

AN ACT

relating to the formation, governance, and internal management of domestic 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. 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 practices observed by entities formed in those other states. The failure or refusal of a managerial official to

1 consider, or to conform the exercise of the managerial official's
2 powers to, the laws, judicial decisions, or practices of another
3 state does not constitute or imply a breach of this code or of any
4 duty existing under the laws of this state.

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

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

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

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

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

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

19 (b) The governing documents of a domestic entity may contain
20 a waiver of the right to a jury trial concerning any internal entity
21 claim.

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

27 (d) A person asserting an internal entity claim is

1 considered to have been informed of the waiver of the right to a
2 jury trial contained in the governing documents and to have
3 knowingly waived the right in the action if the person:

4 (1) voted for or affirmatively ratified the governing
5 document containing the waiver; or

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

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

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

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

whether in written or other tangible form, if the records are
~~[record is]~~ reasonably related to and appropriate to examine and
copy for that proper purpose. For purposes of this subsection, the
records of the corporation 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 corporation.

(b-2) 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. For purposes of Subsection (b), a written demand
shall not be 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 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) 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) a civil lawsuit described by Subsection
(b-2)(2); or

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

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

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

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

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

19 (A) the certificate of formation; or

20 (B) an amendment of the certificate of formation

21 that:

22 (i) authorized the shares of the class or
23 series;

24 (ii) was adopted before the issuance of any
25 shares of the class or series; or

26 (iii) was authorized by one or more
27 resolutions adopted by the affirmative vote of the holders of a

1 majority of the shares of the class or series;

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

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

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

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

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

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

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

24 (9) increasing the rights and preferences of a class
25 or series with rights or preferences later or inferior to the shares
26 of the class or series in such a manner that the rights or
27 preferences will be equal, prior, or superior to the shares of the

1 class or series;

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 9. Subchapter I, Chapter 21, Business Organizations

Code, is amended by adding Section 21.4161 to read as follows:

Sec. 21.4161. DETERMINATION OF INDEPENDENT AND DISINTERESTED DIRECTORS. (a) A corporation that adopts a resolution to authorize the formation of a committee of independent and disinterested directors under Section 21.416(g) may petition a court having 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) A petition under Subsection (a) shall be filed in the business court unless the corporation's principal place of business in this state is located in a county not contained within an operating division of the business court, in which case the petition may be filed in a district court in the county in which the corporation's principal place of business in this state is located.

(c) In the petition, the corporation shall 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.

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

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

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

(3) identifies counsel designated to act on behalf of the corporation and its shareholders, other than the controlling

1 shareholder, director, or officer involved in the transaction; and
2 (4) the shareholders, other than the controlling
3 shareholder, director, or officer involved in the transaction, have
4 the right to participate in the proceeding in person or through
5 counsel.

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

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

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

25 (2) request designation by the court as the
26 appropriate legal counsel.

27 (g) After the court determines the appropriate legal

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

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

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

20 (f) This subsection applies only to a corporation that has a
21 class or series of voting shares listed on a national securities
22 exchange or has made an affirmative election to be governed by
23 Section 21.419. Regardless of whether the conditions of Subsection
24 (b) are satisfied, neither the corporation nor any of the
25 corporation's shareholders will have a cause of action against any
26 director or officer for breach of duty with respect to the making,
27 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) This section sets out certain presumptions concerning compliance by directors and officers with their duties to a domestic corporation, including the duty of care and duty of loyalty as those duties pertain to transactions with interested persons.

(c) 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

1 governing documents.

2 (d) Neither a corporation nor any of the corporation's
3 shareholders has a cause of action against a director or officer of
4 the corporation as a result of any act or omission in the person's
5 capacity as a director or officer unless:

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

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

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

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

14 (e) The presumptions established by this section:

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

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

23 (f) In alleging fraud, intentional misconduct, an ultra
24 vires act, or a knowing violation of the law under Subsection
25 (d)(2)(B), a party must state with particularity the circumstances
26 constituting the fraud, intentional misconduct, ultra vires act, or
27 knowing violation of law.

1 (g) This section does not limit the effectiveness or
2 applicability of a provision contained in the certificate of
3 formation or similar instrument of a corporation limiting monetary
4 liability of a governing person.

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

7 (2) "Shareholder" includes:

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

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

12 (C) two or more shareholders acting in concert
13 under an informal or formal agreement or understanding with respect
14 to a derivative proceeding.

