

BUSINESS ORGANIZATIONS CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 2. PURPOSES AND POWER OF DOMESTIC ENTITY

SUBCHAPTER A. PURPOSES OF DOMESTIC ENTITY

Sec. 2.001. GENERAL SCOPE OF PERMISSIBLE PURPOSES. A domestic entity has any lawful purpose or purposes, unless otherwise provided by this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.002. PURPOSES OF NONPROFIT ENTITY. The purpose or purposes of a domestic nonprofit entity may include one or more of the following purposes:

(1) serving charitable, benevolent, religious, eleemosynary, patriotic, civic, missionary, educational, scientific, social, fraternal, athletic, aesthetic, agricultural, and horticultural purposes;

(2) operating or managing a professional, commercial, or trade association or labor union;

(3) providing animal husbandry; or

(4) operating on a nonprofit cooperative basis for the benefit of its members.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.003. GENERAL PROHIBITED PURPOSES. A domestic entity may not:

(1) engage in a business or activity that:

(A) is expressly unlawful or prohibited by a law of this state; or

(B) cannot lawfully be engaged in by that entity under state law; or

(2) operate as a:

(A) bank;

(B) trust company;

(C) savings association;

(D) insurance company;

(E) cemetery organization, except as authorized by Chapter 711, 712, or 715, Health and Safety Code; or

(F) abstract or title company governed by Title 11, Insurance Code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 728 (H.B. 2018), Sec. 11.103, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 4, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 2, eff. September 1, 2009.

Sec. 2.004. LIMITATION ON PURPOSES OF PROFESSIONAL ENTITY. Except as provided in Title 7, a professional entity may engage in only:

(1) one type of professional service, unless the entity is expressly authorized to provide more than one type of professional service under state law regulating the professional services; and

(2) services ancillary to that type of professional service.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.005. LIMITATION IN GOVERNING DOCUMENTS. The governing documents of a domestic entity may contain limitations on the entity's purposes.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.007. ADDITIONAL PROHIBITED ACTIVITIES OF FOR-PROFIT CORPORATION. A for-profit corporation may not:

(1) operate a cooperative association, limited cooperative association, or labor union;

(2) transact a combination of the businesses of:

(A) raising cattle and owning land for the raising of cattle, other than operating and owning feedlots and feeding cattle; and

(B) operating stockyards and slaughtering, refrigerating, canning, curing, or packing meat;

(3) engage in a combination of:

(A) the petroleum oil producing business in this state; and

(B) the oil pipeline business in this state other than through stock ownership in a for-profit corporation engaged in the oil pipeline business and other than the ownership or operation of private pipelines in and about the corporation's refineries, fields, or stations; or

(4) engage in a business or activity that may not be engaged in by a for-profit corporation without first obtaining a license under the laws of this state and a license to engage in that business or activity cannot lawfully be granted to the corporation. Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 5, eff. September 1, 2007.

Sec. 2.008. NONPROFIT CORPORATIONS. A corporation formed for the purpose of operating a nonprofit institution, including an institution devoted to a charitable, benevolent, religious, patriotic, civic, cultural, missionary, educational, scientific, social, fraternal, athletic, or aesthetic purpose, may be formed and governed only as a nonprofit corporation under this code and not as a for-profit corporation under this code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.009. PERMISSIBLE PURPOSE OF NONPROFIT CORPORATION RELATED TO ORGANIZED LABOR. Subject to Chapter 101, Labor Code, a nonprofit corporation may be formed to organize laborers, workers, or wage earners to protect themselves in their various pursuits.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.010. PROHIBITED ACTIVITIES OF NONPROFIT CORPORATION. A nonprofit corporation may not be organized or registered under this code to conduct its affairs in this state to:

(1) engage in or operate as a group hospital service, rural credit union, agricultural and livestock pool, mutual loan corporation, cooperative association under Chapter 251, cooperative credit association, farmers' cooperative society, Co-operative Marketing Act corporation, rural electric cooperative corporation, telephone cooperative corporation, or fraternal organization operating under the lodge system and incorporated under Subchapter C, Chapter 23;

(2) engage in water supply or sewer service except as an entity incorporated under Chapter 67, Water Code; or

(3) engage in a business or activity that may not be engaged in by a nonprofit corporation without first obtaining a license under the laws of this state and a license to engage in that business or activity cannot lawfully be granted to the corporation. Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 4, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 6, eff. September 1, 2007.

