88R19306 JES-F

By:  Longoria H.B. No. 4279

Substitute the following for H.B. No. 4279:

By:  González of Dallas C.S.H.B. No. 4279

A BILL TO BE ENTITLED

AN ACT

relating to business entities and nonprofit entities.

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

SECTION 1.  Sections 71.002(2) and (7), Business & Commerce Code, are amended to read as follows:

(2)  "Assumed name" means:

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

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

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

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

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

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

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

(H)  for a limited liability company, a name other than the name stated in its certificate of formation or a comparable document, including the name of any protected series of the limited liability company established by its company agreement if the name of the protected series does not include the name of the limited liability company stated in the limited liability company's certificate of formation or a comparable document; and

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

(7)  "Office" means,[~~:~~

[~~(A)~~]  for a person that is not an individual [~~or that is a corporation that is not required to or does not maintain a registered office in this state~~], the person's[~~:~~

[~~(i)~~]  principal office in this state or outside of this state, as applicable[~~; and~~

[~~(ii)  principal place of business if not the same as the person's principal office; and~~

[~~(B)  for a corporation, limited partnership, limited liability partnership, limited liability company, or foreign filing entity that is required to maintain a registered office in this state, the entity's:~~

[~~(i)  registered office; and~~

[~~(ii)  principal office if not the same as the entity's registered office~~].

SECTION 2.  Subchapter B, Chapter 1, Business Organizations Code, is amended by adding Section 1.055 to read as follows:

Sec. 1.055.  DOCTRINE OF INDEPENDENT LEGAL SIGNIFICANCE. An action validly taken under a provision of this code may not be considered invalid because the action is identical or similar in substance to an action that could have been taken under another provision of this code but fails to satisfy one or more requirements prescribed by that other provision.

SECTION 3.  Section 3.059(b), Business Organizations Code, is amended to read as follows:

(b)  A restated certificate of formation may omit:

(1)  the name and address of each organizer other than the name and address of each general partner of a limited partnership or trust manager of a real estate investment trust; [~~and~~]

(2)  the initial mailing address of the filing entity; and

(3)  any other information that may be omitted under the provisions of this code applicable to the filing entity.

SECTION 4.  Section 3.203, Business Organizations Code, is amended to read as follows:

Sec. 3.203.  SIGNATURE REQUIREMENT. (a) A certificate representing an ownership interest in [~~The managerial official or officials of~~] a domestic entity must contain the signature or signatures of each managerial official of the entity that is authorized by the governing documents of the entity to sign certificated ownership interests of the entity [~~must sign any certificate representing an ownership interest in the entity~~].

(b)  A certificated ownership interest that contains the [~~manual or facsimile~~] signature of a person who is no longer a managerial official of a domestic entity when the certificate is issued may be issued by the entity in the same manner and with the same effect as if the person had remained a managerial official.

SECTION 5.  Section 3.251(3), Business Organizations Code, is amended to read as follows:

(3)  "Emergency period" means any period during which the governing authority of a domestic entity, due to a condition that is a part of or results from an emergency, is unable to satisfy one or more requirements of the entity's governing documents or this code necessary for action by vote at a meeting of the governing authority outside of an emergency period.

SECTION 6.  Section 4.005, Business Organizations Code, is amended by adding Subsection (f) to read as follows:

(f)  Subject to any qualification stated in the certificate, a certificate issued by the secretary of state stating that a domestic registered series is in existence may be relied on as conclusive evidence of the existence of the domestic registered series.

SECTION 7.  Section 5.051, Business Organizations Code, is amended to read as follows:

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

SECTION 8.  Section 6.201(b-3), Business Organizations Code, is amended to read as follows:

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

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

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

SECTION 9.  Sections 6.202(b) and (c-3), Business Organizations Code, are amended to read as follows:

(b)  Except as provided by this code, the certificate of formation of a filing entity may authorize the owners or members of the entity to take action without holding a meeting, providing prior notice, or taking a vote if owners or members of the entity having at least the minimum number of votes that would be necessary to take the action that is the subject of the consent at a meeting, in which each owner or member entitled to vote on the action is present and votes, sign a written consent or consents stating the action taken.

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

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

(A)  that effective time; or

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

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

SECTION 10.  Section 10.151(a), Business Organizations Code, is amended to read as follows:

(a)  A [~~After approval of a plan of merger or a plan of exchange as provided by this code, a~~] certificate of merger, which may also include an exchange, or a certificate of exchange, as applicable, must be filed for a merger or interest exchange to become effective if:

(1)  for a merger:

(A)  any domestic entity that is a party to the merger is a filing entity; or

(B)  any domestic entity to be created under the plan of merger is a filing entity; or

(2)  for an exchange, an ownership or membership interest in any filing entity is to be acquired in the interest exchange.

