

By: Hughes, et al. S.B. No. 29  
(Meyer, Leach, Schofield, Anchía, Longoria, et al.)

Substitute the following for S.B. No. 29:

By: Landgraf C.S.S.B. No. 29

A BILL TO BE ENTITLED

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:

(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 shareholder, director, or officer.

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

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

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

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

(f) This subsection applies only to a corporation that has a class or series of voting shares listed on a national securities exchange or has made an affirmative election to be governed by Section 21.419. Regardless of whether the conditions of Subsection (b) are satisfied, neither the corporation nor any of the corporation's shareholders will have a cause of action against any director or officer for breach of duty with respect to the making, authorization, or performance of the contract or transaction

because the director or officer had the relationship or interest described by Subsection (a) 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 the corporation as a result of any act or omission in the person's capacity as a director or officer unless:

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

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

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

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

9           (d) The presumptions established by this section:

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

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

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

23           (f) This section does not limit the effectiveness or  
24 applicability of a provision contained in the certificate of  
25 formation or similar instrument of a corporation limiting monetary  
26 liability of a governing person.

27           SECTION 12. Section [21.551](#)(2), Business Organizations

1 Code, is amended to read as follows:

2 (2) "Shareholder" includes:

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

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

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

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

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

14 (1) the shareholder:

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

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

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

23 (3) for a corporation with common shares listed on a  
24 national securities exchange or a corporation that has made an  
25 affirmative election to be governed by Section 21.419 and has 500 or  
26 more shareholders, at the time the derivative proceeding is  
27 instituted, the shareholder beneficially owns a number of the

1 common shares sufficient to meet the required ownership threshold  
2 to institute a derivative proceeding in the right of the  
3 corporation identified in the corporation's certificate of  
4 formation or bylaws, provided that the required ownership threshold  
5 does not exceed three percent of the outstanding shares of the  
6 corporation.

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

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

22       (c) Before the corporation's determination of how to  
23 proceed on the allegations under Subsection (a), the corporation  
24 may petition the court having jurisdiction to make a finding as to  
25 whether the directors identified or appointed under Subsection  
26 (a)(1) or (2) are independent and disinterested with respect to the  
27 allegations made in the demand.

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

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

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

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

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

26       (i) A court's finding that the directors or individuals are  
27 independent and disinterested under this section shall be



dispositive in the absence of discovery of facts, not presented to the court, constituting evidence sufficient to prove that one or more of those directors or individuals are not independent and disinterested.

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

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

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

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

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

Sec. 101.256. PRESUMPTIONS FOR GOVERNING PERSONS OF CERTAIN LIMITED LIABILITY COMPANIES. (a) This section applies only to a limited liability company that has a class or series of voting membership interests listed on a national securities exchange.

1 Nothing in this subsection prohibits a limited liability company  
2 from adopting, in its company agreement, a provision that  
3 duplicates the effect of this section, regardless of whether the  
4 limited liability company has a class or series of voting  
5 membership interests listed on a national securities exchange.

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

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

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

15 (c) Neither a limited liability company nor any of the  
16 company's members has a cause of action against a governing person  
17 or officer or any affiliate or associate of a governing person or  
18 officer of the company as a result of any act or omission in the  
19 person's capacity as a governing person or officer of the company  
20 unless:

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

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

24 (A) the act or omission of the governing person  
25 or officer or affiliate or associate of a governing person or  
26 officer constituted a breach of one or more of the person's duties  
27 as a governing person 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 governing person or officer 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 governing person or officer of any domestic entity, including any limited liability company 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 company agreement or similar instrument of a limited liability company limiting monetary liability of a governing person or officer.

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

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 101.461, Business Organizations Code,  
7 is amended by adding Subsection (c) to read as follows:

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

11 SECTION 20. Section 101.502(a), Business Organizations  
12 Code, is amended to read as follows:

13 (a) Unless otherwise provided by the governing documents of  
14 a limited liability company, a [A] member of a limited liability  
15 company or an assignee of a membership interest in a limited  
16 liability company, on written demand stating a proper purpose, is  
17 entitled to examine and copy at a reasonable time at the limited  
18 liability company's principal office identified under Section  
19 101.501(c) or another location approved by the limited liability  
20 company and the member or assignee, any records of the limited  
21 liability company, whether in written or other tangible form, which  
22 are reasonably related to and appropriate to examine and copy for  
23 that proper purpose. For purposes of this subsection, the records  
24 of the limited liability company shall not include e-mails, text  
25 messages or similar electronic communications, or information from  
26 social media accounts unless the particular e-mail, communication,  
27 or social media information effectuates an action by the limited

1 liability company or the company agreement expressly states  
2 otherwise.

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

5 (e) Notwithstanding Subsection (b)(2), (3), or (4), a  
6 partnership agreement may eliminate any or all of the duty of  
7 loyalty under Section 152.205, the duty of care under Section  
8 152.206, and the obligation of good faith under Section 152.204(b),  
9 to the extent the governing documents of the partnership include a  
10 statement affirmatively electing to do so.