Sec. 2.011. PURPOSES OF COOPERATIVE ASSOCIATION. (a) A person may organize a cooperative association under this code to acquire, produce, build, operate, manufacture, furnish, exchange, or distribute any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the cooperative association.

(b) A cooperative association may not be organized to:

(1) serve or function as a health maintenance organization;

(2) furnish medical or health care; or

(3) employ or contract with a health care provider in a manner prohibited by the statute under which the provider is licensed.

(c) A cooperative association may not directly or indirectly engage in a health maintenance organization or a prepaid legal service corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.012. LIMITATION ON PURPOSES OF REAL ESTATE INVESTMENT TRUST. The purposes of a real estate investment trust are limited by Section 3.012.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

#### SUBCHAPTER B. POWERS OF DOMESTIC ENTITY

Sec. 2.101. GENERAL POWERS. Except as otherwise provided by this code, a domestic entity has the same powers as an individual to take action necessary or convenient to carry out its business and affairs. Except as otherwise provided by this code, the powers of a domestic entity include the power to:

(1) sue, be sued, and defend suit in the entity's business name;

(2) have and alter a seal and use the seal or a facsimile of it by impressing, affixing, or reproducing it;

(3) acquire, receive, own, hold, improve, use, and deal in and with property or an interest in property;

(4) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of property;

(5) make contracts and guarantees;

(6) incur liabilities, borrow money, issue notes, bonds, or other obligations, which may be convertible into, or include the option to purchase, other securities or ownership interests in the entity, and secure its obligations by mortgaging or pledging its property, franchises, or income;

(7) lend money, invest its funds, and receive and hold property as security for repayment;

(8) acquire its own bonds, debentures, or other evidences of indebtedness or obligations;

(9) acquire its own ownership interests, regardless of whether redeemable, and hold the ownership interests as treasury ownership interests or cancel or dispose of the ownership interests;

(10) be a promoter, organizer, owner, partner, member,

associate, or manager of an organization;

(11) acquire, receive, own, hold, vote, use, pledge, and dispose of ownership interests in or securities issued by another person;

(12) conduct its business, locate its offices, and exercise the powers granted by this code to further its purposes, in or out of this state;

(13) lend money to, and otherwise assist, its managerial officials, owners, members, or employees as necessary or appropriate if the loan or assistance reasonably may be expected to benefit, directly or indirectly, the entity;

(14) elect or appoint officers and agents of the entity, establish the length of their terms, define their duties, and fix their compensation;

(15) pay pensions and establish pension plans, pension trusts, profit-sharing plans, bonus plans, and incentive plans for managerial officials, owners, members, or employees or former managerial officials, owners, members, or employees;

(16) indemnify and maintain liability insurance for managerial officials, owners, members, employees, and agents of the entity or the entity's affiliate;

(17) adopt and amend governing documents for managing the affairs of the entity subject to applicable law;

(18) make donations for the public welfare or for a charitable, scientific, or educational purpose;

(19) voluntarily wind up its business and activities and terminate its existence;

(20) transact business or take action that will aid governmental policy;

(21) renounce, in its certificate of formation or by action of its governing authority, an interest or expectancy of the entity in, or an interest or expectancy of the entity in being offered an opportunity to participate in, specified business opportunities or a specified class or category of business opportunities presented to the entity or one or more of its managerial officials or owners; and

(22) take other action necessary or appropriate to

further the purposes of the entity.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 5, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 7, eff. September 1, 2007.

Sec. 2.102. ADDITIONAL POWERS OF NONPROFIT ENTITY OR INSTITUTION. To effect its purposes, a domestic nonprofit entity or institution formed for a religious, charitable, educational, or eleemosynary purpose may acquire, own, hold, mortgage, and dispose of and invest its funds in property for the use and benefit of, under the discretion of, and in trust for a convention, conference, or association organized under the laws of this state or another state with which it is affiliated or by which it is controlled.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.103. POWER TO INCUR INDEBTEDNESS. (a) Unless otherwise provided by its governing documents or this code, a domestic entity may create indebtedness for any consideration the entity considers appropriate, including:

- (1) cash;
- (2) property;
- (3) a contract to receive property;
- (4) a debt or other obligation of the entity or of another person;
- (5) services performed or a contract for services to be performed; or
- (6) a direct or indirect benefit realized by the entity.