SECTION 11.  Section 10.154(a), Business Organizations Code, is amended to read as follows:

(a)  A [~~After approval of a plan of conversion as provided by this code, a~~] certificate of conversion must be filed for the conversion to become effective if:

(1)  any domestic entity that is a party to the conversion is a filing entity; or

(2)  any domestic entity to be created under the plan of conversion is a filing entity.

SECTION 12.  Section 10.355(c), Business Organizations Code, is amended to read as follows:

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

(1)  be accompanied by:

(A)  a copy of this subchapter; or

(B)  information directing the owner to a publicly available electronic resource at which this subchapter may be accessed without subscription or cost; and

(2)  advise the owner of the location of the responsible organization's principal executive offices to which a notice required under Section 10.356(b)(1) or a demand under Section 10.356(b)(3), or both, may be provided.

SECTION 13.  Section 10.364(d), Business Organizations Code, is amended to read as follows:

(d)  The responsible organization shall[~~:~~

[~~(1)  immediately~~] pay the amount of the judgment to the [~~a~~] holder of the [~~an uncertificated~~] ownership interest on the terms and conditions ordered by the court[~~; and~~

[~~(2)  pay the amount of the judgment to a holder of a certificated ownership interest immediately after the certificate holder surrenders to the responsible organization an endorsed certificate representing the ownership interest~~].

SECTION 14.  Section 11.056, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  The termination of the continued membership of the last remaining member of a domestic limited liability company is an event requiring winding up under Section 11.051(4) unless, not later than one year [~~the 90th day~~] after the date of the termination or within the period of time provided by the company agreement:

(1)  [~~,~~] the legal representative or successor of the last remaining member agrees:

(A) [~~(1)~~]  to continue the company; and

(B) [~~(2)~~]  to become a member of the company effective as of the date of the termination or to designate another person who agrees to become a member of the company effective as of the date of the termination; or

(2)  a member is admitted to the company in the manner provided by the company agreement, effective as of the occurrence of the termination, under a provision of the company agreement that specifically provides for the admission of a member to the company after there is no longer a remaining member of the company.

(c)  The company agreement may provide that the legal representative or successor of the last remaining member is obligated to agree to continue the company and to the admission of the legal representative or successor, or the representative's or successor's nominee or designee, as a member effective as of the occurrence of the event that terminates the continued membership of the last remaining member.

SECTION 15.  Sections 11.202(a) and (c), Business Organizations Code, are amended to read as follows:

(a)  To the extent applicable, a terminated entity, to be reinstated, must complete the requirements of this section [~~not later than the third anniversary of the date the termination of the terminated entity's existence took effect~~].

(c)  After approval of the reinstatement of a filing entity that was terminated, [~~and not later than the third anniversary of the date of the filing of the entity's certificate of termination,~~] the filing entity shall file a certificate of reinstatement in accordance with Chapter 4.

SECTION 16.  Section 11.253, Business Organizations Code, is amended by adding Subsection (e) to read as follows:

(e)  The reinstatement of a terminated limited liability company automatically reinstates any protected series or registered series that terminated because of the termination of the company.

SECTION 17.  Section 11.254, Business Organizations Code, is amended by adding Subsection (c) to read as follows:

(c)  The reinstatement of a limited liability company's certificate of formation after its forfeiture automatically reinstates any protected series or registered series that terminated because of the forfeiture.

SECTION 18.  Subchapter F, Chapter 11, Business Organizations Code, is amended by adding Section 11.255 to read as follows:

Sec. 11.255.  REINSTATEMENT OF CERTIFICATE OF FORMATION FOLLOWING FAILURE TO REVIVE; REINSTATEMENT RETROACTIVE. (a) A nonprofit corporation whose certificate of formation has been terminated under Section 22.364 must follow the procedure required by Section 22.365 to reinstate the nonprofit corporation's certificate of formation. A nonprofit corporation whose certificate of formation is reinstated under Section 22.365 is considered to have continued in existence without interruption from the date of termination.

(b)  A limited partnership whose certificate of formation has been terminated under Section 153.311 must follow the procedure required by Section 153.312 to reinstate the limited partnership's certificate of formation. A limited partnership whose certificate of formation is reinstated under Section 153.312 is considered to have continued in existence without interruption from the date of termination.