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

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

19 (1) the shareholder:

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

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

25 (2) the shareholder fairly and adequately represents
26 the interests of the corporation in enforcing the right of the
27 corporation; and

(3) for a corporation with common shares listed on a national securities exchange or a corporation that has made an 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

1 proceed on the allegations under Subsection (a), the corporation
2 may petition the court having jurisdiction to make a finding as to
3 whether the directors identified or appointed under Subsection
4 (a)(1) or (2) are independent and disinterested with respect to the
5 allegations made in the demand.

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

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

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

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

27 (h) Unless extended for good cause, not later than the 75th

1 day after the date the petition is filed, the court shall sign an
2 order stating whether the directors are independent and
3 disinterested.

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

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

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

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

17 (a) In a derivative proceeding brought in the right of a
18 foreign corporation, the matters covered by this subchapter are
19 governed by the laws of the jurisdiction of formation of the foreign
20 corporation, except for Sections 21.555, 21.560, and 21.561, which
21 with respect to foreign corporations are procedural provisions and
22 do not relate to the internal affairs of the foreign corporation,
23 unless applying the laws of the jurisdiction of formation of the
24 foreign corporation requires otherwise with respect to Section
25 21.555.

26 SECTION 17. Subchapter F, Chapter 101, Business
27 Organizations Code, is amended by adding Section 101.256 to read as

1 follows:

2 Sec. 101.256. PRESUMPTIONS FOR GOVERNING PERSONS OF CERTAIN
3 LIMITED LIABILITY COMPANIES. (a) This section applies only to a
4 limited liability company that has a class or series of voting
5 membership interests listed on a national securities exchange.
6 Nothing in this subsection prohibits a limited liability company
7 from adopting, in its company agreement, a provision that
8 duplicates the effect of this section, regardless of whether the
9 limited liability company has a class or series of voting
10 membership interests listed on a national securities exchange.

11 (b) This section sets out certain presumptions concerning
12 compliance by managerial officials with their duties, if any, to a
13 domestic limited liability company, including any duties that
14 pertain to transactions with interested persons.

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

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

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

24 (d) Neither a limited liability company nor any of the
25 company's members has a cause of action against a governing person
26 or officer or any affiliate or associate of a governing person or
27 officer of the company as a result of any act or omission in the

1 person's capacity as a governing person or officer of the company
2 unless:

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

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

6 (A) the act or omission of the governing person
7 or officer or affiliate or associate of a governing person or
8 officer constituted a breach of one or more of the person's duties
9 as a governing person or officer to the extent the duty has not been
10 modified or eliminated through an affirmative election contained in
11 the governing documents as permitted by this chapter; and

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

14 (e) The presumptions established by this section:

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

18 (2) do not abrogate, preempt, or lessen any other
19 defense, presumption, immunity, or privilege under other
20 constitutional, statutory, case, or common law or rule provisions,
21 in favor of any governing person or officer of any domestic entity,
22 including any limited liability company to which this section does
23 not apply.

24 (f) In alleging fraud, intentional misconduct, an ultra
25 vires act, or a knowing violation of the law under Subsection
26 (d)(2)(B), a party must state with particularity the circumstances
27 constituting the fraud, intentional misconduct, ultra vires act, or

1 knowing violation of law.

2 (g) This section does not limit the effectiveness or
3 applicability of a provision contained in the certificate of
4 formation or company agreement of a limited liability company
5 limiting monetary liability of a governing person or officer.

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

8 Sec. 101.401. EXPANSION, ~~[OR]~~ RESTRICTION, OR ELIMINATION
9 OF DUTIES AND LIABILITIES. The company agreement of a limited
10 liability company may expand, ~~[or]~~ restrict, or eliminate any
11 duties, including fiduciary duties, and related liabilities that a
12 member, manager, officer, or other person has to the company or to a
13 member or manager of the company.

14 SECTION 19. Section 101.461, Business Organizations Code,
15 is amended by adding Subsection (c) to read as follows:

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

19 SECTION 20. Section 101.502(a), Business Organizations
20 Code, is amended 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 or the company agreement expressly states
 10 otherwise.

11 SECTION 21. Section 152.002, Business Organizations Code,
 12 is amended by adding Subsection (e) to read as follows:

13 (e) Notwithstanding Subsection (b)(2), (3), or (4), a
 14 partnership agreement of a limited partnership may eliminate any or
 15 all of the duty of loyalty under Section 152.205, the duty of care
 16 under Section 152.206, and the obligation of good faith under
 17 Section 152.204(b), to the extent the partnership agreement
 18 expressly provides so.

