

By: Hancock

S.B. No. 1523

A BILL TO BE ENTITLED

AN ACT

relating to registered and protected series of domestic limited liability companies; authorizing fees.

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

SECTION 1. Subchapter M, Chapter 101, Business Organizations Code, is amended to read as follows:

SUBCHAPTER M. SERIES LIMITED LIABILITY COMPANY

Sec. 101.601. SERIES OF MEMBERS, MANAGERS, MEMBERSHIP INTERESTS, OR ASSETS. (a) A company agreement may establish or provide for the establishment of one or more designated series of members, managers, membership interests, or assets that:

(1) has separate rights, powers, or duties with respect to specified property or obligations of the limited liability company or profits and losses associated with specified property or obligations; or

(2) has a separate business purpose or investment objective.

(b) A series established in accordance with Subsection (a) or a protected series or registered series established in accordance with Section 101.602 may carry on any business, purpose, or activity, whether or not for profit, that is not prohibited by Section 2.003.

(c) Nothing in this subchapter shall be construed to limit the freedom to contract to a series that is not a protected series

1 or a registered series. Except as otherwise provided by
2 Sections 101.627 through 101.636, a series may not merge or
3 convert.

4 (d) The provisions of the company agreement that govern a
5 protected series or registered series may be amended by the
6 approval of:

7 (1) each member associated with the protected series
8 or registered series;

9 (2) the members of each other protected series and
10 registered series if the amendment adversely affects those members;
11 and

12 (3) the members of the limited liability company that
13 are not associated with any protected series or registered series
14 if the amendment adversely affects those members.

15 Sec. 101.602. ENFORCEABILITY OF OBLIGATIONS AND EXPENSES OF
16 PROTECTED SERIES OR REGISTERED SERIES AGAINST ASSETS. (a)
17 Notwithstanding any other provision of this chapter or any other
18 law, but subject to Subsection (b) and any other provision of this
19 subchapter:

20 (1) the debts, liabilities, obligations, and expenses
21 incurred, contracted for, or otherwise existing with respect to a
22 particular protected series or registered series shall be
23 enforceable against the assets of that series only, and shall not be
24 enforceable against the assets of the limited liability company
25 generally or any other series; and

26 (2) none of the debts, liabilities, obligations, and
27 expenses incurred, contracted for, or otherwise existing with

1 respect to the limited liability company generally or any other
2 series shall be enforceable against the assets of a particular
3 protected series or registered series.

4 (b) Subsection (a) applies only [~~if~~]:

5 (1) to the extent the records maintained for that
6 particular protected series or registered series account for the
7 assets associated with that series separately from the other assets
8 of the company or any other series;

9 (2) if the company agreement contains a statement to
10 the effect of the limitations provided in Subsection (a), subject
11 to any exceptions permitted under Subsection (d); and

12 (3) if the company's certificate of formation contains
13 a notice of the limitations provided in Subsection (a), subject to
14 any exceptions permitted under Subsection (d).

15 (c) A certificate of registered series must be filed with
16 the secretary of state to form a registered series.

17 (d) Subsection (a) or any provision contained in a [~~limited~~
18 ~~liability~~] company agreement, [~~or~~] certificate of formation, or
19 certificate of registered series pursuant to Subsections
20 [~~Subsection~~] (a) and (b) does not restrict:

21 (1) a particular protected series or registered series
22 or a limited liability company on behalf of a particular protected
23 series or registered series from expressly agreeing in the company
24 agreement, the certificate of formation, any certificate of
25 registered series, or in another [~~other~~] written agreement that
26 does not violate that agreement or those certificates that any [~~or~~
27 ~~all~~] of the debts, liabilities, obligations, and expenses incurred,

1 contracted for, or otherwise existing with respect to the company
2 generally or any other series of the company shall be enforceable
3 against the assets of that particular protected series or
4 registered series if there are one or more liabilities that are
5 recourse to the company generally or any other series and that
6 cannot be enforced against those assets pursuant to the company
7 agreement, the certificate of formation, any certificate of
8 registered series, or in another written agreement that does not
9 violate that agreement or those certificates; or

10 (2) a limited liability company from expressly
11 agreeing in the company agreement or other written agreement that
12 any or all of the debts, liabilities, obligations, and expenses
13 incurred, contracted for, or otherwise existing with respect to a
14 particular protected series or registered series shall be
15 enforceable against the assets of the company generally.

16 (e) A company agreement does not need to use the term
17 "protected" or "registered" or refer to this section when
18 referencing a series. A series established by a company agreement
19 without designating whether the series is a protected series or
20 registered series and without filing the certificate of registered
21 series required by Subsection (c) is a protected series if it meets
22 the requirements of Subsections (a) and (b), subject to any
23 exceptions permitted by Subsection (d).

24 (f) A series established in accordance with this section,
25 but without filing the certificate of registered series under
26 Subsection (c), is a protected series.

27 (g) A series established in accordance with this section,

1 including by filing the certificate of registered series under
2 Subsection (c), is a registered series.

3 Sec. 101.603. ASSETS OF PROTECTED SERIES OR REGISTERED
4 SERIES. (a) Assets associated with a protected series or
5 registered series may be held directly or indirectly, including
6 being held in the name of the protected series or registered series,
7 in the name of the limited liability company, through a nominee, or
8 otherwise.

9 (b) To the extent [~~If~~] the records of a protected series or
10 registered series are maintained in a manner so that the assets of
11 the protected series or registered series can be reasonably
12 identified by specific listing, category, type, quantity, or
13 computational or allocational formula or procedure, including a
14 percentage or share of any assets, or by any other method in which
15 the identity of the assets can be objectively determined, the
16 records are considered to satisfy the requirements of Section
17 [101.602\(b\)\(1\)](#).

18 (c) In this subchapter, a reference to:

19 (1) "assets of a protected series" or "assets of a
20 registered series" includes assets associated with that series;

21 (2) "assets associated with a protected series" or
22 "assets associated with a registered series" includes assets of
23 that series;

24 (3) "members or managers of a protected series" or
25 "members or managers of a registered series" includes members or
26 managers associated with that series; and

27 (4) "members or managers associated with a protected

1 series" or "members or managers associated with a registered
2 series" includes members or managers of that series.

3 Sec. 101.604. NOTICE OF LIMITATION ON LIABILITIES OF
4 PROTECTED SERIES OR REGISTERED SERIES. (a) Notice of the
5 limitation on liabilities of a protected series or registered
6 series required by Section 101.602 that is contained in a
7 certificate of formation filed with the secretary of state
8 satisfies the requirements of Section 101.602(b)(3), regardless of
9 whether:

10 (1) the limited liability company has established any
11 protected series or registered series under this subchapter when
12 the notice is contained in the certificate of formation; ~~and~~

13 (2) the notice makes a reference to a specific
14 protected series or registered series of the limited liability
15 company; and

16 (3) the notice:

17 (A) uses the term "protected" or "registered"
18 when referencing the series; or

19 (B) includes a reference to Section 101.602.

20 (b) The fact that the certificate of formation filed with
21 the secretary of state contains the notice of the limitation on
22 liabilities of a protected series or registered series required by
23 Section 101.602 is notice of that limitation on liabilities of a
24 protected series or registered series.

25 Sec. 101.605. GENERAL POWERS OF PROTECTED SERIES OR
26 REGISTERED SERIES. A protected series or registered series
27 established under this subchapter has the power and capacity, in

1 the [~~series' own~~] name of the protected series or registered
2 series, to:

3 (1) sue and be sued;

4 (2) contract;

5 (3) acquire, sell, and hold title to assets of the
6 protected series or registered series, including real property,
7 personal property, and intangible property;

8 (4) grant liens and security interests in assets of
9 the protected series or registered series;

10 (5) be a promoter, organizer, partner, owner, member,
11 associate, or manager of an organization; and

12 (6) exercise any power or privilege as necessary or
13 appropriate to the conduct, promotion, or attainment of the
14 business, purposes, or activities of the protected series or
15 registered series.

16 Sec. 101.606. LIABILITY OF MEMBER OR MANAGER FOR
17 OBLIGATIONS; DUTIES. (a) Except as and to the extent the company
18 agreement specifically provides otherwise, a member or manager
19 associated with a protected series or registered series or a member
20 or manager of the company is not liable for a debt, obligation, or
21 liability of a protected series or registered series, including a
22 debt, obligation, or liability under a judgment, decree, or court
23 order.