SECTION 19.  Sections 11.356(a) and (b), Business Organizations Code, are amended to read as follows:

(a)  Notwithstanding the termination of a domestic filing entity under this code or the Tax Code [~~chapter~~], the terminated filing entity continues in existence until the third anniversary of the effective date of the entity's termination only for purposes of:

(1)  prosecuting or defending in the terminated filing entity's name an action or proceeding brought by or against the terminated entity;

(2)  permitting the survival of an existing claim by or against the terminated filing entity;

(3)  holding title to and liquidating property that remained with the terminated filing entity at the time of termination or property that is collected by the terminated filing entity after termination;

(4)  applying or distributing property, or its proceeds, as provided by Section 11.053; and

(5)  settling affairs not completed before termination.

(b)  A terminated filing entity may not continue its existence for the purpose of continuing the business or affairs for which the terminated filing entity was formed unless the terminated filing entity is reinstated under this code or the Tax Code [~~Subchapter E~~].

SECTION 20.  Section 11.359(c), Business Organizations Code, is amended to read as follows:

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

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

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

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

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

(5)  the terminated filing entity's certificate of formation is reinstated under Chapter 22 with retroactive effect as provided by Section 11.255(a); or

(6)  the terminated filing entity's certificate of formation is reinstated under Chapter 153 with retroactive effect as provided by Section 11.255(b).

SECTION 21.  Section 20.002(c), Business Organizations Code, is amended to read as follows:

(c)  The fact that an act or transfer is beyond the scope of the expressed purpose or purposes of the corporation or is inconsistent with an expressed limitation on the authority of an officer or director may be asserted in a proceeding:

(1)  by a shareholder or member against the corporation to enjoin the performance of an act or the transfer of property by or to the corporation;

(2)  by the corporation, acting directly or through a receiver, trustee, or other legal representative, or through members or shareholders in a representative suit, against an officer or director or former officer or director of the corporation for exceeding that person's authority; or

(3)  by the attorney general to:

(A)  terminate the corporation;

(B)  enjoin the corporation from performing an unauthorized act; or

(C)  enforce divestment of real property acquired or held contrary to the laws of this state.

SECTION 22.  Section 21.157, Business Organizations Code, is amended by amending Subsections (a) and (d) and adding Subsections (e), (f), and (g) to read as follows:

(a)  Except as provided by Section 21.158, a corporation may issue shares for consideration if authorized by the board of directors of the corporation. Shares may be issued in one or more transactions in the number, at the time, and for the consideration stated in or determined by the authorization of the board of directors.

(d)  An authorization of the board of directors may delegate to a person or persons, in addition to the board of directors, the authority to enter into one or more transactions to issue shares. With respect to a transaction entered into by a person or persons to whom authority was delegated under this subsection, shares may be issued in the number, at the time, and for the consideration the person or persons may determine [~~The authorization by the board of directors for the issuance of shares may provide that any shares to be issued under the authorization may be issued:~~

[~~(1)  in one or more transactions in the numbers and at the times as stated in or determined by the authorization; or~~

[~~(2)  in the manner stated in the authorization, which may include a determination or action by any person or persons, including the corporation,~~] if that [~~the~~] authorization of the board of directors:

(1)  states:

(A)  the maximum number of shares that may be issued under the authorization;

(B)  the period of time during which the shares may be issued; and

(C)  the minimum amount of consideration for which the shares may be issued; and

(2)  does not permit the person or persons to whom authority was delegated to issue shares to that person or those persons.

(e)  A provision of an authorization provided under Subsection (a) or (d) may depend on a fact ascertainable outside of the authorization, if the manner in which the fact operates on the authorization is clearly and expressly included in the authorization. In this subsection, "fact" includes the occurrence of any event, including a determination or action by any person or persons.

(f)  If the authorization of the board of directors delegates to a person or persons the authority to enter into a transaction to issue shares under Subsection (d), the provisions of the authorization under Subsection (d)(1) may not depend on a determination or action by the person or persons to whom authority was delegated.

(g)  In this section and notwithstanding Section 1.002, "person" includes a committee of the board of directors.

SECTION 23.  Section 21.160(a), Business Organizations Code, is amended to read as follows:

(a)  Subject to Subsection (b) and Section 21.157, consideration to be received for shares must be determined:

(1)  by the board of directors;

(2)  by a plan of conversion, if the shares are to be issued by a converted corporation under the plan; or

(3)  by a plan of merger, if the shares are to be issued under the plan by a corporation created under the plan.

