BUSINESS ORGANIZATIONS CODE

TITLE 2. CORPORATIONS

CHAPTER 21. FOR-PROFIT CORPORATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 21.002. DEFINITIONS. In this chapter:

(1) "Authorized share" means a share of any class the corporation is authorized to issue.

(2) "Board of directors" includes each person who is authorized to perform the functions of the board of directors under a shareholders' agreement as authorized by this chapter.

(3) "Cancel," with respect to an authorized share of a corporation, means the restoration of an issued share to the status of an authorized but unissued share.

(4) "Consuming assets corporation" means a corporation that:

(A) is engaged in the business of exploiting assets subject to depletion or amortization;

(B) states in its certificate of formation that it is a consuming assets corporation;

(C) includes the phrase "a consuming assets corporation" as part of its official corporate name and gives the phrase equal prominence with the rest of the corporate name on the financial statements and certificates of ownership of the corporation; and

(D) includes in each of the certificates of ownership of the corporation the sentence, "This corporation is permitted by law to pay dividends out of reserves that may impair its stated capital."

(5) "Corporation" or "domestic corporation" means a domestic for-profit corporation subject to this chapter.

(6)(A) "Distribution" means a transfer of property, including cash, or issuance of debt, by a corporation to its shareholders in the form of:

(i) a dividend on any class or series of its outstanding shares;

(ii) a purchase or redemption, directly or indirectly, of any of its own shares; or

(iii) a payment by the corporation in liquidation of all or a portion of its assets.

(B) The term does not include:

(i) a split-up or division of the issued shares of a class of a corporation into a larger number of shares within the same class that does not increase the stated capital of the corporation; or

(ii) a transfer of the corporation's own shares or rights to acquire its own shares.

(7) "Foreign corporation" means a for-profit corporation formed under the laws of a jurisdiction other than this state.

(8) "Investment Company Act" means the Investment Company Act of 1940 (15 U.S.C. Section 80a-1 et seq.), as amended.

(9) "Net assets" means the amount by which the total assets of a corporation exceed the total debts of the corporation.

(10) "Share dividend" means a dividend by a corporation that is payable in authorized but unissued shares or treasury shares of the corporation. The term does not include:

(A) an amendment to the corporation's certificate of formation to change the shares of a class or series, with or without par value, into the same or a different number of shares of the same or a different class or series, with or without par value; or

(B) a split-up or division of the issued shares of a class of a corporation into a larger number of shares within the same class that does not increase the stated capital of the corporation.

(10-a) "Share transfer records" means one or more records maintained by or on behalf of a corporation in accordance with Section 3.151 in which the names of all of the corporation's shareholders of record, the address of and number of shares registered in the name of each shareholder of record, and all issuances and transfers of shares of the corporation are recorded.

(11) "Stated capital" means the sum of:

(A) the par value of all shares of the corporation with par value that have been issued;

(B) the consideration, as expressed in terms of United States dollars, determined by the corporation in the manner provided by Section 21.160 for all shares of the corporation without par value that have been issued, except that part, but not all, of the consideration that:

(i) has been actually received; and

(ii) the board, by resolution adopted not later than the 60th day after the date of issuance of those shares, has allocated to surplus; and

(C) an amount not included in Paragraphs (A) and (B) that has been transferred to stated capital of the corporation, on the payment of a share dividend or on adoption by the board of directors of a resolution directing that all or part of surplus be transferred to stated capital, minus each reduction made as permitted by law.

(12) "Surplus" means the amount by which the net assets of a corporation exceed the stated capital of the corporation.

(13) "Treasury shares" means shares of a corporation that have been issued, and subsequently acquired by the corporation, that belong to the corporation and that have not been canceled. The term does not include shares held by a corporation in a fiduciary capacity, whether directly or through a trust or similar arrangement.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 5, eff. September 1, 2019.

SUBCHAPTER B. FORMATION AND GOVERNING DOCUMENTS

Sec. 21.051. NO PROPERTY RIGHT IN CERTIFICATE OF FORMATION. A shareholder of a corporation does not have a vested property right resulting from the certificate of formation, including a provision in the certificate of formation relating to the management,

control, capital structure, dividend entitlement, purpose, or duration of the corporation.

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

Sec. 21.052. PROCEDURES TO ADOPT AMENDMENT TO CERTIFICATE OF FORMATION. (a) To adopt an amendment to the certificate of formation of a corporation as provided by Subchapter B, Chapter 3, the board of directors of the corporation shall:

(1) adopt a resolution stating the proposed amendment; and

(2) follow the procedures prescribed by Sections 21.053-21.055.

(b) The resolution may incorporate the proposed amendment in a restated certificate of formation that complies with Section 3.059.

(b-1) The resolution may provide that at any time before the filing of a certificate of amendment takes effect as provided by Subchapter B, Chapter 3, the board of directors may abandon the proposed amendment to the certificate of formation without further action by the shareholders of the corporation, notwithstanding authorization of the proposed amendment by the shareholders.

(c) The certificate of amendment must be filed in accordance with Chapter 4 and takes effect as provided by Subchapter B, Chapter 3.

(d) This section does not affect:

(1) the authority of the shareholders of a corporation to consent in writing to the cancellation of an event requiring winding up in accordance with Section 21.502(1); or

(2) the authority of the organizers of a corporation to adopt a resolution to cancel an event requiring winding up in accordance with Section 21.502(2).

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 43, eff. January 1, 2006.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 20, eff. September 1, 2015.

Sec. 21.053. ADOPTION OF AMENDMENT BY BOARD OF DIRECTORS. (a) If a corporation does not have any issued and outstanding shares, or in the case of an amendment under Subsection (b) or (c), the board of directors may adopt a proposed amendment to the corporation's certificate of formation by resolution without shareholder approval.

(b) Notwithstanding Section 21.054, the board of directors may adopt a proposed amendment without shareholder approval in the manner provided by Section 21.155 if the amendment to the corporation's certificate of formation relates to a series of shares established by the board under authority granted to the board in the certificate of formation as provided by Section 21.155.

(c) Notwithstanding Section 21.054 and except as otherwise provided by the certificate of formation, the board of directors of a corporation that has outstanding shares may, without shareholder approval, adopt an amendment to the corporation's certificate of formation to change the word or abbreviation in its corporate name as required by Section 5.054(a) to be a different word or abbreviation required by that section.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 44, eff. January 1, 2006.

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 21, eff. September 1, 2015.

Sec. 21.054. ADOPTION OF AMENDMENT BY SHAREHOLDERS. If a corporation has issued and outstanding shares:

(1) a resolution described by Section 21.052 must also direct that the proposed amendment be submitted to a vote of the shareholders at a meeting; and

(2) the shareholders must approve the proposed amendment in the manner provided by Section 21.055.

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

Sec. 21.055. NOTICE OF AND MEETING TO CONSIDER PROPOSED AMENDMENT. (a) Each shareholder of record entitled to vote shall be given written notice containing the proposed amendment or a summary of the changes to be effected within the time and in the manner provided by this code for giving notice of meetings to shareholders. The proposed amendment or summary may be included in the notice required to be provided for an annual meeting.

(b) At the meeting, the proposed amendment shall be adopted only on receiving the affirmative vote of shareholders entitled to vote required by Section 21.364.

(c) An unlimited number of amendments may be submitted for adoption by the shareholders at a meeting.

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

Sec. 21.056. RESTATED CERTIFICATE OF FORMATION. (a) A corporation may adopt a restated certificate of formation as provided by Subchapter B, Chapter 3, by following the same procedures to amend its certificate of formation under Sections 21.052-21.055, except that:

(1) shareholder approval is not required if an amendment is not adopted; and

(2) the shareholders of a corporation may consent in writing, or the organizers of a corporation may adopt a resolution, to authorize a restated certificate of formation that contains an amendment to cancel an event requiring winding up in accordance with Section 21.502(1) or (2).

(b) The restated certificate of formation shall be filed in accordance with Chapter 4 and takes effect as provided by Subchapter B, Chapter 3.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 22, eff. September 1, 2015.

Sec. 21.057. BYLAWS. (a) The board of directors of a corporation shall adopt initial bylaws.

(b) The bylaws may contain provisions for the regulation and

management of the affairs of the corporation that are consistent with law and the corporation's certificate of formation.

(c) A corporation's board of directors may amend or repeal bylaws or adopt new bylaws unless:

(1) the corporation's certificate of formation or this code wholly or partly reserves the power exclusively to the corporation's shareholders; or

(2) in amending, repealing, or adopting a bylaw, the shareholders expressly provide that the board of directors may not amend, repeal, or readopt that bylaw.

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

Sec. 21.058. DUAL AUTHORITY. Unless the certificate of formation or a bylaw adopted by the shareholders provides otherwise as to all or a part of a corporation's bylaws, a corporation's shareholders may amend, repeal, or adopt the corporation's bylaws regardless of whether the bylaws may also be amended, repealed, or adopted by the corporation's board of directors.

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

Sec. 21.059. ORGANIZATION MEETING. (a) This section does not apply to a corporation created as a result of a conversion or merger the plan of which states the bylaws and names the officers of the corporation.

(b) After the filing of a certificate of formation takes effect, an organization meeting shall be held at the call of the majority of the initial board of directors or the persons named in the certificate of formation under Section 3.007(a)(4) for the purpose of adopting bylaws, electing officers, and transacting other business.

(c) Not later than the third day before the date of the meeting, the directors or other persons calling the meeting shall send notice of the time and place of the meeting to each other director or person named in the certificate of formation.

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

SUBCHAPTER C. SHAREHOLDERS' AGREEMENTS

Sec. 21.101. SHAREHOLDERS' AGREEMENT. (a) The shareholders of a corporation may enter into an agreement that:

(1) restricts the discretion or powers of the board of directors;

(2) eliminates the board of directors and authorizes the business and affairs of the corporation to be managed, wholly or partly, by one or more of its shareholders or other persons;

(3) establishes the individuals who shall serve as directors or officers of the corporation;

(4) determines the term of office, manner of selection or removal, or terms or conditions of employment of a director, officer, or other employee of the corporation, regardless of the length of employment;

(5) governs the authorization or making of distributions whether in proportion to ownership of shares, subject to Section 21.303;

(6) determines the manner in which profits and losses will be apportioned;

(7) governs, in general or with regard to specific matters, the exercise or division of voting power by and between the shareholders, directors, or other persons, including use of disproportionate voting rights or director proxies;

(8) establishes the terms of an agreement for the transfer or use of property or for the provision of services between the corporation and another person, including a shareholder, director, officer, or employee of the corporation;

(9) authorizes arbitration or grants authority to a shareholder or other person to resolve any issue about which there is a deadlock among the directors, shareholders, or other persons authorized to manage the corporation;

(10) requires winding up and termination of the corporation at the request of one or more shareholders or on the occurrence of a specified event or contingency, in which case the winding up and termination of the corporation will proceed as if all of the shareholders had consented in writing to the winding up and termination as provided by Subchapter K;

(11) with regard to one or more social purposes specified in the corporation's certificate of formation, governs the exercise of corporate powers, the management of the operations and affairs of the corporation, the approval by shareholders or other persons of corporate actions, or the relationship among the shareholders, the directors, and the corporation; or

(12) otherwise governs the exercise of corporate powers, the management of the business and affairs of the corporation, or the relationship among the shareholders, the directors, and the corporation as if the corporation were a partnership or in a manner that would otherwise be appropriate only among partners and not contrary to public policy.

(b) A shareholders' agreement authorized by this section must be:

(1) contained in:

(A) the certificate of formation or bylaws if approved by all of the shareholders at the time of the agreement; or

(B) a written agreement that is:

(i) signed by all of the shareholders at the time of the agreement; and

(ii) made known to the corporation; and

(2) amended only by all of the shareholders at the time of the amendment, unless the agreement provides otherwise.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 100 (S.B. 849), Sec. 3, eff. September 1, 2013.

Sec. 21.102. TERM OF AGREEMENT. Any limit on the term or duration of a shareholders' agreement under this subchapter must be set forth in the agreement. A shareholders' agreement under this subchapter that was in effect before September 1, 2015, remains in effect for 10 years, unless the agreement provides otherwise.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 23, eff.

September 1, 2015.

Sec. 21.103. DISCLOSURE OF AGREEMENT; RECALL OF CERTAIN CERTIFICATES. (a) The existence of an agreement authorized by this subchapter shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required for uncertificated shares by Section 3.205.

(b) The disclosure required by this section must include the sentence, "These shares are subject to the provisions of a shareholders' agreement that may provide for management of the corporation in a manner different than in other corporations and may subject a shareholder to certain obligations or liabilities not otherwise imposed on shareholders in other corporations."

(c) A corporation that has outstanding shares represented by certificates at the time the shareholders of the corporation enter into an agreement under this subchapter shall recall the outstanding certificates and issue substitute certificates that comply with this subchapter.

(d) The failure to note the existence of the agreement on the certificate or information statement does not affect the validity of the agreement or an action taken pursuant to the agreement.

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

Sec. 21.104. EFFECT OF SHAREHOLDERS' AGREEMENT. A shareholders' agreement that complies with this subchapter is effective among the shareholders and between the shareholders and the corporation even if the terms of the agreement are inconsistent with this code.

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

Sec. 21.105. RIGHT OF RESCISSION; KNOWLEDGE OF PURCHASER OF SHARES. (a) A purchaser of shares who does not have knowledge at the time of purchase of the existence of a shareholders' agreement authorized by this subchapter is entitled to rescind the purchase.

(b) A purchaser is considered to have knowledge of the existence of the shareholders' agreement for purposes of this

section if:

(1) the existence of the agreement is noted on the certificate or information statement for the shares as required by Section 21.103; and

(2) with respect to shares that are not represented by a certificate, the information statement noting existence of the agreement is delivered to the purchaser not later than the time the shares are purchased.

(c) An action to enforce the right of rescission authorized by this section must be commenced not later than the earlier of:

(1) the 90th day after the date the existence of the shareholder agreement is discovered; or

(2) the second anniversary of the purchase date of the shares.

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

Sec. 21.106. AGREEMENT LIMITING AUTHORITY OF AND SUPPLANTING BOARD OF DIRECTORS; LIABILITY. (a) A shareholders' agreement authorized by this subchapter that limits the discretion or powers of the board of directors or supplants the board of directors relieves the directors of, and imposes on a person in whom the discretion or powers of the board of directors or the management of the business and affairs of the corporation is vested, liability for an act or omission of the person in accordance with Subsection (b).

(b) A person on whom liability for an act or omission is imposed under this section is liable in the same manner and to the same extent as a director on whom liability for an act or omission is imposed by this code or other law.

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

Sec. 21.107. LIABILITY OF SHAREHOLDER. The existence of or a performance under a shareholders' agreement authorized by this subchapter is not a ground for imposing personal liability on a shareholder for an act or obligation of the corporation by disregarding the separate existence of the corporation or otherwise, even if the agreement or a performance under the

agreement:

(1) treats the corporation as if the corporation were a partnership or in a manner that otherwise is appropriate only among partners;

(2) results in the corporation being considered a partnership for purposes of taxation; or

(3) results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

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

Sec. 21.108. PERSONS ACTING IN PLACE OF SHAREHOLDERS. An organizer or a subscriber for shares may act as a shareholder with respect to a shareholders' agreement authorized by this subchapter if no shares have been issued when the agreement is signed.

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

Sec. 21.109. AGREEMENT NOT EFFECTIVE.

(a) A shareholders' agreement authorized by this subchapter ceases to be effective when shares of the corporation are:

(1) listed on a national securities exchange; or

(2) regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(b) If a corporation does not have a board of directors and an agreement of the shareholders of the corporation entered into under this subchapter ceases to be effective, a board of directors shall be instituted or reinstated to govern the corporation in the manner provided by Section 21.710(c).

(c) If a shareholders' agreement that ceases to be effective is contained in or referred to by the certificate of formation or bylaws of a corporation, the board of directors of the corporation may adopt an amendment to the certificate of formation or bylaws, without shareholder action, to delete the agreement and any references to the agreement.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 21, eff.

September 1, 2011.

Sec. 21.110. OTHER SHAREHOLDER AGREEMENTS PERMITTED. This subchapter does not prohibit or impair any agreement between two or more shareholders, or between the corporation and one or more of the corporation's shareholders, permitted by Title 1, this chapter, or other law.

Added by Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 22, eff. September 1, 2011.

SUBCHAPTER D. SHARES, OPTIONS, AND CONVERTIBLE SECURITIES

Sec. 21.151. NUMBER OF AUTHORIZED SHARES. A corporation may issue the number of authorized shares stated in the corporation's certificate of formation.

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

Sec. 21.152. CLASSES AND SERIES OF SHARES. (a) A corporation's certificate of formation may divide the corporation's authorized shares into one or more classes and may divide one or more classes into one or more series. If more than one class or series of shares is authorized, the certificate of formation must designate each class and series of authorized shares to distinguish that class and series from any other class or series.

(b) Shares of the same class must be of the same par value or be without par value, as stated in the certificate of formation.

(c) Shares of the same class must be identical in all respects unless the shares have been divided into one or more series. If the shares of a class have been divided into one or more series, the shares may vary between series, but all shares of the same series must be identical in all respects.

(d) A corporation's certificate of formation must authorize:

(1) one or more classes or series of shares that together have unlimited voting rights; and

(2) one or more classes or series of shares, which may be the same class or series of shares as those with voting rights,

that together are entitled to receive the net assets of the corporation on winding up and termination.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 27, eff. September 1, 2009.

Sec. 21.153. DESIGNATIONS, PREFERENCES, LIMITATIONS, AND RIGHTS OF A CLASS OR SERIES. (a) If more than one class or series of shares is authorized under Section 21.152(d), the certificate of formation must state the designations, preferences, limitations, and relative rights, including voting rights, of each class or series.

(b) The certificate of formation may limit or deny the voting rights of, or provide special voting rights for, the shares of a class or series or the shares of a class or series held by a person or class of persons to the extent the limitation, denial, or provision is not inconsistent with this code.

(c) A designation, preference, limitation, or relative right, including a voting right, of a class or series of shares of a corporation may be made dependent on facts not contained in the certificate of formation, including future acts of the corporation, if the manner in which those facts will operate on the designation, preference, limitation, or right is clearly and expressly stated in the certificate of formation.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 28, eff. September 1, 2009.

Sec. 21.154. CERTAIN OPTIONAL CHARACTERISTICS OF SHARES. (a) Subject to Sections 21.152 and 21.153, if authorized by the corporation's certificate of formation, a corporation may issue shares that:

(1) are redeemable, at the option of the corporation, shareholder, or other person or on the occurrence of a designated event, subject to Sections 21.303 and 21.304;

(2) entitle the holders of the shares to cumulative, noncumulative, or partially cumulative distributions;

(3) have preferences over any or all other classes or series of shares with respect to payment of distributions;

(4) have preferences over any or all other classes or series of shares with respect to the assets of the corporation on the voluntary or involuntary winding up and termination of the corporation;

(5) are exchangeable, at the option of the corporation, shareholder, or other person or on the occurrence of a designated event, for shares, obligations, indebtedness, evidence of ownership, rights to purchase securities of the corporation or one or more other entities, or other property or for a combination of those rights, assets, or obligations, subject to Section 21.303; and

(6) are convertible into shares of any other class or series, at the option of the corporation, shareholder, or other person or on the occurrence of a designated event.

(b) Shares without par value may not be converted into shares with par value unless:

(1) at the time of conversion, the part of the corporation's stated capital represented by the shares without par value is at least equal to the aggregate par value of the shares to be converted; or

(2) the amount of any deficiency computed under Subdivision (1) is transferred from surplus to stated capital.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 29, eff. September 1, 2009.

Sec. 21.155. SERIES OF SHARES ESTABLISHED BY BOARD OF DIRECTORS. (a) If expressly authorized by the corporation's certificate of formation and subject to the certificate of formation, the board of directors of a corporation may establish series of unissued shares of any class by setting and determining the designations, preferences, limitations, and relative rights,

including voting rights, of the shares of the series to be established to the same extent that the designations, preferences, limitations, or relative rights could be stated if fully specified in the certificate of formation.

(b) To establish a series if authorized by the certificate of formation, the board of directors must adopt a resolution specifying the designations, preferences, limitations, and relative rights, including voting rights, of the series to be established or specifying any designation, preference, limitation, or relative right that is not set and determined by the certificate of formation.

(c) If the certificate of formation does not expressly restrict the board of directors from increasing or decreasing the number of unissued shares of a series to be established under Subsection (a), the board of directors may increase or decrease the number of shares in each series to be established, except that the board of directors may not decrease the number of shares in a particular series to a number that is less than the number of shares in that series that are issued at the time of the decrease.

(d) To increase or decrease the number of shares of a series under Subsection (c), the board of directors must adopt a resolution setting and determining the new number of shares of each series in which the number of shares is increased or decreased. If the number of shares of a series is decreased, the shares by which the series is decreased will resume the status of authorized but unissued shares of the class of shares from which the series was established, unless otherwise provided by the certificate of formation or the terms of the class or series.

(e) If no shares of a series established by board resolution under Subsection (b) are outstanding because no shares of that series have been issued or no issued shares of that series remain outstanding, the board of directors by resolution may delete the series from the certificate of formation and delete any reference to the series contained in the certificate of formation. Unless otherwise provided by the certificate of formation, the shares of any series deleted from the certificate of formation under this section shall resume the status of authorized but unissued shares

of the class of shares from which the series was established.

(f) If no shares of a series established by resolution of the board of directors under Subsection (b) are outstanding because no shares of that series have been issued, the board of directors may amend the designations, preferences, limitations, and relative rights, including voting rights, of the series or amend any designation, preference, limitation, or relative right that is not set and determined by the certificate of formation.

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

Sec. 21.156. ACTIONS WITH RESPECT TO SERIES OF SHARES. (a) To effect an action authorized under Section 21.155, the corporation must file with the secretary of state a statement that contains:

(1) the name of the corporation;

(2) if the statement relates to the establishment of a series of shares, a copy of the resolution establishing and designating the series and setting and determining the designations, preferences, limitations, and relative rights of the series;

(3) if the statement relates to an increase or decrease in the number of shares of a series, a copy of the resolution setting and determining the new number of shares of each series in which the number of shares is increased or decreased;

(4) if the statement relates to the deletion of a series of shares and all references to the series from the certificate of formation, a copy of the resolution deleting the series and all references to the series from the certificate of formation;

(5) if the statement relates to the amendment of designations, preferences, limitations, or relative rights of shares of a series that was previously established by resolution of the board of directors, a copy of the resolution in which the amendment is specified;

(6) the date of the adoption of the resolution; and

(7) a statement that the resolution was adopted by all necessary action on the part of the corporation.

(b) On the filing of a statement described by Subsection (a), the following resolutions will become an amendment of the certificate of formation, as appropriate:

(1) the resolution establishing and designating the series and setting and determining the designations, preferences, limitations, and relative rights of the series;

(2) the resolution setting the new number of shares of each series in which the number of shares is increased or decreased;

(3) the resolution deleting a series and all references to the series from the certificate of formation; or

(4) the resolution amending the designations, preferences, limitations, and relative rights of a series.

(c) An amendment of the certificate of formation under this section is not subject to the procedure to amend the certificate of formation contained in Subchapter B.

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

Sec. 21.157. ISSUANCE OF SHARES. (a) Except as provided by Section 21.158, a corporation may issue shares for consideration if authorized by the board of directors of the corporation.

(b) Shares may not be issued until the consideration, determined in accordance with this subchapter, has been paid or delivered as required in connection with the authorization of the shares. When the consideration is paid or delivered:

(1) the shares are considered to be issued;

(2) the subscriber or other person entitled to receive the shares is a shareholder with respect to the shares; and

(3) the shares are considered fully paid and nonassessable.

(c) This subsection applies only to shares issued in accordance with Subsections (a) and (b) and Sections 21.160 and 21.161 for consideration consisting, wholly or partly, of a contract for future services or benefits or a promissory note. A corporation may place the shares, although fully paid and nonassessable, in escrow, or make other arrangements to restrict the transfer of the shares, and may credit distributions made with respect to the shares against their purchase price, until the

services are performed, the note is paid, or the benefits are received. If the services are not performed, the note is not paid, or the benefits are not received, the corporation may pursue remedies provided or afforded under law or in the contract or note, including causing the shares that are placed in escrow or restricted to be forfeited or returned to or reacquired by the corporation and the distributions that have been credited to be wholly or partly returned to the corporation.

(d) The authorization by the board of directors for the issuance of shares may provide that any shares to be issued under the authorization may be issued:

(1) in one or more transactions in the numbers and at the times as stated in or determined by the authorization; or

(2) in the manner stated in the authorization, which may include a determination or action by any person or persons, including the corporation, if the authorization states:

(A) the maximum number of shares that may be issued under the authorization;

(B) the period during which the shares may be issued; and

(C) the minimum amount of consideration for which the shares may be issued.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 30, eff. September 1, 2009.

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 6, eff. September 1, 2017.

Sec. 21.158. ISSUANCE OF SHARES UNDER PLAN OF MERGER OR CONVERSION. (a) A converted corporation under a plan of conversion or a corporation created by a plan of merger may issue shares for consideration if authorized by the plan of conversion or plan of merger, as appropriate.

(b) A corporation may issue shares in the manner provided by and for consideration specified under a plan of merger or plan of conversion.

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

Sec. 21.159. TYPES OF CONSIDERATION FOR SHARES. Shares with or without par value may be issued for the following types of consideration:

(1) a tangible or intangible benefit to the corporation;

(2) cash;

(3) a promissory note;

(4) services performed or a contract for services to be performed;

(5) a security of the corporation or any other organization; and

(6) any other property of any kind or nature.

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

Sec. 21.160. DETERMINATION OF CONSIDERATION FOR SHARES. (a) Subject to Subsection (b), consideration to be received for shares must be determined:

(1) by the board of directors;

(2) by a plan of conversion, if the shares are to be issued by a converted corporation under the plan; or

(3) by a plan of merger, if the shares are to be issued under the plan by a corporation created under the plan.

(b) If the corporation's certificate of formation reserves to the shareholders the right to determine the consideration to be received for shares without par value, the shareholders shall determine the consideration for those shares before the shares are issued. The board of directors may not determine the consideration for shares under this subsection.

(c) A corporation may dispose of treasury shares for consideration that may be determined by the board of directors.

(d) The amount of the consideration to be received for shares may be determined in accordance with Subsection (a) by the approval of a minimum amount of consideration or a formula to determine that amount. The formula may include or be made dependent on facts ascertainable outside the formula, if the manner

in which those facts operate on the formula is clearly or expressly set forth in the formula or in the authorization approving the formula.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 24, eff. September 1, 2015.

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 7, eff. September 1, 2017.

Sec. 21.161. AMOUNT OF CONSIDERATION FOR ISSUANCE OF CERTAIN SHARES. (a) Consideration to be received by a corporation for the issuance of shares with par value may not be less than the par value of the shares.