24 (b) Notwithstanding Subsection (a), a member or manager
25 associated with a protected series or registered series or a member
26 or manager of the company may agree to be obligated personally for
27 any or all of the debts, obligations, and liabilities of one or more

1 protected series or registered series under the company agreement
2 or another agreement.

3 (c) The company agreement may expand or restrict any duties,
4 including fiduciary duties, and related liabilities that a member,
5 manager, officer, or other person associated with a protected
6 series or registered series has to:

7 (1) the protected series or registered series or the
8 company;

9 (2) a member or manager associated with the protected
10 series or registered series; or

11 (3) a member or manager of the company.

12 Sec. 101.607. CLASS OR GROUP OF MEMBERS OR MANAGERS. (a)
13 The company agreement may:

14 (1) establish classes or groups of one or more members
15 or managers associated with a protected series or registered series
16 each of which has certain express relative rights, powers, and
17 duties, including voting rights; and

18 (2) provide for the manner of establishing additional
19 classes or groups of one or more members or managers associated with
20 the protected series or registered series each of which has certain
21 express rights, powers, and duties, including providing for voting
22 rights and rights, powers, and duties senior to existing classes
23 and groups of members or managers associated with the protected
24 series or registered series.

25 (b) The company agreement may provide for the taking of an
26 action[~~, including the amendment of the company agreement,~~] without
27 the vote or approval of any member or manager or class or group of

1 members or managers, including the amendment of the company
2 agreement or an action to create under the provisions of the company
3 agreement a class or group of the protected series or registered
4 series of membership interests that was not previously outstanding.

5 (c) The company agreement may provide that:

6 (1) all or certain identified members or managers or a
7 specified class or group of the members or managers associated with
8 a protected series or registered series have the right to vote on
9 any matter separately or with all or any class or group of the
10 members or managers associated with the protected series or
11 registered series;

12 (2) any member or class or group of members associated
13 with a protected series or registered series has no voting rights;
14 and

15 (3) voting by members or managers associated with a
16 protected series or registered series is on a per capita, number,
17 financial interest, class, group, or any other basis.

18 Sec. 101.608. GOVERNING AUTHORITY. (a) Notwithstanding
19 any conflicting provision of the certificate of formation of a
20 limited liability company or the certificate of registered series,
21 the governing authority of a protected series or registered series
22 consists of the managers or members associated with the protected
23 series or registered series as provided in the company agreement.

24 (b) If the company agreement does not provide for the
25 governing authority of the protected series or registered series,
26 the governing authority of the protected series or registered
27 series consists of:

1 (1) the managers associated with the protected series
2 or registered series, if the company's certificate of formation
3 states that the company has [~~will have~~] one or more managers; or

4 (2) the members associated with the protected series
5 or registered series, if the company's certificate of formation
6 does not provide [~~states~~] that the company has [~~will not have~~]
7 managers.

8 Sec. 101.609. APPLICABILITY OF OTHER PROVISIONS OF CHAPTER
9 OR TITLE 1; SYNONYMOUS TERMS. (a) To the extent not inconsistent
10 with this subchapter, this chapter applies to a protected series or
11 registered series and its associated members and managers.

12 (b) For purposes of the application of any other provision
13 of this chapter to a provision of this subchapter, and as the
14 context requires:

15 (1) a reference to "limited liability company" or
16 "company" means the "protected series" or "registered series";

17 (2) a reference to "member" means "member associated
18 with the protected series" or "member associated with the
19 registered series"; and

20 (3) a reference to "manager" means "manager associated
21 with the protected series [~~-~~]" or "manager associated with the
22 registered series."

23 (c) To the extent not inconsistent with this subchapter, a
24 protected series or registered series and the governing persons and
25 officers associated with the protected series or registered series
26 have the powers and rights provided by Subchapters C and D, Chapter
27 3, and Subchapter F, Chapter 10. For purposes of those provisions,

1 and as the context requires:

2 (1) a reference to "entity," "domestic entity," or
3 "filing entity" includes the "protected series" or "registered
4 series";

5 (2) a reference to "governing person"
6 includes "governing person associated with the protected series"
7 or "governing person associated with the registered series";

8 (3) a reference to "governing authority"
9 includes "governing authority associated with the protected
10 series" or "governing authority associated with the registered
11 series"; and

12 (4) a reference to "officer" includes "officer
13 associated with the protected series[-]" or "officer associated
14 with the registered series."

15 Sec. 101.610. EFFECT OF CERTAIN EVENT ON MANAGER OR MEMBER.

16 (a) An event that under this chapter or the company agreement
17 causes a manager to cease to be a manager with respect to a
18 protected series or registered series does not, in and of itself,
19 cause the manager to cease to be a manager of the limited liability
20 company or with respect to any other protected series or registered
21 series of the company.

22 (b) An event that under this chapter or the company
23 agreement causes a member to cease to be associated with a protected
24 series or registered series does not, in and of itself, cause the
25 member to cease to be associated with any other protected series or
26 registered series or terminate the continued membership of a member
27 in the limited liability company or require the winding up of the

1 protected series or registered series, regardless of whether the
2 member was the last remaining member associated with the protected
3 series or registered series.

4 Sec. 101.611. MEMBER STATUS WITH RESPECT TO DISTRIBUTION.

5 (a) Subject to Sections 101.613, 101.617, 101.618, 101.619, and
6 101.620, when a member associated with a protected series or
7 registered series established under this subchapter is entitled to
8 receive a distribution with respect to the protected series or
9 registered series, the member, with respect to the distribution,
10 has the same status as a creditor of the protected series or
11 registered series and is entitled to any remedy available to a
12 creditor of the protected series or registered series.

13 (b) Section 101.206 does not apply to a distribution with
14 respect to the protected series or registered series.

15 Sec. 101.612. RECORD DATE FOR ALLOCATIONS AND
16 DISTRIBUTIONS. A company agreement may establish or provide for
17 the establishment of a record date for allocations and
18 distributions with respect to a protected series or registered
19 series.

20 Sec. 101.613. DISTRIBUTIONS. (a) A limited liability
21 company may make a distribution with respect to a protected series
22 or registered series.

23 (b) A limited liability company may not make a distribution
24 with respect to a protected series or registered series to a member
25 if, immediately after making the distribution, the total amount of
26 the liabilities of the protected series or registered series, other
27 than liabilities described by Subsection (c), exceeds the fair

1 value of the assets associated with the protected series or
2 registered series.

3 (c) For purposes of Subsection (b), the liabilities of a
4 protected series or registered series do not include:

5 (1) a liability to a member related to the member's
6 membership interest associated with the protected series or
7 registered series; or

8 (2) except as provided by Subsection (e), a liability
9 of the protected series or registered series for which the recourse
10 of creditors is limited to specified property of the protected
11 series or registered series.

12 (d) For purposes of Subsection (b), the assets associated
13 with a protected series or registered series include the fair value
14 of property of the protected series or registered series subject to
15 a liability for which recourse of creditors is limited to specified
16 property of the protected series or registered series only if the
17 fair value of that property exceeds the liability.

18 (e) A member who receives a distribution from a protected
19 series or registered series in violation of this section is not
20 required to return the distribution to the protected series or
21 registered series unless the member had knowledge of the violation.

22 (f) This section may not be construed to affect the
23 obligation of a member to return a distribution to the protected
24 series or registered series under the company agreement, another
25 agreement, or other state or federal law.

26 (g) Section 101.206 does not apply to a distribution with
27 respect to a protected series or registered series.

1 (h) For purposes of this section, "distribution" does not
2 include an amount constituting reasonable compensation for present
3 or past services or a reasonable payment made in the ordinary course
4 of business under a bona fide retirement plan or other benefits
5 program.

6 (i) For purposes of this subchapter, the determination of
7 the amount of the liabilities or the value of the assets of a
8 protected series or registered series may be based on:

9 (1) financial statements of the protected series or
10 registered series, which may include the financial statements of
11 subsidiary entities of the protected series or registered series
12 accounted for on a consolidated basis or on the equity method of
13 accounting that:

14 (A) present the financial condition of the
15 protected series or registered series, and any subsidiary entity
16 included in those financial statements, in accordance with
17 generally accepted accounting principles or international
18 financial reporting standards; or

19 (B) have been prepared using the method of
20 accounting used to file a federal income tax return for the
21 protected series or registered series or using any other accounting
22 practices or principles that are reasonable under the
23 circumstances;

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

27 (3) projections, forecasts, or other forward-looking

1 information relating to the future economic performance, financial
2 condition, or liquidity of the protected series or registered
3 series that is reasonable under the circumstances;

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

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

8 (j) Subsection (i) does not apply to the computation of any
9 tax imposed on a protected series or registered series under the
10 laws of this state.