19 SECTION 22. Subchapter A, Chapter 152, Business
 20 Organizations Code, is amended by adding Section 152.006 to read as
 21 follows:

22 Sec. 152.006. CERTAIN PROVISIONS APPLICABLE TO
 23 PARTNERSHIPS TRADED ON A NATIONAL SECURITIES EXCHANGE. (a) The
 24 provisions of Sections 152.002(e) and 153.163 apply only to a
 25 partnership that has a class or series of partnership interests
 26 listed on a national securities exchange.

27 (b) This section may not be construed as prohibiting any

partnership from adopting, in its partnership agreement, provisions that duplicate the effect of Sections 152.002(e) and 153.163, regardless of whether the partnership has a class or series of partnership interests listed on a national securities exchange.

SECTION 23. Subchapter D, Chapter 153, Business Organizations Code, is amended by adding Section 153.163 to read as follows:

Sec. 153.163. PRESUMPTIONS FOR GENERAL PARTNERS AND OFFICERS OF CERTAIN LIMITED PARTNERSHIPS. (a) This section sets out certain presumptions concerning compliance by managerial officials with their duties, if any, to a domestic limited partnership, including any duties that pertain to transactions with interested persons.

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

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

(2) the partnership agreement of such limited partnership.

(c) Neither a limited partnership nor any of the limited partnership's partners has a cause of action against a managerial official of the limited partnership, including any director, officer, member, or other affiliate of the general partner, as a

1 result of any act or omission in the person's capacity as a
2 managerial official or as an officer or director or other
3 managerial official or affiliate of the general partner unless:

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

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

7 (A) the act or omission of the managerial
8 official or any director, officer, member, or other affiliate or
9 managerial official of the general partner constituted a breach of
10 one or more of the person's duties as a general partner, director,
11 or officer to the extent the duty has not been modified or
12 eliminated by the partnership agreement as permitted by this
13 chapter; and

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

16 (d) The presumptions established by this section:

17 (1) are in addition to any legal presumption arising
18 under common law or this code, in favor of any general partner or
19 member or managerial official of a general partner to which this
20 section applies; and

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

27 (e) In alleging fraud, intentional misconduct, an ultra

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

5 (f) This section does not limit the effectiveness or
6 applicability of a provision contained in the partnership agreement
7 of a partnership limiting monetary liability of a managerial
8 official.

9 SECTION 24. Section 153.411, Business Organizations Code,
10 is amended by adding Subsection (c) to read as follows:

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

15 SECTION 25. Section 153.552(a), Business Organizations
16 Code, is amended to read as follows:

17 (a) Unless otherwise provided by the governing documents of
18 a limited partnership, on ~~on~~ written demand stating a proper
19 purpose, a partner or an assignee of a partnership interest in a
20 limited partnership is entitled to examine and copy, at a
21 reasonable time at the partnership's principal office identified
22 under Section 153.551 or other location approved by the partnership
23 and the partner or assignee, any records of the partnership,
24 whether in written or other tangible form, which are reasonably
25 related to and appropriate to examine and copy for that proper
26 purpose. For purposes of this subsection, the records of the
27 limited partnership shall not include e-mails, text messages or

1 similar electronic communications, or information from social
2 media accounts unless the particular e-mail, communication, or
3 social media information effectuates an action by the limited
4 partnership or the partnership agreement expressly states
5 otherwise.

6 SECTION 26. Sections 21.552(a) and 21.561, Business
7 Organizations Code, as amended by this Act, apply only to a
8 derivative proceeding instituted on or after the effective date of
9 this Act. A derivative proceeding instituted before the effective
10 date of this Act is governed by the law in effect on the date the
11 proceeding was instituted, and the former law is continued in
12 effect for that purpose.

13 SECTION 27. This Act takes effect immediately if it
14 receives a vote of two-thirds of all the members elected to each
15 house, as provided by Section 39, Article III, Texas Constitution.
16 If this Act does not receive the vote necessary for immediate
17 effect, this Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 29 passed the Senate on April 3, 2025, by the following vote: Yeas 30, Nays 1; and that the Senate concurred in House amendments on May 7, 2025, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

I hereby certify that S.B. No. 29 passed the House, with amendments, on May 2, 2025, by the following vote: Yeas 109, Nays 7, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor