

By: Meyer

H.B. No. 15

A BILL TO BE ENTITLED

AN ACT

relating to business entities.

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

SECTION 1. Section 1.002(55-a), Business Organizations Code, is amended to read as follows:

(55-a) "National securities exchange" means:

(A) an exchange registered as a national securities exchange under Section 6, Securities Exchange Act of 1934 (15 U.S.C. Section 78f); or

(B) a stock exchange that:

(i) has its principal office in this state;

and

(ii) has received approval by the securities commissioner under Subchapter C, Chapter 4005, Government Code.

SECTION 2. Subchapter B, Chapter 1, Business Organizations Code, is amended by adding Section 1.056 to read as follows:

Sec. 1.056. LAWS GOVERNING FORMATION, INTERNAL AFFAIRS, AND GOVERNANCE OF DOMESTIC ENTITY. (a) The plain meaning of the text of this code may not be supplanted, contravened, or modified by the laws or judicial decisions of any other state.

(b) The managerial officials of a domestic entity, in exercising their powers with respect to the domestic entity, may consider the laws and judicial decisions of other states and the

1 practices observed by entities formed in those other states. The
2 failure or refusal of a managerial official to consider, or to
3 conform the exercise of the managerial official's powers to, the
4 laws, judicial decisions, or practices of another state does not
5 constitute or imply a breach of this code or of any duty existing
6 under the laws of this state.

7 SECTION 3. Section 2.115(b), Business Organizations Code,
8 is amended to read as follows:

9 (b) The governing documents of a domestic entity [~~may~~
10 ~~require~~], consistent with applicable state and federal
11 jurisdictional requirements, may require:

12 (1) that any internal entity claims shall be brought
13 only in a court in this state; and

14 (2) that one or more courts in this state having
15 jurisdiction shall serve as the exclusive forum and venue for any
16 internal entity claims.

17 SECTION 4. Subchapter B, Chapter 2, Business Organizations
18 Code, is amended by adding Section 2.116 to read as follows:

19 Sec. 2.116. WAIVER OF TRIAL BY JURY. (a) In this section,
20 "internal entity claim" has the meaning assigned by Section 2.115.

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

26 (c) A waiver of jury trial in the governing documents of a
27 domestic entity shall be a knowing and informed waiver of a person

1 who:

2 (1) voted for or affirmatively ratified the governing
3 document containing the waiver;

4 (2) acquired an equity security of the domestic entity
5 at a time at which the waiver was included in the governing
6 documents; or

7 (3) is otherwise shown by evidence satisfactory to an
8 appropriate court to have knowingly and informedly consented or
9 acquiesced to the waiver.

10 SECTION 5. Section 4.051, Business Organizations Code, is
11 amended to read as follows:

12 Sec. 4.051. GENERAL RULE. (a) A filing instrument
13 submitted to the secretary of state takes effect on filing, except
14 as permitted by Section 4.052 or as provided by the provisions of
15 this code that apply to the entity making the filing or other law.

16 (b) Subject to Subsection (c), a revised filing instrument,
17 curing the deficiencies in the initial rejected filing instrument
18 identified by the secretary of state, is considered filed as of the
19 date of the delivery to the secretary of state of the initial
20 rejected filing instrument and takes effect as specified in this
21 subchapter if the revised filing instrument:

22 (1) is delivered to the secretary of state not later
23 than the 10th business day following the date on which the notice of
24 rejection is mailed by the secretary of state;

25 (2) is found to be acceptable by the secretary of
26 state; and

27 (3) is the first revised filing instrument.

1 (c) Subsection (b) applies to a filing instrument that
2 creates or forms a new domestic entity or amends the name of an
3 existing domestic entity only if:

4 (1) the name of the new domestic entity or the amended
5 name of the existing domestic entity, as applicable, was reserved
6 under Subchapter C, Chapter 5, or was registered under Subchapter
7 D, Chapter 5, with the secretary of state by or on behalf of the
8 filer on or before the date the initial rejected filing instrument
9 is delivered to the secretary of state; and

10 (2) the name reservation or registration remains in
11 effect at least until the revised filing instrument delivered to
12 the secretary of state under Subsection (b) takes effect.

13 SECTION 6. Section 21.218, Business Organizations Code, is
14 amended by amending Subsection (b) and adding Subsections (b-2) and
15 (b-3) to read as follows:

16 (b) On written demand stating a proper purpose, a holder of
17 shares of a corporation for at least six months immediately
18 preceding the holder's demand, or a holder of at least five percent
19 of all of the outstanding shares of a corporation, is entitled to
20 examine and copy, at a reasonable time at the corporation's
21 principal place of business or other location approved by the
22 corporation and the holder, the corporation's books, records of
23 account, minutes, share transfer records, and other records,
24 whether in written or other tangible form, if the records are
25 ~~[record is]~~ reasonably related to and appropriate to examine and
26 copy for that proper purpose. For purposes of this subsection, the
27 records of the corporation shall not include e-mails, text messages

1 or similar electronic communications, or information from social
2 media accounts unless the particular e-mail, communication, or
3 social media information affects an action by the corporation.

