers or
12 members and, at the company's election, may insert a statement:

13 (1) regarding whether [~~if the company's certificate of~~
14 ~~formation states that~~] the company currently has or does not [~~will~~
15 have [~~one or more~~] managers[~~, update the names and addresses of the~~
16 ~~persons serving as managers~~]; [~~or~~

17 (2) [~~if the certificate of formation states~~] that the
18 company currently has [~~will not have~~] managers and [~~, update~~] the
19 names and addresses of the persons currently serving as managers;
20 or

21 (3) that the company currently does not have managers
22 and the names and addresses of the current members of the company.

23 SECTION 7. Section 3.251, Business Organizations Code, is
24 amended to read as follows:

25 Sec. 3.251. DEFINITIONS [~~EMERGENCY DEFINED~~]. In [~~For~~
26 ~~purposes of~~] this subchapter:

27 (1) "Emergency" means any of the following:

1 (A) an attack on the United States, a state, or a
2 political subdivision of a state;

3 (B) a nuclear or atomic disaster;

4 (C) the occurrence of a catastrophic event,
5 including:

6 (i) an epidemic or pandemic;

7 (ii) a hurricane, tropical storm, tornado,
8 or other weather condition; or

9 (iii) a riot or civil disturbance;

10 (D) the declaration of a national emergency by
11 the United States government;

12 (E) the declaration of an emergency by a state or
13 a political subdivision of a state; or

14 (F) any other similar emergency situation.

15 (2) "Emergency action" means an action taken by
16 majority vote of the governing persons present at a meeting of the
17 governing authority of a domestic entity during an emergency
18 period.

19 (3) "Emergency period" means any period during which
20 the governing authority of a domestic entity, due to a condition
21 that is a part of or results from an emergency, is unable to satisfy
22 one or more requirements of the entity's governing documents or
23 this code necessary for action by vote of the governing authority
24 outside of an emergency period~~[, an emergency exists if a majority~~
25 ~~of a domestic entity's governing persons cannot readily participate~~
26 ~~in a meeting because of the occurrence of a catastrophic event].~~

27 SECTION 8. Section 3.252, Business Organizations Code, is

1 amended to read as follows:

2 Sec. 3.252. PROVISIONS IN GOVERNING DOCUMENTS. (a) The
3 ~~[Except as otherwise provided by the entity's governing documents,~~
4 ~~the]~~ governing persons and, if applicable, the owners~~[7]~~ or members
5 of a domestic entity may adopt provisions in the domestic entity's
6 governing documents regarding ~~[the management of the entity during~~
7 ~~an]~~ emergency actions, including provisions that apply only during
8 an emergency period that authorize, limit, or prohibit:

9 (1) ~~[prescribing]~~ procedures for calling a meeting of
10 the governing persons;

11 (2) the necessity of a quorum for action by vote at a
12 meeting of the governing persons;

13 (3) ~~[establishing]~~ minimum requirements for
14 participation at the meeting of the governing persons; and

15 (4) the designation of ~~[(3) designating]~~ additional
16 or substitute governing persons.

17 (b) Any ~~[The emergency]~~ provisions in a domestic entity's
18 governing documents that apply only during an emergency period must
19 be adopted in accordance with:

20 (1) the requirements of the governing documents that
21 apply outside of an emergency period; and

22 (2) the applicable provisions of this code that apply
23 outside of an emergency period.

24 SECTION 9. Subchapter **F**, Chapter **3**, Business Organizations
25 Code, is amended by adding Section 3.2535 to read as follows:

26 Sec. 3.2535. ACTIONS DURING EMERGENCY PERIOD. (a) Except
27 as otherwise limited or prohibited by the domestic entity's

1 governing documents or except as provided by Subsection (b), the
2 governing authority of a domestic entity may take an emergency
3 action during an emergency period without satisfying the
4 requirements of the entity's governing documents or this code that
5 apply outside of an emergency period with respect to:

6 (1) procedures for calling a meeting of the governing
7 persons;

8 (2) the necessity of a quorum for action by vote at a
9 meeting of the governing persons;

10 (3) minimum requirements for participation at a
11 meeting of the governing persons; and

12 (4) any other procedural requirements for action at a
13 meeting of the governing persons.