(b) The part of the surplus of a corporation that is transferred to stated capital on the issuance of shares as a share distribution is considered to be the consideration for the issuance of those shares.

(c) The consideration received by a corporation for the issuance of shares on the conversion or exchange of its indebtedness or shares is:

(1) the principal of, and accrued interest on, the indebtedness exchanged or converted, or the stated capital on the issuance of the shares;

(2) the part of surplus, if any, transferred to stated capital on the issuance of the shares; and

(3) any additional consideration paid to the corporation on the issuance of the shares.

(d) The consideration received by a corporation for the issuance of shares on the exercise of rights or options is:

(1) any consideration received by the corporation for the rights or options; and

(2) any consideration received by the corporation for the issuance of shares on the exercise of the rights or options.

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

Sec. 21.162. VALUE AND SUFFICIENCY OF CONSIDERATION. In

the absence of fraud in the transaction, the judgment of the board of directors, the shareholders, or the party approving the plan of conversion or the plan of merger, as appropriate, is conclusive in determining the value and sufficiency of the consideration received for the shares.

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

Sec. 21.163. ISSUANCE AND DISPOSITION OF FRACTIONAL SHARES OR SCRIP. (a) A corporation may:

(1) issue fractions of a share, either certificated or uncertificated;

(2) arrange for the disposition of fractional interests by persons entitled to the interests;

(3) pay cash for the fair value of fractions of a share determined when the shareholders entitled to receive the fractions are determined; or

(4) subject to Subsection (b), issue scrip in registered form that entitles the holder to receive a certificate for a full share or an uncertificated full share on the surrender of the scrip aggregating a full share.

(b) The board of directors may issue scrip:

(1) on the condition that the scrip will become void if not exchanged for certificated or uncertificated full shares before a specified date;

(2) on the condition that the shares for which the scrip is exchangeable may be sold by the corporation and the proceeds from the sale of the shares may be distributed to the holders of scrip; or

(3) subject to any other condition the board of directors may determine advisable.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 31, eff. September 1, 2009.

Sec. 21.164. RIGHTS OF HOLDERS OF FRACTIONAL SHARES OR SCRIP. (a) A holder of a certificated or uncertificated fractional

share is entitled to exercise voting rights, receive distributions, and make a claim with respect to the assets of the corporation in the event of winding up and termination.

(b) A holder of a certificate for scrip is not entitled to exercise voting rights, receive distributions, or make a claim with respect to the assets of the corporation in the event of winding up and termination unless the scrip provides for those rights.

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

Sec. 21.165. SUBSCRIPTIONS. (a) A corporation may accept a subscription by notifying the subscriber in writing.

(b) A subscription to purchase shares in a corporation in the process of being formed is irrevocable for six months if the subscription is in writing and signed by the subscriber, unless the subscription provides for a longer or shorter period or all of the other subscribers agree to the revocation of the subscription.

(c) A written subscription entered into after the corporation is formed is a contract between the subscriber and the corporation.

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

Sec. 21.166. PREFORMATION SUBSCRIPTION. (a) The corporation may determine the payment terms of a preformation subscription unless the payment terms are specified by the subscription. The payment terms may authorize payment in full on acceptance or by installments.

(b) Unless the subscription provides otherwise, a corporation shall make calls placed to all subscribers of similar interests for payment on preformation subscriptions uniform as far as practicable.

(c) After the corporation is formed, if a subscriber fails to pay any installment or call when due, a corporation may:

(1) collect in the same manner as any other debt the amount due on any unpaid preformation subscription; or

(2) forfeit the subscription if the installment or call remains unpaid for 20 days after written notice to the subscriber.

(d) Although the forfeiture of a subscription terminates all the rights and obligations of the subscriber, the corporation may retain any amount previously paid on the subscription.

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

Sec. 21.167. COMMITMENT TO PURCHASE SHARES. (a) A person who contemplates the acquisition of shares in a corporation may commit to act in a specified manner with respect to the shares after the acquisition, including the voting of the shares or the retention or disposition of the shares. To be binding, the commitment must be in writing and be signed by the person acquiring the shares.

(b) A written commitment entered into under Subsection (a) is a contract between the shareholder and the corporation.

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

Sec. 21.168. STOCK RIGHTS, OPTIONS, AND CONVERTIBLE INDEBTEDNESS. (a) Except as provided by the corporation's certificate of formation and regardless of whether done in connection with the issuance and sale of any other share or security of the corporation, a corporation may create and issue:

(1) rights or options that entitle the holders to purchase or receive from the corporation shares of any class or series or other securities; and

(2) indebtedness convertible into shares of any class or series of the corporation or other securities of the corporation.

(b) A right, option, or indebtedness described by this section shall be evidenced in the manner approved by the board of directors.

(c) Subject to the certificate of formation, a right or option described by this section must state the terms on which, the time within which, and any consideration, including a formula by which the consideration may be determined, for which the shares may be purchased or received from the corporation on the exercise of the right or option. A formula by which the consideration may be determined may include or be made dependent on facts ascertainable

outside the formula, if the manner in which those facts operate on the formula is clearly or expressly set forth in the formula or in the authorization approving the formula.

(d) Subject to the certificate of formation, convertible indebtedness described by this section must state the terms and conditions on which, the time within which, and the conversion ratio at which the indebtedness may be converted into shares.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 45, eff. January 1, 2006.

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 8, eff. September 1, 2017.

Sec. 21.169. TERMS AND CONDITIONS OF RIGHTS AND OPTIONS. (a) The terms and conditions of rights or options may include restrictions or conditions that:

(1) prohibit or limit the exercise, transfer, or receipt of the rights or options by certain persons or classes of persons, including:

(A) a person who beneficially owns or offers to acquire a specified number or percentage of the outstanding common shares, voting power, or other securities of the corporation; or

(B) a transferee of a person described by Paragraph (A); or

(2) invalidate or void the rights or options held by a person or transferee described by Subdivision (1).

(b) Rights or options created or issued before the effective date of this code that comply with this section and are not in conflict with other provisions of this code are ratified.

(c) Unless otherwise provided under the terms of rights or options or the agreement or plan under which the rights or options are issued, the authority to grant, amend, redeem, extend, or replace the rights or options on behalf of a corporation is vested exclusively in the board of directors of the corporation. A bylaw may not require the board to grant, amend, redeem, extend, or replace the rights or options.

(d) The terms of rights or options or the agreement or plan under which the rights or options are issued may provide that the board of directors by resolution may authorize one or more officers of the corporation to:

(1) designate officers and employees of the corporation or of any subsidiary of the corporation to receive rights or options created by the corporation; or

(2) determine the number of rights or options to be received under Subdivision (1).

(e) A resolution adopted under Subsection (d)(1) must specify the total number of rights or options the authorized officer or officers may award. An officer may not be designated as a recipient of any rights or options that the officer is authorized to award under Subsection (d)(1).

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 46, eff. January 1, 2006.

Sec. 21.170. CONSIDERATION FOR RIGHTS, OPTIONS, AND CONVERTIBLE INDEBTEDNESS. (a) In the absence of fraud in the transaction, the judgment of the board of directors of a corporation as to the adequacy of the consideration received for rights, options, or convertible indebtedness is conclusive.

(b) A corporation may issue rights or options to its shareholders, officers, consultants, independent contractors, employees, or directors without consideration if, in the judgment of the board of directors, the issuance of the rights or options is in the interests of the corporation.

(c) The consideration for shares having a par value, other than treasury shares, and issued on the exercise of the rights or options may not be less than the par value of the shares.

(d) A privilege of conversion may not be conferred on, or altered with respect to, any indebtedness that would result in the corporation receiving less than the minimum consideration required to be received on issuance of the shares.

(e) The consideration for shares issued on the exercise of

rights, options, or convertible indebtedness shall be determined as provided by Section 21.161.

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

Sec. 21.171. OUTSTANDING OR TREASURY SHARES. (a) Shares that are issued are outstanding shares unless the shares are treasury shares or are canceled.

(b) If there are outstanding shares, one or more shares that together have unlimited voting rights and one or more shares that together are entitled to receive the net assets of the corporation on the winding up and termination of the corporation must be outstanding shares.

(c) Treasury shares are considered to be issued shares and not outstanding shares.

(d) Treasury shares may not be included in the total assets of a corporation for purposes of determining the net assets of a corporation.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 32, eff. September 1, 2009.

Sec. 21.172. EXPENSES OF ORGANIZATION, REORGANIZATION, AND FINANCING OF CORPORATION. A corporation may pay or authorize to be paid from the consideration received by the corporation as payment for the corporation's shares the reasonable charges and expenses of the organization or reorganization of the corporation and the sale or underwriting of the shares without rendering the shares not fully paid and nonassessable.

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

Sec. 21.173. SUPPLEMENTAL REQUIRED RECORDS. In addition to the books and records required to be kept under Section 3.151, a corporation shall keep at its registered office or principal place of business, or at the office of its transfer agent or registrar, a record of:

(1) the original issuance of shares issued by the

corporation;

(2) each transfer of those shares that have been presented to the corporation for registration of transfer;

(3) the names and addresses of all past shareholders of the corporation; and

(4) the number and class or series of shares issued by the corporation held by each current and past shareholder.

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

SUBCHAPTER E. SHAREHOLDER RIGHTS AND RESTRICTIONS

Sec. 21.201. REGISTERED HOLDERS AS OWNERS; SHARES HELD BY NOMINEES. (a) Except as otherwise provided by this code and subject to Chapter 8, Business & Commerce Code, a corporation may consider the person registered as the owner of a share in the share transfer records of the corporation at a particular time, including a record date set under Section 6.101 or 6.102 or Subchapter H, as the owner of that share at that time for purposes of:

(1) voting the share;

(2) receiving distributions on the share;

(3) transferring the share;

(4) receiving notice, exercising rights of dissent, exercising or waiving a preemptive right, or giving proxies with respect to that share;

(5) entering into agreements with respect to that share in accordance with Section 6.251, 6.252, or 21.210; or

(6) any other shareholder action.

(b) A corporation may establish a procedure by which the corporation recognizes as a shareholder the beneficial owner of shares registered in the name of a nominee.

(c) A procedure established under Subsection (b) must:

(1) determine the extent of the corporation's recognition of the beneficial owner as a shareholder; and

(2) include the nominee's filing of a statement with the corporation that contains information regarding the beneficial owner.

(d) A procedure established under Subsection (b) may set

forth:

(1) the types of nominees to which the procedure applies;

(2) the rights or privileges that the corporation will recognize in a beneficial owner, to the extent that the rights or privileges are not inconsistent with Section 10.361(g);

(3) the manner in which the procedure is selected by the nominee;

(4) the information that must be provided when the procedure is selected;

(5) the period for which the selection of the procedure is effective; and

(6) any other aspect of the rights and duties to be established under the procedure.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 33, eff. September 1, 2009.

Sec. 21.202. DEFINITION OF SHARES. In Sections 21.203-21.208, "shares" includes a security:

(1) that is convertible into shares; or

(2) that carries a right to subscribe for or acquire shares.

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

Sec. 21.203. NO STATUTORY PREEMPTIVE RIGHT UNLESS PROVIDED BY CERTIFICATE OF FORMATION. (a) Except as provided by Section 21.208, a shareholder of a corporation does not have a preemptive right under this subchapter to acquire the corporation's unissued or treasury shares except to the extent provided by the corporation's certificate of formation.

(b) If the certificate of formation includes a statement that the corporation "elects to have a preemptive right" or a similar statement, Section 21.204 applies to a shareholder except to the extent the certificate of formation expressly provides otherwise.

(c) This section and Sections 21.204 through 21.208 do not invalidate or impair a corporation's right or power to grant an enforceable nonstatutory preemptive right in:

(1) a contract between the corporation and a shareholder or other person; or

(2) the governing documents of the corporation.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 23, eff. September 1, 2011.

Sec. 21.204. STATUTORY PREEMPTIVE RIGHTS. (a) If the shareholders of a corporation have a preemptive right under this subchapter, the shareholders have a preemptive right to acquire proportional amounts of the corporation's unissued or treasury shares on the decision of the corporation's board of directors to issue the shares. The preemptive right granted under this subsection is subject to uniform terms and conditions prescribed by the board of directors to provide a fair and reasonable opportunity to exercise the preemptive right.

(b) No preemptive right exists with respect to:

(1) shares issued or granted as compensation to a director, officer, agent, or employee of the corporation or a subsidiary or affiliate of the corporation;

(2) shares issued or granted to satisfy conversion or option rights created to provide compensation to a director, officer, agent, or employee of the corporation or a subsidiary or affiliate of the corporation;

(3) shares authorized in the corporation's certificate of formation that are issued not later than the 180th day after the effective date of the corporation's formation; or

(4) shares sold, issued, or granted by the corporation for consideration other than money.

(c) A holder of a share of a class without general voting rights but with a preferential right to distributions of profits, income, or assets does not have a preemptive right with respect to shares of any class.

(d) A holder of a share of a class with general voting rights but without preferential rights to distributions of profits, income, or assets does not have a preemptive right with respect to shares of any class with preferential rights to distributions of profits, income, or assets unless the shares with preferential rights are convertible into or carry a right to subscribe for or acquire shares without preferential rights.

(e) For a one-year period after the date the shares have been offered to shareholders, shares subject to preemptive rights that are not acquired by a shareholder may be issued to a person at a consideration set by the corporation's board of directors that is not lower than the consideration set for the exercise of preemptive rights. An offer at a lower consideration or after the expiration of the period prescribed by this subsection is subject to the shareholder's preemptive rights.

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

Sec. 21.205. WAIVER OF PREEMPTIVE RIGHT. (a) A shareholder may waive a preemptive right granted to the shareholder.

(b) A written waiver of a preemptive right is irrevocable regardless of whether the waiver is supported by consideration.

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

Sec. 21.206. LIMITATION ON ACTION TO ENFORCE PREEMPTIVE RIGHT. (a) An action brought against a corporation, the board of directors or an officer, shareholder, or agent of the corporation, or an owner of a beneficial interest in shares of the corporation for the violation of a preemptive right of a shareholder under Sections 21.203 and 21.204 must be brought not later than the earlier of:

(1) the first anniversary of the date written notice is given to each shareholder whose preemptive right was violated; or

(2) the fourth anniversary of the latest of:

(A) the date the corporation issued the shares, securities, or rights;

(B) the date the corporation sold the shares,

securities, or rights; or

(C) the date the corporation otherwise distributed the shares, securities, or rights.

(b) The notice required by Subsection (a)(1) must:

(1) be sent to the holder at the address for the holder as shown on the appropriate records of the corporation; and

(2) inform the holder that the issuance, sale, or other distribution of shares, securities, or rights violated the holder's preemptive right.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 24, eff. September 1, 2011.

Sec. 21.207. DISPOSITION OF SHARES HAVING PREEMPTIVE RIGHTS. The transferee or successor of a share that has been transferred or otherwise disposed of by a shareholder of a corporation whose preemptive right to acquire shares in the corporation has been violated does not acquire the preemptive right, or any right or claim based on the violation, unless the previous shareholder has assigned the preemptive right to the transferee or successor.

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

Sec. 21.208. PREEMPTIVE RIGHT IN EXISTING CORPORATION. Subject to the certificate of formation, a shareholder of a corporation incorporated before September 1, 2003, has a preemptive right to acquire unissued or treasury shares of the corporation to the extent provided by Sections 21.204, 21.206, and 21.207. After September 1, 2003, a corporation may limit or deny the preemptive right of the shareholders of the corporation by amending the corporation's certificate of formation.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 47, eff. January 1, 2006.

Sec. 21.209. TRANSFER OF SHARES AND OTHER SECURITIES. Except as otherwise provided by this code, the shares and other securities of a corporation are transferable in accordance with Chapter 8, Business & Commerce Code.

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

Sec. 21.210. RESTRICTION ON TRANSFER OF SHARES AND OTHER SECURITIES. (a) A restriction on the transfer or registration of transfer of a security, or on the amount of a corporation's securities that may be owned by a person or group of persons, may be imposed by:

(1) the corporation's certificate of formation;

(2) the corporation's bylaws;

(3) a written agreement among two or more holders of the securities; or

(4) a written agreement among one or more holders of the securities and the corporation if:

(A) the corporation files a copy of the agreement at the principal place of business or registered office of the corporation; and

(B) the copy of the agreement is subject to the same right of examination by a shareholder of the corporation, in person or by agent, attorney, or accountant, as the books and records of the corporation.

(b) A restriction imposed under Subsection (a) is not valid with respect to a security issued before the restriction has been adopted, unless the holder of the security voted in favor of the restriction or is a party to the agreement imposing the restriction.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 48, eff. January 1, 2006.

Sec. 21.211. VALID RESTRICTIONS ON TRANSFER. (a) Without limiting the general powers granted by Sections 21.210 and 21.213 to impose and enforce reasonable restrictions, a restriction placed

on the transfer or registration of transfer of a security of a corporation is valid if the restriction reasonably:

(1) obligates the holder of the restricted security to offer a person, including the corporation or other holders of securities of the corporation, an opportunity to acquire the restricted security within a reasonable time before the transfer;

(2) obligates the corporation, to the extent provided by this code, or another person to purchase securities that are the subject of an agreement relating to the purchase and sale of the restricted security;

(3) requires the corporation or the holders of a class of the corporation's securities to consent to a proposed transfer of the restricted security or to approve the proposed transferee of the restricted security for the purpose of preventing a violation of law;

(4) prohibits the transfer of the restricted security to a designated person or group of persons and the designation is not manifestly unreasonable;

(5) maintains the status of the corporation as an electing small business corporation under Subchapter S of the Internal Revenue Code;

(6) maintains a tax advantage to the corporation;

(7) maintains the status of the corporation as a close corporation under Subchapter O;

(8) obligates the holder of the restricted securities to sell or transfer an amount of restricted securities to a person or group of persons, including the corporation or other holders of securities of the corporation; or

(9) causes or results in the automatic sale or transfer of an amount of restricted securities to a person or group of persons, including the corporation or other holders of securities of the corporation.

(b) A restriction placed on the transfer or registration of transfer of a security of a corporation, on the amount of the corporation's securities, or on the amount of the corporation's securities that may be owned by a person or group of persons is conclusively presumed to be for a reasonable purpose if the

restriction:

(1) maintains a local, state, federal, or foreign tax advantage to the corporation or its shareholders, including:

(A) maintaining the corporation's status as an electing small business corporation under Subchapter S of the Internal Revenue Code;

(B) maintaining or preserving any tax attribute, including net operating losses; or

(C) qualifying or maintaining the qualification of the corporation as a real estate investment trust under the Internal Revenue Code or regulations adopted under the Internal Revenue Code; or

(2) maintains a statutory or regulatory advantage or complies with a statutory or regulatory requirement under applicable local, state, federal, or foreign law.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 49, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 71, eff. September 1, 2007.

Sec. 21.212. BYLAW OR AGREEMENT RESTRICTING TRANSFER OF SHARES OR OTHER SECURITIES. (a) A corporation that has adopted a bylaw or is a party to an agreement that restricts the transfer of the shares or other securities of the corporation may file with the secretary of state, in accordance with Chapter 4, a copy of the bylaw or agreement and a statement attached to the copy that:

(1) contains the name of the corporation;

(2) states that the attached copy of the bylaw or agreement is a true and correct copy of the bylaw or agreement; and

(3) states that the filing has been authorized by the board of directors or, in the case of a corporation that is managed in some other manner under a shareholders' agreement, by the person empowered by the agreement to manage the corporation's business and affairs.

(b) After a statement described by Subsection (a) is filed

with the secretary of state, the bylaws or agreement restricting the transfer of shares or other securities is a public record, and the fact that the statement has been filed may be stated on a certificate representing the restricted shares or securities if required by Section 3.202.

(c) A corporation that is a party to an agreement restricting the transfer of the shares or other securities of the corporation may make the agreement part of the corporation's certificate of formation without restating the provisions of the agreement in the certificate of formation by amending the certificate of formation. If the agreement alters any provision of the certificate of formation, the certificate of amendment shall identify the altered provision by reference or description. If the agreement is an addition to the certificate of formation, the certificate of amendment must state that fact.

(d) The certificate of amendment must:

(1) include a copy of the agreement restricting the transfer of shares or other securities;

(2) state that the attached copy of the agreement is a true and correct copy of the agreement; and

(3) state that inclusion of the certificate of amendment as part of the certificate of formation has been authorized in the manner required by this code to amend the certificate of formation.

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

Sec. 21.213. ENFORCEABILITY OF RESTRICTION ON TRANSFER OF CERTAIN SECURITIES. (a) A restriction placed on the transfer or registration of the transfer of a security of a corporation is specifically enforceable against the holder, or a successor or transferee of the holder, if:

(1) the restriction is reasonable and noted conspicuously on the certificate or other instrument representing the security; or

(2) with respect to an uncertificated security, the restriction is reasonable and a notation of the restriction is contained in the notice sent with respect to the security under

Section 3.205.

(b) Unless noted in the manner specified by Subsection (a) with respect to a certificate or other instrument or an uncertificated security, an otherwise enforceable restriction is ineffective against a transferee for value without actual knowledge of the restriction at the time of the transfer or against a subsequent transferee, regardless of whether the transfer is for value. A restriction is specifically enforceable against a person other than a transferee for value from the time the person acquires actual knowledge of the restriction's existence.

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

Sec. 21.214. JOINT OWNERSHIP OF SHARES. (a) If shares are registered on the books of a corporation in the names of two or more persons as joint owners with the right of survivorship and one of the owners dies, the corporation may record on its books and effect the transfer of the shares to a person, including the surviving joint owner, and pay any distributions made with respect to the shares, as if the surviving joint owner was the absolute owner of the shares. The recording and distribution authorized by this subsection must be made after the death of a joint owner and before the corporation receives actual written notice that a party other than a surviving joint owner is claiming an interest in the shares or distribution.

(b) The discharge of a corporation from liability under Section 21.216 and the transfer of full legal and equitable title of the shares does not affect, reduce, or limit any cause of action existing in favor of an owner of an interest in the shares or distributions against the surviving owner.

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

Sec. 21.215. LIABILITY FOR DESIGNATING OWNER OF SHARES. A corporation or an officer, director, employee, or agent of the corporation may not be held liable for considering the person who is registered as the owner of a share in the share transfer records of the corporation at a particular time to be the owner of the share at that time for a purpose described by Section 21.201, regardless of

whether the person possesses a certificate for that share.

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

Sec. 21.216. LIABILITY REGARDING JOINT OWNERSHIP OF SHARES. A corporation that transfers shares or makes a distribution to a surviving joint owner under Section 21.214 before the corporation has received a written claim for the shares or distribution from another person is discharged from liability for the transfer or payment.

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

Sec. 21.217. LIABILITY OF ASSIGNEE OR TRANSFEREE. An assignee or transferee of certificated shares, uncertificated shares, or a subscription for shares in good faith and without knowledge that full consideration for the shares or subscription has not been paid may not be held personally liable to the corporation or a creditor of the corporation for an unpaid portion of the consideration.

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

Sec. 21.218. EXAMINATION OF RECORDS. (a) In this section, a holder of a beneficial interest in a voting trust entered into under Section 6.251 is a holder of the shares represented by the beneficial interest.

(b) On written demand stating a proper purpose, a holder of shares of a corporation for at least six months immediately preceding the holder's demand, or a holder of at least five percent of all of the outstanding shares of a corporation, is entitled to examine and copy, at a reasonable time, the corporation's books, records of account, minutes, and share transfer records relating to the stated purpose. The examination may be conducted in person or through an agent, accountant, or attorney.

(c) This section does not impair the power of a court, on the presentation of proof of proper purpose by a beneficial or record holder of shares, to compel the production for examination by the holder of the books and records of accounts, minutes, and share transfer records of a corporation, regardless of the period during

which the holder was a beneficial holder or record holder and regardless of the number of shares held by the person.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 9, eff. September 1, 2017.

Sec. 21.219. ANNUAL AND INTERIM STATEMENTS OF CORPORATION. (a) On written request of a shareholder of the corporation, a corporation shall mail to the shareholder:

(1) the annual statements of the corporation for the last fiscal year that contain in reasonable detail the corporation's assets and liabilities and the results of the corporation's operations; and

(2) the most recent interim statements, if any, that have been filed in a public record or other publication.

(b) The corporation shall be allowed a reasonable time to prepare the annual statements.

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

Sec. 21.220. PENALTY FOR FAILURE TO PREPARE VOTING LIST. An officer or agent of a corporation who is in charge of the corporation's share transfer records and who does not prepare the list of shareholders, keep the list on file for a 10-day period, or produce and keep the list available for inspection at the annual meeting as required by Sections 21.354 and 21.372 is liable to a shareholder who suffers damages because of the failure for the damage caused by the failure.

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. 72, eff. September 1, 2007.

Sec. 21.221. PENALTY FOR FAILURE TO PROVIDE NOTICE OF MEETING. If an officer or agent of a corporation is unable to comply with the duties prescribed by Sections 21.354 and 21.372 because the officer or agent did not receive notice of a meeting of

shareholders within a sufficient time before the date of the meeting, the corporation, rather than the officer or agent, is liable to a shareholder who suffers damages because of the failure for the extent of the damage caused by the failure.

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. 73, eff. September 1, 2007.

Sec. 21.222. PENALTY FOR REFUSAL TO PERMIT EXAMINATION OF CERTAIN RECORDS. (a) A corporation that refuses to allow a person to examine and make copies of account records, minutes, and share transfer records under Section 21.218 is liable to the shareholder for any cost or expense, including attorney's fees, incurred in enforcing the shareholder's rights under Section 21.218. The liability imposed on a corporation under this subsection is in addition to any other damages or remedy afforded to the shareholder by law.

(b) It is a defense to an action brought under this section that the person suing:

(1) has, within the two years preceding the date the action is brought, sold or offered for sale a list of shareholders or of holders of voting trust certificates for shares of the corporation or any other corporation;

(2) has aided or abetted a person in procuring a list of shareholders or of holders of voting trust certificates for the purpose described by Subdivision (1);

(3) has improperly used information obtained through a prior examination of the books and account records, minutes, or share transfer records of the corporation or any other corporation; or

(4) was not acting in good faith or for a proper purpose in making the person's request for examination.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 25, eff. September 1, 2011.

Sec. 21.223. LIMITATION OF LIABILITY FOR OBLIGATIONS. (a) A holder of shares, an owner of any beneficial interest in shares, or a subscriber for shares whose subscription has been accepted, or any affiliate of such a holder, owner, or subscriber or of the corporation, may not be held liable to the corporation or its obligees with respect to:

(1) the shares, other than the obligation to pay to the corporation the full amount of consideration, fixed in compliance with Sections 21.157-21.162, for which the shares were or are to be issued;

(2) any contractual obligation of the corporation or any matter relating to or arising from the obligation on the basis that the holder, beneficial owner, subscriber, or affiliate is or was the alter ego of the corporation or on the basis of actual or constructive fraud, a sham to perpetrate a fraud, or other similar theory; or

(3) any obligation of the corporation on the basis of the failure of the corporation to observe any corporate formality, including the failure to:

(A) comply with this code or the certificate of formation or bylaws of the corporation; or

(B) observe any requirement prescribed by this code or the certificate of formation or bylaws of the corporation for acts to be taken by the corporation or its directors or shareholders.