SECTION 24.  Section 21.168, Business Organizations Code, is amended by amending Subsections (c) and (d) and adding Subsections (e), (f), (g), and (h) to read as follows:

(c)  Subject to the certificate of formation, a right or option described by this section must state the terms and conditions on which, the time within which, and any consideration, including a formula by which the consideration may be determined, for which the shares may be purchased or received from the corporation on the exercise of the right or option. [~~A formula by which the consideration may be determined may include or be made dependent on facts ascertainable outside the formula, if the manner in which those facts operate on the formula is clearly or expressly set forth in the formula or in the authorization approving the formula.~~]

(d)  Subject to the certificate of formation, convertible indebtedness described by this section must state the terms and conditions on which, the time within which, and the conversion ratio, which may be stated as a formula by which the conversion ratio may be determined, at which the indebtedness may be converted into shares. The formula may include or be made dependent on facts ascertainable outside the formula, if the manner in which those facts operate on the formula is clearly or expressly provided by the formula or in the authorization approving the formula.

(e)  An authorization of the board of directors may delegate to a person or persons, in addition to the board of directors, the authority to enter into one or more transactions to issue rights or options. For a transaction entered into by a person or persons to whom authority was delegated under this subsection, the rights or options may be issued in the number, at the time, and for the consideration as the person or persons may determine if that authorization of the board of directors:

(1)  states:

(A)  the maximum number of rights or options, and the maximum number of shares issuable on exercise of those rights or options, that may be issued under the authorization;

(B)  the period of time during which the rights or options, and the shares issuable on exercise of those rights or options, may be issued; and

(C)  the minimum amount of consideration:

(i)  if any, for which the rights or options may be issued; and

(ii)  for the shares issuable on exercise of the rights or options; and

(2)  does not permit the person or persons to whom authority was delegated to issue rights, options, or shares to that person or those persons.

(f)  A provision of a right or option or an authorization of a right or option under this section may depend on a fact ascertainable outside of the right, option, or authorization, if the manner in which the fact operates on the right, option, or authorization is clearly and expressly set forth in the right, option, or authorization. In this subsection, "fact" includes the occurrence of any event, including a determination or action by any person or persons.

(g)  If the authorization of the board of directors delegates to a person or persons the authority to enter into a transaction to issue rights or options under Subsection (e), the provisions of the authorization under Subsection (e)(1) may not depend on a determination or action by the person or persons to whom authority was delegated.

(h)  In this section and notwithstanding Section 1.002, "person" includes a committee of the board of directors.

SECTION 25.  Section 21.169(c), Business Organizations Code, is amended to read as follows:

(c)  Except as provided by Section 21.168, unless [~~Unless~~] otherwise provided under the terms of rights or options or the agreement or plan under which the rights or options are issued, the authority to grant, amend, redeem, extend, or replace the rights or options on behalf of a corporation is vested exclusively in the board of directors of the corporation. A bylaw may not require the board to grant, amend, redeem, extend, or replace the rights or options.

SECTION 26.  Section 21.218, Business Organizations Code, is amended by amending Subsections (b) and (c) and adding Subsection (b-1) to read as follows:

(b)  On written demand stating a proper purpose, a holder of shares of a corporation for at least six months immediately preceding the holder's demand, or a holder of at least five percent of all of the outstanding shares of a corporation, is entitled to examine and copy, at a reasonable time at the corporation's principal place of business or other location approved by the corporation and the holder, the corporation's books, records of account, minutes, [~~and~~] share transfer records, and other records, whether in written or other tangible form, if the record is reasonably related to and appropriate to examine and copy for that proper [~~relating to the stated~~] purpose.

(b-1)  The examination and copying may be conducted by the holder of shares [~~in person~~] or through an agent, accountant, or attorney. An agent, accountant, or attorney who conducts an examination and copying under this section is subject to any obligations of the shareholder with respect to the records made available for examination and copying.

(c)  This section does not impair the power of a court, on the presentation of proof of proper purpose by a beneficial or record holder of shares, to compel the production for examination by the holder, at the holder's cost, of the books and records of account [~~accounts~~], minutes, [~~and~~] share transfer records, and other records, whether in written or other tangible form, of a corporation, regardless of the period during which the holder was a beneficial holder or record holder and regardless of the number of shares held by the person.

SECTION 27.  Section 21.220, Business Organizations Code, is amended to read as follows:

Sec. 21.220.  PENALTY FOR FAILURE TO PREPARE VOTING LIST. An officer or agent of a corporation who is in charge of the corporation's share transfer records and who does not prepare the list of shareholders, keep the list on file for a 10-day period before the annual meeting, or [~~produce and~~] keep the list available for inspection [~~at the annual meeting~~] as required by Sections 21.354 and 21.372 is liable to a shareholder who suffers damages because of the failure for the damage caused by the failure.

SECTION 28.  Section 21.354(a), Business Organizations Code, is amended to read as follows:

(a)  The list of shareholders entitled to vote at the meeting prepared under Section 21.372 shall be[~~:~~

[~~(1)~~]  subject to inspection by a shareholder during regular business hours[~~; and~~

[~~(2)  produced and kept open at the meeting~~].