14 (b) Subsection (a) does not apply to an action by the
15 governing authority of a domestic entity:

16 (1) to amend the entity's governing documents; or

17 (2) that must be approved by a separate vote of the
18 owners or members of the entity in accordance with the requirements
19 of the entity's governing documents or this code that apply outside
20 of an emergency period.

21 SECTION 10. Section 3.255, Business Organizations Code, is
22 amended to read as follows:

23 Sec. 3.255. EFFECT OF EMERGENCY ACTION [~~TAKEN~~]. An
24 emergency action taken by the governing persons of a domestic
25 entity in accordance with the entity's governing documents or
26 Section 3.2535, if taken in good faith and based on the reasonable
27 belief that the emergency action was in the entity's best interest

1 ~~[in accordance with the emergency provisions]:~~

2 (1) is binding on the entity; and

3 (2) may not be used to impose liability on a managerial
4 official, employee, or agent of the entity.

5 SECTION 11. Section 6.201, Business Organizations Code, is
6 amended by amending Subsection (b) and adding Subsections (b-1),
7 (b-2), (b-3), (b-4), and (b-5) to read as follows:

8 (b) The owners or members or the governing authority of a
9 filing entity, or a committee of the governing authority, may take
10 action without holding a meeting, providing notice, or taking a
11 vote if each person entitled to vote on the action signs a written
12 consent or consents stating the action taken. Except as provided by
13 this section, the written consent or consents take effect when
14 signed by all persons entitled to vote on the action.

15 (b-1) By a provision in the written consent or consents or
16 by a written instruction to an agent of the filing entity by one or
17 more persons granting the written consent or consents, a written
18 consent or consents may be made to take effect at a future time,
19 which must be not later than the 60th day after the date all persons
20 entitled to vote on the action have signed the consent or consents.
21 If a written consent or consents described by this subsection are to
22 take effect at a future time, all of the written consents take
23 effect at that future effective time.

24 (b-2) If two or more of the written consents described by
25 Subsection (b-1) have different future effective times, the latest
26 future effective time of those consents applies to all of the
27 consents. The written consent or consents are considered to have

1 been given at the applicable effective time so long as all of the
2 persons entitled to vote on the action, which is determined as of
3 that effective time or, if applicable, the record date established
4 under Section 6.102, have:

- 5 (1) signed the consent or consents; and
6 (2) not revoked their consent or consents before the
7 applicable effective time.

8 (b-3) By a provision in the written consent or by a written
9 instruction to an agent of the filing entity, a person signing a
10 written consent may provide that the person's consent is to take
11 effect at a future time, which must be not later than the 60th day
12 after the date all persons entitled to vote on the action have
13 signed the person's consent or consents. A person's written consent
14 is considered to have been given at the later of that future
15 effective time or a later effective time determined under
16 Subsection (b-1) or (b-2), so long as the person:

- 17 (1) is entitled to vote on the action subject to the
18 consent, which is determined as of the applicable effective time
19 or, if applicable, the record date established under Section 6.102;
20 and

- 21 (2) did not revoke the consent before the applicable
22 effective time.

23 (b-4) A person signing a written consent may revoke the
24 person's consent any time before the applicable effective time of
25 the consent.

26 (b-5) For purposes of this section, a "future time" includes
27 a time that is determined on the happening of an event.

1 SECTION 12. Section 6.202, Business Organizations Code, is
2 amended by amending Subsection (c) and adding Subsections (c-1),
3 (c-2), (c-3), (c-4), (e), and (f) to read as follows:

4 (c) A written consent or consents described by Subsection
5 (b) must include:

6 (1) the date each owner or member signed the consent;
7 and

8 (2) the date of signing of the latest dated consent
9 satisfying the minimum number of owners or members necessary to
10 approve the action that is the subject of the consent.

11 (c-1) The date described by Subsection (c)(2) must be [is
12 effective to take the action that is the subject of the consent only
13 if the consent or consents are delivered to the entity] not later
14 than the 60th day after the date of the signing of the earliest
15 dated consent of the owners or members signing the consent or
16 consents. If a consent does not contain the date that an owner or
17 member signed the consent, the date that the owner or member signed
18 the consent is considered to be the date that the consent is
19 received by the filing entity. A written consent or consents
20 described by Subsection (b) that are not solicited by or on behalf
21 of a filing entity or the filing entity's governing authority must
22 be delivered to the entity as required by Section 6.203 to take
23 effect [is delivered to the entity as required by Section 6.203].

