

By: Hughes, et al.

S.B. No. 29

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 a waiver of the right to a jury trial concerning any internal entity  
23 claim.

24 (c) In a lawsuit asserting an internal entity claim, a  
25 waiver of the right to a jury trial contained in the governing  
26 documents of a domestic entity is enforceable, regardless of  
27 whether the applicable governing document is signed by the members,

1 owners, officers, or governing persons.

2 (d) A person asserting an internal entity claim is  
3 considered to have been informed of the waiver of the right to a  
4 jury trial contained in the governing documents and to have  
5 knowingly waived the right in the action if the person:

6 (1) voted for or affirmatively ratified the governing  
7 document containing the waiver; or

8 (2) acquired an equity security of the domestic entity  
9 or any predecessor to the entity at, or continued to hold an equity  
10 security of a domestic entity that has one or more classes of equity  
11 securities listed on a national securities exchange after, a time  
12 at which the waiver was included in the governing documents.

13 (e) Nothing in this section prevents an entity from showing  
14 that a person asserting an internal entity claim knowingly and  
15 informedly waived the right to a jury trial by any evidence  
16 satisfactory to the court having jurisdiction, including by the  
17 person's consent or acquiescence to the waiver contained in the  
18 governing documents.

19 SECTION 5. Section 21.218, Business Organizations Code, is  
20 amended by amending Subsection (b) and adding Subsections (b-2) and  
21 (b-3) to read as follows:

22 (b) On written demand stating a proper purpose, a holder of  
23 shares of a corporation for at least six months immediately  
24 preceding the holder's demand, or a holder of at least five percent  
25 of all of the outstanding shares of a corporation, is entitled to  
26 examine and copy, at a reasonable time at the corporation's  
27 principal place of business or other location approved by the

1 corporation and the holder, the corporation's books, records of  
2 account, minutes, share transfer records, and other records,  
3 whether in written or other tangible form, if the records are  
4 ~~[record is]~~ reasonably related to and appropriate to examine and  
5 copy for that proper purpose. For purposes of this subsection, the  
6 records of the corporation shall not include e-mails, text messages  
7 or similar electronic communications, or information from social  
8 media accounts unless the particular e-mail, communication, or  
9 social media information effectuates an action by the corporation.

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

16 (1) an active or pending derivative proceeding in the  
17 right of the corporation under Subchapter L that is or is expected  
18 to be instituted or maintained by the holder or the holder's  
19 affiliate; or

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

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

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

26 (A) a civil lawsuit described by Subsection  
27 (b-2)(2); or

1                   (B) the derivative proceeding subject to Section  
2 21.556; or

3                   (2) the holder to obtain a court order to compel  
4 production of records of the corporation for examination by the  
5 holder as provided by Subsection (c).

6           SECTION 6. Section 21.364, Business Organizations Code, is  
7 amended by amending Subsections (d) and (e) and adding Subsection  
8 (e-1) to read as follows:

9           (d) Unless an amendment to the certificate of formation is  
10 undertaken by the board of directors under Section 21.155, separate  
11 voting by a class or series of shares of a corporation is required  
12 for approval of an amendment to the certificate of formation that  
13 would result in:

14                   (1) the increase or decrease of the aggregate number  
15 of authorized shares of the class or series, except that the number  
16 of authorized shares of any class or series may be increased or  
17 decreased, but not below the number of shares of the class or series  
18 then outstanding, by the affirmative vote of the holders of a  
19 majority of the stock of the corporation entitled to vote, as  
20 provided by:

21                               (A) the certificate of formation; or

22                               (B) an amendment of the certificate of formation

23 that:

24                                       (i) authorized the shares of the class or  
25 series;

26                                       (ii) was adopted before the issuance of any  
27 shares of the class or series; or

1                    (iii) was authorized by one or more  
2 resolutions adopted by the affirmative vote of the holders of a  
3 majority of the shares of the class or series;

4                    (2) the increase or decrease of the par value of the  
5 shares of the class or series, including changing shares with par  
6 value into shares without par value or changing shares without par  
7 value into shares with par value;

8                    (3) effecting an exchange, reclassification, or  
9 cancellation of all or part of the shares of the class or series;

10                   (4) effecting an exchange or creating a right of  
11 exchange of all or part of the shares of another class or series  
12 into the shares of the class or series;