11 (k) An action alleging a distribution is made in violation
12 of this section must be commenced not later than the second
13 anniversary of the date of the distribution.

14 Sec. 101.614. AUTHORITY TO WIND UP AND TERMINATE PROTECTED
15 SERIES OR REGISTERED SERIES. Except to the extent otherwise
16 provided in the company agreement and subject to Sections 101.617,
17 101.618, 101.619, and 101.620, a protected series or registered
18 series and its business and affairs may be wound up and terminated
19 without causing the winding up of the limited liability company.

20 Sec. 101.615. TERMINATION OF PROTECTED SERIES OR REGISTERED
21 SERIES. (a) Except as otherwise provided by Sections 101.617,
22 101.618, 101.619, and 101.620, the protected series terminates on
23 the completion of the winding up of the business and affairs of the
24 protected series in accordance with Sections 101.617, 101.618,
25 101.619, and 101.620.

26 (b) Except as otherwise provided by Sections 101.617,
27 101.618, 101.619, and 101.620, the registered series terminates on:

1 (1) the completion of the winding up of the business
2 and affairs of the registered series in accordance with Sections
3 101.617, 101.618, 101.619, and 101.620; and

4 (2) the effectiveness of the filing with the secretary
5 of state of a certificate of termination for the registered series.

6 (c) The limited liability company shall provide notice of
7 the termination of a protected series or registered series in the
8 manner provided in the company agreement for notice of termination,
9 if any.

10 (d) [~~(c)~~] The termination of the protected series or
11 registered series does not affect the limitation on liabilities of
12 the protected series or registered series provided by Section
13 101.602.

14 Sec. 101.616. EVENT REQUIRING WINDING UP. Subject to
15 Sections 101.617, 101.618, 101.619, and 101.620, the business and
16 affairs of a protected series or registered series are required to
17 be wound up:

18 (1) if the winding up of the limited liability company
19 is required under Section 101.552(a) or Chapter 11; or

20 (2) on the earlier of:

21 (A) the time specified for winding up the
22 protected series or registered series in the company agreement;

23 (B) the occurrence of an event specified with
24 respect to the protected series or registered series in the company
25 agreement;

26 (C) the occurrence of a majority vote of all of
27 the members associated with the protected series or registered

1 series approving the winding up of the protected series or
2 registered series or, if there is more than one class or group of
3 members associated with the protected series or registered series,
4 a majority vote of the members of each class or group of members
5 associated with the protected series or registered series approving
6 the winding up of the protected series or registered series;

7 (D) if the protected series or registered series
8 has no members, the occurrence of a majority vote of all of the
9 managers associated with the protected series or registered series
10 approving the winding up of the protected series or registered
11 series or, if there is more than one class or group of managers
12 associated with the protected series or registered series, a
13 majority vote of the managers of each class or group of managers
14 associated with the protected series or registered series approving
15 the winding up of the protected series or registered series; or

16 (E) a determination by a court in accordance with
17 Section 101.621.

18 Sec. 101.617. PROCEDURES FOR WINDING UP AND TERMINATION OF
19 PROTECTED SERIES OR REGISTERED SERIES. (a) The following
20 provisions apply to a protected series or registered series and the
21 associated members and managers of the protected series or
22 registered series:

23 (1) Subchapters A, G, H, and I, Chapter 11; and

24 (2) Subchapter B, Chapter 11, other than Sections
25 11.051, 11.056, 11.057, 11.058, and 11.059.

26 (b) The following provisions apply to a registered series
27 and the associated members and managers of the registered series:

1 (1) Subchapters E and F, Chapter 11; and

2 (2) Section 11.102.

3 (c) For purposes of the application of Chapter 11 to a
4 protected series or registered series and as the context requires:

5 (1) a reference to "domestic entity," "filing entity,"
6 "domestic filing entity," or "entity" means the "protected series"
7 or "registered series";

8 (2) a reference to an "owner" means a "member
9 associated with the protected series" or "member associated with
10 the registered series";

11 (3) a reference to the "governing authority" or a
12 "governing person" means:

13 (A) the "governing authority associated with the
14 protected series" or a "governing person associated with the
15 protected series"; or

16 (B) the "governing authority associated with the
17 registered series" or a "governing person associated with the
18 registered series"; and

19 (4) a reference to "business," "property,"
20 "obligations," or "liabilities" means:

21 (A) the "business associated with the protected
22 series," "property associated with the protected series,"
23 "obligations associated with the protected series," or
24 "liabilities associated with the protected series[-]"; or

25 (B) the "business associated with the registered
26 series," "property associated with the registered series,"
27 "obligations associated with the registered series," or

1 "liabilities associated with the registered series."

2 (d) [~~(e)~~] After the occurrence of an event requiring
3 winding up of a protected series or registered series under Section
4 101.616, unless a revocation as provided by Section 101.618 or a
5 cancellation as provided by Section 101.619 occurs, the winding up
6 of the protected series or registered series must be carried out by:

7 (1) the governing authority of the protected series or
8 registered series or one or more persons, including a governing
9 person, designated by:

10 (A) the governing authority of the protected
11 series or registered series;

12 (B) the members associated with the protected
13 series or registered series; or

14 (C) the company agreement; or

15 (2) a person appointed by the court to carry out the
16 winding up of the protected series or registered series under
17 Section 11.054, 11.405, 11.409, or 11.410.

18 (e) [~~(d)~~] An action taken in accordance with this section
19 does not affect the limitation on liability of members and managers
20 provided by Section 101.606.

21 Sec. 101.618. REVOCATION OF VOLUNTARY WINDING UP. Before
22 the termination of the protected series or registered series takes
23 effect, a voluntary decision to wind up the protected series or
24 registered series under Section 101.616(2)(C) or (D) may be revoked
25 by:

26 (1) a majority vote of all of the members associated
27 with the protected series or registered series approving the

1 revocation or, if there is more than one class or group of members
2 associated with the protected series or registered series, a
3 majority vote of the members of each class or group of members
4 associated with the protected series or registered series approving
5 the revocation; or

6 (2) if the protected series or registered series has
7 no members, a majority vote of all the managers associated with the
8 protected series or registered series approving the revocation or,
9 if there is more than one class or group of managers associated with
10 the protected series or registered series, a majority vote of the
11 managers of each class or group of managers associated with the
12 protected series or registered series approving the revocation.

13 Sec. 101.619. CANCELLATION OF EVENT REQUIRING WINDING UP.

14 (a) Unless the cancellation is prohibited by the company
15 agreement, an event requiring winding up of the protected series or
16 registered series under Section 101.616(2)(A) or (B) [~~101.616(1) or~~
17 ~~(2)~~] may be canceled by the consent of all of the members of the
18 protected series or registered series before the termination of the
19 protected series or registered series takes effect.

20 (b) In connection with the cancellation, the members must
21 amend the company agreement to:

22 (1) eliminate or extend the time specified for the
23 protected series or registered series if the event requiring
24 winding up of the protected series or registered series occurred
25 under Section 101.616(2)(A) [~~101.616(1)~~]; or

26 (2) eliminate or revise the event specified with
27 respect to the protected series or registered series if the event

1 requiring winding up of the protected series or registered series
2 occurred under Section 101.616(2)(B) [~~101.616(2)~~].

3 Sec. 101.620. CONTINUATION OF BUSINESS. The protected
4 series or registered series may continue its business following the
5 revocation under Section 101.618 or the cancellation under Section
6 101.619.

7 Sec. 101.621. WINDING UP BY COURT ORDER. A district court
8 in the county in which the registered office or principal place of
9 business in this state of a domestic limited liability company is
10 located, on application by or for a member associated with a
11 protected series or registered [~~the~~] series of the company, has
12 jurisdiction to order the winding up and termination of the
13 protected series or registered [~~a~~] series if the court determines
14 that:

15 (1) it is not reasonably practicable to carry on the
16 business of the protected series or registered series in conformity
17 with the company agreement;

18 (2) the economic purpose of the protected series or
19 registered series is likely to be unreasonably frustrated; or

20 (3) another member associated with the protected
21 series or registered series has engaged in conduct relating to the
22 protected series' or registered series' business that makes it not
23 reasonably practicable to carry on the business with that member.