24 (c-2) By a provision in the written consent or consents or
25 by a written instruction to an agent of the filing entity from one
26 or more persons granting the written consent or consents, a written
27 consent or consents described by Subsection (b) may be made to take

1 effect at a future time, which must be not later than the 60th day
2 after the date the last of the minimum number of owners or members
3 necessary to sign the consent or consents as required by Subsection
4 (b) have signed the consent or consents. If the written consent or
5 consents described by this subsection are to take effect at a future
6 time, all of the written consent or consents take effect at that
7 future effective time.

8 (c-3) If two or more of the written consents described by
9 Subsection (c-2) have different future effective times, the latest
10 future effective time of those consents applies to all of the
11 consents. The written consent or consents are considered to have
12 been given for purposes of this section at the applicable effective
13 time so long as owners or members satisfying the minimum
14 requirements in Subsection (b):

15 (1) are determined to be owners or members, as
16 applicable, as of:

17 (A) that effective time; or

18 (B) if applicable, the record date established
19 under Section 6.102; and

20 (2) have signed and not revoked the owner's or member's
21 consent or consents at any time before the applicable effective
22 time of the consent.

23 (c-4) By a provision in the written consent or by a written
24 instruction to an agent of the filing entity, an owner or member of
25 a filing entity signing a written consent described by Subsection
26 (b) may provide that the owner's or member's consent is to take
27 effect at a future time, which must be not later than the 60th day

1 after the date on which the consent is signed by the last of the
2 minimum number of owners or members of the entity necessary to sign
3 the consent or consents as required by Subsection (b). The owner's
4 or member's consent is considered to have been given for purposes of
5 this section at the later of that future effective time or a later
6 effective time determined under Subsection (c-3) so long as:

7 (1) the person is an owner or member, as applicable, as
8 of:

9 (A) the applicable effective time; or

10 (B) if applicable, the record date established
11 under Section 6.102; and

12 (2) the owner or member did not revoke the consent at
13 any time before the applicable effective time of the consent.

14 (e) An owner or member of a filing entity signing a written
15 consent may revoke the owner's or member's consent at any time
16 before the applicable effective time of the consent.

17 (f) For purposes of this section, a "future time" includes a
18 time that is determined on the happening of an event.

19 SECTION 13. Section 8.002(a), Business Organizations Code,
20 is amended to read as follows:

21 (a) Except as provided by Subsection (b) and Section 8.005,
22 this chapter does not apply to a:

23 (1) general partnership; or

24 (2) limited liability company.

25 SECTION 14. Section 8.003, Business Organizations Code, is
26 amended to read as follows:

27 Sec. 8.003. LIMITATIONS IN GOVERNING DOCUMENTS. A

1 governing document [~~(a) The certificate of formation~~] of an
2 enterprise may restrict the circumstances under which the
3 enterprise must or may indemnify or may advance expenses to a person
4 under this chapter.

5 ~~[(b) The written partnership agreement of a limited~~
6 ~~partnership may restrict the circumstances in the same manner as~~
7 ~~the certificate of formation under Subsection (a).]~~

8 SECTION 15. Subchapter A, Chapter 8, Business Organizations
9 Code, is amended by adding Section 8.005 to read as follows:

10 Sec. 8.005. INDEMNIFICATION AGAINST NEGLIGENCE. (a) This
11 section applies to:

12 (1) an enterprise subject to this chapter; and
13 (2) notwithstanding Section 8.002, a general
14 partnership or limited liability company.

15 (b) A requirement under the laws of this state that
16 indemnification or exculpation for negligence be expressly and
17 conspicuously stated does not apply to a provision in an
18 enterprise's governing documents that provides for indemnification
19 or exculpation.