(b) Subsection (a)(2) does not prevent or limit the liability of a holder, beneficial owner, subscriber, or affiliate if the obligee demonstrates that the holder, beneficial owner, subscriber, or affiliate caused the corporation to be used for the purpose of perpetrating and did perpetrate an actual fraud on the obligee primarily for the direct personal benefit of the holder, beneficial owner, subscriber, or affiliate.

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. 74, eff. September 1, 2007.

Sec. 21.224. PREEMPTION OF LIABILITY. The liability of a holder, beneficial owner, or subscriber of shares of a corporation, or any affiliate of such a holder, owner, or subscriber or of the corporation, for an obligation that is limited by Section 21.223 is exclusive and preempts any other liability imposed for that obligation under common law or otherwise.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 34, eff. September 1, 2009.

Sec. 21.225. EXCEPTIONS TO LIMITATIONS. Section 21.223 or 21.224 does not limit the obligation of a holder, beneficial owner, subscriber, or affiliate to the obligee of the corporation if that person:

(1) expressly assumes, guarantees, or agrees to be personally liable to the obligee for the obligation; or

(2) is otherwise liable to the obligee for the obligation under this code or other applicable statute.

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

Sec. 21.226. PLEDGEES AND TRUST ADMINISTRATORS. (a) A pledgee or other holder of shares as collateral security is not personally liable as a shareholder.

(b) An executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver is not personally liable as a holder of or subscriber to shares of a corporation.

(c) The estate and funds administered by an executor, administrator, conservator, guardian, trustee, assignee for the benefit of creditors, or receiver are liable for the full amount of the consideration for which the shares were or are to be issued.

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

SUBCHAPTER F. REDUCTIONS IN STATED CAPITAL; CANCELLATION OF TREASURY SHARES

Sec. 21.251. REDUCTION OF STATED CAPITAL BY REDEMPTION OR PURCHASE OF REDEEMABLE SHARES. (a) At the time a corporation redeems or purchases the redeemable shares of the corporation, the redemption or purchase has the effect of:

(1) canceling the shares; and

(2) restoring the shares to the status of authorized but unissued shares, unless the corporation's certificate of formation provides that shares may not be reissued after the shares are redeemed or purchased by the corporation.

(b) If the corporation is prohibited from reissuing the shares by the certificate of formation following a redemption or purchase under Subsection (a), the number of shares of the class that the corporation is authorized to issue is reduced by the number of shares canceled.

(c) If shares redeemed or purchased by a corporation under Subsection (a) constitute all of the outstanding shares of a particular class of shares and the certificate of formation provides that the shares of the class, when redeemed and repurchased, may not be reissued, the corporation may not issue any additional shares of the class of shares.

(d) Upon the redemption or purchase of redeemable shares under this section, the stated capital of the corporation shall be reduced by that part of the stated capital that was, at the time of the redemption or purchase, represented by those redeemable shares. Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.252. CANCELLATION OF TREASURY SHARES. (a) A corporation, by resolution of the board of directors of the corporation, may cancel all or part of the corporation's treasury shares at any time.

(b) Upon the cancellation of treasury shares, the stated capital of the corporation shall be reduced by that part of the stated capital that was, at the time of the cancellation, represented by the canceled shares, and the canceled shares shall be restored to the status of authorized but unissued shares.

(c) This section does not prohibit a cancellation of shares

or a reduction of stated capital in any other manner permitted by law.

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

Sec. 21.253. PROCEDURES FOR REDUCTION OF STATED CAPITAL BY BOARD OF DIRECTORS. (a) If all or part of the stated capital of a corporation is represented by shares without par value, the stated capital of the corporation may be reduced in the manner provided by this section.

(b) The board of directors shall adopt a resolution that:

(1) states the amount of the proposed reduction of the stated capital and the manner in which the reduction will be effected; and

(2) directs that the proposed reduction be submitted to a vote of the shareholders at an annual or special meeting.

(c) Each shareholder of record entitled to vote on the reduction of stated capital shall be given written notice stating that the purpose or one of the purposes of the meeting is to consider the matter of reducing the stated capital of the corporation in the amount and manner proposed by the board of directors. The notice shall be given in the time and manner provided by this code for giving notice of shareholders' meetings.

(d) The affirmative vote of the holders of at least the majority of the shares entitled to vote on the matter is required for approval of the resolution proposing the reduction of stated capital.

(e) Upon the approval of the resolution by the shareholders, the stated capital of the corporation shall be reduced as provided in the resolution.

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

Sec. 21.254. RESTRICTION ON REDUCTION OF STATED CAPITAL. The stated capital of a corporation may not be reduced under this subchapter if the amount of the aggregate stated capital of the corporation would be reduced to an amount equal to or less than the sum of the:

(1) aggregate preferential amounts payable on all

issued shares with a preferential right to the assets of the corporation in the event of voluntary winding up and termination; and

(2) aggregate par value of all issued shares with par value but no preferential right to the assets of the corporation in the event of voluntary winding up and termination.

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

SUBCHAPTER G. DISTRIBUTIONS AND SHARE DIVIDENDS

Sec. 21.301. DEFINITIONS. In this subchapter:

(1) "Distribution limit," with respect to a distribution made by a corporation, other than a distribution described by Subdivision (2), means:

(A) the net assets of the corporation if the distribution:

(i) is a purchase or redemption of its own shares by a corporation that:

(a) is eliminating fractional shares;

(b) is collecting or compromising indebtedness owed by or to the corporation; or

(c) is paying dissenting shareholders entitled to payment for their shares under this code; or

(ii) is made by a consuming assets corporation and is not the purchase or redemption of its own shares; or

(B) the surplus of the corporation for a distribution not described by Paragraph (A).

(2) "Distribution limit," with respect to a distribution that is a purchase or redemption of its own shares by an investment company the certificate of formation of which provides that the company may purchase the company's own shares out of stated capital, means the net assets of the investment company rather than the surplus of the investment company.

(3) "Investment company" means a corporation registered as an open-end company under the Investment Company Act.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 9 (S.B. 847), Sec. 4, eff. September 1, 2013.

Sec. 21.302. AUTHORITY FOR DISTRIBUTIONS. (a) The board of directors of a corporation may authorize a distribution and the corporation may make a distribution, subject to Section 21.303.

(b) The board of directors may authorize a distribution by determining the maximum amount that may be distributed and the period during which the maximum amount may be distributed, including by setting a formula to determine the amount to be distributed. The authorization by the board of directors for a distribution may provide that the distribution be paid:

(1) in the amounts and at the times as stated in the authorization; or

(2) in the manner stated in the authorization, which may include a determination or action by any person or persons, including the corporation, if the authorization states the maximum amount that may be distributed under the authorization and the period during which the maximum amount may be distributed.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 10, eff. September 1, 2017.

Sec. 21.303. LIMITATIONS ON DISTRIBUTIONS. (a) A corporation may not make a distribution that violates the corporation's certificate of formation.

(b) Unless the distribution is made in compliance with Chapter 11, a corporation may not make a distribution:

(1) if the corporation would be insolvent after the distribution; or

(2) that exceeds the distribution limit.

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

Sec. 21.304. REDEMPTIONS. (a) A distribution by a corporation that involves a redemption of outstanding redeemable

shares of the corporation subject to redemption may be related to any or all of those shares.

(b) If less than all of the outstanding redeemable shares of a corporation subject to redemption are to be redeemed, the shares to be redeemed shall be selected for redemption:

(1) in accordance with the corporation's certificate of formation; or

(2) ratably or by lot in the manner prescribed by resolution of the corporation's board of directors, if the certificate of formation does not specify how shares are to be selected for redemption.

(c) A redemption of redeemable shares takes effect by call and written notice of the redemption of the shares.

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

Sec. 21.305. NOTICE OF REDEMPTION. (a) A notice of redemption of redeemable shares of a corporation must state:

(1) the class or series of shares or part of the class or series of shares to be redeemed;

(2) the date set for redemption;

(3) the redemptive price; and

(4) the place at which the shareholders may obtain payment of the redemptive price.

(b) The notice of redemption shall be sent to each holder of redeemable shares being called not later than the 21st day or earlier than the 60th day before the date set for redemption, unless otherwise provided by the terms of the class or series of shares contained in the certificate of formation.

(c) A notice that is mailed is considered to have been sent when the notice is deposited in the United States mail, with postage prepaid, addressed to the shareholder at the shareholder's address as it appears on the share transfer records of the corporation.

(d) A corporation may give the transfer agent described by Section 21.306 irrevocable instructions to send or complete the notice of redemption.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 6, eff. September 1, 2019.

Sec. 21.306. DEPOSIT OF MONEY FOR REDEMPTION. (a) After the date the notice of redemption required by Section 21.305 is sent and before the day after the date set for redemption of redeemable shares of the corporation, a corporation may deposit with a bank or trust company in this or another state of the United States appointed and acting as transfer agent for the corporation an amount sufficient to redeem the shares called for redemption. The amount must be deposited as a trust fund.

(b) Unless the corporation's certificate of formation provides otherwise, if a corporation deposits money and gives payment instructions in accordance with Subsection (a) and Section 21.307(b):

(1) the shares called for redemption are considered redeemed, and distributions on those shares cease to accrue on and after the date set for redemption; and

(2) the deposit constitutes full payment of the shares called for redemption to the holders of the shares on and after the date set for redemption.

(c) Unless the certificate of formation provides otherwise, after the date a deposit is made and instructions are given under this section and Section 21.307(b), the shares called for redemption are not considered outstanding, and the holders of the shares cease to be shareholders of the shares and have no right with respect to the shares other than:

(1) the right to receive payment of the redemptive price of the shares without interest from the bank or trust company; and

(2) any right to convert those shares.

(d) Unless the certificate of formation provides otherwise, a bank or trust company receiving a deposit under this section shall pay to the corporation on demand the balance of the amount deposited if one or more holders of the shares called for redemption do not claim for redemption the amount deposited on or before the sixth anniversary of the date of the deposit. After making a payment

under this subsection, the bank or trust company is relieved of all responsibility to the holders with respect to the amount deposited.
Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.307. PAYMENT OF REDEEMED SHARES. (a) Payment of a certificated share shall be made only on the surrender of the respective share certificate.

(b) A corporation may give a transfer agent described by Section 21.306 irrevocable instructions to pay, on or after the date set for redemption of redeemable shares, the redemptive price to the respective holders of the shares as evidenced by a list of shareholders certified by an officer of the corporation.
Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.308. PRIORITY OF DISTRIBUTIONS. (a) Except as provided by Subsection (b) or (c), a corporation's indebtedness that arises as a result of the declaration of a distribution and a corporation's indebtedness issued in a distribution are at parity with the corporation's indebtedness to its general, unsecured creditors.

(b) The indebtedness described by Subsection (a) shall be subordinated to the extent required by an agreement binding on the corporation on the date the indebtedness arises or if agreed to by the person to whom the indebtedness is owed or, with respect to indebtedness issued in a distribution, as provided by the corporation.

(c) The indebtedness described by Subsection (a) shall be secured to the extent required by an agreement binding on the corporation.
Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.309. RESERVES, DESIGNATIONS, AND ALLOCATIONS FROM SURPLUS. (a) A corporation, by resolution of the board of directors of the corporation, may:

(1) create a reserve out of the surplus of the corporation; or

(2) designate or allocate in any manner a part or all

of the corporation's surplus for a proper purpose.

(b) A corporation may increase, decrease, or abolish a reserve, designation, or allocation in the manner provided by Subsection (a).

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

Sec. 21.310. AUTHORITY FOR SHARE DIVIDENDS. The board of directors of a corporation may authorize a share dividend and the corporation may pay a share dividend subject to Section 21.311 and any restriction in its certificate of formation.

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

Sec. 21.311. LIMITATIONS ON SHARE DIVIDENDS. A corporation may not pay a share dividend in authorized but unissued shares of any class if:

(1) the surplus of the corporation is less than the amount required by Section 21.313 to be transferred to stated capital at the time the share dividend is made; or

(2) the share dividend will be made to a holder of shares of any other class or series, unless:

(A) the corporation's certificate of formation provides for the dividend; or

(B) the share dividend is authorized by the holders of at least a majority of the outstanding shares of the class or series in which the share dividend is to be made.

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

Sec. 21.312. VALUE OF SHARES ISSUED AS SHARE DIVIDENDS. (a) A share dividend payable in authorized but unissued shares with par value shall be issued at the par value of the respective share.

(b) A share dividend payable in authorized but unissued shares without par value shall be issued at the value set by the board of directors when the share dividend is authorized.

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

Sec. 21.313. TRANSFER OF SURPLUS FOR SHARE DIVIDENDS. (a) When a share dividend payable in authorized but unissued shares

with par value is made by a corporation, an amount of surplus designated by the corporation's board of directors that is not less than the aggregate par value of the shares issued as a share dividend shall be transferred to stated capital.

(b) When a share dividend payable in authorized but unissued shares without par value is made by a corporation, an amount of surplus equal to the aggregate value set by the corporation's board of directors with respect to shares under Section 21.312(b) shall be transferred to stated capital.

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

Sec. 21.314. DETERMINATION OF SOLVENCY, NET ASSETS, STATED CAPITAL, AND SURPLUS.

(a) For purposes of this subchapter, the determination of whether a corporation is or would be insolvent and the determination of the amount of a corporation's stated capital or surplus, the value of the corporation's net assets, and the amount or value of any component of the corporation's stated capital, surplus, or net assets, may be based on:

(1) financial statements of the corporation, which may include financial statements of subsidiary entities or other entities accounted for on a consolidated basis or on the equity method of accounting, that:

(A) present the financial condition of the corporation, and any subsidiary or other entities included in those financial statements, in accordance with generally accepted accounting principles or international financial reporting standards; or

(B) have been prepared using the method of accounting used to file the corporation's federal income tax return or using any other accounting practices and principles that are reasonable under the circumstances;

(2) financial information, including condensed or summary financial statements, that is prepared on the same basis as financial statements described by Subdivision (1);

(3) a projection, a forecast, or other forward-looking information relating to the future economic performance, financial

condition, or liquidity of the corporation that is reasonable under the circumstances;

(4) a fair valuation or information from any other method that is reasonable under the circumstances; or

(5) a combination of a statement, a valuation, or information authorized by this section.

(b) Subsection (a) does not apply to the computation of the Texas franchise tax or any other tax imposed on a corporation under the laws of this state.

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

Amended by:

Acts 2021, 87th Leg., R.S., Ch. 39 (S.B. 1203), Sec. 21, eff. September 1, 2021.

Sec. 21.315. DATE OF DETERMINATION OF SOLVENCY, NET ASSETS, STATED CAPITAL, AND SURPLUS. (a) For purposes of this subchapter, a determination of whether a corporation is or would be insolvent after a distribution or share dividend or a determination of the value of a corporation's net assets, stated capital, or surplus, or each component of net assets, stated capital, or surplus, shall be made:

(1) on the date the distribution or share dividend is authorized by the corporation's board of directors if the distribution or share dividend is made not later than the 120th day after the date of authorization; or

(2) if the distribution or share dividend is made more than 120 days after the date of authorization:

(A) on the date designated by the corporation's board of directors if the date so designated is not earlier than 120 days before the date the distribution or share dividend is made; or

(B) on the date the distribution or share dividend is made if the corporation's board of directors does not designate a date as described in Paragraph (A).

(b) For purposes of this section, a distribution that involves:

(1) the incurrence by a corporation of indebtedness or a deferred payment obligation is considered to have been made on the

date the indebtedness or obligation is incurred; or

(2) a requirement in the corporation's certificate of formation or other contract of the corporation to redeem, exchange, or otherwise acquire any of its own shares is considered to have been made either on the date when the provision or other contract is made or takes effect or on the date when the shares to be redeemed, exchanged, or acquired are redeemed, exchanged, or acquired, at the option of the corporation.

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

Sec. 21.316. LIABILITY OF DIRECTORS FOR WRONGFUL DISTRIBUTIONS. (a) Subject to Subsection (c), the directors of a corporation who vote for or assent to a distribution by the corporation that is prohibited by Section 21. 303 are jointly and severally liable to the corporation for the amount by which the distribution exceeds the amount permitted by that section to be distributed.

(b) A director is not liable for all or part of the excess amount if a distribution of that amount would have been permitted by Section 21.303 after the date the director authorized the distribution.

(c) A director is not jointly and severally liable under Subsection (a) if, in voting for or assenting to the distribution, the director:

(1) relies in good faith and with ordinary care on:

(A) the statements, valuations, or information described by Section 21.314; or

(B) other information, opinions, reports, or statements, including financial statements and other financial data, concerning the corporation or another person that are prepared or presented by:

(i) one or more officers or employees of the corporation;

(ii) a legal counsel, public accountant, investment banker, or other person relating to a matter the director reasonably believes is within the person's professional or expert competence; or

(iii) a committee of the board of directors of which the director is not a member;

(2) acting in good faith and with ordinary care, considers the assets of the corporation to be valued at least at their book value; or

(3) in determining whether the corporation made adequate provision for payment, satisfaction, or discharge of all of the corporation's liabilities and obligations, as provided by Sections 11.053 and 11.356, relies in good faith and with ordinary care on financial statements of, or other information concerning, a person who was or became contractually obligated to pay, satisfy, or discharge some or all of the corporation's liabilities or obligations.

(d) The liability imposed under Subsection (a) is the only liability of a director to the corporation or its creditors for authorizing a distribution that is prohibited by Section 21.303.

(e) This section and Sections 21.317 and 21.318 do not limit any liability imposed under Chapter 24, Business & Commerce Code, or the United States Bankruptcy Code.

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

Sec. 21.317. STATUTE OF LIMITATIONS ON ACTION FOR WRONGFUL DISTRIBUTION. An action may not be brought against a director of a corporation under Section 21.316 after the second anniversary of the date the alleged act giving rise to the liability occurred.

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

Sec. 21.318. CONTRIBUTION FROM CERTAIN SHAREHOLDERS AND DIRECTORS. (a) A director who is held liable for a claim asserted under Section 21.316 is entitled to receive contributions from shareholders who accepted or received the wrongful distribution knowing that it was prohibited by Section 21.303 in proportion to the amounts received by the shareholders.

(b) A director who is liable for a claim asserted under Section 21.316 is entitled to receive contributions from each of the other directors who are liable with respect to that claim in an amount appropriate to achieve equity.

(c) The liability provided by Subsection (a) is the only liability of a shareholder to the corporation or a creditor of the corporation for accepting or receiving a distribution by the corporation that is prohibited by Section 21.303, except for any liability under Chapter 24, Business & Commerce Code, or the United States Bankruptcy Code.

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

SUBCHAPTER H. SHAREHOLDERS' MEETINGS; NOTICE TO SHAREHOLDERS; VOTING AND QUORUM

Sec. 21.351. ANNUAL MEETING. (a) An annual meeting of the SHAREHOLDERS of a corporation shall be held at a time that is stated in or set in accordance with the corporation's bylaws.

(b) On the application of a shareholder who has previously submitted a written request to the corporation that an annual meeting be held, a court in the county in which the principal executive office of the corporation is located may order a meeting to be held if the annual meeting is not held or written consent instead of the annual meeting is not executed within any 13-month period, unless the meeting is not required to be held under Section 21.655.

(c) The failure to hold an annual meeting at the designated time does not result in the winding up or termination of the corporation.

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

Sec. 21.352. SPECIAL MEETINGS. (a) A special meeting of the shareholders of a corporation may be called by:

(1) the president, the board of directors, or any other person authorized to call special meetings by the certificate of formation or bylaws of the corporation; or

(2) the holders of the percentage of shares specified in the certificate of formation, not to exceed 50 percent of the shares entitled to vote or, if no percentage is specified, at least 10 percent of all of the shares of the corporation entitled to vote at the proposed special meeting.

(b) Unless stated in or set in accordance with the bylaws, the record date for determining which shareholders of the corporation are entitled to call a special meeting is the date the first shareholder signs the notice of that meeting.

(c) Other than procedural matters, the only business that may be conducted at a special meeting of the shareholders is business that is within the purposes described in the notice required by Section 21.353.

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

Sec. 21.3521. SHAREHOLDER MEETINGS BY REMOTE COMMUNICATION. Except for any limitation or other requirements in the governing documents of the corporation, if a meeting of a corporation's shareholders under Section 21.351 or 21.352 is held by means of a telephone conference or other communication system authorized by Section 6.002, the meeting is considered to have satisfied the requirement of Section 6.002(a) that shareholders participating in the meeting be able to communicate with all other persons participating in the meeting if the corporation implements reasonable measures to provide each shareholder entitled to vote at the meeting, or the shareholder's proxyholder, a reasonable opportunity to:

(1) vote on matters submitted to the shareholders; and

(2) read or hear the proceedings of the meeting substantially concurrently with those proceedings.

Added by Acts 2021, 87th Leg., R.S., Ch. 39 (S.B. 1203), Sec. 22, eff. September 1, 2021.

Sec. 21.353. NOTICE OF MEETING. (a) Except as provided by Section 21.456 and subject to Section 21.3531, written notice of a meeting in accordance with Section 6.051 shall be given to each shareholder entitled to vote at the meeting not later than the 10th day and not earlier than the 60th day before the date of the meeting. Notice shall be given at the direction of the president, secretary, or other person calling the meeting.

(b) The notice of a special meeting must contain a statement regarding the purpose or purposes of the meeting.

(c) If a meeting is held by means of remote communication, the notice of the meeting must include information on how to access the list of shareholders entitled to vote at the meeting required by Section 21.372.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 51, eff. January 1, 2006.

Sec. 21.3531. NOTICE BY ELECTRONIC TRANSMISSION. (a) On consent of a shareholder, notice from a corporation under this code, the certificate of formation, or the bylaws may be provided to the shareholder by electronic transmission. The shareholder may specify the form of electronic transmission to be used to communicate notice.

(b) Notice is considered provided under this section when the notice is:

(1) transmitted to a facsimile number provided by the shareholder for the purpose of receiving notice;

(2) transmitted to an electronic mail address provided by the shareholder for the purpose of receiving notice;

(3) posted on an electronic network and a message is sent to the shareholder at the address provided by the shareholder for the purpose of alerting the shareholder of a posting; or

(4) communicated to the shareholder by any other form of electronic transmission consented to by the shareholder.

(c) A shareholder may revoke the shareholder's consent to receive notice by electronic transmission by providing written notice to the corporation. The shareholder's consent is considered revoked for purposes of Subsection (a) if the corporation is unable to deliver by electronic transmission two consecutive notices, and the secretary, assistant secretary, or transfer agent of the corporation, or another person responsible for delivering notice on behalf of the corporation, knows that delivery of those two electronic transmissions was unsuccessful. Inadvertent failure to treat the unsuccessful transmissions as a revocation of the shareholder's consent does not

affect the validity of a meeting or other action.

(d) An affidavit of the secretary, assistant secretary, transfer agent, or other agent of a corporation stating that notice has been provided to a shareholder of the corporation by electronic transmission is, in the absence of fraud, prima facie evidence that the notice was provided under this section.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 52, eff. January 1, 2006.

Sec. 21.354. INSPECTION OF VOTING LIST. (a) The list of shareholders entitled to vote at the meeting prepared under Section 21.372 shall be:

(1) subject to inspection by a shareholder during regular business hours; and

(2) produced and kept open at the meeting.

(a-1) If a meeting of the shareholders is held by means of remote communication, the list must be open to inspection by a shareholder during the meeting on a reasonably accessible electronic network.

(b) The original share transfer records are prima facie evidence of which shareholders are entitled to inspect the list.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 53, eff. January 1, 2006.

Sec. 21.355. CLOSING OF SHARE TRANSFER RECORDS. Share transfer records that are closed in accordance with Section 6.101 for the purpose of determining which shareholders are entitled to receive notice of a meeting of shareholders shall remain closed for at least 10 days immediately preceding the date of the meeting.

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

Sec. 21.356. RECORD DATE FOR WRITTEN CONSENT TO ACTION. The record date provided in accordance with Section 6.102(a) may not be more than 10 days after the date on which the board of directors adopts the resolution setting the record date.

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

Sec. 21.357. RECORD DATE FOR PURPOSE OF SHAREHOLDERS' MEETING. The record date for the purpose of determining shareholders entitled to notice of or to vote at a shareholders' meeting or any adjournment of the meeting, as provided by the directors in accordance with Section 6.101, must be at least 10 days before the date of the shareholders' meeting.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 26, eff. September 1, 2011.

Sec. 21.358. QUORUM. (a) Subject to Subsection (b), the holders of the majority of the shares entitled to vote at a meeting of the shareholders of a corporation that are present or represented by proxy at the meeting are a quorum for the consideration of a matter to be presented at that meeting.

(b) The certificate of formation of a corporation may provide that a quorum is present only if:

(1) the holders of a specified portion of the shares that is greater than the majority of the shares entitled to vote are represented at the meeting in person or by proxy; or

(2) the holders of a specified portion of the shares that is less than the majority but not less than one-third of the shares entitled to vote are represented at the meeting in person or by proxy.

(c) Unless provided by the certificate of formation or bylaws of the corporation, after a quorum is present at a meeting of shareholders, the shareholders may conduct business properly brought before the meeting until the meeting is adjourned. The subsequent withdrawal from the meeting of a shareholder or the refusal of a shareholder present at or represented by proxy at the meeting to vote does not negate the presence of a quorum at the meeting.

(d) Unless provided by the certificate of formation or bylaws, the shareholders of the corporation at a meeting at which a

quorum is not present may adjourn the meeting until the time and to the place as may be determined by a vote of the holders of the majority of the shares who are present or represented by proxy at the meeting.

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

Sec. 21.359. VOTING IN ELECTION OF DIRECTORS. (a) Subject to Subsection (b), directors of a corporation shall be elected by a plurality of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

(b) The certificate of formation or bylaws of a corporation may provide that a director of a corporation shall be elected only if the director receives:

(1) the vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote in the election of directors;

(2) the vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote in the election of directors and represented in person or by proxy at a meeting of shareholders at which a quorum is present; or

(3) the vote of the holders of a specified portion, but not less than the majority, of the votes cast by the holders of shares entitled to vote in the election of directors at a meeting of shareholders at which a quorum is present.

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

Sec. 21.360. NO CUMULATIVE VOTING RIGHT UNLESS AUTHORIZED. Except as provided by Section 21.361 or 21.362, a shareholder does not have the right to cumulate the shareholder's vote in the election of directors.