SECTION 29.  Section 21.372(a-1), Business Organizations Code, is amended to read as follows:

(a-1)  Instead of being kept on file, the list required by Subsection (a) may be kept on a reasonably accessible electronic data system if the information required to gain access to the list is provided with notice of the meeting. Section 21.353(c)[~~, Section 21.354(a-1),~~] and this subsection may not be construed to require a corporation to include any electronic contact information of a shareholder on the list. A corporation that elects to make the list available on an electronic data system must take reasonable measures to ensure the information is available only to shareholders of the corporation.

SECTION 30.  Section 22.220, Business Organizations Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a)  The certificate of formation or bylaws of a corporation may provide that an action required by this chapter to be taken at a meeting of the corporation's directors or an action that may be taken at a meeting of the directors or a committee may be taken without holding a meeting, providing prior notice, or taking a vote if a written consent, stating the action to be taken, is signed by the number of directors or committee members necessary to take that action at a meeting at which all of the directors or committee members are present and voting. The consent must state the date of each director's or committee member's signature.

(c)  Notwithstanding a provision of this code, advance notice is not required to be given to take an action by written consent as provided by this section.

SECTION 31.  Section 22.230(e), Business Organizations Code, is amended to read as follows:

(e)  If at least one of the conditions of Subsection (b) is satisfied, neither the corporation nor any of the corporation's members [~~shareholders~~] will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

SECTION 32.  Section 101.001(1), Business Organizations Code, is amended to read as follows:

(1)  "Company agreement" means any agreement, written, implied, or oral, of the members concerning the affairs or the conduct of the business of a limited liability company. A company agreement of a limited liability company having only one member is not unenforceable because only one person is a party to the company agreement. A written company agreement may consist of one or more agreements, instruments, or other writings and may include or incorporate one or more schedules, supplements, or other writings providing for the conduct of the business and affairs of the limited liability company or of a series of the limited liability company.

SECTION 33.  Section 101.051, Business Organizations Code, is amended to read as follows:

Sec. 101.051.  CERTAIN PROVISIONS CONTAINED IN CERTIFICATE OF FORMATION. (a) A provision that may be included [~~contained~~] in the company agreement of a limited liability company may [~~alternatively~~] be included in the certificate of formation of the company as provided by Section 3.005(b).

(b)  A reference in this title to the company agreement of a limited liability company includes any provision contained in the company's certificate of formation to the extent that the provision reflects the agreement of each member concerning the affairs or the conduct of the business of the limited liability company [~~instead of the company agreement as provided by Subsection (a)~~].

SECTION 34.  Section 101.052, Business Organizations Code, is amended by amending Subsection (f) and adding Subsection (g) to read as follows:

(f)  A company agreement is enforceable by or against the limited liability company, including a protected series or registered series of the company, regardless of whether the company, or the protected series or registered series of the company, has signed or otherwise expressly adopted the agreement.

(g)  A member or manager of a limited liability company, or an assignee of a membership interest of a limited liability company, is bound by the company agreement, regardless of whether the member, manager, or assignee signs the company agreement.

SECTION 35.  Sections 101.054(a) and (e), Business Organizations Code, are amended to read as follows:

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

(1)  this section;

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

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

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

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

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

(e)  The company agreement may not unreasonably restrict a member's or assignee's rights [~~person's right of access to records and information~~] under Section 101.502.

SECTION 36.  Subchapter B, Chapter 101, Business Organizations Code, is amended by adding Section 101.056 to read as follows:

Sec. 101.056.  RATIFICATION OF VOID OR VOIDABLE ACTS OR TRANSACTIONS. (a) Any act or transaction taken by or with respect to a limited liability company under this code or a company agreement that is void or voidable when taken may be ratified, and the failure to comply with any requirements of the company agreement which caused the act or transaction to be void or voidable may be waived, in accordance with this section.

(b)  An act or transaction may be ratified or waived, as applicable, with the approval of the members, managers, or other persons whose approval would be required under the company agreement at the time of the ratification or waiver:

(1)  for the void or voidable act or transaction to be validly taken; or

(2)  to amend the company agreement in a manner that would permit the void or voidable act or transaction to be validly taken.

(c)  If the void or voidable act or transaction was the issuance or assignment of any membership interests, the membership interests purportedly issued or assigned are deemed to have not been issued or assigned for purposes of determining whether the void or voidable act or transaction is ratified or waived under this section.

(d)  Any act or transaction ratified or waived under this section is deemed validly taken at the time the act or transaction occurred.

(e)  This section may not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other lawful means.

SECTION 37.  Section 101.206(e), Business Organizations Code, is amended to read as follows:

(e)  This section may not be construed to affect the obligation of a member of a limited liability company to return a distribution to the company under the company agreement, another agreement, or other state or federal law.