11 SECTION 22. Subchapter A, Chapter 152, Business  
12 Organizations Code, is amended by adding Section 152.006 to read as  
13 follows:

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

19 (b) This section may not be construed as prohibiting any  
20 partnership from adopting, in its partnership agreement,  
21 provisions that duplicate the effect of Sections 152.002(e) and  
22 153.163, regardless of whether the partnership has a class or  
23 series of partnership interests listed on a national securities  
24 exchange.

25 SECTION 23. Sections 152.204(a) and (b), Business  
26 Organizations Code, are amended to read as follows:

27 (a) Except as otherwise specified in the partnership

1 agreement, a [A] partner owes to the partnership, the other  
2 partners, and a transferee of a deceased partner's partnership  
3 interest as designated in Section 152.406(a)(2):

4 (1) a duty of loyalty; and

5 (2) a duty of care.

6 (b) Except as otherwise specified in the partnership  
7 agreement, a [A] partner shall discharge the partner's duties to  
8 the partnership and the other partners under this code or under the  
9 partnership agreement and exercise any rights and powers in the  
10 conduct or winding up of the partnership business:

11 (1) in good faith; and

12 (2) in a manner the partner reasonably believes to be  
13 in the best interest of the partnership.

14 SECTION 24. Subchapter D, Chapter 153, Business  
15 Organizations Code, is amended by adding Section 153.163 to read as  
16 follows:

17 Sec. 153.163. PRESUMPTIONS FOR GENERAL PARTNERS AND  
18 OFFICERS OF CERTAIN LIMITED PARTNERSHIPS. (a) In taking or  
19 declining to take any action on any matters of a limited  
20 partnership's business, any general partner of the limited  
21 partnership, including any director, officer, member, or other  
22 affiliate of the general partner, is presumed to act in good faith  
23 and in compliance with:

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

26 (2) the partnership agreement of such limited  
27 partnership.

1        (b) Neither a limited partnership nor any of the limited  
2 partnership's partners has a cause of action against a general  
3 partner of the limited partnership, including any director,  
4 officer, member, or other affiliate of the general partner, as a  
5 result of any act or omission in the person's capacity as a general  
6 partner or as an officer or director of the general partner unless:

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

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

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

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

19        (c) The presumptions established by this section:

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

24                (2) do not abrogate, preempt, or lessen any other  
25 defense, presumption, immunity, or privilege under other  
26 constitutional, statutory, case, or common law or rule provisions,  
27 in favor of any managerial official of any domestic entity,

1 including any limited partnership to which this section does not  
2 apply.

3 (d) In alleging fraud, intentional misconduct, an ultra  
4 vires act, or a knowing violation of the law under Subsection  
5 (b)(2)(B), a party must state with particularity the circumstances  
6 constituting the fraud, intentional misconduct, ultra vires act, or  
7 knowing violation of law.

8 (e) This section does not limit the effectiveness or  
9 applicability of a provision contained in the certificate of  
10 formation or partnership agreement or similar instrument of a  
11 partnership limiting monetary liability of a governing person.

12 SECTION 25. Section 153.411, Business Organizations Code,  
13 is amended by adding Subsection (c) to read as follows:

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

18 SECTION 26. Section 153.552(a), Business Organizations  
19 Code, is amended to read as follows:

20 (a) Unless otherwise provided by the governing documents of  
21 a limited partnership, on [On] written demand stating a proper  
22 purpose, a partner or an assignee of a partnership interest in a  
23 limited partnership is entitled to examine and copy, at a  
24 reasonable time at the partnership's principal office identified  
25 under Section 153.551 or other location approved by the partnership  
26 and the partner or assignee, any records of the partnership,  
27 whether in written or other tangible form, which are reasonably



1 related to and appropriate to examine and copy for that proper  
2 purpose. For purposes of this subsection, the records of the  
3 limited partnership shall not include e-mails, text messages or  
4 similar electronic communications, or information from social  
5 media accounts unless the particular e-mail, communication, or  
6 social media information effectuates an action by the limited  
7 partnership or the partnership agreement expressly states  
8 otherwise.

9       SECTION 27. Sections 21.552(a) and 21.561, Business  
10 Organizations Code, as amended by this Act, apply only to a  
11 derivative proceeding instituted on or after the effective date of  
12 this Act. A derivative proceeding instituted before the effective  
13 date of this Act is governed by the law in effect on the date the  
14 proceeding was instituted, and the former law is continued in  
15 effect for that purpose.

16       SECTION 28. This Act takes effect immediately if it  
17 receives a vote of two-thirds of all the members elected to each  
18 house, as provided by Section 39, Article III, Texas Constitution.  
19 If this Act does not receive the vote necessary for immediate  
20 effect, this Act takes effect September 1, 2025.