24 Sec. 101.622. PROTECTED SERIES OR REGISTERED SERIES NOT A
25 SEPARATE DOMESTIC ENTITY OR ORGANIZATION. For purposes of this
26 chapter and Title 1, a protected series or registered series has the
27 rights, powers, and duties provided by this subchapter to the

1 protected series or registered series but is not a separate
2 domestic entity or organization.

3 Sec. 101.623. FILING OF CERTIFICATE OF REGISTERED SERIES.

4 (a) To establish a registered series of a limited liability company
5 in accordance with Section 101.602, a certificate of registered
6 series for the registered series must be filed in accordance with
7 this section.

8 (b) A certificate of registered series must state:

9 (1) the name of the limited liability company;

10 (2) the name of the registered series being formed,
11 which must conform with the requirements of Section 5.056(c); and

12 (3) if the registered series is formed under a plan of
13 conversion or merger, a statement to that effect.

14 (c) A certificate of registered series may include any other
15 provisions not inconsistent with law relating to the organization,
16 ownership, governance, business, or affairs of the registered
17 series.

18 (d) A certificate of registered series shall be executed by
19 the limited liability company in accordance with Section 101.0515
20 and filed with the secretary of state in accordance with and take
21 effect as a filing instrument as specified by Chapter 4.

22 (e) A certificate of registered series is not an amendment
23 to the certificate of formation of the limited liability company.

24 (f) If a new registered series is established under a plan
25 of conversion or plan of merger, the certificate of registered
26 series of the registered series must be filed simultaneously with
27 the certificate of conversion or certificate of merger under

1 Section 101.627(b) or 101.634(e). The certificate of registered
2 series is not required to be filed separately under Subsection (a).
3 The formation and existence of a registered series that results
4 from a conversion or merger takes effect and commences on the
5 effectiveness of the conversion or merger.

6 Sec. 101.624. AMENDING CERTIFICATE OF REGISTERED SERIES.

7 (a) A certificate of registered series is amended by filing a
8 certificate of amendment in accordance with this section.

9 (b) If the company agreement of the limited liability
10 company specifies the manner of adopting an amendment to the
11 certificate of registered series, the amendment must be adopted as
12 specified by the company agreement. If the company agreement does
13 not specify the manner of adopting an amendment to the certificate
14 of registered series but specifies the manner of adopting an
15 amendment to the provisions of the company agreement governing the
16 registered series, the amendment must be adopted as specified in
17 the company agreement for the adoption of an amendment to the
18 provisions of the company agreement governing the registered
19 series. If the company agreement does not specify the manner of
20 adopting an amendment to the certificate of registered series or to
21 the provisions of the company agreement governing the registered
22 series, the amendment must be approved:

23 (1) by all of the members of the registered series;

24 (2) if the registered series does not yet have any
25 members but has managers, by all of the managers of the registered
26 series; or

27 (3) if the registered series does not have members or

1 managers, in the manner specified by the company agreement for
2 authorization of the establishment of a new registered series of
3 the limited liability company.

4 (c) The certificate of amendment must state:

5 (1) the name of the limited liability company;

6 (2) the name of the registered series;

7 (3) for each provision of the certificate of
8 registered series that is added, altered, or deleted, an
9 identification by reference or description of the added, altered,
10 or deleted provision and, if the provision is added or altered, a
11 statement of the text of the altered or added provision; and

12 (4) that the amendment has been approved in the manner
13 required by this subchapter and by the governing documents of the
14 registered series.

15 (d) A manager associated with a registered series or, if
16 there is no manager, any member associated with the registered
17 series who becomes aware that any statement in a certificate of
18 registered series filed with respect to the registered series was
19 false when made, or that any provision in the certificate of
20 registered series has changed making the certificate of registered
21 series false in any material respect, shall promptly amend the
22 certificate of registered series.

23 (e) The certificate of amendment must be executed by the
24 registered series in accordance with Section 101.0515 and shall be
25 filed with the secretary of state in accordance with and take effect
26 as a filing instrument as specified by Chapter 4.

27 Sec. 101.625. CERTIFICATE OF TERMINATION FOR REGISTERED

1 SERIES. (a) On completion of the winding up of a registered
2 series, a certificate of termination shall be filed in accordance
3 with this section.

4 (b) The certificate of termination must contain:

5 (1) the name of the limited liability company;

6 (2) the name of the registered series;

7 (3) the registered series' filing number assigned by
8 the secretary of state;

9 (4) the nature of the event requiring winding up the
10 registered series;

11 (5) a statement that the registered series has
12 complied with the provisions of this code governing the series'
13 winding up; and

14 (6) any other information the person filing the
15 certificate of termination determines.

16 (c) The certificate of termination must be executed by the
17 registered series in accordance with Section 101.0515 and shall be
18 filed with the secretary of state in accordance with and take effect
19 as a filing instrument as specified by Chapter 4.

20 (d) The secretary of state may not issue a certificate of
21 fact confirming the existence of a registered series if the limited
22 liability company has ceased to be in existence.

23 Sec. 101.626. NAME OF REGISTERED SERIES. The name of each
24 registered series included in a series' certificate of registered
25 series must:

26 (1) comply with the requirements of Chapter 5; and

27 (2) contain the name of the limited liability company

1 and the phrase or abbreviation required by Section 5.0561.

2 Sec. 101.627. CONVERSION OF A REGISTERED SERIES TO A
3 PROTECTED SERIES. (a) Upon compliance with Section 101.628, a
4 registered series of a domestic limited liability company may
5 convert to a protected series of the domestic limited liability
6 company by filing a certificate of conversion that complies with
7 Section 101.631 with the secretary of state in accordance with, and
8 taking effect as a filing instrument as specified, by Chapter 4.

9 (b) Upon compliance with Section 101.628, a protected
10 series of a domestic limited liability company may convert to a
11 registered series of the domestic limited liability company by
12 filing simultaneously with the secretary of state in accordance
13 with, and taking effect as a filing instrument as specified by,
14 Chapter 4:

15 (1) a certificate of conversion that complies with
16 Section 101.631; and

17 (2) a certificate of registered series as provided by
18 Section 101.623.

19 (c) An existing registered series may not become a protected
20 series except as provided by Subsection (a) and Sections 101.628
21 through 101.632.

22 (d) For purposes of this section and Sections 101.628
23 through 101.632:

24 (1) "Conversion" means the continuation of:

25 (A) a registered series as a protected series; or

26 (B) a protected series as a registered series.

27 (2) "Converted series" means a registered series or

1 protected series resulting from a conversion of, respectively, a
2 protected series or registered series, of a domestic limited
3 liability company.

4 (3) "Converting series" means a registered series or
5 protected series before a conversion of that series.

6 (4) "Plan of conversion" means a document that
7 conforms with the requirements of Section 101.628.

8 Sec. 101.628. AUTHORIZATION OF CONVERSION. (a) A
9 converting series of a domestic limited liability company may
10 convert to a converted series of the company by adopting a plan of
11 conversion of the converting series to a converted series of the
12 company.

13 (b) If the company agreement of the limited liability
14 company specifies the manner of adopting a plan of conversion of a
15 converting series to a converted series of that company, the plan of
16 conversion must be adopted as specified by the company agreement.
17 If the company agreement does not specify the manner of adopting a
18 plan of conversion of a converting series of the company to a
19 converted series of that company and does not prohibit a conversion
20 of a converting series to a converted series, the plan of conversion
21 must be authorized by members of the converting series who own more
22 than 50 percent of the then-current percentage or other interest in
23 the profits of the converting series owned by all of the members of
24 the converting series. If the plan of conversion provides for any
25 amendment to the company agreement, the plan of conversion must
26 also be approved in the manner required by this subchapter for the
27 approval of that amendment.

1 (c) A converting series may not convert if a member
2 associated with the converting series, as a result of the
3 conversion, would become subject to liability under the company
4 agreement as a member, without that member's consent, for a
5 liability or other obligation of the converted series for which the
6 member is not liable under the company agreement as a member of the
7 converting series before the conversion.

8 (d) At the time a conversion takes effect, each member of
9 the converting series has, unless otherwise agreed to by that
10 member, a membership interest in and is the member of the converted
11 series.

12 (e) A plan of conversion must be in writing and must
13 include:

14 (1) the name of the converting series;

15 (2) the name of the converted series;

16 (3) a statement that the converting protected series
17 or registered series, as applicable, is continuing its existence in
18 the form of the converted protected series or registered series, as
19 applicable;

20 (4) the manner and basis, including use of a formula,
21 of converting the membership interests of the converting series
22 into membership interests of the converted series;

23 (5) any amendment to the company agreement that may be
24 necessary to reflect the conversion of the converting series and
25 the establishment of the converted series; and

26 (6) the certificate of registered series required to
27 be filed under this subchapter if the converted series is a

1 registered series.

2 (f) An amendment or certificate of registered series
3 described by Subsection (e)(5) or (6) may be included in the plan of
4 conversion by an attachment or exhibit to the plan.

5 (g) Any of the terms of the plan of conversion may be made
6 dependent on a fact ascertainable outside of the plan if the manner
7 in which those facts will operate on the terms of the conversion is
8 clearly and expressly stated in the plan. In this subsection,
9 "facts" includes the occurrence of any event, including a
10 determination or action by any person.

11 Sec. 101.629. CONVERSION NOT WINDING UP EVENT. Unless
12 otherwise agreed, the conversion of a converting series under
13 Sections 101.627 through 101.631 does not:

14 (1) require the limited liability company or the
15 converting series to wind up the series' affairs under
16 Section 11.051, 11.056, 101.552 or 101.616 or to pay the series'
17 liabilities and distribute its assets under Sections 11.053 and
18 101.617; or

19 (2) constitute an event requiring winding up of the
20 company or the converting series.

21 Sec. 101.630. EFFECT OF CONVERSION. When a conversion
22 takes effect:

23 (1) the converting series continues to exist without
24 interruption in the form of the converted series rather than in the
25 form of the converting series;

26 (2) all rights, title, and interests to all property
27 owned by the converting series continues to be owned, subject to any

1 existing liens or other encumbrances on the property, by the
2 converted series in the new form without:

3 (A) reversion or impairment;

4 (B) further act or deed; or

5 (C) any transfer or assignment having occurred;

6 (3) all liabilities and obligations of the converting
7 series continue to be liabilities and obligations of the converted
8 series in the new form without impairment or diminution because of
9 the conversion;

10 (4) the rights of creditors or other parties with
11 respect to or against the previous members associated with the
12 converting series in their capacities as members in existence when
13 the conversion takes effect continue to exist as to those
14 liabilities and obligations and may be enforced by the creditors
15 and obligees as if a conversion had not occurred;

16 (5) a proceeding pending by or against the converting
17 series or by or against any of the converting series' members in
18 their capacities as members may be continued by or against the
19 converted series in the new form and by or against the previous
20 members without a need for substituting a party;

21 (6) the membership interests of the converting series
22 that are to be converted into membership interests of the converted
23 series as provided by the plan of conversion are converted as
24 provided by the plan, and the former members of the converting
25 series are entitled only to the rights provided by the plan of
26 conversion;

27 (7) the amendment to the company agreement under the

1 plan of conversion becomes effective; and

2 (8) if, after the conversion takes effect, a member of
3 the converted series as a member is liable for the liabilities or
4 obligations of the converted series, the member is liable for the
5 liabilities and obligations of the converting series that existed
6 before the conversion took effect only to the extent that the
7 member:

8 (A) agrees in writing to be liable for the
9 liabilities or obligations;

10 (B) was liable, before the conversion took
11 effect, for the liabilities or obligations; or

12 (C) by becoming a member of the converted series,
13 becomes liable under other applicable law for the existing
14 liabilities and obligations of the converted series.

15 Sec. 101.631. FILING OF CERTIFICATE OF CONVERSION. (a)
16 After adoption of a plan of conversion as provided by Section
17 101.628, a certificate of conversion must be signed by the
18 converting series and must include a statement certifying the
19 following:

20 (1) the name of the limited liability company and, if
21 it has been changed, the name under which the company's certificate
22 of formation was originally filed;

23 (2) the filing number of the limited liability company
24 assigned by the secretary of state;

25 (3) the name of the converting series and, if it is a
26 registered series and its name has been changed, the name under
27 which its certificate of registered series was originally filed;

1 (4) if the converting series is a registered series,
2 the filing number of the registered series assigned by the
3 secretary of state;

4 (5) that a plan of conversion is on file at the
5 principal place of business of the converting series, and the
6 address of the principal place of business;

7 (6) that a plan of conversion will be on file after the
8 conversion at the principal place of business of the converted
9 series, and the address of the principal place of business;

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

15 (8) that the plan of conversion has been adopted as
16 required by the company agreement of the limited liability company
17 and Section 101.628.

18 (b) The certificate of conversion must be filed with the
19 secretary of state in accordance with Section 101.627.

20 Sec. 101.632. PROHIBITION ON CONVERSION PERMITTED. A
21 company agreement may prohibit the conversion of a registered
22 series or protected series of the company under Sections 101.627
23 through 101.631.

24 Sec. 101.633. MERGER AMONG MERGING SERIES OF SAME LIMITED
25 LIABILITY COMPANY. (a) For purposes of the section and Sections
26 101.634 through 101.636:

27 (1) "Merger" means:

1 (A) the division of a merging series into two or
2 more new protected series and registered series; or

3 (B) the combination of one or more merging series
4 with one or more merging series resulting in:

5 (i) one or more surviving merging series;

6 (ii) the creation of one or more new
7 protected series or registered series; or

8 (iii) one or more surviving merging series
9 and the creation of one or more new protected series or registered
10 series.

11 (2) "Merging series" means each and all protected
12 series and registered series that are parties to a merger.

13 (3) "Party to a merger" means a protected series or
14 registered series that under a plan of merger is divided or combined
15 by a merger.

16 (4) "Plan of merger" means a document that conforms to
17 the requirements of this section.

18 (b) One or more merging series of the same limited liability
19 company may affect a merger as provided by a plan of merger that is
20 approved in accordance with this section and that complies with
21 Sections 101.634 through 101.636. The plan of merger shall provide
22 for one or more surviving or new protected series or registered
23 series.

24 (c) Unless otherwise provided by the company agreement, the
25 plan of merger shall be approved by each protected series or
26 registered series that is a party to the merger. If the company
27 agreement specifies the manner of adopting a plan of merger for the

1 merging series, the amendment must be adopted as specified in the
2 company agreement. If the company agreement does not specify the
3 manner of adopting a plan of merger for the merging series but
4 specifies the manner of adopting an amendment to the provisions of
5 the company agreement governing the merging series, the plan of
6 merger must be adopted as specified in the company agreement for the
7 adoption of an amendment to the provisions of the company agreement
8 governing the merging series. If the company agreement does not
9 specify the manner of adopting a plan of merger for the merging
10 series or an amendment to the provisions of the company agreement
11 governing the merging series, the amendment must be approved by
12 members of that merging series who own more than 50 percent of the
13 then-current percentage or other interest in the profits of that
14 merging series owned by all of the members of that merging series.
15 If the plan of merger provides for any amendment to the company
16 agreement, the plan of merger must also be approved in the manner
17 required by this subchapter for the approval of that amendment.

- 18 (d) A plan of merger must be in writing and must include:
- 19 (1) the name of each merging series that is a party to
20 the merger;
 - 21 (2) the name of each merging series that will survive
22 the merger;
 - 23 (3) the name of each new protected series or
24 registered series that is to be created by the plan of merger;
 - 25 (4) the manner and basis, including use of a formula,
26 of converting or exchanging any of the membership interests of each
27 merging series that is a party to the merger into:

1 (A) membership interests, obligations, rights to
2 purchase securities, or other securities of one or more of the
3 surviving merging series or new protected series or registered
4 series;

5 (B) cash;

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

9 (D) any combination of the items described by
10 Paragraphs (A)-(C);

11 (5) the identification of any of the membership
12 interests of a merging series that is a party to the merger that
13 are:

14 (A) to be canceled rather than converted or
15 exchanged; or

16 (B) to remain outstanding rather than converted
17 or exchanged if the protected series or registered series survives
18 the merger;

19 (6) any amendment to the company agreement that may be
20 necessary to reflect the merger of the merging series and the
21 establishment of any new protected series or registered series that
22 is to be created by the merger;

23 (7) any amendment to the certificate of registered
24 series of any registered series that is a surviving registered
25 series, including a change in the name of the surviving registered
26 series, that will be effected by the merger; and

27 (8) the certificate of registered series of each new

1 registered series to be created by the plan of merger.

2 (e) An item required by Subsections (d)(6) and (8) may be
3 included in the plan of merger by an attachment or exhibit to the
4 plan.