13                   (5) the change of the designations, preferences,  
14 limitations, or relative rights of the shares of the class or  
15 series;

16                   (6) the change of the shares of the class or series,  
17 with or without par value, into the same or a different number of  
18 shares, with or without par value, of the same class or series or  
19 another class or series;

20                   (7) the creation of a new class or series of shares  
21 with rights and preferences equal, prior, or superior to the shares  
22 of the class or series;

23                   (8) increasing the rights and preferences of a class  
24 or series with rights and preferences equal, prior, or superior to  
25 the shares of the class or series;

26                   (9) increasing the rights and preferences of a class  
27 or series with rights or preferences later or inferior to the shares

1 of the class or series in such a manner that the rights or  
2 preferences will be equal, prior, or superior to the shares of the  
3 class or series;

4 (10) dividing the shares of the class into series and  
5 setting and determining the designation of the series and the  
6 variations in the relative rights and preferences between the  
7 shares of the series;

8 (11) the limitation or denial of existing preemptive  
9 rights or cumulative voting rights of the shares of the class or  
10 series;

11 (12) canceling or otherwise affecting the dividends on  
12 the shares of the class or series that have accrued but have not  
13 been declared; or

14 (13) the inclusion or deletion from the certificate of  
15 formation of provisions required or permitted to be included in the  
16 certificate of formation of a close corporation under Subchapter O.

17 (e) Except as provided by Subsection (e-1), the [The] vote  
18 required under Subsection (d) by a class or series of shares of a  
19 corporation is required notwithstanding that shares of that class  
20 or series do not otherwise have a right to vote under the  
21 certificate of formation.

22 (e-1) If the certificate of formation provides that any vote  
23 required by Subsection (d) shall be as a single class and without  
24 separate voting by class or series, then shares of a class or series  
25 that do not otherwise have a right to vote under the certificate of  
26 formation shall be treated as having no votes in the vote as a  
27 single class.

SECTION 7. Section 21.365(b), Business Organizations Code, is amended to read as follows:

(b) With respect to a matter for which the affirmative vote of the holders of a specified portion of the shares of a class or series is required by this code, the certificate of formation may provide that:

(1) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares of that class or series is required for action of the holders of shares of that class or series on that matter; and

(2) notwithstanding any other provision of this code, all classes or series of stock shall only be entitled to vote as a single class or series, and separate voting by class or series is not required, for the purpose of approving any matter, including in connection with any fundamental action or fundamental business transaction.

SECTION 8. Section 21.416, Business Organizations Code, is amended by adding Subsection (g) to read as follows:

(g) 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. The board of directors may 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



1 shareholder, director, or officer.

2 SECTION 9. Subchapter I, Chapter 21, Business Organizations  
3 Code, is amended by adding Section 21.4161 to read as follows:

4 Sec. 21.4161. DETERMINATION OF INDEPENDENT AND  
5 DISINTERESTED DIRECTORS. (a) A corporation that adopts a  
6 resolution to authorize the formation of a committee of independent  
7 and disinterested directors under Section 21.416(g) may petition a  
8 court having jurisdiction to hold an evidentiary hearing to  
9 determine whether the directors appointed to the committee are  
10 independent and disinterested with respect to any transactions  
11 involving the corporation or any of its subsidiaries and a  
12 controlling shareholder, director, or officer.

13 (b) A petition under Subsection (a) shall be filed in the  
14 business court unless the corporation's principal place of business  
15 in this state is located in a county not contained within an  
16 operating division of the business court, in which case the  
17 petition may be filed in a district court in the county in which the  
18 corporation's principal place of business in this state is located.

19 (c) In the petition, the corporation shall designate legal  
20 counsel to act on behalf of the corporation and its shareholders,  
21 other than the controlling shareholder, director, or officer  
22 involved in the transaction.

23 (d) The corporation shall give notice to the corporation's  
24 shareholders that:

25 (1) a petition has been filed under this section;

26 (2) identifies the court in which the petition is  
27 filed and provides the case number for the proceeding;

1           (3) identifies counsel designated to act on behalf of  
2 the corporation and its shareholders, other than the controlling  
3 shareholder, director, or officer involved in the transaction; and  
4           (4) the shareholders, other than the controlling  
5 shareholder, director, or officer involved in the transaction, have  
6 the right to participate in the proceeding in person or through  
7 counsel.