(b) In the absence of fraud in the transaction, the judgment of the governing authority of a domestic entity as to the value of the consideration received by the entity for indebtedness is conclusive.

(c) The consideration for the indebtedness may be received either directly or indirectly by the domestic entity, including by

a domestic or foreign organization that is wholly or partially owned, directly or indirectly, by the domestic entity.

(d) This section does not apply to indebtedness created by a domestic entity that is incurred by reason of the authorization or payment of a distribution.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.104. POWER TO MAKE GUARANTIES. (a) In this section, "guaranty" means a guaranty, mortgage, pledge, security agreement, or other agreement making the domestic entity or its assets liable for another person's contract, security, or other obligation.

(b) Unless otherwise provided by its governing documents or this code, a domestic entity may:

(1) make a guaranty on behalf of a parent, subsidiary, or affiliate of the entity; or

(2) make a guaranty of the indebtedness of another person if the guaranty may reasonably be expected directly or indirectly to benefit the entity.

(c) For purposes of Subsection (b)(2), a decision by the governing authority of the domestic entity that a guaranty may reasonably be expected to benefit the entity is conclusive and not subject to attack by any person, except:

(1) a guaranty may not be enforced by a person who participated in a fraud on the domestic entity resulting in the making of the guaranty or by a person who had notice of that fraud at the time the person acquired rights under the guaranty;

(2) a proposed guaranty may be enjoined at the request of an owner of the domestic entity on the ground that the guaranty cannot reasonably be expected to benefit the domestic entity; or

(3) the domestic entity, whether acting directly or through a receiver, trustee, or other legal representative, or through an owner on behalf of the domestic entity, may bring suit for damages against the managerial officials, owners, or members who authorized the guaranty on the ground that the guaranty could not reasonably be expected to benefit the domestic entity.

(d) This section does not:

(1) apply to a domestic entity governed by the

Insurance Code; or

(2) authorize a domestic entity that is not governed by the Insurance Code to engage in a business or transaction regulated by the Insurance Code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 8, eff. September 1, 2007.

Sec. 2.105. ADDITIONAL POWERS OF CERTAIN PIPELINE BUSINESSES. In addition to the powers provided by the other sections of this subchapter, a corporation, general partnership, limited partnership, limited liability company, or other combination of those entities engaged as a common carrier in the pipeline business for the purpose of transporting oil, oil products, gas, carbon dioxide, salt brine, fuller's earth, sand, clay, liquefied minerals, or other mineral solutions has all the rights and powers conferred on a common carrier by Sections 111.019-111.022, Natural Resources Code.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.106. POWER OF NONPROFIT CORPORATION TO SERVE AS TRUSTEE. (a) A nonprofit corporation that is described by Section 501(c)(3) or 170(c), Internal Revenue Code, or a corresponding provision of a subsequent federal tax law, or a nonprofit corporation listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, or any successor I.R.S. publication, may serve as the trustee of a trust:

(1) of which the nonprofit corporation is a beneficiary; or

(2) benefiting another organization described by one of those sections of the Internal Revenue Code, or a corresponding provision of a subsequent federal tax law, or listed by the Internal Revenue Service in the Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986, I.R.S. Publication 78, or any successor I.R.S. publication.