20 SECTION 16. Section 9.251, Business Organizations Code, is
21 amended to read as follows:

22 Sec. 9.251. ACTIVITIES NOT CONSTITUTING TRANSACTING
23 BUSINESS IN THIS STATE. For purposes of this chapter, activities
24 that do not constitute transaction of business in this state
25 include:

26 (1) maintaining or defending an action or suit or an
27 administrative or arbitration proceeding, or effecting the

1 settlement of:

2 (A) such an action, suit, or proceeding; or

3 (B) a claim or dispute to which the entity is a
4 party;

5 (2) holding a meeting of the entity's managerial
6 officials, owners, or members or carrying on another activity
7 concerning the entity's internal affairs;

8 (3) maintaining a bank account;

9 (4) maintaining an office or agency for:

10 (A) transferring, exchanging, or registering
11 securities the entity issues; or

12 (B) appointing or maintaining a trustee or
13 depository related to the entity's securities;

14 (5) voting the interest of an entity the foreign
15 entity has acquired;

16 (6) effecting a sale through an independent
17 contractor;

18 (7) creating, as borrower or lender, or acquiring
19 indebtedness or a mortgage or other security interest in real or
20 personal property;

21 (8) securing or collecting a debt due the entity or
22 enforcing a right in property that secures a debt due the entity;

23 (9) transacting business in interstate commerce;

24 (10) conducting an isolated transaction that:

25 (A) is completed within a period of 30 days; and

26 (B) is not in the course of a number of repeated,
27 similar transactions;

1 (11) in a case that does not involve an activity that
2 would constitute the transaction of business in this state if the
3 activity were one of a foreign entity acting in its own right:

4 (A) exercising a power of executor or
5 administrator of the estate of a nonresident decedent under
6 ancillary letters issued by a court of this state; or

7 (B) exercising a power of a trustee under the
8 will of a nonresident decedent, or under a trust created by one or
9 more nonresidents of this state, or by one or more foreign entities;

10 (12) regarding a debt secured by a mortgage or lien on
11 real or personal property in this state:

12 (A) acquiring the debt in a transaction outside
13 this state or in interstate commerce;

14 (B) collecting or adjusting a principal or
15 interest payment on the debt;

16 (C) enforcing or adjusting a right or property
17 securing the debt;

18 (D) taking an action necessary to preserve and
19 protect the interest of the mortgagee in the security; or

20 (E) engaging in any combination of transactions
21 described by this subdivision;

22 (13) investing in or acquiring, in a transaction
23 outside of this state, a royalty or other nonoperating mineral
24 interest;

25 (14) executing a division order, contract of sale, or
26 other instrument incidental to ownership of a nonoperating mineral
27 interest; [~~or~~]

1 (15) owning, without more, real or personal property
2 in this state; or

3 (16) acting as a governing person of a domestic or
4 foreign entity that is registered to transact business in this
5 state.

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

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

9 (A) a claim that existed before the entity's
10 termination and is not barred by limitations; or

11 (B) a claim that exists after the entity's
12 termination and before the third anniversary of the date of the
13 entity's termination and is not barred by limitations, including a
14 claim under a contractual or other obligation incurred after
15 termination.

16 SECTION 18. Section 11.153, Business Organizations Code, is
17 amended to read as follows:

18 Sec. 11.153. COURT REVOCATION OF FRAUDULENT TERMINATION.

19 (a) Notwithstanding any provision of this code to the contrary, a
20 court may order the revocation of termination of an entity's
21 existence that was terminated as a result of actual or constructive
22 fraud. In an action under this section, any limitation period
23 provided by law is tolled in accordance with the discovery
24 rule. The secretary of state shall take any action necessary to
25 implement an order under this section.

26 (b) If the termination of an entity's existence is revoked
27 under Subsection (a):

1 (1) the revocation relates back to the effective date
2 of the termination and takes effect as of that date; and

3 (2) the entity's status as an entity continues in
4 effect as if the termination of the entity's existence had never
5 occurred.

6 SECTION 19. Section 11.254, Business Organizations Code, is
7 amended to read as follows:

8 Sec. 11.254. REINSTATEMENT OF CERTIFICATE OF FORMATION
9 FOLLOWING TAX FORFEITURE. (a) A filing entity whose certificate of
10 formation has been forfeited under the provisions of the Tax Code
11 must follow the procedures in the Tax Code to reinstate its
12 certificate of formation. A filing entity whose certificate of
13 formation is reinstated under the provisions of the Tax Code is
14 considered to have continued in existence without interruption from
15 the date of forfeiture.

