

## **BILL ANALYSIS**

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S.B. 29  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Texas is America's business capital, leading in jobs, innovation, and economic growth. Yet when it comes to corporate law, Texas lags behind states like Delaware, where most U.S. corporations—including many headquartered in Texas—choose to incorporate. For decades, Delaware's clear, pro-business legal framework, exemplified by its Chancery Court, fostered growth nationwide. But recent shifts have raised costs and risks, stifling the freedom businesses need to innovate.

Texas can seize this moment. S.B. 29 takes a bold step toward making Texas the corporate law capital of America by modernizing the Texas Business Organizations Code. It codifies the business judgment rule to shield directors from frivolous suits, sets fair thresholds for shareholder actions, and streamlines disputes through Texas Business Courts—balancing economic growth with accountability for shareholders and everyday Texans.

Countless corporations are eyeing Texas for its low taxes and pro-business climate. Yet advisors often point to Nevada's more developed corporate laws over Texas's sparser case law as a hesitation. S.B. 29 changes that. By clarifying and strengthening our legal framework, this bill signals to executives nationwide that Texas is ready for sophisticated business disputes. It will drive investment, create jobs, and cement Texas as America's corporate hub for decades to come.

As proposed, S.B. 29 amends current law relating to business entities.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1.002(55-a), Business Organizations Code, to redefine "national securities exchange."

SECTION 2. Amends Subchapter B, Chapter 1, Business Organizations Code, by adding Section 1.056, as follows:

Sec. 1.056. LAWS GOVERNING FORMATION, INTERNAL AFFAIRS, AND GOVERNANCE OF DOMESTIC ENTITY. (a) Prohibits the plain meaning of the text of the Business Organizations Code from being supplanted, contravened, or modified by the laws or judicial decisions of any other state.

(b) Authorizes the managerial officials of a domestic entity, in exercising their powers with respect to the domestic entity, to consider the laws and judicial decisions of other states and the practices observed by entities formed in those other states. Provides that the failure or refusal of a managerial official to consider, or to conform the exercise of the managerial official's powers to, the laws, judicial decisions, or practices of another state does not constitute or imply a breach of this code or of any duty existing under the laws of this state.

SECTION 3. Amends Section 2.115(b), Business Organizations Code, as follows:

(b) Authorizes the governing documents of a domestic entity, consistent with applicable state and federal jurisdictional requirements, to require:

(1) creates this subdivision from existing text and makes a nonsubstantive change; and

(2) that one or more courts in this state having jurisdiction are required to serve as the exclusive forum and venue for any internal entity claims.

Makes a nonsubstantive change to this subsection.

SECTION 4. Amends Subchapter B, Chapter 2, Business Organizations Code, by adding Section 2.116, as follows:

Sec. 2.116. WAIVER OF TRIAL BY JURY. (a) Defines "internal entity claim."

(b) Authorizes the governing documents of a domestic entity to contain an enforceable waiver of the right to a jury trial concerning any internal entity claim, regardless of whether the applicable governing document is signed by the members, owners, officers, or governing persons.

(c) Requires that a waiver of jury trial in the governing documents of a domestic entity be a knowing and informed waiver of a person who voted for or affirmatively ratified the governing document containing the waiver, acquired an equity security of the domestic entity at a time at which the waiver was included in the governing documents, or is otherwise shown by evidence satisfactory to an appropriate court to have knowingly and informedly consented or acquiesced to the waiver.

SECTION 5. Amends Section 4.051, Business Organizations Code, as follows:

Sec. 4.051. GENERAL RULE. (a) Creates this subsection from existing text and makes no further changes.

(b) Provides that, subject to Subsection (c), a revised filing instrument, curing the deficiencies in the initial rejected filing instrument identified by the secretary of state, is considered filed as of the date of the delivery to the secretary of state of the initial rejected filing instrument and takes effect as specified in Subchapter B (When Filings Take Effect) if the revised filing instrument is delivered to the secretary of state (SOS) not later than the 10th business day following the date on which the notice of rejection is mailed by SOS, is found to be acceptable by SOS, and is the first revised filing instrument.

(c) Provides that Subsection (b) applies to a filing instrument that creates or forms a new domestic entity or amends the name of an existing domestic entity only in certain circumstances.

SECTION 6. Amends Section 21.218, Business Organizations Code, by amending Subsection (b) and adding Subsections (b-2) and (b-3), as follows:

(b) Prohibits the records of the corporation, for purposes of this subsection, from including e-mails, text messages or similar electronic communications, or information from social media accounts unless the particular e-mail, communication, or social media information affects an action by the corporation. Makes a nonsubstantive change.

(b-2) Provides that this subsection applies only to a corporation that has a class or series of voting shares listed on a national securities exchange or that has made an affirmative election to be governed by Section 21.419. Prohibits a written demand, for purposes of

Subsection (b), from being for a proper purpose if the corporation reasonably determines that the demand is in connection with:

- (1) an active or pending derivative proceeding in the right of the corporation under Subchapter L (Derivative Proceedings) that is or is expected to be instituted or maintained by the holder or the holder's affiliate; or
- (2) an active or pending civil lawsuit to which the corporation, or its affiliate, and the holder, or the holder's affiliate, are or are expected to be adversarial named parties.