4 (b-2) This subsection applies only to a corporation that has
5 a class or series of voting shares listed on a national securities
6 exchange or that has made an affirmative election to be governed by
7 Section 21.419. For purposes of Subsection (b), a written demand
8 shall not be for a proper purpose if the corporation reasonably
9 determines that the demand is in connection with:

10 (1) an active or pending derivative proceeding in the
11 right of the corporation under Subchapter L that is or is expected
12 to be instituted or maintained by the holder or the holder's
13 affiliate; or

14 (2) an active or pending civil lawsuit to which the
15 corporation, or its affiliate, and the holder, or the holder's
16 affiliate, are or are expected to be adversarial named parties.

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

18 (1) the holder or the holder's affiliate to obtain
19 discovery of records from the corporation in:

20 (A) a civil lawsuit described by Subsection
21 (b-2)(2); or

22 (B) the derivative proceeding subject to Section
23 21.556; or

24 (2) the holder to obtain a court order to compel
25 production of records of the corporation for examination by the
26 holder as provided by Subsection (c).

27 SECTION 7. Section 21.416, Business Organizations Code, is

1 amended by adding Subsection (g) to read as follows:

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

12 SECTION 8. Subchapter I, Chapter 21, Business Organizations
13 Code, is amended by adding Section 21.4161 to read as follows:

14 Sec. 21.4161. DETERMINATION OF INDEPENDENT AND
15 DISINTERESTED DIRECTORS. (a) A corporation that adopts a
16 resolution to authorize the formation of a committee of independent
17 and disinterested directors under Section 21.416(g) may petition a
18 court having appropriate jurisdiction to hold an evidentiary
19 hearing to determine whether the directors appointed to the
20 committee are independent and disinterested with respect to any
21 transactions involving the corporation or any of its subsidiaries
22 and a controlling shareholder, director, or officer.

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

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

7 (d) Promptly after receiving a petition, and not earlier
8 than the 10th day after the date the notice required under
9 Subsection (b) is given, the court shall hold a preliminary hearing
10 to determine the appropriate legal counsel to represent the
11 corporation and its shareholders, other than the controlling
12 shareholder, director, or officer involved in the transaction,
13 whether or not the same as the legal counsel identified in the
14 petition. Any other legal counsel representing a shareholder,
15 other than the controlling shareholder, director, or officer
16 involved in the transaction, may participate in the hearing to
17 request designation by the court as the appropriate legal counsel.

18 (e) After the court determines the appropriate legal
19 counsel under Subsection (d), the court shall promptly hold an
20 evidentiary hearing as to whether the directors on the committee
21 are independent and disinterested with respect to transactions
22 involving the corporation or any of its subsidiaries and a
23 controlling shareholder, director, or officer. The appropriate
24 legal counsel determined under Subsection (d) and legal counsel for
25 the corporation may participate in the hearing. After hearing and
26 reviewing the evidence presented, the court shall make its
27 determination as to whether the directors on the committee are

1 independent and disinterested.

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

9 SECTION 9. Section 21.418, Business Organizations Code, is
10 amended by adding Subsection (f) to read as follows:

11 (f) This subsection applies only to a corporation that has a
12 class or series of voting shares listed on a national securities
13 exchange or has made an affirmative election to be governed by
14 Section 21.419. Regardless of whether the conditions of Subsection
15 (b) are satisfied, neither the corporation nor any of the
16 corporation's shareholders will have a cause of action against any
17 director or officer for breach of duty with respect to the making,
18 authorization, or performance of the contract or transaction
19 because the director or officer had the relationship or interest
20 described by Subsection (a) or took any of the actions authorized by
21 Subsection (d) unless the cause of action is permitted by Section
22 21.419.

23 SECTION 10. Subchapter I, Chapter 21, Business
24 Organizations Code, is amended by adding Section 21.419 to read as
25 follows:

26 Sec. 21.419. PRESUMPTIONS FOR DIRECTORS AND OFFICERS OF
27 CERTAIN CORPORATIONS. (a) This section applies only to a

1 corporation that has:

2 (1) a class or series of voting shares listed on a
3 national securities exchange; or

4 (2) included in its governing documents a statement
5 affirmatively electing to be governed by this section.

6 (b) In taking or declining to take any action on any matters
7 of a corporation's business, a director or officer is presumed to
8 act:

9 (1) in good faith;

10 (2) on an informed basis;

11 (3) in furtherance of the interests of the
12 corporation; and

13 (4) in obedience to the law and the corporation's
14 governing documents.