16 (b) The reinstatement of a filing entity's certificate of
17 formation after its forfeiture has no effect on any issue of the
18 personal liability of the governing persons, officers, or agents of
19 the filing entity during the period between forfeiture and
20 reinstatement of the certificate of formation.

21 SECTION 20. Section 11.359, Business Organizations Code, is
22 amended by adding Subsection (c) to read as follows:

23 (c) Notwithstanding Subsections (a) and (b), the
24 extinguishment of an existing claim with respect to a terminated
25 filing entity as provided by this section is nullified if:

26 (1) the filing entity's termination is revoked with
27 retroactive effect under Section 11.153;

1 (2) the terminated filing entity is reinstated with
2 retroactive effect as provided by Section 11.206;

3 (3) the terminated filing entity is reinstated with
4 retroactive effect as provided by Section 11.253(d); or

5 (4) the terminated filing entity's certificate of
6 formation is reinstated under the Tax Code with retroactive effect
7 as provided by Section 11.254.

8 SECTION 21. Section 21.314(a), Business Organizations
9 Code, is amended to read as follows:

10 (a) For purposes of this subchapter, the determination of
11 whether a corporation is or would be insolvent and the
12 determination of the amount [~~value~~] of a corporation's [~~net~~
13 ~~assets,~~] stated capital[~~]~~ or surplus, the value of the
14 corporation's net assets, and the amount or value of any component
15 of the corporation's stated capital, surplus, or net assets, [~~each~~
16 ~~of the components of net assets, stated capital, or surplus~~] may be
17 based on:

18 (1) financial statements of the corporation, which may
19 include financial statements of subsidiary entities or other
20 entities accounted for on a consolidated basis or on the equity
21 method of accounting, [~~including financial statements~~] that:

22 (A) [~~include subsidiary corporations or other~~
23 ~~corporations accounted for on a consolidated basis or on the equity~~
24 ~~method of accounting, or~~

25 [~~(B)~~] present the financial condition of the
26 corporation, and any subsidiary or other entities included in
27 those financial statements, in accordance with generally accepted

1 accounting principles or international financial reporting
2 standards; or

3 (B) have been [~~(2) financial statements~~]
4 prepared using the method of accounting used to file the
5 corporation's federal income tax return or using any other
6 accounting practices and principles that are reasonable under the
7 circumstances;

8 (2) [~~(3)~~] financial information, including condensed
9 or summary financial statements, that is prepared on the same basis
10 as financial statements described by Subdivision (1) [~~or (2)~~];

11 (3) [~~(4)~~] a projection, a forecast, or other
12 forward-looking information relating to the future economic
13 performance, financial condition, or liquidity of the corporation
14 that is reasonable under the circumstances;

15 (4) [~~(5)~~] a fair valuation or information from any
16 other method that is reasonable under the circumstances; or

17 (5) [~~(6)~~] a combination of a statement, a valuation,
18 or information authorized by this section.

19 SECTION 22. Subchapter **H**, Chapter **21**, Business
20 Organizations Code, is amended by adding Section 21.3521 to read as
21 follows:

22 Sec. 21.3521. SHAREHOLDER MEETINGS BY REMOTE
23 COMMUNICATION. Except for any limitation or other requirements in
24 the governing documents of the corporation, if a meeting of a
25 corporation's shareholders under Section **21.351** or **21.352** is held
26 by means of a telephone conference or other communication system
27 authorized by Section **6.002**, the meeting is considered to have

1 satisfied the requirement of Section 6.002(a) that shareholders
2 participating in the meeting be able to communicate with all other
3 persons participating in the meeting if the corporation implements
4 reasonable measures to provide each shareholder entitled to vote at
5 the meeting, or the shareholder's proxyholder, a reasonable
6 opportunity to:

- 7 (1) vote on matters submitted to the shareholders; and
8 (2) read or hear the proceedings of the meeting
9 substantially concurrently with those proceedings.

10 SECTION 23. Section 21.551(2), Business Organizations
11 Code, is amended to read as follows:

12 (2) "Shareholder" includes ~~[means]~~ a shareholder as
13 defined by Section 1.002 or a beneficial owner whose shares are held
14 in a voting trust or by a nominee on the beneficial owner's behalf.