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

Sec. 21.361. CUMULATIVE VOTING IN ELECTION OF DIRECTORS. (a) At each election of directors of the corporation, each shareholder entitled to vote at the election is entitled to:

(1) vote the number of shares owned by the shareholder

for as many candidates as there are directors to be elected and for whose election the shareholder is entitled to vote; or

(2) if expressly authorized by a corporation's certificate of formation in general or with respect to a specified class or series of shares or group of classes or series of shares and subject to Subsections (b) and (c), cumulate votes by:

(A) giving one candidate as many votes as the total of the number of the directors to be elected multiplied by the shareholder's shares; or

(B) distributing the votes among one or more candidates using the same principle.

(b) Cumulative voting permitted by the certificate of formation is permitted only in an election of directors in which a shareholder who intends to cumulate votes has given written notice of that intention to the secretary of the corporation on or before the day preceding the date of the election at which the shareholder intends to cumulate votes.

(c) All shareholders entitled to vote cumulatively may cumulate their votes if a shareholder gives the notice required by Subsection (b).

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 35, eff. September 1, 2009.

Sec. 21.362. CUMULATIVE VOTING RIGHT IN CERTAIN CORPORATIONS. Except as provided by the corporation's certificate of formation, a shareholder of a corporation incorporated before September 1, 2003, has the right to cumulatively vote the number of shares the shareholder owns in the election of directors to the extent permitted and in the manner provided by Section 21.361. A corporation may limit or deny a shareholder's right to cumulatively vote shares at any time after September 1, 2003, by amending its certificate of formation.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 54, eff.

January 1, 2006.

Sec. 21.363. VOTING ON MATTERS OTHER THAN ELECTION OF DIRECTORS. (a) Subject to Subsection (b), with respect to a matter other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the affirmative vote of the holders of the majority of the shares entitled to vote on, and who voted for, against, or expressly abstained with respect to, the matter at a shareholders' meeting of a corporation at which a quorum is present is the act of the shareholders.

(b) With respect to a matter other than the election of directors or a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the certificate of formation or bylaws of a corporation may provide that the act of the shareholders of the corporation is:

(1) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter;

(2) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter and represented in person or by proxy at a shareholders' meeting at which a quorum is present;

(3) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on, and who voted for or against, the matter at a shareholders' meeting at which a quorum is present; or

(4) the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on, and who voted for, against, or expressly abstained with respect to, the matter at a shareholders' meeting at which a quorum is present.

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

Sec. 21.364. VOTE REQUIRED TO APPROVE FUNDAMENTAL ACTION. (a) In this section, a "fundamental action" means:

(1) an amendment of a certificate of formation,

including an amendment required for cancellation of an event requiring winding up in accordance with Section 11.152(b);

(2) a voluntary winding up under Chapter 11;

(3) a revocation of a voluntary decision to wind up under Section 11.151;

(4) a cancellation of an event requiring winding up under Section 11.152(a); or

(5) a reinstatement under Section 11.202.

(b) Except as otherwise provided by this code or the certificate of formation of a corporation in accordance with Section 21.365, the vote required for approval of a fundamental action by the shareholders is the affirmative vote of the holders of at least two-thirds of the outstanding shares entitled to vote on the fundamental action.

(c) If a class or series of shares is entitled to vote as a class or series on a fundamental action, the vote required for approval of the action by the shareholders is the affirmative vote of the holders of at least two-thirds of the outstanding shares in each class or series of shares entitled to vote on the action as a class or series and at least two-thirds of the outstanding shares otherwise entitled to vote on the action. Shares entitled to vote as a class or series shall be entitled to vote only as a class or series unless otherwise entitled to vote on each matter submitted to the shareholders generally or otherwise provided by the certificate of formation.

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

(1) the increase or decrease of the aggregate number of authorized shares of the class or series;

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

(3) effecting an exchange, reclassification, or

cancellation of all or part of the shares of the class or series;

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

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

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

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

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

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

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

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

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

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

(e) The vote required under Subsection (d) by a class or series of shares of a corporation is required notwithstanding that

shares of that class or series do not otherwise have a right to vote under the certificate of formation.

(f) Unless otherwise provided by the certificate of formation, if the holders of the outstanding shares of a class that is divided into series are entitled to vote as a class on a proposed amendment that would affect equally all series of the class, other than a series in which no shares are outstanding or a series that is not affected by the amendment, the holders of the separate series are not entitled to separate class votes.

(g) Unless otherwise provided by the certificate of formation, a proposed amendment to the certificate of formation that would solely effect changes in the designations, preferences, limitations, or relative rights, including voting rights, of one or more series of shares of the corporation that have been established under the authority granted to the board of directors in the certificate of formation in accordance with Section 21.155 does not require the approval of the holders of the outstanding shares of a class or series other than the affected series if, after giving effect to the amendment:

(1) the preferences, limitations, or relative rights of the affected series may be set and determined by the board of directors with respect to the establishment of a new series of shares under the authority granted to the board of directors in the certificate of formation in accordance with Section 21.155; or

(2) any new series established as a result of a reclassification of the affected series are within the preferences, limitations, and relative rights that are described by Subdivision (1).

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. 75, eff. September 1, 2007.

Sec. 21.365. CHANGES IN VOTE REQUIRED FOR CERTAIN MATTERS. (a) With respect to a matter for which the affirmative vote of the holders of a specified portion of the shares entitled to vote is required by this code, the certificate of formation of a

corporation may provide that the affirmative vote of the holders of a specified portion, but not less than the majority, of the shares entitled to vote on that matter is required for shareholder action on that matter.

(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 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.

(c) If a provision of the certificate of formation provides that the affirmative vote of the holders of a specified portion that is greater than the majority of the shares entitled to vote on a matter is required for shareholder action on that matter, the provision may not be amended, directly or indirectly, without the same affirmative vote unless otherwise provided by the certificate of formation.

(d) If a provision of the certificate of formation provides that the affirmative vote of the holders of a specified portion that is greater than the majority of the shares of a class or series is required for shareholder action on a matter, the provision may not be amended, directly or indirectly, without the same affirmative vote unless otherwise provided by the certificate of formation.

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

Sec. 21.366. NUMBER OF VOTES PER SHARE. (a) Except as provided by the certificate of formation of a corporation or this code, each outstanding share, regardless of class, shall be entitled to one vote on each matter submitted to a vote at a shareholders' meeting.

(b) If the certificate of formation provides for more or less than one vote per share on a matter for all of the outstanding shares or for the shares of a class or series, each reference in this code or in the certificate of formation or bylaws, unless expressly stated otherwise, to a specified portion of the shares with respect to that matter refers to the portion of the votes

entitled to be cast with respect to those shares under the certificate of formation.

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

Sec. 21.367. VOTING IN PERSON OR BY PROXY. (a) A shareholder may vote in person or by proxy executed in writing by the shareholder.

(b) A telegram, telex, cablegram, or other form of electronic transmission, including telephonic transmission, by the shareholder, or a photographic, photostatic, facsimile, or similar reproduction of a writing executed by the shareholder, is considered an execution in writing for purposes of this section. Any electronic transmission must contain or be accompanied by information from which it can be determined that the transmission was authorized by the shareholder.

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

Sec. 21.368. TERM OF PROXY. A proxy is not valid after 11 months after the date the proxy is executed unless otherwise provided by the proxy.

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

Sec. 21.369. REVOCABILITY OF PROXY. (a) In this section, a "proxy coupled with an interest" includes the appointment as proxy of:

(1) a pledgee;

(2) a person who purchased or agreed to purchase the shares subject to the proxy;

(3) a person who owns or holds an option to purchase the shares subject to the proxy;

(4) a creditor of the corporation who extended the corporation credit under terms requiring the appointment;

(5) an employee of the corporation whose employment contract requires the appointment; or

(6) a party to a voting agreement created under Section 6.252 or a shareholders' agreement created under Section 21.101.

(b) A proxy is revocable unless:

(1) the proxy form conspicuously states that the proxy is irrevocable; and

(2) the proxy is coupled with an interest.

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

Sec. 21.370. ENFORCEABILITY OF PROXY. (a) An irrevocable proxy is specifically enforceable against the holder of shares or any successor or transferee of the holder if:

(1) the proxy is noted conspicuously on the certificate representing the shares subject to the proxy; or

(2) in the case of uncertificated shares, notation of the proxy is contained in the notice sent under Section 3.205 with respect to the shares subject to the proxy.

(b) An irrevocable proxy that is otherwise enforceable is ineffective against a transferee for value without actual knowledge of the existence of the irrevocable proxy at the time of the transfer or against a subsequent transferee, regardless of whether the transfer is for value, unless the proxy is:

(1) noted conspicuously on the certificate representing the shares subject to the proxy; or

(2) in the case of uncertificated shares, notation of the proxy is contained in the notice sent under Section 3.205 with respect to the shares subject to the proxy.

(c) An irrevocable proxy shall be specifically enforceable against a person who is not a transferee for value from the time the person acquires actual knowledge of the existence of the irrevocable proxy.

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

Sec. 21.371. PROCEDURES IN BYLAWS RELATING TO PROXIES. (a) A corporation may establish in the corporation's bylaws procedures consistent with this code for determining the validity of proxies and determining whether shares that are held of record by a bank, broker, or other nominee are represented at a meeting of shareholders. The procedures may incorporate rules of and determinations made by a stock exchange or self-regulatory

organization regulating the corporation or that bank, broker, or other nominee.

(b) The bylaws may contain one or both of the following:

(1) a provision requiring that, when soliciting proxies or consents with respect to an election of directors, the corporation include in both its proxy statement and any form of its proxy or consent, in addition to individuals nominated by the board of directors, one or more individuals nominated by a shareholder, subject to any procedures or conditions as may be provided in the bylaws; and

(2) a provision requiring that the corporation reimburse expenses incurred by a shareholder in soliciting proxies or consents with respect to an election of directors so long as the provision does not apply to any election for which the record date precedes the adoption of the bylaw provision, but subject to any procedures or conditions as may be provided in the bylaws.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 25, eff. September 1, 2015.

Sec. 21.372. SHAREHOLDER MEETING LIST. (a) Not later than the 11th day before the date of each meeting of the shareholders of a corporation, an alphabetical list of the shareholders entitled to vote at the meeting or at any adjournment of the meeting shall be prepared by or on behalf of the corporation. The list of shareholders must:

(1) state:

(A) the address of each shareholder;

(B) the type of shares held by each shareholder;

(C) the number of shares held by each shareholder; and

(D) the number of votes that each shareholder is entitled to if the number of votes is different from the number of shares stated under Paragraph (C); and

(2) be kept on file at the registered office or principal executive office of the corporation for at least 10 days

before the date of the meeting.

(a-1) Instead of being kept on file, the list required by Subsection (a) may be kept on a reasonably accessible electronic data system if the information required to gain access to the list is provided with notice of the meeting. Section 21.353(c), Section 21.354(a-1), and this subsection may not be construed to require a corporation to include any electronic contact information of a shareholder on the list. A corporation that elects to make the list available on an electronic data system must take reasonable measures to ensure the information is available only to shareholders of the corporation.

(b) The original share transfer records of the corporation are prima facie evidence of the shareholders of the corporation entitled to vote at the meeting.

(c) Failure to comply with this section does not affect the validity of any action taken at a meeting of the shareholders of 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. 55, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 76, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 7, eff. September 1, 2019.

SUBCHAPTER I. BOARD OF DIRECTORS

Sec. 21.401. MANAGEMENT BY BOARD OF DIRECTORS. (a) Except as provided by Section 21.101 or Subchapter O, the board of directors of a corporation shall:

(1) exercise or authorize the exercise of the powers of the corporation; and

(2) direct the management of the business and affairs of the corporation.

(b) In discharging the duties of director under this code or otherwise and in considering the best interests of the corporation,

a director is entitled to consider the long-term and short-term interests of the corporation and the shareholders of the corporation, including the possibility that those interests may be best served by the continued independence of the corporation.

(c) In discharging the duties of a director under this code or otherwise, a director is entitled to consider any social purposes specified in the corporation's certificate of formation.

(d) Subject to direction by the board of directors of the corporation, in discharging the duties of an officer under this code or otherwise, an officer is entitled to consider:

(1) the long-term and short-term interests of the corporation and of the corporation's shareholders, including the possibility that those interests may be best served by the continued independence of the corporation; and

(2) any social purposes specified in the corporation's certificate of formation.

(e) Nothing in this section prohibits or limits a director or officer of a corporation that does not have a social purpose specified as a purpose in the corporation's certificate of formation from considering, approving, or taking an action that promotes or has the effect of promoting a social, charitable, or environmental purpose.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 100 (S.B. 849), Sec. 4, eff. September 1, 2013.

Sec. 21.402. BOARD MEMBER ELIGIBILITY REQUIREMENTS. Unless the certificate of formation or bylaws of a corporation provide otherwise, a person is not required to be a resident of this state or a shareholder of the corporation to serve as a director. The certificate of formation or bylaws may prescribe other qualifications for directors.

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

Sec. 21.403. NUMBER OF DIRECTORS. (a) The board of directors of a corporation may consist of one or more directors.

(b) If the corporation is to be managed by a board of directors, the number of directors shall be set by, or in the manner provided by, the certificate of formation or bylaws of the corporation, except that the number of directors on the initial board of directors must be set by the certificate of formation.

(c) The number of directors may be increased or decreased by amendment to, or as provided by, the certificate of formation or bylaws. A decrease in the number of directors may not shorten the term of an incumbent director.

(d) If the certificate of formation or bylaws do not set the number constituting the board of directors or provide for the manner in which the number of directors must be determined, the number of directors is the same as the number constituting the initial board of directors as set by the certificate of formation.

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

Sec. 21.404. DESIGNATION OF INITIAL BOARD OF DIRECTORS. If the corporation is to be managed by a board of directors, the certificate of formation of a corporation must state the names and addresses of the persons constituting the initial board of directors of the corporation.

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

Sec. 21.405. ELECTION OF BOARD OF DIRECTORS. (a) At the first annual meeting of shareholders of a corporation and at each subsequent annual meeting of shareholders, the holders of shares entitled to vote in the election of directors shall elect directors for the term provided under Section 21.407, except as provided by Section 21.408.

(b) A corporation's certificate of formation may provide that the holders of a class or series of shares or a group of classes or series of shares are entitled to elect one or more directors of the corporation.

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

Sec. 21.406. SPECIAL VOTING RIGHTS OF DIRECTORS. (a) The certificate of formation of a corporation may provide that

directors, regardless of whether elected by the holders of a class or series of shares or by a group of classes or series of shares, as provided by Section 21.405, are entitled to cast more or less than one vote on all matters or on specified matters. Such a provision also applies to directors voting in any committee or subcommittee regarding all matters or the specified matters, as applicable, unless otherwise provided by the certificate of formation.

(b) Unless expressly stated otherwise, each reference in this code or in a corporation's certificate of formation or bylaws to a specified portion of the directors means the portion of the votes entitled to be cast by the directors to which the reference applies.

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 36, eff. September 1, 2009.

Sec. 21.407. TERM OF OFFICE. Except as otherwise provided by this subchapter, the term of office of a director extends from the date the director is elected and qualified or named in the corporation's certificate of formation until the next annual meeting of shareholders and until the director's successor is elected and qualified.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 56, eff. January 1, 2006.

Sec. 21.408. SPECIAL TERMS OF OFFICE. (a) The certificate of formation or bylaws of a corporation may provide that all or some of the board of directors may be divided into two or three classes that shall include the same or a similar number of directors as each other class and that have staggered terms of office.

(b) The terms of office of the initial directors constituting the first class expire at the first annual meeting of shareholders after the election of those directors. The terms of office of the initial directors constituting the second class

expire at the second annual meeting of shareholders after election of those directors. The terms of office of the initial directors constituting the third class, if any, expire at the third annual meeting of shareholders after election of those directors. In each case, the term of office of an initial director is extended until the director's successor is elected and has qualified.

(c) If the certificate of formation or bylaws provide for staggered terms of directors, the shareholders, at each annual meeting, shall elect a number of directors equal to the number of the class of directors whose terms expire at the time of the meeting. The directors elected at an annual meeting shall hold office until the second succeeding annual meeting, if there are two classes, or until the third succeeding annual meeting, if there are three classes.

(d) Unless provided by the certificate of formation or a bylaw adopted by the shareholders, staggered terms for directors must be effected at a meeting of shareholders at which directors are elected. Staggered terms for directors may not be effected if any shareholder has the right to cumulate votes for the election of directors and the board of directors consists of fewer than nine members.

(e) Directors elected by the holders of a class or series of shares or a group of classes or series of shares in accordance with the certificate of formation shall hold office for the terms specified by the certificate of formation.

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. 77, eff. September 1, 2007.

Sec. 21.409. REMOVAL OF DIRECTORS. (a) Except as otherwise provided by the certificate of formation or bylaws of a corporation or this subchapter, the shareholders of the corporation may remove a director or the entire board of directors of the corporation, with or without cause, at a meeting called for that purpose, by a vote of the holders of a majority of the shares entitled to vote at an election of the director or directors.

(b) If the certificate of formation entitles the holders of a class or series of shares or a group of classes or series of shares to elect one or more directors, only the holders of shares of that class, series, or group may vote on the removal of a director elected by the holders of shares of that class, series, or group.

(c) If the certificate of formation permits cumulative voting and less than the entire board is to be removed, a director may not be removed if the votes cast against the removal would be sufficient to elect the director if cumulatively voted at an election of the entire board of directors, or if there are classes of directors, at an election of the class of directors of which the director is a part.

(d) In the case of a corporation the directors of which serve staggered terms, a director may not be removed except for cause unless the certificate of formation provides otherwise.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 57, eff. January 1, 2006.

Sec. 21.4091. RESIGNATION OF DIRECTORS. (a) Except as otherwise provided by the certificate of formation or bylaws, a director of a corporation may resign at any time by providing written notice to the corporation.

(b) The director's resignation takes effect on the date the notice is received by the corporation, unless the notice prescribes a later effective date or states that the resignation takes effect on the occurrence of a future event, such as the director's failure to receive a specified vote for reelection as a director.

(c) If the director's resignation is to take effect on a later date or on the occurrence of a future event, the resignation takes effect on the later date or when the event occurs.

(d) The director's resignation is irrevocable when it takes effect. The director's resignation is revocable before it takes effect unless the notice of resignation expressly states it is irrevocable.

Added by Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 58, eff.

January 1, 2006.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 78, eff. September 1, 2007.

Sec. 21.410. VACANCY. (a) A vacancy occurring in the initial board of directors before the issuance of shares may be filled by the affirmative vote or written consent of the majority of the organizers or by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum of the board of directors.

(b) Except as provided by Subsection (e), a vacancy occurring in the board of directors after the issuance of shares may be filled by election at an annual or special meeting of shareholders called for that purpose or by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum of the board of directors.

(c) The term of a director elected to fill a vacancy occurring in the board of directors, including the initial directors, is the unexpired term of the director's predecessor in office.

(d) Except as provided by Subsection (e), a vacancy to be filled because of an increase in the number of directors may be filled by election at an annual or special meeting of shareholders called for that purpose or by the board of directors for a term of office continuing only until the next election of one or more directors by the shareholders. During a period between two successive annual meetings of shareholders, the board of directors may not fill more than two vacancies created by an increase in the number of directors.

(e) Unless otherwise authorized by a corporation's certificate of formation, a vacancy or a newly created vacancy in a director position that the certificate of formation entitles the holders of a class or series of shares or group of classes or series of shares to elect may be filled only:

(1) by the affirmative vote of the majority of the directors then in office elected by the class, series, or group;

(2) by the sole remaining director elected in that manner; or

(3) by the affirmative vote of the holders of the outstanding shares of the class, series, or group.

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. 79, eff. September 1, 2007.

Sec. 21.411. NOTICE OF MEETING. (a) Regular meetings of the board of directors of a corporation may be held with or without notice as prescribed by the corporation's bylaws.

(b) Special meetings of the board of directors shall be held with notice as prescribed by the bylaws.

(c) A notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting, unless required by the bylaws.

(d) Notice of the date, time, place, or purpose of a regular or special meeting of the board of directors may be provided to a director by electronic transmission on consent of the director. The director may specify the form of electronic transmission to be used to communicate notice.

(e) Notice is considered provided under Subsection (d) when the notice is:

(1) transmitted to a facsimile number provided by the director for the purpose of receiving notice;

(2) transmitted to an electronic mail address provided by the director for the purpose of receiving notice;

(3) posted on an electronic network and a message is sent to the director at the address provided by the director for the purpose of alerting the director of a posting; or

(4) communicated to the director by any other form of electronic transmission consented to by the director.

(f) A director may revoke the director's consent to receive notice by electronic transmission by providing written notice to the corporation. The director's consent is considered revoked for purposes of Subsection (d) if the corporation is unable to deliver

by electronic transmission two consecutive notices, and the secretary, assistant secretary, or transfer agent of the corporation, or another person responsible for delivering notice on behalf of the corporation, knows that delivery of those two electronic transmissions was unsuccessful. Inadvertent failure to treat the unsuccessful transmissions as a revocation of the director's consent does not affect the validity of a meeting or other action.

(g) An affidavit of the secretary, assistant secretary, transfer agent, or other agent of a corporation stating that notice has been provided to a director of the corporation by electronic transmission is, in the absence of fraud, prima facie evidence that notice was provided under Subsections (d) and (e).

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 59, eff. January 1, 2006.

Sec. 21.412. WAIVER OF NOTICE. (a) If the bylaws of a corporation require notice of a meeting to be given to a director, a written waiver of the notice signed by the director entitled to the notice, before or after the meeting, is equivalent to the giving of the notice.

(b) The attendance of a director at a board meeting constitutes a waiver of notice of the meeting, unless the director attends the meeting for the express purpose of objecting to the transaction of business at the meeting because the meeting has not been lawfully called or convened.

(c) A waiver of notice of a board meeting is not required to specify the business to be transacted at the meeting or the purpose of the meeting, unless required by the bylaws.

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

Sec. 21.413. QUORUM. (a) A quorum of the board of directors is the majority of the number of directors set or established in the manner provided by the certificate of formation or bylaws of a corporation unless the laws of this state, the

certificate of formation, or the bylaws require a different number or portion.

(b) Neither the certificate of formation nor the bylaws may provide that less than one-third of the number of directors constitutes a quorum.

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

Sec. 21.414. DISSENT TO OR ABSTENTION FROM ACTION. (a) A director of a corporation who is present at a meeting of the board of directors at which action has been taken is presumed to have assented to the action taken unless:

(1) the director's dissent or abstention has been entered in the minutes of the meeting;

(2) the director has filed a written dissent or abstention with respect to the action with the person acting as the secretary of the meeting before the meeting is adjourned; or

(3) the director has sent to the secretary of the corporation, within a reasonable time after the meeting has been adjourned, a written dissent or abstention by:

(A) certified or registered mail, return receipt requested; or

(B) other means specified in the corporation's governing documents.

(b) A director who voted in favor of an action may not dissent or abstain with respect to the action.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 11, eff. September 1, 2017.

Sec. 21.415. ACTION BY DIRECTORS. (a) The act of a majority of the directors present at a meeting at which a quorum is present at the time of the act is the act of the board of directors of a corporation, unless the act of a greater number is required by the certificate of formation or bylaws of the corporation or by this code.

(b) Unless otherwise provided by the certificate of

formation or bylaws, a written consent stating the action taken and signed by all members of the board of directors is also an act of the board of directors.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 27, eff. September 1, 2011.

Sec. 21.416. COMMITTEES OF BOARD OF DIRECTORS. (a) If authorized by the certificate of formation or bylaws of a corporation, the board of directors of the corporation may designate:

(1) committees composed of one or more directors; or

(2) directors as alternate members of committees to replace absent or disqualified committee members at a committee meeting, subject to any limitations imposed by the board of directors.

(b) To the extent provided by a resolution of the board of directors designating a committee or by the certificate of formation or bylaws and subject to Subsection (c), the committee has the authority of the board of directors.

(c) A committee of the board of directors may not:

(1) amend the certificate of formation, except to:

(A) establish series of shares;

(B) increase or decrease the number of shares in a series; or

(C) eliminate a series of shares as authorized by Section 21.155;

(2) propose a reduction of stated capital under Sections 21.253 and 21.254;

(3) approve a plan of merger, share exchange, or conversion of the corporation;

(4) recommend to shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation not made in the usual and regular course of its business;

(5) recommend to the shareholders a voluntary winding

up and termination or a revocation of a voluntary winding up and termination;

(6) amend, alter, or repeal the bylaws or adopt new bylaws;

(7) fill vacancies on the board of directors;

(8) fill vacancies on or designate alternate members of a committee of the board of directors;

(9) fill a vacancy to be filled because of an increase in the number of directors;

(10) elect or remove officers of the corporation or members or alternate members of a committee of the board of directors;

(11) set the compensation of the members or alternate members of a committee of the board of directors; or

(12) alter or repeal a resolution of the board of directors that states that it may not be amended or repealed by a committee of the board of directors.

(d) A committee of the board of directors may authorize a distribution or the issuance of shares if authorized by the resolution designating the committee or the certificate of formation or bylaws.

(e) The board of directors may remove a member of a committee appointed by the board if the board determines the removal is in the best interests of the corporation. The removal of the member is without prejudice to any contract rights of the person removed. Appointment of a member of a committee does not create contract rights.

(f) The designation and delegation of authority to a committee of the board of directors does not relieve the board of directors or a director of responsibility imposed by law.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 60, eff. January 1, 2006.

Sec. 21.417. ELECTION OF OFFICERS. The board of directors of a corporation shall elect a president and a secretary at the time

and in the manner prescribed by the corporation's bylaws. Other officers, including assistant officers and agents as deemed necessary, may be elected in accordance with Section 3.103.

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

Sec. 21.418. CONTRACTS OR TRANSACTIONS INVOLVING INTERESTED DIRECTORS AND OFFICERS. (a) This section applies to a contract or transaction between a corporation and:

(1) one or more directors or officers, or one or more affiliates or associates of one or more directors or officers, of the corporation; or

(2) an entity or other organization in which one or more directors or officers, or one or more affiliates or associates of one or more directors or officers, of the corporation:

(A) is a managerial official; or

(B) has a financial interest.

(b) An otherwise valid and enforceable contract or transaction described by Subsection (a) is valid and enforceable, and is not void or voidable, notwithstanding any relationship or interest described by Subsection (a), if any one of the following conditions is satisfied:

(1) the material facts as to the relationship or interest described by Subsection (a) and as to the contract or transaction are disclosed to or known by:

(A) the corporation's board of directors or a committee of the board of directors, and the board of directors or committee in good faith authorizes the contract or transaction by the approval of the majority of the disinterested directors or committee members, regardless of whether the disinterested directors or committee members constitute a quorum; or

(B) the shareholders entitled to vote on the authorization of the contract or transaction, and the contract or transaction is specifically approved in good faith by a vote of the shareholders; or

(2) the contract or transaction is fair to the corporation when the contract or transaction is authorized, approved, or ratified by the board of directors, a committee of the

board of directors, or the shareholders.

(c) Common or interested directors of a corporation may be included in determining the presence of a quorum at a meeting of the corporation's board of directors, or a committee of the board of directors, that authorizes the contract or transaction.

(d) A person who has the relationship or interest described by Subsection (a) may:

(1) be present at or participate in and, if the person is a director or committee member, may vote at a meeting of the board of directors or of a committee of the board that authorizes the contract or transaction; or

(2) sign, in the person's capacity as a director or committee member, a unanimous written consent of the directors or committee members to authorize the contract or transaction.

(e) If at least one of the conditions of Subsection (b) is satisfied, neither the corporation nor any of the corporation's shareholders will have a cause of action against any of the persons described by Subsection (a) for breach of duty with respect to the making, authorization, or performance of the contract or transaction because the person had the relationship or interest described by Subsection (a) or took any of the actions authorized by Subsection (d).

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

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 84 (S.B. 1442), Sec. 37, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 28, eff. September 1, 2011.

SUBCHAPTER J. FUNDAMENTAL BUSINESS TRANSACTIONS

Sec. 21.451. DEFINITIONS. In this subchapter:

(1) "Participating shares" means shares that entitle the holders of the shares to participate without limitation in distributions.

(2) "Sale of all or substantially all of the assets" means the sale, lease, exchange, or other disposition, other than a

pledge, mortgage, deed of trust, or trust indenture unless otherwise provided by the certificate of formation, of all or substantially all of the property and assets of a domestic corporation that is not made in the usual and regular course of the corporation's business without regard to whether the disposition is made with the goodwill of the business. The term does not include a transaction that results in the corporation directly or indirectly:

(A) continuing to engage in one or more businesses; or

(B) applying a portion of the consideration received in connection with the transaction to the conduct of a business that the corporation engages in after the transaction.

(3) "Shares" includes a receipt or other instrument issued by a depository representing an interest in one or more shares or fractions of shares of a domestic or foreign corporation that are deposited with the depository.

(4) "Voting shares" means shares that entitle the holders of the shares to vote unconditionally in elections of directors.

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

Sec. 21.452. APPROVAL OF MERGER. (a) A corporation that is a party to the merger under Chapter 10 must approve the merger by complying with this section.

(b) The board of directors of the corporation shall adopt a resolution that:

(1) approves the plan of merger; and

(2) if shareholder approval of the merger is required by this subchapter:

(A) recommends that the plan of merger be approved by the shareholders of the corporation; or

(B) directs that the plan of merger be submitted to the shareholders for approval without recommendation if the board of directors determines for any reason not to recommend approval of the plan of merger.

(c) Except as otherwise provided by this subchapter or Chapter 10, the plan of merger shall be submitted to the

shareholders of the corporation for approval as provided by this subchapter. The board of directors may place conditions on the submission of the plan of merger to the shareholders.

(d) If the board of directors approves a plan of merger required to be approved by the shareholders of the corporation but does not adopt a resolution recommending that the plan of merger be approved by the shareholders, the board of directors shall communicate to the shareholders the reason for the board's determination to submit the plan of merger without a recommendation.

(e) Except as provided by Chapter 10 or Sections 21.457 and 21.459, the shareholders of the corporation shall approve the plan of merger as provided by this subchapter.

(f) If after adoption of a resolution under Subsection (b)(2) the board of directors of the corporation determines that the plan of merger is not advisable, the plan of merger may be submitted to the shareholders of the corporation with a recommendation that the shareholders not approve the plan of merger.

(g) A plan of merger for a corporation may include a provision requiring that the plan of merger be submitted to the shareholders of the corporation regardless of whether the board of directors determines, after adopting a resolution or making a determination under this section, that the plan of merger is not advisable and recommends that the shareholders not approve the plan of merger.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 61, eff. January 1, 2006.

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

Sec. 21.453. APPROVAL OF CONVERSION. (a) A corporation must approve a conversion under Chapter 10 by complying with this section.

(b) The board of directors of the corporation shall adopt a

resolution that approves the plan of conversion and:

(1) recommends that the plan of conversion be approved by the shareholders of the corporation; or

(2) directs that the plan of conversion be submitted to the shareholders for approval without recommendation if the board of directors determines for any reason not to recommend approval of the plan of conversion.

(c) The plan of conversion shall be submitted to the shareholders of the corporation for approval as provided by this subchapter. The board of directors may place conditions on the submission of the plan of conversion to the shareholders.

(d) If the board of directors approves a plan of conversion but does not adopt a resolution recommending that the plan of conversion be approved by the shareholders of the corporation, the board of directors shall communicate to the shareholders the reason for the board's determination to submit the plan of conversion without a recommendation.

(e) Except as provided by Section 21.457, the shareholders of the corporation shall approve the plan of conversion as provided by this subchapter.

(f) If after the adoption of a resolution under Subsection (b) the board of directors of the corporation determines that the plan of conversion is not advisable, the plan of conversion may be submitted to the shareholders of the corporation with a recommendation that the shareholders not approve the plan of conversion.

(g) A plan of conversion for a corporation may include a provision requiring that the plan of conversion be submitted to the shareholders of the corporation, regardless of whether the board of directors determines, after adopting a resolution or making a determination under this section, that the plan of conversion is not advisable and recommends that the shareholders not approve the plan of conversion.

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. 81, eff. September 1, 2007.

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 29, eff. September 1, 2011.

Sec. 21.454. APPROVAL OF EXCHANGE. (a) A corporation the shares of which are to be acquired in an exchange under Chapter 10 must approve the exchange by complying with this section.

(b) The board of directors shall adopt a resolution that approves the plan of exchange and:

(1) recommends that the plan of exchange be approved by the shareholders of the corporation; or

(2) directs that the plan of exchange be submitted to the shareholders for approval without recommendation if the board of directors determines for any reason not to recommend approval of the plan of exchange.

(c) The plan of exchange shall be submitted to the shareholders of the corporation for approval as provided by this subchapter. The board of directors may place conditions on the submission of the plan of exchange to the shareholders.

(d) If the board of directors approves a plan of exchange but does not adopt a resolution recommending that the plan of exchange be approved by the shareholders of the corporation, the board of directors shall communicate to the shareholders the reason for the board's determination to submit the plan of exchange to shareholders without a recommendation.

(e) Except as provided by Section 21.457, the shareholders of the corporation shall approve the plan of exchange as provided by this subchapter.

(f) If after the adoption of a resolution under Subsection (b)(2) the board of directors of the corporation determines that the plan of exchange is not advisable, the plan of exchange may be submitted to the shareholders of the corporation with a recommendation that the shareholders not approve the plan of exchange.

(g) A plan of exchange for a corporation may include a provision requiring that the plan of exchange be submitted to the shareholders of the corporation regardless of whether the board of directors determines, after adopting a resolution or making a

determination under this section, that the plan of exchange is not advisable and recommends that the shareholders not approve the plan of exchange.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 62, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 82, eff. September 1, 2007.

Sec. 21.455. APPROVAL OF SALE OF ALL OR SUBSTANTIALLY ALL OF ASSETS. (a) Except as provided by the certificate of formation of a domestic corporation, a sale, lease, pledge, mortgage, assignment, transfer, or other conveyance of an interest in real property or other assets of the corporation does not require the approval or consent of the shareholders of the corporation unless the transaction constitutes a sale of all or substantially all of the assets of the corporation.

(b) A corporation must approve the sale of all or substantially all of its assets by complying with this section.

(c) The board of directors of the corporation shall adopt a resolution that approves the sale of all or substantially all of the assets of the corporation and:

(1) recommends that the sale of all or substantially all of the assets of the corporation be approved by the shareholders of the corporation; or

(2) directs that the sale of all or substantially all of the assets of the corporation be submitted to the shareholders for approval without recommendation if the board of directors determines for any reason not to recommend approval of the sale.

(d) The resolution proposing the sale of all or substantially all of the assets of the corporation shall be submitted to the shareholders of the corporation for approval as provided by this subchapter. The board of directors may place conditions on the submission of the proposed sale to the shareholders.

(e) If the board of directors approves the sale of all or

substantially all of the assets of the corporation but does not adopt a resolution recommending that the proposed sale be approved by the shareholders of the corporation, the board of directors shall communicate to the shareholders the reason for the board's determination to submit the proposed sale to shareholders without a recommendation.

(f) The shareholders of the corporation shall approve the sale of all or substantially all of the assets of the corporation as provided by this subchapter. After the approval of the sale by the shareholders, the board of directors may abandon the sale of all or substantially all of the assets of the corporation, subject to the rights of a third party under a contract relating to the assets, without further action or approval by the shareholders.

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

Sec. 21.456. GENERAL PROCEDURE FOR SUBMISSION TO SHAREHOLDERS OF FUNDAMENTAL BUSINESS TRANSACTION. (a) If a fundamental business transaction involving a corporation is required to be submitted to the shareholders of the corporation under this subchapter, the corporation shall notify each shareholder of the corporation that the fundamental business transaction is being submitted to the shareholders for approval at a meeting of shareholders as required by this subchapter, regardless of whether the shareholder is entitled to vote on the matter.

(b) If the fundamental business transaction is a merger, conversion, or interest exchange, the notice required by Subsection (a) shall contain or be accompanied by a copy or summary of the plan of merger, conversion, or interest exchange, as appropriate, and the notice required by Section 10.355.

(c) The notice of the meeting must:

(1) be given not later than the 21st day before the date of the meeting; and

(2) state that the purpose, or one of the purposes, of the meeting is to consider the fundamental business transaction.

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

Sec. 21.457. GENERAL VOTE REQUIREMENT FOR APPROVAL OF FUNDAMENTAL BUSINESS TRANSACTION. (a) Except as provided by this code or the certificate of formation of a corporation in accordance with Section 21.365, the affirmative vote of the holders of at least two-thirds of the outstanding shares of the corporation entitled to vote on a fundamental business transaction is required to approve the transaction.

(b) Unless provided by the certificate of formation or Section 21.458, shares of a class or series that are not otherwise entitled to vote on matters submitted to shareholders generally are not entitled to vote for the approval of a fundamental business transaction.

(c) Except as provided by this code, if a class or series of shares of a corporation is entitled to vote on a fundamental business transaction as a class or series, in addition to the vote required under Subsection (a), the affirmative vote of the holders of at least two-thirds of the outstanding shares in each class or series of shares entitled to vote on the fundamental business transaction as a class or series is required to approve the transaction. Shares entitled to vote as a class or series shall only be entitled to vote as a class or series on the fundamental business transaction unless that class or series is otherwise entitled to vote on each matter submitted to the shareholders generally or is otherwise entitled to vote under the certificate of formation.

(d) Unless required by the certificate of formation, approval of a merger by shareholders is not required under this code for a corporation that is a party to the plan of merger unless that corporation is also a party to the merger.

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

Sec. 21.458. CLASS VOTING REQUIREMENTS FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Separate voting by a class or series of shares of a corporation is required for approval of a plan of merger or conversion if:

(1) that class or series of shares is, under the plan of merger or conversion, to be converted into or exchanged for other

securities, interests, obligations, rights to acquire shares, interests, or other securities, cash, property, or any combination of the items described by this subdivision;

(2) the plan of merger or conversion contains a provision that would require approval by that class or series of shares under Section 21.364 if the provision was contained in a proposed amendment to the corporation's certificate of formation; or

(3) that class or series of shares is entitled under the certificate of formation to vote as a class or series on the plan of merger or conversion.

(b) Separate voting by a class or series of shares of a corporation is required for approval of a plan of exchange if:

(1) shares of that class or series are to be exchanged under the terms of the plan of exchange; or

(2) that class or series is entitled under the certificate of formation to vote as a class or series on the plan of exchange.

(c) Separate voting by a class or series of shares of a corporation is required for approval of a sale of all or substantially all of the assets of a corporation if that class or series of shares is entitled under the certificate of formation to vote as a class or series on the sale of the corporation's assets.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 12, eff. September 1, 2017.

Sec. 21.459. NO SHAREHOLDER VOTE REQUIREMENT FOR CERTAIN FUNDAMENTAL BUSINESS TRANSACTIONS. (a) Unless required by the corporation's certificate of formation, a plan of merger is not required to be approved by the shareholders of a corporation if:

(1) the corporation is the sole surviving corporation in the merger;

(2) the certificate of formation of the corporation following the merger will not differ from the corporation's certificate of formation before the merger;

(3) immediately after the effective date of the merger, each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights;

(4) the sum of the voting power of the number of voting shares outstanding immediately after the merger and the voting power of securities that may be acquired on the conversion or exercise of securities issued under the merger does not exceed by more than 20 percent the voting power of the total number of voting shares of the corporation that are outstanding immediately before the merger; and

(5) the sum of the number of participating shares that are outstanding immediately after the merger and the number of participating shares that may be acquired on the conversion or exercise of securities issued under the merger does not exceed by more than 20 percent the total number of participating shares of the corporation that are outstanding immediately before the merger.

(b) Unless required by the certificate of formation, a plan of merger effected under Section 10.005 or 10.006 does not require the approval of the shareholders of the corporation.

(c) This subsection applies only to a corporation that is a party to the merger and has a class or series of shares that are, immediately before the date its board of directors approves the plan of merger, either listed on a national securities exchange or held of record by at least 2,000 shareholders. Unless required by the corporation's certificate of formation, a plan of merger is not required to be approved by the shareholders of the corporation if:

(1) the plan of merger expressly:

(A) permits or requires the merger to be effected under this subsection; and

(B) provides that any merger effected under this subsection shall be effected as soon as practicable following the consummation of the offer;

(2) an organization consummates an offer for all of the outstanding shares of the corporation on the terms provided in the plan of merger that, absent this subsection, would be entitled

to vote on the approval of the plan of merger, except that:

(A) the offer may be conditioned on the tender of a minimum number or percentage of shares of the corporation or of any class or series of shares of the corporation;

(B) the offer may exclude any excluded shares; and

(C) the organization may consummate separate offers for separate classes or series of shares of the corporation;

(3) immediately following the consummation of the offer, shares that are irrevocably accepted for purchase or exchange pursuant to the consummation of the offer and that are received by the depository before the expiration of the offer, together with the shares that are otherwise owned by the consummating organization or its qualified affiliates and any rollover shares, equal at least the percentage of the shares of the corporation, and of each class or series of those shares that, absent this subsection, would be required to approve the plan of merger by:

(A) Section 21.457 and, if applicable, Section 21.458; and

(B) the certificate of formation of the corporation;

(4) the organization consummating the offer or one of its qualified affiliates merges with or into the corporation pursuant to the plan of merger; and

(5) each outstanding share, other than excluded shares, of each class or series of the corporation that is the subject of and is not irrevocably accepted for purchase or exchange in the offer is to be converted or exchanged in the merger into, or into the right to receive, the same amount and kind of consideration, as described by Section 10.002(a)(5), as to be paid or delivered for shares of such class or series of the corporation irrevocably accepted for purchase or exchange in the offer.

(d) In Subsection (c) and this subsection and, as applicable, in Sections 10.355(d)(3)(B), 10.355(f), and 10.356(b)(3)(E)(iv):

(1) "Consummates," "consummation," or "consummating"

means irrevocably accepts for purchase or exchange shares tendered pursuant to an offer.

(2) "Depository" means an agent appointed to facilitate consummation of an offer.

(3) "Offer" means a tender offer or an exchange offer that satisfies the requirements of Subsection (c)(2).

(e) For purposes of Subsection (c) and this subsection:

(1) "Excluded shares" means:

(A) shares of the corporation that are owned at the commencement of the offer by:

(i) the corporation;

(ii) the organization consummating the offer;

(iii) any person that owns, directly or indirectly, all of the outstanding ownership interests of the organization consummating the offer; or

(iv) any direct or indirect wholly owned subsidiary of the corporation, the organization consummating the offer, or any person described by Subparagraph (iii); and

(B) rollover shares.

(2) "Qualified affiliate" means, with respect to the organization consummating an offer, any person that:

(A) owns, directly or indirectly, all of the outstanding ownership interests of the organization consummating the offer; or

(B) is a direct or indirect wholly owned subsidiary of the organization consummating the offer or of any person described by Paragraph (A).

(3) "Received" means:

(A) with respect to certificated shares, physical receipt of a certificate representing shares accompanied by an executed letter of transmittal;

(B) transfer into the depository's account by means of an agent's message; and

(C) with respect to uncertificated shares held of record by a person other than a clearing corporation as nominee, physical receipt of an executed letter of transmittal by the

depository.

(4) "Rollover shares" means any shares of the corporation that are the subject of a written agreement, separate from the offer, requiring the shares to be transferred, contributed, or delivered to the organization consummating the offer or any of the organization's qualified affiliates in exchange for ownership interests in the organization consummating the offer or a qualified affiliate of that organization. The term does not include shares of a corporation described by this subdivision that, immediately before the time a merger described by Subsection (c) becomes effective, have not been transferred, contributed, or delivered to the organization consummating the offer or any of the organization's qualified affiliates pursuant to the written agreement.

(f) For purposes of Subsections (c) and (e), shares cease to be "received":

(1) with respect to certificated shares, if the certificate representing the shares was canceled before consummation of the offer; and

(2) with respect to uncertificated shares, to the extent the uncertificated shares have been reduced or eliminated due to any sale of those shares before the consummation of the offer.

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

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 26, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 8, eff. September 1, 2019.

Sec. 21.460. RIGHTS OF DISSENT AND APPRAISAL. A shareholder of a domestic corporation has the rights of dissent and appraisal under Subchapter H, Chapter 10, with respect to a fundamental business transaction.

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

Sec. 21.461. PLEDGE, MORTGAGE, DEED OF TRUST, OR TRUST

INDENTURE. Except as provided by the corporation's certificate of formation:

(1) the board of directors of a corporation may authorize a pledge, mortgage, deed of trust, or trust indenture; and

(2) an authorization or consent of shareholders is not required for the validity of the transaction or for any sale under the terms of the transaction.

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

Sec. 21.462. CONVEYANCE BY CORPORATION. A corporation may convey real property of the corporation when authorized by appropriate resolution of the board of directors.

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

SUBCHAPTER K. WINDING UP AND TERMINATION

Sec. 21.501. APPROVAL OF VOLUNTARY WINDING UP, REINSTATEMENT, OR REVOCATION OF VOLUNTARY WINDING UP. A corporation must approve a voluntary winding up in accordance with Chapter 11, a reinstatement in accordance with Section 11.202, a cancellation of an event requiring winding up under Section 11.152(a), or revocation of a voluntary decision to wind up in accordance with Section 11.151 by complying with one of the procedures prescribed by this subchapter.

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. 83, eff. September 1, 2007.

Sec. 21.502. CERTAIN PROCEDURES RELATING TO WINDING UP. To approve a voluntary winding up, a reinstatement, a cancellation of an event requiring winding up, or a revocation of a voluntary decision to wind up, a corporation must follow one of the following procedures:

(1) all shareholders of the corporation must consent in writing to the winding up, the reinstatement, the cancellation

of an event requiring winding up, or the revocation of a voluntary decision to wind up the corporation;

(2) if the corporation has not commenced business and has not issued any shares, a majority of the organizers or the board of directors of the corporation must adopt a resolution to wind up, to reinstate, to cancel an event requiring winding up, or to revoke a voluntary decision to wind up; or

(3)(A) the board of directors of the corporation must adopt a resolution:

(i) recommending the winding up, reinstatement, cancellation of an event requiring winding up, or revocation of a voluntary decision to wind up the corporation; and

(ii) directing that the winding up, reinstatement, cancellation of an event requiring winding up, or revocation of a voluntary decision to wind up the corporation be submitted to the shareholders for approval at an annual or special meeting of shareholders; and

(B) the shareholders must approve the action described by Paragraph (A) in accordance with Section 21.503.

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

Sec. 21.503. MEETING OF SHAREHOLDERS; NOTICE. (a) Each shareholder of record entitled to vote at a meeting described by Section 21.502(3)(A)(ii) must be given written notice stating that the purpose or one of the purposes of the meeting is to consider the winding up, reinstatement, cancellation of the event requiring winding up, or revocation of the voluntary decision to wind up the corporation. The notice must be given in the time and manner provided by Chapter 6 and this chapter for the giving of notice of shareholders' meetings.

(b) A vote of shareholders entitled to vote at the meeting shall be taken on the resolution to wind up, reinstate, cancel the event requiring winding up, or revoke the voluntary decision to wind up the corporation. The shareholders must approve the resolution by the affirmative vote required by Section 21.364.

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

Sec. 21.504. RESPONSIBILITY FOR WINDING UP. If a corporation determines or is required to wind up, the directors of the corporation shall manage the process of winding up the business or affairs of the corporation.

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

SUBCHAPTER L. DERIVATIVE PROCEEDINGS

Sec. 21.551. DEFINITIONS. In this subchapter:

(1) "Derivative proceeding" means a civil suit in the right of a domestic corporation or, to the extent provided by Section 21.562, in the right of a foreign corporation.

(2) "Shareholder" includes a shareholder as defined by Section 1.002 or a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 1, eff. September 1, 2019.

Acts 2021, 87th Leg., R.S., Ch. 39 (S.B. 1203), Sec. 23, eff. September 1, 2021.

Sec. 21.552. STANDING TO BRING PROCEEDING. (a) Subject to Subsection (b), a shareholder may not institute or maintain a derivative proceeding unless:

(1) the shareholder:

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

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

(2) the shareholder fairly and adequately represents the interests of the corporation in enforcing the right of the corporation.

(b) If the converted entity in a conversion is a corporation, a shareholder of that corporation may not institute or maintain a derivative proceeding based on an act or omission that

occurred with respect to the converting entity before the date of the conversion unless:

(1) the shareholder was an equity owner of the converting entity at the time of the act or omission; and

(2) the shareholder fairly and adequately represents the interests of the corporation in enforcing the right of 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. 63, eff. January 1, 2006.

Acts 2011, 82nd Leg., R.S., Ch. 93 (S.B. 1568), Sec. 1, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 2, eff. September 1, 2019.

Sec. 21.553. DEMAND. (a) A shareholder may not institute a derivative proceeding until the 91st day after the date a written demand is filed with the corporation stating with particularity the act, omission, or other matter that is the subject of the claim or challenge and requesting that the corporation take suitable action.

(b) The waiting period required by Subsection (a) before a derivative proceeding may be instituted is not required or, if applicable, shall terminate if:

(1) the shareholder has been notified that the demand has been rejected by the corporation;

(2) the corporation is suffering irreparable injury; or

(3) irreparable injury to the corporation would result by waiting for the expiration of the 90-day period.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 3, eff. September 1, 2019.

Sec. 21.554. DETERMINATION BY DIRECTORS OR INDEPENDENT PERSONS. (a) A determination of how to proceed on allegations

made in a demand or petition relating to a derivative proceeding must be made by an affirmative vote of the majority of:

(1) all independent and disinterested directors of the corporation, regardless of whether the independent and disinterested directors constitute a quorum of the board of directors;

(2) a committee consisting of one or more independent and disinterested directors appointed by an affirmative vote of the majority of one or more independent and disinterested directors, regardless of whether the independent and disinterested directors constitute a quorum of the board of directors; or

(3) a panel of one or more independent and disinterested individuals appointed by the court on a motion by the corporation listing the names of the individuals to be appointed and stating that, to the best of the corporation's knowledge, the individuals to be appointed are disinterested and qualified to make the determinations contemplated by Section 21.558.

(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 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.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 4, eff. September 1, 2019.

Sec. 21.555. STAY OF PROCEEDING. (a) If the corporation that is the subject of a derivative proceeding commences an inquiry into the allegations made in a demand or petition and the person or group of persons described by Section 21.554 is conducting an

active review of the allegations in good faith, the court shall stay a derivative proceeding for not more than 60 days until the review is completed and a determination is made by the person or group regarding what further action, if any, should be taken.

(b) To obtain a stay, the corporation must provide the court with a written statement agreeing to advise the court and the shareholder making the demand of the determination promptly on the completion of the review of the matter.

(c) A stay, on motion, may be reviewed every 60 days for continuation of the stay if the corporation provides the court and the shareholder with a written statement of the status of the review and the reasons why an extension for a period not to exceed 60 additional days is appropriate. An extension shall be granted for a period not to exceed 60 days if the court determines that the continuation is appropriate in the interests of the corporation.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 5, eff. September 1, 2019.

Sec. 21.556. DISCOVERY. (a) If a corporation proposes to dismiss a derivative proceeding under Section 21.558, discovery by a shareholder after the filing of the derivative proceeding in accordance with this subchapter shall be limited to:

(1) facts relating to whether the person or persons described by Section 21.554 are independent and disinterested;

(2) the good faith of the inquiry and review by the person or group; and

(3) the reasonableness of the procedures followed by the person or group in conducting the review.

(b) Discovery described by Subsection (a) may not be expanded to include a fact or substantive matter regarding the act, omission, or other matter that is the subject matter of the derivative proceeding but the scope of discovery shall not be so limited if the court determines after notice and hearing that a good faith review of the allegations has not been made by an independent and disinterested person or group in accordance with Sections

21.554 and 21.558.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 6, eff. September 1, 2019.

Sec. 21.557. TOLLING OF STATUTE OF LIMITATIONS. A written demand filed with the corporation under Section 21.553 tolls the statute of limitations on the claim on which demand is made until the later of:

(1) the 31st day after the expiration of any waiting period under Section 21.553; or

(2) the 31st day after the expiration of any stay granted under Section 21.555, including all continuations of the stay.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 7, eff. September 1, 2019.

Sec. 21.558. DISMISSAL OF DERIVATIVE PROCEEDING. (a) A court, sitting in equity as the finder of fact, shall dismiss a derivative proceeding on a motion by the corporation if the person or group of persons described by Section 21.554 determines in good faith, after conducting a reasonable inquiry and based on factors the person or group considers appropriate under the circumstances, that continuation of the derivative proceeding is not in the best interests of the corporation.

(b) In determining whether the requirements of Subsection (a) have been met, the burden of proof shall be on:

(1) the plaintiff shareholder if:

(A) the majority of the board of directors consists of independent and disinterested directors at the time the determination is made;

(B) the determination is made by a panel of one or more independent and disinterested persons appointed under Section 21.554(a)(3); or

(C) the corporation presents prima facie evidence that demonstrates that the applicable person or persons making the determination under Section 21.554(a) are independent and disinterested; or

(2) the corporation in any other circumstance.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 8, eff. September 1, 2019.

Sec. 21.559. ALLEGATIONS AFTER DEMAND REJECTED. If a derivative proceeding is instituted after a demand is rejected, the petition must allege with particularity facts that establish that the rejection was not made in accordance with the requirements and standards under Sections 21.554 and 21.558.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 9, eff. September 1, 2019.

Sec. 21.560. DISCONTINUANCE OR SETTLEMENT. (a) A derivative proceeding may not be discontinued or settled without court approval.

(b) The court shall direct that notice be given to the affected shareholders if the court determines that a proposed discontinuance or settlement may substantially affect the interests of other shareholders.

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

Sec. 21.561. PAYMENT OF EXPENSES. (a) In this section, "expenses" means reasonable expenses incurred by a party in a derivative proceeding, including:

(1) attorney's fees;

(2) costs in pursuing an investigation of the matter that was the subject of the derivative proceeding; or

(3) expenses for which the corporation may be required to indemnify another person.

(b) On termination of a derivative proceeding, the court may order:

(1) the corporation to pay expenses the plaintiff incurred in the proceeding if the court finds the proceeding has resulted in a substantial benefit to the corporation;

(2) the plaintiff to pay expenses the corporation or other defendant incurred in investigating and defending the proceeding if the court finds the proceeding has been instituted or maintained without reasonable cause or for an improper purpose; or

(3) a party to pay expenses incurred by another party relating to the filing of a pleading, motion, or other paper if the court finds the pleading, motion, or other paper:

(A) was not well grounded in fact after reasonable inquiry;

(B) was not warranted by existing law or a good faith argument for the application, extension, modification, or reversal of existing law; or

(C) was interposed for an improper purpose, such as to harass, cause unnecessary delay, or cause a needless increase in the cost of litigation.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 10, eff. September 1, 2019.

Sec. 21.562. APPLICATION TO FOREIGN CORPORATIONS. (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 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.

(b) In the case of matters relating to a foreign corporation under Section 21.555, a reference to a person or group of persons described by Section 21.554 refers to a person or group entitled

under the laws of the jurisdiction of formation of the foreign corporation to make the determination described by Section 21.554(a). The standard of review of a determination made by the person or group shall be governed by the laws of the jurisdiction of formation of the foreign corporation.

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

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 11, eff. September 1, 2019.

Sec. 21.563. CLOSELY HELD CORPORATION. (a) In this section, "closely held corporation" means a corporation that has:

(1) fewer than 35 shareholders; and

(2) no shares listed on a national securities exchange or regularly quoted in an over-the-counter market by one or more members of a national securities association.

(b) Sections 21.552-21.560 do not apply to a claim or a derivative proceeding by a shareholder of a closely held corporation against a director, officer, or shareholder of the corporation. In the event the claim or derivative proceeding is also made against a person who is not that director, officer, or shareholder, this subsection applies only to the claim or derivative proceeding against the director, officer, or shareholder.

(c) If Sections 21.552-21.560 do not apply because of Subsection (b) and if justice requires:

(1) a derivative proceeding brought by a shareholder of a closely held corporation may be treated by a court as a direct action brought by the shareholder for the shareholder's own benefit; and

(2) a recovery in a direct or derivative proceeding by a shareholder may be paid directly to the plaintiff or to the corporation if necessary to protect the interests of creditors or other shareholders of the corporation.

(d) Other provisions of state law govern whether a shareholder has a direct cause of action or right to sue a director, officer, or shareholder, and this section may not be construed to

create that direct cause of action or right to sue.

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. 84, eff. September 1, 2007.

Acts 2019, 86th Leg., R.S., Ch. 899 (H.B. 3603), Sec. 12, eff. September 1, 2019.

SUBCHAPTER M. AFFILIATED BUSINESS COMBINATIONS

Sec. 21.601. DEFINITIONS. In this subchapter:

(1) "Issuing public corporation" means a domestic corporation that has:

(A) 100 or more shareholders of record as shown by the share transfer records of the corporation;

(B) a class or series of the corporation's voting shares registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 77b et seq.), as amended; or

(C) a class or series of the corporation's voting shares qualified for trading on a national securities exchange.

(2) "Person" includes two or more persons acting as a partnership, limited partnership, syndicate, or other group under an agreement, arrangement, or understanding, regardless of whether in writing, to acquire, hold, vote, or dispose of a corporation's shares.

(3) "Share acquisition date" means the date a person initially becomes an affiliated shareholder of an issuing public corporation.

(4) "Subsidiary" means a domestic or foreign corporation or other entity of which a majority of the outstanding voting shares are owned, directly or indirectly, by an issuing public corporation.

(5) "Voting share" means a share of capital stock of a corporation that entitles the holder of the share to vote generally in the election of directors.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 30, eff. September 1, 2011.

Sec. 21.602. AFFILIATED SHAREHOLDER. (a) For purposes of this subchapter, a person, other than the issuing public corporation or a wholly owned subsidiary of the issuing public corporation, is an affiliated shareholder if the person:

(1) is the beneficial owner of 20 percent or more of the outstanding voting shares of the issuing public corporation; or

(2) during the preceding three-year period, was the beneficial owner of 20 percent or more of the outstanding voting shares of the issuing public corporation.

(b) To determine whether a person is an affiliated shareholder, the number of voting shares of the issuing public corporation considered outstanding includes shares considered beneficially owned by that person under Section 21.603, but does not include other unissued voting shares of the issuing public corporation that may be issuable under an agreement, arrangement, or understanding, or on exercise of conversion rights, warrants, or options.

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

Sec. 21.603. BENEFICIAL OWNER OF SHARES OR OTHER SECURITIES. (a) For purposes of this subchapter, a person is a beneficial owner of shares or other securities if the person individually, or through an affiliate or associate, directly or indirectly beneficially owns the shares or other securities or has the right to:

(1) acquire the shares or other securities immediately or after the passage of time according to an oral or written agreement, arrangement, or understanding, or on the exercise of conversion rights, exchange rights, warrants, or options;

(2) vote the shares or other securities according to an oral or written agreement, arrangement, or understanding; or

(3) acquire, hold or dispose of, or vote the shares or other securities with another person who individually, or through

an affiliate or associate, beneficially owns, directly or indirectly, the shares or other securities.

(b) A person, however, is not considered a beneficial owner of shares or other securities for purposes of this subchapter if:

(1) the shares or other securities are:

(A) tendered under a tender or exchange offer made by the person or an affiliate or associate of the person before the tendered shares or securities are accepted for purchase or exchange; or

(B) subject to an agreement, arrangement, or understanding that expressly conditions the acquisition or purchase of shares or securities on the approval of the acquisition or purchase under Section 21.606 if the person has no direct or indirect rights of ownership or voting with respect to the shares or other securities until the time the approval is obtained; or

(2) the agreement, arrangement, or understanding to vote the shares:

(A) arises solely from an immediately revocable proxy that authorizes the person named in the proxy to vote at a meeting of the shareholders that has been called when the proxy is delivered or at an adjournment of the meeting; and

(B) would not be reportable on a Schedule 13D under the Securities Exchange Act of 1934 (15 U.S.C. Section 77b et seq.), as amended, or a comparable or successor report.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 31, eff. September 1, 2011.

Sec. 21.604. BUSINESS COMBINATION. A business combination is:

(1) a merger, share exchange, or conversion of an issuing public corporation or a subsidiary with:

(A) an affiliated shareholder;

(B) a foreign or domestic corporation or other entity that is, or after the merger, share exchange, or conversion would be, an affiliate or associate of the affiliated shareholder;

or

(C) another domestic or foreign corporation or other entity, if the merger, share exchange, or conversion is caused by an affiliated shareholder, or an affiliate or associate of an affiliated shareholder, and as a result of the merger, share exchange, or conversion this subchapter does not apply to the surviving corporation or other entity;

(2) a sale, lease, exchange, mortgage, pledge, transfer, or other disposition, in one transaction or a series of transactions, including an allocation of assets under a merger, to or with the affiliated shareholder, or an affiliate or associate of the affiliated shareholder, of assets of the issuing public corporation or a subsidiary that:

(A) has an aggregate market value equal to 10 percent or more of the aggregate market value of all of the assets, determined on a consolidated basis, of the issuing public corporation;

(B) has an aggregate market value equal to 10 percent or more of the aggregate market value of all of the outstanding voting shares of the issuing public corporation; or

(C) represents 10 percent or more of the earning power or net income, determined on a consolidated basis, of the issuing public corporation;

(3) the issuance or transfer by an issuing public corporation or a subsidiary to an affiliated shareholder or an affiliate or associate of the affiliated shareholder, in one transaction or a series of transactions, of shares of the issuing public corporation or a subsidiary, except by the exercise of warrants or rights to purchase shares of the issuing public corporation offered, or a share dividend paid, pro rata to all shareholders of the issuing public corporation after the affiliated shareholder's share acquisition date;

(4) the adoption of a plan or proposal for the liquidation, winding up, or dissolution of an issuing public corporation proposed by or under any agreement, arrangement, or understanding, regardless of whether in writing, with an affiliated shareholder or an affiliate or associate of the affiliated

shareholder;

(5) a reclassification of securities, including a reverse share split or a share split-up, share dividend, or other distribution of shares, a recapitalization of the issuing public corporation, a merger of the issuing public corporation with a subsidiary or pursuant to which the assets and liabilities of the issuing public corporation are allocated among two or more surviving or new domestic or foreign corporations or other entities, or any other transaction proposed by or under an agreement, arrangement, or understanding, regardless of whether in writing, with an affiliated shareholder or an affiliate or associate of the affiliated shareholder that has the effect, directly or indirectly, of increasing the proportionate ownership percentage of the outstanding shares of a class or series of voting shares or securities convertible into voting shares of the issuing public corporation that is beneficially owned by the affiliated shareholder or an affiliate or associate of the affiliated shareholder, except as a result of immaterial changes due to fractional share adjustments; or

(6) the direct or indirect receipt by an affiliated shareholder or an affiliate or associate of the affiliated shareholder of the benefit of a loan, advance, guarantee, pledge, or other financial assistance or a tax credit or other tax advantage provided by or through the issuing public corporation, except proportionately as a shareholder of the issuing public 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. 64, eff. January 1, 2006.

Acts 2007, 80th Leg., R.S., Ch. 688 (H.B. 1737), Sec. 85, eff. September 1, 2007.

Sec. 21.605. CONTROL. (a) For purposes of this subchapter, a person has control of another person if the person has possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person, through the ownership of equity securities, by contract, or in

another manner.

(b) A person's beneficial ownership of 10 percent or more of a person's outstanding voting shares or similar interests creates a presumption that the person has control of the other person, but a person is not considered to have control of another person who holds the voting shares or similar interests in good faith and not to circumvent this part, as an agent, bank, broker, nominee, custodian, or trustee for one or more beneficial owners who do not individually or as a group have control of the person.

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

Sec. 21.606. THREE-YEAR MORATORIUM ON CERTAIN BUSINESS COMBINATIONS. An issuing public corporation may not, directly or indirectly, enter into or engage in a business combination with an affiliated shareholder, or any affiliate or associate of the affiliated shareholder, during the three-year period immediately following the affiliated shareholder's share acquisition date unless:

(1) the business combination or the purchase or acquisition of shares made by the affiliated shareholder on the affiliated shareholder's share acquisition date is approved by the board of directors of the issuing public corporation before the affiliated shareholder's share acquisition date; or

(2) the business combination is approved, by the affirmative vote of the holders of at least two-thirds of the outstanding voting shares of the issuing public corporation not beneficially owned by the affiliated shareholder or an affiliate or associate of the affiliated shareholder, at a meeting of shareholders called for that purpose not less than six months after the affiliated shareholder's share acquisition date. Approval may not be by written consent.

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

Sec. 21.607. APPLICATION OF MORATORIUM. Section 21.606 does not apply to:

(1) a business combination of an issuing public corporation if:

(A) the original articles of incorporation or certificate of formation, as applicable, or the original bylaws of the corporation contain a provision expressly electing not to be governed by this subchapter;

(B) before December 31, 1997, the corporation adopted an amendment to the articles of incorporation or bylaws of the corporation expressly electing not to be governed by this subchapter; or

(C) after December 31, 1997, the corporation adopts an amendment to the articles of incorporation or certificate of formation, as applicable, or the bylaws of the corporation, approved by the affirmative vote of the holders, other than an affiliated shareholder or an affiliate or associate of the affiliated shareholder, of at least two-thirds of the outstanding voting shares of the issuing public corporation, expressly electing not to be governed by this subchapter, except that the amendment to the articles of incorporation or certificate of formation, as applicable, or the bylaws takes effect 18 months after the date of the vote and does not apply to a business combination of the issuing public corporation with an affiliated shareholder whose share acquisition date is on or before the effective date of the amendment;

(2) a business combination of an issuing public corporation with an affiliated shareholder who became an affiliated shareholder inadvertently, if the affiliated shareholder:

(A) as soon as practicable divests itself of a sufficient number of the voting shares of the issuing public corporation so that the affiliated shareholder no longer is the beneficial owner, directly or indirectly, of 20 percent or more of the outstanding voting shares of the issuing public corporation; and

(B) would not at any time within the three-year period preceding the announcement date of the business combination have been an affiliated shareholder except for the inadvertent acquisition;

(3) a business combination with an affiliated shareholder who was the beneficial owner of 20 percent or more of

the outstanding voting shares of the issuing public corporation on December 31, 1996, and continuously until the announcement date of the business combination;

(4) a business combination with an affiliated shareholder who became an affiliated shareholder through a transfer of shares of the issuing public corporation by will or intestate succession and continuously was an affiliated shareholder until the announcement date of the business combination; or

(5) a business combination of an issuing public corporation with a domestic wholly owned subsidiary if the domestic subsidiary is not an affiliate or associate of the affiliated shareholder for a reason other than the affiliated shareholder's beneficial ownership of voting shares in the issuing public corporation.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 13, eff. September 1, 2017.

Sec. 21.608. EFFECT ON OTHER ACTIONS. (a) This subchapter does not affect, directly or indirectly, the validity of another action by the board of directors of an issuing public corporation.

(b) This subchapter does not preclude the board of directors of an issuing public corporation from taking other action in accordance with law.

(c) The board of directors of an issuing public corporation does not incur liability for an election made or not made under this subchapter.

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

Sec. 21.609. CONFLICTING PROVISIONS. If this subchapter conflicts with another provision of this code, this subchapter controls.

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

Sec. 21.610. CHANGE IN VOTING REQUIREMENTS. The affirmative vote or concurrence of shareholders required for

approval of an action that is required to be submitted to a vote of the shareholders under this subchapter may be increased but not decreased under Section 21.365.

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

SUBCHAPTER N. PROVISIONS RELATING TO INVESTMENT COMPANIES

Sec. 21.651. DEFINITION. In this subchapter, "investment company" means a corporation registered as an open-end company under the Investment Company Act.

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

Sec. 21.652. ESTABLISHING CLASS OR SERIES OF SHARES; CHANGE IN NUMBER OF SHARES. (a) In addition to the actions the board may undertake under Subchapters D, E, and F, the board of directors of an investment company may:

(1) establish classes of shares and series of unissued shares of a class by setting and determining the designations, preferences, limitations, and relative rights, including voting rights, of the shares of the class or series established under this subdivision to the same extent that the designations, preferences, limitations, and relative rights could be stated if fully stated in the certificate of formation; and

(2) increase or decrease the aggregate number of shares or the number of shares of, or delete from the investment company's certificate of formation, a class or series of shares the corporation has authority to issue, unless a provision has been included in the certificate of formation of the corporation after September 1, 1993, expressly prohibiting those actions by the board of directors.

(b) The board of directors of an investment company may not:

(1) decrease the number of shares in a class or series to a number that is less than the number of shares of that class or series that are outstanding at the time; or

(2) delete from the certificate of formation a reference to a class or series that has shares outstanding at the time.

(c) To establish a class or series under this section, the board of directors must adopt a resolution stating the designation of the class or series and setting and determining the designations, preferences, limitations, and relative rights, including voting rights, of the class or series.

(d) To increase or decrease the number of shares of a class or series of shares or to delete from the certificate of formation a reference to a class or series of shares, the board of directors of an investment company must adopt a resolution setting and determining the new number of shares of each class or series in which the number of shares is increased or decreased or deleting the class or series and any reference to the class or series from the certificate of formation. The shares of a series removed from the certificate of formation shall resume the status of authorized but unissued shares of the class of shares from which the series was established unless otherwise provided by the resolution or the certificate of formation of the investment company.

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

Sec. 21.653. REQUIRED STATEMENT RELATING TO SHARES. (a) Before the first issuance of shares of a class or series established or increased or decreased by resolution adopted by the board of directors of an investment company under Section 21.652, and to delete from the investment company's certificate of formation a class or series of shares and all references to the class or series contained in the certificate of formation, the investment company shall file with the secretary of state a statement that contains:

(1) the name of the investment company;

(2) if the statement relates to the establishment of a class or series of shares, a copy of the resolution establishing and designating the class or series or establishing and designating the class or series and setting and determining the preferences, limitations, and relative rights of the class or series;

(3) if the statement relates to an increase or decrease in the number of shares of a class or series, a copy of the resolution setting and determining the new number of shares of each class or series in which the number of shares is increased or

decreased;

(4) if the statement relates to the deletion of a class or series of shares and all references to the class or series from the certificate of formation, a copy of the resolution deleting the class or series and all references to the class or series from the certificate of formation;

(5) the date of adoption of the resolution; and

(6) a statement that the resolution was adopted by all necessary action on the part of the investment company.

(b) After the statement described by Subsection (a) is filed, a resolution adopted under Section 21.652 becomes an amendment of the certificate of formation. An amendment of the certificate of formation described under this section is not subject to the procedure to amend the certificate of formation contained in Subchapter B.

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

Sec. 21.654. TERM OF OFFICE OF DIRECTORS. Unless the director resigns or is removed in accordance with the certificate of formation or bylaws of the investment company, a director of an investment company shall serve as director for the term for which the director is elected and holds office until a successor is elected and qualifies.

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

Amended by:

Acts 2005, 79th Leg., Ch. 64 (H.B. 1319), Sec. 65, eff. January 1, 2006.

Sec. 21.655. MEETINGS OF SHAREHOLDERS. (a) If provided by the certificate of formation or bylaws of an investment company, the investment company is not required to hold an annual meeting of shareholders or elect directors in a year in which an election of directors is not required under the Investment Company Act.

(b) If an investment company is required to hold a meeting of shareholders to elect directors under the Investment Company Act, the meeting shall be designated as the annual meeting of shareholders for that year.

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

SUBCHAPTER O. CLOSE CORPORATION

Sec. 21.701. DEFINITIONS. In this subchapter and Subchapter P:

(1) "Close corporation" means a domestic corporation formed under this subchapter or governed by this subchapter because of Section 21.705, 21.706, or 21.707.

(2) "Close corporation provision" means a provision in the certificate of formation of a close corporation or in a shareholders' agreement of a close corporation.

(3) "Ordinary corporation" means a domestic corporation that is not a close corporation.

(4) "Shareholders' agreement" means a written agreement regulating an aspect of the business and affairs of or the relationship among the shareholders of a close corporation that has been executed under this subchapter.

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

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 139 (S.B. 748), Sec. 32, eff. September 1, 2011.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 9, eff. September 1, 2019.

Sec. 21.702. APPLICABILITY OF SUBCHAPTER. (a) This subchapter applies only to a close corporation.

(b) This chapter applies to a close corporation to the extent not inconsistent with this subchapter.

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

Sec. 21.703. FORMATION OF CLOSE CORPORATION. A close corporation shall be formed in accordance with Chapter 3.

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

Sec. 21.704. BYLAWS OF CLOSE CORPORATION. (a) A close corporation does not need to adopt bylaws if provisions required by

law to be contained in the bylaws are contained in the certificate of formation or a shareholders' agreement.

(b) A close corporation that does not have bylaws when it terminates its status as a close corporation under Section 21.708 shall immediately adopt bylaws that comply with Section 21.057.

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

Sec. 21.705. ADOPTION OF AMENDMENT FOR CLOSE CORPORATION STATUS. (a) An ordinary corporation may become a close corporation by amending its certificate of formation in accordance with Chapter 3 to conform with Section 3.008.

(b) An amendment adopting close corporation status must be approved by the affirmative vote of the holders of all of the outstanding shares of each class established by the close corporation, regardless of whether a class is entitled to vote on the amendment by the certificate of formation of the ordinary corporation.

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

Sec. 21.706. ADOPTION OF CLOSE CORPORATION STATUS THROUGH MERGER, EXCHANGE, OR CONVERSION. (a) A surviving or new corporation resulting from a merger or conversion or a corporation that acquires a corporation under an exchange under Chapter 10 may become a close corporation if, as part of the plan of merger, exchange, or conversion, the certificate of formation conforms with Section 3.008.

(b) A plan of merger, exchange, or conversion adopting close corporation status must be approved by the affirmative vote of the holders of all of the outstanding ownership or membership interests, and of each class or series of ownership or membership interests, of each entity or non-code organization that is party to the merger, exchange, or conversion, regardless of whether a class or series of ownership or membership interests is entitled to vote on the plan by the certificate of formation of the corporation.

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

Sec. 21.707. EXISTING CLOSE CORPORATION. (a) This section

applies to an existing corporation that elected to become a close corporation before the mandatory application date of this code and has not terminated that status.

(b) A close corporation existing before the mandatory application date of this code is considered to be a close corporation under this code.

(c) A provision in the articles of incorporation of a close corporation authorized under former law is valid and enforceable if the corporation's status as a close corporation has not been terminated.

(d) An agreement among the shareholders of a close corporation in conformance with former law and Sections 21.714-21.725 before the mandatory application date of this code is considered to be a shareholders' agreement.

(e) A certificate representing the shares issued or delivered by the close corporation after the mandatory application date of this code, whether in connection with the original issue of shares or a transfer of shares, must conform with Section 21.732.

(f) In this section, "mandatory application date" has the meaning assigned by Section 401.001.

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. 86, eff. September 1, 2007.

Sec. 21.708. TERMINATION OF CLOSE CORPORATION STATUS. A close corporation may terminate its status as a close corporation by:

(1) filing a statement terminating close corporation status under Section 21.709;

(2) amending the close corporation's certificate of formation under Chapter 3 by deleting from the certificate of formation the statement that it is a close corporation;

(3) engaging in a merger, interest exchange, or conversion under Chapter 10, unless the plan of merger, exchange, or conversion provides that the surviving or new corporation will continue as or become a close corporation and the plan has been

approved by the affirmative vote or consent of the holders of all of the outstanding shares, and of each class and series of shares, of the close corporation, regardless of whether a class or series of shares is entitled to vote on the plan by the certificate of formation; or

(4) instituting a judicial proceeding to enforce a close corporation provision providing for the termination.

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

Sec. 21.709. STATEMENT TERMINATING CLOSE CORPORATION STATUS; FILING; NOTICE. (a) If a close corporation provision specifies a time or event requiring the termination of close corporation status, regardless of whether the provision is identifiable by a person dealing with the close corporation, the termination of the close corporation status takes effect on the occurrence of the specified time or event and the filing of a statement terminating close corporation status under this section.

(b) Promptly after the time or occurrence of an event requiring termination of close corporation status, a statement terminating close corporation status shall be signed by an officer on behalf of the close corporation. A copy of the applicable close corporation provision must be included in or attached to the statement. The statement and any attachment shall be filed with the secretary of state in accordance with Chapter 4.

(c) The statement terminating close corporation status must contain:

(1) the name of the corporation;

(2) a statement that the corporation has terminated its status as a close corporation in accordance with the included or attached close corporation provision; and

(3) the time or event that caused the termination and, in the case of an event, the approximate date of the event.

(d) After a statement terminating close corporation status has been filed under this section, the certificate of formation of the close corporation is considered to be amended to delete from the certificate the statement that the corporation is a close corporation, and the corporation's status as a close corporation is

terminated.

(e) The corporation shall personally deliver or mail a copy of the statement to each shareholder of the corporation. A copy of the statement is considered to have been delivered by mail under this section when the copy is deposited in the United States mail, with postage prepaid, addressed to the shareholder at the shareholder's address as it appears on the share transfer records of the corporation. The failure to deliver the copy of the statement does not affect the validity of the termination.

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

Sec. 21.710. EFFECT OF TERMINATION OF CLOSE CORPORATION STATUS. (a) A close corporation that terminates its status as a close corporation and becomes an ordinary corporation is subject to this chapter as if the corporation had not elected close corporation status under this subchapter.

(b) The effect of termination of close corporation status on a shareholders' agreement is governed by Section 21.724.

(c) When the termination of close corporation status takes effect, if the close corporation's business and affairs have been managed by an entity other than a board of directors as provided by Section 21.725, governance by a board of directors is instituted or reinstated:

(1) if provided by a shareholders' agreement, in the manner stated in the agreement or by the persons named in the agreement to serve as the interim board of directors; or

(2) if each party to a shareholders' agreement agrees to elect a board of directors at a shareholders' meeting.

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

Sec. 21.711. SHAREHOLDERS' MEETING TO ELECT DIRECTORS. A shareholders' meeting required by Section 21.710(c)(2) shall be promptly called after the termination of close corporation status takes effect. If a meeting is not called before the 31st day after the date the termination takes effect, a shareholder may call a shareholders' meeting on the provision of notice required by Section 21.353, regardless of whether the shareholder is entitled

to call a shareholders' meeting or vote at the meeting. At the meeting, the shareholders shall elect the number of directors specified in the certificate of formation or bylaws of the corporation or, in the absence of any specification, three directors.

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

Sec. 21.712. TERM OF OFFICE OF DIRECTORS. A director succeeding to the management of the corporation under Section 21.710(c) shall have a term of office as set forth in Section 21.408. Until a board of directors is elected, the shareholders of the corporation shall act as the corporation's board of directors, and the business and affairs of the corporation shall be conducted under Section 21.726.

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

Sec. 21.713. MANAGEMENT. A close corporation shall be managed:

(1) by a board of directors in the same manner an ordinary corporation would be managed under this chapter; or

(2) in the manner provided by the close corporation's certificate of formation or by a shareholders' agreement of the close corporation.

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

Sec. 21.714. SHAREHOLDERS' AGREEMENT. (a) The shareholders of a close corporation may enter into one or more shareholders' agreements.

(b) The business and affairs of a close corporation or the relationships among the shareholders that may be regulated by a shareholders' agreement include:

(1) the management of the business and affairs of the close corporation by its shareholders, with or without a board of directors;

(2) the management of the business and affairs of the close corporation wholly or partly by one or more of its shareholders or other persons;

(3) buy-sell, first option, first refusal, or similar arrangements with respect to the close corporation's shares or other securities, and restrictions on the transfer of the shares or other securities, including more restrictions than those permitted by Section 21.211;

(4) the declaration and payment of dividends or other distributions in amounts authorized by Subchapter G, regardless of whether the distribution is in proportion to ownership of shares;

(5) the manner in which profits or losses shall be apportioned;

(6) restrictions placed on the rights of a transferee or assignee of shares to participate in the management or administration of the close corporation's business and affairs during the term of the shareholders' agreement;

(7) the right of one or more shareholders to cause the winding up and termination of the close corporation at will or on the occurrence of a specified event or contingency, in which case the winding up and termination of the close corporation shall proceed as if all of the shareholders of the close corporation had consented in writing to winding up and termination as provided by Chapter 11;

(8) the exercise or division of voting power either in general or with regard to specified matters by or among the shareholders of the close corporation or other persons, including:

(A) voting agreements and voting trusts that do not conform with Section 6.251 or 6.252;

(B) requiring the vote or consent of the holders of a larger or smaller number of shares than is otherwise required by this chapter or other law, including an action for termination of close corporation status;

(C) granting one or some other specified number of votes for each shareholder; and

(D) permitting an action for which this chapter requires approval by the vote of the board of directors or the shareholders of an ordinary corporation, or both, to be taken without a vote, in the manner provided by the shareholders' agreement;

(9) the terms and conditions of employment of a shareholder, director, officer, or other employee of the close corporation, regardless of the length of the period of employment;

(10) the individuals who will serve as directors, if any, and officers of the close corporation;

(11) the arbitration or mediation of issues about which the shareholders may become deadlocked in voting or about which the directors or those empowered to manage the close corporation may become deadlocked and the shareholders are unable to break the deadlock;

(12) the termination of close corporation status, including a right of dissent or other rights that may be granted to shareholders who object to the termination;

(13) qualifications of persons who are or are not entitled to be shareholders of the close corporation;

(14) amendments to or termination of the shareholders' agreement; and

(15) any provision required or permitted to be contained in the bylaws by this chapter.