8           (e) If the corporation has a class of its shares listed on a  
9 national securities exchange, the notice required by Subsection (d)  
10 may be provided through the filing of a current report with the  
11 United States Securities and Exchange Commission in accordance with  
12 the requirements of the Securities Exchange Act of 1934 (15 U.S.C.  
13 Section 78a et seq.), and any rules promulgated under that Act.

14           (f) Not earlier than the 10th day after the date the notice  
15 required under Subsection (d) is given, the court shall hold a  
16 preliminary hearing to determine the appropriate legal counsel to  
17 represent the corporation and its shareholders, other than the  
18 controlling shareholder, director, or officer involved in the  
19 transaction, whether or not the same as the legal counsel  
20 identified in the petition. Any other legal counsel representing a  
21 shareholder, other than the controlling shareholder, director, or  
22 officer involved in the transaction, may participate in the hearing  
23 to:

24           (1) object to counsel designated by the corporation in  
25 the petition on the ground that the designated counsel is  
26 insufficiently independent and disinterested; or

27           (2) request designation by the court as the

1 appropriate legal counsel.

2 (g) After the court determines the appropriate legal  
3 counsel under Subsection (f), the court shall promptly hold an  
4 evidentiary hearing as to whether the directors on the committee  
5 are independent and disinterested with respect to transactions  
6 involving the corporation or any of its subsidiaries and a  
7 controlling shareholder, director, or officer. The appropriate  
8 legal counsel determined under Subsection (f) and legal counsel for  
9 the corporation may participate in the hearing. After hearing and  
10 reviewing the evidence presented, the court shall make its  
11 determination as to whether the directors on the committee are  
12 independent and disinterested.

13 (h) The court's determination that the directors are  
14 independent and disinterested under Subsection (g) shall be  
15 dispositive in the absence of facts, not presented to the court,  
16 constituting evidence sufficient to prove that one or more of those  
17 directors is not independent and disinterested with respect to a  
18 particular transaction involving the corporation or any of its  
19 subsidiaries and a controlling shareholder, director, or officer.

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

22 (f) This subsection applies only to a corporation that has a  
23 class or series of voting shares listed on a national securities  
24 exchange or has made an affirmative election to be governed by  
25 Section 21.419. Regardless of whether the conditions of Subsection  
26 (b) are satisfied, neither the corporation nor any of the  
27 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) or took any of the actions authorized by Subsection (d) unless the cause of action is permitted by Section 21.419.

SECTION 11. Subchapter I, Chapter 21, Business Organizations Code, is amended by adding Section 21.419 to read as follows:

Sec. 21.419. PRESUMPTIONS FOR DIRECTORS AND OFFICERS OF CERTAIN CORPORATIONS. (a) This section applies only to a corporation that has:

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

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

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

(1) in good faith;

(2) on an informed basis;

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

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

(c) Neither a corporation nor any of the corporation's shareholders has a cause of action against a director or officer of

1 the corporation as a result of any act or omission in the person's  
2 capacity as a director or officer unless:

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

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

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

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

11 (d) The presumptions established by this section:

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

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

20 (e) In alleging fraud, intentional misconduct, an ultra  
21 vires act, or a knowing violation of the law under Subsection  
22 (c)(2)(B), a party must state with particularity the circumstances  
23 constituting the fraud, intentional misconduct, ultra vires act, or  
24 knowing violation of law.

25 (f) This section does not limit the effectiveness or  
26 applicability of a provision contained in the certificate of  
27 formation or similar instrument of a corporation limiting monetary

1 liability of a governing person.

2 SECTION 12. Section 21.551(2), Business Organizations  
3 Code, is amended to read as follows:

4 (2) "Shareholder" includes:

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

6 (B) ~~or~~ a beneficial owner whose shares are held  
7 in a voting trust or by a nominee on the beneficial owner's behalf;  
8 or

9 (C) two or more shareholders acting in concert  
10 under an informal or formal agreement or understanding with respect  
11 to a derivative proceeding.

12 SECTION 13. Section 21.552(a), Business Organizations  
13 Code, is amended to read as follows:

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

16 (1) the shareholder:

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

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

22 (2) the shareholder fairly and adequately represents  
23 the interests of the corporation in enforcing the right of the  
24 corporation; and

25 (3) for a corporation with common shares listed on a  
26 national securities exchange or a corporation that has made an  
27 affirmative election to be governed by Section 21.419 and has 500 or

more shareholders, 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 14. Section 21.554, Business Organizations Code, is amended by amending Subsection (b) and adding Subsections (c), (d), (e), (f), (g), (h), and (i) to read as follows:

(b) The court shall appoint a panel under Subsection (a)(3) if the court finds that the individuals recommended by the corporation are independent and disinterested and are otherwise qualified with respect to expertise, experience, independent judgment, and other factors considered appropriate by the court under the circumstances to make the determinations. An individual appointed by the court to a panel under this section may be a director. An individual appointed by the court to a panel under this section may not be held liable to the corporation or the corporation's shareholders for an action taken or omission made by the individual in that capacity, except for an act or omission constituting fraud or wilful misconduct.

(c) Before the corporation's determination of how to proceed on the allegations under Subsection (a), the corporation may petition the court having jurisdiction to make a finding as to whether the directors identified or appointed under Subsection

1 (a)(1) or (2) are independent and disinterested with respect to the  
2 allegations made in the demand.

3 (d) If a derivative proceeding has been instituted, a  
4 petition under Subsection (c) shall be filed in the court in which  
5 the proceeding was instituted. If no derivative proceeding has  
6 been instituted, a petition under Subsection (c) shall be filed in  
7 the business court unless the corporation's principal place of  
8 business in this state is located in a county not contained within  
9 an operating division of the business court, in which case the  
10 petition may be filed in a district court in the county in which the  
11 corporation's principal place of business in this state is located.

12 (e) The corporation must serve a copy of the petition on the  
13 shareholder filing the derivative proceeding or making the demand.

14 (f) Unless extended for good cause, a court in which a  
15 petition under Subsection (c) is filed must conduct an evidentiary  
16 hearing on the petition on or before the 45th day after the date the  
17 petition is filed.

18 (g) A shareholder on whom a petition is served under  
19 Subsection (e) is entitled to be served with all notices and papers  
20 filed in the action and to intervene in the action to challenge the  
21 petition. Unless good cause is shown, a shareholder who is not  
22 already a party to the action must intervene not later than the  
23 seventh day before the date the petition is heard by the court.

24 (h) Unless extended for good cause, not later than the 75th  
25 day after the date the petition is filed, the court shall sign an  
26 order stating whether the directors are independent and  
27 disinterested.



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

7        SECTION 15. Section 21.561, Business Organizations Code, is  
8 amended by adding Subsection (c) to read as follows:

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

12        SECTION 16. Section 21.562(a), Business Organizations  
13 Code, is amended to read as follows:

14        (a) In a derivative proceeding brought in the right of a  
15 foreign corporation, the matters covered by this subchapter are  
16 governed by the laws of the jurisdiction of formation of the foreign  
17 corporation, except for Sections 21.555, 21.560, and 21.561, which  
18 with respect to foreign corporations are procedural provisions and  
19 do not relate to the internal affairs of the foreign corporation,  
20 unless applying the laws of the jurisdiction of formation of the  
21 foreign corporation requires otherwise with respect to Section  
22 21.555.

23        SECTION 17. Subchapter F, Chapter 101, Business  
24 Organizations Code, is amended by adding Section 101.256 to read as  
25 follows:

26        Sec. 101.256. PRESUMPTIONS FOR GOVERNING PERSONS OF CERTAIN  
27 LIMITED LIABILITY COMPANIES. (a) This section applies only to a

limited liability company that has:

(1) a class or series of voting membership interests listed on a national securities exchange; or

(2) included in its company agreement a statement affirmatively electing to be governed by this section.

(b) In taking or declining to take any action on any matters of a limited liability company's business, a governing person or officer, and each affiliate or associate of a governing person or officer, is presumed to act in good faith and in compliance with:

(1) the person's or officer's duties required under the governing documents of the limited liability company or common law; and

(2) the governing documents of the limited liability company.

(c) Neither a limited liability company nor any of the company's members has a cause of action against a governing person or officer or any affiliate or associate of a governing person or officer of the company as a result of any act or omission in the person's capacity as a governing person or officer of the company 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 act or omission of the governing person or officer or affiliate or associate of a governing person or officer constituted a breach of one or more of the person's duties as a governing person or officer to the extent the duty has not been

1 modified or eliminated through an affirmative election contained in  
2 the governing documents as permitted by this chapter; and

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

5 (d) The presumptions established by this section:

6 (1) are in addition to any legal presumption arising  
7 under common law or this code, in favor of any governing person or  
8 officer to which this section applies; and

9 (2) do not abrogate, preempt, or lessen any other  
10 defense, presumption, immunity, or privilege under other  
11 constitutional, statutory, case, or common law or rule provisions,  
12 in favor of any governing person or officer of any domestic entity,  
13 including any limited liability company to which this section does  
14 not apply.

15 (e) In alleging fraud, intentional misconduct, an ultra  
16 vires act, or a knowing violation of the law under Subsection  
17 (c)(2)(B), a party must state with particularity the circumstances  
18 constituting the fraud, intentional misconduct, ultra vires act, or  
19 knowing violation of law.

20 (f) This section does not limit the effectiveness or  
21 applicability of a provision contained in the certificate of  
22 formation or company agreement or similar instrument of a limited  
23 liability company limiting monetary liability of a governing person  
24 or officer.

25 SECTION 18. Section 101.401, Business Organizations Code,  
26 is amended to read as follows:

27 Sec. 101.401. EXPANSION, [OR] RESTRICTION, OR ELIMINATION

1 OF DUTIES AND LIABILITIES. The company agreement of a limited  
2 liability company may expand, ~~[or]~~ restrict, or eliminate any  
3 duties, including fiduciary duties, and related liabilities that a  
4 member, manager, officer, or other person has to the company or to a  
5 member or manager of the company.

6 SECTION 19. Section 101.451(3), Business Organizations  
7 Code, is amended to read as follows:

8 (3) "Member" includes:

9 (A) a person who is a member or is an assignee of  
10 a membership interest or a person who beneficially owns a  
11 membership interest through a voting trust or a nominee on the  
12 person's behalf; and

13 (B) two or more members described by Paragraph  
14 (A) acting in concert under an informal or formal agreement or  
15 understanding with respect to a derivative proceeding.

16 SECTION 20. Section 101.452(a), Business Organizations  
17 Code, is amended to read as follows:

18 (a) Subject to Subsection (b), a member may not institute or  
19 maintain a derivative proceeding unless:

20 (1) the member:

21 (A) was a member of the limited liability company  
22 at the time of the act or omission complained of; or

23 (B) became a member by operation of law  
24 originating from a person that was a member at the time of the act or  
25 omission complained of; ~~[and]~~

26 (2) the member fairly and adequately represents the  
27 interests of the limited liability company in enforcing the right

1 of the limited liability company; and

2 (3) for a limited liability company with membership  
3 interests listed on a national securities exchange or that has made  
4 an affirmative election to be governed by Section 101.256 and has  
5 500 or more members, at the time the derivative proceeding is  
6 instituted, the member beneficially owns a number of the membership  
7 interests sufficient to meet the required ownership threshold to  
8 institute a derivative proceeding in the right of the limited  
9 liability company identified in the limited liability company's  
10 certificate of formation or company agreement, provided that the  
11 required ownership threshold does not exceed three percent of the  
12 outstanding membership interests of the limited liability company.

13 SECTION 21. Section 101.461, Business Organizations Code,  
14 is amended by adding Subsection (c) to read as follows:

15 (c) For purposes of Subsection (b), a substantial benefit to  
16 the limited liability company does not include additional or  
17 amended disclosures made to the members, regardless of materiality.

18 SECTION 22. Section 101.502, Business Organizations Code,  
19 is amended by amending Subsection (a) and adding Subsections (a-1),  
20 (a-2), and (a-3) to read as follows:

21 (a) Unless otherwise provided by the governing documents of  
22 a limited liability company, a [A] member of a limited liability  
23 company or an assignee of a membership interest in a limited  
24 liability company, on written demand stating a proper purpose, is  
25 entitled to examine and copy at a reasonable time at the limited  
26 liability company's principal office identified under Section  
27 101.501(c) or another location approved by the limited liability

1 company and the member or assignee, any records of the limited  
2 liability company, whether in written or other tangible form, which  
3 are reasonably related to and appropriate to examine and copy for  
4 that proper purpose. For purposes of this subsection, the records  
5 of the limited liability company shall not include e-mails, text  
6 messages or similar electronic communications, or information from  
7 social media accounts unless the particular e-mail, communication,  
8 or social media information effectuates an action by the limited  
9 liability company.

10 (a-1) This subsection applies only to a limited liability  
11 company that has a class or series of voting membership interests  
12 listed on a national securities exchange or that has made an  
13 affirmative election to be governed by Section 101.256. For  
14 purposes of Subsection (a), a written demand may be made only by a  
15 member or an assignee that has held the membership interest for at  
16 least six months immediately preceding the member's or assignee's  
17 demand.

18 (a-2) This subsection applies only to a limited liability  
19 company that has a class or series of voting membership interests  
20 listed on a national securities exchange or that has made an  
21 affirmative election to be governed by Section 101.256 or Section  
22 101.401. For purposes of Subsection (a), a written demand shall not  
23 be for a proper purpose if the limited liability company reasonably  
24 determines that the demand is in connection with:

25 (1) an active or pending derivative proceeding in the  
26 right of the limited liability company under Subchapter J that is or  
27 is expected to be instituted or maintained by the member or assignee

1 or the member's or assignee's affiliate; or

2 (2) an active or pending civil lawsuit to which the  
3 company, or its affiliate, and the member or assignee, or the  
4 member's or assignee's affiliate, are or are expected to be  
5 adversarial named parties.

6 (a-3) Subsection (a-2) does not impair any rights of the  
7 member or assignee or the member's or assignee's affiliate to obtain  
8 discovery of records from the limited liability company in:

9 (1) a civil lawsuit described by Subsection (a-2)(2);

10 or

11 (2) the derivative proceeding subject to Section  
12 [101.456](#).

13 SECTION 23. Section [152.002](#), Business Organizations Code,  
14 is amended by adding Subsection (e) to read as follows:

15 (e) This subsection applies only to a limited partnership  
16 that has a class or series of voting limited partnership interests  
17 listed on a national securities exchange or that has included in its  
18 governing documents a statement affirmatively electing to be  
19 governed by this subsection. Notwithstanding Subsection (b)(2),  
20 (3), or (4), a partnership agreement may eliminate any or all of the  
21 duty of loyalty under Section [152.205](#), the duty of care under  
22 Section [152.206](#), and the obligation of good faith under Section  
23 [152.204](#)(b), to the extent the governing documents of the  
24 partnership include a statement affirmatively electing to do so  
25 under this subsection.

26 SECTION 24. Subchapter [D](#), Chapter [153](#), Business  
27 Organizations Code, is amended by adding Section 153.163 to read as

1 follows:

2 Sec. 153.163. PRESUMPTIONS FOR GENERAL PARTNERS AND  
3 OFFICERS OF CERTAIN LIMITED PARTNERSHIPS. (a) This section  
4 applies only to a limited partnership that has:

5 (1) a class or series of voting limited partnership  
6 interests listed on a national securities exchange; or

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

9 (b) In taking or declining to take any action on any matters  
10 of a limited partnership's business, any general partner of the  
11 limited partnership, including any director, officer, member, or  
12 other affiliate of the general partner, is presumed to act in good  
13 faith and in compliance with:

14 (1) the person's duties required under this code,  
15 common law, and the partnership agreement of the partnership; and

16 (2) the partnership agreement of such limited  
17 partnership.

18 (c) Neither a limited partnership nor any of the limited  
19 partnership's partners has a cause of action against a general  
20 partner of the limited partnership, including any director,  
21 officer, member, or other affiliate of the general partner, as a  
22 result of any act or omission in the person's capacity as a general  
23 partner or as an officer or director of the general partner unless:

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

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

27 (A) the general partner's or any director,



officer, member, or other affiliate of the general partner's act or omission constituted a breach of one or more of the person's duties as a general partner, director, or officer to the extent the duty has not been modified or eliminated through an affirmative election contained in the governing documents as permitted by this chapter; and

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

(d) 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 general partner or member or managerial official of a general partner 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 limited partnership to which this section does not apply.

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

(f) This section does not limit the effectiveness or applicability of a provision contained in the certificate of formation or partnership agreement or similar instrument of a

1 partnership limiting monetary liability of a governing person.