(b) Any corporation (or person or entity assisting such corporation) described in this section shall have immunity from suit (including both a defense to liability and the right not to bear the cost, burden, and risk of discovery and trial) as to any claim alleging that the corporation's role as trustee of a trust described in this section constitutes engaging in the trust business in a manner requiring a state charter as defined in Section 181.002(a)(9), Finance Code. An interlocutory appeal may be taken if a court denies or otherwise fails to grant a motion for summary judgment that is based on an assertion of the immunity provided in this subsection.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.107. STANDARD TAX PROVISIONS FOR CERTAIN CHARITABLE NONPROFIT CORPORATIONS; POWER TO EXCLUDE. (a) Notwithstanding any conflicting provision of this chapter, Chapter 3, or the certificate of formation and except as provided by Subsection (b), the certificate of formation of each corporation that is a private foundation as defined by Section 509, Internal Revenue Code, is considered to contain the following provisions: "The corporation shall make distributions at the time and in the manner as not to subject it to tax under Section 4942 of the Internal Revenue Code of 1986; the corporation shall not engage in any act of self-dealing which would be subject to tax under Section 4941 of the Code; the corporation shall not retain any excess business holdings which would subject it to tax under Section 4943 of the Code; the corporation shall not make any investments which would subject it to tax under Section 4944 of the Code; and the corporation shall not make any taxable expenditures which would subject it to tax under Section 4945 of the Code."

(b) A nonprofit corporation described by Subsection (a) may amend the certificate of formation of the corporation to expressly exclude the application of Subsection (a).

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.108. POWERS OF PROFESSIONAL ASSOCIATION. Except as provided by Title 7, a professional association has the same

powers, privileges, duties, restrictions, and liabilities as a for-profit corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.109. POWERS OF PROFESSIONAL CORPORATION. Except as provided by Title 7, a professional corporation has the same powers, privileges, duties, restrictions, and liabilities as a for-profit corporation.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.110. POWERS OF COOPERATIVE ASSOCIATION. (a) Except as provided by Chapter 251, a cooperative association may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as a nonprofit corporation.

(b) A cooperative association may:

(1) own and hold membership in other associations or corporations;

(2) own and hold share capital of other associations or corporations;

(3) own and exercise ownership rights in bonds or other obligations;

(4) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, or other nonprofit groups; and

(5) deliver money to a scholarship fund for rural students.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.111. LIMITATION ON POWERS OF COOPERATIVE ASSOCIATION. Except for the payment of necessary legal fees or promotion expenses, a cooperative association may not directly or indirectly use its funds, issue shares, or incur indebtedness for the payment of compensation for the organization of the cooperative association in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.112. STATED POWERS IN SUBCHAPTER SUFFICIENT. A domestic entity is not required to state any of the powers provided to the entity by this subchapter in its governing documents. Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.113. LIMITATION ON POWERS. (a) This subchapter does not authorize a domestic entity or a managerial official of a domestic entity to exercise a power in a manner inconsistent with a limitation on the purposes or powers of the entity contained in its governing documents, this code, or other law of this state.

(b) This code does not authorize any action in violation of the antitrust laws of this state. Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.114. CERTIFICATED INDEBTEDNESS; MANNER OF ISSUANCE; SIGNATURE AND SEAL. (a) Except as otherwise provided by the governing documents of the domestic entity, this code, or other law, on the issuance by a domestic entity of a bond, debenture, or other evidence of indebtedness in certificated form, the seal of the entity, if the entity has adopted a seal, may be a facsimile that may be engraved or printed on the certificate.

(b) Except as otherwise provided by the governing documents of the domestic entity, this code, or other law, if a security described by Subsection (a) is authenticated with the manual signature of an authorized officer of the domestic entity or an authorized officer or representative, to the extent permitted by law, of a transfer agent or trustee appointed or named by an indenture of trust or other agreement under which the security is issued, the signature of any officer of the domestic entity may be a facsimile signature.

(c) A security described by Subsection (a) that contains the manual or facsimile signature of a person who is no longer an officer when the security is delivered by the entity may be adopted, issued, and delivered by the entity in the same manner and to the same extent as if the person had remained an officer of the entity. Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 2.115. CHOICE OF FORUM PROVISIONS. (a) In this section, "internal entity claim" means a claim of any nature, including a derivative claim in the right of an entity, that is based on, arises from, or relates to the internal affairs of the entity, as defined by Section [1.105](#).

(b) The governing documents of a domestic entity may require, consistent with applicable state and federal jurisdictional requirements, that any internal entity claims shall be brought only in a court in this state.

Added by Acts 2021, 87th Leg., R.S., Ch. 39 (S.B. [1203](#)), Sec. 2, eff. September 1, 2021.