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

Sec. 21.715. EXECUTION OF SHAREHOLDERS' AGREEMENT. A shareholders' agreement shall be executed:

(1) in the case of an existing close corporation, by each shareholder at the time of execution, regardless of whether the shareholder has voting power;

(2) in the case of an existing ordinary corporation that will adopt close corporation status under Section 21.705, by each shareholder at the time of execution, regardless of whether the shareholder has voting power; or

(3) in the case of a close corporation that is being formed under Section 21.703, by each person who is a subscriber to the corporation's shares or agrees to become a holder of the corporation's shares under the shareholders' agreement of the close corporation.

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

Sec. 21.716. ADOPTION OF AMENDMENT OF SHAREHOLDERS' AGREEMENT. Unless otherwise provided by a shareholders' agreement, an amendment to the shareholders' agreement of a close corporation may be adopted only by the written consent of each person who would be required to execute the shareholders' agreement if it were being executed originally at the time of adoption of the amendment, regardless of whether the person has voting power in the close corporation.

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

Sec. 21.717. DELIVERY OF SHAREHOLDERS' AGREEMENT. (a) The close corporation shall deliver a complete copy of a shareholders' agreement to:

(1) each person who is bound by the shareholders' agreement;

(2) each person who is or will become a shareholder in the close corporation as provided by Section 21.715 when a certificate representing shares in the close corporation is delivered to the person; and

(3) each person to whom a certificate representing shares is issued and who has not received a complete copy of the agreement.

(b) The failure to deliver a complete copy of a shareholders' agreement as required by this section does not affect the validity or enforceability of the shareholders' agreement.

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

Sec. 21.718. STATEMENT OF OPERATION AS CLOSE CORPORATION. (a) On or after the formation of a close corporation or adoption of close corporation status, a close corporation that begins to conduct its business and affairs under a shareholders' agreement that has become effective shall promptly execute and file with the secretary of state a statement of operation as a close corporation in accordance with Chapter 4.

(b) The statement required by Subsection (a) must:

(1) contain the name of the close corporation;

(2) state that the close corporation is being operated

and its business and affairs are being conducted under the terms of a shareholders' agreement under this subchapter; and

(3) contain the date the operation of the corporation began.

(c) A statement of operation as a close corporation shall be executed by an officer on behalf of the corporation.

(d) On the filing of the statement of operation as a close corporation, the fact that the close corporation is being operated and its business and affairs are being conducted under the terms of a shareholders' agreement becomes a matter of public record.

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

Sec. 21.719. VALIDITY AND ENFORCEABILITY OF SHAREHOLDERS' AGREEMENT. (a) A shareholders' agreement executed in accordance with Section 21.715 is valid and enforceable notwithstanding:

(1) the elimination of a board of directors;

(2) any restriction imposed on the discretion or powers of the board of directors or other person empowered to manage the close corporation; and

(3) that the effect of the shareholders' agreement is to treat the business and affairs of the close corporation as if the close corporation were a partnership or in a manner that would otherwise be appropriate only among partners.

(b) A close corporation, a shareholder of the close corporation, or a party to a shareholders' agreement may initiate a proceeding to enforce the shareholders' agreement in accordance with Section 21.756.

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

Sec. 21.720. PERSONS BOUND BY SHAREHOLDERS' AGREEMENT. (a) A shareholders' agreement executed in accordance with Section 21.715 is:

(1) considered to be an agreement among all of the shareholders of the close corporation; and

(2) binding on and enforceable against each shareholder of the close corporation, regardless of whether:

(A) a particular shareholder acquired shares in

the close corporation by purchase, gift, bequest, or otherwise; or

(B) the shareholder had actual knowledge of the existence of the shareholders' agreement at the time of acquiring shares.

(b) A transferee or assignee of shares of a close corporation in which there is a shareholders' agreement is bound by the agreement for all purposes, regardless of whether the transferee or assignee executed or was aware of the agreement.

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

Sec. 21.721. DELIVERY OF COPY OF SHAREHOLDERS' AGREEMENT TO TRANSFEREE. (a) Before the transfer of shares of a close corporation in which there is a shareholders' agreement, the transferor shall deliver a complete copy of the shareholders' agreement to the transferee.

(b) If the transferor fails to deliver a complete copy of the shareholders' agreement:

(1) the validity and enforceability of the shareholders' agreement against each shareholder of the corporation, including the transferee, is not affected;

(2) the right, title, or interest of the transferee in the transferred shares is not adversely affected; and

(3) the transferee is entitled to obtain on demand from the transferor or from the close corporation a complete copy of the shareholders' agreement at the transferor's expense.

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

Sec. 21.722. EFFECT OF REQUIRED STATEMENT ON SHARE CERTIFICATE AND DELIVERY OF SHAREHOLDERS' AGREEMENT. If a certificate representing shares of a close corporation contains the statement required by Section 21.732, and a complete copy of each shareholders' agreement has been delivered as required by Section 21.717, each holder, transferee, or other person claiming an interest in the shares of the close corporation is conclusively presumed to have knowledge of a close corporation provision in effect at the time of the transfer.

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

Sec. 21.723. PARTY NOT BOUND BY SHAREHOLDERS' AGREEMENT ON CESSATION; LIABILITY. (a) Notwithstanding the person's signature, a person ceases to be a party to, and bound by, a shareholders' agreement when the person ceases to be a shareholder of the close corporation unless:

(1) the person's attempted cessation was in violation of Section 21.721 or the shareholders' agreement; or

(2) the shareholders' agreement provides to the contrary.

(b) Cessation as a party to a shareholders' agreement or as a shareholder does not relieve a person of liability the person may have incurred for breach of the shareholders' agreement.

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

Sec. 21.724. TERMINATION OF SHAREHOLDERS' AGREEMENT. (a) Except as provided by Subsection (b), a shareholders' agreement terminates when the close corporation terminates its status as a close corporation.

(b) If provided by the shareholders' agreement, all or part of the agreement is valid and enforceable to the extent permitted for an ordinary corporation by this chapter or other law.

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

Sec. 21.725. CONSEQUENCES OF MANAGEMENT BY PERSONS OTHER THAN BOARD OF DIRECTORS. Sections 21.726-21.729 apply only to a close corporation the business and affairs of which are managed wholly or partly by the shareholders of the close corporation or any other person as provided by a shareholders' agreement rather than solely by a board of directors.

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

Sec. 21.726. SHAREHOLDERS CONSIDERED DIRECTORS. (a) When required by the context of this chapter, the shareholders of a close corporation described by Section 21.725 are considered to be directors of the close corporation for purposes of applying a provision of this chapter, other than a provision relating to the

election and removal of directors.

(b) A requirement that an instrument filed with a governmental agency contain a statement that a specified action has been taken by the board of directors is satisfied by a statement that:

(1) the corporation is a close corporation with no board of directors; and

(2) the action was approved by the shareholders of the close corporation or the persons empowered to manage the business and affairs of the close corporation under a shareholders' agreement.

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

Sec. 21.727. LIABILITY OF SHAREHOLDERS. The shareholders of a close corporation described by Section 21.725 are subject to any liability imposed on a director of a corporation by this chapter or other law for a managerial act of or omission made by the shareholders or any other person empowered to manage the business and affairs of the close corporation under a shareholders' agreement and relating to the business and affairs of the close corporation, if the action is required by law to be undertaken by the board of directors.

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

Sec. 21.728. MODE AND EFFECT OF TAKING ACTION BY SHAREHOLDERS AND OTHERS. (a) An action that shall or may be taken by the board of directors of an ordinary corporation as required or authorized by this chapter shall or may be taken by action of the shareholders of a close corporation described by Section 21.725 at a meeting of the shareholders or, in the manner permitted by a shareholders' agreement, this subchapter, or this chapter, without a meeting.

(b) Unless otherwise provided by the certificate of formation of the close corporation or a shareholders' agreement of the close corporation, an action is binding on a close corporation if the action is taken after:

(1) the affirmative vote of the holders of the

majority of all outstanding shares entitled to vote on the action; or

(2) the consent of all of the shareholders of the close corporation, which may be proven by:

(A) the full knowledge of the action by all of the shareholders and the shareholders' failure to object to the action in a timely manner;

(B) written consent to the action in accordance with Section 6.201 or this chapter or any other writing executed by or on behalf of all of the shareholders reasonably evidencing the consent; or

(C) any other means reasonably evidencing the consent.

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

Sec. 21.729. LIMITATION OF SHAREHOLDER'S LIABILITY. (a) A shareholder of a close corporation described by Section 21.725 is not liable because of a shareholders' vote or shareholder action without a vote unless the shareholder had the right to vote or consent to the action.

(b) A shareholder of a close corporation, without regard to the right to vote or consent, may not be held liable for an action taken by the shareholders or a person empowered to manage the business and affairs of the close corporation under a shareholders' agreement if the shareholder dissents from and has not voted for or consented to the action.

(c) The dissent of a shareholder may be proven by:

(1) an entry in the minutes of the meeting of shareholders;

(2) a written dissent filed with the secretary of the meeting before the adjournment of the meeting;

(3) a written dissent that is sent to the secretary of the close corporation:

(A) promptly after the meeting or after a written consent was obtained from the other shareholders; and

(B) by certified or registered mail, return receipt requested, or by other means specified in the corporation's

governing documents; or

(4) any other means reasonably evidencing the dissent.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 14, eff. September 1, 2017.

Sec. 21.730. LACK OF FORMALITIES; TREATMENT AS PARTNERSHIP. The failure of a close corporation under this subchapter to observe a usual formality or requirement prescribed for an ordinary corporation by this chapter relating to the exercise of corporate powers or the management of a corporation's business and affairs and the performance of a shareholders' agreement that treats the close corporation as if the corporation were a partnership or in a manner that otherwise is appropriate only among partners may not:

(1) be a factor in determining whether to impose personal liability on the shareholders for the close corporation's obligations by disregarding the separate entity of the close corporation or otherwise;

(2) be grounds for invalidating an otherwise valid shareholders' agreement; or

(3) affect the status of the close corporation as a corporation under this chapter or other law.

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

Sec. 21.731. OTHER AGREEMENTS AMONG SHAREHOLDERS PERMITTED. Sections 21.713-21.730 do not prohibit or impair any other agreement between two or more shareholders of an ordinary corporation permitted by this chapter or other law.

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

Sec. 21.732. CLOSE CORPORATION SHARE CERTIFICATES. (a) In addition to a matter required or authorized by law to be stated on a certificate representing shares, each certificate representing shares issued by a close corporation must conspicuously state on the front or back of the certificate: "These shares are issued by a

close corporation as defined by the Texas Business Organizations Code. Under Chapter 21 of that code, a shareholders' agreement may provide for management of a close corporation by the shareholders or in other ways different from an ordinary corporation. This may subject the holder of this certificate to certain obligations and liabilities not otherwise imposed on shareholders of an ordinary corporation. On a sale or transfer of these shares, the transferor is required to deliver to the transferee a complete copy of any shareholders' agreement."

(b) Notwithstanding this chapter and Section 3.202, the status of a corporation as a close corporation is not affected by the failure of a share certificate to contain the statement required by Subsection (a).

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

SUBCHAPTER P. JUDICIAL PROCEEDINGS RELATING TO CLOSE CORPORATION

Sec. 21.751. DEFINITIONS.

In this subchapter:

(1) "Court" means a district court in the county in which the principal office of the close corporation is located.

(2) "Custodian" means a person appointed by a court under Section 21.761.

(3) "Provisional director" means a person appointed by a court under Section 21.758.

(4) "Shareholder" means a record or beneficial owner of shares in a close corporation, including:

(A) a person holding a beneficial interest in the shares under an inter vivos, testamentary, or voting trust; or

(B) the personal representative, as defined by the Estates Code, of a record or beneficial owner.

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

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 324 (S.B. 1488), Sec. 22.001, eff. September 1, 2017.

Sec. 21.752. PROCEEDINGS AUTHORIZED.

In addition to any other judicial proceeding pertaining to an ordinary corporation

provided for by this chapter or other law, a close corporation or shareholder may institute a proceeding in a district court in the county in which the principal office of the close corporation is located to:

(1) enforce a close corporation provision;

(2) appoint a provisional director; or

(3) appoint a custodian.

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

Sec. 21.753. NOTICE; INTERVENTION. (a) Notice of the institution of a proceeding shall be given to the close corporation, if the corporation is not a plaintiff, and to each shareholder who is not a plaintiff in the manner prescribed by law and consistent with due process of law as directed by the court.

(b) The close corporation or a shareholder of the close corporation may intervene in the proceeding.

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

Sec. 21.754. PROCEEDING NONEXCLUSIVE. Except as provided by Section 21.755, the right of a close corporation or a shareholder to institute a proceeding under Section 21.752 is in addition to another right or remedy the plaintiff is entitled to under law.

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

Sec. 21.755. UNAVAILABILITY OF JUDICIAL PROCEEDING. (a) A shareholder may not institute a proceeding before exhausting any nonjudicial remedy contained in a close corporation provision for resolution of an issue that is in dispute unless the shareholder proves that the close corporation, the shareholders as a whole, or the shareholder will suffer irreparable harm before the nonjudicial remedy is exhausted.

(b) A shareholder may not institute a proceeding to seek damages or other monetary relief if the shareholder is entitled to dissent from a proposed action and receive the fair value of the shareholder's shares under this code or a shareholders' agreement.

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

Sec. 21.756. JUDICIAL PROCEEDING TO ENFORCE CLOSE CORPORATION PROVISION. (a) In a judicial proceeding under this section, a court shall enforce a close corporation provision without regard to whether there is an adequate remedy at law.

(b) The court may enforce a close corporation provision by injunction, specific performance, or other relief the court determines to be fair and equitable under the circumstances, including:

(1) damages instead of or in addition to specific enforcement;

(2) the appointment of a provisional director or custodian;

(3) the appointment of a receiver for specific assets of the close corporation in accordance with Section 11.403;

(4) the appointment of a receiver to rehabilitate the close corporation in accordance with Section 11.404;

(5) subject to Section 21.757, the liquidation of the assets and business and involuntary termination of the close corporation and appointment of a receiver to effect the liquidation in accordance with Section 11.405; and

(6) the termination of close corporation status.

(c) The court may not order termination of close corporation status under Subsection (b)(6) unless the court determines that:

(1) any other remedy in law or equity, including appointment of a provisional director, custodian, or other type of receiver, is inadequate; and

(2) the size, the nature of the business, or the number of shareholders of the close corporation, or their relationship to one another or other similar factors, make it wholly impractical to continue close corporation status.

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

Sec. 21.757. LIQUIDATION; INVOLUNTARY WINDING UP AND TERMINATION; RECEIVERSHIP. Except as provided by Section 21.756, in a case in which a shareholder is entitled to wind up and terminate a close corporation under a shareholders' agreement, a court may not order liquidation, involuntary termination, or

receivership under that section unless the court determines that any other remedy in law or equity, including appointment of a provisional director, custodian, or other type of receiver, is inadequate.

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

Sec. 21.758. APPOINTMENT OF PROVISIONAL DIRECTOR. (a) In a judicial proceeding under this section, a court shall appoint a provisional director for a close corporation on presentation of proof that the directors or the persons empowered to manage the business and affairs of the close corporation under a shareholders' agreement are so divided with respect to the management of the business and affairs of the close corporation that the required votes or consent to take action on behalf of the close corporation cannot be obtained, resulting in the business and affairs being conducted in a manner that is not to the general advantage of the shareholders.

(b) The provisional director must be an impartial person who is not a shareholder, a party to a shareholders' agreement, a person empowered to manage the close corporation under a shareholders' agreement, or a creditor of the close corporation or of a subsidiary or affiliate of the close corporation. The court shall determine any further qualifications.

(c) A provisional director shall serve until removed by court order or by a vote of the majority of the directors or the holders of the majority of the shares with voting power, or by a vote of a different number, not fewer than the majority, of shareholders or directors if a close corporation provision requires the concurrence of a larger or different majority for action by the directors or shareholders.

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

Sec. 21.759. RIGHTS AND POWERS OF PROVISIONAL DIRECTOR. A provisional director has all the rights and powers of an elected director of the close corporation, or the rights of vote or consent of a shareholder and other rights and powers of shareholders or other persons who have been empowered to manage the business and

affairs of the close corporation under a shareholders' agreement with the voting power provided by court order, including the right to notice of, and to vote at, meetings of directors or shareholders.
Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.760. COMPENSATION OF PROVISIONAL DIRECTOR. (a) The compensation of a provisional director shall be determined by an agreement between the provisional director and the close corporation, subject to court approval.

(b) The court may set the compensation in the absence of an agreement or in the event of a disagreement between the provisional director and the close corporation.
Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.761. APPOINTMENT OF CUSTODIAN. (a) In a judicial proceeding under this section, a court shall appoint a custodian for a close corporation on presentation of proof that:

(1) at a meeting held for the election of directors, the shareholders are so divided that the shareholders have failed to elect successors to directors whose terms have expired or would have expired on qualification of a successor;

(2) the business of the close corporation is suffering or is threatened with irreparable injury because the directors, or the shareholders or the persons empowered to manage the business and affairs of the close corporation under a shareholders' agreement, are so divided with respect to the management of the business and affairs of the close corporation that the required vote or consent to take action on behalf of the close corporation cannot be obtained and a remedy with respect to the deadlock in a close corporation provision has failed; or

(3) the plaintiff or intervenor has the right to wind up and terminate the close corporation under a shareholders' agreement as provided by Section 21.714.

(b) To be eligible to serve as a custodian, a person must comply with all the qualifications required to serve as a receiver under Section 11.406.
Acts 2003, 78th Leg., ch. 182, Sec. 1, eff. Jan. 1, 2006.

Sec. 21.762. POWERS AND DUTIES OF CUSTODIAN. A person who qualifies as a custodian has all of the powers and duties and the title of a receiver appointed under Sections 11.404-11.406. The custodian shall continue the business of the close corporation and may not liquidate the affairs or distribute the assets of the close corporation, except as provided by court order or Section 21.761(a)(3).

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

Sec. 21.763. TERMINATION OF CUSTODIANSHIP. If the condition requiring the appointment of a custodian is remedied other than by liquidation or winding up and termination, the court shall terminate the custodianship immediately and management of the close corporation shall be restored to the directors or shareholders of the close corporation or to the persons empowered to manage the business and affairs of the close corporation under a shareholders' agreement.

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

SUBCHAPTER Q. MISCELLANEOUS PROVISIONS

Sec. 21.801. SHARES AND OTHER SECURITIES ARE PERSONAL PROPERTY. Except as otherwise provided by this code, the shares and other securities of a corporation are personal property.

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

Sec. 21.802. PENALTIES FOR LATE FILING OF CERTAIN INSTRUMENTS. (a) A person required under Title 1 or this title to file a change of registered office or agent, a certificate of voluntary withdrawal, or a certificate of termination for a corporation commits an offense if the person does not file the required filing with the secretary of state before the earlier of:

(1) the 30th day after the date of the change, withdrawal, or termination; or

(2) the date the filing is otherwise required by law.

(b) A person who violates Subsection (a) is liable to the

state for a civil penalty in an amount not to exceed $2,500 for each violation. In determining the amount of a penalty under this subsection, the court shall consider all the circumstances giving rise to the offense. The attorney general or the prosecuting attorney in the county in which the violation occurs may bring suit to recover the civil penalty imposed under this section.

(c) The attorney general may bring an action in the name of the state to restrain or enjoin a person from violating this section.

(d) In an action or proceeding brought against a person who has not complied with this section, the plaintiff or other party bringing the suit or proceeding may recover, at the court's discretion, reasonable costs and attorney's fees incurred by locating and effecting service of process on the person. Any damages recovered must be in conjunction with a pending action or proceeding and shall be awarded as costs under the Texas Rules of Civil Procedure. This section does not create a private independent cause of action for failure to comply with this section.

(e) A person who is entitled to recover damages under Subsection (d) may request from the attorney general nonconfidential information on the other person for the purpose of effecting service of process. The attorney general shall comply with a request made under this subsection to the extent practicable.

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

SUBCHAPTER R. RATIFICATION OF DEFECTIVE CORPORATE ACTS OR SHARES; PROCEEDINGS

Sec. 21.901. DEFINITIONS. In this subchapter:

(1) "Corporate statute," with respect to an action or filing, means this code, the former Texas Business Corporation Act, or any predecessor statute of this state that governed the action or the filing.

(2) "Defective corporate act" means:

(A) an overissue;

(B) an election or appointment of directors that is void or voidable due to a failure of authorization; or

(C) any act or transaction purportedly taken by or on behalf of the corporation that is, and at the time the act or transaction was purportedly taken would have been, within the power of a corporation to take under the corporate statute, without regard to the failure of authorization identified in Section 21.903(a)(4), but is void or voidable due to a failure of authorization.

(3) "District court" means a district court in:

(A) the county in which the corporation's principal office in this state is located; or

(B) the county in which the corporation's registered office in this state is located, if the corporation does not have a principal office in this state.

(4) "Failure of authorization" means:

(A) the failure to authorize or effect an act or transaction in compliance with the provisions of the corporate statute, the governing documents of the corporation, any plan or agreement to which the corporation is a party, or the disclosure set forth in any proxy or consent solicitation statement, if and to the extent the failure would render the act or transaction void or voidable; or

(B) the failure of the board of directors or an officer of the corporation to authorize or approve an act or transaction taken by or on behalf of the corporation that required the prior authorization or approval of the board of directors or the officer.

(5) "Overissue" means the purported issuance of:

(A) shares of a class or series in excess of the number of shares of that class or series that the corporation has the power to issue under the governing documents of the corporation and the corporate statute at the time of issuance; or

(B) shares of any class or series that are not at the time of issuance authorized for issuance by the governing documents of the corporation.

(5-a) "Putative record date" means, with respect to

any defective corporate act that involved the establishment of a record date for a meeting of or action by shareholders or any other purpose, that record date.

(6) "Putative shares" means the shares of any class or series of the corporation, including shares issued on exercise of options, rights, warrants, or other securities convertible into shares of the corporation, or interests with respect to the shares that were created or issued pursuant to a defective corporate act, that:

(A) would constitute valid shares, if not for a failure of authorization; or

(B) cannot be determined by the board of directors to be valid shares.

(7) "Time of the defective corporate act" means the date and time the defective corporate act was purported to have been taken.

(8) "Validation effective time" or "effective time of the validation," with respect to any defective corporate act ratified under this subchapter, means the latest of:

(A) the time at which the defective corporate act submitted to the shareholders for approval under Section 21.905 is approved by the shareholders or, if no shareholder approval is required, the time at which the board of directors adopts the resolutions required by Section 21.903;

(B) if a certificate of validation is not required to be filed under Section 21.908, the time, if any, specified by the board of directors in the resolutions adopted under Section 21.903, which may not precede the time at which the resolutions are adopted; or

(C) the time at which any certificate of validation filed under Section 21.908 takes effect in accordance with Chapter 4.

(9) "Valid shares" means the shares of any class or series of the corporation that have been authorized and validly issued in accordance with the corporate statute.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 15, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 10, eff. September 1, 2019.

Sec. 21.902. RATIFICATION OF DEFECTIVE CORPORATE ACT AND PUTATIVE SHARES. Subject to Section 21.909 or 21.910, a defective corporate act or putative shares are not void or voidable solely as a result of a failure of authorization if the act or shares are:

(1) ratified in accordance with this subchapter; or

(2) validated by the district court in a proceeding brought under Section 21.914.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Sec. 21.903. RATIFICATION OF DEFECTIVE CORPORATE ACT; ADOPTION OF RESOLUTIONS. (a) To ratify one or more defective corporate acts, the board of directors of the corporation shall adopt resolutions stating:

(1) the defective corporate act or acts to be ratified;

(2) the date of each defective corporate act;

(3) if the defective corporate act or acts involved the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purportedly issued;

(4) the nature of the failure of authorization with respect to each defective corporate act to be ratified; and

(5) that the board of directors approves the ratification of the defective corporate act or acts.

(b) A resolution may also state that, notwithstanding shareholder approval of the ratification of a defective corporate act that is a subject of the resolution, the board of directors may, with respect to the defective corporate act, abandon the ratification of the defective corporate act at any time before the validation effective time without further shareholder action.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 16, eff. September 1, 2017.

Sec. 21.904. QUORUM AND VOTING REQUIREMENTS FOR ADOPTION OF RESOLUTIONS. (a) The quorum and voting requirements applicable to the adoption of the resolutions to ratify a defective corporate act under Section 21.903 are the same as the quorum and voting requirements applicable at the time of the adoption of the resolutions for the type of defective corporate act proposed to be ratified.

(b) Notwithstanding Subsection (a) and except as provided by Subsection (c), if in order for a quorum to be present or to approve the defective corporate act, the presence or approval of a larger number or portion of directors or of specified directors would have been required by the governing documents of the corporation, any plan or agreement to which the corporation was a party, or any provision of the corporate statute, each as in effect at the time of the defective corporate act, then the presence or approval of the larger number or portion of such directors or of such specified directors must be required for a quorum to be present or to adopt the resolutions to ratify the defective corporate act, as applicable.

(c) The presence or approval of any director elected, appointed, or nominated by holders of any class or series of which no shares are then outstanding, or by any person that is no longer a shareholder, shall not be required for a quorum to be present or to adopt the resolutions.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 17, eff. September 1, 2017.

Sec. 21.905. SHAREHOLDER APPROVAL OF RATIFIED DEFECTIVE

CORPORATE ACT REQUIRED; EXCEPTION. Each defective corporate act ratified under Section 21.903 must be submitted to shareholders for approval as provided by Sections 21.906 and 21.907, unless:

(1)(A) no other provision of the corporate statute, no provision of the corporation's governing documents, and no provision of any plan or agreement to which the corporation is a party would have required shareholder approval of:

(i) the defective corporate act to be ratified at the time of that defective corporate act; or

(ii) the type of defective corporate act to be ratified at the time the board of directors adopts the resolutions ratifying that defective corporate act under Section 21.903; and

(B) the defective corporate act to be ratified did not result from a failure to comply with Subchapter M; or

(2) as of the record date for determining the shareholders entitled to vote on the ratification of the defective corporate act, there are no valid shares outstanding and entitled to vote on the ratification, regardless of whether as of that record date there exist any putative shares.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 18, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 11, eff. September 1, 2019.