(b-3) Provides that Subsection (b-2) does not impair any rights of:

- (1) the holder or the holder's affiliate to obtain discovery of records from the corporation in a civil lawsuit described by Subsection (b-2)(2), or the derivative proceeding subject to Section 21.556 (Discovery); or
- (2) the holder to obtain a court order to compel production of records of the corporation for examination by the holder as provided by Subsection (c) (relating to providing that Section 21.218 (Examination of Records) does not impair the power of the court to compel the production for examination by the holder, at the holder's cost).

SECTION 7. Amends Section 21.416, Business Organizations Code, by adding Subsection (g), as follows:

(g) Provides that this subsection applies only to a corporation that has a class or series of voting shares listed on a national securities exchange or that has made an affirmative election to be governed by Section 21.419. Authorizes the board of directors to adopt resolutions that authorize the formation of a committee of independent and disinterested directors to review and approve transactions, whether or not contemplated at the time of the committee's formation or a petition under Section 21.4161, involving the corporation or any of its subsidiaries and a controlling shareholder, director, or officer.

SECTION 8. Amends Subchapter I, Chapter 21, Business Organizations Code, by adding Section 21.4161, as follows:

Sec. 21.4161. DETERMINATION OF INDEPENDENT AND DISINTERESTED DIRECTORS. (a) Authorizes a corporation that adopts a resolution to authorize the formulation of a committee of independent and disinterested directors under Section 21.416(g) to petition a court having appropriate jurisdiction to hold an evidentiary hearing to determine whether the directors appointed to the committee are independent and disinterested with respect to any transactions involving the corporation or any of its subsidiaries and a controlling shareholder, director, or officer.

(b) Requires the corporation, in the petition, to designate legal counsel to act on behalf of the corporation and its shareholders, other than the controlling shareholder, director, or officer involved in the transaction, and to give notice to the shareholders of the designated counsel and the petition.

(c) Authorizes the notice required by Subsection (b), if the corporation has a class of its shares listed on a national securities exchange, to be provided through the filing of a current report with the United States Securities and Exchange Commission in accordance with the requirements of the Securities Exchange Act of 1934 (15 U.S.C. Section 78 et seq.), and any rules promulgated under that Act.

(d) Requires the court, promptly after receiving a petition, and not earlier than the 10th day after the date the notice required under Subsection (b) is given, to hold a preliminary hearing to determine the appropriate legal counsel to represent the corporation and its shareholders, other than the controlling shareholder, director,

or officer involved in the transaction, whether or not the same as the legal counsel identified in the petition. Authorizes any other legal counsel representing a shareholder, other than the controlling shareholder, director, or officer involved in the transaction, to participate in the hearing to request designation by the court as the appropriate legal counsel.

(e) Requires the court, after the court determines the appropriate legal counsel under Subsection (d), to promptly hold an evidentiary hearing as to whether the directors on the committee are independent and disinterested with respect to transactions involving the corporation or any of its subsidiaries and a controlling shareholder, director, or officer. Authorizes the appropriate legal counsel determined under Subsection (d) and legal counsel for the corporation to participate in the hearing. Requires the court, after hearing and reviewing the evidence presented, to make its determination as to whether the directors on the committee are independent and disinterested.

(f) Requires that the court's determination that the directors are independent and disinterested under Subsection (e) be dispositive in the absence of facts, not presented to the court, constituting evidence sufficient to prove that one or more of those directors is not independent and disinterested with respect to a particular transaction involving the corporation or any of its subsidiaries and a controlling shareholder, director, or officer.

SECTION 9. Amends Section 21.418, Business Organizations Code, by adding Subsection (f), as follows:

(f) Provides that this subsection applies only to a corporation that has a class or series of voting shares listed on a national securities exchange or has made an affirmative election to be governed by Section 21.419. Provides that, regardless of whether the conditions of Subsection (b) (relating to providing that a contract or transaction is valid and enforceable if certain conditions are met) are satisfied, neither the corporation nor any of the corporation's shareholders will have a cause of action against any director or officer for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the director or officer had the relationship or interest described by Subsection (a) (relating to a contract or transaction between certain individuals of a corporation and an entity or other organization) or took any of the actions authorized by Subsection (d) (relating to defining a person who has the relationship or interest) unless the cause of action is permitted by Section 21.419.

SECTION 10. Amends Subchapter I, Chapter 21, Business Organizations Code, by adding Section 21.419, as follows:

Sec. 21.419. PRESUMPTIONS FOR DIRECTORS AND OFFICERS OF CERTAIN CORPORATIONS. (a) Provides that this section applies only to a corporation that has a class or series of voting shares listed on a national securities exchange or included in its governing statement affirmatively electing to be governed by this section.