15 (c) Neither a corporation nor any of the corporation's
16 shareholders has a cause of action against a director or officer of
17 the corporation as a result of any act or omission in the person's
18 capacity as a director or officer unless:

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

21 (2) it is proven by the claimant that:

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

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

27 (d) The presumptions established by this section:

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

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

9 (e) In alleging fraud, intentional misconduct, an ultra
10 vires act, or a knowing violation of the law under Subsection
11 (c)(2)(B), a party must state with particularity the circumstances
12 constituting the fraud, intentional misconduct, ultra vires act, or
13 knowing violation of law.

14 (f) This section does not limit the effect of a provision
15 contained in the certificate of formation or similar instrument of
16 a corporation limiting monetary liability of a governing person as
17 permitted by Section 7.001.

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

20 (2) "Shareholder" includes:

21 (A) a shareholder as defined by Section 1.002;

22 (B) [~~or~~] a beneficial owner whose shares are held
23 in a voting trust or by a nominee on the beneficial owner's behalf;
24 or

25 (C) two or more shareholders acting in concert
26 under an informal or formal agreement or understanding with respect
27 to a derivative proceeding.

1 SECTION 12. Section 21.552(a), Business Organizations
2 Code, is amended to read as follows:

3 (a) Subject to Subsection (b), a shareholder may not
4 institute or maintain a derivative proceeding unless:

5 (1) the shareholder:

6 (A) was a shareholder of the corporation at the
7 time of the act or omission complained of; or

8 (B) became a shareholder by operation of law
9 originating from a person that was a shareholder at the time of the
10 act or omission complained of; ~~and~~

11 (2) the shareholder fairly and adequately represents
12 the interests of the corporation in enforcing the right of the
13 corporation; and

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

24 SECTION 13. Section 21.554, Business Organizations Code, is
25 amended by amending Subsection (b) and adding Subsections (c), (d),
26 (e), and (f) to read as follows:

27 (b) The court shall appoint a panel under Subsection (a)(3)

1 if the court determines [~~finds~~] that the individuals recommended by
2 the corporation are independent and disinterested and are otherwise
3 qualified with respect to expertise, experience, independent
4 judgment, and other factors considered appropriate by the court
5 under the circumstances to make the determinations. An individual
6 appointed by the court to a panel under this section may not be held
7 liable to the corporation or the corporation's shareholders for an
8 action taken or omission made by the individual in that capacity,
9 except for an act or omission constituting fraud or wilful
10 misconduct.

11 (c) Before the corporation's determination of how to
12 proceed on the allegations under Subsection (a), the corporation
13 may petition the court in which the derivative proceeding has been
14 instituted, or a court having proper jurisdiction if no derivative
15 proceeding has been instituted, to request a determination as to
16 whether the directors identified or appointed under Subsection
17 (a)(1) or (2) are independent and disinterested with respect to the
18 allegations made in the demand.

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

24 (e) After hearing and reviewing the evidence presented, the
25 court shall make its determination as to whether the directors are
26 independent and disinterested.

27 (f) A court's determination that the directors or

1 individuals are independent and disinterested under this section
2 shall be dispositive in the absence of discovery of facts, not
3 presented to the court, constituting evidence sufficient to prove
4 that one or more of those directors or individuals are not
5 independent and disinterested.

6 SECTION 14. Section 21.561, Business Organizations Code, is
7 amended by adding Subsection (c) to read as follows:

8 (c) For purposes of Subsection (b), a substantial benefit to
9 the corporation does not include additional or amended disclosures
10 made to the shareholders, regardless of materiality.

11 SECTION 15. Section 21.562(a), Business Organizations
12 Code, is amended to read as follows:

13 (a) In a derivative proceeding brought in the right of a
14 foreign corporation, the matters covered by this subchapter are
15 governed by the laws of the jurisdiction of formation of the foreign
16 corporation, except for Sections 21.555, 21.560, and 21.561, which
17 with respect to foreign corporations are procedural provisions and
18 do not relate to the internal affairs of the foreign corporation,
19 unless applying the laws of the jurisdiction of formation of the
20 foreign corporation requires otherwise with respect to Section
21 21.555.

22 SECTION 16. (a) Section 4.051, Business Organizations
23 Code, as amended by this Act, applies only to a filing instrument
24 submitted to the secretary of state on or after the effective date
25 of this Act. A filing instrument submitted to the secretary of
26 state before the effective date of this Act is governed by the law
27 in effect on the date the filing instrument was submitted, and the

1 former law is continued in effect for that purpose.

2 (b) Sections 21.552(a) and 21.561, Business Organizations
3 Code, as amended by this Act, apply only to a derivative proceeding
4 instituted on or after the effective date of this Act. A derivative
5 proceeding instituted before the effective date of this Act is
6 governed by the law in effect on the date the proceeding was
7 instituted, and the former law is continued in effect for that
8 purpose.

9 SECTION 17. This Act takes effect immediately if it
10 receives a vote of two-thirds of all the members elected to each
11 house, as provided by Section 39, Article III, Texas Constitution.
12 If this Act does not receive the vote necessary for immediate
13 effect, this Act takes effect September 1, 2025.