5 (f) If the plan of merger provides for a manner and basis of
6 converting or exchanging a membership interest that may be
7 converted or exchanged in a manner or basis different than any other
8 membership interest of the same class of the membership interest,
9 the manner and basis of conversion or exchange must be included in
10 the plan of merger in the same manner as provided by Subsection
11 (d)(4). A plan of merger may provide for cancellation of a
12 membership interest while providing for the conversion or exchange
13 of other membership interests of the same class as the membership
14 interest to be canceled.

15 (g) Any of the terms of the plan of merger may be made
16 dependent on facts ascertainable outside of the plan if the manner
17 in which those facts will operate on the terms of the merger is
18 clearly and expressly stated in the plan. In this subsection,
19 "facts" includes the occurrence of any event, including a
20 determination or action by any person.

21 (h) If more than one series is to survive or to be created by
22 the plan of merger, the plan of merger must include:

23 (1) the manner and basis of allocating and vesting the
24 property of each merging series that is a party to the merger among
25 one or more of the surviving or new series; and

26 (2) the manner and basis of allocating each liability
27 and obligation of each merging series that is a party to the merger,

1 or adequate provisions for the payment and discharge of each
2 liability and obligation, among one or more of the surviving or new
3 series.

4 (i) A plan of merger may include:

5 (1) amendments to provisions of the company agreement
6 relating to any surviving merging series or any new protected
7 series or registered series to be created by the merger; and

8 (2) any other provisions relating to the merger that
9 are not required by this subchapter.

10 (j) Notwithstanding prior approval, a plan of merger may be
11 terminated or amended under a provision for that termination or
12 amendment contained in the plan of merger.

13 (k) A merging series may not merge under this section if a
14 member of that merging series that is a party to the merger will, as
15 a result of the merger, become subject to liability under the
16 company agreement as a member, without that member's consent, for a
17 liability or other obligation of any other person for which the
18 member is not liable under the company agreement as a member of that
19 merging series before the merger.

20 Sec. 101.634. CERTIFICATE OF MERGER. (a) After approval of
21 a plan of merger as provided by Section 101.633, if a registered
22 series is a party to the merger or if a new registered series is to
23 be created by the merger, a certificate of merger must be signed by
24 each merging series that is a party to the merger and must include a
25 statement certifying the following:

26 (1) the name of each merging series that is a party to
27 the merger and the name of the limited liability company that formed

1 that merging series;

2 (2) that a plan of merger has been approved and
3 executed by or on behalf of each merging series that is to merge;

4 (3) the name of each merging series that survives the
5 merger and each new registered series or protected series that is
6 created by the merger;

7 (4) any amendment to the certificate of registered
8 series of any registered series that is a surviving merging series,
9 including a change in the name of the surviving registered series,
10 to be effected by the merger or a statement that amendments are
11 being made to the certificate of registered series of any
12 registered series that is a surviving merging series under a
13 certificate of amendment attached to the certificate of merger
14 under Subsection (d);

15 (5) the certificate of registered series for each new
16 registered series that is to be created by the merger is being filed
17 with the certificate of merger;

18 (6) that the plan of merger is on file at a place of
19 business of each surviving or new registered series or the limited
20 liability company that formed the registered series, and the
21 address of that place of business;

22 (7) that a copy of the plan of merger will be on
23 written request furnished without cost by each surviving merging
24 series or new registered series or protected series to any member of
25 any merging series that is a party to the merger or any registered
26 series or protected series created by the plan of merger and, for a
27 merger with multiple surviving or new series, to any creditor or

1 obligee of the parties to the merger at the time of the merger if a
2 liability or obligation is then outstanding;

3 (8) if approval of the members of any merging series
4 that was a party to the plan of merger is not required by this code
5 or the company agreement, a statement to that effect; and

6 (9) a statement that the plan of merger has been
7 approved as required by this code and by the company agreement.

8 (b) As provided by Subsection (a)(4), a certificate of
9 merger filed under this section may include as an attachment a
10 certificate of amendment containing amendments to the certificate
11 of registered series for any registered series that is a surviving
12 registered series of the merger.

13 (c) A certificate of merger that contains any amendment or
14 certificate of amendment to the certificate of registered series of
15 a registered series that is a surviving registered series in
16 accordance with Subsection (a)(4) and, if applicable, Subsection
17 (b) is considered to be an amendment to the certificate of
18 registered series of that surviving registered series. No further
19 action is required to amend the certificate of registered series of
20 the surviving registered series under Section 101.624 with respect
21 to the amendment.

22 (d) The certificate of merger must be filed with the
23 secretary of state in accordance with, and take effect as a filing
24 instrument as specified by Chapter 4. If a new registered series is
25 to be created by the merger, a certificate of registered series for
26 the new registered series that complies with Section 101.623 must
27 be simultaneously filed with the certificate of merger in

1 accordance with Chapter 4 as a filing instrument and must take
2 effect simultaneously with the effectiveness of the certificate of
3 merger.

4 (e) Whenever this section requires the filing of a
5 certificate of merger, that requirement is satisfied by the filing
6 of the plan of merger containing the information required to be
7 included in the certificate of merger as provided by this section.

8 Sec. 101.635. EFFECTS OF MERGER OF MERGING SERIES. (a)
9 When a merger of merging series takes effect:

10 (1) the separate existence of each merging series that
11 is a party to the merger, other than a surviving merging series or a
12 new protected series or registered series, ceases;

13 (2) all rights, title, and interests to all real
14 estate and other property owned by each merging series that is a
15 party to the merger is allocated to and vested, subject to any
16 existing liens or other encumbrances on the property, in one or more
17 of the series as provided by the plan of merger without:

18 (A) reversion or impairment;

19 (B) any further act or deed; or

20 (C) any transfer or assignment having occurred;

21 (3) all liabilities and obligations of each merging
22 series that is a party to the merger are allocated to one or more of
23 the surviving or new series provided by the plan of merger;

24 (4) each surviving or new series to which a liability
25 or obligation is allocated under the plan of merger is the primary
26 obligor for the liability or obligation, and, except as otherwise
27 provided by the plan of merger or by law or contract, no other party

1 to the merger, other than a surviving merging series liable or
2 otherwise obligated at the time of the merger, and no other new
3 registered series or protected series created under the plan of
4 merger is liable for the debt or other obligation;

5 (5) any proceeding pending by or against any merging
6 series that is a party to the merger may be continued as if the
7 merger did not occur, or the surviving or new series to which the
8 liability, obligation, asset, or right associated with that
9 proceeding is allocated to and vested in under the plan of merger
10 may be substituted in the proceeding;

11 (6) any amendment to the company agreement provided by
12 the plan of merger becomes effective;

13 (7) any amendment to the certificate of registered
14 series of a surviving registered series that is contained in the
15 certificate of merger, and any certificate of amendment attached to
16 the certificate of merger that contains amendments to the
17 certificate of registered series of a surviving registered series,
18 becomes effective;

19 (8) each new registered series whose certificate of
20 registered series is included in the plan of merger and filed with
21 the certificate of merger, on meeting any additional requirements,
22 if any, of this subchapter for the series' formation, is formed as a
23 registered series under this subchapter as provided by the plan of
24 merger; and

25 (9) the membership interests of each merging series
26 that is a party to the merger and that are to be converted or
27 exchanged, wholly or partly, into membership interests,

1 obligations, rights to purchase securities, or other securities of
2 one or more of the surviving or new series, into cash or other
3 property, including membership interests, obligations, rights to
4 purchase securities, or other securities of any organization, or
5 into any combination of these, or that are to be canceled or remain
6 outstanding, are converted, exchanged, canceled, or remain
7 outstanding as provided in the plan of merger, and the former
8 members who held membership interests of each merging series that
9 is a party to the merger are entitled only to the rights provided by
10 the plan of merger.

11 (b) If the plan of merger does not provide for the
12 allocation and vesting of the right, title, and interest in any
13 particular real estate or other property or for the allocation of
14 any liability or obligation of any party to the merger, the
15 unallocated property is owned in undivided interest by, or the
16 liability or obligation is the joint and several liability and
17 obligation of, each of the surviving and new series, pro rata to the
18 total number of surviving and new series resulting from the merger.

19 (c) Unless otherwise agreed, a merger of a merging series of
20 a limited liability company, including a merging series which is
21 not a surviving or new series resulting from the merger:

22 (1) does not require such merging series to wind up its
23 affairs under Section 101.616 or pay its liabilities and distribute
24 its assets under Sections 11.053 and 101.617; and

25 (2) does not constitute an event requiring winding up
26 of the merging series.

27 Sec. 101.636. PROHIBITION ON MERGER PERMITTED. A company

1 agreement may provide that a protected series or registered series
2 company does not have the power to merge under Section 101.633.