15 SECTION 24. Section 21.908(a), Business Organizations
16 Code, is amended to read as follows:

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

26 SECTION 25. Section 22.508(a), Business Organizations
27 Code, is amended to read as follows:

1 (a) If a defective corporate act ratified under this
2 subchapter would have required under any other provision of the
3 corporate statute the filing of a filing instrument or other
4 document with the filing officer, the corporation shall file a
5 certificate of validation with respect to the defective corporate
6 act in accordance with Chapter 4, regardless of whether a filing
7 instrument or other document was previously filed with respect to
8 the defective corporate act. [~~The filing of another filing~~
9 ~~instrument or document is not required.~~]

10 SECTION 26. Section 101.052(d), Business Organizations
11 Code, is amended to read as follows:

12 (d) The company agreement may contain any provisions for the
13 regulation and management of the affairs of the limited liability
14 company not inconsistent with law [~~or the certificate of~~
15 ~~formation~~].

16 SECTION 27. Section 101.206, Business Organizations Code,
17 is amended by adding Subsections (c-1), (c-2), and (g) to read as
18 follows:

19 (c-1) For purposes of this section, the determination of the
20 amount of a limited liability company's liabilities or the value of
21 a company's assets may be based on:

22 (1) financial statements of the company, which may
23 include the financial statements of subsidiary entities or other
24 entities accounted for on a consolidated basis or on the equity
25 method of accounting, that:

26 (A) present the financial condition of the
27 company and any subsidiary or other entities included in those

1 financial statements, in accordance with generally accepted
2 accounting principles or international financial reporting
3 standards; or

4 (B) have been prepared using the method of
5 accounting used to file the company's federal income tax return or
6 using any other accounting practices and principles that are
7 reasonable under the circumstances;

8 (2) financial information, including condensed or
9 summary financial statements, that is prepared on the same basis as
10 financial statements described by Subdivision (1);

11 (3) projections, forecasts, or other forward-looking
12 information relating to the future economic performance, financial
13 condition, or liquidity of the company that is reasonable under the
14 circumstances;

15 (4) a fair valuation or information from any other
16 method that is reasonable under the circumstances; or

17 (5) a combination of a statement, valuation, or
18 information authorized by this subsection.

19 (c-2) Subsection (c-1) does not apply to the computation of
20 the franchise tax or any other tax imposed on a limited liability
21 company under the laws of this state.

22 (g) An action alleging a distribution is made in violation
23 of this section must be commenced not later than the second
24 anniversary of the date of the distribution.

25 SECTION 28. Section 101.251, Business Organizations Code,
26 is amended to read as follows:

27 Sec. 101.251. GOVERNING AUTHORITY. (a) The governing

1 authority of a limited liability company consists of:

2 (1) the managers of the company, if the company
3 agreement provides [~~company's certificate of formation states~~]
4 that the company is managed by [~~will have~~] one or more managers; or

5 (2) the members of the company, if the company
6 agreement provides [~~company's certificate of formation states~~]
7 that the company is managed by the members [~~will not have managers~~].

8 (b) If the company agreement does not provide otherwise, the
9 governing authority of a limited liability company consists of:

10 (1) the managers of the company, if the company's
11 certificate of formation states that the company has managers; or

12 (2) the members of the company, if the company's
13 certificate of formation does not state that the company has
14 managers.

15 SECTION 29. Section 101.451(3), Business Organizations
16 Code, is amended to read as follows:

17 (3) "Member" includes [~~means~~] a person who is a member
18 or is an assignee of a membership interest or a person who
19 beneficially owns a membership interest through a voting trust or a
20 nominee on the person's behalf.

21 SECTION 30. Section 101.457, Business Organizations Code,
22 is amended to read as follows:

23 Sec. 101.457. TOLLING OF STATUTE OF LIMITATIONS. A written
24 demand filed with the limited liability company under Section
25 101.453 tolls the statute of limitations on the claim on which
26 demand is made until the later of:

27 (1) the 31st day after the expiration of any waiting

1 period under Section 101.453(a) [~~153.403~~]; or

2 (2) the 31st day after the expiration of any stay
3 granted under Section 101.455 [~~153.405~~], including all
4 continuations of the stay.