2 SECTION 25. Section 153.401(2), Business Organizations  
3 Code, is amended to read as follows:

4 (2) "Limited partner" means:

5 (A) a person who is a limited partner or is an  
6 assignee of a partnership interest, including the partnership  
7 interest of a general partner; and

8 (B) two or more limited partners described by  
9 Paragraph (A) acting in concert under an informal or formal  
10 agreement or understanding with respect to a derivative proceeding.

11 SECTION 26. Section 153.402(a), Business Organizations  
12 Code, is amended to read as follows:

13 (a) Subject to Subsection (b), a limited partner may not  
14 institute or maintain a derivative proceeding unless:

15 (1) the limited partner:

16 (A) was a limited partner of the limited  
17 partnership at the time of the act or omission complained of; or

18 (B) became a limited partner by operation of law  
19 originating from a person that was a limited partner or general  
20 partner at the time of the act or omission complained of; ~~and~~

21 (2) the limited partner fairly and adequately  
22 represents the interests of the limited partnership in enforcing  
23 the right of the limited partnership; and

24 (3) for a limited partnership with limited partnership  
25 interests listed on a national securities exchange or that has made  
26 an affirmative election to be governed by Section 152.002(e) or  
27 Section 153.163 and has 500 or more limited partners, at the time

the derivative proceeding is instituted, the partner beneficially owns a number of limited partnership interests sufficient to meet the required ownership threshold to institute a derivative proceeding in the right of the limited partnership identified in the limited partnership's certificate of formation or partnership agreement, provided that the required ownership threshold does not exceed three percent of the outstanding limited partnership interests of the limited partnership.

SECTION 27. Section 153.411, Business Organizations Code, is amended by adding Subsection (c) to read as follows:

(c) For purposes of Subsection (b), a substantial benefit to the limited partnership does not include additional or amended disclosures made to the limited partners, regardless of materiality.

SECTION 28. Section 153.552, Business Organizations Code, is amended by amending Subsection (a) and adding Subsections (a-1) and (a-2) to read as follows:

(a) Unless otherwise provided by the governing documents of a limited partnership, on [On] written demand stating a proper purpose, a partner or an assignee of a partnership interest in a limited partnership is entitled 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. For purposes of this subsection, the records of the

limited partnership shall not include e-mails, text messages or similar electronic communications, or information from social media accounts unless the particular e-mail, communication, or social media information effectuates an action by the limited partnership.

(a-1) This subsection applies only to a limited partnership that has a class or series of voting limited partnership interests listed on a national securities exchange or that has made an affirmative election to be governed by Section 152.002(e) or 153.163. For purposes of Subsection (a), a written demand:

(1) may be made only by a limited partner or an assignee that has held the limited partnership interest for at least six months immediately preceding the limited partner's or assignee's demand; and

(2) shall not be for a proper purpose if the limited partnership reasonably determines that the demand is in connection with:

(A) an active or pending derivative proceeding in the right of the limited partnership under Subchapter I that is or is expected to be instituted or maintained by the limited partner or assignee or the limited partner's or assignee's affiliate; or

(B) an active or pending civil lawsuit to which the partnership, or its affiliate, and the limited partner or assignee, or the limited partner's or assignee's affiliate, are or are expected to be adversarial named parties.

(a-2) Subsection (a-1) does not impair any rights of the limited partner or assignee or the limited partner's or assignee's

1 affiliate to obtain discovery of records from the limited  
2 partnership in:

3 (1) a civil lawsuit described by Subsection  
4 (a-1)(2)(B); or

5 (2) the derivative proceeding subject to Section  
6 153.406.

7 SECTION 29. Sections 21.552(a), 21.561, 101.452(a),  
8 101.461, 153.402(a), and 153.411, Business Organizations Code, as  
9 amended by this Act, apply only to a derivative proceeding  
10 instituted on or after the effective date of this Act. A derivative  
11 proceeding instituted before the effective date of this Act is  
12 governed by the law in effect on the date the proceeding was  
13 instituted, and the former law is continued in effect for that  
14 purpose.

15 SECTION 30. This Act takes effect immediately if it  
16 receives a vote of two-thirds of all the members elected to each  
17 house, as provided by Section 39, Article III, Texas Constitution.  
18 If this Act does not receive the vote necessary for immediate  
19 effect, this Act takes effect September 1, 2025.