(b) Provides that, in taking or declining to take any action on any matters of a corporation's business, a director or officer is presumed to act in good faith, on an informed basis, in furtherance of the interests of the corporation, and in obedience to the law and the corporation's governing documents.

(c) Provides that neither a corporation nor any of the corporation's shareholders has a cause of action against a director or officer of the corporation as a result of any act or omission in the person's capacity as a director or officer unless:

(1) the claimant rebuts one or more of the presumptions established by Subsection (b); and

(2) it is proven by the claimant that:

(A) the director's or officer's act or omission constituted a breach of one or more of the person's duties as a director or officer; and

(B) the breach involved fraud, intentional misconduct, an ultra vires act, or a knowing violation of law.

(d) Provides that the presumptions established by this section:

(1) are in addition to any legal presumption arising under common law or this code, in favor of any managerial official of a corporation to which this section applies; and

(2) do not abrogate, preempt, or lessen any other defense, presumption, immunity, or privilege under other constitutional, statutory, case, or common law or rule provisions, in favor of any managerial official of any domestic entity, including any corporation to which this section does not apply.

(e) Requires a party, in alleging fraud, intentional misconduct, an ultra vires act, or a knowing violation of the law under Subsection (c)(2)(B), to state with particularity the circumstances constituting the fraud, intentional misconduct, ultra vires act, or knowing violation of law.

(f) Provides that this section does not limit the effect of a provision contained in the certificate of formation or similar instrument of a corporation limiting monetary liability of a governing person as permitted by Section 7.001 (Limitation of Liability of Governing Person).

SECTION 11. Amends Section 21.551(2), Business Organizations Code, to redefine "shareholder."

SECTION 12. Amends Section 21.552(a), Business Organizations Code, as follows:

(a) Prohibits a shareholder, subject to Subsection (b) (relating to prohibiting a converted entity in a conversion shareholder from instituting or maintaining a derivative proceeding based on an act or omission that occurred before the date of the conversion) from instituting or maintaining a derivative proceeding unless:

(1)-(2) makes nonsubstantive changes to these subdivisions; and

(3) for a corporation with common shares listed on a national securities exchange or that has made an affirmative election to be governed by Section 21.419, at the time the derivative proceeding is instituted, the shareholder beneficially owns a number of the common shares sufficient to meet the required ownership threshold to institute a derivative proceeding in the right of the corporation identified in the corporation's certificate of formation or bylaws, provided that the required ownership threshold does not exceed three percent of the outstanding shares of the corporation.

SECTION 13. Amends Section 21.554, Business Organizations Code, by amending Subsection (b) and adding Subsections (c), (d), (e), and (f), as follows:

(b) Makes a nonsubstantive change to this subsection.

(c) Authorizes the corporation, before the corporation's determination of how to proceed on the allegations under Subsection (a) (relating to requiring that a determination of how to proceed on allegations relating to a derivative proceeding be made by an affirmative vote of certain majorities), to petition the court in which the derivative proceeding has been instituted, or a court having proper jurisdiction if no derivative proceeding has been

instituted, to request a determination as to whether the directors identified or appointed under Subsection (a)(1) (relating to requiring that the determination be made by all independent and disinterested directors) or (2) (relating to requiring that the determination be made by a committee consisting of one or more independent and disinterested directors) are independent and disinterested with respect to the allegations made in the demand.

(d) Requires the corporation, for purposes of Subsection (c), if a derivative proceeding was not instituted, to promptly deliver a copy of the petition to the shareholder making the demand who will have the right, if promptly exercised, to challenge the petition before the court makes its determination.

(e) Requires the court, after hearing and reviewing the evidence presented, to make its determination as to whether the directors are independent and disinterested.

(f) Requires that a court's determination that the directors or individuals are independent and disinterested under this section be dispositive in the absence of discovery of facts, not presented to the court, constituting evidence sufficient to prove that one or more of those directors or individuals are not independent and disinterested.

SECTION 14. Amends Section 21.561, Business Organizations Code, by adding Subsection (c) to provide that, for purposes of Subsection (b) (relating to authorizing the court to order certain actions on termination of a derivative proceeding), a substantial benefit to the corporation does not include additional or amended disclosures made to the shareholders, regardless of materiality.

SECTION 15. Amends Section 21.562(a), Business Organizations Code, as follows:

(a) Provides that, in a derivative proceeding brought in the right of a foreign corporation, the matters covered by this subchapter are governed by the laws of the jurisdiction of formation of the foreign corporation, except for certain sections, which with respect to foreign corporations are procedural provisions and do not relate to the internal affairs of the foreign corporation, unless applying the laws of the jurisdiction of formation of the foreign corporation requires otherwise with respect to Section 21.555 (Stay of Proceeding).

SECTION 16. (a) Makes application of Section 4.051, Business Organizations Code, as amended by this Act, prospective.

(b) Makes application of Sections 21.552(a) and 21.561, Business Organizations Code, as amended by this Act, prospective.

SECTION 17. Effective date: upon passage or September 1, 2025.