3 SECTION 2. Section 1.201(b)(27), Business & Commerce Code,
4 is amended to read as follows:

5 (27) "Person" means an individual, corporation,
6 business trust, estate, trust, partnership, limited liability
7 company, association, joint venture, government, governmental
8 subdivision, agency, or instrumentality, public corporation, any
9 other legal or commercial entity, or a protected series or
10 registered [particular] series of a for-profit entity.

11 SECTION 3. Section 9.102(a)(71), Business & Commerce Code,
12 is amended to read as follows:

13 (71) "Registered organization" means an organization
14 formed or organized solely under the law of a single state or the
15 United States by the filing of a public organic record with, the
16 issuance of a public organic record by, or the enactment of
17 legislation by the state or the United States. The term includes a
18 business trust that is formed or organized under the law of a single
19 state if a statute of the state governing business trusts requires
20 that the business trust's organic record be filed with the state.
21 The term includes a series of a registered organization if the
22 series is formed or organized under the laws of a single state and
23 the statute of the state governing the series requires that the
24 public organic record of the series be filed with the state.

25 SECTION 4. Sections 71.002(2), (4), and (9), Business &
26 Commerce Code, are amended to read as follows:

27 (2) "Assumed name" means:

1 (A) for an individual, a name that does not
2 include the surname of the individual;

3 (B) for a partnership, a name that does not
4 include the surname or other legal name of each joint venturer or
5 general partner;

6 (C) for an individual or a partnership, a name,
7 including a surname, that suggests the existence of additional
8 owners by including words such as "Company," "& Company," "& Son,"
9 "& Sons," "& Associates," "Brothers," and similar words, but not
10 words that merely describe the business being conducted or the
11 professional service being rendered;

12 (D) for a limited partnership, a name other than
13 the name stated in its certificate of formation;

14 (E) for a company, a name used by the company;

15 (F) for a corporation, a name other than the name
16 stated in its certificate of formation or a comparable document;

17 (G) for a limited liability partnership, a name
18 other than the name stated in its application filed with the office
19 of the secretary of state or a comparable document; ~~and~~

20 (H) for a limited liability company, a name other
21 than the name stated in its certificate of formation or a comparable
22 document, including the name of any protected series of the limited
23 liability company established by its company agreement; and

24 (I) for a registered series of a domestic limited
25 liability company, a name other than the name stated in its
26 certificate of registered series.

27 (4) "Company" means a real estate investment trust, a

1 joint-stock company, or any other business, professional, or other
2 association or legal entity that is not incorporated, other than a
3 partnership, limited partnership, limited liability company,
4 registered series of a limited liability company, limited liability
5 partnership, or foreign filing entity.

6 (9) "Person" includes an individual, partnership,
7 limited partnership, limited liability company, registered series
8 of a limited liability company, limited liability partnership,
9 company, corporation, or foreign filing entity.

10 SECTION 5. Section 71.003, Business & Commerce Code, is
11 amended by adding Subsection (b-1) to read as follows:

12 (b-1) This chapter does not require a registered series of a
13 limited liability company or its members to file a certificate to
14 conduct business or render a professional service in this state
15 under the name of the registered series as stated in the series'
16 certificate of registered series.

17 SECTION 6. Section 71.051, Business & Commerce Code, is
18 amended to read as follows:

19 Sec. 71.051. CERTIFICATE FOR CERTAIN UNINCORPORATED
20 PERSONS. A person must file a certificate under this subchapter if
21 the person regularly conducts business or renders a professional
22 service in this state under an assumed name other than as a
23 corporation, limited partnership, limited liability partnership,
24 limited liability company, protected series or registered series of
25 a limited liability company, or foreign filing entity.

26 SECTION 7. Section 71.101, Business & Commerce Code, is
27 amended to read as follows:

1 Sec. 71.101. CERTIFICATE FOR INCORPORATED BUSINESS OR
2 PROFESSION, LIMITED PARTNERSHIP, LIMITED LIABILITY PARTNERSHIP,
3 LIMITED LIABILITY COMPANY, REGISTERED SERIES, OR FOREIGN FILING
4 ENTITY. A corporation, limited partnership, limited liability
5 partnership, limited liability company, registered series of a
6 limited liability company, or foreign filing entity must file a
7 certificate under this subchapter if the registered series or
8 entity:

9 (1) regularly conducts business or renders
10 professional services in this state under an assumed name; or

11 (2) is required by law to use an assumed name in this
12 state to conduct business or render professional services.

13 SECTION 8. Section 71.102, Business & Commerce Code, is
14 amended to read as follows:

15 Sec. 71.102. CONTENTS OF CERTIFICATE. The certificate
16 must state:

17 (1) the assumed name under which the business is or is
18 to be conducted or the professional service is or is to be rendered;

19 (2) the registrant's name as stated in the
20 registrant's certificate of formation or application filed with the
21 office of the secretary of state or other comparable document,
22 except that:

23 (A) if the registrant is a limited liability
24 company that is filing under an assumed name used by a protected
25 series of the limited liability company, the certificate must state
26 the name of that protected series as stated in the company agreement
27 of the limited liability company and the name of the limited

1 liability company as stated in the company's certificate of
2 formation; or

3 (B) if the registrant is a registered series of a
4 limited liability company, the certificate must state the
5 registrant's name as stated in its certificate of registered series
6 and the name of the limited liability company as stated in the
7 company's certificate of formation;

8 (3) the state, country, or other jurisdiction under
9 the laws of which the registrant was formed, incorporated, or
10 organized;

11 (4) the period, not to exceed 10 years, during which
12 the registrant will use the assumed name;

13 (5) a statement specifying that the registrant is:

14 (A) a for-profit corporation, nonprofit
15 corporation, professional corporation, professional association,
16 or other type of corporation;

17 (B) a limited partnership, limited liability
18 partnership, [~~or~~] limited liability company, or registered series
19 of a limited liability company; or

20 (C) another type of incorporated business,
21 professional or other association, or legal entity, foreign or
22 domestic;

23 (6) the street or mailing address of the registrant's
24 principal office in this state or outside this state, as
25 applicable; and

26 (7) the county or counties in this state where the
27 registrant is or will be conducting business or rendering

1 professional services under the assumed name.

2 SECTION 9. Section 71.103(a), Business & Commerce Code, is
3 amended to read as follows:

4 (a) A corporation, limited partnership, limited liability
5 partnership, limited liability company, registered series of a
6 limited liability company, or foreign filing entity required to
7 file a certificate under Section 71.101 shall file the certificate
8 in the office of the secretary of state.

9 SECTION 10. Section 1.002, Business Organizations Code, is
10 amended by amending Subdivision (69-b) and adding Subdivisions
11 (77-a), (78-a), and (79-a) to read as follows:

12 (69-b) "Person" means an individual or a corporation,
13 partnership, limited liability company, business trust, trust,
14 association, or other organization, estate, government or
15 governmental subdivision or agency, or other legal entity, or a
16 protected series or registered series of a domestic limited
17 liability company or foreign entity.

18 (77-a) "Protected series" means a series of a domestic
19 limited liability company that is established as a protected series
20 in accordance with Section 101.602.

21 (78-a) "Registered series" means a series of a
22 domestic limited liability company that is formed as a registered
23 series in accordance with Section 101.602.

24 (79-a) "Series," with respect to a limited liability
25 company, means a designated series of members, managers, membership
26 interests, or assets that is a protected series or a registered
27 series, or that is neither a protected series nor a registered

1 series.

2 SECTION 11. Subchapter D, Chapter 4, Business Organizations
3 Code, is amended by adding Section 4.162 to read as follows:

4 Sec. 4.162. FILING FEES: REGISTERED SERIES OF LIMITED
5 LIABILITY COMPANY. (a) For a filing by or for a registered series
6 of a domestic limited liability company, the secretary of state
7 shall impose the following fees:

8 (1) for filing a certificate of registered series,
9 \$300;

10 (2) for filing a certificate of amendment, \$150; and

11 (3) for filing a certificate of termination, \$40.

12 (b) For a filing by or for a registered series of a domestic
13 limited liability company when no other fee has been provided, the
14 secretary of state shall impose the same fee as the filing fee for a
15 similar instrument under Section 4.151.