5 SECTION 31. Section 153.151, Business Organizations Code,
6 is amended by adding Subsection (a-1) to read as follows:

7 (a-1) On formation of a limited partnership, a person
8 becomes a general partner if the person:

9 (1) has entered into the partnership agreement as a
10 general partner; and

11 (2) is named as a general partner in the certificate of
12 formation of the limited partnership.

13 SECTION 32. Section 153.210, Business Organizations Code,
14 is amended by adding Subsections (c), (d), and (e) to read as
15 follows:

16 (c) For purposes of this section, the determination of the
17 amount of a limited partnership's liabilities or the value of a
18 limited partnership's assets may be based on:

19 (1) financial statements of the limited partnership,
20 which may include the financial statements of subsidiary entities
21 or other entities accounted for on a consolidated basis or on the
22 equity method of accounting, that:

23 (A) present the financial condition of the
24 limited partnership and any subsidiary or other entities included
25 in those financial statements in accordance with generally accepted
26 accounting principles or international financial reporting
27 standards; or

1 (B) have been prepared using the method of
2 accounting used to file the partnership's federal income tax return
3 or using any other accounting practices and principles that are
4 reasonable under the circumstances;

5 (2) financial information, including condensed or
6 summary financial statements, that are prepared on the same basis
7 as financial statements described by Subdivision (1);

8 (3) projections, forecasts, or other forward-looking
9 information relating to the future economic performance, financial
10 condition, or liquidity of the limited partnership that is
11 reasonable under the circumstances;

12 (4) a fair valuation or information from any other
13 method that is reasonable under the circumstances; or

14 (5) a combination of a statement, valuation, or
15 information authorized by this subsection.

16 (d) Subsection (c) does not apply to the computation of the
17 franchise tax or any other tax imposed on a limited partnership
18 under the laws of this state.

19 (e) An action alleging a distribution is made in violation
20 of this section must be commenced not later than the second
21 anniversary of the date of the distribution.

22 SECTION 33. Section 200.209, Business Organizations Code,
23 is amended to read as follows:

24 Sec. 200.209. DETERMINATION OF SOLVENCY, NET ASSETS, STATED
25 CAPITAL, AND SURPLUS. (a) The determination of whether a real
26 estate investment trust is or would be insolvent and the
27 determination of the amount [~~value~~] of a real estate investment

1 trust's [~~net assets,~~] stated capital[~~,~~] or surplus or any component
2 of the trust's stated capital or surplus, or the value of the real
3 estate investment trust's net assets or any component of the trust's
4 net assets, [and each of the components of net assets, stated
5 capital, or surplus] may be based on:

6 (1) financial statements of the real estate investment
7 trust that present the financial condition of the real estate
8 investment trust in accordance with generally accepted accounting
9 principles or international financial reporting standards,
10 including financial statements that include subsidiary entities or
11 other entities accounted for on a consolidated basis or on the
12 equity method of accounting;

13 (2) financial statements prepared using the method of
14 accounting used to file the real estate investment trust's federal
15 income tax return or using any other accounting practices and
16 principles that are reasonable under the circumstances;

17 (3) financial information, including condensed or
18 summary financial statements, that is prepared on the same basis as
19 financial statements described by Subdivision (1) or (2);

20 (4) a projection, a forecast, or other forward-looking
21 information relating to the future economic performance, financial
22 condition, or liquidity of the real estate investment trust that is
23 reasonable under the circumstances;

24 (5) a fair valuation or information from any other
25 method that is reasonable under the circumstances; or

26 (6) a combination of a statement, a valuation, or
27 information authorized by this section.

1 (b) Subsection (a) does not apply to the computation of the
2 franchise tax or any other tax imposed on a real estate investment
3 trust under the laws of this state.

4 SECTION 34. The following provisions of the Business
5 Organizations Code are repealed:

6 (1) Section 3.253; and

7 (2) Section 3.254.

8 SECTION 35. Sections 101.206 and 153.210, Business
9 Organizations Code, as amended by this Act, apply only to a
10 distribution made on or after the effective date of this Act. A
11 distribution made before the effective date of this Act is governed
12 by the law in effect on the date the distribution was made, and the
13 former law is continued in effect for that purpose.

14 SECTION 36. This Act takes effect September 1, 2021.