Sec. 21.906. NOTICE REQUIREMENTS FOR RATIFIED DEFECTIVE CORPORATE ACT SUBMITTED FOR SHAREHOLDER APPROVAL. (a) If the ratification of a defective corporate act is required to be submitted to the shareholders for approval under Section 21.905, notice of the time, place, if any, and purpose of the meeting shall be given at least 20 days before the date of the meeting to:

(1) each holder of record, as of the record date of the meeting, of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, at the address of the holder as

it appears or most recently appeared, as appropriate, on the corporation's records; and

(2) each holder of record of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, other than to a holder whose identity or address cannot be ascertained from the corporation's records:

(A) as of the time of the defective corporate act; or

(B) in the case of any defective corporate act that involved the establishment of a putative record date, as of that putative record date.

(b) The notice must contain:

(1) copies of the resolutions adopted by the board of directors under Section 21.903 or the information required by Sections 21.903(a)(1)-(5); and

(2) a statement that, on shareholder approval of the ratification of the defective corporate act or putative shares made in accordance with this subchapter, the holder's rights to challenge the defective corporate act or putative shares are limited to an action claiming that a court of appropriate jurisdiction, in its discretion, should declare:

(A) that the ratification not take effect or that it take effect only on certain conditions, if that action is filed with the court not later than the 120th day after the applicable validation effective time; or

(B) that the ratification was not accomplished in accordance with this subchapter.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 19, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 12, eff. September 1, 2019.

Sec. 21.907. SHAREHOLDER MEETING; QUORUM AND VOTING. (a) At the shareholder meeting, the quorum and voting requirements

applicable to the approval of the ratification of a defective corporate act under Section 21.905 are the same as the quorum and voting requirements applicable at the time of the approval by the shareholders of the ratification for the type of ratified defective corporate act proposed to be approved, except as provided by this section.

(b) If the presence or approval of a larger number or portion of shares or of any class or series of shares or of specified shareholders would have been required for a quorum to be present or to approve the defective corporate act, as applicable, by the corporation's governing documents, any plan or agreement to which the corporation was a party, or any provision of the corporate statute, each as in effect at the time of the defective corporate act, then the presence or approval of the larger number or portion of shares or of the class or series of shares or of such specified shareholders shall be required for a quorum to be present or to approve the ratification of the defective corporate act, as applicable, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a shareholder, is not required.

(c) The approval by the shareholders of the ratification of the election of a director requires the affirmative vote of the majority of shares present at the meeting and entitled to vote on the election of the director at the time of the approval, unless the governing documents of the corporation then in effect or in effect at the time of the defective election require or required a larger number or portion of shares or of any class or series of shares or of specified shareholders to elect the director, in which case the affirmative vote of the larger number or portion of shares or of the class or series of shares or of the specified shareholders is required to ratify the election of the director, except that the presence or approval of shares of any class or series of which no shares are then outstanding, or of any person that is no longer a shareholder, is not required.

(d) If a failure of authorization results from the failure to comply with Subchapter M, the approval of the ratification of the defective corporate act requires the vote set forth by Section

21.606(2), regardless of whether that vote would have otherwise been required.

(e) Putative shares on the record date for determining shareholders entitled to vote on any matter submitted to shareholders under Section 21.905 are not entitled to be counted for voting or quorum purposes in any vote to approve the ratification of any defective corporate act, regardless of any ratification that becomes effective after the record date.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 20, eff. September 1, 2017.

Sec. 21.908. CERTIFICATE OF VALIDATION. (a) If a defective corporate act ratified under this subchapter would have required under any other provision of the corporate statute the filing of a filing instrument or other document with the filing officer, the corporation shall file a certificate of validation with respect to the defective corporate act in accordance with Chapter 4, regardless of whether a filing instrument or other document was previously filed with respect to the defective corporate act.

(a-1) A separate certificate of validation is required for each defective corporate act for which a certificate of validation is required under this section, except that:

(1) two or more defective corporate acts may be included in a single certificate of validation if the corporation filed, or to comply with the applicable provisions of this code could have filed, a single filing instrument or other document under another provision of this code to effect the acts;

(2) a single certificate of validation may be filed to amend the certificate of formation of the corporation to establish a new class or series of shares or to increase the number of authorized shares of any class or series of shares, in order to cure multiple previous overissues of the shares of the class or series; and

(3) a single certificate of validation may be filed to amend the corporation's certificate of formation to establish two or more new classes or series of shares, to increase the number of authorized shares of two or more classes or series of shares, or to establish one or more new classes or series of shares and increase the number of authorized shares of one or more classes or series of shares, in order to cure multiple previous overissues of the shares of all the classes and series that are the subjects of the certificate of validation.

(a-2) An amendment effected by a certificate of validation described by Subsection (a-1)(2) or (3) is effective as to each class or series that is a subject of the certificate of validation as of the first overissue of the shares of the class or series.

(b) The certificate of validation must include:

(1) each defective corporate act that is a subject of the certificate of validation, including:

(A) for a defective corporate act involving the issuance of putative shares, the number and type of putative shares issued and the date or dates on which the putative shares were purported to have been issued;

(B) the date of the defective corporate act; and

(C) the nature of the failure of authorization with respect to the defective corporate act;

(2) a statement that each defective corporate act was ratified in accordance with this subchapter, including:

(A) the date on which the board of directors ratified each defective corporate act; and

(B) the date, if any, on which the shareholders approved the ratification of each defective corporate act; and

(3) as appropriate:

(A) if a filing instrument was previously filed with a filing officer under the corporate statute with respect to the defective corporate act and no change to the filing instrument is required to give effect to the defective corporate act as ratified in accordance with this subchapter:

(i) the name, title, and filing date of the previously filed filing instrument and of any certificate of

correction to the filing instrument; and

(ii) a statement that a copy of the previously filed filing instrument, together with any certificate of correction to the filing instrument, is attached as an exhibit to the certificate of validation;

(B) if a filing instrument was previously filed with a filing officer under the corporate statute with respect to the defective corporate act and the filing instrument requires any change to give effect to the defective corporate act as ratified in accordance with this subchapter, including a change to the date and time of the effectiveness of the filing instrument:

(i) the name, title, and filing date of the previously filed filing instrument and of any certificate of correction to the filing instrument;

(ii) a statement that a filing instrument containing all the information required to be included under the applicable provisions of this code to give effect to the ratified defective corporate act is attached as an exhibit to the certificate of validation; and

(iii) the date and time that the attached filing instrument is considered to have become effective under this subchapter; or

(C) if a filing instrument was not previously filed with a filing officer under the corporate statute with respect to the defective corporate act and the defective corporate act as ratified under this subchapter would have required under the other applicable provisions of this code the filing of a filing instrument in accordance with Chapter 4, if the defective corporate act had occurred when this code was in effect:

(i) a statement that a filing instrument containing all the information required to be included under the applicable provisions of this code to give effect to the defective corporate act, as if the defective corporate act had occurred when this code was in effect, is attached as an exhibit to the certificate of validation; and

(ii) the date and time that the attached filing instrument is considered to have become effective under this

subchapter.

(c) A filing instrument attached to a certificate of validation under Subsection (b)(3)(B) or (C) does not need to be executed separately and does not need to include any statement required by any other provision of this code that the instrument has been approved and adopted in accordance with that provision.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 21, eff. September 1, 2017.

Acts 2021, 87th Leg., R.S., Ch. 39 (S.B. 1203), Sec. 24, eff. September 1, 2021.

Sec. 21.909. ADOPTION OF RESOLUTIONS; EFFECT ON DEFECTIVE CORPORATE ACT. On or after the validation effective time, unless determined otherwise in an action brought under Section 21.914 and subject to Section 21.907(e), each defective corporate act ratified in accordance with this subchapter may not be considered void or voidable as a result of the failure of authorization described by the resolutions adopted under Sections 21.903 and 21.904, and the effect shall be retroactive to the time of the defective corporate act.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 22, eff. September 1, 2017.

Sec. 21.910. ADOPTION OF RESOLUTIONS; EFFECT ON PUTATIVE SHARES. On or after the validation effective time, unless determined otherwise in an action brought under Section 21.914 and subject to Section 21.907(e), each putative share or fraction of a putative share issued or purportedly issued pursuant to a defective corporate act ratified in accordance with this subchapter and described by the resolutions adopted under Sections 21.903 and 21.904 may not be considered void or voidable and is considered to

be an identical share or fraction of a share outstanding as of the time it was purportedly issued.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 23, eff. September 1, 2017.

Sec. 21.911. NOTICE TO SHAREHOLDERS FOLLOWING RATIFICATION OF DEFECTIVE CORPORATE ACT. (a) For each defective corporate act ratified by the board of directors under Sections 21.903 and 21.904, notice of the ratification shall be given promptly to:

(1) each holder of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of the date the board of directors adopted the resolutions ratifying the defective corporate act; or

(2) each holder of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of a date not later than the 60th day after the date of adoption, as established by the board of directors.

(b) Notice under this section shall be sent to the address of a holder of shares described by Subsection (a)(1) or (a)(2) as the address appears or most recently appeared, as appropriate, on the records of the corporation.

(c) Notice under this section shall also be given to each holder of record of valid shares and putative shares, regardless of whether the shares are voting or nonvoting, as of the time of the defective corporate act, except that notice is not required to be given to a holder whose identity or address cannot be ascertained from the corporation's records.

(d) The notice must contain:

(1) copies of the resolutions adopted by the board of directors under Section 21.903 or the information required by Sections 21.903(a)(1)-(5); and

(2) a statement that, on ratification of the defective corporate act or putative shares made in accordance with this subchapter, the holder's rights to challenge the defective

corporate act or putative shares are limited to an action claiming that a court of appropriate jurisdiction, in its discretion, should declare:

(A) that the ratification not take effect or that it take effect only on certain conditions, if the action is filed not later than the 120th day after the later of the applicable validation effective time or the time at which the notice required by this section is given; or

(B) that the ratification was not accomplished in accordance with this subchapter.

(e) Notwithstanding Subsections (a)-(d):

(1) notice is not required to be given under this section to a person if notice of the ratification of the defective corporate act is given to that person in accordance with Section 21.906; and

(2) for a corporation that has a class of stock listed on a national securities exchange, the notice required by this section and Section 21.906(a)(2) may be considered given if the information contained in the notice is disclosed in a document publicly filed by the corporation with the Securities and Exchange Commission under Section 13, 14, or 15(d), Securities Exchange Act of 1934 (15 U.S.C. Section 78m, 78n, or 78o(d)), and any rules promulgated under that Act.

(f) For purposes of Sections 21.905, 21.906, and 21.907 and this section, notice to holders of putative shares and notice to holders of valid shares and putative shares as of the time of the defective corporate act shall be treated as notice to holders of valid shares for purposes of Sections 6.051, 6.052, 6.053, 6.201, 6.202, 6.203, 6.204, 6.205, 21.353, and 21.3531.

(g) If the ratification of a defective corporate act has been approved by shareholders acting under Section 6.202, the notice required by this section may be included in any notice required to be given under Section 6.202(d) and, if included:

(1) shall be sent to the shareholders entitled to the notice under Section 6.202(d) and all other holders of valid shares and putative shares otherwise entitled to the notice under Subsection (a) of this section; and

(2) is not required to be sent to shareholders or holders of valid shares or putative shares who signed a consent described by Section 6.202(b).

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 24, eff. September 1, 2017.

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 25, eff. September 1, 2017.

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 13, eff. September 1, 2019.

Sec. 21.912. VALID SHARES OR PUTATIVE SHARES. In the absence of actual fraud in the transaction, the judgment of the board of directors of a corporation that shares of the corporation are valid shares or putative shares is conclusive, unless otherwise determined by the district court in a proceeding brought under Section 21.914.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Sec. 21.913. RATIFICATION PROCEDURES OR COURT PROCEEDINGS CONCERNING VALIDATION NOT EXCLUSIVE. (a) Ratification of an act or transaction under this subchapter or validation of an act or transaction as provided by Sections 21.914 through 21.917 is not the exclusive means of ratifying or validating any act or transaction taken by or on behalf of the corporation, including any defective corporate act or any issuance of putative shares or other shares, or of adopting or endorsing any act or transaction taken by or in the name of the corporation before the corporation exists.

(b) The absence or failure of ratification of an act or transaction in accordance with this subchapter or of validation of an act or transaction as provided by Sections 21.914 through 21.917 does not, of itself, affect the validity or effectiveness of any act or transaction or the issuance of any shares properly ratified under common law or otherwise, nor does it create a presumption that

any such act or transaction is or was a defective corporate act or that those shares are void or voidable.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 26, eff. September 1, 2017.

Sec. 21.914. PROCEEDING REGARDING VALIDITY OF DEFECTIVE CORPORATE ACTS AND SHARES. (a) The following may bring an action under this section:

(1) the corporation;

(2) any successor entity to the corporation;

(3) any member of the corporation's board of directors;

(4) any record or beneficial holder of valid shares or putative shares of the corporation;

(5) any record or beneficial holder of valid shares or putative shares as of the time a defective corporate act was ratified in accordance with this subchapter; or

(6) any other person claiming to be substantially and adversely affected by a ratification under this subchapter.

(b) Subject to Section 21.917, the district court, on application by a person described by Subsection (a), may:

(1) determine the validity and effectiveness of any defective corporate act ratified in accordance with this subchapter;

(2) determine the validity and effectiveness of the ratification of any defective corporate act in accordance with this subchapter;

(3) determine the validity and effectiveness of:

(A) any defective corporate act not ratified under this subchapter; or

(B) any defective corporate act not ratified effectively under this subchapter;

(4) determine the validity of any corporate act or transaction and of any shares, rights, or options to acquire

shares; and

(5) modify or waive any of the procedures set forth in Sections 21.901 through 21.913 to ratify a defective corporate act.

(c) In connection with an action brought under this section, the district court may:

(1) declare that a ratification in accordance with and pursuant to this subchapter is not effective or that the ratification is effective only at a time or on conditions as specified by the district court;

(2) validate and declare effective any defective corporate act or putative shares and impose conditions on such a validation;

(3) require measures to remedy or avoid harm to any person substantially and adversely affected by a ratification under this subchapter or from any order of the district court pursuant to this section, excluding any harm that would have resulted had the defective corporate act been valid when approved or effectuated;

(4) order the filing officer to accept for filing an instrument with an effective date and time as specified by the court, which may be before or subsequent to the time of the order;

(5) approve share records for the corporation that include any shares ratified in accordance with this subchapter or validated in accordance with this section and Sections 21.915 through 21.917;

(6) declare that putative shares are valid shares or require a corporation to issue and deliver valid shares in place of any putative shares;

(7) order that a meeting of holders of valid shares or putative shares be held and determine the right and power of persons to vote at the meeting;

(8) declare that a defective corporate act validated by the court is effective as of the time of the defective corporate act or at such other time as determined by the court;

(9) declare that putative shares validated by the district court are considered to be an identical valid share or a fraction of a valid share as of the time the shares were originally or purportedly issued or at such other time as determined by the

district court; and

(10) make any other order regarding such matters as the court considers appropriate under the circumstances.

(d) In connection with the resolution of matters under Subsections (b) and (c), the district court may consider:

(1) whether the defective corporate act was originally approved or effectuated with the belief that the approval or effectuation was in compliance with the provisions of the corporate statute or the governing documents of the corporation;

(2) whether the corporation and the corporation's board of directors have treated the defective corporate act as a valid act or transaction and whether any person has acted in reliance on the public record that the defective corporate act was valid;

(3) whether any person will be or was harmed by the ratification or validation of the defective corporate act, excluding any harm that would have resulted had the defective corporate act been valid when it was approved or took effect;

(4) whether any person will be harmed by the failure to ratify or validate the defective corporate act; and

(5) any other factors or considerations the district court considers just and equitable.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Sec. 21.915. EXCLUSIVE JURISDICTION. The district court has exclusive jurisdiction to hear and determine any action brought under Section 21.914.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Sec. 21.916. SERVICE. (a) Service of an application filed under Section 21.914 on the registered agent of a corporation or in any other manner permitted by applicable law is considered to be service on the corporation, and no other party need be joined in order for the district court to adjudicate the matter.

(b) If an action is brought by a corporation under Section

21.914, the district court may require that notice of the action be provided to other persons identified by the court and permit those other persons to intervene in the action.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Sec. 21.917. STATUTE OF LIMITATIONS. (a) This section does not apply to:

(1) an action asserting that a ratification was not accomplished in accordance with this subchapter; or

(2) any person to whom notice of the ratification was not given as required by Sections 21.906 and 21.911.

(b) Notwithstanding any other provision of this subchapter:

(1) an action claiming that a defective corporate act or putative shares are void or voidable due to a failure of authorization identified in the resolutions adopted in accordance with Section 21.903 may not be filed in or must be dismissed by any court after the applicable validation effective time; and

(2) an action claiming that a court of appropriate jurisdiction, in its discretion, should declare that a ratification in accordance with this subchapter not take effect or that the ratification take effect only on certain conditions may not be filed with the court after the expiration of the 120th day after the later of the validation effective time or the time that any notice required to be given under Section 21.911 is given with respect to the ratification.

(c) Except as otherwise provided by a corporation's governing documents, for purposes of this section, notice under Section 21.911 that is:

(1) mailed is considered to be given on the date the notice is deposited in the United States mail with postage paid in an envelope addressed to the holder at the holder's address appearing or most recently appearing, as appropriate, in the records of the corporation; and

(2) transmitted by facsimile or electronic message is considered to be given when the facsimile or electronic message is transmitted to a facsimile number or an electronic message address

provided by the holder, or to which the holder consents, for the purpose of receiving notice.

Added by Acts 2015, 84th Leg., R.S., Ch. 32 (S.B. 860), Sec. 30, eff. September 1, 2015.

Amended by:

Acts 2017, 85th Leg., R.S., Ch. 75 (S.B. 1518), Sec. 27, eff. September 1, 2017.

SUBCHAPTER S. PUBLIC BENEFIT CORPORATIONS

Sec. 21.951. LAW APPLICABLE TO PUBLIC BENEFIT CORPORATIONS; FORMATION. (a) A for-profit corporation may elect under Section 3.007(e) to be a public benefit corporation that is governed by this subchapter.

(b) If a corporation elects to be a public benefit corporation, the corporation is subject to the other provisions of this chapter and other provisions of this code applicable to for-profit corporations.

(c) To the extent of a conflict between this subchapter and another provision of this chapter or another provision of this code applicable to for-profit corporations, this subchapter controls.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Sec. 21.952. DEFINITIONS. In this subchapter:

(1) "Public benefit" means a positive effect, or a reduction of a negative effect, on one or more categories of persons, entities, communities, or interests, other than shareholders in their capacities as shareholders of the corporation, including effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific, or technological nature.

(2) "Public benefit corporation" means a domestic for-profit corporation that elects under Section 3.007(e) to be a public benefit corporation governed by this subchapter.

(3) "Public benefit provisions" means the provisions of a certificate of formation that are required by Section 3.007(e)

and this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Sec. 21.953. PURPOSE OF PUBLIC BENEFIT CORPORATION; NAME OF CORPORATION. (a) A public benefit corporation is a domestic for-profit corporation that is intended to produce a public benefit or benefits and to operate in a responsible and sustainable manner.

(b) To accomplish the purpose of the corporation described by Subsection (a), a public benefit corporation shall be managed in a manner that balances:

(1) the shareholders' pecuniary interests;

(2) the best interests of those persons materially affected by the corporation's conduct; and

(3) the public benefit or benefits specified in the corporation's certificate of formation.

(c) The name of the public benefit corporation specified in its certificate of formation may contain the words "public benefit corporation," the abbreviation "P.B.C.," or the designation "PBC." If the name does not contain those words or that abbreviation or designation, before the issuance of unissued shares or the disposition of treasury shares and except as provided by Subsection (d), notice that the corporation is a public benefit corporation shall be given to any person:

(1) to whom the unissued shares are issued; or

(2) who acquires the treasury shares.

(d) Notice is not required to be provided under Subsection (c) if:

(1) the issuance or disposal of shares described by that subsection is under an offering registered under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.); or

(2) at the time of the issuance or disposal of shares described by that subsection, the corporation has a class of securities registered under the Securities Exchange Act of 1934 (15 U.S.C. Section 78a et seq.).

(e) Section 5.054(a) does not apply to a public benefit corporation that includes in its name the words, abbreviation, or

designation permitted by Subsection (c).

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 14, eff. September 1, 2019.

Sec. 21.954. CERTAIN AMENDMENTS, MERGERS, EXCHANGES, AND CONVERSIONS; VOTER APPROVAL REQUIRED. (a) Notwithstanding any other provision of this chapter, a domestic for-profit corporation that is not a public benefit corporation may not, without the approval of the owners of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which must be a vote by class or series of shares if otherwise required by Section 21.364, 21.457, or 21.458:

(1) amend the corporation's certificate of formation to comply with the requirements of Section 3.007(e) to elect for the corporation to be governed as a public benefit corporation;

(2) merge or effect an interest exchange with another entity if, as a result of the merger or exchange, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; or

(3) convert into a foreign public benefit corporation or similar entity.

(b) Subsection (a) does not apply until the corporation has issued and outstanding shares of the corporation's capital stock.

(c) A domestic entity that is not a domestic for-profit corporation may not, without the approval of the owners of two-thirds of the outstanding ownership interests of the entity entitled to vote on the matter:

(1) merge or effect an interest exchange with another entity if, as a result of the merger or exchange, the ownership interests in the entity would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign public benefit corporation or similar entity; or

(2) convert into a domestic or foreign public benefit corporation or similar entity.

(d) Notwithstanding any other provision of this chapter, a public benefit corporation may not, without the approval of two-thirds of the outstanding shares of the corporation entitled to vote on the matter, which must be a vote by class or series of shares if otherwise required by Section 21.364, 21.457, or 21.458:

(1) amend the corporation's certificate of formation to delete or amend a provision required by Section 3.007(e) or described by Section 21.957(c);

(2) convert into a domestic or foreign entity:

(A) that is not a public benefit corporation or similar entity; and

(B) that does not contain in its certificate of formation or similar governing document provisions identical to the provisions in the certificate of formation of the public benefit corporation containing the public benefit or benefits specified under Section 3.007(e) or imposing requirements under Section 21.957(c); or

(3) merge or effect an interest exchange with another entity if, as a result of the merger or exchange, the shares in the corporation would become, or be converted into or exchanged for the right to receive, shares or other equity interests in a domestic or foreign entity:

(A) that is not a public benefit corporation or similar entity; and

(B) that does not contain in its certificate of formation or similar governing document provisions identical to the provisions in the certificate of formation of the public benefit corporation containing the public benefit or benefits specified under Section 3.007(e) or imposing requirements under Section 21.957(c).

(e) Notwithstanding any other provision of this section, a nonprofit corporation or nonprofit association may not:

(1) with respect to a merger governed by this section, be a party to the merger; or

(2) convert into a public benefit corporation.

(f) An owner of a domestic entity affected by an action described by this section has the rights of dissent and appraisal as an owner described by Section 10.354 and to the extent provided by Subchapter H, Chapter 10.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Sec. 21.955. STOCK CERTIFICATES; NOTICES REGARDING UNCERTIFICATED STOCK. (a) A stock certificate issued by a public benefit corporation must note conspicuously that the corporation is a public benefit corporation governed by this subchapter.

(b) A notice sent to any person under Section 3.205 must state conspicuously that the corporation is a public benefit corporation governed by this subchapter.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 665 (S.B. 1971), Sec. 15, eff. September 1, 2019.

Sec. 21.956. DUTIES OF DIRECTORS. (a) The board of directors of a public benefit corporation shall manage or direct the business and affairs of the corporation in a manner that balances:

(1) the pecuniary interests of the shareholders;

(2) the best interests of those persons materially affected by the corporation's conduct; and

(3) the specific public benefit or benefits specified in the corporation's certificate of formation.

(b) A director of a public benefit corporation does not, by virtue of the public benefit provisions included in the certificate of formation or by virtue of the purpose and requirements of Sections 21.953(a) and (b), owe any duty to any person because of:

(1) any interest the person has in the public benefit or benefits specified in the certificate of formation; or

(2) any interest materially affected by the corporation's conduct.

(c) With respect to a decision implicating the balance requirement of Subsection (a), a director of a public benefit corporation is considered to have satisfied the director's duties to shareholders and the corporation if the director's decision is both informed and disinterested and is not a decision that no person of ordinary, sound judgment would approve.

(d) The certificate of formation of a public benefit corporation may include a provision that any disinterested failure of a director to satisfy the requirements of this section does not, for the purposes of the applicable provisions of this code, constitute an act or omission not in good faith or a breach of the duty of loyalty.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Sec. 21.957. PERIODIC STATEMENTS. (a) A public benefit corporation shall include in each notice of a meeting of shareholders a statement to the effect that the corporation is a public benefit corporation governed by this subchapter.

(b) A public benefit corporation, at least biennially, shall provide to the corporation's shareholders a statement pertaining to the corporation's promotion of the public benefit or benefits specified in the corporation's certificate of formation and promotion of the best interests of those materially affected by the corporation's conduct. The statement must include:

(1) the objectives the board of directors has established to promote the public benefit or benefits and interests;

(2) the standards the board of directors has adopted to measure the corporation's progress in promoting the public benefit or benefits and interests;

(3) objective factual information based on those standards regarding the corporation's success in meeting the objectives for promoting the public benefit or benefits and interests; and

(4) an assessment of the corporation's success in meeting the objectives and promoting the public benefit or benefits

and interests.

(c) The certificate of formation or bylaws of a public benefit corporation may require that the corporation:

(1) provide the statement required by Subsection (b) more frequently than biennially; or

(2) make the statement required by Subsection (b) available to the public.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Sec. 21.958. DERIVATIVE SUITS. (a) In this section, "shareholder" means:

(1) shareholders of a public benefit corporation that own, individually or collectively, at least two percent of the corporation's outstanding shares; or

(2) shareholders of a public benefit corporation the shares of which are listed on a national securities exchange that own at least the lesser of:

(A) the percentage of shares described by Subdivision (1); or

(B) shares whose market value is at least $2 million.

(b) A shareholder of a public benefit corporation may maintain a derivative action on behalf of the corporation to enforce compliance with the requirements of Section 21.956(a).

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.

Sec. 21.959. NO EFFECT ON OTHER CORPORATIONS. Except as provided by Section 21.954, this subchapter does not apply to a corporation that is not a public benefit corporation.

Added by Acts 2017, 85th Leg., R.S., Ch. 776 (H.B. 3488), Sec. 4, eff. September 1, 2017.