16 SECTION 12. Section 5.001, Business Organizations Code, is
17 amended to read as follows:

18 Sec. 5.001. EFFECT ON RIGHTS UNDER OTHER LAW. (a) The
19 filing of a certificate of formation by a filing entity under this
20 code, an application for registration by a foreign filing entity
21 under this code, a certificate of registered series, or an
22 application for reservation or registration of a name under this
23 chapter does not authorize the use of a name in this state in
24 violation of a right of another under:

25 (1) the Trademark Act of 1946, as amended (15 U.S.C.
26 Section 1051 et seq.);

27 (2) Chapter 16 or 71, Business & Commerce Code; or

1 (3) common law.

2 (b) The secretary of state shall deliver a notice that
3 contains the substance of Subsection (a) to each of the following:

4 (1) a filing entity that files a certificate of
5 formation under this code;

6 (2) a foreign filing entity that registers under this
7 code;

8 (3) a person that reserves a name under Subchapter C;
9 [~~and~~]

10 (4) a person that registers a name under Subchapter D;
11 and

12 (5) a registered series of a domestic limited
13 liability company that files a certificate of registered series.

14 SECTION 13. Section 5.051, Business Organizations Code, is
15 amended to read as follows:

16 Sec. 5.051. ASSUMED NAME. A domestic entity, a protected
17 series or registered series of a domestic limited liability
18 company, or a foreign entity having authority to transact business
19 in this state may transact business under an assumed name by filing
20 an assumed name certificate in accordance with Chapter 71, Business
21 & Commerce Code. The requirements of this subchapter do not apply
22 to an assumed name set forth in an assumed name certificate filed
23 under that chapter.

24 SECTION 14. Section 5.052, Business Organizations Code, is
25 amended to read as follows:

26 Sec. 5.052. UNAUTHORIZED PURPOSE IN NAME PROHIBITED. (a) A
27 filing entity or a foreign filing entity may not have a name that

1 contains any word or phrase that indicates or implies that the
2 entity is engaged in a business that the entity is not authorized by
3 law to pursue.

4 (b) A registered series may not have a name that contains
5 any word or phrase that indicates or implies that the registered
6 series is engaged in a business that the registered series is not
7 authorized by law to pursue.

8 SECTION 15. Section 5.053(a), Business Organizations Code,
9 is amended to read as follows:

10 (a) The name of a filing entity or registered series of a
11 domestic limited liability company or the name under which a
12 foreign filing entity registers to transact business in this state
13 must be distinguishable in the records of the secretary of state
14 from:

- 15 (1) the name of another existing filing entity;
- 16 (2) the name of a foreign filing entity that is
17 registered under Chapter 9;
- 18 (3) the fictitious name under which a foreign filing
19 entity is registered to transact business in this state;
- 20 (4) a name that is reserved under Subchapter C; ~~[or]~~
- 21 (5) a name that is registered under Subchapter D; or
- 22 (6) the name of another existing registered series of
23 a domestic limited liability company.

24 SECTION 16. Subchapter B, Chapter 5, Business Organizations
25 Code, is amended by adding Section 5.0561 to read as follows:

26 Sec. 5.0561. NAME OF REGISTERED SERIES OF LIMITED LIABILITY
27 COMPANY. The name of a registered series of a limited liability

1 company must contain:

2 (1) the phrase "registered series"; or

3 (2) the abbreviation "RS" or "R.S." of that phrase.

4 SECTION 17. Section 5.061, Business Organizations Code, is
5 amended to read as follows:

6 Sec. 5.061. NAME CONTAINING "LOTTO" OR "LOTTERY"
7 PROHIBITED. A filing entity, ~~[or]~~ a foreign filing entity, or a
8 registered series of a domestic limited liability company may not
9 have a name that contains the word "lotto" or "lottery."

10 SECTION 18. Section 5.062(a), Business Organizations Code,
11 is amended to read as follows:

12 (a) Subject to Subsection (b), a filing entity or a
13 registered series of a domestic limited liability company may not
14 have a name that:

15 (1) reasonably implies that the entity or registered
16 series is created by or for the benefit of war veterans or their
17 families; and

18 (2) contains the word or phrase, or any variation or
19 abbreviation of:

20 (A) "veteran";

21 (B) "legion";

22 (C) "foreign";

23 (D) "Spanish";

24 (E) "disabled";

25 (F) "war"; or

26 (G) "world war."

27 SECTION 19. Section 5.102(a), Business Organizations Code,

1 is amended to read as follows:

2 (a) The secretary of state may reserve a name under this
3 subchapter only if the name is distinguishable in the records of the
4 secretary of state from:

5 (1) the name of an existing filing entity;

6 (2) the name of a foreign filing entity that is
7 registered under Chapter 9;

8 (3) the fictitious name under which a foreign filing
9 entity is registered to transact business in this state;

10 (4) a name that is reserved under this subchapter;
11 ~~or~~

12 (5) a name that is registered under Subchapter D; or

13 (6) the name of an existing registered series of a
14 domestic limited liability company.

15 SECTION 20. Section 5.153(a), Business Organizations Code,
16 is amended to read as follows:

17 (a) The secretary of state may register a name under this
18 subchapter only if the name is distinguishable in the records of the
19 secretary of state from:

20 (1) the name of an existing filing entity;

21 (2) the name of a foreign filing entity that is
22 registered under Chapter 9;

23 (3) the fictitious name under which a foreign filing
24 entity is registered to transact business in this state;

25 (4) a name that is reserved under Subchapter C; ~~or~~

26 (5) a name that is registered under this subchapter;
27 or

1 (6) the name of an existing registered series of a
2 domestic limited liability company.

3 SECTION 21. Section 5.301, Business Organizations Code, is
4 amended to read as follows:

5 Sec. 5.301. APPLICABILITY OF SUBCHAPTER. (a) This
6 subchapter applies to service of process, notice, or demand on a
7 series of a domestic limited liability company or a series of a
8 foreign entity.

9 (b) For purposes of this subchapter, a reference to a
10 "series" is intended to be a reference to a protected series or
11 registered series of a domestic limited liability company or to a
12 series of a foreign entity that has the power to sue or be sued as a
13 separate series under the laws of the jurisdiction of formation of
14 the foreign entity.

15 SECTION 22. Section 11.206, Business Organizations Code, is
16 amended to read as follows:

17 Sec. 11.206. EFFECT OF REINSTATEMENT. (a) When the
18 reinstatement of a terminated entity takes effect:

19 (1) the existence of the terminated entity is
20 considered to have continued without interruption from the date of
21 termination; and

22 (2) the terminated entity may carry on its business as
23 if the termination of its existence had not occurred.

24 (b) The reinstatement of a terminated limited liability
25 company automatically reinstates any protected series or
26 registered series that terminated because of the termination of the
27 company.

1 SECTION 23. Section 101.0515, Business Organizations Code,
2 is amended to read as follows:

3 Sec. 101.0515. EXECUTION OF FILINGS. (a) Unless otherwise
4 provided by this title, a filing instrument of a limited liability
5 company must be signed by an authorized officer, manager, or member
6 of the limited liability company.

7 (b) Unless otherwise provided by this title, a filing
8 instrument of a registered series of a domestic limited liability
9 company must be signed by an authorized officer, manager, or member
10 of the registered series.

11 SECTION 24. Section 101.054(a), Business Organizations
12 Code, is amended to read as follows:

13 (a) Except as provided by this section, the following
14 provisions may not be waived or modified in the company agreement of
15 a limited liability company:

16 (1) this section;

17 (2) Section 101.101, 101.151, 101.206, 101.501, or
18 Subchapter M of Chapter 101, except that Sections 101.601(d),
19 101.610, 101.611, 101.613(a), 101.616(2)(A) through (D), 101.618,
20 or 101.619(b) may be waived or modified in the company agreement
21 [101.602(b), or 101.613];

22 (3) Chapter 1, if the provision is used to interpret a
23 provision or define a word or phrase contained in a section listed
24 in this subsection;

25 (4) Chapter 2, except that Section 2.104(c)(2),
26 2.104(c)(3), or 2.113 may be waived or modified in the company
27 agreement;

1 (5) Chapter 3, except that Subchapters C and E may be
2 waived or modified in the company agreement; or

3 (6) Chapter 4, 5, 10, 11, or 12, other than Section
4 11.056.

5 SECTION 25. Sections 101.611, 101.612, and 101.613,
6 Business Organizations Code, as amended by this Act, apply only to a
7 distribution made on or after the effective date of this Act. A
8 distribution made before the effective date of this Act is governed
9 by the law in effect on the date the distribution was made, and the
10 former law is continued in effect for that purpose.

11 SECTION 26. This Act takes effect June 1, 2022.