SECTION 38.  Section 101.252, Business Organizations Code, is amended to read as follows:

Sec. 101.252.  MANAGEMENT BY GOVERNING AUTHORITY. The governing authority of a limited liability company shall direct the management of [~~manage~~] the business and affairs of the company and exercise or authorize the exercise of the powers of the company as provided by:

(1)  the company agreement; and

(2)  this title and the provisions of Title 1 applicable to a limited liability company to the extent that the company agreement does not provide for the management of the company.

SECTION 39.  Section 101.358(b), Business Organizations Code, is amended to read as follows:

(b)  Notwithstanding Sections 6.201 and 6.202, an action may be taken without holding a meeting, providing prior or subsequent notice, or taking a vote if a written consent or consents stating the action to be taken is signed by the number of governing persons, members, or committee members of a limited liability company, as appropriate, necessary to have at least the minimum number of votes that would be necessary to take the action at a meeting at which each governing person, member, or committee member, as appropriate, entitled to vote on the action is present and votes.

SECTION 40.  Section 101.457, Business Organizations Code, is amended to read as follows:

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

(1)  the 31st day after the expiration of any waiting period under Section 101.453 [~~101.453(a)~~]; or

(2)  the 31st day after the expiration of any stay granted under Section 101.455, including all continuations of the stay.

SECTION 41.  Section 101.502, Business Organizations Code, is amended to read as follows:

Sec. 101.502.  RIGHT TO EXAMINE RECORDS [~~AND CERTAIN OTHER INFORMATION~~]. (a) A member of a limited liability company or an assignee of a membership interest in a limited liability company, [~~or a representative of the member or assignee,~~] on written demand stating [~~request and for~~] a proper purpose, is entitled to [~~may~~] examine and copy at a [~~any~~] reasonable time at the limited liability company's principal office identified under Section 101.501(c) or another location approved by the limited liability company and the member or assignee, any records of the limited liability company, whether in written or other tangible form, which are reasonably related to and appropriate to examine and copy for that proper purpose [~~and at the member's or assignee's expense:~~

[~~(1)  records required under Sections 3.151 and 101.501; and~~

[~~(2)  other information regarding the business, affairs, and financial condition of the company that is reasonable for the person to examine and copy~~].

(b)  The examination and copying under Subsection (a) may be conducted [~~A limited liability company shall provide to a member of the company or an assignee of a membership interest in the company, on written request~~] by the member or assignee or through an agent, accountant, or attorney. An agent, accountant, or attorney who conducts an examination and copying under this section is subject to any obligations of the member or assignee with respect to the records made available for examination and copying. [~~sent to the company's principal office in the United States or, if different, the person and address designated in the company agreement, a free copy of:~~]

(c)  On written request of a member or an assignee of a membership interest, the limited liability company shall provide to the requesting member or assignee without charge copies of:

(1)  the company's certificate of formation, including any amendments to or restatements of the certificate of formation;

(2)  if in writing, the company agreement, including any amendments to or restatements of the company agreement; and

(3)  any tax returns described by Section 101.501(a)(2).

(d)  A demand or request made by a member or assignee under Subsection (a) or (c) must be made to:

(1)  the person who is designated to receive the demand or request in the company agreement at the address designated in the company agreement; or

(2)  if there is no designation, a manager or managing member at the limited liability company's principal office in the United States.

SECTION 42.  Section 101.601(c), Business Organizations Code, is amended to read as follows:

(c)  Nothing in this subchapter shall be construed to limit the application of the principle of freedom of [~~to~~] contract to a series that is not a protected series or a registered series. Except as otherwise provided by Sections 101.627 through 101.636, a series may not merge or convert.

SECTION 43.  Section 101.623(b), Business Organizations Code, is amended to read as follows:

(b)  A certificate of registered series must state:

(1)  the name of the limited liability company;

(2)  the name of the registered series being formed, which must conform with the requirements of Section 5.0561 [~~5.056(c)~~]; and

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

SECTION 44.  Section 101.624(d), Business Organizations Code, is amended to read as follows:

(d)  A manager associated with a registered series or, if there is no manager, any member associated with the registered series who becomes aware that any statement in a certificate of registered series filed with respect to the registered series was false when made, or that any provision in the certificate of registered series has changed making the certificate of registered series false in any material respect, or that the name of the registered series does not comply with Section 101.626, shall promptly amend the certificate of registered series.

SECTION 45.  Section 101.625(b), Business Organizations Code, is amended to read as follows:

(b)  The certificate of termination must contain:

(1)  the name of the limited liability company;

(2)  the name of the registered series;

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

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

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

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

SECTION 46.  Section 101.627(a), Business Organizations Code, is amended to read as follows:

(a)  Upon compliance with Section 101.628, a registered series of a domestic limited liability company may convert to a protected series of the domestic limited liability company by filing a certificate of conversion that complies with Section 101.631 with the secretary of state in accordance with[~~,~~] and taking effect as a filing instrument as specified[~~,~~] by Chapter 4.

SECTION 47.  Section 101.628(g), Business Organizations Code, is amended to read as follows:

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

SECTION 48.  Section 101.631(a), Business Organizations Code, is amended to read as follows:

(a)  A [~~After adoption of a plan of conversion as provided by Section 101.628, a~~] certificate of conversion must be signed by the converting series and must include a statement certifying the following:

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

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

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

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

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

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

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

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

SECTION 49.  Section 101.633(a)(1), Business Organizations Code, is amended to read as follows:

(1)  "Merger" means:

(A)  the division of a merging series into:

(i)  two or more new protected series or [~~and~~] registered series; or

(ii)  a surviving merging series and one or more new protected series or registered series; or

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

(i)  one or more surviving merging series;

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

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

SECTION 50.  Sections 101.633(b) and (e), Business Organizations Code, are amended to read as follows:

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

(e)  An item required by Subsection [~~Subsections~~] (d)(6), (7), or [~~and~~] (8) may be included in the plan of merger by an attachment or exhibit to the plan.

SECTION 51.  Sections 101.634(a), (d), and (e), Business Organizations Code, are amended to read as follows:

(a)  If [~~After approval of a plan of merger as provided by Section 101.633, if~~] a registered series is a party to the merger or if a new registered series is to be created by the merger, a certificate of merger must be signed by each merging series that is a party to the merger and must include a statement certifying the following:

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

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

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

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

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

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

(7)  that a copy of the plan of merger will be on written request furnished without cost by each surviving merging series or new registered series or protected series to any member of any merging series that is a party to the merger or any registered series or protected series created by the plan of merger and, for a merger with multiple surviving or new series, to any creditor or obligee of the parties to the merger at the time of the merger if a liability or obligation is then outstanding;

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

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

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

(e)  Whenever this section requires the filing of a certificate of merger, that requirement may be [~~is~~] satisfied by the filing of the plan of merger containing the information required to be included in the certificate of merger as provided by this section.

SECTION 52.  Section 101.636, Business Organizations Code, is amended to read as follows:

Sec. 101.636.  PROHIBITION ON MERGER PERMITTED. A company agreement may provide that a protected series or registered series [~~company~~] does not have the power to merge under Section 101.633.

SECTION 53.  Section 151.001(5), Business Organizations Code, is amended to read as follows:

(5)  "Partnership agreement" means any agreement, written, implied, or oral, of the partners concerning a partnership and the partnership's affairs or business, and includes amendments to the partnership agreement. A partnership is not required to sign its partnership agreement. A partnership is bound by its partnership agreement whether or not the partnership signs the partnership agreement. A partnership agreement may provide rights to any person, including a person who is not a party to the partnership agreement, to the extent contained in the partnership agreement. A partner of a partnership or a transferee or assignee of a partnership interest is bound by the partnership agreement whether or not the partner, transferee, or assignee signs the partnership agreement. A written partnership agreement may consist of one or more agreements, instruments, or other writings and may include or incorporate one or more schedules, supplements, or other writings providing for the conduct of the business and affairs of the partnership.

SECTION 54.  Section 152.002(b), Business Organizations Code, is amended to read as follows:

(b)  A partnership agreement or the partners may not:

(1)  unreasonably restrict a partner's or former partner's right of access to books and records under Section 152.212;

(2)  eliminate the duty of loyalty under Section 152.205, except that the partners by agreement may identify specific types of activities or categories of activities that do not violate the duty of loyalty if the types or categories are not manifestly unreasonable;

(3)  eliminate the duty of care under Section 152.206, except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(4)  eliminate the obligation of good faith under Section 152.204(b), except that the partners by agreement may determine the standards by which the performance of the obligation is to be measured if the standards are not manifestly unreasonable;

(5)  vary the power to withdraw as a partner under Section 152.501(b)(1), (7), or (8), except for the requirement that notice be in writing;

(6)  vary the right to expel a partner by a court in an event specified by Section 152.501(b)(5);

(7)  restrict rights of a third party under this chapter or the other partnership provisions, except for a limitation on an individual partner's liability in a limited liability partnership as provided by this chapter;

(8)  select a governing law not permitted under Sections 1.103 and 1.002(43)(C); or

(9)  except as provided in Subsections (c) and (d), waive or modify the following provisions of Title 1:

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

(B)  Chapter 2, other than Sections 2.104(c)(2), 2.104(c)(3), and 2.113;

(C)  Chapter 3, other than Subchapters C and E of that chapter; or

(D)  Chapters 4, 5, 10, 11, and 12, other than Sections 11.057(a), (b), (c)(1), (c)(3), (d), and (f).

SECTION 55.  Section 153.004(a), Business Organizations Code, is amended to read as follows:

(a)  Except as provided by this section, the following provisions of Title 1 may not be waived or modified in the partnership agreement of a limited partnership:

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

(2)  Chapter 2, other than Section 2.104(c)(2), 2.104(c)(3), or 2.113;

(3)  Chapter 3, other than Subchapters C and E of that chapter and Section 3.151 (provided, that in all events a partnership agreement may not validly waive or modify Section 153.551 or unreasonably restrict a partner's or assignee's rights [~~right of access to books and records~~] under Section 153.552); or

(4)  Chapter 4, 5, 10, 11, or 12, other than Section 11.058.

SECTION 56.  Section 153.112, Business Organizations Code, is amended to read as follows:

Sec. 153.112.  RECEIPT OF WRONGFUL DISTRIBUTION. A limited partner who receives a distribution that is not permitted under Section 153.210 is not required to return the distribution unless the limited partner knew that the distribution violated the prohibition of Section 153.210. This section does not affect an obligation of the limited partner under the partnership agreement, another agreement, or other applicable law to return the distribution.

SECTION 57.  Section 153.552, Business Organizations Code, is amended to read as follows:

Sec. 153.552.  EXAMINATION OF RECORDS [~~AND INFORMATION~~]. (a) On written demand [~~request~~] stating a proper purpose, a partner or an assignee of a partnership interest in a limited partnership is entitled [~~may examine and copy, in person or through a representative, records required to be kept under Section 153.551 and other information regarding the business, affairs, and financial condition of the limited partnership as is just and reasonable for the person~~] to examine and copy, at a reasonable time at the partnership's principal office identified under Section 153.551 or other location approved by the partnership and the partner or assignee, any records of the partnership, whether in written or other tangible form, which are reasonably related to and appropriate to examine and copy for that proper purpose.

(b)  The examination and copying [~~records requested~~] under Subsection (a) may be conducted by the partner or assignee or through an agent, accountant, or attorney. An agent, accountant, or attorney who conducts an examination and copying under this section is subject to any obligations of the partner or assignee with respect to the records made available for examination and copying [~~examined and copied at a reasonable time and at the partner's sole expense~~].

(c)  On written request by a partner or an assignee of a partnership interest, the partnership shall provide to the requesting partner or assignee without charge copies of:

(1)  the partnership agreement and certificate of formation and all amendments or restatements; and

(2)  any tax return described by Section 153.551(a)(2).

(d)  A demand or request made by a partner or assignee under Subsection (a) or (c) must be made to:

(1)  the person who is designated to receive the demand or request in the partnership agreement at the address designated in the partnership agreement; or

(2)  if there is no designation, a general partner at the partnership's principal office in the United States.

SECTION 58.  Subchapter C, Chapter 154, Business Organizations Code, is amended by adding Section 154.205 to read as follows:

Sec. 154.205.  RATIFICATION OF VOID OR VOIDABLE ACTS OR TRANSACTIONS. (a) Any act or transaction taken by or with respect to a partnership under this code or a partnership agreement that is void or voidable when taken may be ratified, and the failure to comply with any requirements of the partnership agreement which caused the act or transaction to be void or voidable may be waived, in accordance with this section.

(b)  An act or transaction may be ratified or waived, as applicable, with the approval of the partners or other persons whose approval would be required under the partnership agreement at the time of the ratification or waiver:

(1)  for the void or voidable act or transaction to be validly taken; or

(2)  to amend the partnership agreement in a manner that would permit the void or voidable act or transaction to be validly taken.

(c)  If the void or voidable act or transaction was the issuance or assignment of any partnership interests, the partnership interests purportedly issued or assigned are deemed to have not been issued or assigned for purposes of determining whether the void or voidable act or transaction is ratified or waived under Subsection (b).

(d)  Any act or transaction ratified or waived under this section is deemed validly taken at the time the act or transaction occurred.

(e)  This section may not be construed to limit the accomplishment of a ratification or waiver of a void or voidable act or transaction by other lawful means.

SECTION 59.  The following provisions of the Business Organizations Code are repealed:

(1)  Section 21.160(d);

(2)  Sections 21.169(d) and (e);

(3)  Section 21.354(a-1); and

(4)  Section 22.158(d).

SECTION 60.  This Act takes effect September 1, 2023.